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EUROPEAN COMMISSION FOR DEMOCRACY THROUGH LAW
(VENICE COMMISSION)

THE VENICE COMMISSION IN 2004

ANNUAL REPORT OF ACTIVITIES

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Statement by Mr Antonio La Pergola, President of the Venice Commission

to the Committee of Ministers of the Council of Europe

7 July 2005

Mr Chairman, Ambassadors, Ladies and Gentlemen,

The Committee of Ministers of the Council of Europe is the governing body of the Organisation which has at its core mission the defence and promotion of democracy, the rule of law and human rights. I am aware and thankful that your Committee has constantly supported the Venice Commission since its establishment 15 years ago. Your encouragement has helped us to earn the reputation we have come to enjoy, and there is nothing more rewarding than to feel we have deserved it.

Being here again after a somewhat longer absence than usual I am impressed to see once more how much our activities are developing. Gone are the days when certain ambassadors were wondering what the Venice Commission would do once all the new constitutions in Central and Eastern Europe had been adopted. Our role, and along with it our work-load, are steadily increasing. One of the reasons for this development, I think, is that the Venice Commission has always tried, and hardly ever failed, to engage in matters of immediate relevance to the countries concerned, and that it has thus made all the contribution it could to implement within the member states the shared and cherished values of which the Council of Europe is the guardian. "Let us secure the implementation of these values". That was one of the main messages, perhaps the first and foremost message, from the Council of Europe when the Heads of State met in Warsaw. As President of the Venice Commission, I am privileged to have on that occasion been invited for the first time to a Council of Europe Summit. I accepted this invitation with gratitude. It acknowledged the useful service we render to our mother institution. Moreover, it offered me a unique opportunity to assess how the work of our Commission dovetails with the present tasks of the Council of Europe as a whole.

The Summit asked the Council of Europe to focus on the defence and promotion of the core values of the Organisation and to do so in close co-operation with other international organisations, especially the EU and the OSCE. Our fruitful co-operation with the EU and OSCE-ODIHR are well known to you and I will refer to specific instances in my speech. Our commitment to the core values of the Organisation is firmly grounded on our mandate as Commission for Democracy through Law and stems from our specific field of action, constitutional law.

Mr Chairman,

Constitutions are the texts which at national level define the scope and limitations of human rights. They reflect and set out the essential principles of the rule of law and they govern the functioning of the democratic institutions and their relationship. We are concerned with constitutional democracy, and this makes our Commission a natural partner of the Forum for the Future of Democracy with which we will be pleased to cooperate. It is possible that some of the challenges nowadays facing the traditional democracies are not directly linked to issues of constitutional law and cannot be easily overcome by legal means. However, at least in the new democracies, basic questions of constitutional law remain crucial for the democratic stabilisation of these countries.

Let me take a few examples from our work. I shall start with the recent case of Armenia. This country figures on the agenda of your meeting today, in the form of a report by the Chairman of the Ago Group, Ambassador Wegener, on the visit of the Group to the South Caucasus countries. We have been working on constitutional reform in Armenia since 2001 and finally, two weeks ago, at a meeting during the session of the Parliamentary Assembly, an understanding on the content of this reform was reached between the Armenian authorities and the Venice Commission. If a text in accordance with this understanding were to be adopted by referendum later this year, it would be a decisive step forward towards the consolidation of democracy in Armenia. It would fully enable that country to comply with its commitments to the Council of Europe. What is even more important, such an understanding should in principle be acceptable to both the majority and the opposition in Armenia, and it might pave the way for a return of the opposition to parliament. I am pleased to inform you that this very morning Mr Buquicchio was invited by the Speaker to address the Armenian National Assembly during its debate on constitutional reform at the end of August.

Another example is Bosnia and Herzegovina. Our opinion on the constitutional situation in the country was, I understand, very favourably received both by your Committee and the Parliamentary Assembly. We have done our best to point out how institutions might be enabled to function better in a situation which, as result of the war, is still characterised by the absence of trust among the constituent peoples. Obviously we do not know yet whether our opinion will ever be implemented, fully or in part. Nevertheless it was certainly important to outline in some detail possible reforms which are realistic, while trying to take into account the legitimate concerns of all three constituent peoples.

In Ukraine we have just adopted an opinion on constitutional reform at the request of the new authorities. This reflects an emergent spirit of co-operation, for in the past such opinions have usually been adopted by us at the request of the Parliamentary Assembly. In Georgia, we have convinced the new authorities to withdraw a proposal for constitutional reform which was not well thought through and which would have been, in our assessment, detrimental to judicial independence. And in Georgia, again, we co-operate with the authorities to refine the peace plan for South Ossetia presented by President Saakashvili. The Commission will be represented at the Conference on this topic in Batumi this weekend. This is a further example of good co-operation between international organisations, since the proposal to involve the Venice Commission was actually made by EU Special Representative Talvitie.

With regard to another conflict, Transnistria, we also have close working relations with the EU Special Representative, and long-standing contacts with the head of the OSCE Mission. There are now new perspectives for progress in the settlement of this conflict, thanks to the fresh impetus provided by the Ukrainian authorities. Despite the combined efforts of the EU, OSCE and the Council of Europe, it will certainly be neither easy nor quick to settle any of these issues, but I am convinced that in the end our persistent efforts will be crowned with success.

Another conflict area in which we are active is Kosovo. At the request of the Parliamentary Assembly we adopted an opinion on the protection of human rights there. That opinion puts forward concrete proposals for improving the protection of human rights in this region, including the setting up of a panel of legal advisers to the Special Representative of the Secretary General of the United Nations with the task of providing opinions on legal texts as well as on individual decisions which may possibly infringe on human rights. UNMIK has reacted positively to our opinion and presented concrete proposals on how to set up such a panel. We are examining these proposals, but there is already general agreement between UNMIK and the Venice Commission.

This has brought me from constitutional texts to constitutional practice. In order to be meaningful and viable, constitutions have to be implemented. As we know from experience, Courts, and in particular Constitutional Courts, play a key role in this respect. A fairly large part of our budget goes therefore into establishing links with and among such Courts, through the Bulletin on Constitutional Case Law, the *Codices* data base, seminars, conferences and consultations between courts through the Venice Forum. I am gratified to note that the importance of this networking is explicitly recognised in the Summit Action Plan which calls for an increase of this line of activity.

Mr Chairman,

The Action Plan starts by insisting on the need for ensuring the effectiveness of the European Court of Human Rights. While the role of the Venice Commission is here rather modest, I am glad to inform you that last month we provided for the first time the Court with an *amicus curiae* opinion. Moreover, following a proposal by the Romanian authorities, the Commission is preparing a comparative study on national remedies regarding allegations of excessive length of administrative, civil and criminal proceedings. As a result of this study we intend to present guidelines for the improvement of such remedies. Their purpose would be both to assist member states and the Committee of Ministers in the implementation of the Courts judgments and especially in reducing the number of complaints on excessive length of proceedings currently flooding the Court.

Mr Chairman,

I have referred to an intensification of our activities in the area of constitutional justice. The same applies to electoral law. Our contacts with electoral commissions and other election management bodies have shown that there is a great and growing demand from such bodies for networking and co-operation, and we are supporting a move from the already existing regional co-operation among such bodies to pan-European co-operation in accordance with the mandate of the Council of Europe. The new *Vota* database should also be a useful tool for these bodies. Again, synergy and co-operation are the *leitmotiv* of our work in this sector. In the Council for Democratic Elections, we work together with the Parliamentary Assembly and the Congress. Most of our opinions on electoral legislation are prepared jointly with ODIHR, financial assistance comes through a joint programme from the European Commission, and the Ago Group within your committee provides political support for our work on improving electoral legislation in Armenia and Azerbaijan.

Our co-operation with ODIHR is being extended to other areas, in particular the defence of fundamental freedoms. We have worked jointly with ODIHR on the Armenian law on public meetings. We have laid down joint guidelines on freedom of religion which will be used by our respective rapporteurs when assessing national legislation, and we are now working out joint guidelines on freedom of assembly.

Within the Council of Europe, our close co-operation with the Parliamentary Assembly has led to the conclusion of a co-operation agreement which strengthens our mutual contacts and further calls on the Assembly to avail itself of the Venice Commission's assistance. In fact, Venice Commission experts are providing legal advice to Assembly missions observing elections.

Finally, let me add a few remarks on our activities outside Europe. Upon the invitation of the German *Friedrich Naumann Stiftung* we participated in a seminar on constitution-making with members of the Constituent Assembly of Iraq in Amman. A follow-up seminar on federalism will take place in Germany in mid-July. We sincerely hope that these activities, which are entirely funded by the German foundation, will contribute to the emergence of a peaceful, stable and democratic Iraq.

A delegation from our Commission was in Kyrgyzstan in June in order to discuss the constitutional reform planned in this country. During our visit we received an official request from the Speaker to assist the Constitutional Council which has prepared draft amendments to the Constitution. The European Commission will probably provide financial support for this activity.

Such initiatives as concern non European states are an addition to our responsibilities. We do maintain our focus on Europe which will always be our priority. It is a fact, however, that a good many countries outside our old continent are more than ever interested in the Council of Europe. They regard and admire it as a successful system designed to guarantee democracy as well as peace - an achievement the like of which is not found anywhere else.

Allow me to recall the prophecy of the enlightened lawyers who had the courage to conceive a *droit de la paix*, and extol it, in the troubled years between the two great wars, when the violence of totalitarian regimes was spreading like wildfire. Europe would develop into the homeland of law and reason, of a close-knit family of peoples and nations, they said, if democracy within the States and peace between the States were to progress in unison with each other. How right these thinkers - unheeded in their days, as is often the case with prophets - have turned out to be. The Council of Europe is there to embody their ideas. And the way in which its admirers are inspired by what we are achieving in Strasbourg discloses a further possible dimension in the fulfilment of our mission a field of action which, to be sure, still lies fallow, but may well be worth tilling. I have always insisted that within its remit as an expert body the Venice Commission should do its part in this endeavour. I am thinking in particular of American countries with which we had initiated contacts that need to be revived

or improved upon. I shall make a point of reporting to your Committee on clearer plans and appropriate measures once they materialise. Meanwhile, let me thank you for having recently admitted Chile as a member of our Commission and ask you to examine with benevolence future demands for accession. The past request by Israel for accession to the Venice Commission may also merit reconsideration in the context of progress in the Middle East.

Your benevolence will obviously be even more welcome when you examine our draft budget for 2006. I am conscious that this is not the moment for financial decisions or promises. Nevertheless, our resources can only be stretched up to a certain point and, if you look at the manifold activities set forth in our Annual Report, I trust that you will arrive at the conclusion that we do provide value for money.

Thank you very much, Mr Chairman.

I. WORKING FOR DEMOCRATIC STABILITY the venice commission on its 15th anniversary

1. Venice Commission introduction ^[1]

The European Commission for Democracy through Law, better known as the Venice Commission, is a Council of Europe consultative body of independent experts on constitutional matters. Established 15 years ago, in 1990, it has since played a leading role in the adoption of constitutions which conform to the standards of Europe's constitutional heritage. The Commission meets four times a year in Venice for plenary sessions and works in three fields: constitutional assistance, constitutional justice and electoral matters.

- Constitutional assistance

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

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

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

- Constitutional justice

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

- Electoral matters

Another field of activity of the Commission is electoral law where it strives to bring the electoral legislation of member states up to European standards. For any democratic society, free and fair elections are of paramount importance; therefore, the Venice Commission has defined the principles applicable to democratic

elections in the Code of Good Practice in Electoral Matters and a number of other standard-setting texts. It also drafts opinions and recommendations on the electoral legislation of member countries and organises training seminars targeting all the actors involved in the electoral process. To a large extent these activities are carried out through the **Council for Democratic Elections**, a joint body set up in co-operation with the Parliamentary Assembly and the Congress of Local and Regional Authorities of the Council of Europe.

2. Some achievements of the Venice Commission during the 15 years of its existence

Constitutions

- The Commission was closely involved in the drafting of the new constitutions in a large number of Central and Eastern Europe states;
- The Commission did help to prevent constitutional reforms leading to a more authoritarian system in certain countries;
- Thanks to the Commission a constitutional reform introducing a far more democratic and balanced system of government seems now possible in Armenia;
- The Romanian constitution was reformed in close co-operation with the Venice Commission to facilitate Euro-Atlantic integration;
- The Commission's opinion on the constitutional situation in Bosnia and Herzegovina provides a realistic outline of necessary constitutional reforms in this country.

Ethno-political conflicts

- The Commission was involved in the drafting of the Rambouillet Agreement on Kosovo, the Ohrid Agreement in the former Yugoslav Republic of Macedonia and the Constitutional Framework in Kosovo;
- The Commission is advising the government of Georgia on possible solutions to the conflict in South Ossetia and working with Moldova on legal aspects of a Transnistria settlement.

Minorities

- The Commission's report on the protection of kin-minorities contributed to defusing a possible conflict between Hungary and Romania;
- The Commission did prepare a proposal for a Convention on the Protection of Minorities which was a point of departure for the drafting of the Framework Convention for the Protection of National Minorities.

Constitutional justice

- The Commission has contributed to the fact that constitutional courts exist in most Central and East European countries;
- The Commission provides a framework for networking between constitutional courts which was decisive for consolidating and strengthening the position of such courts at the national level;
- The Commission's support made it possible for several constitutional courts to abolish the death penalty.

Electoral law

- The Commission's Code of Good Practice in Electoral Matters has become a main reference when drafting electoral legislation;
- The Commission is assisting many states in their reforms of electoral legislation.

2. The Commission in 2004

With respect to 2004 the following main activities should be highlighted:

- Constitutional assistance

Constitutional reform

In March the Commission adopted an opinion on a major constitutional reform introducing a semi-presidential system of government in Georgia. In December it adopted an opinion on three alternative drafts for reforming the Constitution of Armenia which will be the basis for the decision of the Armenian parliament on which draft should be used as the basis for further work.

Furthermore the Commission adopted opinions on more limited constitutional reforms in Georgia (on human rights and the judiciary) and the Federation of Bosnia and Herzegovina (on local government) as well as on the procedure for adopting the Constitution of Ukraine.

Territorial organisation and settlement of conflicts

In March the Commission adopted an opinion on the draft constitutional law of Georgia on the status of Adjara. Furthermore it adopted an opinion on the draft law of the Russian Federation providing for a new procedure for electing regional governors as well as an opinion on restitution of property to victims of the Georgian-Ossetian conflict. The Commission was also involved in the drafting of the framework document on decentralisation in Kosovo.

Respect for human rights and the rule of law

In October the Commission adopted an opinion on the protection of human rights in Kosovo. Together with the OSCE it adopted guidelines for the review of laws affecting freedom of religion or belief. It also adopted opinions on the Ombudsman institutions in Bosnia and Herzegovina and Serbia, on the law on public meetings of Armenia, the draft law on the public prosecutor of Ukraine and on draft laws for the protection of national minorities in Ukraine and Montenegro.

- Constitutional justice

Strengthening constitutional justice

The Joint Council on Constitutional Justice of the Commission continued to support, and work with, constitutional courts through the Bulletin on Constitutional Case-Law and the CODICES database. The Commission adopted opinions on constitutional reform proposals introducing the individual complaint in Moldova and Turkey. In 2004, conferences and seminars on constitutional justice issues were held, *inter alia*, in Armenia, Azerbaijan, Belarus, Bosnia and Herzegovina, the Russian Federation, the former Yugoslav Republic of Macedonia and Turkey. For the first time the Commission provided in 2004 several *amicus curiae* opinions at the request of constitutional courts.

Looking beyond Europe

The Commission intensified its regional approach to co-operation with constitutional and supreme courts and associations of such courts outside Europe. Thanks to a contribution from Norway, the Commission continued to support the Southern African Judges Commission which had recently been established with the support of the Commission. The purpose of this co-operation is to strengthen the capacity of these courts and to enable them to assist each other in case of undue interference from other state powers.

- Electoral matters

The Commission adopted together with the OSCE Office of Democratic Institutions and Human Rights opinions and recommendations on the electoral laws of Albania, Armenia, Azerbaijan, Moldova and Romania (local elections). It adopted an opinion on the referendum in Belarus enabling the President to serve more than two terms of office as well as guidelines in the area of the law on political parties.

The Commission put an expert at the disposal of the Electoral Commission of Georgia for the presidential and parliamentary elections and the elections in the autonomous province of Adjara, provided training for election officials from several countries and intensified its co-operation with the Parliamentary Assembly on electoral (and other) matters following the conclusion of a co-operation agreement.

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

1. Country Specific Activities

- Albania

a) Comments on the Draft Law of Albania on Recognition, Restitution and Compensation of Property

At its March session, the Commission endorsed the comments made by Mr Solyom and Mr van Dijk on the draft law of Albania on the recognition, restitution and compensation of property ([CDL-AD\(2004\)9](#)).

Article 181 of the Albanian Constitution called for the adoption of a law on expropriations and confiscations effected prior to the entry into force of the Constitution. Various constitutional courts in other countries had addressed the issue of the restitution of property expropriated under the Communist regime, on the basis of the principle of equal rights. The new democratic constitutions did not have retrospective effect and any expropriations effected prior to their adoption would thus normally remain in force. States, however, were free to decide whether they wished to award compensation and if so, how much, with due regard to the principle of equality.

Overall, the draft law was in keeping with international standards, although Mr Solyom noted that a few amendments would be required, for example, the word recognition should be deleted from the title of the draft law and a list should be drawn up of any laws and other legal instruments under which expropriations had been effected and which would now give rise to compensation. Mr van Dijk highlighted his concern with the compatibility of the draft with the European Convention on Human Rights, stating that while in general the draft did not give rise to any objections, a number of provisions did nevertheless need revising, such as those relating to the right of access to the courts.

The opinion was forwarded to the Albanian Parliament which was already examining the draft law.

b) Opinion on constitutional aspects of the draft law on the criteria and conditions to be established for the reorganisation of the administrative territorial division of the Republic of Albania

At its June session, the Commission adopted its Opinion on constitutional aspects of the draft law on the criteria and conditions to be established for the reorganisation of the administrative territorial division of the Republic of Albania ([CDL-AD\(2004\)019](#)).

The Commission was asked to examine a problem of hierarchy of norms while the substance of the draft law was to be examined by local government experts of the Council of Europe. Mr Tuori concluded that under the Albanian Constitution the laws adopted by special majority were not to be considered as *leges superiores* with respect to other laws and the draft thus did not require a special majority under Art. 81 of the Albanian Constitution. Mr Omari agreed with Mr Tuoris conclusion.

c) Comments on the amendments to the Law on the status of former political prisoners

At its June session, the Commission took note of the comments by Mr Lapinskas ([CDL\(2004\)069](#)) and Mr Paczolay ([CDL\(2004\)070](#)) on the amendments to the Law on the status of former political prisoners in Albania.

Mr Lapinskas referred to the experience of Lithuania, where there had been many prisoners during the Soviet period, as possibly useful for Albania. Mr Paczolay noted that this was not only a legal issue. He emphasised that the principle of non-discrimination was important in this respect and indicated that there was relevant case law of the Hungarian Constitutional Court.

- Armenia

a) Conference organised in co-operation with the Armenian National Assembly on constitutional reforms in Armenia (Yerevan, 20-21 January 2004)

At its March session, Mr Tuori recalled that the process of constitutional reform in Armenia had been a lengthy one. After the failure of the referendum in May last year, a conference was organised in Yerevan on 20-21 January 2004 by the Armenia National Assembly in co-operation with the Commission in order to re-launch the process. The Commission was represented by Messrs Tuori, Endzins, Jean-Claude Colliard, Bruno Nascimbene and Owen Masters.

The insufficient involvement of the opposition and of the public had been identified as the main reason for the failure of the previous reform process. Accordingly, both the opposition and the civil society were invited to and attended the conference. The level of constitutional argumentation in the course of the conference was very high and the atmosphere was very constructive.

