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EUROPEAN COMMISSION FOR DEMOCRACY THROUGH LAW

(VENICE COMMISSION)

ANNUAL REPORT OF ACTIVITIES FOR 1999

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VOLUME I

Presentation of the Commissions Activities

PRESENTATION OF THE VENICE COMMISSIONS

REPORT OF ACTIVITIES FOR 1999

Statement byMr Antonio La Pergola, President of the Venice Commission to the Committee of Ministers (3 May 2000)

Mr Chairman, Ambassadors, Ladies and Gentlemen,

I hardly need to recall that this year marks the 10th anniversary of our Commission. You have all been invited to the celebrations scheduled in Venice for June 17. I hope that many of you will be able to join us there in view of this special event.

Meanwhile, I have the privilege of addressing, as I do every year, this distinguished Strasbourg audience. May I take advantage of todays occasion to evaluate, in your presence, how the Venice Commission has developed thus far and sketch, in addition, our priorities for the future.

Let us look back. The Commission was set up within the Council of Europe to provide a collective service of assistance on constitutional matters for the democracies which would be arising from the ashes of the Soviet bloc. It has been fulfilling its appointed tasks ever since the eve of that turning point in history which was the breakdown of the hideous divide of Europe into two opposite camps. Our reputation as a highly qualified team of legal experts has been firmly established. Our Commission has always been known to work in total independence from the national governments by which its members are appointed. It has come to be trusted as an impartial body of advisers who can help the country concerned to settle constitutional questions, no matter how hard or divisive, as far as possible in accordance with generally recognised European standards. We are proud to have witnessed the advent of the rule of law and democracy throughout our continent and we are grateful to have played a growing role in this process, with the rise in membership and importance of the Council of Europe where we belong. The thrust of our initial commitment was, to be sure, participating in the constituent season of the emerging democracies. In the course of the 1990s, democratic constitutions have been adopted by most countries of central and eastern Europe and as a result we have been concerned with their subsequent and often laborious implementation. Now we are experiencing the first wave of constitutional amendments. In fact, a pressing need for constitutional revision is clearly discernible in countries like Ukraine, Moldova and Armenia. Here there is friction or outright conflict between the president and parliament and the underlying issue is if and how their respective powers should be better balanced by improving on the arrangements of the present basic text. Another critical area in which the Commission has been involved is that of the self-rule granted, on ethnical or other grounds, to certain territories within unitary or even federal states, such as Kosovo, Bosnia and Herzegovina, Crimea and Transnistria.

Apart from all this, the Commission has in several cases gone beyond a pure and simple advisory function. To be more precise, it is frequently asked to interpret normative texts already in force, rather than recommend or comment on the adoption of new ones. Examples of this quasi-judicial kind are the Commissions recent opinion on the constitutionality of the death penalty in

Albania and Ukraine, as well as the controversial referendum called by the President of this latter country. Once again, it is impartiality that counts to develop the Commissions potential in this new direction. Equally important is its ability to spell out conveniently the common European standards on which it can rely to provide its own reading of the text at hand. It is worth noting that such a Europe centred approach to interpretation, and the resulting opinions of the Commission, have been endorsed by the constitutional courts in the countries whose legislation was at issue. This trend may lead to a fruitful spreading and sharing of common constitutional values on the entire scale the Council of Europe has acquired. And the best case in point is precisely afforded by the judicial ban on the death penalty, since we can ascribe its generalisation to a common European principle received, as it were, into all the national legal systems.

The Commissions role has expanded, furthermore, in order to embrace questions on how to maintain peace along with democracy. There are indeed situations in which these two values are inseparable and must be jointly protected. The Commission has therefore been called upon by the Council to explore and suggest by what kind of legal engineering such a twofold guarantee of peace and democracy could be put into place. This is the case with areas hit and torn by violence, whose democratic future, once peace is restored, is bound to remain uncertain and require effective prevention of setbacks. Now, working for the Council of Europe comes within our statutory responsibilities. We have been honoured to co-operate with its organs and this co-operation has become a welcome and natural duty, particularly so, as our record shows, with the Parliamentary Assembly and the Congress of Local and Regional Authorities. I would like to remind, if I may, the Committee of Ministers too, and the Secretary General, that the Commission is at their disposal whenever they think of making more use of its services.

We are within our remit focussing on peace-keeping as a necessary condition of democratic security in South East Europe. Actions to maintain stability in this sensitive area are being carried out by different institutions. The Commission is of course aware that such efforts should dovetail to avoid fragmentation and maximise effectiveness. And to this effect, it is also co-operating with institutions outside the Council of Europe. Close contacts with the Office of the High Representative in Bosnia and Herzegovina, UNMIK, ODIHR and the OSCE have been maintained and help to avoid needless duplication of effort. With the European Commission I am pleased to report on the conclusion of a Joint Programme, entitled Strengthening democracy and constitutional development in central and eastern Europe and CIS countries . The Venice Commission very much appreciates this support, which will enable it to increase its activities over the programmes two year duration.

Moreover, the Commission is active in the Stability Pact for South East Europe and at the end of last year organised a conference in Slovenia on The contribution of constitutional arrangements for the stability of South East Europe . We have recently set up a Sub-Commission on South East Europe to give this region the attention it deserves. Co-operation with Bosnia and Herzegovina continues to be a major focus of the Commissions activities, particularly in the context of its possible accession to the Council of Europe. Last year alone we adopted four opinions and one report and have ongoing work on three other issues. In the future, we will be looking principally at the fusion of the Human Rights Chamber and the Constitutional Court and at a re-orientation of the activities of the Ombudsman towards more traditional ombudsman functions, such as mediation, rather than pleadings before courts. Furthermore, in co-operation with the Office of the High Representative, we will try to establish a State Court of Bosnia and Herzegovina, - a federal court, conceivably, which would deal with questions of administrative law, criminal law and electoral law at the state level. In this connection, we will be organising a seminar on federalism in Bosnia and Herzegovina later this year with the German authorities.

Other ongoing assignments include the legal system in Kosovo, the reform of the state institutions in Bosnia and Herzegovina at the end of the transitional period foreseen by the Dayton Agreement, the reform of the legal system concerning minorities in Croatia and the conformity of constitutional reform in Moldova with the democratic standards of the Council of Europe.

There is another side to our record, an important one that I cannot leave unnoticed here. The Commission has taken on the added value of a permanent workshop on applied constitutional law, on the legal techniques of democracy, though it also produces its own views and proposals about transnational integration, most notably with regard to the European case. We are keen on steeling ourselves as a think-tank that can engage in research, reflection and debate, not in a purely academic sense, of course, but to accomplish in-depth analysis of issues actually raised before the Commission or likely to interest its work as an expert body. To serve this purpose, we publish a number of reports and run the nourished series of UniDem seminars, each conceived as a sort of common room for constitutional experts. By these initiatives, we cover a number of salient topics in our field of interest and try to read as lawyers the signs of our time. Suffice it to recall the attention we have reserved to the problems of federalism, minorities and European citizenship, and the emphasis laid on constitutional justice through our Bulletin, database and the exchange of information in the meetings we promote so that recently established courts may draw for their case-law on the experience of their older counterparts.

In this as well as in other respects, the Commission is a novel thing and has filled a void, for no comparable body existed previously. The sheer number of its members amply demonstrates that there were good reasons to create it and develop its role, as has been done. With the United Kingdom, Georgia and Andorra alljoining recently, our number has risen to 40 from an initial figure of 18. But it is not just in Europe that interest for the VeniceCommission has grown. We are happy to encourage links with non-European countries wherever this may contribute towards promoting the values for which the Council of Europe stands. It is a way of answering an outside,

genuine interest in Europe, of working for Europe by reason of what Europe means to lawyers in other continents who cherish its world of constitutional values. The Republic of Koreaobtained observer status with the Commission last year and the Secretary of State for Human Rights of Brazil participated in a recent meeting. The VeniceCommission also concluded an agreement with the Association of Constitutional Courts using the French Language known as ACCPUF to allow it to use the structure of the Bulletin on Constitutional Case-Law and the CODICES data base for its own journal and database. Furthermore, within the framework of its programme with South Africa,the Venice Commission co-organised a conference at the end of last year to review the development of constitutionalism in Southern Africa over the past 40years. The conference looked at the possibility of creating a Southern African Commission for Democracy and Constitutionalism, on the model of our own Commission. We are currently helping this sister Commission to get off the ground. It would provide a means to strengthen democracy in Southern Africa, propogate European values in that region and maintain a link between our two continents. Indeed, had such a Commission already been set up, it could possibly have been of assistance in the current crisis in Zimbabwe.Similar initiatives are also being considered by certain Latin American countries that have long been interested in the Commissions working methods and achievements.

This inevitably leads to the question of the revision of the Venice Commissions statute, which has been put on hold in the wake of the Wise Persons Report, to an enlarged partial agreement. I hope that this issue can be tackled again in the near future, in order that a satisfactory framework can be found to take the activities of the Venice Commission forward during the next ten years and beyond.

Our priorities will be guided, in the future as they have been in the past, by political priorities on our continent. Thus, South East Europe and the Caucasian countries will remain the focus of our energies in the foreseeable future. In terms of substance, we have now entered a further stage of constitutional assistance, that of fine-tuning the constitutions we helped to draft over the past ten years to the particular requirements of individual countries. We will also devote the best of our efforts to constitutional mediation, if and when, in the face of conflictual situations, this is required of us as legal experts by the political authorities that consult the Commission. We shall expand our initiatives in the area of constitutional justice, which is essential to the very soundness and growth of constitutional democracy on our continent. We shall not fail either, I trust, to grow as a laboratory of blueprints for the ordering of democracy and as a research centre we can put to fruition in fulfilling our duties. The UniDem seminars we are running may develop into UniDem campuses, one of which we expect to establish within the framework of the Stability Pact in Trieste to serve for the training of lawyers and civil servants in South East Europe. Some much needed help has already been earmarked for this initiative and we hope to receive more in the near future. And our enduring priority, more in general, remains, let me conclude, to go on deserving the encouragement we need and we have always received from the Committee of Ministers, for which I wish to thank you wholeheartedly. And once again, let me say how much I am looking forward to seeing you in Venice at our forthcoming celebrations.

MEMBERSHIP

At the end of 1999, the Commission totalled 39 full members, 4 associate members and 9 observers.

Members

During 1999 the United Kingdom and Georgia acceded to the Partial Agreement. Mr Avtandil Demetrashvili, Chairman of the Constitutional Court of Georgia and Mr Gela Bezhuashvili, Director, Department of International Law, Ministry of Foreign Affairs, were nominated member and substitute member in respect of Georgia. The United Kingdom has not yet nominated its member.

Mr Vital Moreira, Professor, Law Faculty, University of Coimbra was appointed member in respect of Portugal, replacing Mr Armando Marques Guedes whose mandate had expired. Mr Pieter van Dijk, State Councillor, Former Judge at the European Court of Human Rights, and Mr Erik Lukacs, former Legal Adviser, Ministry of Justice member and substitute member in respect of the Netherlands, respectively replacing Mr Godert Maas Geesteranus who resigned his mandate.

In addition, Ms Ivana Janu, Vice-President of the Constitutional Court of the Czech Republic was appointed substitute member in respect of the Czech Republic.

Associate members

Mr Gaguik Harutunian, Chairman of the Constitutional Court of Armenia was appointed associate member in respect of Armenia, replacing Mr Khatchig Soukiassian.

