

* European Commission for Democracy through Law
Draft annual report of activities 2008

**SPEECH BY MR JAN HELGESEN, PRESIDENT OF THE VENICE
COMMISSION AT THE 77th PLENARY SESSION
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Distinguished Members of the Venice Commission, Dear friends,

As we leave Venice now, we are leaving behind the working year 2008 of the Venice Commission.

I am certainly not going to present our Annual Report at this moment. Allow me some reflections, however, at the end of the year.

2008 has been a very active and demanding year for our Commission. The Venice Commission has consolidated its position even further. During our four sessions, we have heard statements confirming that the Commission is respected in the international community. We have also been informed that the Commission is present during discussions in national parliaments and governments.

As an example, we heard from an Ombudsman, visiting Venice, that if he felt his arguments were not well received by the Government, he informed the Government that he would bring the case before the Venice Commission. Then, the Government would normally yield. This is promising. Such a testimony gives substance to the Plenary Meetings in this beautiful Scuola.

We are entering into the year 2009, which will be, by no means, less challenging.

It is a disturbing fact that the understanding and acceptance of one of the pillars of The Venice Commission, the principle of the rule of law, is challenged, or even threatened by some forces. One example suffices; the so-called "war on terror" constitutes a serious threat to the respect of the rule of law. I am pleased that the Venice Commission in the coming year is to conduct a study on the conformity between existing anti-terror legislation in the member states and the European Convention on Human Rights.

The Commission must repeatedly stress that democracy, in Europe, and globally, must be founded on respect of the rule of law. No government, be it democratically elected, may infringe upon the rule of law, claiming to protect other legitimate values.

One is often confronted these days with the view that during the difficult times we are going through, Constitutions, or more generally, the rule of law, cannot be implemented. This is a fundamental misconception. The Venice Commission must make it perfectly clear, that the rule of law must also be upheld during difficult times in the life of a nation.

I was very pleased to see that this is also the approach taken by the Supreme Court of United States in the case *Boumediene v. Bush* from last June. The applicant was a prisoner at Guantanamo, claiming that he was protected under the Constitution of the United States. The US Administration is claiming, as we know, that these suspects have placed themselves outside of the rule of law, and furthermore, that the Constitution cannot apply during the dark and difficult times the nation is experiencing. The answer of the Supreme Court is crystal clear: Justice Kennedy, on behalf of the majority, finds that even these prisoners are protected under the Constitution. And he adds: "The laws and Constitution are designed to survive, and remain in force, in extraordinary times. Liberty and security can be reconciled; and in our system they are reconciled within the framework of the law."

The Venice Commission is not only an institution, it is also a body composed of human beings. I want to take the opportunity to thank all of you warmly for the time, the energy and thoughts you have invested in the Commission during the year we are leaving behind. The quality of the Venice Commission's work reflects your wisdom and personal qualities.

I would in particular like to thank the Secretariat for all the hours, long days and nights you devote to the Venice Commission. I know perfectly well that the Commission has an excellent Secretariat. Please convey this message to your colleagues who are in Strasbourg and not in Venice these days.

A very important part of the Secretariat is the interpreters. We are served by highly competent interpreters. We often refer to "problems of translation" when we study a draft law. In the Commission itself, there are no problems of translation.

What remains to be said? I wish you a merry Christmas and a happy, peaceful year. I hope you will find the opportunity to relax from work.

And then, we shall meet in the New Year, for the March session!

I. WORKING FOR DEMOCRATIC STABILITY – AN OVERVIEW OF VENICE COMMISSION ACTIVITIES IN 2008

1. THE VENICE COMMISSION: AN INTRODUCTION¹

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

The Commission has the prime function of providing constitutional assistance to States, mainly, but not exclusively, those which participate in its activities.² Such assistance takes the form of opinions prepared by the Commission at the request not only of States, but also of organs of the Council of Europe, more specifically the Parliamentary Assembly, Committee of Ministers, Congress of Local and Regional Authorities and Secretary General, as well as of other international organisations or bodies which participate in its activities. These opinions relate to draft constitutions or constitutional amendments, or to other draft legislation in the field of constitutional law. The Commission has thus made an often crucial contribution to the development of constitutional law, mainly, although not exclusively, in the new democracies of central and eastern Europe.

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

The Commission does not attempt to impose solutions, taking an approach based on dialogue, rather than on demand. This is why a rapporteur group frequently makes visits to the countries concerned in order to meet the various political players involved on the ground. An approach of this kind also fosters the most objective possible view of the situation. The Commission does not put forward models of the ideal constitution or law, but endeavours, on the basis of common standards, to understand through its dialogue, countries' needs and constraints, before it gives its specific opinions to requesting countries.

The Commission's working method involves the setting up of a rapporteur group of its own members, sometimes with the addition of experts, who present their personal observations on the text concerned. Following a discussion with the national authorities and other relevant bodies in the country concerned, the working group draws up a draft common opinion on the conformity of the text (preferably in its draft state) with European and international legal and democratic standards, and on how it could be improved on the basis of common experience. The draft opinion is discussed and adopted by the Commission at a plenary session, usually in the presence of representatives of the country concerned. Following adoption, it is transmitted to the State or the body which requested it, and comes into the public domain.

¹ For more information, please refer to the Venice Commission's website: www.venice.coe.int.

² Article 3, paragraph 3, of the Statute of the Commission specifies that any State which is not a member of the agreement may benefit from the activities of the Commission by making a request to the Committee of Ministers of the Council of Europe.

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

At the request of the European Union, in particular, the Commission has also played, and continues to play, an important role in the interpretation and development of the constitutional law of countries which have experienced, are experiencing or run the risk of ethnic/political conflicts. In this role, it supplies technical assistance relating to the legal dimension of the search for political agreement.

While most of its work concerns specific countries, the Venice Commission also draws up, supervises and commissions studies and reports on subjects of general interest. Just a few examples demonstrating the variety, complexity and importance of the matters dealt with by the Commission are its reports on a possible convention on the rights of minorities, on "kin minorities", on remedies to the excessive length of proceedings, on the status of detainees at Guantanamo Bay, on democratic control of security services and armed forces, and on the relationship between freedom of expression and freedom of religion.

These studies may, *inter alia*, culminate in the drafting of guidelines and draft international agreements, or take the form of either scientific conferences with the Universities for Democracy (UniDem), the proceedings of which are published in the "Science and technique of democracy" series, or civil service training seminars (UniDem Campus).

Where the rule of law is concerned, however, it is not enough to help states to adopt democratic constitutions. There is also a need to help them to ensure that these are implemented. This is why constitutional justice is also one of the main fields of activity of the Commission, which has developed close co-operation with the key players in this field, *i.e.* constitutional courts and other courts with equivalent jurisdiction. As early as 1991, the Commission set up the Centre on Constitutional Justice, the main task of which is to collect and disseminate constitutional case-law. The Commission's activities in this field are supervised by the Joint Council on Constitutional Justice. This is made up of members of the Commission and liaison officers appointed by the participating courts in over 50 countries (including some outside Europe), by the European Court of Human Rights, the Court of Justice of the European Communities and the Inter-American Court of Human Rights. Since 1996, the Commission has established co-operation with a number of regional or language based groups of constitutional courts, in particular the Conference of European Constitutional Courts, the Association of Constitutional Courts using the French Language, the Southern African Judges Commission, the Conference of Constitutional Control Organs of Countries of Young Democracy, Asian constitutional courts, the Union of Arab Constitutional Courts and Councils and the Ibero-American Conference of Constitutional Justice. In January 2009, the Commission organised together with the Constitutional Court of South Africa a World Conference on Constitutional Justice, which for the first time gathered all these regional groups and their member courts as well as Commonwealth courts and Portuguese speaking courts. The Conference decided to establish an association, assisted by the Venice Commission and open to all participating courts, with the purpose of promoting co-operation within the groups but also between them on a global scale.

Since 1993, the Commission's constitutional justice activities have also included the publication of the Bulletin of Constitutional Case-Law, which contains summaries in French and English of the most significant decisions taken by over 80 participating courts. It also has its electronic counterpart, the CODICES database, which contains a further 5,000 texts of decisions in full, constitutions and descriptions of many courts and the laws governing them.³ These publications have proved to play a vital "cross-fertilisation" role in constitutional case-law.

At the request of a constitutional court or a court with equivalent jurisdiction, the Commission may also provide *amicus curiae* opinions, not on the constitutionality of the act concerned, but on comparative constitutional and international law issues.

³ CODICES is available on CD-ROM and on line: <http://www.CODICES.coe.int>.

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

The ordinary courts have become a subject of growing importance to the Commission. Increasingly often, the Commission is asked to give an opinion on constitutional aspects of legislation relating to the courts. Frequently, it co-operates in this sphere with other Council of Europe departments, so that the constitutional law viewpoint is supplemented by other aspects. With its report on judicial appointments (CDL-AD(2007)028), the Commission produced a reference text, which it uses in its opinions on specific countries.

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

Elections and referendums which meet international standards are of the utmost importance in any democratic society. And this is the third and last of the Commission's main areas of activity, in which the Commission has, since it was set up, been the most active Council of Europe body, leaving aside election observation operations. In 2002, the Council for Democratic Elections was set up at the Parliamentary Assembly's request. This is a subordinate body of the Venice Commission comprising members of the Commission, the Parliamentary Assembly and the Congress of Local and Regional Authorities. The Council for Democratic Elections also includes an observer from the OSCE/ODIHR.

The Council for Democratic Elections and the Venice Commission have done much to set European standards in the electoral sphere, adopting a good number of general documents, the most important of which are the Code of Good Practice in Electoral Matters (2002),⁴ which is the Council of Europe's reference document in this field, and the Code of Good Practice for Referendums (2007). The other general documents concern such matters as electoral law and national minorities, and restrictions on the right to vote.

The Commission has drafted more than 50 opinions on States' law and practice relating to elections, referendums and political parties, and these have had a significant impact on electoral legislation in the States concerned. Among the States which regularly co-operate with the Commission in the electoral sphere are Albania, Armenia, Azerbaijan, Georgia, Moldova and Ukraine, and the Commission has even played a part in the drafting of electoral legislation, especially in Bosnia and Herzegovina.

The Council for Democratic Elections has developed regular co-operation with election authorities in Europe and on other continents. It organises an annual European Conference of Electoral Management Bodies, and is also in very close contact with the other international organisations or bodies which work in the election field, such as ACEEEO, IFES and, in particular, the OSCE. Thus, in principle, opinions on electoral matters are drafted jointly with the OSCE/ODIHR, with which there is exemplary co-operation.

The Commission also holds general seminars on subjects such as the preconditions for democratic elections and the cancellation of election results, as well as training workshops for those involved in the electoral process.

⁴ *Approved by the Parliamentary Assembly and the Congress of Local and Regional Authorities, and the subject of a solemn declaration by the Committee of Ministers encouraging its application.*

The Council for Democratic Elections has created a database known as VOTA⁵ containing, inter alia, member States' electoral legislation.

The activities of the Venice Commission and Council for Democratic Elections also relate to political parties, without which elections in keeping with Europe's electoral heritage are unthinkable. This is another field in which the Commission has laid down standards, relating in particular to the financing, prohibition and dissolution of political parties, and in which it issues opinions on national legislation. In 2008 the Commission adopted a Code of Good Practice in the field of Political Parties.

2. THE COMMISSION IN 2008

Accession of new member States

The enlargement of the membership of the Commission continued in 2008. The Committee of Ministers invited Israel and Tunisia to become members of the Commission and accorded special co-operation status to the Palestinian National Authority. This shows that there is a growing interest of non-European States in the Commission and further accessions can be expected.

Main activities

Despite limited resources and a stagnant budget the Commission continued in 2008 to carry out a large number of activities. The following activities should be highlighted as particularly important:

Constitutional assistance

Constitutional reform

The Commission was closely involved in efforts to reform the Constitution of Ukraine and adopted an opinion on a draft new Constitution of this country. It adopted opinions on the constitutions of Bulgaria and Finland, on constitutional amendments in Albania and on proposed constitutional amendments in Republika Srpska (Bosnia and Herzegovina).

Territorial organisation and settlement of conflicts

The Commission maintained close contacts with the European Union on the legal aspects of the status of Transnistria and provided informal comments to the Moldovan authorities on their proposal for a settlement of this conflict.

Functioning of the democratic institutions

The balance of powers between the main state organs was the central issue in the Commission's opinion on the draft Constitution of Ukraine. The Commission adopted reports on the democratic control of the armed forces and on legislative initiative.

Respect for human rights and the rule of law

The Commission adopted a report on the relationship between freedom of expression and freedom of religion. It was closely involved in efforts to ensure that the Armenian law on public assemblies should be in line with European standards and adopted opinions on several versions of this law as well as on related provisions of the criminal code. The Commission adopted opinions on the law on state secrets of Moldova, the law on non-discrimination of "the former Yugoslav Republic of Macedonia" and on laws on freedom of assembly and on freedom of religion of Kyrgyzstan.

Constitutional and ordinary justice, ombudspersons

Strengthening constitutional justice

⁵ VOTA is accessible on line: <http://www.venice.coe.int/VOTA>.

The Commission's Joint Council on Constitutional Justice continued its support of constitutional courts and equivalent bodies through the Centre on Constitutional Justice, which publishes the Bulletin on Constitutional Case-Law (five issues in 2008) and the CODICES database (web-site and three CD-ROMs in 2008). The Commission's Venice Forum dealt with over 30 requests from the courts. In June 2008, the Conference of European Constitutional Courts acknowledged in a special resolution the high value of this type of assistance.

The Commission adopted opinions on the laws on the Constitutional Courts of Kyrgyzstan and Montenegro. The Commission adopted two *amicus curiae* opinions for the European Court of Human Rights (relating to Bosnia and Herzegovina as well as to Montenegro and Serbia).

In 2008, constitutional justice conferences and seminars were held in Albania, Algeria, Armenia, Azerbaijan, Georgia, Kazakhstan, Kyrgyzstan, Montenegro, with the Palestinian National Authority, in Portugal, Russia, Slovakia and Ukraine.

Ordinary judiciary

The need to ensure the independence of the judiciary, as well as the functioning of the judicial system in the interest of society, plays an ever increasing role in the Commission's activities. It was a central issue in its opinions on the Constitutions of Bulgaria and Ukraine. The Commission provided opinions on legislative texts for Kyrgyzstan, Moldova, Montenegro and Serbia. Upon request by the Parliamentary Assembly, the Venice Commission prepared a report on judicial independence, to be adopted in early 2009.

Ombudspersons

The Commission continued its practice to provide opinions upon request by ombudspersons on an issue not related to his or her own status (*amicus ombud* opinion for Armenia).

The Venice Commission's work with the ombudspersons is geared in particular towards supporting co-operation between ombudspersons and constitutional courts.

Looking beyond Europe

In addition to its close co-operation with European constitutional courts and equivalent bodies, the Commission intensified its regional approach in the field of constitutional justice by co-operating with associations of constitutional and supreme courts and councils outside Europe, especially in view of the World Conference on Constitutional Justice to be held in January 2009. In 2008, this major event was prepared with the regional groups in three preparatory meetings, held in Vilnius, Seoul and Algiers. These meetings enabled the Conference to be geared to the groups' needs and showed their keen interest in it.

The Commission established bilateral co-operation programmes with the Ibero-American Conference on Constitutional Justice and the Union of Arab Constitutional Courts and Councils. The Commission invited their respective member courts to contribute to the CODICES database and the Venice Forum exchange network. In the framework of the co-operation with the Arab Union, and with the support of the Norwegian Government, the Commission organised conferences in Algiers and Ramallah and contributed to a multilateral conference in Sana'a.

Electoral matters

Electoral legislation and practice

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

The Commission also adopted a number of documents defining the European electoral heritage, including reports on dual voting for persons belonging to national minorities and on thresholds and other features of electoral systems which bar parties from access to parliaments.

Furthermore, the Venice Commission organised in Belgium the fifth European conference of electoral management bodies and, in Malta, a UniDem seminar on the cancellation of election results, targeted towards members of Constitutional and Supreme Courts in charge of electoral disputes. It also organised workshops on the holding and supervision of elections in Armenia, Azerbaijan, Georgia, Moldova and “the former Yugoslav Republic of Macedonia” as well as seminars in the field of elections or of political parties in Kazakhstan, Russia and Ukraine.

The Commission provided legal assistance to a number of election observation missions of the Parliamentary Assembly. It also provided electoral assistance to Azerbaijan and Georgia by assigning experts to be at the disposal of the Central Election Commissions of these countries.

Political Parties

The Commission adopted a code of good practice in the field of political parties as well as opinions on laws on political parties of Bosnia and Herzegovina and Bulgaria.

II. DEMOCRATIC DEVELOPMENT OF PUBLIC INSTITUTIONS AND RESPECT FOR HUMAN RIGHTS¹

1. COUNTRY SPECIFIC ACTIVITIES

- Albania

Amendments to the Constitution

By letter dated 4 July 2008 the Chair of the Monitoring Committee of the Parliamentary Assembly, Mr Holovaty, asked the Venice Commission to examine the amendments to the Constitution of Albania adopted on 21 April 2008. The Venice Commission adopted its opinion (CDL-AD(2008)033) at its 77th Plenary Session on 12-13 December on the basis of comments by Messrs Bartole, Jowell and Kask and following an initial discussion at the 76th Plenary Session in the presence of Mr Rusmajli, President of the Legal Affairs Committee of the Assembly of the Republic of Albania..

The Commission noted that the constitutional amendments are generally in line with European standards. The majority of the amendments can be regarded as improvements and clarifications of the existing text. This does not apply to the amendments to Article 104 on the vote of confidence and Article 149 on the Prosecutor General. The latter amendment, limiting the term of office of the Prosecutor General to five years with the right to be re-appointed, does indeed appear a regrettable step back making this institution less independent.

The amendments to the electoral provisions of the Constitution seem mostly positive. The Constitution will henceforth contain less detail on electoral rules. This is welcome but only if the legislative rules which will be adopted are in line with European standards. In particular, it will be crucial to ensure in the electoral law that elections will continue to be organised by an independent and impartial body. The new electoral system based on a proportional system within regions follows the example of other European countries. This seems a good model, which strikes a balance between the need for proximity between the voters and those elected and the need for a representative system, provided the electoral districts are not too small. For these reasons the implementation of the constitutional amendments in the electoral law is of particular importance and the Venice Commission is available to assess the revised electoral legislation.

- Armenia

Rallies

In 2005, the Venice Commission had assisted the Armenian authorities in preparing a law on conducting meetings ("law on rallies") which met European standards. In February and March 2008, however, in the aftermath of the new presidential elections, demonstrations of the opposition had taken place in Yerevan and violence had escalated which led to the death of 10 people. A state of emergency had been declared in Armenia, and shortly before its end, the law on rallies had been amended in a manner which de facto prolonged the state of emergency.

The Venice Commission and the OSCE/ODIHR prepared an assessment of these amendments and came to the conclusion that they represented an undue limitation of freedom of assembly. In particular, a provision allowed the authorities to suspend the right to assemble when a demonstration had degenerated into violence until such time as the responsible persons were identified and tried. This provision, which exempted the authorities from the need to carry out an analysis of each individual demonstration, was against standards. In addition, the March amendments appeared to limit in a substantial manner the right to a remedy in case demonstrations would be prohibited on the basis of information by the police and the secret services.

This opinion, which the Commission endorsed (CDL-AD(2008)018), was sent to the Armenian National Assembly, which invited the experts to meet with the Armenian authorities in Yerevan on 25-26 April

¹ The full text of all adopted opinions can be found on the web site www.venice.coe.int.

2008. At this meeting, certain principles were agreed upon by the participants as regards the amendments needed in order to bring the law back into compliance with European and international standards.

Draft amendments were subsequently prepared which, in the opinion of the Commission and the OSCE/ODIHR, were generally satisfactory. The provision on the general suspension of assemblies had been repealed. Spontaneous assemblies were now specifically permitted with no need for prior notification (although they could only last for six hours), and communication among participants of a spontaneous event in order to gather was permitted after the event which had prompted the spontaneous assembly. As concerned remedies, it was now foreseen that the information submitted by the police or secret services be justified and that it had to be in writing and made available to the organisers, who could challenge it before a court. The timeframe for notification of an event had been extended from 3 to 5 days, but this was not against standards.

In conclusion, the latest amendments, which were adopted by the National Assembly on 11 June, rendered the Armenian law on rallies compatible with European and international standards. Once again, however, this positive assessment was only an abstract one, and due attention needed to be paid by the Council of Europe to the interpretation and implementation of the law. In addition, training for the police, the administrations and the judges was essential.

Draft amendments to the Criminal Code

On 5 May 2008, the Armenian National Assembly requested the Council of Europe to assess the draft law on making amendments and addenda to the Criminal Code of Armenia. Both the Venice Commission and the Directorate General on Human Rights and Legal Affairs accepted to carry out this assessment. Mr James Hamilton was appointed to act as rapporteur. The opinion (CDL-AD (2008)017), based on his contribution, was adopted by the Venice Commission at its 75th Plenary Session (Venice, 13-14 June 2008)

The amendments to the Criminal Code of Armenia concern Article 225, which creates several offences related to "mass disorder", and Article 301, which makes criminal public calls to commit crimes against the foundation of the constitutional order and against national security. The background to these proposals is the demonstrations in Yerevan after the Presidential elections on 19 February 2008. In the Commission's opinion the draft amendments are too broad and at variance with the principle of legality. The Commission expressed thus the opinion that they should not be adopted.

