



Strasbourg, 16 March 1998
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CDL-CR (98) PV

EUROPEAN COMMISSION FOR DEMOCRACY THROUGH LAW

**MEETING OF THE SUB-COMMISSION ON
CONSTITUTIONAL REFORM
(Venice, 5 March 1998)**

MEETING REPORT

1. Adoption of the agenda

The Sub-Commission decided to add the Albanian issue to the agenda. Otherwise, the agenda was adopted as set out in document CDL-CR (98) OJ.

2. Estonian constitutional reform

a. Mr Dürr said that three opinions were available. Two of them, drafted by Mr Niemivuo (CDL (97) 52) and Mr Lopez Guerra (CDL (98) 5) respectively, concerned European Union membership and the Estonian Constitution. The third, drawn up by Mr Bartole and supported by Mr Steinberger, focused on the setting-up of the Constitutional Court (CDL (97) 53).

The document by Mr Lopez Guerra emphasised the specific, supranational nature of the European Communities, demonstrated in particular by the direct effect and primacy of Community law and a major transfer of powers to the Communities.

Estonia's admission to the European Union would necessitate a constitutional amendment to permit the delegation of powers to the Union and the Communities. Other specific constitutional amendments would also be required with regard to the rights of Union citizens to vote and stand for municipal and European Parliament elections, and for accession to the single currency.

b. Mr Dürr said that the Estonian Supreme Court was going to submit its own proposal for reforming the present Supreme Court. The envisaged reform of the system for verifying constitutionality would enable individuals, lower court judges and parliamentary minorities to seize the Constitutional Review Chamber.

c. Mr Madise agreed with the opinion submitted by Mr Lopez Guerra and stressed that the reform would extend the capacity to lodge constitutional appeals. He would shortly provide further details on the governmental committee's proposal to set up a constitutional court proper.

3. Study on constitutional law and European integration

Mr Garrone said that the Secretariat had received replies from 13 states to the questionnaire on constitutional law and European integration (see documents CDL-UE (97) 1 and (98) 1). Mr Toledano would present his summary report at the meeting in June 1998.

4. Albania

Ms Bolognese said that the parliament had genuinely amended the constitution in three respects: Chapter I, Article 10 (the right to property), Chapter V, Article 15 (High Council of Justice) and Chapter V, Article 18 (rotation of the Constitutional Court). Having given the Constitutional Court a thirty-day deadline to begin rotating its members, the parliament had considered the court suspended under Article 18 referred to above.

Mr Buquicchio said that co-operation with Albania was a priority for the Council of Europe. He had gone to Tirana from 6 to 8 January with Mr La Pergola, President of the Commission, and had met President Mejdani, the Prime Minister Mr Nano, and the former President Mr Berisha. A meeting had also been held with the members of the constitutional commission.

The Sub-Commission then held an exchange of views on the suspension of the Albanian Constitutional Court, on the basis of the opinions submitted by Mr Bartole and Mr Holovaty (CDL (98) 19 and 21).

The Sub-Commission reached the following conclusions in the light of the information available to it regarding the recent amendments to the Major Constitutional Provisions. The amendments to Articles 10 (Chapter I) and 15 (Chapter V) were adequately dealt with in the opinions by Mr Bartole, Mr Holovaty, Mr Lopez Guerra and Mr Said Pullicino (CDL (98) 19, 21, 22 and 8). The Sub-ommission agreed in principle with the opinions on those two articles, and would be happy to provide the Albanian authorities with a consolidated opinion on all the amendments in question in the near future. The following conclusions refer to the amendment to Article 18, concerning the rotation and suspension of the Constitutional Court.

The constitution-making body was, in principle, sovereign. There was therefore no room for challenging the validity of constitutional provisions such as Article 18 regarding the suspension of the Constitutional Court.

The Constitutional Court had the obligation to respect the constitution, including the rules concerning its own functioning, and to act in accordance with it. It was natural that the Constitutional Court's failure to comply with the above rule might require measures to be taken, as it could not be allowed to harm the constitutional order of Albania.

However, such measures must respect the principles of the rule of law and the separation of powers; under no circumstances should they be disproportionate.

Suspension of the Constitutional Court was a disproportionate solution: it went against the common interest of both the citizens and the state, as citizens were deprived of protection of their constitutional rights and the state was deprived of the guarantees of one of its essential constitutional and democratic institutions.

Suspension was inappropriate. The measure taken must not go so far as to harm the constitutional order of Albania.

Other solutions that would safeguard the proper functioning of the constitutional order would have been more appropriate. An amendment to Article 18 might, for instance, provide for an alternative procedure in the event that the Constitutional Court failed to effect the rotation; the President of the Republic and the Speaker of the People's Assembly could, for example, draw lots for the rotation.

A P P E N D I X I

LISTE DES PARTICIPANTS/LIST OF PARTICIPANTS

BELGIUM/BELGIQUE:

M. Jean-Claude SCHOLSEM, Professeur, Faculté de droit, Université de Liège

CYPRUS/CHYPRE:

Mr Michael TRIANTAFYLLIDES, Chairman of the Council of the University of Cyprus, Former President of the Supreme Court and former Attorney-General of the Republic

ESTONIA/ESTONIE:

Mr Lauri MADISE, Legal Expert, Public Law Division, Ministry of Justice

FINLAND/FINLANDE:

Mr Antti SUVIRANTA, Former President of the Supreme Administrative Court

FRANCE:

M. Jacques ROBERT, Président honoraire de l'Université de droit, d'économie et des Sciences sociales de Paris, Membre du Conseil constitutionnel

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M. János ZLINSZKY, Juge à la Cour constitutionnelle

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NETHERLANDS/PAYS-BAS:

Mr Godert W. MAAS GEESTERANUS, Former Legal Adviser to the Minister of Foreign Affairs

PORTUGAL:

M. Armando MARQUES GUEDES, ancien Président du Tribunal constitutionnel

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TURKEY/TURQUIE:

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SOUTH AFRICA/AFRIQUE DU SUD :

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Ms Charmaine MARE, Liaison Officer, Department of Constitutional Development

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