Observers

The Republic of Korea obtained observer status and nominated Mr Choi Dwa-Hwa, Ambassador of the Republic of Korea to Belgium, Luxembourg and the European Union as its observer on the Commission.

Mr Yoshihide Asakura, Consul, Consulate General of Japan was appointed observer in respect of Japan replacing Mr Akira Ando.

In addition, Mr Gregori, Secretary of State for Human Rights of Brazil participated in the 41st Plenary Meeting. He considered it important that Brazil should be involved in the Commissions work and a request for observer status should shortly be received.

The full list of members, associate members and observers by order of seniority is set out in Appendix I to this report.

Sub-Commissions

No new Sub-Commissions were created during 1999. However, at its 39th Plenary Meeting the Commission set up a Task Force on autonomy in crisis, as in the Balkans, and more specifically Kosovo, Nagorno-Karabakh, Moldova, etc., made up of members of the Commission with relevant experience.

The composition of the Sub-Commissions is set out in Appendix II to this report.

ACTIVITIES

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

During 1999 the Venice Commission continued its work on constitutional reform and the effective functioning of democratic institutions. The Commission was active on the whole continent but the conflict in Kosovo and the consolidation of peace in South-East Europe were naturally a major part of its work.

The strengthening of peace and democracy in those areas affected by violence and with an uncertain democratic future are the Commissions political priority for the year 2000. The judicial system in Kosovo, the reform of the State institutions in Bosnia and Herzegovina at the end of the transitional period foreseen by the Dayton Agreement, the reform of the legal system concerning minorities in Croatia and the conformity of constitutional reform in Moldova with the democratic standards of the Council of Europe are the Commissions priority activities.

A short description of the Commissions work in this area (Part A) is followed by the list of some opinions which the Commission has decided to make public (Part B). The text of these opinions appears in Volume II.

Description of the Commissions activities

1. CO-OPERATION WITH ALBANIA

Compatibility of the death penalty with the Albanian Constitution

Following a request from the Parliamentary Assembly, the Commission drew up an opinion on the compatibility of the death penalty with the Albanian Constitution. At the Commissions 38th Plenary Meeting, Ms Suchocka presented the opinion on the compatibility of the death penalty with the Albanian Constitution which she had drawn up with Mr Malinverni. The Albanian Constitution does not contain any express provision authorising, prohibiting or abolishing the death penalty, but the overall logic of the Constitution, Albanias international commitments and European standards in general all suggest that the death penalty is incompatible with the Albanian Constitution.

In particular :

- the absence of an explicit constitutional basis for allowing the death penalty;

- the absence of any exception (express or implied) to the protection of life provided for in Article 21 of the Constitution, which only incorporated the general rule of Article 2 of the ECHR (right to life) without also incorporating the exception (death penalty);

- the important position given to the protection of life by its placement at the top of the hierarchy of rights laid down in the Constitution;

- the requirement that any limitations on rights and freedoms laid down in the Constitution should not infringe the essence of these rights and freedoms;

- the fact that the constitutional prohibition of cruel, inhuman or degrading torture, punishment or treatment and the fundamental importance of the dignity of the individual enunciated in Article 3 of the Constitution and its Preamble left no room, in practice, for imposing and carrying out the death penalty in Albania;

- the trend in European legal policy towards the abolition of the death penalty.

At its 38th Plenary Meeting the Commission adopted its opinion on this subject and decided to forward it to the Parliamentary Assembly. The text of this opinion is reproduced in Volume II.

At its 41st Plenary Meeting the Commission was informed that the Albanian Constitutional Court decided that the death penalty was unconstitutional in line with the Commissions opinion. This decision was welcomed.

Draft Law on the organisation and functioning of the Constitutional Court

At the request of the Constitutional Court of Albania, the Commission examined the draft Law on the Organisation and Functioning of the Constitutional Court, which had been elaborated by the members of the Court. Messrs. Solyom, Bartole and Lopez Guerra were appointed rapporteurs and presented written comments. On the basis of these comments, the Court prepared a revised draft which was the subject of discussion at a meeting between the Court and Messrs Bartole and Lopez Guerra in Tirana on 8 November 1999. The rapporteurs noted that many of their comments had already been taken into account in this revised text and made further suggestions for its improvement. At its 41st Plenary Meeting, the Commission endorsed the results of the meeting of the Court with the rapporteurs.

Law on the Supreme Court of Albania

At the request of the Albanian authorities the Commission examined the law on the Supreme Court of Albania. At the 39th Plenary meeting, Mr Torfason reported on the meeting which had taken place in Tirana on 4-5 June with the Albanian authorities. Numerous points concerning the composition of the Court, its division into chambers and the role of the President of the Court had been addressed. Work on this question is continuing.

Reform of the electoral system in Albania

At the 38th Plenary Meeting the Secretariat reported on a visit to Albaniawith a group of experts to discuss the planned electoral reform with the Albanian authorities. The group had met Mr Imami, Albanian Minister for Legislative Reform, and the officials who were working on the planned reform. The aim of this project was to help Albaniato review the whole of its electoral law, which covered parliamentary elections, local elections, the national Electoral Commission, electoral procedure, referenda, the funding of elections, media and election campaigns. The Albanian authorities were drawing up the relevant draft legislation, which would be submitted to the Commission for examination.

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In addition, a UniDem Seminar on the implementation of the new Albanian Constitution was held in Trieste on 13-14 December 1999.

2. CO-OPERATION WITH ARMENIA

The Commission was kept up-to-date during the year and is still following the progress on constitutional reform in Armenia.

A meeting had been held with representatives of the Armenian Ministry of Foreign Affairs, who expressed the wish that the Commission should put forward its comments on the draft for a new constitution, which the Armenian constitutional reform commission was to submit at the end of the year. However, the process of constitutional reform has been delayed. It is hoped that the Commission will be involved in this process early in 2000.

A Seminar on Cases of conflict of competence between state powers before the Constitutional Court was held in Erevan on 4-5 October 1999.

3. CO-OPERATION WITH AZERBAIJAN

A seminar on Regional autonomy was held in Baku on 22-23 April 1999.

4. CO-OPERATION WITH BELARUS

Following the request made to the Secretary General of the Council of Europe by Mr Ural Latypov, Deputy Prime Minister of the Republic of Belarus, the Commission was asked to provide an expert opinion on the draft electoral law of Belarus. Prof. Richard Rose (Glasgow) and Mr Hans Birchler (Zurich) drew up an opinion on this question which was forwarded to the Belarus authorities early in November.

5. CO-OPERATION WITH BOSNIA AND HERZEGOVINA

Throughout 1999 the Commission continued its intense and particularly fruitful co-operation with the authorities of Bosnia and Herzegovina, as well as with the institutions of the international community in this country, on a vast programme of consolidation of democratic institutions and State structures. Despite certain alarming, but sporadic, events, the principal political forces in Bosnia and Herzegovina are at this moment showing sincere interest in finding adequate solutions to lasting peace and democratisation. The international community contributes a great deal to this process of consolidation and the Venice Commission is pleased to be able to play a positive role in this operation.

The Commission was principally involved in the implementation of a coherent and functioning federal regime.

Within this framework, the Commission adopted at its 38th Plenary Meeting, an opinion on the *scope of the responsibilities of Bosnia and Herzegovina* in the field of immigration and asylum with particular regard to possible involvement of the entities, drawn up at the request of the High Representative. The text of this opinion appears in Volume II.

In addition, at its 39th Plenary Meeting the Commission adopted an *opinion on responsibilities for the conclusion and implementation of international agreements under the constitution of Bosnia and Herzegovina* , again drawn up at the request of the High Representative. In its opinion the Commission notes that, under the Constitution, the State of Bosnia and Herzegovina is responsible for foreign policy, but has few powers on the domestic front. Most international agreements would therefore have to be implemented by the entities, which can conclude international agreements with the consent of the Parliamentary Assembly of Bosnia and Herzegovina. Under these circumstances, co-operation between the two entities and between the latter and the State of Bosnia and Herzegovina is essential. The text of the opinion is reproduced in Volume II.

Moreover, the final award of 5 March 1999 of the *Arbitral Tribunal for Dispute over Inter-Entity Boundary in Br čko area* invited comments on the arrangements proposed for the future Statute of the Brčko District in the provisional Annex to the Award in order to finalise this Annex. At the request of OHR a working group of the Commission prepared proposals for amendments to this Annex. These proposals were forwarded by OHR to the Arbitral Tribunal.

Following the adoption of the revised Annex by the Arbitral Tribunal, the working group discussed with representatives of OHR, including members of the staff of the Supervisor for the Brčko area, the contents of the future Statute of the area.

The Supervisor attended the Commisisons 41st plenary meeting and thanked the Commission for its contribution.

Furthermore, the Commission closely followed work on the *electoral law on Bosnia and Herzegovina* . On the Commissions behalf Messrs Owen and Rose had drawn up observations on the draft law prepared by the working group set up by the High Representative. Most of the Commission experts comments were incorporated into the final text. Key aspects of the draft law include : the right to vote for displaced persons, an open list system rather than the closed list system which currently exists, a preferential voting system for the Presidency of the State of Bosnia and Herzegovina, multi-member constituencies, limits on campaign expenses, a ban on all paid advertising on broadcast media and a minority gender rule. One of the main concerns of the Commissions experts concerned the Electoral Commission, which they considered too powerful. In response to this, the draft law now provides that key decisions of the Electoral Commission can be reviewed by a specific court. This specific court would be fused with the State Court when it has been established. Messrs Owen and Rose gave additional opinions on the final version of the draft electoral law. Mr Froment-Meurice, Chairman of the Electoral Law Working Group, confirmed that these decisions would be taken into account in the discussions before the Parliamentary Assembly.

The Commission also worked in the field of institutional reforms in Bosnia and Herzegovina. Bearing in mind that the judicial system of human rights protection is extremely complex and taking into account the fact that the transitional period in Bosnia and Herzegovina is coming to an end and the provisional international institutions will soon have to be replaced by Bosnian bodies, the Commission adopted at its 39th Plenary Meeting a *preliminary proposal for the restructuring of human rights protection mechanisms.* According to this proposal, at the end of the transitional period provided for in the Dayton Agreements :

- the human rights Chamber should merge with the Constitutional Court, which would assume responsibility for the protection of human rights;

- the State of Bosnia and Herzegovina should establish a separate judicial institution to deal with electoral matters and administrative disputes and criminal cases ; and lastly

- the functions of the Ombudsperson should be redefined.

Concerning the Federation of Bosnia and Herzegovina, the Commission proposed that the Human Rights Court of the Federation should be abolished. The text of the preliminary proposal is reproduced in Volume II.

At the request of the High Representative the Commission continued its work in the field of Ombudsman Institutions. At its 39th Plenary Meeting, the Commission approved the *report of the Working Group on Ombudsman Institutions in Bosnia and Herzegovina*, which contains three draft laws on the Ombudsman Institutions of the State and the two entities. These drafts were presented to the appropriate legislative bodies during 1999. A Seminar was organised by the Commission in co-operation with the Ombudsman of the Federation in Sarajevo in November in order to encourage public debate on these drafts. The text of this report is reproduced in Volume II.

Finally, at its 41st Plenary the Commission adopted its *opinion on the reform of the judicial protection of human rights in the Federation of Bosnia and Herzegovina* which examines the concrete aspects of the proposed constitutional amendment on the abolition of the Court of Human Rights of the Federation. The text of this opinion is reproduced in Volume II.

