EUROPEAN COMMISSION FOR DEMOCRACY THROUGH LAW

ANNUAL REPORT OF ACTIVITIES FOR 1994

TABLE OF CONTENTS

APPENDICES

INTRODUCTION

Throughout 1994 the work of the Venice Commission continued unabated and interest in its activities continued to increase. Not only was there an increase in membership, but the impact of the Commission's work continued to spread.

The Commission's legal opinion was sought on several occasions by countries engaged in democratic reform in Central and Eastern Europe, by South Africa and by the Committee of Ministers of the Council of Europe which requested the Commission's experts to analyse certain legal texts.

Its researches into areas affecting the functioning of democratic institutions enabled it to draw up an inventory of the relevant legal provisions. These studies brought the Commission's work to the attention of an increasing number of Council of Europe Committees, international organisations, and lawyers. Finally, the success of the UniDem meetings and their publications shows that recognition of the Commission's contribution to the development of democratic awareness is still continuing to grow.

MEMBERSHIP

At the end of 1994, the Commission totalled 30 full members, 8 associate members and 5 observers.

Lithuania, Romania and the Czech Republic have become full members. Mr Kestutis Lapinskas, judge at the Lithuanian Constitutional Court, Mr Petru Gavrilescu, a Romanian diplomat and Mr Cyril Svoboda, First Deputy Minister of Justice of the Czech Republic were appointed to the Commission.

The Ukraine, Moldova and Georgia became associate members of the Venice Commission. Mr Leonid Yuzkov, President of the Constitutional Court was appointed Associate Member in respect of Ukraine and Mr Petro Martinenko, Director of the Legal Council of the Parliament was appointed his substitute. Mr Boris Negru, Head of the Legal Affairs Department of the Moldovan Parliament was appointed Associate Member in respect of Moldova.

Furthermore, in November 1994 the Committee of Ministers decided to admit Belarus to participate in the work of the Commission.

ACTIVITIES

I. Activities of the Commission for Democracy through Law in the field of democratic reform

During 1994, the Commission continued to co-operate with several countries, expecially in Central and Eastern Europe, particularly on the constitutional reforms being undertaken in these countries. The Commission was consulted both on the draft Constitutions as such and on the establishment of constitutional courts, the adoption of laws on the status of minorities and on citizenship. At the same time, the Commission closely monitored constitutional developments inside and outside Europe.

Chapter A contains a short description of the work of the Commission in this area. Chapter B deals with legal instruments already in force (Constitution of the Russian Federation, Constitution of Bosnia-Herzegovina), draft laws already adopted (Law on the Constitutional Court of the Russian Federation) and draft laws which were not adopted (Draft Constitution of Albania rejected by referendum).

A. Description of the Activities of the Commission

1. Co-operation with Russia

Since the adoption of the new Constitution on 12 December 1993, the Commission has been closely following constitutional developments in Russia. It studied the constitutional provisions and held several exchanges of views with Mr Vitruk, President a.i. of the Federal Constitutional Court and associate member of the Commission in respect of Russia. The Commission's Group of Rapporteurs on Russia, composed of Messrs. Economides, Helgesen, La Pergola, Özbudun, Pimentel and Scholsem, Commission members, together with Mr Bartole, Mrs Botusharova and Mr Kedzia, substitute members, as well as Mr Beaudoin, observer in respect of Canada, drew up, at the request of the Committee of Ministers, an **opinion on the Constitution of the Russian Federation** *(see below)*.

Co-operation with the Russian authorities continued with the involvement of the Commission in the drawing up of a draft **constitutional law on the Constitutional Court of the Russian Federation**. The Commission provided the national Russian authorities with comments on the draft submitted to it together with suggestions most of which were followed *(see below)*. The Commission particularly welcomes this fruitful co-operation which concluded with the adoption on 23 July 1994 of the constitutional law concerned. It considers that a quick implementation of this law and an effective functioning of the new Constitutional Court would be an important step in the establishment of the Rule of Law in Russia.

The Commission is following with interest the various steps being taken by the Russian national authorities to complete and improve the legislation in force concerning democratic institutions. These steps comprise, inter alia, a draft constitutional law on the Ombudsman and various procedures aimed at bringing the Constitutions and laws of the subjects of the Federation into conformity with the federal Constitution. The Commission has declared itself ready to assist the authorities to successfully carry out any reforms they undertake with the aim of strengthening democratic institutions and the rule of law.

2. Co-operation with Latvia

Co-operation with Latvia continued in two fields :

- firstly, concerning the slow progress towards the adoption of the Latvian law on citizenship and the resolution of the situation regarding the former USSR citizens who are not citizens of Latvia or any other State;

- secondly, concerning legislative reform to create a Latvian Constitutional Court.

With regard to the **Latvian Law on citizenship** the Commission was particularly concerned with the establishment of annual naturalisation quotas. Having closely followed the debate on this draft law and its successive amendments and reforms, the Commission welcomed the fact that the final draft largely takes into account the analysis and drafting suggestions of the Council of Europe and Commission experts. It also welcomed the adoption of the new law on citizenship of 22 July 1994, in which the provision on quotas had been dropped.

The Commission noted with satisfaction the **Draft Law designed to solve the problem of the citizenship of former USSR nationals who are not citizens of Latvia or of another State**. In compliance with Mr Endzin's request for comments on the Draft Law, the Commission appointed Mr Kedzia, Mr Russell, Mr Suviranta and Mr Zlinszki rapporteurs. The first reading of the Draft Law on the status of citizens of the former USSR who are not citizens of Latvia or of another State took place on 27 October 1994. The comments of the Commission's rapporteurs have been forwarded to the Legal Affairs Committee of the Saeima.

Following the preparation of the **Draft Law on the Constitutional Court**, the Commission was requested to comment on the draft before its second reading in Parliament. Mr Berchtold, Mr Klucka, Mr Russell and Mr Suviranta were appointed rapporteurs on the draft law on the Latvian Constitutional Court. At the 21st meeting of the Commission, Mr Endzins, President of the Legislative Commission of the Saeima, and associate member of the Commission in respect of Latvia, held an exchange of views with the rapporteurs whose comments had been taken into account in preparing the text presented at the second reading.

3. Co-operation with Croatia and Bosnia-Herzegovina concerning the Washington Agreements and certain constitutional aspects of the situation in Bosnia-Herzegovina

The Commission was requested at its 19th plenary meeting in Venice (13-14 May 1994) by the Government of the Republic of Croatia to give an opinion on the **possible amendments to the Croatian Constitution following the creation of a Confederation between the Federation of Bosnia-Herzegovina and Croatia** (Washington Agreements of March 1994). Moreover, at the 513th meeting of the Ministers' Deputies held in Strasbourg from 24 to 26 May 1994, the Committee of Ministers decided to consult the Commission **on the constitutional aspects of Recommendation 1238 (1994) of the Parliamentary Assembly on the situation in Bosnia-Herzegovina**. The Commission examined these two questions jointly on the basis of comments of MM Bartole, Berchtold, Economides, Helgesen, Maas Geesteranus, Malinverni, Nick, Robert and Triantafyllides, which were presented and discussed at the Commission's 20th Plenary

meeting in Venice (9-10 September 1994). An exchange of views between the Commission's Rapporteurs and a delegation from the Constituent Assembly of Bosnia-Herzegovina, composed of Mr Ljubic, President of the Constitutional Assembly, and Mr Campara, Secretary General of the Parliament of the Republic, took place in Santorini (Greece) on 22-25 September during the UniDem seminar on "The modern concept of confederation", part of which was devoted to the Washington Agreements. The Commission's opinion, adopted on 29 September 1994, was transmitted to the Committee of Ministers *(see below)*.

At its 21st meeting (11-12 November 1994) the Commission had an exchange of views with Mr Hadzimusic, Representative of Bosnia-Herzegovina to the Council of Europe, concerning the difficulties encountered in the effective implementation of the new Constitution of the Federation of Bosnia-Herzegovina owing to the war situation in his country. The Commission, while considering the various legal aspects of the Constitution of Bosnia-Herzegovina, is well aware of the difficulties of implementation due to the war situation. It expressed its deep concern at the situation in that country and for the plight of the population of Sarajevo and stated that it is prepared to assist the competent authorities with the process of constitutional development.

4. Co-operation with Georgia

During 1994 the Commission continued to co-operate successfully with Georgia, represented by Mr Demetrashvili, Secretary of the State Constitutional Commission of the Parliament of Georgia. Throughout the year, the Commission was able to monitor closely constitutional developments in Georgia and held close consultations with the Georgian authorities both in Venice, during its plenary meetings, and in Tbilissi.

At the Commission's 18th meeting (25-26 February 1994), Mr Demetrashvili presented the Draft Constitution of the Republic of Georgia, prepared by the State Constitutional Commission of the Parliament of Georgia, to the Commission. At this meeting, the members of the Commission made several comments on the text and Mr Bartole, Mr Economides, Mr Helgesen, Mr Nicolas, Mr Niemivuo, Mr Özbudun, Mr Reuter, Mr Scholsem and Mr Zlinszky were appointed rapporteurs.

At Mr Demetrashvili's invitation, a group of rapporteurs which comprised Mr Scholsem, Mr Vitruk, Mr Nicolás Muñiz, Mr Buquicchio and Mr Polakiewicz visited Georgia from 6 to 9 July 1994. The mission provided an opportunity for exchanges of views with the members of the Constitutional Commission, the President of the Republic, Mr Shevarnadze, the President of the Supreme Court, Mr Ugrekelidze and with several of the country's political representatives involved in the constitutional reforms. Mr Demetrashvili stressed that the Draft Constitution which had already been proposed took account of many of the Commission members' comments.

At the Commission's 21st meeting (11-12 November 1994), Mr Demetrashvili, together with a delegation from the State Constitutional Commission of the Parliament of Georgia, presented the Draft Constitution of the Republic of Georgia. The Draft Constitution is based on seven different drafts submitted by the political parties and the University of Tbilissi. Many of its provisions were inspired by the Georgian Constitution of 1921. The Commission decided to deliver a written opinion on the Draft Constitution and appointed Mr Bartole, Mr Batliner, Mr

Economides, Mr Helgesen, Mr Klucka, Mr Nicolas, Mr Niemivuo, Mr Özbudun, Mr Reuter, Mr Scholsem, Mr Steinberger, Mr Svoboda, Mr Vitruk and Mr Zlinsky rapporteurs.

The commentaries were forwarded to the Georgian Constitutional Commission at the beginning of 1995.

