



**SCUOLA GRANDE DI S. GIOVANNI
EVANGELISTA**

Preesistente fabbrica gotica, ristrutturata
da Leonardo e da Matteo Cadorini alla fine
del 1480. Prezioso poliquadro del Trecento.
Importanti altipodi del Tardo Cinquecento e
del Seicento. Lapidario del sec. XV - XVIII
e sculture di Giandomenico Morlaiter



The Venice Commission

2009

Annual activity report



European Commission for Democracy through Law



Member states of the Venice Commission, 2010

Members – 57

Albania (14.10.1996)
Algeria (1.12.2007)
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)
Brazil (01.04.2009)
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 (1.05.2008)
Italy (10.05.1990)
Republic of Korea (1.06.2006)

Kyrgyzstan (1.01.2004)
Latvia (11.09.1995)
Liechtenstein (26.08.1991)
Lithuania (27.04.1994)
Luxembourg (10.05.1990)
Malta (10.05.1990)
Mexico (3.02.2010)
Moldova (25.06.1996)
Monaco (5.10.2004)
Montenegro (20.06.2006)
Morocco (1.06.2007)
Netherlands (1.08.1992)
Norway (10.05.1990)
Peru (11.02.2009)
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)
Tunisia (1.04.2010)
Turkey (10.05.1990)

Ukraine (3.02.1997)
United Kingdom (1.06.1999)

Associate member

Belarus (24.11.1994)

Observers – 7

Argentina (20.04.1995)
Canada (23.05.1991)
Holy See (13.01.1992)
Japan (18.06.1993)
Kazakhstan (30.04.1998)
United States (10.10.1991)
Uruguay (19.10.1995)

Participants – 4

European Commission
EU Committee of the Regions
OSCE/ODIHR
International Association of Constitutional Law (IACL)

Special co-operation status – 2

Palestinian National Authority
South Africa

**European Commission
for Democracy through Law**

The Council of Europe's Venice Commission

2009 annual activity report

Council of Europe, 2010

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**Address
by Mr Gianni
Buquicchio,
President
of the Venice
Commission**



Address by Mr Gianni Buquicchio, President of the Venice Commission

presenting its Annual Report of Activities for 2009 to the Committee of Ministers

Strasbourg, 27 May 2010

Mr Chairman, Ambassadors, ladies and gentlemen,

It is a great pleasure for me to be again in this familiar room in a different capacity. The Commission elected me as its President last December and I will do my best to continue the work started by my distinguished predecessors, Antonio La Pergola and Jan Helgesen.

This year is a very special year for the Venice Commission. In a few days, on 5 June, we will celebrate our 20th anniversary and I shall have the pleasure of seeing many of you again on this festive occasion.

Twenty years is a sufficient period to take stock of what we have achieved in order to reflect on the perspectives for the future. If you look at our Annual Report, you will notice that, last year, we adopted more than 50 opinions for specific countries, 10 texts of a general nature and organised 23 conferences, seminars and workshops.

We further developed all our main fields of activity: democratic institutions and human rights, elections, referendums and political parties, constitutional and ordinary justice and ombudspersons.

These impressive figures reflect the continuous increase in activities over the past 20 years and we have no reason to believe that our role might diminish in the future, although it is changing over time.

The new Secretary General has outlined a new vision for the Council of Europe as an organisation, which will be more impact oriented and more politically relevant as well as focused on the areas where the Organisation can

make a real difference. This reform seems indeed to be indispensable to make our Organisation fit for the future.

We in the Venice Commission have been trying already for a long time to orient our work in this direction. We therefore see the current reform as an opportunity to further improve the effectiveness of our work.

Our work is successful first of all due to the specific qualities of our Commission, its independence, its flexibility and its ability to react quickly. We are, however, fully conscious that the success of our work depends to a large extent on the fact that we are part of this Organisation and that we benefit from the support of your Committee, the Parliamentary Assembly and the Secretary General.

Being part of the Council of Europe not only defines the overall orientation for the advice we provide, it also provides the political context for our intervention.

Our close co-operation with other international organisations, in particular the European Union and the OSCE, also contributes to the effectiveness of our work.

Finally, we also benefited from financial support from individual donors and I would like to thank the representatives of Germany, Ireland, Italy, Luxembourg, Monaco, Norway and the European Union for the contributions made in 2009. Without these contributions we would not have been able to carry out all our activities.

If anything is constant in the Europe of today, it is change. Changes have taken place in all European states as well as in the European structures. The countries of central and eastern Europe, which have been our main partners from the very beginning, are changing even faster. The consti-

tutional and legal reforms which took place at the beginning of the 1990s have often proved to be insufficient, and new reforms have become necessary to respond to new challenges.

The Venice Commission has been ready to assist in these reforms and the form of our co-operation has evolved with the new challenges. While we have always tried to base our co-operation on dialogue and the sharing of experience and common European wisdom, this dialogue has become richer and more intense over time.

We are now increasingly asked to become involved by our member states at an early stage of legislative drafting. This means that our assistance is no longer focused on a single opinion, but our final opinions are preceded by a number of interim opinions and a constant exchange of views with the national authorities on how to further improve the text.

In this way, we are better able to understand the national situation, capable to better fine-tune our advice and become participants in a process of continuous refinement of legislative texts.

This type of co-operation seems particularly useful and satisfactory for both sides. As examples I refer to our co-operation with Armenia, with Bulgaria and with Georgia. In the electoral field, we already had the practice of coming back again and again to the electoral legislation of a specific country, taking into account the conclusions of the election observation missions.

Besides this more patient work of adapting legislation, there are still a number of big issues and crisis situations where an urgent intervention of our Commission is required. The most important such situation this year has certainly been the crisis in **Moldova**. We have tried to con-

tribute to a solution based on constructive dialogue and respect for the Constitution.

Your Committee, on 5 May, called on all political forces in **Moldova** “to do their utmost to address the political and institutional deadlock by engaging in a constructive dialogue, with a view to reaching a mutually acceptable agreement, as soon as possible, regarding the revision of Article 78 of the Constitution on the election of the President, in ongoing consultation with and taking into account the advice of the Venice Commission”.

Your decision very much reflects the spirit of our efforts and we are thankful for your very explicit support, as well as for the strong support we received from the European Union and from the OSCE.

At this very moment, the situation remains uncertain and not all local political parties have acted constructively at all stages. We still hope, however, that the solution finally adopted will be in line with the decision made by your Committee, based on a large consensus and fully in line with the Constitution.

The crisis in **Kyrgyzstan**, a member state of the Venice Commission, is even more acute and potentially dangerous. The new interim authorities are faced with the need to adopt a new Constitution as quickly as possible.

We have been able, not least thanks to our close co-operation with the European Union and the OSCE, to provide considerable assistance in drafting the new Constitution in a very short time frame. Although more time for this process would be needed, our assessment of the draft to be submitted to referendum is quite positive and we are pleased to see that the draft Constitution generally reflects Council of Europe values.

Bosnia and Herzegovina is not a country in an acute crisis, but a country which still does not have institutions that seem sustainable on their own, without the strong involvement of the International Community. While the Dayton Constitution put an end to the war and therefore deserves praise and respect, it is high time for it to be reformed.

The decision of the European Court of Human Rights in the case of *Sejdic and Finci* provides a welcome impetus for such reform. While it seems regrettably too late to adopt this reform before the forthcoming elections in October, it is essential that after these elections the Constitution be made compatible with the provisions of the European Convention on Human Rights, notably the prohibition on discrimination, and that a first step be made to make the institutions more functional. Your Committee has repeatedly called on Bosnia and Herzegovina to use the services of the Venice Commission when undertaking this reform and we stand ready to make our contribution.

The Constitution of **Ukraine** is far from being as dysfunctional as the Constitution of Bosnia and Herzegovina, but has shown its weaknesses, creating the risk of constant conflict between the State organs. In 2009, we were closely involved in various reform efforts.

Now, in 2010, the election of a new President provides an opportunity for a new start with the reforms and we would be pleased to contribute. Not only the Constitution, but also the electoral legislation and the judiciary require reform and President Yanukovich, whom I met recently, has already asked for our assistance in relation to the judicial reform.

As I said, change has taken place all over Europe, also in the West. Today, it is time to assess, reflect and possibly in-

troduce reforms. Some long-established democracies have approached the Commission and have shown interest in working with us.

We welcome this development. Last year, we examined a proposal for constitutional reform in **Luxembourg** and, following our involvement in the evaluation of the **Finnish Constitution**, we hope for a closer co-operation with the Nordic countries.

While we have not been formally asked for an opinion on the constitutional reform in Turkey, texts adopted by our Commission have been a consistent point of reference in the reform debate and were often used by the authorities to defend their proposals.

I think that this outline of our main activities and issues with which we are confronted makes it quite clear that we are not going to be running out of tasks in Europe. This is the reason why we are adopting a prudent approach to any further enlargement of the Commission. Enlargement so far has been beneficial and the countries which have already joined the Commission make a positive contribution. However, we cannot overburden the Commission and we encourage the accession only of countries which have shown a real and practical interest in our work.

For other countries, different methods of co-operation should be envisaged, through sister Commissions on other continents or through the World Conference on Constitutional Justice.

We will co-organise the second World Congress on Constitutional Justice in Brazil in January next year. This Congress provides a unique and cost-effective opportunity for promoting Council of Europe values on all continents and to contribute to the development of a global human rights case-law.

In this year of reform in the Council of Europe, I think it is appropriate for me to also present our vision of the place of our Commission within our Organisation. I am aware that hitherto, the reform is focusing on activities and not on structures and I think this is the right choice. Nevertheless, as part of the overall reform, the place of our Commission in the Council of Europe structures should also be considered.

We are, and are proud to be, an integral part of the Council of Europe and this fact gives us strength and legitimacy. The Commission is, however, a very peculiar body, unique in this Organisation. We do not neatly fit into any single thematic pillar.

Our activities promote all three core values of the Council of Europe: democracy, the rule of law and human rights. We provide legal assistance through co-operation with states, we contribute to standard setting, we feed legal analysis into political advice, we carry out fundamental work in the area of elections.

Indeed, the Venice Commission is not just a technical consultative body, it is a partner of the organs of the Council of Europe, a role already acknowledged in the Wise Persons' report of 1998. For these reasons, it would seem appropriate to us that our Secretariat be separated from any directorate, and be directly attached to the Secretary General.

We believe that this institutional independence would better suit our specific nature. Further, it would enhance our visibility, which would be beneficial for the Council of Europe as a whole. It would also acknowledge, allow me to say, the importance the Commission has acquired over the years, an importance generally recognised inside and outside the Organisation.

Mr Chairman, distinguished members of the Committee, Let me conclude by thanking you again for the support you have provided to our Commission. I am confident that we will show, by our work, that we continue to merit this support.

Thank you very much for your attention.

**Working
for democracy
through law**



The Venice Commission: an introduction

The European Commission for Democracy through Law, better known as the Venice Commission,¹ is a Council of Europe independent consultative body on issues of constitutional law, including the functioning of democratic institutions and fundamental rights, electoral law and constitutional justice. Its members are independent experts. Set up in 1990 under a partial agreement between 18 Council of Europe member states, it has subsequently played a decisive role in the adoption and implementation of constitutions in keeping with Europe's constitutional heritage.² The Commission holds four plenary sessions a year in Venice, working mainly in three fields: constitutional assistance, constitutional justice and election and referendum issues. In 2002, once all Council of Europe member states had joined, the Commission became an enlarged agreement of which non-European states could become full members. In 2009, it had 56 full members and 13 other entities formally associated with its work. It is financed by its member states on a proportional basis which follows the same criteria as 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.

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

2. On the concept of the constitutional heritage of Europe, see *inter alia* "The Constitutional Heritage of Europe", proceedings of the UniDem seminar organised jointly by the Commission and the Centre d'études et de recherches comparatives constitutionnelles et politiques (CERCOP), Montpellier, 22 and 23 November 1996, "Science and technique of democracy", No. 18.

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

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

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.

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.

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 assist-

ance 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. In addition, in 2009 the Venice Commission was invited to co-operate with countries of Central Asia in the framework of the Rule of Law initiative for Central Asia of the European Commission and to assist the authorities of Bolivia in the implementation of the Constitution.

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 Guantánamo Bay, on democratic control of security services and armed forces, on the relationship between freedom of expression and freedom of religion as well as the adoption of codes of good practice in electoral matters, on referendums and in the field of political parties.

These studies may, 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**) programme, the proceedings of which are published in the "**Science and technique of democracy**" series. The Commission also organises a legal

training for civil servants entitled **UniDem Campus** on topical issues of general interest.

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 some 70 countries (including some outside Europe), by the European Court of Human Rights, the Court of Justice of the European Communities and the Inter-American Court of Human Rights. Since 1996, the Commission has established **co-operation with a number of regional or language based groups of constitutional courts**, in particular the Conference of European Constitutional Courts, the Association of Constitutional Courts using the French Language, the Southern African Chief Justices' Forum, the Conference of Constitutional Control Organs of Countries of Young Democracy, 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 over a four months period. It also has an electronic counterpart, the **CODICES database**, which contains some 7 000 decisions rendered by over 95 participating courts together with constitutions and descriptions of many courts and the laws governing them.⁴ These publications have played a vital "cross-fertilisation" role in constitutional case-law.

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

One final area of activity in the constitutional justice sphere is the support provided by the Commission to constitutional and equivalent courts when these are subjected to pressure by other authorities of the state. The Commission has even, on several occasions, been able to help some courts threatened with dissolution to remain in existence. 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

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

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. The latter is asked increasingly to give an opinion on constitutional aspects of legislation relating to the courts. Frequently, it co-operates in this sphere with other Council of Europe departments, so that the constitutional law viewpoint is supplemented by other aspects. With its report on 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* briefs, present elements of comparative and international law, but contain no verdict on the possible unconstitutionality of a text, a decision which only the constitutional court itself can take. The Commission promotes relations between ombudspersons and constitutional courts with the aim of furthering human rights protection in member countries.

Elections and referendums which meet international standards are of the utmost importance in any democratic society. 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.

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

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

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

The Commission has drafted more than 80 opinions on **states' laws and practices relating to elections, referendums and political parties**, and these have had a significant impact on electoral legislation in the states concerned. Among the states which regularly co-operate with the Commission in the electoral sphere are Albania, Armenia, Azerbaijan, Georgia, Moldova, Serbia and Ukraine. The Commission has played a direct part in the drafting of electoral legislation, especially in Bosnia and Herzegovina.

The Council for Democratic Elections has developed **regular co-operation with election authorities in Europe and on other continents**. It organises annually the European Conference of Electoral Management Bodies, and is also in very close contact with other international organisations or bodies which work in the election field, such as

ACEEEO (Association of European Election Officials), IFES (International Foundation for Electoral Systems) and, in particular, the OSCE (Organisation for Security and Co-operation in Europe). Thus, in principle, opinions on electoral matters are drafted jointly with the OSCE/ODIHR, with which there is exemplary co-operation.

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

The Council for Democratic Elections has created the VOTA⁶ database containing, *inter alia*, member states' electoral legislation.

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

The Commission in 2009

Member states

New accessions

Two further accessions (Brazil and Peru) occurred in 2009. Mexico also requested membership (the decision is to be taken by the Committee of Ministers in 2010). With Chile, which had joined in 2005, the representation of the American continent has thus become significant.

Voluntary contributions

In 2009 the governments of Germany, Ireland, Italy, Luxembourg, Monaco and Norway supported the Commission's activities concerning the constitutional reform in Georgia, co-operation with the Southern African Chief

Justices Forum (SACJF) and the Union of Arab Constitutional Courts and Councils (UACCC), the implementation of the **European Union Rule of Law Initiative for Central Asia** as well as to the organisation of the UniDem (Universities for Democracy) Campus.

Main activities

2009 was an extremely productive year for the Venice Commission: over 50 opinions and 10 studies were adopted, two UniDem Seminars and 21 other seminars were organised, an active exchange took place on the Venice Forum (34 items posted) and three Constitutional Case-law Bulletins were published.

Democratic institutions and fundamental rights

Constitutional reform

Constitutional reforms are the core of the work of the Venice Commission, both because such reforms relate to the essential structures of a democratic state, and because it is clear that the Commission will only be asked to participate if it enjoys the trust and respect of the country concerned. In 2009 the Venice Commission was involved in constitutional reform efforts in Azerbaijan, Bosnia and Herzegovina (contributing to the reform draft submitted to political leaders by the EU and the US in October 2009), Georgia, Luxembourg and Ukraine and provided an *amicus curiae* brief to the Constitutional Court of Albania on the procedure for amending the Constitution. It also held initial consultations on the constitutional crisis which followed the April 2009 elections in Moldova.

Constitutional reforms are complex and lengthy processes, which are rarely completed within one year. Several Council of Europe countries are undertaking comprehensive reforms. The Venice Commission will continue in 2010 its assistance to the reform process in Bosnia and Herzegovina (where the judgment of the European Court of Human Rights in the case of *Sejdic and Finci*, in which the Venice Commission had submitted an *amicus curiae* brief in 2008 and which is largely based on several previous Venice Commission opinions, should give new impetus to reform), Georgia, Luxembourg, Moldova and Ukraine. In all these countries, new reform proposals are expected to reflect the earlier opinions of the Commission. In Azerbaijan, the Venice Commission will be further involved in the implementation of the reform already adopted.

The Commission discussed possible co-operation in the implementation of the new constitution with the Bolivian authorities upon the request of the European Commission.

Conflict settlement

The Commission maintained close contacts with the European Union on legal aspects of the status of Transnistria.

The Commission further tried to encourage dialogue and keep open the perspective for a change in the legal situation in Abkhazia and South Ossetia by suggesting to insert a clause of revision, after a certain lapse of time, into the "law on the occupied territories of Georgia". This suggestion was accepted by the Georgian authorities.

Functioning of the democratic institutions

Over the years, the opinions of the Venice Commission have become a standard of reference for states and international organisations.

In 2009, the Commission's early involvement in many legislative reforms allowed for fruitful co-operation with the countries: several interim opinions on early drafts were taken into consideration by the authorities in subsequent drafts. 40 opinions were adopted by the Commission on legislative reforms. Several of these opinions appear particularly important in the light of their impact on the relevant national situation: the successful amendment of the criminal code of Armenia (2 opinions), contributing to the solution of a national crisis; the reform of the civil code of Armenia concerning freedom of expression (3 opinions), carried out thanks to fruitful co-operation with the authorities; the law on occupied territories of Georgia (3 opinions), where the VC obtained crucial improvements.

The Commission also adopted two important studies. The report on constitutional amendment procedures is a comprehensive document of high scientific value and provides practically important guidance especially for new democracies. The report on private military firms examines the feasibility of Council of Europe action in the field. Most of the general documents adopted by the Venice Commission are linked to requests by PACE, which should provide follow-up.

Respect for human rights and the rule of law

The Venice Commission has worked with its member states on human rights-related legislation for many years, and has developed considerable experience in adapting the European and universal standards to the particular legal context of each country. Its opinions have generally been followed by the authorities, and have thus had a positive impact in the countries concerned.

In 2009 the Venice Commission worked on laws pertaining to human rights in Armenia, Bulgaria, Georgia, Montenegro and Ukraine.

Constitutional and ordinary justice, ombudspersons

Strengthening constitutional justice

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* (3 issues in 2009) and the CODICES database (website and three CD-ROMs in 2009). The Commission's Venice Forum dealt with 34 requests from the courts on such diverse topics as public gatherings, contesting paternity, the

criminal liability of parents for their children's actions and illustration (see below, *Transnational activities*, page 60).

The Commission adopted opinions on the laws on the Constitutional Court of Latvia and the High Constitutional Court of the Palestinian National Authority and opinions on amendments to the Constitutions of Azerbaijan, Georgia, Latvia, Luxembourg and Ukraine. The Commission adopted 4 *amicus curiae* briefs for Albania, Georgia (2) and Kazakhstan.

In 2009 constitutional justice conferences and seminars were held in Algeria, Armenia, Botswana, Estonia, Georgia (2), Latvia, Moldova, Montenegro (2), with the Palestinian National Authority, in Romania, Russia, Hungary, Serbia, Tajikistan and Turkey (see below, *Country-specific activities*, page 47).

Ordinary judiciary

The need to ensure the independence of the judiciary, as well as the proper functioning of the judicial system, plays an ever-increasing role in the Commission's activities. Opinions on these issues were adopted for Azerbaijan and Serbia (see below III.1 *Country-specific activities*, page 47, and *Transnational activities – Ordinary judiciary*, page 63).

It adopted opinions on the draft law on the judiciary of Bulgaria, the law on the ombudsman of Montenegro and the draft law on the public prosecutor of Ukraine.

Ombudspersons

The Commission continued its practice of providing opinions upon request by ombudspersons. This year, there was one opinion for Montenegro on the draft amendments to the Law on the protector of human rights and freedoms, which improved the institution of the protector

of human rights in that country, notably the specialisation of the Protector's deputies, minority representation in their appointment, the right of the Protector to resume his or her previous function and the budgetary procedure.

Looking beyond Europe

In addition to its close co-operation with European constitutional courts and equivalent bodies, the Commission has intensified its regional approach over the past few years in the field of constitutional justice by co-operating with associations of constitutional and supreme courts and councils outside Europe (see below, *Regional co-operation*, page 61). Towards that end, the 1st World Conference on Constitutional Justice on the topic "Influential Constitutional Justice – its influence on society and on developing a global jurisprudence on human rights" was held on 23 and 24 January 2009 in Cape Town, South Africa (see below, *World Conference on Constitutional Justice*, page 62).

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 Albania, Georgia, "the former Yugoslav Republic of Macedonia" and Ukraine (concerning both the parliamentary and the presidential elections).

The Commission also adopted a number of texts defining the European electoral heritage, notably, several documents on the international status of election observers (including guidelines) as well as the reports on the cancellation of election results, on the impact of electoral

systems on women's representation in politics and on the imperative mandate and similar practices.

Furthermore, the Venice Commission organised in the Netherlands the Sixth European Conference of Electoral Management Bodies. It also organised a UniDem seminar on supervising electoral processes in the framework of the Spanish presidency of the Committee of Ministers and a Conference in Kiev on "the quality of elections: making democracy strong". In addition, the Commission organised a workshop on the organisation and supervision of elections in "the former Yugoslav Republic of Macedonia".

The Commission provided legal assistance to four election observation missions of the Parliamentary Assembly. It developed a capacity building programme for the Electoral Commission of Moldova.

Political parties

The Commission adopted the explanatory report to the code of good practice in the field of political parties as well as an opinion on the constitutional and legal provisions relative to the prohibition of political parties in Turkey and opinions on the laws or draft laws on political parties in Georgia and Kyrgyzstan. The Commission organised a seminar on the functioning of political parties during the election period in Moldova.

In 2009 the OSCE/ODIHR invited the Commission to cooperate in drafting Guidelines on legislation on political parties. Representatives of the Venice Commission participated in seminars on financing of political parties, political parties and elections, prohibition of political parties as well as in meetings of experts responsible for the elaboration of the text of the guidelines.

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



Country-specific activities

Albania

In 2009 the Commission prepared and adopted two *amicus curiae* opinions at the request of the Constitutional Court of Albania. Both opinions relate to issues strongly debated in the country.

Amicus curiae brief on the admissibility of a referendum to abrogate constitutional amendments

In the spring of 2008 the Albanian Parliament adopted a package of constitutional amendments, based on consensus between the two largest parties, relating to the electoral system (i.e. election of the Assembly and the President) and the mandate of the Prosecutor general. Following a request by the Monitoring Committee of the Parliamentary Assembly later in the year, the Commission assessed the adopted amendments. The Commission considered that, while the majority of the amendments was generally in line with European standards, the same could not be said for the changes regarding the vote of confidence and the Prosecutor general (cf. CDL-AD (2008) 033).

