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EUROPEAN COMMISSION FOR DEMOCRACY THROUGH LAW
(VENICE COMMISSION)

OPINION

**ON PACE RECOMMENDATION 1713(2005)
ON DEMOCRATIC OVERSIGHT OF THE SECURITY SECTOR
IN MEMBER STATES**

**Adopted by the Venice Commission
at its 64th Plenary Session,
(Venice, 21-22 October 2005)**

on the basis of comments by

Mr Dimitri CONSTAS (Member, Greece)

I. Introduction

1. At its 934th meeting of 7 July 2005, the Committee of Ministers of the Council of Europe decided to request an opinion of the Venice Commission on Recommendation 1713 (2005) of the Parliamentary Assembly “on democratic oversight of the security sector in member states”.

2. Mr Dimitri Conostas was appointed as Rapporteur. The present opinion, which was drawn up on the basis of his comments, was adopted by the Commission at its 64th Plenary Session (Venice, 21-22 October 2005).

II. The scope of the Venice Commission’s analysis

3. The opinion of the Venice Commission on PACE Recommendation 1713(2005) is meant to assist the Committee of Ministers in preparing its reply to the Parliamentary Assembly: the Commission’s task is thus limited to providing the Committee of Ministers with some useful elements to this end.

4. The Parliamentary Assembly has recommended “(...) that the Committee of Ministers prepare and adopt guidelines for governments setting out the *political* [sic!] rules, standards and practical approaches required to apply the principle of democratic supervision of the security sector in member states (...)”. It has further identified certain principles in the following areas: Intelligence Services; Police; Border management; Defence and National Security and Democracy.

5. The Venice Commission will confine itself to commenting on the principles pertaining to intelligence services¹ and defence².

III. The principles which should inspire governments in respect of intelligence services

6. In 1998, the Venice Commission was requested by the Committee on Legal Affairs of the Parliamentary Assembly to examine the question of the constitutional relations between internal security services (hereinafter: “ISS”) and other organs of the State³.

7. The Commission came to the following main conclusions:

- ISS by their own nature sometimes have to act outside the accepted standards of an ordinary police force;
- whatever their position in respect of the Executive, they must be made accountable for their actions with the provisions of the laws which regulate them;
- the role, functions, powers and duties of the ISS must be clearly defined and delimited by the legislation setting them up or by the Constitution;

¹ PACE Recommendation 1713(2005), § 10, i.

² § 10, iv.

³ Internal Security Services in Europe, CDL-INF(1998)6.

- rules concerning ISS should be laid down in the legislation or even in the constitution; at any rate, the legal basis should be clear and concise as to their tasks and in harmony with the constitution and the international obligations, in particular those on human rights protection;
- the norms applicable to ISS should only be kept secret to the extent that it is absolutely necessary;
- the budget allocated to ISS must be appropriately monitored, and there should be at least one Government member responsible for it;
- ISS must only be used in the national interest;
- A close control of ISS is necessary, be it by the Executive, or by Parliament and/or the judiciary;
- The administrative/legal structures of ISS must allow for an adequate judicial control of their activities;
- In order to allow for pursuing the overriding State interest when necessary, provision should be made to ensure confidentiality, lack of publicity, protection of preserved information and data, protection of witnesses and so on;
- Access from other state authorities to the information held by ISS must be regulated in detail;
- The possibility for ISS to monitor persons belonging to other State services must be duly regulated by law;
- In the operation of ISS, derogations of fundamental rights and freedoms must be kept to a minimum, and accountability of ISS for undue infringements of human rights must be stated;
- The use by ISS of extraordinary measures must be proportionate to the danger incurred and must not be unduly prolonged in time.

8. The Commission's study was carried out prior to the tragic events of 11 September 2001 and the bombings *inter alia* in Madrid, Bali, London and Sharm el Sheikh.

9. The need to increase the efficacy of ISS has since become apparent. The parallel strengthening of democratic intelligence oversight should however be also seen as necessary and a priority.

10. The Parliamentary Assembly has rightly urged the Committee of Ministers to focus on this important question. Indeed, the Council of Europe has been active in the analysis of non-military aspects of security within the framework of the notion of "democratic security".

11. National oversight practices vary greatly in the different Council of Europe member states, in terms of the amount of power which is granted to the intelligence services and of the manner in which they are held responsible for their actions.

12. The Venice Commission considers that a comparative analysis of the legislation on and the practice in respect of democratic oversight of national security in the Council of Europe member states would be interesting and appropriate, as it would reveal the weaknesses and strengths of each system and would help the Committee of Ministers define how the accountability of ISS can be best achieved in a democratic society, due regard being paid to the need for ISS to be efficient. This comparative analysis should give special emphasis to the role of Parliaments and their specialized committees as well as to that of national courts in carrying out this task. An additional area of concern should be the intensification of the international functions of national

intelligence agencies and the risk, in view of the absence of clear standards for their extraterritorial conduct, to evade national rules.

13. The Venice Commission is ready to assist the Committee of Ministers on this matter, if so requested.

IV. The principles which should inspire governments in respect of Defence

14. Armed forces must be kept under the control of the national democratic institutions, especially in times where security challenges become increasingly transnational and the traditional distinction between armed forces and police has blurred. This is a topic which has so far not been the object of in-depth reflection within the Council of Europe⁴.

15. The need to ensure civilian command authority over the armed forces in their national and international operations remains an important issue in several member States and raises important constitutional issues.

16. In addition, the Venice Commission shares the concerns expressed by PACE that a decision-making role of parliaments has to be safeguarded in the area of defence even though many decisions are taken at the international level⁵.

17. If so requested by the Committee of Ministers, the Venice Commission is ready to undertake a study of this question.

⁴ Other specialised bodies, such as the Geneva Centre for the Democratic Control of Armed Forces (DCAF), have focussed on this matter and have strived to assist the international community in pursuing good governance and reform of the security sector

⁵ See, *mutatis mutandis*, the Venice Commission's report on the legal foundation for foreign policy, CDL-INF (1998)013, III.