



Strasbourg, 18 July 2005

Restricted  
**CDL-JU-PV(2005)001**  
**Or. Eng.**

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

**4<sup>TH</sup> MEETING OF THE JOINT COUNCIL ON  
CONSTITUTIONAL JUSTICE**

(Baku, 16 June – 17 June 2005)

**REPORT**

## 1. Adoption of the agenda

The agenda was adopted unchanged.

## 2. Communication by the Secretariat

Mr Dürr of the Secretariat informed the Joint Council about the appointment of the following new liaison officers since the last meeting, held in Venice on 10 March 2004 (in chronological order): in March 2004 Mr M. Schlungs, Judge of the Constitutional Court of Luxembourg; in May 2004 Mr B.- O. Bryde, Judge of the Federal Constitutional Court of Germany; in May 2004 Mr B. Banaszkiwicz, Director of the Department of Jurisprudence and Studies, Constitutional Tribunal of Poland; in June 2004 Ms V. Nagesar, Researcher at the Constitutional Court of South Africa; in July 2004 Ms V. Koivu of the Supreme Administrative Court of Finland; in September 2004 Mr P. Miklaszewicz of the Constitutional Tribunal of Poland; in September 2004 Mr Z. Korganashvili of the Constitutional Court of Georgia; in October 2004 Ms N. Papanicolaou of the Supreme Court of Cyprus; in November 2004 Mr E. Ferrar MacGregor Poisot and Ms C. Bolivar Galindo of the Supreme Court of Justice of Mexico; in December 2004 Mr M. Mbuyisa of the Constitutional Court of South Africa; in February 2005 Ms M. Lesevska of the Constitutional Court of “the former Yugoslav Republic of Macedonia”; in February 2005 Mr J. Jentgen of the Constitutional Court of Luxembourg; in February 2005 Mr M. Chikobava of the Constitutional Court of Georgia; in February 2005 Ms C. Lokrantz of the Supreme Administrative Court of Sweden; in March 2005 Ms T. Ziamou of the Conseil d’Etat of Greece; in March 2005 Ms P. Novackovca of the Constitutional Court of the Czech Republic; in June 2005 Ms A. Niemi of the Supreme Administrative Court of Finland; and in June 2005 for the United Kingdom, Lord Justice Maurice Kay on behalf of the House of Lords.

Mr Buquicchio, Secretary of the Venice Commission, informed the Joint Council about the conclusions of the Warsaw Summit, which had taken place on 16-17 May 2005. The Action Plan adopted in Warsaw places great emphasis on co-operation and specifically mentions the Venice Commission in the section on strengthening democracy, good governance and the rule of law in member states. The Action Plan calls on member states to make use of the advice and assistance of the Venice Commission, and encourages the Venice Commission to step up its co-operation with Constitutional Courts and courts of equivalent jurisdiction.

In May Mr Buquicchio had attended the XIIIth Congress of the Conference of European Constitutional Courts in Cyprus. He emphasised how important it was for the governments of the members to know what the liaison officers were doing. He invited the liaison officers to be more active in letting judges know about their activities.

Mr Buquicchio informed the Joint Council about the last Plenary Session held in Venice on 10-11 June 2005. The Commission had adopted, *inter alia*, the opinion on the compatibility of the Gasparri Law and the Frattini Law of Italy with the standards of the Council of Europe in the field of freedom of expression and media pluralism, the opinion on amendments to the Constitution of Ukraine, and the opinion on the Federal Law on the Prokuratura of the Russian Federation. After an examination of the rapporteurs’ comments, the Commission instructed the Secretariat to prepare a consolidated *amicus curiae* opinion for submission to the European Court of Human Rights on the nature – domestic or international – of the proceedings before the Human Rights Chamber and the Constitutional Court of Bosnia and Herzegovina.

The Commission was continuing to co-operate with Armenia and Azerbaijan in the area of electoral law and practice. It was continuing to pursue its activity of providing assistance in the resolution of conflicts, *inter alia*, in Kosovo and Cyprus, and it was working with the OSCE on the resolution the conflict in Transnistria.

Mr Buquicchio informed the Joint Council that the budget of the Venice Commission would be cut by 2% in 2006. He was hoping that the Commission would be able to maintain the quality and quantity of its work with the constitutional courts.

Mr Buquicchio informed the Joint Council that Chile had been accepted by the Committee of Ministers as a member state of the Venice Commission. He hoped that Korea would also become a member instead of an observer.

Mr Dürr invited the participants to take note of document CDL-JU(2005)011 on the tasks of liaison officers, a document usually sent to new liaison officers. He informed the participants that a new document would be prepared on the basis of the most recent version and be sent to all liaison officers. The document gives an overview of the activities of co-operation with constitutional courts. Aside from the Bulletin, those activities include dealing with requests by liaison officers to the Venice Forum for information and requests by courts to the Venice Commission for *amicus curiae* opinions. Mr Dürr pointed out that the publication schedule for the Bulletin in the document had changed so as to be more realistic and to reflect the increase in the amount of work in the Bulletin.

**The Joint Council was informed about the new liaison officers.**

**The Joint Council was informed about the activities of the Venice Commission.**

**The liaison officers were invited to be more active in letting judges know about their activities.**

**The Joint Council noted the revised publication schedule for the Bulletin.**

### **3. Updating of data on the participating courts**

#### **3a. Composition, addresses**

Mr Dürr invited the liaison officers to check and inform the Secretariat of any changes to the information (including addresses, telephone and fax numbers and order of judges) contained in the list of constitutional courts (CDL-JU(2005)001), the list of liaison officers (CDL-JU(2005)002) and the list of websites of constitutional courts and equivalent bodies (CDL-JU(2005)003). He invited them to check the information at the meeting and when sending in contributions to the Bulletin. He asked them to check the information on the website to ensure that the contents, in particular, the description and addresses, were correct.