- *Bosnia and Herzegovina*

Constitutional reform

From the Commission's point of view constitutional reform in this country remains a priority. Venice Commission representatives took part in two meetings discussing the possibilities for resuming the constitutional reform process after the October 2008 municipal elections: a seminar on methods and possibilities of constitutional reform organised by the Konrad Adenauer Stiftung in Cadenabbia on 14-15 November and a roundtable on constitutional reform in Bosnia and Herzegovina organised by the International Centre for Democratic Transition in Sarajevo on 1-2 December 2008.

Law on conflict of interest in governmental institutions

On 28 November 2007, the President of the Central Election Commission and the OSCE Mission to Bosnia and Herzegovina requested an expert assessment by the Venice Commission of the law on conflict of interest in governmental institutions of Bosnia and Herzegovina. Messrs Kaarlo Tuori and Oliver Kask acted as rapporteurs. On 24 and 25 April 2008, Mr Tuori, accompanied by Ms Granata-Menghini, traveled to Sarajevo and met with representatives of the Central Election Commission of Bosnia and Herzegovina, the Interagency Working Group on Amendments to the Law on Conflict of Interest, the OSCE Mission to Bosnia and Herzegovina and the Office of the High Representative.

The opinion was adopted by the Commission at its 75th Plenary Session (in Venice between 13 and 14 June 2008 (CDL-AD (2008)014).

The law on conflict of interest in governmental institutions raised a certain number of technical issues, such as the exceptionally broad range of incompatibilities, the automatic imposition of the very serious sanction of a four-year ban irrespective of the gravity of the violation, the absence of a mechanism of effective review of the declarations of assets, the absence of provisions on pantouflage and the contradictions in the definition of "gifts".

The regulation of the conflict of interest in Bosnia and Herzegovina also raised issues of a constitutional nature, related to the state competence for conflict of interest at Entity level. In the absence of a voluntary transfer of competence from the Entities to the State, the latter cannot exercise jurisdiction over the elected officials, executive officeholders and advisers of the Entities. Entities should ensure that their legislation on conflict of interest is consistent and mirrors the law on conflict of interest at the State level, and are consistent with each other insofar as possible, in terms of both substantial provisions and procedural ones. It is at any rate essential that the competent body for judicial review of any decision on conflict of interest be the State Court of Bosnia and Herzegovina.

The Commission was informed of the intention of the parliament of Bosnia and Herzegovina to prepare a new law codifying all rules on conflict of interest. The Commission expressed its readiness to continue the assistance to the authorities of Bosnia and Herzegovina in this task in the year 2009.

Amicus Curiae brief in the cases of Sejdić and Finci v. Bosnia-Herzegovina pending before the ECHR

On 29 May 2008, the Venice Commission sought leave to intervene as a third party in the proceedings before the European Court of Human Rights in the cases of *Sejdić v. Bosnia-Herzegovina* and *Finci v. Bosnia-Herzegovina*. These cases were undoubtedly of major importance, in that the alleged discrimination stemmed directly from the constitutional provisions of Bosnia and Herzegovina, which are the fruit of the Dayton Peace Accords of 1995 that ended a bloody civil war in the country. In 2006, the Constitutional Court of Bosnia and Herzegovina had been called upon to assess whether this text was still valid, and concluded that it was.

Since 1994, the Commission has drafted more than one hundred reports and opinions. Among these, the opinion "on the Constitutional Situation in Bosnia Herzegovina and the Powers of the High Representative" was of particular importance. Chapter V of this opinion is almost entirely devoted to the problem of the compatibility of the constitution of Bosnia and Herzegovina with the European Convention on Human Rights. More recently, the Commission was asked to assess certain draft constitutional amendments, which failed to be adopted but aimed inter alia at reducing if not eliminating the discriminatory treatments, which are now the object of the applications to the European Court of Human Rights at issue.

The central issue in both the case *Sejdić v. Bosnia-Herzegovina* and in *Finci v. Bosnia- Herzegovina* was the question of whether the provisions of the Constitution of Bosnia and Herzegovina and the corresponding regulations in the Electoral Code of Bosnia-Herzegovina which prevent persons not belonging to one of the three constituent peoples from standing for election to the Presidency and the House of Peoples of the Parliamentary Assembly of Bosnia and Herzegovina comply with the prohibition of discrimination in Article 14 of the European Convention on Human Rights, read in conjunction with the Right to free elections guaranteed in Article 3 of Protocol No. 1 to the Convention and / or the General prohibition of discrimination in Article 1 of Protocol No.12 to the Convention.

The Venice Commission expressed the opinion that the exclusion of the "Others" from the elections to the House of Peoples and to the Presidency by operation of the relevant provisions of the Constitution and the Electoral Code of Bosnia and Herzegovina was incompatible with the Prohibition of discrimination in Article 14 in conjunction with the Right to free elections in Article 3 of Protocol No. 1 to the ECHR and with the General prohibition of discrimination guaranteed in Article 1 of Protocol No. 12. Indeed, while there was certainly a legitimate aim for this exclusion at the time of the Dayton peace accords in December 1995, one could legitimately doubt as to its pertinence today. Bosnia and Herzegovina had not managed to achieve a functioning democratic state, and was at a stalemate. There was no indication that the continuing exclusion of the "others" would contribute towards finding a solution to the crisis.

The amicus curiae brief was prepared on the basis of comments by Ms Angelika Nussberger, Mr Jean-Claude Scholsem and Mr Joseph Marko, and was adopted by the Commission at its 76th Plenary Session (Venice, 17-18 October 2008).

Draft amendments to the Constitution of Republika Srpska

During the visit of a Council of Europe Monitoring Mission to Banja Luka on 23 April 2008 both Prime Minister Dodik and President Kuzmanovic asked for a Venice Commission assessment of proposed Amendments to the Constitution of Republika Srpska.

Mr Jensen (Denmark) and Mr Scholsem (Belgium) were appointed as rapporteurs, Mr Himsworth (United Kingdom) provided comments on the provisions relating to local government at the request of the Directorate of Democratic Institutions of the Directorate General of Democracy and Political Affairs. The Venice Commission adopted its Opinion on the draft amendments to the Constitution of Republika Srpska (CDL-AD (2008)016) at its 75th Plenary Session in Venice on 13-14 June 2008.

The amendments addressed the provisions on human rights, local self-government as well as some institutional provisions in the Constitution of this Entity.

As regards the amendments concerning human rights, it should first of all be taken into account that the Constitution of Bosnia and Herzegovina, which is particularly generous in this respect by inter alia giving priority over all other law to the European Convention of Human Rights, is applicable. In 1996, following a suggestion by the Venice Commission, some general provisions were introduced into the Constitution of Republika Srpska to ensure its conformity with the State Constitution. The aim of the present amendments was to partly harmonise the individual human rights provisions with the European Convention of Human Rights. This attempt at partial harmonisation created, however, more problems than it solved.

The provisions on local self-government were generally positive and in line with the European Charter. The institutional amendments contained a provision making the transfer of powers from the Entities to the State more difficult. This is undesirable since, as the Venice Commission had previously noted, the responsibilities of the State level are insufficient.

- Bulgaria

Review of the Constitution

By letter dated 24 May 2007, the Chair of the Parliamentary Assembly of the Council of Europe's Monitoring Committee, Mr Eduard Lintner, requested an opinion on the Bulgarian Constitution, in particular as regards the amendments made in February 2007. The comments of the appointed rapporteurs, Messrs C ea Egana, van Dijk, Hamilton and Neppi Modona, were successively discussed with Bulgarian representatives at the 72nd Plenary Session (Venice, 19-20 October 2007), during the visit of a Commission delegation to Bulgaria in 2007 and at the 74th Plenary Session (Venice, 14-15 March 2008). During this last session, the Commission welcomed the open attitude of the Bulgarian authorities and adopted the opinion (CDL-AD(2008)009).

In the Commission's opinion, the provisions of the Constitution of the Republic of Bulgaria, including its latest amendments, are generally in conformity with European standards and in line with constitutional practice in other European states. The Constitution provides a sound framework for the development of a democratic system in Bulgaria and this achievement was internationally recognised by Bulgaria's accession first to the Council of Europe and thereafter to the European Union. However, the opinion stresses the need for further improvements in the text.

Some of these improvements suggested by the Commission concern Chapter Six of the Constitution on the Judiciary. In this respect, it was shown that eleven out of the 25 members of the Supreme Judicial Council were elected by a simple majority in Parliament. The Minister of Justice chaired the meetings of the Council and could make proposals both for the budget and for the appointment, promotion and dismissal of judges. Taken together this could lead to a politicization of the Judiciary. The opinion did not criticise the current post holders but pointed out which safeguards would need to be taken against ill intentioned post holders. It was most important that the governmental majority should not have power

over the Judiciary. At the same time, another problem was raised by the fact that three distinct components of the judicial branch in Bulgaria, the judges, the prosecutors and the investigating magistrates, were all represented in a single body, the Judicial Council. In order to ensure that there is no risk of influence being brought by one branch towards the other, the Commission suggested that appropriate specialised committees or chambers deal with matters pertaining to the particular branches of the judicial arm. The opinion also drew attention to the probationary period of five years for new judges which might raise serious difficulties for judicial independence, as well as on the too broad powers the Inspectors have, with the risk of interference in the administration of justice.

The meeting of the rapporteurs with the Bulgarian authorities in Sofia enabled a number of issues to be settled. Inter alia, it had been made clear that the word "to pass" the reports by the Judiciary to Parliament had to be read as "to take note". The limitation of the immunity of magistrates was to be welcomed.

Another issue addressed in the Commission's opinion referred to the constitutional provisions on human rights. The rapporteurs discussed with the Bulgarian authorities the use of the term "citizen" in the constitutional text. The latter had explained that the term "citizen" should be read as everyone and a restriction was made only when the Constitution talked of "Bulgarian citizen". While there was no current danger, the opinion recommended changing these terms. At the same time, the tone of the provisions on the protection of minorities was rather restrictive. Article 11(4) did enable political parties to be created along ethnic lines. The limitations to human rights in the Constitution did not correspond to those in the European Convention on Human Rights. The Bulgarian side had pointed out that this was not a real problem as the Convention ranked above ordinary law in the national legal system however the opinion nonetheless recommended also making this clear in the Constitution itself. The Commission also recommended that the election of the Ombudsman require a qualified majority.

- Finland

Evaluation of the Constitution

In the year 2008 the Venice Commission continued, following the request by the Ministry of Justice of Finland, its participation in the evaluation of Finland's current Constitution which had started in 2007.²

Following the first visit of a Commission delegation to Finland in 2007, individual comments were drafted by the rapporteurs. A second visit took place on 28 January 2008, which was mostly dedicated to the role of the Prime Minister and to European and international relations in the Finnish constitution. The Commission's opinion (CDL-AD(2008)010) is based on the individual comments from the rapporteurs, and takes into account the information received during the visits to Finland and a number of documents provided by the Finnish authorities. It was adopted at the 74th Plenary Session of the Venice Commission following an exchange of views with Ms Tiina Astola, Permanent Secretary, Ministry of Justice.

The opinion addresses issues raised by the Finnish Ministry of Justice, namely the referendum and popular initiative, the election of the President of the Republic, the organisation of the legislative and regulatory sphere, the conduct of foreign and European policy (including the place of the European Union in the Constitution). It also deals with other topics raised on the occasion of the visits by the delegation of the Venice Commission to Finland: basic rights and liberties, international relations in general, including the rank of international treaties and EU law, as well as the administration of (constitutional and ordinary) justice.

On the whole, the Finnish Constitution is in conformity with European standards of democracy, the rule of law and human rights. Even if some adjustments to the wording of the Constitution in the field of basic rights and liberties could be appropriate, the interpretation constantly given to general provisions in this field and supervision of constitutionality is fully in conformity with international treaties and standards. However, the preeminent role of the President of the Republic and of the Prime Minister, respectively in foreign and European policy, may lead to difficulties, since the separation between both fields may be far from clear. The creation of a specialised constitutional court is not imposed by any European standard, as long as the Finnish system guarantees in practice

² See Annual Report for 2007.

the protection of human rights, even if it could be pertinent to extend the judicial control of constitutionality beyond the cases of clear conflict with the Constitution.

- **Kyrgyzstan**

Freedom of religion

At the request of the Chairman of the parliament of Kyrgyzstan, the OSCE/ODIHR Panel of Experts on Freedom of Assembly and the Venice Commission assessed the draft law on freedom of religion of the Kyrgyz Republic. This assessment was largely based on the OSCE/ODIHR - Venice Commission Guidelines on freedom of religion.

In this joint opinion (CDL-AD(2008)032), the Commission and OSCE/ODIHR consider that the draft law is at times excessively detailed, and at times rather vague. The registration requirements are extremely strict and are presented in an unclear manner; the consequence of lack of registration (a ban on all operation and activity) appears disproportionate. The draft law fails to require that the reasons for refusal to register a religious organisation and association be spelled out in detail and in writing and also fails to provide for the explicit possibility to appeal against refusal in court. In conclusion, the draft law does not appear to meet the applicable international standards. The influence of the State over the exercise of freedom of religion is excessive.

- **Moldova**

Law on State Secret

By a letter dated 5 November 2007, Mr. Esanu, Deputy Minister of Justice of Moldova, requested the Venice Commission's assessment of the 1994 Law on State Secret of the Republic of Moldova. The Commission's opinion (CDL-AD(2008)008), prepared on the basis of comments by Messrs Iain Cameron and Olivier Duthellet de Lamothe, was adopted by the Venice Commission at its 74th Plenary Session (Venice, 14-15 March 2008).

As stated in the Commission's opinion, the Law on State Secret of the Republic of Moldova raises three main problems. Firstly, the law combines a formal definition, which corresponds to the practice of the majority of the states and international organisations, with a material definition, which aims at covering all the state secret's aspects, but finally proves to be too broad. This definition was also in contradiction with other provisions of the law.

Secondly, the law makes a distinction between the national list of classified information which is drawn up by the Inter-departmental Commission for the protection of state secret, and the detailed lists drawn up by the persons delegated by the heads of the state administration bodies. The latter are approved only by the heads of the state administration bodies and are not published. Such a dichotomy between a national list, which contains certain guarantees, and the lists of ministerial departments, which do not offer the same guarantees, risks giving rise to a massive and occult development of protected information at the level of ministerial departments. At the same time, there is a risk that the Inter-departmental Commission might not have a comprehensive view and cannot ensure an adequate control of the protected information.

Thirdly, in some cases the Moldovan Law on the Protection of State Secret imposes excessive restrictions on the freedom of information, communication and circulation, as well as on the right of respect for private life of civil servants and citizens who have access to state secrets.

In conclusion, the Commission was of the opinion that the Law on the State Secret of Moldova falls short in an important number of respects from what could be regarded as good practices in the field of state secrecy. Therefore, several provisions would need amendments or clarification.

Status of Transnistria

The Venice Commission maintained its close contacts with the EU Special Representative for Moldova, Mr Mizsei, on the legal aspects of a possible settlement. Venice Commission experts provided informal comments to the Moldovan authorities on their draft settlement proposal.

Double nationals

At the invitation of the Moldovan parliament a delegation composed of Mr Nick (Croatia), Mr Schaerer (Switzerland, DGHL expert) and Mr Markert from the Secretariat took part in a hearing of the legal affairs committee of the Moldovan parliament on the draft dual citizenship act in Chisinau on 2 April. While the delegation accepted the possibility of prohibiting double nationals from occupying certain particularly sensitive positions in the public sector, it warned against an excessively wide scope of such prohibition. It seemed in particular problematic to prevent double nationals elected to parliament from taking their seats.³

- Montenegro

Amicus Curiae brief in the case of Bijelić against Montenegro and Serbia pending before the ECHR

In July 2008, the Venice Commission was granted leave to intervene as a third party in the proceedings of the European Court of Human Rights in the case of Nadez Bijelić, Svetlana Bijelić and Ljiljana Bijelić against Montenegro and Serbia (application no. 11890/05). The above case raised the question of whether the Republic of Montenegro and/or the Republic of Serbia might be held responsible by the Court for breaches of the Applicants' rights under the European Convention on Human Rights that were alleged to have occurred in Montenegro between 3 March 2004 and 5 June 2006. The interest of the Venice Commission in this matter arose from previous opinions that it had given on issues relating both to the process by which Montenegro had achieved independence in June 2006 and to the current constitution of Montenegro.

The *amicus curiae* brief, which does not address the substantive merits of the applicants' case, was prepared on the basis of comments by Messrs Anthony Bradley and Iain Cameron, and was adopted by the Commission at its 76th Plenary Session (Venice, 18-19 October 2008).

The opinion deals with two main issues: the succession of Serbia and Montenegro to the treaty obligations of the former State Union of Serbia and Montenegro, and the liability of a successor state for the wrongful acts of its predecessor.

As concerns the first issue, the Commission's document shows that Serbia succeeded to the State Union as of 14 June 2006, by operation of a specific provision of the Constitutional Charter of the State Union itself. Montenegro was accepted by the Committee of Ministers as a successor to the treaty obligations of the State Union as of 14 June 2006 in respect of "open" conventions (which are open to non Council of Europe member States). The Committee of Ministers decided in May 2007 that Montenegro was to be considered a party to the ECHR, which is a "closed" convention, retrospectively as of 6 June 2006 (date on which Montenegro declared in a letter to be willing to succeed to the treaty obligations of the State Union).

As concerns the second issue, the opinion stresses that there are few settled rules on state succession and considers that the correct approach in deciding this kind of issue is to judge in each specific case by reference to all the factors to determine how reasonable it is to impose continuity in responsibility. Indeed, the International Law Commission in its Articles on State Responsibility provides for a general rule that responsibility devolves to a successful independence movement, unless the successor can prove that it would be unreasonable to do so. In the case under consideration, the acts or inaction complained of were attributable to authorities which were under the complete control of an entity (the Republic of Montenegro) which later became the government of the new State (Montenegro). It would therefore have been unreasonable to hold Serbia responsible for human rights violations allegedly committed by the courts of the Republic of Montenegro. This interpretation, which seems to be in line with the intentions of Montenegro itself, was in conformity with the principles of a European public order brought about by the ECHR. This conclusion does not affect the possibility, under different circumstances, of holding Serbia responsible for breaches possibly committed during the material time by the authorities of the State Union.

³ See also the chapter on electoral reform in Moldova in Part IV of this report.

- **Slovakia**

Draft press law

Following a request by the Slovak authorities an informal meeting on the draft press law took place on 28 February between representatives of the Venice Commission and the Media Division of the Directorate General of Human Rights and Legal Affairs on the one hand and representatives of the Slovak authorities on the other.

- **“The former Yugoslav Republic of Macedonia”**

Law on the prohibition of discrimination

At its 77th Plenary Session, the Commission adopted an opinion on the draft Law on protection against discrimination of “the former Yugoslav Republic of Macedonia” (CDL-AD(2008) 042).

In the opinion, prepared at the request of the former Minister of Labour and Social Policy of “the former Yugoslav Republic of Macedonia”, the Commission points out that the draft Law on prohibition of discrimination was assessed in the light of the applicable European standards, which are in particular the ECHR and, as concerned soft law, the recommendations by the European Commission against Racism and Intolerance (ECRI).

In “the former Yugoslav Republic of Macedonia” there is no general anti-discrimination law; the draft Law under consideration is thus to be welcomed, as it will improve the normative protection of the principle of non discrimination. The Law is nevertheless excessively broad, and therefore fails to provide the necessary consistency and to prove applicable in practice. An explanatory memorandum or other authoritative interpretative guide is necessary in this respect.

As concerns the enforcement of the Law, the Venice Commission shares the recommendation of ECRI to entrust, in principle, the supervision of non discrimination legislation to a specialised body. However, taking into account in particular the concerns expressed by the Council of Europe’s Commissioner for Human Rights on the excessive complexity of the legal system of that country, the Venice Commission accepts that for an initial period, the supervision of the implementation of the Law could be entrusted to the Ombudsman, on condition however that this institution be adequately strengthened in terms of both financial resources and human resources and competences.

- **Ukraine**

Constitutional reform

Throughout the year the Commission was actively involved in constitutional reform efforts in Ukraine. On 17 January a Commission delegation, which was joined by members of the Parliamentary Assembly, exchanged views with representatives of Ukrainian political forces and the Presidential Secretariat, on the perspectives for constitutional reform. On the same day the President of the Commission, Mr Helgesen, met the Speaker of the Verkhovna Rada, Mr Yatsenyuk.

Commission representatives made presentations on constitutional reform at a number of meetings: the Wilton Park Conference on “Ukraine: Building a Stable Future” on 21-24 February, the international conference on “Constitutional Reform and Consolidated Democracy: the Role of Civil Society, Authority and Opposition” in Kyiv on 5 March and the first session of the Ukrainian School of Political Studies in Kyiv on 10 April.

Commission delegations exchanged views with representatives of the government and the Presidential Secretariat on proposals for constitutional reform on 16 May. On 30 May a Commission delegation met with the working group of the National Constitutional Council established by President Yushchenko and discussed the draft concept paper prepared by this Council.

