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## EUROPEAN COMMISSION FOR DEMOCRACY THROUGH LAW

### **ANNUAL REPORT OF ACTIVITIES FOR 1991 <sup>1</sup>**

#### 1. Membership

During 1991, the membership of the Commission expanded considerably, with a new participant at practically every meeting.

Liechtenstein became a member of the Partial Agreement, and is represented on the Commission by Mr Gerard Batliner, former Head of the Government of the Principality.

Albania, Canada, the United States and the Soviet Union were admitted by the Committee of Ministers to co-operate with the Commission. While under the terms of the Statute of the Commission Canada and the United States were granted observer status, the Commission decided to grant to Albania and the Soviet Union associate member status, in consultation with the States concerned.

Mr Schifter, Assistant Secretary of State of the United States, and Mr Deriabine, Vice Minister of External Relations of the Soviet Union, attended personally meetings of the Commission.

The Holy See has also recently applied for observer status. <sup>2</sup>

Considering the continuous enlargement of its membership, the Commission wishes to state its readiness to initiate consideration of any possible changes in its Statute or its Rules of Procedure that would be called for by the new situation.

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<sup>1</sup> Adopted by the Commission at its 10th meeting (Venice, 7-8 February 1992).

<sup>2</sup> Granted by the Committee of Ministers in January 1992.

## 2. Activities

### a. **Constitutional Reforms**

The main activity of the Commission consisted of the assistance provided to several States of Central and Eastern Europe in the process of constitutional reforms, at the explicit request of the country concerned.

At the initiative of the Spanish member of the Commission, Mr Laporta, Director of the Centre of Constitutional Studies of Madrid, representatives of the bodies responsible in Central and Eastern European countries for drawing up the new Constitutions were invited to Madrid (on 11-12 April 1991) to meet some personalities who participated in the drafting of the Spanish Constitution and discuss with them on the basis of their recent experience the various problems, practical and of principle, that face constitutional drafters in Central and Eastern Europe.

Details on the activity of the Commission country by country are given below.

#### Albania

The Deputy Minister of Foreign Affairs of Albania, Mr Marku attended the 8th meeting of the Commission (September 1991). On 18-21 October, at the invitation of Mr Marku, a delegation composed of the President and experts of the Commission accompanied by experts on Human Rights appointed under the Demosthenes programme, met the Constituent Commission of the People's Assembly in Tirana and held extensive exchanges of views on the general principles to be embodied in the chapters of the Constitution concerning human rights, jurisdictional guarantees and the structure of the State.

A multiparty delegation led by the President of the People's Assembly, Mr Islami, attended the 9th meeting of the Commission (November 1991), and submitted the draft Constitution drawn up on the basis of the previous exchange of views for examination by the group of members and experts, enlarged to other members that had been prevented from visiting Tirana in October. The main conclusions of this examination were then presented to the Plenary Commission. The Albanian authorities undertook to prepare a revised version of the draft Constitution on the basis of the comments and proposals made and to submit it to the new People's Assembly that will result from the elections foreseen for March 1992.

#### Bulgaria

During its 6th and 7th meetings (February and May 1991) the Commission held an exchange of views with Mr Ganev, Vice-President of the Grand National Assembly and President of the Commission for the reform of the Constitution, as well as other members of Parliament, on the general policy that the Bulgarian authorities were pursuing in preparing their new draft Constitution.

### Estonia

The Ministry of Foreign Affairs asked the Council of Europe for expert assistance on constitutional law, in order to comment on the draft constitution under elaboration.

A team of four members or substitutes of the Commission (Mr Berchtold, Mr Ragnemalm, Mr Russell and Mr Suviranta) visited Tallinn on 28-29 October 1991, where it met the President of the Supreme Council Mr Rüütel. The team then had extensive meetings with the Constitutional Assembly both in plenary session and in its drafting group, where the main chapters were commented on in detail.

### Latvia

At the invitation of the Supreme Council of Latvia, a team of three members or substitutes of the Commission (Mr Berchtold, Mr Russell and Mr Suviranta) travelled to Riga on 30 October - 1 November 1991.

They met the President of the Supreme Council Mr Gorbunovs, and had extensive exchanges of views with the Legislative Committee of the Supreme Council and with a delegation of opposition parties representing the Russian minority.

The discussions concerned the first chapters of the draft constitution that had already been drawn up concerning rights and obligations of men and of citizens, as well as the Resolution on citizenship adopted by the Supreme Council, to later be expanded to become a detailed law.

### Poland

During every meeting the Commission held exchanges of views on the process of constitutional reform in Poland on the basis of subsequent drafts prepared by the Sejm and of reports by the Rapporteurs Mr Russell and Mr Triantafyllides.

On 26-30 June the Rapporteurs travelled to Warsaw and Poznan to meet members and experts of the constitutional Committee of the Sejm for an in-depth, detailed analysis of the text.

During its 9th meeting (September 1991) the Commission also examined the draft Constitution prepared by the Senate, and reiterated its readiness to assist the Sejm and the Senate, if they so wish, in the merging of the two texts. The member of the Sejm present at the meeting (Mrs Suchocka) already gave her agreement in principle to the initiative.