At its June session, Mr Tigran Torossian, Vice-speaker of the Armenian National Assembly, informed the Commission that the new draft Constitution was under preparation. The ruling coalition had initially waited for the opposition to join the work of the parliamentary commission charged with the constitutional revision, but had now decided to proceed without it. The new draft was expected to be completed and submitted to the Venice Commission by the end of June/beginning of July.

At its October session, Mr Torossian informed the Commission that three sets of proposals for amendments to the Armenian Constitution were currently pending before the National Assembly: one prepared by the ruling coalition and two prepared by opposition members of parliament. Parliament would have to choose one of the three texts, and subsequently three readings would be necessary for the text to be finalised. The second and most important reading was planned to take place in February/March 2005. The third reading would then only address minor points. The referendum was planned for June 2005. The Commission, which had already been requested to assess the three drafts, would be called upon to assess the single draft resulting from the work of the National Assembly before the second reading.

At its December session, Mr Tuori presented the opinion on three proposals for revising the Armenian Constitution, saying that it pertained solely to the constitutional provisions for which an amendment had been proposed, and was not concerned with the other sections of the Constitution, such as the preamble, which were unaffected by the reform. Mr Tuori further explained that the working group had used the draft constitutional reform prepared in 2001 with the help of the Venice Commission as a reference document.

The first draft was an improvement on the current Constitution, but it still had some major flaws. For example, it did not expressly prohibit the death penalty; in the media sector, it was left to ordinary law to regulate the activities and responsibilities of the media; on the subject of martial law and states of emergency, it diminished the power of the National Assembly to control the President's use of emergency powers. In comparison with the 2001 draft, moreover, the new draft gave the President increased authority at the expense of the National Assembly, thereby changing the balance of power. The draft also preserved the power of the President to elect and dismiss the mayor of Yerevan, which was contrary to European standards of local self-government.

The second draft could not be regarded as a comprehensive and coherent proposal for reform; it dealt only with political programmes and there appeared to be some confusion between the *legal and political* responsibilities of the political parties. It sought to introduce a sort of set of mandatory instructions, which was problematic in several respects.

The third draft was broadly in keeping with the 2001 draft and was a definite improvement on the existing Constitution. In particular, it contained an explicit prohibition of the death penalty. Like the first draft, it contained provisions on the Central Bank and the Audit Chamber which were to be welcomed, although the National Assembly ought to have supervisory powers in matters of public finance.

Mr Harutunian informed the Commission that the National Assembly intended to take the Commission's opinion on board when deciding which draft to choose in the next stage of the reform process. Once this decision had been made, the chosen draft would be revised and re-submitted to the Commission for opinion.

An exchange of views between a delegation from the Commission and the authors of the chosen draft would take place at the end of February/beginning of March 2005. The need to involve the opposition was widely recognised, and had recently been underlined by the Ago Group of the Council of Europe's Committee of Ministers. Positive signals seemed to be coming from the opposition, which might decide to participate in the reform process.

The Commission adopted the opinion, entitling it interim opinion on constitutional reform in Armenia ([CDL-AD\(2004\)44](#)).

b) Law on the procedure of conducting gatherings, meetings, rallies and demonstrations

After a preliminary discussion on the eve of the June session between the rapporteurs and Mr Torossian, Vice Speaker of the Armenian National Assembly, and with Mr Harutunian, at the October session, Ms Flanagan informed that the explanation subsequently provided by Mr Torossian had been useful but that reporting members remained of the opinion that the law needed to be amended. It contained distinctions between categories of demonstrations and criteria for restrictions of public events which did not correspond to the European Convention on Human Rights. In addition, excessive formalism surrounding the procedure for notifying a demonstration and obtaining authorisation risked discouraging demonstrations.

Mr Torossian informed the Commission that the Armenian authorities planned to revise the law in question before March 2005, taking into account the Venice Commission's opinion.

The Commission adopted the opinion on the Law on the procedure for conducting gatherings, meetings, rallies and demonstrations as it appears in document [CDL-AD\(2004\)039](#).

At its December session, Ms Flanagan informed the Commission that a revised version of the law had been received and that an opinion on this revised version would be prepared shortly.

- Bosnia and Herzegovina

a) Draft opinion on the draft amendments to the Constitution of the Federation of Bosnia and Herzegovina

At its March session, the Commission adopted its opinion on the draft amendments to the Constitution of the Federation of Bosnia and Herzegovina ([CDL-AD\(2004\)14](#)) on the basis of comments made by Mr Scholsem.

The Commission had been asked twice by the Constitutional Committee of the Parliament of the Federation of Bosnia and Herzegovina to comment on the draft amendments to the Federation's Constitution with regard to provisions on local authorities. Initial remarks made by Mr Scholsem had been taken into account by the Constitutional Committee in the second draft, which had then been submitted to the Commission for comments.

The constitutional amendments submitted were very important in the particular context of Bosnia and Herzegovina; they sought to redefine the distribution of local powers within the federated entity of the Federation of Bosnia and Herzegovina between the federation, the cantons and the municipalities. Mr Scholsem's comments related mainly to the need to harmonise and clarify as far as possible relations between the various levels of authority (federal, cantonal and municipal), in that the drafts submitted sought to replace the original competencies vested in the cantons with residual competencies, in favour of the municipalities which therefore should now enjoy proper fiscal powers. Although initial comments made by Mr Scholsem had broadly been incorporated into the second set of draft constitutional amendments submitted to the Commission, there was nevertheless a need to clarify this last point further.

At its October session, the Commission adopted an opinion on a new version of the draft amendments, as it appears in document [CDL-AD\(2004\)32](#). This opinion followed on from the comments given on the two earlier versions of these amendments already examined by the Commission and welcomed improvements and clarifications made in this more recent version. In addition there were new provisions on city authorities which risked creating an overlap with the powers of the municipalities.

b) Opinion on the status and rank of the Human Rights Ombudsman of Bosnia

and Herzegovina

At its March session, the Commission adopted its opinion on the status and rank of the Human Rights Ombudsman of Bosnia and Herzegovina (see [CDL-AD\(2004\)006](#)), on the basis of comments by Mr Vogel, and forwarded it to the authorities of Bosnia and Herzegovina.

This opinion was given at the request of the Human Rights Ombudsman of Bosnia and Herzegovina. The main question underlying this request was that of the level of remuneration of the three State ombudsmen. Under the legislation in force, the salaries of the Human Rights Ombudsman of Bosnia and Herzegovina were equated to the Chair of the Presidency of the Council of Ministers of Bosnia and Herzegovina, while those of the Ombudsmen of the Entities were equated to Supreme Court judges, which entailed a significantly higher level of remuneration.

On the basis of a comparative study which the Commission had previously carried out in the context of a similar request by the Ombudsmen of the Federation of Bosnia and Herzegovina, it had to be concluded that the choice of equating the State Ombudsman to high public officials was not contrary to any European standards. Nevertheless, consistency had to be ensured in the status and rank and subsequent remuneration of all Ombudsman institutions in Bosnia and Herzegovina.

c) Draft Law on amendments to the Law on the Ombudsman for Human Rights in Bosnia and Herzegovina

At its June session, the Commission was informed about progress in the restructuring of the ombudsman institutions in Bosnia and Herzegovina. Bosnia and Herzegovina currently has three Ombudsman institutions (one at the level of the State and one in each entity), which is costly and confusing for the public. At the Commission's initiative, and following a request for assistance from the Ministry of Human Rights and Refugees of Bosnia and Herzegovina, a meeting took place in Strasbourg on 19 April 2004, which was attended by representatives of the working group set up by the Council of Ministers of Bosnia and Herzegovina with a view to preparing the reform (the group included a representative of the Minister of Human Rights and Refugees, the three Human Rights Ombudsmen of Bosnia and Herzegovina, the three Ombudsmen of the Federation of Bosnia and Herzegovina, the two Ombudsmen of the Republika Srpska and representatives of the Ministries of Justice of the State and the two Entities). The participants agreed in essence that, after a transitional period during which one state-level and two entity-level institutions would co-exist, there would be a single ombudsman institution for the whole territory of Bosnia and Herzegovina, composed of one ombudsman and two deputies, each appointed from the constituent peoples and rotating on the position of ombudsman.

Following this meeting, a draft Law containing amendments to the Law on the Ombudsman for Human Rights in Bosnia and Herzegovina was submitted to the Commission for its opinion by the Ministry for Human Rights and Refugees.

At its October session, the Commission adopted its opinion on the draft Law on amendments to the Law on the Ombudsman for Human Rights in Bosnia and Herzegovina ([CDL-AD\(2004\)031](#)) and submitted it to the Ministry for Human Rights and Refugees. The draft Law reflected in most part the conclusions of the April meeting. However, it was necessary to spell out more clearly the modalities of the appointment and the respective roles and functions of the Ombudsman and of its Deputies. As regards the competence of the State of Bosnia and Herzegovina to proceed with the restructuring, the opinion underlined that the Constitution of Bosnia and Herzegovina clearly stated that responsibility for human rights protection and the future shape of human rights institutions was in the hands of the State. Nevertheless, it was up to the Entities themselves to make the necessary amendments to their Constitutions and/or legislation.

The Ministry for Human Rights and Refugees subsequently amended the draft law in the light of the Commission's opinion. However, at its December session, the Commission was informed that the new draft law incorporating the Commission's comments had suddenly, and for no apparent reason, been withdrawn from the Legislative Commission debates by the representative of the Minister for Human Rights and Refugees, in favour of another draft law which did not comply with the Commission's recommendations at all. The House of Representatives of the Bosnian Parliament had subsequently rejected this second draft and had instructed the Minister for Human Rights and Refugees to prepare a new draft law. The Commission expressed its surprise at the behaviour of the Bosnian authorities which had sought its opinion only to withdraw the draft law without any explanation.

d) Follow-up to Assembly Resolution 1384

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

The High Representative, Lord Ashdown, who attended the session in October, welcomed the timely request by the Parliamentary Assembly and stated that the opinion to be delivered by the Commission could provide an important impetus to move forward in Bosnia and Herzegovina.

At the end of October a Commission delegation (Messrs Helgesen, Jowell, Malinverni, Scholsem and Tuori) visited Bosnia and Herzegovina. The delegation met

the High Representative, the Constitutional Court, the constitutional committees of the parliaments of the state and the entities and representatives of the main political parties. Following the visit, an opinion will be prepared by the rapporteurs and submitted to the Commission for adoption at the March 2005 session.

style='text-transform:none;mso-bidi-font-style:normal'>- Georgia

a) Draft opinion on amendments to the Constitution

At its March session the Commission took note of the opinion on the draft amendments to the Georgian Constitution ([CDL-AD\(2004\)008](#)), prepared on the basis of contributions submitted by Messrs Dutheillet de Lamothe, Bartole, Malinverni, Torfason and Zahle.

The draft opinion had been put together within the space of a week and sent to the Georgian authorities with a view to the imminent adoption of the constitutional amendments. Under these amendments, Georgia was to move from a purely presidential system to a French-style semi-presidential system, ie a parliamentary system with a dual executive, the President of the Republic and the Government, and the possibility for the President to act as arbitrator in the event of a dispute between the Government and the Parliament, through dissolution. The exercise had not been entirely successful, however. The text lacked consistency and too much power remained vested in the President. A number of provisions which had been prepared rather hastily needed revising. The constitutional reform had already been adopted but the Commission could contribute to a review of the text after the parliamentary elections in Georgia.

The Commission then held an exchange of views with Ms Burdjanadze, Speaker of the Georgian Parliament. She informed the Commission that the Georgian people were pinning their hopes on the countrys new leaders. There was a real risk of anarchy and failure of the rule of law due to the problem of corruption, which was rife. It had thus been important to act swiftly and to amend the Constitution so that the post of Prime Minister could be created. It was obviously difficult to carry out a radical overhaul of the constitutional system in a short period of time. The amendments adopted were not without flaws and steps would have to be taken later to complete the state reform. Any imbalance between the various authorities, and in particular any imbalance to the detriment of Parliament, should be rectified. The adopted text should therefore be regarded as a provisional one and dialogue with the Commission was expected to continue after the parliamentary elections. The Venice Commissions comments on the immunity of judges and the need for a single ballot on the composition and programme of the government had already been taken into account. There should be no doubt as to what the end result would be, namely a constitution that was fully compliant with international standards and the development of a proper democracy governed by the rule of law.

The Commission organised, in co-operation with the Constitutional Court of Georgia, a conference on The constitutional organisation of the State in Tbilisi ON 18-19 May 2004. The Conference was attended by scholars, members of the Georgian Constitutional Court and of NGOs, representatives of the Parliamentary Assembly and the Congress of Local and Regional Authorities of the Council of Europe, members of the Venice Commission and other representatives of the international community

During the first day the Conference addressed issues of the separation of powers in the light of the recent constitutional amendments in Georgia. On behalf of the Venice Commission Mr Olivier Dutheillet de Lamothe (France) presented the semi-presidential system of government and Mr Sergio Bartole (Italy) spoke on the parliamentary control of the executive. Ms Ketevan Eremadze, assistant to the President of the Constitutional Court of Georgia, and Mr David Usupashvili, IRIS-Georgia, addressed the specific situation in Georgia. Participants acknowledged that the move from a purely presidential to a semi-presidential system of government was positive in the context of the specific situation of Georgia but that it had not been carried out in a coherent manner and that the process of constitutional reform should be continued. Participants from Georgia agreed with the arguments put forward in this respect in the Venice Commission opinion on the (draft) amendments to the Constitution.

On the occasion of the seminar the Commission delegation met the President of Georgia, Mr Saakashvili. The President referred to the continuous good co-operation between Georgia and the Venice Commission. He said that the move to a semi-presidential system of government had been necessary, in particular to enable the President to focus on priority issues. The constitutional reform did not fully follow the French model, mainly because there had been a lot of resistance to the idea of the President being able to dissolve parliament without a precise reason. The constitutional amendments adopted in February were not to be considered as definitive but the solutions chosen should be reviewed at a later stage, possibly around 2007 when Georgia would be preparing for EU accession talks.

b) Proposal for a constitutional law amending the Georgian Constitution

At its December meeting, the Commission took note of the comments made by Messrs van Dijk and Hamilton on the proposal for a constitutional law amending the Georgian Constitution and instructed the Secretariat to prepare a joint opinion with the OSCE/ODIHR.

This proposal had been prepared by the Georgian NGO Liberty Institute but had been submitted to the Commission for opinion by the Georgian Minister of Justice. The Commission recalled that because of its workload, only proposals from government authorities could be submitted to it for opinion.

The draft constitutional reform which concerned only the chapter on fundamental rights and the chapter on the judiciary, had no explanatory memorandum, making it difficult at times to assess the planned reforms, in particular the proposed abolition of the Constitutional Court and the consequent widening of the powers of the Supreme Court. Although the exercise by the Supreme Court of constitutional review powers was not contrary to European standards, the decision to abolish an existing, functioning constitutional court could be justified only on specific grounds, which in this case had not been explained. Quite apart from that, the constitutional functions of the Supreme Court were insufficiently defined and co-ordinated with the appeal functions in the draft in question.

As far as fundamental rights were concerned, the text was extremely detailed, in some cases excessively so, and deviated from the definitions given in the European Convention on Human Rights, which might give rise to ambiguities and misunderstandings. The provision on the abolition of the death penalty was to be welcomed.

Mr Denis Petit, representing the ODIHR, told the Commission that the OSCE mission in Tbilisi had also been asked by the Georgian Ministry of Justice to examine the Liberty Institute text. Mr Gerard Batliner had prepared comments which basically echoed those made by the Commissions rapporteurs. He felt that this text contained a number of welcome new features, but needed streamlining. The abolition of the Constitutional Court was clearly problematic, and should in any case be preceded by extensive public debate before it was even considered.

c) Draft constitutional law on the status of Adjara

The other topic addressed at the seminar in May (see point a above) concerned territorial organisation, in the context of the restoration of Georgian Government authority in the Autonomous Republic of Adjara. Mr Giorgio Malinverni (Switzerland) presented the concept of asymmetrical federalism and its practical implementation in a number of countries, Mr Libert Cuatrecasas (Spain), former President of the Congress of Local and Regional Authorities, presented the Spanish system of asymmetric competences, and Mr Hans-Heinrich Vogel (Sweden) described the division of responsibilities in the economic and financial field in federal states or between states and autonomous regions. Mr Konstantin Kublashvili, former Deputy Minister of Justice of Georgia, noted that the concept of asymmetric federalism provided the best perspective for a settlement of the conflict in Abkhazia and developed far-reaching proposals, granting wide autonomy to this Autonomous Region. During his meeting with the Commission delegation President Saakashvili also confirmed the interest of the concept of asymmetrical federalism for Georgia.

Shortly after the seminar the Monitoring Committee of the Parliamentary Assembly of the Council of Europe (PACE) asked the Venice Commission to prepare an opinion on the draft constitutional law on the status of Adjara.

The draft opinion prepared by Messrs Malinverni and Vogel welcomed the fact that the autonomy of Adjara would get a more precise constitutional basis thanks to the envisaged constitutional law. Nevertheless the draft had a number of weaknesses. In particular, it regulated in detail questions of the internal organisation of the autonomous region, which should be left to the region itself, and provided for numerous possibilities for interference by the central authorities. In addition, the draft did not provide a clear financial basis for the autonomy.

In the ensuing discussion several members supported the conclusions of the draft opinion while suggesting some changes, questioning in particular the possibility for the President of Georgia to dismiss the Council of Ministers of Adjara without consulting the Supreme Council of Adjara. The Commission then adopted its opinion on the draft Constitutional Law of Georgia on the status of the autonomous Republic of Adjara ([CDL-AD\(2004\)018](#)).

At its October session, the Commission was informed about the adoption of the draft Constitutional law of Georgia concerning the status of Adjara. The Constitution of Georgia itself did not provide a definitive solution with respect to the territorial organisation of Georgia. The Commission had worked on the Constitutional Law and submitted conclusions very quickly. As a result of some of the comments made in the opinion, the following changes had been made:

- a uni-cameral parliamentary system had been retained, rather than a bi-cameral one
- a simple majority of the House of Representatives is required for a motion of no-confidence in the Council of Ministers rather than the three-fourths majority initially provided for (considered too high)
- the President of Georgia can dissolve the parliament of Adjara only with the consent of the Georgian Parliament
- decisions to abrogate certain laws which do not comply with Georgian law should not be taken by political structures; in its opinion the Commission suggested that the Constitutional Court should be left to decide. This had caused heated debate within the drafting committee. In the end, it had been agreed that a solution should be found involving the Constitutional Court. The Parliament of Georgia is entitled to address the Constitutional Court and ask it to abrogate laws if they are against the Constitution or Georgian law. The Constitutional Court can decide to accept the request and suspend laws of the Adjarian parliament. In general, the Constitutional Court should decide on problems regarding laws on the autonomy of Adjara.

Other comments of the Commission, however, had not been taken into account in the new Constitutional Law. In particular, the powers of the central state and the regions should have been better defined.

d) Draft law on Restitution of Housing and Property to the Victims of the Georgian-Ossetian conflict

At its October session, the Commission adopted the opinion on the draft Law on Restitution of Housing and Property to the Victims of the Georgian-Ossetian conflict ([CDL-AD\(2004\)037](#)) on the basis of comments by Messrs van Dijk and Paczolay.

The draft law constituted a very important step towards remedying part of the damages caused by the conflict in question and, as such, it had to be welcomed. Nevertheless, the draft lacked certain important substantial provisions, notably on the criteria to be followed by the Commission for Housing and Property Issues in deciding upon claims for property restitution. There was a need for the law to ensure the adequate protection of the rights of all the individuals concerned both the returnees and the current occupants of the property in question. Mr Paczolay underlined the need for the Georgian authorities to address similar issues with respect to Abkhazia.

e) Status of South Ossetia

The Commission was informed that in response to a request from the Georgian Minister of Foreign Affairs, asking the Commission to help find a solution to the problems in South Ossetia, a Commission delegation would visit Georgia on 27-28 January 2005.

- Italy

At its October session, the Commission was informed about a request from the Parliamentary Assembly of the Council of Europe for an opinion on the compatibility of the Italian Gasparri Law on the media and Frattini Law on the conflict of interest with the standards of the Council of Europe in the field of freedom of expression and media pluralism, especially in the light of the case-law of the European Court of Human Rights.