5. Co-operation with Moldova

The new Constitution of the Republic of Moldova was adopted during 1994.

At the 21st plenary meeting, (11-12 November 1994), Mr Eugen Rusu, President of the Legal Affairs Commission of the Moldovan Parliament, informed the Commission of the legal problems posed by the existence of self-proclaimed republics on the territory of Moldova and of the legislative means being employed by the Parliament to deal with the situation. Mr Rusu informed the Commission of the adoption of an organic law on the special autonomous status of Gagauzia and the work being undertaken on the status of minorities in Moldova. The Commission stated that it favoured a general law governing the rights of all individuals belonging to minorities rather than a specific law on Gagauzia. It indicated its readiness to assist Moldova by examining any law on the status of minorities.

At the request of the Moldovan authorities, Mr Malinverni, Mr Özbudun and Mr Scholsem were appointed rapporteurs on the draft law on minorities of the Republic of Moldova. The rapporteurs' comments were forwarded to the Moldovan authorities at the beginning of 1995.

The Commission welcomes this co-operation with Moldova which was further developed by the fact that this country joined the Commission as associate member.

6. Co-operation with Albania

A voluntary contribution from the Italian Government to the Commission enabled the latter to provide law books to Albanian Universities and to organise a series of study visits for Albanian politicians, judges, those involved in drafting legislation and teachers and students of law. Mr Bendo, legal adviser to the Prime Minister, undertook a ten-day study visit to the Ministry of Justice of the Netherlands; Mr Cela, Minister of Justice, and Mr Gervalla, Director of External Relations at the Ministry of Justice undertook a one-week study visit to the Bavarian Ministry of Justice; Mr Zhangolli, legal adviser to the Labour Ministry undertook a twelve-day visit to the Italian Labour Ministry and Mr Beja, legal adviser to the President undertook a study visit from 10 to 23 October 1994 to the Austrian Ministry of Foreign Affairs. In addition, a number of teachers from Albanian law faculties spent several months at French, Irish and Italian universities.

At the request of the Albanian Government, the European Commission for Democracy through Law set up a working group to study the Draft Albanian Constitution which was submitted to referendum on 6 November 1994. The working group, chaired by Mr Malinverni and composed of Mr Batliner, Mr Matscher, Mr Suviranta, members of the Commission, Mr Kedzia, alternate member of the Commission, Mr Luarasi, associate member of the Commission on behalf of Albania and Mr Auer, expert, met in Strasbourg on 27 October 1994. During the meeting, an exchange of views was held with a multi-party Albanian delegation

composed of Mr Shehu, General-Secretary of the Democratic Party and Mr Traja, former Vice-Minister of Justice, on behalf of the Albanian Government and Mr Dockle, Vice-President of the Socialist Party, Mr Milo, Vice-President of the Social-Democratic Party and Mr Melo, President of the Human Rights Party. Mr Bartole, alternate member of the Commission presented comments in writing on the Draft Constitution.

At the 21st meeting, Mr Luarasi informed the Commission of constitutional developments in Albania. Since the Draft Constitution which was submitted to referendum on 6 November 1994 was not adopted, it would have to be revised. Mr Luarasi said that the help of the Venice Commission would be required at this stage.

The Commission forwarded to the Albanian authorities an opinion on the Draft Constitution based on the comments and opinions expressed at the Strasbourg meeting *(see below)*.

The Commission also stated that it was prepared to furnish the competent Albanian authorities with any assistance needed in the future for the adoption and implementation of a new constitution.

7. Co-operation with Belarus

Belarus, which was represented at several meetings of the Commission, expressed its desire to co-operate with the Venice Commission. As Belarus is in a period of transition, new texts are being prepared or in the process of adoption.

8. Constitutional reform in South Africa

The meetings held both in South Africa and within the framework of the Commission have maintained the close co-operation between the Commission and that country which began in 1993 with the visit, at the invitation of South Africa, by a Commission delegation composed of its President, Mr La Pergola, Mr Helgesen, Mr Maas Geesteranus, Mr Malinverni, Mr Ragnemalm, Mr Buquicchio and Mr Lamponi to Johannesburg and Capetown. At the 18th meeting of the Commission, Ambassador van Heerden stressed the importance attached to the delegation's visit by the leading personalities it met in South Africa.

The President of the Commission was invited by Mr Mandela and Mr Buthelezi to join the group of mediators (which also included Mr Kissinger and Lord Carrington) responsible for proposing solutions to the ANC and Inkatha in mid-April on unresolved constitutional questions, to enable free and peaceful elections to be held with the participation of all political forces. During his visit to South Africa, the President received assurances from all the leading representatives of the main parties to the negotiations of South Africa's interest in continuing co-operation with the Commission.

A South African delegation headed by the Minister of Provincial Affairs and Constitutional Development, Mr Roelf Meyer, and composed of politicians, senior civil servants and academics who had participated actively in the constitutional reform process and the negotiations on the preparation of a definitive Constitution, was invited to attend the Commission's 20th meeting to define the priority areas in which the Commission's assistance would be needed. Mr Meyer stated that the Commission's expertise could be extremely useful

to the South African lawmakers in several areas such as constitutional guarantees for human rights, regionalism, the institution of the ombudsman and constitutional justice.

9. Exchange of views with Mr Rodolfo Barra, Minister of Justice of Argentina on constitutional reform in Argentina

At its 21st meeting, the Commission was informed of the constitutional reforms taking place in Argentina by Mr Barra, Minister of Justice who explained the main characteristics of the revised Constitution and answered numerous questions put by participants. The Commission expressed keen interest in this constitutional reform which affects one of the oldest constitutions still in force in the world, some aspects of which could serve as a model. The Commission noted in particular:

- the provisions whereby human rights treaties have constitutional status, as have all amendments of these treaties, and any new treaty on human rights adopted by a two-thirds majority of Congress from the date of entry into force;

- the amendment extending the right to introduce an "amparo" petition (whereby a judge can terminate or order the cessation of any specific act of a public authority or private individual which clearly violates a right guaranteed by the Constitution, a law or a treaty) to the ombudsman and associations of consumers and goods and services users;

- the provisions whereby the federal authorities only exercise the powers which have been specifically vested in them, whereas the provinces have general residual power in addition to that which is specifically vested in them, as well as the provisions extending the powers of the provinces by recognising each province's right to develop its own resources.

The Commission was anxious to find appropriate ways of following up this exchange of views which would enable those involved in the process of constitutional reform to exchange information on the problems encountered and the solutions envisaged.

10. Co-operation with the Office for Democratic Institutions and Human Rights of the CSCE

The CSCE Office of Democratic Institutions and Human Rights which works closely with the Commission (see especially the section on the UniDem seminars) has sought the Commission's assistance in commenting on certain constitutional and legislative drafts.

Mr Bartole and Mr Özbudun presented commentaries on the Draft Constitution of **Tadjikistan** and Mr Suviranta commented on the draft law on nationalities, aliens and refugees in **Armenia**.

B. Opinions of the Commission

I. The Constitution of the Russian Federation

At the request of the Committee of Ministers, the Commission embarked on an in-depth legal study of the Constitution of the Russian Federation, within the framework of the co-operation between that country and the Council of Europe. The Commission's opinion was published in full in Document CDL 94(11) and was commented on in May 1994 by Mr Vitruk, associate member of the Commission in respect of Russia. The opinion's evaluation of the Constitution as a whole was favourable, but it indicated certain points on which the Commission felt obliged to express reservations. These reservations are still valid even after the adoption of the text of the Constitution in December 1993. The Commission noted that the Constitution was very detailed and represented a compromise between an enumeration of basic principles of the constitutional regime and detailed rules for the main constitutional institutions. It felt that, in general, the Constitution of 12 December 1993 conformed to the principles of a democratic State governed by the rule of law and respectful of human rights. The obscurities and omissions on which the Commission expressed reservations are frequently the result of political comprise. Consequently, it would be for the national authorities and more particularly, the Federal Constitutional Court, to interpret the Constitution and correct any possible defects by maintaining a proper balance between powers. The Commission attached particular importance to role of the Constitutional Court in strengthening the rule of law in the Russian Federation.

The following is a summary of the main points of the opinion:

1. **Chapter on the basis of the constitutional system (Articles 1 to 16)** comprises general and abstract provisions which did not give rise to any objections on the part of the Commission. However, the Commission questioned the wording of Article 10 which , it believed, could be misleading since it states, after establishing the separation of powers, that the "bodies of the legislative, executive and judicial powers shall be independent". The Commission felt that, since one of the primary objectives of the new Constitution was to regulate, in considerable detail, the interdependence of and co-operation between legislative and executive arms, they were not "independent". Only the judicial power could be described as "independent".

The Commission welcomed the reference to international law in Article 15(4) which is repeated several times in the following chapter and which makes it possible to define clearly the hierarchy of laws in the Russian legal system. International law - both customary law and the treaties - takes precedence over domestic law at statutory level and below. The fact that the adoption of the new Constitution opens the domestic legal system to the direct influence of international law, represents a challenge and a major innovation for the Russian legal system.

2. As regards the **chapter on the rights and freedoms of the individual and the citizen,** the Commission welcomed the changes to both the substance and the form of what had been contained in the earlier drafts. Considerable progress had been made in the drafting of this fundamental text which, the Commission felt, followed an undeniably modern and progressive approach. The improvements included better organisation of the chapter and a more precise formulation and better structuring of the provisions. The Constitution recognises and guarantees the basic and social rights commonly found in modern democratic constitutions. Under the Constitution, civil and political rights as well as economic, social and cultural rights are perceived as human rights. Some members of the Commission regarded this as a positive development, whereas others emphasised the difficulties of implementing economic, social and cultural rights and questioned whether these rights could provide the basis for a legal claim. According to Mr Vitruk, the provisions guaranteeing economic, social and cultural rights should be interpreted as directives for the legislator.

Several comments and criticisms formulated by the Commission with respect to the first draft are still valid.

Firstly, Article 55(3) lists the reasons for which restrictions can be imposed on the applicability of rights and freedoms in general, from which it follows that restrictions can be imposed on all rights and freedoms for the reasons mentioned in this article. The Commission took the view that this seemed inconsistent with international and European standards

which clearly determined which rights could be limited and for which reasons. The formula adopted leads to a situation in which all the possible reasons for limitation might be applied indifferently to all the rights and freedoms, thereby opening the way to the misuse of power by the legislative or the executive authority. According to Mr Vitruk, the danger created by the possibility of provisionally limiting citizens' rights and freedoms is significantly reduced and even eliminated by the fact that the Constitution acknowledges the primacy of the principles and rules universally recognised in international law and international treaties.

