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**EUROPEAN COMMISSION FOR DEMOCRACY THROUGH LAW  
(VENICE COMMISSION)**

in co-operation with

**THE EUROPEAN COURT OF HUMAN RIGHTS**

and

**THE CONSTITUTIONAL COURT OF ARMENIA**

**THE EUROPEAN STANDARDS OF RULE OF LAW  
AND THE SCOPE OF DISCRETION OF POWERS IN  
THE MEMBER-STATES OF THE COUNCIL OF  
EUROPE**

**Yerevan, Armenia**

**3-5 July 2013**

**MEMORANDUM**

Within the framework of the Chairmanship of the Republic of Armenia in the Committee of Ministers of the Council of Europe, the Pan-European Conference on “the European Standards of Rule of Law and the Scope of Discretion of Powers in the Member-States of the Council of Europe was convened on 3-5 July 2013 in Yerevan with the participation of delegations from thirty two countries.

Delegations of Legislative Bodies, Constitutional Courts and equivalent bodies, Ministries of Foreign Affairs and Justice, Human Rights Defenders from the member States of the Council of Europe and other countries participated in the Conference.

The President of the Republic of Armenia, the President of the European Court of Human Rights and the President of the European Commission for Democracy through Law of the Council of Europe (“Venice Commission”) addressed the Conference with welcome speeches.

In their discussions on the Rule of Law, the participants of the Conference took into consideration the references to the Rule of Law in the Statute of the Council of Europe<sup>1</sup> and the European Convention on Human Rights, the approaches to the Rule of Law of the Committee of Ministers of the Council of Europe<sup>2</sup>, Resolution 1594(2007) of the Parliamentary Assembly of the Council of Europe on “The Principle of the Rule of Law”<sup>3</sup>, the case-law of the European Court of Human Rights as well as the “Declaration of the High-level Meeting of the UN General Assembly on the Rule of Law at the National and International Levels”<sup>4</sup>.

By focussing on discretion in the context of the Rule of Law, it has been noted that the Conference is also a logical follow-up to the Venice Commission’s “Report on the Rule of Law”<sup>5</sup> and the Conference on “The Rule of Law as a Practical Concept” (London, 2 March 2012), which have taken place in the framework of the Chairmanship of the United Kingdom in the Committee of Ministers of the Council of Europe.

Within the general framework of the Rule of Law, the presentations and the discussions at the Pan-European Conference focused on discretionary powers as a concept which has to be interpreted in conformity with the Rule of Law. In the field of human rights, discretion is often referred to as a margin of appreciation. Discretion was approached from the point of view of the norm-setting powers (Parliament through Laws, Government by way of decree) and the implementing bodies (administration, but also the judiciary).

In its legislative activity, Parliament is free to make the policy choices it sees fit for the country. Nonetheless, in legislating, Parliament is limited by the Constitution and by international law. Parliament’s scope of legislative choices is wider in areas where the State provides benefits than in areas where it limits rights.

The principles of legality and separation of powers provide the framework in which discretion can be exercised. Parliament plays a key role in limiting the discretion of the executive power,

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<sup>1</sup>Preamble and Article 3.

<sup>2</sup>See “The Council of Europe and the Rule of Law - An Overview CM(2008)170 of 21 November 2008.

<sup>3</sup>Resolution 1594 (2007) of 23 November 2007,  
<http://assembly.coe.int/main.asp?Link=/documents/adoptedtext/ta07/eres1594.htm>.

<sup>4</sup>A/67/L.1, 19 September 2012, [http://www.un.org/ga/search/view\\_doc.asp?symbol=A/67/L.1](http://www.un.org/ga/search/view_doc.asp?symbol=A/67/L.1).

<sup>5</sup>CDL-AD(2011)003rev.

in particular of the administration. Legislative provisions should be clear and understandable to enable the executive power to exert discretion only in areas where this is intended and not simply because the law is uncertain or ambiguous.

Discretion in the implementation of the law is necessary in order to provide for flexibility in the reaction of the State to social realities. However, the exercise of discretion must be legitimised by procedural transparency and a coherent motivation of the decisions made.

Discussion on discretion as an element of the Rule of Law gave the Conference the opportunity to contribute to the further development of the value system within the Council of Europe member States and to provide practical approaches on how discretion could be aligned with the requirements that stem from the principle of the Rule of Law, including the hierarchy of norms.

The Conference calls upon the Venice Commission to take into account the problems discussed and solutions proposed in its on-going work on the "Rule of Law Check-List",

The Conference highly appreciates the initiative of the Republic of Armenia for the organisation of this important and fruitful event.

The participants of the Conference also welcome the publication of the Volume entitled: "New Millennium Constitutionalism: Paradigms of Reality and Challenges", published in Yerevan, on the basis of contributions from a wide range of outstanding authors from all around the world, as well as the future publication of the proceedings of the Pan-European Conference as an important contribution to the development of the Rule of Law in the member States of the Council of Europe.

Pan-European Conference on  
"The European Legal Standards of Rule of Law  
and the Scope of Discretion of Powers  
in the Member-States of the Council of Europe."

04.07.2013

Yerevan, the Republic of Armenia