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**EUROPEAN COMMISSION FOR DEMOCRACY THROUGH LAW**

(VENICE COMMISSION)

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**ANNUAL REPORT OF**

**ACTIVITIES FOR 2001**

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**PRESENTATION OF THE VENICE COMMISSIONS**  
**REPORT OF ACTIVITIES FOR 2001**

**Statement by**  
**Mr Antonio La Pergola, President of the Venice Commission,**  
**to the Committee of Ministers (22 May 2002)**

Mr Chairman, Ambassadors, Ladies and Gentlemen,

**I.**

While I have the honour and pleasure of addressing you every year with my Annual Report of Activities, this is the very first time that I do so as the President of an Enlarged and not a Partial Agreement. The Russian Federation joined our Commission earlier this year. For the first time in the history of the Council of Europe, a Partial Agreement has succeeded in attracting within its circle all the member States. All of them have joined us on a completely voluntary basis. It is a deep satisfaction for us to know that they wish to take part in our work. You have drawn the natural conclusion from this fact, when adopting the new Statute, which rests on an Enlarged Agreement. Now an Enlarged Agreement not only means a new dimension of our membership. It also calls for fresh responsibilities that we must face as we bring into focus the goals which an expert team of lawyers like ours can pursue in line with the far-reaching appeal of the whole Council of Europe. A new perspective has been disclosed to the Commission. It can spread within its remit the values of the Council of Europe even beyond our continent. This will certainly be a topic for my future interventions before you.

Meanwhile, let me express my appreciation to you for having adopted the revised Statute. There are many welcome changes. Our new Statute is more functional, more coherent and more in keeping with the practice of the Commission as it has developed throughout the years. The energising principle of our work, and the chief reason for such success as we have deserved in your own eyes and in the Council of Europe at large, is of course our independence of judgement. True enough, the impartiality of an expert who delivers advice can be formally guaranteed in more ways than one. We had made proposals in this regard, you have left the system as it stood. Our members are each appointed by the Government of a member state. We can be confident, nevertheless, that our treasured value of independence will be effectively preserved by the wisdom shown by your Governments when they choose our members as well as by the code of behaviour practised by all those who sit on our Commission, fully aware as they have always been that they belong to a body which does not seek or receive any instructions.

**II.**

Our written annual report gives you an overview of our wide-ranging activities and I can only highlight a few during this presentation. Let me start with the Balkans. Not only were our activities there particularly important but the area is also a focus for your attention, a few weeks after Bosnia's accession to the Council of Europe and in view of the admission of the Federal Republic of Yugoslavia, now being transformed into Serbia and Montenegro.

What was once Yugoslavia is now an area fractured into several states, but these entities are coming as an entire region within the

orbit of the Council of Europe. Such a result marks the progress achieved. Commissioner Patten noted in a recent speech before the Western Balkans Democracy Forum in Thessaloniki that the Balkans are today in a better shape than they have been for a decade and that the situation has improved compared to only two years ago, although a good deal of work remains to be done.

The Venice Commission has been involved in many of these positive changes.

In the Federal Republic of Yugoslavia we have provided legal advice to EU High Representative Mr Solana, at his request, during his successful efforts to bring about an agreement of principle on the new shape of the Federation. We remain at his disposal if our services are required for the preparation of the constitutional charter and the subsequent revision of the Republican constitutions.

- In Kosovo we were fully involved last year in the drafting of the Constitutional Framework for Provisional Self-Government in Kosovo, at the request of the Special Representative of the Secretary General of the United Nations, Mr Haekkerup.
- Our contribution to the drafting of the Ohrid Framework Agreement in the Former Yugoslav Republic of Macedonia, requested by EU Special Representative Francois Leotard, has been, may I say, of particular importance. This Agreement is a rare example of the early peaceful resolution of a conflict through political and legal means and our Commission is proud of having contributed to this achievement.

These three activities also very clearly show that the contribution we can make is increasingly recognised not only within the Council of Europe but also by international organisations and in particular by the European Union.

Such co-operation with international bodies has from the beginning been typical of our activities in Bosnia. There we have over the years tried, in close co-operation with the Office of the High Representative, to strengthen within the limits of the Constitution the powers conferred to institutions at the State level. The commitments entered into by Bosnia upon accession envisage Venice Commission assistance and we look forward to increasing co-operation with the domestic institutions of Bosnia and Herzegovina which are finally taking over their responsibilities as befits an independent country and a member state of the Council of Europe.

In Croatia we have been working for a number of years with the authorities there on a revision of the legislation on minorities. Unfortunately this co-operation has not yet resulted in the adoption of a law which would accord with our recommendations and the Commission is anxious to see the long work done brought to fruition.

As regards the Caucasus I think I can be fairly brief since you are yourselves following developments there in the framework of the Ago group. We have co-operated very closely with Armenia in order to revise its Constitution. The text resulting from this co-operation seems to us well balanced and we hope that the referendum prescribed for its final adoption will not be postponed for too long. As you know, the initiative for revising the Constitution was taken by the Armenian authorities of their own free will and not by way of a previous commitment towards the Council of Europe. However, the proposed constitutional amendments are helpful, if not essential, to enable Armenia to fulfil the commitments it has undertaken. In addition, we are involved together with ODIHR in the revision of the electoral law and a meeting on this subject took place last week in Erevan as a parallel event to the visit of your group.

With respect to Azerbaijan, co-operation on the electoral code should soon be resumed. We have also provided a number of opinions on various draft laws in the constitutional field and are expecting more information on the follow up to these opinions. As concerns the Law recently passed on the Ombudsman we are gratified to note that it has taken into account our comments.

We have established a fruitful and long-standing co-operation with Georgia as well. Its parliament has asked us to give an opinion on the proposal by President Shevardnadze to amend the Constitution, and move from an American type of presidency to a French style semi-presidential government. We are also hoping to resume work on the status of Abkhazia, although conditions in this respect seem difficult at the moment.

The geographical scope of our activities has not of course been limited to the Balkans and the Caucasus. We have, for example, given a number of opinions on Ukraine and quite recently another on the status of Gagauzia in Moldova. We have no geographical preference or limitation. We are glad to assist whichever country is interested.

It was thus for us a particular pleasure to receive a request from the Grand Duchy of Luxemburg to deal with three draft laws which will soon be submitted to the national parliament, on the creation of a mediator, data protection and freedom of expression. We are honoured by this mark of confidence from a Western European country, a founding member of both the Council of Europe and the European Union, and any request from other western European countries would be equally welcome. Our Commission was not set up to deal exclusively with Central and Eastern Europe. Our European constitutional heritage is shared by all our countries. They have all contributed to its growth. Each of them may want to tap on the resources of this common wisdom and experience and we remain at the disposal of any member State of the Council.

### **III.**

Of course, the Commission does not deal exclusively with problems of particular countries. We also examine transnational issues. One such case concerns our Guidelines for constitutional referendums. Another is our study on the protection of national minorities by their kin State. You all know the situation which gave rise to this opinion. There were many concerns when we started to tackle this delicate issue. In the end our report was welcomed by the interested countries and contributed towards a consensual solution. Here is further proof that addressing a problem from a legal angle may lead to a less emotional discussion and a clearer appreciation of practical issues.

As every year we have continued our co-operation with constitutional courts and courts of equivalent jurisdiction. When adopting the new Statute you have acknowledged the importance of this co-operation by setting up within the Commission the Joint Council on Constitutional Justice as a joint body of members of our Commission and representatives of the Constitutional Courts of the member States. This Council should give a further boost to our already intensive activity, which may well develop in new and significant directions.

While constitutional justice is a traditional concern of ours, electoral law is at present our area of growth. We have already observed over the years that the Commission is being increasingly asked to comment on the drafting of electoral legislation. The Parliamentary Assembly last year called for the establishment of a Council of Europe body dealing with electoral issues and in March of this year the Parliamentary Assembly, the Congress of Local and Regional Authorities of Europe and the Venice Commission set up together the Council for Democratic Elections. This body will combine the practical experience of the parliamentarians and local and regional councillors with the more legal oriented approach of our Commission. It has started its work by drafting a code of good practice in electoral matters. ODIHR participates fully in the Councils work, the European Parliament has shown its interest and this is therefore an example of good co-operation not only between various bodies within the Council of Europe but also between international organisations.

The further development of the Council on Democratic Elections will to a large extent depend on the human and financial resources made available. We hope to get financial support from the European Union within a Joint Programme, but allow me to say that we regard your help and encouragement for this initiative as indispensable. Elections are so central to the concept of democracy that neither the Council of Europe as a whole nor a Commission for Democracy through Law can, in our view, afford to miss the importance of this area of interest which is indeed a priority.

To sum up, I can in all fairness state that the Commission has continued successfully its traditional activities throughout last year and in the early months of the present one. Moreover, we have substantially enhanced our role in the settlement of ethno-political conflicts and we are developing, together with the Parliamentary Assembly, ~~and the Congress and ODIHR,~~ new activities in the field of electoral law. We trust that we will continue to benefit from your support. We need it to achieve our goals, which are the same as those of our mother Institution, the Council of Europe where we all belong.

Thank you very much, Mr Chairman.

### **MEMBERSHIP**

At the end of 2001, the Commission totalled 42 full members<sup>[1]</sup>, 3 associate members and 11 observers.

## Members

During 2001 Armenia and Azerbaijan acceded to the Partial Agreement and nominated Mr Gaguk Harutunian, President of the Constitutional Court of Armenia and Mr Khanlar Hajiyev, President of the Constitutional Court of Azerbaijan as members.

Ms Suzanna Stanik, Minister of Justice of Ukraine was nominated member and Mr Volodymyr Vassilenko, Ambassador of Ukraine to the United Kingdom nominated Substitute member in respect of Ukraine replacing Mr Serhiy Holovaty and Mr Volodymyr Shapoval whose mandates had expired.

Ms Maria Postoico, Chairperson of the Committee on Legal Affairs, appointments and immunities, Parliament of Moldova was nominated member and Mr Vasile Rusu, Deputy Chairperson, of the Committee on Legal Affairs, appointments and immunities, Parliament of Moldova nominated Substitute member in respect of Moldova replacing Mr Vladimir Solonari whose mandate had expired.

In addition, Mr Henrik Zahle, Supreme Court Judge was nominated member in respect of Denmark replacing Mr Asborn Jensen who resigned his mandate.

Mr Dimitri Conostas, Professor, Panteio University, Director of the Greek Institute of International Relations, was nominated substitute member in respect of Greece.

## **Associate members**

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The Federal Republic of Yugoslavia obtained associate member status and appointed Mr Vojin Dimitrijevic, Director, Belgrade Human Rights Centre as its associate member on the Commission and Mr Vladimir Djeric, adviser to the Minister of Foreign Affairs, as substitute associate member.

## **Observers**

Mexico obtained observer status and appointed Mr Porfirio Munoz-Ledo, Permanent Observer of Mexico to the Council of Europe as its observer on the Commission.

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 set up during 2001.

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



# Introduction

The main task of the Commission is to promote democracy and the rule of law. While many international bodies are dealing with the protection of human rights, the Commission is fairly unique in addressing all constitutional issues, including questions of the separation of powers and of State structure. The relevance of its activities was impressively confirmed in December 2001, when the Federation of Russia announced her decision to join the Commission. For the first time in the history of the Council of Europe, a Partial Agreement has thereby succeeded in attracting all Council of Europe member states as members.

While the Commission is not a political body but a technical body providing legal advice, the year 2001 confirmed that the legal expertise of the Commission can contribute to the solution of political disputes. This concerns in particular ethno-political disputes. The Commission addressed these both by means of a general study and through activities related to particular conflicts. It was involved in the drafting of the Ohrid Framework Agreement in the Former Yugoslav Republic of Macedonia, which has as its core a far-reaching constitutional reform, and the Constitutional Framework for Provisional Self-Government in Kosovo. Its Interim Report on the Constitutional Situation in the Federal Republic of Yugoslavia addressing in particular the issue of a possible secession of Montenegro received a lot of attention by political decision-makers. The seminar on the status of Abkhazia provided for the first time in many years a framework for discussion between international, Georgian and Abkhaz experts.

Traditionally the most important activity of the Commission concerns constitutional reform. While no entirely new Constitution was adopted in Europe in 2001, the Commission was fully involved in the work for the revision of the Constitution of Armenia, which will hopefully be adopted in 2002, and was asked by Romania to assist the planned constitutional reform in this country. The Commission provided orientation for the revision of the constitutions of the two Entities in Bosnia and Herzegovina. Several activities were devoted to the building up of the State institutions in Bosnia and Herzegovina and the establishment of a court at the State level in this country was mainly due to the persistent efforts of the Commission in this direction.

Many countries co-operated with the Commission when adopting organic or ordinary legislation in the constitutional field. This concerned in particular Armenia and Azerbaijan as the most recent Council of Europe member States, Bosnia and Herzegovina as the State closest to accession to the Council of Europe and Croatia as a country undertaking a particular effort of reform. Many of these laws concerned the protection of minorities, a traditional focus of Commission activity which has lost none of its relevance. Electoral law continued to gain in importance in 2001 and the Commission intends to expand its activities in this sector in 2002.

The studies prepared by the Commission and the seminars organised by it do not have a theoretical character but are part of a comprehensive approach. Its Report on the Preferential Treatment of National Minorities by their Kin-State was the basis of an understanding between Hungary and Romania on the previously highly controversial Hungarian Law on Hungarians living abroad. The UniDem campus in Trieste contributes to the application of European standards in South Eastern Europe by training officials from the region.

Last but not least the Commission continues to devote a large amount of time and resources to constitutional justice. It is proud to have contributed to the flourishing of constitutional justice in Europe in the last decade when constitutional courts were established throughout Central and Eastern Europe. It co-operates with constitutional courts and courts with equivalent jurisdiction and furthers co-operation among them. Constitutional courts play the key role in ensuring that human rights and liberal democracy do not remain dead letters but are reflected in daily practice. Co-operation with and among constitutional courts not only enhances the technical quality of their work. It ensures that European courts work in a common spirit reflecting the common values of the European constitutional heritage.

This heritage is not exclusive to Europe. While the Commission sees as its main task to uphold constitutionalism throughout Europe, and particularly in the regions where these values are not yet securely established, it notes with satisfaction that its activities have attracted attention in other continents and is pleased to contribute to democratic reform in countries such as South Africa.

Finally, it should be underlined that the Commission does not and cannot act in isolation. The political commitment of the countries concerned to respect and implement Council of Europe standards and values is the precondition for any successful activity. Co-operation with the organs of the Council of Europe, the Parliamentary Assembly and the Committee of Ministers, but also the Congress of Local and Regional Authorities of Europe and the Secretary General, was crucial for many activities. Through a Joint Programme the European Commission provided major financial support for a wide range of activities. Many of the most important activities of the Commission were carried out at the request and in close co-operation with international organisations

such as the European Union, UNMIK, UNOMIG or OSCE. The Commission therefore wishes to thank all these partners and expects to pursue co-operation with them in 2002 and beyond.

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

### **1. CO-OPERATION WITH ALBANIA**

#### *Draft Legislation on Parliamentary Investigative Commissions*

At the request of the Parliament of Albania, Ms Suchocka and Messrs Bartole and Nolte drew up opinions on the draft legislation on Parliamentary Investigative Commissions. Their comments focused on aspects such as the composition of such commissions, including the participation of special prosecutors and the political balance of the commissions, their relationship to other institutions and branches of power, and who had the right to create such commissions. According to the Constitution, a request by one quarter of the members of Parliament was sufficient to require the creation of a parliamentary investigative commission. This in effect gave the opposition the right to create such commissions, a right which should in the view of some of the rapporteurs be treated with caution to ensure that it did not lead to excessive interference in the work of government.

These opinions were approved by the Commission at its 47<sup>th</sup> Plenary Meeting and forwarded to the Albanian authorities.

### **2. CO-OPERATION WITH ARMENIA[3]**

Shortly after its accession to the Council of Europe, Armenia also became a full member of the partial agreement on the Venice Commission on 27 March 2001.

**The Commissions activities with Armenia in 2001 followed the lines set out in the programme of co-operation approved by the Commission at its 45<sup>th</sup> Plenary meeting (Venice, 15-16 December 2000.**

#### *Constitutional Reform*

The Commission followed the question of constitutional reform in Armenia through much of the year. The Working Group set up by the Commission in 2000 continued to co-operate closely with the Armenian authorities and meetings were held with the rapporteurs and representatives of the Armenian authorities in

Paris on 13-14 February and in Strasbourg on 5-6 June. These meetings built on the work already begun in 2000.

At the Commissions 46<sup>th</sup> Plenary Meeting in March, Messrs Harutunian and Batliner presented the work to date of the Working Group on Constitutional Reform. They reported that the Group had already carried out a great deal of work that had been very effective, in terms of the amount of attention its observations had received from the Armenian authorities. All the sections of the draft constitution had been examined in minute detail. The human rights section had been substantially improved and was compatible with international and European standards. For example, the new draft constitution contained an explicit provision abolishing the death penalty in peace time. It had opted for a diffuse system for protecting human rights, with machinery for monitoring the constitution that was both theoretical and practical.

