European Commission for Democracy through Law

(Venice Commission)

Annual report of activities 2007

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I. Working for democratic stability – an overview of Venice Commission activities in 2007

1. The Venice Commission – an introduction[1]

The European Commission for Democracy through Law, better known as the Venice Commission, is a Council of Europe consultative body on issues of constitutional law, including the protection of human rights, electoral law and the protection of national minorities. Its members are independent experts. Set up in 1990 under a partial agreement between 18 Council of Europe member states, it has subsequently played a decisive role in the adoption and implementation of constitutions in keeping with Europe's constitutional heritage.[2] The Commission holds four plenary sessions a year in Venice, working mainly in three fields: constitutional assistance, constitutional justice and election and referendum issues. In 2002, once all Council of Europe member states had joined, the Commission became an enlarged agreement of which non-European states could become full members. It is financed by its member states on a proportional basis which follows the same criteria as applied to the Council of Europe as a whole. This system guarantees the Commission's independence vis-à-vis those states which request its assistance.

The Commission has the prime function of providing constitutional assistance to States, mainly, but not exclusively, those which participate in its activities.[3] Such assistance takes the form of opinions prepared by the Commission at the request not only of States, but also of organs of the Council of Europe, more specifically the Parliamentary Assembly, Committee of Ministers, Congress of Local and Regional Authorities and Secretary General, as well as of other international organisations or bodies which participate in its activities. These opinions relate to draft constitutions or

1. For more information, please refer to the Venice Commission's website: www.venice.coe.int.
2. On the concept of the constitutional heritage of Europe see, *inter alia*, "The Constitutional Heritage of Europe", proceedings of the UniDem seminar organised jointly by the Commission and the Centre d'Etudes et de Recherches Comparatives Constitutionnelles et Politiques (C.E.R.CO.P.), Montpellier, 22 and 23 November 1996, "Science and technique of democracy", No. 18.
3. Article 3, paragraph 3, of the Statute of the Commission specifies that any State which is not a member of the agreement may benefit from the activities of the Commission by making a request to the Committee of Ministers of the Council of Europe.

constitutional amendments, or to other draft legislation in the field of constitutional law. The Commission has thus made an often crucial contribution to the development of constitutional law, mainly, although not exclusively, in the new democracies of central and eastern Europe.

The aim of the assistance given by the Venice Commission is to provide a complete, precise, detailed and objective analysis not only of compatibility with European and international standards, but also of the practicality and viability of the solutions envisaged by the States concerned. The Commission's recommendations and suggestions are largely based on common European experience in this sphere.

The Commission does not attempt to impose solutions, taking an approach based on dialogue, rather than on demand. This is why a rapporteur group frequently makes visits to the countries concerned in order to meet the various political players involved on the ground. An approach of this kind also fosters the most objective possible view of the situation. The Commission does not put forward models of the ideal constitution or law, but endeavours, on the basis of common standards, to understand through its dialogue, countries' needs and constraints, before it gives its specific opinions to requesting countries.

The Commission's working method involves the setting up of a rapporteur group of its own members, sometimes with the addition of experts, who present their personal observations on the text concerned. Following a discussion with the national authorities and other relevant bodies in the country concerned, the working group draws up a draft common opinion on the conformity of the text (preferably in its draft state) with European and international legal and democratic standards, and on how it could be improved on the basis of common experience. The draft opinion is discussed and adopted by the Commission at a plenary session, usually in the presence of representatives of the country concerned. Following adoption, it is transmitted to the State or the body which requested it, and comes into the public domain.

Although the Commission's opinions are not binding, they ultimately tend to be reflected in the law of the countries to which they relate, thanks to the approach taken and to the Commission's reputation of independence and objectivity. Furthermore, even after an opinion has been adopted, the Commission remains at the disposal of the State concerned, and often continues to provide its assistance until the constitution or law has been finally adopted.

At the request of the European Union, in particular, the Commission has also played, and continues to play, an important role in the interpretation and development of the constitutional law of countries which have experienced, are experiencing or run the risk of ethnic/political conflicts. In this role, it supplies technical assistance relating to the legal dimension of the search for political agreement.

While most of its work concerns specific countries, the Venice Commission also draws up, supervises and commissions studies and reports on subjects of general interest. Just a few examples demonstrating the variety, complexity and importance of the matters dealt with by the Commission are its reports on a possible convention on the rights of minorities, on "kin minorities", on remedies to the excessive length of proceedings, on the status of detainees at Guantánamo Bay, and on control of security services.

These studies may, *inter alia*, culminate in the drafting of guidelines and draft international agreements, or take the form of either scientific conferences with the Universities for Democracy (UniDem), the proceedings of which are published in the "Science and technique of democracy" series, or civil service training seminars (UniDem Campus).

Where the rule of law is concerned, however, it is not enough to help states to adopt democratic constitutions. There is also a need to help them to ensure that these are implemented. This is why constitutional justice is also one of the main fields of activity of the Commission, which has developed close co-operation with the key players in this field, namely, constitutional courts and other courts with equivalent jurisdiction. As early as 1991, the Commission set up the Centre on Constitutional Justice, the main task of which is to collect and disseminate constitutional case-law. The Commission's activities in this field are supervised by the Joint Council on Constitutional Justice. This is made up of members of the Commission and liaison officers appointed by the participating courts in over 50 countries (including some outside Europe), by the European Court of Human Rights, the Court of Justice of the European Communities and the Inter-American Court of Human Rights. The Commission also co-operates with the ACCPUF (Association of Constitutional Courts Using the French Language) and with the Southern African Judges Commission, set up with a great deal of assistance from the Venice Commission.

Since 1993, the Commission's constitutional justice activities have also included publication of the *Bulletin of Constitutional Case-Law*, which contains summaries in French and English of the most significant decisions taken by over 80 participating courts. It also has its electronic counterpart, the *CODICES* database, which contains a further 5 000 texts of decisions in full, constitutions and descriptions of many courts and the laws governing them.[1] These publications have proved to play a vital "cross-fertilisation" role in constitutional case-law.

At the request of a constitutional court or a court with equivalent jurisdiction, the Commission may also provide *amicus curiae* opinions, not on the constitutionality of the act concerned, but on

1. *CODICES* is available on CD-ROM and on line: http://www.CODICES.coe.int.

comparative constitutional and international law issues.

One final area of activity in the constitutional justice sphere is the support provided by the Commission to constitutional and equivalent courts when these are subjected to pressure by other authorities of the State. The Commission has even, on several occasions, already been able to help some courts threatened with dissolution to remain in existence. It should also be pointed out that, generally speaking, by facilitating the use of support from foreign case-law, if need be, the *Bulletin* and *CODICES* also help to strengthen judicial authority. Lastly, the Commission holds seminars and conferences in co-operation with constitutional and equivalent courts, and makes available to them on the Internet a forum reserved for them, the "Venice Forum", through which they can speedily exchange information relating to pending cases.

The ordinary courts have become a subject of growing importance to the Commission. Increasingly often, the Commission is asked to give an opinion on constitutional aspects of the legislation relating to the courts. Frequently, it co-operates in this sphere with other Council of Europe departments, so that the constitutional law viewpoint is supplemented by other aspects. With its report on judicial appointments (CDL-AD(2007)028), the Commission produced a reference text, which it uses in its opinions on specific countries.

The Commission also co-operates with ombudsmen, through opinions on the legislation governing their work, and by offering them *amicus ombud* opinions on any other subject, opinions which, like *amicus curiae* opinions, present elements of comparative and international law, but contain no verdict on the possible unconstitutionality of a text, a decision which only the constitutional court itself can take. The Commission promotes relations between ombudsmen and constitutional courts with the aim of furthering human rights protection in member countries.

Elections and referendums which meet international standards are of the utmost importance in any democratic society. And this is the third and last of the Commission's main areas of activity, in which the Commission has, since it was set up, been the most active Council of Europe body, leaving aside election observation operations. In 2002, the Council for Democratic Elections was set up at the Parliamentary Assembly's request. This is a subordinate body of the Venice Commission comprising members of the Commission, the Parliamentary Assembly and the Congress of Local and Regional Authorities. The Council for Democratic Elections also includes an observer from the OSCE/ODIHR.

The Council for Democratic Elections and Venice Commission have done much to set European standards in the electoral sphere, adopting a good number of general documents, the most important of which are the Code of Good Practice in

Electoral Matters (2002),[1] which is the Council of Europe's reference document in this field, and the Code of Good Practice for Referendums (2007). The other general documents concern such matters as electoral law and national minorities, and restrictions on the right to vote.

The Commission has drafted around 50 opinions on States' law and practice relating to elections, referendums and political parties, and these have had a significant impact on electoral legislation in the States concerned. Among the States which regularly co-operate with the Commission in the electoral sphere are Albania, Armenia, Azerbaijan, Georgia, Moldova and Ukraine, and the Commission has even played a part in the drafting of electoral legislation, especially in Bosnia and Herzegovina.

The Council for Democratic Elections has developed regular co-operation with election authorities in Europe and on other continents. It organises an annual European Conference of Electoral Management Bodies, and is also in very close contact with the other international organisations or bodies which work in the election field, such as ACEEEO, IFES and, in particular, the OSCE. Thus, in principle, opinions on electoral matters are drafted jointly with the OSCE/ODIHR, with which there is exemplary co-operation.

The Commission also holds general seminars on subjects such as the preconditions for democratic elections and the annulment of election results, as well as training workshops for those involved in the electoral process.

The Council for Democratic Elections has created a database known as VOTA[2] containing, *inter alia*, member States' electoral legislation.

The activities of the Venice Commission and Council for Democratic Elections also relate to political parties, without which elections in keeping with Europe's electoral heritage are unthinkable. This is another field in which the Commission has laid down standards, relating in particular to the financing, prohibition and dissolution of political parties, and in which it issues opinions on national legislation. It is preparing a Code of Good Practice in the field of Political Parties.

2. The Commission in 2007

Accession of new member States

In 2007 Morocco and Algeria were invited by the Committee of Ministers to become members of the Commission.[3] This confirmed the increased interest of the Arab world in the Commission, building on contacts previously established with

1. Approved by the Parliamentary Assembly and the Congress of Local and Regional Authorities, and the subject of a solemn declaration by the Committee of Ministers encouraging its application.
2. *VOTA* is accessible on line: http://www.venice.coe.int/VOTA.
3. Israel was invited by the Committee of Ministers to accede in January 2008

the Union of Arab Constitutional Courts and Councils.

President of the Commission

The long-time President and founding father of the Commission, Antonio La Pergola, died in July 2007. In December Mr Jan Helgesen (Norway) was elected as new President of the Commission.

Main activities

Despite limited resources and a stagnant budget the Commission continued in 2007 to carry out a large number of activities. The following activities should be highlighted as particularly important:

Constitutional assistance

Constitutional reform

The Commission was closely involved in the process of adopting a new Constitution of Montenegro, adopting first an Interim Opinion on a draft and thereafter a final Opinion on the text. It adopted Opinions on the Constitutions of Serbia and Kyrgyzstan and started work on the Constitutions of Bulgaria and Finland.

Territorial organisation and settlement of conflicts

The Commission was involved in the preparation of a preliminary draft constitution for Kosovo in order to ensure its compliance with the Comprehensive Proposal for a Kosovo Status Settlement of Mr Ahtisaari. It maintained close contacts with the European Union and the Georgian and Moldovan authorities respectively regarding legal aspects of the conflicts in South Ossetia and Abkhazia.

Functioning of the democratic institutions

The balance of powers between the main state organs was the central issue in the Commission's opinion on the Constitution of Kyrgyzstan and was addressed in its opinions on the Constitutions of Serbia and of Montenegro. The Commission adopted opinions on a draft law on the opposition of Ukraine as well as on the issue of the "imperative mandate". It adopted, at the request of the Committee of Ministers, a comprehensive report on democratic oversight of the security services.

Respect for human rights and the rule of law

The Commission adopted reports on video-surveillance in public and private places and on blasphemy and religious insults. It adopted opinions on laws on freedom of assembly of Azerbaijan, on freedom of religion of Albania and "the former Yugoslav Republic of Macedonia" and non-discrimination of Serbia as well as on issues related to freedom of expression in Armenia, property rights in Albania and ratification of the Rome Statute by Moldova.

Constitutional and ordinary justice, ombudspersons

Strengthening constitutional justice

The Joint Council on Constitutional Justice of the Commission continued to support, and work with, constitutional courts through the Bulletin on Constitutional Case-Law (four issues published) and the CODICES database (www.CODICES.coe.int and three CD-ROMs published in 2007). The Venice Forum received and dealt with more than 30 requests from constitutional courts and equivalent bodies.

The Commission adopted opinions on the laws on constitutional courts of Azerbaijan and Serbia. In 2007, conferences and seminars on constitutional justice issues were held, in Armenia, Estonia, Georgia, Lesotho, Moldova, Portugal, Russia and South Africa, as well as in Venice and Strasbourg.

Ordinary judiciary

The need to ensure the independence of the judiciary as well as a functioning of the judicial system in the interest of society played a further increasing role in the Commission's activities. It was the central issue in its Opinions on the Constitutions of Montenegro and of Serbia. The Commission provided opinions on legislative texts of Georgia, Montenegro, "the former Yugoslav Republic of Macedonia" and Ukraine. With respect to the issue of judicial appointments, the Commission adopted a position paper guiding its future activity.

Ombudspersons

The Commission adopted opinions on the laws on the Ombudsperson of Kazakhstan and Kosovo. For the first time the Commission adopted an opinion upon request by an ombudsman (Armenia) on an issue not related to his own status.

In its seminars in Armenia, Kazakhstan and Portugal, the Commission emphasised the need for co-operation between ombudspersons and constitutional courts.

Looking beyond Europe

In addition to its close co-operation with European constitutional courts and equivalent bodies, the Commission continued with its regional approach by co-operating with associations of constitutional Courts outside Europe. In co-operation with the Association of Constitutional Courts Using the French Language (ACCPUF), the Commission organised two seminars in Strasbourg on the preparation of contributions to the CODICES database. Thanks to a contribution from Ireland, the Commission organised meetings in co-operation with the Southern African Judges Commission in Lesotho and in South Africa. Existing contacts were strengthened with a network of Asian Constitutional Courts and the Ibero-American Conference of Constitutional Justice expressed its wish to work closely with the Commission. Co-operation was established with the member courts of the Union of Arab Constitutional Courts and Councils who

participated in a fruitful exchange of views with the Commission in Venice.

Electoral matters

Electoral legislation and practice

The Commission adopted, mostly together with the OSCE Office of Democratic Institutions and Human Rights, opinions and recommendations on (draft) electoral legislation in Albania, Armenia, Croatia, Moldova, "the former Yugoslav Republic of Macedonia", Ukraine and the United Kingdom as well as on the CIS Convention on electoral standards.

The Commission also adopted a number of documents defining the European electoral heritage, including the Code of Good Practice on Referendums, a report on the secrecy of the vote in the context of elections by Parliament, a report on choosing the date of an election and an opinion on media coverage of election campaigns. Furthermore, the Venice Commission organised the fourth European conference of electoral management bodies. It also organised workshops on the holding and supervision of elections in Armenia, Georgia and Ukraine as well as seminars in the field of elections or of political parties in Azerbaijan and Moldova.

The Commission provided legal assistance to a number of election observation missions of the Parliamentary Assembly as well as to the election observation mission in Kosovo and provided pre-electoral assistance to Armenia and Georgia. In particular, it assigned experts to be at the disposal of the Central Election Commissions of these countries.

Political parties

The Commission started work on a code of good practice in the field of political parties and adopted an opinion on the law on political parties of Moldova.

II. Democratic development of public institutions and respect for human rights[1]

1. Country specific activities

Albania

Law on legalisation, urban planning and integration of unauthorised buildings

In April, the Albanian Constitutional Court asked the Commission for an *amicus curiae* opinion on the law on legalisation, urban planning and integration of unauthorised buildings of the Republic of Albania. The law provides, *inter alia,* for the transfer of the ownership of the plots on which illegal buildings stand from the original owner of the land to the owner of the illegal building.

At the June session, the Commission discussed the observations made by the rapporteurs, Mr Fischbach, Ms Nussberger and Mr Velaers, and asked them to draft a consolidated opinion (CDL-AD(2007)029) on the basis of that discussion and to forward this to the Constitutional Court of Albania. The Commission did not take up a position on the constitutionality of the law as such, but gave the court some indications as to the compatibility of the law with the European Convention on Human Rights, and about issues of comparative constitutional law. The case-law of the European Court of Human Rights relating to Article 1 of the First Protocol to the Convention recognised a broad measure of discretion for States in the matter of protection of property, within which this law seemed to fall. The law provided for transfers of ownership in a manner in conformity with the principle of legality and pursued a public-interest objective to which the fact that the planned transfers were for the benefit of private individuals was not an obstacle. Not being a party to any adversarial proceedings, the Commission was not in a position to say whether the law in all cases struck a fair balance between the competing interests. While the rules on compensation seemed *a priori* compatible with the requirements of the Convention, the Commission did not possess sufficient information about them. Finally, the rules relating to appeals were not clear enough for the Commission to be able to make a ruling about them.

The Commission was informed at its December session that the Constitutional Court had finally concluded that the law was constitutional, largely on the basis of the *amicus curiae* opinion. The slight

1. The full text of all adopted opinions can be found on the web site www.venice.coe.int

anxiety expressed by the Commission about the lack of co-ordination of the legalisation and compensation procedures was dissipated by the instruction given to the two committees responsible, one for each subject, to work together.