6. CO-OPERATION WITH BULGARIA

Draft Bulgarian Civil Service Act

At the request of the Parliamentary Assembly the Commission examined the draft Bulgarian Civil Service Act. At the 38th Plenary Meeting, Messrs Tuori and Herbiet (rapporteurs) presented the draft consolidated opinion on this Act. They pointed out that their work had been based on a second version of the Act, received by the Commission in January 1999. This version contained a number of improvements in relation to the original draft, although a number of issues had still not been resolved. The text did not indicate clearly whether the proposed system was post-based or career-based, the basic concepts and scope of the Act were not clearly defined and the powers granted to the State Administrative Commission, responsible for monitoring public administration, were too broad, which could lead to abuses of power and heavy politicisation of the civil service.

Mr Gotsev, Bulgarian Minister of Justice, and Mr Djerov informed the Commission that the text had been adopted at its first reading, but that the changes proposed by the Commission could still be incorporated.

The Commission adopted the opinion on the draft Bulgarian Civil Service Act and instructed the Secretariat to forward it to the Parliamentary Assembly. The text of this opinion is reproduced in Volume II.

Reform of the Judiciary

At the request of the Parliamentary Assembly the Commission examined the Bulgarian Judicial System Act. At the Commissions 38th Plenary Meeting the rapporteurs presented the draft consolidated opinion on the reform of the judiciary in Bulgaria, in the presence of Mr Gotsev, Minister of Justice with responsibility for European legal integration of Bulgaria.

The aim had not been to verify whether the Act was constitutional, since the Constitutional Court had already done this through its

decision of 14 January 1999, but rather to consider whether it complied with European norms. The main aspects which had prompted criticism were the provision to replace the Supreme Judicial Council before its term of office had elapsed, the method of electing the parliamentary component of the new Council (by a simple majority vote) and the strengthening of the Minister of Justices disciplinary powers. Although the provisions of the Act which had been criticised by the Constitutional Court complied with European standards as far as the independence of the judiciary was concerned, they increased the powers of the Minister of Justice quite considerably. Consequently, the rapporteurs recommended that these powers be exercised judiciously. Political consensus and trust between the majority and opposition parties were necessary if the Act was to be properly implemented and its provisions fully respected.

Mr Gotsev thanked the rapporteurs for their work and assured the Commission that its comments would be given serious consideration by the Bulgarian authorities. Nevertheless, he stressed that the Ministers of Justice of other European countries enjoyed much greater powers than he did in Bulgaria. The full immunity of judges, public prosecutors and investigators had led to corruption and to a large number of cases which had not been dealt with by the courts. The mere existence of the new disciplinary measures had already helped to bring about a significant reduction in the number of such unresolved cases. The political climate in Bulgaria ruled out co-operation between the government and the opposition. He assured the Commission that the current government would do its utmost to ensure that the provisions of the Constitution and of current legislation were respected.

The Commission adopted the opinion on the reform of the judiciary in Bulgaria and forwarded it to the Parliamentary Assembly. The text of this opinion is reproduced in Volume II.

7. CO-OPERATION WITH CROATIA

In 1999 co-operation with Croatia continued in respect of the revision of the suspended provisions of the 1991 Constitutional Law on Human Rights and Rights of Minorities and with the participation of international advisers in the work of the Constitutional Court.

Revision of the Constitutional Law

On 29 April 1999, the Parliamentary Assembly, by its Resolution 1185 (1999) on the honouring of obligations and commitments by Croatia regretted that little progress (had) been made by Croatia in honouring commitments and obligations related to the fundamental principles of the Council of Europe (democracy, rule of law and human rights) and called on the Croatian authorities, *inter alia*, to adopt a constitutional law revising the suspended provisions of the 1991 constitutional law in compliance with the recommendations of the Venice Commission and taking into account new realities, by the end of October 1999 at the latest .

Following an invitation by Mrs ZoricicTabakovic, Chair of the Council of National Minorities, Messrs G. Maas Geesteranus and F. Matscher participated in a meeting of the Council of national minorities in Zagreb, on 5 May 1999. During the meeting the urgency of the revision was underlined and reference was made to the Memorandum addressed by the Venice Commission to the Croatian Parliament in 1997 indicating the main topics to be dealt with in the framework of the revision. These include the status of the Council of National Minorities and other minority institutions, the representation of minorities in the legislative bodies and the Government and guarantees for educational and cultural autonomy. It was generally accepted that the points set out in the Commissions Memorandum could form the basis for the revision. It was further stressed that early involvement of the Commission in the preparation of the revision would make co-operation easier and more effective. In this respect, the need was underlined to submit to the Commission as soon as possible any draft amendments to the Constitutional law of 1991, including provisions on the electoral rights of persons belonging to minorities. The Director of the Governmental Office for Minorities indicated that work on the revision was on-going, but no draft had been finalised so far. As soon as finalised, the draft would be sent to the Venice Commission and to the Council of National Minorities for consideration.

However, no draft material was forwarded to the Commission until December 1999 and at its 41st Plenary Meeting the Commission concluded with regret that no significant progress had been made in this respect since the Commission forwarded its memorandum on the revision to the authorities of the Republic of Croatia (June 1997), despite the relevant commitment of Croatia and the declarations of Croat officials.

Participation of international advisers in the work of the Constitutional Court

In accordance with the commitments undertaken by Croatia, international advisers appointed by the Committee of Ministers of the Council of Europe participated in the work of the Constitutional Court of Croatia in cases concerning rights of minorities. The Constitutional Court invited the advisers to participate in five cases concerning legislation on property, access of persons belonging to minorities to civil service and minority language education. The advisers participated in the preparatory meetings and in hearings and deliberations.

On 8 November 1999, the Court gave its decision in the cases concerning minority language education, repealing the challenged acts which were found unconstitutional for lack of sufficient clarity. In their provisional opinion the international advisers expressed the view that the challenged acts were unconstitutional. The repealed acts shall cease to be in effect as from 30 June 2000. According to the information received by the Courts registry, the remaining cases in which the advisers are involved are to be decided in 2000.

8. CO-OPERATION WITH GEORGIA

At the request of the Georgian authorities, the Commission examined the draft amendments to the Organic law on the Constitutional Court of Georgia. At the 38th Plenary Meeting, the rapporteurs presented their comments on this question. In particular, they mentioned several provisions of the laws which could raise serious difficulties :

- the procedure allowing the Court to give subsequent interpretations of its decisions could undermine the principle of *res judicata*. The Courts decisions should be final;

- if this procedure was retained, the time limit for requesting that the Court interpret one of its decisions, which must not exceed one month, was unjustified. Questions of interpretation could emerge much later in the context of other cases;

- dissenting opinions should be made public together with the Courts decision;

- the Courts decisions should not take effect immediately, but at the time of publication.

Mr Demetrashvili thanked the rapporteurs for their comments. He thought that the provision allowing the Court to interpret its decisions should be retained. He also mentioned the problem of the execution of the Courts decisions. Under the Court's practice, several days usually elapsed between the taking of the decision and its publication. This explained the provision that the Constitutional Courts decisions should take immediate effect.

The Rapporteurs written comments were forwarded to the Georgian authorities.

In addition, a seminar on Constitutional control in Federal and Unitary States was held in Batumi on 1-2 July 1999.

9. CO-OPERATION WITH KAZAKHSTAN

At its 39th Plenary Meeting, the Commission held an exchange of views with Mr Kim, President of the Constitutional Council of Kazakhstan. Mr Kim informed the Commission about developments in his country in the constitutional sphere.

10. CO-OPERATION WITH LATVIA

At the 40th Plenary Meeting, Mr Endzins, on behalf of the Latvian Constitutional Court, asked the Commission to appoint rapporteurs to consider the draft amendments of the Constitutional Court Law prepared by the judges of the court. The purpose

of these amendments was to give the State Human Rights Bureau, ordinary courts and individuals standing before the court. The Commission requested Messrs. Solyom, Klucka, Lavin and Schwartz to draw up an opinion on this question.

At the 41st Plenary Meeting the rapporteurs presented their comments. The amendments introduce constitutional review in individual cases and favour a written procedure rather than the oral procedure which currently exists. Mr Solyom identified three main areas of concern : the fact that the amendments would allow judges of the Constitutional Court to be removed by an external power (the legislature) rather than the court itself; the extension of the powers of the President of the Constitutional Court, with the possibility for the president to compose panels of judges in each case; and the time at which the annulment of a norm by the Constitutional Court becomes effective: at present it is when the decision is pronounced, rather than when it is published, which goes against the principle of legal certainty.

Mr Endzins thanked the rapporteurs for their work. A new draft was currently being produced on the basis of the different comments received from the Commission and other experts. Upon Mr Endzins request, it was agreed that a seminar would be organised with the Latvian Constitutional Court in February 2000 on the issues raised by the amendments.

11. CO-OPERATION WITH MOLDOVA

Laws on territorial organisation and on local authorities

Following a request from the Parliamentary Assemblys Monitoring Committee and from the Moldovan authorities, the Commission was invited to examine the laws on territorial organisation and on local authorities. The Secretariat drew up a series of preliminary observations in the form of a memorandum. As the Congress of Local and Regional Authorities of Europe was also considering this question and a report on the subject had been drawn up, the Congress was co-operating with the Commission on this subject. A delegation made up Commission members and experts from the Congress had visited Moldovain May 1999.

At its 39th Plenary Meeting the Commission held an exchange of views with Mr Eugene Rusu, Chairman of the Legal Affairs Committee of the Moldovan Parliament. Mr Rusu said that the two laws examined, ie the law on local authorities and territorial organisation and the law on public administration, were part of the administrative and territorial reform under way in Moldova. This reform had long been necessary and when drafting the law, the authorities had taken time to consider the provisions of the European Charter of Local Self-Government, local traditions and economic realities in Moldova. Mr Rusu referred in particular to the situation in Taraklia, saying that communities and municipalities in the region would enjoy greater autonomy under the new set-up. The opposition to reform in Taraklia was coming from local politicians fearful of losing influence. Despite some difficulties and a heavy workload, the Moldovan authorities would manage to establish the new institutions with due regard for the recommendations made by the Commission and the Congress of Local and Regional Authorities.

At the same meeting, Mr Tuori presented the opinion drawn up on the basis of a Secretariat memorandum on the results of a Commission delegations visit to Moldova in May 1999. He believed that the Moldovan authorities and the Gagauz community were moving towards co-operation and were willing to resolve their problems through negotiation, and that the conflict of rank between the law on the special status of Gagauzia and the law on public administration, given that both laws were institutional acts, could be settled by applying the *lex specialis* rule. With regard to the Bulgarian minority, the members of the Commission delegation had not managed to meet representatives of this minority but according to information received, there was no evidence of any obvious violations of the Framework Convention for the Protection of National Minorities, or any other Council of Europe instruments concerning the rights of minorities.

At its 40th Plenary Meeting the Commission adopted the draft opinion on the questions raised concerning the conformity of the law on local administration and territorial organisation and of the law on local and public administration with the legislation currently in force concerning minorities drawn up on the basis of the comments of the rapporteurs, and decided to forward it to the Parliamentary Assembly and to the Moldovan authorities.

The text of this opinion is reproduced in Volume II.

Constitutional reform in Moldova

At the request of the Parliamentary Assembly and the Moldovan authorities, the Commission monitored the process of constitutional reform in Moldova. At its 39th Plenary Meeting the Commission examined the draft proposed by 39 members of the Moldovan parliament. Mr Moreira presented his comments and observed that the proposal for reform submitted to the Commission by the parliamentarians seemed to comply with democratic principles and European standards in such matters. He suggested that the Commission continue to co-operate with the Moldovan authorities in this area.