Albanian smaller parties, including those representing national minorities, contested the adopted changes, claiming that they would effectively bar them from parliament. They also argued that changes to the method for electing the President and to the mandate of the Prosecutor general, had not been sufficiently discussed. Further to the demand from a group of Albanian citizens for a referendum on the amendments to the constitution, the Con-

stitutional Court of Albania was asked to say whether or not such a referendum is constitutionally admissible. The Constitutional Court referred the issue to the Venice Commission, by asking it to give its opinion on two questions: whether the provision of the Constitution providing for the possibility to launch a referendum to abrogate an adopted law was also applicable to constitutional amendments and whether the relevant constitutional provisions were in harmony with the constitutional principle of the sovereignty of the people.

In its *amicus curiae* brief (CDL-AD (2009) 007) adopted at its March 2009 session the Commission recalled that the Albanian Constitution contained detailed provisions on the procedure for adopting constitutional amendments, including the possibility for a small minority (one-fifth) of parliament to request the holding of a referendum. In the Commission's opinion, it was clear that the Constitution did not envisage that, in addition, there should also be the possibility to hold a referendum on the basis of the provisions applicable to abrogating laws. In a constitutional democracy also the people had to exercise their powers in accordance with the provisions of the Constitution. There was therefore no reason to doubt the compatibility of the provisions on the referendum and on constitutional amendments with the principle of popular sovereignty.

1. The full text of all adopted opinions can be found on the website <http://www.venice.coe.int/>.

Amicus curiae brief on the “Law on the cleanliness of the figure of high functionaries of the public administration and elected officials of Albania”

In December 2008, despite strong criticism from the opposition, the Albanian Parliament adopted a new Law “on the cleanliness of the figure of high functionaries of the public administration and elected officials of Albania” (the Lustration Law). Prior to this law, Albania had enacted other vetting laws, which however had not been fully implemented on account of negative judgments of the constitutional court and of changes in the government. The previous law had expired in 2002. The 2008 law had been adopted by the new majority, but had been brought before the Constitutional Court, which had suspended it.

A delegation of the Venice Commission discussed in detail these matters with the Albanian authorities in the course of a visit to Tirana in the spring.

The law, which was an ordinary one, aimed at the termination of the mandate of the holders of important state offices such as the President, members of parliament, judges of the Supreme Court and of the Constitutional Court and ministers, as well as other civil servants. It provided that the persons to be lustrated would be identified by an administrative authority *ad hoc* on the basis of their formal involvement with the communist regime; lustration would entail the final and permanent loss of functions or the impossibility to accede to public functions. The same procedure was applicable to all the different categories of persons to be lustrated, including the state institutions which were regulated at the level of the constitution and of organic laws.

In early 2009, after suspending the law, the Constitutional Court of Albania requested the Venice Commission to give an *amicus curiae* opinion on its conformity with the

Constitution of Albania. In the Commission’s opinion (CDL-AD (2009) 044), the lustration law, which had been adopted by an ordinary majority and not by three-fifths like organic laws, could not change the Constitution. The mandate of the most important state institutions was protected by the Constitution, which provided a special procedure, more protective than the one foreseen in the lustration law. In addition, the termination of the mandate could only be the effect of an individualised examination of the actual co-operation of the person in question with the communist regime and ought not to have been permanent. The lustration law therefore appeared to be flawed.

The question of the possible conflict of interest of the judges of the Constitutional Court had arisen, as they are directly concerned by the law on the one hand, and have to decide on its constitutionality, on the other hand. In this respect, the Commission observed that if the judges refrained from deciding, the constitutional court would be paralysed, which could not be allowed to happen in a democratic society. In the Commission’s opinion, the lustration law ought to have envisaged a mechanism of substitution of the abstaining judges: as it had not done so, the judges of the Constitutional Court had to rule on the constitutionality of the lustration law.

The Commission stressed that it was not opposed to lustration as such; it had been a necessity in many new democracies including Albania. Lustration could be legitimately carried out by Albania, even almost twenty years after the end of the communist regime if considered necessary. However, this could only be done on the condition that the constitution and the principle of the rule of law are respected. In the Commission’s opinion, this was not the case with the lustration law under consideration.

Armenia

The Venice Commission and Armenia have a long history of co-operation on the main constitutional and legal issues which have arisen in that country.

In 2009 Armenia was faced in particular with two important issues: the determination of the charges pending against the February 2009 demonstrators – an issue which related to the amendment of the criminal code – and the question of compensation of victims of defamation by the press – an issue related to the amendment of the civil code. The Venice Commission was associated to this exercise, and produced interim opinions followed by final opinions. In both cases, the opinions were followed by the authorities and the relevant provisions eventually amended.

In 2009 the Commission also assessed the Draft Law on the freedom to receive information and the related Draft law on making amendments to the Code of Administrative Violations, as well as the Draft law on making amendments and addenda to the law on the freedom of conscience and on religious organisations of Armenia, and the related draft law amending the criminal code.

Draft amendments to the Criminal Code of Armenia

In 2007, at the request of the Human Rights Defender of Armenia, the Commission had assessed Article 301 of the criminal code of Armenia in the light of the applicable European standards (notably Article 10 of the European Convention on Human Rights) and had concluded that that provision did not appear to be incompatible with the ECHR “provided that it is properly interpreted and used” (cf. CDL-AD (2007) 043).

In early 2008 large demonstrations took place in Armenia against the results of the presidential elections. Following

violent clashes that had occurred between the demonstrators and the police, the President declared a state of emergency, during which freedom of assembly was suspended. The law on rallies was amended in an unduly restrictive manner, but was subsequently brought back in line with European standards with the assistance of the Venice Commission. Further, draft amendments to the Criminal Code were prepared concerning Article 225 which created several offences related to “mass disorder” and Article 301 which made criminal public calls to commit crimes against the foundation of the constitutional order and against national security. Upon a request by the Armenian National Assembly, the Commission assessed these amendments. It took the view that the proposed amendments were overbroad and open to abuse, and recommended not adopting them (cf. CDL-AD (2008) 017).

Later in 2008, 28 persons were charged under Article 300, including seven opposition activists, whose cases had subsequently been brought before the court and who were considered by the authorities to be the “ring-leaders” of the events of 1 and 2 March. In total 79 persons had been charged under Article 225, 19 of them under paragraph 3, including the above-mentioned 7.

In response to the Parliamentary Assembly’s Resolutions 1609 (2008) and 1620 (2008), Armenia committed itself to further amending Articles 225 and 300 of the Criminal Code with a view to making them less open to abuse. To the extent that these amendments rendered the provisions in question more favourable to the accused, once they entered into force they would apply retrospectively to the charges against the seven opposition activists by virtue of Articles 22 and 42 of the Armenian Constitution.

The Armenian authorities submitted the draft amendments to the Commission and asked it to assess them, and

explain the extent to which they would apply retroactively. A Commission delegation met with the Armenian authorities in Tbilisi, in the course of another country-visit, and the issue was discussed extensively. Meetings with the Armenian authorities were also held at the secretariat level in Strasbourg.

In the Commission's opinion (CDL-AD (2009) 009), the new provisions represented an improvement in terms of clarity and were thus likely to be applied retroactively, i.e. to proceedings which were still pending (but would not affect irrevocable judgments). The opinion pointed out that the adoption of the amendments under consideration (including those proposed to Article 225 §§ 1, 2 and 4) would, however, not have the automatic effect that the charges based on the amended provisions would have to be dropped, provided that the acts attributed to the accused be considered as a crime both by the previous and the new law. It would be up to the public prosecutor to maintain or not the charges and, if charges were maintained, to the judge to acquit or convict the accused, on the basis of the facts and of the concrete evidence which existed against them.

Draft law amending the Civil Code of Armenia

The Venice Commission also assisted the Armenian authorities, at their request, in the preparation of amendments to Article 19 of the civil code relating to the Protection of Honour, Dignity and Business Reputation. Three subsequent versions of these amendments were assessed. This matter was discussed extensively in the course of two meetings between the Armenian authorities and the secretariat, in Strasbourg and Yerevan respectively.

The intended purpose of the draft amendments was to move towards decriminalisation of the offences of libel (Article 135 of the Penal Code) and insult (Article 136 of the Penal Code) by ensuring stronger protection of the right to honour, dignity and business reputation in the Civil Code. In its interim opinion (CDL-AD (2009) 037), the Commission welcomed this shift in the legislation of the Republic of Armenia from criminal to civil law but stressed the need for the legislator to be careful to avoid both duplications and lacunas. The approach followed in the draft amendment under consideration left insufficient room for flexible solutions, especially on the part of the courts, in that, in particular, it took away every possible discretion on their part as to whether or not to award damages, and in what amount. The Commission underlined that the law itself ought to have been conducive to a fair balance between the freedom of expression of the author and the honour, dignity and reputation of the person affected. A balance had to be struck, taking into account the need to avoid hindering open debates on matters of public interest, and solutions had to be based on the specific circumstances of each individual case. This required less rigid provisions, more sensitive to the value of freedom of expression in a democratic society.

Further to the adoption of the first interim opinion, the Commission's representatives and the Armenian authorities remained in close contact, and the Commission was provided with additional information on the legal context. Several improvements were made to the draft amendments in order to take into account the concerns raised by the Commission.

The second interim opinion of the Commission (CDL-AD (2009) 47) welcomed the improved draft amendments and the good progress achieved, but called for some fur-

ther clarifications. In December 2009, the final opinion of the Commission (CDL-AD (2009) 056) noted that several doubts and misunderstandings relating to the legal context of the amendment had been dispelled. The continuous and fruitful co-operation between the Commission and the Armenian authorities brought revised amendments even closer to the standards in the field, although some improvement was still recommended.

Draft law on freedom to receive information and on Draft law on making amendments to the Code of Administrative Violations

In 2003, under the pressure of civil society organisations, the National Assembly of the Republic of Armenia adopted the Law on Freedom of Information regulating public relationships in the area of access to official and other information of public value. While this law was perceived as an important step towards promoting citizens' rights to search and receive information and towards the transparency of the government, in the opinion of international experts it lacked clarity and contained several shortcomings.

In 2009 the new Draft Law on freedom to receive information (Draft law on FRI), which intended to replace the Law currently in force, and the related law on making amendments to the Code of Administrative Violations were submitted to the Commission for assessment by the Armenian authorities.

In its opinion (CDL-AD (2009) 016) adopted at its March 2009 session, the Commission recalled that on 27 November 2008 the Committee of Ministers of the Council of Europe had adopted the Convention on Access to Official Documents, which represented the most advanced document in this area and for this reason had been taken as the

yardstick for assessing the draft laws under consideration, even though it was not yet a binding instrument.

In the Commission's opinion, the Draft law on FRI complied in several respects with the general principles codified in the Convention on Access to Official Documents. It nonetheless raised certain issues. In particular, the law failed to set out a harm test or public-interest test in respect of restrictions to the right of access to information and provided for the release of information concerning notably the employees' private sphere which could infringe the European Convention on Human Rights. The opinion contained a list of recommendations for improving the law.

As for the proposed amendment to the Code of Administrative Violations, the Commission considered that it was far too general and could cover a number of actions and omissions, such as not releasing information at all on grounds of misinterpreting an exemption, delaying past the time limits to release information or not publishing information in accordance with Article 6 of the FRI.

Draft law on making amendments and addenda to the law on the freedom of conscience and on religious organisations of Armenia and on the draft law amending the criminal code of Armenia

The 1991 "Law of the Republic of Armenia on the Freedom of Conscience and on Religious Organisations" (CDL (2009) 065), currently in force, had been amended once in 1997; among other things, the number of adult members required to qualify for registration was raised from 50 to 200. In 2008, the Armenian parliament prepared draft amendments to the law on religious organisations in Armenia and submitted them to the

Commission's review, together with draft amendments to Article 162 of the Criminal code.

The Venice Commission, in co-operation with the Directorate General of Human Rights and Legal Affairs of the Council of Europe and the Advisory Council on Freedom of Religion of OSCE/ODIHR, prepared an assessment of these draft laws (CDL-AD (2009) 036). A delegation of the Venice Commission discussed these matters with the competent Armenian authorities in Yerevan in the spring of 2009.

In the Commission's view, the draft amendments represented a significant step forward to improve the precision and the range of human rights guarantees as required by international commitments. At the same time, however, they raised several concerns and would require redrafting. In particular, the draft law needed to make clear that it was possible for a religious group to practice religion collectively without the need to register as a religious association. It was planned to raise the minimum number of members in order to register from 200 to 500: this appeared unjustified and problematic as following the entry into force of the amendments, existing religious associations would need to re-register, and some of them might not reach this new, higher minimum number. The draft law also penalised proselytism without drawing a distinction between a proper and an improper one, which was required by European standards.

The Commission also considered that the first paragraph of the proposed new Article 162 of the Criminal code was unduly vague to the extent that it rendered punishable "encroachments on other rights of individuals". The Commission therefore recommended that these provisions be redrafted to specify these "other rights".

The opinion further recommended to acknowledge that Art 162 of the Criminal Code (as amended) should not permit the imposition of sanctions on a religious organisation such as the Jehovah's Witnesses for stating that its members should refuse to undertake military or appropriate alternative civil service, as this teaching involves the promotion of a central precept of the beliefs of this organisation.

Azerbaijan

In 2009 the Venice Commission assessed, at the request of the Parliamentary Assembly, a set of important constitutional amendments, which were subsequently submitted to referendum and approved. Following their entry into force, by decree the President of Azerbaijan provided that all the relevant implementing laws be prepared with the assistance of the Venice Commission.

Draft amendments to the Constitution of the Republic of Azerbaijan

On 18 December 2008 the Azerbaijani Parliament adopted the referendum proposal to amend the Constitution, notably by removing the two-term limit to the presidential mandate. The leaders of the major opposition parties and human rights activists appealed to the Constitutional Court in order for it to stop the proposed referendum. Despite the protests, on 24 December the Constitutional Court approved the draft act on the referendum. The approval was followed by a parliamentary decision on 26 December to conduct the referendum on 18 March 2009. In late January 2009, the Secretary General of the Council of Europe and the Monitoring Committee of the Parliamentary Assembly requested the opinion of the Venice Commission on these amendments.

The draft constitutional amendments combined a limited number of important reforms, significantly affecting the overall distribution of powers between the branches of state power, with some modest adjustments. The Commission's opinion (CDL-AD (2009) 010) focused on the most significant aspects of the reform, notably those raising concerns.

The main draft amendment carried the proposal to abolish the hitherto existing two-term limitation on the presidential mandate. The Commission pointed out that according to a comparative survey undertaken, in most states with an elected president the constitution imposed a limitation on the successive terms a president may serve. The Commission also recalled its previous opinion on Kyrgyzstan, where it pointed out that in a presidential or semi-presidential system where the powers of the president are almost unrestricted, a constitutional provision providing that the president may be re-elected only once may be the only effective check on presidential powers. Consistently with this trend, as Azerbaijan is a country where the President concentrates extensive powers in his hands, the existing constitution provided for a two-term limit on the presidential mandate. In the Commission's opinion, the removal of such limitation represented a serious set-back on Azerbaijan's road to a consolidated democracy.

Another significant change related to the extension of the term of office of the Milli Majlis and the President, in case elections could not be held due to military operations under a state of war and as long as these military operations had not come to an end. It was positive that the proposed amendment included a guarantee against the arbitrary use of the extension of the term of office of the Milli Majlis and President by making it dependent on a decision of the

Constitutional Court following a request by the Central Election Commission. Despite these positive elements, the draft amendment did not appear to be sufficiently precise.

The draft amendments also included changes to the provisions dealing with basic rights and liberties. In particular, the draft amendment to the Right of Personal Immunity raised some concerns lest it restricted in a non-proportional manner the freedom of expression and information of journalists and the media in general.

The proposals for amendment to Article 146 on local self-government also raised concern, notably regarding the extent to which the state will exercise control over the municipalities.

In its conclusions the Commission acknowledged that the adoption of appropriate legislation could alleviate some of the concerns expressed in the opinion. It stressed however that a more thorough constitutional reform remained necessary to reach a better distribution of powers between the branches of state power in Azerbaijan.

Draft Law on the status of municipalities

The first law implementing the constitution which was submitted to the assessment of the Venice Commission was the Draft Law on the status of municipalities, which aimed at implementing the new Article 146 of the Constitution on local self-government.

In its opinion on this draft law (CDL-AD (2009) 049) the Commission recalled that Article 146, the only constitutional provision on local self-government, was expected to open the way to a broad legislative reform in this field. The draft Law under consideration, instead, was very limited.

While the relevant constitutional provision allowed for an excessively broad state control on the authorities (see above, opinion on the draft constitutional amendments), the implementing law could have limited such control, containing it within acceptable limits. Instead, the Commission noted that unspecified “supervisory authorities” were given a broad authority to apply sanctions, including the dissolution of a municipal council, without a clear relationship of proportionality between the sanction and the gravity of the irregularity. The Commission further noted with concern the impossibility for the municipal council in question to participate in this procedure; the unclear provision on the suspension of the mandate, which appeared to conflict with already existing provisions; the possibility of merging or dividing municipalities, which conflicted with the law in force.

Bosnia and Herzegovina

Constitutional reform

The Commission was informally involved in the drafting of the proposals for constitutional reform, submitted to leaders of political parties by the European Union and the United States in Butmir in October 2009. These proposals, unfortunately, were not accepted by a majority of party leaders and the reform process remained blocked. It is hoped that it will be possible to move forward following the judgment of the European Court of Human Rights in the case of *Sejdic and Finci v. Bosnia and Herzegovina* (see the section *European Court of Human Rights*, page 80). This judgment can only be implemented if the Constitution is revised.

Bulgaria

Concept paper for a new law on statutory instruments of Bulgaria and Draft Law on Normative Acts

In September 2008 Mr Petkov, Permanent Representative of Bulgaria to the Council of Europe, requested the Venice Commission’s opinion on the draft concept paper for a new law on statutory instruments. This concept paper resulted in a draft Law on Normative Acts, which was also subsequently submitted to the Commission for assessment.

A general concept paper is a well-established tradition in the Bulgarian legal system. A concept paper on statutory instruments had already been drafted prior to the passing in 1973 of the law on statutory instruments (the LSI), currently in force. Moreover, the drafting of a concept paper was foreseen in the action plan “for implementing the benchmarks in the areas of judicial reform and the fight against corruption and organised crime” undertaken by Bulgaria in relation to its accession to the European Union.

In its opinion on the concept paper for a law on statutory instruments (CDL-AD (2009) 018), the Commission noted that from a legal drafting point of view, such an approach was of clear practical benefit. The LSI could help give greater weight to the rules governing the drafting of legislation, provide a clearer overview of these rules and ensure greater consistency. As such, it was a significant step forward to improve the quality of Bulgarian legislation as a whole. The Commission nonetheless made a number of recommendations, among others: to make explicit provision for the development of aids; to make a clearer distinction between the preparation of documents relating to legislative policy and the stage leading to the drawing up

and technical and legal verification of a draft law; to ensure that the text of the future law contains exclusively provisions of a purely statutory nature; to adopt in a transparent and public way the positions decided upon following the public consultation and to consider the possibility of a written report on their impact on the draft law.

A draft law on normative acts, based on the concept paper, was subsequently prepared taking into account the Commission's Opinion on the concept paper. In its assessment on this draft law (CDL-AD (2009) 053), the Commission congratulated the Bulgarian authorities on the good work, in particular for understanding and promoting the principle that good legislation helps implement the rule of law and legal certainty, and for listing all the possible sources of law under the Bulgarian Constitution. As concerned European legislation, the Opinion recommended that the Law focus on its internal preparation and address Parliament as well, to the extent that despite being free in respect of the content, it had to respect the drafting rules.

Draft law on meetings, rallies and manifestations

In March 2009 the Bulgarian authorities sought the Venice Commission's assessment of the Draft Law on meetings, rallies and manifestations (the Draft law). This assessment was largely based on the OSCE/ODHIR-Venice Commission Guidelines on freedom of assembly.

In its opinion on this draft Law (CDL-AD (2009) 035) the Commission and ODIHR welcomed the draft as it clearly articulated three fundamental principles: the presumption in favour of holding assemblies, the state's duty to protect peaceful assembly and proportionality, in conformity with European and international standards. The draft law nevertheless presented certain shortcomings, notably in that it sought to regulate the exercise of the

freedom of assembly in considerable detail. In conclusion, the opinion gave a number of recommendations for improvement, and stressed that adequate awareness-raising and training for the authorities in the law implementation were essential in order to avoid an overly restrictive reading of the law and to ensure that the freedom of assembly be guaranteed in practice.

Georgia

In 2009, the co-operation between Georgia and the Venice Commission was extremely intense and touched upon crucial issues such as two sets of constitutional amendments: while the first was passed, the second was rendered obsolete by the launching of a thorough process of constitutional reform. The Commission was immediately asked by the Chairman of the newly-formed Constitutional Commission, Mr Avtandil Demetrashvili, to assist in the preparation of the new constitution. This process has advanced at a rather slow pace, and is to be pursued in 2010.

The Commission also assessed the law on occupied territories and the amendments to the law on demonstrations, and provided an amicus curiae brief on an issue of protection of the right to respect for private life of television viewers.

Four constitutional laws amending the Constitution of Georgia

In 2009, the Georgian Parliament adopted four constitutional laws amending the Constitution. The amendments entailed: the reduction in the number of members of Parliament required to form a parliamentary faction; the automatic removal of the Government following the inauguration of the President or the election of a new Par-

liament; the strengthening of the guarantees for private property; and the transfer of the responsibility for prosecution to the Minister of Justice. The Venice Commission assessed these laws at the request of the First Deputy Speaker of the Parliament of Georgia, Mr Mikheil Machiavariani. A delegation of the Commission met with the Georgian authorities in order to discuss these matters in the course of a visit to Tbilisi in February 2009.

As stated in the Commission's opinion adopted at its March 2009 session (CDL-AD (2009) 017rev), the reduction of the number of deputies for forming a parliamentary faction was welcome, and so were the increased powers of parliament. The constitutional amendments concerning the protection of property were also considered positive.

As regards the crucial issue of the public prosecution service reform, the Commission based its assessment on Committee of Ministers' Recommendation Rec (2000) 19 on the role of public prosecution in the criminal justice system. According to the constitutional amendments, the Public Prosecution service was nowadays within the Ministry of Justice. It was a very hierarchical system, with the Minister of Justice having broad powers, including the power to conduct him- or herself the prosecution in high-profile cases. The opinion pointed out that, under Council of Europe standards, a system under which the prosecution is part of, or subordinate to, the executive power was not in itself unacceptable. The transfer of the prosecution service to the executive needed however to be accompanied by sufficient and appropriate constitutional guarantees for the independence of the prosecutors: such guarantees were missing in the Georgian Constitution. As the Constitution referred to the Ministry of Justice's role in

the prosecution service, it was also necessary that it refer to the independence of the Ministry in carrying out its prosecution-related functions and to the independence of the prosecution service at the level of specific cases. Alternatively, if the Ministry was to have the power to give instructions, safeguards needed to be spelled out. Further, it was essential that the legislation on the prosecution service define clearly the role of the Ministry of Justice with regard to the prosecution service, and in particular its role at the level of the individual case, in conformity with the relevant European standards.

The Commission concluded that the appropriateness of the Minister of Justice acting as prosecutor in relation to high office holders ought to have been reconsidered. If the Minister was to retain such a role, there was a need to ensure transparency in relation both to decisions to prosecute and decisions not to prosecute, and the possibility for an independent review of such decisions needed to be considered.

Draft constitutional law on the amendments to the Constitution of Georgia

Later on in 2009 the Venice Commission was also requested, by Mr Machiavariani, to review a new draft constitutional law on amendments to the Constitution. A Constitutional Commission was however subsequently set up in Georgia with the task of preparing a systematic revision of the Constitution, which rendered the draft amendments in question obsolete. The Commission considered that the issues raised by them were however very important, and their assessment remained of interest for the current constitutional reform. The Commission's opinion on this matter (CDL-AD (2009) 030) was adopted at its June 2009 session.