Draft law on freedom of religion and religious organisations

In March, the Albanian Minister of Culture, Tourism, Youth, and Sports requested the assistance of the Commission in the preparation of a law on freedom of religion, religious organisations and relationships between religious communities. At the end of October, the Commission received the text of the draft law, subsequently that of three agreements concluded by the State of Albania with as many religious communities, namely the Bektashi World Community, the Muslim Community, and the Autocephalous Orthodox Church of Albania.

The opinion was adopted by the Commission at its December session (CDL-AD(2007)041) on the basis of comments by Mr Christians and Ms Nussberger. The draft law regulates both human rights questions relating to freedom of religion and the legal status of religious organisations. Its guiding principles are "human dignity", "religious pluralism", "laicism" and "harmony of relationships between public institutions and religious organisations". It is to be highly welcomed that it refers to international standards on several occasions. Nevertheless, the bill should be improved by reviewing the terminology concerning "religion" and "belief", by elaborating on the differences between "religious organisations" and "religious communities", and by clarifying vague and inconsistent provisions that might be interpreted as undue limitations on freedom of religion.

More specifically the rights and prerogatives of religious communities as opposed to religious organisations should be clarified as well as the legal status of non-registered organisations, especially in connection with individual rights. Any denial to register an association should also be required to be based on clear material evidence. Moreover, the internal consistency of the concepts used has to be ensured. And, finally, in order to avoid some possible ambiguities, the law should clearly state that it does not restrict freedom of religion as guaranteed by both the constitution and international conventions in any way, and that such a freedom is granted to every individual and every religious organisation, be it registered or not.

Armenia

Compatibility with ECHR of the criminalisation of calls for political/ constitutional change by force

In October, the Commission received a request from the Human Rights Defender of the Republic of Armenia for an opinion on the compatibility of Article 301 of that country's Criminal Code with Article 10 of the European Convention on Human Rights. This article provides that: "Public calls for

seizing state power by force, changing the constitutional order of the Republic of Armenia by force are punished with a fine in the amount of 300 to 500 minimal salaries, or with arrest for the term of two to three months, or with imprisonment for the term of up to three years". Mr Hamilton was appointed as rapporteur.

The rapporteur's comments were endorsed by the Commission at its December session (CDL-AD(2007)043). In principle, the provision seems not incompatible with the ECHR. First, the meaning of Article 301 of the Criminal Code seems to be reasonably clear. Second, the European Court of Human Rights certainly has consistently maintained that "there can be no democracy without pluralism", so that freedom of expression applies, "not only to information or ideas that are favourably received or regarded as inoffensive or as a matter of indifference, but also to those that offend, shock, or disturb". But in the same *Refah Partisi* case, it stated that there were two conditions subject to which a political party might promote a change in the law or the legal and constitutional structures of the state: "firstly, the means used to that end must be legal and democratic, secondly, the change proposed must itself be compatible with fundamental democratic principles." Therefore, on its face the provision in question does not appear to be incompatible with the ECHR. The mere fact that a legal provision itself is acceptable, however, does not mean it cannot be abused by wrongful decisions to detain or prosecute persons against whom sufficient evidence of a breach of the provision in question does not exist.

Azerbaijan

Law on Freedom of Assembly

In October 2006, the Commission had, at the request of the Presidential Administration of Azerbaijan, adopted an opinion on the 1998 law on freedom of assembly (CDL-AD(2006)034).[1] Thereafter, several meetings were held in order to improve the law between representatives of the Commission and of the presidential administration with the participation of members of the OSCE Mission in Baku.

The final set of amendments prepared by the Presidential Administration became the subject of a further Opinion of the Commission adopted at its December session (CDL-AD(2007)042) on the basis of comments by Mr Aurescu and Ms Flanagan. The Opinion welcomes the commitment shown by the Azerbaijani authorities to remedy the shortcomings of the 1998 law in accordance with the suggestions made in the 2006 Opinion, Particularly positive is the fact that the right to counter-assembly has been strengthened, including by stressing the positive obligation resting on the state authorities to facilitate its exercise. The necessity for counter-demonstrators to find an

1. See Annual Report for 2006.

alternative location should however only be limited to "exceptional cases", when the risk of violence is "serious" and the police authorities cannot handle the situation. The provision that prohibits assemblies in a list of places has also been significantly improved. It no longer concerns "any" state building, which could have had the effect of virtually excluding the centre of Baku. It now lists exhaustively the places of legislative power and the judiciary where certain types of assembly can be prohibited. For organs of executive power, however, the term "central" should be added, so that only some ministries would be concerned, and not all other state buildings. If the amendments are adopted including these few remaining modifications, the law will meet European standards. Due implementation, however, will then be crucial. This will require extensive discussions, including with the civil society, as well as specific training.

Bosnia and Herzegovina

Decertification of Police Officers

In its Opinion on a possible solution to the issue of decertification of police officers in Bosnia and Herzegovina (CDL-AD(2005)024) the Commission had found that the vetting procedure of Bosnian policemen carried out by the United Nations in 2002 did not respect Article 6 of the European Convention on Human Rights. The Commission recommended that the UN remedy the situation itself, for example by setting up a panel with the task of reviewing the cases which had been challenged, and this time in a manner compatible with Article 6 of the European Convention on Human Rights. In a letter of 30 April 2007, the Chairman of the United Nations Security Council accepted that persons who had been denied certification be allowed to apply for positions in BiH law enforcement agencies. This decision remedied the life-long effect of the decertification decisions, but not the breach of Article 6, and did not amount to any acknowledgment of the breach.

Bulgaria

Evaluation of the constitution

Upon request by the Monitoring Committee of the Parliamentary Assembly of the Council of Europe, the Commission started the preparation of an opinion on the Bulgarian Constitution, in particular as regards the recent amendments made in February 2007. The Commission invited Messrs Céa Egana, van Dijk, Hamilton and Neppi Modona to act as rapporteurs. At its October Session, the Commission discussed the rapporteurs' comments with Mr Evgenij Tanchev, Judge at the Constitutional Court of Bulgaria and Mr Velchev, Prosecutor General of Bulgaria. On 12-13 November a delegation of the Commission, composed of Mr Hamilton and Mr Neppi Modona visited Bulgaria and met with the Ministry of Justice, Parliament, the ombudsman, the Supreme Court, the Constitutional Court and the Supreme Judicial Council. The delegation reported on its

visit at the December Session. The adoption of the opinion is foreseen for the Plenary Session of the Commission in March 2008.

Finland

Evaluation of the constitution

The Ministry of Justice of Finland asked the Venice Commission to take part in the evaluation of Finland's current Constitution, which came into force in 2000. At the 71st plenary session of the Commission (1-2 June 2007), Mr Pekka Hallberg, President of the Supreme Administrative Court of Finland, told the Commission about recent constitutional developments in his country. The new constitution, in particular, specified relations between State bodies, improved provisions relating to fundamental rights and freedoms, and took account of European integration, although Union membership was not explicitly mentioned. On 7 and 8 June 2007, a Commission delegation visited Finland. Among others, it met Mrs Tuija Brax, Minister of Justice, and representatives of both the Office of the President of the Republic and the Supreme Administrative Court. It then attended, at the University of Turku, a seminar focusing mainly on human rights issues, particularly the role of international human rights treaties. This visit made it possible to identify the main questions arising about the content and application of the Finnish Constitution, such as the powers of the President of the Republic and the Finnish Government and Parliament in respect of foreign and European policy, the status of international and European law, the absence of a Constitutional Court and the limits of the supervision of constitutionality, referendums and people's initiatives.

The work on the evaluation of the Finnish Constitution will continue in 2008, with a view to adoption of an opinion.

Kazakhstan[1]

Legal and constitutional co-operation

At the invitation of the authorities of Kazakhstan representatives of the Venice Commission visited Almaty and Astana on 14-16 May 2007 and discussed issues of constitutional reform in Kazakhstan, possible reform of the ombudsman institution as well as some other areas of possible future co-operation between the authorities and the Commission. During the meetings Kazakhstan's accession to the Venice Commission as a full member was also discussed.

Kyrgyzstan[1]

New constitution

In late 2006, the Kyrgyz Parliament adopted two new versions of the constitution, first on 9 November 2006 a text based on a basically parliamentary system of government and thereafter,

1. Activities in Kazakhstan were carried out in the framework of a Joint Programme with the European Commission.

on 30 December 2006, a text giving stronger powers to the President. In February 2007 a Commission delegation visited the country to discuss implementation of this new constitution and further co-operation.

On 14 September 2007 the Constitutional Court declared both new versions of the constitution to be null and void due to procedural violations when these texts were adopted. On 19 September, the President of the country, Mr Bakiev, submitted a new version of the constitution together with a new electoral code to referendum. These texts were approved on 21 October 2007. By letter dated 22 October 2007 the Speaker of Parliament, Mr Sultanov, asked the Commission for an assessment of the constitutional situation.

The Commission adopted its Opinion (CDL-AD(2007)045) at its December session on the basis of comments by Mr Fogelkou, Ms Nussberger and Mr Tanchev. The Commission notes that the time-frame of one month between the publication of the draft constitution and the date of the referendum was extremely short and welcomes that the new text maintains some of the advances made in earlier texts and drafts. In this respect the new text reflects earlier discussions between the Venice Commission and the Kyrgyz authorities. This concerns in particular the requirement that deprivation of liberty has to be authorised by a judge and not by a prosecutor, the abolition of the death penalty, the fact that judges will in the future mainly have terms of office until retirement as well as the setting up of the Judicial Council.

On the whole, however, for the Commission the negative elements of the text prevail. The main impetus of the new version of the constitution is to establish by all possible legal means the indisputable supremacy of the President with respect to all other state powers. This corresponds to an authoritarian tradition which Kyrgyzstan has tried to overcome. While the constitution proclaims the principle of the separation of powers, the President clearly dominates and appears both as the main player and the arbiter of the political system.

Moldova

Status of Transnistria

The Commission maintained close contacts with the EU Special Representative for Moldova, Mr Mizsei, on the legal aspects of a possible settlement.

Compatibility of the Rome Statute of the ICC with the constitution

In September, the Constitutional Court of Moldova requested the Commission to give an *amicus curiæ* opinion on the compatibility of the Statute of the International Criminal Court with that country's Constitution. Messrs Bianku and Paczolay, members of the Commission, as well as Mr Kress, expert, were appointed as rapporteurs.

The rapporteurs' comments (CDL-AD(2007)038) were endorsed by the Commission at its October session The questions mainly concerned whether the constitutional provision ruling out extradition of any citizen and those providing for parliamentary and presidential immunities would create obstacles to the enforcement of the Rome Statute to such a point that the country could not co-operate with the ICC in the arrest and surrender of persons, as provided for in the Statute, Article 24, paragraph 2, of which notably reads: Immunities or special procedural rules which may attach to the official capacity of a person, whether under national or international law, shall not bar the [ICC] from exercising its jurisdiction over such a person. All the rapporteurs agreed that the answer depends on the construction of these constitutional provisions by the Constitutional Court, so that no constitutional amendment is required. Such an amendment would, however, be for Mr Paczolay the best solution.

Draft Law on Conflict of Interest

In September, the Moldovan Parliament requested from the Council of Europe an expert assessment of the draft law on conflict of interest. Both the Commission and the Council of Europe's Project against Corruption, Money Laundering and Terrorism Financing in the Republic of Moldova (MOLICO) provided their assistance in that case, in co-operation with each other.

The opinion (CDL-AD(2007)044) was adopted by the Commission at its December session on the basis of comments by Messrs Kask and Tuori. In the Commission's opinion the draft law requires substantial amendments as regards its proposed scope of application as well as its individual provisions. Distinctions should also be made between the material, personal and temporal aspects. Several other ambiguities remain to be resolved.

Montenegro

New constitution

On 3 June 2006, Montenegro declared its independence. The discussions on the new constitution began immediately and the Speaker of Parliament, Mr Ranko Krivokapic, requested the Venice Commission's assistance.

Montenegro applied for membership of the Council of Europe. Two members of the Venice Commission, Mr Tuori and Mr Bradley, were appointed in July 2006 by the Parliamentary Assembly as "eminent lawyers" to assess the compatibility of the Montenegrin legal order with the Council of Europe standards. In their report of September 2006, the importance of a new constitution as well as the need for it to introduce a new, independent judiciary system were underlined. Accession by Montenegro to the Council of Europe appeared clearly conditional, *inter alia,* on these two matters.

At the December 2006 Plenary Session, Mr Krivokapic expressed the wish for Montenegro to become a member of the Council of Europe as soon as possible and therefore requested the

Commission's assistance once again in adopting a constitution that is in full conformity with European standards.

During and after the process of accession to the Council of Europe, the Venice Commission assisted the Montenegrin Parliament in the preparation of the constitution, by assessing the various subsequent draft proposals (it issued an interim opinion in June 2007 on a draft version of the constitution which had been received in April, CDL-AD(2007)017)) and by offering suggestions, in particular as concerned the human rights chapter and the judiciary, in the course of several working meetings and exchanges of views.

Montenegro eventually became a member of the Council of Europe on 11 May 2007. The Montenegrin authorities committed themselves to ensuring that the new constitution, to be prepared with the assistance of the Venice Commission within one year of accession, would incorporate the following minimum seven principles:

A. the constitution must stress that the Republic of Montenegro is a civic state, based on civic principles by which all persons are equal and not on the equality between constituent peoples;

B. the constitution must provide for the independence of the judiciary and recognise the imperative of avoiding any decisive role of political institutions in the procedure of appointment and dismissal of judges and prosecutors;

C. in order to avoid conflict of interests, the role and tasks of the Public Prosecutor should not include, both the application of legal remedies for the protection of constitutionality and legality and the representation of the Republic in property and legal matters;

D. the efficient constitutional protection of human rights must be ensured. The constitution should provide for the direct applicability of the human and minority rights, as was recognised in the Charter on Human and Minority rights of Serbia and Montenegro. The constitutional reform therefore needs to provide for at least the same level of protection of human rights and fundamental freedoms as the one provided for in the Charter, including the rights of minorities ;

E. the constitution should state that capital punishment is prohibited at all times;

F. the constitution should include transitional provisions for the retrospective applicability of human rights protection to past events. It should also include provisions on the retrospective applicability of the European Convention on the protection of Human Rights and Fundamental Freedoms and Protocols;

G. the constitution should regulate the status of the armed forces, security forces and intelligence services of Montenegro and the means of parliamentary supervision. It should

provide that the position of the commander-in-chief be held by a civilian.

The new constitution was finally adopted on 19 October 2007; the Commission adopted its final opinion on this text in December 2007 (CDL-AD(2007)047).

The new Constitution of Montenegro was, in the Commission's view, a good text, which generally met most European standards, with some exceptions (the President of the Supreme Court, the State prosecution and the constitutional court).

The constitution contained important provisions on the supremacy and direct applicability of human rights treaties. In addition, a new general provision set out that limitations of human rights needed to respect the principles of legality, legitimate aims and proportionality. These provisions would help avoid interpretation problems which could arise on account of the different wording of the human rights provisions of the new constitution compared to the ECHR.

The provisions on minority rights were very far-reaching. The new constitution did not contain a citizen-based definition of "minority", which was a positive development compared to the law on minority rights of Montenegro.

Concerning the state powers, the new constitution reflected the choice of a clearly parliamentary system, which was to be welcomed. Unnecessary conflicts of power between the President and the Prime Minister would be avoided. The definition of the powers of parliament, however, raised certain problems, notably in connection with the power of parliament to dismiss persons elected by it.

Civilian command over the Armed Forces, one of the accession commitments, was now guaranteed; regulation on ending the state of emergency was however lacking.

The provisions on the judiciary reflected for the most part the Venice Commission's recommendations. In particular, the appointment, career and dismissal of the judges were no more in the hands of the parliament, which had previously been a major issue of concern for the Council of Europe. The composition of the Judicial Council was now balanced.

Under the new constitution, however, parliament had retained some control over the judiciary, notably through the election of the President of the Supreme Court, who also chaired the Judicial Council, and through the election and dismissal of all state prosecutors. These solutions were problematic. The Commission understood that these solutions reflected the strong will of the Montenegrin authorities to ensure the accountability of the judiciary, but is was important that, when in time the situation of the judiciary would improve thanks to the new constitution, further reform towards full independence be carried out. In the meantime, attention needed to be paid in the preparation of the law on the judicial council in order to avoid conflicts between state powers.

The provisions on the constitutional court did not reflect the Commission's earlier recommendations and were unsatisfactory.

The Venice Commission further examined the constitutional law on implementation of the constitution, and found that it raised two problems; first, it referred to laws and regulations of the State Union of Serbia and Montenegro remaining in force "if the interests of Montenegro so required", which impinged on legal certainty. Secondly, the provision on retroactive application of human rights treaties was worded in an obscure manner. This provision, in the Commission's view, was to be interpreted in a manner consistent with the relevant commitment of Montenegro, that is to say that human rights treaties to which Montenegro had been a party as a federated republic of the State Union of Serbia and Montenegro, were considered to be applicable in Montenegro between the end of the State Union and 3 June 2006.

The Venice Commission carried out its assistance to the Montenegrin authorities in co-operation with the OSCE High Commissioner on National Minorities and with the OSCE/ODIHR. These institutions shared the Commission's conclusions.

