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EUROPEAN COMMISSION FOR DEMOCRACY THROUGH LAW

ANNUAL REPORT OF ACTIVITIES FOR 1992¹

1. Introduction

The European Commission for Democracy through Law continued to fulfill in 1992 its appointed task as the consultative body of the Council of Europe on matters of constitutional law.

In so doing the Commission believes that it contributed in a tangible manner to the implementation of the political options taken by the Committee of Ministers in directing the external relations of the Organisation; the Commission recalls that, under the terms of its Statute, it is always at the disposal of member States to carry out any specific task falling within its area of competence.

2. Membership

By the end of 1992 the Commission counted 24 members (the list of members appears in Appendix I).

Poland and Bulgaria, which were previously associate members, changed their status to become full members as a consequence of their accession to the Council of Europe. The member in respect of Poland is the Prime Minister Ms Hanna Suchocka, represented by her alternate Prof Zdzislaw Kedzia. The member in respect of Bulgaria is Mr Alexandre Djerov, President of the Legislative Commission of the Grand Assembly.

Latvia, Lithuania and Slovenia were granted associate member status, while the Holy See obtained at its request the status of observer.²

¹ *Adopted by the Commission during its 14th meeting (Venice, 5-6 February 1993).*

² *In February 1993, Croatia obtained associate member status and Kyrgyzstan obtained observer status.*

3. Activities

a. **Constitutional reforms**

Albania

The Office of the President of the Republic requested the opinion of the Commission on the modalities envisaged for the commutation of the death penalty in the light of European law and practice.

In co-operation with the Human Rights Documentation Centre, the Commission was able to provide elements for the appreciation of the Albanian authorities. Because of the urgency of the request, this consultation was entirely done by correspondence during the month of May.

Czechoslovakia

Following a request by the Czechoslovak authorities, the Commission discussed informally during its 12th meeting (September 1992) how the proposed dissolution of the Czech and Slovak Federal Republic could be implemented while respecting constitutionality, in accordance with the wish expressed by the Committee of Ministers in its declaration of 6 July 1992. A letter from the President of the Commission summing up the discussions was sent to the Czechoslovak authorities on 21 September 1992.

Kyrgyzstan

The Deputy Minister of Justice of Kyrgyzstan Mr Kosakov was invited to a hearing on the occasion of the 13th meeting of the Commission (November 1992), during which a detailed exchange of views took place on a preliminary draft Constitution.

Once the Parliament has completed the first reading of the draft, the Commission will be asked to give its opinion on the text.

Latvia

At the request of the Latvian authorities and in conjunction with the Demosthenes programme, the Commission organised a mission of experts on the draft electoral law of Latvia (Riga, 30 April - 1 May 1992).

The Rapporteurs on Latvia Mr Russell and Mr Suviranta participated in the mission, together with the following experts: Mr Garrone (Geneva), Mr Owen (Paris) and Mr Sexton (Dublin).

The meeting with the Legislative Commission of the Supreme Council was preceded by a general exchange of views with representatives of all political parties and factions.

The Latvian authorities asked the Commission to examine the draft law on citizenship.

Lithuania

During its 11th (May 1992) and 12th (September 1992) meetings the Commission held exchanges of view on successive drafts of the Lithuanian Constitution, on the basis of reports prepared by Mr Batliner and Mr Scholsem.

The associate member in respect of Lithuania informed the Commission that the draft finally adopted and submitted successfully to referendum took account of comments made by the Commission.

Russia

In March 1992 the Commission received from Mr Rummyantsev, Executive Secretary of the Constitutional Commission of the Supreme Soviet, an urgent request for opinion on a preliminary draft constitution. The Task Force on Constitutional Reforms of the Commission was able to reply in writing within the short time limits allowed.

Further drafts were submitted to the Commission at its 12th (September 1992) and 13th (November 1992) meetings and gave rise to exchanges of view with a multiparty delegation of members of the Constitutional Commission, empowered by the President of the Supreme Soviet of the Russian Federation Mr Khasbulatov.

The Russian authorities invited the Commission to appoint a delegation of members who would travel to Moscow with a view to continuing discussions with the Constitutional Commission.

Ukraine

A multiparty delegation of the Ukrainian Commission for the drafting of the Constitution, led by its Chairman Mr Yuzkov, was invited to a hearing which gave rise to a detailed exchange of views on the draft Constitution during the 13th meeting of the Commission (November 1992).