**The liaison officers were invited to notify the Secretariat of any changes to be made to the information on their courts on the website of the Venice Commission and in the documents CDL-JU(2005)001, CDL-JU(2005)002 and CDL-JU(2005)003. That notification could take place at the meeting or when sending in contributions to the Bulletin.**

### **3b. Updating of Constitutions, Laws on the Courts and Descriptions**

Mr Dürr drew the attention of the Joint Council to the state of the updating of Constitutions, Laws on the Courts and Descriptions in CODICES in document CDL-JU(2005)007. He invited the liaison officers to inform the Secretariat of any changes to their constitutions, laws and descriptions. The Secretariat was making serious efforts to reduce the backlog of updating.

**The liaison officers were invited to notify the Secretariat of any changes to their Constitutions, Laws on the Courts and Descriptions.**

### **4. Co-operation between Constitutional Courts on the Internet: Venice Forum**

The participants were invited to take note of the confidential document CDL-JU(2005)004 on requests made by liaison officers via the Venice Forum and replies given by other liaison officers. Nearly a dozen requests were made. Mr Dürr thanked the liaison officers for answering the requests. He underlined the importance of answers being received within the time-limit and noted that all answers had been received within the time-limit.

The Secretariat informed the liaison officers about a project to establish a discussion forum to supplement the current e-mail based system of information exchange of the Venice Forum. Mr Dürr recalled that under the existing system, a liaison officer sent a request to the Secretariat, which would then pass the questions onto all liaison officers and do a search of CODICES and forward the results of that search to the liaison officer. The other liaison officers would then send their answers directly to the liaison officer sending the request and send a copy to the Secretariat.

The discussion forum would be a restricted website allowing for more informal discussion between the liaison officers, who could then have a free exchange of opinions not necessarily related to a specific fact situation but rather to things that interested them. The e-mail Venice Forum would continue to exist. The liaison officers could access the discussion forum with the same password. Both the e-mail based and web based versions of the Venice Forum would be confidential.

Mr Iwai stated that he generally supported the Venice Forum but he wondered how long the information would be kept on the website of the supplementary discussion forum.

Mr Dürr noted that although the information should remain on the website because such information would be interesting for the future, it could be deleted at the request of the liaison officer.

Mr Tschümperlin stated that at the conference in Cyprus, he had been surprised to hear a judge ask for the setting up of a system that would encompass elements similar to the Bulletin, CODICES and the Venice Forum. The judge clearly did not know that such instruments already existed. The existing instruments (Bulletin, CODICES and the Venice Forum) are excellent and meet a real need. The liaison officers should pass the word on in their own countries that such instruments exist. He underlined the common interest in using those instruments.

Mr Pirdeni shared Mr Tschümperlin's opinion. He emphasised that judges and assistants had to be informed of what is being offered by the Venice Commission. After the ACCPUF Bucharest Conference, a judge asked Mr Pirdeni if he could consult the database on a "ne bis idem" issue

in a case. Mr Pirdeni found a decision in CODICES involving the same issue in a similar case. The judge found that case very useful.

Mr Dürr supported the remarks made by Mr Tschümperlin and Mr Pirdeni as to the need to for more publicity for, that is to say, for judges and courts to be more aware of, the activities of the Venice Commission, in particular, that a tool such as CODICES exists and can be consulted. He also encouraged the liaison officers to pass the word onto judges that the Venice Forum exists as well. He stated that it was also in the interests of the liaison officers to have their work seen and honoured. Mr Dürr noted that the judges present at the last ACCPUF conference where he had presented CODICES had been interested and had come afterwards to speak to him about CODICES. He was hoping to present CODICES again at the next Conference of European Constitutional Courts.

Mr Buquicchio stated that it was not a question of letting the Venice Commission's work be recognised but of the liaison officers' letting their own work be recognised.

Mr Tschümperlin suggested that the courts put a link to the Venice Commission's website on their websites in the hopes that some judges might look at CODICES.

Mr Torfason stated that it would be good to keep the Venice Forum.

**The participants were invited to take note of the exchanges that had taken place between the courts via the Venice Forum.**

**The liaison officers were invited to pass the word onto judges of the existence of the Bulletin, CODICES and the Venice Forum.**

##### **5. Availability of the Venice Commission to act as *amicus curiae* for Constitutional Courts**

The Secretariat recalled that there were two kinds of opinions given by the Venice Commission: the first kind encompasses opinions on the establishment of courts and draft laws; the second kind is the *amicus curiae* opinion. The Secretariat informed the participants about the Venice Commission's *amicus curiae* opinions and opinions on draft legislation on constitutional courts that had been given since the last meeting of the Joint Council.

##### **- Georgia: *amicus curiae* Opinion 289/2004 on the relationship between the Freedom of Expression and Defamation with respect to unproven defamatory allegations of fact**

The Constitutional Court of Georgia was the first court to request an *amicus curiae* opinion from the Venice Commission. In March 2004, the Commission had adopted the opinion on the relationship between the Freedom of Expression and Defamation with respect to unproven defamatory allegations of fact (CDL-AD(2004)011), on the basis of comments by Mr. Nolte.

The Commission concluded that the obligation on the person who has made defamatory assertions of fact to prove the truth of those assertions, is in line with European standards but, in some situations - especially in cases of public concern - either the speaker, or his audience has a legitimate interest in assertions being put forward that cannot be proven true. Here, freedom of expression requires that such issues may be made subject to public debate. In such cases, it is up to the ordinary courts to balance a number of possible considerations in order to assess whether,

in a given case, freedom of expression takes precedence over reputational interests. Much depends, in particular, whether the speaker has acted *bona fide* and whether he or she has observed the appropriate duty of care when assessing the veracity of the allegation.