A Commission delegation travelled, in September, to Moldova, to discuss in particular a different draft for a constitutional revision, prepared by the Presidential Constitutional Commission. This draft had the aim of introducing a presidential system of government in Moldova.

A further meeting took place in Venice 16 October, following the Commissions 40th Plenary Meeting, with the representatives of both the constitutional committee set up by the President of the Republic and members of the parliament. Just the organisation of this meeting represented a success, since it implied that a mutually agreed solution to the question of the constitutional revision was being sought.

At its 41st Plenary Meeting, the Commission examined the interim report drawn up on the basis of the rapporteurs comments. The Commission emphasised that the criticism expressed by the experts with respect to the draft proposal by the Constitutional Commission concerned the text of the draft as a whole. Certain provisions of the draft would be acceptable if taken alone but presented a serious problem if combined with other articles. The experts considered that the principle of the separation of powers was not fully respected and there was a lack of checks and balances between the executive power and the Parliament.

The Commission adopted the interim report on constitutional reform in the Republic of Moldova and decided to annex to it the comments of the Moldovan authorities and to transmit it to the Parliamentary Assembly. The text of this report is reproduced in Volume II.

Moreover, the Commission welcomed the decision of the Moldovan authorities to create a joint working group of the Constitutional Commission and the Parliament which would be in charge of elaborating a single draft of the constitutional reform. The Commission is continuing its co-operation with the Moldovan authorities in this field during 2000.

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In addition a Seminar on The role of the Constitutional Court in the protection of private property was held in Chisinau on 30-31 March 1999.

12. COOPERATION WITH MONTENEGRO (FEDERAL REPUBLIC OF YUGOSLAVIA)

On 20 October, the President of the Commission and members of the Secretariat held an exchange of views with a delegation from the Republic of Montenegro concerning the possibilities of co-operation with the Commission.

The following areas were identified as suitable for further possible co-operation :

- the protection of minorities
- the setting-up of an Ombudsman
- constitutional justice

13. CO-OPERATION WITH PORTUGAL

At its 39th Plenary Meeting the Commission held an exchange of views with Mr Seixas da Costa, Portuguese Secretary of State for Foreign Affairs. Mr Seixas da Costa believed that legal co-operation was a very important area within the Council of Europe and that it was instrumental in finding joint solutions to crises in Europe. The important task of promoting democratic values demanded that the Councils remit extend beyond Europe. The Venice Commission, as a body made up of independent legal experts, could assist in this process. Mr Seixas da Costa wanted the Commission to be more autonomous and requested that its statute be amended so that non-European countries could play a greater part in its activities.

14. CO-OPERATION WITH SLOVAKIA

At the 41st Plenary meeting, Mr Klucka informed the Commission about the special parliamentary working group which had been set up in March 1999 to prepare the amendment of the Constitution. The amendments would be important. The first Slovakian Constitution had been prepared in only three months in 1992 and practice had since revealed a number of weaknesses. The final draft would be ready in January 2000 and members of parliament might request the Commission to comment on it.

Some of the key changes proposed include a new regulation of the relationship between international and domestic law, a confirmation of the extent of the powers of the Constitutional Court, a reduction in the possibilities for individuals to bring cases before the Constitutional Court (only constitutional complaints would still be possible), regulation of emergency situations and the introduction of a Judicial Council to propose judges for the ordinary courts. An amendment had been made to the Constitution in March 1999, providing for the direct election of the President of the Slovak Republic.

15. CO-OPERATION WITH SLOVENIA

In co-operation with the Ministry of Foreign Affairs of Slovenia the Commission organised a UniDem Seminar on Societies in conflict : the contribution of law and democracy to conflict resolution in Bled on 26-27 November. This was followed by a Conference on The contribution of constitutional arrangements to stability in South Eastern Europe which took place in Brdo on 29-30 November (see also Point 19 below).

16. CO-OPERATION WITH SOUTH AFRICA

i) Democracy, from the law book to real life

The Commission continued to implement activities within the framework of the programme Democracy, from the law book to real life , which is funded by the Swiss Federal Department of Foreign Affairs.

A conference entitled Intergovernmental relations and co-operative governance : fostering mutual co-operation took place in March. The aim of the conference, which was opened by Deputy President Thabo Mbeki, was to evaluate intergovernmental relations over the past five years in the presence of the relevant players. The conference was well attended at a very high level. Participants included national, provincial and local government representatives, members of executive councils in the provinces (MECs) and the National Council of the Provinces (NCOP) as well as academics and other interested parties. It is an activity which the Department of Constitutional Development, now the Department for Local and Provincial Government, hopes to repeat on an annual basis.

Another conference was organised in November on the theme of African renaissance. The aim of this conference was to discuss democracy and constitutionalism in Southern Africa over the past 40 years and to look at the possibility of strengthening co-operation in this field through the establishment of a Southern African Commission for Constitutionalism and Democracy, along the lines of the

Venice Commission in Europe. Delegates from different African countries attended the conference, in particular from member states of the Southern African Development Community (SADC). Further to the resolution which was adopted at the end of the conference, the South African authorities undertook to take the initiative forward

Other activities which were carried out included:

- a study visit for the Director of the South African Constitutional Court to the European Court of Human Rights and the *Bundesverfassungsgericht* (Germany) to look at effective court administration;

- a study visit for officials from the Department of Constitutional Development to Italy, Spain and Switzerland to look at provincial government in those countries

- a conference on open and democratic government, organised by the South African Human Rights Commission;

- a workshop on the role of district councils in local government;

- a workshop for provincial officials organised by the Cape Administrative Academy on the constitutional state and public administration, with reference to provinces;

- four research scholarships for lecturers from the University of South Africa to Europe on:

  Transparency in the public service: its ethical dimensions and implications lessons from Europe;

  Informatisation and public administration: *quo vadis* democracy;

  Developing diplomacy in a changing international political system;

  Constitutional provisions and institutions which could enhance economic development in South Africa and the Southern African region.

- participation by South African experts in conferences on:

  Constitutional culture, organised by the Polish Centre for Constitutionalism and Legal Culture of the Institute of Public Affairs;

  Federal and regional states in the perspective of European integration, organised within the framework of UniDem programme in Bologna, Italy;

  16th meeting of the Sub-Commission on Constitutional Justice in Liechtenstein;

  "The right to a fair trial", organised within the framework of the UniDem programme in Brno, Czech Republic.

In addition, publications of the Commission and the Council of Europe on constitutional and administrative law were sent to all provincial administrations in South Africa.

ii) Chairs in Intergovernmental Relations and Co-operative Governance

The Chair at the University of Natal continued to function throughout 1999. It organised a workshop on The reality of intergovernmental relations : environmental management and local water services , which brought together representatives from national government as well as representatives from local and provincial government, NGOs and community organisations from Kwa-Zulu Natal. It provided an opportunity to reflect on co-ordination between the different spheres of government in practice and how this co-operation could be improved. Experts from Spain and Italy provided valuable input on the experience of their countries in managing decentralised government.

The University of Fort Hare, where the second Chair was established, experienced serious management and financial difficulties during 1999. As the holder of the post of Chair was called upon to act as Vice-Chancellor of the University during the process of restructuring, the activities of the Chair were *de facto* suspended for most of the year. It is hoped that they can be resumed in the year 2000.

Although support for the Chairs within the framework of the programme funded by Switzerland was due to finish at the end of 1999, it was agreed to postpone the deadline until the end of the year 2000.

17. CO-OPERATION WITH UKRAINE

Draft law on the organisation of the judiciary

At its 38th Plenary meeting the Commission discussed possible follow-up to the Parliamentary Assemblys request for an opinion on the role and functioning of the courts and Public Prosecutors Office in Ukraine. It noted that there were currently several bills dealing with these issues and that it was difficult to say which of these could be used as a basis for discussion. In view of the complex situation in Ukraine, the reform process was very slow despite the stipulation in the transitional provisions of the Constitution that the judicial system should be reformed within five years. Several members proposed that the subject be left to one side until the bills on the judicial system and the public prosecution service had been given a first reading.

At its 40th Plenary Meeting the Commission was informed that the draft law on the organisation of the judiciary had been received. Messrs Svoboda, Torfason, Said Pullicino and Ms Suchocka were appointed rapporteurs on this draft law. At it 41st Plenary Meeting, the Commission considered the opinions prepared by the rapporteurs and proposed that the Secretariat draw up a summary report, focussing on general principles rather than specific issues. Mr Holovaty thanked the rapporteurs for their work.

The text of this summary report is reproduced in Volume II.

Lawgoverning parliamentary elections

At its 40th Plenary Meeting the Commission was informed that the Ukrainian authorities had requested an expert opinion on the law governing parliamentary elections, the adoption of which was one of the commitments made by Ukraine when it joined the Council of Europe. This task had been entrusted to the Commission, which had requested two expert opinions, one from Mr Florian Grotz (Heidelberg), the other from Mr Michael Krennerich (Hamburg). The opinions were forwarded to the Ukrainian authorities.

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In addition, the following seminars and workshops were held in Ukraine during 1999 :

- Workshop on the relationship between the Constitutional Court and the Ombudsman (Kiev, 1-2 July 1999);

- Seminar on the execution of decisions of the Constitutional Court (Kiev, 28-29 October 1999);

- Conference of Secretaries General of European Constitutional Courts and jurisdictions of equivalent competence (Kiev, 25-26 November 1999).

18. SITUATION IN KOSOVO

Following its involvement in the drafting of the various texts for a political settlement prepared by the Contact Group, the Commission was invited to be represented at the Rambouillet and Paris peace conferences. Mr Scholsem, Chairman of the Commissions working group, attended a part of the negotiations and a secretariat member was present during both conferences as legal adviser to the EU negotiator, Ambassador Petritsch.

Immediately following the establishment of UNMIK administration within Kosovo, Mr Russell, a Commission expert from Ireland took part in the very first fact-finding missions to Kosovo and in the drafting of recommendations on the organisation of the judiciary.

The legal adviser of UNMIK, Mr Anthony Miller, furthermore asked the Commission to start examining legal aspects of the establishment and functioning of a Kosovo Assembly during the transitional period. A team of members of the Commissions working group went to Kosovo on 10 to 14 November 1999 to get more information about the situation and the views of UNMIK and local representatives. The study is underway.

In addition, at the request of the Special Representative of the Secretary General of the United Nations in Kosovo, a joint Working Group of the Commission and the Directorate of Human Rights of the Council of Europe was established to draft the regulation on the Ombudsman for Kosovo in cooperation with the Ombudsman Support Unit of the OSCE Mission in Kosovo. The Commission is particularly satisfied with the strong cooperation established between the Working Group and the OSCE in this area.

The Working Group held its first meeting, including an exchange of views with members of the local communities, in Pristina in September. The draft regulation, concentrating on the competences of the Ombudsman with regard to human rights violations and maladministration, was completed at two further meetings in Paris and Strasbourg. The Working Group placed particular emphasis on the possibility for the Ombudsman to make recommendations both to the international administration in Kosovo and to local authorities. The draft regulation was submitted to UNMIK in November. Work is continuing towards the adoption of the regulation in 2000.

Furthermore, the draft Regulation on Municipal Elections prepared by OSCE was discussed at a meeting in Strasbourg on 20 December 1999. A representative of the Congress of Local and Regional Authorities of Europe participated in the discussions.