The draft amendments addressed two main issues. The first concerned the limitation of the President's power to dissolve the parliament: after a first dissolution, it would have been necessary for the President to submit the issue of dissolution to a referendum, and, in case of failure, he would have to resign. The Commission was of the opinion that, while the aim was certainly to be approved, it would have been more appropriate to restrict the President's dissolution power either for a certain period of time after each dissolution, or through listing in the constitution the mandatory cases of dissolution. In addition, the Commission took the view that a referendum could only address questions of principle which were to lead, in the long run, to constitutional or legislative amendments, and not, as in this proposed case, questions of institutional conflict. The second issue was the possibility for the parliamentary minority to express a motion of no confidence in the government. The opinion welcomed this proposal but considered that it was necessary to provide a definition of minority.

Law on occupied territories of Georgia

In its Resolutions 1633 (2008) on "The consequences of war between Georgia and Russia" and 1647 (2009) on "The implementation of Resolution 1633 (2008)", the Parliamentary Assembly of the Council of Europe expressed concern over the recently adopted Law on occupied territories of Georgia to the extent that such law could have resulted in restricting access and the delivery of humanitarian aid to all areas by humanitarian actors and thus not be in line with, or even violate, relevant international law.

Further to a request by the Committee on the Honouring of Obligations and Commitments of the Parliamentary Assembly the Commission gave its opinion on this law.

As stated in its first opinion on the law on occupied territories (CDL-AD (2009) 015), the question of the legal status of South Ossetia (Georgia) and Abkhazia (Georgia) was not the subject of the Commission's assessment.

In the Commission's view, the law on occupied territories risked, in the first place, adversely affecting the conditions of the population of the two regions. This is because, among others, the law criminalised irregular access to these two regions (that is, access from elsewhere than the two officially designated entry points) by foreigners, Russian citizens and citizens living either in Abkhazia (Georgia) or in South Ossetia (Georgia) and having acquired Russian citizenship. The lack of an explicit exclusion of humanitarian aid and no explicit exception for emergency situations was problematic in the light of the rule of customary international law that the well-being of the population in occupied areas has to be a basic concern of those involved in a conflict and of Security Council Resolution 1866 (2009). Another issue concerned the annulment of real estate transactions, which, to the extent that it was made retroactively applicable, could infringe the right to enjoyment of acquired property rights, and was at any rate contrary to the principle of non retroactivity of criminal law.

After the adoption of the this opinion, the Commission engaged in an intense and fruitful co-operation with the Georgian authorities, which resulted in a set of amendments to the law prepared and revised along the lines of the Commission's opinions adopted in March and October 2009 respectively. The latest version of the amend-

ments was considered by the Commission in its final opinion adopted in December 2009.

In its first interim opinion on draft amendments and annexes to the law on occupied territories (CDL-AD (2009) 046), the Commission welcomed that the criminal liability for irregular entry into the occupied territories had been narrowed down, humanitarian aid was now possible, inheritance rights had been improved. The Commission however noted that the exception for criminal liability was too narrow, to the extent that only “necessary” humanitarian aid “in emergency situations” was exempted from the need for an authorisation. The criminalisation of economic activities remained retroactive.

The final opinion on the further set of amendments to the law on occupied territories (CDL-AD (2009) 051) welcomed the inclusion of “confidence-building measures” among the reasons justifying unhindered access to the occupied territories, the abolition of the restriction on inheritance rights, and the possibility of revising the Law in two years’ time, as previously recommended by the Commission. Certain issues remained unsolved, and one in particular – the fact that humanitarian aid would be unhindered, but when qualified as “emergency” – deserved attention. The Commission indeed had recommended removing this qualification, as being redundant and carrying the risk of unduly restrictive interpretation. It noted, however, that a partial improvement had been made and the authorities had given assurances that the formula would not be interpreted in contradiction with Geneva Convention IV. Special attention would need to be given to the implementation of the Law, which would have to be adequately monitored.

The Law on assemblies and demonstrations

In summer 2009 the Georgian parliament passed a set of amendments to the law on assembly and manifestations, and subsequently asked the Commission to assess them. The amendments were analysed by two rapporteurs (CDL (2009) 152 and CDL (2009) 153), who both expressed concern mainly as regards the blanket restrictions on the right to assemble around the entrance to several public premises including state buildings, the extensive prohibitions on assemblies that obstruct the thoroughfare, the excessive liability of organisers, the lack of express possibility for spontaneous assemblies and counter-demonstrations.

The parliament, which had committed itself to revising the amendments should the Venice Commission so recommend, started preparing new amendments.

Amicus curiae brief on the limitation of the viewers’ right of access to court against decisions of an independent broadcasting authority for the rescheduling of programmes (CDL-AD (2009) 013).

At the request of the President of the Constitutional Court of Georgia, Mr Papuashvili, the Venice Commission prepared an *amicus curiae* opinion on the limitation of the viewers’ right of access to court against decisions of an independent broadcasting authority regarding the rescheduling of programmes in compliance with the conditions of the broadcasting license (notably broadcast programmes with sexual or erotic content only at specified times).

The opinion (CDL-AD (2009) 013) first addressed the question of victim status, that is whether any child viewer – represented by its parents – could possibly claim to have been directly affected by the allegedly illegal broadcast-

ing in the absence of a specific prejudice suffered in connection with the programme, and the question of whether the parent who complained in his capacity as (parent of) a person falling in the category of individuals which the law intended to protect, has suffered a violation on account of the failure on the side of the authorities to respect the applicable legal provisions (*victim indirecte*). The opinion expressed doubts in this regard. Neither Article 6 ECHR, nor Article 2 of Protocol No. 1 nor Article 10 in conjunction with Article 13 was considered to be applicable.

The opinion then examined the question of whether there needed to be an effective remedy for the alleged breach of the child's private life; the opinion suggested distinguishing between cases depending on whether the viewer had been specifically affected by the programme or not. In the first case, an interference with the viewer's private life could be found to exist and an effective remedy needed to be made available.

In conclusion, the Commission noted that a number of countries provided for the possibility for the viewers to apply to an independent authority in order to seek the rescheduling of certain programmes. In some cases, the decisions of these authorities were subject to judicial review. Access to court was therefore provided in order to protect constitutionally guaranteed rights of the viewers.

Kyrgyzstan

In 2008, upon the request by the Speaker of Kyrgyzstan's legislature the Commission and the OSCE/ODIHR had reviewed the draft amendments to the Law of the Kyrgyz Republic on the Right of Citizens to Assemble Peaceably, without Weapons, to Freely Hold Rallies and Demonstrations prepared by the Presidential Administration. De-

spite criticism that the amendments failed to meet international standards on the protection of the freedom to peaceful assembly expressed in the Commission's opinion, the amendments were passed by the Zhogorku Kenesh on 13 June 2008.

With the aim of improving the current Law on the Right of Citizens to Assemble Peaceably, without Weapons, to Freely Hold Rallies and Demonstrations, the Ombudsman of the Kyrgyz Republic in co-operation with an institutional working group prepared a new draft Law on assemblies, and requested a review by the OSCE/ODIHR. The latter's Expert Panel on Freedom of Assembly and the Venice Commission carried out the assessment jointly (CDL-AD (2009) 034).

The new draft Law appeared to seek to establish a legal framework which would permit the exercise of freedom of peaceful assembly in a manner compatible with international standards, and with the recommendations of the OSCE/ODIHR and the Venice Commission. Notably, it did not contain any blanket restriction and permitted spontaneous assemblies. Nonetheless, the draft Law contained some potential for abuse and its practical implementation could also present difficulties. While it paid much attention to the responsibilities and limits on action to be taken by various state bodies, the draft Law did not apply to a number of categories of public assembly, and also allowed for assemblies to be regulated by other unspecified laws. In conclusion, the joint opinion gave some proposals for improvement.

A delegation of the Commission participated in a public round table on the preparation of these amendments in December 2009, and found that the reflection by the Kyrgyz authorities on this matter needed to be pursued, and that the political will to change the law in force did not ap-

pear to exist at that stage. An appeal was pending before the Constitutional Court, which could influence this process. The delegation expressed its availability to continue its assistance to the country.

Luxembourg

On 2 June 2009, having drafted a proposal for constitutional review geared to amending and reorganising the Constitution, which was presented to the Chamber of Deputies on 21 April 2009, the Luxembourg Commission on Institutions and Constitutional Review, requested an opinion from the Venice Commission on this text.

The Venice Commission instructed a Working Group comprised of members of the Commission to prepare an opinion on this matter. On 14 October 2009 the Working Group held a meeting in Luxembourg with the Commission on Institutions and Constitutional Review and the Luxembourg Conseil d'Etat. Based on the rapporteurs' individual comments and information gleaned at the meeting on 14 October 2009, the Venice Commission adopted an interim report on the text prepared by the above-mentioned Commission at its December 2009 plenary session (CDL-AD (2009) 057). A final opinion should be adopted once the revision is finalised.

The proposed review has three goals: "modernising outdated terminology", "tailoring the texts to the actual mode of exercise of powers", and "including in the Constitution provisions on customary practice which are included in other texts falling outside the ambit of the legislature".

The following are amongst the principal observations:

- The constitutional writers' aim to bring the text of the Constitution into line with constitutional practice and remove any obsolete provisions has largely been achieved.
- The revision of Chapter 2 on Public Liberties and Fundamental Rights is mainly confined to restructuring. The Commission wonders whether it would be more judicious to make more radical changes to this chapter. In fact, a certain number of the important human rights are not mentioned (non-discrimination in general, right to life, several guarantees on fair trial). In addition, even if it is true that international takes precedence over Luxembourg law, the conditions of the restrictions do not correspond to those of international treaties. Some adjustments could be made (for example the introduction of the right to private life) but they should be more consistent by inserting cross-referencing texts, for example by drawing inspiration from the Swiss Constitution or the European Union Charter of Fundamental Rights. Moreover, it is worth explicitly mentioning that international law takes precedence.
- The main changes affect the institutional structure, especially the Grand Duke's powers and prerogatives (Chapter 3). In this field, it is for the Luxembourg constitutional writers to choose the type of monarchy that is best suited to Luxembourg society, provided that the principles of democracy and the rule of law are observed. It is incumbent on them to specify the extent to which the Grand Duke remains vested with the duties conferred on him in 1998 ("symbolic function", function of "guardian of the institutions" and "arbitrating function").

Co-operation with the Luxembourg authorities on constitutional reform should continue in 2010.

Moldova

Draft Law on the Status of Euroregions of the Republic of Moldova

Following a request by the Permanent Representation of the Republic of Moldova, the Venice Commission prepared an opinion on the Draft Law on the Status of Euroregions of Moldova (CDL-AD (2009) 050).

The overall assessment of the text by the Commission was positive. There were some shortcomings in the draft Law that needed to be addressed. In particular, the provisions relating to the Law applicable to the establishment agreement and actions of Euroregions having their headquarters outside the Republic of Moldova should be modified; and the conditions and procedures regarding the participation of Moldovan local authorities to the Euroregions abroad clarified.

Montenegro

In 2009, further to a request by the then Minister for the Protection of Human and Minority Rights of Montenegro, Mr Fuad Nimani, the Commission assessed the Draft Law on Prohibition of Discrimination and the draft amendments to the “Law on the Protector of Human Rights and Freedoms”.

Draft Law on Prohibition of Discrimination

The adoption of an anti-discrimination law is part of Montenegro’s accession commitments to the Council of Europe and is also one of the short-term priorities of the European Council Decision of 22 January 2007 on the principles, priorities, and conditions contained in the European Partnership with Montenegro (2007/49/EC). In March 2009 the Montenegrin authorities prepared the

draft Law on prohibition of discrimination and submitted it to the Venice Commission for assessment.

In its opinion adopted at the October 2009 session (CDL-AD (2009) 045) the Commission welcomed the intention of the Montenegrin authorities to adopt a single comprehensive anti-discrimination act. The act had the potential for constituting a significant step forward in combating discrimination in the country. It prohibited both direct and indirect discrimination as well as a wide range of discriminatory actions and introduced the concept of positive action. Human rights organisations and other relevant entities would be allowed, although with certain limitations, to initiate proceedings on behalf or in support of victims of discrimination. The draft Law provided for a shared burden of proof in discrimination cases.

However, the Commission was of the opinion that in several aspects the draft Law failed to comply with international and European standards. In this respect, referring in particular to the guidelines by the European Commission against Racism and Intolerance (ECRI) it recommended, *inter alia*, to provide for the establishment of a specialised anti-discrimination body or in case of granting enforcement powers to the Ombudsman to ensure that: a) the Ombudsman has full powers for the implementation of the law; and b) the Ombudsman institution has the necessary human and financial resources to fulfil its new tasks, and specialised training on discrimination issues is provided for its staff; to make the draft law more precise and clear; to provide for “effective, proportionate and dissuasive” sanctions for breaching the provisions of the law, and to regulate this issue in a more comprehensive and detailed way; to define clearly the scope of application of the law to the public and private sphere; to specifically in-

dicate that legal persons or entities are also entitled to protection from discrimination under this law.

Following the adoption of the opinion, a follow-up mission took place in Montenegro whereby a delegation of the Commission met with the Working Group in order to assist in the implementation of the Commission's recommendations. This work is to be pursued in 2010.

Ukraine

The Commission's active involvement in constitutional reform efforts in Ukraine continued in 2009. It provided its expert opinion on two draft laws amending the Constitution: the draft law presented by people's deputies Yanukovich, Lavrynovich et al. and the draft law presented by the President of Ukraine. Further, jointly with the OSCE/ODHIR the Commission also assessed the Draft Law on organizing and conducting peaceful events in Ukraine.

Draft law amending the Constitution of Ukraine presented by people's deputies Yanukovich, Lavrynovich et al.

The 1996 Ukrainian Constitution was amended in December 2004. These amendments weakened the – previously very strong – powers of the President in a somewhat unfortunate manner (see CDL-AD (2005) 015). Following this revision, the powers of the President and the Government are ill-defined and overlapping and this has contributed to a constant inter-institutional conflict which threatens to paralyse the functioning of the state institutions. There have therefore been a number of efforts to revise the Constitution and the Venice Commission adopted in particular an opinion on the so-called Shapoval draft in June 2008 CDL-AD (2008) 015).

In November 2008 the Minister for Foreign Affairs of Ukraine, Mr Volodymyr Ogryzko, asked the Venice Com-

mission to assess the draft law amending the Constitution of Ukraine presented by people's deputies Yanukovich, Lavrynovich et al. In its opinion on this draft law (CDL-AD (2009) 008), the Venice Commission recalled that it has underlined on several occasions the need for constitutional reform in Ukraine. In the Commission's view, the main focus of such reform should be to clarify the respective powers of President, government and parliament.

During a visit of a Commission delegation to Ukraine in early February 2009, it became clear that this draft had been prepared in a different political situation and that at present it is no longer under serious consideration. The opinion was therefore relatively brief with a focus on major issues which seemed relevant for future discussions on constitutional reform in Ukraine.

In the Commission's opinion, the draft seemed problematic in many respects. The proposed election system provided an artificial bonus to the strongest party, which would get an absolute majority in parliament regardless of the percentage of the votes received. This is commented upon in more detail in the separate opinion on the parallel draft amendments to the electoral law. Power was too concentrated in the leadership of the strongest party or coalition, the role of the President was weakened to an excessive degree, replacing for example the impeachment procedure by a procedure which was more a vote of no confidence. Furthermore, in contradiction of European standards, the draft provided for the direct election of judges by the people. This did not seem a suitable way of fighting corruption in the judiciary. The Commission thus welcomed the fact that, at the moment, the draft no longer seemed to be seriously pursued in Ukraine.

Draft Law of Ukraine amending the Constitution presented by the President of Ukraine

In March the Permanent Representation of Ukraine to the Council of Europe asked the Venice Commission to review the draft revised Constitution submitted by the President of Ukraine to the Verkhovna Rada on 13 March 2009. The presidential proposal represented yet another attempt to achieve a constitutional reform. Its main goal was to find the best way to solve the tension existing in Ukraine among the President, Parliament and the Council of Ministers, as well as to guarantee more efficiency of the state power by a better division of functions and by avoiding a dualism in the functioning of executive power.

In its opinion (CDL-AD (2009) 024), the Commission noted as regards the procedure that the draft was submitted by the President to the Verkhovna Rada, thus showing his acceptance of the constitutional requirement that any new version of the Constitution needed to be adopted by a two-thirds majority in the Verkhovna Rada before its final approval by referendum.

As for the substance, the Commission welcomed clear improvements with respect both to previous drafts and to the current Constitution. These improvements were particularly visible in the Section on the judiciary, regarding in particular the appointment of judges, the composition of the High Judicial Council and the new rules on the prosecution service. The draft no longer reflected the Soviet model of prokuratura but a model of prosecution service in line with European standards and in compliance with Ukraine's commitments to the Council of Europe. As regards the crucial issue of the balance of powers among the state organs, the draft brought some clarifications and abandoned many questionable solutions of the current Constitution. It nevertheless maintained a semi-

presidential system with a dual executive and a risk of continuing conflicts between the President and the Government.

The requirement that all constitutional amendments require a referendum risks making the Constitution excessively rigid and the expansion of direct democracy at the national level created additional risks for political stability. While changes with respect to the position of the Autonomous Republic of Crimea were not dramatic, they tended to decrease the autonomy.

Draft Law of Ukraine on Order of Organising and Conducting of Peaceful Events in Ukraine

Further to a request by the Office of the Acting Minister for Foreign Affairs of Ukraine, the Venice Commission and the OSCE/ODIHR reviewed a new Draft Law of Ukraine on the Order of Organising and Conducting of Peaceful Events ("the Draft Law"), which had been adopted in the first reading by the Verkhovna Rada in June 2009.

The Draft Law represented a development of a previous draft law entitled "Draft Law on Peaceful Assemblies in Ukraine" on the same subject and which the Venice Commission and the OSCE/ODIHR Panel jointly assessed in 2006 (cf. CDL-AD (2006) 033). At the time, the Commission and the OSCE/ODHIR considered that the draft Law was clearly endeavouring to establish a legal framework for the exercise of freedom of peaceful assembly compatible with international and European standards on freedom of peaceful assembly. A certain number of amendments were nonetheless considered necessary in order to achieve full clarity and full compliance with the relevant standards.

In the joint opinion adopted at the Commission's December 2009 session, the Commission was of the view that the new draft Law contained certain improvements in respect of the draft Law previously examined by the Commission. It presented nonetheless several substantial shortcomings and continued to be excessively detailed with excessive differentiation between categories of events in a manner which is not properly linked to permissible rea-

sons for restrictions. Several recommendations of the 2006 Joint Opinion had not been addressed, in particular those relating to the responsibility of the organisers. The opinion (CDL-AD (2009) 052) recommended that close attention be paid to the OSCE/ODIHR Guidelines on the Freedom of Assembly which cover comprehensively the law and practice on this matter.

Transnational activities

Report on private military and security firms and the erosion of the state monopoly on the use of force

In early 2009 the Committee of Ministers of the Council of Europe examined Recommendation 1858 (2009) of the Parliamentary Assembly on "Private military and security firms and the erosion of the state monopoly on the use of force" and agreed to transmit this recommendation to the Venice Commission for information and for it to be taken into account in its future work. In view of the growing importance of the topic and following its earlier work on the democratic control of armed forces (cf. CDL-AD (2008) 004), the Commission decided to prepare a report on the said recommendation.

The report (CDL-AD (2009) 038) mainly focused on the legal implications of the various proposals made by the Parliamentary Assembly. Numerous references were made to the so-called "Montreux Document on pertinent international legal obligations and good practices for states related to operations of private military and security companies during armed conflicts". The report was adopted at the Commission's June 2009 session.

In its recommendation the Parliamentary Assembly expressed the view that there was a strong need for improved regulation of private military and security companies (PMSCs). PMSCs are incorporated in one state, but are multinational enterprises in that they may draw their personnel from other states and act in other states. Where one state chooses to regulate their extraterritorial activities, there is an obvious risk that they will relocate to a state where they are not regulated, or are less regulated. The logical consequence of this is to seek international regulation by means of a treaty, containing minimum common standards of regulation to be applied to PMSCs by the contracting states.

The area where the Parliamentary Assembly expressed the desire for a new treaty was already partially regulated by treaties in the area of international humanitarian law, human rights, international criminal law and arms control. The majority of these treaties are of a global character. Otherwise, it is customary international law principles which regulate the responsibility of states for acts and omissions in breach of international law, and the attribution of responsibility for the acts of private actors. That an

area is already partially regulated by global treaty obligations does not preclude however, a new regional treaty binding only upon European states, and involving more onerous or progressive, obligations on these states. However, the existing network of international law obligations adds to the complexity of the task of drafting a new treaty. The Montreux final document, summarising the discussions between a relatively small group of states, also indicates how difficult it is to agree new common standards of regulation in the area: the best practices set out in Part 2 are expressly stated not to be binding.

In the report the Venice Commission took the view that some of the issues taken up by the Parliamentary Assembly – while undoubtedly of international concern – were not appropriate for inclusion in a Council of Europe treaty. Other parts of the Parliamentary Assembly recommendation could form the basis of a future treaty provisions. Certain of the issues taken up by the Parliamentary Assembly were however suitable for a Committee of Ministers' recommendation to Council of Europe states: among these issues are: the endorsement of the Montreux Document; the review of national laws dealing with registration/licensing of PMSCs in order to ascertain if these provide a proper degree of regulation of the extraterritorial activities of PMSCs; the review of criminal laws/criminal procedure laws, in order to determine whether there is jurisdiction over serious offences committed by personnel of PMSCs, at least where they are nationals of the state in question; the review of civil law systems in order to determine whether it is possible at all to make claims for damages for extraterritorial civil wrongdoing against PMSCs incorporated in the state, and possibly even their foreign-incorporated subsidiaries, and if not, to consider enacting appropriate legislation on the issue.

This report was transmitted to the Committee of Ministers, which is due to prepare a reply to the Parliamentary Assembly in 2010.

Report on constitutional amendment

In its Recommendation 1791 (2007) on “The state of human rights and democracy in Europe”, the Parliamentary Assembly of the Council of Europe recommended that the Committee of Ministers examine, among others, “whether the current constitutional arrangements are democratically appropriate” and “whether the current national arrangements for changing the constitution require a sufficiently high approval level to prevent abuses of democracy”. This request was made within the framework of the preparation by the Assembly of guidelines on the elimination of deficits in the functioning of democratic institutions, taking into account existing Council of Europe legal instruments. At its 2007 session the Council of Europe’s “Forum for the Future of Democracy”, in turn, encouraged the Venice Commission to reflect on these issues.

A working group was set up within the Commission to prepare a study on constitutional provisions for amending national constitutions. The group started working in 2008 and worked throughout the 2009. The final report was adopted at the December 2009 session of the Commission.

Report CDL-AD (2010) 001 described and analysed the existing procedures and thresholds for national constitutional amendment in the Council of Europe states. There was a great variety of solutions within states covered by the study, ranging from cases in which constitutional amendment is quite easy to cases where in practice it is almost impossible. As the Commission underlined, when

constructing and applying rules on constitutional amendment, the basic challenge is to find a proper balance between rigidity and flexibility. The Commission addressed this matter in the report, without however trying to propose a “best model” for constitutional amendment, nor to formulate any common European standards. The report instead aimed at identifying factors that may be relevant for the assessment of a given constitutional system, and which may be useful in analysing how strict a given amendment formula actually is, and whether it should be reformed or compensated by other means. Some of these factors may also be relevant when assessing the legitimacy of a given proposal for constitutional change.

In the Commission’s opinion, having stronger procedures for constitutional amendment is an important principle of democratic constitutionalism. Constitutions should be flexible enough to allow necessary reforms to be passed and relatively rigid so as not to undermine the constitutional stability, predictability and the protection of non-majority rights and interests. The main arena for procedures of constitutional amendment should be the national parliament, as the institution best placed to debate and consider such issues. Recourse to a popular referendum to decide on constitutional amendment should be confined to those political systems in which this is required by the constitution, applied in accordance with the established procedure, and should not be used as a means to circumvent parliamentary procedures, or to undermine fundamental democratic principles and basic human rights. If judicial review of constitutional amendment is provided for in the national constitutional system, then this should be carried out with care and consideration, al-

lowing a margin of appreciation for the national constitutional legislator.

