

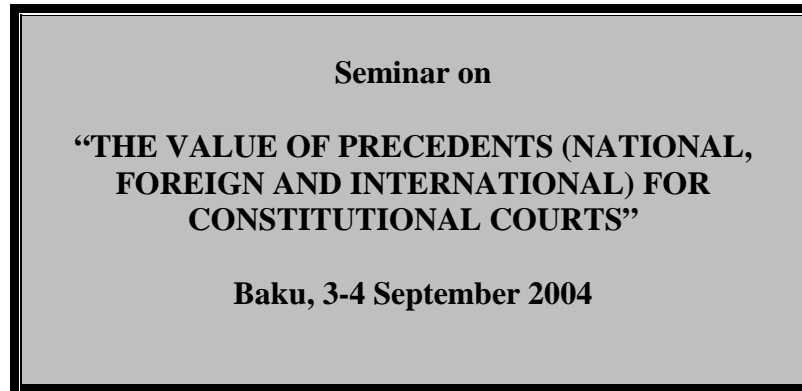


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EUROPEAN COMMISSION FOR DEMOCRACY THROUGH LAW
(VENICE COMMISSION)

in co-operation with the
CONSTITUTIONAL COURT OF AZERBAIJAN



SYNOPSIS

In co-operation with the Constitutional Court of Azerbaijan, the Venice Commission organised a seminar on "The Value of Precedents (National, Foreign and International) for the Constitutional Courts" (Baku, 3-4 September 2004). The Seminar was attended by approximately 60 participants including the Judges from the Constitutional Court of Azerbaijan, the Parliamentary and Presidential Administrations, ordinary courts headed by the Supreme Court, the Ombudsman, Baku University and the OSCE office in Baku. The seminar had very good media coverage. Parallel to the seminar, the Secretary of the Venice Commission, Mr Buquicchio met in private with the President of the Republic, Mr Ilham Aliyev.

Speakers representing the constitutional or supreme courts of Azerbaijan, Belgium, the Czech Republic, the Russian Federation, the United States and the European Court of Human Rights addressed three aspects of the topic:

The first aspect concerned the case-law of the constitutional courts themselves. The speakers pointed out that even though in most cases they are not formally bound to do so, constitutional courts usually respect their own previous case-law as precedents in order to guarantee legal certainty and a certain predictability of their decisions. Nevertheless, changes in society and the evolution of values may, over time, require that the jurisprudence be adapted. While courts do sometimes openly contradict previous decisions, they will in many cases rather differentiate current cases from these precedents thus guaranteeing a coherent line of argumentation over time.

The second aspect addressed was the use of case-law from foreign courts. The participants insisted that constitutional courts cannot be bound by such case-law given that these foreign courts apply their own constitution and laws. Decisions from other courts can, however, be inspiring in that they show a given line of reasoning, which can be applicable in the national context. Such foreign decisions thus can have a convincing effect.

Such inspiration – sometimes called "cross-fertilisation" – between constitutional courts is actively fostered by the Venice Commission, which collects and publishes important decisions in its *Bulletin on Constitutional Case-Law* and the database CODICES, which cover more than 4000 decisions. These successful tools are indeed used by the courts in the preparation of their cases. Upon request by the courts, the Commission is also available to provide *amicus curiae* opinions, which present aspects of comparative law in cases before the court.

The third aspect dealt with during the seminar was the question whether and in which way constitutional courts and equivalent bodies feel bound by decisions from international courts, especially the European Court of Human Rights. While some courts may argue that they are not concerned by this case-law because they apply a different standard - the national constitution, not the Convention - others follow the Strasbourg Court's case-law because they find it convincing or because they do feel bound by this case-law.

An important point in the discussion was that the use of foreign or international sources can be linked to the questions of judicial restraint and whether a court feels itself limited to the use of the historical method of interpretation. While this method will be able to respect the original intentions of the constituent, inspiration from foreign courts deciding in a similar constitutional environment may lead to results which are likely to enhance the implementation of basic principles like the protection of human rights, which are enshrined in the national

constitution. The choice of such sources has to be well reasoned and has to respect the limits of the constitutional legitimacy conferred upon the court.

The reports presented at the seminar will be published in the Bulletin of the Constitutional Court of Azerbaijan and on the web-site of the Commission (<http://venice.coe.int>).