The Ukrainian authorities invited the Commission to appoint a delegation of members who would travel to Kiev with a view to continuing discussions with the Commission for the drafting of the Constitution.

b. UniDem

For the management of the UniDem programme, the Commission set up a Governing Board consisting of members of the Commission as well as of representatives of the Universities and other bodies concerned; its task is to establish the programme of the events to be organised (venue, subject, speakers, participants, etc.).

The first Conference of the programme, entitled "Constitution making as an instrument of democratic transition" took place in Istanbul on 8-10 October, organised in co-operation with the Turkish government and of the Turkish Democracy Foundation.

All the Republics on the territory of the former Soviet Union were invited to appoint one constituent legislator and one independent expert as participants. Discussions were introduced by reports from Mr Herrero de Miñón, Mr Linz and Mr Vedel.

c. Protection of Minorities

On the proposal of its Working Party, the Commission decided at its 12th meeting (September 1992) to proceed to the compilation of as much legal documentation as possible concerning the protection of minorities in Europe (national laws and practice, bilateral and multilateral treaties, recent drafts of proposals, etc), with a view to offering to all interested parties easy access to the relevant material.

The CSCE High Commissioner on National Minorities and the CSCE Office for Democratic Institutions and Human Rights will be contacted, in order to ensure collaboration and avoid duplication.

At the request of the Legal Affairs and Human Rights Committee of the Parliamentary Assembly (see *infra*), the Commission gave its opinion on the draft protocol to the Human Rights Convention prepared by Mr Worms. Furthermore, the Commission was asked to give its opinion on the Hungarian draft law on the protection of minorities.

Upon adoption of this annual report, the Commission wished to declare once more to the Committee of Ministers its availability to conduct any further study or research on the subject of the protection of minorities.

The Commission welcomed the invitation to participate in the work of the Committee of experts for the protection of national minorities (DH-MIN). Mr Matscher represented the Commission at the first meeting of this Committee.

The Commission hoped that a similar co-operation could be extended to other intergovernmental bodies.

d. Constitutional Justice

The Commission, with the assistance of external experts and of representatives of the Courts, drew up a draft Thesaurus for the envisaged Documentation Centre on constitutional case law during its 10th (February 1992) and 11th (May 1992) meetings, and invited the Constitutional Courts and other equivalent bodies to test it by drafting summaries of a sample of their decisions according to the Thesaurus.

The analysis of these test trials will allow the text of the Thesaurus to be finalised, and will enable the Commission to formulate its proposals on the administrative set up of the Centre.

e. Relationship between international and domestic law

The Commission undertook a comparative study of constitutional provisions and practice in all European States, Canada and the USA, on the basis of a questionnaire prepared by Mr Economides.

The competent Working Party agreed during its meetings in September and November 1992 that the study should aim at proposing model clauses concerning the application in domestic law of treaties, international customs and principles of law, acts and decisions of International Organisations. It will also contribute to the UniDem seminar on the matter to be held in Poland in 1993 (see infra).

f. Federal and regional State

The Working Parties on the Federal and the regional State and on the Protection of minorities pursued the research in hand concerning the solutions that federalism and regionalism could offer to the problems of minorities, on the basis of reports to be prepared by the members in respect of States structured on a federal or regional basis.

At the request of the CLRAE, the Commission adopted during its 13th meeting (November 1992) an opinion on the preliminary draft Convention on Inter-regional co-operation between territorial communities or authorities.

g. Human rights and genuine democracy

The Commission took note with pleasure that all the proposals formulated by its representative at the CAHDD Mr Economides had been accepted by the Committee of Ministers within the Plan, and instructed its competent Working Parties to start the necessary preparatory work.

The activity mentioned under item e. above belongs to the Plan.

h. CSCE Seminars

i. The Commission was invited to attend the CSCE Seminar on Tolerance (Warsaw, 16-20 November 1992), and was represented by Mr Helgensen.

ii. On a proposal by the CSCE Office for Democratic Institutions and Human Rights, the Commission decided to co-sponsor a Seminar on constitutional law organised by the Office for the benefit of the former Asian Republics of the Soviet Union. Mr Jambrek represented the Commission at this event.

i. Workshop on constitutional reforms in Bulgaria and Romania (Trieste, 14-15 September 1992)

Organised in co-operation with the law faculty of the University of Trieste, the Workshop was attended by Constitution drafters from both countries and by several members of the Commission and other experts, and focused on the implementation in ordinary legislation and in practice of the main provisions of the Constitutions recently enacted.