In its decision of 11 March 2004 - N2/1/241, Akaki Gogichaishvili v. the Parliament of Georgia, the Constitutional Court decided that Article 18.2 was constitutional to the extent that it obliges a person to retract information where the person has disseminated statements (facts), those statements are false, the person who has disseminated such statements cannot prove the truth of those statements, and those statements defame the honour and dignity of others. The necessary balancing was a task for the ordinary courts in each individual case. The Court requested that Parliament define more precisely the notion of "information" in Article 18.2 of the Civil Code in order to avoid any incoherent interpretation by the ordinary courts.

Parliament has not yet amended Article 18.2 of the Civil Code.

- **Albania: *amicus curiae* Opinion 312/2004 on the interpretation of Articles 125 and 126 of the Constitution of Albania (appointment of highest judges)**

At its October 2004 Plenary Session, the Commission adopted the *amicus curiae* opinion on the Interpretation of Articles 125 and 136 of the Constitution of Albania regarding the appointment of highest judges (CDL-AD(2004)034) based on comments by Messrs Bartole and Cardoso da Costa. The opinion was based on comparative research of similar systems.

Following the refusal by Parliament to give its consent to the presidential nomination of a judge of the Constitutional Court, the President of the Republic had asked the Court to interpret the articles of the Constitution on the nomination of judges of the Constitutional and Supreme Courts. The Constitutional Court requested an *amicus curiae* opinion. The Commission came to the conclusion that when giving its consent to such presidential nominations, the Albanian Parliament has the power to decide upon the merits of the nominations and not only whether formal requirements have been met.

In its decision 22/2 of 18 January 2005, the Constitutional Court concluded: "the Assembly of Albania has the authority to give or refuse the consent for the appointment of judges of the Constitutional Court and judges of the Supreme Court".

The Commission also recommended that the Standing Orders of the Assembly be amended in order to allow for an open debate of the presidential nominations by the Assembly, thereby giving the President the necessary information about the reasons for a refusal of consent.

- **Turkey: Opinion 296/2004 - introduction of the individual complaint to the Constitutional Court**

Upon request by the Constitutional Court of Turkey, the Venice Commission adopted in June 2004 an opinion (CDL-AD (2004)024) on draft constitutional amendments elaborated by the Court proposing to change the Court's organisation and to introduce the individual complaint. The purpose of the draft was to reduce the number of Turkish cases before the European Court of Human Rights by effectively dealing with them on the national level. Two objections had been raised against the proposal, mainly by the Court of Cassation and the Council of State: the election of a part of the judges by Parliament would politicise the Court, and the introduction of

an individual complaint would convert the Constitutional Court into just another instance of appeal.

The opinion did not share the view that there was a danger of politicising the Court by four out of 17 judges being elected by Parliament. The individual complaint to the Constitutional Court was to be welcomed. However, its limitation to those constitutional rights which are also covered by the European Convention on Human Rights was unusual and should be reconsidered.

Due the resistance by the other highest courts, the introduction of the individual complaint to the Constitutional Court of Turkey seems to be stalled and is not being actively pursued in Parliament.

- **Moldova: Opinion 315/2004 - introduction of the individual complaint to the Constitutional Court**

At its December 2004 Session, the Commission had adopted the opinion on the draft law to amend and supplement the Constitution of Moldova introducing individual complaints to the Constitutional Court, based on comments by Mr Paczolay and Mr Nolte (CDL-AD(2004)043).

The Commission welcomed the introduction of the individual complaint in Moldova. Under the draft, it was proposed to add a seventh judge, appointed by the President of the Republic, to help the Court deal with the extra workload. The Commission concluded that, since the President of the Republic was elected by a qualified majority of members of Parliament, the introduction of a seventh judge, to be appointed by the President, as envisaged in the draft amendments, would serve to widen the pool from which Constitutional Court judges could be recruited. However, as a counterweight to the government's power to appoint two judges, the draft opinion recommended that the two judges appointed by Parliament be elected by a qualified majority.

Since the adoption of the opinion, the draft has been approved by the Moldovan Government in its original form and is now before Parliament.

- **European Court of Human Rights: international or national nature of the Human Rights Commission**

The Secretariat informed the Joint Council that an *amicus curiae* opinion had been discussed in the Plenary Session the week before, and a consolidated opinion was under preparation for submission to the European Court of Human Rights. That opinion deals with the issue of whether proceedings before the Human Rights Chamber of Bosnia and Herzegovina are "domestic proceedings" or "another international procedure". That issue is important for determining the admissibility of applications to the European Court of Human Rights against decisions taken by the Human Rights Chamber.

- ***Amicus curiae* opinions**

The Secretariat invited the liaison officers to inform their judges of the Venice Commission's *amicus curiae* opinions. The Secretariat stated that in *amicus curiae* opinions, the Venice Commission prepares a comparative study of the issue but does not give an opinion on a specific fact situation. The Venice Commission can give quick legal opinions on questions; the

rapporteurs can give an indication of what the adopted opinion will look like. The Court is, of course, in no way bound by an *amicus curiae* opinion of the Venice Commission.

Mr Ryckeboer welcomed the idea of *amicus curiae* opinions. He suggested that the Secretariat prepare a document for distribution by the liaison officers to their judges and courts. The purpose of that document would be to formalise the information that would be given by the liaison officers to their judges and courts. It could explain the procedure of the Venice Forum and could explain the procedure and context of the *amicus curiae* opinions.

Mr Dürr thought that was an excellent idea. He stated that an existing text could be expanded for distribution inside the courts.

**The Joint Council was informed of the *amicus curiae* opinions and opinions on draft legislation on constitutional courts given since its last meeting.**

**The liaison officers were invited to inform their judges of the Venice Commission's willingness to receive requests for *amicus curiae* opinions.**

**The Secretariat was invited to prepare a document outlining the procedure used in the Venice Forum and the procedure and context of the *amicus curiae* opinion. The liaison officers were invited to pass that document onto their courts and judges.**

## **6. Co-operation activities**

### **6.a Series of seminars with Constitutional Courts (CoCoSem)**

The Secretariat informed the participants about the seminars that had been held since the last meeting (CDL-JU(2005)005) and the programme of CoCoSems for 2005.