At the Commission's Plenary Session of December 2007, Mr Ranko Krivokapic, Speaker of the Parliament of Montenegro, expressed his gratitude to the Commission for the fruitful co-operation. He considered that the adoption of the new constitution in parliament with a two-thirds majority had been a real political success, bearing in mind that there were 15 parties and 7 political clubs in Montenegro. It was important to avoid a too long interregnum between independence and the new constitution.

Montenegro had prepared this constitution in consultation with the civil society, notably as concerned minority rights, and in co-operation with international organisations; Montenegro would pursue this co-operation in relation to the due implementation of the constitution.

Mr Krivokapic stated that he was aware that the new constitution was not perfect, but it was felt to respond to the current needs of the country. Hopefully, it would enable the situation to be improved, in particular with regard to the judiciary, a field in which it was essential to take into account the specific national context.

Mr Krivokapic reiterated the willingness of the Montenegrin authorities to pursue their co-operation with the international community.

Serbia

New constitution

In Serbia, a new constitution was adopted by Parliament on 30 September 2006 and confirmed by referendum on 28 to 29 October 2006. The Monitoring Committee of the Parliamentary Assembly asked the Venice Commission to provide an assessment of this constitution. The Commission adopted its Opinion (CDL-AD(2007)004) at its

March session on the basis of comments by Mr Grabenwarter, Mr Jowell, Ms Suchocka, Mr Tuori and Mr Velaers and following a discussion with Mr Loncar, Minister of Local Government of Serbia, and Mr Simic, Legal Adviser to the Prime Minister.

In its Opinion the Commission welcomes that after several years of efforts it has been finally possible to replace the constitution adopted under the Milosevic regime by a new text reflecting the democratic ideals of the new Serbia. By contrast, it regrets that the text which, for important political reasons, was drafted hastily in the final phase is extremely rigid with large parts being very difficult to amend.

The Commission notes that the constitution contains many positive elements, including the option for a functional parliamentary system of government and a comprehensive catalogue of fundamental rights. While it would have been preferable to have clearer and less complicated rules on restrictions to fundamental rights, it is possible for the courts and in particular the constitutional Court to apply these rights in full conformity with European standards.

The main concerns of the Commission with respect to the constitution relate, on the one hand, to the fact that individual members of parliament are made subservient by Article 102.2 to party leaderships and, on the other, to the excessive role of parliament in judicial appointments. The National Assembly elects, directly or indirectly, all members of the High Judicial Council proposing judges for appointment and in addition elects the judges. Combined with the general reappointment of all judges following the entry into force of the constitution provided for in the Constitutional Law on Implementation of the constitution, this creates a real threat of a control of the judicial system by political parties. The respective provisions of the constitution will have to be amended. Since such amendments are unlikely to take place quickly, the composition of the first High Judicial Council will be of the utmost importance.

With respect to other parts of the constitution, in the Commission's view a lot will depend on implementation. The provisions on the role of international law in the legal system are not unusual as such but require a prudent approach sensitive to international developments, as well as the introduction of a procedure for assessing the constitutionality of treaties before their entry into force. The rules on territorial organisation are complicated and not very clear but do not close doors.

With a view to these concerns on implementation, a Commission delegation visited Serbia on 11 to 12 September. It discussed with the authorities in particular the implementation of the constitution in the judicial field, including the planned reappointment of all judges, and the establishment of the Constitutional Court.

Draft law prohibiting discrimination

In October, the Minister of Labour and Social Policy of Serbia requested an assessment by the Commission of the draft law prohibiting discrimination. Mr Bianku and Ms Err were appointed as rapporteurs. The bill is part of social, political and economic reforms which aim at harmonising domestic legislation and practice with international instruments

The Commission adopted its opinion at the December session (CDL-AD(2008)001). In its view the draft law constitutes a comprehensive, complete and well-structured legal act for the protection against discrimination. It offers detailed definitions and establishes important remedies for making the fight against discrimination effective. It complies with international standards in this area and therefore constitutes a significant step towards the ban of discrimination. The Commission particularly welcomed: the laying down of numerous causes of prohibited discrimination; the establishment of a Commission for the protection of equality which enjoys wide powers; the principle of sharing the burden of proof; the introduction of affirmative action as well as the use of the equality principle as a ground for protection. It nevertheless recommended re-examining the following issues: defining the scope of the law; adding the proportionality principle; further clarity with regard to the general definition of direct and indirect discrimination, preferably by taking up the definitions of the European Commission against Racism and Intolerance as well as making the provisions on sanctions more efficient. The Commission reminded the Serbian authorities that the complementary nature and compatibility of the proposed law with both the Criminal and Civil Codes should be ensured.

Kosovo Constitution

At the request of the International Civilian Office-EU Preparation Team the Venice Commission was involved in the preparation of a preliminary draft of the future Constitution of Kosovo in accordance with the Comprehensive Proposal for a Kosovo Status Settlement prepared by Mr Ahtisaari.

"The former Yugoslav Republic of Macedonia"

Law relating to "the legal status of a church, religious community and a religious group"

In January 2007 the Minister of Justice of "the former Yugoslav Republic of Macedonia" requested the Commission's opinion on a draft law relating to "the legal status of a church, religious community and a religious group". Ms Flanagan, Mr Vogel and Mr Haenel were appointed rapporteurs. On 6 March, a meeting took place in Skopje between a Commission delegation, the group responsible for preparing the draft law, national officials, representatives of the country's five main religious communities and the OSCE/ODIHR representative.

The Commission adopted the opinion (CDL-AD(2007)005) at its March plenary session. This related, *inter alia*, to the compatibility of the planned law with Article 9 of the ECHR guaranteeing freedom of thought, conscience and religion, and with Articles 10 and 11 relating to freedom of expression and freedom of assembly and association respectively, and with which Article 9 is closely linked. The draft law did reflect the general principles of freedom of expression, but frequently lacked sufficient detail about the objectives pursued and the scope of its provisions. Numerous amendments were needed to ensure that the planned law did not give rise to any discrimination or other violation of the rights of the various religious entities or those of their members. Careful revision was necessary of, *inter alia*, the status and rights of unregistered religious entities, as well as the registration process and related issues. Any new legislation on freedom of religion should not merely officialise an existing situation in the country, albeit one deemed satisfactory, but should create a framework for current and future exercise thereof which was in conformity with international standards.

The law now adopted, which is due to come into force in May 2008, is in line with most of the recommendations made by the Commission.

Ukraine

Constitutional situation

Venice Commission representatives took part in a Public Forum on "Constitutional reform in Ukraine: The view of civil society" in Odessa on 16 to 18 March.

Status of Deputies

The Constitution of Ukraine provides for the imperative mandate for members of parliament. In its opinions on the constitution, the Venice Commission had strongly criticised this principle which does not allow for the necessary freedom and independence of democratically elected officials and is therefore at odds with European standards.

In January 2007, the Ukrainian Verkhovna Rada adopted the Law on Amendments to Certain Laws concerning the Status of Deputies of the Verkhovna Rada of the Autonomous Republic of Crimea and Local Councils of Ukraine, which introduced the imperative mandate at the local level.

The Commission reiterated its criticism in relation to this law (CDL-AD(2007)018).

Nevertheless, in spring 2007 a draft law (draft amendments to the law on the status of people's deputy) was prepared aimed at implementing the constitutional provision on the imperative mandate at the parliament level and the Commission was requested to assess it.

The Commission could not but reiterate that the principle of imperative mandate was at odds with European standards. The draft law ought not to be enacted and the Ukrainian Constitution should be modified on this point (CDL-AD(2007)031).

Draft law on the parliamentary opposition

In Ukraine a draft law was passed at its first reading on 12 January with a view to the promulgation of a completely new law to govern every aspect of the status of the parliamentary opposition. The Ukrainian President then requested the Commission's opinion.

At its plenary session in March, the Commission examined the draft law, adopted a preliminary opinion (CDL-AD(2007)015) and requested the rapporteurs Mr Bartole, Mr Paczolay and Mr Sanchez-Navarro to prepare a final opinion for the next session. As the situation was a complex one very much outside the scope of a strict analysis of the relevant provisions, encompassing practices, unwritten agreements and other forms of political and parliamentary conventions, the current status of the opposition in Ukraine merited comprehensive study. However, while the variety of solutions adopted made it difficult to come up with European standards in this field, it was nevertheless an undisputed general requirement that, in a parliament, the opposition should benefit from fair procedural guarantees. It was thus appropriate in this case to applaud the strengthening of the position of the opposition through the granting of new rights, although these should not supersede existing rights, but supplement them. The Commission nevertheless had doubts about the advisability of this attempt to regulate the status of the opposition, a matter on which specific legislation would be exceptional in the international context. It therefore reserved its position on this subject, while emphasising that such legislation should in any case be adopted with the manifest agreement (meaning the agreement of a large part) of the opposition. The extreme formalism permeating the draft in relation to the conditions for the constitution, alteration and dissolution of the parliamentary opposition seemed difficult to reconcile with the principle that the will of parliament is expressed through that of its members.

The final opinion was adopted at the June session (CDL-AD(2007)019). It drew attention to the real risk of curtailing MPs' rights, particularly the right to form groups attached neither to the majority nor to the opposition, as well as to the importance of any new status for the opposition enjoying the agreement of the country's main political forces. An effort also needed to be made to provide within the draft itself for the effects which the law was likely to have on a large number of provisions in force, so as to forestall contradictions, inconsistencies or any other source of legal uncertainty.

Information on constitutional developments

Members of the Commission, observers and other invited guests informed the Commission at its

plenary sessions of constitutional developments of particular interest. In 2007, these concerned:

- **Albania** – Constitutional and legislative reforms;

- **France** – Evolution of the role of the Constitutional Council;

- **Israel** – The role of the Supreme Court in ensuring respect for human rights in the fight against terrorism;

- **Republic of Korea** – Possible constitutional amendments to harmonise the terms of office of the president and parliament;

- **Mexico** – Reform of the state and judicial remedies in the electoral field;

- **Morocco** – Reform of family law;

- **Netherlands** – Possible introduction of the control of constitutionality;

- **Romania** – Attempt to remove the President from office by referendum;

- **Turkey** – Preparation of a new constitution;

- **United Kingdom** – implications of the fight against terrorism for human rights.

2. Studies and seminars of general scope

Video surveillance

By letter dated 10 October 2006, the Chair of the Committee on Legal Affairs and Human Rights of the Parliamentary Assembly of the Council of Europe, Mr Dick Marty, requested the opinion of the (Venice) Commission on the compatibility of video surveillance with fundamental rights. Mr Pieter van Dijk and Mr Vojin Dimitrijevic were appointed rapporteurs, with the addition, in the capacity of expert, of Mr Giovanni Buttarelli, secretary general of Italy's data protection authority.

An initial study was adopted by the Commission at its plenary session of 16 and 17 March 2007 (CDL-AD(2007)014). This specifically covered video surveillance of people in public places by the public authorities, generally for the purposes of crime prevention and law enforcement, whatever kind of monitoring was used, that is to say with or without recording or connection to a network, for instance. As understood here, however, such surveillance involved a minimum amount of image processing by a human being, and did not therefore extend to processes such as fully automatic detection of certain road traffic offences.

Video surveillance was described as far more effective than direct human observation, with night vision, a zoom facility, automatic tracking, and simultaneous viewing of several images by a single

person or of a single image by several persons. An intelligent system could even be used which detected false beards and recognised faces or voices. Even in public places, the use of such surveillance by the authorities could be a serious threat to certain fundamental rights, such as the right to private life, the right to protection of, and access to, personal data, and freedom of movement. Where the first was concerned, while individuals might of course expect diminished protection of their privacy in such places, they could not be asked to forgo this right completely. Where this whole set of rights was concerned, international law required any restriction of their exercise to be in accordance with the law, to be necessary in a democratic society and to be proportionate. National law sometimes specified these requirements or made provision for others where video surveillance and associated matters were concerned. But it could never ease these in such a way as to reduce the level of protection guaranteed by international law.

Yet it was at both international and national level that the Commission recommended the adoption of specific rules on video surveillance of public places by public authorities. Such rules should first and foremost ensure the respect for private life guaranteed by the European Convention on Human Rights and by the European Union Directive on the protection of individuals with regard to the processing of personal data and on the free movement of such data, particularly the provisions thereof reiterating certain principles of the Council of Europe Convention for the Protection of Individuals with regard to Automatic Processing of Personal Data. The Commission also recommended that the following measures be taken systematically: 1. ensure that persons thus monitored are aware of this monitoring; and 2. set up a specific independent authority to supervise such video surveillance activities.

At first, the deadline set prevented the Commission from doing more than draw preliminary conclusions. Mr van Dijk and Mr Dimitrijevic therefore continued their work, focusing on video surveillance activities by public authorities in the private sphere, and by private operators in both the public and private spheres. "Private operators" in this context meant individuals or partnerships, private-law corporations such as joint stock companies controlled by private shareholders, or even certain public-law corporations not under the control of the state: private detectives and investigation agencies, commercial companies running casinos or banks, semi-public establishments, etc. The use of video surveillance had certainly increased considerably in recent years, as a result of a significant fall in the cost of a wide range of home and professional products, such as closed circuit television (CCTV) monitoring systems and "nanny cams" . In addition to these, the Internet and webcams made it easy to engage in video surveillance activities anywhere in the world.

The Commission therefore adopted a second opinion on video surveillance at its plenary session

of 1 and 2 June 2007, stating that the protection of privacy was guaranteed not only by the ECHR, but also by the International Covenant on Civil and Political Rights. The Convention for the Protection of Individuals with regard to Automatic Processing of Personal Data had been bolstered by an additional protocol which provided for national supervisory authorities to be set up and for such data to be transferred only to states or international organisations which offered an adequate level of protection. Video surveillance, however, fell outside the scope of the European Union directive when it was practised for purposes of public safety, defence or national security, when it was done by an individual in the course of a purely personal or household activity, or during the course of other activities not covered by Community law. The Commission again recommended the adoption, at national, European and international levels, of specific rules on video surveillance, but added that the same rules should apply to any video surveillance, whether conducted by public authorities or private operators, in both the public and the private sphere. It therefore reiterated the recommendations made in its first opinion, but placed the emphasis on individuals' right to have access to personal information about them and to have this corrected or destroyed, unless security reasons temporarily prevented this. Every individual was also entitled to find out the use made of information concerning him or her personally, whether from the person who collected this or not. Finally, all surveillance equipment should require a licence and be the subject of periodical checks if circumstances so required.

Democratic control of security services

In its 2005 Recommendation on democratic oversight of the security sector in member states, the Parliamentary Assembly of the Council of Europe advocated the adoption by the Committee of Ministers, and in accordance with certain principles which it set out, of guidelines on democratic control of the security sector. The Committee of Ministers then requested the opinion of the Commission. In its opinion (CDL-AD(2005)033) the Commission first pointed out that, in 1998, at the request of the Parliamentary Assembly's Legal Affairs Committee, it had considered the question of the relations between internal security services (ISS) and other state bodies, concluding that strict control of the former was necessary by the latter, whether this meant the executive, parliament and/or the courts (CDL-AD(1998)006). It then noted that, while it seemed essential following 11 September 2001 to improve the efficiency of ISS, this should go hand in hand with a corresponding strengthening of democratic control over them. Finally, it recommended that a comparative study be carried out of law and practice in member states relating to democratic supervision of their security services. In June 2006, the Committee of Ministers invited it to conduct such a study. A working group was then set up comprising

Messrs Cameron, Dutheillet de Lamothe, Leigh, Helgesen, Matscher and Zorkin.

The Commission adopted its report on the democratic oversight of the security services at its plenary session of 1 and 2 June 2007. While intelligence and security services were vital to state security and public safety, machinery was necessary to prevent political abuse, although this should not prevent some degree of oversight of the intelligence agencies by the executive. And in accordance with the principle of the rule of law, it was also important, as in any other sector of public administration, to ensure that they were under judicial supervision. This threw up the challenge of coupling respect for democratic values with national security, through good governance involving the sharing of supervisory duties between the directors of intelligence agencies, responsible for internal supervision, and the executive, parliament, the courts and the specialised authorities or groups of independent experts exercising one kind or another of external oversight.

A distinction could be made in this context between issues of policy, operations and scrutiny. There was a strong case for disclosure and public debate of the policy issues. In contrast, the arguments for secrecy held sway in respect of operational questions, making them essentially a matter for the executive. As for scrutiny, which came after the event and related to the conformity of operational activities with public policies (effectiveness, proportionality, economic aspects, etc.), on the one hand, and with the law, on the other, this was a matter for the executive, parliament and the judiciary. Such distinctions should not, of course, be too rigid. Political questions might be raised about operations which needed to be kept secret, and the permanence of which sometimes meant that even the opening of a scrutiny procedure was impossible. That said, the benefits of public discussion and democratic supervision of policy issues were such that any arguments in favour of secrecy would always have to be extremely persuasive ones. And while it was easier to defend secrecy in respect of operational matters, it was nevertheless vital for them to be subject to external control, in the form of political and legal scrutiny. There were in practice many innovative models of democratic supervision of intelligence and security services, which demonstrated, rather than an insurmountable problem of incompatibility, the essential nature of such control for not only these services' legitimacy, but also their effectiveness. Some countries had, for instance, decided to use the services of committees or groups of experts tasked with reporting to parliament, with secrecy being maintained where this was necessary.