Secondly, the Commission would have preferred the adoption of a genuine "habeas corpus" system rather than the 48 hours detention without judicial decision proposed in Article 22.

Finally, the Commission regretted that Article 31 guarantees the right of assembly only to citizens of the Russian Federation, whereas international standards regard this as a human right. This limitation is surprising, considering that Article 30 guarantees freedom of association as a human right.

3. The Commission concluded that the main provisions of the **Chapter on the federal structure of Russia** complied with the basic principles of federalism.

The Commission felt, however, that the allocation of responsibilities between the central Government and subjects of the Federation has not been sufficiently defined by the Constitution. It noted that the powers exclusively exercised by the Federation listed in Article 71 of the Constitution were very broad and that problems of interference with the list of concurrent powers in Article 72 clearly exist. One wonders which powers might come under the head of residuary jurisdiction, since the lists of federal powers are so exhaustive. The Commission felt that the ideal framework for power-sharing should comprise a list of exclusive federal powers, a list of exclusive provincial powers and a list of joint powers specifying which carries the greater weight.

A further point which called for special attention was the large number of federal units. All are subjects of the Russian Federation, but nevertheless differ in constitutional status. These different units do not simply border on one another in territorial terms, but some subjects of the Federation include others on their territory (see Article 66(4) which refers to relations between autonomous areas which are part of a territory or region). In the Commission's view there is a strong risk that this would pose highly complex problems in terms of power-sharing.

The Commission expressed concern at the considerable powers of obstruction enjoyed by the Council of the Federation by virtue of its highly egalitarian composition (two representatives from each subject of the Federation) and the extensive powers vested in it (particularly in legislative matters). It also regretted that the question of the dissolution of the Council of the Federation was not dealt with in the Constitution.

On the basis of these factors, one can foresee a dynamic development in the way relations between the Federal Government and the subjects of the Federation are worked out in practice. Particular care must be taken to ensure that these developments remain within the framework of the legal means and procedures provided in the Constitution itself for improving the allocation of areas of responsibility and their respective powers.

4. Chapters 4,5 and 6 deal respectively with the **President of the Russian Federation, the Federal Sobranie and the Government of the Federation.** According to the Commission, the most serious constitutional problem in Russia is the struggle between the executive and legislature. Only experience will show whether the rules which have been adopted function correctly. From a strictly legal point of view, the provisions which have been adopted do not, as a whole, pose any major problem. However, the Commission drew attention to a number of deficiencies and ambiguous provisions which could lead to certain malfunctions.

The only provision in the Constitution concerning a no-confidence vote in the Duma is one which stipulates that an absolute majority is needed to carry it. It does not indicate how many deputies are required to introduce it.

Moreover, the Constitution does not indicate the issues on which a referendum can be called, the conditions under which the people can be consulted and the effects of the popular vote. The Commission would have preferred the Constitution to define the procedure for holding a referendum more precisely.

The Commission also noted the absence of a procedure for countersigning which is a useful indicator of how power is divided between the President and the Government. The Commission felt that the basic charter should establish which presidential acts require a countersignature and which do not.

The Commission felt that the procedure for removing the President from office should be set out in greater detail in the Constitution. It questioned the expediency of including a judicial decision in the procedure for removing the President since such a decision could be repudiated by a political body, in this case the Council of the Federation.

The provisions governing the appointment of the Head of Government, the formation of the Government and conditions under which the President can dissolve the State Duma are rigidly defined. Neither the President nor the legislative authority have any room for manoeuvre once the procedure laid down in the Constitution is exhausted. The Duma runs the risk of being dissolved if it rejects the candidates proposed by the President. The Commission therefore felt that the Constitution does not enable difficulties which might arise in the event of permanent disagreement between the President and the Duma to be resolved effectively. The danger exists that the balance of power could collapse and be replaced by a purely presidential system, particularly as the President is free to accept or reject the Government's resignation without consulting Parliament. However, the Commission noted the fact, stressed by Mr Vitruk, that a draft Federal Constitutional Law regulating the functioning of the Government of the Federation and other draft laws dealing with relations between the President, the Sobranie and the Government would provide additional legal guarantees of a balanced distribution of powers.

5. With regard to the **Chapter on the organisation of justice**, the Commission noted with satisfaction that several of its members' comments concerning, in particular, the need to stipulate which entities can refer matters to the Constitutional Court, the legal force of Constitutional Court rulings and the prohibition of special courts had been incorporated in the final draft of the Constitution submitted to referendum on 12 December 1993.

However, the Commission felt that the exercise of "supervision" by the Supreme Court and the Higher Court of Arbitration over the activity of the lower courts conflicts with the almost universal practice whereby higher courts do not supervise the decisions of lower courts except in the case of appeals against the decisions of the latter. The Commission also believes that the procedure for appointing Federal Court judges set out in Article 128 of the Constitution could lead to excessive politicisation of the members of these courts and jeopardise the principle of the separation of powers.

The Commission noted that the Constitution does not define the functions of the Prokuratura or of the Commissioner for human rights. However, it also noted that these matters will be dealt with in the context of additional federal legislation.

The Commission was unanimous in its insistence on the importance, in establishing a federal and semi-presidential system, of a strong, independent judicial authority capable of ensuring a balanced distribution of power. It therefore attached particular importance to the establishment of a Constitutional Court responsible for interpreting the basic charter. The effective exercise of the functions of the Constitutional Court should be a factor in strengthening the rule of law in the Federation.

6. The Commission noted that the Constitution does not deal with **local self-government**. This could create the danger that the legislative authorities in all the various entities could concur to limit the independence of local authorities without justification. Mr Vitruk said that this question had been discussed at length and that effective legal arrangements for local self-government would subsequently be developed in current legislation.

7. Finally, on the **amendment and revision of the Constitution**, the Commission noted that citizens are not given the right to submit proposals for the amendment or revision of the Constitution and that there is no definition of the procedure to be followed in deciding to hold a referendum (Article 134).

2. The Constitutional Law on the Federal Constitutional Court of Russia

At the invitation of the Russian authorities, the Commission appointed, at its 18th meeting, Mr Helgesen, Mr Steinberger and Mr Zlinszki as rapporteurs on the draft law on the Constitutional Court of the Russian Federation.

The definitive text of the Constitutional Law on the Federal Constitutional Court was adopted almost unanimously by both Chambers of the Parliament and entered into force on 23 July 1994.

The rapporteurs unanimously welcomed the existence of a Constitutional Court. It was preferable that constitutional questions should be entrusted to a special permanent institution rather than the ordinary courts particularly as, for historical and political reasons, these courts are not accustomed to dealing with constitutional issues. On the whole, the rapporteurs also felt that the text was very detailed, although it could be argued that questions concerning the rules of the Court, which are less important for the general public, could be dealt with in a separate document which would not have constitutional force. The Commission welcomed the fact that several of the rapporteurs' proposals had been incorporated in the final text.

The following is a summary of the main points of the opinion:

1. **The provisions of Section 1 on the organisation of the Constitutional Court of the Russian Federation** were carefully analysed by the Commission's experts to ensure that they did not conflict with the Constitution.

Several comments were made on two general provisions regarding which the experts found certain ambiguities in the version submitted to them:

First, regarding the "goals and tasks" of the Constitutional Court and its power of judicial supervision, the experts pointed out that the Constitution makes no provision for a normative statement of this nature and that listing them in this way could be regarded as giving a restrictive interpretation of the powers of the Court as set out in Article 125 of the Constitution.

Moreover, the rapporteurs stressed that paragraph 1 (6) of this Article which concerns the Constitutional Court's right of legislative initiative within the limits of its competency, should be interpreted very restrictively, as the exercise of such a right could be prejudicial to the fundamental principle of the separation of powers and to the prestige of the Constitutional Court.

Moreover, Article 4 of the law which sets out the limits of the Court's powers, was commented on several times. The rapporteurs questioned the need to stipulate that the Court shall examine problems of law and shall not consider "political problems". This provision could open the door to numerous debates.

Paragraph 3 raises problems of interpretation in that it prevents the Court from establishing the facts of a case "when this is within the competence of other courts and bodies". The Commission's rapporteurs questioned whether this provision restricted the power, vested in the Court by Article 125 of the Constitution, to examine the facts of a case falling within its jurisdiction. The functions of the Court may be significantly curtailed if it were bound by the findings of another court or institution. In the experts' opinion, the limits of the Constitutional Court's powers should be established by the Court itself through its case law.

On the **status of judge of the Constitutional Court**, the Commission welcomed the fact that the final version of the draft, which has subsequently become law, took account of several of the rapporteurs' comments on the suspension of the powers of the judge (Article 17). Certain reasons for suspension which were imprecise (e.g., inability to fulfil his obligations "for a long time") or excessively rigid (e.g., absence from "more than three plenary sessions... without valid reasons") have been dropped from the final draft. The rapporteurs had also criticised the provision whereby only "serious" violations of the appointment procedure constitute a reason for terminating the power of a judge who has been irregularly appointed. They felt, in particular, that the notion "seriousness" would be difficult to apply. The text adopted simply refers to a "violation of the procedure of appointment".

The rapporteurs therefore consider that both the institutional independence of the Court and the independence of the judges were guaranteed. Nonetheless, certain points need to be clarified.

In particular, under Article 9 of the Law which lays down the procedure for appointing judges of the constitutional court, the candidates presented by the President of Russia are elected by majority vote of the plenary session of the Federation Council voting by secret ballot. The rapporteurs questioned the choice of a public nomination procedure. Although the transparency this provided could work to the institution's advantage, they feared it might nonetheless have adverse consequences.

With regard to the list of occupations and actions incompatible with the functions of judge of the Constitutional Court (Article 11 of the Law), the rapporteurs queried the desirability of permitting a Constitutional Court judge to exercise "legal representation in the court, in the arbitration court or in any other law-enforcement organs" notwithstanding the possibility provided for in the draft law to challenge a judge for bias.

With regard to the prohibition of membership of a political party, the rapporteurs felt that the Law should have specified that it did not refer to the period prior to appointment.

The rapporteurs' comments on **the structure and organisation of the work of the Constitutional Court** chiefly concerned the way cases were assigned to the different chambers. The rapporteurs pointed out that the method for allocating cases to the chambers and the annual revision of the composition of the chambers could raise problems. They suggested choosing the members of the chambers by lot and establishing in advance the categories of cases to be dealt with by each chamber. This would exclude manipulations from within the Court and ensure that specific cases were dealt with by a specific chamber.

