



Strasbourg, 28 January 2009

CDL-JU(2009)051syn
Engl only

EUROPEAN COMMISSION FOR DEMOCRACY THROUGH LAW
(VENICE COMMISSION)

in co-operation with
THE CONSTITUTIONAL COURT OF LATVIA

**INTERNATIONAL CONFERENCE
ON
ACCESS TO THE COURT: THE APPLICANT IN THE
CONSTITUTIONAL JURISDICTION**

RIGA, 6 NOVEMBER 2009

SYNOPSIS

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 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*) in front 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 *actio popularis* 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 has given *locus standi* to this association. This prompted discussions on which fundamental rights apply to legal entities (e.g. property rights).

Discussions revolved around the definition of an individual complaint and how in all countries participating in the conference, the violation of a right(s) must be direct and personal. The introduction of “future infringement” complaints (i.e. prevention of future violations) was also briefly discussed as a possibility, which would allow a person to file a complaint if, for instance, there is a reasonable possibility that his or her job might be in jeopardy due to the possible introduction of a future law affecting their sector of work. Participants also discussed the problems related to errors made in applications and how access to the courts could be reasonably restricted in order to reduce the exploding caseload of many constitutional courts. For instance, in Slovenia 1600 cases were brought in front of the constitutional court this year and in Spain over 10 000 (mostly individual complaints) were brought in front of the constitutional court, which create a great backlog (3 to 5 years in Spain for a lower court to obtain an answer to a question on the constitutionality of a law).

Participants also discussed the requirement of the exhaustion of all other legal remedies before turning to the constitutional court. Some countries have strict rules on this (Slovenia and Spain), while others give the constitutional court more discretion on this issue (Latvia). The joinder of applications was also briefly discussed (a new and recent phenomenon in Latvia – the Latvian Law on the Constitutional Court would need to be amended if such applications are to be properly regulated).

Access to the court by the Ombudsman was also discussed, especially the difficulties encountered when the legislator is requested by the Ombudsman to amend laws, as the Law on the Constitutional Court is silent on the length the legislator should be given to implement this request.

The Constitutional Court of Latvia would like to request the Venice Commission to co-operate in the organisation of a seminar or expert meeting in the first half of 2010 on the possible introduction of a Judicial Council in Latvia.