Because of, *inter alia*, the interplay between the different kinds of questions to which they turned their attention, intelligence and security services should not be subject to a single level of supervision, but to a system of complementary controls, all forming part of an overall mechanism.

Particular care needed to be given to co-operation between different countries' agencies. International agreements could be considered as a way of guaranteeing some degree of "traceability" in this respect, specifying, for example, that any transfer of authority to a foreign agency was clearly a matter of the executive's responsibility. And it was not just intelligence agencies which needed to network in the current context, but also the authorities responsible for supervising them. This was why encouragement should be given to exchanges of good practice.

Blasphemy, religious insults and incitement to religious hatred

In October 2006, the Committee on Culture, Science and Education of the Parliamentary Assembly, which was finalising its report on "Blasphemy, religious insults and hate speech against persons on the grounds of their religion", requested the Commission to examine the existing legislation in this field.

The Commission carried out a comparative analysis of the European legislation. It observed that incitement to hatred was a criminal offence in practically all member States (and the use of the media was an aggravating circumstance in this respect), while religious insults were criminally sanctioned only in half the states, while blasphemy in few of them, and rarely prosecuted.

The Commission considered that the introduction of further, specific criminal offences such as incitement to religious hatred would not necessarily allow for a better balancing of the right to respect for one's religious convictions with respect to the right to freedom of expression. What seemed more necessary was, on the one hand, the lowering of the threshold of sensitivity of religious groups and, on the other hand, the improvement of the communication skills of both religious groups and the media in general. The Commission considered that this required further reflection and decided to reconsider it in the future. A final report is expected in 2008.

The Commission concluded its preliminary report (CDL-AD(2007)006) by underlining the utmost importance of freedom of expression in a democratic society, while recalling that intercultural and inter-religious dialogue were crucial to the democratic development of Europe.

Democratic control of the armed forces

In 2007, the Commission pursued its analysis of the different means to ensure civilian command over the armed forces (direct and indirect control, ex ante and ex post control; external and internal mechanisms of control). It also examined these matters in relation to national participation in international armed forces.

The final report will be adopted at the beginning of 2008.

Participation of minorities in public life

On 18-19 May 2007, the Venice Commission organised in Zagreb a UniDem seminar on "The participation of minorities in public life", in co-operation with the Croatian Ministry of Foreign Affairs and European Integration, the Constitutional Court of Croatia, the University of Zagreb and the University of Glasgow.

The seminar, which was attended by academics, representatives of international organisations, the political world and civil society and public officials, was divided into three thematic sessions. The first session focused on the impact that different constitutional models, in particular unitary and federal or regionalist states, have with regard to the opportunities minorities have to make their voice heard in the domestic decision-making process. The aim of the second session was to take stock of the substantial development, in terms of both quantity and quality, of international standards which foster minority participation and to assess their impact on states' national policies. Finally, the third session focused on the historical origins and current relevance of an old model of minority participation, that is to say non-territorial cultural autonomy. During each of the three sessions, participants frequently made comments on the prevailing situation in the Republic of Croatia. The numerous reports presented during the seminar, which will be published in 2008 in the "Science and Technique of Democracy" collection, provided very useful input for the discussion on the three above-mentioned themes.

3. Unidem campus – legal training for civil servants

For the 6th year, the UniDem Campus programme pursued its training of civil servants from 16 countries (Albania, Armenia, Azerbaijan, Belarus, Bosnia and Herzegovina, Bulgaria, Croatia, Georgia, Moldova, Montenegro, Romania, Russian Federation, Slovenia, Serbia, "the former Yugoslav Republic of Macedonia" and Ukraine) in efficient administration and good governance, as well as in democratisation and human rights. As the purpose of the programme is "training of trainers", participants are expected to train their own colleagues, passing down the information and material acquired at each seminar.

In 2007, three seminars were held on the following topics: "Legislative evaluation"; "European integration: constitutional and legal reforms" and "Concerted efforts at the European level to protect ethnic, linguistic and national minorities".

The seminars were attended by 82 participants, who in turn trained over 800 civil servants though seminars, round tables and debates which took place within the relevant national administrations.

III. Constitutional justice, ordinary courts and ombudsmen[1]

1. Country specific activities

Armenia

International conference on "International experience of co-operation between constitutional courts and human rights defenders in the sphere of human rights" (Yerevan, 5 and 6 October 2007)

This conference, marking the 12th anniversary of the adoption of the Constitution of Armenia and the foundation of the Constitutional Court, and organised in co-operation with the court, together with the Human Rights Defender of Armenia, was the first meeting of its kind of ombudsmen and constitutional court judges from numerous Council of Europe member and non-member states.

Mr J-P Costa, President of the European Court of Human Rights, introducing the conference, reaffirmed his belief in the importance of dialogue between judges and between different institutions working to protect human rights. Ombudsmen played an important role, for they offered a non-judicial view at a stage that was vital to true democracy.

All the participants welcomed this first gathering of ombudsmen and constitutional court judges, a meeting from which a lot had been learned.

Through their oral presentations of their experience at national level, ombudsmen and constitutional court judges alike had given an overview of the various possible forms of co-operation between them.

Co-operation was closest when the ombudsman (mediator) could refer matters to the constitutional court, and challenge in that court any text of doubtful constitutionality where fundamental rights were concerned. All who spoke agreed that referrals to the constitutional court by the ombudsman represented a significant advance in human rights protection; such referrals were all the more important where no individual right of petition to the constitutional court existed. But even where such a right existed, both experience and practice had showed that this juxtaposition of possibilities played an important part in safeguarding a high level of human rights protection.

1. The full text of all adopted opinions can be found on the web site www.venice.coe.int.

The second point made was that, in all countries, both the ombudsman and the constitutional court, in order to be able to fulfil their roles properly, needed a very high level of independence, with the level of financial independence being crucial. Another criterion of independence was the institution's capacity to resist external pressure: both institutions' terms of reference and role required them to be capable of withstanding large amounts of external pressure.

Finally, the reports and national experience presented in respect of those countries where the ombudsman could not refer matters to the constitutional court also provided a basis for assessing the complementary nature of the two institutions' roles. While one had as its main objective the propagation of a human rights culture through government, the other's was to do the same amongst the courts. While constitutional courts were not well equipped to fill, or take action on, gaps in human rights protection, the ombudsman, in contrast, was in a better position, through public annual reports, to carry out this vital role of sounding warnings for established and young democracies alike.

While dialogue between judges was important, and had been promoted by the Venice Commission since its inception through numerous conferences, dialogue between the two institutions had proved just as vital, and needed to be encouraged in future.

Azerbaijan

Draft amendments to the Law on the Constitutional Court and to the Civil and Criminal Procedural Codes

As early as November 2006, a seminar had been held in Baku, in collaboration between the Constitutional Court of Azerbaijan and the Commission, on relations between the Constitutional Court and the ordinary courts. A number of questions had been raised at that point about the execution of judgments of the Constitutional Court, especially with respect to the showing of sufficient regard to the reasoning of the Constitutional Court, that is to say, the general reasoning that always underlies such judgments, by ordinary courts dealing with other cases. In May 2007, the Constitutional Court requested the Commission's opinion on a draft amendment of the Law on the Constitutional Court and of the Civil and Criminal Procedural Codes.

On the basis of the comments of Messrs Jarašiunas, Lee and Paczolay (CDL(2007)088, 089 and 087 respectively), the Commission adopted an opinion at its plenary session of 19 and 20 October (CDL-AD(2007)036). Most of the planned amendments to the Law on the Constitutional Court were described as acceptable, but it was pointed out that, if the proposed changes to the conditions for the appointment of members of this court were actually to prove necessary, these would require prior amendment of the constitution. The Commission did not approve the plan to introduce

a procedure whereby the Constitutional Court would explain its decisions. The provision relating to the calculation of Constitutional Court judges' salaries needed to be clarified, as did those relating to their term of office. Finally, the Commission welcomed the draft amendments to the Civil and Criminal Procedural Codes, as these were intended to guarantee respect for judgments of the Constitutional Court and to foster their execution in appellate and review proceedings.

Estonia

Seminar on "Political questions in constitutional review – What Is the Dividing Line Between Interference with Policymaking and Routine Constitutional Review?" on the occasion of the 15th anniversary of the adoption of the Constitution of Estonia (Tallinn 6-7 September 2007)

The participants discussed the issue of judicial activism and judicial restraint both from a theoretical and a practical angle examining concrete cases in the fields of social rights and substantive equality, political parties and local government.

This international seminar was held in the light of criticism against some constitutional courts as being too "activist" and the ensuing pressure on them. In one country, state powers had "punished" constitutional courts for delivering unwelcome decisions, by not appointing new judges, thereby trying to "starve out" the court by pushing the number of remaining judges below that constituting a quorum. The role of the Venice Commission to assist courts in such situations was highlighted.

Constitutional courts are often unfairly accused of 'judicial activism', a term frequently used in a negative sense to describe the tendency of judges to follow a particular, sometimes political or personal, agenda. However, the line between interpretation of the constitution and judicial activism is difficult to draw. While a technique such as the interpretation of laws in conformity with the constitution, enables conflicts in some cases to be avoided, constitutional courts or equivalent bodies such as the Estonian Supreme Court cannot avoid filling legal gaps through interpretation in other cases.

It was pointed out that the constitutional court's role in this respect is legitimised directly by the constitution. Its active role in fulfilling its mandate is crucial. This should not be confused with judicial activism, which would involve the court making its own legislative judgements. Such action by the constitutional court would be a radical departure from its role as the guarantor of the constitution.

Taking into account the historical context and basing its construction of itself on the wording, the constitutional court develops the inherent values contained in the constitution through a systematic or teleological approach. In this way, the constitutional court ensures that the constitution remains a living, dynamic instrument that shapes the life of society, and vice versa, and not a static text that would be quickly outdated.

Georgia

Law on disciplinary responsibility and disciplinary prosecution of judges of common courts of Georgia

In October 2006, the Chair of the Monitoring Committee of the Parliamentary Assembly of the Council of Europe requested the opinion of the Venice Commission on Georgia's law on the disciplinary responsibility of the judges of ordinary courts. The request was for both an overall examination of the law, giving particular attention to the principle of judicial independence, and determination of the specific scope of one of its provisions, namely Article 2, on which prosecutions of a number of judges had been based, including judges of the Supreme Court, with the outcome being their dismissal. The Commission had appointed as rapporteurs Ms Nussberger (CDL(2007)020), Ms Suchocka (CDL(2007)021) and Mr Vogel.

It was in the presence of Georgia's Minister of Justice that the Commission, at its plenary session of 16 and 17 March, adopted the opinion (CDL-AD(2007)009). Although the Georgian law pursued the legitimate objective of providing a legal basis for disciplinary action against members of the judiciary as a means of combating corruption, its imprecise wording posed a threat to judicial independence, and therefore to the rule of law in Georgia. Article 2 did not specify precisely enough those cases in which the judge's responsibility would be engaged. Nor should an error of law, even a gross or repeated error, be a disciplinary offence. This article, with others, was too vague about the dismissal of judges, which was allowed in a way which conflicted with the principle of proportionality laid down by the European Court of Human Rights, and recognised by the European Charter on the Statute for Judges. The provisions relating both to the Disciplinary Collegium of Judges of Common Courts of Georgia, the decision-taking body in this sphere, and to the distribution of cases to the members thereof were also imprecise and could not be regarded as sufficient protection against arbitrariness. European standards therefore required the rewriting of this law.

Conference on "the jurisdiction of the Constitutional Court and the European Court of Human Rights in conflict zones" (Batumi, 6-7 July 2007)

On the occasion of its 10th anniversary, the Constitutional Court of Georgia organised – in co-operation with the Venice Commission and the Technical Co-operation Department of the Directorate General of Human Rights and Legal Affairs of the Council of Europe, the German Society for Technical Co-operation and the OSCE – a conference, which brought together representatives of the constitutional courts of Georgia, Albania, Armenia, Bosnia and Herzegovina, Bulgaria, Greece, Lithuania, Moldova, Slovakia, Slovenia and Turkey; judges of the European Court of Human Rights, representatives of the Supreme Court of Norway, of the Supreme Court of Georgia, including its President Mr Kublashvili, representatives of the

Ministry of Justice of Georgia, the Public Defender of Georgia, representatives of the OSCE Mission in Georgia and of NGOs.

The discussions focused on the difficult issue of conflict zones in the 21st century and the jurisdiction of courts in such zones, notably the discrepancy between the de facto and *de jure* situations. It was pointed out that whereas the European Court of Human Rights benefits from an uncontested credibility on both sides in a conflict between a country and its breakaway region and can rely on international pressure to enforce its decisions, national constitutional courts face a much more difficult task in trying to impose their decisions in such a situation. Their role is, however, important as they control the actions of governments by ensuring that the latter do not breach the rule of law when striving to seek the settlement of a conflict. In addition, the constitutional court's role is crucial after such a settlement has been reached, in order to ensure that human rights are respected in the country and its former breakaway region.

The participants discussed whether a derogation under the European Convention on Human Rights (ECHR) should be made by states in times of crisis, when a state can no longer effectively guarantee certain human rights in one of its regions. A number of participants underlined that such derogations are important because of the need for scrutiny of the exercise of power during such a crisis.

With respect to separatist regions, the European Court of Human Rights recognises that a state experiencing a conflict on its territory may have reduced responsibility if it loses control of a part of its territory, the loss of which is a question of fact in each case. Participants agreed that it would be useful if "positive obligations" of states and the term "effective control" were further explained and developed in the case-law of the European Court of Human Rights.

The issue of property rights in conflict zones was also discussed as well as the tendency of the European Court of Human Rights to interpret reservations made by states to the ECHR with respect to conflict zones in a restrictive manner. Participants agreed that reservations are an indication that the state concerned has lost effective control over a part of its territory and discussed Georgia's reservation to Article 1 of Protocol No. 1 of the ECHR on the protection of property, which will not apply to internally displaced persons (IDPs) until the restoration of the territorial integrity of Georgia is achieved. This has resulted in IDPs having lodged a complaint to the Constitutional Court of Georgia, claiming that the reservation made to Protocol No. 1 was in violation of the Georgian Constitution, a claim that was rejected by the Constitutional Court.

Conference on "The interaction of National Courts with European Courts" (Batumi, 6-7 November 2007)

This conference was organised by the Constitutional Court of Georgia in co-operation with the Venice Commission, USAID Georgia, ABA Rule of Law Initiative and the Open Society Georgia Foundation.

Discussions focused on the status of the European Convention on Human Rights (ECHR) and its influence on how national courts interpret the ECHR's provisions and how they apply it domestically in Austria, Georgia, Romania and the Nordic countries. The differences in the practice of countries that adopt a monist approach from those that adopt a dualist approach to the implementation of the ECHR were compared and the role of enabling legislation was discussed.

The progress made by Georgia in the implementation of democratic laws through independent courts was considered and the Georgian Constitutional Court's extensive reference to the case-law of the European Court of Human Rights in its judgments was highlighted.

Discussions also addressed the role of domestic courts in the interpretation of the ECHR. Participants also raised questions on the problems encountered in the execution of judgments by the Constitutional Court of Georgia.

The issues of undue delay and the right to a fair trial were also discussed. The participants pointed out the danger of artificially shortening the length of proceedings, as this would affect their quality and thereby defeat the purpose of a fair trial. They agreed that more concrete solutions needed to be found in order to speed up proceedings.

Kazakhstan

Draft reform of the institution of ombudsman

In December 2006, the Commissioner for Human Rights (ombudsman) of Kazakhstan requested the Commission's opinion on certain issues relating to the development and possible reform of his institution. On 15 May 2007, in Astana, in the framework of a joint programme with the European Commission, a delegation from the Venice Commission met the director of the National Centre for Human Rights, the provider of staff resources to the ombudsman.

It was in the presence of the head of the department of experts of the office of the ombudsman of Kazakhstan that the Commission, at its plenary session of 1 and 2 June 2007, adopted the opinion (CDL-AD(2007)020). The post of ombudsman, the remit, powers, privileges and immunities attaching thereto, the election of the post-holder by parliament by a qualified majority and the methods and procedures for the taking up and laying down of the office should be regulated by the constitution. The Commission recommended that the ombudsman be allowed to refer matters to the Constitutional Council. However, the ombudsman should not be vested with a right of legislative

initiative, but at most with a limited power to recommend legislative reform to parliament, the government and/or the President of Kazakhstan. While he/she certainly should be able to express views about the interpretation of legislation and of ratified human rights treaties, his/her opinions should not have binding force. It would be adequate to create specialised ombudsmen's functions (for children, etc.) only within the office of the national ombudsman. And the latter should be able to rely on sufficient appropriations for the full, effective and relatively independent discharge of his/her functions. His/her relative budgetary independence could even be envisaged in the form of the right to submit a proposed budget.

On 18 September, the Commission presented its opinion in a public seminar organised in co-operation with the Human Rights Commissioner, funded by a joint programme between the European Commission and the Venice Commission.

Montenegro

Draft Law on the High Judicial Council

On 22 November the Ministry of Justice of Montenegro asked for urgent assistance in the drafting of the Law on the High Council of Justice, one of the laws to be adopted as a matter of priority following the entry into force of the new constitution. Mr Neppi Modona and Mr Markert from the Secretariat met the working group drafting the law in Podgorica on 7 to 8 December and discussed the draft article by article. Their suggestions for a revision of the text were accepted by the working group and after the meeting Mr Neppi Modona provided written comments (CDL(2007)129) summing up the remarks made at the meeting.