### Romania

At the 6th meeting of the Commission (February 1991) a multiparty delegation of the Constitutional Committee of the Romanian parliament led by the Committee Chairman, Mr Jorgovan, presented the "Thesis for the draft Constitution" and participated in an exchange of views thereon on the basis of reports drawn up by the Rapporteurs Mr Ragnemalm and Mr Scholsem.

The exchange of views continued throughout the following meetings on the basis of subsequent drafts submitted by the Romanian parliament.

The Rapporteur Mr Ragnemalm participated in an expert mission to Bucharest organised within the framework of the Demosthenes programme.

**b. CSCE Seminar of Experts on Democratic Institutions  
(Oslo, 4-15 November 1991)**

According to the invitation extended to it in the Paris Charter for a new Europe, the Commission participated actively in the Seminar by submitting a written contribution that included reports on various topics of the Study Groups of the Seminar drawn up by members of the Commission.

The President of the Commission made a statement at the opening session, and ten members of the Commission took part in the discussions in the Study Groups.

The Report of the Seminar to the CSCE Council acknowledged the "work, experience and extensive resources" of the Commission, and recommended that the Office on Democratic Institutions and Human Rights should ensure "effective liaison" with the Commission.

**c. Protection of Minorities**

During its 6th meeting (February 1991) the Commission adopted a proposal for a Convention on the Protection of Minorities and the explanatory report thereto, and submitted them to the Committee of Ministers.

During its 8th and 9th meetings, on the basis of preparatory work done by its competent Working Party, the Commission adopted an opinion on the draft Charter for Regional or Minority Languages.

The Commission continues its work and entrusted its Working Party on the Federal State and the New Forms of Political and Economic Integration to study the issue of the federal solutions to the problems of minorities. It is also ready to study the issue of mediation and conciliation as alternative solutions to the problems of minorities.

**d. Constitutional Justice**

In conformity with a wish expressed by the Presidents of Constitutional Courts and equivalent bodies when they met the Commission in October 1990, the Working Party on Constitutional Justice held a first meeting with liaison officers from the Courts in order to establish modalities for the setting up and functioning of a documentation centre on constitutional case law.

The Working Party and the Commission advocated the setting up of such a Centre, which would collect, in their original language, the decisions adopted by the Constitutional Court or other equivalent bodies. The Courts will accompany the decisions that they consider to be important with a summary in English or French, and with key words from a thesaurus to be drawn up.

The Secretariat would circulate information on the decisions to interested receivers (Courts, Universities, Bars, Ministries, Parliaments, etc) and dispatch copies upon request. The computerisation of the centre and the modalities of co-operation with existing research centres should also be studied.

- e. **Seminars**
  - i. **Legislation by Decree**
  - ii. **Judicial and other control of the Administration**

Within the framework of the Demosthenes programme, the Commission organised in July and September seminars on the above subjects, run by members of the Commission and external experts, attended by representatives of Central and Eastern European countries responsible for the constitutional reforms or their implementation in the respective countries.

- f. **Hearings with personalities**

Under the terms of Article 5.2 of its Statute, the Commission invites to its meetings personalities capable of helping the Commission in the fulfilment of its activities.

Among these personalities one could mention Mr Gros Espiell, Minister of Foreign Affairs of Uruguay, who attended the 8th meeting of the Commission (September 1991) when he presented the recent Asuncion Treaty establishing Mercosur. He also suggested that the Commission could assist Uruguay and other interested South American countries in strengthening democracy under modalities to be determined.

The Ministers of Justice of the Czech and Slovak Republics as well as the Dean of the Latran University are also regularly invited and participate actively in the debates.

In compliance with the Statute, the President of the Parliamentary Assembly and the President of the Strasbourg Institute for Democracy are automatically invited to each meeting of the Commission.

### 3. **Future activities**

- i. In 1992 the bulk of the activities of the Commission is likely to be represented by the continuation of its assistance to the constitutional reforms in Central and Eastern European countries.

This will include not only the drafting of new Constitutions but also assistance in the phase of their implementation. Emphasis will gradually shift to the latter element as far as the work on drafting nears completion in a number of countries.

The Commission supported the proposal of the President to organise a series of University Seminars for Democracy (UNIDEM) in co-operation with universities of Central and Eastern Europe on subjects chosen by the country concerned. The Seminars would put together expert lawyers from member States and all those involved in the process of implementing the constitution in the country (members of parliament, Ministry officials, University Professors, etc.).

Beyond the solution of contingent problems, the medium-term objective of UNIDEM would be to contribute to strengthening democratic culture among the legal community in the new democracies.

ii. Alongside activities on a country-by-country basis, the Commission has decided to carry out in-depth studies on the following matters, which emerged from the CSCE Oslo Seminar as being both of general interest and of immediate topicality :

- Emergency powers of the government;
- Relations between international law and domestic law;
- Regional State;
- Federal State and new forms of political and economic integration;
- Constitutional guarantees of a market economy.

iii. Since the circulation of legal information is of vital importance in the implementation of the new constitutions and in the elaboration of the complementing legislation, the Commission will accelerate its work on the setting up of the documentation centre on constitutional case-law, and hopes it will be able to submit concrete proposals to the Committee of Ministers during 1992.

iv. In 1992, within the framework of the Columbus celebrations, a working party composed of interested members of the Commission will meet, probably in Spain, lawyers from Latin America, to examine with them in what manner the Commission can provide assistance to new democracies in that continent on specific issues, without detracting from its efforts towards Central and Eastern Europe.