These proposals were adopted. In particular, Article 22 of the text adopted lists the matters which fall within the competence of the chambers.

The rapporteurs regretted that the Law did not provide for the possibility of referral to the plenary Court of certain questions concerning the interpretation of the Constitution where a danger exists of a conflict between the case laws of the chambers of the Court.

2. The rapporteurs also commented on the provisions concerning the **procedure before the Constitutional Court**, particularly the difficulties which could arise in applying them. In particular, some rapporteurs felt that the procedure of preliminary examination of an appeal by the Registry of the Court whereby the latter can decide to reject a case which "is evidently not within the jurisdiction of the Russian Federation Constitutional Court" should be replaced by an accelerated examination procedure by one of the Chambers.

The rapporteurs criticised the procedure for **reviewing the constitutionality of laws at the request of the courts (Chapter XIII)**. The rapporteurs took the view that the provision of the draft law permitting referral to the Constitutional Court in the event of "disclosed ambiguity", was too vague and might invite a large number of referrals to the Court. The rapporteurs suggested that the courts should only be permitted to refer matters to the Constitutional Court where they were convinced of the unconstitutionality of a particular provision.

This suggestion was incorporated in the final version of the draft which was later adopted and which stipulated that the courts should only have recourse to the Constitutional Court after they have "concluded" that a law conflicts with the Constitution.

On the procedure for **interpreting the Constitution in abstracto,** as set out in **Chapter XV**, the rapporteurs pointed out that other constitutional courts do not usually enjoy this power and that considerable clarification was called for. The rapporteurs drew attention to several procedural ambiguities. For example, the law does not clearly define the parties in such a procedure nor the persons who can appear before or be heard by the Court. To prevent the Court from being submerged by requests or from being consulted for purely political reasons, the rapporteurs recommended attaching strict conditions to such requests.

3. Certain aspects of the constitutional situation in Bosnia-Herzegovina

A. The Constitution of the Federation of Bosnia-Herzegovina

The text of the Constitution of the Federation of Bosnia-Herzegovina contains, in general, the principal elements of a federal Constitution based on the principles of democracy and the rule of law. It includes instrumental provisions which define the various authorities and their powers, as well as their relations *inter se*. The Constitution does not confine itself to dealing with federal authorities, but also contains chapters on cantonal and municipal authorities. The Constitution then sets out provisions on the division of competences between the Federation and the cantons, identifying those areas in respect of which the Federation has responsibility.

The Constitution also contains a chapter devoted to human rights. Two particularly positive features should be highlighted in this connection: the reference to rights and freedoms guaranteed by international instruments and the provisions

concerning the Ombudsman.

The Commission nonetheless considers it necessary to offer a few observations on certain aspects of the Constitution.

1. The number and names of federate entities composing the Federation should appear in the Constitution. This is one of the characteristics of federal states (see e.g. the Swiss Federal Constitution, the Preamble to the Basic Law of the Federal Republic of Germany).

   Mention of the federate states in the actual text of the Constitution distinguishes them from mere provinces or regions of a unitary state and reflects their importance in the state structure.

2. The implementation of international **human rights** norms (as provided for in Article II.A.1) is without doubt a particularly felicitous provision, which demonstrates Bosnia-Herzegovina's commitment to effective protection of human rights. However, it could give rise to difficulties of a technical kind in practice.

   Such problems could arise in cases where there are discrepancies between the texts of international instruments safeguarding human rights and the catalogue of rights guaranteed by the Constitution. One solution to this problem might be to state the principle whereby the provision most favourable to the rights of the individual would be applicable in the event of conflict. Failing the inclusion of such a provision in the Constitution, it will probably fall to the Constitutional Court or the Court of Human Rights to establish this principle through its case law.

   The list of rights appearing in Article II.2 may also raise some problems. Although it is a non-exhaustive list of rights guaranteed (as indicated by the words "in particular"), this list might nevertheless give the impression that the drafters of the constitution wanted to accord the rights expressly mentioned there a higher value than the rights guaranteed by international instruments. It will be for the supreme courts of the Federation to clarify this point.

3. The **protection of minorities** receives only a simple mention: having regard to the particularly delicate character of this question in Bosnia-Herzegovina, an economy of detailed provisions on this matter is unwarranted.

4. The Commission welcomes the existence of precise rules governing the **Ombudsman**, but an express provision in the Constitution to enable the Ombudsman to make recommendations to the administration would have been desirable. The present text allows for a wide range of different practices by both the ombudsman and the administrative authorities. Furthermore, intervention by the ombudsman in the course of a trial should be exceptional, or at least subject to extreme caution. His role should in fact be to intervene before the institution of judicial proceedings. Intervention during a trial should have no other purpose than to bring about a friendly settlement. Any other kind of intervention would be contrary to the principle of the separation of powers, the independence of the judiciary and equality of arms.

5. The Commission welcomes articles 3, 4 and 5. It considers in particular that the constitutional guarantee of the right of refugees to return to their homes is of paramount importance in the present political context in Bosnia-Herzegovina.

6. The matter of the **division of competences between the Federation and the cantons** also gives rise to certain questions. Residual competence is vested in the cantons (Article III.4), which means (cf. Article III.1-3 *a contrario*) that the Federation has no competence in the field of criminal law, and that it cannot legislate for example in respect of such matters as private law, labour law and social security or environmental law. It may be questioned whether such a situation is satisfactory.

   It would have been wise to include a provision whereby, in the areas in which both the Federation and the cantons have competence, the cantons may not exercise their legislative powers if the Federation has enacted comprehensive legislation; it would also have been useful to make express provision for the Federation to adopt outline legislation, leaving it to the cantons to regulate matters of detail.

   In addition, the division of competences in fiscal matters should be specified.

Furthermore, the possibility for cantons to delegate certain competences to the Federation (Article V.2, para.1) could give rise to problems. It would have been preferable to limit this possibility, in order to prevent the cantons being completely stripped of their powers.

7. As regards the various **organs of central government** and their respective powers, the points open to discussion include the following:

- the Constitution leaves open the question of whether the legislature will be elected by proportional representation for the whole country or whether the country will be divided into electoral constituencies and, if so, whether the constituencies will correspond to the cantons; these questions can of course be dealt with later by electoral legislation.

- the absence of a clear choice between perfect and imperfect bicameralism which could lead to a certain incoherence;

- there is no express provision for Parliamentary control over the administration, nor for the executive's right to initiate legislation;

- Article IV.B.16 which enables the President to dissolve both chambers of the legislature if he determines that they are unable to enact necessary legislation, gives rise to some misgivings; rash application of this provision could easily result in abuse and seriously infringe the principle of separation of powers.

- the powers of the Constitutional Court to intervene to put an end to political disagreements between the two Chambers or to decide as to the vital interests of one of the peoples of the Federation (Articles IV.A.18 and IV.B.6) are questionable. The Constitutional Court should as far as possible remain aloof from political disputes. Its involvement could discredit it and substantially impair its effectiveness as guarantor of the Constitution and the rule of law.

- the Commission considers that some of the conditions laid down for the appointment of military and diplomatic staff and all judges (appointments subject to approval by both Chambers) are often difficult to meet and hence the cause of malfunctions; another rule difficult to apply in all cases is the one requiring an equal number of Bosniac and Croat judges in every court (see eg the Constitutional Court, which is made up of 9 judges).

8. The Commission finds it important that Cantons can create **cantonal councils** to coordinate their activities. In the Commission's opinion, such bodies will allow for the consideration of questions of more than a mere cantonal interest without requiring action by the Federation. It is on the other hand to be regretted that the Constitution prevents the creation of such cantonal councils between cantons having different ethnical majorities (Article V.3).

9. In addition, regarding the appointment of senior judges, involving their peers in the appointment process would have been more in keeping with the principle of the **independence of the judiciary**.

Finally, the Commission finds that the Supreme Court should not have the power to dismiss cantonal judges, nor the cantonal high court to dismiss municipal judges (Articles V.11, para.3 and VI.7, para.4).

10. Lastly, the Commission notes that the new Constitution has not been adopted by a specially elected constituent assembly, but by a legislative assembly composed of Deputies whose mandate was still valid. It further observes that the referendum process has not been followed, either for the approval of the new constitution, or for the amendments to be made to it. However, this may be explained by the extreme political conditions prevailing in Bosnia-Herzegovina.

B. Compatibility of the Washington Agreements of 18 March 1994 with the Constitution of the Republic of Croatia of 22 December 1990

The "Preliminary Agreement Concerning the Establishment of a Confederation between the Federation of Bosnia-Herzegovina and the Republic of Croatia" (hereinafter "Agreement") was signed on 18 March 1994 by the President of the Republic of Croatia, Mr Franjo Tudjman, and the President of the Republic of Bosnia-Herzegovina, Mr Alija

Izetbegovic. It establishes a confederation for co-operation in economic and defence matters between the Republic of Croatia and the Federation of Bosnia-Herzegovina. Attached to the Agreement are two further agreements granting the Federation unrestricted access to the Adriatic and granting Croatia unrestricted transit through the municipality of Neum.

The Commission is of the opinion that the creation of the confederation is in principle compatible with the Constitution of Croatia.

The Croatian Constitution expressly provides for the association of the Republic of Croatia in alliances with other States (cf. Articles 2 and 132 et seq. of the Constitution). The term "alliance", used in a broad sense, may cover also the envisaged Confederation with the Federation of Bosnia-Herzegovina. This Confederation is not given the power to enact regulations with direct effect in the internal legal order of the Parties. Internal regulations which the progressive establishment of a common market and a monetary union might entail (cf. Article 4 of the Agreement) will be adopted by each of the participating States separately. In its present form, the incipient Confederation has therefore not been granted "powers derived from the Constitution" in the sense of Article 133, paragraph 2, of the Constitution.

The envisaged co-operation and common policies in economic, cultural, migration and legal matters do not entail any transfer of sovereignty which would be contrary to Article 2, paragraph 1, of the Constitution. The limitation on the exercise of constitutional powers inherent in the establishment of the Confederation is not unusual in the present practice of international co-operation, and the provisions contained in Articles 132 et seq. of the Constitution are a sufficient basis for the envisaged co-operation, including the conclusion of such defence arrangements as are provided for in Article 5 of the Agreement.

Since the international identity and legal personality of each of the Parties will remain unaffected by the establishment of the Confederation (Article 2 of the Agreement), the unitary structure of the Croatian State (cf. Article 1, paragraph 1, of the Constitution) is not put into question.