Generally, in his view, the draft deserved a positive assessment. Some provisions, in particular on the appointment and dismissal of the President of the Supreme Court, had to be revised to ensure full compliance with the constitution although the pertinent constitutional provisions were far from ideal. Moreover, lower-level judges should be better represented within the Council.

Romania

The Commission participated in the celebration of the 15th anniversary of the Constitutional Court of Romania, where its Latvian member, Mr Endzins, presented a report on the Role of the Constitutional Court in the System of the Separation of Powers (CDL-JU(2007)038).

Russia

Xth International Forum on Constitutional Review: the Constitutional Principle of the Social State and its application by the Constitutional Courts (Moscow, 12-13 October 2007)

This conference, organised with the Moscow Centre on International Law and Policy under the

auspices of the Constitutional Court of the Russian Federation and opened by its President brought together constitutional judges and academics from Belarus, Germany, Bulgaria, Lithuania, Russia, Slovakia, the United States and the European Court of Human Rights.

Presentations covered the question of the justiciability of social rights, constitutional protection of fundamental social rights, practical tools for courts to use in applying social rights and the application of these rights by constitutional courts in different countries.

Questions revolved around the use of the equality principle by constitutional courts in their case-law in order to apply social rights; the problem of the increasing income gap between the poor and the very rich in the Russian Federation; the need to balance freedoms: free market and social rights; that social rights decisions may result in immediate budgetary consequences for the state; with respect to welfare: the danger of creating legitimate expectations of social protection; the difference between the social state and the social welfare state.

The participants discussed the structure of social rights, how social rights can create uncertainty and analysed the first and second generation of rights and where the difference between the two lies. They discussed the negative connotations of social rights, especially for post-communist states and raised the question of whether these rights should be considered citizens' rights or human rights.

The difference in constitutions' treatment of social rights were also addressed, noting that in some states' constitutions there is just a mere reference to the social state (e.g. Germany) while in others, a whole catalogue of rights is set out in the constitution (e.g. Hungary) and in still others, the constitution provides no social rights at all (e.g. the United States). Discussions also touched upon the constitutional court's interpretation of the constitution. Courts that use the constitution to a maximum to apply social rights tend to produce an activist case-law (e.g. Hungary) whereas others tend to produce a restrictive case-law with respect to these rights (e.g. the United States and Bulgaria).

Participants also discussed the link between social rights and democracy. There are at least two schools of thought: those who believe that social rights are the basis for democracy and those who go as far as believing that social rights can be detrimental to democracy.

Serbia

Law on the Constitutional Court

In early July the Ministry of Justice of Serbia asked for urgent comments on the draft Law on the Constitutional Court, one of the texts to be adopted following the entry into force of the new Constitution. Messrs Grabenwarter and Jowell and Ms Suchocka were appointed as rapporteurs and provided comments during the month of July. Their comments were further discussed at a public

hearing in Belgrade on 12 September and endorsed by the Commission at its October session.

In their comments (CDL(2007)065, 066 and 067), the rapporteurs noted that, although the text of the draft was quite long and detailed, it was in many respects too vague and did not sufficiently distinguish between the different types of procedures before a constitutional court. In particular, the provisions on participants in proceedings were confusing. It was also contrary to European tradition to give to the court itself the right to initiate proceedings. While it was welcome that the Serbian authorities wished to ensure that the Court be operational quickly and therefore wanted to adopt the law as soon as possible, this should not be to the detriment of the quality of the text.

Draft law on the ombudsman of Kosovo

In April, the United Nations mission in Kosovo (UNMIK) requested an opinion on the draft law on the "People's Advocate" (ombudsman). The assessment of this draft Law was carried out by the Commission and by the Directorate General for Human Rights and Legal Affairs of the Council of Europe.

The opinion was adopted by the Commission at its June session (CDL-AD(2007)024). It noted that the Comprehensive Proposal for the Kosovo Status Settlement presented by Mr Ahtisaari provided that the future Constitution of Kosovo had to ensure that "the current powers and role of the Ombudsperson shall remain in place". In general, the draft law constituted a good basis for the functioning of the Ombudsperson institution which drew from the recent experience. A certain number of improvements were nonetheless proposed in relation to the ombudsman's jurisdiction and immunities; his/her appointment, suspension, removal and term of office; his/her budgetary autonomy; the organisation of the office and the status of the staff. Procedural time-limits, admissibility criteria and their consequences, as well as confidentiality and publicity were matters to be further addressed.

"The former Yugoslav Republic of Macedonia"

Draft laws on the public prosecutor's office and on the council of public prosecutors

In January 2007, the Minister of Justice of "the former Yugoslav Republic of Macedonia" requested an opinion on draft laws on the public prosecutor's office and on the council of public prosecutors.

The planned law on the public prosecutor's office provided for the functions, structures, organisation, budget and powers of that office and set down the rules governing the appointment, disciplining, dismissal and other forms of termination of the office of prosecutors, as well as their other rights and obligations. And the law on the council of public prosecutors was intended to set up such a body to be responsible for the appointment, disciplining and dismissal of prosecutors. The opinion was jointly prepared by the Commission

and the Department of Crime Problems, Directorate General of Legal Affairs of the Council of Europe, with Mr Hortenberg, an expert from that department, making his comments in parallel with those of Mr Hamilton, representing the Commission (CDL(2007)041 and 031).

Following an exchange of views with the Minister, the opinion was adopted by the Commission at its plenary session of 16 and 17 March (CDL-AD(2007)011). The draft laws constituted a sound basis which could support further preparatory work on the legislation. In practice, in order to set up a truly independent public prosecutor's office, it was necessary, *inter alia*, to specify the role of the government and parliament in the appointment of the Public Prosecutor of the Republic, setting down objective criteria and procedures de-politicising this process, to establish an objective procedure and criteria for the appointment, disciplining and dismissal of the other prosecutors, and to review the plan to give senior public prosecutors power to give instructions to those below them and to remove them from cases.

Ukraine

Draft laws on the status of judges and on the judiciary

In October 2006, the president of the Ukrainian Commission for strengthening of democracy and the rule of law requested an opinion on the draft law on the status of judges and on the draft law on the judiciary. The Venice Commission prepared this opinion in co-operation with the Division for the Judiciary and Programmes of the Directorate General of Legal Affairs of the Council of Europe. Messrs Oberto and Zalar, experts from that division, were appointed rapporteurs alongside Mr Hamilton and Mrs Suchocka, of the Commission. In the framework of a joint Council of Europe/ European Commission programme, the four rapporteurs took part in a conference in Kyiv on 12 and 13 February 2007 which looked at the draft laws concerned. The conference was attended by Ukrainian MPs, the Presidential Administration, the Ministry of Justice, judges, legal practitioners and members of NGOs.

The Commission adopted the opinion at its plenary session of 16 and 17 March (CDL-AD(2007)003), following an exchange of views with the Chair of the Ukrainian Parliament's Committee on Justice. It welcomed both draft laws, which represented a clear improvement over both the previous drafts and the present situation, as well as the intention of the parliamentary Committee on the Judiciary, announced immediately after the February conference, of merging them into a single law. Numerous aspects nevertheless needed to be reconsidered, relating to the appointment, disciplining and immunities of judges, the creation of courts, other aspects of the institutional independence of the judiciary, and the financial independence of the judiciary. In particular, judges should benefit only from immunity relating to their function; they should be free to join associations and trade unions; with the exception

of constitutional court judges, they should not be appointed by parliament; they should not be appointed for a probationary period which would undermine their independence; incorrect interpretation of the law should not be a possible basis for disciplinary proceedings but should be remedied solely by way of an appeal; provision should be made for disciplinary measures against judges to be subject to appeal to a court; higher courts should not be responsible for providing abstract explanations to the lower courts, but should contribute to the unification of judicial practice solely through decisions on appeals; it should be impossible for a judge's salary to be reduced; an independent body with substantial judicial representation, such as a judicial council, should be given a significant role in presenting and defending the judicial budget in parliament.

Furthermore, the system safeguarding the institutional independence of the judiciary was excessively complex. There was no need for a separate High Qualifications Commission, with its problematic composition. The judicial self-administration body, namely the High Judicial Council, should comprise a majority of judges elected by their peers, and should also be responsible for judges' training.

Several of the Commission's recommendations implied amendment of the constitution, and were thus unlikely to be taken up in the near future. Since the opinion was adopted, the Commission had been informed that the Ukrainian Parliament's Committee on Justice had indeed been asked to merge the two draft laws into one.

2. Activities of general scope – constitutional justice

Bulletin on Constitutional-Case Law/database CODICES

The major service, which the Venice Commission provides to Constitutional Courts and equivalent bodies is the publication of the Bulletin on Constitutional Case-Law, which presents précis of important constitutional cases from the member and observer countries of the Venice Commission. In 2007, three regular issues and the special Issue No. 7 of the Basic Texts (extracts of constitutions and laws on the constitutional courts) series was published. Another regular issue as well as two special Bulletins were prepared during the same period. The Bulletin is highly appreciated by the court because it enable a regular exchange of case-law between the courts, which are otherwise separated by a language barrier.

All regular and special issues of the Bulletin are included in the CODICES database (www.CODICES.coe.int), which at the end of 2007 contained 4 735 cases from Europe and 657 cases from non-European courts. The latter decisions are included by virtue of the member or observer status of the respective countries or by virtue of the co-operation of the Venice Commission with regional partners (see below). CODICES allows

for full text search or for thematic search by the Commission's Systematic Thesaurus, which is updated once a year by the Joint Council on Constitutional Justice.

Venice Forum

The Venice Forum provides a system of quick exchange between the constitutional courts and equivalent bodies. Liaison officers from one court can ask questions about specific topics to all the other courts and receive their replies in time for the preparation of a case pending before the court. The Forum exists in two forms: 1. the classic Forum allows exchanges via e-mail, moderated by the secretariat, 2. whereas the Forum Newsgroup allows the courts to post their requests directly on a restricted site. The classic forum is open to courts in member and observer states fo the Venice Commision, whereas the Newsgroup is also open to courts in regional partnerhips (see below). In 2007, more than 30 requests were made via the Forum and enabled replies with a rich content on issues as diverse as punishment for adultery or the immunity of judges of ordinary courts to be received.

Mini-conference on proportionality (Venice, 30 May 2007)

On the occasion of the 6th meeting of the Joint Council on Constitutional Justice, the Commission organised a mini-conference on the topic of proportionality. Liaison officers from the Constitutional courts of Belgium, Poland, Slovenia and the Court of Justice of the European Communities presented their case-law and compared the application of these principles in the various jurisdictions. An interesting discussion showed that the distinction between the principles of proportionality and reasonableness are not always very clear-cut and that their application will often lead to the same result.

Regional co-operation in the field of constitutional justice

In addition to its close co-operation with European constitutional courts and equivalent bodies, the Commission continued with its regional approach by co-operating with associations of constitutional courts and equivalent bodies outside Europe.

Association of Constitutional Courts Using the French Language (ACCPUF)

In co-operation with the Association of Constitutional Courts Using the French Language (ACCPUF), the Commission organised two seminars on the preparation of contributions to the CODICES database in Strasbourg.

On 19-20 February, the Commission held a training seminar for a delegation of the Constitutional Court of Gabon and the Vice-President of the Supreme Constitutional Court of Egypt on the preparation of decisions of the member courts of ACCPUF for their inclusion in CODICES. The Constitutional Court of Gabon volunteered to assist the other courts in Central Africa in the

preparation of their contributions to CODICES. The Vice-President of the Supreme Constitutional Court of Egypt participated in the seminar with a view to contributions of the Arab constitutional Courts and Councils to the CODICES database (see below).

On 28-30 November 2007, the ACCPUF and the Venice Commission organised the Meeting of National Correspondents of the courts members of ACCPUF. The seminar dealt with the preparation of contributions of ACCPUF to the CODICES database and communication between the courts and the public. As a result of the seminar, a number of cases were added to the CODICES database.

Southern African Judges Commission

Thanks to a voluntary contribution from Ireland, the Commission was able to organise two meetings in co-operation with the Southern African Judges Commission, in Lesotho and in South Africa.

Opened by His Majesty King Letsie III of Lesotho, the Conference on "Constitutionalism: the key to democracy, human rights and the rule of law" (31 March-1 April 2007, Maseru, Lesotho) gathered the Chief Justices from Botswana, Kenya, Lesotho, Malawi, Mauritius, Mozambique, Namibia, Swaziland, Tanzania, Uganda and Zambia as well as the delegation from the Venice Commission.

The key objective of these gatherings is for judges of Southern and Eastern Africa to share the experience of their respective jurisdictions. During the conference, the importance of the separation of powers was underlined.

The issue of the guarantee for independence of the appointment of chief justices was also discussed. The participants agreed that a transparent and credible appointment procedure of a chief justice is crucial for the independence of the judiciary.

Ms Flanagan, the Irish member of the Venice Commission, reported on the experience in her country of enforcement of the constitution and human rights, notably about tribunals of inquiry. Similar structures exist in SAJC countries, for instance in Mauritius, Kenya and Uganda. The participants agreed that public pressure on such structures can be very productive and that such tribunals or commissions must enjoy independence and their outcome must be made public in order to obtain the public's trust.

During the SAJC's meeting, the chief justices also discussed the recent situation concerning a judges' "strike" in Uganda and the threat to the independence of the judiciary following the arrest of suspects inside the High Court after having been released on bail.

On 6-8 December, the Constitutional Court of South Africa and the Commission organised a SAJC registrar's workshop in Johannesburg. The workshop discussed a number of issues relating to

the duties of a registrar, in particular: administrative/financial duties and responsibilities, modernisation of the legal system, development and management of court archives and record management, case flow management, law researchers programme, legal aid and (electronic) court libraries. The participating registrars from South Africa and the other SAJC countries found the meeting very useful and inspiring for their daily work.

Asian Constitutional Courts

The Commission participated in the Fifth Conference of Asian Constitutional Court Judges on "Standards for Constitutional Review in Safeguarding Civil, Political and Socio-Economic Rights" organised by the Constitutional Court of the Republic of Korea and the Konrad Adenauer Foundation (Seoul , 9-12 October 2007). At this meeting the participating courts expressed their interest to deepen their co-operation with the Venice Commission and to contribute to the CODICES database. In addition to the Asian courts in member or observer states of the Commission, the Constitutional Court of Indonesia and the Supreme Court of the Philippines already contribute to CODICES.

At the meeting of the Advisory Group for the Asia-Europe Democratisation and Justice Series of the Asia Europe Foundation (Jakarta, Indonesia, 3-4 December), the Commission proposed focusing in this series on the needs of the judiciary and in particular constitutional justice.

Ibero-American Conference of Constitutional Justice

The Venice Commission participated in the 5th Ibero-American Conference of Constitutional Justice (Cartagena, Colombia), which approved co-operation with the Venice Commission. While the Constitutional Court of Argentina and the Supreme Court of Mexico already contribute to CODICES, the database will now also be available to the other Latin American members of the Conference. The member courts will also be invited to participate in the exchange of information via Venice Forum Newsgroup.

Union of Arab Constitutional Courts and Councils

Meetings with the Chief Justice, the Minister of Justice of the Palestinian National Authority and NGOs in Ramallah on 29-30 August, enabled the specific needs of the Palestinian Judiciary to be defined, within the programme of co-operation of the Commission with the Union of Arab Constitutional Courts and Councils, which is funded by the Government of Norway.

In the framework of its 72nd Plenary Session, the Commission organised an exchange of views between the Union and the Commission on "Limits of Constitutional Control". Following a welcome address by the President of the

Parliamentary Assembly of the Council of Europe, Mr van der Linden, emphasising the importance of the dialogue between Europe and the Arab World, President Mokkadem and UACCC Secretary General Abdelkader underlined the purpose of the Union to foster scientific exchange of experiences through seminars and legal studies between its member courts on the basis of the judicial principles of democracy, human rights and the rule of law. On behalf of the Government of Norway, Mr Helgesen informed the Commission that Norway attached great importance to the co-operation with the Arab world and financially supported the programme of co-operation between the Union of Arab Constitutional Courts and Councils and the Venice Commission. This programme comprised seminars, contributions of the Arab courts to the Commission's CODICES database, translations of case-law and contributions to the Union's library.

The discussions revolved around the advantages and disadvantages of the various models of constitutional control in Europe and the Arab countries including specialised and diffuse systems. It was pointed out that there are a number of limits to constitutional control. The first related to the type of constitutional control and the various forms of appeal (e.g. *a priori, a posteriori* control, authorities and persons allowed to appeal to the court). The judge is bound by various factors such as the grounds given in the appeal, precedents and international law, especially in the field of human rights. The second related to constitutional judges themselves, who have to take into account possible results of their judgments in the light of the specific constitutional situation in their country.

The European and Arab participants concluded that the exchange of views had contributed to establishing firm ties between the Arab courts and the Venice Commission.

The Commission also participated in the celebrations at the occasion of the 10th anniversary of the Constitutional Councils of Algeria (Algiers, 4 September) and the 20th anniversary of the Constitutional Council of Algeria (Tunis, 14-15 December).