A working group, composed of Messrs Helgesen, Tuori, Grabenwarter and Paczolay was set up. The group planned to visit Italy on 13-14 January 2005.

- Romania

a) Draft law concerning support for Romanians living abroad

At its June session, the Commission adopted its opinion on the draft law concerning support for Romanians living abroad, based on comments by Messrs van Dijk, Malinverni and Matscher ([CDL-AD\(2004\)020](#)).

The draft complied with the applicable European standards, which had been codified by the Commission in its Report on the preferential treatment of national minorities by their kin-States of October 2001 ([CDL-INF\(2001\)19](#)), from which the draft law had drawn specific inspiration. The draft could be improved on two points in particular: first, the entitlement of Romanians abroad to study in Romania and to benefit from the related facilities, which currently covered all levels and forms of education, needed to be genuinely linked to the nature of these studies (Romanian culture and language); second, their entitlement to free accommodation in Romania needed to be made dependent on the same low-income conditions as apply with respect to ordinary Romanian students.

Mr Aurescu informed the Commission that this draft law had been inspired by the lessons learnt in the context of the Hungarian/Romanian controversy surrounding the adoption of the so-called Status Law. It was to be implemented through bilateral instruments, which would be reviewed by the Minister of Foreign Affairs at bilateral venues, according to the Romanian Law on Treaties of February 2004. He added that in his view there was no risk of establishing discriminatory practices, as the benefits provided under the law would be made available to any other person of non-Romanian ethnic background wishing to study in Romania and in Romanian. As regarded free accommodation, Mr Aurescu would suggest that the low-income requirement be added.

b) Constitutional revision

Also at its June session, the Commission held an exchange of views with Mr Hazaparu, President of the Romanian Foundation for Democracy through Law. Mr Hazaparu presented the recent revision of the 1991 Constitution of Romania, adopted with a view to facilitating its accession to organisations such as the European Union and the North Atlantic Treaty Organisation. The new provisions modified some aspects of the legislative procedure (in particular, those concerning urgency orders); restricted the scope of parliamentary immunity; transformed the Supreme Court into the High Court of Cassation and Justice but brought no changes with regard to the role and functions of the Public Prosecutor. The revision also touched upon the role and structure of the Supreme Judicial Council and broadened the Constitutional Courts jurisdiction. The latter now also had the power to decide on the distribution of powers between State authorities as well as on the constitutionality of international agreements.

- Russian Federation

a) Law establishing new procedures for electing and dismissing heads of executive authorities of subjects of the Russian Federation

At its December session, the Commission adopted its opinion on the draft federal law ^[2] amending the federal law On general principles governing the organisation of legislative (representative) and executive state authorities of constituent entities of the Russian Federation and the federal law On fundamental guarantees of Russian Federation citizens electoral rights and right to participate in a referendum ([CDL-AD\(2004\)042](#)) and decided to forward it to the Monitoring Committee of the Parliamentary Assembly of the Council of Europe, which had requested the opinion. This opinion had been prepared in the light of comments by Messrs Malinverni, Scholsem, Nolte, Fogelklou and Lesage

The Parliamentary Assemblys Monitoring Committee had asked the Commission to look into whether this draft was not incompatible with the Russian Constitution and whether it conformed to European standards. The purpose of the law was to change the federal system in the following areas:

- 1) heads of executives were no longer to be elected directly, but were to be elected by the legislative assemblies of subjects of the Russian Federation ON a proposal from the Russian President;
- 2) the President of the Russian Federation had the right to dissolve assemblies if they twice rejected the Presidents candidate for the post of head of executive of a Federation subject;
- 3) heads of executives were to be less accountable to the legislative assemblies;
- 4) the Russian President could dismiss the head of executive of a Federation subject at any time.

The Commission could not usurp the authority of the Russian Constitutional Court and examine the constitutionality of the draft law. It could merely express its opinion on how it related to existing norms. With regard to European standards, federal states were something of an exception in Europe and it was difficult to say which federal system was the best. The reporting members had compared Russia to other federal and regional states in Europe. A comparative analysis of the draft reform showed that the legislative assemblies would be weakened as a result and that the strong involvement of the President of the Federation in forming the organs of the subjects was difficult to reconcile with the mutual co-operation between different levels of power required for the functioning of a federal system. Concerning the composition of the Federation Council (the upper house of the Russian parliament), once the draft law was adopted, half of this body would be directly dependent on the Russian President, because it was made up of representatives of the executive.

It was recalled that the draft in question was being debated by the Russian Duma even as the Commission was holding its plenary session and that there was a possibility that it might be extensively amended. The procedure envisaged in the draft for electing the heads of the executive of the subjects of the Federation was an investiture rather than an appointment procedure and the right to dissolve an assembly could also be seen as a way of settling disputes.

It was also pointed out that the Russian Constitution was very flexible as regards the composition of authorities in the Federation subjects. It allowed for the possibility of adjusting the balance of power. The desire to strengthen the executive, which was a single system under the Constitution, was not in itself unconstitutional therefore. The nature of Russian federalism was changing, however, and some of the changes proposed would seem to create an imbalance in the federal system.

Mr Baglay felt that the Commission was putting itself in an awkward position by examining a draft law at the same time as it was being debated by the national parliament. Russian parliamentarians would read the Commissions opinion when the law in question might already have been adopted. For information, he said that 250 amendments were being discussed by the Russian parliament. It seemed a pity to comment on a draft that might not even exist the day after the meeting. He nevertheless congratulated the reporting members on their excellent work and broadly concurred with their assessment and conclusions. On the subject of the composition of the Federation Council, he shared the Commissions concerns and said that, unfortunately, the Constitutional Court had been

unable to examine this matter because the provisions on the composition of the upper house were part of the Constitution and the Court could not rule on the constitutionality of the Constitution. He hoped that the planned reform of the Federation Council would resolve this issue. Mr Baglay concluded by saying that strengthening the executive was a necessary measure in order to centralise the fight against corruption and organised crime and that once the internal situation had returned to normal, the federal structure would be re-examined in the interest of the sub-federal authorities.

- Serbia and Montenegro

a) State of constitutional reform in Serbia and Montenegro

At its March session, the Commission heard from Mr Krivokapic, Speaker of the Montenegrin Parliament, that Montenegro was now an equal partner in the State Union of Serbia and Montenegro. In his view, this Union was, domestically speaking, a confederation which could not survive economically. Montenegro's Constitution needed to be brought into line with the Constitution of the State Union and the Parliament had set up a council of experts in constitutional matters which was to submit a report to Parliament's Constitutional Committee, focusing mainly on aspects of this harmonisation procedure. This report would be forwarded to the Commission. The opposition was still boycotting Parliament and was not prepared to take part in the process of harmonising the Constitution with the Constitutional Charter of the State Union.

At its June session, Mr Đerić, substitute member for the State Union of Serbia and Montenegro, informed the Commission that the government has adopted a first draft proposal for a new Constitution of Serbia. The last institution of the State Union whose creation was provided for by the Constitutional Charter the Court had also been recently established.

Mr Ivočić, member of the Council for Constitutional Issues of Montenegro, informed the Commission that the opposition in Montenegro was still boycotting Parliament and was not prepared to take part in the process of constitutional revision. The Council for Constitutional Issues was still working on a report to be submitted to the Parliament's Constitutional Committee, focusing mainly on the procedural aspects of the revision: whether to proceed towards amending the constitution or towards drafting a new constitution.

Mr Ivočić also mentioned that a conference on constitutional reform could be organised in Podgorica in early autumn 2004, in co-operation with the Venice Commission.

At its October session, the Commission was informed that work on the new Constitution in Serbia was to be speeded up following the local elections which had just taken place and that an expert body was finalising its recommendations on the adoption of the new constitution of Montenegro.

At its December session, Mr Bradley informed the Commission that at the end of November a delegation had visited Podgorica to discuss constitutional reform in Montenegro. The Constitutional Charter of the State Union of Serbia and Montenegro required that the Montenegrin Constitution be brought into line with this Charter. At the request of the parliament, a group of experts had prepared a report on how best to proceed. According to these experts, the adoption of a brand new constitution was desirable and, to this end, given the discontinuity in the constitutional development process, it was not essential to observe the rules on constitutional revision set out in the existing constitution. The Commission delegation had held discussions *inter alia* with the group of experts and the parliament's constitutional committee. The group of experts would prepare a revised version of their report which would reflect the discussions with the Commission delegation.

b) Revised Draft law on the exercise of rights and freedoms of national and ethnic minorities in Montenegro

At its March session, the Commission was informed that the Montenegrin authorities were in the process of preparing a law on the exercise of the rights of national and ethnic minorities in Montenegro. Messrs Aurescu and Bartole had prepared preliminary comments on a first draft law, in view of a working meeting which would take place in Podgorica on 16 March 2004.

The draft law was generally in line with European standards. Certain areas in which an improvement would be possible had nevertheless been identified; these concerned notably the diverse terminology used throughout the draft law and the inclusion in the definition of national minority of the notions of citizenship and of belonging to a kin-State.

The draft law recognised collective rights. In the opinion of several members of the Commission, the recognition of collective rights, to the extent that it was not detrimental to individual rights, was not contrary to international law, although the latter did not currently go as far as recognising collective rights.

At its June session, the Commission adopted its opinion on the exercise of the rights of national and ethnic minorities in Montenegro ([CDL-AD\(2004\)026](#)) prepared on the basis of comments by Messrs Aurescu and Bartole.

The reporting members informed the Commission that the expert meeting that had taken place in Podgorica on 16 March 2004 had been particularly useful in order to fully understand the specific situation of minorities in Montenegro.

The draft law was generally in line with European standards and in certain respects even went beyond them. According to Article 14.2 of the revised draft law, in municipalities where the population belonging to a national minority accounts for 5% of the total inhabitants, the language of that minority shall be in official use. Such a possibility was not provided for either in the Constitutional Charter of the State Union of Serbia and Montenegro or in the Montenegrin Constitution. There was also a need to clarify whether the term official use of language had the same meaning as the term official language. The importance of the position of the draft law in the hierarchy of norms in Montenegro in the context of an effective judicial protection of guaranteed minority rights was stressed. It was important to add a reference to the Constitutional Charter of the State Union of Serbia and Montenegro in Article 1 of the draft law and to clarify the issue of terminology in accordance with the Framework Convention on National Minorities. Particular mention was also made of the representation rights of minorities. With respect to the implementation of this right, the manner in which the census was conducted would be important.

c) Draft Law on the Ombudsman of Serbia

At its December session, the Commission adopted the joint opinion prepared by the Commission, the Commissioner for Human Rights and the Directorate General of Human Rights of the Council of Europe on the draft law on the Ombudsman of Serbia ([CDL-AD \(2004\)041](#)).

Messrs Lavin and Tuori were the reporting members. The opinion underlined that the requirement in the draft law to exhaust all legal remedies before applying to the ombudsman made it difficult for the latter to take swift, effective action. Also, providing a constitutional underpinning for this institution would help prevent parliament from changing certain aspects of it. The opinion also expressed doubts about the need for the ombudsman to have a law degree.

d) Draft opinion on the possible establishment of human rights review mechanisms in Kosovo

At its October session, the Commission adopted the opinion on Human Rights in Kosovo: possible establishment of review mechanisms ([CDL-AD\(2004\)033](#)) on the basis of comments by Messrs van Dijk, Helgesen, Malinverni, Scholsem and Nolte.

The draft opinion had been discussed at the meeting of the Sub-Commission on International Law on 7 October 2004. The reporting members had presented an analysis of the main human rights issues which were being experienced in Kosovo but had pointed out that the Commission's mandate only related to the possible institutional solutions to the lack of human rights review mechanisms in Kosovo. They had proposed, as a medium-term solution, the setting up of a Human Rights Court for Kosovo, to review the acts of UNMIK and KFOR or any other international organisation provisionally administering Kosovo. They had also proposed a short-term, compromise solution, targeting each of the three potential institutional sources of human rights violations (UNMIK, KFOR and the Provisional Institutions of Self-Government) individually. This proposal consisted of the creation of two advisory bodies competent to review acts by UNMIK and KFOR respectively and the setting up of the Special Chamber of the Supreme Court on Constitutional matters, already foreseen in the Constitutional Framework, with additional competence over individual human rights cases concerning PISG authorities.

A delegation of the working group had visited Kosovo at the beginning of September to prepare the opinion. In the course of the visit, the reporting members had met with people working in the different international organisations (including UNMIK, OSCE, OHCHR and UNICEF), who were fully committed to human rights protection and were doing a marvellous job in such a complex and difficult scenario. The working group had intended to provide all these people with some assistance and additional tools for fulfilling the objective of giving people in Kosovo an adequate level of human rights protection. However, the reporting members were conscious of the limited mandate they had received and also of the limited extent to which an institutional approach may have an impact on the human rights situation in Kosovo.

A series of international human rights instruments were applicable in Kosovo. Kosovo was being administered by UNMIK and KFOR, however, these international organisations and their members enjoyed immunity from legal proceedings. While personal immunity could be waived (and indeed had been waived in a number of cases), institutional immunity prevented any independent review of UNMIK and KFOR acts, which were potentially capable of violating human rights.

Serbia and Montenegro, despite having territorial sovereignty over Kosovo, could not be held accountable for acts committed by UNMIK or KFOR. Accordingly, notwithstanding that Serbia and Montenegro had ratified the European Convention on Human Rights, the Kosovo people were prevented from bringing individual complaints against acts by UNMIK or KFOR before the European Court of Human Rights.

The working group considered that the possible extension of the jurisdiction of the European Court of Human Rights over the UN (UNMIK) or NATO (KFOR) was not a realistic objective, given that the process of achieving such an extension through either an amendment of both the ECHR and the Council of Europe Statute or a parallel agreement was likely to take longer than the period of existence of the provisional administration in Kosovo.

A medium-term and a short-term solution had instead been envisaged, as has already been pointed out. The working group did not doubt that UNMIK and KFOR were fully committed to human rights. However, it considered that it was necessary for the international organisations provisionally administering Kosovo to give a signal to the Kosovo people and to the world that human rights were a serious concern and that they did not shield their acts from independent scrutiny. It was pointed out that the proposed UNMIK and KFOR advisory bodies would be internal to these organisations, but that their members would be independent.

Mr Jean-Christian Cady, Deputy Special Representative of the Secretary General for Police and Justice, welcomed the opinion of the Commission. He pointed out that UNMIK, a UN body, incorporated human rights standards and had the will and the capacity to respect them fully. A number of internal mechanisms supervising respect for human rights existed within UNMIK and the other pillars. UNMIK had also created the conditions for PISG to respect human rights standards. On the other hand, the prosecution of members of UNMIK staff had been possible, the Secretary General having each time lifted the immunity.

Mr Thomas Toussaint, Chief Legal Adviser of KFOR, explained that while KFOR still retained the power to detain and to carry out searches, and rightly so, this power was nowadays only exercised in very limited and exceptional circumstances and under the supervision of the Legal Advisor on the basis of written standards and procedures. The suggested Advisory Board which would complement the review by the Legal Advisor could indeed prove useful. However, the decision to set up such a body could not be taken by KFOR, but by a higher NATO authority.

e) Framework Document on decentralisation in Kosovo

At the request of UNMIK a staff member of the Venice Commission took part in June and July 2004 in the preparation of the Framework document for the reform of local self-government in Kosovo. This document provides, on the one hand, guidelines for a new law on local self-government which would be in full compliance with international standards and strengthen the powers of the municipalities. On the other hand, it suggests the rapid setting up of pilot units of local self-government to gain practical experience with the functioning of the new rules. In addition, some of the pilot projects would be in areas where Albanians are not in the majority and thereby enable other communities such as the Kosovo Serbs to have self-government institutions reflecting their wishes.

The adoption of the Framework document was welcomed by the Contact Group at a meeting on 20 July 2004 and the document was endorsed by the PISG government of Kosovo on 23 July 2004. Its implementation was however delayed due to the elections in Kosovo in October.

- Turkey

The Commission was informed about the constitutional reform package which had been passed by the Turkish Parliament. One of the articles abolished the death penalty in times of war and - now on the constitutional level - also in cases of terrorism. This opened the way for the ratification of Protocol 13 to the European Convention on Human Rights by Turkey. Another important element was that Article 90 of the Constitution now provides for the priority of international human rights treaties over conflicting national law, thus placing them on a level between the constitution and ordinary law. Until this amendment, international treaties had been incorporated at the level of ordinary law and conflicts had to be resolved by the rules of *lex specialis* and *lex posterior*. The third major amendment concerned the abolition of the state security courts. Even though these courts were not extraordinary courts but had been provided for by the Constitution itself, they had been criticised because of the participation of military judges. In recent years, the procedures of these courts had already been assimilated to that of ordinary courts. The fourth important element had been an amendment to Article 10 of the Constitution providing for affirmative action in favour of women. Taken as a whole these amendments were a significant step towards full democratic rule in Turkey

- Ukraine

a) Procedure of amending the Constitution of Ukraine

At its October session, the Commission adopted its opinion on the Procedure of amending the Constitution of Ukraine ([CDL-AD\(2004\)30](#)). As regards the substance of the various proposals for amending the Constitution of Ukraine, the Commission had adopted its opinion in December 2003 ([CDL-AD\(2003\)19](#)).

The draft opinion had been drawn up on the basis of comments by Ms Flanagan, Ms Thorgeirsdottir and Mr Tuori. The three draft proposals for amending the Constitution all dealt with the distribution of powers between the President and the Parliament. The first draft law on amending the Constitution (no. 4105), adopted in the first reading in December 2003 had been rejected by the Verkhovna Rada in its second reading in June 2004. The second draft law on amending the Constitution (no. 3207- 1) had failed to obtain the necessary approval, while the third draft law on amending the Constitution (no. 4180), which was virtually identical to draft law no. 4105 had been submitted to the Verkhovna Rada and adopted in its first reading on 23 June 2004. If a second vote on Draft Law no. 4180 were to be taken, it would be on the agenda of the Verkhovna Rada during its Autumn session.

The Monitoring Committee of the Parliamentary Assembly had suggested that the reforms should be postponed until after the presidential elections due to take place on 31 October 2004, and asked the Commission to give its opinion on the procedural issues involved. Two possible interpretations of the relevant constitutional articles (Articles 158 and 159) were possible: one allowed the successive submission of amendments to the constitution within one year of a similar text failing to be adopted by Parliament, the other prohibited this. The opinion emphasised the need for constitutional certainty and recommended that a decision by the Constitutional Court of Ukraine should be sought on this issue.

b) Draft Law on the Public Prosecutor

At its June session, the Commission endorsed the comments by Ms Hanna Suchocka ([CDL\(2004\)048fin](#)) and Mr James Hamilton ([CDL\(2004\)060fin](#)) on the draft Law on the Public Prosecutors Office of Ukraine and instructed the Secretariat to prepare a consolidated opinion for adoption at its next session.

The comments were critical since the draft did not really bring Ukraine closer to European standards in this field. The purpose of the draft seemed to maintain the traditional system of an overly strong and centralised Prokuratura while improving some details. The draft was partly based on a draft constitutional amendment which had been criticised both by the Commission (see [CDL-AD\(2003\)19](#)) and the Constitutional Court of Ukraine and not adopted by the Ukrainian parliament.

At its October session, the Commission adopted its opinion on the draft Law amending the Law on the office of the Public Prosecutor of Ukraine ([CDL-AD\(2004\)38](#)).