Following a request by the Monitoring Committee of the Parliamentary Assembly the Venice Commission adopted at its 75th Plenary Session in Venice on 13-14 June an opinion (CDL-

AD(2008)015) on the draft Constitution of Ukraine prepared by a group of scholars headed by Professor Shapoval, on the basis of comments by Mr Bartole, Ms Nussberger, Mr Paczolay, Ms Suchocka and Mr Tuori.

The Commission noted that the text is the draft of an entirely new Constitution, although it is clearly based on the text of the current Constitution and avoids a radical departure from existing solutions. Under these circumstances, it is not at all clear why the approach of adopting an entirely new Constitution was chosen. Proceeding by means of amendments to the current Constitution would have the advantage of symbolic continuity and enhance constitutional stability. It would also dispel any speculation that the adoption of a new Constitution might be a means of getting around the requirements for amending the Constitution established by the Constitution presently in force and in particular of bypassing the Verkhovna Rada, which has to approve all constitutional amendments by a two-thirds majority of its members.

An approach based on amendments and not on a new Constitution would also enable a clear focus on the most urgent issues. The unclear and overlapping distribution of powers between the President and the Cabinet of Ministers, partly but not exclusively due to the constitutional amendments of December 2004, is a major source of tensions and instability. The issue of the dual executive power should therefore be addressed as a priority. Other important reforms such as judicial reform could be addressed separately.

As regards the substance of the changes, The Commission regards most of the amendments as improvements. This concerns in particular the Chapter on Courts and Justice, including the procuracy. By contrast, the Chapter on territorial organisation of power, which would reduce the scope of local self-government and the autonomy of Crimea, is criticised in the opinion.

As regards the crucial issue of the balance of powers between the state organs, the draft provides for adjustments but no major change in respective powers. On the whole the present "parliamentary-presidential" system is maintained. While this seems a reasonable approach in principle, it is unlikely to be sufficient to resolve the current tensions between the state organs and may prove again dysfunctional, especially in periods of "cohabitation". The Commission therefore recommends examining, with a view to their inclusion in the Constitution, means of ensuring co-operation and coordination between President and Cabinet of Ministers, such as binding presidential decisions to proposals from the Cabinet of Ministers, the countersignature of presidential acts by the Prime Minister or the competent minister and/ or the taking of presidential decisions in the presence of the Cabinet of Ministers.

2. TRANSNATIONAL ACTIVITIES

Report on the democratic control of armed forces

The Parliamentary Assembly of the Council of Europe (PACE), concerned about the democratic control of the security sector in general, recommended that the Committee of Ministers should prepare some guidelines about political rules, standards and practical approaches to this issue. On 7 July 2006, the Committee of Ministers of the Council of Europe, in turn, requested the Venice Commission to carry out a study on the democratic issues involved in the supervision of armed forces, as institutions whose mission is to ensure national security, in the Council of Europe member States.

A working Group which was subsequently set up within the Venice Commission and worked together with the Geneva Centre for the Democratic Control of Armed Forces (DCAF) and the Centre for Political and Constitutional Studies (CEPC) in Madrid endeavoured to describe the need of all societies for security provided for by the armed forces, on the one hand, and the requirement to respect democratic values, human rights and freedoms on the other hand. The lessons learned from history - even recent - of European States, but not only, have shown that the military might affect democracy and its values. The interests of the military must therefore be subordinate to the interest of a democratic society. The report (CDL-AD)(2008)004) prepared by the working group was discussed within the Sub-Commission on Democratic Institutions and adopted by the Venice Commission at its 74th Plenary Session (Venice, 14-15 March 2008).

The study focused on particular aspects related to armed forces: “traditional” issues such as military expenditure or military budget and appointment of top commanders and issues which correspond to the change in the role of the armed forces. Democratic control over armed forces refers mainly to the existence of a democratically elected organ that reviews and supervises the decisions adopted by the organs or authorities with military competences. The role of the Parliament as an elected body is therefore of paramount importance in the concept of democratic control of armed forces. Next to the Ombudsmen and the Court of Audits, the judiciary play an important role in the control over armed forces with both the Constitutional courts as guardians of the rule of law, of democratic procedures and the military courts.

At the international level, the control of armed forces can be performed by different organs, i.e. international organisations of which member States of the Council of Europe are part and/or international courts. First and foremost, the international use of force must be legitimate. States can carry out individual or collective self defence, but in order for their actions to be legitimate they must comply with strict conditions which have been laid down by international law. There are different types of international organisations whose mission is to safeguard and contribute to international collective defence, security and peace. Their common feature is that the existence of their parliamentary body paved the way for a control of the decisions taken at the executive level of the organisation. These international organisations have fixed and developed through their activities important international standards concerning the democratic oversight of the military. Lastly, International courts also play an important role in the oversight of democratic forces.

Blasphemy

The Report on “The relationship between freedom of expression and freedom of religion: the issue of regulation and prosecution of blasphemy, religious insult and incitement to religious hatred”, which the Commission adopted at its 76th Plenary Session, was prepared at the request of the Parliamentary Assembly. A preliminary report had been adopted in March 2007. An international Round Table on “Art and Sacred beliefs: from collision to co-existence” was organised by the Commission in January 2008 in Athens in co-operation with the Hellenic League of Human Rights.

This report is a pioneer one, and as such it does not purport to provide all the answers to the difficult questions which arise in the field of the intersection of freedom of expression and freedom of religion.

In the Commission’s opinion, incitement to hatred must be criminalised and prosecuted, as is actually the case in practically all Council of Europe member States; it is essential, however, that the provisions against incitement to hatred be applied in a non-discriminatory manner and no unjustified difference should be made between different groups.

Insult on the ground of belonging to a given religious group should be treated as an “insult” and, as such, punished. By contrast, *insult to religious feelings* must be distinguished from the aforementioned insult, and should not be penalised. Blasphemy should not be criminalised.

The analysis of the pertinent European domestic laws shows the pan-European penalisation of incitement to hatred, a clear tendency not to prosecute blasphemy and a tendency not to criminalise religious insult. In the Commission’s view, this is the correct approach for the future.

The report underlines that democratic societies must not become hostage to the excessive sensitivities of certain individuals: it must be possible to criticise religious ideas even if such criticism may be perceived by some as hurting their religious feelings. Fear of violent reactions should not dictate self-censorship. But reasonable self-restraint should be used if constructive debate is to replace dialogues of the deaf.

The report concludes by proposing a new ethic of responsible intercultural relations, in Europe and in the world.

Rome Statute

This report was intended to supplement the Venice Commission’s Report on the constitutional issues raised by the ratification of the Rome Statute of the International Criminal Court, which the Commission

had prepared in 2001 at a time when practically no State had yet ratified the Statute. It was adopted by the Commission at its 76th Plenary Session.

This second report examines the European constitutional case-law since 2001, and confirms that several States have indeed been confronted with the problems which the Commission had foreseen and anticipated in 2001 (the lifting of immunity for Heads of State and Government; surrender of nationals to ICC; co-operation with ICC Prosecutor; exercise of the prerogative of pardon; imposition of life imprisonment). Some of these States have adopted the solutions indicated in the 2001 report, notably, in respect of immunity, a two-tier responsibility which distinguishes between the national and the international level. Practice shows that several of the States which have been unable to interpret the statute in a manner compatible with the constitution and instead have to modify the latter, have not yet ratified the statute.

Legislative initiative

This report was prepared at the request of the former Georgian Minister of Justice, and was adopted by the Commission at its 77th Plenary Session.

It is a descriptive report of a comparative nature on the holders of the right to initiate legislation and on the modalities of exercise of this right. It also contains some analysis of recurrent features and recent trends in this area.

The report revealed that the right of legislative initiative is linked to the principle of separation of powers. While Parliament is the primary holder of this right, the executive also holds it in several countries. In particular, the report addresses the case in which the right to initiate legislation is vested at the same time in the Government and in the President. This is more frequent in presidential systems, but it is only appropriate in systems where the President is not meant to be a neutral, *super partes* institution. As regards the judiciary, it is rarely granted the right to initiate legislation, and, in the Venice Commission's opinion, rightly so.

3. UNIDEM CAMPUS – LEGAL TRAINING FOR CIVIL SERVANTS

For the 7th year, the UniDem Campus programme pursued its training of civil servants from 16 countries (Albania, Armenia, Azerbaijan, Belarus, Bosnia and Herzegovina, Bulgaria, Croatia, Georgia, Moldova, Montenegro, Romania, Russian Federation, Slovenia, Serbia, "the former Yugoslav Republic of Macedonia" and Ukraine) in efficient administration and good governance, as well as in democratisation and human rights.

In 2008, three seminars were held on the following topics: "Implementation of the case-law of the European Court of Human Rights in Council of Europe member states: impact on structural and legal reforms. Given example: Remedies against the unreasonable length of proceedings", "Models of regional development and "The Effectiveness of Public Administration and its Europeanisation".

The purpose of this programme is to "train trainers", which means that each participant, after attending a seminar, is expected to train his or her own colleagues, passing down the information and material acquired at the seminar. Participants receive a specific practical workshop, designed to help them become "trainers".

In 2008, this "training of trainers" aspect was strengthened : fewer participants were accepted in comparison to previous years (approximately 60 participants), but in turn these trained almost 1300 civil servants through seminars, round tables and debates which took place within the relevant national administrations.

III. CONSTITUTIONAL JUSTICE, ORDINARY JUSTICE AND OMBUDSMAN¹

1. COUNTRY SPECIFIC ACTIVITIES

- Albania

Joint Council on Constitutional Justice

The Venice Commission was invited by the Constitutional Court of Albania to hold the 7th meeting of its Joint Council on Constitutional Justice in Tirana on 26-27 June 2008. In the opening of this event, the President of the Constitutional Court underlined the close co-operation that exists between the Constitutional Court of Albania and the Venice Commission. This co-operation includes not only regular contributions to the Commission' Bulletin on Constitutional Case-Law and the CODICES database, but also an active participation in the Venice Forum (see below) and requests for *amicus curiae* briefs.

Within the framework of this meeting, the Joint Council on Constitutional Justice also held a mini-conference on the topic of social rights.

The liaison officers from 27 constitutional courts and equivalent bodies discussed various aspects of social rights as applied in constitutional justice.

A distinction was made between more recent constitutions, especially those of new democracies, which often explicitly refer to social rights, and older constitutions, some of which do not even have a catalogue of social rights. Nonetheless, such rights had been identified by the courts, sometimes by linking them to other rights, such as the right to equality. While the existence of social rights could sometimes be identified by the courts, they would usually not be in a position to fix a specific level of welfare payments, since this falls within the competence of the legislature or government. Some extreme examples were discussed, which showed how these powers had tried to implement social rights by treating them as being directly enforceable against the state.

It was pointed out that civil and political rights typically required restraint or non-interference from the state, whereas most social rights do require the State's intervention (regulation or payments). As a result, the implementation of these rights depends on the financial capacity of the state, which in turn is linked to the general prosperity of society. A paradox was identified to the extent that this prosperity could be undermined by taxation, which would be necessary to raise funds for the implementation of social rights.

A number of participants insisted that the level of welfare payments necessarily varied from one country to the next and that no general standards could be applied in this respect.

Nevertheless, the examples drawn from the case-law of various courts showed that social rights were not only mere programmatic declarations, but were also capable of judicial enforcement (so-called "justiciability of social rights"). The application of the principle of proportionality was seen as a means, which allowed the courts to apply strict judicial standards even in a complex field such as that of social rights.

- Algeria

Colloquy on « Constitutional Interpretation »

The Venice Commission organised a Colloquy on « *Constitutional Interpretation* » (Algiers, 30-31 October 2008) in co-operation with the Constitutional Council of Algeria. The purpose of this Colloquy was to discuss and exchange information on the methods used by Constitutional Courts and Councils to interpret not only the Constitution itself but also other legislation or draft legislation submitted to them for scrutiny.

¹ The full text of all adopted opinions can be found on the web site www.venice.coe.int.

The participants from Algeria, Armenia, Burkina Faso, Italy, Libya, Mexico, Romania, South Africa and Tunisia discussed various interpretation techniques such as literal, historical, systematic and teleological interpretation, which can be used either individually or together, putting forward arguments for why a specific technique was more appropriate than another for a given case. In addition to these methods relating to the text, the constitutional judges may also use techniques relating to the result of the examination of the case by determining whether the interpretation was in conformity with the constitution, which has to be applied by all state bodies (in French *reserve d'interprétation* or *interprétation conforme* or *neutralisante*). Other relevant concepts, such as the Italian concept of *diritto vivente* (living law) were also discussed.

Together with the Colloquy, the Venice Commission held a preparatory meeting for the World Conference on Constitutional Justice (Cape Town, 23-24 January 2009), see below under "Transnational issues".

- **Armenia**

Draft amendments to Article 23(5) of the Law on the Human Rights Defender

In July 2008, the Human Rights Defender of Armenia, Mr Harutyunyan asked the Venice Commission to provide an opinion on the draft amendments to Article 23(5) of the Law on the Human Rights Defender in Armenia. The Venice Commission adopted an Opinion on this issue (CDL-AD(2008)028) at its 76th Plenary Session (17-18 October 2008).

In an earlier opinion in 2006 on the Law on the Human Rights Defender of Armenia, the Venice Commission had expressed a positive view on the extension of immunity to staff of the Human Rights Defender's office. Immunity for the office of the Human Rights Defender (ombudsman) including his/her staff is one of the key guarantees of the independence of this institution, giving it the capacity to carry out its special role in a democratic society governed by the rule of law. Owing to its tasks of conducting a special kind of examination often resulting in strong criticism of the authorities, the institution becomes a likely target of attacks motivated by political and other interests.

The Group of States against Corruption's (GRECO) standing practice in monitoring compliance with the Guiding Principles and its reports on Armenia, do not support the proposed amendment, which would strip the staff of the Defender of their functional immunity. The staff of the Human Rights Defender has not been included in the categories whose immunity GRECO has found to be problematic.

Despite the importance of the fight against corruption and the ensuing necessity of limiting the categories of persons enjoying immunity, the need to ensure the independence of the institution of the Human Rights Defender provides a strong justification favouring the preservation of the present immunity of the staff of the Human Rights Defender.

Conference on "Fundamental constitutional values and public practice"

The Constitutional Court of Armenia together with the Venice Commission and the conference of Constitutional Control Organs of Countries of Young Democracy (CCCOCYD) organised a conference on "*Fundamental constitutional values and public practice*", dedicated to the 10th anniversary of "*Constitutional Justice*". The event was opened by the President of Armenia and took place in Yerevan (3-5 October 2008).

The purpose of this conference was to discuss and exchange information on how fundamental constitutional values are protected in different countries and how these are implemented by the courts (representatives from 20 countries/courts were present at this event).

The conference considered the role of state policy and public practice to guarantee the implementation of fundamental constitutional values, and discussed the importance of the rule of law, the role of civil society in the protection of these values, the social contradictions and conflicts that can arise and the role of the European Court of Human Rights and that of constitutional courts in various countries in the protection and the development of these values. The participants discussed, among others, the separation of powers, the independence of the judiciary, the role of parliament with respect to the constitutional court and individual complaints. They then focused more particularly on property rights and the issue of the overburdening of constitutional courts with abstract revision cases and the trend in a number of countries

that encourages ordinary courts to deal with constitutional issues themselves, without systematically turning to the constitutional court.

- **Azerbaijan**

Conference on “Execution of Decisions of Constitutional Courts”

On the occasion of the 10th Anniversary of the Constitutional Court of Azerbaijan, the Commission organised a Conference on the “*Execution of Decisions of Constitutional Courts*” in co-operation with the Court and the German Society for Technical Co-operation, held in Baku on 14-15 July 2008.

The Conference dealt with the various effects of constitutional courts’ decisions including the political implications of legal decisions. The need for the respect of court decisions in general and that of constitutional courts in particular was highlighted as a fundamental tenant of the rule of law.

During the discussions, particular attention was given to the execution of constitutional court decisions by ordinary courts. Tensions between these courts sometimes had resulted in the non-execution of constitutional courts’ decisions or their ‘literal’ implementation accepting only the operative part of the decision, but ignoring the constitutional arguments in future cases. An open dialogue between the courts based on the interpretation of the Constitution, as set out by the Constitutional Court, was seen as a remedy to such problems.

- **Belarus**

Conference on “The use of international instruments for protecting individual rights, freedoms and legitimate interests through national legislation and the right to legal defence in Belarus: challenges and outlook”

Within the framework of the Slovak Presidency of the Council of Europe’s Committee of Ministers, the Constitutional Court of Belarus, the Venice Commission and the Slovak Embassy in Minsk organised a Conference on “*The use of international instruments for protecting individual rights, freedoms and legitimate interests through national legislation and the right to legal defence in Belarus: challenges and outlook*” in Minsk on 24 April 2008. The participants included the Chairman and Judges of the Constitutional Court of Belarus, former (pre-1997) judges of the Court, the Vice-President of the Supreme Court, the Prosecutor General, the Deputy Ministers of Justice and Foreign Affairs, academics and the Belarus Helsinki Committee.

The international participants highlighted the importance of international human rights treaties and especially that of the European Convention on Human Rights as applied by the case-law of the European Court of Human Rights.

The presenters from Belarus insisted that international instruments in the human rights field were already part of the legal order in Belarus and had direct effect together with the Constitution. The judges of the Constitutional Court of Belarus presented relevant case-law, which referred to international instruments, including the European Convention on Human Rights, although Belarus is not yet party to the Convention. The case abolishing the *propiska* system, which had limited the right to take residence in other parts of the country, was cited as a key decision referring to international instruments.

The Chairman of the Constitutional Court agreed to reflect, together with the Belarus Helsinki Committee, on how the Opinions of the UN Committee on Human Rights (now Human Rights Council) could be implemented.

Belarus’ accession to the Council of Europe was discussed at various stages of the Conference and the Secretary of the Venice Commission emphasised that Belarus was part of Europe and should eventually join the Council. However, concrete steps were required on the path to future accession. Co-operation with the Venice Commission could be pursued if the Belarus authorities were prepared to make requests for opinions in relevant fields.

- **Georgia**

Conference on "Constitutional Justice and the Rule of Law in South Caucasus"

In co-operation with the Constitutional Court of Georgia and the German Society for Technical Cooperation (GTZ), the Commission organised a Conference on "*Constitutional Justice and the Rule of Law in South Caucasus*" in Batumi (19-20 June 2008). Presidents and judges from the Constitutional Courts of Armenia, Azerbaijan, Georgia, Germany, Lithuania, Poland, Russia, Turkey and Ukraine, as well as several Georgian and foreign experts took part in this Conference.

The Conference focused on the relevance of constitutional justice for the rule of law and the specific importance of the individual complaint in this respect. The discussions revolved around the leading role of constitutional courts in countries where the ordinary judiciary was still in a transitional process. Individual complaints to the constitutional court were a means not to control the ordinary judiciary, but to give it guidance in matters relating to the protection of human rights. An important part of the Conference was an overview given on the state of reforms in this field in the three countries of the Caucasus: Armenia, Azerbaijan and Georgia.

- **Kazakhstan**

Conference on "The Universal Declaration of Human Rights and its fundamental principles – implementation in the Constitution of Kazakhstan "

The Constitutional Council of Kazakhstan and the Venice Commission organised a Conference on "*The Universal Declaration of Human Rights and its fundamental principles – implementation in the Constitution of Kazakhstan*" on the occasion of the 60th anniversary of this international text. The conference was opened by the State Secretary, Mr Saudabaev on 2 December 2008.

Discussions focused on the role played by the United Nation's Universal Declaration of Human Rights in influencing the laws in various countries and, in particular, the implementation of human rights in Kazakhstan.

The Ombudsman explained that 17 regional ombudsman offices will be opened nationwide over the next year. The Head of the European Commission's Delegation to Kazakhstan, Kyrgyzstan and Tajikistan, explained that there was a long standing co-operation between the EU and Kazakhstan and that Kazakhstan has made progress in the field of human rights, but that the areas of elections and freedom of assembly in particular needed further attention. He praised the co-operation between Kazakhstan and the Venice Commission and encouraged the Kazakh authorities to take advantage of the legal expertise of the Venice Commission. Several members of Parliament raised the need for the implementation of the international treaties to which Kazakhstan is a party, notably, the need to bring together and address the various obligations Kazakhstan has committed to under these treaties. Participants also discussed the need to increase the role of civil society to raise awareness of human rights in the country.

The Head of the association *Human Rights' Charter*, explained that although Kazakhstan still provides for the death penalty in its law, it was narrowed down in 2007 to apply only to war crimes and acts of terrorism. Furthermore, a moratorium was introduced in 2003 that effectively put an end to the death penalty and that other areas in the field of human rights needed more urgent attention, such as the freedom of assembly and association and the freedom of expression.

- **Korea**

On 1-4 September 2008, the Venice Commission participated in the Symposium on the "*Separation of Powers and Adjudication in the 21st Century*" on the occasion of the 20th anniversary of the Constitutional Court of the Republic of Korea. Presidents and Judges from more than 30 countries and 6 regional bodies uniting constitutional courts attended this event.