Following the meeting of the Working Group held in June, the rapporteurs prepared an opinion on the constitutional revision in Armenia. They noted first of all that most of the Working Groups comments had been taken into account. The constitutional revision had several major objectives: strengthening human rights in the Armenian legal system; safeguarding the separation of powers; strengthening the position of the legislative and judicial functions; reinforcing the principle of local self-government. The following points needed to be considered: the right of access to information should not be restricted to citizens but recognised as a human right; the system of restrictions on and derogations from human rights could be simplified; states of emergency and martial law should preferably require parliamentary approval; the mayor of Yerevan was still appointed rather than elected, which was incompatible with the principles of local self-government. The Working Group had not examined the preamble and transitional provisions of the Constitution. The Commission adopted this opinion at its 47<sup>th</sup> Plenary Meeting and noted that it was planned to submit the draft constitutional revision to a referendum in autumn 2001 or spring 2002. However, as at the end of 2001 no date had yet been set for the referendum.

It may also be noted in this context that progress on the draft law on the Ombudsman was frozen pending the necessary revision of the Constitution. This was in order to avoid repeated changes to legislation on the same subject, based first on the existing Constitution and then on the revised version.

## *Electoral Code*

Reform of the Electoral Code was one of Armenias undertakings when it joined the Council of Europe and it was in this context that the Commission examined the Code. A meeting organised by the OSCE office in Armenia was held in Yerevan in February 2001 and was designed to highlight the problems that had been identified since the last elections, and ways of simplifying monitoring procedures. Subsequently, the Armenian authorities drew up draft amendments to the Code, which were submitted to the Commission for examination in December 2001. Mr Owen, who had prepared comments on the Code in 2000 and attended the meeting in February, and Mr Mackie were designated as rapporteurs for the Commission. Work is continuing on this matter in 2002.

## *Law on Political Parties*

At its 47<sup>th</sup> Plenary Meeting, the Commission considered the draft law on political parties in Armenia, prepared by the Armenian Peoples Party. The draft covers practically all the issues connected with political parties activities. Messrs Stoica and Vogel prepared individual comments but came to the same conclusions, on the basis of the European Convention on Human Rights. The main problems were as follows: depending on the proposed version, parties had to be represented either in two-thirds of the country's geographical sub-divisions or in all of them, which was excessive; the restrictions in cases of a state of emergency were unclear; the ban on political parties that did not secure a certain number of votes was inadmissible; the question of public funding should be reviewed; the provision that parties not presenting lists of candidates at national elections or with insufficient members could be dissolved was very restrictive; and finally, the automatic loss of a parliamentary seat in the event, *inter alia*, of the dissolution or reorganisation of a party was unacceptable.

The Armenian authorities indicated their intention to resubmit the text to the Commission after its first reading in Parliament and

the Commission is following this question with interest.

## *Draft Civil Service Law*

At its 48<sup>th</sup> Plenary Meeting, the Commission adopted its opinion on the draft Civil Service Law of the Republic of Armenia, prepared at the request of the Armenian authorities. The assessment was made against the background of the draft revised Constitution, Mr Tuori, the Commissions rapporteur, noted that local self-government was now left outside the scope of the draft, in accordance with the constitutional principle of local self-government enunciated in the draft constitution, and that a new provision had been inserted, guaranteeing that a person could only be deprived of the right to occupy a civil service position through judicial proceedings. Some problems remained, notably with respect to the principles laid down in Article 5 of the draft, which were not regulated more specifically by further provisions; nor was there a reference to complementary provisions on access to public information. With regard to the principles of democracy and the rule of law, comments had already been made by other experts and were therefore not repeated by Mr Tuori. In December, the Commission communicated to the Armenian authorities a note concerning the compatibility of the draft Civil Service Law with the current Constitution. The draft Law had not yet been adopted at the end of 2001.

## *Ratification of the European Convention on Human Rights*

The Commission had given an opinion on constitutional reform in Armenia ([CDL-INF \(2001\) 17](#)) and later was asked to give a further opinion on the question of whether Armenia could ratify the European Convention on Human Rights before the constitutional reform was carried out.

In its opinion, adopted at the 49<sup>th</sup> Plenary Meeting, the Commission noted that Article 6 of the Armenian Constitution which foresees that the Constitution should be amended before ratification of an international treaty containing provisions which could be in contradiction to the Constitution, should be interpreted as making reference to a strict incompatibility between the two provisions in each text. The Constitution seems to reveal several contradictions which have been examined.

A contradiction seems to exist insofar as the European Convention on Human Rights guarantees the enjoyment of fundamental rights and freedoms to all individuals, whereas the Armenian constitution reserves several of these rights (in particular the right to form political parties, the freedom to hold meetings, the right to vote, the right to education and the right to own property) for citizens only. However, a real contradiction can only be revealed when the constitution explicitly prevents the enjoyment of one of these rights being extended to non-citizens. In fact, once ratified, the European Convention will be directly applicable in Armenia law and consequently, non-citizens will be able to benefit from the rights in question, even if the source of protection remains at a lower level in the hierarchy of norms. The only problem therefore remaining would be concerning property law, as Article 28, Para 2 of the Constitution foresees that foreigners and stateless people cannot own land. However, given that Article 1 of the Additional Protocol does not guarantee the right to acquire property and that the limitation of the right of citizens to dispose of their goods in the case where they wish to sell or bequeath to foreigners follows the legitimate aim of preserving the Armenian land which constitutes a national wealth, the Additional Protocol to the European Convention is not, *prima facie*, in contradiction with the Armenian Constitution.

Another contradiction seems to exist between Article 1 of Protocol N 6 to the European Convention which requires the abolition of the death penalty, and Article 17 of the Constitution which authorises the death penalty until such time as it is abolished. In the Commissions opinion however, article 17 explicitly foresees the possibility of the abolition of the death penalty, an abolition which could be carried out by means of the ratification of the Convention: the contradiction is therefore only apparent.

In conclusion, the Commission considered that there is no constitutional obstacle to the ratification of the European Convention on Human Rights, but at the same time the Commission emphasised the need for constitutional reform, which would foresee clearly, predictably and accessibly, the rights and duties of individuals and the authorities.

Furthermore, on 22 February 2002, the Constitutional Court of Armenia gave a decision on the compatibility of provisions of the

European Convention with the Armenian Constitution. Afterwards, on 20 March 2002, the National Assembly of Armenia ratified the European Convention, with reservation.

### **3. CO-OPERATION WITH AZERBAIJAN[4]**

Shortly after its accession to the Council of Europe, Azerbaijan also became a full member of the partial agreement on the Venice Commission on 1 March 2001.

The Commissions activities with Azerbaijan in 2001 followed the lines set out in the programme of co-operation approved by the Commission at its 45th Plenary meeting (Venice, 15-16 December 2000).

#### **Draft Law on the Ombudsman of the Republic of Azerbaijan**

Following a request from the authorities of Azerbaijan of 26 March 2001 to give a legal opinion on the draft Law on the Ombudsman of the Republic of Azerbaijan, the Commission asked Mrs Serra Lopes and Mr van Dijk to give their comments on the first draft. The Commission noted with satisfaction that further revisions of the draft Law on the Ombudsman in the Republic of Azerbaijan had incorporated almost all the observations and suggestions made. In general, the Commission found the final draft Law on the Ombudsman of the Republic of Azerbaijan to be compatible with European standards. It was hoped that the creation of such an institution would be duly reflected in the Constitution through corresponding amendments ([CDL\(2001\)83](#)).

#### *Draft Law on Safeguards for the vote of confidence to the Cabinet of Ministers by the Milli Mejlis (Parliament)*

In September 2001, the authorities of the Azerbaijan Republic seized the Venice Commission with a request for an opinion on the draft Law on Safeguards for the Vote of Confidence to the Cabinet of Ministers by the Milli Mejlis (Parliament). Following comments by the rapporteurs, Messrs Endzins, Hamilton and Bartole, the Commissions Rapporteurs and representatives of the Azeri authorities met first in Baku, on 15 November and then in Strasbourg, on 29-30 November 2001. Messrs Khanlar Hajiev, President of the Constitutional Court and Member of the Venice Commission, Mr Safa Mirzoyev, Head of the Secretariat of the Milli Mejlis, and Messrs Shahin Aliev and Fouad Aleskerov, from the Legal Department of the Office of the President of the Republic, participated in these meetings. For the Venice Commission Messrs Bartole, Endzins, Hamilton and Matscher were present at the Strasbourg meeting.

In its opinion, adopted at the 49<sup>th</sup> Plenary Meeting (Venice, 14-15 December 2001 [CDL-INF\(2001\)26](#)), the Commission observed that the draft Constitutional Law did not introduce any changes to the political system of Azerbaijan. It merely aimed at providing for a mechanism whereby the Milli Mejlis will be enabled to exercise, by means of a recommendatory vote of no confidence, some control over the executive. Any substantial strengthening of parliamentary control would however require a revision of the Constitution by referendum.

#### *Draft Law on the Regulation of Implementation of Human Rights and Freedoms in the Azerbaijan Republic*

Within the framework of the programme of co-operation between Azerbaijan and the Venice Commission, an opinion on the draft law On the Regulation of Implementation of Human Rights and Freedoms in the Azerbaijan Republic was requested by the Presidential administration of the Republic of Azerbaijan. The purpose of this law was twofold: to establish guidelines for the implementation of the ECHR's provisions on the restriction of human rights and freedoms, and secondly to supplement the human rights provisions contained in the Constitution with a view to ensuring their compatibility with the ECHR.

Following a meeting held in Baku on 15 November 2001, whereby the preliminary comments on the draft law made by the rapporteurs, Messrs Franz Matscher and Pieter van Dijk, were discussed, the first version of the draft law was partially amended. The amended text was then discussed during the meeting held in Strasbourg on 28-29 November 2001. On the basis of the comments by the rapporteurs and the discussions during this meeting, the Commission adopted its opinion at its 49th Plenary Meeting (Venice, 14-15 December 2001 [CDL-INF\(2001\)27](#)).

The Commission noted with satisfaction that the new draft incorporated many of the rapporteurs' previous proposals and concluded by suggesting various further changes to be incorporated into the final version of the law. The Commission also expressed its satisfaction that the draft constitutional law determines the precise limits of possible restrictions and derogations to guaranteed human rights and freedoms and thus contributes to improving the legal framework of human rights protection in Azerbaijan.

The work on the draft Law on the Regulation of Implementation of Human Rights and Freedoms in the Azerbaijan Republic continues in 2002 on the basis of a revised draft.

#### *Draft Law on the Constitutional Court*

By letter of 7 September 2001, Mr Khanlar Hajiyev, President of the Constitutional Court of Azerbaijan, requested the Commission's opinion on the draft law on the Constitutional Court. Following the individual comments by the rapporteurs, Messrs Endzins, Hamilton, Nolte and Paczolay, a workshop and meetings on the draft law were held in Baku on 5-6 November 2001. Further to these discussions, the Constitutional Court prepared a revised draft, which was the subject of discussions in Strasbourg on 29-30 November 2001. Given that the Commission had been informed that another revised draft would be presented, the Commission adopted only an interim opinion at its 49th Plenary Meeting on 14-15 December 2001 ([CDL-INF \(2001\) 28](#)). The Commission pointed out that the revised draft was substantially improved in comparison to the first draft and welcomed that it took into account comparative international experiences.

The main reform contained in this draft law was the introduction of individual access to the Constitutional Court and access for ordinary courts at all levels. The Commission recommended that several provisions be regulated in the internal regulations of the Court rather than in the Draft Law. Issues discussed in the interim opinion included the safeguards of independence in the procedure of appointment of the judges, the introduction of a written procedure and the establishment of facts in electoral cases.

The work on the draft Law on the Constitutional Court continues in 2002 on the basis of a revised draft.

#### **4. CO-OPERATION WITH BELGIUM**

Upon a request by the Committee on Legal Affairs and Human Rights of the Parliamentary Assembly, the Commission set up a working group composed of Messrs Matscher, Malinverni, Van Dijk and Bartole, in order to examine the question of possible groups of persons to which the Framework Convention for the Protection of National Minorities could be applied, once ratified, by Belgium. The working group met in Venice in December 2001 and is expected to complete its work in early 2002.

#### **5. CO-OPERATION WITH BOSNIA AND HERZEGOVINA[5]**

The Commission continued unabated in 2001 its long-standing and fruitful co-operation with the authorities of BiH, as well as with the institutions of the international community in this country. The Commission's priority remained the consolidation of democratic institutions in the country, notably in preparation for the future accession of BiH to the Council of Europe. The drafting of new legislation on elections was a key element and the Commission played an active role in this process. The revision of the Constitutions of the Entities to bring them into line with the Constitution of the State also remained high on the agenda following the constituent peoples' decision of the Constitutional Court in 2000. The Commission continued its work on this question in 2001 as well as on the drafting of a law on the merger of the Human Rights Chamber and the Constitutional Court at the level of the State.

### *Implementation of the Constitutional Court Decision on the Constituent Peoples and Constitutional Reforms in the Entities*

In the course of 2000, the Commission received a request from the authorities of the Federation of Bosnia and Herzegovina (FBH) for assistance in the revision of the Constitution of the FBH. Work began as described in the Commission's Annual Report for 2000

and continued in 2001, combined with work on the Constitution of the Republika Srpska, following a request from the Committee on Legal Affairs and Human Rights of the Parliamentary Assembly of the Council of Europe for the Commission's opinion on the partial decision of the Constitutional Court of Bosnia and Herzegovina on the issue of the constituent peoples. This request was supported by the Minister for Foreign Affairs of Bosnia and Herzegovina, Mr Prlić.

In its opinion, adopted at its 46<sup>th</sup> Plenary Meeting, the Commission considered ways of giving force to the main elements of this decision and drew a distinction between the situations in the two Entities. In the case of the Republika Srpska, although it raised numerous practical problems, implementation of the decision did not require fundamental changes to the wording of the Constitution, which was neutral in principle and made no reference to ethnicity. The problem in the Republika Srpska was rather the discrimination practised by institutions against non-Serbs. In the Federation, however, the Constitution made constant references to ethnic criteria and gave precedence to the groups identified as Croat and Bosniac. Rather than extending machinery for protection and participation to other groups or abandoning all reference to ethnic groups, the Commission favoured a rewriting of the Constitution to make it more neutral, drawing on classical federalism and avoiding the trap of a systematic enumeration of individual and universal rights.

At the same time, the High Representative invited the Commission to participate in the Task Force for the implementation of the judgment of the Constitutional Court of Bosnia and Herzegovina on the issue of constituent peoples. The Task Force, in which Messrs Scholsem and Markert participated on behalf of the Commission, made various proposals for constitutional drafting and implementation, and in particular proposed including an article in the Constitution of the Republika Srpska giving the authorities specific responsibility for preventing any discrimination. It also proposed the establishment of a constitutional commission in each Entity, composed of the constituent peoples. At the 48<sup>th</sup> Plenary Meeting of the Commission, Mr Barrett of the Office of the High Representative informed the Commission that the Entity commissions had been sitting fortnightly since March and were now, at their own initiative, holding joint sessions prior to reporting to their respective parliaments. The need to reform the Entity constitutions to comply with the decisions of the Constitutional Court of BiH in case U 5/98, especially the constituent peoples decision, was now urgent, and it was hoped that the process would reach its conclusion soon.

## *Election Law of Bosnia and Herzegovina*

In the context of the definition by the Parliamentary Assembly of the Council of Europe of the commitments to be undertaken by BiH in the event of its accession to the Council of Europe, the Assembly requested the Commission to examine the Electoral Law adopted by the Parliamentary Assembly of BiH in August 2001. The opinion, adopted by the Commission at its 48<sup>th</sup> Plenary Meeting, on the basis of comments by Messrs Malinverni and Scholsem, did not purport to be a detailed analysis of the law but focused on possible discriminatory provisions in the text, in particular in the light of international standards that were an integral part of the Constitution of BiH. Certain elections were not regulated in the law, pending the revision of the constitutions of the Entities in the light of the constituent peoples decision, and others were not problematic. However, serious questions were raised by the regulation of elections to the Presidency of BiH and the House of Peoples of BiH. These arose from the application of a mixture of territorial and ethnic criteria of the same type as that criticised by the Constitutional Court in its decision on constituent peoples of the Entities. The main problem with these provisions, however, was that they flowed directly from the provisions of the Constitution of BiH itself.

The Commission proposed that these questions be examined in future collaboration with the Council of Europe, whilst emphasising that these discussions should not disturb the electoral timetable already laid down for Bosnia and Herzegovina.