In 2004, two major trends characterised the seminars: human rights issues and topics relating to the role and functioning of the constitutional court.

#### **i. Seminars on human right issues**

The Conference on "Constitutional Protection: Current State of Affairs and Perspectives" on the occasion of the 40th anniversary of the Constitutional Court of "the former Yugoslav Republic of Macedonia" (Skopje, 3-4 June) focused on the constitutional court as guarantor of human rights.

Human rights were also the focus of the XXth International Round Table on "Constitutional justice, ordinary justice, supra-national justice: who is responsible for the protection of human rights?" organised in honour of Louis Favoreu, in co-operation with the Groupe d'études et de recherche sur la justice constitutionnelle (Aix-en-Provence, 17-18 September). The Conference showed that the interplay between national and international systems of human rights protection is perceived by some as being incoherent. However, the Conference also showed that the diversity of national systems requires a subsidiary approach based on minimum standards on the international level.

This very topic, the relationship between constitutional courts, the Court of Justice of the European Communities and the European Court of Human Rights in fundamental rights issues



was also at the centre of discussions at the Conference on “The Position of Constitutional Courts following Integration into the European Union” (Bled, Slovenia, 30 September-1 October), co-organised with the Constitutional Court of Slovenia. The trust by constitutional courts in the human rights jurisprudence as expressed by the *Solange II* decision of the German Federal Constitutional Court is key to fruitful co-operation between these courts. Together with a continuous discussion and an exchange between the courts, accession of the European Union to the European Convention on Human Rights was identified as an important element in solidifying this trust.

The Symposium on “The Structure of Constitutional Courts” on the occasion of the 43rd Anniversary of the Constitutional Court of Turkey (Ankara, 26-27 April) mainly related to the opinion on the introduction of the individual complaint to the Constitutional Court of Turkey (see above). Again, the perspective was one of human rights as the purpose of the introduction of the individual complaint was to reduce the number of Turkish cases before the European Court of Human Rights.

Situated outside the jurisdiction of the Luxembourg and Strasbourg Court, the Conference on “Constitutional Control and Development of the Social State Ruled by Law” in co-operation with the Constitutional Court of Belarus (Minsk, 9-10 September) was nevertheless human rights centred as well. Apart from discussions on social rights, the Commission's delegation insisted in its contribution in particular on the freedom of expression, a field in which clearly serious problems continue to exist in Belarus.

At the IX<sup>th</sup> Yerevan International Conference on “Ensuring the Principles of the Rule of Law in the Practice of Constitutional Justice” (Yerevan, 15-16 October), held in co-operation with the Constitutional Court of Armenia, a need for a material concept of the rule of law was identified - laws have to be founded on human dignity, which implies the protection of human rights. Such a material concept of the rule of law ensures that the individual is not subject to arbitrariness, of either the executive or the legislator. Constitutional courts have a central position in ensuring that these principles are met in practice. An inevitable consequence of the respect for the principle of the rule of law is the respect for court decisions and, in particular, of decisions of the Constitutional Court, notably as regards their final and binding character. It was stressed that the support of constitutional courts by the Venice Commission remains crucial for the independence of the courts and for them to be the true guarantors of the respect for democratic principles in general and for the rule of law principle in particular.

## **ii. Seminars relating to the role and functioning of the courts**

The Conference on “The Role of the Constitutional Court in the Maintenance of the Stability and Development of the Constitution”, held in co-operation with the Constitutional Court of the Russian Federation (Moscow, 27-28 February), gave occasion to talk about judicial restraint. A conflict between the legislator and the judiciary can arise if the courts go very far in interpreting fundamental laws: courts can excessively limit the scope of the action of politics. This can be avoided by the predictability of the doctrine developed by the courts in their jurisprudence. On the other hand, not only the operative parts of the court's decisions but also their reasoning should be respected by all state powers.

The idea of the predictability of the case-law of constitutional courts was pursued in the Conference on “The Role of Precedents for the Practice of Constitutional Courts”, organised in co-operation with the Constitutional Court of Azerbaijan (Baku, 3-4 September). Three types of

precedents were discussed: precedents of the court itself, precedents from international courts, in particular the European Court of Human Rights and precedents from other national constitutional courts. While the latter obviously cannot bind the other courts, they can be a powerful source of inspiration and 'cross-fertilisation'. They also can help to reinforce arguments based on the national constitution, especially when the court expects resistance against its decisions from other state powers.

Two very practical seminars were held in Sarajevo in co-operation with the Constitutional Court of Bosnia and Herzegovina: Legal Training Workshops on “effective case management – effective decision drafting – understanding the European Convention on Human Rights” (5-6 February and 12-13 February).

Constitutional amendments and amendments to the Law on the Constitutional Court of Azerbaijan, adopted in December 2003, introduced the possibility of direct individual applications to the Constitutional Court for the control of normative acts. This was bound to have an impact on the Court’s workload and working methods. On 26 and 27 February 2004 the Commission held a legal training workshop on “Improving examination methods of individual complaints – effective case management – effective decision drafting” for the Court’s legal staff.

The Conference on “The budget of the Constitutional Court: a determining factor of its independence” (Sarajevo, 14-15 October) was the occasion to insist on the intrinsic relationship between budgetary and judicial independence of constitutional courts.

### **iii. Planned seminars, conferences etc.**

In mid-August 2005 a conference is to be held in Namibia on the relations between the courts, and the media and judicial accountability. In late August, the Commission is invited to a Conference in Kazakstan on the topic of constitutionalism: individual, society and state. In late September, the 3rd Conference of Secretaries General will be held in Slovenia focusing on the two topics of the budget and case management. From 29 September to 1 October the 10<sup>th</sup> Yerevan Conference will be held in Yerevan in co-operation with the Constitutional Court of Armenia and the International Association of Constitutional Law; the topic is “Legal principles and political reality in the exercise of constitutional control”. A conference on the topic of the influence of ECHR case-law on national constitutional jurisprudence will be held in Ukraine in mid-October. In mid-November a conference on the role of the constitutional court in establishing rule of law will be held in Azerbaijan. A conference is scheduled to be held in the Czech Republic in mid-November on the topic of the limits of review of decisions of ordinary courts in constitutional complaint proceedings. There, the issue of how far a constitutional court can go in reviewing the decisions of the Supreme Court will be discussed.