The symposium consisted of sessions dealing with the legislative power, the executive power and the judicial powers. The presentations showed that constitutional courts have a key position in the settlement of conflicts of powers between state authorities. Their decisions settle disputes which hamper the smooth functioning of the relationship between the state powers.

Together with the Symposium, the Commission held a preparatory meeting for the World Conference on Constitutional Justice (Cape Town, 23-24 January 2009), see below under "Transnational issues".

- **Kyrgyzstan**

By letter dated 6 May 2008, the Chair of the Constitutional Court of Kyrgyzstan, Ms Svetlana Sydykova, requested opinions on: (1) the draft Law amending and supplementing the Law on constitutional proceedings in Kyrgyzstan; (2) the draft Law amending and supplementing the Law on the Constitutional Court; (3) the Law on the Status of Judges; (4) the Law on Court Juries; (5) the Law on Bodies of Judicial Self-government and (6) the Law amending and supplementing the Law on the Supreme Court and local courts. Laws (1) and (2) were dealt with in Opinion 481 and laws (3) to (6) were dealt with in 4 separate opinions (under Opinion 480).

Draft Amendments to the Constitutional Law on the Supreme Court and Local Courts (CDL-AD(2008)041)

The aim of this draft Law is to bring the Law "*on the Supreme Court of the Kyrgyz Republic and local courts*", adopted on 18 July 2003, in conformity with the new Constitution of Kyrgyzstan, adopted by referendum on 21 October 2007.

The amendments introduced by the draft Law concern, in particular, specific regulations (e.g. responsibility of the execution of judicial acts, number of vice-presidents and judges, organisation of the sittings of the Plenum, organisation of courts' staff etc.).

A number of the amendments have the potential of improving the proficiency of the administration of justice. The compatibility of most of the amendments with the principle of the rule of law will depend on their implementation.

The Venice Commission pointed out that the judges' liability for the non-execution of judgments as well as the competences of the presidents of courts to assign cases to specific judges, raise concern in view of the principle of the rule of law and should therefore be amended.

Constitutional Law on Bodies of Judicial Self-Regulation of Kyrgyzstan (CDL-AD(2008)040)

This Law establishes two bodies of judicial self-regulation: (1) the Congress of Judges and (2) the Council of Judges. It sets out the basic principles for their organisation and activity and establishes their legal status. This is a framework law, which does not provide many details, and how the system works in practice will depend on what other legal and regulatory acts will be adopted to govern its working.

It contains some important provisions, for instance the organisation of training and further training of judges and the whole court structure. Time and practice will tell if the implementation of the relatively strict rules concerning the self-regulation of judges leaves enough room for real self-regulation and for an open debate among judges on the problems of the judicial system and thereby leading to an improvement in the adjudication of concrete cases.

The Venice Commission recommended, *inter alia*, to delete the provision where Congress needs to be convened by the President of the Kyrgyz Republic, because it is not in line with self-regulation; as regards the prohibition of the re-election of members of the Council for a second consecutive term, to introduce the staggering of the terms of office; with respect to disciplinary proceedings against judges, clarify whether such decisions concern judges and whether they are binding and to include in this Law how the Council's various representational and advisory functions are to be carried out.

Constitutional Law on Court Juries (CDL-AD(2008)038)

The overall concept of including jurors in criminal trials on the most serious crimes seems to be a promising approach to enhance fair trial and this Law is therefore welcomed by the Venice Commission. However a number of aspects in the draft Law remain vague, for instance the exclusion of people having an "interest" in the outcome of the proceedings, to the guarantees of independence and immunity and to the procedure of "random selection".

Draft Amendments to the Constitutional Law on the Status of Judges (CDL-AD(2008)039)

This draft Law sets out three objectives, namely (1) to create a legal machinery guaranteeing the status of judges; (2) to provide judges with guarantees of independence and (3) to make provision for the election, appointment, transfer, rotation, discharge from office, liability and material and social provisions of judges.

In a constitutional situation where the presidential powers are too wide (see CDL-AD(2007)045, paragraph 35, Opinion on the Constitutional Situation in the Kyrgyz Republic), a strengthening of judicial independence is highly welcome. The draft Law is therefore necessary and deserves praise. Its general principles are excellent, in particular the manner in which judges (with the exception of the Constitutional Court judges) are elected or appointed and the regulations on dismissal are in line with standards.

However, the Venice Commission made several suggestions to improve this draft Law, notably, with respect to advancement, a proposal is made by the National Council of Judges to the President for the advancement of a judge – the Venice Commission recommends that the decision-making process in this Council be included in this draft Law; two provisions seem to go too far in providing for complete immunity of judges – there should be no immunity from criminal liability if a judge commits a crime. It is reasonable to grant immunity from civil suit to a judge acting in good faith in the performance of his or her duty, but, it should not be extended to a corrupt or fraudulent act carried out by a judge. A provision should be added to the draft Law that covers and regulates the process of selecting candidates for the office of president of the Constitutional Court and president of the Supreme Court. The procedure for selecting candidate judges for the Constitutional Court should be more transparent. The Venice Commission therefore recommends that there should be input from a body, such as an expert committee or the Judicial Council, who would vet the suitability of candidates for election; the Venice Commission recommends that a judge should first resign before being able to contest political office, because if a judge is a candidate and fails to be elected he or she is nonetheless identified with a political tendency to the detriment of judicial independence.

It is important to note that, sometimes, the problem with Kyrgyz laws seems to be not so much the laws themselves, but their interpretation and application in practice. In this case, the decision-making process of the National Council of Judges and the Council of Judges must be analysed.

If the Venice Commission's recommendations are heeded, then this Law will provide a good basis for the development of judicial independence and integrity.

Draft Law amending and supplementing the Law on Constitutional Proceedings and Draft Law amending and supplementing the Law on the Constitutional Court (CDL-AD(2008)029)

These amendments were drafted as a result of the entry into force of a new Kyrgyz Constitution (CDL(2008)017). The Venice Commission had already given an Opinion on this Constitution (Opinion on the Constitutional Situation in the Kyrgyz Republic, document CDL-AD(2007)045) and a number of issues discussed in that opinion also arose in relation to the amendments dealt with in this opinion.

The opinion stated that the amendments on the competences and procedures of the Constitutional Court could improve the functioning of the Constitutional Court. However, a number of points needed to be dealt with. For instance, the draft Law on the Constitutional Court deleted a whole chapter on the status of judges in that Court – as constitutional court judges are in need of special guarantees for their independence and they cannot be assimilated to ordinary judges, the Venice Commission suggested that the chapter be reintroduced. Furthermore, the election procedure of the president and vice-president and also of judges of the Constitutional Court should be further detailed. A new competence for the Court to provide an official interpretation of the norms of the Constitution was introduced, which was not recommended by the Venice Commission; the Law should also specify who has standing for the various procedures before the Constitutional Court; the introduction of an individual complaint against individual acts is recommended.

The Venice Commission also recommended that the Constitutional Court's budget should not be a part of the general budget for the judiciary and that access to the Constitutional Court be simplified. In addition,

the current Law on constitutional proceedings contains a number of provisions that should be included in separate rules on procedure.

Conference on “Supremacy of law and the independence of the judiciary – guarantees for the stability of democratic institutions”

A conference on the topic “Supremacy of law and the independence of the judiciary – guarantees for the stability of democratic institutions” was organised in Bishkek, Kyrgyzstan on 27-28 May 2008 together with the Constitutional Court. The purpose of the conference was to enable the rapporteurs to discuss and obtain information on the current judicial reform in Kyrgyzstan, in the context of the request for opinion on the six draft laws/amendments mentioned above.

- Moldova

Draft Law on the Public Prosecutor’s service

By letter dated 6 February 2008, the Prosecutor General of Moldova asked for an Opinion on the Draft Law on the Public Prosecutor’s Service. The Venice Commission and the Co-operation Directorate of the Directorate General of Human Rights and Legal Affairs of the Council of Europe prepared the opinion following a meeting with the Moldovan authorities in Chisinau on 7 April 2008. The Co-operation Directorate had already provided advice on previous versions of the draft. The Venice Commission adopted the opinion (CDL-AD(2008)019) at its 75th Plenary Session (13-14 June 2008).

As stated in the opinion, the draft Law was, on the whole, clear, coherent and comprehensive. The substitution of the earlier three draft laws represented a substantial improvement and a number of the rapporteurs’ previous recommendations had been adopted. However, a major remaining problem was the need to clarify to what extent the individual prosecutor was autonomous in his/her decision-making or subject to hierarchical control. In particular, it should have been made clear in what circumstances the prosecutor’s autonomy could be overridden by a senior prosecutor. At the same time, the change in the definition of the public prosecutor’s service in Article 1, while it aligned it more closely to the Constitution, appeared to be a step away from changing the service into a service operating in accordance with the principles of a democratic society under the rule of law by removing elements of the *prokuratura*-style prosecution system which still existed. The best solution recommended by this opinion was to amend Article 124 of the Constitution.

In addition, in order to further improve the text, the Commission recommended a number of other amendments. Some of these amendments referred to the prosecutor’s powers. In this respect, the Commission suggested that any “supervisory role” of the prosecutor be limited to making an appeal in cases where s/he was a party to the proceedings. The choice between the opportunity principle and the legality principle should be clearly specified. The powers of Article 6 to request information and to inspect premises were too far reaching and should be made dependent on a decision by a judge. At the same time, the powers of the prosecutor to secure the protection of the rights, freedoms and interests of juveniles, elderly or disabled persons, or persons who, due to their state of health, are unable to take proceedings should be subsidiary only.

In what concerned the appointment of prosecutors, the Commission showed that there were a number of options which could include the Superior Council simply giving an opinion on the suitability of all the candidates or alternatively ranking them in order of preference. A recommendation for appointment of a prosecutor should come from the Prosecutor General, with the Superior Council having the right to refuse to appoint a person, but only for good reason. This would require an amendment of the constitutional text itself. The opinion also suggested that it would be appropriate to assess the performance of prosecutors at intervals much closer than five years. As for the promotion of prosecutors, this required a greater degree of objective transparency such as recommendation of suitability by an appropriate board. This should not be left to the sole discretion of an immediate superior. At the same time, the disciplinary criterion of “unequal interpretation or application of legislation” was dangerously vague and could be used to exert pressure on a prosecutor. The Commission also suggested that the prosecutors be personally liable only if they act in bad faith or in some very improper manner. In what concerns the two members of civil society elected by the Board, the Commission considered that it would have been preferable to have them elected by Parliament.

- **Montenegro**

Law on the Constitutional Court

In May 2008, the Minister of Justice of Montenegro, Mr Radovic, requested an opinion on the Draft Law on the Constitutional Court. On 16-17 June 2008, a delegation of the Commission participated in a meeting with the working group, which had prepared the draft and a public Round Table on this subject, organised in co-operation with the OSCE Mission to Montenegro.

In the Opinion, adopted by the Commission at its 76th Plenary Session (17-18 October 2008), the Commission underlined that the draft Law was very well prepared and set out the functions and procedures of the Constitutional Court in a coherent manner. In view of facilitating its reading and understanding, the Commission recommended that the Law repeat the provisions of the Constitution rather than just complete them.

The Venice Commission welcomed, in particular, the introduction of a “full” individual complaint, also against individual acts, the mandate for the Court to take into account in its decisions the European Convention on Human Rights as well as the obligation for other state authorities to take into account the legal reasoning of the Constitutional Court’s decisions.

Nonetheless, the Venice Commission found that some problems in the draft Law were related to the Constitution and recommended that the Constitution be amended, *inter alia*, with respect to the following points:

1. the election of the judges of the Constitutional Court should require a qualified majority;
2. a clear basis for the introduction of chambers should be introduced;
3. judges should remain in office until their successor takes up office;
4. the *actio popularis* without legal interest should be excluded;
5. the Court should be enabled to postpone the entry into force of its decisions in order to give time to Parliament to avoid a legal void created by the annulment of a law;
6. the Court should not be able to initiate cases on its own motion and should not have a general competence to monitor constitutionality and legality.

A number of issues could, however, be solved by ordinary law. Some of the main recommendations concerned the definition of the Court as an independent judicial institution, budgetary independence, procedural autonomy, social guarantees for judges and staff of the Court, a transparent election of judges, the application of a procedural code by default, the introduction of rules concerning bias and a procedure for challenging a judge, the possibility to accept individual complaints exceptionally, even before the exhaustion of remedies, a written Court procedure, a limitation of the possibility for the Court to act on its own initiative, the effects of decisions, the possibility to quash decisions of authorities having acted without competence (*ultra vires*) as well as a limitation of the too broad monitoring competence of the Court.

Draft Amendments to the Law on the Prosecution Service

In February 2008, the Deputy Minister of Justice of Montenegro, Ms Lakocevic, requested the Commission’s opinion on the draft amendments to the Law on State Prosecutors of Montenegro. In order to prepare the requested opinion, a delegation of the Commission, together with the rapporteur appointed by the Directorate of Co-operation of the Directorate General for Human Rights and Legal Affairs of the Council of Europe, visited Podgorica where it met the drafting group chaired by the Minister of Justice. This visit enabled a number of issues raised by the rapporteurs in their comments to be settled. The opinion (CDL-AD(2008)005) was adopted by the Venice Commission at its 74th Plenary Session (14-15 March 2008).

According to the Opinion, problems for the independence of the prosecution do not result so much from the draft amendments, but rather from the Constitution itself, which provides that both the prosecutors and the members of the Prosecutorial Council are elected by Parliament without the requirement of a qualified majority. Within that given constitutional framework, the rapporteurs found the draft amendments well prepared, providing a good basis for the work of the State Prosecutor’s Office.

Nonetheless, the Opinion recommended that a prosecutor who was being seconded against his/her will should be allowed to file a non suspensive protest to the Prosecutorial Council. The right to appoint one member of the Council should remain with the Protector of Human Rights, or at least the President of Montenegro should be obliged to consult with the Protector before making his/her proposal for a person with relevant human rights experience. Finally, the deletion of the provision on special reports to be provided upon request by Parliament and by Government was welcome. If such a provision were to be re-introduced, it should be formulated in a way to exclude requests concerning individual cases.

- **Palestinian National Authority**

Seminar on “Models of Constitutional Jurisdiction”

On 15 June 2008, the Committee of Ministers approved a special co-operation status for the Palestinian National Authority. This status is similar to that of observers and enables the Palestinian authorities to make requests for opinion to the Venice Commission.

In co-operation with the Ministry of Justice of the Palestinian National Authority, the Venice Commission organised a seminar on “*Models of Constitutional Jurisdiction*” in Ramallah on 25-26 October 2008. The seminar examined the possibilities of establishing a Constitutional Court on the basis of a Law adopted in 2006. Discussions covered various elements of the functioning of a constitutional court and in particular its jurisdiction and composition were discussed, taking into account the extremely difficult political situation and the split between the West Bank and Gaza. During the seminar, the Minister of Justice, Mr Khashan, requested an opinion from the Venice Commission on the Law on the Constitutional Court, which had been adopted in 2006, but which had not so far been implemented.

- **Serbia**

Seminar on the draft laws on the High Judicial Council, on Judges and on the Organisation of Courts

A seminar for the opinion on the draft laws forming a part of the package of judiciary laws took place on 21 February 2008, in Belgrade.

The purpose of this seminar was to enable the rapporteurs to discuss in a meeting with representatives of the Ministry of Justice, the Working Group for drafting laws related to the organisation of the judiciary and the Judges Association of Serbia the 3 draft laws that they were requested to comment: (1) the draft Law on the High Judicial Council; (2) the draft Law on Judges and (3) the draft Law on the Organisation of Courts. This meeting settled a number of outstanding questions by the rapporteurs regarding the draft laws.

Draft Laws on the High Judicial Council, on Judges and on the Organisation of Courts

By letters dated 11 December 2007 and 23 January 2008, the Ministry of Justice of the Republic of Serbia requested the Venice Commission’s opinion on the draft Law on the High Court Council, as well as an opinion on the draft Law on Judges and the draft Law on the Organisation of Courts of the Republic of Serbia.

The Opinion on the Draft Law on the High Judicial Council (CDL-AD(2008)006) was adopted at the 74th Plenary Session of the Venice Commission (14-15 March 2008) and explained that the draft Law attempted to resolve the problem raised by the Serbian Constitution² with regard to the independence of the judiciary and the risk of politicizing it due to the involvement of the National Assembly in the election of the High Judicial Council members without a qualified majority, by giving a powerful role to the judges in the election of the majority of the Council. At the same time, the Commission drew attention to the risk of creating a constitutional conflict between the National Assembly and the judiciary. Although a number of recommendations were formulated, in principle the draft Law on the High Judicial Council was considered to be acceptable. However, in the Commission’s opinion, no fully satisfactory resolution of the issues envisaged is possible without amending the Constitution itself.

² Cf. the Annual Report for 2007.

The Opinion on the Draft laws on Judges and on the Organisation of Courts of the Republic of Serbia (CDL-AD(2008)0007) was also adopted at the 74th plenary session of the Venice Commission.

Despite the fact that the draft Law on Judges is considered to be generally in line with European standards, the Commission pointed out that there were still a number of provisions that needed to be revised. This concerned in particular those which tended to weaken judicial independence. In this regard, attention was drawn to the risk of politicizing the judiciary by requiring that, for the election of each judge, the National Assembly be presented with two candidates by the High Judicial Council and by failing to provide for an acceptable model for the continuance in office of serving judges against whom no incompetence or behaviour incompatible with the role of an independent judge was alleged.

The opinion also addressed the problem of the presence of too many judges in the current Serbian judiciary and suggested that the way to deal with such a problem was through ordinary retirement or by introducing early voluntary retirement, not by in effect dismissing judges who have not been shown to be incompetent or to have misbehaved.

As concerns the Draft Law on the Organisation of Courts, only a few changes were recommended, notably, the need to include in the text more specific provisions on fair trial, the need to clarify the relation between international law and national law in case of conflict between them, the revision of those provisions which could breach the freedom of expression, especially that of the press, and the revision of the supervising tasks of the president of a court in order to ensure judicial independence.

- **Slovakia**

Seminar on “Constitutional judiciary in the Vishegrad 4 states”

In co-operation with the Constitutional Court of Slovakia, the Venice Commission organised a Seminar on “*Constitutional judiciary in the Vishegrad 4 states*” on the occasion of the 15th anniversary of the establishment of the Court (3 April 2008). An exchange of information and views between the Constitutional Courts of the four Vishegrad countries took place during this seminar (Czech Republic, Hungary, Poland and Slovakia). Discussions also highlighted the positive development of the Constitutional Court of Slovakia.

During the seminar, the key role of constitutional courts in modern democracies was discussed. It was pointed out that they do not only provide for the stability of the constitution and respect for the rule of law, but also have, beyond this classical approach, a distinctive role to play in furthering and strengthening the democratic process, in which the constitution serves as a main pillar.

- **Russia**

XI International Forum on Constitutional Review on “Constitutional Values in Theory and Judicial Practice”

On 20-21 June 2008, the Venice Commission organised, in co-operation with the Institute of Law and Public Policy, the German Foundation for International Legal Cooperation, the John D. and Catherine T. MacArthur Foundation and under the aegis of the Constitutional Court of the Russian Federation, the XI International Forum on constitutional justice on “*Constitutional Values in Theory and Judicial Practice*”. Chief justices, justices and staff members of the Constitutional Courts of Russia, European countries and the countries of CIS, judges of the European Court of Human Rights as well as leading Russian and foreign experts in constitutional law and political science participated in the sessions of the Forum.

Issues examined revolved, *inter alia*, around values as normative concepts; values and their reflection in the texts of constitutions, procedures and decisions and the legitimacy of value judgments in constitutional adjudication. The discussions showed that constitutional values are not an abstract topic of legal theory, but that their application in daily practice had an important impact on society.

- **Ukraine**

Conference on “the Constitutional Court in the System of State Bodies: Crucial Problems, Ways of their Solution”

In co-operation with the Constitutional Court of Ukraine, the OSCE and the German Foundation for International Legal Co-operation, the Venice Commission organised a Conference on “*the Constitutional Court in the System of State Bodies: Crucial Problems, Ways of their Solution*” in Kyiv on 16-17 May 2008, which was opened by the President of the Republic.

In the light of the previous constitutional justice crisis in Ukraine, these discussions revolved around the importance of strengthening the Constitutional Court in order to provide stability of the Constitution and respect for the rule of law. Presentations from constitutional courts of other countries (Austria, Belarus, Czech Republic, Germany, Hungary, Kazakhstan, Latvia, Lithuania, Moldova, Romania, Russia and Slovenia) showed the crucial effect that constitutional courts can have on the democratic development of countries, even if in some of these countries problems persisted. The Constitutional Court of Ukraine ought to have a distinctive role to play in furthering and strengthening the democratic process, in which the Constitution serves as a main pillar. It was proposed that the Constitutional Court of Ukraine be further strengthened by the introduction of a constitutional complaint against individual acts.

2. TRANSNATIONAL ACTIVITIES

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

- **Bulletin on Constitutional-Case Law / database CODICES**

The Venice Commission provides a number of services to Constitutional Courts and equivalent bodies, including the publication of the Bulletin on Constitutional Case-Law, which presents *précis* of important constitutional cases from the member and observer countries of the Venice Commission. In 2008, three regular issues and, upon request by the Conference of European Constitutional Courts, a special issue on legislative omission was published. Two regular issues as well as another special Bulletin was prepared during the same period. The Bulletin is highly appreciated by the courts because it enables regular exchanges of case-law between courts, which would otherwise be separated by a language barrier (see also resolution of the Conference of European Constitutional Courts below).