### *Preliminary draft Law on the Merger of the Human Rights Chamber and the Constitutional Court of Bosnia and Herzegovina*

Owing to the fact that the Human Rights Chamber would cease to operate once the European Convention on Human Rights had been ratified, it seemed logical and desirable to the Commission to transfer all the competences of the Human Rights Chamber to the Constitutional Court. This would enable all final appeals concerning human rights to be treated by a single jurisdiction at the State level and, with this in mind, the Commission proposed, at its 42<sup>nd</sup> Plenary Meeting (Venice, 31<sup>st</sup> March-1<sup>st</sup> April 2001) a total transfer of the competences of the Human Rights Chamber to the Constitutional Court.

Consequently, the Working Group on the merger of the Human Rights Chamber and the Constitutional Court continued its work and met on two occasions during 2001; in Paris in March 2001 ([CDL \(2001\) 32](#)) and in Bled, Slovenia on 10-12 June 2001 ([CDL \(2001\) 62](#) def) with the aim of drawing up a draft law which could enable this merger to take place under the best conditions (see [CDL-INF\(2001\)20](#)).

Even though in the interests of clarity of the law it would be advisable to amend the Constitution, such amendment was not indispensable and it was agreed that an ordinary law would be sufficient to implement this draft merger. The Working Group also considered that taking into account the importance of the institutional modifications needed, it was preferable to implement them by a law rather than only by a modification to the rules or to the procedures of the Constitutional Court. The draft law as drawn up, proposes a merger of competences; the term merger had deliberately been chosen to emphasise the need for a full transfer of competence from the Chamber to the Constitutional Court. The draft law also clearly indicates the transfer of resources that would be needed. The Working Group considered that the merger should take place as close as possible to the ratification of the European Convention on Human Rights.

## *Draft Laws on the Rights of National Minorities*

In spring 2001, the Venice Commission was asked by the Office of the High Representative to give its opinion on the draft Law on the Rights of the National Minorities of Bosnia and Herzegovina, prepared by the BiH Ministry of Human Rights and Refugees, as well as on a second draft law on national minorities, the Law on the Rights of Ethnic and National Communities and Minorities in Bosnia and Herzegovina, in the process of being adopted by the House of Peoples. Two opinions were subsequently adopted by the Commission at its 47th Plenary Meeting, on the basis of comments by Messrs van Dijk and Malinverni, and were sent to the Office of the High Representative.

The Commission noted that the first draft law, broadly inspired by the Framework Convention on the Protection of National Minorities, granted entitlements going beyond the internationally established minimum standards of protection. The Commission, though welcoming this attitude, pointed out that the significant costs relating to the implementation of the law were exclusively imposed on the local authorities and expressed concern as to the latter's financial accountability. It thus warned against the risk of making the realization of the minorities rights dependent upon the availability of financial means within the presumably very limited - budgetary resources of the local authorities. The Commission further made several suggestions, both substantial and of a technical nature, aiming at improving the draft law.

The second draft law, on the contrary, appeared to be too vaguely drafted to produce any meaningful impact on the minority protection scenario. Indeed, it merely repeated the wording of certain provisions of the Framework Convention, without giving them any actual implementation.

The Bosnian authorities have initiated, on the basis of the opinions of the Venice Commission as well as of comments by other international organisations including the OSCE High Commissioner for National Minorities, a process of drafting of a single, comprehensive piece of legislation on minority protection. The Commission is actively involved in this process.

### **Draft Law on the Intelligence and Security Service of the Federation of Bosnia and Herzegovina**

The Office of the High Representative asked the Venice Commission to provide comments on the draft Law on the Establishment of the Federation of Bosnia and Herzegovina Intelligence and Security Service. Messrs Said Pullicino and Nolte as rapporteurs raised a large number of concerns with respect to the draft. These concerned the position of the Agency in the institutional framework in Bosnia and Herzegovina, its tasks and powers, its internal structure and the rights of individuals with respect to the service. On the basis of the comments received from the Commission and from the data protection experts of the Council of Europe, the Office of the High Representative prepared a revised version of the draft and submitted it to the Federation authorities. It is expected that the Law will be adopted in 2002.

## **6. CO-OPERATION WITH CROATIA[6]**

## *Constitutional Legislation on the Protection of Minorities*



In 2001 the Commission continued its co-operation with the Croatian authorities on constitutional legislation for the protection of minorities. A meeting of the working group was held in Zagreb on 4-5 January 2001 and a number of points that needed to be clarified were identified. At its 47<sup>th</sup> Plenary Meeting the Commission adopted the opinion on the Constitutional Law on the Rights of Minorities on the basis of comments by Messrs Matscher, van Dijk and Delcamp and Ms Suchocka. The Commission welcomed the spirit of openness and co-operation which had prevailed during work on the draft and found that the new draft significantly improved the legal framework of minority protection in Croatia. In particular, it clarified the effects of the law and electoral rights aspects, and provided for the establishment of a system for minority self-government at local, regional and state level. There was no longer a list of minorities in the law; however, a list of minorities continued to exist at constitutional level. Further, it needed to be clear that laws implementing the Constitutional Law would be ordinary laws subject to review by the Constitutional Court for their conformity with the Constitutional Law. Some ambiguities remained with respect to the provisions on minority self-government and these needed to be removed and clarifications given as to the competence of such bodies.

Finally, the Commission noted that 18 months after the abolition of the suspended provisions of the Constitutional Law of 1991 in May 2000, no normative action had been successfully carried out by the Croatian Parliament at supra-legislative level to replace the abolished provisions. The protection of minorities rights at the level of the Constitution therefore remains incomplete.

## *Revision of the Constitution*

At the request of the Parliamentary Assembly, the Commission had also examined the amendments of 9 November 2000 and 28 March 2001 to the Constitution of Croatia. The Commission adopted its opinion on these amendments at its 47<sup>th</sup> Plenary Meeting, on the basis of comments by Messrs Matscher, Bartole and Delcamp. It noted that there was a significant transfer of powers from the President to the Prime Minister and an extension of the legislative domain, designed to create a counterweight to the executive. The changes introduced were generally speaking welcomed by the Commission, in particular the transition towards a parliamentary system, which was accompanied by a series of other highly opportune amendments in the fields of human rights, local and regional autonomy and the judiciary. Caution would nevertheless need to be exercised with respect to the implementation of some of the changes, in particular regarding the provisions on the dissolution of political parties and the hierarchy of laws with respect to minorities. Concerns were also voiced that the generally positive developments with respect to the judiciary introduced in the first series of amendments may have been marred to some degree by the implementing provisions of the second series. It remains to be seen how these amendments will be translated into practice.

## *Law on Local Elections*

A working group was set up to examine the Law on Local Elections and its effect on national minorities, at the request of the Congress of Local and Regional Authorities of Europe.

## **7. CO-OPERATION WITH GEORGIA**

### **Status of Abkhazia**

A meeting on the status of Abkhazia, organised at the request of the United Nations Special Representative, in conjunction with the Council of Europe's Commissioner for Human Rights, was held in Pitsunda on 12-13 February 2001. Messrs Lopez Guerra, Malinverni, Vogel and Coppieters attended on behalf of the Commission. The main purpose of the meeting was to offer the Abkhaz and Georgian delegations a forum for discussion. The presence and contribution of representatives of the Commission was greatly appreciated by both organisers and participants, and the Commission was now considered a leading player in the search for legal and technical solutions to ethno-political conflicts.

A follow-up meeting was planned for the summer; however, outbreaks of violence in the region led to an interruption in the dialogue between the Georgian and Abkhaz authorities and the meeting was postponed until further notice.

### **Relations between the State and the Georgian Orthodox church**

In March 2001, the Georgian authorities asked the Venice Commission to examine the possibility of a constitutional agreement between the state and the Georgian Orthodox Church. Such an agreement would first require a constitutional revision. The Georgian authorities presented a proposal to the Commission, following which comments were prepared by Messrs Malinverni and Economides. At the Georgian authorities' request, a draft constitutional revision was then drawn up. The revision adopted in March took account of certain of the Commission members' comments, particularly that the constitutional agreement with the Orthodox Church should have sub-constitutional status. On the other hand, the approved text did not state explicitly that the agreement must be compatible with all the rules of international law, as the experts had proposed, but confined itself to referring to the universally recognised rules and principles of international law, particularly in the field of human rights and fundamental freedoms.

A draft constitutional agreement between the Georgian state and the Apostolic Autocephalous Orthodox Church of Georgia was then submitted to the Commission Secretariat. Two members of the Commission, Messrs Economides and Vogel, and an expert, Mr Manitakis, professor of constitutional law at the University of Thessaloniki, commented on the proposals.

#### **Electoral Code**

The Parliamentary Assembly of the Council of Europe has asked the Venice Commission to co-operate with Georgia to revise the electoral code. This activity will take place in 2002.

### **8. CO-OPERATION WITH HUNGARY**

On 2 July 2001, the Venice Commission having received a request by Romania's Prime Minister, Mr A. Nastase, to give an opinion on the Hungarian *Act on Hungarians living in neighbouring countries*, the Hungarian Minister of Foreign Affairs, Mr J Martonyi, requested the Commission to carry out, instead, a comparative study of the recent tendencies of the legislations in Europe concerning the preferential treatment of persons belonging to national minorities living outside the borders of their motherland. At its 47<sup>th</sup> plenary session, the Venice Commission, having in the meantime received a request by the Hungarian Minister of Foreign Affairs to carry out a comparative study of this law and other similar European laws, decided to undertake a study on the compatibility of the *Preferential treatment of national minorities by their kin-State* with the standards of the CoE and the principles of international law (see supra, introduction, and below, point 11 and infra III point 4).

### **9. CO-OPERATION WITH KOREA**

At its 48<sup>th</sup> Plenary Meeting, the Commission held an exchange of views with Mr Park, Ambassador of the Republic of Korea to the Kingdom of Belgium and Representative to the European Union. He described the process leading to reconciliation on the Korean peninsula, or sunshine policy. Europe had an important role to play in consolidating peace and security in the region, and Mr Park called upon the Commission to continue to devote its interest and attention to the region so that all the people of the Korean Peninsula could enjoy the benefits of peace, stability, democracy and the rule of law.

Mr La Pergola expressed the Commission's willingness to assist in the areas of its expertise.

### **10. CO-OPERATION WITH MOLDOVA**

Mr Solonari informed the Commission at its 46<sup>th</sup> Plenary Meeting that following a constitutional amendment enacted by Parliament in July 2000, the President of the Republic was now elected by Parliament rather than direct universal suffrage. The spirit of the reform was to strengthen the powers of Parliament and the Prime Minister, who became the most important figure in the state. The required majority for electing the President had not been achieved in Parliament and it had therefore been necessary to hold early parliamentary elections. These had taken place on 25 February 2001 and the Communist Party had won 71% of the seats. The Democratic Party no longer held any seats. The alternatives for the future were thus: either that despite reduced powers under the current constitution the President ran the country through his control of the Communist Party, or that the Constitution be amended to strengthen his powers. The results of these elections would undoubtedly have an impact on the country's constitutional development. Mr Solonari stressed in this regard the valuable contribution the Commission had made to the process of democratisation in Moldova.

## 11. CO-OPERATION WITH ROMANIA

Mrs Stănoiu, the Romanian Minister for Justice, informed the Commission at its 47<sup>th</sup> Plenary Meeting of proposals to reform the Romanian Constitution. The planned reform was intended to bring the Constitution into line with European Union law and clarify a number of points, which ten years experience had shown to be desirable. In particular, the legislative procedure needed to be simplified by abolishing the overlap of powers between the two houses of Parliament. The question of delegated legislative powers had to be clarified, particularly regarding emergency decrees. Other issues for consideration included the appointment and dismissal of ministers, the role and place of the public prosecutor's department, the composition of the Judicial Council, the election of the President of the Republic, the legislation on political parties, the law on property and ratification of the Rome Statute on the International Criminal Court. A group had been set up to examine the compatibility of the Constitution with the Community *acquis* and a committee of representatives of parliamentary groupings would be established.

Mrs Stănoiu asked the Commission to co-operate with the Romanian authorities in the field of constitutional revision; the Commission agreed to co-operate with the Romanian authorities in this matter and appointed rapporteurs.

At its 48<sup>th</sup> Plenary Meeting Mr Stoica informed the Commission that as yet there had been little progress, for both political and formal reasons. Politically, a two-thirds majority in parliament was required to pass such reforms, so a preliminary consensus between the parties represented in parliament was necessary. The government had issued a statement on the proposed reforms and so had other political parties, but no meetings had occurred. A committee of representatives of parliamentary groupings was yet to be established, and this would be the first formal step in the process of reform. As to substance, one of the key issues was the election of the President. Whereas the President is currently elected by popular vote, it was proposed that the President be elected by the parliament, as it was considered important for Romania to have a clear parliamentary regime.

On 21 June 2001, Romania's Prime Minister, Mr A. Nastase, requested the Venice Commission to examine a Hungarian law, the *Act on Hungarians living in neighbouring countries*, whose effects stretched to the Romanian territory and that directly concerned Romanian citizens of Hungarian origin. At its 47<sup>th</sup> plenary session, the Venice Commission, having in the meantime received a request by the Hungarian Minister of Foreign Affairs to carry out a comparative study of this law and other similar European laws, decided to undertake a study on the compatibility of the *Preferential treatment of national minorities by their kin-State* with Council of Europe standards and the principles of international law (see *supra*, introduction and point 8 and *infra* III point 4).

## 12. CO-OPERATION WITH SLOVAKIA [\[7\]](#)

### *Amendments to the Constitution*

At its 48<sup>th</sup> Plenary Meeting, the Commission held an exchange of views with Mr Jan Mazk, President of the Constitutional Court of Slovakia, who outlined the recent amendments to the Constitution of Slovakia. These had considerably changed the constitutional order in the Slovak Republic in several crucial aspects and represented a significant development in the constitutional history of the independent Slovak Republic. The amendments strengthened the pro-European Union trends and trends towards European integration more generally; consolidated the principles of democracy and a state governed by the rule of law; created constitutional mechanisms for accepting international liability flowing from international instruments; incorporated a more consistent separation of the judicial power from the executive and legislative powers; regulated in more detail the powers of the supreme auditing authority; enhanced the powers, independence and impartiality of the Constitutional Court; regulated the powers of the Public Protector of Rights (Ombudsman); and delegated certain powers to bodies of territorial self-government. The changes would come into effect progressively: some had entered into force on 1 July 2001, whereas others would enter into force on 1 January 2002.

With respect to the Constitutional Court, the changes included an expansion of its competencies, increased enforceability of its decisions and a higher level of protection of fundamental rights and freedoms. As a result of the changes, an effective domestic tool of protection of fundamental rights and freedoms had been created. Its application would obviously be a precondition for submission of complaints before the European Court of Human Rights. Furthermore, new provisions on the appointment of judges of the Constitutional Court meant that judges would be appointed for a non-renewable term of 12 years. These provisions aimed to strengthen the guarantees of independence of judges of the Constitutional Court.

## *Law on Regional Elections*

Following a request from the Congress of Local and Regional Authorities of Europe, the Commission at its 49<sup>th</sup> Plenary Meeting adopted a consolidated opinion on the Law on Regional Elections in Slovakia. The opinion, drawn up on the basis of comments by Messrs Luchaire and Owen, included a detailed analysis of the mechanisms set up by the Law. The most important points underlined by the opinion dealt with the composition of the electoral commissions and the drawing of constituency boundaries. The role of electoral commissions was secondary and strictly limited to the holding of elections, whereas the public authorities took responsibility for key administrative decisions and matters of logistics. This ran contrary to current practice, which favours increasing the powers of the electoral commissions. Furthermore, the fact that parties could withdraw any one of their members from a commission could raise questions concerning its independence.

As regards boundaries of constituencies, the opinion underlines that such boundaries should not be redrawn a few months before the election. A better system is to redraw them at ten-year intervals, for example, and well away from election dates. Responsibility for redrawing constituency boundaries should be conferred on an independent commission.

Two other points of concern may be mentioned: the obligation imposed on candidates to mention their academic qualifications, and second, the obligation, where a coalition was formed between parties in one constituency, for the same parties to form coalitions in all the constituencies in the same region. This obligation appeared to infringe the political freedom of parties.

### **13. CO-OPERATION WITH SOUTH AFRICA**

2001 was the final year of the Democracy, from the Law Book to Real Life programme run by the Commission thanks to funding from the Swiss Federal Department of Foreign Affairs. Four activities were held: a seminar on management of provincial government in a constitutional State, organised in co-operation with the Administrative Academy of the Western Cape; a colloquium for judges of constitutional and supreme courts from southern Africa, organised in co-operation with the Constitutional Court of South Africa, with a follow-up conference for liaison officers from these courts held in Mangochi, Malawi and focusing on the exchange of information between the courts; and a school on intergovernmental relations, organised in co-operation with the Department of Provincial and Local Affairs and the PAIR Institute of the University of Pretoria.