The report usefully contained a concise list of the main normative reflections, which can serve as a basis for future assessment of constitutional amendment procedures or proposals for amendment.

Imperative mandate

At its June 2009 session the Venice Commission adopted a report on the imperative mandate and similar practices (CDL-AD (2009) 027). It was drawn up following Parliamentary Assembly Recommendation 1791 (2007) and Resolution 1547 (2007) on the state of human rights and democracy in Europe.

The document concluded that at present, imperative mandate *stricto sensu* and recall were unknown in practice in Europe. Moreover, there were very few countries among the Council of Europe member states which had legislation giving the power to political parties to make members of the elected bodies resign if they change their political affiliation. Whilst in these countries these practices are considered consistent with the constitution, the Venice Commission has consistently argued that losing the condition of representative because of crossing the floor or switching party is *contrary to the principle of a free and independent mandate*. Even though the aim pursued by this kind of measure (i.e. preventing the “sale” of mandates to the top payer) can be sympathetically contemplated, the basic constitutional principle which prohibits imperative mandate or any other form of policy depriving representatives of their mandates must prevail as a cornerstone of European democratic constitutionalism.

UniDem Seminar on “Definition and development of human rights and popular sovereignty in Europe”

On 15 and 16 May 2009 the Venice Commission, the Faculty of Law of Goethe University and the latter’s Cluster of Excellence “Normative Orders” co-organised a conference on “Definition and development of human rights and popular sovereignty in Europe” at the university’s seat in Frankfurt.

High-level experts in constitutional law, human rights law, public law and European law debated what instances, groups and individuals should be empowered to define and develop human rights and according to which procedures; the relationship between sovereign law-making and constituent power, on the one hand, and the judiciary, on the other; the protection of human rights at the supranational or transnational level (EU).

In detail, the topics discussed at the conference were:

- the definition and development of human rights as an act of collective self-determination;
- the processes of definition and development of human rights besides popular sovereignty;
- the grounds for democratic states’ agreement to international Human Rights conventions;
- the bottom-up as opposed to top-down protection of human rights;
- human rights and transfers of sovereignty in the European Union;
- the definition and development of human rights in the international context and popular sovereignty;
- popular sovereignty and jurisdiction;

- judicial review as a substitute for not yet constituted instances of popular sovereignty; and
- human rights defined by the sovereign will of the people v. human rights defined by international standards.

Round table on “Fight against Terrorism: Challenges for the Judiciary”

On 18 and 19 September 2009 the Venice Commission and the European University Institute (EUI), in collaboration with the Sub-Committee on Crime Problems and the Fight against Terrorism (of the Committee on Legal Affairs and Human Rights of the Parliamentary Assembly of the Council of Europe) co-organised a round-table in Fiesole, Italy, on “Fight against Terrorism: Challenges for the Judiciary”.

International experts and parliamentarians discussed three main topics: the right of the accused in the context of the fight against terrorism; use or abuse of state secrets and courts and the right to privacy.

UniDem Campus – legal training for civil servants

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

The main goal of this successful programme is to strengthen efficient administration and good governance, as well as democratisation and human rights, including the rights of persons belonging to national minorities, law enforcement and institution building.

In 2009 three seminars were held on the following topics:

- “Policies on the protection and social integration of immigrants and their implementation at the international, national and local level”,
- “The independence of the judicial system from the executive and the legislative power” and
- “The protection of the fundamental rights of irregular migrants”.

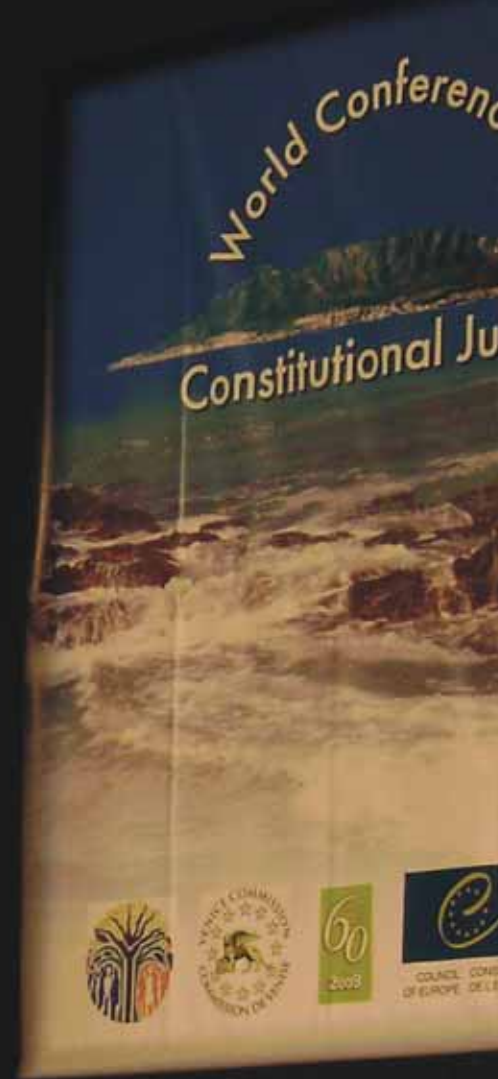
In accordance with established practice the seminars were organised on the basis of an interactive method, which includes: lectures introducing the subject, followed directly by questions from participants; discussions of practical

examples proposed by the lecturer, aiming at helping civil servants from different countries identify common European values that can be applied in their respective states, and exchange of experience whereby several national delegations make a short presentation on the specific situation in their respective countries related to the topic of the seminar.

“Training of trainers” is an important component of this programme. After the seminar, participants are requested to pass on the insights gained and the material acquired at the seminar to their colleagues in their respective countries. One session of the seminar is entirely dedicated to a practical workshop, designed to help participants become “trainers” themselves.

In 2009 56 participants took part in the three seminars, and 789 civil servants were subsequently trained by the participants.

Constitutional justice, ordinary justice and ombudsman



Country-specific activities

Algeria

Colloquium on the “Relations between constitutional courts and parliaments” on the occasion of the 20th Anniversary of the Constitutional Council of Algeria

The Constitutional Council of Algeria, the Union of Arab Constitutional Courts and Councils (UACCC) and the Venice Commission organised an international colloquium on the occasion of the 20th anniversary of the Constitutional Council of Algeria on the “Relations between Constitutional Courts and Parliaments” in Algiers, Algeria from 30 October to 1 November 2009.

The colloquium was opened by the President of the Republic and participants included members and the registry of the Constitutional Council of Algeria, members of the Algerian parliament, law professors and students; representatives of European and African Constitutional Courts and Councils, including courts members of the UACCC as well as the President of the *Association des Cours Constitutionnelles ayant en Partage l’Usage du Français* (ACCPUF).

The aim of this event was to provide for an intercultural exchange of experience between Arab and European experts on the topic and to discuss the draft Statute of the World Conference on Constitutional Justice (WCCJ) with the members of the UACCC prior to the WCCJ Bureau meeting in Venice on 12 December 2009 (81st plenary session of the Venice Commission).

Reports and discussions covered such issues as the tensions between the state powers in general; the relations between courts and parliaments; the non-execution by parliaments of court decisions; the legitimacy of courts and councils and the current situation in Algeria.

The discussions at the UACCC meeting on the draft Statute of the WCCJ focused on the composition of the Bureau and its powers, financial contributions to the WCCJ and possible amendments to the draft Statute.

Armenia

XIVth Yerevan International Conference on the “International experience of interaction between constitutional courts and parliaments in guaranteeing the supremacy of the constitution”

The Constitutional Court of Armenia, the National Assembly of Armenia and the Venice Commission organised the annual Yerevan Conference on the “International experience of interaction between constitutional courts and parliaments in guaranteeing the supremacy of the Constitution” under the aegis of the Conference of Constitutional Control Organs of Countries of Young Democracy (CCCOCYD). The event took place in Yerevan on 30 September and 1 October 2009.

Participants included presidents from the constitutional courts of Armenia, Belarus, Georgia, Latvia, Moldova and Tajikistan; vice-presidents of the constitutional courts of

1. The full text of all adopted opinions can be found on the website <http://www.venice.coe.int/>.

Bosnia and Herzegovina and the Russian Federation; judges and representatives of the constitutional courts or equivalent bodies of Albania, Algeria, Andorra, Armenia, Belgium, Bulgaria, Estonia, Kyrgyzstan, Lithuania, Netherlands, Norway, “the former Yugoslav Republic of Macedonia” and Ukraine; the President of the Senate and the Vice-Chair of the House of Representatives of Belgium, members of the parliaments of Armenia, Belarus, the Czech Republic, Georgia, Kazakhstan, Poland, Serbia and Romania; representatives of the OSCE in Armenia, the SRSG in Armenia and the Vice-President of the European Court of Human Rights.

The conference’s aim was to exchange information on the relations between the highest courts of constitutional jurisdiction and parliaments in dealing with constitutional matters. The discussions covered guaranteeing the supremacy of constitutions as a basic safeguard for the stability of the rule of law; parliamentary guarantees for exercising constitutional control; legal positions of the courts as a source of law, their role in overcoming the legal gaps and European trends for the development of functional relationships between parliaments and constitutional courts.

Azerbaijan

Opinion on the draft Law “about obtaining information on activities of the courts”

By letter dated 3 July 2009 addressed to the Secretary of the Venice Commission, Mr Ramiz Mehdiyev, the Head of the President’s Administration of Azerbaijan, requested an opinion on the draft Law “about obtaining information on activities of the courts of Azerbaijan”.

In its opinion adopted at the December 2009 session (CDL-AD (2009) 055), the Commission considered that the draft Law was in line with European standards, even if parts were mostly declarative, which did not in itself guarantee the public access to information. Much will therefore depend on its implementation.

The Commission recommended that all the laws of Azerbaijan that deal with this topic might be united into one general law on access to public information, which is the practice in most Council of Europe member states. It also recommended that the introduction of a centralised web page for all courts of Azerbaijan be considered, to facilitate access by legal professionals, law students and others; that any acts restraining the right of access to public hearings should stem from laws adopted by Parliament; that mass media should not have access to the exam proceedings for candidates for judges and that the control over the implementation of the draft Law should not lead to the supervision by the chairman of the court over the access to proceedings or court sessions in individual cases.

Botswana

Conference on “Sustaining the rule of law to promote socio-economic development in the Eastern and Southern African Region”

With the funds obtained from the Irish Government, the Venice Commission together with the Open Society Foundation for Southern Africa and the Konrad Adenauer Stiftung, sponsored a Conference of the Southern African Chief Justices’ Forum (SAJCF) on “Sustaining the Rule of Law to promote Socio-economic Development in the Eastern and Southern African Region” held in Kasane, Botswana on 7 and 8 August 2009.

Participants included chief justices and judges from Angola, Botswana, Kenya, Lesotho, Malawi, Mauritius, Mozambique, Namibia, South Africa, Swaziland, Tanzania, Uganda, Zambia, Zanzibar and Zimbabwe, the SADC Tribunal and the International Criminal Court. Representatives of the United Nations High Commissioner for Human Rights and the International Commission of Jurists also participated in the Conference.

In his opening speech, the President of Botswana, H.E. Seretse Khama Ian Khama, insisted that socio-economic development can only take place in the context of a robust, transparent, predictable and enforceable legal framework.

The Conference adopted a communiqué calling on courts in Africa to continue to refer to international and regional human rights instruments and the decisions of foreign courts in interpreting their own constitutions where appropriate, taking into account African values such as human dignity, equality and non-discrimination.

The Executive Committee of the SACJF was mandated to consider the establishment of a Committee of Chief Justices, whose task will be to promote and protect the independence of the judiciary through support missions in the region to deal with threats and potential threats to the rule of law, strengthening the judiciary by making appropriate recommendations.

At the end of the Conference, the SACJF held their Annual General Meeting, which warmly welcomed the establishment of the World Conference on Constitutional Justice, and mandated the Executive Committee to send comments on the draft Statute to Forum members within a month. It also mandated its President to represent the

Forum at the meeting of the Bureau of the World Conference in Venice in December 2009.

Bulgaria

Opinion on the draft Law amending and supplementing the Law on judicial power

By letter dated 8 January 2009, the Permanent Representative of Bulgaria to the Council of Europe, Mr Ivan Petkov, requested an opinion on the draft Law amending and supplementing the Law on Judicial Power of Bulgaria.

The Law on Judicial Power was adopted in 2007 and covers a variety of matters, including general principles, the Supreme Judicial Council, its Inspectorate, courts and court hearings, the prosecution office, the National Investigative Service and the status, appointment, disciplining and dismissal of judges, prosecutors and investigating magistrates.

The draft Law amending and supplementing the Law on Judicial Power (the Act) is accompanied by a report of motives. This report sets out that changes to the Act were introduced as a result of the amendments to the Constitution of the Republic of Bulgaria made in 2006 and 2007, the accession of Bulgaria to the European Union, the recommendations made by European bodies (monitoring reports of the European Commission and European expert reports) and magistrates' recommendations. The draft Law itself is an extensive document amending many provisions of the Act. The amendments are mostly technical in nature, many dealing with matters such as changes in time limits and the like.

The main changes brought about by the draft Law seem to be the following: changes intended to reorganise the investigative service and to strengthen the Prosecutor Gen-

eral's control over it; changes relating to the Supreme Judicial Council – strengthening that body; a provision requiring the Supreme Judicial Council to adopt a Code of Ethics for all judges and prosecutors and changes to the provisions relating to discipline.

As the Supreme Judicial Council is of crucial importance within the Bulgarian judicial system, it should be recalled that – as far as the Constitution is concerned – the Venice Commission made a number of critical comments in its Opinion No. 444/2007 on the Constitution of Bulgaria (CDL-AD (2008) 009), which have yet to be addressed.

However, in its opinion adopted at the March 2009 session (CDL-AD (2009) 011), the Commission noted that, on the whole, the proposed amendments to the Law did not appear to raise any particular objections and appeared positive.

Egypt

40th anniversary of the foundation of constitutional judicature in Egypt and Conference on the “Constitutional guarantees of rights and political freedoms” and the “Constitutional protection of the social equality principle”

The Venice Commission participated in the conference on the “Constitutional guarantees of rights and political freedoms” and the “Constitutional protection of the social equality principle” on the occasion of the 40th anniversary of the Supreme Constitutional Court of Egypt, which took place in Cairo and in Alexandria, Egypt, from 7 to 9 March 2009.

Approximately 150 participants from 40 foreign courts took part in this event (including courts from Europe: France, Germany, Italy and the Russian Federation). The Conference was opened by President Mubarak. The first

day was devoted to political rights and the second on social rights. Arab courts that are members of the UACCC were reminded to appoint liaison officers, if they had not done so already, in order to contribute to the CODICES database.

Estonia

Joint Council on Constitutional Justice

The Venice Commission was invited by the Supreme Court of Estonia to hold the 8th meeting of its Joint Council on Constitutional Justice in Tallinn on 18 and 19 June 2009. In the opening of this event, the President of the Supreme Court praised the close co-operation between the Supreme Court of Estonia 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, page 60).

During this meeting, the Joint Council on Constitutional Justice decided to re-integrate the case-law of the Constitutional Court of Belarus into the Bulletin.

Within the framework of this meeting, the Joint Council on Constitutional Justice also held a mini-conference on the “Effects and execution of constitutional review decisions”.

Georgia

Amicus curiae brief for the Constitutional Court on the retroactivity of statutes of limitation and the retroactive prevention of the application of a conditional sentence

By a letter of 12 February 2009, the President of the Constitutional Court of Georgia sought an *amicus curiae* brief on several questions concerning the retroactivity of stat-

utes of limitation and the retroactive prevention of the application of a conditional sentence.

In its opinion adopted at the March 2009 session (CDL-AD (2009) 012) on whether the prohibition of retroactivity of criminal laws extend to the statute of limitations for the prosecution of offences and regarding the question of the retroactive applicability of the statute of limitations, the Venice Commission pointed to the case-law of the European Court of Human Rights, which establishes that it is permissible, if the domestic law of the state regards a limitation law as procedural rather than substantive, to amend a limitation law so as to extend the limitation period with retroactive effect with regard to crimes where the limitation period has not expired at the time of the amendment.

The European Court of Human Rights has not decided whether a retroactive extension is permissible in the case of crimes where the prescription period has already run, but it is unnecessary to decide this issue in the context of the actual applications the subject matter of the request. This does not preclude a state from having a domestic law according to which the expiry of limitation periods gives rise to substantive rather than procedural rights, in which case an extension of the limitation period with retroactive effect may not be permitted. This seemed to have been the case with the Criminal Code of Georgia, which provided for the prohibition of retroactivity in wider terms, including all rules detrimental to the offender. This provision was changed in 2000 to cover only criminal rules, which establish or aggravate the punishment of an act.

With respect to the case-law of the European Court of Human Rights regarding the retroactivity of statutes of limitations of criminal law and regarding conditional punishment, the Commission found that a change in sen-

tencing law, which provides for a harsher regime, cannot be applied retroactively, but only prospectively. Notwithstanding the change in the law, the sentencing court should have had the option to apply a conditional sentence if they considered that was the proper course and if that course was more favourable to the convicted person than the course in fact adopted.

On whether the principle of retroactivity only applies to criminal law or also to criminal procedure, the Venice Commission found that it does not apply to procedural as distinct from substantive criminal law. However, the qualification of a provision as substantive or procedural has to be made from a functional perspective. Where a limitation period has already run it is possible that the principle of legality could be invoked to prevent its revival.

Seminar on the “Justiciability of Social Rights in Courts of Constitutional Jurisdiction and the European Court of Human Rights”

The Venice Commission participated in a conference organised by the Constitutional Court of Georgia in co-operation with the Directorate of Co-operation of the Directorate General of Human Rights and Legal Affairs of the Council of Europe on “Justiciability of Social Rights in Courts of Constitutional Jurisdiction and the European Court of Human Rights”, held in Batumi, Georgia on 11 and 12 July 2009.

The conference gathered together *inter alia* judges from the Georgian Constitutional Court, the Supreme Court and lower courts, representatives from the Ministry of Justice and the Georgian Parliament, the Georgian judge of the European Court of Human Rights, representatives of the European Committee for Social Rights, UNDP, the

German Society for Technical Co-operation, NGOs and Georgian and German researchers.

Discussions evolved around the obligations of states under the Revised European Social Charter. In relation to the justiciability of social rights, it was underlined that civil and political as well as social and economic rights were not fundamentally different in character and that they were equally applicable by national courts. Representatives of the European Committee of Social Rights also presented the collective complaint mechanism through which states could accept international adjudication of social rights in a quasi-judicial proceeding. It was also explained that the Revised European Social Charter was directly applicable before Georgian courts.

The question was discussed to what extent courts could determine the level of social protection to be granted. Courts must evaluate whether existing resources were allocated reasonably by the state, gather information on available financial means and realistically consider the financial impact of their decisions. While there were no concrete standards as to the required level of protection in the Revised Social Charter, the more concrete case-law of the European Social Committee could serve as a yardstick.

An overview was given of the case-law of the European Court of Human Rights in relation to social rights, showing that the Court had gradually extended its jurisdiction to cover also social rights, especially in relation to Articles 2, 3 and 8 ECHR. Many cases were related to health issues. Also, a comparative report of the case-law of European Constitutional Courts provided insight into methods applied by these courts to define or extend their jurisdiction on social rights. Often, constitutional courts defined the

states' "obligation to fulfil" as participatory entitlements of individuals allowing them to benefit equally of the existing resources and services, thus striking a balance between social rights.

Seminar on "Precedent as a source of law"

The Constitutional Court of Georgia, in co-operation with the German NGO GTZ and the Venice Commission, organised a seminar on the "Precedent as a source of Law", which took place on 7 and 8 November 2009 in Batumi, Georgia.

Participants included judges and members of the registry of the Constitutional Court of Georgia; members of the Georgian Parliament, the state Constitutional Commission, judges from the Supreme Court and the Batumi regional court; law professors/lecturers and students of Tbilisi State University, the Max-Planck-Institute for Comparative Public Law and International Law, Vilnius University and the Sussex Law School; International and local NGOs as well as the School of Magistrates.

The aim of the seminar was to discuss the role and the importance of precedents, notably the influence of constitutional and ordinary court judgments on subsequent cases; the value of precedents in European courts of constitutional jurisdiction and in the European Court of Human Rights and the comparison between the Lithuanian, German, British and Georgian practice.

The issues of judicial activism, good relations between constitutional courts and parliaments, the lack of awareness of the local judiciary of the binding character of the European Convention on Human Rights and of the European Court of Human Rights case-law enjoyed a particular focus.

Hungary

International Conference in celebration of the 20th Anniversary of the Constitutional Court of Hungary

The International Conference in celebration of the 20th anniversary of the Constitutional Court of Hungary was organised in co-operation with the Venice Commission and took place in Budapest, Hungary on 23 and 24 November 2009.

A solemn ceremony commemorating the 20th anniversary of the Constitutional Court took place on 23 November, opened by Mr László Solo, President of the Republic of Hungary, bringing together the high dignitaries of Hungary and around 100 presidents and judges from constitutional courts or equivalent bodies from 23 countries. The topics of the conference were the “Development of constitutional adjudication in Europe” and “Politics and law in constitutional justice – from the political questions doctrine to judicial politics”.

The conference was divided into two sessions, the first dealt with European courts (European Court of Justice, European Court of Human Rights) and the second session dealt with the relationship between these courts and national constitutional courts.

Discussions also revolved around the supremacy of EU law in the light of the upcoming entering into force of the Lisbon Treaty on 1 December and the recent judgment of the Czech Republic’s Constitutional Court on this issue (on 3 November). The earlier ruling of the Constitutional Court of Germany concerning the Lisbon Treaty, which had given rise to many discussions, and the role of the ECJ were also broached.

Participants also spoke about the individual complaints procedure and the recent French constitutional reform (23

July 2008) was also touched upon, especially as the enabling legislation for the new law was being adopted in France while this conference was taking place. With this reform, the French have introduced the procedure for a referral for preliminary ruling in front of the *Conseil Constitutionnel*. Participants acknowledged that with such procedures, it was important to introduce good filters to weed out inadmissible cases as early as possible.

Latvia

Opinion on draft amendments to the law on the Constitutional Court of Latvia

By letter dated 13 May 2009, the President of the Constitutional Court of Latvia requested an opinion on the draft amendments to the Law on the Constitutional Court of Latvia.

The Amendments provided regulations on matters such as the requirements for candidates to the function of a judge of the Constitutional Court, the confirmation procedure for judges, the term of office and the procedure and organisation of the Constitutional Court. They also granted judges special social guarantees.

In its opinion adopted at the October 2009 session (CDL-AD (2009) 042), the Venice Commission, *inter alia*, welcomed the procedural changes (extension of deadlines) introduced by these amendments and found that the requirements for candidates to the function of a judge of the Constitutional Court as well as the amendments to the term of office were in line with international standards.

The Venice Commission found that the amendments on the whole were well drafted and would help in increasing the Constitutional Court of Latvia’s efficiency.

International conference on "Access to the court: the applicant in the constitutional jurisdiction"

The International Conference on "Access to the Court: the applicant in the Constitutional Jurisdiction" was organised by the Constitutional Court of Latvia in co-operation with the Venice Commission in Riga, Latvia on 6 November 2009.

The Conference gathered together current and former Latvian Constitutional Court judges and a judge from the Supreme Court of Ireland, the former president of the Latvian Constitutional Court, advisers to the Ombudsman and to the Legal Bureau of the *Saeima* (Parliament), professors of law from the University of Latvia, professors of law from Slovenia and Spain and representatives of the Ministry of Foreign Affairs.

Presentations covered standing (*locus standi*) before of the constitutional courts of Latvia, Slovenia and Spain and the Supreme Court of Ireland; the requirements for individual applications and constitutional complaints; the definition of fundamental rights and who they apply to (e.g. natural/legal persons); the difference between the constitutional complaint and the *action populaire* and the specific aspects of a constitutional complaint in environmental cases, especially in the context of a judgment rendered by the Constitutional Court of Latvia on 17 January 2008 involving an environmental association, in which the Court had given *locus standi* to this association. This prompted discussions on which fundamental rights apply to legal entities (e.g. property rights).