- **CODICES database**

All regular and special issues of the Bulletin are included in the CODICES database (www.CODICES.coe.int), which at the end of 2008 contained 5759 cases. Non-European decisions are included by virtue of the full member or observer status of the respective countries or by virtue of the co-operation of the Venice Commission with regional partners (see below). CODICES enables a full text search or a thematic search to be carried out through the Commission’s Systematic Thesaurus, which is updated once a year by the Joint Council on Constitutional Justice.

- **Venice Forum**

The Venice Forum provides a system of quick exchange between the constitutional courts and equivalent bodies. Liaison officers from one court can ask questions about specific topics to all the other courts and receive their replies in time for the preparation of a case pending before their court. The Forum exists in two forms: (1) the classic Forum allows exchanges via e-mail, moderated by the Secretariat, (2) whereas the Forum Newsgroup allows the courts to post their requests directly on a restricted site. The classic forum is open to courts of member and observer states of the Venice Commission, whereas the Newsgroup is also open to courts of regional partnerships (see below). In 2008, more than 37 requests were made via the Forum and received replies with a rich content on issues as diverse as the legality of audio-visual recording of meetings with officials to passport confiscation and foetal screening.

3. REGIONAL CO-OPERATION

The Venice Commission pursues a regional approach by co-operating with associations of constitutional courts and equivalent bodies both in- and outside Europe.

- Conference of European Constitutional Courts

On 2-7 June 2008, the Commission participated in the XIVth Congress of the Conference of European Constitutional Courts on "*Problems of Legislative Omission in Constitutional Jurisprudence*".

Upon request by the Lithuanian Presidency of the European Conference, the Venice Commission had prepared a working document on the case-law of the participating courts in the field of legislative omission and the filling of legal gaps. Furthermore, the Venice Commission presented a working document on the Supreme Court of Monaco, which sought and obtained full member status with the Conference. Together with this contribution and contributions to previous congresses of the European Conference, the work of the Venice Commission for the constitutional courts was acknowledged in a special resolution, which thanked the Venice Commission for the services it provides (Bulletin on Constitutional Case-Law, CODICES, database, Venice Forum, seminars, etc.). The Conference called for a continuation of this excellent co-operation with the Venice Commission.

On the sidelines of the Congress, the Venice Commission held the first of three preparatory meetings for the World Conference on Constitutional Justice (see below).

- Ibero-American Conference of Constitutional Justice

On the occasion of the XIVth Congress of the Conference of European Constitutional Courts, the Ibero-American Conference of Constitutional Justice and the Venice Commission concluded a co-operation programme, which provides that the CODICES database will also be available to the Latin American members of the Conference. The member courts will also be invited to participate in the exchange of information via the Venice Forum Newsgroup.

Within the larger framework of co-operation with Ibero-American Courts, the Venice Commission participated in the VIth Meeting of Supreme Courts of Mercosul (Mercosur) Member States and Associate Members in Brasilia (21 November 2008). This meeting showed the keen interest of Mercosul member courts to co-operate closely with the Venice Commission.

The Supreme Court of Brazil stated that it will actively contribute its case-law to the CODICES database and has sought to extend such contributions to the whole of the Mercosul region.

- Union of Arab Constitutional Courts and Councils

In 2006, the Union of Arab Constitutional Courts and Councils sought co-operation with the Venice Commission. The Union had been created in 1997 with the objective of promoting co-operation and the exchange of ideas between the courts and councils, to encourage research in the constitutional field and in particular in the human rights area and to establish contacts with similar organisations.

The Venice Commission established a co-operation programme, with the Union (signed in Cairo in June 2008), which comprises seminars, contributions of the Arab courts to the Commission's CODICES database as well as translations of basic texts in the field of constitutional justice. The programme, funded by the Government of Norway, has a special focus on the needs of the Palestinian judiciary.

Within the framework of the co-operation programme, a delegation of the Venice Commission participated in the Fifth Plenary of the Scientific Symposium of the Union of Arab Constitutional Courts and Councils on "*Constitutional Principles Securing a Fair Trial*" presenting European views on this topic in Sana'a, Yemen on 10-11 November 2008.

The seminars in Algeria and with the Palestinian National Authority fall (see above) into the framework of this co-operation.

- **Commonwealth**

In view of establishing relations with apex courts in Commonwealth countries, which are not organised in the form of a formal association, the Commission participated in the Meeting of Commonwealth Law Ministers and Senior Officials, which gathered together Law Ministers and Attorney-Generals from 38 countries of the Commonwealth in Edinburgh, Scotland on 7-10 July 2008.

These meetings take place every three years and provide a forum for promoting the Commonwealth's values and principles through legal policy and practice, an area in which the Law Ministers play a key role. Since Commonwealth countries have a similar legal system, this forum enables them to share experiences and information, which often take the form of the adoption of model laws, principles and guidelines which set a standard for these countries to follow.

Participants agreed that a major challenge was the rule of law as it relates to (lack of) resources and corruption both regionally and nationally. They explained that there was very little reliable research on access to justice in Commonwealth countries and that this should be remedied.

A number of Commonwealth countries were very interested in the work of the Venice Commission, notably Malaysia, who was keen to get in contact regarding constitutional matters.

- **ODIHR Human Dimension Seminar**

On 14-15 May 2008, the Venice Commission participated in the ODIHR Human Dimension Seminar on Constitutional Justice in Warsaw. This seminar enabled the Commission to inform about its close co-operation with constitutional courts and equivalent bodies to the OSCE delegations present. ODIHR recognised the key role which the Venice Commission has in this respect.

4. WORLD CONFERENCE ON CONSTITUTIONAL JUSTICE

In the light of the close co-operation with a number of regional groups of courts of constitutional jurisdiction (Arab, Asian, Commonwealth, European, French Speaking, Ibero-American, Southern African, Young Democracies/CIS) the Venice Commission pursued the goal of uniting these groups and their members for the first time in a World Conference on Constitutional Justice.

In co-operation with the Constitutional Court of South Africa, the Venice Commission prepared the organisation of this event, to be held in Cape Town, South Africa from 23 to 24 January 2009.

The topic of the Conference is "*Influential Constitutional Justice - its influence on society and on developing a global jurisprudence on human rights*".

In the light of the global scale of the Conference and the implication of the regional groups as the vectors of the conference, the Venice Commission held three preparatory meetings for the Conference with the regional groups in 2008: in Vilnius, Seoul and Algiers. These meetings enabled the full support of the groups for the Conference to be obtained. At the meetings a programme was drafted which put a focus on presentations by the participating groups to encourage not only contacts within the regions but also between them. At the last meeting in Algiers, the president of the regional groups prepared a draft final declaration, which provided for an institutionalisation of the World Conference.

5. TRANSNATIONAL ACTIVITIES – ORDINARY JUDICIARY

- **Study on the Independence of the Judiciary**

By letter of 11 July 2008, the Chairperson of the Committee on Legal Affairs and Human Rights of the Parliamentary Assembly requested the Venice Commission to give an opinion on "*European standards as regards the independence of the judicial system*". The Committee is "interested both in a presentation of the existing *acquis* and in proposals for its further development, on the basis of a comparative analysis taking into account the major families of legal systems in Europe".

The Venice Commission entrusted the preparation of this report to its Sub-Commission on the Judiciary, which held two meetings on the subject in Venice on 16 October 2008 and 11 December 2008.

The Sub-Commission decided to prepare two reports on the independence of the Judiciary, one dealing with prosecution and another one on judges. The Commission intends to adopt these reports in 2009.

- **Conference of Prosecutors General of Europe (St Petersburg, 1-3 July 2008)**

Ms Suchocka participated, on behalf of the Venice Commission, in this Conference which dealt with the issue of the powers of prosecutors outside the criminal law field. In her presentation, she explained the reasons for the Venice Commission's critical position with respect to such powers, in particular if these are inherited from the Soviet *Prokuratura* system.

- **Regional Conference on Justice and the Rule of Law in the South Caucasus (Tbilisi, 19-20 November 2008)**

Mr Gstöhl participated on behalf of the Venice Commission in this Conference, which was organised within the framework of the Swedish presidency of the Committee of Ministers. He made a presentation on "*Judicial reforms in the South Caucasus: Past achievements and future perspectives*".

IV. DEMOCRACY THROUGH FREE AND FAIR ELECTIONS¹

1. COUNTRY SPECIFIC ACTIVITIES

- Armenia

Electoral reform

At its 76th plenary session (Venice, 17-18 October 2008), the Venice Commission adopted the joint opinion with OSCE/ODIHR on the Election Code of the Republic of Armenia as amended up to December 2007 (CDL-AD(2008)023). This opinion took account of the implementation of the Election Code during the 2007 and 2008 elections.

In the Commission's view, the amended Code can be regarded as the basis for genuinely democratic elections if implemented in good faith. However, further improvements could be made, and the Code could also be improved by including more explicit obligations within areas where the implementation seems to fall short of international standards. Some of the most important points to be considered suggested by the Venice Commission refer to the complaints and appeals procedures. The Commission recommends that the provisions on this issue be made more systematic, and the procedure more efficient. In particular, it stresses that overly formalistic approaches should be avoided, so that alleged irregularities are systematically addressed in their substance.

The Commission's opinion also draws attention to the problem of the balance in the election commissions, in particular in their management positions (chairperson, deputy chairperson and secretary), stressing that a fair and balanced political representation is crucial and should be better ensured at all levels of the election administration. In what concerns the issue of the increased electoral deposit, the Commission warns against the risk of transforming it into an excessive hurdle. The Commission's recommendations also refer to the stamping of voters' identification documents which is considered to be a positive step as a safeguard against double voting. Nevertheless, the inking of fingers still remains an appropriate alternative safeguard against fraud.

The Commission expressed a favourable opinion on the regulation of the elections at all levels of government in the same piece of legislation. Such consolidated legislation is of considerable benefit because differences in the administration of different elections could be avoided, and it is easier to maintain. However, the Code does not take full benefit of these advantages since there is still unnecessary repetition between the sections addressing specifically the various elections. For example, rules applicable to all elections regarding ballots or summarisation of results could be included in a general section.

Immunity of persons involved in the electoral process

By letter of 1 July 2008, the Human Rights Defender of Armenia, Mr Armen Harutyunyan, requested an opinion on draft amendments to the Election Code of Armenia regarding immunity of persons involved in the electoral process. The opinion (CDL-AD(2008)024) was adopted by the Venice Commission at its 76th plenary session (Venice, 17-18 October 2008).

The Commission considers it to be exceptional that immunity is extended to mere candidates for public office. In its view, the only conceivable justification for such an extension is to prevent undue pressure on the candidates and to guarantee that elections are not affected by ungrounded indictments or detentions. This justification must be balanced against the reasons favouring the limitation of immunity and underpinning the recommendations of the Group of States against Corruption (GRECO).

Taking into account the importance of the office in the political system, the Commission found that securing fair elections might justify the immunity of presidential candidates in a young democracy such as Armenia. Therefore, immunity for Presidential candidates does not seem disproportionate. On the contrary, immunity for candidates for National Assembly, territorial and local elections does not appear

¹ This chapter includes the issues related to elections and political parties.

justified, and can even lead to reverse abuse. It can be an incentive to stand for elections in order to avoid either pending or potential cases before courts.

Regarding the electoral administration and more particularly the central organ of this administration, i.e. the Central Election Commission, the Commission suggests that it would be advisable to distinguish the members vis-à-vis the staff members. The members, all appointed by elected stakeholders (political parties sitting at the National Assembly and the President of the Republic), themselves stakeholders highly involved in the organisation of the elections, should enjoy immunity during their entire mandate, due to the high risk of pressure they could undergo from political factions, Government, etc. In spite of the GRECO recommendations regarding the members of the Central Election Commission, the Venice Commission recommends for the time being to maintain the immunity of the Central Election Commission's members. On the contrary, it seems excessive to provide the staff of the electoral administration with immunity; such personnel should be considered comparable to other civil servants, in spite of the fact that they are staff members of a body independent from any Ministry or national Agency.

Conference for free elections through law

On 26 January 2008, the Venice Commission organised, in co-operation with the Constitutional Court of Armenia, the Legal School of Armenia and the American Bar Association, a Conference on Free and fair elections through law. Three Venice Commission experts made a presentation at this Conference which was aimed in particular at judges responsible for legal disputes, in the context of the Presidential elections of 19 February 2008.

Legal assistance to an electoral observation mission

At the invitation of the Parliamentary Assembly of the Council of Europe (PACE), a Venice Commission member and a member of the Secretariat participated as legal advisers in a PACE electoral observation mission during the Presidential elections of 19 February 2008. Their task was to advise members of the delegation on the legal aspects of the election.

- Azerbaijan

Electoral reform

In 2009, the Venice Commission continued its co-operation with Azerbaijan on electoral matters. Consequently, a joint opinion by the Venice Commission and OSCE/ODIHR on the draft amendments to the electoral code of the Republic of Azerbaijan was adopted by the Council for Democratic Elections at its 25th Meeting (12 June 2008) and by the Venice Commission at its 75th Plenary Session (13-14 June 2008) (CDL-AD(2008)011). This opinion was a follow-up to the interim joint opinion adopted by the Commission at its 74th Plenary Session (14-15 March 2008) (CDL-AD(2008)003) and the meeting of a working group of the Commission and OSCE/ODIHR with the authorities in February 2008. The final opinion takes into consideration the amendments adopted by the Parliament of Azerbaijan on 2 June 2008. The amended Code incorporated the recommendations of the Venice Commission and OSCE/ODIHR relating to the responsibility of executive commissions not to interfere unduly in the electoral process, the inking of voters' fingers and a new appeals procedure. Nevertheless, some of the previous recommendations do not appear in the new law; including concerning the fundamental question of the composition of electoral commissions. In addition, new amendments were adopted on the reduction of the length of electoral campaigns and on the media without any discussion between the experts of the Venice Commission and OSCE/ODIHR and the authorities. Further electoral reform is therefore necessary.

Assistance to the Central Electoral Commission

At the request of the Central Electoral Commission, a Venice Commission expert was put at the disposal of this Commission from 23 September to 11 October to assist with the preparation of the elections.

Seminars on electoral issues

From 14 to 17 July 2008, the Venice Commission organised, in co-operation with the Central Electoral Commission and IFES, two training seminars for territorial electoral commissions of Azerbaijan. These two seminars were attended by around 250 participants in total.

From 21-26 August 2008, the Venice Commission organised, in co-operation with the Central Electoral Commission and IFES, two training seminars for expert groups on disputes created within the territorial electoral commissions.

Legal assistance to an electoral observation mission

At the invitation of the Parliamentary Assembly of the Council of Europe, a Venice Commission expert and a member of the Secretariat participated as experts in the mission observing the presidential elections of 15 October 2008. Their task was to advise the members of the Assembly delegation on legal aspects of the election.

- Bosnia and Herzegovina

Electoral reform

At the request of the Central Electoral Commission of Bosnia and Herzegovina, the Council for Democratic Elections at its 24th meeting (15 March 2008) and the Venice Commission at its 75th plenary session on 13 to 14 June 2008 adopted a joint opinion with OSCE/ODHR concerning the law on amendments to the election law of Bosnia and Herzegovina (CDL-AD(2008)012). This joint opinion addresses only the amendments to the Election Law and, therefore, must be considered in relation with previous assessments of the Election Law by the Venice Commission and the OSCE/ODIHR.

In the obviously difficult constitutional, institutional and political context of Bosnia and Herzegovina, the election law has already been subject to quite frequent reforms. For the major part, the current amendments address technical issues, for purposes of clarification and improvement, and mainly with positive results. They also address some previous recommendations of a more substantive nature and may be considered as positive to that extent. However, the amendments do not address certain significant issues previously noted regarding the national and entity election systems, which are based on ethnicity, the right to be elected, and transparency in the determination of rights in electoral dispute proceedings.

Seminar on Electoral Standards

On 10 September 2008, the Central Electoral Commission of Bosnia and Herzegovina and the Venice Commission co-organised a seminar on electoral standards. This activity involved members of electoral commissions from different levels and highlighted different questions relating to the forthcoming elections in Bosnia and Herzegovina. The participants had the opportunity to discuss existing electoral standards and their practical implementation in the electoral process.

Law on the financing of political parties

By letter of 28 November 2007, Mr Stjepan Mikic, president of the Central Election Commission (CEC) of Bosnia and Herzegovina, requested together with the Head of OSCE Mission to Bosnia and Herzegovina, Ambassador Douglas Davidson, the assistance of the Venice Commission in dealing with three issues concerning the Bosnia and Herzegovina legislation on political party financing, mainly codified in the Law on Political Party Financing as enacted in 2000.

Following a visit of a Venice Commission delegation to Sarajevo on 18-19 February 2008, the Venice Commission adopted an opinion on the law on financing of political parties of Bosnia and Herzegovina at its 74th plenary session on 14-15 March 2008 (CDL-AD(2008)002).

The question of externally donated monies as well as the acceptable range of fines and barring political parties from elections are among the main problems. The latter is a sanction of such severity that it can

be considered only under very exceptional circumstances and only if this measure is not disproportionate to the goal, which is to be achieved.

- **Bulgaria**

Law on Political Parties

At its 77th session (12-13 December 2008), the Venice Commission adopted the Opinion on the amendments to the Law on political parties of Bulgaria (CDL-AD(2008)034), at the request of the Minister of Justice of Bulgaria. The overall assessment of the Law was positive; however, certain provisions of the text might be reconsidered, notably, the limitations on the participation in political parties imposed on non-citizens, high thresholds for establishing parties as well as requirements concerning the territorial branches of parties. The Opinion also noted that certain articles of the Law that related to the financing of parties or to complaints and appeals procedures might be reviewed and made clearer in order to avoid problems of interpretation.

- **Georgia**

Electoral reform

Following a request from the Georgian authorities, the Council for Democratic Elections at its 26th meeting (18 October 2008) and the Venice Commission at its 77th Plenary Session (12-13 December 2008) adopted a joint opinion by the Venice Commission and OSCE/ODIHR on the Electoral Code of Georgia as amended in July 2008 (CDL-AD(2009)001). This opinion concluded that the amendments made to the Electoral Code of Georgia are clearly an overall improvement. Nonetheless a number of provisions in the current law remain issues of concern, or raise questions due to the fact that they are not sufficiently specific. Among these issues is the number of voters in each single mandate constituency, which should be comparable. In addition, there is the question of political officials combining campaigning with official duties, as well as the issue of the use of administrative resources for campaign purposes, both of which should be prohibited.

In conclusion, the Venice Commission and OSCE/ODIHR suggested revising the electoral code according to an open and transparent process of consultation.

Assistance to the Central Election Commission

From 28 April to 25 May and from 29 May to 9 June 2008, a high level international expert appointed by the Venice Commission assisted the Central Election Commission on the legal and technical questions before, during and after the legislative elections of 21 May 2008.

Seminar on electoral issues

On 6 May 2008 the Venice Commission organised in co-operation with the High School of Justice a seminar on electoral disputes with judges responsible for disputes (Supreme Court and Administrative Courts judges).

On 7 May 2008 the Venice Commission organised in co-operation with the Association of Young Lawyers of Georgia a workshop on the holding and supervision of elections aimed at disseminating the principles of the European electoral heritage, in particular concerning observation on voting day, by training NGOs which are active in electoral observation.

Legal assistance to two election observation missions

At the invitation of the Parliamentary Assembly of the Council of Europe, a Venice Commission member and a member of the Secretariat participated, as legal advisers, in a mission observing the Presidential elections of 5 January 2008 and the Parliamentary elections of 21 May 2008. Their task was to advise members of the delegation on the legal aspects of the elections.

- **Kazakhstan**

Conference on the financing of political parties

The Venice Commission organised in Astana on 1 December 2008 in co-operation with the Legal Policy Research Centre a Conference on Financing of Political Parties and Election Campaigns in which participated representatives of the Constitutional Council, the Ministry of Justice as well as representatives of political parties and the civil society.

- **Kyrgyzstan**

Electoral Reform

On 17 December 2008, representatives of the Venice Commission took part in a national conference entitled "Electoral process in Kyrgyzstan". The aim of this conference was to discuss reports on the European standards in the electoral field.

The National Conference was attended by representatives of the Central Electoral Commission and of the Constitutional Court, representatives of different political parties and of the civil society, as well as representatives of international organisations (OSCE, European Commission, IFES, UNDP, and Soros foundation – Kyrgyzstan).

Co-operation with the Kyrgyz authorities should continue in 2009.

- **Moldova**

Electoral reform

In April 2008, the Parliament of the Republic of Moldova adopted amendments to the Election Code. Following an official request from the Moldovan authorities, the OSCE/ODIHR and the Venice Commission undertook a joint expert review of the Election Code of Moldova as amended. The opinion (CDL-AD(2008)022), which was adopted by the Venice Commission at its 76th plenary session (Venice, 17-18 October 2008) has to be read in conjunction with an earlier Joint Opinion of the Venice Commission and the OSCE/ODIHR of 2007 (CDL-AD(2007)040). The opinion is focused on the extent to which the amendments have addressed previous recommendations, and assesses the amendments against OSCE commitments and international standards for democratic elections.