Mr Daniels, Chief State Law Adviser of the Department of Justice and Constitutional Development, attended the 46<sup>th</sup> Plenary Meeting of the Commission to participate in an exchange of views on the African Renaissance programme and on the possible establishment of a Southern African Commission on Constitutionalism and Democracy. The Commission welcomed this initiative and expressed its full support for the creation of a southern African sister Commission. The Commission could provide assistance thanks to a voluntary contribution by the Norwegian authorities.

At its 48<sup>th</sup> Plenary Meeting, the Commission examined the progress made in the creation of a sister Commission for southern Africa. Although there was a clear interest in South Africa in creating such a body, for the moment, there were few concrete developments. However, co-operation with the Constitutional Court of South Africa and with equivalent courts from the SADC countries was highly successful and these courts were keen to develop such links further, including through the exchange of case-law and participation in the CODICES data-base. It was therefore proposed to pursue regional co-operation at the level of the judiciary, which was in itself an important means of strengthening the independence of the judiciary in the countries concerned, and to widen the fields of co-operation as the demand arose.

### **14. CO-OPERATION WITH SWITZERLAND[8]**

## *Co-operation with Swiss Cantons on Electoral Issues*

At the request of the authorities of the canton of Ticino, the Commission prepared an opinion on the electoral law of the canton,

following from its preliminary opinion prepared in 2000. The opinion, adopted by the Commission at its 47<sup>th</sup> Plenary Meeting, set out to suggest possible modifications to the Ticino electoral law in order to introduce a majority voting system in elections for the Council of State and, possibly, the Grand Council, and to advise on how the electoral system could create clearer majorities and facilitate a changeover of political power between parties, while emphasising the vote for individuals.

In addition, Mr Garrone informed the Commission at its 48<sup>th</sup> Plenary Meeting that, at the invitation of the Constituent Assembly of the Canton of Fribourg, he had travelled to Fribourg on 17 September 2001 to present a paper on the question of popular elections. The Constitution of the canton was being revised and questions arose as to whether the current system of elections to a certain number of positions should be kept in place. The paper included an intercantonal and where possible international comparison of the means of election or appointment of the bodies in question; it presented the advantages and disadvantages of elections, in particular election by the people, to bodies or positions such as that of prefect or magistrate.

## **15. CO-OPERATION WITH THE FORMER YUGOSLAV REPUBLIC OF MACEDONIA**

In the light of developments in the former Yugoslav Republic of Macedonia during the year, Resolution 1255 (2001) of the Parliamentary Assembly asked the Government of Macedonia to co-operate closely with the Venice Commission on the adoption of amendments to the Constitution. At the same time, it invited the Commission to offer its co-operation to the Macedonian authorities and all interested parties on the problems relating to the amendment of the Constitution, in order to ensure that the principles of the Council of Europe were guaranteed. In response to this Resolution, the Commission at its 47<sup>th</sup> Plenary Meeting constituted a working group on the former Yugoslav Republic of Macedonia, composed of Messrs Torfason, Helgesen and Stoica.

At the request of Francois Lotard, representative of the European Union in Skopje, the Commission also decided to send Mr Markert to Skopje as a member of the international expert team in the negotiations for a political settlement of the crisis in Macedonia. A Framework Agreement was concluded at Lake Ohrid on 13 August 2001 and the constitutional amendments provided for in the agreement were adopted by the Parliament on 16 November 2001. The Commission provided its assistance throughout this process through the regular participation of Mr Markert. Further, at its 49<sup>th</sup> Plenary Meeting, it indicated its continued willingness to provide technical assistance to assist in resolving questions arising as to the implementation of the Agreement.

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In addition, a UniDem seminar on Democracy, Rule of Law and Foreign Policy was held in collaboration with the Constitutional Court in Skopje on 4-5 October 2001.

## **16. CO-OPERATION WITH TURKEY**

A UniDem seminar on Constitutional Implications of Accession to the European Union was held in collaboration with Bilkent University in Ankara on 9-10 November 2001.

## **17. CO-OPERATION WITH UKRAINE[9]**

### *Revision of the Constitution*

Following a request from the Monitoring Committee of the Parliamentary Assembly, the Commission adopted at its 47<sup>th</sup> Plenary Meeting an opinion, based on comments by Messrs Batliner and Malinverni, on the proposed revision of the Ukrainian Constitution put forward by some members of the Ukrainian parliament. The proposals, taken as a whole, tended to direct the existing presidential regime towards a parliamentary regime and to redress the balance of powers of the state. At the same time, the draft showed a marked concern to stabilise the new parliamentary-led system. However, the proposed solutions to stabilise the system seemed to go too far. There were two main points of concern. First, a member of parliament who left his political group or was excluded from it lost his parliamentary seat. This conflicted with the principle of the independence of members of

parliament. Second, there were proposals to ensure that once the parliamentary session began, a stable parliamentary majority would be formed. The proposals went too far, since they contravened the rule that the will of parliament was formed by members of parliament who, in each particular case, voted according to their convictions.

## *Draft Law of Ukraine on the Judicial System*

The Commission examined, at the request of the Ukrainian member of the Commission, the draft law on the Judicial System prepared by the Ukrainian Ministry of Justice. Mrs Suchocka and Mr Said Pullicino presented their comments at the Commissions 47<sup>th</sup> Plenary Meeting. They noted that another draft had already been discussed in the past and certain criticisms made. There had been modifications, but some key points had not been settled. In particular, there were no provisions about the rights and obligations of judges. Moreover, the Minister of Justice took part in the plenum of the Supreme Court, which could issue instructions to the courts. The draft should be substantially revised. Mr Said Pullicino added that efforts had been made, but agreed that a broad-ranging revision was needed.

Mrs Stanik said that the draft law had been brought before Parliament and referred to a committee. There was legislation currently in force on the status of judges and the independence of the courts. In June, amendments to several sets of legislation the Criminal Code, Code of Civil Procedure and Justice Act were adopted to bring these laws into conformity with the Constitution following the end of the transitional period allowing exceptions from some of the rules in the Constitution. The Prokuratura was resisting reform and the legislation would have to be revised on this point.

The Commission approved the opinions of its rapporteurs on the draft law on the Ukrainian judicial system at its 47<sup>th</sup> Plenary Meeting and indicated that it remained at the Ukrainian authorities' disposal to continue its involvement.

### **Draft Law on the Office of the Prosecutor**

At the request of the Ministry of Justice of Ukraine two rapporteurs appointed by the Commission, Mr Hamilton and Ms Suchocka, examined a draft Law on the Office of the Prosecutor of Ukraine.

Presenting his opinion at the 48<sup>th</sup> Plenary Meeting of the Commission Mr Hamilton noted that the present law on the office of the prosecutor was not satisfactory. The office was too centralised and hierarchical, its powers were closely intertwined with the powers of the judicial, executive and legislative branch, some of these powers were too wide or should more appropriately be exercised by the judicial branch and the independence of the office was not sufficiently guaranteed. One provision of the existing law even had to be regarded as a threat to press freedom. The draft law contained some improvement, in particular strengthening the independence of the office. On the whole it could however not be regarded as a fundamental reform of the existing system and the concerns raised with respect to the present system remained valid.

Ms Suchocka fully agreed with Mr Hamilton. The draft law was still to a large extent based on the Soviet concept of the Prokuratura. There was no clear concept for a reform of the system in accordance with European standards and the adoption of the draft law in its present form would not be justified.

Ms Stanik thanked the rapporteurs for their pertinent comments and noted that the office of the General Prosecutor had prepared the draft.

The Commission endorsed the comments by the two rapporteurs and agreed to forward their opinions to the Ukrainian authorities.

## *Concept of State Ethnic and National Policy*

At its 47<sup>th</sup> Plenary Meeting the Commission adopted its opinion on the concept behind Ukraine's ethnic and national policy. The Commissions rapporteur on this matter, Mr Matscher, remarked that the government policy of encouraging the Ukrainian language and increasing its use in everyday life was also aimed at the diaspora, including Ukrainians living in neighbouring states. In particular, it invited those who had had to leave Ukraine during the Soviet era to return. The Ukrainian authorities would have to abide by the principles and treaties of international organisations. Any final assessment of the policy would depend on how it was applied: the available documentation was not sufficiently precise to allow such an assessment.

Ms Stanik thanked the Commission for its opinion and commented that the concept concerned not just Ukrainians but also the rights of ethnic groups. It aimed to be compatible with public international law, and the Council of Europe's Framework Convention in particular.

## *Electoral Law*

Following a request from the Ukrainian authorities, the Commission adopted at its 48<sup>th</sup> Plenary Meeting its opinion on the draft electoral law of Ukraine. The new text was long and introduced a number of clarifications compared with the earlier draft, without modifying the electoral system itself. There were two main points of debate: first, the duration of the pre-electoral phase, which could be shortened if the guarantees of equal treatment were extended to cover not just the campaign period but the entire pre-electoral period, and if the number of signatures required for the registration of candidates was reduced. Second, the electoral commissions should be composed of an absolutely balanced representation of political parties, this being the best way, in the present circumstances, to ensure their independence.

Two other important questions were raised. The role of the electoral commission and the courts in the event of appeals needed to be clarified. Also, the draft provided that only parties which had been registered for one year before the elections could nominate candidates in the nation-wide constituency. This was clearly excessive and should at any rate not be applied retroactively.

Mr Haric, Deputy Speaker of the Parliament of Ukraine, thanked the Commission for its assistance and stated that the logic of the opinion corresponded to that of the discussions that had been held in the parliament two days earlier. While it was true that the electoral system remained essentially unchanged, the model had evolved, meaning there was now less dependence on the executive.

Mr Jurgens requested that the opinion, which was of great interest in the framework of the Parliamentary Assembly's monitoring procedures with respect to Ukraine, be forwarded to the Assembly's Monitoring Committee.

## **18. CO-OPERATION WITH THE FEDERAL REPUBLIC OF YUGOSLAVIA [10]**

During 2001, Mr Dimitrijevic regularly informed the Commission as to constitutional developments occurring in the Federal Republic of Yugoslavia. Whereas positive trends appeared to be emerging from the Constitutional Court, it was noteworthy that the development of the Federal Constitution itself was significantly hampered by the secession movement in Montenegro. The Serbian Constitution also needed improvement, particularly in terms of the protection of human rights. Another much discussed aspect was the possibility of including a measure of decentralisation to take account of historically autonomous regions in Serbia, such as Vojvodina.

## *Draft Law on the Rights of National and Ethnic Communities*

From 10 to 12 January 2001, a delegation from the joint working group of the Commission and Directorate General II on the Draft Law on the Rights of National and Ethnic Communities travelled to Belgrade to meet the Minister for National and Ethnic Communities and the group of experts he had appointed to draft the legislation. The latter had expressed a number of reservations about the possibility of adopting legislation at federal level that would be compatible with the Constitution. The group had also had difficulties identifying the communities concerned and thought that while satisfactory legislation already existed in Yugoslavia, its application had caused problems. A second meeting of the working group was held in Strasbourg on 26

and 27 March to consider the draft legislation drawn up by the group of experts. Mr Malinverni and Mrs Benot-Rohmer attended on behalf of the Commission. The draft was assessed to be generally positive; however, the Council of Europe experts strongly cautioned against the inclusion of a list of national minorities in the text and the creation of registers of members of minorities. A number of other issues, many arising due to the fact that questions remained as to the eventual status of this law in the legal system of the Federal Republic of Yugoslavia, were raised. Drafting continued in Belgrade throughout the year and the law should be adopted in 2002.

## *Interim Report on the Constitutional Situation in the Federal Republic of Yugoslavia*

At its 48<sup>th</sup> Plenary Meeting, the Commission adopted its Interim Report on the Constitutional Situation in the Federal Republic of Yugoslavia. This report was drawn up following the visit to Belgrade and Podgorica in September of a delegation of the Commission, consisting of Messrs Tuori, Batliner and Jowell, accompanied by Messrs Buquicchio and Markert. In the report, the Commission assessed the constitutional situation in the Federal Republic of Yugoslavia at the Federal and Republican levels, outlining the main perspectives for the near future rather than focusing on the legacy of the past.

The Commission observed that the key issue was the question of the future status of Montenegro. It found that solving this issue by way of a referendum alone would present difficulties in terms both of the legality and the legitimacy of such a solution. It therefore urged the interested parties to try to reach a common proposal through bona fide negotiations, which could then be submitted to a popular referendum and confirmed as necessary by decisions of the relevant bodies. Moreover, it found that clarifying this situation would be fundamental in view of a possible accession to the Council of Europe.

The Commission also underlined its concern that this situation had led to an atmosphere of uncertainty and was, in particular, impeding necessary democratic reforms. This was largely because constitutional relations between Federal and Republican levels were not based on secure legal foundations. In consequence, the Commission welcomed the clear willingness within the Federal Republic of Yugoslavia to improve the constitutions at all levels and called on the relevant authorities to begin official work on drafting new constitutions as soon as possible. It noted that the draft Constitution of the Republic of Serbia prepared under the auspices of the Belgrade Human Rights Centre was an excellent basis for future constitutional work.

This opinion was prepared at the request of the Parliamentary Assembly of the Council of Europe, in the context of the Assembly's assessment of the application by the Federal Republic of Yugoslavia to accede to the Council of Europe.

### **Situation in Kosovo**

At its 46<sup>th</sup> Plenary Meeting, the Commission was informed that a joint working group for the establishment of an interim legal framework in Kosovo had been set up by the Special Representative of the Secretary General of the United Nations, Mr Haekkerup. The aim was to draw up a draft document setting out the powers of Kosovo's interim self-governing institutions. Mr Haekkerup invited the Commission to be represented in this body, otherwise composed of UN representatives and experts designated by Kosovo political parties and communities. It was decided that Mr Russell and a member of the Secretariat would participate in the consultations and advise the Commission of developments. Following this decision the Commission representatives spent several weeks in Pristina and contributed actively to the drafting of the text which was adopted as UNMIK Regulation 2001/9 on the Constitutional Framework for Provisional Self-Government. In particular, the Commission representatives ensured that the text is in line with Council of Europe standards.

An exchange of views with Mr Neihart Hoefler-Wissing, Deputy Director of Political Affairs of the United Nations Mission in Kosovo, was held at the Commission's 47<sup>th</sup> Plenary Meeting. He thanked the Commission for its help in preparing a constitutional framework for provisional self-government for Kosovo that would be in accordance with United Nations Resolution 1244. The new constitutional framework would make it possible to establish democratic institutions while maintaining the powers of the Secretary General's Special Representative. Mr Hoefler-Wissing expressed particular thanks to Messrs Russell and Markert, who had taken part in the joint group of experts from Kosovo and the international community. He remarked that the Kosovo Albanians had wanted the term Constitution to be used, references to the will of the people and to the Kosovo Protection Service, a directly elected President and a Constitutional Court. The Kosovo Serbs, who had withdrawn from the group's activities but returned towards the end, had insisted on Yugoslavia's territorial integrity, the return of refugees, language provisions and a special procedure giving minorities a right of veto when their interests were at stake. A compromise solution was found, which avoided any reference to a sovereign state. The final text, published by the Secretary General's Special Representative on 15 May, had been criticised by the two parties but they had confirmed that they would co-operate. The wording ensured a balance of powers and specific rights for minorities. The Secretary General's Special Representative had control of points of tension between the



communities.

## 19. OTHER CONSTITUTIONAL ISSUES

In 2001 the Commission continued its regular exchanges of views with its members, begun in 2000, on constitutional issues of interest in their countries that had not formed the object of the Commissions work. These exchanges of views, which provided a welcome occasion to enrich the Commissions debates, are referred to above wherever the Commission co-operated with the country in question during 2001 on other matters. Other exchanges are reported below.

### - *France*

Mr Robert described the main current constitutional issues in France. First, two highly ranked courts had recently handed down judgments on the status of the head of state with respect to criminal law. The Constitution was silent on the question, except insofar as it provided that the President shall not be held liable for acts performed in the exercise of his or her duties except in the case of high treason, and that he or she shall be tried by the High Court of Justice. The Constitutional Council had found that in consequence, the President could only be tried by the High Court of Justice, at the request of the parliament; however, he or she was liable before this court for all acts. On the other hand, the Court of Cassation had found, when examining whether the President could be required to appear as a witness in a criminal case, that the High Court of Justice was competent with respect to acts committed during the Presidents term of office, whereas for all other acts, the President should be judged by the ordinary courts, but only after the completion of his or her term of office.

There had also been much debate as to whether the electoral timetable could be inversed in 2002, in order that the presidential election may occur before the general election also due next year. Mr Robert explained that this inversion was essential in order to preserve the logic of the Fifth Republic, the good functioning of which required that the President, elected by universal suffrage and with significant powers, be supported by a parliamentary majority.

A third point of interest was the draft law dealing with the status of Corsica, which *inter alia* went considerably further than most laws on decentralisation, granting the assembly of Corsica the right to introduce measures derogating from laws passed at the central level wherever specific problems were identified. There was a risk that this draft may be found to be unconstitutional, as it may undermine the indivisibility of the French state.