Moldova

Conference on "Fundamental constitutional values as a stability factor of the democratic regime"

The Venice Commission organised a conference on the occasion of the 15th anniversary of the Constitution of Moldova on "Fundamental constitutional values as a stability factor of the democratic regime" in Chisinau, Moldova on 22-23 July 2009.

The official ceremony to commemorate the 15th anniversary of the Constitution of Moldova was attended by around 200 people. The Conference was organised in co-operation with the Venice Commission, the German Foundation for International Legal Co-operation (IRZ), UNDP Moldova, the OSCE Mission in Moldova, ABA/ROLI Moldova and the co-ordinating Office of the Turkish International Co-operation and Development Agency (TIKA) programmes.

The following participated in the Conference (around 50 participants in all): presidents of constitutional courts of Armenia, Azerbaijan, Georgia, Kazakhstan, Latvia, Moldova, Romania, Serbia, Tajikistan, Ukraine, judges of the constitutional courts of Albania, Armenia, Azerbaijan, Bulgaria, Czech Republic, Germany, Moldova, Romania, Russian Federation, Slovakia, Tajikistan, Turkey and Ukraine.

The Conference covered such topics as the constitution as a stabilising factor in the socio-economic process, pointing to the case-law of the Constitutional Court of the Russian Federation for examples. The Conference also addressed the universality of constitutional law and its impact on the protection of human rights, notably the protection of constitutional rights and freedoms through the possibility of using individual appeals to constitution-

al courts. It also dealt with the evolution of constitutional justice, notably through the case-law of the European Court of Human Rights.

Montenegro

Opinion on the draft amendments to the Law on the protector of human rights and freedoms

By letter dated 23 March 2009, the Minister for the Protection of Human and Minority Rights of Montenegro, Mr Fouad Nimadi, requested an opinion on amendments to the Law on the Protector of Human Rights and Freedoms.

The amendments to the Law on the Protector of Human Rights and Freedoms were coherent and provided a number of improvements to the institution of the Protector of Human Rights. In its opinion adopted at the October 2009 session (CDL-AD (2009) 043), the Commission welcomed, in particular, the specialisation of the Protector's deputies, minority representation in their appointment, the right of the Protector to resume his or her previous function and the budgetary procedure. The attribution to the Protector of the task of prevention of torture and other ill-treatment, and combating discrimination would require relevant legislative amendments as well as additional human and financial resources.

Other provisions could be further improved such as that on the establishment of units of the office of the Protector, on donations, on functional immunity, on the succession of office holders. The Protector – and every person acting on his or her behalf – should also have free access at any time to individuals deprived of their liberty.

The Commission strongly recommended keeping the current system of appointment of the Protector, but to add a

provision on a qualified majority for his or her election in Parliament (constitutional amendment). See also the related Opinion on the draft Law on Prohibition of Discrimination of Montenegro (CDL-AD (2009) 045).

Conference on "Efficient dealing with individual complaints by the constitutional court - international experiences"

Following a request from the Constitutional Court of Montenegro, the Venice Commission in co-operation with the OSCE mission to Montenegro and the Office of the Council of Europe in Podgorica organised a seminar on the "Efficient dealing with individual complaints – International experiences" in Podgorica, Montenegro on 12 and 13 June 2009.

Participants included judges and members of the registry of the Constitutional Court of Montenegro; the Government Agent of Montenegro at the European Court of Human Rights; representatives of the OSCE Mission to Montenegro and of the Council of Europe office in Podgorica; experts from the Constitutional Court of Bosnia and Herzegovina and legal experts from Belgium and Spain.

The aim of the seminar was to discuss the individual complaints procedure, which was introduced by the new Montenegrin Law on the Constitutional Court of 2008. Since the new law entered into force, the Constitutional Court of Montenegro had received 500 individual complaints and considered that information on how best to deal with these cases was needed. The Constitutional Court of Montenegro requested the Venice Commission's help, as a follow-up to the opinion on the draft Law on the Constitutional Court, which was adopted at the Commission's plenary session in October 2008.

Conference on the “Competence of the Constitutional Court to control the conformity of laws with ratified treaties”

This Conference was co-organised by the Constitutional Court of Montenegro, the OSCE and the Venice Commission and took place in Podgorica, Montenegro on 3 November 2009.

The Conference gathered together the President and judges from the Constitutional Court of Montenegro, members of the OSCE mission to Montenegro, representatives of the state and the Ambassador of Croatia.

During the conference participants discussed the legal framework and practice of the Croatian, Macedonian, Montenegrin and Slovenian constitutional courts when deciding on the conformity of the law with international treaties and they also discussed new trends in constitutional justice in this area.

The Conference contributed to enhancing exchange of information between these constitutional courts of the region.

Palestinian National Authority

Seminar on the “Establishment of a Constitutional Court of the Palestinian National Authority”

This Conference was co-organised by the Venice Commission together with the European Union Siyanda Programme and took place in Ramallah on 22 and 23 April 2009.

The Conference gathered together 30 participants and its aim was to discuss the creation of a Constitutional Court of the Palestinian National Authority on the basis of the Opinion adopted by the Commission at its plenary session in March 2009 (CDL-AD (2009) 014).

Russia

XIIth International Forum on Constitutional Justice on “Property rights and the freedom of enterprise: constitution in practice”

The Venice Commission organised, in co-operation with the Moscow Institute for Public Law and Policy and under the aegis of the Constitutional Court of the Russian Federation, the XIIth International Forum on Constitutional Justice on the topic “Property rights and the freedom of enterprise: the constitution in practice”, in St Petersburg on 20 and 21 November 2009.

The Forum meets annually and allows presidents and judges of constitutional courts to exchange their experiences and points of view on a given topic with their peers from other constitutional courts, supreme courts, the European Court of Human Rights, the European Court of Justice and professors.

Participants included judges from the Constitutional Court of the Russian Federation, judges from civil and administrative supreme courts, three judges from the European Court of Human Rights, one from the European Court of Justice, presidents of the Constitutional Courts of Belarus and Bulgaria and judges from the constitutional courts of Latvia and Lithuania.

The Forum discussed the topic of the protection of property rights in countries in transition from totalitarian regimes towards democracies, criteria used by the European Court of Human Rights and constitutional courts and courts of equivalent jurisdiction in Germany, France, Latvia, Lithuania and Poland. The participants discussed the protection of property rights, general principles and limits to the freedom of enterprise according to the European Court of Justice; the notion of public interest

in the case-law of the European Court of Human Rights as well as the case-law of the Constitutional Court of the Russian Federation; new challenges to property rights in Europe, the conditions for restitution of property, the relationship between the freedom of religion and restitution of church property and constitutional limits that may be applied to tax relief.

Serbia

Opinion on the draft criteria and standards for the election of judges and court presidents

By letter dated 18 March 2009, the Minister of Justice of the Republic of Serbia, Ms Snezana Malovic, requested an opinion on the draft Criteria and standards for the election of judges and court presidents.

The draft criteria on judges are intended to set out objective criteria for the recruitment and appointment of judges. The actual election of the judges, however, is still governed by the Constitution of Serbia and the laws previously assessed by the Venice Commission (CDL-AD (2008) 007).

In its opinion adopted at the June 2009 session (CDL-AD (2009) 023), the Venice Commission states that its concerns with respect to the reappointment procedure for existing judges, who had not been guilty of any wrongdoing, are partly addressed by these draft criteria on judges.

As such, the draft criteria are in line with European standards (recommendations of the Council of Europe and good practices identified in member states) and are forward-looking as they define a precise framework for the skills required of the various categories of judges. However, reservations are raised with respect to the

manner in which the various skills are going to be evaluated and balanced against one another.

Opinion on the draft Rules of procedure on criteria and standards for the evaluation of the qualification, competence and worthiness of candidates for bearers of public prosecutor's function

By letter dated 18 March 2009, the Minister of Justice of Serbia, Ms Snezana Malovic, requested an opinion on the draft Rules of procedure on criteria and standards for the evaluation of the qualification, competence and worthiness of candidates for bearers of public prosecutor's function.

In its opinion adopted at its June 2009 session (CDL-AD (2009) 022), the Commission notes that the draft criteria on prosecutors define the criteria and standards for the evaluation of prosecutors and candidates to prosecutorial functions and concern the criteria for election to the position of public prosecutor and deputy public prosecutor. They are proposed to be adopted by the State Prosecutorial Council. The drafters tried to avoid any arbitrariness in the evaluation of prosecutors and the consequences of the evaluation. Precise criteria have been established and the procedure has been set out.

The draft criteria provide for a concrete and objective evaluation of prosecutors, carried out by the State Prosecutorial Council, an authority that provides guarantees of impartiality and competence.

The principal concerns with these draft criteria relate to the risk of an over-mechanistic approach to statistical information concerning workloads and the like, and in evaluating persons through the use of questionnaires by their colleagues which are filled anonymously poses some risks (Article 27). This latter idea may need to be looked at

again and some safeguards built in to avoid the possibility that a prosecutor could be evaluated unfairly.

Furthermore, the procedure will require much work from the prosecutors, who will be in charge of grading their subordinates as well as for the State Prosecutorial Council. It will be important that persons responsible for the evaluation – at all levels – be able to take on this duty under conditions (especially sufficient time) that will lead to a fair outcome.

In order to simplify the procedure, one could renounce to the detailed evaluation of prosecutors who, according to the general opinion of their superiors, carry out their duties in a satisfactory manner and who have raised no problems of misbehaviour. This could also apply to their promotion. The system could provide that a positive opinion is required for a promotion within the Public Ministry and a detailed evaluation will only be required where prosecutors have received a negative opinion from at least one superior officer who was asked to provide an opinion. In this way, the means required would be drastically reduced.

Conference on “Constitutional restrictions on the freedom of association”

The Conference on “Constitutional restrictions on the freedom of association” was organised by the Constitutional Court of Serbia in co-operation with the Venice Commission in Belgrade on 2 June 2009.

The Conference gathered together around 40 participants: presidents of the constitutional courts of Serbia and Montenegro, Serbian judges, the Minister of Human and Minority Rights of Serbia, the Minister of Public Administration and Local Self-Government of Serbia, the Om-

budsman of Serbia, law professors and other legal professionals.

The conference’s aim was to discuss acceptable limitations to the freedom of association and the role of the constitutional court and other institutions in protecting this freedom.

Several bills on associations had been prepared over the past 9 years, which were never adopted by Parliament – and it looked as if a recent new bill was going to finally be adopted.

The Conference also discussed the problem of whether or not to prohibit the illegal activities of unregistered associations and if so, how. Note was however taken that in those countries in Europe that have laws regulating the prohibition of associations/political parties, there was a general reluctance to apply them.

Tajikistan

Seminar on the “International experience and standards in the field of independence of the judiciary”

The Judicial Training Centre of Tajikistan, the Tajik Branch of the Open Society Institute – Assistance Foundation and the Venice Commission organised, with the support of the German Government, a seminar on the “International experience and standards in the field of independence of the judiciary” in Dushanbe, Tajikistan on 12 and 13 November 2009.

Participants included the director of the Judicial Training Centre, the Ombudsman of Tajikistan, the law programme co-ordinator of the Tajik Branch of the Open Society Institute – Assistance Foundation, law professors from Azerbaijan and Italy; judges and former judges of the constitutional courts of Latvia and Tajikistan.

During the seminar participants discussed the independence of constitutional courts and in particular the courts of Tajikistan and international co-operation between constitutional courts and equivalent bodies as a means to promote judicial independence.

Turkey

4th Conference of Secretaries General of Constitutional Courts and Courts of Equivalent Jurisdiction

The Venice Commission organised the fourth Conference of Secretaries General of Constitutional Courts and Courts of Equivalent Jurisdiction in co-operation with the Constitutional Court of Turkey in Ankara on 1 and 2 October 2009.

The Conference gathered together 22 secretaries general of constitutional courts from all over Europe as well as from the Constitutional Council of Morocco.

The reports and discussions focused on four themes:

The first was on case management and the procedure of preliminary requests, where participants discussed the pros and cons of constitutional complaints that challenge court rulings and those that challenge statutes; the fact that the Council of Europe tends to favour complaints that challenge rulings as these ease the caseload of the European Court of Human Rights. The participants also learned about the role of the Secretary General of the Constitutional Court of Morocco and how his role is limited to electoral disputes in contrast with the extended role played by the Swiss *gruffer*, the *Référendaire* at the Court of Justice of the European Communities, the Macedonian law clerks and the Italian *canceller*, which was discussed under the second theme, the preparation of decision of constitutional courts (the role of law clerks).

Discussions covered such issues as the advantages and disadvantages of having only one judge decide on the admissibility of a complaint, they also covered the individual complaints procedure and the fact that Turkey has been considering the introduction of such a procedure since 2004, but that due to the lack of support from the Turkish Council of State and the Court of Cassation, discussions were still ongoing.

The third theme dealt with the secretary general's relationship with the outside world: the rights of third parties, the right to access official documents and the publication of the decisions of constitutional courts. This was a very timely subject in view of the recent judgment of the European Court of Human Rights in the case of *Tarasa A Szabadságjogóért v. Hungary* and the new Council of Europe Convention on access to official documents adopted on 18 June 2009. Participants discussed and compared the information that their courts provided on their websites and how long it takes them to publish decisions.

The last theme dealt with the financial management and economic constraints of the constitutional court. The independence of the courts' budget was discussed as well as budget strategies, how and when audits are carried out and informing/reporting on the use of public funding.

Ukraine

Opinion on the draft Law on the Office of the Public Prosecutor

By letter dated 18 May 2009 the Minister of Justice of Ukraine, Mr Mykola Onishchuk, asked the Venice Commission to examine the draft Law on the Office of the Public Prosecutor.

In its opinion adopted at the June 2009 session (CDL-AD (2009) 048) the Commission found that the draft did not intend to reform the functioning of the prosecution service in Ukraine which was inherited from the Soviet “prokuratura” system but the text was rather an attempt to preserve the status quo and to put an end to reform efforts undertaken on the basis of the 1996 Constitution of Ukraine.

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 2009 three regular issues were published. The Bulletin is highly appreciated by the courts because it enables regular exchanges of case-law between them, which would otherwise not be possible due to language barriers.

CODICES database

All regular and special issues of the Bulletin are included in the CODICES database (<http://www.CODICES.coe.int>), which at the end of 2009 contained 5 779 cases. Non-Euro-

The recommendations made by the Commission in its earlier opinions of 2001, 2004 and 2006 had not been taken on board in this new draft law. The prosecutor’s office would remain a very powerful and excessively centralised institution whose functions considerably exceeded the scope of functions performed by a prosecutor in a democratic country. The Commission recommended to withdraw the draft and to prepare an entirely new law.

pean 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 of information between constitutional courts and equivalent bodies. Liaison officers from one court may ask questions about specific topics to all the other courts and receive their replies in time for the preparation of a case pending before their court. The Forum exists in two forms: (1) the classic Forum, which allows exchanges of information 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 2009 34 requests were made via the Forum and received replies

with a rich content on issues as diverse as lustration, public gatherings, contesting paternity and criminal liability of parents for their children's actions.

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.

Conferences of the Asian Constitutional Court Judges

The Venice Commission participated in the 6th Conference of Asian Constitutional Court Judges on "Constitutional review and separation of powers" organised by the Constitutional Court of Mongolia and the Konrad Adenauer Stiftung, which took place in Ulaan Baatar, Mongolia, on 25 and 26 July 2009.

The Conference discussed constitutional adjudication *vis-à-vis* the legislature, the relation between constitutional review organs, governments and the ordinary judiciary and the establishment of an Asian Association of Constitutional Courts and Equivalent Organs. The participating delegations welcomed the establishment of the World Conference on Constitutional Justice as a permanent body.

Association des Cours Constitutionnelles ayant en Partage l'Usage du Français (ACCPUF)/ International Organisation of the Francophonie (OIF)

The 5th Congress of the ACCPUF on the topic of "Constitutional courts and crises" took place in Cotonou, Benin on 23-25 June 2009. The Congress was opened by the Pres-

ident of the Republic, Mr Yayi, and the Secretary General of the Organisation Internationale de la Francophonie (OIF), Mr Abdou Diouf.

The discussions covered, *inter alia*, constitutional crisis and the role of the courts in African countries.

The World Conference on Constitutional Justice was also discussed and the idea of its institutionalisation was welcomed in general.

The Venice Commission is grateful to the **International Organisation of the Francophonie** for their support in ensuring that contributions from its member, associate and observer states can be translated into French.

Conference of Constitutional Control Organs of Countries of Young Democracy

As part of its co-operation with the Conference of Constitutional Control Organs of Countries of Young Democracy, the Venice Commission co-organised the XIVth Yerevan International Conference on the "International experience of interaction between constitutional courts and parliaments in guaranteeing the supremacy of the constitution" in Yerevan, Armenia, under the aegis of the CCCCYD (see above).

Conference of European Constitutional Courts

A preparatory meeting of the Conference of European Constitutional Courts took place in Bucharest, Romania

on 15-16 October 2009. During this meeting the Conference of European Constitutional Courts (CECC) selected a theme its XVth Congress.

The CECC gathered together presidents, chief justices and judges of constitutional courts and equivalent bodies from 40 European countries. The European Conference also discussed the draft statute of the World Conference on Constitutional Justice and decided that it was too early to have the statute adopted.

Ibero-American Conference of Constitutional Justice

The Venice Commission was invited by the Supreme Court of Mexico to participate in the VIIth Ibero-American Conference on Constitutional Justice on “Constitutional Interpretation”, which was held in Mérida, Yucatán from 15 to 17 April 2009.

At this conference a first draft Statute for the World Conference on Constitutional Justice was also discussed during the Bureau meeting (which was established by the Final Declaration of the First World Conference on Constitutional Justice) on 16 April 2009.

World Conference on Constitutional Justice

The Commission has established co-operation, since 1996, with a number of regional or language based groups of constitutional courts, in particular the Conference of European Constitutional Courts, the Association of Constitutional Courts using the French Language, the Southern African Chief Justices’ Forum, the Conference of Constitutional Control Organs of Countries of Young Democracy, a group of Asian constitutional courts, the

Southern African Chief Justices Forum (SACJF)

Within the framework of its co-operation agreement with the SACJF (formerly known as Southern African Judges Commission SAJC), the Commission co-organised the Colloquium on the “Relations between constitutional courts and parliaments” Conference in Botswana, on “Sustaining the rule of law to promote socio-economic development in the Eastern and Southern African Region” that took place in Kasane in August 2009 (see above, page 48).

Union of Arab Constitutional Courts and Councils (UACCC)

The Venice Commission co-operates with the UACCC on the basis of a co-operation agreement concluded in June 2008. In 2009, the UACCC, the Constitutional Court of Algeria and the Venice Commission organised an international colloquium on the occasion of the 20th anniversary of the Algerian Constitutional Council on the “Relations between the Constitutional Court and Parliament” in Algiers from 31 October to 1 November 2009 (see above, page 47).

Union of Arab Constitutional Courts and Councils and the Ibero-American Conference of Constitutional Justice.

In the pursuit of the goal of uniting these groups and their members, the Commission organised for the first time a World Conference on Constitutional Justice, which was held in Cape Town, South Africa on 23 and 24 January 2009 in co-operation with the Constitutional Court of South Africa on the topic “Influential Constitutional Jus-

tice – its influence on society and on developing a global jurisprudence on human rights”. The Conference brought together 8 regional or linguistic groups and 93 courts.

The World Conference adopted a declaration which “concluded that constitutional justice is a key element in fostering and deepening the basic values enshrined in the Constitutions that form the basis of the work of the Courts and Councils which participated in the World Conference. Their decisions have a decisive impact on society.

The participants of the Conference underlined the paramount importance of the respect for human rights in all parts of the World and insisted that governments must implement international human rights instruments.

The presentations and discussions at the World Conference showed a common concern for the defence of human rights and the rule of law, both on a regional and a global level. One element identified as being at the heart of this jurisprudential trend is the unifying force of the Universal Declaration on Human Rights and the UN Covenants. Other elements are the decisions of regional Courts such as the European Court of Human Rights, the Inter-American Court of Human Rights or the African Court of Human Rights. Mutual inspiration is also increasingly drawn from the case-law of peer Courts of other countries and even other continents, which gives rise to cross-fertilisation between the Courts on a worldwide scale. While constitutions differ, the basic principles underlying them,

in particular the protection of human rights and human dignity and respect for the Constitution and the rule of law, form a common ground. Legal reasoning in respect of the application of these principles in one country can be a source of inspiration in another country, notwithstanding the differences in their Constitutions.

Consequently, the exchange of information and experience between the Courts and Councils should be reinforced on a regional and global basis. The participants of the World Conference endorse and support the regional and linguistic groups and call upon their members to use the tools for exchange of information and experience provided by the Venice Commission, notably the CODICES database (<http://www.CODICES.coe.int/>) and the on-line Venice Forum”.

On the basis of the declaration adopted in Cape Town, the Venice Commission assisted the Bureau in the establishment of the World Conference as a permanent body. At their first meeting in Mexico in April 2009, the Bureau prepared a draft Statute, which was discussed at another meeting of the Bureau on 12 December 2009 in Venice together with questions on the organisation of a second Congress (Conference) on Constitutional Justice in January 2011. The topic of this event will be “Separation of Powers and Independence of Constitutional Courts and Equivalent Bodies”.

Transnational activities – Ordinary judiciary

Study on the Independence of the Judiciary

By letter of 11 July 2008, the Chairperson of the Commit-

tee on Legal Affairs and Human Rights of the Parliamentary Assembly requested the Venice Commission to give an opinion on “European standards as regards the inde-

pendence 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 Commission decided to prepare two reports on the independence of the Judiciary: one dealing with prosecution and another one on judges and entrusted the preparation of this report to its Sub-Commission on the Judiciary, which met twice in Venice in 2009. The Commission intends to adopt these reports in 2010.

Democracy through free and fair elections



Country-specific activities

Albania

Electoral reform

At its March 2009 session, the Commission adopted a joint opinion with OSCE/ODIHR on the Electoral code of the Republic of Albania as revised until December 2008 (CDL-AD (2009) 005). The opinion concludes that the Electoral Code of Albania provides a thorough technical foundation for the organisation of elections. The recent amendments continue to improve the Code and reflect the commitment of the Albanian authorities to improve the legal framework for elections. Although the amendments continue the process of electoral reform, new provisions related to media access and campaign financing are less effective.

Legal assistance to an election observation mission

At the invitation of the Parliamentary Assembly of the Council of Europe, a Commission delegation participated, as a legal adviser, in a mission observing the legislative elections which took place on 28 June 2009. This delegation's task was to advise the PACE delegation on legal aspects of the elections.

Armenia

Electoral reform

In 2008 the Venice Commission adopted a 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 underlined that a number of improvements were still necessary in electoral legislation and practice, especially concerning complaints and appeals and the balance in the composition of election commissions. In 2008 a working group on electoral reform, composed of the various political factions and members of the civil society as well as of representatives of the international community, was established.

At the request of the National Assembly of Armenia, the Venice Commission initiated in October 2009 a joint informal opinion on the basis of proposals for revising the Election Code by the above-mentioned working group. This informal opinion should lead to a formal opinion on a draft revision of the Election Code during 2010.

Azerbaijan

Further to the opinion by the Venice Commission and OSCE/ODIHR on the draft amendments to the Electoral code of the Republic of Azerbaijan, which raised a number of points which should be reconsidered in this code, co-operation with the authorities of Azerbaijan continued in the electoral field. On 25 September 2009 the Venice Commission co-organised with IFES and the Office of the Special Representative of the Secretary General in Baku a round table on the Use of Administrative Resources in Elections. Representatives of the authorities,

1. This chapter covers questions related to elections, referendums and political parties.

several political parties and NGOs attended the seminar as well as representatives of academia. Co-operation will continue in 2010, in particular in the framework of the preparation of the parliamentary elections in Azerbaijan.

France – international co-operation

At the invitation of the French Ministry of Foreign and European Affairs, the Commission participated in an election observation day in Paris on 25 May 2009. This event brought together election observers and other persons responsible for electoral matters to discuss the role of the international community during election observation missions and to gain a better understanding of the role of election observers.