19. STABILITY PACT FOR SOUTH-EASTERN EUROPE

At its 41st Plenary Meeting the Commission held an exchange of views on the Stability Pact with Ms Magdelena Tovornik, Permanent representative of Slovenia to the Council of Europe (see Co-operation with Committee of Ministers below).

With this in mind a new Sub-Commission on South-East Europe has been set up and its work will commence early in 2000.

- Conference on The Contribution of constitutional arrangements for the stability of South East Europe Brdo., Slovenia, 29-30

November 2000

The International Conference The Contribution of Constitutional Arrangements to the Stability of South Eastern Europe took place on 29 and 30 November 1999 in Brdo, Slovenia. The Conference was co-organised by the Ministry of Foreign Affairs of the Republic of Slovenia, the Faculty of Law of the University of Ljubljana and the Venice Commission. The Conference was held within the framework of the Working Table for Democratisation and Human Rights of the Stability Pact for South Eastern Europe as one of the first contributions within the said Working Table. Representatives of states and international organisations as well as independent experts participated in the Conference. Mr Bodo Hombach, Special Co-ordinator of the Stability Pact for South Eastern Europe, addressed the opening session of the conference.

The Conference dealt with two main themes, namely the Effectiveness of the Constitutional Human Rights Standards and the Constitutional Framework for Repartition of Powers.

With respect to the Effectiveness of the Constitutional Human Rights Standards, it was stated that international human rights standards need to be integrated into national legal orders and implemented and protected by national institutions. The importance of the inclusion of specific minority rights at the highest, i.e. constitutional level, was emphasised. Integration of minorities needs to be secured through their involvement in decision-making at all levels. Protection of minorities can be addressed through various models of autonomy.

Generally, the view was expressed that in many countries the practical situation regarding human rights falls short of the theoretical standards. Differences exist between the guarantees in texts, such as constitutions and laws, and the practice. A number of general proposals to help overcome this gap between the normative and the actual situation were identified.

An increasing emphasis should be placed on education, training and public awareness programmes in the field of human rights and constitutional law. Such efforts should be aimed at the general public, lawyers and judges as well as police and security forces. The importance of the training of judges, including raising of awareness on human rights standards, was emphasised repeatedly. Also, improvement of the facilities available is necessary, such as better access to court reports and legal materials. States, international organisations and the Stability Pact should provide financial contributions in support of the functioning of the judicial system in countries with difficulties.

The discussions emphasised the importance of considering to establish national human rights institutions (i.e. extra-judicial means to improve the protection of human rights), such as ombudsmen and human rights commissions.

With respect to the Constitutional Framework for Repartition of Powers, the need was stressed to have very precise constitutional rules on the powers of the various institutions. Otherwise, the former system of unity of power risks creeping back through the gaps in the present rules. A balanced relationship between the two branches of power is necessary for a more democratic, accountable and stable political life in these countries.

In this context, participants emphasised the important role of the constitutional court and welcomed the strong position given to such courts by constitutions in this region. Such courts will however only be able to play their role fully if parliaments and politicians in general accept as a matter of course that their decisions have to be implemented.

Participants were unanimous in underlining that judicial independence nowadays constitutes the core of separation of powers. Judicial independence is a prerequisite of the rule of law. Participants also stressed conditions guaranteeing functional independence of the judiciary. They mentioned in particular issues such as the terms of office of judges, their immunity, the incompatibility of judicial with political functions and, not least, the economic independence of judges and the allocation of sufficient budgetary means to the courts on the basis of objective criteria. All states have to fully respect the standards developed in the case law of the European Court of Human Rights in this respect.

In addition, an independent council of the judiciary, to which decisions on appointments, promotions and transfers of judges as well as disciplinary proceedings are reserved, has proved a particularly efficient tool of preserving judicial independence. Participants pointed out that such a council can fully exercise this role only if its composition provides for adequate representation of judges elected by their peers.

Participants further underlined the importance of local self-government for the development of democracy in the region. They welcomed the fact that the South-East European Council of Europe member States have ratified the European Charter of Local Self-Government and called for its full implementation. Constitutions should make reference to the principle of local self-government and there should be limits to the control of municipalities by higher bodies. In practice the budgetary autonomy of the municipalities and the allocation of adequate funds to them are of particular importance.

LIST OF OPINIONS ADOPTED

The text of these opinions appears in Volume II.

ALBANIA

- Opinion on the compatibility of the death penalty with the Constitution of Albania (CDL-INF (99) 4) adopted by the Commission at its 38th Plenary meeting (Venice, 22-23 March 1999);

BOSNIA AND HERZEGOVINA

- Opinion on the scope of the responsibilities of Bosnia and Herzegovina in the field of immigration and asylum with particular regard to possible involvement of the entities (CDL-INF (99) 6) adopted by the Commission at its 38th Plenary meeting (Venice, 22-23 March 1999);

- Opinion on responsibilities for the conclusion and implementation of international agreements under the constitution of Bosnia and Herzegovina (CDL-INF (99) 9) adopted by the Commission at its 39th Plenary meeting (Venice, 18-19 June 1999);

- Report of the working group of the Venice Commission and the Directorate of Human Rights on Ombudsman Institutions in Bosnia and Herzegovina (CDL-INF (99) 10) adopted by the Working Group at its meeting in Paris on 11 May 1999 and approved by the Commission at its 39th Plenary meeting (Venice, 18-19 June 1999);

- Preliminary proposal for the restructuring of human rights protection mechanisms in Bosnia and Herzegovina (CDL-INF (99) 12) adopted by the Commission at its 39th Plenary meeting (Venice, 18-19 June 1999);

- Opinion on the reform of the judicial protection of human rights in the federation of Bosnia and Herzegovina (CDL-INF (99) 16) adopted by the Commission at its 41st Plenary Meeting (Venice, 10-11 December 1999);

BULGARIA

- Opinion on the draft Civil Service Act of the Republic of Bulgaria (CDL (99) 14) adopted by the Commission at its 38th Plenary meeting (Venice, 22-23 March 1999);

- Opinion on the reform of the judiciary in Bulgaria (CDL-INF (99) 5) adopted by the Commission at its 38th Plenary meeting (Venice, 22-23 March 1999);

MOLDOVA

- Opinion on the questions raised concerning the conformity of the laws of the Republic of Moldova on local administration and administrative and territorial organisation to current legislation governing certain minorities (CDL -INF (99) 14 adopted by the Commission at its 40th Plenary meeting (Venice, 15-16 October 1999);

- Interim report on the constitutional reform in the Republic of Moldova (CDL (99) 88) adopted by the Commission at its 41st Plenary meeting (Venice, 10-11 December 1999);

UKRAINE

- Opinion on the draft law on the organisation of the judicial system of Ukraine (CDL-INF (2000) 5 drawn up by the Secretariat on the basis of the rapporteurs comments

II. Co-operation between the Commission and the statutory organs of the Council of Europe, the European Union and other international organisations

- Co-operation with the Committee of Ministers

Representatives from the Committee of Ministers participated in all the Commissions plenary meetings during 1999.

At its 38th Plenary Meeting, the Commission held an exchange of views with Mr Sten Lundbo, Permanent Representative of Norway to the Council of Europe and Chair of the Rapporteur Group on relations between the Council of Europe and the European Union, who reported on the progress of work at the quadripartite meetings. The European Commission was very interested in co-operating with the Council of Europe and the Venice Commission, especially in the programmes of assistance for Albania, the Russian Federation, Ukraine and the Transcaucasian Republics, and in activities relating to the promotion of human rights, the fight against corruption and media independence.

The 38th Plenary Meeting was also attended by Mr Alfred Regg, Permanent Representative of Switzerland to the Council of Europe, who said that the Committee of Ministers valued the impartiality of the Venice Commissions work. The Commission was among those Council of Europe bodies which promoted the values of the organisation far beyond the borders of Europe. The Committee of Ministers was currently considering how the Commission might now be made more flexible. As far as Switzerland was concerned, Mr Regg pointed out that his country was helping fund the Commissions co-operation programme with South Africa and that his government would be prepared to continue supporting this project in the future.

At the 39th Plenary Meeting, Mr Josef Wolf, Permanent Representative of Liechtenstein to the Council of Europe, reported that the Committee of Ministers had studied the Venice Commissions annual report with keen interest. The document had met with a warm response from the Committee of Ministers. Mr Wolf believed that the Commissions work should be given greater media exposure. He was pleased that Liechtensteins voluntary contribution of FRF 100,000 had helped cover the travel expenses of the central and eastern European members, because pan-European participation in the Commissions activities was essential. Mr Wolf informed those present about activities in the field of confidence-building.

At the same meeting, Mr Olexandre Koupchyshyn, Permanent Representative of Ukraine to the Council of Europe and Chairman of the Rapporteur Group on Legal Co-operation, said that legal co-operation was one of the main priorities of the Council of Europe. He told the Commission how the Council of Europe was being restructured following the Committee of Wise Persons report. The Rapporteur Group on Legal Co-operation was currently working on several important topics including the question of which authority would be responsible for interpreting Council of Europe Conventions, relations between the Committee of Ministers and the Parliamentary Assembly, the European code of conduct on arms sales and legal co-operation with non-European states.

Mr Koupchyshyn also spoke about the situation in Ukraine and in particular the problems involved in honouring the commitments

entered into by his country on joining the Council of Europe. His country attached great importance to co-operation with the Venice Commission.

At its 40th Plenary Meeting, The Commission had an exchange of views with Mr Sveinn Bjornsson, Permanent Representative of Iceland to the Council of Europe and Chairman of the Ministers' Deputies, Mr Justin Harman, Permanent Representative of Ireland to the Council of Europe, and Mr Igor Grexa, Charg d'affaires a.i. of Slovakia to the Council of Europe.

Mr Bjornsson gave a brief description of activities during the Icelandic chairmanship. Stability in Europe was one of the main objectives during the Icelandic chairmanship. The Council of Europe was playing a full part in the developments in south-east Europe, particularly since the drawing up of the European Union's Stability Pact, and had thus been represented at the Sarajevo summit at the end of July.

It was during the Icelandic chairmanship that the Committee of Ministers had had the opportunity to welcome Mr Walter Schwimmer, the new Secretary General of the Council of Europe.

The main areas of activity of the Council of Europe were human rights and the rule of law, areas in which the Venice Commission played a particularly important role. Mr Bjornsson emphasised that the Committee of Ministers was unanimous in its appreciation of the work of the Commission.

Mr Harman, who would be taking over the chairmanship of the Ministers' Deputies in November, said that closer co-operation with the Commission would be an aim during the Irish chairmanship, particularly on the preparation of the UniDem Conference in Dublin. He outlined the main activities foreseen during the Irish Presidency.

Relations with the European Union would be important in the context of the development of the future role of the Council of Europe. The draft Charter of Fundamental Rights was currently under discussion at the Tampere Summit, but a number of decisions on the Charter had not yet been taken. The Committee of Ministers hoped that the Charter would not duplicate, or reduce the role of, the European Convention on Human Rights.

Mr Grexa said that the Committee of Ministers was well aware of the work of the Commission, but that information ought to be disseminated more widely in the outside world. It was no longer actually possible to deal with democracy just at national level, or even to keep to the regional level, without taking an interest in the other regions of the world.

At the 41st Plenary Meeting the Commission held an exchange of views with Ms Magdelena Tovornik, Permanent Representative of Slovenia to the Council of Europe who confirmed the support of the Committee of Ministers for the Venice Commissions work.