### - *Constitutional developments in Italy*

Mr Bartole informed the Commission about the recent constitutional law approved by referendum in October 2001 and which reorganised the powers of the regions. Through this reform, Italy was acquiring all the hallmarks of a shift to federalism: matters which came within the jurisdiction of central government were specifically indicated, while the regions exercised overall authority. Under the present arrangement, the regions no longer required a transfer of power from central government in order to pass laws, as the power to legislate was assigned to them directly by the Constitution.

There were, however, two types of legislation: laws derived from an unlimited authority vested in the regions and laws derived from a concurrent authority with central government, within the general framework of compliance with the Constitution and international commitments of the state. What distinguished the Italian system from federalism proper was the co-existence of lower-level local authorities, municipalities and provinces which continued to operate under the wing of central government. The future of these reforms remained politically uncertain, for they still had to be implemented by the new majority which had challenged them and had just submitted a new proposal. Another important aspect of this reform concerned central government control over regional legislation, and the move from prior controls (ie before legislation came into force) to post factum reviews. Mr La Pergola drew the Commissions attention to the new prominence that the draft seemed to give to international treaties: international treaties could now prevail over any incompatible legislation, whether national or regional. Direct applicability of treaties was a new concept that had been introduced by the reform.

### - *United States of America*

As part of the debate on terrorism and what the fight against terrorism might mean for the rule of law and procedural safeguards, Mr

Rubinfeld was asked to outline the latest developments in the United States in response to the tragic events of 11 September 2001.

Mr Rubinfeld said that the recent provisions on the setting-up of special military tribunals in the United States were designed to address the potential problem of capturing persons who had committed or ordered the terrorist attacks of 11 September. It was unlikely that ordinary criminal proceedings would provide the authorities with sufficient safeguards to counter the terrorist threat.

At the same time, the main difficulty lay in the fact that the rule of law, fundamental safeguards and the principle of a fair trial must nevertheless continue to be upheld.

The rule of law could be applied to the definition of terrorism mainly in relation to the right of combatants in the current military operations, detainees, fair trial and the procedure to be followed. The challenge was to reconcile military action with the requirements of the rule of law without sacrificing the latter. The Venice Commission was certainly an ideal forum for exploring these issues and the United States would be most interested in participating in any discussions on the subject.

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

### **- Co-operation with the Committee of Ministers**

Representatives from the Committee of Ministers participated in all the Commissions plenary meetings during 2001.

At the 46<sup>th</sup> Plenary Meeting by Mr Erkki Kourula, Permanent Representative of Finland to the Council of Europe referred to the importance and success of the Venice Commission, particularly in its dealings with the Committee of Ministers. He congratulated and thanked the Commission for its study of the constitutional implications of ratification of the Statute of the International Criminal Court and said that it was important for every country to ratify this treaty. At the same meeting, Mr Olexandre Chalyi, Permanent Representative of Ukraine to the Council of Europe also referred to the Commission's major role in conflict resolution, for which it offered a general framework for problem solving through its experience and expertise. It had overseen Europe's constitutional development and was still ideally placed to offer legal assessments of and possible responses to the problems now facing the more long-standing as well as the new democracies.

The 47<sup>th</sup> Plenary Meeting was attended by Mr Jacques Warin, Permanent Representative of France to the Council of Europe and by Mr Mark Entin, Charg d'affaires a.i. of the Russian Federation to the Council of Europe.

Mr Warin held an exchange of views with the Commission concerning the possibility of co-operation with the Universal Encyclopaedia of Human Rights.

The 48<sup>th</sup> Plenary Meeting was attended by Mr Athanasios Theodorakopoulos, Permanent Representative of Greece to the Council of Europe and by Mr Torbjorn Aalbu, Permanent Representative of Norway to the Council of Europe.

Mr Theodorakopoulos reaffirmed the Committee of Ministers keen interest in the work of the Venice Commission, highlighting its merits not only as an instrument for the consolidation of democratic institutions in Europe but also in the field of preventive diplomacy. He referred to the Commissions co-operation with Armenia and Azerbaijan as important examples of the Commissions role in consolidating institutions and ensuring conformity of laws with Council of Europe standards.

Mr Aalbu, emphasised the Commissions importance in providing necessary professional and legal assistance to the Committee of

Ministers, adding that the regular exchanges of views between the Secretariat and the Committee of Ministers deputies were very useful in this regard. He mentioned that Norway had always supported the work of the Commission, including through its voluntary contribution to the Commissions work with new democracies in southern Africa.

At the 49<sup>th</sup> Plenary Meeting Mr Alexandre Orlov, Permanent Representative of the Russian Federation to the Council of Europe presented the Commission with the Russian Federations decision to join the Venice Commission as from 1 January 2002 and announced the appointment of Mr Baglay, President of the Constitutional Court of the Russian Federation, as a member and of Mr Toumanov, former President of the Constitutional Court, as substitute member. Mr Igor Grexa, Deputy Permanent Representative of the Slovak Republic to the Council of Europe, reported on the Committee of Ministers discussions concerning changes to the Commissions Statute.

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

The Commission continued its close co-operation with the Parliamentary Assembly during 2001. Representatives from the Assembly were present at all the Commissions Plenary Meetings, and the Commission was delighted to welcome the President of the Assembly, Lord Russell-Johnston, to its 48<sup>th</sup> Plenary Meeting.

Throughout the year, thanks to the regular exchanges of views held with these representatives, the Commission was kept informed of the major issues on the Assemblys agenda. These included, amongst others, post-accession monitoring with respect to Armenia and Azerbaijan, the accession requests of Bosnia and Herzegovina, the Federal Republic of Yugoslavia and Monaco, the execution of decisions of the European Court of Human Rights, the possibility of European Union accession to the European Convention on Human Rights and the impact of the EU Charter of Fundamental Rights on human rights protection in Europe, as well as the possible adoption of further protocols to the European Convention on Human Rights, dealing with minority rights and with the abolition of the death penalty at all times. The Assembly was again examining the situation of the French-speaking population living in certain areas of Belgium. Finally, its fourth part-session in 2001 had been very much under the shadow of the events of 11 September and the question of the battle against terrorism had dominated debates.

Once again, requests from the Assembly formed the basis of a significant proportion of the Commissions work in 2001. These requests concerned in particular:

- the implications of the decision of the Constitutional Court of Bosnia and Herzegovina on the issue of the constituent peoples;
- the Electoral Law of Bosnia and Herzegovina;
- the Constitutional Law on the Rights of National Minorities in Croatia;
- the amendments of 9 November 2000 and 28 March 2001 to the Constitution of Croatia;
- the Ukraine Constitutional Reform Project;
- the constitutional situation in the Federal Republic of Yugoslavia;
- the legal system of the Palestinian autonomous territories.

The Commissions Guidelines for Constitutional Referendums at National Level were also drawn up following an initiative of the Assembly.

At the Commissions 48<sup>th</sup> Plenary Meeting, Mr Jurgens referred to the proposals to amend the Statute of the Commission, stating that the draft report on the composition of the Commission prepared for the Assemblys Committee on Legal Affairs and Human Rights had reached very similar conclusions to those of the Commission itself.

Mr Clerfayt, member of the Political Affairs Committee, informed the Commission at its 49<sup>th</sup> Plenary Meeting of Parliamentary Assembly of Resolution 1264 on preparing a code of good practice in electoral matters and of the invitation to the Venice Commission to set up a working group. The Commission warmly welcomed this proposal for co-operation and decided to set up a working group comprising representatives of the Parliamentary Assembly, the CLRAE and other organisations with experience

in this area as observers (the OSCE, through ODIHR and its Parliamentary Assembly, and the EU, through the European Parliament and the European Commission). The Group will discuss electoral issues on a regular basis, devise a code of good practice in electoral matters and compile a list of basic principles of European electoral systems. The code of good practice will be designed to help prevent different electoral standards from developing in Europe and to standardise election monitoring criteria. In the medium term, the data collected on European elections should be entered into a database, and analysed and disseminated by a specialised unit. The first meeting of the Group is to be held in Venice, immediately prior to the Commissions first plenary meeting for 2002.

Finally, at the end of 2001 the Commission was working on a number of requests received in the course of the year from the Assembly. These included an opinion on the possible groups of persons to which the Framework Convention on National Minorities could be applied in Belgium, as well as two opinions falling within the framework of the Assemblys post-accession monitoring of Ukraine.

#### **- 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 Bosnia and Herzegovina, Croatia, Moldova and the situation in Kosovo, as well as the study on the financing of political parties. A Representative of the Congress participated at all the Commissions Plenary Meetings during 2001.

- Council of Europe Development Bank

At the Commissions 48<sup>th</sup> Plenary Meeting, Mr Raphael Alomar, Governor of the Development Bank, highlighted the complementarity of the Bank and the Commission. Not only did they share a common vocation in the service of democracy, social cohesion and the respect of the individual, but they had a natural closeness by their nature as Partial Agreements of the Council of Europe and a shared vision of Europe and its future. The increase in the Banks activities in favour of countries in transition and of vulnerable populations widened the possibilities for co-operation between the Commission and the Bank: first, the Bank could benefit further from the Commissions thorough knowledge of the legal and institutional aspects of transition, and second, the latters work with respect to civil society could increase the effectiveness of the Banks activities in the field of social cohesion and with respect to minorities. Mr Alomar hoped that such mutually beneficial co-operation would continue to become closer in future.

#### **- Co-operation with the European Union**

A Joint Programme between the European Commission and the Venice Commission entitled "Strengthening democracy and constitutional development in central and eastern Europe and CIS countries" came into force on 1 January 2000 for a period of 2 years this programme has been extended until the end of 2002. The activities provided for in the programme include exchanges of views to provide assistance to states in drafting and implementing constitutional provisions and legislation on democratic institutions, seminars with recently established constitutional courts, UniDem ("Universities for Democracy") seminars on topics of current constitutional importance and the publication of two special editions of the Bulletin on Constitutional Case-Law. The programme also facilitates the participation of experts from central and eastern Europe and CIS countries in exchanges of views on constitutional issues at plenary meetings of the Venice Commission and provides for the participation of a representative of the European Commission to identify activities and priorities jointly with the Venice Commission.

At the request of Mr F. Lotard, Special Representative of the European Union in Skopje, a Commission representative took part in the drafting of the Ohrid Framework Agreement in the Former Yugoslav Republic of Macedonia (see above point 15).

The European Commission took an active part in the work of the Venice Commission and was represented at most of the Plenary Meetings in 2001.

- **Co-operation with the OSCE**

Representatives of the OSCE and ODIHR participated in many meetings, seminars and Conferences organised by the Commission during 2001.

- **Co-operation with the United Nations**

At the request of the Special Representative of the Secretary General of the United Nations, Mr H. Haekkerup, Commission representatives took part in the drafting of the Constitutional Framework for Provisional Self-Government in Kosovo (see above point 18).

At the request of the United Nations Special representative in Georgia, and in conjunction with the Council of Europe's Commissioner for Human Rights, the Commission organised a meeting on the Status of Abkhazia, in Pitsunda on 12-13 February 2001 (see above point 7).

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### **III. Studies of the Venice Commission**

1. Report on the judgments of constitutional courts and the execution thereof,

At its 46<sup>th</sup> Plenary Meeting (Venice, 31 March-1 April 2001) the Venice Commission adopted its report on the judgements of constitutional courts and the execution thereof ([CDL-INF \(2001\) 9](#)).

At the dawn of the twenty-first century, constitutional courts have become one of the pillars of the primacy of law and, more generally, of constitutional law. Even though their role and jurisdiction differ from State to State, since they were instituted in very different historical and political circumstances, it is essential that their decisions should be carried out effectively. Accordingly, the main aim of the Venice Commission's study is to consider the effects of judgments of constitutional courts and their execution, an exercise carried out in Parts 2 and 3. These questions, however, cannot be divorced from an examination of the type and purpose of the review of constitutionality, which are considered in Part 1.

Consequently, the study is not confined to issues relating to the execution of constitutional decisions, but sets out to provide a general description of the functioning of constitutional courts of States taking part in the proceedings of the Venice Commission. The study is based on the questionnaire on judgments of constitutional courts and their execution which was adopted by the Venice Commission following its 43<sup>rd</sup> meeting (June 2000). 45 States sent replies to the questionnaire to the Secretariat.

The report concluded that as might have been expected, the diversity of forms of constitutional courts results in diversity in the effects of their decisions and in the manner of executing them.

For example, preliminary or even abstract review will give rise to fewer difficulties of execution than review carried out in individual cases where such review nevertheless results in judgments of general scope. A decision that prevents a law from entering into force or invalidates it is easier to execute than a decision requiring an institution to revise the measures which it has adopted or, worse, requiring the administration to alter a long-established practice. Political or financial considerations may also constitute major impediments to the execution of judgments.

Obviously, this does not signify that only judgments which are easy to execute should be given, as such reasoning could have the undesirable effect of reducing the scope of the review of constitutionality. Nor does this mean that courts should not take subtle decisions, leaving a degree of leeway to the legislator, rather than unrealistically imposing substantial expenditure or creating a legislative vacuum. On the other hand, procedural rules must be framed sufficiently precisely so as to avoid leaving the way open to non-execution or to doubts as to the effects of a judgment; legislation must provide for institutions empowered to execute judgments and, where necessary, to act in the event of non-execution. It is fortunate in this regard that, despite their imperfections, the systems currently applied give rise to only a limited number of cases of non-execution.

## 2. Guidelines on the financing of political parties

Following the report on the financing of political parties drawn up by Mr Robert and adopted by the Commission in 2000, the Commission set up a Rapporteur Group composed of Messrs Robert (Chairman of the Group), Zbudun, Luchaire, Ms Err and Mr Vogel. This group drew up guidelines on the financing of political parties ([CDL-INF \(2001\) 8](#)) at the meeting held in Paris on 30 November 2000 which were adopted by the Commission at its 46<sup>th</sup> Plenary Meeting (9-10 March 2001).

The Venice Commission's guidelines on the financing of political parties read as follows:

*The Venice Commission:*

*Being engaged in the promotion of fundamental principles of democracy, of the rule of law and the protection of human rights, and in the context of improving democratic security for all;*

*Noting with concern problems relating to the illicit financing of political parties recently uncovered in a number of Council of Europe member states;*

*Taking into account the essential role of political parties within democracy and considering that freedom of association, including that of political association, is a fundamental freedom protected by the European Convention on Human Rights and is one of the cornerstones of genuine democracy, such as that envisaged by the Statute of the Council of Europe;*

*Paying particular attention to state practice in the area of financing of political parties;*

*Recognising the need to further promote standards in this area on the basis of the values of European legal heritage;*

*Has adopted the following guidelines:*

1. *For the purpose of these guidelines, a political party is an association of persons one of the aims of which is to participate in the management of public affairs by the presentation of candidates to free and democratic elections.*
2. *Such political parties may seek out and receive funds by means of public or private financing.*

## **A Regular Financing**

### **a. Public Financing**

3. *Public financing must be aimed at each party represented in Parliament.*
4. *In order, however, to ensure the equality of opportunities for the different political forces, public financing could also be extended to political bodies representing a significant section of the electoral body and presenting candidates for election. The level of financing could be fixed by legislator on a periodic basis, according to objective criteria.*

*Tax exemptions can be granted for operations strictly connected to the parties political activity.*

5. *The financing of political parties through public funds should be on condition that the accounts of political parties shall be subject to control by specific public organs (for example by a Court of Audit). States shall promote a policy of financial transparency of political parties that benefit from public financing.*

### **b. Private Financing**

6. *Political parties may receive private financial donations. Donations from foreign States or enterprises must however be prohibited. This prohibition should not prevent financial donations from nationals living abroad.*

*Other limitations may also be envisaged. Such may consist notably of:*

- a. *a maximum level for each contribution;*
- b. *a prohibition of contributions from enterprises of an industrial, or commercial nature or from religious organisations;*
- c. *prior control of contributions by members of parties who wish to stand as candidates in elections by public organs specialised in electoral matters.*

7. *The transparency of private financing of each party should be guaranteed. In achieving this aim, each party should make public each year the annual accounts of the previous year, which should incorporate a list of all donations other than membership fees. All donations exceeding an amount fixed by the legislator must be recorded and made public.*

## **B Electoral Campaigns**

8. *In order to ensure equality of opportunities for the different political forces, electoral campaign expenses shall be limited to a ceiling, appropriate to the situation in the country and fixed in proportion to the number of voters concerned.*

9. *The State should participate in campaign expenses through funding equal to a certain percentage of the above ceiling or proportional to the number of votes obtained. This contribution may however be refused to parties who do not reach a certain threshold of votes.*

10. *Private contributions can be made for campaign expenses, but the total amount of such contributions should not exceed the stated ceiling. Contributions from foreign States or enterprises must be prohibited. This prohibition should not prevent financial contributions from nationals living abroad.*

*Other limitations may also be envisaged. Such may consist notably of a prohibition of contributions from enterprises of an industrial or commercial nature or religious organisations.*

11. *Electoral campaign accounts will be submitted to the organ charged with supervising election procedures, for example, an election committee, within a reasonable time limit after the elections.*

12. *The transparency of electoral expenses should be achieved through the publication of campaign accounts.*

## **C. Control and sanctions**

13. *Any irregularity in the financing of a political party shall entail sanctions proportionate to the severity of the offence that may consist of the loss of all or part of public financing for the following year.*

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15. *The above-mentioned rules including the imposition of sanctions shall be enforced by the election judge (constitutional or other) in accordance with the law.*

### 3. Guidelines for constitutional referendums at national level

At its 47<sup>th</sup> Plenary Meeting (Venice, 6-7 July 2001) the Venice Commission adopted guidelines on constitutional referendums ([CDL-INF \(2001\) 10](#)).