This opinion had been prepared on the basis of the individual comments by Ms Suchocka and Mr Hamilton, which had been discussed and endorsed at the June plenary session. The draft Law had been prepared to fulfil one of the obligations entered into by Ukraine upon its accession to the Council of Europe, that is, to transform the role and functions of the public prosecutors office to bring it into line with European democratic standards. However, the draft Law did not fulfil this obligation and moreover would make permanent a number of features which according to the Constitution were only meant to be transitional. Although the draft Law contained some marginal improvements, it was not a fundamental reform. The reporting members highlighted a number of matters which were cause for serious concern. These included an over-centralisation of power with the public prosecutor, infringements of the principle of the separation of powers, powers given to the public prosecutor which would more appropriately be exercisable by a court, an unclear relationship between the public prosecutor and the executive, a threat to press freedom, powers of representation which were too widely drawn and provisions on the independence of the public prosecutor which were not in accordance with the texts of the Parliamentary Assembly and the Committee of Ministers of the Council of Europe.

c) Draft laws amending the law on national minorities

At its March session, the Commission adopted its opinion on two draft laws amending the law on national minorities in Ukraine ([CDL-AD \(2004\)013](#)) and forwarded it to the Ukrainian authorities.

The Commission was informed that Ukraine was in the process of amending its law on national minorities. Several drafts had been prepared and discussed, including the two which had been submitted to the Commission. A fruitful working meeting had taken place in Strasbourg on 12 January 2004 with the participation of Council of Europe experts, representatives of the Ukrainian State Committee on Nationalities and Migration and the Legislation Institute of the Verkhovna Rada, and members of the Office of the OSCE High Commissioner for National Minorities.

Two areas requiring improvement had been identified: an indication of the position of this law in the hierarchy of laws in Ukraine and guidelines regarding secondary legislation to be issued in application of this law.

The Ukrainian authorities were currently working on a draft law which would combine the two previous drafts and would then submit it to the Commission for expertise.

At its June session, the Commission adopted its opinion on the latest version of the draft law amending the law on national minorities in Ukraine ([CDL-AD\(2004\)022](#)).

The draft law under consideration had been prepared on the basis of the two drafts previously examined by the Commission and partially took into account the Commission's previous opinion. While the new draft law was generally to be regarded as an improvement, certain aspects, such as the unclear position of this law in the Ukrainian hierarchy of norms, the citizenship requirement in the general definition of national minorities, the possibility of using the minority language only in dealings with the local authorities (and not also with the judiciary and the regional bodies), the unclear extent of judicial protection of minority rights and the lack of fair representation of minorities in legislative bodies at the local, regional and national levels, remained problematic.

d) Draft Law on the concept of the state ethnic policy

At its June session, the Commission adopted its opinion on the draft law on the conception of the State ethnic policy of Ukraine ([CDL-AD\(2004\)021](#)).

The Commission had already examined the previous law, which was in many respects similar to the new draft. Certain points remained problematic. In particular, the following issues needed to be addressed: the unspecified legal status of this law, the restriction of the State ethnic policy to Ukrainian citizens, the lack of reference to self-government and proportional representation of national minorities in elected bodies and the lack of reference to the need to comply with the European standards codified by the Venice Commission in respect of protection of Ukrainians abroad.

e) Law on the status of indigenous (autochthonous) peoples

At its October meeting, the Commission adopted its opinion on the draft Law on the Status of Indigenous Peoples of Ukraine ([CDL-AD\(2004\)036](#)).

While the preparation of a specific piece of legislation in this field was to be welcomed, the draft law seemed not to take into due account the differences between indigenous peoples and national minorities; reference in the draft law to numerical criteria, for example, was confusing and inappropriate. The draft law needed to be complemented by more detailed and precise provisions on the Assembly of Indigenous Peoples as a consultative body and on the right of persons belonging to indigenous peoples to be elected.

- Information on constitutional developments in other states

Members of the Commission, observers or invited guests informed the Commission at its plenary sessions on constitutional developments of particular interest. In 2004 this concerned:

- **Algeria:** the experience of the constitutional council and possible co-operation with the Venice Commission;
- **Chile:** the activities of the constitutional tribunal and possible accession to the Venice Commission;
- **Egypt:** the developing case-law of the Supreme Constitutional Court;
- **France:** the decision of the constitutional council on the constitutionality of the constitutional treaty of the European Union;
- **Japan:** the initiative of the Prime Minister for a new draft constitution and the introduction of a quasi-jury system;
- **Mexico:** proposed changes to the political and electoral system;
- **Republic of Korea:** the attempted impeachment of the President, important decisions by the Constitutional Court and possible accession to the Venice Commission;
- **Portugal:** constitutional amendments increasing the powers of the autonomous regions and on the status of EU law within the national legal system;
- **the Former Yugoslav Republic of Macedonia:** constitutional aspects of the referendum on the law redrawing municipal boundaries;
- **United Kingdom:** the bill to abolish the office of Lord Chancellor.

2. Studies and seminars of general scope

- Report on the supremacy of international human rights

treaties

Following the request by the Head of the Constitutional Commission of the Turkish Grand National Assembly, the Commission prepared the report on the case-law of countries which have adopted the supremacy of treaties on fundamental human rights and freedoms. The recently amended Turkish Constitution provides for the priority of international human rights treaties over conflicting national law, thus placing them on a level between the constitution and ordinary law. Until this amendment, international treaties were incorporated at the level of ordinary law and conflicts had to be resolved by the rules of *lex specialis* and *lex posterior*.

The report contains a review of the constitutional provisions relating to international human rights treaties, or international treaties in general, and includes extracts from decision summaries of courts with constitutional jurisdiction dealing with the question of the position of international human rights treaties in domestic legislation. Only the case-law of countries which have adopted the supremacy of treaties on fundamental human rights and freedoms was taken into consideration. The report, which had been prepared on the basis of information contained in the Commission's CODICES database is a working document and needs to be completed.

A debate on the report on the case-law of countries which have adopted the supremacy of treaties on fundamental human rights and freedoms, which took place during the Commission's 60th plenary session (Venice, 8-9 October 2004) generated the idea of carrying out a study on the status of international human rights treaties. At the 61st plenary session of the Commission (Venice, 34 December 2004), the UniDem Governing Board decided to organise a UniDem seminar on this topic in September next year, which could provide the basis for the study. The seminar will look mainly at the relationship between these treaties and national constitutions and legislation. It will also address the issue of the existence of an essential core of human rights and the need for a special legal status of international human rights treaties both at international and national level. This UniDem seminar will be organised in co-operation with the International Association of Constitutional Law (IACL).

- Future of democracy

At the request of the Committee of Ministers, the Commission participated, represented by Mr Mifsud Bonnici, in the work of the Council of Europe's High Level Group on the Future of Democracy. The Group was established within the framework of the Council of Europe Integrated Project Making democratic institutions work. The principal outcome of the project, the *Green paper on the Future of Democracy in Europe*, addresses the challenges to democracy in practice, and analyses their impact upon citizenship, representation and decision-making institutions. It concludes by proposing some twenty-nine potential reforms that are intended to make democratic institutions work better and, hence, to enhance the legitimacy of governing and governance arrangements by making them more accountable to the will of the people.

The Commission also adopted an opinion on the possible follow-up to Recommendation 1629(2003) of the Parliamentary Assembly on Future of democracy: strengthening democratic institutions ([CDL-AD\(2004\)015](#)) and forwarded it to the Committee of Ministers. In this opinion, the Commission concluded that developing a catalogue of fundamental democratic rights as protected by the Council of Europe could contribute towards further legitimising international support and action in promoting and strengthening democracy in Europe. However, it underlined that such a catalogue should take full account of the diversity among nations and differences in political and cultural traditions and give prominence to the essential role played by civil society.

- Ombudsman and good administration

The Committee of Ministers invited the Commission to comment on Recommendation 1615 (2003) of the Parliamentary Assembly on the institution of ombudsman, which emphasised the importance of the institution of Ombudsman within national systems and aimed at further enhancing the right to good administration. The Commission's comments were appended to the Committee of Ministers reply.

- Guidelines for legislative reviews of law affecting religion or beliefs

The Commission co-operated with ODIHR in the preparation of Guidelines for Legislative Reviews affecting Religion or Beliefs ([CDL-AD\(2004\)28](#)). At its June session, Professor Jeremy Gunn presented the work of the ODIHR Panel of Experts on Freedom of religion and belief and in particular the aforementioned guidelines, prepared by the Panel in co-operation with the Venice Commission. He explained that these guidelines were to assist the Panel in assessing draft legislation in this area, which it was called upon doing increasingly often, and were to be made available to governments, so that the latter would become acquainted with the basic standards which ODIHR uses as a reference.

Ms Flanagan expressed her appreciation of the quality work carried out by ODIHR in this area and underlined the need on the one hand to address the overlapping issue of freedom of expression and on the other hand to continue updating the guidelines in order for them to reflect the evolving case-law of the European Court of Human Rights. These guidelines would serve as reference standards for the Commission in the assessment of draft legislation relating to freedom of religion.

- UniDem seminar on Evaluation of fifteen years of constitutional practice in Central and Eastern Europe (Warsaw, 19-20 December 2004)

In the framework of its UniDem Programme, the Commission organised a seminar on: Evaluation of fifteen years of constitutional practice in Central and Eastern Europe. The seminar took place in Warsaw, on 19-20 November 2004 and was organised in co-operation with the Institute for Democracy (France) and the Foundation Ius et Lex (Poland). It was the first multilateral event in the framework of the Polish Chairmanship of the Committee of Ministers of the Council of Europe.

The seminar was organised to take stock of the democratic transition of Central and Eastern European countries and to draw lessons for the future. Debates were based on three main topics: the President of the Republic, constitutional reform and electoral systems.

Presentations and debates more particularly focused on: developments over fifteen years of constitutional practice, in different member states and from a comparative perspective; the position and role of the President of the Republic; relations between executive and legislative powers; role of the constitutional case-law in the process of constitutional reform; electoral systems and party systems in Central and Eastern Europe. Finally, a transversal topic was studied, regarding the assistance of European institutions to Central and Eastern European countries, particularly that from the Commission.

Around 50 participants took part in this seminar, among them judges of constitutional courts, members of central electoral commissions and professors of law from Central and Eastern European countries. Ms Hanna Suchocka and Mr Marek Safjan, Chairman of the Constitutional Court, among others, chaired the working sessions.

The seminar led to a positive evaluation of democratic practice during the transition period of Central and Eastern European countries, even if some progress remains to be accomplished. At the conclusion of the seminar it was recalled that the Commission remains, as it has been since 1990, at the disposal of Central and Eastern European countries to accompany them in the pursuit of their constitutional and legislative reforms.

3. UniDem Campus for the legal training of the civil service

The UniDem Campus project was established in 2001 with the aim of strengthening efficient administration and good governance as well as democratisation and human rights in the countries of the Stability Pact. Through six five-day seminars per year, organised on the basis of lectures introducing the subject and discussions of practical examples proposed by the lecturer, the programme aims at providing legal training to civil servants in subjects such as the protection of fundamental rights, including the rights of national minorities, the standards of public life and good administration, good law-making principles as well as the issues raised by accession to the EU. Civil servants who attend the seminars are expected and required to share the knowledge acquired at the Campus amongst their colleagues in their respective countries.

As from next year (2005), the geographical scope of the project will be enlarged by four more countries. It will then offer legal training to officials from 15 countries : Albania, Armenia, Azerbaijan, Belarus, Bulgaria, Croatia, Georgia, Moldova, Romania, Russian Federation, Slovenia, State Union of Serbia and Montenegro, the former Yugoslav Republic of Macedonia and Ukraine.

In 2004, the seminars addressed the following topics:

The civil servants guide to the Council of Europe (February)

- Local and regional self-government and transfrontier co-operation (April)
- Harmonisation of national legislation with the *acquis communautaire* and good law-making principles (May)
- State security, transnational organised crime and illegal immigration (July)
- Access to and protection of data in the era of e-government (October)
- Civil service : the authority serving the public or the public serving the authority (November)

This year, 50 lecturers and some 180 civil servants from eleven countries attended the Campus seminars.

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

The Venice Commission sees its co-operation with constitutional courts and equivalent bodies as the key vector to ensure that the principles of the constitutional heritage it helps to shape in national constitutions are not only laid down on paper but are implemented in real life. The strengthening of the independence and authority of these bodies is important in order to allow them to take decisions, which may be disliked by the other state powers, the executive, the legislative and even the judiciary, which sometimes resents constitutional control of its final decisions. Handing down such difficult judgments is however essential in upholding the basic principles of the Council of Europe democracy, the protection of human rights and the rule of law in the Councils member states.

The means the Commission has chosen to pursue this objective are twofold. On the one hand, the Commission promotes exchange between the courts by facilitating direct contacts between the courts at seminars or conferences, by providing a continuous survey of important case-law of the courts via its *Bulletin on Constitutional Case-Law* and the CODICES database or by enabling quick electronic exchange via its confidential Venice Forum. On the other hand, the Commission offers its direct assistance to the courts by providing opinions on constitutional amendments and legislation on the courts and as a novelty since 2004 - also by acting as *amicus curiae* for the courts in cases in which aspects of comparative constitutional law play a major role.

The new facility of *amicus curiae* opinions constitutes an important step in the co-operation between constitutional courts and the Venice Commission. In the past, the courts had often drawn upon the Commission' co-operation, be it by requesting an opinion on legislation on the courts themselves (see the opinions for courts in Azerbaijan, Moldova, the Russian Federation and Turkey below), be it for the joint organisation of conferences and seminars (see point 3 below) or within the framework of regional co-operation. *Amicus curiae* opinions however create a link between the current judicial activity of the courts and the Venice Commission. The Commission hopes thus to reinforce the position of the courts by providing arguments drawn from comparative constitutional law, which will reinforce the reasoning used by the court based on the national constitution.

The Commission's availability to act as *amicus curiae*, formally announced at the 4th meeting of the Joint Council on Constitutional Justice (Venice, 10 March 2004) has already been drawn upon by the constitutional courts of Georgia and Albania (see point 2 below).

1. Opinions on constitutional amendments or laws on the courts

The Commission sees a high quality of the legislation on constitutional courts or equivalent bodies as an indispensable precondition for the independence and effective operation of these bodies and consequently their ability to uphold constitutional principles and guarantees. Rules which prevent a court from acting smoothly upon appeals can in extreme cases lead to a denial of justice as is expressed in the well known saying that justice delayed is justice denied. While this is certainly a problem in respect of appeals from state bodies it can be a serious violation of human rights in cases of individual appeal or concrete norm control (preliminary requests by ordinary courts). The Commission was pleased to note that three of its opinions in this field Azerbaijan, Moldova and Turkey related to the introduction of the individual complaint to the constitutional court, thus providing direct access to constitutional justice for individuals as an effective tool to protect human rights. Even the fourth opinion for the constitutional court of the Russian Federation indirectly concerns individual access albeit from another angle, focusing on a pragmatic solution to enable the Court to continue to work with a high number of cases without being obliged to hold oral hearings in each case.

- Azerbaijan - Opinion on the Rules of Procedure of the Constitutional Court

At its June session, the Commission adopted the opinion on the draft rules of procedure of the Constitutional Court of Azerbaijan ([CDL-AD\(2004\)023](#)), which had been given in response to a request made by the President of the Court, Mr Abdoullayev.

Constitutional amendments and amendments to the Law on the Constitutional Court, adopted in December 2003, had introduced the possibility of direct individual applications to the Constitutional Court for the control of normative acts. In order to prepare the staff of the court for this task, the Constitutional Court had asked the Commission to organise a training seminar on individual complaints. This seminar, held on 26-27 February 2004, had also provided the Commission's reporting members present, Ms Barnstedt and Mr. Klucka, with the necessary input for their comments.

The opinion welcomes the draft rules of procedure as fitting into the classical triad of constitution, law on the court and rules of procedure drafted by the court itself. Nevertheless, the Commission was of the opinion that the distribution of powers between the Plenum of the Court, the President and the judges should be regulated by general clauses. This would allow items to be covered which had not been or could not have been envisaged during the drafting of the rules. Especially as concerns the procedure in the chambers, the Rules should be more explicit. On the other hand, the Rules of Procedure should avoid repeating principles already set out in the constitution and the law on the constitutional court.

- Moldova introduction of the individual complaint

At its December session, the Commission adopted the opinion on the draft law to amend and supplement the Constitution of Moldova introducing individual complaints to the Constitutional Court, based on comments of Messrs Nolte and Paczolay ([CDL-AD\(2004\)043](#)).

The draft law was designed to amend and supplement the Moldovan Constitution concerning the filing of individual complaints with the Constitutional Court and had been prepared at the request of the Constitutional Court of Moldova and the Permanent Representative of Moldova to the Council of Europe.

The Commission welcomed the introduction of individual complaints in Moldova; such a move was wholly in keeping with European standards and should enable better protection of fundamental rights.

Under the draft, it was proposed to add a seventh judge, appointed by the President of the Republic, to help the Court deal with the extra workload. The increase in the number of judges and the procedure for appointing judges called for two comments. Firstly, since the President of the Republic was elected by a qualified majority of members of parliament, the introduction of a seventh judge, to be appointed by the President, as envisaged in the draft amendments, would serve to widen the pool from which Constitutional Court judges could be recruited. Secondly, as a counterweight to the governments power to appoint two judges, the draft opinion recommended that the two judges appointed by Parliament be elected by a qualified majority.

The draft opinion also called for the creation of chambers within the Court to deal with the extra workload. This issue should be addressed in amendments to the law on the Constitutional Court.

- Russian Federation written procedure

At its October session, the Commission adopted the Opinion on the Draft Constitutional Law on Modification and Amendments to the Federal Constitutional Law on the Constitutional Court of the Russian Federation providing for the introduction of a written procedure at the Court ([CDL-AD\(2004\)035](#)) drafted on the basis of comments by Messrs Cardosa de Costa and Paczolay.

The draft Constitutional Law had been prepared by the Constitutional Court and submitted to the legislature. The aim of the amendment was to introduce the possibility of written proceedings before the Constitutional Court where previously only oral hearings had been allowed. The possibility of written proceedings was limited to a narrow number of cases, where analogous normative provisions are at issue, which the Commission had understood as where a case was similar to a previous one. The Commission had found the draft Constitutional Law to be in conformity with European standards, since written proceedings are quite common. The main problem would be to clarify what analogous provision means. However, this was not a pressing issue.

- Turkey introduction of the individual complaint

At its June session, the Commission adopted the opinion on the Constitutional Amendments relating to the Constitutional Court of Turkey ([CDL-AD\(2004\)024](#)) on the basis of comments by Mr Paczolay.

The Constitutional Court of Turkey had made proposals to reform the organisation and jurisdiction of the Court. There were two reasons for this. On the one hand, the Court had to cope with its increased workload and, on the other hand, it wanted to reduce the number of Turkish cases before the European Court of Human Rights by dealing with them on the national level. The Court had transmitted its proposal to the Government and to Parliament. During a symposium on the occasion of the 42nd anniversary of the Court in April in which the Commission participated, two main objections had been raised against the proposal: the election of a part of the judges by Parliament would politicise the Court and the introduction of an individual complaint would convert the Constitutional Court into just another instance of appeal. Its Chairman, Mr Bumin, had however refuted these arguments pointing out that Parliament also participates in the election of judges in other countries without politicising these courts. The role of the Constitutional Court was to protect human rights and the individual complaint would be the most efficient way to achieve this goal.

The proposal concerned only amendments on the constitutional level. Several questions would have to be dealt with on the level of legislation. The amendments had two main thrusts, to change the organisation of the Court and to introduce the individual complaint. As to the organisation, the introduction of two chambers raised the problem of co-ordination between them. This would have to be a task of the plenary session of the court. The draft opinion did not share the view that there was a danger of politicising the Court by electing four out of 17 judges by Parliament. The minimum age of 50 years for judges was probably too high. The individual complaint to the Constitutional Court was to be welcomed. However, its limitation to those constitutional rights which are also covered by the European Convention on Human Rights was very unusual and should be reconsidered.

2. *Amicus curiae* opinions

In line with its goal of supporting constitutional courts in their judicial activity, (e.g. Venice Forum since 1997), the Commission formally informed the courts at the 4th meeting of the Joint Council on Constitutional Justice (Venice, 10 March 2004) about its readiness to provide *amicus curiae* opinions for constitutional courts relating to cases before them. By virtue of its statute and the framework for its co-operation with constitutional courts and equivalent bodies, the Venice Commission is ideally placed to provide arguments based on comparative law and case-law).