She referred to the two activities which Slovenia had recently hosted: a UniDem seminar on Societies in conflict: the contribution of law and democracy to conflict resolution which took place in Bled and an international conference on The Contribution of constitutional arrangements for the stability of South East Europe which was held in Brdo. She stressed that the conference would need to be followed-up and stated that the role of the Commission in this would be important (see point Stability Pact above)

The 41st Plenary meeting was also attended by Mr Jacques Warin, Permanent Representative of France to the Council of Europe, who informed the Commission about the activities of the Working Group of the Committee of Ministers on information policy. He noted that the Working Group was paying special attention to the problem of the elaboration of an effective information policy at the Council of Europe in general and presented the latest proposals of the group.

Mr Warin suggested that the Commission could also improve the visibility of its work, for example, by publishing on a regular basis a special gazette describing its activities and creating an Internet site, where most of its documents would be available to the public. He also invited the Commission to consider the possibility of having a spokesperson, who could inform the press and general public about the Commissions work.

- Co-operation with the Parliamentary Assembly of the Council of Europe

The Commission continued and intensified its close co-operation with the Parliamentary Assembly during 1999. Representatives from the Assembly were present at all the Commissions Plenary Meetings.

At its 38th Plenary Meeting, the Commission held an exchange of views with Lord Russell-Johnston, President of the Parliamentary Assembly of the Council of Europe. He stressed that the Parliamentary Assembly respected and was grateful for the work of the Venice Commission, which was often extremely difficult but always invaluable. Many items on the agenda of the Commissions meeting were very similar to subjects discussed by the Bureau of the Parliamentary Assembly. Bosnia and Herzegovina was one such subject. He was concerned about the situation in the Republika Srpska and informed the Commission that an Assembly delegation would be visiting Bosnia and Herzegovina. He also mentioned Kosovo, a subject of great concern to the whole international community. Regretting the lack of progress in negotiations between the parties, the President of the Parliamentary Assembly thanked the Commission and its team of experts for their excellent work in Rambouillet and Paris. The Commission should remain an impartial, independent body and its role should be strengthened in accordance with the report of the Committee of Wise Persons.

In reply, Mr La Pergola emphasised that co-operation between the Venice Commission and the Parliamentary Assembly was very active. As an independent body comprising eminent legal experts from the member states, the Commission played a vital role in helping member and applicant states to uphold the principles of the rule of law and in promoting the values defended by the Council of Europe not only in Europe but also in other continents. In accordance with the report of the Council of Europes Committee of Wise Persons, which had recognised the importance and high standard of the Commissions work, its role should be strengthened even further.

Once again the number of requests from the Assembly for the Commissions opinion increased. In particular the Commission has co-operated with the Assembly on the following questions :

- Opinion on the compatibility of the death penalty with the new Constitution of Albania
- Bulgarian law on the judiciary
- Bulgarian law on the civil service
- Co-operation with Croatia - revision of the Constitutional law on human rights and rights of national minorities
- Questions raised concerning the conformity of the laws of the Republic of Moldova on local administration and administrative and territorial organisation to current legislation governing certain minorities
- Constitutional reform in Moldova
- Draft law on the organisation of the Judiciary of Ukraine
- Draft law on the Prosecutors Office in Ukraine

In addition the Commission also adopted reports on the following subjects during 1999 which were drawn up at the Assemblys request :

- Self-determination and secession in constitutional law
- Guidelines on prohibition an dissolution of political parties and analogous measures

Throughout the year the Commission was kept informed about the work of the Committee on Legal Affairs and Human Rights of the Parliamentary Assembly, in particular concerning the abolition of the death penalty, applications for membership to the Council of Europe and the application of international human rights conventions. The Commission took note of work being carried out within the Parliamentary Assembly and at its 41st Plenary Meeting decided to carry out a study on the execution of constitutional court decisions, with particular reference to decisions of recently established constitutional courts in central and eastern Europe.

- Co-operation with other bodies of the Council of Europe

- Congress of Local and Regional authorities of Europe

The Commission continued its close co-operation with the CLRAE in particular concerning Albania, Bosnia and Herzegovina, Croatia, Moldova and the situation in Kosovo, as well as the study on the financing of political parties. The Commissions study on Federated and regional entities and international treaties parallels the work of the Congress on regions with legislative powers. A Representative of the Congress participated at all the Commissions Plenary Meetings during 1999.

- Development Bank

At its 38th Plenary Meeting the Commission held an exchange of views with Mr R. Alomar, Governor of the Bank who outlined the Banks activities and possible areas for future co-operation. The Bank had been set up under one of the first Council of Europe partial agreements and, as an independent body, was able to act as a multilateral bank with a strong social role. It enjoys full financial independence from the Council of Europe. The Banks membership has grown over recent years and now comprises 34 states.

The Banks primary task is to grant loans. It had originally been set up to support the return of refugees, but now has a much wider scope, covering spheres such as health, the historic heritage, education, the fight against unemployment and various projects implemented by different local authorities in the member states. The Bank did not receive contributions from the member states and was very highly rated on world markets.

The Banks priorities are to combat unemployment and step up its work in central and eastern Europe.

The Bank currently has a balance sheet totalling 12 billion Euros. Its profit for 1999 on the international capital markets is estimated at between 2.5 and 3 billion Euros and its guarantee capital totalled 1.1 billion Euros.

The Banks main clients are governments, local authorities and public or private funding bodies. The Bank does not award subsidies but grants loans at preferential rates of interest.

Mr Alomar thought that the Bank and the Venice Commission had a great deal in common and that the two bodies should now begin to co-operate more closely. Both contributed to the democratisation of Europe since there was a close link between economic and democratic stability. The Bank was especially interested in work in the fields of social rights, national minorities and refugees.

The Commission expressed its wish to co-operate more closely with the Bank.

- Co-operation with the European Union and other International organisations

At its 38th Plenary Meeting (Venice, 22-23 March 1999) the Commission held an exchange of views with Mr A. Vinas, Director of DGIa, European Commission. The European Commission was very keen to continue co-operating with the Venice Commission, whose programme of activities for 1999 tied in very closely with the European Commissions own area of work.

A framework for a Joint programme Strengthening democracy and constitutional development in central and eastern Europe and CIS countries has been drawn up and will be implemented in 2000.

The European Commission took an active part in the work of the Venice Commission and was represented at most of the Plenary

Meetings in 1999.

The Commission also co-operated with the OSCE and ODIHR. Representatives of these organisations participated in many meetings, seminars and Conferences organised by the Commission during 1999.

III. Studies of the Venice Commission

1. Guidelines on prohibition and dissolution of political parties and analogous measures

At the request of the Secretary General of the Council of Europe, the Commission conducted a survey on the prohibition of political parties and analogous measures.

Countries which co-operate with the Venice Commission were invited to answer a questionnaire on the prohibition of political parties, covering the existence of rules prohibiting political parties or providing for similar measures in order to study the situation existing in different countries. 40 countries contributed to the study.

The conclusions of the study highlighted the following issues:

a) party activities everywhere are guaranteed by the principle of freedom of association;

b) there is a possibility to sanction political parties that do not respect a certain set of rules, through prohibition and dissolution of political parties, in a number of countries which answered the questionnaire;

c) the procedure regarding measures restricting the activities of the political parties show the authorities concern to respect the principle of freedom of association.

The Commission adopted the report on prohibition of political parties and analogous measures (CDL-INF (98) 14) at its 35th plenary meeting in Venice, 12-13 June 1998[1]. The report provided a good starting point for further analysis of the question. The Commission decided to continue its work with a view to drafting guidelines in this field and appointed Rapporteurs to this end.

The draft guidelines on the prohibition of political parties were discussed by the Sub-Commission on democratic institutions during its meeting on 17 June 1999. Members of the Sub-Commission introduced a number of changes in the text prepared by Mr Alexandru Farcas and revised by the Secretariat on the basis of comments by Messrs Kaarlo Tuori and Joseph Said Pullicino. In addition, the Secretariat was asked to prepare an explanatory memorandum to the guidelines.

The Sub-Commission on democratic institutions further discussed the draft guidelines on the prohibition of political parties and analogous measures and the explanatory report during its meeting in Venice on 9 December 1999 and decided to submit them to the plenary session. At its 41st plenary meeting, the Commission adopted both documents and decided to forward them to the Parliamentary Assembly and the Secretary General.

A P P E N D I X

The Commissions Guidelines on prohibition of political parties and analogous measures read as follows :

The Venice Commission:

Being committed to the promotion of the fundamental principles of democracy, the rule of law and the protection of human rights, in a context of enhanced democratic security for all, throughout the entire Council of Europe area,

Taking into account the essential role of political parties in any democracy, considering that freedom of political opinion and freedom of association, including political association, represent fundamental human rights guaranteed by the European Convention on the Protection of Human Rights and are primordial elements of any genuine democracy as envisaged by the Statute of the Council of Europe,

Having particular regard to States practice in the field of protecting (and of organising) the exercise of the rights to freedom of association and to freedom of expression,

Committed to the principle that these rights cannot be restricted other than by a decision of a competent judicial body in full respect of the rule of law and the right to a fair trial,

Recognising the need to further promote future standards in this field, based on the provisions of the European Convention for the Protection of Human Rights and on the values of the European legal heritage,

Has adopted the following guidelines:

1. States should recognise that everyone has the right to associate freely in political parties. This right shall include freedom to hold political opinions and to receive and impart information without interference by a public authority and regardless of frontiers. The requirement to register political parties will not in itself be considered to be in violation of this right.

2. Any limitations to the exercise of the above-mentioned fundamental human rights through the activity of political parties shall be consistent with the relevant provisions of the European Convention for the Protection of Human Rights and other international treaties, in normal times as well as in cases of public emergencies.

3. Prohibition or enforced dissolution of political parties may only be justified in the case of parties which advocate the use of violence or use violence as a political means to overthrow the democratic constitutional order, thereby undermining the rights and freedoms guaranteed by the constitution. The fact alone that a party advocates a peaceful change of the Constitution should not be sufficient for its prohibition or dissolution.

4. A political party as a whole can not be held responsible for the individual behaviour of its members not authorised by the party within the framework of political/public and party activities.

5. The prohibition or dissolution of political parties as a particularly far-reaching measure should be used with utmost restraint. Before asking the competent judicial body to prohibit or dissolve a party, governments or other state organs should assess, having regard to the situation of the country concerned, whether the party really represents a danger to the free and democratic political order or to the rights of individuals and whether other, less radical measures could prevent the said danger.

6. Legal measures directed to the prohibition or legally enforced dissolution of political parties shall be a consequence of a judicial finding of unconstitutionality and shall be deemed as of an exceptional nature and governed by the principle of proportionality. Any such measure must be based on sufficient evidence that the party itself and not only individual members pursue political objectives using or preparing to use unconstitutional means.

7. The prohibition or dissolution of a political party should be decided by the Constitutional court or other appropriate judicial body in a procedure offering all guarantees of due process, openness and a fair trial.

2. Self-determination and secession in constitutional law

At its 41st Plenary Meeting the Commission adopted its report on Self-determination and secession in constitutional law and decided to forward to the Parliamentary Assembly.

The Parliamentary Assembly had for several years been working on the subject of self-determination and secession. It had drawn up a report on the subject in 1996, for which the rapporteur, Mr Severin, had based himself partly on a discussion paper from the Centre for Political Studies and Comparative Analysis, in Bucharest. This text had highlighted international law issues. In June 1999, the Political Affairs Committee had decided to consult the Venice Commission, particularly with a view to an analysis of the relevant constitutional provisions.