Recent experience of constitutional referendums in the new democracies has highlighted a number of issues which the present guidelines seek to address. These guidelines set out minimum rules for constitutional referendums and are designed to ensure that this instrument is used in all countries in accordance with the principles of democracy and the rule of law.

Constitutional referendums are taken as referring to popular votes in which the question of partially or totally revising a States Constitution (and not of its federated entities) is asked, irrespective of whether this requires voters to give an opinion on a specific proposal for constitutional change or on a question of principle.

By definition a constitutional referendum is concerned with a *partial or total revision* of the Constitution.

Constitutional referendums generally take one of the following forms:



A constitutional referendum may :

-

be required by the text of the Constitution which provides that certain texts are automatically submitted to referendum after their adoption by Parliament (mandatory referendum);

take place following a popular initiative :

- either a section of the electorate puts forward a text which is then submitted to popular vote;

- or a section of the electorate requests that a text adopted by Parliament be submitted to popular vote;

be called by an authority such as :

- Parliament itself or a specific number of members of Parliament;

- the Head of State or the government;

- one or several territorial Entities.

Constitutional referendums may be held both with respect to texts *already approved or not yet approved* by Parliament.

They may take the form of :

- a vote on *specifically-worded draft* amendments to the constitution or a specific proposal to abrogate existing provisions of the Constitution;
- a vote on a *question of principle* (for example: are you in favour of amending the constitution to introduce a presidential system of government?); or
- on a concrete proposal which does not have the form of specifically worded amendments, known as a *generally worded proposal* (for example: are you in favour of amending the Constitution in order to reduce the number of seats in Parliament from 300 to 200?).

It could be a question of :

- *a legally binding referendum* or
- *a non-legally binding referendum*

#### 4. Opinion on the preferential treatment of national minorities by their kin-State

On 21 June 2001, Romania's Prime Minister, Mr A. Nastase, requested the Venice Commission to examine the compatibility of the Act on Hungarians living in neighbouring countries, adopted by the Hungarian Parliament on 19 June 2001, with the European standards and the norms and principles of contemporary public international law.

On 2 July 2001, the Hungarian Minister of Foreign Affairs, Mr J Martonyi, requested the Venice Commission to carry out a comparative study of the recent tendencies of the legislations in Europe concerning the preferential treatment of persons belonging to national minorities living outside the borders of their country of citizenship.

At its plenary session of 6-7 July 2001, the Venice Commission decided to undertake a study, based on the legislation and practice of certain member States of the Council of Europe, on the preferential treatment by a State of its kin-minorities abroad. The aim of the study would be to establish whether such treatment could be said to be compatible with the standards of the Council of Europe and with the principles of international law.

A working group was thereafter formed, consisting of Messrs Franz Matscher, Francois Luchaire, Giorgio Malinverni and Pieter Van Dijk. A meeting was held in Paris on 18 September 2001. The Rapporteurs met with representatives of the Romanian and the Hungarian Governments respectively, in order to obtain certain clarifications following the information that both parties had submitted, at the Commissions request, in August.

The report ([CDL-INF \(2001\) 19](#)) was prepared on the basis of comments by Messrs Matscher, Luchaire, Malinverni and Van Dijk; it was discussed within the Sub-Commission for the Protection of Minorities on 18 October 2001, and was subsequently adopted by the Commission at its 48<sup>th</sup> Plenary Meeting held in Venice on 19-20 October 2001.

The report concludes :

Responsibility for minority protection lies primarily with the home-States. The Commission notes that kin-States also play a role in the protection and preservation of their kin-minorities, aiming at ensuring that their genuine linguistic and cultural links remain strong. Europe has developed as a cultural unity based on a diversity of interconnected languages and cultural traditions; cultural diversity constitutes a richness, and acceptance of this diversity is a precondition to peace and stability in Europe.

The Commission considers, however, that respect for the existing framework of minority protection must be held as a priority. In this field, multilateral and bilateral treaties have been stipulated under the umbrella of European initiatives. The effectiveness of the treaty approach could be undermined, if these treaties were not interpreted and implemented in good faith in the light of the principle of good neighbourly relations between States.

The adoption by States of unilateral measures granting benefits to the persons belonging to their kin-minorities, which in the Commission's opinion does not have sufficient *diuturnitas* to have become an international custom, is only legitimate if the principles of territorial sovereignty of States, *pacta sunt servanda*, friendly relations amongst States and the respect of human rights and fundamental freedoms, in particular the prohibition of discrimination, are respected.

Respect for these principles would seem to require that certain features of the measures in question be respected, in particular:

- A State may issue acts concerning foreign citizens inasmuch as the effects of these acts are to take place within its borders.
- When these acts aim at deploying their effects on foreign citizens abroad, in fields that are not covered by treaties or international customs allowing the kin-State to assume the consent of the relevant home-states, such consent should be sought prior to the implementation of any measure.
- No quasi-official function may be assigned by a State to non-governmental associations registered in another State. Any form of certification *in situ* should be obtained through the consular authorities within the limits of their commonly accepted attributions. The laws or regulations in question should preferably list the exact criteria for falling within their scope of application. Associations could provide information concerning these criteria in the absence of formal supporting documents.
- Unilateral measures on the preferential treatment of kin-minorities should not touch upon areas demonstrably pre-empted by bilateral treaties without the express consent or the implicit but unambiguous acceptance of the home-State. In case of disputes on the implementation or interpretation of bilateral treaties, all the existing procedures for settling the dispute must be used in good faith, and such unilateral measures can only be taken by the kin-State if and after these procedures prove ineffective.
- An administrative document issued by the kin-State may only certify the entitlement of its bearer to the benefits provided for under the applicable laws and regulations.

- Preferential treatment may be granted to persons belonging to kin-minorities in the fields of education and culture, insofar as it pursues the legitimate aim of fostering cultural links and is proportionate to that aim.
- Preferential treatment cannot be granted in fields other than education and culture, save in exceptional cases and if it is shown to pursue a legitimate aim and to be proportionate to that aim.

## IV. Centre on Constitutional Justice

In line with the objective of the Venice Commission to favor co-operation with regional bodies representing constitutional courts and equivalent jurisdictions, the year 2001 brought about a deepening of the relations with the Conference of the European Constitutional Courts, the Association of Constitutional Courts using the French Language and constitutional and supreme courts in the Southern African (SADC) region.

This trend also manifested itself in the demand for sub-regional events within the framework of the programme of seminars in co-operation with constitutional courts (CoCoSem) and the development of the database CODICES on constitutional case-law which was extended to meet the needs of regional co-operation.

### Regional co-operation

Upon request of the Belgian Presidency of the Conference of the European Constitutional Courts the Commission prepared a special issue of the Bulletin on Constitutional Case-Law on the topic of the next Conference: "The relations between the constitutional courts and the other national courts, including the interference in this area of the action of the European courts"

The Association of Constitutional Courts using the French Language (ACCPUF) requested assistance from the Secretariat for the organisation of a training seminars for their national correspondents who started to contribute to the CODICES database by virtue of a protocol to the co-operation agreement with ACCPUF. The first such contributions were already into the database.

At a meeting of Presidents of Constitutional and Supreme Courts from the Southern African region (SADC), organised within the framework of the programme Democracy, from the law book to real life, funded by Switzerland, the participating courts decided to nominate liaison officers in order to exchange their case-law via the CODICES database of the Commission. Shortly thereafter, a first meeting of these liaison officers was held during which they were trained in the preparation of contributions to the database. The courts were equipped with necessary computer equipment financed via the programme. Given that the funds by the Swiss government have come to an end, the continuation of this co-operation will depend on the availability of sufficient funding.

### Seminars in co-operation with constitutional courts

Seminars in co-operation with constitutional courts (CoCoSem) geared towards an exchange of experience between practitioners (judges and staff of the courts) from 'older' and more recently established constitutional courts were organised in co-operation with the constitutional courts of Armenia, Azerbaijan, Kyrgyzstan, South Africa and Ukraine. The issues dealt with included the independence of the constitutional court, requirements of the law on the constitutional court, property rights, the role of the constitutional court in society and its relations with the media. The courts highly appreciated the input by the rapporteurs representing the Commission as well as its organisational assistance.

## Bulletin on Constitutional Case-Law and CODICES database

In 2001, issue 6 of the series of special Bulletins on "Basic Texts" containing the laws governing the work of participating courts and relevant extracts of the constitutions was published together with three regular issues of the *Bulletin on Constitutional Case-Law*.

The CODICES database was further enlarged to contain about 3200 summaries and 4000 full texts of decisions from constitutional courts and equivalent bodies, together with the laws on the courts, their descriptions and constitutions. The English and French versions of CODICES were merged to provide a better overview of the available resources and to prepare for regional co-operation with ACCPUF (francophone) and the SADC courts (mostly anglophone). A new chapter ('book') was added to the database in order to facilitate research and to provide improved cross-references between the data. Search facilities by (sub-) region were included.

Within the context of the co-operation with ACCPUF and upon strong pressure from the participating courts the previously paying Internet version of CODICES was made public without restrictions. ACCPUF agreed to compensate for the loss of revenue.

### **V. The UniDem (Universities for Democracy) Programme**

The Commission organised two seminars within the framework of this programme during 2001:

1. Seminar on Democracy, rule of law and foreign policy in co-operation with the Constitutional Court (Skopje, 4-5 October 2001)

The Commission organised, in co-operation with the Constitutional Court of the former Yugoslav Republic of Macedonia a Seminar on Democracy, Rule of Law and Foreign Policy in Skopje on 4-5 October 2001.

The Venice Commission has been working for several years on the question of law and foreign policy. In 1998 it carried out a detailed study of this issue, which was published in the series Science and technique of democracy. The seminar in Skopje was a very useful initiative aimed at having an exchange of views of representatives of different countries.

The question of rule of law and foreign policy was of particular interest and importance for the Former Yugoslav Republic of Macedonia in the light of the impact of international norms and instruments of co-operation on domestic law. Among other issues tackled by the rapporteurs, the role of the judicial control in this process was paid particular attention. The participants of the seminar had a very fruitful exchange of views on the experience of different countries in this field, notably that of Croatia, France, Germany and Ireland.

The seminar proved very useful both in providing a comparative study of the practice in different countries and in addressing more specifically the situation in the Former Yugoslav Republic of Macedonia.

2. Seminar on the constitutional implications of accession to the European Union in co-operation with the University of Bilkent (Ankara, 9-10 November 2001)

The Commission organised, in co-operation with the University of Bilkent, Ankara a Seminar on The constitutional implications of accession to the European Union in Ankara on 9-10 November 2001).

The Venice Commission has been working for several years on the question of the influence of European integration on domestic

constitutional law. This has become one of the most important legal questions on our continent, as the enlargement of the European Union is one of the major endeavours over the next few years.

In addition, the question is particularly topical in Turkey owing to draft constitutional reform adopted by the Parliament aimed, amongst other things, at ensuring the conformity of Turkish constitutional law with European law.

The seminar was divided into two parts, one comparative, the other more specifically devoted to the situation in Turkey.

A comparative report on the situation in member States entitled the experience of half a century of European integration was presented by Mr Hans-Heinrich Vogel, Professor at Lund University (Sweden). Subsequently, the situation in the candidate states was dealt with in a general manner.

The part of the Seminar more specifically devoted to Turkey was divided into two sections, the first dealt with the European Unions point of view, and the second with that of Turkey.

The concluding report was presented by Ms Nanette Neuwahl, Professor of European Law, Montreal University.

This seminar was organised within the framework of the Joint Programme between the European Commission and the Venice Commission of the Council of Europe for strengthening democracy and constitutional development in central and Eastern Europe and the CIS.

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

### **3. Preparation of forthcoming seminars**

It is envisaged to hold the following UniDem seminars in 2002 :

a seminar on The Post-Communist State : the Construction of an idea (Paris, 5-6 April 2002);

- a seminar on the resolution by the Constitutional Court of conflicts between the central State and entities with legislative power will take place on 14-15 June 2002 in Rome;
- a seminar on Constitutional Courts and European Integration will take place in Koice (Slovak Republic) on 19-21 September 2002;

### **4. UniDem Campus for the legal training of the civil service**

In 2001, the Commission pursued legal training for the civil service, an initiative launched in 2000 and known as the Unidem Campus Trieste. Four seminars were organised during 2001: on *Public Administration and the Individual in the light of the European Convention on Human Rights* (14-18 May 2001), on *The principle of non-discrimination and the protection by the Public Administration of the rights of ethnic, cultural and linguistic minorities* (11-15 June 2001), on *Control of Administrative bodies: judicial control, administrative control, the Ombudsman* (24-18 September 2001) and on *the Guarantees of property rights in the new democracies of Central and Eastern Europe* (26-30 November 2001).

A meeting with the national correspondents of the nine countries involved (Albania, Bosnia and Herzegovina, Bulgaria, Croatia, Moldova, Romania, Slovenia, the Former Yugoslav Republic of Macedonia and the Federal Republic of Yugoslavia) was held in

Trieste on 24 November 2001, at which satisfaction was expressed for the high level of the lectures and the interest shown by the participants, and several suggestions were made in order to improve further this activity in 2002.

The Unidem Campus Trieste is financed by the Italian authorities.

## A P P E N D I X I

### **LIST OF MEMBERS OF THE EUROPEAN COMMISSION**

#### **FOR DEMOCRACY THROUGH LAW**

Mr Antonio LA PERGOLA (Italy), President, Judge at the Court of Justice of the European Communities

(Substitute: Mr Sergio BARTOLE, Professor, University of Trieste)

\* \* \*

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

Ms Hanna SUCHOCKA (Poland), Vice-President, Ambassador of Poland to the Holy See

Mr Kaarlo TUORI (Finland), Vice-President, Professor of Administrative law, University of Helsinki

(Substitute: Mr Matti NIEMIVUO, Director at the Department of Legislation, Ministry of Justice)

\* \* \*

Mr Constantin ECONOMIDES (Greece), Professor, Panteio University, Former Director of the Legal Department, Ministry of Foreign Affairs

(Substitute: Mr Dimitri CONSTAS, Professor, Panteio University, Director of the Greek Institute of International Relations)

(Substitute: Ms Fani DASKALOPOULOU-LIVADA, Assistant Legal Adviser, Legal Department, Ministry of Foreign Affairs)

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

Mr Giorgio MALINVERNI (Switzerland), Professor, University of Geneva

Mr Franz MATSCHER (Austria), Professor, University of Salzburg, Former judge at the European Court of Human Rights

(Substitute: Ms Ingrid SIESS-SCHERZ, Head of Division, Federal Chancellery)

Mr Ergun ZBUDUN (Turkey), Professor, University of Bilkent, Vice President of the Turkish Foundation for Democracy

Mr Grard REUTER (Luxembourg), Former President of the Board of Auditors

(Substitute : Ms Lydie ERR, Member of Parliament)

Mr Jean-Claude SCHOLSEM (Belgium), Professor, Law Faculty, University of Lige

Mr Michael TRIANTAFYLLIDES (Cyprus), Chairman of the Council of the University of Cyprus, Former President of the Supreme Court and former Attorney-General of the Republic

(Substitute : Mr Panayotis KALLIS, Supreme Court Judge)

Mr Helmut STEINBERGER (Germany), Director of the Max-Planck Institute, Professor, University of Heidelberg

(Substitute : Mr Georg NOLTE, Professor of Public Law, University of Goettingen)

Mr Jan HELGESEN (Norway), Professor, University of Oslo

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

Mr Joseph SAID PULLICINO (Malta), Chief Justice

Mr Jn KLUCKA (Slovakia), Judge, Constitutional Court

(Substitute: Mr Peter KRESAK, Professor, Member of the National Council of Slovakia)

Mr Peter JAMBREK (Slovenia), Professor, High School of Government Administration, Former Minister of the Interior, Former President of the Constitutional Court, Former Judge at the European Court of Human Rights

(Substitute: Mr Anton PERENIC, Professor of Law, former Judge of the Constitutional Court)