Pursuing the wider agenda of intercultural dialogue, the Venice Commission also participated in the World Public Forum on the Dialogue of Civilisations in Rhodes (11-12 October 2007).

3. Activities of general scope – the judicial system

Report on judicial appointments and judicial councils

The Consultative Council of European Judges (CCEJ) was instructed, in consultation with the Commission, to prepare an opinion in 2007 on the structure and role of councils for the judiciary. The Commission, following a discussion thereof in the CCJE working party, adopted a report on judicial appointments (CDL-AD(2007)028) at its Plenary Session of 16 and 17 March. This dealt only with

the appointment of ordinary judges, and not that of constitutional court judges, whose specific functions might require them to have greater democratic legitimacy.[1]

There is no single model in Europe for judicial appointments, but many different systems. In the older democracies, the executive authority sometimes has a decisive influence on judicial appointments. Such systems might function correctly in practice and make it possible to have an independent judiciary, for the latter's powers are limited by the legal culture and traditions which have evolved over many years. The new democracies, on the other hand, have not yet had an opportunity to develop such traditions, so that selection of a judicial appointments system remains particularly crucial in the countries concerned, and was often problematic in practice. Explicit provisions in both the constitution and the law are therefore necessary in such countries.

According to a recommendation issued by the Committee of Ministers of the Council of Europe, "All decisions concerning the professional career of judges should be based on objective criteria, and the selection and career of judges should be based on merit, having regard to qualifications, integrity, ability and efficiency. The authority taking the decision on the selection and career of judges should be independent of the government and the administration. In order to safeguard its independence, rules should ensure that, for instance, its members are selected by the judiciary and that the authority decides itself on its procedural rules. However, where the constitutional or legal provisions and traditions allow judges to be appointed by the government, there should be guarantees to ensure that the procedures to appoint judges are transparent and independent in practice and that the decisions will not be influenced by any reasons other than those related to the objective criteria mentioned above".

It is in practice undesirable for the appointment of judges to serve in the ordinary (as opposed to the constitutional) courts to be subject to a parliamentary vote. This would bring the risk of political considerations prevailing over candidates' objective merits. The appropriate method is effectively to set up a judicial council and to endow it with constitutional guarantees with respect to its membership, powers and autonomy. A judicial council should have a decisive influence on the appointment and promotion of judges and on disciplinary measures against them.

A substantial part, or the majority, of the members of judicial councils should be elected by judges themselves. The others should be elected by parliament from among the qualified persons. It is in practice vital to strike a balance between judicial independence and accountability. The latter should make it possible to avoid corporatism which would

1. The Commission refers in this respect to No. 20 in its "Science and technique of democracy" collection: The Composition of Constitutional Courts.

in particular risk making disciplinary proceedings against judges ineffective.

The CCEJ then asked the Commission for its comments on the draft opinion, which were given at the Plenary Session of 19 and 20 October 2007 (CDL-AD(2007)032). The CCEJ and the Commission had essentially converging views on judicial councils. Some divergences nevertheless remained between the CCEJ's draft opinion and the Commission's report, first of all where the former said that three quarters of the members of a judicial council should be judges. The CCEJ urges that there should be no ministers among the other members, whereas the Commission considers the presence of the Minister of Justice acceptable, provided that he/she does not participate in the taking of all decisions, and particularly not those on disciplinary measures. The CCEJ also takes the view that, in presidential or semi-presidential systems of government where the head of state plays an active part in the exercise of authority and cannot chair the judicial council, the council should be chaired by a judge, whereas the Commission proposes that the chair should be one of the non-judge members. Where the method of appointment of council members is concerned, while the CCEJ deems their election by parliament to be acceptable, it prefers appointment by "non-political authorities". Nor did the Commission share the view that certain responsibilities could be reserved for the [judicial] council in a limited all-judge composition, for it seems that this idea is intended to be applied to disciplinary action. This is another sphere in which the Commission proposes the opposite solution to the CCEJ's, recommending that judicial councils should have jurisdiction in the first instance, and that the judges punished should then have a judicial remedy. Where the powers of such councils are concerned, the CCEJ proposes that they should be responsible for the administration of justice. The Commission fears that this might lead to an excessive workload and distract councils from their fundamental role of guaranteeing the independence of the judiciary. In its report on judicial appointments, the Commission said that the administration of justice should not necessarily be entirely a matter for judges. The Commission remains at the disposal of the CCEJ for possible continuation of this consultation.

4. Activities of general scope – ombudsman

In 2007, the Venice Commission introduced a number of activities for the benefit of ombudsmen. The opinion on the possible reform of the Ombudsman Institution in Kazakhstan (see above under that country) gave the Commission the opportunity to elaborate its position on the legal basis of the ombudsman institution, the relationship between the ombudsman and constitutional Courts, on specialised ombudsman institutions and on their financial independence.

The topic of the relationship between ombudsmen and constitutional courts had been a key issue

both at the XIIth Yerevan International Conference: on "International experience of the co-operation between constitutional courts and Ombudsmen in the field of ensuring of and protecting human rights" (see above under Armenia) and at the Lisbon Forum 2007 on "National Human Rights Institutions: the cornerstone for the promotion and protection of human rights" (Lisbon, 16-17 November 2007).

This conference was organised by the North-South Centre of the Council of Europe in co-operation with the Venice Commission and gathered together representatives of national human rights institutions from 39 countries, mostly from Europe and Africa.

The Forum discussed the role and objectives of national human rights institutions, in particular those of ombudspersons and national human rights commissions. It also dealt with the interaction between these institutions and national courts, whether constitutional or ordinary courts. In addition, participants discussed the role of these institutions in the promotion and protection of the rights of vulnerable groups and what role these institutions could play in the context of a North-South co-operation.

In the Council of Europe's 47 member states, some countries have regional ombudspersons, while others have national human rights commissions, some are ombudspersons and others are both ombudspersons and commissioners. The same is true for a number of African countries, although most tend to have national human rights councils and commissions rather than ombudspersons.

Participants discussed the importance for national human rights institutions to earn credibility in the society in which they operate and the importance for them to avoid alienating the authorities with which they work. They must be accountable for how they choose their priorities and they must be accessible and contribute to the functioning of democracy through their complementary nature alongside other institutions and authorities in the country.

Participants exchanged their countries' experiences in this area and discussions went beyond the promotion of rights and covered the issues of real access to rights and the guarantee of their equal enjoyment. The participants agreed that dialogue between the different institutions is crucial for the positive development of society, however that one major obstacle remained: the discrepancy in many countries between the rich and the poor. All participants agreed that this was one of the biggest threats to peace and security in the world today.

Following the announcement of its availability for opinions from ombudsmen at the 10th Round Table of European Ombudsmen and the Council of Europe Commissioner or Human Rights (Athens, 12-13 April), the Commission received a first request for an *amicus ombud* opinion from the Human Rights Defender of the Republic of

Armenia. The opinion concerned the compatibility of Article 301 on the criminalisation of calls for political/constitutional change by force with Article 10 of the European Convention on Human Rights (see above in Chapter II, under Armenia). What is important from the ombudsmen's point of view is that the request by the Armenian ombudsman did not concern his own statute but the compatibility of a national law with international standards. In analogy to *amicus curiae* opinions given to constitutional courts, the Commission calls such requests *amicus ombud* opinions.

IV. Democracy through free and fair elections[1]

1. Country specific activities

Albania

Electoral reform

In November 2004, the Commission and the OSCE/ODIHR had adopted joint recommendations on the Electoral Law and the Electoral Administration in Albania (CDL-AD(2004)017). Later, the Albanian electoral code was amended four times: on 21 October 2004, 10 January 2005, 14 April 2005 and 13 January 2007.

At the session from 18 to 20 October 2007, the Council for Democratic Elections and the Venice Commission adopted a further opinion prepared jointly with the OSCE/ODIHR which took account of the aforementioned amendments. According to the 2004 recommendations, the Albanian electoral code provided an adequate basis for conducting democratic elections but required, *inter alia,* more detailed provisions and more reasonable deadlines for filing appeals with the Central Election Commission and with the Electoral College judicial body. It also needed revising to ensure greater transparency in terms of the various election processes and the term of office of representatives of local authorities should be extended from three to four years. Some of these recommendations, in particular those concerning transparency, appeals and the term of office of local authorities, had in fact been followed up by legislation. This legislation had introduced a series of amendments to the electoral code, as part of a process of ongoing improvement. The election observation reports indicated, however, that even the improved code had not had a significant impact on the problem of political polarisation of the election administration in Albania. This was a problem that required resolution through the political will and good faith of political parties in Albania as the Code granted them a monopoly of control over all election processes to the exclusion of civil society and institutional structures. Among the main areas of concern that remained unaddressed were the provisions that allowed parties and coalitions to change the order of candidates on a candidates list after election; the provisions that infringed the constitutional rights of the institutions responsible for appointing members of the Central Election Commission and the provisions for removal of members of lower election commissions that

1. The full text of all opinions adopted can be found on the website www.venice.coe.int.

might hinder the professional and non-partisan performance of the election administration. Other matters of continuing concern were the provisions on the conduct of referendums, which seemed to be at odds with the constitution, and the complex rules on allocating seats in Parliament.

On 10 October 2007, the Commission attended a meeting of the *ad hoc* committee on electoral reform, which looked at the current electoral system and its drawbacks, and at European experience in the field of electoral systems.

Armenia

Electoral reform

In March 2006, the National Assembly of the Republic of Armenia requested the opinion of the Venice Commission and the OSCE/ODIHR on a series of draft amendments to the country's electoral code. An initial joint opinion was adopted on 15 June 2006. Following the adoption of the latest amendments by the National Assembly on 22 December 2006, the OSCE/ODIHR and the Commission agreed to jointly issue a final opinion on the revised law.

This latest opinion was adopted by the Commission at its plenary session on 16 and 17 March 2007 (CDL-AD(2007)013). It expressed disappointment that the latest set of amendments had not been adopted earlier because the next parliamentary elections were being held on 12 May 2007. The revised electoral code provided a good basis for conducting genuinely democratic elections, in spite of the fact that some Venice Commission and OSCE/ODIHR recommendations had not been taken on board. It contained a number of positive elements, including the improved status of proxies, additional safeguards for the integrity of the vote and electoral procedures such as signature requirements and clarification on the distribution of tasks among members of election commissions. The opinion welcomed the fact that certain provisions foreseen in the previous draft amendments, such as video recording of the voting, recall of election commission members and complex voting and counting procedures, had not been included in the final code. Some amendments might need further clarification, for example the presidential role in approving the composition of the Central Election Commission, the stamping of ballot envelopes, the approval of preparation and printing of ballots and the complaints and appeals procedures. The late introduction of new provisions changing the quorum and voting requirements for an election commission to adopt a decision raised concerns and needed to be proven in practice. Finally, as stated in an earlier final joint opinion on the amendment of Armenia's electoral code, dated 25 October 2005 (CDL-AD(2005)027), the conduct of genuinely democratic elections depended not only on the quality of the electoral code, but on good faith implementation of that code and a degree of political will.

A law amending the Armenian electoral code was also adopted in February 2007. It deals mainly with

dual citizenship. The Commission and the OSCE/ODIHR undertook to give a brief supplementary opinion on this subject. At its plenary meeting on 1 and 2 June, the Commission instructed its secretariat to finish preparing the opinion in question and to forward it as soon as possible to the Armenian authorities (CDL-AD(2007)023). The new provisions allowing Armenians with dual nationality to vote but preventing them from standing for national office had not been fully implemented in the parliamentary elections on 12 May. For example, potential candidates were not required to show that they did not have dual nationality. Some amendments called for revision, in particular those which had the effect of disenfranchising Armenian citizens living abroad. The same applied to the provisions on active (right to vote) and passive suffrage (right to stand for election), since electoral legislation normally stipulated the same requirements for both.

Seminars on the holding and supervision of elections

The Venice Commission held a seminar on the holding and supervision of elections in Tsakhkadzor on 25 and 26 April 2007. The purpose of the seminar was to ascertain the most appropriate way for national observers to observe elections.

In co-operation with Armenia's Central Election Commission (CEC), from 11 to 13 December2007 the Venice Commission held exchanges of views with CEC staff and NGO officials on the different stages in the electoral process and the problems encountered.

Legal advice during an election observation mission

In accordance with the agreement between the Parliamentary Assembly and the Venice Commission, the Commission provided legal advice during the Assembly's mission to observe the elections on 12 May 2007. The Venice Commission advised the ad hoc committee on the possibility of amending the electoral legislation in order to improve electoral practice; these recommendations have been included in the mission report and in the Parliamentary Assembly documents.

Azerbaijan

Electoral Reform

On 7 May 2006 the Venice Commission received a request from the authorities of the Republic of Azerbaijan to continue the work on the improvement of the Election Code. In April, May and November 2007, representatives of the OSCE/ODIHR and the Venice Commission met with the authorities of the Republic of Azerbaijan in order to discuss possible amendments to the Electoral Code. During the meetings the participants discussed possible changes in such important areas as the composition of electoral commissions at all levels, the complaints and appeals procedure, registration and deregistration of candidates, inking

and some other technical issues. In particular, the Venice Commission organised on 7 and 8 November 2007 a round table on electoral disputes in Baku. The draft law on amendments to the Election Code of Azerbaijan would be sent to the Milli Majlis in March 2008. The adoption of the final joint opinion of the Venice Commission and OSCE/ODIHR is planned for the June 2008 plenary session of the Venice Commission.

Croatia

Draft law on voter lists

In 2004, a round table on electoral legislation and practice organised by the OSCE mission in Zagreb, the OSCE/ODIHR and the Venice Commission showed that there was broad agreement on the need to address, through legislation, certain issues related to voter registration. In 2005, the Chair of the State Election Commission spoke out in favour of amending the law on voter lists. In December 2006, the OSCE/ODIHR, the Venice Commission, the European Union and representatives of civil society took part in a workshop in Zagreb sponsored by the OSCE mission and the Central State Administration Office, with a view to examining an initial version of the draft law on voter lists. A second version was published at the end of December. The Central Office then prepared a third and last version which the government presented to Parliament in January 2007 and on which the Croatian authorities asked the OSCE/ODIHR and the Venice Commission for an opinion.

At its plenary session on 1 and 2 June, the Venice Commission asked its secretariat and the OSCE/ODIHR secretariat to complete the opinion so that it could be forwarded immediately to the requesting authorities (CDL-AD(2007)030). It was found that the draft law would not make fundamental changes to the method of voter registration which would continue to be done at local level, based on civil registration records. By introducing certain major changes concerning the computerisation of records, the protection of personal information, the registration of voters not in their constituency at the time of the elections or living abroad and to the recording of information on ethnicity, it was liable to have some effect on voters' rights, however. Although the latest draft was a considerable improvement which eliminated many of the ambiguities and inconsistencies contained in earlier versions, it did nevertheless raise questions. Basing voter registration on other civil records was bound to make it susceptible to flaws in those records, particularly with respect to the many migrants who had not informed the local authorities about their change of residence. In Croatia, moreover, the effect of emigration had clearly been compounded by the war for independence. A systematic and non-discriminatory method should be devised to correct voter registration records with respect to citizens who had permanently changed their addresses or were no longer permanent residents of Croatia. Such a

method should be developed only after extensive public consultation. The applicability of certain provisions to citizens who permanently resided abroad, others who resided abroad for long periods, and temporary residents or travellers abroad could stand to be clarified. In particular, it should be considered whether diplomatic and consular facilities responsible for organising out-of-country voting should maintain a voter list or whether this list should be maintained centrally. Either there should be more detailed provisions on the conditions for disclosure of voter registration information or the custodian of such information should be given exclusive regulatory authority in this area. Certain changes made to the draft since its earlier versions could be interpreted as an attempt to prevent voters from seeking to change their registered ethnic identification, and to cause the names of minority voters to be placed in separate voter list extracts for election day. These modifications should be reconsidered. Finally, members of ethnic or national minorities should under no circumstances be limited to voting only at special polling stations.

Georgia

Assistance to the Central Election Commission

At the request of Georgia's Central Election Commission (CEC) and in preparation for the presidential election, the Venice Commission assigned the CEC a long-term expert in electoral law. This expert assisted the CEC from 7 December 2007 to 7 January 2008, specifically in order to improve the planning of its activities for the presidential election on 5 January 2008.

Seminar on the holding and supervision of elections

In co-operation with Georgia's Central Election Commission (CEC), the Venice Commission held a seminar on 18 and 19 December 2007 on the holding and supervision of elections for CEC staff and NGO officials. The seminar focused on the various stages in the electoral process and the problems encountered.

Electoral reform in Georgia, 2-3 May, 5, 25 October 2007

The Venice Commission met on three occasions – in Tbilisi, Vienna and Strasbourg – with the Speaker of the Georgian Parliament, other parliamentarians and persons involved in political life, and also with the OSCE/ODIHR and representatives of the Council of Europe and the OSCE in Georgia, to discuss with the Georgian Parliament the implementation of international recommendations for improving the electoral code.

Kyrgyzstan

In the framework of the special Joint programme with the European Commission the Venice Commission participated in an exchange of views

on the reform of the electoral Code in August 2007.