In such opinions, the Commission provides information about aspects of comparative constitutional law but does not reply as to the question of constitutionality of the act under review by the Court. It goes without saying that the requesting courts are in no way bound to follow the arguments used Commission's opinion. In no case will the Commission itself intervene as *amicus curiae* without request but will provide its assistance only upon invitation by the court.

Already in February, the Constitutional Court of Georgia had requested an *amicus curiae* opinion on the relationship between freedom of expression and defamation with respect to unproven defamatory allegations of fact. Another such opinion had been requested by the Constitutional Court of Albania relating to the appointment of highest judges (Supreme Court and Constitutional Court).

- Albania appointment of highest judges

At its October session, the Commission adopted the *amicus curiae* opinion on the Interpretation of Articles 125 and 136 of the Constitution of Albania regarding the appointment of highest judges ([CDL-AD\(2004\)034](#)) based on comments by Messrs Bartole and Cardoso da Costa.

This opinion had resulted from a request for an *amicus curiae* opinion by the Constitutional Court. Following the refusal by Parliament to give its consent to the presidential nomination of a judge of the Constitutional Court, the President of the Republic had asked the Court to interpret the articles of the Constitution on the nomination of judges of the Constitutional and Supreme Courts. The Commission came to the conclusion that when giving its consent to such presidential nominations, the Albanian Parliament has the power to decide upon the merits of the nominations and not only whether formal requirements had been met. However, the Commission recommended that the Standing Orders of the Assembly be amended in order to allow for an open debate of the presidential nominations by the Assembly thus giving the President the necessary information about the reasons for a refusal of consent.

- Georgia - relationship between freedom of expression and defamation with respect to unproven defamatory allegations of fact

Upon request by the Constitutional Council of Georgia, the Commission adopted at its March session its *amicus curiae* opinion on the relationship between freedom of expression and defamation with respect to unproven defamatory allegations of fact ([CDL-AD\(2004\)011](#)), on the basis of comments by Mr Nolte.

The Commissions comparative study of the experience of other courts which had grappled with similar issues suggested that the rule in question should be

interpreted narrowly, in such a way as to apply only to situations that were compatible with freedom of expression.

A general principle could be said to emerge from numerous European court decisions (in particular, a House of Lords ruling in the case of *Reynolds v. Times Newspapers Limited*), namely that persons who spoke or acted in a defamatory manner must show that the allegations were true, as the reputation of others was a legitimate restriction on freedom of expression. There were, however, some exceptions to this general rule, such as instances where it was in the public interest to know about such allegations, in which case the principle of freedom of expression would prevail over the principle of protection of reputation and would exempt the author from having to prove these allegations.

3. Constitutional Justice Seminars

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

In 2004, two major trends characterised the seminars: human rights issues and topics relating to the role and functioning of the constitutional court.

- Seminars on human rights issues

The Conference on Constitutional Protection: Current State of Affairs and Perspectives on the occasion of the 40th anniversary of the Constitutional Court of the former Yugoslav Republic of Macedonia (Skopje, 3-4 June 2004) focused on the constitutional court as guarantor of human rights. Compared to other traditional functions of constitutional courts, such as the settlement of disputes between state powers, this role of constitutional courts is becoming more and more important.

At the Conference, the influence of the draft Constitution of the European Union on the protection of human rights was already discussed, a topic which was to be at the centre of interest at the Bled Conference which took place later in the year.

Human rights were also the focus of the XXth International Round Table on constitutional justice, ordinary justice, supra-national justice: who is responsible for the protection of human rights? organised in honour of Louis Favoreu in co-operation with the *Groupe d'études et de recherche sur la justice constitutionnelle* (Aix-en-Provence, 17-18 September 2004). The Conference showed that the interplay between national and international systems of human rights protection is perceived by some as being incoherent. However, the Conference also showed that the diversity of national systems requires a flexible, subsidiary approach based on minimum standards at the international level.

This very topic, the relationship between constitutional courts, the Court of Justice of the European Communities and the European Court of Human Rights in fundamental rights issues was also at the centre of discussions at the Conference on the Position of Constitutional Courts following Integration into the European Union (Bled, Slovenia, 30 September-1 October 2004), co-organised with the Constitutional Court of Slovenia. The trust by constitutional courts in the human rights jurisprudence of the Court of Justice of the European Communities as expressed by the Solange II decision of the German Federal Constitutional Court is the key to a fruitful co-operation between these courts. Together with a continuous discussion and exchange between the courts, accession of the European Union to the European Convention on Human Rights was identified as an important element in solidifying this trust.

The Symposium on the Structure of Constitutional Courts on the occasion of the 43rd Anniversary of the Constitutional Court of Turkey (Ankara, 26-27 April 2004) related to the opinion on the introduction of the individual complaint to the Constitutional Court of Turkey (see above). Again, the perspective was one of human rights as the purpose of the introduction of the individual complaint was to reduce the number of Turkish cases before the European Court of Human Rights.

Situated outside the jurisdiction of the Luxembourg Court but also that of the Strasbourg Court, the Conference on constitutional control and development of the social state ruled by law in co-operation with the Constitutional Court of Belarus (Minsk, 9-10 September 2004) was nevertheless human rights centred. Apart from discussions on social rights, the Commission's delegation insisted in its contribution in particular on the freedom of expression, a field where clearly serious problems continue to exist in Belarus.

At the IXth Yerevan International Conference on Ensuring the Principles of the Rule of Law in the Practice of Constitutional Justice (Yerevan, 15-16 October 2004) held in co-operation with the Constitutional Court of Armenia a need, for a material concept of the rule of law was identified - laws have to be founded on human dignity which implies the protection of human rights. Such a material concept of the rule of law ensures that the individual is not subject to arbitrariness, neither from the executive nor from the legislator. Constitutional courts have a central position in ensuring that these principles are met in practice. An inevitable consequence of the respect for the principle of the rule of law is the respect for court decisions and in particular of decisions of the Constitutional Court, notably as regards their final and binding character. It was stressed that the support of the constitutional courts by the Venice Commission remains crucial for the independence of the courts and for them to be the true guarantors of the respect of democratic principles in general and of the rule of law principle in particular.

- Seminars relating to the role and functioning of the courts

The Conference on the Role of the Constitutional Court in the Maintenance of the Stability and Development of the Constitution, held in co-operation with the Constitutional Court of the Russian Federation (Moscow, 27-28 February) gave *inter alia* an opportunity to discuss judicial restraint. A conflict between the legislator and the judiciary can arise if the courts go too far in interpreting fundamental laws. This can and should be avoided by a coherent evolution of the doctrine developed by the courts in their jurisprudence. On the other hand, not only the operative parts of the courts decisions but also their reasoning should be respected by all state powers.

The idea of the predictability of the case-law of constitutional courts was pursued in the Conference on the Role of Precedents for the Practice of Constitutional Courts, organised in co-operation with the Constitutional Court of Azerbaijan (Baku, 3-4 September 2004). Three types of precedents were discussed: precedents of the court itself, precedents from international courts, in particular the European Court of Human Rights and precedents from other national constitutional courts. While the latter obviously cannot bind the other courts, they can be a powerful source of inspiration and 'cross-fertilisation'. They can also help to reinforce arguments based on the national constitution, especially when a court expects resistance against its decisions from other state powers.

Two mainly practical seminars were held in Sarajevo in co-operation with the Constitutional Court of Bosnia and Herzegovina: Legal Training Workshops on effective case management effective decision drafting understanding the European Convention on Human Rights (5-6 February 2004 and 12-13 February 2004). These seminars were organised to prepare the Court for the high number of new cases following the transfer of jurisdiction from the Human Rights Chamber to the Constitutional Court.

Constitutional amendments and amendments to the Law on the Constitutional Court of Azerbaijan, adopted in December 2003, had introduced the possibility of direct individual applications to the Court for the control of normative acts. This was bound to have an impact on the Courts workload and working methods. In parallel to an opinion on the draft rules of procedure (see above), the Constitutional Court had asked the Commission to organise a legal training workshop on Improving examination methods of individual complaints - effective case management effective decision drafting for the Courts legal staff, who, under the new law, were to play a key role in handling the influx of cases. This seminar held in Baku on 26 and 27 February 2004 provided an opportunity for a highly constructive exchange of views and experience on methods of managing and processing cases.

The Conference on the Budget of the Constitutional Court: a determining factor of its independence (Sarajevo, 14-15 October) was the opportunity to insist on the intrinsic relationship between budgetary and judicial independence of constitutional courts. A court, which depends for its very functioning on the bodies which it is to control, may encounter difficulties in sustaining negative reactions to decisions it is compelled to make. Budgetary autonomy concerns not only the elaboration of the budget but also the management of the adopted budget and in some cases its control.

4. Regional co-operation

Due to its nature as an enlarged agreement, the Commission also pursued its co-operation outside Europe in the field of constitutional justice. Major partners in this endeavour are the *Association des cours constitutionnelles ayant en partage l'usage du français* (ACCPUF) and the Southern African Judges' Commission (SAJC). Upon invitation by the Supreme Court of Egypt, the Commission also participated in the International Judicial Conference of Arab countries (Cairo, 29-31 May 2004).

- ACCPUF

By virtue of the co-operation agreement between ACCPUF and the Venice Commission, the Commission participated in the 4th Seminar of national correspondents of ACCPUF (Paris, 1-2 December 2004) and presented its achievements in the field of political parties, the topic of the seminar. The participants were highly interested in the recommendations of the Venice Commission regarding the prohibition and financing of political parties. They also discussed difficulties in implementing standards of financing in cases where the ruling party could draw on government facilities.

Further case-law from ACCPUF was integrated into the CODICES database thus enriching the French section of the database.

- SACJ

Following the establishment of the Southern African Judges Commission in 2003, the year 2004 enabled the consolidation of this body. The statute of the SAJC expressly provides for co-operation with the Venice Commission. The Commission was able to support the SAJC thanks to a voluntary contribution from Norway.

During the inauguration of the new building of the Constitutional Court of South Africa (Johannesburg , 21-21 March 2004) the Executive Board met in parallel and planned the SAJCs activities for the year 2004. Therefore in 2004, the Commission was able to support a Chief Justices Conference on Human Rights (Kazani, Botswana, 5-7 July 2004). In addition at a Conference on the occasion of the 25th anniversary of the Constitutional Court of Tanzania, (Dar-es-Salaam, 15-17 September 2004), the executive board discussed practical issues such as judicial training.

At the Venice Commission's June session, Mr Chaskalson, President of the Constitutional Court of South Africa and President of the Southern African Judges Commission, thanked the Venice Commission for its continued support of South Africa and the Southern African region during the past ten years. Since the fall of Apartheid, South Africa has been in a process of democratisation and institution building. The judiciary in South Africa but also in the region in general had an important role to play in this process. Based on their sound commitment to development, the judiciary had to restrain any abuse of power and the establishment of the SAJC with the support of the Venice Commission and Norwegian funds had helped the courts in this endeavour.

IV. DEMOCRACY THROUGH FREE AND FAIR ELECTIONS

Almost since the very beginning, the Venice Commission has been active in the electoral field. Free and fair elections are in fact a prerequisite of democracy. Most activities in the electoral field were carried out within the framework of a new joint programme between the European Commission and the Venice Commission, entitled Democracy through free and fair elections.

The leading role in the electoral field of the Council for Democratic Elections, which includes representatives of the Venice Commission, the Parliamentary Assembly and the Congress of Local and Regional Authorities of the Council of Europe, was confirmed during 2004, thus ensuring an even more systematic co-operation with OSCE/ODIHR in the field of electoral reform. During last year the Council reaffirmed itself as an essential body in the field of electoral law and practice within the Council of Europe. In 2004, all opinions on electoral matters were discussed and adopted by the Council before their adoption by the Venice Commission (except an opinion on a recommendation of the Parliamentary Assembly). The fact that it operates under the auspices of both political and legal co-operation bodies enables the Council of Europe to better co-ordinate its action with other international organisations active in the electoral field such as, for example, OSCE/ODIHR, the ACEEEO and IFES.

The Venice Commissions activities in the electoral field can be divided into the following items:

1. Country specific activities

- *Opinions and recommendations on the electoral law and the electoral administration; these activities are in general carried out in co-operation with OSCE/ODIHR; they addressed in 2004 the legal situation in Albania, Armenia, Azerbaijan, Belarus (referendum), Moldova and Romania;*
- *Workshops on the holding and supervision of elections (electoral law training workshops); two such workshops were held in 2004 in Ukraine, one in Azerbaijan and one in Moldova;*
- *Legal advice during electoral observation missions, in conformity with the co-operation agreement with the Parliamentary Assembly; this activity took place for the first time during the presidential elections in Ukraine;*
- *Other assistance activities in 2004 included; advice on the revision of the electoral legislation of Albania, as well as co-operation with the Central Electoral Commission of Georgia on the occasion of the presidential and parliamentary elections as well as the regional elections in Adjara.*

2. Transnational activities

- *Studies and seminars of a general nature; in particular, a UniDem (Universities for Democracy) Seminar on European standards of electoral law in the contemporary constitutionalism was organised in Sofia on 28-29 May 2004;*
- *VOTA, the electoral database of the Venice Commission, which became operational in 2004;*
- *Activities in the field of political parties.*

1. Country specific activities

- Albania

a) Electoral law and electoral administration in Albania

Recommendations on the electoral law and the electoral administration in Albania, jointly prepared by the Venice Commission and OSCE/ODIHR, were submitted to the Commission at its March and June sessions.^[3]

At its October session, the Commission adopted the joint recommendations of the Venice Commission and OSCE/ODIHR on the electoral law and the electoral administration in Albania.^[4] According to this document, the current text of the Electoral Code constitutes a significant improvement in comparison with the previous code, in particular regarding complaints and appeals and the creation of better conditions for equal campaigning. The new provisions on media coverage, the articles implementing the general principle of the inviolability of elections, and move to voter lists generated by the Civil Status Offices are welcomed. However, a number of outstanding concerns remain to be addressed.

b) Electoral assistance

The following meetings were co-organised with the Albanian authorities: on the revision of the electoral code and electoral lists; on amendments to the electoral code of Albania on financing of electoral campaigns of political parties.^[5] During this process, concerns were raised regarding electoral lists, the functioning of electoral commissions, the rules for allotting seats, counting of ballots, financing and time-limits for electoral campaigns.

- Armenia

Electoral reform

Since 2003, at the request of the Armenian Authorities, and in the framework of the monitoring of commitments by the Parliamentary Assembly and the Committee of Ministers of the Council of Europe, the Venice Commission together with OSCE/ODIHR has been assisting Armenia with its electoral reform.

In this context, meetings were held in January and February 2004^[6] on the basis of the joint recommendations made by the Commission and OSCE/ODIHR on the electoral law and the electoral administration in Armenia.^[7]

The meeting in February took the form of a seminar on the electoral process as a whole (before, during and after the ballot). It sought to highlight the legal provisions and practice that needed to be changed in order to ensure that the electoral law and the electoral administration would comply with the European standards. As a result of this activity a number of new joint recommendations were drafted and forwarded to the Armenian Parliament.

At their October and December sessions, the Council for Democratic Elections and the Venice Commission adopted a joint Venice Commission/OSCE/ODIHR opinion on the draft amendments to the electoral code of Armenia, which underlined the need to revise the code, in particular its provisions on such issues as the election administration (commissions), voters lists, the electoral campaign, mass media, transparency of the process and complaints and appeals.^[8]

The Venice Commission and the Armenian authorities agreed to continue their co-operation in 2005.

- Azerbaijan

a) Electoral law and electoral administration in Azerbaijan

At its March session, the Commission endorsed the joint recommendations made by the Venice Commission and OSCE/ODIHR on the electoral law and the electoral administration in Azerbaijan, as adopted by the Council for Democratic Elections.^[9] The main points which would need revising were: the complexity of the law, the composition of election commissions and the procedure they follow, the registration of candidates, the rules on the electoral campaign, transparency of the electoral process and complaints and appeals. The creation of an independent Media Council was also part of these recommendations.

b) Electoral law training workshop

An electoral law training workshop was organised in co-operation with the Central Electoral Commission and the International Foundation for Elections Systems (IFES) in Baku on 8-10 July 2004, with a view to the local elections which were to take place in Autumn 2004; the workshop was aimed at training trainers.

- Belarus

Referendum

At the October session, Messrs Russell and Bartole, reporting members, presented a draft opinion on the referendum scheduled for 17 October 2004, prepared following an urgent request by the Parliamentary Assembly. The people of Belarus were asked to endorse the proposal authorising the incumbent President to continue in office beyond the currently authorised two terms and amending the Constitution by removing the term limit. The Commission had concluded in one of its previous opinions on Belarus that the powers of the President in this country were excessive. It seemed particularly undesirable in the situation existing in Belarus in 2004 to enable a President to stay in office indefinitely. It was also questionable whether the required conditions for a free and fair vote existed in Belarus.

The Commission adopted the Opinion on the referendum of 17 October 2004 in Belarus.^[10]

- Georgia

Electoral Assistance

In 2004 the Venice Commission organised at the request of the Georgian authorities three missions of assistance to the Central Electoral Commission of Georgia on the occasion of the presidential and parliamentary elections as well as the regional elections in Adjara.^[11]

This assistance had two main objectives: to improve the electoral processes before, during as well as after the vote and to rationalise the functioning of the Central Electoral Commission, and subsequently of the whole electoral administration. The experts, notably, assisted the Central Electoral Commission in drafting comprehensive instructions to the lower levels of the electoral administration.

In addition, a member of the Secretariat participated in the enlarged election observation Mission of the Parliamentary Assembly of the Council of Europe for the presidential elections, from 2 to 6 January 2004.

- Moldova

a) Electoral law and electoral administration in Moldova

At its March session the Venice Commission examined the draft Recommendations on the electoral law and electoral administration in Moldova, prepared on the basis of comments made by Mr Krennerich, OSCE/ODIHR, the Parliamentary Assembly and the Congress of Local and Regional Authorities of the Council of Europe. At its June meeting, the Council for Democratic Elections adopted the revised version of the joint recommendations, underlying, in particular, the need to secure the secret nature of the ballot, to lower the threshold for representation of parties in Parliament and to revise the composition of the Central Electoral Commission.^[12] These Joint recommendations were adopted at the June plenary session of the Venice Commission.^[13]

b) Electoral training workshop

In the framework of co-operation with Moldova an electoral training workshop was organised in Chisinau on 10-11 December, in view of the Parliamentary elections to be held on 6 March 2005. The target group for this activity included members of the Central Electoral Commission of Moldova.

- Romania

Law on local elections in Romania

At its June meeting, the Council for Democratic Elections was informed that the Parliamentary Assembly of the Council of Europe had requested an expertise from the Venice Commission on the law on local elections in Romania, in particular on the provisions concerning candidates from national minorities standing for election.

Messrs Mifsud Bonnici and van Dijk, reporting members, were of the opinion that the examined law was generally speaking in conformity with democratic standards. At the same time they indicated that certain provisions could be problematic in the light of the principle of equality. It was stressed that there was an excessive number of obstacles to the presentation of candidates from national minorities not represented in Parliament.^[14]

- Ukraine

a) Legal advice during electoral observation missions

In conformity with Item 15 of the co-operation agreement with the Parliamentary Assembly the Venice Commission provided for the first time legal advice during election observation missions. It participated in missions to observe the presidential elections in Ukraine on 31 October and 21 November 2004. The Commissions experts task was to advise the Parliamentary Assembly observation mission on the legal aspects of the electoral process.

b) Electoral training workshops

Two regional electoral training workshops were organised in Ukraine (in Donezk and in Kherson) on 13-17 September 2004. They were aimed at members of electoral Commissions and NGOs specialised in electoral matters.