Mr Kestutis LAPINSKAS (Lithuania), President, Supreme Administrative Court

Mr Cyril SVOBODA (Czech Republic), Shadow Prime Minister, Member of Parliament

(Substitute : Ms Ivana JANU, Vice-Chairman, Constitutional Court)

Mr Aivars ENDZINS (Latvia), President, Constitutional Court

Mr Alexandre DJEROV (Bulgaria), Advocate, Member of the National Assembly

(Substitute: Mr Vassil GOTZEV, Judge, Constitutional Court)

Ms Carmen IGLESIAS CANO (Spain), Director of the Centre for Constitutional Studies

(Substitute: Mr Luis LOPEZ GUERRA, Professor, Universidad Carlos III)

Mr Rune LAVIN (Sweden), Justice, Supreme Administrative Court

(Substitute : Mr Hans Heinrich VOGEL, Professor in Public Law, University of Lund)

Mr Stanko NICK (Croatia), Ambassador of Croatia in Hungary

(Substitute: Mrs Marija SALECIC, Legal Adviser, Constitutional Court)

Mr Tito BELICANEC, ("The former Yugoslav Republic of Macedonia"), Professor, Faculty of Law, University of Skopje

(Substitute: Mr Igor SPIROVSKI, Secretary General, Constitutional Court)

Mr James HAMILTON (Ireland), Director of Public Prosecutions

Mr Luan OMARI (Albania), Vice President, Sciences Academy of Albania

Mr Hjrtur TORFASON (Iceland), Former Judge, Supreme Court of Iceland

Mr Lszl SLYOM (Hungary), Former President of the Constitutional Court

Mr Valeriu STOICA (Romania), Member of Parliament

(Substitute: Mr Alexandru FARCAS, State Secretary for European Integration and International Relations, Ministry of Interior)

Mr Vital MOREIRA (Portugal), Professor, Law Faculty, University of Coimbra

Ms Maria de Jesus SERRA LOPES, State Counsellor, Former Chairman of the Bar Association

Mr Pieter VAN DIJK (The Netherlands), State Councillor, Former Judge at the European Court of Human Rights

(Substitute: Mr Erik LUKACS, Former Legal Adviser, Ministry of Justice)

Mr Avtandil DEMETRASHVILI (Georgia), Member, Council of Justice

(Substitute: Mr Gela BEZHUASHVILI, Deputy Minister of Defence)

Mr Franois LUCHAIRE (Andorra), Honorary President of the University of Paris I, Former member of the French Constitutional Council, former President of the Constitutional Tribunal of Andorra

Mr Peeter ROOSMA (Estonia), Adviser, Supreme Court of Estonia

Mr Jeffrey JOWELL (United Kingdom), Professor of Public Law, University College London

Ms Siuzanna STANIK (Ukraine), Minister of Justice<sup>[11]</sup>



(Substitute: Mr Volodymyr VASSYLENKO, Ambassador of Ukraine to the United Kingdom)

Mr Khanlar I. HAJIYEV (Azerbaijan), President, Constitutional Court

Mr Gaguk HARUTUNIAN (Armenia), President, Constitutional Court

Mr Henrik ZAHLE (Denmark), Judge, Supreme Court

(Substitute: Mr John LUNDUM, High Court Judge)

Ms Maria POSTOICO (Moldova), Chairperson of the Committee on Legal Affairs, appointments and immunities, Parliament of Moldova

(Substitute: Mr Vasile RUSU, Deputy Chairperson of the Committee on Legal Affairs, appointments and immunities, Parliament of Moldova)

Mr Marat V. BAGLAY (Russia) [\[12\]](#), President, Constitutional Court

(Substitute: Mr Vladimir TOUMANOV, former President of the Constitutional Court)

## **ASSOCIATE MEMBERS**

Mr Anton MATOUCEWITCH (Belarus), Deputy Rector, Commercial University of Management

Mr Cazim SADIKOVIC (Bosnia and Herzegovina), Dean, Faculty of Law, University of Sarajevo

Mr Vojin DIMITRIJEVIC, (Federal Republic of Yugoslavia), Director, Belgrade Human Rights Centre

(Substitute: Mr Vladimir DJERIC, Advisor to the Minister of Foreign Affairs)

## **OBSERVERS**

Mr Hector MASNATTA (Argentina), Ambassador, Executive Vice-Chairman, Centre for constitutional and social studies

Mr Grald BEAUDOIN (Canada), Professor, University of Ottawa, Senator

(Substitute: Mr Yves de MONTIGNY, Senior General Counsel, Manager Public Law Group, Department of Justice)

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

Mr Amnon RUBINSTEIN (Israel), Chairman, State Control and Ombudsman Committee, Knesset

Mr Naoki ONISHI (Japan), Consul, Consulate General of Japan, Strasbourg

Mr Oljas SOULEIMENOV (Kazakhstan), Ambassador of Kazakhstan in Rome

Mr Yang-Chun PARK (Republic of Korea), Ambassador of the Republic of Korea to Luxembourg, Belgium and the European Union

Mr Serikul KOSAKOV (Kyrgyzstan), Head of Teaching Department, Department of Law, Kyrgyz State National University

Mr Porfirio MUOZ LEDO (Mexico), Ambassador Extraordinary and Plenipotentiary, Permanent Observer to the Council of Europe

Mr Jed RUBENFELD (United States of America), Professor, Yale Law School

Mr Miguel SEMINO (Uruguay), Ambassador of Uruguay in Paris

## **SECRETARIAT**

Mr Gianni BUQUICCHIO

Mr Christos GIAKOUMOPOULOS

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Ms Brigitte AUBRY

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Mrs Marie-Louise WIGISHOFF

Ms Jo FARMER

# OFFICES AND COMPOSITION OF THE SUB-COMMISSIONS

## OFFICES AND

# COMPOSITION OF THE SUB-COMMISSIONS

- President : Mr La Pergola
  
- Vice-Presidents : Mr Robert, Ms Suchocka, Mr Tuori
  
- Bureau : Mr Hamilton, Mr Lapinskas, Mr Lavin, Mr Steinberger, Mr Triantafyllides
  
- Chairmen of Sub-Commissions : Mr Batliner, Mr Economides, Mr Helgesen, Mr Jambrek, Mr Jowell, Mr Malinverni, Mr Matscher, Mr Moreira, Mr zbudun, Mr Said Pullicino, Mr Scholsem, Mr Solyom, Mr van Dijk
  
- Constitutional Justice : Chairman: Mr Slyom - members: Mr Bartole, Mr Batliner, Mr Demetrashvili, Mr Djerov, Mr Endzins, Mr Gotzev, Mr Hamilton, Mr Harutunian, Ms Janu, Mr La Pergola, Mr Lapinskas, Mr Lavin, Mr Malinverni, Mr Moreira, Mr Reuter, Mr Robert, Mr Roosma, Mr Said Pullicino, Mr Scholsem, Mr Spirovski, Ms Stanik, Mr Steinberger, Mr Stoica, Ms Suchocka, Mr Torfason, Mr Triantafyllides, Mr Vogel, Mr Zahle - observers: Canada, Israel
  
- Federal State and Regional State : Chairman: Mr Malinverni - members: Mr Bartole, Mr Belicanec, Mr Hajiyev, Ms Iglesias, Mr Jowell, Mr La Pergola, Mr Matscher, Mr Sadikovic Mr Scholsem, Ms Serra Lopes, Mr Steinberger, Mr Triantafyllides, Mr Tuori observers: Canada, USA
  
- International Law : Chairman: Mr Economides - members: Mr Djerov, Mr Farcas, Mr Gotzev, Mr Helgesen, Mr Klucka, Mr La Pergola, Mr Luchaire, Mr Lukacs, Mr Malinverni, Mr Matscher, Mr Moreira, Mr Nick, Mr Steinberger, Mr Triantafyllides
  
- Protection of Minorities : Chairman: Mr Matscher - members: Mr Bartole, Mr Belicanec, Mr Economides, Mr Farcas, Mr Gualandi, Mr Hamilton, Mr Helgesen, Mr Klucka, Mr Malinverni, Mr Nick, Mr zbudun, Mr Scholsem, Mr Slyom, Mr Stoica, Mr Torfason, Mr Triantafyllides, Mr Tuori, Mr van Dijk observers: Canada
  
- Constitutional Reform : Chairman: Mr Batliner - members: Mr Bartole, Mr Djerov, Mr Endzins, Mr Farcas, Mr Gotzev, Mr Hajiyev, Ms Iglesias, Ms Janu, Mr La Pergola, Mr Lapinskas, Mr Luchaire, Mr Lukacs, Mr Malinverni, Mr Moreira, Mr Nolte, Mr Omari, Mr zbudun, Mr Reuter, Mr Robert, Mr Roosma, Mr Said Pullicino, Mr Scholsem, Ms Serra Lopes, Mr Spirovski, Mr Steinberger, Mr Stoica, Ms Suchocka, Mr Torfason, Mr Triantafyllides, Mr Tuori observers: Israel
  
- Democratic Institutions : Chairman: Mr Scholsem - members: Mr Belicanec, Mr Economides, Mr Endzins, Mr Farcas, Mr Hamilton, Mr Harutunian, Ms Iglesias, Mr Jambrek, Ms Janu, Mr Jowell, Mr Klucka, Mr Lapinskas, Mr Lavin, Mr Luchaire, Mr Malinverni, Mr Moreira, Mr Omari, Mr zbudun, Mr Reuter, Mr Robert, Mr Roosma, Ms Serra Lopes, Mr Stoica, Mr Svoboda, Mr Triantafyllides, Mr Tuori, Mr Vogel
  
- UniDem Governing Board : Chairman: Mr Jowell - members: Mr Batliner, Mr Djerov, Mr Gualandi, Mr Helgesen, Mr Jambrek, Ms Janu, Mr La Pergola, Mr Lavin, Mr Moreira, Mr zbudun, Mr Reuter, Mr Robert, Ms Suchocka, Mr Svoboda, Mr van Dijk, Mr

Vogel observers: Holy See, ODIHR

Co-opted members : Prof. Evans (Johns Hopkins University, Bologna), Prof. von der Gabelntz (College of Europe, Bruges), Prof. Masterson (European University Institute, Florence), Mr Koller (Federal Office of Justice, Berne)

- South Africa : Chairman: Mr Helgesen - members: Mr Hamilton, Mr Helgesen, Mr Jambrek, Mr Jowell, Mr Lavin, Mr La Pergola, Mr Torfason, Mr Tuori, Mr Vogel - observers: Canada, USA
  
- Mediterranean Basin : Chairman: Mr Said Pullicino - members: Mr Batliner, Mr Djerov, Mr Economides, Mr Gotzev, Ms Iglesias, Mr La Pergola, Mr Nick, Mr zbudun, Mr Robert, Mr Triantafyllides observers: Israel
  
- Administrative and Budgetary Questions : Chairman: Mr van Dijk - members: Mr Economides, Mr Malinverni, Mr Matscher, Mr Tuori
  
- South-East Europe : Chairman: Mr Jambrek members: Mr Belicanec, Mr Djerov, Mr Economides, Mr Farcas, Mr Gotsev, Mr Luchoire, Mr Lukacs, Mr Moreira, Mr Nick, Mr Omari, Mr Robert, Mr Sadikovic, Mr Spirovski, Mr Torafason
  
- Emergency powers : Chairman: Mr zbudun
  
- Latin America : Chairman: Mr Moreira

### A P P E N D I X III

#### MEETINGS OF THE EUROPEAN COMMISSION FOR DEMOCRACY THROUGH LAW IN 2001<sup>[13]</sup>

## Plenary Meetings

46<sup>th</sup> Meeting 9-10 March

47<sup>th</sup> Meeting 6-7 July

48<sup>th</sup> Meeting 19-20 October

49<sup>th</sup> Meeting 14-15 December

### Bureau

27<sup>th</sup> Meeting - Meeting enlarged to include the Chairmen of Sub-Commissions

8 March

28<sup>th</sup> Meeting - Meeting enlarged to include the Chairmen of Sub-Commissions

5 July

29<sup>th</sup> Meeting - Meeting enlarged to include the Chairmen of Sub-Commissions

18 October

30<sup>th</sup> Meeting - Meeting enlarged to include the Chairmen of Sub-Commissions

13 December

## **SUB-COMMISSIONS**

### **Constitutional Justice**

Meeting of Working Group on the systematic thesaurus

3 May (Koice, Slovakia)

18<sup>th</sup> meeting - 4 May (Koice, Slovakia)

(Meeting with Liaison officers from Constitutional Courts)

First meeting of liaison officers from Constitutional and Supreme Courts from SADC countries

5-6 November (Malawi)

## **Democratic Institutions**

12<sup>th</sup> Meeting - 8 March

13<sup>th</sup> Meeting - 5 July

## **South-East Europe**

2<sup>nd</sup> Meeting - 5 July

(Joint meeting with the UniDem Governing Board)

3<sup>rd</sup> Meeting - 13 December

(Joint meeting with the UniDem Governing Board)

## **Unidem Governing Board**

30<sup>th</sup> Meeting - 8 March

31<sup>st</sup> Meeting - 5 July

(Joint meeting with the Sub-Commission on South-East Europe)

32<sup>nd</sup> Meeting - 18 October

33<sup>rd</sup> Meeting - 13 December

(Joint meeting with the Sub-Commission on South-East Europe)

## Minorities

Meeting of the Working Group on preferential treatment of national minorities by their kin-State

18 September (Paris)

17<sup>th</sup> Meeting - 18 October

## Administrative and Budgetary Questions

31 January (Strasbourg)

14 June (Strasbourg)

13 December

## Armenia

Meeting of Working Group on drafting of the Electoral Code of Armenia

9-10 February (Yerevan)

Meeting of Working Group on the Revision of the Constitution of Armenia

13-14 February (Paris)

5-6 June (Strasbourg)

## Azerbaijan

Meeting of Working Group on the laws related to the Revision of the Constitution of Azerbaijan

29-30 November (Strasbourg)

## Bosnia and Herzegovina

Meeting of Working Group on the Law on the merger of the Human Rights Chamber and the Constitutional Court of Bosnia and Herzegovina

26-27 March (Paris)

10-12 June (Bled, Slovenia)

## Croatia

Meeting on draft law on rights of minorities

4-5 January (Zagreb)

## Georgia

Meeting on the status of Abkhazia

12-13 February (Pitsunda)

## Federal Republic of Yugoslavia

Meeting on the law on the rights of minorities in the Federal Republic of Yugoslavia

11-12 January (Belgrade)

Meeting of Working Group on the law on national and ethnic communities of Federal Republic of Yugoslavia

26-27 March (Strasbourg)

#### **CONSTITUTIONAL JUSTICE SEMINARS**

Seminar on economic transition: property rights, restitution, pensions etc

27-28 April (Bishkek, Kyrgyzstan)

Seminar on the role of the Constitutional Court in the State and in Society

10-11 May (Kyiv)

Seminar on guarantees for the independence of the judiciary

5-6 October (Yerevan)

Conference on Actual problems of constitutional jurisdiction: contemporaneity and perspectives of development

18-19 October (Kyiv)

Seminar on draft law on the Constitutional Court of Azerbaijan

14-15 November (Baku)

#### **UNIDEM SEMINARS**

Democracy, rule of law and foreign policy

4-5 October (Skopje)

Constitutional implications of accession to the European Union

9-10 November (Ankara)

#### **UniDem Campus Trieste**

1<sup>st</sup> Seminar Public Administration and the Individual in the light of the European Convention on Human Rights

14-18 May (Trieste)

2<sup>nd</sup> Seminar The principle of non-discrimination and the protection by the Public Administration of the rights of ethnic, cultural and linguistic minorities

11-15 June (Trieste)

3<sup>rd</sup> Seminar Control of Administrative bodies: judicial control, administrative control, the Ombudsman

14-18 September (Trieste)

Meeting with National Coordinators

24 November (Trieste)

4<sup>th</sup> Seminar the Guarantees of property rights in the new democracies of Central and Eastern Europe

26-30 November (Trieste)

### **PROGRAMME DEMOCRACY, FROM THE LAW BOOK TO REAL LIFE**

Seminar on Management of provincial government in a Constitutional State

31 May-1 June (Stellenbosh, South Africa)

Colloquium 2001 for Constitutional and Supreme Judges of the Southern Africa Region

10-12 August (Willowvale, South Africa)

School on Intergovernmental Relations

8-12 October (Pretoria)

### **OTHER SEMINARS AND CONFERENCES**

Meeting of Task force on the revision of the Constitution of Bosnia and Herzegovina

20 January (Brussels)

Meeting on the future relationship between Serbia and Montenegro

24 January (Brussels)

Meetings for the drafting of the Constitutional Framework for Provisional Self-Government in Kosovo

7-14 March (Pristina)

26-31 March (Pristina)

1-6 April (Pristina)

Training Seminar of national correspondents ACCPUF

1-4 April (Alexandria, Egypt)