The Election Code regulates all direct elections and referendums in the Republic of Moldova except those for the authorities of the Autonomous Territorial Unit of Gagauzia. The amendments introduced this year are not comprehensive, and have not addressed most of the previous recommendations. While some of the amendments bring about technical improvements to the organisation of the electoral process, it is unfortunate that some of them represent a step back. This is particularly true for the increase of the threshold for accession to Parliament from 4 to 6 % while electoral alliances have been removed and independent candidates are not admitted. Moreover, double nationals are no longer allowed to sit in Parliament. The European Court of Human Rights, quoting a number of Venice Commission documents, stated clearly that such an incompatibility goes against Article 3 of the Additional Protocol to the European Convention on Human Rights. In particular, the Court remarked that there were other means of securing loyalty to the State such as requiring MPs to take an oath of loyalty and that Moldova is a party to the European Convention on Nationality which guarantees all persons holding multiple nationality equal treatment with other Moldovans.²

As a matter of priority, it would be desirable to implement all recommendations in this opinion as well as other important recommendations contained in the previous joint opinions before the parliamentary elections scheduled for 2009.

² *Tanase and Chirtoacă v Moldova (application no. 7/08), judgment of 18 November 2008.*

Already on 29 May 2008, the Venice Commission had taken part in an Expert Meeting with the Republic of Moldova on Human Rights and Democracy Issues organised by the European Commission. The issues of the threshold and the restrictions of double citizens' electoral rights had been raised.

Seminars on electoral issues

On 30 October 2008, the Venice Commission organised a seminar aimed at strengthening the capacities of the Central Election Commission and civil society in Moldova in electoral issues. This seminar, which covered the different stages of the electoral process, was for members and staff of the electoral administration, as well as NGOs authorised to observe the elections.

On 24-25 November 2008 the Commission organised a seminar for judges on electoral disputes. Around 80 judges from Constitutional and Supreme Courts as well as Administrative and Appeal Courts from the whole country participated in this seminar.

Seminar in the electoral field bringing together experts from both banks of the Nistru

On 31 October 2008 the Venice Commission participated in an exploratory mission to Transnistria with a view to examining whether a joint seminar involving the Central Electoral Commissions of Moldova and Transnistria would be possible during 2008. Following this meeting, the General Directorate of Democracy and Political Affairs of the Council of Europe and the Venice Commission, in co-operation with OSCE/ODIHR and the OSCE Mission in Moldova, organised a seminar on European electoral standards in Budapest on 18-19 December 2008. This event was however cancelled as the Transnistrian delegation announced at the last minute that they would not participate.

- **Montenegro**

Legal Assistance to an election observation mission

At the invitation of the Parliamentary Assembly of the Council of Europe, a Venice Commission expert participated in a mission observing the Presidential elections of 6 April 2008 as an expert. The expert's task was to advise the members of the Assembly delegation on the legal aspects of the election.

- **Serbia**

Law on local elections

On 18 March 2008, the Venice Commission participated a meeting of experts on the basic legislation concerning local self government in Serbia. In particular, the discussion focused on the new law on local elections.

Co-operation with Serbia on electoral issues should continue during 2009.

Legal Assistance to an election observation mission

At the invitation of the Parliamentary Assembly of the Council of Europe (PACE), the Venice Commission advised members of the PACE delegation who observed the parliamentary elections of 11 May 2008 on the legal aspects of the election.

- **"The former Yugoslav Republic of Macedonia"**

Re-appointment of the members of the State Election Commission

Following a request from the Monitoring Committee of the Parliamentary Assembly, the Commission adopted at its 77th Plenary Session (12-13 December 2008), an opinion on the issue of the re-appointment of the members of the State Election Commission of "the former Yugoslav Republic of Macedonia" (CDL-AD(2008)036). The latest revision of the electoral code entailed the total renewal of the State Election Commission shortly before the elections. The opinion in particular put the emphasis on the stability of the electoral law. Care should be taken to avoid semblance of manipulation and to ensure that the Commission is not composed of only inexperienced members.

Seminar on electoral issues

On 16 and 17 October 2008, the Venice Commission organised a seminar, in co-operation with the State Election Commission, with a view to the preparation of the Presidential and Local elections scheduled for Spring 2009. The debates focused on the principles of the European electoral heritage; on the functioning of the electoral administration and its work in the context of the forthcoming elections; on the rights and obligations of observers during the polling period.

The theme of the seminar was: "How to prepare the forthcoming elections for achieving credible and genuine elections?". There were around 40 participants at the seminar evenly divided between members and staff members of the State Election Commission and Presidents of Municipal Election Commissions.

Legal Assistance to an election observation mission

At the invitation of the Parliamentary Assembly of the Council of Europe (PACE), a Venice Commission electoral expert participated in the PACE mission observing the legislative elections of 1 June 2008 as a legal adviser. The expert's task was to advise the members of the delegation on the legal aspects of the election.

- Turkey

Prohibition of political parties

At its meeting of 11 September 2008 the Monitoring Committee of the Parliamentary Assembly decided to request the Venice Commission to review the constitutional and legal provisions which are relevant for the prohibition of political parties in Turkey. The Commission held a preliminary exchange with representatives of the Turkish authorities at its October session and continued discussions at its December session. The adoption of the Commission's opinion is scheduled for the March session.

- Ukraine

Draft referendum laws

At its 77th session, the Venice Commission endorsed comments (CDL-EL(2008)010, 023 and 028) on the draft laws on referendum in Ukraine. The opinion had been requested by the President of the Ukrainian Parliament. The rapporteurs shared the opinion that both draft laws addressed the main and necessary issues in an appropriate way that could serve as a legal basis for organising a referendum; however, both texts were too detailed and sometimes with unnecessary repetitions and even contradictions. Co-operation on this issue should continue in 2009.

Electoral reform/Conference on European standards and the development of electoral legislation in Ukraine

On 16 January 2008 the Venice Commission organised, in co-operation with OSCE and the Electoral Law Institute of Ukraine, a Conference on European standards and the development of electoral legislation in Ukraine. The aim of this meeting was to discuss the 2007 Ukrainian elections and hold an exchange of views on improvements to be made to the legislation and electoral practice. The Conference was attended by the President and members of the Central Electoral Commission as well as representatives of political parties, NGOs and Universities.

Co-operation with the Ukrainian authorities on electoral reform, preferably with a view to the adoption of a unified electoral code, should continue in 2009.

2. TRANSNATIONAL ACTIVITIES

- Code of good practice on referendums

In 2007, the Venice Commission adopted the Code of good practice on referendums (CDL-AD(2007)008), which was then approved by the Parliamentary Assembly and the Congress of Local and

Regional Authorities of the Council of Europe. On 27 November 2008, the Committee of Ministers adopted a declaration on the code of good practice on referendums, in which it invited governments, parliaments and other relevant authorities in the member states to take account of the Code of Good Practice on Referendums, to have regard to it, within their democratic national traditions, when drawing up and implementing legislation on referendums and to make sustained efforts to disseminate it widely in the relevant circles.

- **Code of good practice for political parties**

In 2008, the Venice Commission continued its work on the Code of good practice for political parties culminating in its adoption.

This document was prepared further to Parliamentary Assembly Resolution 1546(2007) on the Code of good practice for political parties. This code (CDL-AD(2009)002) was adopted by the Council for Democratic Elections, at its 26th meeting (18 October 2008), and by the Venice Commission at its 77th Plenary Session (12-13 December 2008). The Council for Democratic Elections, at its 27th meeting (13 December 2008) started consideration of the draft explanatory report to the code, which should be adopted in March 2009.

The code of good practice for political parties was drawn up at the request of the Parliamentary Assembly and is aimed at a systemisation of good practices. It is intended for political parties and does not contain recommendations for national authorities. It contains four parts, general principles to which all political parties should conform, the internal organisation of political parties, their funding and their political functions. The general principles include the definition of political parties and their guiding principles such as the rule of law, democracy, transparency and openness. In the chapter on internal organisation, the Commission emphasises in particular non-discrimination regarding membership, the internal democratic structure, representativeness, responsibility and accountability. The chapter on funding recalls the norms extensively developed in the Commission's previous work (see document CDL-INF(2001)008). Finally, the chapter on political functions deals with the programme, civic and political training of members, the activity of parties during elections as well as performance in office and the role of the opposition.

- **Dual voting for persons belonging to national minorities**

In October 2006, the Office of the OSCE High Commissioner on National Minorities (HCNM) requested the Venice Commission's opinion on a document on dual voting for persons belonging to national minorities, prepared by the HCNM. After discussing the subject, the Commission agreed that due account should be taken of the wide variety of models adopted to ensure the election of special minority representatives in the national and regional assemblies, as well as of the considerable discretion the states enjoyed in determining how effective participation was to be achieved. That margin of discretion should enable them to take account of their particular historical and social circumstances, while at the same time complying with Article 3 of the Additional Protocol to the ECHR and Article 25 of the UN's ICCPR and relevant case-law.

Further to that discussion, the HCNM prepared a revised version of the document on dual voting for persons belonging to national minorities. The conclusions of the UniDem Seminar on the participation of minorities in public life (Zagreb, 18 - 19 May 2007) were also taken into account in the preparation of these comments. The report (CDL-AD(2008)013) prepared on the basis of contributions by Mr Sergio Bartole and Ms Josette Durrieu was adopted by the Council for Democratic Elections at its 25th meeting (Venice, 12 June 2008) and by the Venice Commission at its 75th plenary session (Venice, 13-14 June 2008).

As it results from the report's conclusions, the representation of minorities in elected bodies can be ensured either by the application of the general rules of electoral law or by specific rules. The situation depends on a number of variables, such as the nature of the electoral rules (e.g. proportional vs. plurality/majority system), the repartition of the minorities (in particular, whether they are a majority in any part of the territory) and the degree of integration, in practice, of minorities in the political system.

At the same time, the long-term interests of minorities and of societies as a whole seem to be in principle better served by representation under the "ordinary electoral system" which guarantees equal rights to citizens, irrespective of the group to which they are initially affiliated. However, from the Commission's

point of view, this does not exclude specific measures of a transitional nature when needed in order to ensure proper representation of minorities. These solutions include *inter alia* exceptions to rules on the threshold, reserved seats and overrepresentation of districts in which the minority is in a majority.

The Commission concludes that alternative, more decentralised, political models may offer another solution, especially in situations where national minorities are concentrated in certain regions. The recognition granted to regional forms of government, for example in Italy (Trentino-Alto Adige and Valle d'Aosta), Spain (Catalonia and the Basque Country) and the United Kingdom (Scottish devolution and recent developments in Northern Ireland), shows that states can develop forms of organisation that reconcile political unity and the presence of minorities, while continuing to respect universal rights. This may lead other countries to accept greater autonomy for their minorities.

As far as specific rules on representation of national minorities are retained and on the basis of the previous developments, the Commission concludes that dual voting is an exceptional measure, which has to be within the framework of the Constitution, and may be admitted if it respects the principle of proportionality under its various aspects. This implies that it can only be justified if:

- it is impossible to reach the aim pursued through other less restrictive measures which do not infringe upon equal voting rights;
- it has a transitional character;
- it concerns only a small minority.

Finally, given the exceptional nature of dual voting, the Commission recommends that the fulfilment of the above-mentioned conditions (in particular, those that refer to its functionality as a means of integrating minorities in the political system and its limited scope) be periodically reviewed, in order to maintain its transitional character.

- **Thresholds and other features of the electoral system which bar parties from access to Parliament**

Further to the conclusions of the 2007 session of the Forum for the future of Democracy, the Forum's Consultative Committee requested a more in-depth examination of the question of thresholds on parliamentary representation. The Venice Commission therefore started to draw up a study on this issue.

The report adopted by the Commission in December 2008, constitutes a first stage, which can be described as a comparative contextual analysis: it presents the various mechanisms which have the effect of limiting parties' access to parliament, as well as, in a comparative manner, the various contexts under which these mechanisms enter into specific electoral systems. Consequently, it does not only concern thresholds, but also other aspects of the electoral systems (size of constituency, majority systems, etc) which restrict access to parliament. It concludes that, in order to be able potentially to make a normative value judgment and elaborate any common European standards with respect to the inclusiveness/exclusiveness of parties' access to parliament, one must first clarify how inclusive/exclusive the different electoral systems across Europe actually are. However, the degree of inclusiveness/exclusiveness is dependent on several features, or mechanisms, which are either explicit or implicit components of these electoral systems. Since the same effect of excluding parties from parliament can be achieved through any of those, it would be insufficient, when measuring the degree of inclusiveness/exclusiveness, to focus solely on the legal threshold. Any contextual and sound comparative analysis of the issue would take into account also the mechanisms discussed above – the thresholds in the broader sense.

This report should be followed – second stage- by a detailed analysis of domestic law and its effects, and – third stage - the possibility of drawing up recommendations.

- **Conference on “Electoral Law and Practice in Council of Europe Member States”**

The Venice Commission organised the conference on “Electoral Law and Practice in Council of Europe Member States” in co-operation with the Institute of European Law of the State Institute of International Relations (MGIMO University) in Moscow on 28–29 April 2008. Reports focused on the comparative analysis of electoral systems in the countries of the Council of Europe and on the Russian political

practice in the context of international electoral standards and the judicial protection of the electoral rights. During the discussion the participants had a fruitful exchange of views on a wide range of issues focussing on the implementation of international standards in the electoral field in national legislation and practice.

International experts and approximately 50 participants from different Russian public institutions and NGOs, as well as professors of law, attended the conference.

- **UniDem Seminar on the cancellation of election results**

The European Commission for Democracy through law organised a UniDem Seminar on the cancellation of election results which was held in Valetta (Malta) on 14-15 November 2008, in co-operation with the Constitutional Court and the Ministry of Justice and Home Affairs of Malta. This seminar was aimed at Constitutional and Supreme Courts responsible for electoral disputes;

The event's theme was chosen based on the following statement: there is no democracy without elections in conformity with the international principles of electoral law. Respect of these principles is only possible if it may lead to a sanction and in particular to a judicial sanction. In other words, an appeal, and preferably an appeal before a court, has to be possible should there be irregularities in the preparation or the holding of elections.

Around forty participants took part in the seminar, including representatives of constitutional and supreme courts in charge of electoral disputes from various parts of Europe, of the European Court of Human Rights, as well as specialists of electoral law and disputes, practitioners and academicians. They first of all examined in which cases irregularities should lead to the cancellation of election results based on a questionnaire. The replies to the questionnaire will serve as a basis for a comparative study which should be adopted by the Venice Commission in 2009.

Finally, the participants worked on a practical case including legal provisions which could be problematic vis-à-vis the European electoral heritage, as well as practical irregularities. They had to establish whether, taken separately or together, the circumstances of the case could be considered as a violation of their national law and whether they had to lead to the cancellation of the results.

- **Fifth European Conference of Electoral Management Bodies – « Distance Voting » (Brussels, 20-21 November 2008)**

The Fifth European Conference of Electoral Management Bodies – “Distance voting” was organised by the Venice Commission in co-operation with the Elections Unit of the General Direction of Institutions and Population, Federal Public Service, in Brussels, on 20 - 21 November 2008. The issues which were addressed during the conference included the recent elections in member States (focusing on problems of distance voting and action taken to remedy them), as well as the comparative report on complaints and appeals procedures in the Council of Europe member States, the problem of reaching citizens abroad and persuading them to register and to vote and the latest developments in the field of e-voting in the Council of Europe Member States. Representatives of Austria, Belgium and the United Kingdom informed the conference on distance voting organised in their respective countries during the latest elections.

Around 70 participants from different national electoral management bodies of the following countries attended the conference: Armenia, Austria, Azerbaijan, Belgium, Estonia, Finland, Germany, Italy, Kyrgyzstan, Latvia, Lithuania, Malta, Mexico, Netherlands, Norway, Portugal, Russian Federation, Slovakia, Spain, Sweden, “the former Yugoslav Republic of Macedonia”, Ukraine and United Kingdom as well as representatives of the Congress of Local and Regional authorities of the Council of Europe.

The Conference took note of instances where the use of distance voting had contributed to better implementing the principle of universal suffrage and invited the member States of the Venice Commission to ensure that all principles for free and fair elections as enshrined in the 'Code of Good Practice in Electoral matters' adopted by the Venice Commission in October 2002 are respected, also with regard to distance voting.

- **VOTA, the Venice Commission's electoral database**

The VOTA database was set up as part of the joint Venice Commission and European Commission programme "Democracy through Free and Fair Elections" in 2004. It contains the electoral legislation of the Venice Commission's member states and other states involved in the Commission's work. Over 80 laws and statutes from about 40 states, as well as Venice Commission opinions in the field of elections, are already available in the database, in English and French (<http://www.venice.coe.int/VOTA>).

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

1. COUNCIL OF EUROPE

- Committee of Ministers

The previous President of the Committee of Ministers, Minister Jan Kubis (Slovak Republic), addressed the Commission at its June session, informing it about the results of the Slovak Presidency.

Representatives of the Committee of Ministers participated in all the Commission's plenary sessions during 2008. The following ambassadors attended the sessions during 2008:

Ambassador Alexander Alekseev, Permanent Representative of the Russian Federation to the Council of Europe, Ambassador Emil Kuchar, Permanent Representative of the Slovak Republic to the Council of Europe, Ambassador Irma Ertman, Permanent Representative of Finland to the Council of Europe, Ambassador Wendelin Ettmayer, Permanent Representative of Austria to the Council of Europe, Ambassador Borislav Maric, Permanent Representative of Bosnia and Herzegovina to the Council of Europe, Ambassador Jan Devadder, Permanent Representative of Belgium to the Council of Europe, Ambassador Margaret Hennessy, Permanent Representative of Ireland to the Council of Europe, Ambassador Paul Widmer, Permanent Representative of Switzerland to the Council of Europe, Ambassador Stelian Stoian, Permanent Representative of Romania to the Council of Europe, Ambassador Margarita Gega, Permanent Representative of Albania to the Council of Europe, Ambassador Yevhen Perelygin, Permanent Representative of Ukraine to the Council of Europe and Ms Rodica Postu, Deputy Permanent Representative of Moldova to the Council of Europe.

Different subjects were raised by the representatives of the Committee of Ministers, including the role of the Venice Commission in defending the rule of law, human rights and democracy as the core values of the Council of Europe, budgetary issues, the proposal to organise a conference on democracy and decentralisation as part of the Swiss presidency programme, the Forum for the Future of Democracy, the role of the Venice Commission in supporting reforms in Central and Eastern Europe, its usefulness for the long-established democracies and its influence beyond Europe.

The report on the civilian control of the armed forces was prepared and adopted at the request of the Committee of Ministers.

The Commission co-organised together with the Slovak Presidency the seminar on the "The use of international instruments for protecting individual rights, freedoms and legitimate interest through national legislation and The Right to legal defense in Belarus: challenges and outlook" (Minsk, 24 April 2008). It took part in two events organised in the framework of the Swedish Presidency of the Committee of Ministers: the Forum "Towards stronger implementation of the European Convention of Human Rights (Stockholm, 9-10 June) and the Regional Conference on Justice and the Rule of Law in the South Caucasus (Tbilisi, 19-20 November).

- Parliamentary Assembly

Mr Pourgourides (Cyprus) attended the March, June and October sessions of the Commission as representative of the Parliamentary Assembly, Mr van der Linden (the Netherlands), former President of the Assembly, the October and December sessions.

The representatives of the Parliamentary Assembly informed the Commission about activities of the Parliamentary Assembly of particular interest to the Commission,.

A number of texts were adopted at the request of the Parliamentary Assembly, including the Code of Good Practice on Political Parties, the opinions on the Constitution of Bulgaria, on the draft Constitution of Ukraine, on the amendments to the Constitution of Albania and on amendments to the Election Code of "the former Yugoslav Republic of Macedonia", as well as the report on legislative initiative. The opinion on the rules relevant for the prohibition of political parties in Turkey will be adopted in 2009.

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

The Commission took part in the hearing on "Protection of Human Rights in Emergency Situations", organised by the Parliamentary Assembly in Paris on 9 September.

- **Congress of Local and Regional Authorities**

The Congress was represented at the March plenary sessions of the Commission by Mr Newbury and at the October Session by Mr Delcamp. The Congress continued to participate actively in the Council for Democratic Elections, established in 2002 as a tri-partite body of the Venice Commission, the Parliamentary Assembly and the Congress of Local and Regional Authorities of Europe (see Part IV above). The UniDem seminar on the role of second chambers (see Part II above) was organised in co-operation with the Congress.

- **European Court of Human Rights**

In 2008, the Venice Commission intervened as *amicus curiae* in two sets of proceedings pending before the European Court of Human Rights (Bijelić against Montenegro and Serbia and Sejdić and Finci v. Bosnia-Herzegovina; see part II above) as it had done on two occasions before (Jeličić v. Bosnia and Herzegovina; CDL-AD (2005)020 ; Parti nationaliste basque – Organisation régionale d'Iparralde v. France, CDL-AD(2006)014).

Third party interventions are a means for the Venice Commission to put its experience and reflections at the disposal of the European Court of Human Rights, when the latter needs to decide a case which raises questions on which the Venice Commission has already worked. Needless to say, the Venice Commission's *amicus curiae* briefs do not deal with the substance of the cases pending before the Court.