The Commissions report recalls the actual context of the topic in Council of Europe member States. It is recalled that major political changes of very different kinds have been a most obvious feature of the past decade in Europe.

a. The process of European unification has been characterised by its concurrent deepening and widening. National boundaries have gradually faded, and so has national sovereignty, as a result of the Single European Act followed by the Treaties of Maastricht and Amsterdam. Meanwhile, the number of states either immediately or potentially concerned by European integration has increased considerably.

b. Just as gradually, the states reduced their powers not only upwards to supranational authorities but also internally and downwards by devolution of certain powers to lower tiers (regions and decentralised public authorities).

c. At the same time but with much greater speed, democracy and rule of law have made enormous strides in many states following the collapse of the systems of the bipolar world.

d. Coinciding with these relatively conflict-free developments, a process of national assertion has gained ground in a way not seen in Europe for a long time; a form of national sovereignty that precludes power-sharing with higher or lower authorities has been sought or proclaimed, in particular in states born out of secession, and the growth of nation-states has been unprecedented for such a short period. After more than forty years of virtually total stability, new frontiers have been established as they disappear elsewhere. This process, which has led to the dissolution of three states, may have been peaceful in the case of Czechoslovakia but was attended by tragedy and bloodshed in Yugoslavia and to a much lesser extent in the Soviet Union. It should be noted that the constitutions of the latter two States contain dispositions relative to the secession of Republics.

The Commission further stressed that self-determination is above all governed by international law. The definitions and general concepts, chiefly in terms of public international law, are given in the memorandum submitted to the Parliamentary Assembly Political Affairs Committee. The purpose of the Venice Commissions report is, on the other hand, to examine the question of self-determination and secession as addressed by constitutional law. This report will not refer again to the rules of international law, even if they are immediately applicable in the States' domestic law. It is founded on national constitutional sources, viz. constitutions and statutes of a constitutional nature, as well as on rulings by constitutional courts and equivalent authorities. The states considered here are the Council of Europe member states, with the applicant states, as well as South Africa and Kyrghyzystan in view of their special status with the Venice Commission.

In conclusion, the report confirms one of its prior assumptions, namely that as the fundamental norm of the state the Constitution is in general opposed to secession and instead emphasises concepts such as territorial integrity, indivisibility of the state and national unity. In certain cases, these principles allow of restrictions to fundamental rights. As is evident in the case-law of the European Court of Human Rights, such restrictions must nonetheless comply with the principle of proportionality and accordingly be applied only in serious circumstances.

The term "self-determination", unlike "secession", is by no means alien to constitutional law. However, there is no general

recognition in constitutional law of the right to self-determination, nor any common definition of those who are entitled to it and its content. Moreover, the constitutions studied, when they recognise the right to self-determination, do not deal with the procedure which allows for its implementation. Procedural rules only exist for the modification of territorial boundaries within the State, which is not explicitly recognised as being a form of the right to self-determination.

The term self-determination, in constitutional law, has multiple meanings and may in particular denote:

- decolonisation in the few cases where the issue still arises;

- the right to independence of a state which is already constituted;

- the right of peoples freely to determine their political status and to pursue their development within the state's frontiers (internal self-determination).

Internal self-determination may be exercised by the assertion of specific fundamental rights, with a collective character, in particular in the cultural sphere, or even by federalism, regionalism or other forms of local self-government within the state with all due regard to territorial integrity. Apart from the aforementioned cultural autonomy, federalism, regionalism, and possibly local self-government, may be mentioned. In particular, the establishment of public authorities - federated entities especially - and the alteration of their boundaries may constitute a form of self-determination. This broad interpretation of the internal aspect of self-determination is intended to avert conflicts which might carry a risk of secession.

On balance, while in very general terms secession is alien to constitutional law, self-determination, primarily construed as internal, is an element frequently incorporated in constitutional law but needing to be dissociated from secession.

3. Federated and regional entities and international treaties

At its 41st Plenary Meeting the Commission adopted its report on Federated and regional entities and international treaties (CDL-INF (2000) 3) and decided to forward to the Chamber of the Regions of the Congress of Local and Regional Authorities in Europe.

The report was drawn up on the basis of replies to a questionnaire received from 13 states.[2] It highlights the main aspects of the replies, which are also summarised in a comparative table distributed simultaneously. The Commissions study of this question parallels the work of the Congress of Local and Regional Authorities of Europe on regions with legislative powers.

The Commissions report recalls that :

Europe is currently experiencing shifts of power both away from and towards the centre. A trend towards increasing the powers of public authorities at sub-state level - and specifically the growth of federalism and regionalism - coincides with the accelerating integration of Europe. As the number of tiers of authority increases, the question of the *allocation of powers* becomes ever more important in constitutional law.

At the same time, *international relations* are becoming increasingly important. To make them the exclusive responsibility of central government, as they have been traditionally, has a much more centralising effect today than it did fifty years ago. Moreover, cross-border co-operation is developing, with the result that certain issues have to be regulated at both international and sub-state level.

For these reasons *the allocation of powers in the field of international relations* has now acquired new importance and is a live issue in all federal or regionalised states and those containing autonomous entities. Typically, the first aspect of the question - to

which most of this report is devoted - is that of international treaties. The report will therefore deal first with the allocation of treaty-making powers (ie of substantive responsibility for treaty-making) between the central authority and the entities; it will then look at procedural powers before considering some actual examples of treaties concluded by entities. However, entities are involved not just in those treaties that they themselves conclude, but also in treaties made by central government. They may be asked to take part in the process leading to the conclusion of such treaties, either by being consulted or by participating in negotiations. They may also be required to adopt the implementing provisions of such instruments or to incorporate them into their own legislation. Apart from questions of treaty-making, the report will cover the participation of entities in the (increasingly important) work of international and supra-national organisations, before very briefly looking at specific questions about the delegation of treaty-making powers and the settlement of disputes concerning treaties concluded by entities.

The report concludes the following :

Participation by federated and regional entities in international relations (particularly treaty-based relations) is an increasingly contemporary phenomenon, not only because of the growth in international links but also because of developments in the apportionment of powers, with a tendency for federated states and regions to have a greater share of international responsibilities. But national arrangements vary widely, from the concentration of responsibility for international questions at central government level, to the system in which international powers parallel domestic responsibilities. In addition to concluding their own treaties, entities may be involved in the preparation or implementation of treaties concluded by central government. Where there is provision for such involvement prior to the conclusion of a treaty, it takes the form of consultation or, more rarely, participation in negotiations. The extent to which entities are involved in implementing treaties depends generally on the apportionment of responsibilities. Clearly, the entities role is greater in states with a dualist tradition, where international law always has to be incorporated into domestic law, than in those with monist systems, where implementing provisions are needed only for treaties that are not directly applicable. Entities participation in international organisations is less developed than their involvement in supranational bodies: the fact is that the latter enjoy real legislative powers and it is essential that entities participate in the process of European Community decision-making.

In the debate about the allocation of powers - a major issue in the countries considered - the international dimension can no longer be ignored.

4. Electoral law and national minorities

At its 41st Plenary Meeting the Commission adopted its report on Electoral law and national minorities.

The report is the culmination of research into the participation of members of minorities in public life, based on a questionnaire on the subject and it deals with the first part of the questionnaire, relating to the law governing elections. The report looks at electoral provisions issues arising for national minorities, highlighting those general electoral law themes which are indissociable from any consideration of the question. The specific situation of every minority makes it very difficult to come up with general principles and recommendations.

During the last ten years and the upheavals which have occurred in Europe, the protection of minorities has once again become one of the major preoccupations of European public law specialists. Far from being an academic subject reserved for those specialising in constitutional law and political science, it is central to political debate and to achieving the three fundamental principles of Europe's constitutional heritage on which the Council of Europe is based - democracy, human rights and the rule of law.

The involvement of members of minorities in the various aspects of life in society is an important factor in their integration and in the prevention of conflicts. This applies especially to what is commonly called public life, that is to say participation in state bodies.

The report covers a central element of public life - participation in a state's elected bodies, especially the national legislature. Such participation is studied through electoral law and the possibilities it gives members of national minorities of being present in elected bodies.

1. Rules of electoral law which provide for special representation of minorities are an exception. They will be briefly considered in

the first section of the report.

2. In most cases, the representation of minorities in an elected body is achieved through the application of the ordinary rules of electoral law, which treat people belonging to national minorities and others in the same way.

It is not always easy to identify which of these general rules promote and which hinder representation of minorities. There are various reasons for this.

a. First, the relationship between an electoral system and the composition of elected bodies - other than with regard to its purely mathematical aspects - is one of the most controversial questions in political science. The diversity of situations in the various states makes it impossible to deduce detailed rules which may be applied universally. Furthermore, the significance of international comparisons must be tempered by factors other than the mathematical formula for converting votes into mandates, such as the possibility voters may have of choosing between the candidates on a list or more than one list. The number of seats per constituency, although not part of the electoral system in its strict meaning, is also a decisive factor.

b. Second, in most states which replied to the questionnaire, there are no precise data on the presence of members of minorities in elected bodies. Failing such data, it is very difficult to know whether the electoral system tends to result in under-representation or over-representation of the minority in the elected body.

c. Third, it is often hard to ascertain whether or not the purpose of a rule is to ensure or strengthen the representation of minorities (or, on the contrary, to lessen it). For one thing, such an objective is not necessarily explicit. Also, the representation of national minorities, even if intended, is not necessarily the main objective of legislation, especially in states where there are no sizeable minorities. Thus, in a strongly proportional electoral system, which aims to ensure that small political groups are represented, the representation of national minorities may be an associated aim. And finally, paradoxical as it may seem, when an electoral system ensures that minorities are represented to their satisfaction, the question is not crucial, and thus there is no vital reason for wondering whether the legislation tends to ensure that minorities are represented. As a consequence, no distinction will be made in the present report between those ordinary electoral rules which merely result in the protection of minorities and those whose very purpose is such protection.

d. The rules on the conversion of votes into seats, especially those of a mathematical nature, which are most universal in scope, apply above all to political parties. They never concern a national minority directly. Their significance for the representation of national minorities therefore largely depends on the relationship between national minorities and political parties, or at least political groupings. Such rules concern national minorities when there are parties or other organisations peculiar to such minorities that present their own lists. Obviously, it remains to be seen to what extent the voters belonging to the minority - or indeed the majority - vote for such parties. If there are no such lists, there may be a link between an electoral system and the representation of minorities when membership of a minority is a decisive criterion in voting by citizens.

The report concludes :

The wide variety of electoral systems have been grist to generations of legal specialists, political analysts and mathematicians and will continue to be so. It is true that they do not all without exception guarantee that national minorities are fairly represented, but the main conclusion which may be drawn from the foregoing analysis is that there is no absolute rule in this field. Indeed, the electoral system is but one of the factors conditioning the presence of members of minorities in an elected body. Other elements also have a bearing, such as the choice of candidates by the political parties and, obviously, voters' choices, which are only partly dependent on the electoral system. The concentrated or dispersed nature of the minority may also have a part to play, as may the extent to which it is integrated into society, and, above all, its numerical size.

Nevertheless, the electoral system is not irrelevant to the participation of members of minorities in public life. On the one hand, certain states - but they are few in number - have specific rules designed to ensure such participation. On the other hand, it may be that neutral rules - for example, those relating to the drawing of constituency boundaries - are applied with the intention of making it easier for minorities to be represented. More often than not, however, the representation of minorities is not a deciding factor in the choices made when an electoral system is adopted or even put into practice. However, as regards the presence of members of minorities in elected bodies, the following general remarks may be made.