2. Transnational Activities

- Studies and seminars of general scope

a) Media and observation of elections

The Venice Commission has been involved in the preparation of a document on media and observation of elections since January 2004. Firstly, it took part in a workshop on guidelines for media monitoring during OSCE/ODIHR election observation missions. [\[15\]](#)

Ms Herdis Thorgeirsdottir and Mr Masters presented comments on documents on media monitoring during election observation missions prepared by the OSCE/ODIHR, which were adopted by the Council for Democratic Elections and the Venice Commission. [\[16\]](#)

Following the comments by Ms Herdis Thorgeirsdottir and Mr Masters the OSCE/ODIHR prepared a revised version of this document, entitled Guidelines on media monitoring during election observation missions, which should lead to the adoption of a joint OSCE/ODIHR European Commission Council of Europe document, and possibly to the drawing up of joint brief guidelines.

b) Electoral rules and affirmative action for national minorities

At its October meeting, the Council for Democratic Elections adopted the preliminary report on electoral rules and affirmative action for national minorities, prepared by Ms Lazarova Trajkovska. [\[17\]](#) At its December meeting and following a request from several members of the Council for Democratic Elections, it was decided to pursue work on this issue and to take into consideration the comments sent by the OSCE High Commissioner for National Minorities in the framework of the Forum on minorities. The Council decided to re-examine the revised version of the report document [\[18\]](#) at its meeting in March 2005 with a view to adoption.

c) Restrictions on the right to vote

The Council examined the reports by Ms Lazarova Trajkovska and Mr Matscher, on restrictions on the right to vote, the first presenting a comparative perspective and the second being based on the provisions of the European Convention on Human Rights and the case-law of the European Court of Human Rights. The reports were adopted by the Commission at its December plenary session. [\[19\]](#)

d) Womens participation in elections

Following the adoption by the Parliamentary Assembly of a recommendation on the participation of women in elections, recommending the Committee of Ministers to draw up a Charter on electoral equality, the Committee of Ministers requested the Venice Commissions opinion on this matter. At its December session, the Commission adopted the Report on Recommendation 1676(2004) of the Parliamentary Assembly relating to womens participation in elections, which approved the text as a whole, except a few provisions such as the total ban on voting by proxy. [\[20\]](#)

e) Electronic voting and remote voting; e-governance

At its 826th meeting (5 February 2003), the Committee of Ministers of the Council of Europe approved the specific terms of reference of the Multidisciplinary Ad Hoc Group of Specialists on legal, operational and technical standards for e-enabled voting, in the framework of Integrated Project 1 Making Democratic Institutions work. The task of the Group of Specialists was to develop an intergovernmentally agreed set of standards for e-enabled voting. The legal standards are intended to apply existing Council of Europe principles, and other international instruments in the field of elections, to the circumstances of e-enabled voting.

At the second meeting of the Group of Specialists held on 18 and 19 September 2003, the Venice Commission expressed its willingness to render an opinion on remote voting, taking into account the traditions of remote voting in member States and current developments in e-enabled voting.

Mr Grabenwarter prepared a report on the compatibility of remote voting and electronic voting with the requirements of the documents of the Council of Europe. In conclusion, remote voting including that in a non-controlled and non-supervised environment is in principle compatible with European standards. This report was adopted by the Council for Democratic Elections and the Venice Commission.^[21]

The Venice Commission took part in the Second meeting of the Group of Specialists on e-governance (Strasbourg, 9-10 September 2004).

f) Referendum

In June 2004, the Council for Democratic Elections and the Venice Commission adopted the questionnaire on the use of referendums.^[22] Work on this subject will continue during 2005 and will lead to a general study on referendums.

g) Electoral standards and electoral systems

Among other activities concerning electoral standards, the Venice Commission participated in the first Training course of the school of politics on what is the impact of electoral systems in South Eastern Europe on the chances of the voters to promote policy change.^[23]

h) Elections observation forms

The Council for Democratic Elections worked on election observation forms during the whole year 2004. This study was started in 2003, at the request of the Parliamentary Assembly of the Council of Europe.^[24]

At its June meeting, the Council for Democratic Elections examined election observation forms prepared by the Venice Commission, OSCE/ODIHR and the European Commission, and discussed how they might be harmonised. A simplified questionnaire was drawn up to be used by different observation teams.^[25]

i) UniDem Seminar on European standards of electoral law in the contemporary constitutionalism (Sofia, 28-29 May 2004)

In the framework of the UniDem (Universities for Democracy) programme, the Venice Commission in co-operation with the Constitutional court of the Republic of Bulgaria organised a seminar on European standards of electoral law in the contemporary constitutionalism, in Sofia (Bulgaria), on 28-29 May 2004.

The main aim of this activity was to explore the different electoral systems and experiences of a number of courts both in the various European countries and at European Union level. Following a number of reports (10), the participants held a fruitful discussion on the advantages and shortcomings of different electoral systems, the case-law of higher national jurisdictions on electoral disputes, the participation of foreigners in the electoral process at the local level, the electoral rights of nationals of other European countries and the possible development of electoral law within the European Union. Discussions were extremely lively and interesting. Some participants who were not speakers had prepared specific documents on elections and constitutional case-law in their respective countries which were distributed to the participants.

Approximately 50 participants including judges of the Constitutional Court of the Republic of Bulgaria, the chairman of the Central Election Commission as well as representatives of the Ministry of Justice attended the seminar.

This seminar was also attended by representatives of 12 constitutional and other courts, and electoral commissions.

This activity was given extensive coverage by the national media.

j) Electoral training workshops

Four electoral law training workshops on the holding and supervision of elections were organised in Azerbaijan, Ukraine and Moldova (see above). This activity of the Venice Commission launched in 2003 aims at sharing the experience of different countries in ensuring that common European standards are applied in practice and at helping to find acceptable solutions for different technical problems arising in the process of preparing an election. The target groups of these training workshops included those involved in the preparation, adoption and implementation of electoral law, first of all election administrators and election observers, but also judges, lawyers and media.

- VOTA, Venice Commission electoral database

The Vota database was created in the framework of the joint programme between the Venice Commission and the European Commission Democracy through free and fair elections.^[26] It includes a collection of the electoral legislation of the member states of the Venice Commission. Preliminary tests for *Vota* took place during summer 2004.

Links were set up to the electoral sections of the web sites of the Venice Commission, the Parliamentary Assembly and the Congress of Local and Regional Authorities of the Council of Europe.

During 2004, the electoral laws from member states were progressively introduced and indexed according to the systematic thesaurus adopted by the Council for Democratic Elections in 2003.^[27] Electoral laws are currently being integrated and indexed.

The Secretariat submitted at the December meeting a set of proposals for the thesaurus on the basis of the indexation experience and the Council adopted the revised thesaurus for the *Vota* database. The database is now available online.^[28]

The co-operation with OSCE/ODIHR on this matter should be emphasised, ODIHR having accepted that texts which appear in its *Legislationline* database be included in the *Vota* database.

- Activities in the field of political parties

a) Political parties and elections

In recent years, the Venice Commission has been actively involved both in the field of electoral law and of legislation on political parties in different countries. This work is focused not only on the legislation of specific States but also on some general issues essential for the development of democratic institutions in Europe and elsewhere.

Free elections and freedom to associate in political parties are closely linked in any democracy, since political parties exist for the purpose of winning political power through free and fair elections. In a number of opinions and research projects, the Venice Commission has examined the role of political parties in a democratic society and their participation in the electoral process of specific countries. However, until now the Venice Commission had conducted no comparative study of the legislation and practices in its Member countries in this important field.

The Council for Democratic Elections therefore decided at its 11th meeting in Venice on 2 December 2004 to conduct in 2005 a study on the participation of political parties in the electoral process.

b) Roundtable on combating extremism, Alma-Aty, 1-2 July 2004.

In the framework of its co-operation with OSCE/ODIHR, the Commission was asked to participate in the set of seminars and conferences in Central Asia concerning political extremism, namely contributing to the exchange of views on prohibition of political parties and analogous measures (see the Guidelines on the prohibition of political parties and analogous measures,[CDL-INF\(2000\)001](#)).

The seminar in Alma-Aty was the first roundtable organised by OSCE/ODIHR in the region. The participants were not only from government agencies but also represented a large spectrum of political parties and NGOs of Kazakhstan. The Venice Commission representatives presented the Guidelines on the prohibition

of political parties and analogous measures and contributed to the exchange of views on the definition of parties and the application of the principle of proportionality. During the work of the Round Table, the participants had an opportunity to discuss with the representatives of the Kazakh authorities the new draft law on extremism.

3. Co-operation between the Council for Democratic Elections and the Organs of the Council of Europe, the European Union and other International Organisations

- Council of Europe

a) Committee of Ministers

Following a request by the Committee of Ministers, the Venice Commission adopted an opinion on a recommendation of the Parliamentary Assembly on the participation of women in elections.^[29]

b) Parliamentary Assembly

The Parliamentary Assembly was represented at all meetings of the Council for Democratic Elections during 2004 and initiated the studies on referendum, electoral rules and affirmative action for national minorities and restrictions on the right to vote.

In the framework of the co-operation agreement between the Parliamentary Assembly and the Venice Commission, the Venice Commission is invited by the Parliamentary Assembly to assist delegations of members of Parliament during election observation missions, on legal aspects regarding electoral legislation and electoral practice. Venice Commission experts were invited as legal advisers in the observation of the presidential elections in Ukraine on 31 October and 21 November 2004 as well as of the elections of the President of the Palestinian Authority on 9 January 2005. Their task was to assist the observers and advise them on legal aspects of electoral legislation and practice.

c) Congress of Local and Regional Authorities

The Congress of Local and Regional Authorities of the Council of Europe was represented at all meetings of the Council for Democratic Elections during 2004.

- European Union

a) Joint Programme Democracy through free and fair elections

The European Commission accepted, in the framework of the European Initiative for Democracy and Human Rights (EIDHR), a joint programme with the Venice Commission entitled Democracy through free and fair elections, which started in December 2003. Most opinions and recommendations of the Venice Commission in the electoral field, as well as the UniDem seminar on European standards of electoral law in the contemporary constitutionalism held in Sofia on 28-29 May 2004 and the *Vořa* database were financed through the joint programme.

b) Other activities

In addition, a meeting on election support was held in Brussels on 28-29 September 2004, which in particular dealt with the question of principles for international election observation. At the invitation of the European Commission, a member of the Venice Commission secretariat participated in the above-mentioned meeting. The aim of the activity was to evaluate different observation missions, programmes of electoral assistance undertaken by the European Union and other organisations and to define future common strategy in this field. At the invitation of the Initiative Group on standards in election observation (UNEAD, NDI and the Carter Centre), the Venice Commission examined the draft standards on election observation with a view to participating in this initiative.

A member of the Council for Democratic Elections was therefore invited to provide comments on the Declaration of principles for international election observation and the code of conduct for international election observers. He stated that the text submitted to him was fairly complete and did not present any particular problems as to European standards. He was of the opinion that the Commission could support this initiative. Therefore, the Council for Democratic Elections and the Venice Commission adopted the comments on the Declaration of principles for international election observation and code of conduct for international election observers in December 2004.^[30]

The Venice Commission took part in the e-democracy seminar organised by the European Commission in Brussels on 12-13 February 2004.

- OSCE

OSCE/ODIHR and the Parliamentary Assembly of the OSCE are observers at the Council for Democratic Elections.

During 2004 the Venice Commission continued its fruitful co-operation with OSCE/ODIHR in electoral matters, in particular in the drafting of the opinion on the Electoral Code of Armenia, and the recommendations on the electoral law and the electoral administration in Albania, Azerbaijan and Moldova, as well as in the revision of the Electoral Code of Albania and the Elaboration of Guidelines on media monitoring during election observation missions.

In July 2004, the Venice Commission participated in the OSCE Supplementary Human Dimension Meeting on electoral standards and commitments.^[31] This meeting offered the opportunity to develop the harmonisation of electoral standards between the two organisations, maintaining the same objective of constructing and developing jointly the European electoral heritage.

- Association of Central and Eastern European Election Officials (ACEEEO)

The ACEEEO is an observer at the Council for Democratic Elections.

At the request of the ACEEEO, the Venice Commission prepared an opinion on the draft ACEEEO Convention on election standards, electoral rights and freedoms.^[32] This is considered an important step towards the harmonisation of electoral law. During the exchange of views on this matter it was pointed out that the essential features of the European electoral heritage were introduced in the examined text, although a certain number of points could be reviewed. The draft convention was revised on the basis of the Venice Commissions comments.

Furthermore, the Venice Commission took part in the annual meeting of ACEEEO.^[33] The main part of the discussion was devoted to participation in elections, in particular the participation of new voters. The speeches concerned both national experiences as well as work of a comparative nature. The reports on national experience emphasised research on the causes of abstention, in particular that of young voters and measures being taken to thwart it, such as information campaigns specifically aimed at the young, with a view to emphasising the importance of voting as well as developing new voting methods (e-voting). This was also an opportunity to discuss elections held in the Central and Eastern European region.

- Inter-Parliamentary Union

Co-operation with the Inter-Parliamentary Union was established in 2004. The Venice Commission was represented at the Conference which took place in Geneva on 12-13 November 2004 on the criteria for free and fair elections. The Inter-Parliamentary Union aims at modifying its publication on elections following the Conference. Representatives of the Venice Commission could be invited to take part in other activities of the Inter-Parliamentary Union in 2005.

- International Foundation for Elections Systems (IFES)

Co-operation took place with the electoral law training workshop organised in Azerbaijan, in July 2004. This efficient and complementary collaboration opens the door to future co-operation for activities on the spot.

VI. CO-OPERATION BETWEEN THE COMMISSION AND THE STATUTORY ORGANS 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 Commissions plenary sessions during 2004. The following ambassadors attended the sessions during 2004:

Mr Johannes C. Landman, Permanent Representative of the Netherlands, Mr James Sharkey, Permanent Representative of Ireland, Mr Torbjorn Froyenes, Permanent Representative of Norway, Mr Pietro Lonardo, Permanent Representative of Italy, Mr Alan Streimann, Permanent Representative of Estonia, and Mr Daryal Batibay, Permanent Representative of Turkey.

Different subjects were raised by representatives of the Committee of Ministers, including the role of the Commission in developing Europe's democratic heritage, the adoption of Protocol 14 to the European Convention on Human Rights, the third Council of Europe Summit in May 2005 and the contribution of the Commission to the peaceful resolution of conflicts such as those in South Ossetia or Transnistria.

At the request of the Committee of Ministers, the Commission adopted an opinion on the possible follow-up to Recommendation 1629(2003) of the Parliamentary Assembly on Future of democracy: strengthening democratic institutions ([CDL-AD\(2004\)015](#)) and provided comments on Recommendation 1615 (2003) on the institution of ombudsman and Recommendation 1676 (2004) on women's participation in elections.

- Parliamentary Assembly

President Schieder attended the March session of the Commission, together with Mr Jurgens, who also attended the sessions in October and December. Mr Holovaty attended the session in June.

The Commission was regularly informed about the activities of the Assembly of interest to the Commission, including the dialogue with Liechtenstein following the constitutional review, the question of Belarus reintegration into the Council of Europe as a special guest, post-monitoring dialogue in Latvia with regard to the Russian minority in particular, elections in Albania, opposition parties protests in Armenia, Turkey's implementation of decisions of the European Court of Human Rights, the human rights situation in Kosovo and Chechnya, the concept of nation, abolition of restrictions on the right to vote in general elections and differences in the concepts of the rule of law and *tat de droit*.

On 13 March 2004, the Enlarged Bureau of the Commission met with the Presidential Committee of the Parliamentary Assembly to discuss future co-operation. As a result of this meeting, a co-operation agreement was prepared which was signed by the Commission and the Parliamentary Assembly on 4 October 2004. The agreement strengthens co-operation between the Commission and the Parliamentary Assembly and puts this co-operation on a more formal basis. Some new forms of co-operation were also included, such as the possibility for Commission members to participate as legal advisers in election observation missions of the Parliamentary Assembly.

Members of the Commission participated in meetings of the Committee on Legal Affairs and Human Rights of the Parliamentary Assembly on human rights in Kosovo on 16 March 2004, the concept of nation on 8 June 2004 and the lawfulness of detentions by the USA in Guantanamo Bay on 17 December 2004.

A number of opinions were provided at the request of the Parliamentary Assembly, including the opinion on the draft Constitutional Law concerning the status of Adjara, the opinion on the protection of human rights in Kosovo, the urgent opinion on the referendum in Belarus and the Opinion on the procedure of amending the Constitution of Ukraine.

In on-going opinions, it is recalled that in Resolution 1384, the Parliamentary Assembly asked the Commission to examine the powers of the High Representative, the compatibility of the Constitution with the European Convention on Human Rights and the efficiency and rationality of the present constitutional arrangements in Bosnia and Herzegovina. The Parliamentary Assembly also requested the Commission to prepare an opinion on the compatibility of the Italian Gasparri law on the media and the Frattini law on the conflict of interests.

The Parliamentary Assembly continued to participate actively in the Council for Democratic Elections, established in 2002 as a tri-partite body of the Venice Commission, the Parliamentary Assembly and the Congress of Local and Regional Authorities of Europe (see Part IV above). The Council for Democratic Elections is chaired by a member of the Parliamentary Assembly, Mr Jurgens, and a number of activities of the Council were initiated by the representatives from the Parliamentary Assembly.

- Congress of Local and Regional Authorities

The Congress was represented at the plenary sessions of the Commission by Mr Giovanni di Stasi, President of the Chamber of Regions of the Congress, in March, by Mr Gianfranco Martini in June and by Mr Alain Delcamp in December. They informed the Commission about activities of the Congress of interest to the Commission, such as the strengthening of civic rights by regional ombudsmen, monitoring progress in developing local democracy in Armenia, Georgia, Russia and South East Europe, the new draft European Charter for Regional Self-Government and the local and regional aspects which the European Union would be addressing in Article 5 of the treaty establishing a constitution for Europe. The latter two developments were also reflected in the establishment of closer ties between the EUs Committee of the Regions and the Congress of Local Authorities which had adopted joint resolutions that could pave the way for new forms of co-operation with the Commission, along the lines of the conference on representation of local and regional authorities at parliamentary level, in which the Commission was already involved, or as part of the plans to draft a single document on the various mechanisms for safeguarding the rights of local and regional authorities.

The Congress continued to participate actively in the Council for Democratic Elections, established in 2002 as a tri-partite body of the Venice Commission, the Parliamentary Assembly and the Congress of Local and Regional Authorities of Europe (see Part IV above).

- Development Bank

Mr Alomar, Governor of the Development Bank of the Council of Europe (CEB), attended the Commissions June session. Mr Alomar recalled that the Bank is the only international financial institution in Europe with an exclusively social vocation. He informed the Commission that in 2003 the Bank had pursued its efforts in favour of the transition countries where the needs in the social field are still considerable and cited projects such as the project on deported persons in Lithuania, the project in favour of orphanages in Romania and the project for the Roma population. Particular mention was made of the need to strengthen co-operation with other international organisations and complementary objectives. The importance of the Commissions work towards strengthening the democratic constitutional and institutional framework for the success of the Banks projects was emphasised. The Commission expressed its commitment to further co-operation with the Bank.

2. European Union

The European Commission accepted, in the framework of the European Initiative for Democracy and Human Rights (EIDHR), a joint programme with the Venice Commission entitled Democracy through free and fair elections, which started in December 2003 (see Part IV above). Most opinions of the Venice Commission in the electoral field, as well as the UniDem seminar on European standards of electoral law in the contemporary constitutionalism held in Sofia on 28-29 May 2004 and the Vota database are financed through the joint programme.

The Commission maintained close contacts with the EU and the OSCE on a number of issues, in particular the conflicts with respect to Transnistria and South Ossetia and decentralisation in Kosovo.

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

3. OSCE

During 2004 the Venice Commission continued its fruitful co-operation with OSCE/ODIHR in electoral matters, in particular the drafting of the opinion on the Electoral Code of Armenia, and the recommendations on the electoral law and the electoral administration in Albania, in Azerbaijan and in Moldova, as well as the revision of the Electoral Code of Albania and the Elaboration of Guidelines on media monitoring during election observation missions. More details on this co-operation are provided in Part IV above.