In addition to this form of co-operation, since 2001 the Court has been referring to the works of the Venice Commission in an increasing number (more than 35 to date, seven of which in 2008) of judgments and decisions. The most cited works are the Guidelines on the prohibition and dissolution of political parties and the Code of Good Practice in Electoral Matters.

- **Forum for the Future of Democracy**

The Venice Commission participated in the fourth Forum for the Future of Democracy on "e-democracy" which took place in Madrid on 15 to 17 October.

- **North-South Centre**

The Venice Commission took part in the "Conference on conflict resolution in the 21st century", organised by the North-South Centre in Johannesburg on 26 to 28 March, as well as in the 2008 Lisbon Forum on "The principle of universality of human rights and its implementation at international and regional level" (Lisbon, 10-11 November).

2. EUROPEAN UNION

An exchange of letters on enhanced co-operation between the European Commission and the Venice Commission was concluded on 13 June between the Directors General of Enlargement and External Relations of the European Commission and the Secretary of the Commission. Ms Pavan Woolfe, representative of the European Commission to the Council of Europe, presented the exchange of letters at the June session of the Commission and confirmed the willingness of the European Commission to further intensify the already excellent co-operation. The European Commission continues to be represented at the sessions of the Commission by a representative of the Legal Service.

The Venice Commission took part in the Joint Programme of Co-operation between the European Commission and the Council of Europe to promote the democratic process in Ukraine and South Caucasus, more specifically through activities in the electoral field in Georgia and Ukraine (up to April 2008). From January 2008 on, it took part in the Joint Programme between the European Commission and the Council of Europe entitled "South Caucasus – Moldova – Support to free and fair elections", through activities in Armenia, Azerbaijan, Georgia and Moldova. The activities of the Commission for Kazakhstan and Kyrgyzstan took place in the framework of a Joint Programme with the European Commission.

At the invitation of the Slovenian EU Presidency the Secretary of the Commission made a presentation to the EU Council Committee on co-operation with the OSCE and the Council of Europe (COSCE) on 27 June in Brussels. The topic of the presentation was "The Venice Commission and its role in providing advice on constitutional matters: Future prospects".

The Commission took part in the EU-Central Asia Ministerial Conference on "The Rule of Law: Cornerstone of Development" on 27-28 November in Brussels. The European Commission and Germany expressed the intention to provide financial support for rule of law activities of the Commission in Central Asia.

Throughout the year the Commission co-operated closely with the EU Special Representative for Moldova, Mr Mizsei. Close coordination was maintained with the Council of the European Union, in particular with respect to the constitutional situation in Ukraine. A representative of the EU Council attended the June session of the Commission..

3. OSCE

A Venice Commission representative took part in the OSCE Chairmanship seminar on election related issues in Vienna on 21-22 July 2008. Throughout the year the Venice Commission continued its close co-operation with OSCE/ODIHR in electoral matters, in particular through the drafting of joint opinions on the electoral legislation in Armenia, Azerbaijan, Bosnia and Herzegovina, Georgia and Moldova. More details on this co-operation are provided in Part IV above. The OSCE/ODIHR took part in the 5th European Conference of Electoral Management Bodies (Brussels, 20-21 November 2008). Moreover, the Venice Commission regularly co-operates with the OSCE field offices in electoral and other matters.

The Venice Commission and OSCE/ODIHR also adopted a number of joint opinions in the field of human rights. In 2008 this concerned freedom of assembly in Armenia and Kyrgyzstan and freedom of religion in Kyrgyzstan.

Representatives of the Venice Commission took part in the working sessions on freedom of expression and freedom of religion of the ODIHR Human Dimension Meeting (Warsaw, 30 September and 7 October respectively), in the Supplementary Human Dimension Meeting on Democratic Law Making organised by the Finnish chairmanship (Vienna, 6 to 7 November) and the meeting of experts on better legislation in the OSCE area (Vienna 5 November).;

In 2008, the Venice Commission pursued its co-operation with the OSCE High Commissioner on National Minorities (HCNM) on dual voting for persons belonging to national minorities. It adopted its report on this issue at its 75th Plenary Session (Venice, 13-14 June 2008). In addition, Venice Commission members and a representative of the Secretariat were consulted by the HCNM in the context of the preparation of the Bolzano Recommendations on National Minorities in Inter-State relations, which were published in June 2008.

4. UNITED NATIONS

At the invitation of the UN Special Rapporteur on human rights and counter terrorism a Venice Commission representative took part in the meeting on "International Aviation Law: Promoting Legal Safeguards and Protecting Human Rights in the Counter-Terrorism Context" (Geneva, 24 June)

A Commission representative presented the experience of the Commission at a seminar to reinforce OHCHR's capacity to provide constitutional assistance to states in Geneva on 10 to 11 December. The seminar was organised by the Office of the High Commissioner for Human Rights.

5. WESTERN EUROPEAN UNION (WEU)

A representative of the Commission presented the report on the civilian control of the armed forces at a WEU Conference on "Strategic choices for security and defence in Europe" on 5 May in Paris.

6. ASSOCIATION OF EUROPEAN ELECTION OFFICIALS (ACEEEO)

The Venice Commission was represented at the ACEEEO Conference on ensuring security of elections in Constanta on 11 to 13 September 2008..

7. INTERNATIONAL INSTITUTE FOR DEMOCRACY AND ELECTORAL ASSISTANCE (IDEA)

At the invitation of International IDEA, a Venice Commission representative took part in a workshop on electoral complaints and appeals on 6 November 2008 in Brussels.

**APPENDIX I –
LIST OF MEMBER COUNTRIES¹**

MEMBERS

Albania (14.10.1996)
Algeria (01.12.2007)
Andorra (1.02.2000)
Armenia (27.03.2001)
Austria (10.05.1990)
Azerbaijan (1.03.2001)
Belgium (10.05.1990)
Bosnia and Herzegovina (24.04.2002)
Bulgaria (29.05.1992)
Chile (1.10.2005)
Croatia (1.01.1997)
Cyprus (10.05.1990)
Czech Republic (1.11.1994)
Denmark (10.05.1990)
Estonia (3.04.1995)
Finland (10.05.1990)
France (10.05.1990)
Georgia (1.10.1999)
Germany (3.07.1990)
Greece (10.05.1990)
Hungary (28.11.1990)
Iceland (5.07.1993)
Ireland (10.05.1990)
Israel (01.05.2008)
Italy (10.05.1990)
Republic of Korea (01.06.2006)
Kyrgyzstan (01.01.2004)
Latvia (11.09.1995)
Liechtenstein (26.08.1991)
Lithuania (27.04.1994)
Luxembourg (10.05.1990)
Malta (10.05.1990)
Moldova (25.06.1996)
Monaco (05.10.2004)
Montenegro (20.06.2006)
Morocco (01.06.2007)
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 (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)
Japan (18.06.1993)
Kazakhstan (30.04.1998)
Mexico (12.12.2001)
United States (10.10.1991)
Uruguay (19.10.1995)

PARTICIPANTS

European Commission
OSCE/ODIHR
IACL

SPECIAL CO-OPERATION STATUS

Palestine National Authority
South Africa

¹ Tunisia was invited to accede to the Enlarged Agreement by the Committee of Ministers on 15 May 2008, Peru on 11 February 2009 and Brazil on 1 April 2009.

**APPENDIX II –
LIST OF MEMBERS¹**

Mr Jan HELGESEN (Norway), President, Professor, University of Oslo
(Substitute: Mr Fredrik SEJERSTED, Professor, University of Oslo)

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

Mr Kaarlo TUORI (Finland), Vice-President, Professor of Jurisprudence, University of Helsinki
(Substitute: Mr Matti NIEMIVUO, Professor, University of Lapland, Former Director at the
Department of Legislation, Ministry of Justice)

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

* * *

Mr Ergun ÖZBUDUN (Turkey), Professor, Department of Political Science, University of Bilkent,
Vice President of the Turkish Foundation for Democracy
(Substitute: Mr Erdal ONAR, Associate Professor, Faculty of Law, Ankara University)

Mr Cyril SVOBODA (Czech Republic), Member of Parliament, Former Deputy Prime Minister,
Former Minister of Foreign Affairs
(Substitute: Ms Eliska WAGNEROVA, Vice-President, Constitutional Court)

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

Mr Stanko NICK (Croatia), Former Ambassador of Croatia in Hungary
(Substitute: Ms Jasna OMEJEC, President, Constitutional Court)

Mr Hjörtur TORFASON (Iceland), Former Judge, Supreme Court of Iceland
(Substitute: Ms Herdis THORGEIRSDOTTIR, Professor, Faculty of Law, Bifrost School of
Business)

Mr Pieter VAN DIJK (The Netherlands), State Councillor, Former Judge at the European Court of
Human Rights
(Substitute: Mr Ben VERMEULEN, Professor of Constitutional, Administrative and Education
Law, University of Amsterdam)

Mr Jeffrey JOWELL (United Kingdom), Professor of Public Law, University College London
(Substitute: Mr Anthony BRADLEY, Professor)

Mr Gagik HARUTUNIAN (Armenia), President, Constitutional Court
(Substitute: Mr Armen HARUTUNIAN, Human Rights Defender, Republic of Armenia)

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

Ms Finola FLANAGAN (Ireland), Director General, Senior Legal Adviser, Head of the Office of
the Attorney General
(Substitute: Mr James HAMILTON, Director of Public Prosecutions)

Ms Lydie ERR (Luxembourg), Member of Parliament
(Substitute: Mr Marc FISCHBACH, Mediator)

Mr Ugo MIFSUD BONNICI (Malta), President Emeritus

¹ *By order of seniority.*

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

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

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

Mr Serhiy HOLOVATY (Ukraine), Member of Parliament, Former Minister of Justice, President, Ukrainian Legal Foundation
(Substitute: Mr Volodymyr SHAPOVAL, Chairman, Central Election Commission)

Mr Dominique CHAGNOLLAUD (Monaco), Member of the Supreme Court, Professor, University of Law, Economics and Social Science Paris II
(Substitute: Mr Christophe SOSSO, Defence Lawyer)

Mr Nicolae ESANU (Moldova), Deputy Minister of Justice

Mr Peter PACZOLAY (Hungary), President, Constitutional Court
(Substitute: Mr Laszlo TROCSANY, Judge, Constitutional Court, Professor of Constitutional Law University of Szeged)

Mr Oliver KASK (Estonia), Judge, Tallinn Court of Appeal
(Substitute: Ms Liina LUST, Adviser, Public Law Division, Ministry of Justice)

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

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

Mr Egidijus JARASIUNAS (Lithuania), Counsellor to Chairman of the Constitutional Court
(Substitute: Ms Zivile LIEKYTE, Director, Department of Legislation and Public Law, Ministry of Justice)

Mr Jean-Claude COLLIARD (France), Professor of Public Law, President of the Association 'Santé des Etudiants de France', former member of the Constitutional Council
(Substitute: Mr Olivier DUTHEILLET DE LAMOTHE, State Counsellor, member of the Constitutional Council
Mr Hubert HAENEL, Member of the Council of State, Senator Haut-Rhin, President of the Senate delegation to the European Union)

Mr Christoph GRABENWARTER (Austria), Judge, Constitutional Court
(Substitute: Mme Gabriele KUČSKO-STADLMAYER, Professor, University of Vienna)

Ms Gret HALLER (Switzerland), Senior lecturer, Johann Wolfgang Goethe University, Frankfurt am Main, Former Speaker of the Swiss Parliament
(Substitute: Ms Monique JAMETTI GREINER, Vice Director, Head of the international relations Department, Federal Office of Justice)

Ms Kalliopi KOUFA (Greece), Professor of International Law, University Aristote, Thessaloniki
(Substitute: Ms Fani DASKALOPOULOU-LIVADA, Director, International Law Department, Ministry of Foreign Affairs)

Mr Frixos NICOLAIDES (Cyprus), Supreme Court Judge
(Substitute: Mr Myron NICOLATOS, Supreme Court Judge)

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

Mr Lucian MIHAL (Romania), Professor, Faculty of Law, University of Bucharest
(Substitute: Mr Bogdan AURESCU, Professor, Lecturer, Faculty of Law, University of Bucharest)

Mr Kong-hyun LEE (Republic of Korea), Justice, Constitutional Court
(Substitute: Mr Boohwan HAN, Attorney at Law, former Vice Minister of Justice)

Mr Srdjan DARMANOVIC (Montenegro), Professor, University of Montenegro, Director, Centre for Democracy and Human Rights

Mr Harry GSTÖHL (Liechtenstein), Princely Justice Counsellor, Attorney at Law
(Substitute: Mr Wilfried HOOP, Partner, Hoop and Hoop)

Ms Maria Fernanda PALMA (Portugal), Professor, University of Lisbon, former Judge, Constitutional Court
(Substitute: Mr Pedro BACELAR de VASCONCELOS, Professor of Constitutional Law)

Mr Jorgen Steen SORENSEN (Denmark), Director of Public Prosecutions
(Substitute: Mr Michael Hansen JENSEN, Professor, University of Aarhus)

N.N. (San Marino)².
(Substitute: Ms Barbara REFFI, State Attorney)

Ms Evetta MACEJKOVA (Slovakia), President, Constitutional Court
(Substitute: Mr Eduard BARANY, Former Vice President, Constitutional Court of Slovakia, Head of Public Law and Theory of State and law Unit, Slovak Academy of Sciences)

Mr Wolfgang HOFFMANN-RIEM (Germany), Former Judge, Federal Constitutional Court
(Substitute: Ms Angelika NUSSBERGER, Professor, University of Cologne)

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

Mr Sergio BARTOLE (Italy), Professor, University of Trieste
(Substitute: Mr Guido NEPPI MODONA, Professor, University of Turin)

Ms Svetlana SYDYKOVA (Kyrgyzstan), President, Constitutional Court
(Substitute: Mr Marat KAYPOV, Minister of Justice)

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

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

Mr Abdellatif MENOUNI (Morocco), Member, Constitutional Council
(Substitute: Mr Abdelaziz LAMGHARI, Professor, Public Law Department, Rabat)

Ms Gordana SILJANOVSKA-DAVKOVA ("the former Yugoslav Republic of Macedonia"), Professor of law, University "Ss Cyril and Methodius"
(Substitute: Ms Tanja KARAKAMISHEVA, Professor, Law Faculty, University St. Cyril and Methodius, Judge, Constitutional Court)

² Member resigned on 13 March 2007. A new member has not yet been appointed.

Mr Eugeni TANCHEV (Bulgaria), Judge, Constitutional Court
(Substitute: Mr Plamen KIROV, Judge, Constitutional Court)

Mr Dan MERIDOR (Israel), Deputy Prime Minister, Minister of Intelligence and Atomic Energy
(Substitute: Mr Eyal BENVENISTI, Professor, Tel Aviv University)

Mr Joan MONEGAL BLASI (Andorra), Lawyer

N.N. (Algeria)

N.N. (Tunisia)

SPECIAL CO-OPERATION STATUS

Mr Ali KHASHAN (Palestine National Authority), Minister of Justice

Mr Pius N. LANGA (South Africa), Chief Justice

ASSOCIATE MEMBERS

N.N. (Belarus)

OBSERVERS

N.N. (Argentina)

N.N. (Canada)

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

Mr Akira TAKANO (Japan), Consul, Consulate General of Japan, Strasbourg

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

Ms Maria AMPARO CASAR (Mexico), Professor

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

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

PARTICIPANTS

Mr Patrick HETSCH (European Commission), Principal Legal Adviser
(Substitute: Ms Carmel O'REILLY, Legal Adviser)

Mr Didier MAUS (IACL), President

Mr Denis PETIT (OSCE/ODIHR), Head of the Democratisation Department

SECRETARIAT

Mr Gianni BUQUICCHIO

Mr Thomas MARKERT

Mrs Simona GRANATA-MENGHINI

Mr Pierre GARRONE

Mr Rudolf DÜRR

Mr Alain CHABLAIS

Mr Sergueï KOUZNETSOV

Ms Caroline MARTIN

Ms Tanja GERWIEN

Mr Jorg NOBBE

Mr Gaël MARTIN-MICALLEF
Ms Antonella MASCIA LODI
Ms Tatiana MYCHELOVA
Ms Helen MONKS
Ms Monica PETROVICI
Ms Brigitte AUBRY
Ms Marian JORDAN
Mrs Emmy KEFALLONITOU
Mrs Brigitte RALL
Ms Ana GOREY
Mrs Marie-Louise WIGISHOFF
Ms Caroline GODARD
Ms Rosy RIETSCH
Ms Giovanna MONTAGNA

**APPENDIX III –
OFFICES AND SUB-COMMISSIONS**

- President: Mr Helgesen
- Vice-Presidents: Ms Suchocka, Mr Tuori, Mr Zorkin
- Bureau: Messrs Colliard, Endzins, Holovaty, Paczolay

- **Council for Democratic Elections:**

Chair: Mr Luc van den Brande (Parliamentary Assembly)

Venice Commission - Vice-Chair: Mr Mifsud Bonnici : Members : Messrs Chagnollaud, Colliard, Kask, Paczolay, Sanchez Navarro, Torfason

Parliamentary Assembly – Ms Josette Durrieu, Mr Andreas Gross, Ms Hanne Severinsen

Congress of Local and Regional authorities – Mr Ian Micallef, Mr Keith Whitmore

- **Joint Council on Constitutional Justice:**

Chair : Mr van Dijk : Members : Messrs Bartole, Endzins, Harutunian, Holovaty, Jarasiunas, Jowell, Messrs Lee, Mihai, Neppi Modona, Ms Omejec, Mr Paczolay, Ms Thorgeirsdottir, Mr Torfason, Ms Wagnerova, as well as 90 liaison officers from 65 Constitutional Courts or Courts with equivalent jurisdiction

- **Federal State and Regional State:**

Chair: Mr Closa Montero

- **International Law:**

Chair: Mr Dimitrijevic

- **Protection of Minorities:**

Chair: Mr Velaers

- **Fundamental Rights:**

Chair: Mr Helgesen

- **Democratic Institutions:**

Chair: Mr Jowell

- **Judiciary:**

Chair: Ms Flanagan

- **External Relations:**

Chair: Mr Mifsud Bonnici

**APPENDIX IV –
MEETINGS OF THE VENICE COMMISSION IN 2008¹**

1. PLENARY SESSIONS

74 th Session	14-15 March
75 th Session	13-14 June
76 th Session	17-18 October
77 th Session	12-13 December

Bureau

Meeting enlarged to include the Chairpersons of Sub-Commissions
- 13 March

Meeting enlarged to include the Chairpersons of Sub-Commissions
- 12 June

Meeting enlarged to include the Chairpersons of Sub-Commissions
- 16 October

Meeting enlarged to include the Chairpersons of Sub-Commissions
- 11 December

Followed by a joint meeting with the Committee on Legal Affairs and Human Rights of the Parliamentary Assembly of the Council of Europe

2. SUB-COMMISSIONS

Democratic Institutions 13 March
16 October

Judiciary 16 October
11 December

Protection of Minorities 15 March (Joint Meeting with the Council for Democratic Elections)
12 June (Joint Meeting with the Council for Democratic Elections)

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

Meetings of Working Groups and Rapporteurs

Armenia

Joint Meeting with OSCE/ODIHR on the law on conducting rallies
15-16 April (Yerevan)

Bosnia and Herzegovina

Draft law on conflict of interest
24-26 April (Sarajevo)
Colloquy on the reform of the Constitution
14-15 November (Cadenabbia)

Finland

Evaluation of the Constitution
28 January (Helsinki)

Moldova

¹ *All meetings took place in Venice unless otherwise indicated..*

Double Citizenship

2 April (Chisinau)

Exploratory visit to Transnistria

31 October (Chisinau)

Montenegro

Round Table on implementation of the guarantees of Human Rights in the New Constitution of Montenegro

28 February (Podgorica)

18 September (Paris)

Slovakia

Meeting on draft press law

28 February (Strasbourg)

“the former Yugoslav Republic of Macedonia”

Draft law on protection against discrimination

25-26 November (Skopje)

Ukraine

Ukraine Building a stable future

21-23 February (Wilton Park)

Session of Ukrainian School of Political Studies

10 April (Kyiv)

Blasphemy, religious insult and incitement to religious hatred

26 September (Paris)

Reopening of judicial procedures

26 September (Paris)

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

Conference on Art and Religion

1-2 February (Athens)

UniDem Seminar on Second Chambers

21 February (Paris)

Round Table a new approach to autonomy

26 March (Budapest)

North-South Centre Conference on conflict resolution in the 21st Century

26-27 March (Johannesburg)

OSCE High Commissioner for National minorities Expert Seminar on the Recommendation on State Responsibility and National Minorities Abroad

11 April (The Hague)

UEO Conference on strategic choices for the security and defence of Europe

5 May (Paris)

Forum “Towards stronger implementation of the European Convention on Human Rights at national level”

9-10 June (Stockholm)

OSCE High Commissioner for National minorities Conference on Linguistic rights of national minorities

18-19 June (Oslo)

Meeting on international aviation law promoting legal safeguards and protection human rights in the counter-terrorism context

24 June (Geneva)

Conference of Prosecutors General of Europe

1-3 July (St Petersburg)