Georgia

Political parties' reform

At the request of the Parliament of Georgia, the Venice Commission carried out an assessment of the Law amending the Law of Georgia on political unions of citizens (CDL-AD (2009) 033). In its conclusions, the Venice Commission underlined that the mechanisms and formulas of party financing represent a step in the right direction in efforts to normalise political competition between ruling and opposition parties and strengthen democratic reforms in the country. Nevertheless, the opinion raised a number of points which would need revision. These points regard the legal status of the fund or foundation; the necessity of framework budget decisions concerning the fund's or foundation's distribution of appropriate means; the necessity that the fund or foundation can be fully audited by external auditors; finally, it has to be ensured that there is full accountability and transparency in matters of the fund or foundation.

Electoral reform

Further to the joint opinion by the Venice Commission and OSCE/ODIHR on the Electoral Code of Georgia as amended in July 2008 (CDL-AD (2009) 001), a process towards revision of this Code was initiated. In the framework of this process, the Venice Commission took part on 4 July 2009 in a meeting of the Election Code Working Group, in charge of preparing the revision of the Election Code. The Electoral Code Working Group included representatives of political parties, international organisations, international and local NGOs observing the meeting, as well as the Central Election Commission. The Venice Commission delegation recalled some important recommendations to be implemented in the future revised Election Code on the basis of the Venice Commission-OSCE/ODIHR Joint Opinion of January 2009 (CDL-AD (2009) 001), including more accurate voters lists; clarification of complaints and appeals procedures; the question of political officials combining campaigning with official duties, as well as the issue of the use of administrative resources for campaign purposes. An opinion of the Electoral Code as revised up to December 2009 should be adopted in 2010.

Kyrgyzstan

At its October 2009 session the Commission adopted a joint Venice Commission and OSCE/ODIHR opinion on the draft law on political parties of the Kyrgyz Republic (CDL-AD (2009) 041). The opinion had been requested by the Parliament of Kyrgyzstan. The opinion pointed out that the Draft Law generally followed democratic standards and accepted practices as outlined in a number of international documents; however, the Commission stressed that the ultimate test of the compliance of the law

with the relevant international standards would be its practical implementation. In particular, the draft should be strengthened in some areas to fully respect the right of association as some provisions of the text unreasonably limited this right.

Moldova

Assistance to the Central Election Commission

In the context of the parliamentary elections of 5 April 2009 the Venice Commission organised on 26 February 2009 a seminar in order to disseminate the principles of the European Electoral heritage in the field of political parties and to ensure due implementation of the Law on political parties and of the Election Code.

In the same context and at the request of the Central Election Commission of Moldova, the Venice Commission provided an international expert in electoral matters from 17 March to 9 April 2009 aimed at assisting the electoral administration on legal and technical issues.

The Venice Commission participated in an international conference organised by the Central Election Commission of Moldova on 2 and 3 November 2009 regarding the evaluation of the 2009 parliamentary elections. In this regard, domestic and international speakers intervened concerning the 5 April and the repeat 29 July parliamentary elections; a Venice Commission election expert intervened and underlined the Venice Commission and OSCE/ODIHR recommendations to improve the Election Code and more globally the electoral process on the basis of the Joint Opinion of October 2008 (CDL-AD (2008) 022).

On 5 November 2009 the Venice Commission participated in a Round table on media monitoring during elections, organised by the Directorate General of Human Rights

and Legal Affairs of the Council of Europe, Media division. A member of the Venice Commission introduced the OSCE/ODIHR-Venice Commission “Guidelines on media analysis during election observation missions” (CDL-AD (2009) 031).

Legal assistance to election observation missions

In the context of the parliamentary elections of 5 April 2009 and at the invitation of the Parliamentary Assembly of the Council of Europe, a delegation of the Venice Commission participated from 2 April to 6 April 2009 in an election observation mission of the Parliamentary Assembly. Their mandate was to advise the delegation on the legal aspects of the elections.

In the context of the 29 July 2009 repeat Parliamentary elections, a Venice Commission election expert assisted the Central Election Commission from 15 July to 5 August 2009 in preparing the repeat elections on the legal and technical aspects of the electoral process.

In the same context and at the invitation of the Parliamentary Assembly of the Council of Europe, this expert participated from 26 to 31 July 2009 in an election observation mission of the Parliamentary Assembly as legal adviser. His mandate was to advise the delegation on the legal aspects of the elections.

Co-operation with the Moldovan authorities in the electoral field should proceed in 2010.

Serbia

Electoral reform

At its October 2009 session, the Venice Commission adopted a joint Venice Commission and OSCE/ODIHR opinion on the draft laws on electoral legislation in Serbia

(CDL-AD (2009) 039). This opinion had been requested by the Minister for Public Administration and Local Self-Government of Serbia. The joint opinion of the Venice Commission and OSCE/ODIHR commented on the following draft laws of the Republic of Serbia: Draft Law on the Unified Register of Voters, Draft Law on the State Election Commission, and Draft Law on Election of Councillors. Although the submitted laws mostly followed the previous recommendations of the Venice Commission and OSCE/ODIHR, there were still some areas where the existing norms could be improved, notably, provisions regarding the recall of commission members, participation in the electoral process of both international and nonpartisan domestic observers, discretionary powers of political parties to distribute two-thirds of the mandates to candidates without regard to their order on the lists, requirements for the production and verification of signature lists in support of a candidate list as well as procedures for mobile voting.

“The former Yugoslav Republic of Macedonia”

Electoral reform

At the request of the Minister of Justice, the Venice Commission prepared, jointly with OSCE/ODIHR, an opinion on the Electoral code as modified in October 2008 (CDL-AD (2009) 032). OSCE/ODIHR and the Venice Commission strongly recommended reviewing *inter alia* the following elements:

- the voter turnout requirement in the second round of the Presidential election (which should be removed);
- the procedures of appointment and dismissal of members of the election commissions, notably the Municipal Election Commissions;

- the system for voting abroad;
- the method of defining districts, in particular the drawing of districts;
- the provisions on media coverage and more especially those relating to paid advertising;
- addressing concerns regarding campaign financing;
- improving the counting process; and
- improving the complaints and appeals process by the adoption of more detailed provisions.

Legal assistance to the State Electoral Commission

In the framework of the local and presidential elections, on 2 and 3 March 2009 the Venice Commission co-organised with the State Electoral Commission an electoral workshop with a view to training trainers. The workshop consisted of practical group working sessions on the different legal and technical aspects of a poll. This training course enabled approximately 80 trainers to train all the members of the country's polling stations.

Legal assistance to an election observation mission

At the invitation of the Parliamentary Assembly of the Council of Europe, the Venice Commission participated, as a legal adviser, from 19 to 23 March 2009 in a mission observing the Presidential elections which took place on 22 March 2009. Its task was to advise the PACE delegation on legal aspects of the elections.

Seminar of the Skopje School of Politics

At the invitation of the Directorate General of Democracy and Political Affairs the Venice Commission participated from 26 to 29 March 2009 in a seminar on the situation in the country on the occasion of the elections. The Commission presented a report on the fundamental elements for

elections and their implementation during elections in the country.

Ukraine

Electoral reform: opinions

In 2009 the Venice Commission adopted three opinions on the electoral legislation in Ukraine: the Opinion on the Draft Law amending the Law on election of People's Deputies of Ukraine presented by People's Deputies Lavrynovych and Portnov (CDL-AD (2009) 019) adopted by the Venice Commission at its March 2009 session; the Joint Opinion on Draft Law No. 3366 about Elections to the Parliament of Ukraine by the Venice Commission and the OSCE/ODIHR (CDL-AD (2009) 028) adopted by the Venice Commission at its June 2009 session and the Joint Opinion on the Law on amending some legislative acts on the election of the President of Ukraine adopted by the Verkhovna Rada of Ukraine on 24 July 2009 (CDL-AD (2009) 040) by the Venice Commission and the OSCE/ODIHR adopted by the Venice Commission at its October 2009 session.

In its opinion on the Draft Law amending the Law on election of People's Deputies of Ukraine presented by People's Deputies Lavrynovych and Portnov (CDL-AD (2009) 019) the Commission pointed out that the proposed election system (where a winning party automatically would have gained the majority of seats in the parliament (226)) would most probably lead to a further polarisation between two major political blocs and exacerbate the division within the country. Moreover, the proposed distribution of seats seemed to be alien to known electoral systems and solutions used in Europe and could be problematic in the light of the existing European standards in the field of elections.

The Joint Opinion on Draft Law No. 3366 about Elections to the Parliament of Ukraine (CDL-AD (2009) 028) concluded that this draft law provided a thorough technical foundation for elections and incorporated some previous recommendations of the Venice Commission and the OSCE/ODIHR. However, the draft law could and should be further improved, in particular concerning de-registration of candidates, the procedure for the allocation of mandates and the nomination of members of electoral commissions.

The Joint Opinion on the Law on Amending some legislative acts on the election of the President of Ukraine adopted by the Verkhovna Rada of Ukraine on 24 July 2009 (CDL-AD (2009) 040) considered that the adopted law had a considerable number of shortcomings. The rapporteurs pointed out that although the amendments to the Election Law incorporated a number of important recommendations, concerns previously expressed by the OSCE/ODIHR and the Venice Commission remained unaddressed, including candidacy requirements and the role of non-party domestic observers. Furthermore, the law had a number of provisions that marked a step backwards in some aspects of the election legislation. Among other problems the adopted law had restrictive amendments that undermined the possibility to challenge election results and undermined the right of citizens, parties, and other stakeholders to seek effective redress for violations and allowed disputes to remain un-adjudicated.

Round table on possible electoral systems for the parliamentary elections in Ukraine

At the invitation of the Verkhovna Rada of Ukraine, representatives of the Venice Commission took part in a round table on possible electoral systems for parliamenta-

ry elections in Ukraine (3-4 February 2009). This event was attended by members of the parliament of Ukraine, representatives of various NGOs and academia. The delegation of the Venice Commission had an opportunity to hold separate meetings with the representatives of the Ukrainian authorities and attended the opening of the spring session of the Rada.

Regional seminars “Quality of elections: making democracy strong”

Experts of the Venice Commission participated in regional seminars on electoral issues co-organised by the Cen-

tral Electoral Commission of Ukraine, the Committee for state building and local self-government of the Verkhovna Rada and the Ukrainian Agency for legislative Initiatives in Odessa (2-3 July), Lviv (24-25 September) and Kyiv (20-21 October).

In 2009 the Venice Commission continued its co-operation with the Working group of the Verkhovna Rada on the Election Code of Ukraine. Representatives of the Commission attended two working sessions of the group in February and May 2009.

Transnational activities

Code of Good Practice in the field of political parties

In December 2008, further to Parliamentary Assembly Resolution 1546 (2007) on the Code of good practice for political parties, which is addressed to political parties and does not contain recommendations for national authorities, the Venice Commission adopted a Code of good practice in the field of political parties.

In March 2009 the Venice Commission adopted the Explanatory report to the Code of good practice for political parties (CDL-AD (2009) 021) and transmitted it to the Parliamentary Assembly of the Council of Europe.

The Code of Good Practice in the field of Political Parties has, in comparison with the former texts on political parties, a number of specific features which introduce a new approach to the issue. Its explicit aim, as mandated in the PACE resolution, is to reinforce political parties' internal democracy and increase their credibility in the eyes of cit-

izens, thus contributing to the legitimacy of the democratic process and institutions as a whole and fostering participation in political life, as well as to promote democratic principles such as equality, dialogue, co-operation, transparency and the fight against corruption.

Impact of electoral systems on women's representation in politics

At the request of the Committee on equal opportunities for women and men of the Parliamentary Assembly the Venice Commission drafted a report on the impact of electoral systems on women's representation in politics, which was adopted by the Council for Democratic Elections in March 2009 and by the Venice Commission in June 2009 (CDL-AD (2009) 029).

This report concluded that there is a wide variety of socio-economic, cultural and political factors that can hamper or facilitate women's access to parliament. However, even if they are not the only factors exercising an influence on

women's representation in parliament, both the electoral system and gender quotas can strongly influence women's parliamentary representation. The following combination, theoretically, appears to be favourable: PR list systems in large constituencies and/or a nationwide district, with legal threshold, closed lists and a mandatory quota which provides not only for a high portion of female candidates, but also for strict rank-order rules and effective sanctions for non-compliance. Having said this, it should be noted that the electoral system, apart from favouring women's representation, can also pursue other political aims, such as, for instance enabling the formation of stable governing majorities and ensuring a close voter-representative relationship. Since some of the objectives are antagonistic, no electoral system fulfils all requirements completely. Consequently, the appropriateness of an electoral system is dependent on the political aims which are given priority in a particular socio-cultural and political context.

Media analysis during election observation missions

In 2005 the Council for Democratic Elections and the Venice Commission had already adopted "guidelines on media analysis during election observation missions" (CDL-AD (2005) 032), in co-operation with OSCE/ODIHR and the Directorate General of Human Rights of the Council of Europe. A shorter version was prepared on the basis of the 2005 document, which is aimed at a wider public and not only at specialists in the subject and was adopted by the Council for Democratic Elections and the Venice Commission in June 2009 (CDL-AD (2009) 031).

This document endeavours to offer tools for analysing how the media can influence the electoral process. It emphasises the following points:

- Voters' right to receive information;
- Candidates' right to impart information;
- The media's freedom of expression.

The guidelines highlight in particular media coverage, free airtime space and paid advertising.

International status of election observers

Following a request from the Parliamentary Assembly of the Council of Europe, the Venice Commission studied the question of an international status of election observers.

Firstly, the Commission drew up a report on an internationally recognised status for election observers, which it adopted at its March 2009 session (CDL-AD (2009) 020rev). This text consists of a comparative study of international and national texts and standards related to the rights and duties of election observers. Following this report, the need for recommendations leading to an internationally recognised status of election observers appeared beneficial considering the existing disparities in rights and duties of election observers in international and domestic legislation as well as in soft-law. The Commission then drew up a summary of recommendations on the basis of international election observation mission reports (CDL-AD (2009) 026) and aimed at summarising what is lacking in the rights and obligations of election observers in the different domestic legislations. Finally, the Commission drew up guidelines aimed at recognising a real status for both national and international election observers (CDL-AD (2009) 059), and to harmonise as far as pos-

sible between the different domestic legislations of the member states.

Cancellation of election results

Following the Commission's decision to study the question of the cancellation of election results, a UniDem Seminar was organised in Valletta (Malta) on 14 and 15 November 2009 in which took part representatives of Constitutional and Supreme Courts responsible for electoral disputes. In parallel, the Commission drew up a comparative study of the situation in the Council of Europe member states. This study focused on parliamentary elections and was adopted by the Council for Democratic Elections and the Venice Commission in December 2009 (CDL-AD (2009) 054).

The report made the following conclusions: In almost all European countries there is a possibility to appeal the decision validating election results. However, national procedure for the cancellation of election results varies between European states. Some countries have a fast procedure, whereas in other countries the time-limits are long or not provided for in law. Differences also appear based on the question of whether the last instance to review the cancellation is a judicial body or not, how broad the right to collect evidence by the decision-making body is and whether the cancellation is still possible after the elected person has taken office. There are lesser divergences concerning the legal basis for the cancellation of election results as in all observed countries the rule is that the cancellation is possible when the violations have affected the overall results (allocation of mandates). In short, even if the principles laid down in the Code of Good Practice in Electoral Matters on the cancellation of

election results are not fully followed in most countries, the legislation is mostly in harmony with the Code.

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

Following the conclusions of the 2007 session of the Forum for the Future of Democracy, the Consultative Committee of the Forum requested a more in-depth examination of the question of threshold of parliamentary representation. The Venice Commission started an examination of this issue.

A first report on this question was adopted in 2008 (CDL-AD (2008) 037). The Commission continued its work in 2009, with a view to drafting a second text examining in more details the effects of the different domestic laws, and even a third text containing guidelines on this matter. Work on this issue will continue in 2010.

UniDem Seminar on Controlling the Electoral process

In the framework of the Spanish Presidency of the Committee of Ministers, in co-operation with the Centre for political and constitutional studies, the Ministry for the Presidency and the Ministry of Foreign Affairs of Spain, the Venice Commission organised a Conference on "Controlling the Electoral Process", in Madrid on 24 and 25 April 2009.

This Conference was aimed at examining how to make electoral legislation more efficient. It brought together around thirty high level experts in the electoral field from Europe and America, in particular Presidents and members of international jurisdictions, Constitutional and Supreme Courts and Electoral Courts. It enabled

comparisons to be made between solutions adopted on both continents on the issue of control of the electoral process, in particular disputes and control of the financing of electoral campaigns.

The following subjects were dealt with:

- A comparative analysis of the bodies responsible for electoral control, in particular judicial ones. This analysis demonstrated the different approaches used in Europe, where disputes are generally dealt with by the constitutional or ordinary courts, and Latin America, which has developed its own method of electoral jurisdiction;
- The role of the international judicial instances in guaranteeing the quality of the electoral process: European Court of Human Rights and Inter-American Court of Human Rights;
- Specialised economic control: the control of electoral campaign financing. The reports on this theme concerned the situation in both Europe and America with emphasis on the United States, Mexico and Spain;
- Electoral disputes: a summary. In this context both the procedural and material aspects of electoral disputes before constitutional and supreme national courts were dealt with.

6th European Conference of Electoral Management Bodies “Enhancing participation in elections”

The 6th European Conference of Electoral Management Bodies – “Enhancing participation in elections” was organised by the Venice Commission in co-operation with the Ministry of the Interior and Kingdom Relations of the Netherlands and the Electoral Council of the Netherlands on 30 November and 1 December 2009 in The Hague. The issues which were addressed during the conference in-

cluded the recent elections in member states, as well as measures aimed at attracting voters to participate in elections, organisation of the information campaigns before the vote and the problem of criteria for disenfranchising voters.

Around 75 participants from national electoral management bodies of the following countries attended the conference: Albania, Austria, Belgium, Finland, Georgia, Germany, Kyrgyzstan, Latvia, Malta, Mexico, Netherlands, Norway, Portugal, Russian Federation, Spain, Sweden, Ukraine and United Kingdom as well as representatives of the Parliamentary Assembly of the Council of Europe and the Directorate General of Democracy and Political Affairs.

Reports were presented by Mr E. Tanchev, President of the Constitutional Court of Bulgaria, Member of the Venice Commission, Ms M. van den Broeke, Deputy Spokesperson and Head of the Press Unit at the European Parliament, Mr E. Abrahamson, Solicitor, London, United Kingdom and Mr G. Golosov, Professor at the University of St Petersburg, Russian Federation.

Three workshops were organised on measures aimed at attracting voters to participate in elections, organisation of the information campaigns before the vote and the problem of criteria for disenfranchising voters.

Among other issues the Conference reminded the participating states of their obligation to ensure the implementation of the rights enshrined in Article 3 of Protocol No. 1 to the European Convention on Human Rights, the applicable case-law of the European Court of Human Rights and other international instruments. It also underlined the importance of specific measures focused on attracting electors to participate in elections.

VOTA, the Venice Commission's electoral database

The VOTA database was set up as part of the joint Venice Commission and European Commission programme "Democracy through Free and Fair Elections" in 2004. It contains the electoral legislation of the Venice Commission's member states and other states involved in the Commission's work. Over 100 laws and statutes from about 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>).

In 2009 the Secretariat of the Venice Commission, in cooperation with some of the European Electoral Bodies, updated the database on the basis of the results of the survey conducted in 2008. New functionalities were added to the database. The work on some further technical improvements of the database will be continued in 2010.

International co-operation



Council of Europe

Committee of Ministers

Representatives of the Committee of Ministers participated in all the Commission's plenary sessions during 2009. The following ambassadors, Permanent Representatives to the Council of Europe, attended the sessions during 2009:

- Ambassador Judit Jozsef, Permanent Representative of Hungary,
- Ambassador Zoran Jankovic, Permanent Representative of Montenegro,
- Ambassador Claudette Gastaud, Permanent Representative of Monaco,
- Ambassador Ronald Mayer, Permanent Representative of Luxembourg,
- Ambassador Petter Wille, Permanent Representative of Norway,
- Ambassador Sergio Busetto, Permanent Representative of Italy,
- Ambassador Thomas Hajnoczi, Permanent Representative of Austria,
- Ambassador Athanassios Dendoulis, Permanent Representative of Greece,
- Ambassador Euripides L. Evriviades, Permanent Representative of Cyprus and

- Ambassador Hans-Dieter Heumann, Permanent Representative of Germany.

The report on private military and security firms and erosion of state monopoly on the use of force was prepared and adopted following the transmission of the PACE recommendation 1858 (2009) by the Committee of Ministers to the Commission.

The Commission co-organised, together with the Spanish Presidency and in co-operation with the Centre for Constitutional and Political Studies, a conference on "Controlling Electoral Processes" (24-25 April, Madrid).

Parliamentary Assembly

Mr Serhiy Holovaty attended the June and December 2009 sessions of the Commission as representative of the Parliamentary Assembly.

During the June 2009 session the Enlarged Bureau of the Commission exchanged views with the Presidential Committee of the PACE. The Assembly was represented at the session as follows:

Mr Lluís Maria de Puig, President of the Parliamentary Assembly; Mr Luc Van den Brande, Group Leader, EPP/CD – Group of the European People's Party; Mr David Wilshire, Group Leader, EDG – European Democrat Group; Mr René van der Linden, former President of the Parliamentary Assembly of the Council of Europe; Mr Christos Pourgourides, Member of the Committee on

legal affairs and human rights; and Mr Serhiy Holovaty, Member of the Monitoring Committee.

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 opinion on the draft amendments to the Constitution of Azerbaijan, on the law on occupied territories of Georgia, rules of procedure of the Assembly of “the former Yugoslav Republic of Macedonia”, the report on the private military and security firms and the erosion of the state monopoly on the use of force (see Recommendation 1858 (2009) of the PACE).

Amongst the texts adopted at the request of the Parliamentary Assembly, several concerned the fields of elections and political parties: the code of good practice in the field of political parties, the report on Impact of electoral systems on women’s representation in politics, the report on the international status of election observers (including the guidelines) as well as the opinion on the constitutional and legal provisions relevant to the prohibition of political parties in Turkey. The report on the imperative mandate follows up to Parliamentary Assembly Recommendation 1791 (2007) relative to the situation of human rights and democracy in Europe.

The Parliamentary Assembly continued to participate actively in the Council for Democratic Elections created in 2002 as a tripartite organ of the Venice Commission, the Parliamentary Assembly and the Congress of Local and Regional Authorities of the Council of Europe (see above, page 16). The Council for Democratic Elections was chaired by a member of the Parliamentary Assembly, Mr van den Brande (Belgium) and several of its activities

were launched at the initiative of the Parliamentary Assembly representatives.

In accordance with the co-operation agreement concluded between the Venice Commission and the Parliamentary Assembly, representatives of the Commission participated in several Assembly election observation missions.

The Venice Commission, in co-operation with the PACE Committee on Legal Affairs and Human Rights and the European University Institute (Florence), organised a round table on “The challenges for the judiciary in the fight against terrorism” held in Fiesole, Italy, on 17 and 18 September 2009.

Congress of Local and Regional Authorities

The Congress continued to participate in the Council for Democratic Elections, established in 2002 as a tripartite body of the Venice Commission, the Parliamentary Assembly and the Congress of Local and Regional Authorities of Europe (see above, page 16).

European Court of Human Rights

The European Court of Human Rights (hereafter the Court) has been referring to the works of the Venice Commission in an increasing number (forty-four to date, eleven of which in 2009) of judgments and decisions. The first reference was made in 2001 in the case *Banković and others v. Belgium and 16 other Contracting States*, where the report on the preferential treatment of national minorities by their kin-state, adopted by the Venice Commission at its 48th Plenary session (19-20 October 2001), was quoted in the context of determining the scope of Article 1 of the Convention. Guidelines on prohibition and dissolution of political parties (CDL-INF (2000) 001) and the Code of

Good Practice in Electoral Matters (CDL-AD (2002) 023) are the most cited by the Court.