The Secretariat invited the liaison officers to check the new guidelines on co-organising CoCoSem conferences and seminars with the Venice Commission (CDL-JU(2005)010). The Secretariat stated that if it is informed that a court is facing a particular challenge or problem, a seminar can be held that deals with that issue.

**The Joint Council took note of the programme of activities involving Constitutional Courts.**

**The liaison officers were invited to check the new guidelines on co-organising CoCoSem conferences and seminars with the Venice Commission (CDL-JU(2005)010).**

## **6.b Co-operation with the Association of Constitutional Courts using the French Language (ACCPUF)**

Ms Garayalde represented the Secretary General of ACCPUF, who was unable to attend the Joint Council's meeting.

Ms Garayalde informed the participants about ACCPUF's recent activities, *inter alia*, the seminar for the national correspondents of the ACCPUF held in Paris in early December 2004, where Mr Dürr had presented CODICES. That seminar dealt with the status, the funding and the role of political parties. Some documents produced by the Venice Commission had been useful in the preparation of the Conference, *inter alia*, the Guidelines and Explanatory Report on Legislation on Political Parties adopted by the Venice Commission in 2004; the Report on the Establishment, Organisation and Activities of Political Parties adopted by the Venice Commission in 2003; and the Guidelines and Report on the Financing of Political Parties adopted by the Venice Commission in 2001.

Ms Garayalde spoke about the conference held in Bucharest from 31 May 2005 to 1 June 2005 on the independence of judges and courts. Again, some Venice Commission documents had been used in the preparation of the working documents for that meeting. She found that the presentation of CODICES given by Mr Dürr at that conference had been a good one.

Future activities of ACCPUF include the Annual Meeting of the Bureau to be held in Nigeria in November 2005 and another meeting to be held in Paris in 2005. She stated that the ACCPUF would need a half-day practical session on indexing for the national officers.

She stated that ACCPUF had recently published the papers of a seminar on the role and functioning of constitutional courts during electoral periods and had also published a brochure presenting the association, with references to CODICES database and highlighting its co-operation with the Venice Commission.

Ms Garayalde stated that ACCPUF was available to help promote the Venice Commission. She hoped that the ACCPUF would be able to hold a session on the Venice Commission.

Mr Dürr thanked her for her remarks and agreed that the co-operation between the Venice Commission and ACCPUF was fruitful. He stated that after his presentation of CODICES at the Bucharest Conference, he had had positive feedback from the judges there.

Mr Buquicchio stated that there would be a 2 per cent budget cut the following year and that the translation costs for the Bulletin were not negligible.

Mr Dürr informed the participants that ACCPUF and the Francophonie had been approached as to whether they could co-operate in the financing of the costs of translation of the English parts of the Bulletin into French. No agreement had been reached but, as a counterpart, the Francophonie might be interested in using the Djibouti Protocol to its full extent. The Venice Commission could include elements relating to members of ACCPUF in CODICES, that is to say, constitutions and laws. The chapter on constitutions in CODICES would be broken down into continents. However, the Venice Commission would not be able to update texts sent by members of ACCPUF; it would put the texts as received into CODICES. Members of ACCPUF would have to amend the texts themselves.

Ms Garayalde hoped that the Venice Commission, the Francophonie and ACCPUF would be able to work together in an equitable partnership. She stated that that was an avenue to be further explored.

Mr Tschümperlin emphasised the great need for CODICES to remain a bilingual database. He supported any steps taken that would lead to maintaining the two languages in the database.

**The Joint Council was informed of the co-operation between ACCPUF and the Venice Commission.**

#### **6.c Co-operation with the Southern African Judges Commission**

The Secretariat informed the participants that the programme of co-operation between the Southern African Judges Commission (constitutional and supreme courts of the Southern African region) and the Venice Commission had intensified. The Venice Commission co-operated in the seminars of the presidents of the courts of the region. The Venice Commission tries to support the courts in order to help them stand up to pressure; it tries to assist them in their co-operation and strengthen them by linking them together in order to help them to become better able to withstand undue influence from other state powers. The Venice Commission helps them to exchange information on decisions through CODICES.

In early 2004, the Venice Commission made its expertise available to Uganda on the subject of modernising the judiciary. One issue discussed was that judges from smaller countries with no training centres for judges should be able to attend training centres in larger countries.

The Secretariat stated that the Norwegian government funded the current programme and that Ireland had agreed to grant funds for a follow-up programme.

**The Joint Council was informed on the co-operation between the Venice Commission and the Southern African Judges Commission.**

#### **6.d Co-operation with the Conference of the Constitutional Control Organs of the Countries of Young Democracy (CCCOCYD)**

The Secretariat informed the Joint Council that the Conference of the Constitutional Control Organs of the Countries of Young Democracy and the Venice Commission. It mostly deals with exchanges of information and the organisation of conferences. The Constitutional Court of Armenia is the most active partner. The Secretariat stated that the Yerevan International Conference had become institutionalised and that the next Yerevan International Conference, entitled "Legal Principles and Political Reality in the Exercise of Constitutional Control", was to be held in October 2005.

**The Joint Council was informed of the co-operation with the Conference of the Constitutional Control Organs of the Countries of Young Democracy (CCCOCYD).**

#### **6.e Co-operation with the Network of Constitutional Courts of Asia**

The Secretariat informed the participants about a possible co-operation between the Venice Commission and the Network of Constitutional Courts of Asia (Cambodia, Indonesia, Republic of Korea, Mongolia and Thailand, with the possible implication of India, the Philippines and Japan). The courts are loosely grouped in the form of seminars by the Adenauer Foundation. Mr Dürr indicated that an ACCPUF- kind of co-operation might be possible between the Network and the Venice Commission, i.e., inclusion of the *précis* from these courts in the English section of CODICES.