It should be noted, however, that the Confederation Agreement provides for the establishment of joint decision-making machinery in certain areas of activity, intended to operate on a permanent basis. The Parties to the Agreement undertake to give this decision-making process a certain priority in relation not only to their other international undertakings with third states, but also in relation to each Party's internal decision-making process. The effect of this is indirectly but certainly to limit the powers of each Party, even though there is no direct transfer of powers to the Confederation. Such a limitation arising from the special relationship between the two Parties ought normally to be provided with justification and a legal basis in the Constitutions of both states.

From a more technical point of view, the only constitutional provision which might be in contradiction with the Washington Agreements is Article 2, paragraph 5, according to which the "Republic of Croatia may conclude alliances with other States, retaining ... the right freely to withdraw from them". According to Article 7 of the Agreement, it shall "remain in force until otherwise agreed by the Parties". The attached agreements on access to the Adriatic and transit through Neum "shall remain in force for a period of 99 years, except as otherwise agreed by the Parties" (Article 7 and 5 respectively). These provisions exclude the right of Croatia to withdraw at will unilaterally from the agreements. In the view of the Commission, Article 2, paragraph 5, of the Constitution should accordingly be amended in order to allow the Republic of Croatia to conclude alliances which may not be denounced unilaterally.

The Commission further considers it advisable to insert an additional provision into the Constitution which explicitly mentions the Confederation with the Federation of Bosnia-Herzegovina.

In conclusion, the Commission found that the Constitution of the Federation of Bosnia-Herzegovina contains the essential norms of a federal constitution. Particular prudence will nevertheless be necessary in the practice of the federal and cantonal authorities in order for it to be implemented without difficulty.

The Commission further found that with the exception of Article 2 para. 5 of the Constitution of Croatia, no provision of this Constitution is incompatible with the Washington Agreements.

Finally, the Commission considered it advisable that an explicit constitutional basis be given to the planned Confederation. With the establishment of a Confederation, the two States concerned are entering on a permanent basis into a special, privileged relationship which should find some expression in each of their Constitutions.

4. Commentaries on the draft Constitution of Albania, submitted for popular approval on 6 November 1994

The Commission working party took the view that the Albanian Constitution, which represents a serious effort to adopt a Constitution in conformity with European criteria for democracy, human rights and the guarantee of the rule of law, called for a number of comments which are summarised below:

I. Fundamental principles

The Commission attaches great importance to this part of the draft Constitution containing the principles upon which the political life of the State will be founded. In addition, these principles will constitute the basis for interpreting the Constitution as a whole.

General Observations

1. Chapter I (and particularly Articles 6 and 7) includes some restrictions on and conditions for the exercise of certain fundamental rights which are only guaranteed later on, in Chapter II. It is usual to impose such restrictions, to the extent that they are strictly necessary, in legislative texts in a manner such that their conformity with constitutional provisions guaranteeing fundamental freedoms can be reviewed, if necessary, on a case by case basis. Measures implementing the limitations and restrictions on fundamental freedoms set out in Articles 6 and 7 could, on this draft, escape review in respect of their compatibility with the human rights provisions.

Observations on particular provisions

2. Political Parties

Article 6(2) prohibits political parties which place the existence of the Albanian Republic or its democratic institutions in danger. Strictly interpreted, this prohibition does not give rise to any objections in itself - an analogous provision can also be found in the European Convention on Human Rights (Article 17); it is nevertheless open to the risk of abusive interpretation. It should rather be clear that a political party that wishes to modify existing institutions, even profoundly, and to replace them with other democratic institutions, cannot be banned. It would therefore be preferable to provide that political parties must act in a manner compatible with the Constitution.

Article 6(3), which prohibits political parties having a religious or ethnic basis, can be understood as aiming to protect against elements of fundamentalism. As drafted, the provision is nonetheless open to abuse. Problems potentially deriving from the political activities of certain religious or ethnic entities should be resolved on a case by case basis and not by a complete prohibition on all activity (cf. general observation 2 above).

In this general connection, the Commission particularly commends the provision attributing competence to the Supreme Court in the matter of the banning of political parties (Art.115(4)).

3. Conduct and organisation of religious communities

As regards Article 7 of the draft, the Commission finds the prohibition on the use of religion for political purposes in Article 7(3) to be an excessive invasion of freedom of religion. It must be recalled that numerous questions of an ethical character, upon which religious bodies can - and even must - express themselves in a clear and precise manner, can have a large application in the political sphere.

One can also question the extent of the prohibition in Article 7(3) on religious activities imperilling the Republic of Albania or its institutions. Article 36, which allows for such restrictions on freedom of religion as are necessary for public

security, for the maintenance of public order, or for the protection of health or morals or the rights of others (a provision directly inspired by the European Convention on Human Rights) appears entirely sufficient.

The provision in Article 7(4) whereby the leaders of "large" religious communities must be Albanian citizens born in Albania and resident there for at least 20 years is not easily reconcilable with existing standards of freedom of association, nor with the principle of the separation of religion and State, as affirmed in Article 7(1), nor with the principle of equality before the law.

4. Relationship between international law and domestic law

Article 10, governing the relationship between domestic law and international law, requires more precision. In effect, it does not establish the rank of international law in the Albanian legal order. Rather, it appears to establish only a general obligation to respect international law. Nor does Article 72(9), and especially its subsection (c), which concerns international treaties in the domain of human rights and fundamental freedoms and which provides that certain international treaties shall be ratified "by law", decisively clarify the place of international norms guaranteeing fundamental rights within the Albanian **legal hierarchy**.

II. Fundamental rights and freedoms

General observations

1. The Commission notes with satisfaction that the authors of the draft Constitution have sought to limit restrictions on fundamental rights to the greatest extent possible.

2. The question of the review of the constitutionality of laws by ordinary courts is not regulated in a very precise manner. Article 57 declares the principle of access to the courts in case of a violation of one's human rights, which allows for the conclusion that the draft enables ordinary courts to review State conduct in the light of the constitutional provisions on human rights and freedoms. This system of diffuse review would appear to be sufficient, notably to the extent that it would allow the ordinary courts to decline to apply a legislative provision which is considered to be contrary to the Constitution. However, the second paragraph of Article 103, which attributes compulsory jurisdiction in the matter to the Supreme Court, weighs down the procedure and introduces a degree of centralised review which appears to contradict the conception of diffuse review.

3. In addition, it would be desirable to use the formulation "necessary in a democratic society" in respect of restrictions on fundamental rights.

Observations on particular provisions

4. Right to life (Article 19)

Article 19(2), concerning the death penalty, should stipulate that such punishment can be applied only in the execution of a final judgment of a competent judicial authority (cf. Article 6 of the International Covenant on Civil and Political Rights). Article 19(3) must be considered to give rise to discrimination on the grounds of sex. It must also be emphasised that Protocol No. 6 to the European Convention on Human Rights forbids the death penalty in time of peace.

5. Freedom of expression (Article 20)

Article 20(2) can be interpreted as allowing for prior censorship. It would be preferable to exclude this and to adopt the substance of Article 10(2) of the European Convention on Human Rights, which authorises only such restrictions as are provided for by law and are necessary in a democratic society. The provision as a whole should be reconsidered with a view to ensuring consistency with Article 10 of the European Convention on Human Rights.

6. Guarantee of personal security (Article 23)

Article 23, concerning security of the person, makes no mention of the reasons justifying the deprivation of an individual's liberty; it contains a sole substantive guarantee in its second paragraph, stating that a deprivation of liberty cannot be effected save when there are sufficient grounds justifying such deprivation. In the absence of an exhaustive list of those circumstances in which the Constitution authorises the legislative, judicial or executive powers to provide for,

order or execute a measure depriving a person of his or her liberty, there exists a not insubstantial risk of arbitrariness (potentially aggravated by the inconsistency in the terms detention, arrest, and pre-imprisonment). Moreover, the provision in Article 37(2) whereby arrested persons, even without being convicted, are deprived of the right to be elected, serves to accentuate this risk (see also point 7 infra). It would be desirable, therefore, that the Constitution contain a provision comparable to Article 5 of the European Convention on Human Rights, which provides in an exhaustive manner for cases of restrictions on personal liberty, including those having no connection with criminal procedure (e.g, in case of mental illness or contagious disease). Article 23(6) could be better drafted, relying, for example, upon Article 5(4) of the European Convention on Human Rights. It is also difficult to provide by law, as is foreseen in Article 27(3), for a maximum duration for detention on remand.

7. Presumption of innocence

The ineligibility of persons on remand (Article 37(2)) seems to be incompatible with the presumption of innocence.

8. Protection of minorities

Article 44(1) on the protection of minorities is a provision which the Commission particularly commends. Nonetheless, it is worth mentioning that this provision is a general one whose implementation will require concrete legislative measures.

9. Procedural Guarantees

Article 56 lacks precision. A provision similar to Article 6(1) of the European Convention on Human Rights should be adopted.

III. Organs of the state

Powers of the President of the Republic

1. The draft gives to the President of the Republic, who is elected by Parliament (Article 79), considerably more powers than are normally conferred on the Head of State in a parliamentary regime. These powers appear to be closer to those conferred on the President of the French Republic.

In particular, according to Article 84, the President fixes the dates of national and local elections without the requirement of a proposal from the government, and has the right to propose to Parliament that a question be put to referendum. He can chair meetings of the government and determine the agenda for these. He can conduct relations directly with the directors of State bodies without passing through the competent Ministry and, in addition, under Article 61(2), give authorisation for the extraordinary extension of the legislature's term of office.

Disqualifications

2. The absence of an incompatibility of functions as between a member of Parliament and a member of the government (Articles 64 and 90(2) is not unusual. However, the proposed system accords to members of the government a significant weight in the work of Parliament: under Article 71, members of the government have the right to participate in all sessions of Parliament and of its committees. Although unusual, these privileges accorded to members of the government could have the advantage of facilitating close links between parliamentary and governmental activities.

3. In general, the question of disqualifications ought to be reconsidered with a view to ensuring consistency. This applies not only to Parliament and government, but also to the judicial power.

Parliament

4. The quorum rules in Article 68(2) and 69 could frustrate the adoption of laws: in effect, the requirement of a positive vote of a majority of members present, constituting at least one-third of the total number of deputies, would allow the opposition to block the adoption of a bill by its simple abstention. This defect could be cured by a stipulation that the required majority is a majority of members present and voting.