I. Parliamentary Assembly

On 12 November 1992 the Commission held a joint meeting with the Legal Affairs and Human Rights Committee of the Parliamentary Assembly, in order to discuss matters of common interest.

In particular, views were exchanged on the constitutional situation in the Baltic States in connection with their application for membership of the Council of Europe, as well as on the draft protocol to the Human Rights Convention on the protection of minorities drawn up by Mr Worms and the draft Hungarian law on the same subject.

4. Future activities

i. The Commission's advice in the drafting of the Constitution has already been asked for by Kyrgyzstan, Russia and Ukraine (see above), and should be provided in the first quarter of 1993. The rapporteurs on each country have already been appointed, and have been asked to provide their advice as a matter of urgency.

Expertise on the draft law on citizenship, to be provided in February-March of 1993, has been requested by Latvia (see above).

ii. Furthermore, Albania requested the organisation of training for judges and law drafters; Lithuania requested assistance for setting up the Constitutional Court and training its judges, and visiting professorships; Moldova requested advice on the draft Constitution and on setting up the Constitutional Court.

iii. UniDem Seminars are already scheduled in Moscow on "The transition to a new model of economy and its constitutional reflections" (18-20 February 1993) and in Warsaw on "Relationship between international and domestic law" (late May 1993).

Other proposals for further Seminars have been announced by Albania, Bulgaria and Romania. One of the next seminars could be devoted to the protection of minorities.

iv. Preparatory work on the setting up of a documentation centre on constitutional case law (in particular, finalisation of the Thesaurus) should be completed during 1993; the Commission hopes that it will be in a position to submit proposals to the Presidents of the Courts first and then to the Committee of Ministers on the administrative and budgetary implications of the Centre in due course.

A further meeting with the Presidents of the Constitutional Courts or equivalent bodies could be held in 1993.

v. A meeting with the Ministers of Foreign Affairs of five Latin American countries, originally scheduled for October 1992, had to be postponed due to last minute engagements of several Ministers concerned. The Commission envisages to reschedule the meeting in 1993.

The aim of the meeting will be to review constitutional developments in Latin America and examine possible modalities for future co-operation of those countries with the Commission.

5. Administrative arrangements

The Commission welcomed the decision of the Committee of Ministers to confirm its legal status as a Partial Agreement of the Council of Europe for an indefinite duration. This will enable the Commission to continue carrying out its duties according to modalities that have met with the appreciation of the countries of Central and Eastern Europe seeking its co-operation.

The adoption of the budget for 1993 in the terms proposed by the Secretary General and supported by the Commission, in spite of the difficult economic situation faced by certain member States, is seen by the Commission as a token of interest and consideration for its action in a field of high priority for the Organisation.

Thanks to the creation of new posts, the Secretariat of the Partial Agreement should now be in a better position to serve the Commission and ensure the smooth running of its numerous meetings and seminars. Further structural adjustments might prove necessary in order to exploit in the best possible way the human resources of the staff, in the interest of the Commission; the Commission will ask the Secretariat to submit proposals to this end in due time.

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APPENDICES

- List of members
- Composition of Working Parties
- List of meetings

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, Dean of the Law Faculty at the
University of Liège
- BULGARIA : Mr Alexandre DJEROV, President of the Legislative Commission of
the National Assembly
- 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 Panteios 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 Gerard 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
- NETHERLANDS : Mr G.W. MAAS GEESTERANUS, Member of the Permanent Court
of Arbitration

- NORWAY** : Mr Jan HELGESEN, Professor at the University of Oslo
- POLAND** : Mrs Hanna SUCHOCKA, Prime Minister
- PORTUGAL** : Mr José Menéres PIMENTEL, Ombudsman
- SAN MARINO** : Mr Giovanni GUALANDI, Vice-President of the Council of Presidency of the Legal Institute of San Marino
- SPAIN** : Mr Francisco LAPORTA, Director of the Centro de Estudios Constitucionales
- SWEDEN** : Mr Hans RAGNEMALM, Justice of the Supreme Administrative Court
- SWITZERLAND** : Mr Giorgio MALINVERNI, Professor at the University of Geneva
- TURKEY** : Mr Ergun ÖZBUDUN, Professor at the University of Ankara, Vice President of the Turkish Foundation for Democracy