Mr Kim stated that the seminar of Asian Constitutional Judges had been created with the financial support of the German Adenauer Foundation. The seminar was rather loose but it could be more in the future. The next seminar would be held in September 2005.

Mr Dürr reported that at the end of June he would be attending a workshop in Indonesia on Access to Justice, where he hoped to be able to make contact with Asian Constitutional Courts.

**The Joint Council was informed of the possible co-operation between the Venice Commission and Network of Constitutional Courts of Asia.**

#### **6.f Co-operation with other courts**

The Secretariat informed the participants that the British member of the Venice Commission was looking into the possibility of contacts with the Commonwealth Secretariat. It was still at a very early stage, but the Secretariat wanted to inform the Joint Council as soon as possible. Some members of the Commonwealth such as Canada, Ireland, South Africa, the United Kingdom and Malta were already included in the Bulletin and the database. There was already co-operation with most English-speaking countries in Africa. Countries such as India, Australia and New Zealand would be included. Mr Dürr emphasised that co-operation with those countries was still at the exploratory phase. Co-operation with those countries would not concern the Bulletin, but would be confined to the English part of the database.

Mr Dürr stated that a request to be included in CODICES had been made by the Consultative Committee established under the Social Charter of the Council of Europe to supervise the implementation of the Charter of Social Rights. Mr Singer expressed doubts as to whether the Committee amounted to a body equivalent to a constitutional court and as to whether the Committee could give final and binding decisions. He stated that it was obvious that information for the database and the Bulletin could only be collected from judicial bodies. The database and the Bulletin could not include opinions of all bodies. There was a need to have strict criteria on the body in question being a judicial body and on its ability to hand down judicial decisions.

**The Joint Council was informed of the possible co-operation with other courts and the request by the Consultative Committee established under the Social Charter of the Council of Europe.**

## 7. Publication of the *Bulletin on Constitutional Case-Law*

Mr Dürr informed the participants that they should have already received a copy of the Bulletin 2004/1. As the publication of the Bulletin was a very expensive activity, Mr Dürr wished to send questionnaires to members of the general public (not the courts) which received paper copies of the Bulletin free of charge to ensure that they were still interested in receiving it. Only those who replied would continue to receive it. Mr Dürr asked the liaison officers to reply to a questionnaire that would be sent out to them in the autumn. He stated that even if the liaison officers did not reply to the questionnaire, they would, of course, still continue to receive the Bulletin.

Mr Dürr informed the participants that the Secretariat was examining how to speed up publication of the Bulletin. The Secretariat was working on the possibility of secondment of an English-speaking lawyer and changing how contributions to the Bulletin were dealt with internally so that the first two steps would be condensed into one. Mr Alain Chablais, a new member of the Secretariat, would be dealing with French contributions in the future.

Mr Singer stated that the Court of Justice of the European Communities also had a Bulletin whose mailing list they wished to cut. They could not cut their mailing list very much. He was moderately optimistic about being able to cut costs that way. He stated that if the questionnaire reminded people of the website and that they would have free access to the same information, then perhaps they might not be interested in receiving the Bulletin in the future.

Mr Iwai agreed with Mr Singer as to the point of the questionnaire on the Bulletin. He suggested the alternative of having a PDF version for persons interested in it.

Mr Dürr thanked Mr Singer for his suggestion of mentioning the website in the questionnaire. He also thanked Mr Iwai for his suggestion of offering a PDF version for persons interested in it. Although he did not have much hope of reducing the mailing list to the general public, he thought that a 10 to 15% reduction would already amount to a substantial reduction. He stated that the prime goal of the Bulletin was to give information to the judges and presidents of the courts, who still preferred paper copies. He did not intend to give up producing the paper copy of the Bulletin.

<p><b>The liaison officers were invited to respond to a questionnaire that would be sent out in the autumn by the Secretariat.</b></p>
--

### 7.a Regular issues of the *Bulletin*

The liaison officers had been notified by e-mail about and sent a link to the interim Bulletin website. The members were invited to consult the interim Bulletin website and check the current state of their contributions. Their contributions may have been changed, and it would be good for them to consult the interim website and protest against any changes they did not agree with.

Mr Dürr stated that in light of the complaints about the way the 1,200 word limit rule on *précis* was applied (to the identification, keywords of the systematic thesaurus, keywords of the alphabetical thesaurus, headnotes, summary, supplementary information and references), he proposed that it would be fairer to apply the 1,200 word limit to only the headnotes, summary, supplementary information and references. A liaison officer sending a *précis* of over 1,800 words might be asked to shorten it. A *précis* between 1,400 and 1,600 might be let by. More tolerance could be shown in cases where only one *précis* exceeds the word limit than in cases where a number of *précis* exceed the word limit.

Mr Dürr suggested that in appropriate cases, as an option, the liaison officers could attempt to separate the cases they present into I. facts (including case history) and II. decision of the Court, as the German liaison officer usually did (e. g. GER-2004-1-001) . It would not be imposed but he suggested that it could be used.

Mr Dürr asked the participants to decide whether in the appropriate case the Secretariat could be empowered to add I and II to the *précis* or whether it should only be done by liaison officers.

Mr Tschümperlin suggested that the choice of whether or not to separate the cases into two parts should be left to the courts and that the decision of the courts should be respected.

**The liaison officers were invited to check the interim bulletin website and invited, in appropriate cases, to attempt to separate the summary zone of the *précis* into two parts: Part I: facts; Part II: decision of the Court. The decision of whether or not to separate the *précis* into two parts would be left to the liaison officer sending in the *précis*.**

## **7.b Special Bulletins**

The working document on limitations to human rights, requested by the Cypriot Presidency of the Conference of European Constitutional Courts was made available to the XIII<sup>th</sup> Congress on 16-19 May 2005. The Secretariat informed the liaison officers that they could send any changes or contributions until the end of July 2005.