Participation in seminar the role of the Constitutional Court in settling electoral disputes

5-6 April (Tirana)

Participation in the 9<sup>th</sup> International Judicial Conference on Courts of Ultimate Appeal: Issues of Judicial Independence



24-26 May (Budapest)

Participation in OSCE/ODIHR Seminar on Human Dimension: election processes

29-31 May (Warsaw)

Participation in talks on the political settlement in the former Yugoslav Republic of Macedonia

4-17 July (Skopje)

Participation in an Interministerial Conference on Minorities

5-6 July (Belgrade)

Fact-finding mission to Montenegro and Serbia

1-2 October (Belgrade and Podgorica)

Participation in the seminar European Law in the case-law of Constitutional Courts

3-5 October (Bratislava)

Participation in the Conference EuroWeb 2001 the Web in Public Administration

18-20 December (Pisa, Italy)

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

### **LIST OF PUBLICATIONS**

## **OF THE EUROPEAN COMMISSION FOR DEMOCRACY THROUGH LAW**

### **Collection[\[14\]](#) Science and technique of democracy**

No. 1 Meeting with the presidents of constitutional courts and other equivalent bodies[\[15\]](#) (1993)

No. 2 Models of constitutional jurisdiction[\[16\]](#)

by Helmut Steinberger (1993)

- No. 3 Constitution making as an instrument of democratic transition (1993)
- No. 4 Transition to a new model of economy and its constitutional reflections (1993)
- No. 5 The relationship between international and domestic law (1993)
- No. 6 The relationship between international and domestic law<sup>3</sup>  
by Constantin Economides (1993)
- No. 7 Rule of law and transition to a market economy (1994)
- No. 8 Constitutional aspects of the transition to a market economy (1994)
- No. 9 The Protection of Minorities (1994)
- No. 10 The role of the constitutional court in the consolidation of the rule of law (1994)
- No. 11 The modern concept of confederation (1995)
- No. 12 Emergency powers<sup>3</sup>  
by Ergun zbudun and Mehmet Turhan (1995)
- No. 13 Implementation of constitutional provisions regarding mass media in a pluralist democracy (1995)
- No. 14 Constitutional justice and democracy by referendum (1996)
- No. 15 The protection of fundamental rights by the Constitutional Court<sup>[17]</sup> (1996)
- No. 16 Local self-government, territorial integrity and protection of minorities (1997)
- No. 17 Human Rights and the functioning of the democratic institutions in emergency situations (1997)
- No. 18 The constitutional heritage of Europe (1997)
- No. 19 Federal and Regional States (1997)
- No. 20 The composition of Constitutional Courts (1997)

No. 21 Citizenship and state succession (1998)

No. 22 The transformation of the Nation-State in Europe at the dawn of the 21<sup>st</sup> century (1998)

No. 23 Consequences of state succession for nationality (1998)

No. 24 Law and foreign policy (1998)

No. 25 New trends in electoral law in a pan-European context (1999)

No. 26 The principle of respect for human dignity in European case-law (1999)

No. 27 Federal and Regional States in the perspective of European integration (1999)

No. 28 The right to a fair trial (2000)

No. 29 Societies in conflict: the contribution of law and democracy to conflict resolution (2000)

N. 30 European Integration and Constitutional Law (2001)

10<sup>th</sup> anniversary of the Venice Commission speeches presented at the ceremony to commemorate the Commissions 10<sup>th</sup> anniversary

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Bulletin on Constitutional Case-Law -	93-1,2,3
	94-1,2,3
	95-1,2,3
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	97-1,2,3
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Special Bulletins -	1994 - Description of Courts
	1999 - Description of Courts
	Basic texts 1,2,3,4,5 and 6 (extracts from constitutions and laws on Constitutional Courts)

Leading cases - European Court of Human Rights

Freedom of religion and beliefs

Leading cases - European Court of Human Rights (1963-2000) 2 volumes in Russian

Annual Reports -

1993, 1994, 1995, 1996, 1997, 1998, 1999, 2000, 2001

## APPENDIX V

### LIST OF INFORMATION DOCUMENTS (CDL-INF)[18]CDL-INF(2001)6

**Opinion on the decision of the Constitutional Court of Bosnia and Herzegovina on the issue of the constituent peoples, adopted by the Commission at its 46<sup>th</sup> Plenary Meeting (9-10 March 2001)**

**[CDL-INF \(2001\) 7](#) Memorandum on the Organic Law on the Institution of the Ombudsman of the Federation of Bosnia and Herzegovina, approved by the Venice Commission at its 46<sup>th</sup> Plenary Meeting (Venice, 9-10 March 2001);**

**[CDL-INF \(2001\) 8](#) Guidelines on the financing of political parties adopted by the Commission at its 46<sup>th</sup> Plenary Meeting (9-10 March 2001);**

**[CDL-INF \(2001\) 9](#) Summary report on the judgments of constitutional courts and the execution thereof, adopted by the Commission at its 46<sup>th</sup> Plenary Meeting (9-10 March 2001);**

**[CDL-INF \(2001\) 10](#) Guidelines on constitutional referendums adopted by the Commission at its 47<sup>th</sup> Plenary Meeting (6-7 July 2001);**

**[CDL-INF \(2001\) 11](#) Consolidated opinion on the Ukrainian Constitutional Reform Project adopted by the Commission at its 47<sup>th</sup> Plenary Meeting (6-7 July 2001);**

**[CDL-INF \(2001\) 12](#) Opinion on the Draft Law on Rights of National Minorities of Bosnia and Herzegovina Prepared by the Ministry of Human Rights and Refugees of Bosnia and Herzegovina, 18 April 2001, adopted by the Commission at its 47<sup>th</sup> Plenary Meeting (Venice, 6-7 July 2001);**

**[CDL-INF \(2001\) 13](#) Opinion on the Draft Law on the Rights of Ethnic and National Communities and Minorities In Bosnia and Herzegovina (prepared by Mr Ibrahim Spahic, Delegate in the House of Peoples of Bosnia and Herzegovina), adopted by the Commission at its 47<sup>th</sup> Plenary Meeting (Venice, 6-7 July 2001);**

**[CDL-INF \(2001\) 14](#) Opinion on the Croatian constitutional law on the rights of minorities, adopted by the Commission at its 47<sup>th</sup> Plenary Meeting (6-7 July 2001);**

- [CDL-INF \(2001\) 15](#) Opinion on the amendments to the Croatian constitution, adopted by the Commission at its 47<sup>th</sup> Plenary Meeting (6-7 July 2001);
- [CDL-INF \(2001\) 16](#) Opinion on electoral legislation in the Ticino canton adopted by the Commission at its 47<sup>th</sup> Plenary Meeting (6-7 July 2001);
- [CDL-INF \(2001\) 17](#) Report on the Revised Constitution of Armenia, ([CDL-INF \(2001\) 17](#)), adopted by the Commission at its 47<sup>th</sup> Plenary Meeting (Venice, 6-7 July 2001);
- [CDL-INF \(2001\) 19](#) Opinion on the preferential treatment of national minorities by their kin-State adopted by the Commission at its 48<sup>th</sup> Plenary Meeting (19-20 October 2001);
- [CDL-INF \(2001\) 20](#) Proposal for a law on the Merger of the Human Rights Chamber and the Constitutional Court of Bosnia and Herzegovina, approved by the Commission at its 48<sup>th</sup> Plenary Meeting (19-20 October 2001);
- [CDL-INF \(2001\) 21](#) Opinion on the Electoral Law of Bosnia and Herzegovina, (adopted by the Commission at its 48<sup>th</sup> Plenary Meeting (19-20 October 2001);
- [CDL-INF \(2001\) 22](#) Opinion on the draft Ukrainian Law on Elections of Peoples Deputies adopted by the Commission at its 48<sup>th</sup> Plenary Meeting (19-20 October 2001);
- [CDL-INF \(2001\) 23](#) Interim report on the constitutional situation in the Federal Republic of Yugoslavia adopted by the Commission at its 48<sup>th</sup> Plenary Meeting (19-20 October 2001);
- [CDL-INF \(2001\) 24](#) Consolidated Opinion on the Law on Regional Elections of Slovakia adopted by the Commission at its 49<sup>th</sup> Plenary Meeting (Venice, 14-15 December 2001);
- [CDL-INF \(2001\) 25](#) Opinion on the Constitutional Issues that Could Be Raised Under the Constitution in Force by Armenias Ratification of the European Convention on Human Rights, adopted by the Commission at its 49<sup>th</sup> Plenary Meeting (Venice, 14-15 December 2001);
- [CDL-INF \(2001\) 26](#) Consolidated Opinion on the Draft Law of Azerbaijan on the Vote of No Confidence, ([CDL-INF \(2001\) 26](#)), adopted by the Commission at its 49<sup>th</sup> Plenary Meeting (Venice, 14-15 December 2001);
- [CDL-INF \(2001\) 27](#) Consolidated Opinion on the Draft Law on the Implementation of Human Rights and Freedoms of Azerbaijan, adopted by the Commission at its 49<sup>th</sup> Plenary Meeting (Venice, 14-15 December 2001);
- [CDL-INF \(2001\) 28](#) Opinion on the Draft Law on the Constitutional Court of Azerbaijan, adopted by the Commission at its 49<sup>th</sup> Plenary Meeting (Venice, 14-15 December 2001).

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[\[1\]](#) *The Russian Federation acceded to the Commission with effect from 1 January 2002.*

[2] The full text of all opinions adopted by the Commission during 2001 is available on the Commissions web-site : <http://www.venice.coe.int>

[3] The following opinions concerning Armenia were adopted by the Commission during 2001 :

- Report on the Revised Constitution of Armenia, ([CDL-INF \(2001\) 17](#)), adopted by the Commission at its 47th Plenary Meeting (Venice, 6-7 July 2001);
- Opinion on the draft Civil Service Law of the Republic of Armenia, adopted by the Commission at its 48<sup>th</sup> Plenary Meeting (19-20 October 2001);
- Opinion on the Constitutional Issues that Could Be Raised Under the Constitution in Force by Armenias Ratification of the European Convention on Human Rights, ([CDL-INF \(2001\) 25](#)), adopted by the Commission at its 49th Plenary Meeting (Venice, 14-15 December 2001).

[4] The following opinions concerning Azerbaijan were adopted by the Commission during 2001 :

- Consolidated Opinion on the Draft Law of Azerbaijan on the Vote of No Confidence, ([CDL-INF \(2001\) 26](#)), adopted by the Commission at its 49th Plenary Meeting (Venice, 14-15 December 2001);
- Consolidated Opinion on the Draft Law on the Implementation of Human Rights and Freedoms of Azerbaijan, ([CDL-INF \(2001\) 27](#)), adopted by the Commission at its 49th Plenary Meeting (Venice, 14-15 December 2001);
- Opinion on the Draft Law on the Constitutional Court of Azerbaijan, ([CDL-INF \(2001\) 28](#)), adopted by the Commission at its 49th Plenary Meeting (Venice, 14-15 December 2001).

[5] The following opinions concerning Bosnia and Herzegovina were adopted by the Commission during 2001:

- Opinion on the decision of the Constitutional Court of Bosnia and Herzegovina on the issue of the constituent peoples, ([CDL-INF \(2001\) 6](#)), adopted by the Commission at its 46<sup>th</sup> Plenary Meeting (9-10 March 2001);
- Memorandum on the Organic Law on the Institution of the Ombudsman of the Federation of Bosnia and Herzegovina, ([CDL-INF \(2001\) 7](#)), approved by the Venice Commission at its 46th Plenary Meeting (Venice, 9-10 March 2001);
- Opinion on the Draft Law on Rights of National Minorities of Bosnia and Herzegovina, prepared by the Ministry of Human Rights and Refugees of Bosnia and Herzegovina, 18 April 2001, ([CDL-INF \(2001\) 12](#)), adopted by the Commission at its 47th Plenary Meeting (Venice, 6-7 July 2001);
- Opinion on the Draft Law on the Rights of Ethnic and National Communities and Minorities In Bosnia and Herzegovina, prepared by Mr Ibrahim Spahic, Delegate in the House of Peoples of Bosnia and Herzegovina, ([CDL-INF \(2001\) 13](#)), adopted by the Commission at its 47th Plenary Meeting (Venice, 6-7 July 2001);
- Opinion on the Electoral Law of Bosnia and Herzegovina, ([CDL-INF \(2001\) 21](#)), adopted by the Commission at its 48<sup>th</sup> Plenary Meeting (19-20 October 2001);

- *Proposal for a law on the Merger of the Human Rights Chamber and the Constitutional Court of Bosnia and Herzegovina, ( [CDL-INF \(2001\) 20](#) ), approved by the Commission at its 48<sup>th</sup> Plenary Meeting (19-20 October 2001).*

**[6]** *The following opinions concerning Croatia were adopted by the Commission during 2001 :*

- *Opinion on the Croatian constitutional law on the rights of minorities, ( [CDL-INF \(2001\) 14](#) ), adopted by the Commission at its 47<sup>th</sup> Plenary Meeting (6-7 July 2001);*

- *Opinion on the amendments to the Croatian constitution, ( [CDL-INF \(2001\) 15](#) ), adopted by the Commission at its 47<sup>th</sup> Plenary Meeting (6-7 July 2001);*

**[7]** *The following opinion concerning Slovakia was adopted by the Commission during 2001 :*

- *Consolidated Opinion on the Law on Regional Elections of Slovakia ( [CDL-INF \(2001\) 24](#) ), adopted by the Commission at its 49th Plenary Meeting (Venice, 14-15 December 2001).*

**[8]** *The following opinion concerning Switzerland was adopted by the Commission during 2001 :*

- *Opinion on electoral legislation in the Ticino canton ( [CDL-INF \(2001\) 16](#) ), adopted by the Commission at its 47<sup>th</sup> Plenary Meeting (6-7 July 2001).*

**[9]** *The following opinions concerning Ukraine were adopted by the Commission during 2001 :*

- *Consolidated opinion on the Ukrainian Constitutional Reform Project ( [CDL-INF \(2001\) 11](#) ), adopted by the Commission at its 47<sup>th</sup> Plenary Meeting (6-7 July 2001);*

- *Opinion on the draft statute on the Ukrainian judicial system , adopted by the Commission at its 47<sup>th</sup> Plenary Meeting (6-7 July 2001);*

- *Opinion regarding the concept of State ethnic and national policy of Ukraine, adopted by the Commission at its 47<sup>th</sup> Plenary Meeting (6-7 July 2001);*

- *Opinion on the draft Ukrainian Law on Elections of Peoples Deputies ( [CDL-INF \(2001\) 22](#) ), adopted by the Commission at its 48<sup>th</sup> Plenary Meeting (19-20 October 2001).*

**[10]** *The following opinion concerning the Federal Republic of Yugoslavia was adopted by the Commission during 2001 :*

- *Interim report on the constitutional situation in the Federal Republic of Yugoslavia ( [CDL-INF \(2001\) 23](#) ), adopted by the Commission at its 48<sup>th</sup> Plenary Meeting (19-20 October 2001).*

**[11]** *Appointed Permanent Representative of Ukraine to the Council of Europe in January 2002.*

**[12]** *Accession to the European Commission for Democracy through Law on 1 January 2002.*

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

**[14]** *Also available in French.*

[\[15\]](#) *Speeches in the original language.*

[\[16\]](#) *Also available in Russian.*

[\[17\]](#) *An abridged version is also available in Russian.*

[\[18\]](#) *The documents [9] to [12] The following opinions concerning Ukraine were adopted by the Commission during 2001 :*

*Consolidated opinion on the Ukrainian Constitutional Reform Project ( [CDL-INF \(2001\) 11](#) ), adopted by the Commission at its 47<sup>th</sup> Plenary Meeting (6-7 July 2001);*

*Opinion on the draft statute on the Ukrainian judicial system , adopted by the Commission at its 47<sup>th</sup> Plenary Meeting (6-7 July 2001);*

*Opinion regarding the concept of State ethnic and national policy of Ukraine, adopted by the Commission at its 47<sup>th</sup> Plenary Meeting (6-7 July 2001);*

*Opinion on the draft Ukrainian Law on Elections of People's Deputies ( [CDL-INF \(2001\) 22](#) ), adopted by the Commission at its 48<sup>th</sup> Plenary Meeting (19-20 October 2001).*

[\[10\]](#) *The following opinion concerning the Federal Republic of Yugoslavia was adopted by the Commission during 2001 :*

*Interim report on the constitutional situation in the Federal Republic of Yugoslavia ( [CDL-INF \(2001\) 23](#) ), adopted by the Commission at its 48<sup>th</sup> Plenary Meeting (19-20 October 2001).*

[\[11\]](#) *Appointed Permanent Representative of Ukraine to the Council of Europe in January 2002.*

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[\[16\]](#) *Also available in Russian.*

[\[17\]](#) *An abridged version is also available in Russian.*

[\[18\]](#) *The documents*