Recourse to referenda

5. The procedures for recourse to referenda are not regulated in a very precise manner.

According to Article 72(3), it is for Parliament to decide on the holding of referenda. It appears that this refers to an extraordinary referendum, decided upon by Parliament, and not to the popular referendum requested by a fraction of the electorate (cp. Articles 84(3) and 84(4)). In this case, the Constitution should establish which are those laws or matters that Parliament may submit for referendum and, further, define the legal consequences of a popular vote.

From a technical perspective, it would be preferable to replace the term "repeal" by "approval or repeal" in the second paragraph of Article 72(3). It is inadvisable to leave to Parliament alone the power to decide on the issue of referral for referendum, and the respective powers of Parliament and of the people should be clearly separated in this respect. In addition, the role of the President in the holding of referenda ought to be clarified.

On the power of initiative in the matter of the holding of referenda to revise the Constitution, see Part VI *infra*.

Procedure for the nomination of the Prime Minister

6. The nomination of the Prime Minister, as provided for in Article 87, is very complicated. It is provided that priority shall be given to the nomination of the candidate nominated by the party which obtained the greatest number of popular votes; failing this, the President nominates the candidate from the party which obtained the second greatest number of seats; failing which, the party with the third greatest number of seats "names" the Prime Minister; if parliamentary approval is still impossible, Parliament is dissolved. What if another party obtained, in the event, a greater number of seats? In addition, in the absence of an absolute majority of any one party, it would not necessarily be the largest party who would nominate the Prime Minister. Moreover, the two stage parliamentary vote of confidence, first in respect of the Prime Minister (Article 87(3)) and then in respect of the Government (Article 89) is rather unusual.

Treaty-making power

7. Additional clarification of the respective powers of Parliament, of the President and of the government in relation to international treaties would also be desirable. It should be specified in particular when treaties are ratifiable by the President (Article 84(10)) and when ratifiable by the government (Article 91(7)). It must be borne in mind, as well, that it is incorrect to affirm that Parliament "ratifies" and rejects treaties (Article 72(9)): in general, Parliament can approve treaties, but they are always ratified by the executive, which retains the treaty-making power. This could be merely a problem in the translation.

In addition, one can speculate as to the meaning of treaties of a "political" character, referred to in Article 72(9) of the draft.

IV. The organisation of justice and the constitutional court

Independence of the courts

1. A provision guaranteeing the term of office of all judges for life (or until the age of retirement), an essential element in the independence of the judicial power, would be desirable: Article 102, relating only to the Supreme Court, is silent on this point.

2. The participation of the Attorney General in the Supreme Council of Justice, as well as that of the directors of the prosecution service at the option of that organ (Article 109), raises the question of the apparently exaggerated role of the Attorney General in the administration of justice. Whatever the status of a prosecutor, one should not lose sight of the fact that the prosecution is one of the parties to criminal proceedings and that its involvement in the nomination of judges risks creating problems having regard to the requirements of independence and to the principle of equality of arms.

3. The existing provisions governing removal from judicial office are inadequate. Articles 102(4) and 105 appear to be contradictory. It would be preferable to stipulate the precise conditions and procedures for the removal of all judges, and that these be set out in a single provision.

4. On Article 112 and the question of disqualifications, see the observations contained in Part III, supra, points 2 and 3.

Access to courts in respect of administrative matters; review of the legality of administrative action.

5. The Constitution does not expressly guarantee a right of access to the courts in order to challenge alleged violations of the law by the administration other than constitutional violations. While it is true that Article 3 recognises the principle of legality in respect of acts of the administration, the means for reviewing such legality are not defined. In the absence of administrative courts, it may be supposed that the ordinary courts will have jurisdiction in the matter. However, the draft Constitution could usefully specify that this is the solution chosen.

V. Local authorities

It would be desirable, in general, that this fifth chapter be more detailed, and that it should be based in this connection by the existing transitional Constitution. This is the case notwithstanding the existence of implementing legislation.

VI. Final and transitional provisions

The Commission has considered the question of which authority has the initiative in respect of revisions of the Constitution. It emerged from the exchange of views between the Working Group and the Albanian delegation that this initiative is vested in the same organs that enjoy the power to initiate legislation, Article 73 being applicable mutatis mutandis to this matter. Such a solution is in any case more than desirable, and could moreover be expressly provided for.

Finally, it is worth asking whether the procedure for revising the Constitution, in Article 130, is not excessively rigid, and capable of frustrating all attempts at constitutional revision.

II. Co-operation between the European Commission for Democracy through Law and the statutory organs and certain Committees of the Council of Europe, International Organisations and NGOs

1. Co-operation with the Committee of Ministers

The Commission continued to co-operate with the Committee of Ministers of the Council of Europe. The Committee of Ministers requested the Commission for two opinions: one on the Constitution of the Russian Federation and the other on certain constitutional aspects of the situation in Bosnia-Herzegovina.

At its 20th plenary meetings, the Committee held an exchange of views with **Ambassador Overvad, Chair of the Enlarged Group of Rapporteurs on Central and Eastern Europe of the Committee of Ministers (GREL)**.

2. Co-operation with the Parliamentary Assembly

The Parliamentary Assembly of the Council of Europe was represented at all plenary meetings of the Commission and at many of the events it organises.

Furthermore, the Assembly requested the Commission to prepare a study on the legislation and practice governing **parliamentary immunity** in Europe. The Commission is currently considering the request.

3. Co-operation with certain Council of Europe Committees

By decision of the Committee of Ministers of 16 February 1994, the Venice Commission was invited to participate in the work of the Ad Hoc Committee for the Protection of National Minorities (CAHMIN) which the Commission has been following closely.

The Commission also took part in the work of the Project Group on Human Rights and Genuine Democracy (CADDH) where it presented a series of studies *(see below)*.

4. Co-operation with other International Organisations

The **Commission of the European Union** took part in the meetings of the Venice Commission and lent its support to several of the events it organised (particularly UniDem, see below).

The Commission has established closer ties with the **CSCE Office of Democratic Institutions and Human Rights (ODIHR)**. The ODIHR participated in all the Commission's plenary meetings and supported several of its events *(see UniDem below)*. The ODIHR requested the Commission for commentaries on the Draft Constitution of Tadjikistan and on certain Armenian draft laws. At the Commission's 21st meeting, the ODIHR representative, Mr Quinn, indicated the CSCE's interest in co-operating with the Commission and stated that the Commission had been mentioned as a possible co-organiser for several events in the ODIHR's 1995 programme.

Finally, the Commission established links with **the Conference of European Constitutional Courts** which had undertaken to support the Documentation Centre on Constitutional Case-Law. The Venice Commission has been invited to participate in the work of the next Conference to be held in Budapest in 1996 and, possibly, to prepare a paper on one of the topics of the conference.

5. Co-operation with non-governmental Organisations

At its 21st meeting, the Commission was informed of the activities of **International Alert** by the organisation's Secretary-General, Mr Rupesinghe. International Alert, a non-governmental organisation, had been created in 1983-84 by international human rights lawyers for the prevention and resolution of conflicts. The organisation was especially active in Transnistria and Tchetchenia. A particularly successful project undertaken by International Alert was the elaboration of a new Constitution for Fiji aimed at reconciling the indigenous population with the economically more powerful immigrant population. This difficult operation had been carried out with the help of the Vice President of the Venice Commission, Mr Steinberger. The Commission decided to examine the possibility of co-operating with that body on a case by case basis.

III. Studies of the European Commission for Democracy through Law

In 1994 the Commission concluded a series of activities which it had undertaken within the framework of the Council of Europe project "Human Rights and Genuine Democracy".

1. Rule of law and transition to a market economy

At its 18th meeting, the Commission adopted a report on : "*the legal foundation of the economic system during a period of transition from a planned to a market economy*" drawn up on the basis of a study by Prof. Michel Herbiet. The report was also submitted to the CSCE Economic Forum held in Prague from 15 to 17 March 1994.

This report together with the proceedings of the Moscow and Sofia Seminars were published in Volume 8 of the Collection Science and Technique of Democracy which was devoted to "Constitutional Aspects of the Transition to a Market Economy".

2. The protection of minorities

Throughout 1994, the work of the Sub-Commission on the Protection of Minorities and of the Sub-Commission on the Federal State and Regional State focused on the problem of the protection of minorities. This work was aimed at drawing up two consolidated reports, one on the rights of minorities in domestic law in general and the other on the protection of minorities in a federal and regional State in particular.

The consolidated report on the rights of minorities is based principally on the answers to the questionnaire on the rights of minorities drawn up by the Venice Commission. In all, the Commission received answers from 28 countries. The consolidated report, is by no means an exhaustive study of comparative law on the protection of minorities, but shows the variety of legislative models which have been established and which reflect the complexity of practical situations and the variety of solutions adopted by different States to deal with the problem. The report is a digest of the legislative practice of a number of European States.
The consolidated report on the protection of minorities in federal and regional States was prepared on the basis of the national reports of seven countries: Austria, Belgium, Canada, Germany, Italy, Spain and Switzerland. The report sets out to define certain types of rules on the protection of minorities which are specific to certain federal or regional States and to show at the same time the extent to which the federal or regional structure of a State can provide an adequate protection of minorities.

Both reports were adopted at the 20th plenary meeting (9-10 September 1994) and forwarded to the Steering Committee for Human Rights (CDDH) the Committee of Legal Advisers on Public International Law (CAHDI) and the Ad Hoc Committee of Experts for the Protection of Minorities (CAHMIN).

3. Emergency powers of the Government

The Commission adopted a consolidated report on Emergency Powers. In all, the Commission received reports from 32 countries (Albania, Austria, Canada, Croatia, Cyprus, Denmark, Finland, Germany, Greece, Hungary, Ireland, Italy, Japan, Kyrghystan, Latvia, Liechtenstein, Lithuania, Luxembourg, Malta, Norway, Poland, Portugal, Romania, Russia, San Marino, Slovakia, Spain, Sweden, Switzerland, Turkey and the United States of America). The consolidated report, which was drawn up by Mr Özbudun and Mr Turhan, can serve as a digest of the legislative practice of several European States in this area.

The report contains a list of recommendations for States undertaking constitutional reform.

The report was adopted at the Commission's 20th meeting and forwarded to the European Committee on Legal Co-operation (CDCJ) and the Steering Committee for Human Rights (CDDH).