The Secretariat informed the participants on the progress of special Bulletins. The special Bulletin on the Status and Functions of the Secretary General was in its final stages of preparation and would be published in July. The special Bulletin Leading Cases II might be published in autumn. The special Bulletin on Criteria for the Limitation on Human Rights would be published at the end of the year or probably early next year. The special Bulletin on Basic Texts 7 would be published in March 2006.

Mr Singer suggested that the idea be considered that the results of the Conference (general and national reports) be published as an annex to a special Bulletin. Mr Torfason stated that that was a valid suggestion and worthy of consideration, but he wondered if the Joint Council was in a position to decide and perhaps only those who had attended the Conference were in a position to decide.

Mr Tschümperlin stated that the Brussels Conference had been an excellent conference and the Belgians had put the results on the internet. The product of a conference included the general report and national reports. He was interested, in particular, in seeing the national reports, which were part of the Cyprus conference, published.

Mr Singer pointed out that in the long run, it was a one-way process where the liaison officers sent in their contributions and their control of what happened stopped there. Mr Torfason fully sympathised with Mr Singer, especially with the argument that there should be some “mutual investment”.

Mr Dürr stated that it was up to the court holding the Conference to decide how to publish the general report and national reports. The Venice Commission could discuss the matter with the next, Lithuanian presidency.

**The Joint Council was informed of the publication dates of the Special Bulletins.**

**Liaison officers were invited to send any changes or new *précis* to be included in the working document on Criteria for the Limitation on Human Rights no later than the end of July 2005.**

**The Secretariat was invited to encourage the presidency of the Conference of European Constitutional Courts to publish reports of the Conference in the future.**

## **8. CODICES database**

### **8.a Presentation of a new version of CODICES**

Mr Dürr presented the version 4.5 2004/1 of CODICES (CD-ROM and Internet) and the new version 5.0 CD-ROM. He pointed out that some minor changes in version 4.5 had to be made to the database for purposes of the NXT internet version. He also presented the main feature of version 5.0, which is a separation of the contents by continent. He asked the Joint Council if they agreed to this separation by continent.

He encouraged the liaison officers to use the internet input mask. Ms Kovacs stated that she had used the Internet mask but had trouble accessing it for the last contribution. Mr Dürr offered to look into the problem.

**The Joint Council received a presentation of the new version of CODICES and approved the separation by continent in the database.**

### **8.b Inclusion of full texts of decisions into the CODICES database**

Mr Dürr referred the participants to Document CDL-JU(2005)006, which shows the updated statistics on available full texts in CODICES sorted by language and by country. He stated that there was enough space in the database to include full texts in all languages and that the Secretariat would be happy to do so. There were, however, some problems with some fonts, like Japanese and Korean. Only Latin and Russian Cyrillic fonts were available.

Mr Mavčič asked whether it was possible to send full texts without *précis* for CODICES.

Mr Dürr answered that a full text without an accompanying *précis* would go into the database with an “X” in its classification number, so that an example of how a 2005 full text without an accompanying *précis* would read in the database would be SLO-2005-X-001. Where no *précis* is submitted, that case cannot be included in the Bulletin.



Mr Iwai asked if he could send full texts in Japanese. Mr Dürr responded that the CODICES system did not yet respond to Japanese. He stated that he hoped that that problem would be overcome. He wished to make a distinction between the CD-ROM and the internet version. Those texts would be available only on the internet. That project would not be ready for 2005, but perhaps later. He asked Mr Iwai to keep contributing his texts in English.

Mr Mavčič noted that the future was clearly the internet and wondered whether the Venice Commission would eventually stop producing the CD-ROM.

Mr Dürr answered that production of the CD-ROM was needed for the medium and probably even the long term, as some countries had poor power and internet facilities. The agreement with ACCPUF obliges the production of CD-ROMs. Although it was easier to work only with the internet, the production of CD-ROMs would continue.

**Liaison officers were invited to send in full texts for inclusion in CODICES.**

**8.c Indexing of constitutions and laws in CODICES**

The Secretariat informed the participants about the progress of the project of indexing the constitutions and laws on the courts article by article (document CDL-JU(2005)007).

In March 2004 trainees had started indexing laws on paper. The Secretariat was now at the stage where the secretaries were incorporating that information into CODICES. All indexing would also be updated to reflect any changes to the systematic thesaurus. Mr Dürr stated that retro-indexing of new keywords was a huge task. The Secretariat would harmonise the indexing of the constitution and laws, but it would not keep track of historic versions of laws (but for link purposes, it would keep track of historic versions of constitutions).

Mr Mavčič pointed out that the changing of Systematic Thesaurus presented a problem for his country, which used it as a method of indexing its national decisions. He indicated that the Systematic Thesaurus might even be used to index legal literature in his country.

**The Secretariat informed the participants about the progress of the project of indexation of the constitutions and laws on the courts.**

**8.d Data input mask**

The Secretariat informed the liaison officers about the Access and Internet data input masks. The CD-ROM version would be delivered without an Access run-time version and would require an existing installation of Access. It could also be downloaded at [www.venice.coe.int/ju/mask1.8mdb](http://www.venice.coe.int/ju/mask1.8mdb). For the Internet version, Access would not be necessary.

**9. Documentation Centre on Constitutional Justice / Library**

Mr Dürr reminded the liaison officers that the Venice Commission had a small library in Strasbourg and thanked the liaison officers for providing it with digests, brochures and other publications. He was happy to include in the library any kind of publication by the courts, including CD-ROMs, in any language.

He invited the liaison officers to assist the Secretariat in obtaining digests or other publications by the Courts for the library. The list of documents held by the Documentation Centre/Library is available at [http://www.venice.coe.int/site/dynamics/N\\_cocentre\\_ef.asp](http://www.venice.coe.int/site/dynamics/N_cocentre_ef.asp).