- The impact of an electoral system on the representation of minorities is felt most clearly when national minorities have their own parties.

- It is uncommon for political parties representing national minorities to be prohibited by law and highly unusual for this in fact to happen. Only in very rare cases does this constitute a restriction upon the freedom of association, which nonetheless respects the principle of proportionality, and is consistent with the European constitutional heritage.

- Although parties representing national minorities are very widely permitted, their existence is neither the rule nor indispensable to the presence of persons belonging to minorities in elected bodies.

- The more an electoral system is proportional, the greater the chances dispersed minorities or those with few members have of being represented in the elected body. The number of seats per constituency is a decisive factor in the proportionality of the system.

- When lists are not closed, a voter's choice may take account of whether or not the candidates belong to national minorities. Whether or not such freedom of choice is favourable or unfavourable to minorities depends on many factors, including the numerical size of the minorities.

- Unequal representation may have an influence (positive or negative) on the representation of concentrated minorities, but the replies to the questionnaire do not indicate any concrete instances.

- When a territory where a minority is in the majority is recognised as a constituency, this helps the minority to be represented in the elected bodies, especially if a majority system is applied.

To *sum up*, the participation of members of national minorities in public life through elected office results not so much from the application of rules peculiar to the minorities, as from the implementation of general rules of electoral law, adjusted, if need be, to increase the chances of success of the candidates from such minorities.

LIST OF REPORTS AND STUDIES ADOPTED

- Guidelines on prohibition and dissolution of political parties and analogous measure (CDL-INF (2000) 1) adopted by the Commission at its 41st Plenary meeting (Venice, 10-11 December 1999);

- Self-determination and secession in constitutional law (CDL-INF (2000) 2) adopted by the Commission at its 41st Plenary meeting (Venice, 10-11 December 1999);

- Federated and regional entities and international treaties (CDL-INF (2000) 3) adopted by the Commission at its 41st Plenary meeting (Venice, 10-11 December 1999);

- Electoral law and national minorities (CDL-INF (2000) 4) adopted by the Commission at its 41st Plenary meeting (Venice, 10-11 December 1999);

IV. Centre on Constitutional Justice

Co-operation with constitutional courts and courts of equivalent jurisdiction further advanced during the year 1999. In addition to the publication of the *Bulletin on Constitutional Case-Law* and the database CODICES every four months, the series of seminars in co-operation with constitutional courts has firmly taken roots. Moreover, throughout the year the Commission held exchanges of views with Presidents and members of European Consitutional Courts, in particular with Mr Adamovich, President of the Constitutional Court of Austria, Mr Rozenko, Vice-President of the Constitutional Court of Ukraine and with Ms Jaeger, member of the First Senate, Constitutional Court of Germany.

Bulletin on Constitutional Case-Law

About 50 constitutional courts and equivalent bodies participated in the publication of the *Bulletin on Constitutional Case-Law* and the database CODICES. Upon request by the Presidency of the Conference of the European Constitutional Courts, the Commission published two special issues of the *Bulletin* on the Freedom of Religion and Beliefs and on Descriptions of Courts. The latter issue was also published in Russian. The publication of a Russian edition of the Special Bulletin on the Leading Cases of the European Court of Human Rights entered its final stage at the end of 1999.

An agreement was concluded with the Association of Constitutional Courts using the French Language (ACCPUF) which allows for the exchange of publications of both bodies in favour of participating courts. ACCPUF was allowed to use the structure of the *Bulletin* and CODICES including the Systematic Thesaurus of the Commission for its own bulletin and database.

CODICES

In 1999 three up-dated versions of the database CODICES were published on CD-ROM and via Internet. CODICES contains all previous regular and special issues of the *Bulletin* (2200 prcis), together with over 2000 decisions in full text, the laws on the courts, descriptions of the courts and constitutions. All special *Bulletins* have been integrated into CODICES as well. Several constitutions already have been indexed article by article according to the Thesaurus to make them searchable by topic.

Seminars in co-operation with constitutional courts

These seminars build upon a mutual exchange of experience of judges from 'older' and more recently established constitutional courts. Experience has shown that similar problems often arise in parallel in several countries. While constitutions may differ, the principles which govern the decisions of constitutional courts are the same. An exchange of experience between the courts is therefore likely to contribute to the promotion of the rule of law.

In 1999, such seminars were organised in co-operation with the constitutional courts of Armenia, Azerbaijan, Georgia, Moldova, Ukraine (three seminars). Topics dealt with included the protection of private property by the Constitutional Court, constitutional control in federal and unitary states, the resolution of conflicts between powers by the Constitutional Court, the execution of the decisions of the constitutional court and the role of the secretariat of the Constitutional Court.

The increasing demand for these seminars shows that they effectively address the needs of requesting courts.

V. The UniDem (Universities for Democracy) Programme

The Commission organised four seminars within the framework of this programme during 1999 :

1. Seminar on Federal and Regional States in the perspective of European Integration (Bologna, 18-19 March 1999);

The Commission organised, in co-operation with the Johns Hopkins University and the University of Bologna, on 18-19 March 1999 in Bologna a Seminar on Federal and Regional States in the perspective of European integration.

Today in Europe, powers are even more than ever shared between the national State, its entities and supranational bodies. It has become therefore indispensable to study the relationships between the different levels. This was achieved during the above-mentioned UniDem Seminar.

The seminars first day, opened by Mr Evans, rector of the Johns Hopkins University, was devoted to the European Union and in particular to the relationship between the Union and Federated States or regions. Following an introductory report by Prof. La Pergola, President of the Venice Commission, which stressed common values on the continent in particular in the human rights field, national reports were presented on the situation in different Federal and Regional States of the European Union. The conclusions were presented by Prof. De Vergottini (University of Bologna).

The debates, far from restricting themselves to the single theme of European integration, or even the European Union, also addressed the general question of regional integration which is becoming more and more topical in different parts of the planet, in the presence of participants from five continents. Thus, the second day was devoted to points of view from outside Europe on questions of regional and federal integration. Speakers were from the United States, South Africa and Japan.

The proceedings of the seminar have been published in the series Science and Technique of Democracy.

2. Seminar on The right to a fair trial (Brno, Czech Republic, 23-25 September 1999)

The Commission organised, in co-operation with the Constitutional Court of the Czech Republic and the University of Montpellier, on 23-25 September 1999 in Brno a Seminar on The right to a fair trial.

This seminar falls within the framework of seminars on European constitutional heritage, at which members of Constitutional Courts participate. The seminars work was divided into two distinct parts.

In the first part general reports were presented concerning the case-law of the organs of the European Convention on Human Rights, national reports by speakers from Czech Republic, Hungary, Romania, Spain and Switzerland, as well as the United States and South Africa.

In the second part the participants examined a practical example on the right to a fair trial. In addition to the rapporteurs, judges from Constitutional Courts or equivalent bodies from more than twenty States presented the solutions which would be applied in their countries to questions such as the presence of foreign judges in the Court, a defendant who is not allowed to express himself in his mother tongue, or the fact that the lawyer in the opposing party is a relative of one of the judges.

Thanks to the presence of high level experts, constitutional or supreme court judges, this seminar highlighted one of the fundamental objectives of the Venice Commission : transconstitutionalism, which allows courts to benefit from the experience of their peers : European constitutional heritage has a dynamic character, it is progressively growing by the exchange of information and the reciprocal renewal of national solutions.

The Seminars proceedings will be published in the series Science and Technique of Democracy.

3. Seminar on Societies in conflict : the contribution of law and democracy to conflict resolution (Bled, 26-27 November 1999)

The Commission organised, in co-operation with the Ministry of Foreign affairs of Slovenia, on 26-27 November 1999 in Bled a Seminar on Societies in conflict : the contribution of law and democracy to conflict resolution.

The seminar was opened by Mr Volk, Secretary General of the Ministry of Foreign Affairs, and by Mr Holovaty, Vice-President of the Commission. It was mainly attended by experts on the various European conflict areas, in particular in South Eastern Europe. Its purpose was to analyse the various conflicts and try to identify legal tools which would be useful for the settlement of such conflicts. The seminar was followed on 29 and 30 November by the Conference on the contribution of constitutional arrangements to stability in South Eastern Europe in Brdo (see also part I, point 19 - Stability Pact).

Several reports addressed general issues of societies in conflict such as human rights violations, ensuring human security in conflict situations and the role of international law in the settlement of disputes. These reports were followed by country studies on Moldova, Bosnia and Herzegovina, Kosovo, the Federal Republic of Yugoslavia and Albania. An intervention presented the Northern Ireland Agreement as an example of (relatively) successful conflict resolution. Further reports were devoted to the UN efforts for a settlement in Cyprus and the role of the Office of the High Representative in Bosnia and Herzegovina.

The general report was presented by Ms Thune from Norway, former member of the European Commission for Human Rights.

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

4. Seminar on The implementation of the new Constitution of Albania (Trieste, 13-14 December 1999).

The Commission organised, in co-operation with the University of Trieste, on 13-14 December 1999 in Trieste a Seminar on the implementation of the new Constitution of Albania.

The seminar emphasised the following topical subjects in Albanian constitutional law:

- The problem of the death penalty. A few days prior to the seminar, the Albanian Constitutional Court had declared the death penalty unconstitutional, based in particular on an opinion by the Venice Commission.

- Models for the protection of national minorities. Several models were compared. On the one hand, the solution of territorial autonomy (federalism, regionalism, special status); on the other hand, the granting of specific rights to persons belonging to minorities, in particular rights relating to the use of a minority language, access to the press, instruction in a minority language.

- The restitution of property according to European law and international human rights. This is obviously a crucial question in all new democracies. Some solutions can be found in international law and in particular the Additional Protocol to the European Convention on Human rights.

- Options for electoral legislation. The new constitution introduces specific rules in electoral matters, in particular concerning the electoral system strictly speaking. They should now be introduced into law. Respect for basic principles of electoral law, universal suffrage, equal, free, direct and secret ballot.

- The Constitutional Court. The seminar was an opportunity to compare the experiences of the new constitutional courts of Central and Eastern Europe, to enable the Albanian Constitutional Court to benefit from these experiences.

5. Preparation of forthcoming seminars

It is envisaged to hold the following UniDem seminars :

- Conference on The Protection of Human Rights in the 21st Century: Towards Greater Complementarity within and between European Regional Organisations in co-operation with the Irish Presidency of the Committee of Ministers (Dublin, 3-4 March 2000);

- Seminar on Democracy in a Society in Transition in co-operation with the University of Lund (Lund, 19-20 May 2000);

- Seminar on the Ombudsman Institution in Europe (Athens, May 2000)

- Seminar on Constitutional change and European integration in Cyprus (date to be fixed)

- Seminar on State consolidation and National identity in Moldova (date to be fixed)

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[1] The full text of this report appears in the Commissions annual report of activities for 1998 as well as in CDL-INF(98)14 .

[2] Argentina, Austria, Belgium, Bosnia and Herzegovina , Canada, Denmark, Finland, Germany, Italy, Portugal, Switzerland, Ukraine and the United States .

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[2]ïċ ½ïċ ½ïċ ½ïċ ½ïċ ½ïċ ½ïċ ½ïċ ½ïċ ½ïċ ½ïċ ½ïċ ½ïċ ½ Argentina, Austria, Belgium, Bosnia and Herzegovina , Canada, Denmark, Finland, Germany, Italy, Portugal, Switzerland, Ukraine and the United States .