In 2009 the Court referred to the Venice Commission's relevant *amicus curiae* briefs in two judgments: *Bijelić v. Montenegro and Serbia* (28 April 2009) and *Sejdic and Finci v. Bosnia and Herzegovina* (22 December 2009).

In the latter judgment the Court, which found a violation of Article 14 (prohibition of discrimination) of the European Convention on Human Rights taken together with Article 3 of Protocol No. 1 (right to free elections) and Article 1 of Protocol No. 12 (general prohibition of discrimination) to the Convention, also referred to three previous opinions of the Venice Commission:

- on the constitutional situation in Bosnia and Herzegovina and the powers of the High Representative (CDL-AD (2005) 004 of 11 March 2005);
- on different proposals for the election of the Presidency of Bosnia and Herzegovina (CDL-AD (2006) 004 of 20 March 2006);
- on the draft amendments to the Constitution of Bosnia and Herzegovina (CDL-AD (2006) 019 of 12 June 2006).

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.

Forum for the Future of Democracy

The Venice Commission participated in the 5th Forum for the Future of Democracy, on "Electoral systems: strengthening democracy in the 21st century" which took place in Kyiv from 21 to 23 October 2009. In particular, Mr Jan Helgesen, President of the Venice Commission, took part in a high-level Round Table on the future of elections. The Commission was represented in all the workshops and several members presented a report.

North-South Centre

Representatives of the North-South Centre participated in the Algiers conference organised by the Commission, the Algerian Constitutional Council and the UACCC (31 October-1 November 2009).

Committee of experts on the participation of people with disabilities in political and public life

At the invitation of the Directorate General for Social Cohesion of the Council of Europe, the Venice Commission participated in the first two meetings of the Committee of experts on the participation of people with disabilities in political and public life which took place in Strasbourg from 7 to 9 September 2009 and 9 to 11 December 2009. At these two meetings the Commission Secretariat presented the principles of the European electoral heritage, in particular in relation to existing rights and persisting obstacles in the electoral processes of member states for citizens with disabilities. During the term of office of this Expert Committee the Venice Commission should be called upon to advise the Committee on a legal level, in particular with a view to drawing up recommendations aimed at improving the participation of people with disabilities in political and public life.

European Union

The Venice Commission co-operates closely with the European Union Special Representative for the Republic of Moldova and with the European Union Special Representative in Bosnia and Herzegovina. It co-ordinates efforts with the European Union Special Representative for the South Caucasus. Close co-operation is maintained with the Council of the European Union, in particular with respect to the constitutional situation in Ukraine.

Ms Véronique Arnault, Director of Multilateral Relations and Human Rights, represented the European Commission at the March 2009 sessions of the Council for Democratic Elections and of the Venice Commission. Ms Arnault also attended the 6th European Conference of Electoral Management Bodies, co-organised by the Venice Commission and the authorities of the Netherlands (The Hague, 30 November-1 December 2009). The March 2009 session was addressed by Mr Peter Semneby, EU Special Representative for the Southern Caucasus. The June 2009 session accepted the request from the Committee of the Regions of the European Union to take part in the sessions of the Commission and the Council for Democratic Elections.

The Venice Commission actively participated in the Joint Programme of co-operation between the European Commission and the Council of Europe entitled "Support to free and fair elections in South Caucasus states and Moldova" through activities carried out in Armenia, Azerbaijan, Georgia and Moldova.

At the invitation of the Delegation of the European Commission in Bolivia, a delegation of the Venice Commission visited La Paz from 28 to 30 October and met representatives of the Bolivian authorities in order to discuss possi-

ble fields of co-operation. In 2010 the Venice Commission could be invited to start co-operation with Bolivia on such issues as reforms of the judiciary as well as the electoral and of the territorial organisation in the framework of a specific Joint programme with the European Commission.

Rule of Law Initiative for Central Asia of the European Union

In 2008 the European Commission invited the Venice Commission to work in the framework of a Joint Programme entitled "The European Union Rule of Law Initiative for Central Asia".

The European Union Rule of Law Initiative aims at a concerted regional approach, taking into account national situations. Core challenges such as the development of the judicial system, law enforcement, modernisation of legislation or accountability of the administration are similar for all Central Asian states. Within the Initiative, it is foreseen to undertake specific activities to offer tools for Central Asian countries to further develop the rule of law, comprising assistance to judicial systems and legal professions, as well as advisory services and regional exchange in the field of legislation.

Following a voluntary contribution from the Ministry of Foreign Affairs of Germany, the Venice Commission started its co-operation with Kazakhstan, Kyrgyzstan, Tajikistan, Turkmenistan and Uzbekistan as from February 2009. Representatives of the Venice Commission had several exchanges of views with the authorities of Kyrgyzstan, Tajikistan and Uzbekistan between February and April 2009.

In 2009 the Venice Commission organised a number of activities in the countries of the region, notably, the international conference “Rule of Law and Principle of Separation of Powers”, hosted by the Kyrgyz Parliament (Bishkek, 25-26 May); a conference on the reform of the judiciary in Uzbekistan (Tashkent, 25-26 June); a round table on the introduction of the juries in Kyrgyzstan (Bishkek, 8-9 September); a seminar on “International experience and standards in the field of the independence of

the judiciary” (Dushanbe, Tajikistan, 12-13 November). Experts of the Venice Commission also participated in several activities organised by the European Commission and OSCE in Kazakhstan, Kyrgyzstan and Turkmenistan.

In December 2009 the Venice Commission and the European Commission officially launched the Joint Programme entitled the “European Union Rule of Law Initiative for Central Asia” for the period 2010-11.

OSCE

High Commissioner for National Minorities (HCNM)

Co-operation between the Venice Commission and the High Commissioner for National Minorities focused on the draft Recommendations on National Minorities in Inter-state Relations. Bearing in mind the importance of the work already carried out by the Venice Commission on this matter, some of its members were consulted on several occasions during the preparation of this set of recommendations by the HCNM.

OSCE/ODIHR

During the whole of 2009 the Venice Commission continued its close co-operation with OSCE/ODIHR in the electoral field, in particular by drafting joint opinions on the electoral laws of Albania, Serbia, “the former Yugoslav Republic of Macedonia” and Ukraine (laws on the parliamentary and presidential elections), and by the adoption of joint guidelines on media analysis during election observation missions.

OSCE/ODIHR took part in all meetings of the Council for Democratic Elections. The March 2009 session was addressed by Mr Janez Lenarcic, Director of the OSCE Office for Democratic Institutions and Human Rights. Further information on this co-operation can be found in Part IV above. OSCE/ODIHR took part in the 6th Conference of European Electoral Management Bodies which took place in The Hague from 30 November to 1 December 2009. In addition, the Venice Commission regularly co-operated with OSCE field offices on both electoral and other questions. For example in 2009 two seminars with the Constitutional court of Montenegro were organised jointly with the local OSCE Mission.

The Commission participated in an expert seminar on electoral administrations organised in the framework of the Greek Presidency of the OSCE. This seminar mainly dealt with the role of electoral administrations in the electoral process in line with the commitments of the OSCE and the Council of Europe (Vienna, 16-17 July 2009).

A joint opinion was adopted on the draft law on political parties in Kyrgyzstan and the Venice Commission partic-

ipated in two meetings on the guidelines in the field of political parties organised by OSCE/ODIHR (London, 21-22 April 2009 and Athens, 17-19 September 2009).

The Venice Commission participated in a Round Table organised by OSCE/ODIHR on 23-24 September 2009 in Ashgabat, Turkmenistan on “the interaction between the Parliament and the Government in the preparation of draft laws”.

In 2009 the Venice Commission pursued its co-operation with OSCE/ODIHR in the field of freedom of religion

(joint opinion on legislation in Armenia) and freedom of assembly (joint opinion on legislation of Kyrgyzstan and Ukraine). In particular, the Venice Commission and the ODIHR's relevant bodies have adopted common guidelines setting out in detail the standards in these two fields, and consistently refer to these guidelines in the joint and individual assessments. In 2009 the Venice Commission has participated in the update of the guidelines on freedom of religion and freedom of assembly.

United Nations

UNPD United Nations Development Programme

On 3 February 2009 the Venice Commission participated in a Seminar on Combating Proxy and Family Voting or-

ganised by the United Nations Development programme in Skopje.

Commonwealth of Independent States

At the invitation of the Interparliamentary Assembly of member Nations of the Commonwealth of Independent States, the Venice Commission participated on 9 June 2009 in Cholpon-Ata (Kyrgyzstan) in a Seminar for interna-

tional observers. A representative of the secretariat introduced the activities of the Venice Commission in the electoral field and recommendations for election observers.

Other international bodies

Association of European Election Officials (ACEEEO)

The Venice Commission participated in a Conference and the General Assembly of ACEEEO (Association of European Election Officials) which took place in Yerevan from

3 to 5 September 2009. The Conference dealt with in particular the legal protection of the electoral process and international experience in applying sociology to the electoral process. In parallel to this Conference the Venice Commission participated in the Consultative Council as

well as in a meeting of experts on the project “the development of specific electoral lists in democracies in transition”.

Association of Constitutional Courts using the French Language (ACCPUF)

The Venice Commission has a co-operation agreement with ACCPUF, according to which the case-law of the courts members of ACCPUF is included in the CODICES constitutional case-law database of the Venice Commission.

Representatives of ACCPUF participated in the 8th meeting of the Joint Council on Constitutional Justice (Tallinn, June). The Venice Commission took part in the 5th congress of ACCPUF on “Constitutional Courts and Crises” (Cotonou, 24-26 June 2009)

Conference of European Constitutional Courts (CECC)

The Venice Commission assists the rotating presidencies of the CECC in the preparation of the triennial conferences, particularly with the publication of special issues of the *Bulletin on Constitutional Case-Law* of the Commission on the topic of the conferences.

Conference of the Constitutional Control Organs of the Countries of Young Democracy (CCCOCYD)

The Venice Commission co-operates with the CCCOCYD in the framework of an agreement facilitating the exchange of information between the courts members of the CCCOCYD and the constitutional courts and equivalent bodies participating in the work of the Joint Council on Constitutional Justice of the Venice Commission. The Commission and the CCCOCYD co-organised the XIVth

International Yerevan Conference on “The interaction between constitutional courts and parliaments in guaranteeing the supremacy of the Constitution” (Yerevan, 1-3 October 2009).

Ibero-American Conference of Constitutional Justice

The Venice Commission participated in Ibero-American Conference on Constitutional Justice on “Constitutional Interpretation” hosted by the Supreme Court of Mexico (Merida, 15-17 April 2009);

International Association of Constitutional Law (IACL)

In 2009 the Venice Commission concluded a co-operation agreement with the IACL facilitating the exchange of information between the two institutions and providing for joint conferences.

Representatives of IACL participate in the plenary sessions of the Venice Commission.

International Organisation of La Francophonie (OIF)

The IOF supports the translation into French of contributions to the *Bulletin on the Constitutional Case-Law* of the Venice Commission. Co-operation in the updating of francophone constitutions in the respective databases has been established.

Southern African Chief Justices Forum (SACJF)

The Venice Commission co-organised with the SACJF in Kazane, Botswana, from 6 to 9 August 2009, a regional conference on “The enhancement of the rule of law, separation of powers and judicial independence and the protection of human rights through the court system”. The

conference was hosted by the Constitutional Court of Botswana.

The case-law of the SACJF participating courts is included in the CODICES database of the Venice Commission.

Union of Arab Constitutional Court and Councils (UACCC)¹

The Venice Commission co-operates with the UACCC on the basis of a co-operation agreement concluded in June 2008.

In 2009, the UACCC, the Constitutional Court of Algeria and the Venice Commission organised an international colloquium on the occasion of the 20th anniversary of the Algerian Council on the “Relations between the Constitutional Court and Parliament” in Algiers on 31 October and 1 November 2010.

1. According to the preparatory meeting which was held in Cairo on 25 and 26 February 1997, the Constitutional Councils and Courts in the following Arab states participate in the UACCC: The Republic of Tunisia, the Democratic and Popular Republic of Algeria, the Republic of Sudan, the Palestinian National Authority, the State of Kuwait, the Republic of Lebanon, the Socialist people 's Libyan Arab Jamahiriya, the Arab Republic of Egypt, the Kingdom of Morocco, the Islamic Republic of the Mauritania, the Republic of Yemen.

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

Appendices



Member countries¹

Members – 55

Albania (14.10.1996)	Germany (3.07.1990)	Norway (10.05.1990)
Algeria (01.12.2007)	Greece (10.05.1990)	Peru (11.02.2009)
Andorra (1.02.2000)	Hungary (28.11.1990)	Poland (30.04.1992)
Armenia (27.03.2001)	Iceland (5.07.1993)	Portugal (10.05.1990)
Austria (10.05.1990)	Ireland (10.05.1990)	Romania (26.05.1994)
Azerbaijan (1.03.2001)	Israel (01.05.2008)	Russian Federation (1.01.2002)
Belgium (10.05.1990)	Italy (10.05.1990)	San Marino (10.05.1990)
Bosnia and Herzegovina (24.04.2002)	Republic of Korea (01.06.2006)	Serbia (3.04.2003).
Brazil (01.04.2009)	Kyrgyzstan (01.01.2004)	Slovakia (8.07.1993)
Bulgaria (29.05.1992)	Latvia (11.09.1995)	Slovenia (2.03.1994)
Chile (1.10.2005)	Liechtenstein (26.08.1991)	Spain (10.05.1990)
Croatia (1.01.1997)	Lithuania (27.04.1994)	Sweden (10.05.1990)
Cyprus (10.05.1990)	Luxembourg (10.05.1990)	Switzerland (10.05.1990)
Czech Republic (1.11.1994)	Malta (10.05.1990)	“The former Yugoslav Republic of Macedonia” (19.02.1996)
Denmark (10.05.1990)	Moldova (25.06.1996)	Turkey (10.05.1990)
Estonia (3.04.1995)	Monaco (05.10.2004)	Ukraine (3.02.1997)
Finland (10.05.1990)	Montenegro (20.06.2006)	United Kingdom (1.06.1999)
France (10.05.1990)	Morocco (01.06.2007)	
Georgia (1.10.1999)	Netherlands (1.08.1992)	

Associate member

Belarus (24.11.1994)

Observers – 8

Argentina (20.04.1995)

Canada (23.05.1991)

Holy See (13.01.1992)

1. At 31 December 2009, Tunisia was invited to accede to the Enlarged Agreement by the Committee of Ministers on 15 May 2008.

Japan (18.06.1993)

Mexico (12.12.2001)

Uruguay (19.10.1995)

Kazakhstan (30.04.1998)

United States (10.10.1991)

Participants – 4

European Commission

OSCE/ODIHR

International Association of Constitutional Law (IACL)

EU Committee of the Regions

Special co-operation status – 2

Palestinian National Authority

South Africa

The Venice Commission²

Members

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

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

Mr Guido NEPPI MODONA, Professor, University of Turin)

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

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

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

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

Mr Peter PACZOLAY (Hungary), Vice-President, President, Constitutional Court

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

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

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

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

Mr Cyril SVOBODA (Czech Republic), Chairman of the Legislative Council, MP, 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

2. By order of seniority, at 31 December 2009.

- Mr Kaarlo TUORI (Finland), 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 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 (Netherlands), State Councillor, President of the Administrative Jurisdiction Division, Council of State, 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 Gagüik 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 Lydie ERR (Luxembourg), Member of Parliament
(Substitute: Mr Marc FISCHBACH, Mediator)
- Mr Ugo MIFSUD BONNICI (Malta), President Emeritus
- 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 Dominique CHAGNOLLAUD (Monaco), Member of the Supreme Court, Professor, University of Law, Economics and Social Science Paris II
(Substitute: Mr Christophe SOSSO, Defence Lawyer, Court of Appeal)
- Mr Nicolae ESANU (Moldova), Former Deputy Minister of Justice
- Mr Oliver KASK (Estonia), Judge, Tallinn Court of Appeal
(Substitute: Ms Berit AAVIKSOO, Lecturer in Constitutional Law, University of Tartu)
- Mr Valeriy ZORKIN (Russia), President of the Constitutional Court
(Substitute: Mr Valeriy MUSIN, Head of Division, Legal Faculty, St Petersburg State University)
- 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), President of the Université Paris I – Panthéon-Sorbonne, 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 KUCSKO-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 MIHAI (Romania), Professor, Faculty of Law, University of Bucharest, Former President of the Constitutional Court

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

Mr 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)³

(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, Director, Institute for Eastern European Law)

Mr George PAPUASHVILI (Georgia), President, Constitutional Court

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

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

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 SS. Cyril and Methodius, Judge, Constitutional Court)

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

Ms Maria Angeles AHUMADA RUIZ (Spain), Director General for Legal Coordination, Ministry of the Presidency of the Government

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

Mr Iain CAMERON (Sweden), Professor, University of Uppsala
(Substitute: Mr Johan HIRSCHFELDT, Former President, Svea Court of Appeal)

Mr Carlos MESIA RAMIREZ (Peru), Vice President, Constitutional Tribunal
(Substitute: Mr Ernesto FIGUEROA BERNARDINI, Secretary Rapporteur, Constitutional Tribunal)

Mr Ivan SIMONOVIC (Croatia), Minister of Justice
(Substitute: Ms Jasna OMEJEC, President, Constitutional Court)

Mr Gilmar Ferreira MENDES (Brazil), President, Federal Supreme Court
(Substitute: Mr Antonio PELUSO, Vice President, Federal Supreme Court)

Mr Mario FERNANDEZ BAEZA (Chile), Judge, Constitutional Court
(Substitute: Ms Marisol PENA TORRES, Judge, Constitutional Court)

Mr Boualem BESSAÏH (Algeria), President, Constitutional Council
(Substitute Mr Mohamed HABCHI, Member, Constitutional Council)

Mr Hachemi ADALA, Member, Constitutional Council)

N.N. (Tunisia)

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

Secretariat

Mr Gianni BUQUICCHIO

Mr Thomas MARKERT

Ms Simona GRANATA-MENGHINI

Mr Pierre GARRONE

Mr Rudolf DÜRR

Mr Alain CHABLAIS

Mr Sergueï KOUZNETSOV

Ms Caroline MARTIN

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Ms Antonella MASCIA LODI

Ms Tatiana MYCHELOVA

Ms Helen MONKS

Ms Brigitte AUBRY

Ms Marian JORDAN

Ms Emmy KEFALLONITOU

Mrs Brigitte RALL

Ms Ana GOREY

Ms Marie-Louise WIGISHOFF

Mrs Caroline GODARD

Ms Rosy RIETSCH

Offices and subcommissions

President: Mr Buquicchio

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

Vice-Presidents: Ms Flanagan, Mr Paczolay

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

Council for Democratic Elections

Chair: Mr Gross (Parliamentary Assembly)

Venice Commission – Vice-Chair: Mr Colliard; Members: Messrs Chagnollaud, Mifsud Bonnici, Torfason, Paczolay, Darmanovic and Kask

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 Grabenwarter; Members: Messrs Bartole, van Dijk, Endzins, Harutunian, Jarasiunas, Jowell, 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 Hoffmann Riem

International Law

Chair: Mr Dimitrijevic

Protection of Minorities

Chair: Mr Velaers

Fundamental Rights

Chair: Mr Tuori

Democratic Institutions

Chair: Mr Jowell

Judiciary

Chair: Ms Suchocka

External Relations

Chair: Mr Mifsud Bonnici

Working Methods

Chair: Mr van Dijk

Meetings of the Venice Commission in 2009

Plenary sessions⁴

- 78th Session, 13-14 March
- 79th Session, 12-13 June
- 80th Session, 9-10 October
- 81st Session, 11-12 December

Bureau

Meetings enlarged to include the Chairpersons of Sub-Commissions

- 12 March
- 11 June
- 8 October
- 10 December

Council for Democratic Elections

- 14 March
- 11 June
- 8 October
- 10 December

4. All meetings took place in Venice unless otherwise indicated.

Joint Council on Constitutional Justice

- Meeting with Liaison officers from Constitutional Courts – 18-19 June (Tallinn)
- Meeting of the Working Group on the systematic thesaurus – 18 June (Tallinn)

Subcommissions⁵

Democratic Institutions

- 11 June
- 8 October
- 10 December

Judiciary

- 12 March
- 10 December

Democratic Development of Public Institutions and Respect for Human Rights

Meetings of Working Groups and Rapporteurs

Albania

Meetings with Albanian authorities on the Law on lustration – 28 April, Tirana

Armenia

Conference on “Human Rights in Armenia” – 18-19 March, Yerevan

Meeting on freedom of assembly in Armenia – 18 May, Yerevan

Bosnia and Herzegovina

Seminar “Bosnia and Herzegovina in transition: challenges and opportunities” – 9 June, Stockholm

Meeting on the potential role of the EU in supporting the constitutional reform process in Bosnia and Herzegovina and on the strategy ahead – 16 July, Brussels

Meetings on constitutional reform in Bosnia and Herzegovina – 1-2 October and 5-6 October, Brussels – 19-20 October, Butmir/Sarajevo

Bulgaria

Meetings with the Ministry of Justice and other Bulgarian authorities on the draft Law on statutory instruments – 27-28 January, Sofia

Georgia

Meetings on the legal aspects of the situation in Abkhazia and Ossetia – 30 April, Brussels – 15 July, Strasbourg

Meetings on recent constitutional amendments – 1-2 February, Tbilisi

5. Idem.

Kazakhstan

Seminar on Human Rights – 29-30 June, Almaty

Kyrgyzstan

Meeting on “The principle of rule of law and the separation of powers” – 25-26 May, Bishkek

Training seminar for judges – 8-9 September, Issyk-Kul

Round table on freedom of assembly and meetings with authorities concerning the Law on freedom of assembly – 1-3 December, Bishkek

Luxembourg

Meeting on draft amendments to Constitution of Luxembourg – 14 October, Luxembourg

Montenegro

Meetings on draft law on prohibition of discrimination – 2-3 September and 2-14 October, Podgorica

Mechanisms for monitoring the compliance with European standards of Acts by International Organisations in Kosovo – 16-17 November, Pristina

Tajikistan

Meetings with Tajik authorities to discuss about the programme of co-operation between the Venice Commission and Tajikistan – 23-25 February, Dushanbe

Turkmenistan

Interaction of Government and Parliament through the different stages of the legislative process – 23-24 September, Ashgabat

Turkey

Compatibility with European standards of the lack of recognition of legal personality for the religious communities in Turkey –

Meetings with religious communities and authorities – 9-11 November, Istanbul/Ankara

Ukraine

Round Table draft law judicial system and the status of judges of Ukraine – 19 November, Kyiv

Conference on “The EU and Ukraine: moving forward” – 4-5 November, Kyiv

Uzbekistan

Meetings with Uzbek authorities to discuss programme of co-operation – 26-28 March, Tashkent

The current situation and further prospects of judicial reforms in Uzbekistan – 25-26 June, Tashkent

Guidelines on freedom of religion

OSCE Supplementary human dimension meeting on freedom of religion or belief – 9-10 July, Vienna

Guidelines on freedom of assembly

Expert Panel on Freedom of Peaceful Assembly – 25 June, Warsaw

Report on counter-terrorist measures and human rights

Round Table “Fight against terrorism: challenges for the judiciary” – 18-19 September, Fiesole

Other seminars and conferences organised by the Commission or in which the Commission was involved

UniDem Seminar on “Definition and development of human rights and popular sovereignty in Europe” – 15-16 May, Frankfurt

Conference “Freedom of expression and right to a fair trial” – 25-26 May, Yerevan
 Constitutional order and reform in Germany and South East Europe – 21-22 May, Budva
 Summer School – Centre for European Studies – 10 July, Budapest
 Round table, “Ways of protection of the right to a trial within a reasonable time” – 21-22 September, Bled
 Forum for the future of democracy – 21-23 October, Kyiv
 Meetings with Bolivian authorities on constitutional reform – 28-30 October, La Paz
 EU Rule of Law Initiative for Central Asia – Co-ordination meeting – 27 November, Berlin
 OSCE public lectures in Moldova – 17-18 December, Chisinau
 Meeting with the European Commission on the 2010-2011 Joint Programme for Central Asia – 17 December, Brussels