**Liaison officers were invited to assist the Secretariat in obtaining digests or other publications by the courts for the Documentation Centre/Library.**

## **10. Version 17 of the Systematic Thesaurus**

The participants were asked to approve the proposals by the Working Group on the Systematic Thesaurus for version 17 of the Systematic Thesaurus, as set out in document CDL-JU(2005)009, produced after the meeting of the Working Group on 16 June 2005. The Secretariat proposed an amendment to that document, namely, that the English footnote in point 1.1.3.10 of that document continue to use the word “auditors” as a translation of “référéndaires”, until the translation could be checked and if need be, another one proposed. The participants approved those proposals.

Mr Dürr pointed out that the day before, changes had been proposed to the Working Group on which there had been no unanimity, as participants felt they did not have enough information to reach a decision. Some of those proposals for changes would be discussed next year after further research.

Mr Dürr informed the participants that an attempt was being made in the Secretariat to make the alphabetical index shorter and more coherent.

**The Joint Council adopted version 17 of the Thesaurus as proposed by the Working Group (with one minor amendment), and decided it would be applicable as from Bulletin 2005/2.**

## **11. Other business**

There was no other business.

## **12. Date and place of the next meeting**

The next meeting of the Joint Council on Constitutional Justice would take place in June 2006, either in Venice or upon invitation by a participating court kindly offering to host the meeting. Liaison officers from courts wishing to do so were invited to inform the Secretariat. A decision would have to be taken at the latest in September.

**The next meeting of the Joint Council would take place in June 2006, upon invitation by a participating court kindly offering to host the meeting or in Venice. Any court wishing to host the meeting was invited to inform the Secretariat soon, as the decision would have to be taken at the latest in September.**

## **LIST OF PARTICIPANTS**

### **ALBANIA / ALBANIE**

M. Luan PIRDENI, Responsable du Département des Relations internationales, Cour constitutionnelle, TIRANA

### **AUSTRIA / AUTRICHE**

Mrs Reinhild HUPPMANN, Co-president of the Joint Council on Constitutional Justice, Chief of Protocol at the Constitutional Court, WIEN  
(Apologised/Excusé)

### **AZERBAIJAN / AZERBAÏDJAN**

Mr Raouf GULIYEV, Head of International Relations, Constitutional Court, BAKU

### **BELGIUM / BELGIQUE**

M. Rik RYCKEBOER, Référendaire à la Cour d'Arbitrage, BRUXELLES

### **BOSNIA AND HERZEGOVINA / BOSNIE-HERZÉGOVINE**

Mr Dušan KALEMBER, Secretary General, Constitutional Court, SARAJEVO

### **BULGARIA / BULGARIE**

M. Kiril MANOV, Secretary General, Constitutional Court, SOFIA

### **CZECH REPUBLIC / RÉPUBLIQUE TCHÈQUE**

Ms Blanka LÁZNIČKOVÁ, Constitutional Court, BRNO

### **FRANCE**

Mlle Valérie.GARAYALDE, Chargée de mission, Service des relations extérieures, Conseil constitutionnel, PARIS, Association des Cours constitutionnelles ayant en Partage l'Usage du Français (ACCPUF)

### **GEORGIA / GÉORGIE**

Mr Mikheil CHIKOBAVA, International Relations Department, Constitutional Court, TBILISI

### **HUNGARY / HONGRIE**

Ms Krisztina KOVACS, Counsellor, Constitutional Court, BUDAPEST

### **ICELAND / ISLANDE**

Mr Hjörtur TORFASON, Former Judge, Supreme Court, REYKJAVIK  
Co-President of the Joint Council and President of the Sub-Commission on Constitutional Justice

### **KYRGYZSTAN / KIRGHIZSTAN**

Mr Kachike E. ESENKANOV, Judge, Constitutional Court, BISHKEK

### **JAPAN / JAPON**

Mr Naoyuki IWAI, Liaison Officer for the Supreme Court of Japan / Consul, Consulate General of Japan, STRASBOURG

### **REPUBLIC OF KOREA / RÉPUBLIQUE DE CORÉE**

Mr Seung Dae KIM, Constitutional Research Officer, Constitutional Court, SEOUL

**LIECHTENSTEIN**

Mr Ivo ELKUCH, Legal Adviser, State Court, VADUZ

**NORWAY / NORVÈGE**

Mrs Anne M. SAMUELSON, Senior Law Clerk, Supreme Court, OSLO

**ROMANIA / ROUMANIE**

Mme Gabriela DRAGOMIRESCU, Magistrat-assistant, Cour constitutionnelle, BUCAREST

**SLOVENIA / SLOVÉNIE**

Mr Arne MAVCIC, Director, Co-Chairman of the Joint Council, Legal Information Centre, Constitutional Court, LJUBLJANA

**SWITZERLAND / SUISSE**

M. Paul TSCHÜMPERLIN, Secrétaire Général, Tribunal fédéral, LAUSANNE

**TURKEY/TURQUIE**

Mr Bekir SÖZEN, Reporter, Constitutional Court, ANKARA

**COURT OF JUSTICE OF THE EUROPEAN COMMUNITIES /**

**COUR DE JUSTICE DES COMMUNAUTÉS EUROPÉENNES**

M. Ph. SINGER, Chef de Division, Cour de justice des Communautés européennes, Luxembourg

**EXPERT**

M. Pierre VANDERNOOT, Membre du Conseil d'Etat, Bruxelles, BELGIQUE

**SECRETARIAT**

**VENICE COMMISSION / COMMISSION DE VENISE**

M. Gianni BUQUICCHIO

Mr Schnutz Rudolf DÜRR

Mrs Sandra MATRUNDOLA

Ms Marian JORDAN

**INTERPRETERS / INTERPRETES**

Ms Maria FITZGIBBON

Ms Julia TANNER