**A P P E N D I X I**

**LIST OF MEMBERS OF THE EUROPEAN COMMISSION  
FOR DEMOCRACY THROUGH LAW**

- AUSTRIA** : Mr. Franz MATSCHER, Professor at the University of Salzburg, Judge at the European Court of Human Rights
- BELGIUM** : Mr. Jean-Claude SCHOLSEM, Professor at the University of Liège
- CYPRUS** : Mr. Michael TRIANTAFYLLIDES, Attorney General of the Republic
- DENMARK** : Mr. Christian TRØNNING, Under-Secretary of State at the Ministry of Justice
- FINLAND** : Mr Antti SUVIRANTA, President of the Supreme Administrative Court
- FRANCE** : Mr. Jacques ROBERT, Member of the Constitutional Council
- GERMANY** : Mr. Helmut STEINBERGER, Director of the Max-Planck Institute, Professor at the University of Heidelberg
- GREECE** : Mr. Constantin ECONOMIDES, Professor at Panteion University, Director of the Legal Department, Ministry of Foreign Affairs
- HUNGARY** : Mr. Géza HERCZEGH, Vice-President of the Constitutional Court
- IRELAND** : Mr. Matthew RUSSELL, Senior Legal Assistant to the Attorney General
- ITALY** : Mr. Antonio LA PERGOLA (President), Member of the European Parliament
- LIECHTENSTEIN** : Mr. Gérard BATLINER, President of the Academic Council of the Liechtenstein Institute
- LUXEMBOURG** : Mr. Gérard REUTER, President of the Board of Auditors
- MALTA** : Mr. Giovanni BONELLO, Barrister at Law
- NORWAY** : Mr. Jan HELGESEN, Professor, University of Oslo

- PORTUGAL** : Mr. José Menéres PIMENTEL, Ombudsman
- SAN MARINO** : Mr. Giovanni GUALANDI, Vice-President Council of  
Presidency of the Legal Institute of San Marino
- SPAIN** : Mr. Francisco LAPORTA, Director, Centro de Estudios  
Constitucionales
- SWEDEN** : Mr. Hans RAGNEMALM, Ombudsman
- SWITZERLAND** : Mr. Giorgio MALINVERNI, Professor at the University of  
Geneva
- TURKEY** : Mr. Ergun ÖZBUDUN, Professor at the University of Ankara,  
President of the Turkish Foundation for Democracy

#### **ASSOCIATE MEMBERS**

- ALBANIA** : Mr. Skender LUARASI, Deputy Minister, Ministry of Foreign  
Affairs
- BULGARIA** : Mr. Alexandre DJEROV, President of the Legislative  
Commission of the Grand Assembly
- POLAND** : Mrs Hanna SUCHOCKA, Member of Parliament
- ROMANIA** : Mr. Ioan MAXIM, Director, Ministry of Foreign Affairs
- USSR** : Mr. Youri DERABINE, Vice Minister for External Relations  
Mr. Alexandre VLADYCHENKO, Deputy Director, Department  
for European Security and Co-operation, Ministry of Foreign  
Affairs

#### **OBSERVERS**

- CANADA** : Mr. Gérald BEAUDOIN, Senator
- U.S.A.** : Mr Richard SCHIFTER, Assistant Secretary of State, Bureau of  
Human Rights and Humanitarian Affairs



A P P E N D I X II

**MEETINGS OF THE EUROPEAN COMMISSION  
FOR DEMOCRACY THROUGH LAW IN 1991 <sup>1</sup>**

**Plenary Meetings**

6th meeting	8-9 February
7th meeting	10-11 May
8th meeting	13-14 September
9th meeting	22-23 November

**Bureau**

2nd meeting	21 November
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**WORKING PARTIES**

**Minorities**

4th meeting	7 February
5th meeting	13 September
6th meeting	21 November

**Constitutional Justice**

Meeting with Liaison officers from Constitutional Courts for the establishment of a Documentation Centre	
-	12 September

**Task Force on Constitutional Reform**

3rd meeting	11-12 April (Madrid)
Rapporteurs on Poland, visit to Warsaw and Poznan	
-	25-29 June
Group visit to Albania (Tirana)	
-	17-21 October
Group visit to Estonia (Tallin)	
-	28-29 October
Group visit to Latvia (Riga)	
-	30 October-1 November
Meeting of experts on the Albanian Constitution	
-	22-23 November

**SEMINARS**

Legislation by Decree (Paris)	
-	16-17 July
Judicial or other control of the administration	
-	11-12 September

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<sup>1</sup>

All meetings took place in Venice unless otherwise indicated.