Constitutional justice, ordinary justice and ombudsman

Conferences and seminars organised by the Commission

World Conference on Constitutional Justice – 23-24 January, Cape Town
 40th anniversary of the foundation of constitutional judicature in Egypt – Colloquy on “The constitutional protection of social equality principle” – 7-9 March, Cairo
 VIIth Ibero-American Conference on constitutional justice on “Constitutional Interpretation” – 15-17 April, Merida, Mexico
 Seminar on the establishment of a Constitutional Court of the Palestinian National Authority – 22-23 April, Ramallah
 Conference on “Constitutional limitations on freedom of association” – 2 June, Belgrade
 Seminar on “The efficient dealing with individual complaint by the Constitutional Court - international experience” – 12-13 June, Podgorica
 Seminar on the “Justiciability of Social Rights in Courts of Constitutional Jurisdiction and the European Court of Human Rights” – 9-12 July, Batumi
 Conference “15th anniversary of Constitution Moldova – Fundamental constitutional values as a stability factor in the constitutional regime” – 22-23 July, Chisinau
 Conference on “The enhancement of the rule of law, separation of powers and judicial independence and the relationship of these doctrines to socio-economic development: the protection of human rights in general through the court system by way of judicial review” – 6-9 August, Kazane
 4th Conference Secretaries General of Constitutional Courts – 1-2 October, Ankara
 XIVth Conference of the CCCOYD on “The international experience of interaction of constitutional courts and parliaments in guaranteeing the supremacy of the Constitution” – 1-3 October, Yerevan
 International Colloquy on “The Relationship between Constitutional Courts and Councils and Parliaments” – 31 October-1 November, Algiers

Seminar on the competence of the Constitutional Court to control the conformity of laws with ratified treaties – 3 November, Podgorica

Conference on “Access to the Court: the applicant in the Constitutional jurisdiction” – 7-8 November, Riga

Seminar on “The value of the judicial precedent law” – 7-8 November, Batumi

Seminar on “The international experience and standards in the field of independence of the judiciary” – 12-13 November, Dushanbe

XIIth International Forum on “Property, free enterprise and constitution - new and old questions” – 20-21 November, St Petersburg

International Conference on the occasion of the 20th Anniversary of the Constitutional Court of Hungary – 23-24 November, Budapest

World Conference on Constitutional Justice – 2nd Meeting of the Bureau – 12 December, Venice

Other seminars and conferences organised by the Commission or in which the Commission was involved

“The Right to a Fair Trial and the Independence of the Judiciary” – 12-13 May, Dushanbe

5th ACCPUF Congress – 23-25 June, Cotonou, Benin

6th Conference of Asian Constitutional Court Judges “Constitutional Review and Separation of Powers” – 25-26 September, Ulan Bator, Mongolia

Preparatory Meeting of the Conference of European Constitutional Courts – 15-16 October, Bucharest

Democracy through free and fair elections

Conferences, seminars and meetings organised by the Commission

Meeting with Verkhovna Rada and Round Table on electoral systems – 3-4 February, Kyiv

Seminar on the functioning of political parties – 26 February, Chisinau

Meetings with the Working group on the Electoral code of Ukraine – 17 February, Kyiv – 7-8 May, Kyiv

Electoral Training Workshop for trainers – 2-3 March, Skopje

Legal Assistance to PACE delegation observing Presidential elections – 20-22 March, Skopje

Legal Assistance to PACE delegation observing elections in Moldova – 2-6 April, Chisinau – 26-31 July, Chisinau

Meetings of experts on drafting of OSCE ODIHR guidelines on legislation pertaining to political parties – 21-22 April, London – 17-19 September, Athens

UniDem Seminar on “Supervising electoral processes” – 24-25 April, Madrid

Round Table organised by PACE on elections and related issues in Serbia – 26-27 June, Belgrade

Legal Assistance to PACE delegation observing Presidential elections in Albania – 26-29 June, Tirana

International Conference on “Quality of elections: making democracy strong” – 2-3 July, Odessa – 24-25 September, Lviv – 20-21 October, Kyiv

Meeting of the Working group on electoral reform in Georgia – 4 July, Tbilisi

18th annual Conference ACEEEO – 3-5 September, Yerevan

Round table on the use of administrative resources in elections – 25 September, Baku

Conference “Managing the electoral process in Moldova. Trends and Prospects” – 2-3 November, Chisinau

Round table on “Monitoring the media during elections” – 5 November, Chisinau

6th European Conference of Electoral Management Bodies – 30 November-1 December, The Hague

Other meetings, seminars and conferences in which the Commission was involved

Seminar on “Combating proxy and family voting – 3 February, Skopje

OSCE Conference on “The presidential elections and the electoral code of Ukraine” – 16 February, Kyiv

Second Seminar of the Skopje School of Politics – 26-29 March, Skopje

International workshop on e-voting from abroad organised by the Austrian Federal Ministry for European and International Affairs – 18-19 May, Vienna

Meeting on the Election observation day – 25 May, Paris

Seminar for international observers and consultants on elections – 9 June, Cholpon-Aty, Kyrgyzstan

OSCE Chairmanship expert seminar on Electoral Management Bodies – 16-17 July, Vienna

Meetings of the Committee of experts on the participation of people with disabilities in political and public life – 7-9 September, Strasbourg – 9-11 December, Strasbourg

28th Meeting of the Committee of Experts of Roma and Travellers – 15-16 October, Strasbourg

Forum for the Future of Democracy: Electoral systems: strengthening democracy in the 21st century – 21-23 October, Kyiv

International seminar of the Judicial Electoral Observatory – 17-18 November, Mexico City

Participation in a workshop on the certification of electronic voting systems – 26-27 November, Strasbourg

UniDem Campus for the legal training of the civil service⁶

Policies on the protection and social integration of immigrants and their implementation at the international, national and local level – 29 June-2 July

The independence of the judicial system from the Executive and the Legislative Power – 28 September-1 October

The protection of the fundamental rights of irregular migrants – 23-26 November

6. All seminars took place in Trieste.

Publications

Series – Science and Technique of Democracy⁷

- No. 1. Meeting with the presidents of constitutional courts and other equivalent bodies⁸ (1993)
- No. 2. Models of constitutional jurisdiction⁹ 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 law⁹ by Constantin Economides (1993)
- No. 7. Rule of law and transition to a market economy⁸ (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 powers⁹ by Ergun Özbudun and Mehmet Turhan (1995)
- No. 13. Implementation of constitutional provisions regarding mass media in a pluralist democracy⁸ (1995)
- No. 14. Constitutional justice and democracy by referendum (1996)
- No. 15. The protection of fundamental rights by the Constitutional Court⁹ (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 States⁹ (1997)
- No. 20. The composition of Constitutional Courts (1997)
- No. 21. Citizenship and state succession (1998)
- No. 22. The transformation of the Nation-State in Europe at the dawn of the 21st century (1998)
- No. 23. Consequences of state succession for nationality (1998)
- No. 24. Law and foreign policy (1998)
- No. 25. New trends in electoral law in a pan-European context (1999)
- No. 26. The principle of respect for human dignity in European case-law (1999)

7. Publications are also available in French unless otherwise indicated.

8. Speeches in the original language (English or French).

9. Also available in Russian.

- 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 resolution⁸ (2000)
- No. 30. European Integration and Constitutional Law (2001)
- No. 31. Constitutional implications of accession to the European Union⁸ (2002)
- No. 32. The protection of national minorities by their kin-State⁸ (2002)
- No. 33. Democracy, Rule of Law and Foreign Policy⁸ (2003)
- No. 34. Code of good practice in electoral matters⁹ (2003)
- No. 35. The resolution of conflicts between the central State and entities with legislative power by the Constitutional Court² (2003)
- No. 36. Constitutional Courts and European Integration (2004)¹⁰
- No. 37. European and US Constitutionalism (2005)¹⁰
- No. 38. State Consolidation and National Identity (2005)¹⁰
- No. 39. European Standards of Electoral Law in Contemporary Constitutionalism (2005)
- No. 40. Evaluation of fifteen years of constitutional practice in Central and Eastern Europe⁹ (2005)
- No. 41. Organisation of elections by an impartial body (2006)¹⁰
- No. 42. The status of international treaties on human rights (2006)¹⁰
- No. 43. The preconditions for a democratic election (2006)¹⁰
- No. 44. Can excessive length of proceedings be remedied? (2007)
- No. 45. The participation of minorities in public life (2008)¹⁰
- No. 46. The cancellation of election results (2010)¹⁰
- No. 47. Blasphemy, insult and hatred (2010)¹⁰
- No. 48. Supervising electoral processes (2010)¹⁰

Other publications

Collection "Points of view – points of law"

- Guantanamo – violation of human rights and international law? (2007)
- The CIA above the laws? Secret detentions and illegal transfers of detainees in Europe (2008)
- Armed forces and security services: what democratic controls? (2009)

Collection "Europeans and their rights"

- The right to life (2006)

10. Available only in English.

- Freedom of religion (2007)
- Child rights in Europe (2008)
- Freedom of expression (2009)

Other titles

- Tackling blasphemy, insult and hatred in a democratic society (2008)
- Electoral Law (2008)

European Conference of Electoral Management Bodies

- 2nd Conference (Strasbourg 2005)
- 3rd Conference (Moscow, 2006)
- 4th Conference (Strasbourg, 2007)

Bulletin on Constitutional Case-Law

- 1993-2008 (three issues per year)

Special editions of the Bulletin

- 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): Leading cases 1 – Czech Republic, Denmark, Japan, Norway, Poland, Slovenia, Switzerland, Ukraine (2002); Leading cases 2 – Belgium, France, Hungary, Luxembourg, Romania, USA (2008)
- Freedom of religion and beliefs (1999)
- Inter Court Relations (2003)
- Status and functions of Secretaries General of Constitutional Courts (2006)
- Human Rights Limitations (2006)
- Legal Omission (2008)

Annual reports

- 1993-2008

Brochures

- 10th anniversary of the Venice Commission (2001)⁹
- Revised Statute of the European Commission for Democracy through Law (2002)
- The Venice Commission (2002)
- UniDem Campus – Legal training for civil servants (2003)
- Services provided by the Venice Commission to Constitutional Courts and equivalent bodies (2007)

Documents adopted in 2009

CDL-AD (2009) 005 – Joint Opinion on the Electoral Code of the Republic of Albania adopted by the Venice Commission at its 78th plenary session (Venice, 13-14 March 2009)

CDL-AD (2009) 006 – Opinion on the Constitutional and Legal Provisions relevant to the Prohibition of Political Parties in Turkey adopted by the Venice Commission at its 78th Plenary Session (Venice, 13-14 March 2009)

CDL-AD (2009) 007 – *Amicus Curiae* Brief for the Constitutional Court of Albania on the admissibility of a referendum to abrogate Constitutional Amendments adopted by the Venice Commission at its 78th Plenary Session (Venice, 13-14 March 2009)

CDL-AD (2009) 008 – Opinion on the Draft Law amending the Constitution of Ukraine presented by People’s Deputies Yanukovich, Lavrynovych, et al – adopted by the Venice Commission at its 78th Plenary Session (Venice, 13-14 March 2009)

CDL-AD (2009) 009 – Opinion on the Draft Amendments of February 2009 to the Criminal Code of Armenia adopted by the Venice Commission at its 78th Plenary Session (Venice, 13-14 March 2009)

CDL-AD (2009) 010 – Opinion on the Draft Amendments to the Constitution of the Republic of Azerbaijan adopted by the Venice Commission at its 78th Plenary Session (Venice, 13-14 March 2009)

CDL-AD (2009) 011 – Opinion on the Draft Law amending and supplementing the Law on Judicial Power of Bulgaria adopted by the Venice Commission at its 78th Plenary Session (Venice, 13-14 March 2009)

CDL-AD (2009) 012 – *Amicus Curiae* Brief for the Constitutional Court of Georgia on the Retroactivity of Statutes of Limitation and the Retroactive Prevention of the Application of a conditional sentence adopted by the Venice Commission at its 78th Plenary Session (Venice, 13-14 March 2009)

CDL-AD (2009) 013 – *Amicus Curiae* Brief for the Constitutional Court of Georgia on the viewer’s right of access to Court against decisions of an independent broadcasting authority concerning the programme schedule adopted by the Venice Commission at its 78th Plenary Session (Venice, 13-14 March 2009)

CDL-AD (2009) 014 – Opinion on the Law on the High Constitutional Court of the Palestinian National Authority adopted by the Venice Commission at its 78th Plenary Session (Venice, 13-14 March 2009)

CDL-AD (2009) 015 – Opinion on the Law on occupied territories of Georgia adopted by the Venice Commission at its 78th Plenary Session (Venice, 13-14 March 2009)

CDL-AD (2009) 016 – Opinion on the Draft Laws on freedom to receive information and on making amendments to the Code of Administrative Violations of the Republic of Armenia adopted by the Venice Commission at its 78th Plenary Session (Venice, 13-14 March 2009)

CDL-AD (2009) 017 – Opinion on Four Constitutional Laws amending the Constitution of Georgia adopted by the Venice Commission at its 78th Plenary Session (Venice, 13-14 March 2009)

CDL-AD (2009) 018 – Opinion on the concept paper for a new Law on Statutory Instruments of Bulgaria adopted by the Venice Commission at its 78th Plenary Session (Venice, 13-17 March 2009)

CDL-AD (2009) 019 – Opinion on the Draft Law amending the Law on election of People’s Deputies of Ukraine presented by People’s Deputies Lavrynovych and Portnov adopted by the Venice Commission at its 78th Plenary Session (Venice, 13-14 March 2009)

CDL-AD (2009) 020 – Report on an internationally recognised status of election observers adopted by the Venice Commission at its 78th Plenary Session (Venice, 13-14 March 2009)

CDL-AD (2009) 021 – 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) and Explanatory Report adopted by the Venice Commission at its 78th Plenary Session (Venice, 13-14 March 2009)

CDL-AD (2009) 022 – Opinion on Rules of Procedure on Criteria and Standards for the Evaluation of the Qualification, Competence and Worthiness of Candidates for Bearers of Public Prosecutor's Function of Serbia adopted by the Venice Commission at its 79th Plenary Session (Venice, 12-13 June 2009)

CDL-AD (2009) 023 – Opinion on the Draft Criteria and Standards for the Election of Judges and Court Presidents of Serbia adopted by the Venice Commission at its 79th Plenary Session (Venice, 12-13 June 2009)

CDL-AD (2009) 024 – Opinion on the Draft Law of Ukraine amending the Constitution presented by the President of Ukraine adopted by the Venice Commission at its 79th Plenary Session (Venice, 12-13 June 2009)

CDL-AD (2009) 025 – Opinion of the Rules of Procedures of the Assembly of "the former Yugoslav Republic of Macedonia" adopted by the Venice Commission at its 76th Plenary Session (Venice, 12-13 June 2009)

CDL-AD (2009) 026 – Summary of Recommendations on an internationally recognised status of election observers adopted by the Council for Democratic Elections at its 29th meeting (Venice, 11 June 2009) and the Venice Commission at its 79th plenary session (Venice, 12-13 June 2009)

CDL-AD (2009) 027 – Report on the Imperative Mandate and Similar Practices adopted by the Council for Democratic Elections at its 28th meeting (Venice, 14 March 2009) and by the Venice Commission at its 79th Plenary Session (Venice, 12-13 June 2009)

CDL-AD (2009) 028 – Joint Opinion on the Draft Law No – 3366 about Elections to the Parliament of Ukraine by the Venice Commission and the OSCE/ODIHR adopted by the Council for Democratic Elections at its 29th meeting (Venice, 11 June 2009) and by the Venice Commission at its 79th Plenary Session (Venice, 12-13 June 2009)

CDL-AD (2009) 029 – Report on the Impact of Electoral Systems on Women's Representation in Politics adopted by the Council for Democratic Elections at its 28th meeting (Venice, 14 March 2009) and the Venice Commission at its 79th plenary session (Venice, 12-13 June 2009)

CDL-AD (2009) 030 – Opinion on a Draft Constitutional Law on the Amendments to the Constitution of Georgia adopted by the Venice Commission at its 79th Plenary Session (Venice, 12-13 June 2009)

CDL-AD (2009) 031 – Guidelines on Media Analysis during Election Observation Missions by the OSCE Office for Democratic Institutions and Human Rights (OSCE/ODIHR) and the Venice Commission adopted by the Council for Democratic Elections at its 29th meeting (Venice, 11 June 2009) and the Venice Commission at its 79th plenary session (Venice, 12-13 June 2009)

CDL-AD (2009) 032 – Joint opinion on the Electoral Code of "the former Yugoslav Republic of Macedonia" as revised on 29 October 2008 by the Venice Commission and the OSCE Office for Democratic Institutions and Human Rights, adopted by the Council for Democratic Elections at its 29th Plenary Session (Venice, 12-13 June 2009)

CDL-AD (2009) 033 – Opinion on the Organic Law of Georgia on changes and additions to the Organic Law of Georgia on Political Unions of Citizens adopted by the Council for Democratic Elections at its 29th meeting (Venice, 11 June 2009) and the Venice Commission at its 79th plenary session (Venice, 12-13 June 2009)

- CDL-AD (2009) 034 – Joint Opinion on the Draft Law on Assemblies of the Kyrgyz Republic by the Venice Commission and OSCE/ODIHR endorsed by the Venice Commission at its 79th Plenary Session (12-13 June 2009)
- CDL-AD (2009) 035 – Opinion on the Draft Law on Meetings, Rallies and Manifestations of Bulgaria adopted by the Venice Commission at its 79th Plenary Session (Venice, 12-13 June 2009)
- CDL-AD (2009) 036 – Joint Opinion on the Law on Making Amendments and Addenda to the Law on the Freedom of Conscience and on Religious Organizations and on the Law on Amending the Criminal Code of the Republic of Armenia by the Venice Commission, the Directorate General of Human Rights and Legal Affairs of the Council of Europe, the OSCE/ODIHR Advisory Council on Freedom of Religion or Belief adopted by the Venice Commission at its 79th Plenary Session, (Venice, 12-13 June 2009)
- CDL-AD (2009) 037 – Interim Opinion on the Draft Law on Amending the Civil Code of the Republic of Armenia adopted by the Venice Commission at its 79th Plenary Session, (Venice, 12-13 June 2009)
- CDL-AD (2009) 038 – Report on Private Military and Security Firms and Erosion of the State Monopoly on the use of force adopted by the Venice Commission at its 79th Plenary Session (Venice, 12-13 June 2009)
- CDL-AD (2009) 039 – Joint Opinion on Draft Laws on Electoral Legislation of Serbia by the Venice Commission and the OSCE/ODIHR Adopted by the Council for Democratic Elections at its 30th meeting (Venice, 8 October 2009) and by the Venice Commission at its 80th Plenary Session (Venice, 9-10 October 2009)
- CDL-AD (2009) 040 – Joint Opinion on the Law on Amending some legislative acts on the election of the President of Ukraine adopted by the Verkhovna Rada of Ukraine on 24 July 2009 by the Venice Commission and the OSCE/ODIHR adopted by the Council for Democratic Elections at its 30th meeting (Venice, 8 October 2009) and by the Venice Commission at its 80th Plenary Session (Venice, 9-10 October 2009)
- CDL-AD (2009) 041 – Joint Opinion on the Draft Law on Political Parties of the Kyrgyz Republic by the Venice Commission and the OSCE/ODIHR adopted by the Venice Commission at its 80th Plenary Session (Venice, 9-10 October 2009)
- CDL-AD (2009) 042 – Opinion on Draft Amendments to the Law on the Constitutional Court of Latvia adopted by the Venice Commission at its 80th Plenary Session (Venice, 9-10 October 2009)
- CDL-AD (2009) 043 – Opinion on Draft Amendments to the Law on the Protector of Human Rights and Freedoms of Montenegro adopted by the Venice Commission at its 80th Plenary Session (Venice, 9-10 October 2009)
- CDL-AD (2009) 044 – *Amicus Curiae* Opinion on the Law on the cleanliness of the figure of high functionaries of the Public Administration and Elected Persons of Albania adopted by the Venice Commission at its 80th Plenary Session (Venice, 9-10 October 2009)
- CDL-AD (2009) 045 – Opinion on the Draft Law on Prohibition of Discrimination of Montenegro adopted by the Venice Commission at its 80th Plenary Session (Venice, 9-10 October 2009)
- CDL-AD (2009) 046 – Interim Opinion on the Draft Amendments and Annexes to the Law on Occupied Territories of Georgia adopted by the Venice Commission at its 80th Plenary Session (Venice, 9-10 October 2009)
- CDL-AD (2009) 047 – Second Interim Opinion on the Draft Amendments to the Civil Code of Armenia adopted by the Venice Commission at its 80th Plenary Session (Venice, 9-10 October 2009)
- CDL-AD (2009) 048 – Opinion on the Draft Law of Ukraine on the Office of the Public Prosecutor adopted by the Venice Commission at its 79th Plenary Session (Venice, 12-13 June 2009)

CDL-AD (2009) 049 – Opinion on the Draft Law on additions to the Law on the status of municipalities of the Republic of Azerbaijan adopted by the Venice Commission at its 81st Plenary Session (Venice, 11-12 December 2009) prepared in consultation with The Directorate General of Democracy and Political Affairs of the Council of Europe

CDL-AD (2009) 050 – Opinion on the Draft Law on the status of Euroregions of the Republic of Moldova adopted by the Venice Commission at its 81st Plenary Session (Venice, 11-12 December 2009)

CDL-AD (2009) 051 – Final Opinion on the Draft Amendments to the Law on Occupied Territories of Georgia adopted by the Venice Commission at its 81st Plenary Session (Venice 11-12 December 2009)

CDL-AD (2009) 052 – Joint Opinion on the order of organising and conducting peaceful events of Ukraine by the Venice Commission and OSCE/ODIHR adopted by the Venice Commission at its 81st Plenary Session (Venice, 11-12 December 2009)

CDL-AD (2009) 053 – Opinion on the draft law on normative acts of Bulgaria adopted by the Venice Commission at its 81st Plenary Session (Venice, 11-12 December 2009)

CDL-AD (2009) 054 – Report on the cancellation of election results adopted by the Council for Democratic Elections at its 31st meeting (Venice, 10 December 2009) and by the Venice Commission at its 81st plenary session (Venice, 11-12 December 2009)

CDL-AD (2009) 055 – Opinion on the Draft Law about obtaining information on activities of the Courts of Azerbaijan adopted by the Venice Commission at its 81st Plenary Session (Venice, 11-12 December 2009)

CDL-AD (2009) 056 – Final Opinion on the Draft Law on Amending the Civil Code of the Republic of Armenia endorsed by the Venice Commission at its 81st Plenary Session (Venice, 11-12 December 2009)

CDL-AD (2009) 057 – Interim opinion on the draft revision of the Constitution of Luxembourg adopted by the Venice Commission at its 81st Plenary Session (Venice, 11-12 December 2009)

CDL-AD (2009) 058 – *Amicus Curiae* Brief on the Interpretation of the Kazakh Constitution concerning the participation in the Customs Union within the Euro-Asian Economic Community for the Constitutional Council of Kazakhstan endorsed by the Venice Commission at its 81st Plenary Session (Venice, 11-12 December 2009)

CDL-AD (2009) 059 – Guidelines on an internationally recognised status of election observers adopted by the Council for Democratic Elections at its 31st meeting (Venice, 10 December 2009) and by the Venice Commission at its 81st plenary session (Venice, 11-12 December 2009)

CDL-AD (2010) 001 – Report on Constitutional amendment adopted by the Venice Commission at its 81st Plenary Session (Venice, 11-12 December 2009).

The Council of Europe

The Council of Europe has 47 member states, covering virtually the entire continent of Europe. It seeks to develop common democratic and legal principles based on the European Convention on Human Rights and other reference texts on the protection of individuals. Ever since it was founded in 1949, in the aftermath of the Second World War, the Council of Europe has symbolised reconciliation.



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