Co-ordination meeting for European Union rule of law initiative for Central Asia

15 July (Berlin)

Hearing of the Parliamentary Assembly on human rights in emergency situations

9 September (Paris)

OSCE/ODIHR Human Dimension Meeting on freedom of expression

30 September (Warsaw)

OSCE/ODIHR Human Dimension Meeting on freedom of religion

7 October (Warsaw)

Meeting of experts on better legislation in the OSCE region

5 November (Vienna)

Supplementary Human Dimension Meeting on Democratic Law making organised the Finnish Chairmanship and ODIHR

6-7 November (Vienna)

Lisbon Forum 2008 and beyond

10-11 November (Lisbon)

Conference on human rights in culturally diverse societies – challenges and perspectives

12-13 November (The Hague)

Conference on freedom of association in the Gulf: NGOs and Trade Unions (including for migrants)

17 November (Kuwait)

Regional Conference on justice and rule of law in South Caucasus

19-20 November (Tbilisi)

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

Meeting of the Working Group on the systematic thesaurus

26 June

Joint Council on Constitutional Justice

26-27 June

(Meeting with Liaison officers from Constitutional Courts)

Meetings of Working Groups and Rapporteurs

Moldova

3rd Working Group on the new legislation governing the Public Prosecutor Service

7-8 April (Chisinau)

Montenegro

Meeting on State Prosecutors Act
27 February (Podgorica)

Meeting on law on Constitutional Court of Montenegro
16-17 June (Podgorica)

Serbia

Meeting concerning 4 draft laws
31 January – 1 February (Belgrade)

Constitutional Justice Seminars

Conference on “Constitutional Judiciary in the States of V4”
3-4 April (Kosice)

Formal Session XXVth anniversary Constitutional Court of Portugal
9 April (Lisbon)

Seminar on “the use of international instruments for protecting individual rights, freedoms and legitimate interests through national legislation and the right to legal defence in Belarus: challenges and outlook”
24 April (Minsk)

Seminar on “The constitutional Court in the system of State bodies : crucial problems and ways to solve them”
16-17 May (Kyiv)

Conference on “Supremacy of law and independence of the judiciary - guarantee of the stability of democratic institutions”
27-28 May (Bishkek)

Seminar "Constitutional Justice and the rule of law in South Caucasus"
19-20 June (Batumi)

Seminar on “Constitutional values”
20-21 June (Moscow)

International Conference on “the execution of court decisions”
14-15 July (Baku)

International Symposium "The separation of powers and constitutional adjudication in the 21st Century; preparation meeting for 1st world Conference of Constitutional Courts
2-4 September (Seoul)

Conference on the occasion of the 15th anniversary of the Constitutional Court of the Czech Republic
10-11 September (Brno)

13th Yerevan Conference: “Fundamental constitutional values and public practice”
3-4 October (Yerevan)

Seminar on “models of constitutional jurisdiction”
25-26 October (Ramallah)

Colloquy on “Constitutional interpretation”: preparation meeting for 1st world Conference of Constitutional Courts
30-31 October (Algiers)

Symposium on "Fair Trial"
12-14 November (Yemen)

Other Seminars and Conferences in which the Commission participated

Conference on "dialogue between people and cultures"
19-20 January (Alexandria)

Meeting with Commonwealth representatives
31 January-1 February (London)

Presentation of the Commission to the Constitutional Council of Tunisia
12-13 April (Tunis)

OSCE/ODIHR Human Dimension Seminar on Constitutional Justice
14-16 May (Warsaw)

XIVth Congress of Conference of European Constitutional Courts
3-5 June (Vilnius)

Meeting of representatives of institutional networks for la francophonie
19-21 June (Bucharest)

Signature of the agreement between the Commission and the Union of Arab Constitutional Courts and Councils
23-24 June (Cairo)

Meeting of Commonwealth Law Ministers and Senior Officials
7-10 July (Edinburgh)

Summer School "Comparative interpretation of European Constitutional Jurisprudence"
29 July (Trento)

Colloquy on the 50th anniversary of the Constitutional Council of Europe
3 November (Paris)

Meeting of the Executive Committee IACL
13-15 November (London)

Vlth Meeting of Supreme Courts of Mercosul member States
20-22 November (Brasilia)

5. DEMOCRACY THROUGH FREE AND FAIR ELECTIONS

Council for Democratic Elections

15 March
12 June
18 October
13 December

Meetings of Working Groups and Rapporteurs

Azerbaijan

Meetings on electoral code
7-9 February (Baku)

Workshop on electoral complaints and appeals
21-22 August (Baku)
25-26 August

Meeting with Central Election Commission and IFES
23 August (Baku)

Bosnia and Herzegovina

Meeting on financing of political parties
18-20 February (Sarajevo)

Workshop on local and regional elections in Bosnia and Herzegovina
10-11 September (Sarajevo)

Georgia

Workshop on electoral disputes
6 May (Tbilisi)

Working on the holding and supervision of elections
7 May (Tbilisi)

Moldova

Seminar for judges on electoral disputes
24-25 November (Chisinau)

Seminar on electoral issues for the Central Electoral Commission
30 October (Chisinau)

Ukraine

Conference on 2007 elections and future co-operation
15-17 January (Kyiv)

Meeting of the Working Group on the electoral code of Ukraine
29-30 May (Kyiv)

Code of good practice on political parties

Preparatory meeting
21 May (Paris)
24 September (Paris)

Electoral Law Training Workshops

14-18 July (Baku)
18-20 December (Tbilisi)

Training Seminar on good practices in electoral matters in the perspective of the local self-government elections to be held in the Chechen Republic in 2009
28 October (Moscow)

Electoral Assistance

Assistance to Central Electoral Commission Georgia
29 April – 24 May (Tbilisi)
28 May – 9 June (Tbilisi)

Legal Assistance to PACE delegation observing Parliamentary elections
19-22 May (Tbilisi)

Legal Assistance to PACE delegation observing elections
30 May – 2 June (Skopje)

Assistance to Central Electoral Commission Azerbaijan
24 September – 2 October (Baku)
7-16 October (Baku)

Legal Assistance to PACE delegation observing elections
13-16 October (Baku)

Election observation

Observation elections in Georgia
1-8 January (Tbilisi)

Observation elections in Montenegro
4-7 April (Podgorica)

Observation Legislative and local elections of Serbia
10-12 May (Belgrade)

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

XXVI Human Rights course 2008 organised by the Institute of Human Rights of Catalunya
16 April (Barcelona)

Conference on "Electoral law in Council of Europe member States"
28-29 April (Moscow)

Expert meeting on Human Rights and democratic issues
28-29 May (Chisinau)

Workshop for Belarus civil society members "overview of European and International Human Rights and democracy standards"
21-22 June (Vilnius)

CIO Seminar on election related issues
21-22 July (Vienna)

17th ACEEEO Conference on ensuring the security of elections
11-13 September (Constanta)

International Conference on Direct Democracy
2-4 October (Aarau)

Forum on the future of democracy
15-17 October (Madrid)

Board of editors of IDEA on electoral complaints and appeals books
6 November (Brussels)

5th Conference of electoral management bodies
20-21 November (Brussels)

Round Table on "International standards on financing of political parties and election campaigns"
1 December (Astana)

Meeting of the Permanent Committee of the Congress, presentation of the activities of the Council for Democratic Elections
3 December (Strasbourg)

Seminar on electoral legislation of Kyrgyzstan and meetings with the Constitutional Court, the Central Electoral Commission, the Ministry of Justice and the Presidential Administration of Kyrgyzstan
17-18 December (Bishkek)

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

Implementation of the case law of the European Convention on Human Rights in Council of Europe member states

24-28 February (Trieste)

Models of regional development

21-24 April (Trieste)

Participation in follow-up Seminars

19 June (Tirana)

23 June (Zagreb)

APPENDIX V –

LIST OF PUBLICATIONS OF THE VENICE COMMISSION

• **SERIES – SCIENCE AND TECHNIQUE OF DEMOCRACY²**

- No. 1 Meeting with the presidents of constitutional courts and other equivalent bodies³ (1993)
- No. 2 Models of constitutional jurisdiction*⁴ 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 Özbudun 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)

² Publications are also available in French unless otherwise indicated.

³ Speeches in the original language (English or French)

⁴ Publications marked with * are also available in Russian

- 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 Integration⁵ (2004)
- No. 37 European and U.S. Constitutionalism⁴ (2005)
- No. 38 State Consolidation and National Identity⁴ (2005)
- No. 39 European Standards of Electoral Law in Contemporary Constitutionalism¹ (2005)
- No. 40 Evaluation of fifteen years of constitutional practice in Central and Eastern Europe* (2005)
- No. 41 Organisation of elections by an impartial body⁴ (2006)
- No. 42 The status of international treaties on human rights⁴ (2006)
- No. 43 The preconditions for a democratic election⁴ (2006)
- No. 44 Can excessive length of proceedings be remedied? (2007)
- No. 45 The participation of Minorities in public life⁴ (2008)

⁵ Available in English only.

- **OTHER PUBLICATIONS**

- Collection points of view – points of law**
- Guantanamo - violation of human rights and international law?
 - The CIA above the laws? Secret detentions and illegal transfers of detainees in Europe
- Collection Europeans and their rights**
- The right to life
 - Freedom of religion
 - Child rights in Europe
 - Freedom of expression
- Other titles**
- Tackling blasphemy, insult and hatred in a democratic society (2008)
- Electoral Law (2008)
- European Conference of Electoral Management Bodies
- 2nd Conference (Strasbourg 2005)
 - 3rd Conference (Moscow, 2006)
 - 4th Conference (Strasbourg, 2007)
- Bulletin on Constitutional Case-Law –** 1993 – 2007 (three issues per year)
- Special Bulletins -**
- Description of Courts (1999)*
 - Basic texts - extracts from Constitutions and laws on Constitutional Courts - issues Nos 1–2 (1996), Nos 3-4 (1997), No 5 (1998), No 6 (2001), No 7 (2007)
 - 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)
 - Special Edition Leading cases 2 – Belgium, France, Hungary, Luxembourg, Romania, USA (2008)
 - Inter Court Relations (2003)
 - Role and functions of the Secretary General of the Constitutional court or equivalent body (2006)
 - Criteria for the limitation of Human Rights by the Constitutional Court (2006)
 - Legal Omissions (2008)
- Annual Reports -** 1993 - 2008

Brochures -

- 10th anniversary of the Venice Commission (2001)*
- Revised Statute of the European Commission for Democracy through Law (2002)
- The Venice Commission (2002)
- UniDem Campus – Legal training for civil servants (2003)

**APPENDIX VI –
LIST OF DOCUMENTS ADOPTED IN 2008**

- CDL-AD(2008)002 Opinion on the Law on the Financing of Political Parties of Bosnia and Herzegovina adopted by the Venice Commission at its 74th Plenary Session (Venice, 14-15 March 2008)
- CDL-AD(2008)003 Joint Interim Opinion on the Draft Amendments to the Electoral Code of the Republic of Azerbaijan by the Venice Commission and OSCE/ODIHR adopted by the Venice Commission at its 74th Plenary Session (Venice, 14-15 March 2008)
- CDL-AD(2008)004 Report on the Democratic Control of the Armed Forces adopted by the Venice Commission at its 74th Plenary Session (Venice, 14-15 March 2008)
- CDL-AD(2008)005 Opinion on the Draft Amendments to the Law on the State Prosecutor of Montenegro adopted by the Venice Commission at its 74th Plenary Session (Venice, 14-15 March 2008)
- CDL-AD(2008)006 Opinion on the Draft Law on the High Judicial Council of the Republic of Serbia adopted by the Venice Commission at its 74th Plenary Session (Venice, 14-15 March 2008)
- CDL-AD(2008)007 Opinion on the Draft Laws on Judges and the Organisation of Courts of the Republic of Serbia adopted by the Venice Commission at its 74th Plenary Session (Venice, 14-15 March 2008)
- CDL-AD(2008)008 Opinion on the Law on State Secret of the Republic of Moldova adopted by the Venice Commission at its 74th Plenary Session (Venice, 14-15 March 2008)
- CDL-AD(2008)009 Opinion on the Constitution of Bulgaria adopted by the Venice Commission at its 74th Plenary Session (Venice, 14-15 March 2008)
- CDL-AD(2008)010 Opinion on the Constitution of Finland adopted by the Venice Commission at its 74th Plenary Session (Venice, 14-15 March 2008)
- CDL-AD(2008)011 Joint opinion on the Draft Law on Amendments and changes to the electoral code of the Republic of Azerbaijan by the Venice Commission and OSCE/ODIHR adopted by the Council for Democratic Elections at its 25th Meeting (Venice, 12 June 2008) and by the Venice Commission at its 75th Plenary Session (Venice, 13-14 June 2008)
- CDL-AD(2008)012 Joint opinion on amendments to the Election Law of Bosnia and Herzegovina by the Venice Commission and OSCE/ODIHR adopted by the Council for Democratic Elections at its 24th Meeting (Venice, 15 March 2008) and by the Venice Commission at its 75th Plenary Session (Venice, 13-14 June 2008)
- CDL-AD(2008)013 Report on Dual Voting for Persons belonging to National Minorities adopted by the Council for Democratic Elections at its 25th meeting (Venice, 12 June 2008) and the Venice Commission at its 75th Plenary Session (Venice, 13-14 June 2008)
- CDL-AD(2008)014 Opinion on the Law on conflict of interest in Governmental Institutions of Bosnia and Herzegovina adopted by the Venice Commission at its 75th Plenary Session (Venice, 13-14 June 2008)

- CDL-AD(2008)015 Opinion on the Draft Constitution of Ukraine (prepared by a working group headed by Mr V.M. Shapoval) adopted by the Venice Commission at its 75th Plenary Session (Venice, 13-14 June 2008)
- CDL-AD(2008)016 Opinion on the Draft Amendments to the Constitution of the Republika Srpska adopted by the Venice Commission at its 75th Plenary Session (Venice, 13-14 June 2008)
- CDL-AD(2008)017 Opinion of the Draft Amendments to the Criminal Code of the Republic of Armenia adopted by the Venice Commission at its 75th Plenary Session (Venice, 13-14 June 2008)
- CDL-AD(2008)018 Joint Opinion on the amendments of 17 March 2008 to the Law on conducting meetings, assemblies, rallies and demonstrations of the Republic of Armenia by the Venice Commission and OSCE/ODIHR endorsed by the Venice Commission at its 75th Plenary Session (Venice, 13-14 June 2008)
- CDL-AD(2008)019 Opinion on the draft law on the Public Prosecutors' service of Moldova adopted by the Venice Commission at its 75th Plenary Session (Venice, 13-14 June 2008)
- CDL-AD(2008)020 Joint Opinion on the Draft Law amending and supplementing the law on conducting meetings, assemblies, rallies and demonstrations of the Republic of Armenia by the Venice Commission and OSCE/ODIHR endorsed by the Venice Commission at its 75th Plenary Session (Venice, 13-14 June 2008)
- CDL-AD(2008)021 Amicus Curiae Brief in the case of Bijelic against Montenegro and Serbia (Application N°11890/05) pending before the European Court of Human Rights adopted by the Venice Commission at its 76th Plenary Session (Venice, 17-18 October 2008)
- CDL-AD(2008)022 Joint Opinion on the Election Code of Moldova as of 10 April 2008 adopted by the Venice Commission at its 76th Plenary Session (Venice, 17-18 October 2008)
- CDL-AD(2008)023 Joint Opinion on the Election Code of the Republic of Armenia as amended up to December 2007 adopted by the Venice Commission at its 76th Plenary Session (Venice, 17-18 October 2008)
- CDL-AD(2008)024 Opinion on the issue of the immunity of persons involved in the electoral process in Armenia adopted by the Venice Commission at its 76th plenary session (Venice, 17-18 October 2008)
- CDL-AD(2008)025 Joint Opinion on the Amendments to the Law on the right of citizens to assemble peaceably, without weapons, to freely hold rallies and demonstrations of the Kyrgyz Republic by the Venice Commission and OSCE/ODIHR adopted by the Venice Commission At its 76th Plenary Session, (Venice, 17-18 October 2008)
- CDL-AD(2008)026 Report on the relationship between Freedom of Expression and Freedom of Religion: the issue of regulation and prosecution of Blasphemy, Religious Insult and Incitement to Religious Hatred adopted by the Venice Commission at its 76th Plenary Session (Venice, 17-18 October 2008)
- CDL-AD(2008)026add Annexe I Recueil des législations nationales européennes en matière de blasphème, injure religieuse et incitation à la haine religieuse

- CDL-AD(2008)026add2 Annexe II Analysis of the Domestic Law concerning Blasphemy, Religious Insult and Inciting Religious Hatred in Albania, Austria, Belgium, Denmark, France, Greece, Ireland, Netherlands, Poland, Romania, Turkey, United Kingdom on the basis of replies to a questionnaire
- CDL-AD(2008)027 Amicus Curiae Brief in the cases of Sejdic and Finci v. Bosnia and Herzegovina (Applications no. 27996/06 and 34836/06) pending before the European Court of Human Rights adopted by the Venice Commission at its 76th Plenary Session (Venice, 17-18 October 2008)
- CDL-AD(2008)028 Opinion on Draft Amendments to Article 23(5) of the Law on the Human Rights Defender of Armenia adopted by the Venice Commission at its 76th Plenary Session (Venice, 17-18 October 2008)
- CDL-AD(2008)029 Opinion on the Draft Laws amending and supplementing the Law on Constitutional Proceedings and the Law on the Constitutional Court of Kyrgyzstan adopted by the Venice Commission at its 76th Plenary Session (Venice, 17-18 October 2008)
- CDL-AD(2008)030 Opinion on the Draft Law on the Constitutional Court of Montenegro, adopted by the Venice Commission at its 76th Plenary Session (Venice, 17-18 October 2008)
- CDL-AD(2008)031 Second Report on Constitutional Issues raised by the ratification of the Rome Statute of the International Criminal Court - Supplement to the Report on constitutional issues raised by the ratification of the Rome Statute of the International Criminal Court (CDL-INF(2001)001) adopted by the Venice Commission at its 76th Plenary Session, (Venice, 17-18 October 2008)
- CDL-AD(2008)032 Joint Opinion on Freedom of Conscience and Religious Organisations in the Republic of Kyrgyzstan by the Venice Commission and OSCE/ODIHR Advisory Council on Freedom of Religion or Belief adopted by the Venice Commission at its 76th Plenary Session, (Venice, 17-18 October 2008)
- CDL-AD(2008)033 Opinion on the Amendments to the Constitution of the Republic of Albania (Adopted on 21 April 2008 by the Assembly of the Republic of Albania) Adopted by the Venice Commission at its 77th Plenary Session (Venice 12-13 December 2008)
- CDL-AD(2008)034 Opinion on the Draft Amendments to the Law on Political Parties of Bulgaria adopted by the Venice Commission at its 77th Plenary Session (Venice, 12-13 December 2008)
- CDL-AD(2008)035 Report on Legislative Initiative adopted by the Venice Commission at its 77th Plenary Session (Venice, 12-13 December 2008)
- CDL-AD(2008)035add Annex to the Report on Legislative Initiative - Excerpts from Constitutions of European Countries (CODICES 2007/02)
- CDL-AD(2008)036 Opinion on the issue of the re-appointment of the members of the State Election Commission of "the former Yugoslav Republic of Macedonia" adopted by the Venice Commission at its 77th Plenary Session (Venice, 12-13 December 2008)
- CDL-AD(2008)037 Comparative Report on thresholds and other features of electoral systems which bar parties from access to Parliament adopted by the Council for Democratic Elections at its 26th meeting (Venice, 18 October 2008) and the Venice Commission at its 77th Plenary Session (Venice, 12-13 December 2008)

- CDL-AD(2008)038 Opinion on the Constitutional Law on Court Juries of Kyrgyzstan adopted by the Venice Commission at its 77th Plenary Session (Venice, 12-13 December 2008)
- CDL-AD(2008)039 Opinion on the Draft Amendments to the Constitutional Law on the Status of Judges of Kyrgyzstan adopted by the Venice Commission at its 77th Plenary Session (Venice, 12-13 December 2008)
- CDL-AD(2008)040 Opinion on the Constitutional Law on bodies of Judicial self-regulation of Kyrgyzstan adopted by the Venice Commission at its 77th Plenary Session (Venice, 12-13 December 2008)
- CDL-AD(2008)041 Opinion on the Draft Amendments to the Constitutional Law on the Supreme Court and Local Courts of Kyrgyzstan adopted by the Venice Commission at its 77th Plenary Session (Venice, 12-13 December 2008)
- CDL-AD(2008)042 Opinion on the Draft Law on protection against discrimination of "the former Yugoslav Republic of Macedonia" adopted by the Venice Commission at its 77th Plenary Session (Venice, 12-13 December 2008)
- CDL-AD(2009)001 Joint Opinion on the Election Code of Georgia as revised up to July 2008 adopted by the Council for Democratic Elections at its 26th meeting (Venice, 18 October 2008) and by the Venice Commission at its 77th plenary session (Venice, 12-13 December 2008)
- CDL-AD(2009)002 Code of good practice in the field of Political Parties adopted by the Venice Commission at its 77th Plenary Session (Venice, 12-13 December 2008)