Moldova

Law on the election of the governor of Gagauzia

At the invitation of the Moldovan authorities, the Congress of Local and Regional Authorities of the Council of Europe observed the election of the governor of Gagauzia on 3 and 17 December 2006. While recognising the improvement made in terms of administration since the previous election, the observers concluded that the conduct of the election had not been completely in accordance with international standards (CG/BUR(13)75). They found significant shortcomings in terms of consistency between Gagauzia's electoral legislation and that of Moldova and the impartiality of the Central Election Commission of Gagauzia, shortcomings that needed to be urgently addressed ahead of the local elections. Determined to monitor the progress of the Moldovan authorities in implementing its Recommendation 213 of 12 February 2007, the Congress requested, on the 26th of the same month, the Venice Commission's opinion on the law on the election of the governor of Gagauzia, as recently amended by the autonomous territorial unit.

The Council for Democratic Elections and the Venice Commission adopted the opinion at the session from 18 to 20 October (CDL-AD(2007)033). Many provisions of the law on the election of the Governor of Gagauzia followed the recommendations set forth in the Code of Good Practice in Electoral Matters (CDL-AD(2002)023rev) and codified the prevailing practice in democratic countries. The law provided for universal and equal suffrage and secret and direct election. For the most part, the provisions provided for a transparent electoral process with real possibilities for political, administrative and judicial oversight. Some of its provisions, however, could not be said to be in compliance with either the Code of Good Practice in Electoral Matters or prevailing practice in democratic countries. The Central Election Commission should be established on a permanent rather than an ad hoc basis. There should be clearer rules regarding the revocation of members of the other election commissions. The right to vote should not be too restrictive for some categories of voters, such as in detention facilities and in army units. There should also be clearer provisions on restriction of the registration of candidates, for whom the law should, moreover, ensure a fair campaign. The criteria for winning the runoff should be the same as for the first round of elections. The counting process should be improved, as should the complaints and appeals process. And lastly, it would advisable in future to enlist the services of the Venice Commission prior to amending the law.

Electoral code

The Moldovan electoral system has been the subject of a number of OSCE/ODIHR and Venice

Commission recommendations, including a joint opinion in 2006 (CDL-AD(2006)001). On 27 April 2007, the Moldovan Parliament reported to the Council of Europe on the action taken on the recommendations, stating that most of them had been followed in full and that only ten or so had been the subject of a partial acceptance or rejection, stating the reasons therefor. The Secretary General of the Council then referred the matter of the Moldovan electoral code to the Venice Commission.

The Council for Democratic Elections and the Venice Commission adopted the joint opinion of the OSCE/ODIHR and the Venice Commission at the session held from 13 to 15 December (CDL-AD(2007)040). As amended in March, the Moldovan electoral code provided a good basis for the organisation of genuinely democratic elections, despite the fact that some Venice Commission and OSCE/ODIHR recommendations were not reflected in the revised text.

There was still room for improvement, however. Although it ensured that all direct elections and referendums in the Republic of Moldova, except for those held by the authorities of the Autonomous Territorial Unit of Gagauzia, were conducted under the same rules, the text did contain a number of unnecessary repetitions if not ambiguities. Other, more substantive aspects of the text likewise called for comment. For example, the parliamentary election system should ensure adequate participation in public life of national minorities and mainstream interests at regional level. The turnout requirements for elections to be recognised as valid should be removed so as to avoid endless cycles of failed elections. The thresholds for winning seats should not be increased and consideration should be given to introducing a single threshold for parties and coalitions to gain seats in Parliament. The possibility for recall of election commission members should be reconsidered. Further efforts needed to be deployed to improve the reliability of the voter lists, including through the introduction of a centralised and permanent voter register. The provision allowing certain prisoners to be deprived of the right to vote should be brought into line with the latest case-law of the ECHR. Proceedings in cases of violations of the law that could lead to the revocation of a candidacy should abide by the principle of presumption of innocence. The secrecy of the vote should be better ensured by abolishing the requirement that ballots be stamped after they had been marked by voters. Restrictions on the right to campaign should be reviewed so as not to preclude pre-electoral campaigns, and not to conflict with the principle of freedom of expression. The existing mechanisms for supervising the counting of votes should be made more clear and further mechanisms introduced. The Central Election Commission should be required to publish detailed election results by polling station on its website as soon as they had been processed by the district commissions. And lastly, the powers and responsibilities of the various bodies responsible for reviewing complaints and appeals should be more

clearly defined so that the choice of appeal body was not left to the appellant.

Serbia

Legal advice during an election observation mission

In accordance with the agreement between the Parliamentary Assembly and the Venice Commission, the Commission provided legal advice during the Assembly mission to observe the parliamentary elections on 21 January 2007. The Venice Commission advised the *ad hoc* committee on the possibility of amending the electoral legislation in order to improve electoral practice; these recommendations have been included in the mission report and in the Parliamentary Assembly documents.

Kosovo – election observation mission

The head of the Elections and Referendums Division acted as legal adviser to the Council of Europe mission to observe the elections in Kosovo (Kosovo Assembly, municipal assemblies and mayors) on 17 November 2007 (CEEOM V). In this context, he provided the mission with an analysis of the main legal issues before and after the elections, including when preparing the final mission report.

"The former Yugoslav Republic of Macedonia"

Electoral reform

At the request of the Minister of Justice of "the former Yugoslav Republic of Macedonia", the Commission examined the proposed amendments to the country's electoral code in consultation with the OSCE/ODIHR, with which it prepared a draft joint opinion. Most of the proposed amendments are designed to allow voting abroad.

The opinion was adopted by the Commission at its plenary session on 16 and 17 March (CDL-AD(2007)012). While the proposed text dealt primarily with the issue of voting abroad, it included several other issues as well. The Commission suggested that a more thorough review of the electoral code be conducted and other additional issues considered for inclusion in the proposal, with reference to the 2006 opinion on the same code, an opinion prepared jointly with the OSCE/ODIHR, and to the final report on the parliamentary elections published the same year by the OSCE/ODIHR. Additional amendments could include measures to strengthen the complaints and appeals process, in particular by improving the rules of evidence for the State Election Commission, by improving the procedure for protection of candidates' rights before the courts of first instance and by making Supreme Court hearings to consider election-related appeals open to the public. In order to increase

transparency in the tabulation process, the electoral code should be amended to clearly task the State Election Commission with publishing all election results, including by polling station, electronically and in a timely manner. In order to avoid a cycle of failed presidential elections, the requirement to repeat the election if the turnout threshold (absolute majority of voters) was not met should be removed from the electoral code through a constitutional amendment.

Ukraine

Pre-term elections in Ukraine

On 19 April, in response to the political crisis that had gripped the country ever since the presidential decree dissolving Parliament, the Parliamentary Assembly of the Council of Europe instructed "the Venice Commission to give an opinion on the existing legislative basis for pre-term parliamentary elections in Ukraine and on the possible ways to improve electoral legislation based on European practice". The elections were to take place on 30 September.

The Commission adopted the opinion at its plenary session on 1 and 2 June (CDL-AD(2007)021). The Ukrainian Constitution and electoral legislation provided the legislative framework for special or pre-term elections. Some legislative provisions and procedural aspects of their implementation seemed to be unclear and/or not sufficient for fully ensuring voters' rights, however. This could seriously compromise the electoral process and create political and social unrest. The role of the electoral management bodies was absolutely essential therefore. The Central Election Commission should make full use of its powers and implement the existing legislative provisions on pre-term elections, with particular attention being given to organising the work of the lower commissions, registering candidates and checking the voter lists. Under the present circumstances, the extended timeframe for organising elections enabled the Central Election Commission to create lower commissions in a timely manner, so as to facilitate professional training of their members. While the issue of the complaints and appeals procedure in case of early elections was not addressed by the provisions of the law, the electoral management bodies had enough time to deal with the matter in a satisfactory manner. The law on the voter register adopted in March 2007 would not enter into force until 1 October and according to the information received by the Commission, the register did not exist yet. The current provisions might not be enough for the election commissions to carry out the work of checking and up-dating the voter lists. If the competent authorities, including the Central Election Commission, addressed the issue in a timely manner, however, this problem could be solved in time. The decisions taken by the various state authorities and courts in the electoral sphere should be implemented without delay, otherwise voters' trust in the electoral process could be seriously undermined. Lastly, the legislative provisions should

indicate clearly the terms for allocating financial resources to organise the pre-term elections.

Unfortunately, the amendment, in June, of the Ukrainian electoral law not only failed to resolve some of the problems noted by the Commission but also created fresh ones. The introduction of a new procedure requiring citizens returning to Ukraine to register well in advance of elections also meant that a number of them would be unable to exercise their right to vote, something that would be criticised by the international observation mission. At the plenary session on 14 and 15 December, several members expressed the hope that Ukraine would review its legislation in the light of the Commission's recommendations, and in particular its Code of Good Practice in Electoral Matters.

Draft law on the register of voters

On 12 February, the Ukrainian Parliament requested the Commission's opinion on the draft law on the register of voters. An initial draft, prepared in 2005, had already been commented on by the OSCE/ODIHR and the Venice Commission at the request of the Ministry of Justice and been the subject of a joint opinion, adopted by the Commission in December the same year (CDL-AD(2006)003).

The second joint opinion was adopted by the Commission at its plenary session on 1 and 2 June (CDL-AD(2007)026). The law, which provided for the introduction of a national voter register in the form of a regularly updated electronic database, might be a significant improvement over existing arrangements for preparing voter lists. It provided a detailed framework for the introduction and maintenance of the new register and included robust provisions to ensure the accuracy of the list and the protection of voters' data, as well as appropriate sanctions for unlawful access and abuse of registered data. On the subject of personal data protection, it was, however, pointed out that, although Ukraine had signed Council of Europe Convention 108 for the Protection of Individuals with regard to Automatic Processing of Personal Data, it had yet to ratify it. Substantial resources would be needed to set up and test the hardware and software required for introducing a new register, transferring data from existing voter lists and updating voter entries. Also, further resources would be needed to raise public awareness so as to ensure that voters played a full part in ensuring that they were included in the register and that their entries were accurate. The intention to update the register four times a year was laudable but would require substantial ongoing investment. If this proved to be too costly, less frequent updates might be more feasible. The law was long, very detailed, sometimes repetitive and quite complex, in a field where clear rules were necessary. The use of certain terminology was confusing, although this might be due to the translation. As a result, the law could be difficult for citizens to understand, for political actors to handle, and for electoral bodies and courts to implement.

Seminar for judges on electoral complaints and appeals

On 14-15 September 2007, the High administrative court of Ukraine and the Venice Commission organised a round table for judges of ordinary and administrative courts on issues related to complaints and appeals procedures during the elections. The participants had an opportunity to have an exchange of views on different ways of enhancing the operation of courts in the electoral process, on the recent case law of the European Court of Human Rights on Article 3 of Protocol No. 1 to the European Convention on Human Rights and on the latest recommendations of the Supreme Administrative Court of Ukraine on complaints and appeals procedures relevant to the early elections of 30 September 2007.

Legal advice during an election observation mission

In accordance with the agreement between the Parliamentary Assembly and the Venice Commission, the Commission provided legal advice during the Assembly's mission to observe the elections on 30 September 2007. The Venice Commission advised the *ad hoc* committee on the possibility of amending the law in order to improve electoral practice; these recommendations have been included in the mission report and in the Parliamentary Assembly documents.

United Kingdom

Electoral law

On 28 June 2006, a motion for a resolution was submitted to the Parliamentary Assembly of the Council of Europe to initiate a monitoring procedure to investigate electoral fraud in the United Kingdom. On 2 October, in accordance with the Assembly Rules of Procedure and resolutions, the Assembly Bureau transmitted the proposal, for opinion, to the Committee on the Honouring of Obligations and Commitments by Member States, commonly known as the "monitoring committee". The latter appointed two rapporteurs who carried out a fact-finding visit to the country from 26 to 28 February 2007, after which the monitoring committee sought the opinion of the Venice Commission. On 10 December, a delegation from the Venice Commission met with representatives of the Electoral Commission, the Electoral Office for Northern Ireland, election registration officers and returning officers and a Parliamentary Under-Secretary of State from the Ministry of Justice.

The Council for Democratic Elections and the Venice Commission adopted the opinion on the electoral law of the United Kingdom at the session from 13 to 15 December 2007. The opinion focused primarily on voter registration and postal voting. The introduction of a rolling registration system throughout the year in addition to the annual canvass was a positive measure for both increasing participation in elections and improving the accuracy of registers. The household system of

registration and the lack of personal identifiers, however, could lead to inaccuracies and other problems in securing the exercise of the individual right to vote. The fact that the system relied on voters' good faith, with penalties for anyone who was found to have acted dishonestly, was not enough in itself to ensure a fair ballot. The improvements made to the legislation and to the rules on postal voting, such as the introduction of personal identifiers in the registration procedure, were to be welcomed. The fact that this information was checked in only 20% of cases, however, raised questions about the reliability of the system. The legislation in force in Northern Ireland had tighter controls for preventing electoral fraud and other abuses that could not be considered as impeding the exercise of the right to free and fair elections. Indeed, it could be argued that this legislation was more in keeping with Council of Europe standards than the legislation in force in the rest of the United Kingdom, in particular where registration and certain aspects of postal voting were concerned. Differences in electoral law within one and the same state were not, *per se,* incompatible with European standards. In this particular case, the different requirements were warranted by the political situation in Northern Ireland, although the British authorities might possibly wish to consider whether the circumstances that had led to postal voting being made available only where justified rather than "on demand" still existed today.

The monitoring committee's opinion will be published on 22 January 2008 (AS/Mon (2007) 38). There is no need to initiate a procedure to monitor the United Kingdom's compliance in electoral matters, at least for the time being, as the electoral system is not yet so vulnerable as to impede the conduct of democratic elections. The monitoring committee will, however, continue to keep a close watch on the electoral situation in this country in its periodic reports, in case it deteriorates.

2. Transnational activities

Code of Good Practice on Referendums

At its 70th session (16-17 March 2007), the Commission adopted the Code of Good Practice on Referendums, including its explanatory report (CDL-AD(2007)008). The Code of Good Practice on Referendums was then forwarded to the Parliamentary Assembly and the Congress of Local and Regional Authorities of the Council of Europe. The Congress approved it at its 14th plenary session (30 May-1 June 2007) in its Resolution 235 (2007); the Standing Committee, acting on behalf of the Parliamentary Assembly, followed suit at its meeting on 23 November 2007 (see Recommendation 1821 (2007) and Resolution 1592 (2007). The matter is expected to be addressed by the Committee of Ministers in 2008. The Code of Good Practice on Referendums is set to become one of the key documents of the Council of Europe, alongside its counterpart, the

Code of Good Practice in Electoral Matters (CDL-AD(2002)023rev).

Choosing the date of an election: role of the executive and related issues

The Council decided to look at the role of the executive in choosing the date of an election. At its 20th meeting (17 March 2007), it accordingly held an initial exchange of views on the subject. Against this background, Mr Velaers prepared a report, which the Council for Democratic Elections adopted at its 22nd meeting (18 October 2007) and the Venice Commission at its 72nd plenary session (19-20 October 2007) (CDL-AD(2007)037). The report is divided into two parts: the first on choosing the date of ordinary elections after the expiration of the normal term of office and the second on choosing the date of extra-ordinary elections after the dissolution of Parliament. The date of ordinary elections could be determined by the constitution or the electoral law, within a fairly strict constitutional or legal framework, or could be left to the discretion of an authority. As far as extra-ordinary elections were concerned, these could take place in the circumstances prescribed by the constitution – for example, as part of a procedure to amend the constitution – or by decision of Parliament, the head of state or the government. In this latter instance, dissolution was subject in most states to certain formal or substantive conditions (e.g. existence of a political crisis). In was when there were no substantive conditions that there was a real possibility of choosing the date of an election. The report ended by emphasising the importance of the democratic nature of the decision-making process, which was largely dependent on the democratic legitimacy of the authority which decided when to hold the elections, especially in cases of dissolution of Parliament. It might also be useful to determine a minimum and a maximum period between the decision on the date of the elections and the elections themselves. The Council for Democratic Elections and the Commission also took note of certain reference documents, including a comparative table on the executive (CDL-AD(2007)037add1).[1]

Media coverage of election campaigns

In March, the Group of specialists on Human Rights in the information society (MC-S-IS) of the Council of Europe asked the Commission to take part in its work on the revision of the 1999 recommendation of the Committee of Ministers on media coverage of election campaigns (Recommendation R(99)15) and to provide an opinion focusing on the role played in such a coverage by electronic media. Following this

1. The other reference documents are the comparative table on choosing the date for an election (CDL-AD(2007)037add2); constitutional and legislative provisions (CDL-AD(2007)037add3) and a note on the issue of dissolution of parliament (CDL-AD(2007)037add4).

request, the Commission appointed Ms Thorgeirsdóttir and Mr Masters as rapporteurs, who provided the group of experts with their written comments. On 29-30 March, Ms Thorgeirsdóttir took part to a MC-S-IS meeting which was held in Strasbourg.

The Commission adopted the opinion at its plenary session on 1-2 June (CDL-AD(2007)022). As noted by the Committee of Ministers in a January 2007 declaration, the current process of media globalisation/concentration "can place a single or a few media owners or groups in a position of considerable power to separately or jointly set the agenda of public debate and significantly influence or shape public opinion, and thus also exert influence on the government and other state bodies and agencies". The media landscape is indeed overwhelmingly politicised, and journalists struggle for professionalism in an environment where they are poorly trained, often badly paid, and even subject to intense pressure from owners, powerful business groups in society, political factions, and religious groups. The perception is that reporters are in a weaker position during election periods and that external forces are more encroaching during such periods. Two major sets of principles should be strongly reaffirmed for the securing of responsible journalism in all news media during these periods.