- OSCE Human Dimension Seminars

The aim of these seminars, which were organised by OSCE/ODIHR in Warsaw, was to review both the implementation of the OSCE Human Dimension commitments and the procedures and mechanisms for monitoring and enhancing compliance with these commitments. Mr Mifsud Bonnici delivered a keynote speech at the human dimension seminar on Democratic Institutions and Democratic Governance on 12-14 May 2004. Ms Flanagan spoke at the human dimension seminar on Freedom of Assembly and Association on 13 October 2004.

- Meeting of OSCE Contact Group with the Mediterranean Partners for Co-operation

At the invitation of the Chairman of this Group, the Secretary of the Commission, Mr Buquicchio, attended a meeting on 14 May 2004. During the exchange of views, Mr Buquicchio indicated that while there remains a lot to be done in central and eastern Europe, there were now more possibilities to address issues in other regions. Europe's immediate neighbours across the Mediterranean were a priority for the Commission, in addition to existing contact with central and East Asian countries.

- OSCE Round Table on combating extremism

The Commission was asked by ODIHR to participate in a set of seminars in Central Asia concerning political extremism, in particular to contribute to the exchange of views on the prohibition of political parties and analogous measures (see the Commissions Guidelines on prohibition of political parties and analogous measure ([CDL-INF\(2000\)001](#)). The seminar, which took place in Alma-Aty on 1-2 July 2004, was the first roundtable organised in the region. Participants came not only from government agencies but also from a large spectrum of political parties and NGOs from Kazakhstan. The seminar provided an opportunity to discuss with representatives of the Kazakh authorities the new draft law on extremism.

4. United Nations

At the request of the United Nations Mission in Kosovo (UNMIK), a staff member of the Venice Commission participated in the drafting of the Framework Document for the Reform of Local Self-Government in Kosovo. The opinion on human rights protection in Kosovo was adopted following contacts with UNMIK. More details are provided in Part II.1 above.

5. International Association of Constitutional Law

At its March session, the Commission held an exchange of views with Ms Cheryl Saunders, President of the International Association of Constitutional Law (IACL). She informed the Commission that IACL was an association of constitutional law experts established in 1991 which sought to facilitate exchanges of views on constitutional issues and to promote constitutionalism among its members, mainly through regional meetings and an international meeting every four years, the most recent of which, in Santiago, Chile in 2004, had proved a success. More broadly, the association aimed to develop dialogue between the various constitutionalists worldwide.

Ms Saunders proposed some form of co-operation between the Venice Commission and the IACL, since the two bodies complemented one another in their work. Exchanges of information, sharing of expertise, networks and contacts were areas where co-operation could be beneficial to both. Following this proposal a co-operation agreement was indeed concluded in October. It provides for mutual representation of IACL and the Commission at each other's meetings with the possibility of organising seminars and conferences both jointly at regional and international level. The agreement would serve to spread constitutional heritage in other regions. It was agreed that one of the first joint activities would be the organisation of a UniDem seminar on the status of international human rights treaties.

A P P E N D I X I - list of member countries

MEMBERS

Albania (14.10.1996)
Andorra (1.02.2000)
Armenia (27.03.2001)
Austria (10.05.1990)
Azerbaijan (1.03.2001)
Belgium (10.05.1990)
Bosnia and Herzegovina (24.04.2002)
Bulgaria (29.05.1992)
Croatia (1.01.1997)
Cyprus (10.05.1990)
Czech Republic (1.11.1994)
Denmark (10.05.1990)
Estonia (3.04.1995)
Finland (10.05.1990)
France (10.05.1990)
Georgia (1.10.1999)
Germany (3.07.1990)
Greece (10.05.1990)
Hungary (28.11.1990)
Iceland (5.07.1993)
Ireland (10.05.1990)

Italy (10.05.1990)
Kyrgyzstan (01.01.2004)
Latvia (11.09.1995)
Liechtenstein (26.08.1991)
Lithuania (27.04.1994)
Luxembourg (10.05.1990)
Malta (10.05.1990)
Moldova (25.06.1996)
Monaco (05.10.2004)
Netherlands (1.08.1992)
Norway (10.05.1990)
Poland (30.04.1992)
Portugal (10.05.1990)
Romania (26.05.1994)
Russian Federation (1.01.2002)
San Marino (10.05.1990)
Serbia and Montenegro (3.04.2003).
Slovakia (8.07.1993)
Slovenia (2.03.1994)
Spain (10.05.1990)
Sweden (10.05.1990)
Switzerland (10.05.1990)
the former Yugoslav Republic of
Macedonia (19.02.1996)
Turkey (10.05.1990)
Ukraine (3.02.1997)
United Kingdom (1.06.1999)

ASSOCIATE MEMBER

Belarus (24.11.1994)

OBSERVERS

Argentina (20.04.1995)
Canada (23.05.1991)
Holy See (13.01.1992)
Israel (15.03.2000)

Japan (18.06.1993)

Kazakhstan (30.04.1998)

Mexico (12.12.2001)

Republic of Korea (6.10.1999)

United States (10.10.1991)

Uruguay (19.10.1995)

PARTICIPANTS

European Commission

OSCE/ODIHR

SPECIAL CO-OPERATION STATUS

South Africa

APPENDIX II - list of members ^[34]

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

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

Mr Olivier DUTHEILLET DE LAMOTHE (France), Vice-President^[35], State Counsellor, Member of the Constitutional Council

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

Mr Aivars ENDZINS (Latvia), Vice-President², President, Constitutional Court

Ms Finola FLANAGAN (Ireland), Vice-President², Director General, Senior Legal Adviser, Head of the Office of the Attorney General

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

Mr Ugo MIFSUD BONNICI (Malta), Vice-President², President Emeritus

* * *

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

(Substitute: Mr Heinrich KOLLER, Professor Basel University)

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

(Substitute: Mr Christoph GRABENWARTER, Professor of Public Law, University of Graz)

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

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

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

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

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

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

Mr Gerard BATLINER (Liechtenstein), Member, Academic Council of the Liechtenstein Institute ^[36]

(Substitute: Mr Wilfried HOOP, Lawyer, Aspen)

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

(Substitute: Mr Anton PERENIC, Professor of Law, former Judge of the Constitutional Court)

Mr Kestutis LAPINSKAS (Lithuania), Judge, Constitutional Court

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

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

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

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

Mr Rune LAVIN^[37] (Sweden), Justice, Supreme Administrative Court

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

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

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

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

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

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

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

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

Mr Lszl SLYOM (Hungary), Former President of the Constitutional Court

(Substitute: Mr Peter PACZOLAY, Deputy Head, Office of the President of the Republic of Hungary)

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

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

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

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

(Substitute: Mr Anthony BRADLEY, Professor)

Mr Gaguk HARUTUNIAN (Armenia), President, Constitutional Court

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

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

(Substitute: Mr John LUNDUM, High Court Judge)

Ms Maria POSTOICO^[38] (Moldova), Chairperson of the Committee on Legal Affairs, appointments and immunities, Parliament of Moldova

(Substitute: Mr Vasile RUSU, Deputy Chairperson of the Committee on Legal Affairs, appointments and immunities, Parliament of Moldova)

Mr Marat V. BAGLAY (Russia), former President of the Constitutional Court

(Substitute: Mr Vladimir TOUMANOV, former President of the Constitutional Court)

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

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

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

Ms Lydie ERR (Luxembourg), Member of Parliament

Mr Panayotis KALLIS (Cyprus), Former Supreme Court Judge

(Substitute: Mr Petros CLERIDES, Deputy Attorney General of the Republic)

Ms Rodica Mihaela STANOIU (Romania), Presidential Adviser for Defence and National Security

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

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

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

(Substitute: Ms Assuncao ESTEVES, Former member of the Constitutional Court)

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

(Substitute: Mr Srdja DARMANOVIC^[39], Director, Centre for democracy and human rights)

Mr Piero GUALTIERI (San Marino), Professor

(Substitute: Ms Barbara REFFI, State Attorney)

Mr John KHETSURIANI (Georgia), President, Constitutional Court

(Substitute: Mr Levan BODZASHVILI, National Legal Assistant, EUJUST THEMIS, EU Rule of Law Mission to Georgia)

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

Ms Cholpon BAEKOVA (Kyrgyzstan), President, Constitutional Court

Ms Marijana LAZAROVA TRAKOVSKA, ("The former Yugoslav Republic of Macedonia"), Judge, Constitutional Court

(Substitute: Mr Borce DAVITKOVSKI, Professor, Law Faculty, St Cyril and Methodius University)

Mr Taavi ANNUS (Estonia), Associate Professor of Constitutional Law, Faculty of Law, University of Tartu

(Substitute: Mr Oliver KASK, Head of Public Law Division, Legislative Politics Department, Ministry of Justice)

Mr Jn MAZAK (Slovakia), President, Constitutional Court

(Substitute: Mr Peter KRESAK, Professor, Member of the National Council of Slovakia)

Mr Anton STANKOV (Bulgaria), Minister of Justice

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

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

Mr Serhiy HOLOVATY^[40] (Ukraine), Member of Parliament, President, Ukrainian Legal Foundation

Mr Carlos CLOSA MONTERO^[41] (Spain), Professor, Sub-Director for Studies and Investigation, Centre for Political and Constitutional Studies

(Substitute: Mr Angel J. SANCHEZ NAVARRO, Professor of Constitutional Law, Complutense University, Madrid)

ASSOCIATE MEMBERS

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

OBSERVERS

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

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

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

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

Mr Amnon RUBINSTEIN (Israel), Dean, Interdisciplinary Centre

Mr Naoyuki IWAI (Japan), Consul, Consulate General of Japan, Strasbourg

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

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

Mr Porfirio MUOZ LEDO (Mexico), President, Centro Latinoamericano de la globalidad

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

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

SECRETARIAT

Mr Gianni BUQUICCHIO

Mr Thomas MARKERT

Mrs Simona GRANATA-MENGHINI

Mr Pierre GARRONE

Mr Rudolf DRR

Mr Sergue KOUZNETSOV

Ms Caroline MARTIN

Mrs Helen ZYMAN

Ms Dubravka BOJIC-BULTRINI

Ms Helen MONKS

Ms Tatiana MYCHELOVA

Mr Gal MARTIN-MICALLEF

Ms Sandra MATRUNDOLA

Ms Brigitte AUBRY

Ms Marian JORDAN

Mrs Emmy KEFALLONITOU

Mrs Brigitte RALL

Ms Ana GOREY

Mrs Marie-Louise WIGISHOFF

Ms Caroline GODARD

Ms Linda McINTOSH

A P P E N D I X III : offices and composition of the sub-commissions

- President: Mr La Pergola

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

- Bureau: Mr Baglay, Mr Solyom, Mr Zahle,

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

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

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

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

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

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

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

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

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

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

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

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

- Latin America: Chairman: Mr Helgesen

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

A P P E N D I X IV : meetings of the venice commission in 2004^[42]

1. PLENARY SESSIONS

58th Session 12-13 March

59th Session 18-19 June

60th Session 8-9 October

61st Session 3-4 December

Bureau

Meeting enlarged to include the Chairmen of Sub-Commissions

- 11 March

Meeting of the Enlarged Bureau with the Presidential Bureau of the Parliamentary Assembly of the Council of Europe

- 13 March

Meeting enlarged to include the Chairmen of Sub-Commissions

- 17 June

Meeting enlarged to include the Chairmen of Sub-Commissions

- 7 October

Meeting enlarged to include the Chairmen of Sub-Commissions

- 2 December

2. SUB-COMMISSIONS

Constitutional Reform 2 December

Democratic Institutions 11 March

Ethics Committee 7 October

International Law 17 June

7 October

Protection of Minorities 17 June

UniDem Governing Board 2 December

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

Meetings of Working Groups and Rapporteurs

Bosnia and Herzegovina

Meeting on the restructuring of Ombudsman Institutions in Bosnia and Herzegovina

19 April (Strasbourg)

Exchange of views with institutions of Bosnia and Herzegovina on the issues raised by Resolution 1384 of the Parliamentary Assembly of the Council of Europe

25-26 October (Sarajevo/Banja Luka)

Moldova

Talks with OSCE/EU on Transnistria

8 March (Chisinau)

Romania

Meeting on draft law on freedom of religion in Romania

29-30 October (Bucharest)

Serbia and Montenegro

Meeting on the human rights situation in Kosovo, organised by the Parliamentary Assembly of the Council of Europe

16 March (Paris)

Meeting on the draft law on the exercise of rights and freedoms of national and ethnic minorities in Montenegro

16 March (Podgorica)

Meeting on decentralisation in Kosovo

22-24 June (Pristina)

7-22 July (Pristina)

Meetings on human rights in Kosovo

1-3 September (Pristina)

20 September (Paris)

Exchange of views with representatives of Institutions of Montenegro on preliminary report on alternatives of constitutional change in Montenegro

25-26 November (Podgorica)

Ukraine

Meeting on national minorities in Ukraine

12 January (Strasbourg)

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

6th World Congress on the international association of Constitutional Law

9-16 January (Santiago di Chile)

Conference on the European perspective for the Republic of Moldova

20-21 January (Munich)

Conference on the role of the Constitution in the Spanish democratic transition on the occasion of the 25th anniversary of the Spanish Constitution

23-24 January (Madrid)

Meetings of the Group of Eminent persons on the future of democracy in Europe

11-12 February (Strasbourg)

18-19 March (Strasbourg)

Conference on Kin-State involvement in Minority Protection

12 February (Bucharest)

Debate on Judicial independence: law and practice of appointments to the European Court of Human Rights organised by Interights (NGO)

19 February (Strasbourg)

Seminar on the independence of the judiciary in the new Serbian Constitution

16-17 April (Belgrade)

OSCE Human Dimension Seminar

12-14 May (Warsaw)

13 October (Warsaw)

Meeting of the OSCE contact group with Mediterranean partners for co-operation

14 May (Vienna)

Seminar on democratic reform and constitutional development in Georgia in co-operation with the Constitutional Court of Georgia

18-19 May (Tbilisi)

Reflection on the definition of Minority : the citizenship requirement

28 May (Strasbourg)

Meeting of the Committee on Legal Affairs and Human Rights of the Parliamentary Assembly of the Council of Europe on the concept of nation

8 June (Berlin)

13th annual summer seminar Eastern Europe and the Balkans 15 years after

1-2 July (Hydra)

Round Table on combating extremism

1-2 July (Alma-Aty)

1st Round Table of European Regional Ombudsmen on human rights

2-3 July (Barcelona)

Conference on the 10th anniversary of the entry into force of the European Convention on Human Rights in Romania

8-9 July (Bucharest)

High Level Seminar on reform of European human rights systems

18 October (Oslo)

Participation in a meeting of the Congress working group on regions with legislative power

20 October (Paris)

UniDem Seminar on Evaluation of fifteen years of constitutionalism in Central and Eastern Europe in co-operation with the Ius Lex Foundation

19-20 November (Warsaw)

OSCE Seminar on draft law on the Ombudsman Serbia

22 November (Belgrade)

Conference on the control of arms and struggle against terrorism UN and EU

6 December (Venice)

Hearing on the lawfulness of detentions by the USA in Guantanamo Bay organised by the Committee on Legal Affairs and Human Rights of the Parliamentary Assembly of the Council of Europe

17 December (Paris)

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

Meeting of the Working Group on the systematic thesaurus

9 March (Venice)

Joint Council on Constitutional Justice

10 March (Venice)

(Meeting with Liaison officers from Constitutional Courts)

4th Seminar of national correspondents ACCPUF

1-2 December (Paris)

Meetings of Working Groups and Rapporteurs

Conference on Constitutional reforms in Armenia

20-21 January (Yerevan)

Constitutional Justice Seminars

Legal Training Workshop on effective case management effective decision drafting understanding the European Convention on Human Rights in co-operation with the Constitutional Court of Bosnia and Herzegovina

5-6 February (Sarajevo)

12-13 February (Sarajevo)

Legal Training Workshop on Improving examination methods of individual complaints - effective case management effective decision drafting in co-operation with the Constitutional Court of Azerbaijan

26-27 February (Baku)

Conference on the role of the Constitutional Court in the maintenance of the stability and development of the constitution in co-operation with the Constitutional Court of the Russian Federation

27-28 February (Moscow)

Symposium on the structure of Constitutional Courts on the occasion of the 43rd Anniversary of the Constitutional Court of Turkey

26-27 April (Ankara)

Conference on Constitutional protection : current state of affairs and perspectives on the occasion of the 40th anniversary of the Constitutional Court of the former Yugoslav Republic of Macedonia

2-5 June (Skopje)

Chief Justices Conference on Human Rights

5-7 July (Kazani, Botswana)

Conference on the role of precedents for the practice of Constitutional Courts in co-operation with the Constitutional Court of Azerbaijan

3-4 September (Baku)

Conference on constitutional control and development of the social state ruled by law in co-operation with the Constitutional Court of Belarus

9-10 September (Minsk)

Conference on the 25th anniversary of the Constitutional Court of Tanzania

15-17 September (Dar-es-Salaam)

XXth International Round Table on constitutional justice, ordinary justice, supra-national justice: who is responsible for the protection of human rights? in co-operation with *le Groupe d'Etudes et de recherche sur la justice constitutionnelle* (GERJC)

17-18 September (Aix-en-Provence)

Seminar on the position of Constitutional Courts following integration into the European Union

30 September-1 October (Bled)

Conference on the budget of the Constitutional Court: a determining factor of its independence

14-15 October (Sarajevo)

IX Yerevan International Conference on ensuring the principles of the rule of law in the practice of Constitutional Justice in co-operation with the Constitutional Court of Armenia

15-16 October (Yerevan)

Other Seminars and Conferences in which the Commission participated

Inauguration of the Constitutional Court of the Republic of South Africa and meeting of the Executive Committee of the Southern African Judges Commission

21-21 March (Johannesburg)

International Judicial Conference of Arab countries

29-31 May (Cairo)

5. DEMOCRACY THROUGH FREE AND FAIR ELECTIONS

Council for Democratic Elections

11 March

17 June

9 October

2 December

Meetings of Working Groups and Rapporteurs

Albania

Meeting with Albanian authorities on revision of the electoral code and electoral lists

4-6 May (Tirana)

Meeting on amendments to electoral code of Albania financing of electoral campaigns of political parties

23-24 September (Tirana)

Armenia

Meeting on Recommendations on the electoral law and administration of Armenia

23 January (Yerevan)

25-28 February (Yerevan)

Meeting on revision of the election code of Armenia

29 September-1 October (Yerevan)

Electoral Law Training Workshops

8-10 July (Baku)

13-14 September (Donezk, Ukraine)

16-17 September (Kherson, Ukraine)

10-11 December (Chisinau)

Electoral Assistance and election observation

Assistance to the Central Electoral Commission of Georgia in the framework of the legislative elections

1-10 January (Tbilisi)

1-19 March (Tbilisi)

6-22 June (Tbilisi)

Observation of presidential elections in Ukraine (organised by the Parliamentary Assembly of the Council of Europe)

29 October 1 November (Kiev)

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

Workshop on guidelines for media monitoring during OSCE/ODIHR election observation missions

27-28 January (Warsaw)

E-Democracy Seminar

12-13 February (Brussels)

1st Training course of the school of politics what is the impact of electoral systems in South Eastern Europe on the chances of the voters to promote policy change

27 March (Sofia)

UniDem Seminar on European Standards of electoral law in the contemporary constitutionalism

28-29 May (Sofia)

Meeting of ad-Hoc group on legal standards (IP1-S-EE)

5-6 July (Strasbourg)

OSCE Meeting on Electoral Standards

15-16 July (Vienna)

Meeting on e-Governance

9-10 September (Strasbourg)

International Round Table on Electoral Matters

12-13 November (Geneva)

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

Meeting of National Co-ordinators

9 February (Paris)

4 October (Trieste)

Civil Servants guide to the Council of Europe and the European Commission

16-18 February (Strasbourg)

Local and Regional Self-Government and transfrontier co-operation

5-9 April (Trieste)

Harmonisation of national legislation with *acquis communautaire* and law-making principles

24-28 May (Trieste)

State security, transnational organised crime and illegal immigration

5-9 July (Trieste)

Access to and protection of data in the era of e-government

4-8 October (Trieste)

Civil service: the authority serving the public or the public serving the authority