4. Recommendations for the Construction of a Teaching Module on Media Law for teachers in schools of Journalism and Radio/Television Broadcasters in Central and Eastern Europe and the CIS

At its 21st meeting, the Commission adopted the report on "*Human Rights and Democratic Institutions: Recommendations for the construction of a teaching module on media law for teachers in schools of journalism and radio/television broadcasters in Central and Eastern Europe and the CIS*", drawn up for the Commission by the European Centre for Journalism in Maastricht. The report has been forwarded to the Steering Committee on the Mass Media (CDMM) and the Information Centre on Human Rights.

5. Study on the consequences of State succession for nationality

At its 21st meeting, the Commission appointed Mr Economides, Mr Kedzia, Mr Klucka and Mr Malinverni rapporteurs for the "Study of the consequences of State succession for nationality". Further to the request of the Committee of Experts on Multiple Nationality (CJ-PL) to co-operate with the Commission in studying this topic, the rapporteurs' group will also include two co-rapporteurs from the Committee, Mr Kojanec and Mr Schaerer.

IV. Documentation Centre on Constitutional case-law

The Commission's principal activity in this field consisted of studying ways and means of improving the Bulletin on Constitutional Case-Law and the establishment of a constitutional case-law data bank. The Conference of European Constitutional Courts decided to support the Commission's project.

The Bulletin on Constitutional case-law represents an important step towards the goal of a fully functioning Documentation Centre on Constitutional case-law, which will collect the most important judgements of Constitutional Courts and other equivalent bodies and make them easily accessible to any interested party. The Commission is firmly convinced that constitutional jurisdictions have a primary role to play in the consolidation of the rule of law and that it is of vital importance for democracies both old and new to exchange information and ideas in the field of judge made law. The Bulletin's aim is to foster such exchanges and to assist national judges in solving critical questions of law which often arise simultaneously in different countries.

Three issues of the Bulletin were published in 1994. The number of Constitutional Courts and other equivalent bodies participating in the Bulletin on Constitutional Case-Law has more than doubled. In addition to the European Court of Human Rights, 14 more countries participated in the last edition of the Bulletin than in 1993. In all, 27 courts are participating in the preparation of the Bulletin.

The 1994 Special Edition of the Bulletin contains a short description of 29 Supreme and Constitutional Courts, their powers and their procedures. The special edition of the Bulletin which places the case law of the constitutional courts in context, is an indispensable addition to the Bulletin on Constitutional Case-Law.

The steady growth in the Bulletin's circulation must be ascribed to the co-operation of the liaison officers who provide the Secretariat with the addresses of the Ministries, courts, universities and institutes which wish to receive the Bulletin regularly. The Commission also decided to charge an annual subscription to the Bulletin as this would enable it to be disseminated on the understanding, however, that the Secretariat would be instructed to send it free of charge as far as possible, to subscribers in Central and Eastern Europe.

The Commission decided to establish a **computerised constitutional case-law data-base**. The Secretariat was instructed to take the necessary steps to set up the data base.

V. The UniDem (Universities for Democracy) Programme

At its 19th meeting, the Commission approved the proposal from the President to co-opt Professor Masterson, Rector of the European University Institute in Florence, Professor Evans, Director of Johns Hopkins University in Bologna and Professor Fragniere, Rector of the European College in Bruges to the Governing Board of its "Universities for Democracy" programme (UniDem). At the 21st meeting, Mr Heinrich Koller, Professor at the University of Basle, Director of the Swiss Federal Justice Office and President of the Council of the Swiss Institute of Comparative Law was also co-opted to the Governing Board.

The Commission organised several seminars within the framework of this programme :

1. Seminar on "The Role of the Constitutional Court in the Consolidation of the Rule of Law" (Bucharest, 8-10 June 1994)

On a proposal from and in co-operation with the Constitutional Court of Romania, the European Commission for Democracy through Law organised a UniDem seminar on "The Role of the Constitutional Court in the Consolidation of the Rule of Law". The Commission wishes to thank the Romanian Ministry of Foreign Affairs for its assistance and the Bureau for Democratic Institutions and Human Rights of the CSCE and the Japan Foundation for their financial support. The seminar was opened by Mr Ion Iliescu, President of Romania; the Minister of Foreign Affairs, Mr Melescanu was present at the opening session and the President of the Chamber of Deputies, Mr Nastase, chaired one of the working sessions.

The seminar was intended as a multilateral event involving the new constitutional courts of Central and Eastern Europe. It attracted great interest among these courts and was attended by representatives of 18 Constitutional Courts and other bodies from Central and Eastern Europe and from Central Asia with responsibility for constitutional matters. The theme chosen for the seminar was highly topical in view of the fact that almost all the former Communist countries have set up Constitutional Courts or courts with wide-ranging powers in constitutional matters. These courts will have a key role to play in the consolidation and development of the rule of law in their respective countries. An exchange of experiences between these courts and with Western judges and specialists in constitutional law is therefore of the highest importance. In addition to the opening speeches by President Iliescu, the President of the Romanian Constitutional Court, Mr Gionea, and the President of the European Commission for Democracy through Law, Mr La Pergola and the closing address by Mr Badinter, President of the French Constitutional Council, 8 reports were presented at the seminar, 4 by members of the Romanian Constitutional Court and 4 by representatives of Western Constitutional Courts.

The proceedings of the Seminar have been published in Volume 10 of the Collection Science and Technique of Democracy.

2. UniDem Seminar on" The modern concept of confederation" (Santorini, 23-25 September 1994)

The seminar on "the modern concept of confederation", organised by the Commission in co-operation with the Greek Ministry of Foreign Affairs, brought together in Santorini politicians, senior judges, academics and high ranking officials from 18 countries of Europe and Central Asia (Belgium, Bosnia-Herzegovina, Bulgaria, Croatia, Cyprus, Finland, Greece, Italy, Kyrgyzstan, Latvia, Lithuania, the Netherlands, Romania, Russia, Spain, Switzerland, Ukraine and the United Kingdom). Representatives of the Parliamentary Assembly of the Council of Europe, the CSCE and the European Union were also present.

The participants exchanged views on the historical development of the concept of confederation on the basis of reports presented by Mr Kitromilides (Greece) and Mr Aubert (Switzerland). The classical and modern concepts of confederation were also discussed on the basis of reports by Mr Malinverni (Switzerland) and Mr Forsyth (United Kingdom).

The participants examined the Agreement concerning the establishment of a confederation between Croatia and Bosnia-Herzegovina (Washington Agreements) and its constitutional aspects. The evolution of the concept of confederation in the context of the Commonwealth of Independent States (C.I.S.) was examined in detail on the basis of reports by Mr Vitruk, President a.i. of the Constitutional of the Russian Federation, and Mr Yuzkov, President of the Constitutional Court of the Ukraine. The possibility of the Baltic States and the States of Central Asia developing towards some form of confederation was presented by Mr Lapinskas, judge at the Constitutional Court of Lithuania, Mr Endzins, President of the Legal Affairs Commission of the Saeima of Latvia, and Mr Kosakov, President of the Supreme Economic Court of Kirgizstan.

The participants examined the different aspects of the new idea of confederation in Europe and the experience of the European Union, on the basis of report by Mr Lejeune (Belgium).

The proceedings of the seminar will be published in the Collection Science and Technique of Democracy.

3. Round Table on the "Implementation of constitutional provisions regarding mass media in a pluralist democracy", (Nicosia, 16-18 December 1994)

Within the framework of its UniDem programme, the European Commission for Democracy through Law organised a Round Table on "The implementation of constitutional provisions regarding mass media in a pluralist democracy", in Nicosia (Cyprus) in co-operation with the Office of the Attorney General of the Republic of Cyprus and with the support of the Commission of the European Union. Constitutional court judges, academics, media experts and journalists from member States of the Council of Europe as well as from Albania, Croatia, Georgia, Kirgizstan, Latvia and Russia attended the Round Table. Representatives from the Parliamentary Assembly of the Council of Europe, the European Court of Human Rights, the Steering Committees for Human Rights (CDDH) and on Mass Media (CDMM) and the European Commission also participated in the work of the Round Table which was opened by Mr Glafkos Clerides, President of the Republic of Cyprus following speeches by Mr Alecos

Evangelou the Minister of Justice and the Presidents of the Supreme Court and the Bar Association of Cyprus and by Mr Vitruk, President a.i. of the Constitutional Court of the Russian Federation.

On the basis of reports by Professor Guy Drouot, Professor Gabor Halmai, Mr Karol Jakubowicz and Mr Arthur Plunkett, the participants discussed the role of the mass media in monitoring the exercise of political power in a pluralist democracy, the role of the constitutional courts and other similar bodies in ensuring the freedom of the press, the problems raised by the State monopoly of the electronic media and the large concentration of private broadcasters, as well as the current rules governing access to official information. The participants stressed the need to protect the independence of the media vis-a-vis the executive authority and the plurality of information sources as essential factors in the development of the democratic awareness of the general public.

The proceedings of the round table will be published in the Collection Science and Technique of Democracy.

VI. Propositions for Future Activities

1. Constitutional Reforms

In 1995 the Commission will continue its examination of several constitutions in the process of being drafted, namely the **constitutions of Georgia, Albania and the Ukraine**. The Commission has also been requested by **Belarus** to examine the effectiveness of the law on the Constitutional Court by studying the practical and technical aspects of its implementation.

2. Study on the functioning of democratic institutions

In May 1994, the Commission drew the attention of the Committee of Ministers to the fact that, since the process for adopting of the new Constitutions laying down the principles of democratic pluralism, the rule of law and respect for the fundamental rights of the individual was reaching completion, the emphasis should be shifted to the effective application of these principles as enshrined in the constitutional texts and laws. The Commission would henceforth also be called on to fulfil this role which is vested in it by its Statute, while at the same time continuing its work on constitutional reform and other tasks. The Commission will hold a special meeting devoted, inter alia, to this question, at the end of 1995.

3. Forthcoming UniDem Seminars

Preparations are under way for a UniDem seminar on **"Constitutional justice and consultative democracy"**, to be held in Strasbourg on 23 and 24 June 1995. The discussions will focus on judicial review of the validity of a referendum by a constitutional judge and on the constitutional jurisdiction and review of the material validity of texts submitted to a referendum.

A second UniDem Seminar will be organised in co-operation with the Constitutional Court of Croatia and the ODIHR of the OSCE on the **"Protection of fundamental rights by the Constitutional Courts"** in Brioni on 23 and 24 September 1995. The topics proposed are : Rights suitable for protection by constitutional complaint procedures; Procedures other than constitutional complaints for protecting human rights; Admissibility requirements for constitutional complaints and mechanisms for avoiding an excessive case load; Remedies and effects of decisions in constitutional complaint procedures.