ASSOCIATE MEMBERS

- ALBANIA** : Mr Aleks LUARASI, Professor at the University of Tirana
- LATVIA** : Mr Aivars ENDZINS, President of the Legislative Commission of the Supreme Council
- LITHUANIA** : Mr Kestutis LAPINSKAS, Chairman of the Commission for the drafting of the Constitution of the Supreme Council
- ROMANIA** : Mr Petru GAVRILESCU, Specialist, Human Rights Division, Ministry of Foreign Affairs
- RUSSIA** : Mr Nicolas VITROUK, Vice-President of the Constitutional Court
- SLOVENIA** : Mr Peter JAMBREK, President of the Constitutional Court

OBSERVERS

- CANADA** : Mr Gérald BEAUDOIN, Senator
- HOLY SEE** : Mr Vincenzo BUONOMO, Professor of International Law at the Latran University
- U.S.A.** : Mrs Patricia DIAZ-DENNIS, Assistant Secretary of State, Bureau of Human Rights and Humanitarian Affairs

A P P E N D I X II

COMPOSITION OF THE WORKING PARTIES

- Constitutional Justice : Chairman Mr Russell - members: Cyprus, Denmark, Finland, France, Germany, Hungary, Italy, Liechtenstein, Luxembourg, Malta, Poland, Portugal, Sweden, Turkey, Bulgaria, Romania, Slovenia.
- Federal State and Regional State : Chairman Mr Malinverni - members: Austria, Belgium, Cyprus, Germany, Greece, Italy, Poland, Spain, Canada, USA.
- Relations between international law and domestic law : Chairman Mr Economides - members: Finland, Germany, Italy, Norway, Switzerland, Bulgaria, Slovenia.
- Emergency powers of the government : Chairman Mr Ozbudun - members: Ireland, Liechtenstein.
- Rule of law and transition to a market economy : Chairman Mr Scholsem - members: Cyprus, Luxembourg.
- Protection of Minorities : Chairman Mr Matscher - members: Belgium, Greece, Hungary, Netherlands, Norway, San Marino, Switzerland, Turkey, Romania.
- Task Force : Chairman Mr La Pergola, Vice-Chairman Mr Helgesen - members: Belgium, Bulgaria, Cyprus, Finland, France, Greece, Liechtenstein, Luxembourg, Netherlands, Poland, Portugal, Spain, Sweden, Switzerland, Turkey.
- Latin America : Chairman Mr Matscher - members: Germany, Italy, Norway, Portugal, Spain.
- UniDem : Chairman Mr La Pergola - members Belgium, Germany, Norway, Poland, Portugal, Spain, Turkey, Holy See.

A P P E N D I X III

MEETINGS OF THE EUROPEAN COMMISSION FOR DEMOCRACY THROUGH LAW IN 1992 ¹

Plenary Meetings

10th meeting	7-8 February
11th meeting	8-9 May
12th meeting	11-12 September
13th meeting	13-14 November

Joint meeting with the Committee for Legal Affairs and Human Rights of the Parliamentary Assembly

- 12 November

Bureau

3rd meeting - Joint meeting with the UniDem Governing Board

- 16-17 April (Perugia)

4th meeting - Meeting enlarged to include the Chairmen of Working Parties

- 12 November

WORKING PARTIES

Minorities and Federal and Regional State

7th meeting 10 September

8th meeting 13 November

Constitutional Justice

Meetings with Liaison officers from Constitutional Courts for the establishment of a Documentation Centre

- 6 February

- 7 May

Meeting of experts for the drawing up of a Thesaurus

- 27 April (Strasbourg)

Task Force on Constitutional Reform

Meeting on Russian draft Constitution

- 10 March (Strasbourg)

Relationship between international and domestic law

1st meeting 11 September

Joint meeting with the UniDem Governing Board

- 14 November

¹

All meetings took place in Venice unless otherwise indicated.

UniDem Governing Board

Joint meeting with the Bureau

- 16-17 April (Perugia)
- 2nd meeting - 3-4 July (Bologna)
- 3rd meeting - 10 September
- 4th meeting - Joint meeting with the Working Party on the relationship between international and domestic law
- 14 November

SEMINARS AND CONFERENCES

Seminar on the Electoral Law of Latvia

- 30 April - 1 May (Riga)

Workshop on Constitutional Reforms in Bulgaria and Romania

- 14-15 September (Trieste)

UniDem Conference on Constitution making as an instrument of Democratic transition

- 8-10 October (Istanbul)

CSCE Office for Democratic Institutions and Human Rights - Seminar on constitutional law

- 26-29 November (Perugia)