22-26 November (Trieste)

APPENDIX V - list of publications

- **SERIES SCIENCE AND TECHNIQUE OF DEMOCRACY** ^[43]

No. 1 Meeting with the presidents of constitutional courts and other equivalent bodies ^[44] (1993)

No. 2 Models of constitutional jurisdiction* ^[45]

by Helmut Steinberger (1993)

No. 3 Constitution making as an instrument of democratic transition (1993)

No. 4 Transition to a new model of economy and its constitutional reflections (1993)

No. 5 The relationship between international and domestic law (1993)

No. 6 The relationship between international and domestic law*

by Constantin Economides (1993)

No. 7 Rule of law and transition to a market economy² (1994)

No. 8 Constitutional aspects of the transition to a market economy (1994)

No. 9 The Protection of Minorities (1994)

No. 10 The role of the constitutional court in the consolidation of the rule of law (1994)

No. 11 The modern concept of confederation (1995)

No. 12 Emergency powers*

by Ergun zbudun and Mehmet Turhan (1995)

No. 13 Implementation of constitutional provisions regarding mass media in a pluralist democracy² (1995)

No. 14 Constitutional justice and democracy by referendum (1996)

No. 15 The protection of fundamental rights by the Constitutional Court* (1996)

No. 16 Local self-government, territorial integrity and protection of minorities (1997)

- No. 17 Human Rights and the functioning of the democratic institutions in emergency situations (1997)
- No. 18 The constitutional heritage of Europe (1997)
- No. 19 Federal and Regional States* (1997)
- No. 20 The composition of Constitutional Courts (1997)
- No. 21 Citizenship and state succession (1998)
- No. 22 The transformation of the Nation-State in Europe at the dawn of the 21st century (1998)
- No. 23 Consequences of state succession for nationality (1998)
- No. 24 Law and foreign policy (1998)
- No. 25 New trends in electoral law in a pan-European context (1999)
- No. 26 The principle of respect for human dignity in European case-law (1999)
- No. 27 Federal and Regional States in the perspective of European integration (1999)
- No. 28 The right to a fair trial (2000)
- No. 29 Societies in conflict: the contribution of law and democracy to conflict resolution² (2000)
- No. 30 European Integration and Constitutional Law (2001)
- No. 31 Constitutional implications of accession to the European Union² (2002)
- No. 32 The protection of national minorities by their kin-State² (2002)
- No. 33 Democracy, Rule of Law and Foreign Policy² (2003)
- No. 34 Code of good practice in electoral matters* (2003)
- No. 35 The resolution of conflicts between the central State and entities with legislative power by the Constitutional Court² (2003)
- No. 36 Constitutional Courts and European Integration [\[46\]](#) (2004)
- No. 37 European and U.S. Constitutionalism⁴ (2005)

• **OTHER PUBLICATIONS**

Bulletin on Constitutional Case-Law	1993 2004 (three issues per year)
Special Bulletins -	Description of Courts (1999)* Basic texts - extracts from Constitutions and laws on Constitutional Courts - issues Nos 12 (1996), issues Nos 3-4 (1997), issue No 5 (1998), issue No 6 (2001) Leading cases of the European Court of Human Rights (1998)* Freedom of religion and beliefs (1999) Special Edition Leading cases 1 - Czech Republic, Denmark, Japan, Norway, Poland, Slovenia, Switzerland, Ukraine (2002) Inter Court Relations (2003)
Annual Reports -	1993 2004
Brochures -	10th anniversary of the Venice Commission (2001)* Revised Statute of the European Commission for Democracy through Law (2002) The Venice Commission (2003) UniDem Campus Legal training for civil servants (2003)

A P P E N D I X VI - list of documents adopted in 2004

[CDL-AD\(2004\)006](#) Opinion on the on the status and rank of the human rights ombudsman of Bosnia and Herzegovina adopted by the Commission at its 58th Plenary Session (12-13 March 2004);

[CDL-AD\(2004\)007](#) Guidelines and Explanatory Report on legislation on Political Parties: some specific issues on the basis of comments by Mr Tuori and Mr Vogel adopted by the Commission at its 58th Plenary Session (12-13 March 2004);

[CDL-AD\(2004\)008](#) Opinion on the draft amendments to the Constitution of Georgia adopted by the Commission at its 58th Plenary Session (12-13 March 2004);

[CDL-AD\(2004\)009](#) Opinion on the Draft Law on Recognition, Restitution and Compensation of Property of Albania adopted by the Commission at its 58th Plenary Session (12-13 March 2004);

- [CDL-AD\(2004\)010](#) Opinion on the draft ACEEEO Convention on election standards, electoral rights and freedoms adopted by the Commission at its 58th Plenary Session (12-13 March 2004);
- [CDL-AD\(2004\)011](#) *Amicus curiae* opinion on the relationship between the freedom of expression and defamation with respect to unproven defamatory allegations of fact as requested by the Constitutional Court of Georgia adopted by the Commission at its 58th Plenary Session (12-13 March 2004);
- [CDL-AD\(2004\)012](#) Report on the compatibility of remote voting and electronic voting with the standards of the Council of Europe adopted by the Commission at its 58th Plenary Session (12-13 March 2004);
- [CDL-AD\(2004\)013](#) Opinion on the two draft laws amending the law on national minorities of Ukraine adopted by the Commission at its 58th Plenary Session (12-13 March 2004);
- [CDL-AD\(2004\)014](#) Opinion on the draft amendments to the Constitution of the Federation of Bosnia and Herzegovina adopted by the Commission at its 58th Plenary Session (12-13 March 2004);
- [CDL-AD\(2004\)015](#) Opinion on the possible follow-up to the Parliamentary Assembly Recommendation 1629(2003) on the future of democracy: strengthening democratic institutions adopted by the Commission at its 58th Plenary Session (12-13 March 2004);
- [CDL-AD\(2004\)016](#) Joint recommendations on the electoral law and the electoral administration in Azerbaijan by the Venice Commission and ODIHR adopted by the Commission at its 58th Plenary Session (12-13 March 2004);
- [CDL-AD\(2004\)017](#) Joint recommendations on the electoral law and the electoral administration in Albania by the Venice Commission and ODIHR adopted by the Commission at its 58th Plenary Session (12-13 March 2004);
- [CDL-AD\(2004\)018](#) Opinion on the draft constitutional law of Georgia on the status of the autonomous Republic of Adjara adopted by the Commission at its 59th Plenary Session (18-19 June 2004);
- [CDL-AD\(2004\)019](#) Opinion on the relationship between the draft law on the criteria and conditions to be established for the re-organisation of the administrative territorial division and the law on the organisation and functioning of local government of the Republic of Albania adopted by the Commission at its 59th Plenary Session (18-19 June 2004);
- [CDL-AD\(2004\)020](#) Opinion on the draft law concerning the support to Romanians living abroad adopted by the Commission at its 59th Plenary Session (18-19 June 2004);
- [CDL-AD\(2004\)021](#) Opinion on the draft law on the conception of the state ethnic policy of Ukraine adopted by the Commission at its 59th Plenary Session (18-19 June 2004);
- [CDL-AD\(2004\)022](#) Opinion on the latest version of the draft law amending the law on national minorities in Ukraine adopted by the Commission at its 59th Plenary Session (18-19 June 2004);
- [CDL-AD\(2004\)023](#) Opinion on the rules of procedure of the Constitutional Court of Azerbaijan adopted by the Commission at its 59th Plenary Session (18-19 June 2004);
- [CDL-AD\(2004\)024](#) Opinion on the draft constitutional amendments relating to the Constitutional Court of Turkey adopted by the Commission at its 59th Plenary Session (18-19 June 2004);

- [CDL-AD\(2004\)25](#) Opinion on the law on political parties of the Republic of Azerbaijan adopted by the Commission at its 59th Plenary Session (18-19 June 2004);
- [CDL-AD\(2004\)026](#) Opinion on the revised draft law on the exercise of the rights and freedoms of national and ethnic minorities in Montenegro adopted by the Commission at its 59th Plenary Session (18-19 June 2004);
- [CDL-AD\(2004\)027](#) Joint recommendations on the electoral law and the electoral administration in Moldova by the Venice Commission and ODIHR adopted by the Commission at its 59th Plenary Session (18-19 June 2004);
- [CDL-AD\(2004\)028](#) Guidelines for legislative reviews of law affecting religion or beliefs adopted by the Commission at its 59th Plenary Session (18-19 June 2004);
- [CDL-AD\(2004\)029](#) Opinion on the referendum of 17 October 2004 in Belarus adopted by the Commission at its 60th Plenary Session (8-9 October 2004);
- [CDL-AD\(2004\)030](#) Opinion on the procedure of amending the Constitution of Ukraine adopted by the Commission at its 60th Plenary Session (8-9 October 2004);
- [CDL-AD\(2004\)031](#) Opinion on amendments to the law on the Ombudsman in Bosnia and Herzegovina adopted by the Commission at its 60th Plenary Session (8-9 October 2004);
- [CDL-AD\(2004\)032](#) Opinion on the new draft amendments to the Constitution of the Federation of Bosnia and Herzegovina concerning local government adopted by the Commission at its 60th Plenary Session (8-9 October 2004);
- [CDL-AD\(2004\)033](#) Opinion on Human Rights in Kosovo: possible establishment of review mechanisms adopted by the Commission at its 60th Plenary Session (8-9 October 2004);
- [CDL-AD\(2004\)034](#) *Amicus curiae* opinion on the interpretation of Articles 125 and 136 of the Constitution of Albania (appointment of highest Judges) adopted by the Commission at its 60th Plenary Session (8-9 October 2004);
- [CDL-AD\(2004\)035](#) Opinion on the draft federal constitutional law on modifications and amendments to the federal constitutional law on the Constitutional Court of the Russian Federation adopted by the Commission at its 60th Plenary Session (8-9 October 2004);
- [CDL-AD\(2004\)036](#) Opinion on the draft law on the status of indigenous peoples of Ukraine adopted by the Commission at its 60th Plenary Session (8-9 October 2004);
- [CDL-AD\(2004\)037](#) Opinion on the draft law on restitution of housing and property to the victims of the Georgian-Ossetian conflict of the Republic of Georgia adopted by the Commission at its 60th Plenary Session (8-9 October 2004);
- [CDL-AD\(2004\)038](#) Opinion on the draft law amending the law of Ukraine on the Office of the Public Prosecutor adopted by the Commission at its 60th Plenary Session (8-9 October 2004);
- [CDL-AD\(2004\)039](#) Opinion on the law on conducting meetings, assemblies, rallies and demonstrations of the Republic of Armenia adopted by the Commission at its 60th Plenary Session (8-9 October 2004);
- [CDL-AD\(2004\)040](#) Opinion on the law for the election of local public administration authorities in Romania adopted by the Commission at its 61st Plenary Session (3-4 December 2004);
- [CDL-AD\(2004\)041](#) Joint opinion on the draft law on the Ombudsman of Serbia by the Venice Commission, the Commissioner for Human Rights and the

Directorate General of Human Rights of the Council of Europe adopted by the Commission at its 61st Plenary Session (3-4 December 2004);

[CDL-AD\(2004\)042](#) Opinion on the draft Federal law amending the Federal law on general principles governing the organisation of legislative (representative) and executive state authorities of constituent entities of the Russian Federation and the federal law on fundamental guarantees of Russian Federation citizens electoral rights and the right to participate in a referendum adopted by the Commission at its 61st Plenary Session (3-4 December 2004);

[CDL-AD\(2004\)043](#) Opinion on the proposal to amend the Constitution of the Republic of Moldova (introduction of the individual complaint to the Constitutional Court) adopted by the Commission at its 61st Plenary Session (3-4 December 2004);

[CDL-AD\(2004\)044](#) Interim opinion on constitutional reform in the Republic of Armenia adopted by the Commission at its 61st Plenary Session (3-4 December 2004);

[CDL-AD\(2004\)047](#) Report on media monitoring during election observation missions on the basis of comments by Mr Masters adopted by the Commission at its 61st Plenary Session (3-4 December 2004);

[CDL-AD\(2004\)049](#) Joint opinion on the draft amendments to the electoral code of Armenia by the Venice Commission and ODIHR adopted by the Commission at its 61st Plenary Session (3-4 December 2004);

CDL-AD(2004)050 Revised Rules of Procedure of the Venice Commission adopted by the Commission at its 61st Plenary Session (3-4 December 2004);

[CDL-AD\(2005\)002](#) Report on Recommendation 1676(2004) of the Parliamentary Assembly relating to womens participation in elections adopted by the Commission at its 61st Plenary Session (3-4 December 2004);

[CDL-AD\(2005\)011](#) Report on the abolition of restrictions on the right to vote in general elections by Ms Mirjana Lazarova Trajkovska adopted by the Commission at its 61st Plenary Session (3-4 December 2004);

[CDL-AD\(2005\)012](#) Report on the abolition of restrictions on the right to vote in general elections by Mr Franz Matscher adopted by the Commission at its 61st Plenary Session (3-4 December 2004).

[1] For more information please refer to the Venice Commissions site www.venice.coe.int

[2] Version submitted by the President to the Duma on 28 September 2004 .

[3] [CDL-EL\(2004\)002](#); then [CDL-EL\(2004\)002rev](#); cf. [CDL\(2004\)009](#).

[4] [CDL-AD\(2004\)017](#), Joint recommendations on the electoral law and the electoral administration in Albania by the Venice Commission and OSCE/ODIHR, on the basis of comments by Mr Jessie Pilgrim (expert, OSCE/ODIHR, USA) and Mr Adriaan Stoop (expert, OSCE/ODIHR, the Netherlands), adopted by the Commission at its 60th Plenary Session (8-9 October 2004). Former [CDL-EL\(2004\)002rev](#).

[5] On 4-6 May and on 23-24 September 2004, in Tirana.

[6] The first meeting took place on 23 January 2004 and the second one from 24 to 29 February 2004 .

[7] [CDL-AD\(2003\)021](#).

[8] [CDL-AD\(2004\)049](#).

[9] [CDL-AD\(2004\)016rev](#). Joint recommendations on the electoral law and the electoral administration in Azerbaijan by the Venice Commission and ODIHR, on the basis of comments by Mr Richard Barrett (Venice Commission Expert, Ireland), adopted by the Commission at its 58th Plenary Session (12-13 March 2004). Cf. [CDL\(2003\)047](#).

[10] [CDL-AD\(2004\)029](#), Opinion on the referendum of 17 October 2004 in Belarus, adopted by the Commission at its 60th Plenary Session (8-9 October 2004).

[11] 1-10 January, 1-19 March, 6-22 June 2004.

[12] [CDL-EL\(2004\)015](#), then [CDL-EL\(2004\)015rev](#); cf. [CDL\(2002\)141](#). Venice Commissions previous opinion: [CDL-AD\(2003\)001](#).

[13] [CDL-AD\(2004\)027](#), *Joint recommendations on the electoral law and the electoral administration in Moldova* by the Venice Commission and OSCE/ODIHR, adopted by the Commission at its 59th Plenary Session (18-19 June 2004).

[14] [CDL-AD\(2004\)040](#), *Opinion on the law for the election of local public administration authorities in Romania* adopted by the Commission at its 61st Plenary Session (3-4 December 2004).

[15] From 27 to 28 January 2004, in Warsaw.

[16] [CDL-EL\(2004\)012](#) and 013, which will become [CDL-AD\(2004\)047](#) (a consolidated report on media monitoring during election observation missions); see also [CDL-EL\(2004\)005rev](#).

[17] [CDL-EL\(2004\)020](#).

[18] [CDL-EL\(2004\)020rev](#).

[19] [CDL-AD\(2005\)001](#), *Report on the abolition of restrictions on the right to vote in general elections* adopted by the Commission at its 61st Plenary Session (3-4 December 2004).

[20] [CDL-AD\(2005\)002](#), *Report on Recommendation 1676(2004) of the Parliamentary Assembly relating to women's participation in elections* adopted by the Commission at its 61st Plenary Session (3-4 December 2004).

[21] [CDL-AD\(2004\)012](#), *Report on the compatibility of remote voting and electronic voting with the standards of the Council of Europe, on the basis of a contribution by Mr Christoph Grabenwarter (substitute member, Austria)*, adopted by the Commission at its 58th Plenary Session (12-13 March 2004).

The active participation of the Venice Commission in this field was also concretised by the participation in the meeting of the Group of Specialists on legal and operational standards for e-enabled voting (EE-S-LOS; a sub-group of IP1-S-EE) on 21-23 January. In the same domain, the Venice Commission took part in the e-democracy seminar organised by the European Commission, 12-13 February (Brussels).

[22] *Questionnaire on the use of referendums, drawn up on the basis of a contribution by Mr Luchaire*, [CDL-EL\(2004\)003rev](#).

[23] *First Training course of the school of politics what is the impact of electoral systems in South Eastern Europe on the chances of the voters to promote policy change*, 27 March 2004 (Sofia).

[24] See in particular [CDL-AD\(2003\)010](#).

[25] [CDL-EL\(2004\)014rev](#); and revised version: [CDL-EL\(2004\)rev2](#). [26] Website: <http://venice.coe.int/vota/en/start.html>. [27] [CDL-EL\(2003\)004](#)

rev.

[28] [CDL-EL\(2004\)021](#); [CDL-EL\(2004\)021rev](#).

[29] [CDL-AD\(2005\)002](#) (see above)..

[30] [CDL-EL\(2004\)026](#); cf. [CDL-EL\(2004\)025](#).

[31] 15-16 July 2004, Vienna.

[32] [CDL-AD\(2004\)010](#), *Opinion on the draft ACEEEO Convention on election standards, electoral rights and freedoms, on the basis of comments by Mr Christoph Grabenwarter (Substitute Member, Austria) and Mr Angel Sanchez Navarro (Substitute Member, Spain)* adopted by the Commission at its 58th Plenary Session (12-13 March 2004). Draft ACEEEO Convention on Election Standards, Electoral Rights and Freedoms: [CDL\(2003\)057](#).

[33] From 9 to 11 September 2004, in Tirana, Albania.

[34] By order of seniority.

[35] Following the elections in March 2005.

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

[37] Resigned in March 2005, a new member has not yet been nominated.

[38] Mandate expired 11 May 2005, a new member has not yet been nominated.

[39] Replaced Mr Vladimir Djerić on 2 June 2005.

[40] Replaced Ms Siuzanna Stanik on 2 February 2005.

[41] Replaced Ms Carmen Iglesias Cano on 7 February 2005.

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

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

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

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

[46]

font-family:Palatino;mso-fareast-font-family: "Times New Roman";mso-bidi-font-family:"Times New Roman";letter-spacing:-.15pt;mso-ansi-language:EN-GB;mso-fareast-language:FR;mso-bidi-language:AR-SA>[23] *First Training course of the school of politics what is the impact of electoral systems in South Eastern Europe on the chances of the voters to promote policy change*, 27 March 2004 (Sofia).

[24] See in particular [CDL-AD\(2003\)010](#).

[25] [CDL-EL\(2004\)014rev](#); and revised version: [CDL-EL\(2004\)rev2](#). [26] Website: <http://venice.coe.int/vota/en/start.html>. [27] [CDL-EL\(2003\)004](#)

rev.

[28] [CDL-EL\(2004\)021](#); [CDL-EL\(2004\)021rev](#).

[29] [CDL-AD\(2005\)002](#) (see above)..

[30] [CDL-EL\(2004\)026](#); cf. [CDL-EL\(2004\)025](#).

[31] 15-16 July 2004, Vienna.

[32] [CDL-AD\(2004\)010](#), *Opinion on the draft ACEEEO Convention on election standards, electoral rights and freedoms, on the basis of comments by Mr Christoph Grabenwarter (Substitute Member, Austria) and Mr Angel Sanchez Navarro (Substitute Member, Spain)* adopted by the Commission at its 58th Plenary Session (12-13 March 2004). Draft ACEEEO Convention on Election Standards, Electoral Rights and Freedoms: [CDL\(2003\)057](#).

[33] From 9 to 11 September 2004, in Tirana, Albania.

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[\[46\]](#)