A third UniDem Seminar could be organised in South Africa on topics proposed by the South African authorities.

A P P E N D I X I

LIST OF MEMBERS OF THE EUROPEAN COMMISSION FOR DEMOCRACY THROUGH LAW

Mr Antonio LA PERGOLA (Italian), President, Advocate General at the Court of Justice of the European Communities
(Substitute : Mr Sergio BARTOLE, Professor at the University of Trieste)

Mr Helmut STEINBERGER (German), Vice-President, Director of the Max-Planck Institute, Professor at the University of Heidelberg

Mr Michael TRIANTAFYLLIDES (Cypriot), Vice-President, Attorney General of the Republic

Mr Alexandre DJEROV (Bulgarian), Vice-President, Advocate, Member of the National Assembly
(Substitute : Mrs Ana MILENKOVA, Member of the National Assembly)

Mr Constantin ECONOMIDES (Greek), Professor at Pantios University, Director of the Legal Department, Ministry of Foreign Affairs
(Substitute : Ms Fani DASKALOPOULOU-LIVADA, Assistant Legal Adviser, Legal Department, Ministry of Foreign Affairs)

Mr Giovanni GUALANDI (San Marino), Vice-President of the Council of Presidency of the Legal Institute of San Marino

Mr Giorgio MALINVERNI (Swiss), Professor at the University of Geneva

Mr Franz MATSCHER (Austrian), Professor at the University of Salzburg, Judge at the European Court of Human Rights
(Substitute : Mr Klaus BERCHTOLD, Bundeskanzleramt, Vienna)

Mr Ergun ÖZBUDUN (Turkish), Professor at the University of Ankara, Vice President of the Turkish Foundation for Democracy

Mr José Menéres PIMENTEL (Portuguese), Ombudsman
(Substitute : Mr Antonio VILHENA DE CARVALHO, Office of Comparative Law, Attorney General's Office)

Mr Hans RAGNEMALM (Swedish), Judge at the Court of Justice of the European Communities

Mr Gérard REUTER (Luxembourg), President of the Board of Auditors

Mr Matthew RUSSELL (Irish), Senior Legal Assistant to the Attorney General

Mr Jean-Claude SCHOLSEM (Belgian), Dean of the Law Faculty at the University of Liège

Mr Antti SUVIRANTA (Finnish), Former President of the Supreme Administrative Court
(Substitute : Mr Matti NIEMIVUO, Director at the Department of Legislation, Ministry of Justice)

Mr Jacques ROBERT (French), Honorary President of the Paris University of Law, Economics and Social Science, Member of the Constitutional Council

Mr Jan HELGESEN (Norwegian), Professor at the University of Oslo

Mr Gerard BATLINER (Liechtenstein), President of the Academic Council of the Liechtenstein Institute

Mrs Hanna SUCHOCKA (Polish), Member of Parliament
(Substitute : Mr Zdzislaw KEDZIA, Minister Plenipotentiary, Counsellor at the Permanent Mission of Poland to the United Nations)

Mr Godert W. MAAS GEESTERANUS (Dutch), Former Legal Adviser to the Minister of Foreign Affairs

Mr János ZLINSZKY (Hungarian), Judge at the Constitutional Court

Mr Joseph SAID PULLICINO (Maltese), Judge

Mr Ján KLU_KA (Slovakian) , Judge at the Constitutional Court

Mr Magnus Kjartan HANNESSON (Icelandic), Professor at the University of Iceland

Mr Luis AGUIAR DE LUQUE (Spanish), Director of the Centro de Estudios Constitucionales
(Substitute: Mr Jaime NICOLAS MUNIZ, Deputy Director of the Centro de Estudios Constitucionales)

Mr Peter JAMBREK (Slovenian), Former President of the Constitutional Court, Judge at the European Court of Human Rights
(Substitute : Mr Anton PERENIC, Professor of Law, former Judge of the Constitutional court)

Mr Kestutis LAPINSKAS (Lithuanian), Judge, Constitutional Court

Mr Petru GAVRILESCU (Romanian), Specialist, Directorate for Human Rights, Ministry for Foreign Affairs

Mr Asbjørn JENSEN (Danish), Attorney General

Mr Cyril SVOBODA (Czech), First Deputy Minister of Justice

ASSOCIATE MEMBERS

Mr Aleks LUARASI (Albanian), Professor at the University of Tirana

Mr Nicolas VITRUK (Russian), Acting President of the Constitutional Court

Mr Aivars ENDZINS (Latvian), Chairman of the SAEIMA Legal Affairs Committee

Mr Stanko NICK (Croatian), Chief Legal Adviser, Ministry of Foreign Affairs

Mr Leonid YUZKOV (Ukrainian), President of the Constitutional Court
(Substitute : Mr Petro MARTINENKO, Professor of Comparative Law)

Mr Boris NEGRU (Moldovan), Head of the Section of Legislative Affairs, Moldovan Parliament
(Substitute : Mr Eugen RUSU, Chairman of the Legal Affairs Committee, Parliament of Moldova)

Mr Avtandil DEMETRASHVILI (Georgian), Secretary of the State Constitutional Commission

Mr Valery ROMASKO (Belorussian), Deputy Director, Institute of Public Administration and Legislation

OBSERVERS

Mr Gérald BEAUDOIN (Canadian), Professor at the University of Ottawa, Senator

Mrs Nancy ELY-RAPHEL (American), Principal Deputy Assistant Secretary of State, Bureau of Human Rights and Humanitarian Affairs

Mr Vincenzo BUONOMO (Holy See), Professor of International Law at the Latran University

Mr Serikul KOSAKOV (Kyrgyz), President of the Supreme Economic Court

Mr Masato ITO (Japanese) Consul, Consulate General of Japan, Strasbourg

A P P E N D I X II

OFFICES AND COMPOSITION OF THE SUB-COMMISSIONS

- President : Mr La Pergola

- Vice-Presidents : Mr Steinberger, Mr Triantafyllides, Mr Djerov

- Bureau : Mr Ragnemalm, Ms Suchocka, Mr Reuter, Mr Pimentel Chairmen of Sub-Commissions - Mr Russell, Mr Malinverni, Mr Economides, Mr Özbudun, Mr Scholsem, Mr Matscher

- Constitutional Justice : Chairman Mr Russell - members: Bulgaria, Cyprus, Denmark, Finland, France, Germany, Hungary, Italy, Liechtenstein, Luxembourg, Malta, Poland, Portugal, Sweden, Turkey, Romania, Slovenia.

- Federal State and Regional State : Chairman Mr Malinverni - members: Austria, Belgium, Cyprus, Germany, Greece, Italy, Poland, Spain, Croatia, Canada, USA.

- Relations between international law and domestic law : Chairman Mr Economides - members: Bulgaria, Finland, Germany, Italy, Norway, Switzerland, Slovenia.

- Emergency powers of the government : Chairman Mr Ozbudun - members: Finland, 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, Croatia, 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, France, Germany, Netherlands, Norway, Poland, Portugal, Spain, Turkey, Holy See.

- South Africa : Chairman Mr La Pergola - members Cyprus, Netherlands, Norway, Poland, Sweden, Switzerland, Canada, USA.

A P P E N D I X III

MEETINGS OF THE EUROPEAN COMMISSION FOR DEMOCRACY THROUGH LAW IN 1994 [1]

Plenary Meetings

18th meeting 25-26 February
19th meeting 13-14 May
20th meeting 9-10 September
21st meeting 11-12 November

Bureau

6th meeting - Meeting enlarged to include the Chairmen of Sub-Commissions
- 13 May
7th meeting - Meeting enlarged to include the Chairmen of Sub-Commissions
- 9 September
8th meeting - Meeting enlarged to include the Chairmen of Sub-Commissions
- 11 November

SUB-COMMISSIONS

Minorities

11th meeting 12 May
12th meeting 7 September

Constitutional Justice

Joint Meeting with the UniDem Governing Board
- 12 May

Meeting with Liaison officers from Constitutional Courts for the establishment of a Documentation Centre
6th meeting 9-10 November

Constitutional Reform

Exchange of views on the Georgian draft Constitution
- 6-9 July (Tblisi)

Meeting on the Draft Consitution of Albania
- 27 October (Strasbourg)

Federal and Regional State

Joint meeting with the UniDem Governing Board
- 12 May

[1] All meetings took place in Venice unless otherwise indicated.

Rule of law and transition to a market economy
3rd Meeting 24 February

Emergency Powers
3rd meeting 24 February
4th meeting 12 May
5th meeting 8 September

UniDem Governing Board
8th meeting 24 February
Joint meeting with the Sub-Commissions on the Federal and Regional State and on Constitutional Justice
- 12 May
10th meeting 10 November
11th meeting 5 December (Luxembourg)

SEMINARS AND CONFERENCES

UniDem Seminar on the role of the Constitutional Court in the consolidation of the Rule of Law
- 8-10 June (Bucharest)

UniDem Seminar on the Modern Concept of Confederation
- 23-25 September (Santorini)

Round Table on the Implementation of Constitutional Provisions regarding Mass Media in a pluralist democracy
- 16-18 December (Nicosia)

Attendance at Economic Forum of the CSCE
- 14-17 March (Prague)

Attendance at CSCE Seminar on Local Democracy
- 16-19 May (Warsaw)

Attendance at Konrad Adenauer Stiftung Working Group "Democracy and Law"
- 29 September (Bonn)

A P P E N D I X IV

LIST OF PUBLICATIONS

Collection [1]
Science and technique of democracy

No. 1: Meeting with the presidents of constitutional courts and other equivalent bodies
Piazzola sul Brenta, 8 October 1990 [2]

No. 2: Models of constitutional jurisdiction
by Helmut Steinberger [3]

No. 3: Constitution making as an instrument of democratic transition
Istanbul, 8-10 October 1992

No. 4: Transition to a new model of economy and its constitutional reflections
Moscow, 18-19 February 1993

No. 5: The relationship between international and domestic law
Warsaw, 19-21 May 1993

No. 6: The relationship between international and domestic law
by Constantin Economides [3]

No. 7: Rule of law and transition to a market economy
Sofia, 14-16 October 1993

No. 8: Constitutional aspects of the transition to a market economy
Collected texts of the European Commission for Democracy through Law

No. 9: The Protection of Minorities
Collected texts of the European Commission for Democracy through Law

No. 10: The role of the constitutional court in the consolidation of the rule of law
Bucharest, 8-10 June 1994

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1. Also available in French
2. Speeches in the original language
3. Also available in Russian