The first set is related to the freedom of expression as a fundamental right in general and is comprised of the following principles: 1. The right of voters to be informed on political alternatives; 2. The right of the candidates and the political parties to communicate their platforms and their views and to access all forms of media; 3. Freedom for the media to spread information and to inform the public with no interference by government, business, or commercial interests; 4. The need to address the issue of the Internet's increasing role in the electoral process, particularly in respect of election campaign blackout, and dissemination of opinion polls; 5. The provision of electoral information through the Internet, and freedom of access to it, regardless of frontiers.

The second set is linked to media's particular rights and role during election campaigns. It consists of the following: 1. Media must have the freedom to inform the public, and to cover all relevant election issues; 2. The definition of mass media should be more precise; 3. Information for the public should be professional, correct, balanced, and provided in a transparent manner; 4. Journalists must be protected from harassment, intimidation, violence, and attack, which could induce self-censorship; 5. Regulatory frameworks on paid political advertising should ensure that: the possibility of buying advertising space is available to all contending parties, on consistent and equal conditions, with equal rates of payment ; transmission times are consistent, and programmed at equal times for all parties ; space provided in the print media are in agreement with the principle of equality of opportunity ; the public is aware that the message is a paid political advertisement.

Some specific considerations on the new communication services must also be made. There is a need to adapt some of the existing rules that apply to the more conventional information providers to these new services' peculiar needs. Though a difficult task, such an adaptation can be said to result in the following lines: there should be no interference with the editorial independence of new communication services or their election coverage nor with the right to express any political preferences; when covering election campaigns, new communication services owned by public authorities should act in a fair, balanced, and impartial manner, without discriminating against or supporting a specific political party or candidate; if such communication services owned either by public or private organisations offer paid political advertising, they should ensure that advertising is readily recognisable as such, and that all political contenders and parties are treated in an equal and non-discriminatory manner.

Secrecy of the vote in the context of parliamentary procedure

At the request of the Committee on the Honouring of Obligations and Commitments by Member States (Monitoring Committee) of the Parliamentary Assembly of the Council of Europe, the Venice Commission undertook a study on secrecy of the vote in the context of elections by Parliament. It appointed Mr Chagnollaud as rapporteur. A draft questionnaire was adopted by the Council for Democratic Elections at its meeting on 18 March 2006. Replies were received from Venice Commission members in respect of over 30 states.

Mr Chagnollaud prepared a summary report, which was adopted by the Council for Democratic Elections at its meeting on 2 June 2007, and later by the Commission at its plenary session on 19 and 20 October (CDL-AD(2007)034). The principle of secrecy of the vote, aimed at ensuring electoral honesty, had constitutional force only in elections by direct or indirect universal suffrage. In the case of purely internal elections held within parliamentary chambers, that is to say when what was being expressed was merely the will of members of parliament, and not an extension of the will of the "people", there was no European standard that could be used to establish a general exception to the practice of public voting during sittings. And however morally reprehensible violating secrecy during a ballot might be in cases where such secrecy was the rule, even in elections of this kind, punishing such behaviour, which was rarely recorded incidentally, was no easy task.

Dual voting for persons belonging to national minorities and other ways of facilitating the representation/ participation of minorities in national parliaments

The Council for Democratic Elections and the Commission pursued their reflection on this matter, on the basis of a revised document by the OSCE High Commissioner on National Minorities.

In particular, a joint meeting of the Council for Democratic Elections and the Sub-Commission for the Protection of Minorities dedicated to this topic was held on 18 October 2007. The final report will be adopted in 2008.

Opinion on the Convention on the standards of democratic elections, electoral rights and freedoms in the Commonwealth of Independent States

The Convention on the Standards of Democratic Elections, Electoral Rights and Freedoms in the member states of the Commonwealth of Independent States was adopted on 7 October 2002, then ratified by Armenia, Kyrgyzstan, Moldova, Russia and Tajikistan. On 28 September 2006, as part of the discussions on the possible adoption of a European instrument in electoral matters, the Secretary General of the Council of Europe asked the Venice Commission for an opinion on whether the CIS convention could serve as a model for a European convention.

A draft opinion was first examined by the Council for Democratic Elections at its meeting on 16 December 2006. The opinion was adopted by the Commission at its plenary session on 16 and 17 March 2007 (CDL-AD(2007)007). In terms of its general shape alone, the convention raised a number of questions. It was very detailed, unusually so for a text of this kind. A number of guarantees appeared several times and not always in the same form, which was liable to give rise to misunderstandings.

On a more substantive note, although it did not address the process from a fundamental rights perspective, the convention did represent a contribution to the definition and implementation of the international standards of electoral law. The essential features of the European electoral heritage had been incorporated. The text also dealt in an interesting way with different aspects of the electoral process, including not only rights and freedoms of the different agents involved, but also a description of the context and the circumstances, which might influence, and give sense to, the process as a whole. Other aspects might prove problematic, however, such as the restrictions on the rights of observers, the prohibition of any involvement by foreigners in the electoral process and the general obligation to accept the results of elections. It should also be emphasised that any restriction on a fundamental right should be clearly subjected to the principle of proportionality.

Fourth European Conference of Electoral Management Bodies – "Fighting against electoral fraud – complaints and appeals procedures" (Strasbourg, 20-21 September 2007)

The Fourth European Conference of Electoral Management Bodies – "Fighting against electoral fraud – complaints and appeals procedures" was organised by the Venice Commission in Strasbourg, on 20-21 September 2007. The issues which were addressed during the conference included the recent elections in member States (focusing on

problems observed during the vote and action taken to remedy them); fighting against fraud – specialised bodies or ordinary courts; a comparative study of the advantages and drawbacks of each approach, the challenges posed by distance voting; problems related to the financing of electoral campaigns; and the European Court of Human Rights case-law on violations of electoral rights.

Around 130 participants from different national electoral management bodies of the following countries attended the conference: Albania, Austria, Azerbaijan, Belgium, Bosnia and Herzegovina, Canada, Croatia, Denmark, Finland, Georgia, Germany, Hungary, Kyrgyzstan, Latvia, Lesotho, Lithuania, Malta, Mexico, Moldova, Netherlands, Nigeria, Panama, Philippines, Portugal, Romania, Russian Federation, Slovakia, Spain, Sweden, "the former Yugoslav Republic of Macedonia", Uganda, United Kingdom and the United States as well as members of the Parliamentary Assembly of the Council of Europe.

The Conference:

1. invited participating States to:

1.1 ensure the access of electors and candidates to an effective system of appeals as laid out in the "Code of Good Practice in Electoral matters" adopted by the "Venice Commission" in October 2002;

1.2 provide an effective system of prevention and repression of electoral fraud, – including its use during the pre-election and election phases – and fraud in respect to the registration of electors and candidates, election advertising and election financing;

1.3 adopt necessary measures to ensure the implementation of the rights enshrined in Article 3 Protocol No. 1 of the "European Convention on Human Rights" and the corresponding case-law of the European Court of Human Rights;

1.4 implement the obligations, commitments and decisions of other respective international instruments – including the "Copenhagen Document of the OSCE" by which the state is bound.

2. requested the Venice Commission to conduct a study on the inter-relationship between different national institutions – including the judiciary – and supranational institutions, responsible for dealing with complaints and appeals, to be submitted prior to the next European Conference of Electoral Management Bodies (EMB).

3. took note of the broad consensus to continue holding European conferences of Electoral Management Bodies annually, in a flexible and informal manner, on topics of common interest, amongst election experts from the public and, if invited, the academic sector. Participation shall be open to all European EMBs and relevant international institutions as well as to interested election authorities from other parts of the world, on equal levels. The secretariat to the conferences will be provided by the Venice Commission.

4. agreed that the 5th European Conference of EMBs will be held on the topic of "Distance voting from abroad" in the year 2008 in Belgium.

Regional conference of Balkan election officials

On 19 and 20 June 2007, the Council of Europe's Venice Commission held a regional conference of Balkan election officials in Skopje, in co-operation with the State Election Commission, the Association of European Election Officials (ACEEEO) and the International Foundation for Election Systems (IFES).

International and national experts spoke on the following subjects: civic education for voters; political party financing regulations and enforcement; voter registers; drawing of electoral boundaries.

VOTA, the Venice Commission's electoral database

The VOTA database was set up as part of the joint Venice Commission and European Commission programme "Democracy through Free and Fair Elections" in 2004. It contains the electoral legislation of the Venice Commission's member states and other states involved in the Commission's work. Over 80 laws and statutes from about 40 states, as well as a number of Venice Commission opinions, are already available in the database, in English and French.

3. Activities relating to political parties

Code of Good Practice for Political Parties

On 12 March 2007, the Parliamentary Assembly of the Council of Europe approved a Resolution 1546 (2007) on the Code of Good Practice for Political Parties that invited the Venice Commission to elaborate this code following the elements outlined in the resolution. The explicit aim of this code, as stated in the resolution, is reinforcing parties' internal democracy and increasing their credibility in the eyes of citizens, thus contributing to greater participation in political life. Furthermore, the Code should promote concepts and strategies which enhance and strengthen the role, status and relevance of political parties in a democratic system.

The Council for Democratic Elections discussed the issue during its meetings on 2 June and 13 December 2007 and asked the rapporteurs to prepare a text of the draft code for its meeting in June 2008.

Georgia

Financing of political parties and election campaigns

On 26 and 27 February 2007 the Venice Commission took part in a round table at the Council of Europe headquarters in Strasbourg on

amendments to the legal provisions concerning political party and election campaign finance in Georgia. The event was attended by some 20 participants from the Georgian Parliament, the various political parties, non-governmental organisations and the media. Mr Vogel represented the Venice Commission at the meeting. The discussions focused on those provisions of the law on election campaign financing that ought to be amended.

Moldova

Conference on promoting transparency and accountability of political parties in the Republic of Moldova

On 22 and 23 May 2007, the Venice Commission took part in a conference in Chișinău on promoting transparency and accountability of political parties in the Republic of Moldova. The event, hosted by the Moldovan Parliament, was jointly organised by the Directorate General of Human Rights and Legal Affairs together with the Venice Commission of the Council of Europe, the European Commission, the OSCE/ODIHR and the Swedish International Development Co-operation Agency. The purpose of the conference was to discuss the draft law on political parties, which had been adopted by the Moldovan Parliament to allow the implementation of Council of Europe, OSCE/ODIHR and Venice Commission recommendations.

Draft law on political parties

In January, the Speaker of the Moldovan Parliament asked the Council of Europe to give an expert opinion on a draft law on political parties. Mr Walecki submitted his comments on behalf of the Council of Europe's Directorate General of Legal Affairs (in February). The Venice Commission was involved in the handling of the request and asked Mr Vogel to comment.

The Commission endorsed Mr Vogel's comments at its plenary meeting on 1 and 2 June 2007. The draft law was an important step towards amending Moldova's existing legislation on political parties and their financing, providing an opportunity to create a modern system that would be both transparent and accountable. The wording of some of the provisions, however, conflicted with the European Convention on Human Rights and the case-law of the Court, which was responsible for enforcing it, or was incompatible with other European standards. Notable examples included the prohibition of any party which conveyed "ideas" which "contravened" the "provisions of the constitution"; the stipulation that only citizens could be members of political parties; the requirement that in order to register, a political party must have a certain level of support at national level; the prohibition on establishing parties on the basis of ethnic or racial criteria; the requirement that every political party submit a list of its members before an election; and the blanket ban that prohibited parties from accepting financial support

from abroad. Also, the provisions on tax exemptions were ambiguous and would in any case be better addressed through tax legislation.

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

1. Council of Europe

Committee of Ministers

The President of the Committee of Ministers, Minister Fiorenzo Stolfi (San Marino), addressed the Commission at its March session, paying tribute to the importance of its work.

Representatives of the Committee of Ministers participated in all the Commission's plenary sessions during 2007. The following ambassadors attended the sessions during 2007:

Ambassador Bruno Gain, Permanent Representative of France to the Council of Europe, Ambassador Eberhard Kölsch, Permanent Representative of Germany to the Council of Europe, Ambassador Meta Bole, Permanent Representative of Slovenia to the Council of Europe, Ambassador Piotr Świtalski, Permanent Representative of Poland to the Council of Europe, Ambassador Jacobus van der Velden, Permanent Representative of the Netherlands to the Council of Europe, Ambassadeur Américo Madeira Bárbara, Permanent Representative of Portugal to the Council of Europe, Ambassador Christian Oldenburg, Permanent Representative of Denmark to the Council of Europe, Ambassador Arif Mammadov, Permanent Representative of Azerbaijan to the Council of Europe and Ambassador Eleanor Fuller, Permanent Representative of the United Kingdom to the Council of Europe

Different subjects were raised by the representatives of the Committee of Ministers, including the draft Memorandum of Understanding between the European Union and the Council of Europe and its implications for the Commission, the Forum for the Future of Democracy, the work of the Committee of Ministers' rapporteur groups on democracy (GR-DEM) and legal affairs (GR-J), the need for respecting human rights in the fight against terrorism and the role of the Venice Commission in supporting reforms in central and eastern Europe.

At the request of the Committee of Ministers, the Venice Commission adopted a report on democratic oversight of intelligence services as well as comments on Recommendation 1791 of the Parliamentary Assembly on the state of human rights and democracy in Europe and Recommendation 1801 on secret detentions and illegal transfer of detainees involving Council of Europe member States. It started preparation of a report on the civilian control of armed forces which will be adopted in 2008.

Mr Christians (Belgium) participated on behalf of the Commission in the European Conference on "The Religious Dimension of Intercultural Dialogue", organised by the Presidency of the Committee of Ministers in San Marino on 23 to 24 April.

Parliamentary Assembly

The President of the Parliamentary Assembly, Mr van der Linden (Netherlands), addressed the Commission at its October session, welcoming the excellent co-operation between the Parliamentary Assembly and the Commission and the dialogue of the Commission with representatives of Arab constitutional and supreme courts.

The Vice-President of the Commission, Mr Mifsud Bonnici (Malta), addressed the Parliamentary Assembly during its debate on the state of human rights and democracy in Europe in April 2007.

The Enlarged Bureau of the Commission held a joint session with the Committee on Legal Affairs and Human Rights of the Parliamentary Assembly in Venice on 14 December. The main topic of the joint session was "State secrets as an obstacle to parliamentary and judicial scrutiny".

Mr Jurgens (Netherlands) attended the March, October and December sessions of the Commission as representative of the Parliamentary Assembly, Mr Ateş (Turkey) the October and December sessions.

The representatives of the Parliamentary Assembly informed the Commission about activities of the Parliamentary Assembly of particular interest to the Commission, including secret detentions, distance voting, the Assembly's debate on the state of human rights and democracy in Europe and accession of the European Union to the European Convention of Human Rights,

A number of opinions were provided at the request of the Parliamentary Assembly, including the Opinion on the Constitution of Serbia, the Opinion on the Law of Georgia on disciplinary responsibility of judges, the Opinion on legislative provisions concerning early elections in Ukraine and the Opinion on the electoral law of the United Kingdom as well as the reports on videosurveillance and on blasphemy and religious insult. The Opinion on the Constitution of Bulgaria will be forwarded to the Parliamentary Assembly in 2008.

The Parliamentary Assembly continued to participate actively in the Council for Democratic Elections, established in 2002 as a tripartite body of the Venice Commission, the Parliamentary Assembly and the Congress of Local and Regional Authorities of Europe (see Part IV above). The Council for Democratic Elections was chaired by a member of the Parliamentary Assembly, Mr van den Brande (Belgium) and a number of activities of the Council were initiated by the representatives from the Parliamentary Assembly. In accordance with the co-operation agreement concluded between the Venice Commission and

the Parliamentary Assembly, Venice Commission representatives participated in a number of election observation missions of the Assembly.

Mr Markert from the Commission Secretariat made a presentation on "Frozen Conflicts from a Comparative and International Law Perspective" at the Hearing of the Monitoring Committee of the Parliamentary Assembly in Berlin on 5 to 6 November.

Mr Louis-Léon Christians (Belgium) participated in a colloquy on questions related to State and religion, organised by PACE's Committee on Culture, Science and Education in Strasbourg on 27 February 2007, at which he presented the outcome of the Venice Commission's comparative study on the European legislation on blasphemy, religious insults and incitement to religious hatred.

Secretary General

The Secretary General of the Council of Europe, Mr Terry Davis, addressed the Commission at its March session, underlining the important role of the Commission in particular in Central and Eastern Europe.

Congress of Local and Regional Authorities

The Congress was represented at the March, June, and December plenary sessions of the Commission by Mr Keith Whitmore and at the October Session by Mr Ian Micallef. The Congress continued to participate actively in the Council for Democratic Elections, established in 2002 as a tri-partite body of the Venice Commission, the Parliamentary Assembly and the Congress of Local and Regional Authorities of Europe (see Part IV above). The opinion on the law of Moldova on the election of the governor of Gagauzia was adopted at the request of the Congress.

European Court of Human Rights

In the case of *Parti Nationaliste Basque – Organisation Régional d'Iparralde v. France*, the European Court of Human Rights requested the Venice Commission's expert opinion on the prohibition on the funding of political parties by foreign political parties. The Court's judgment of 7 June 2007 relies on the Commission's opinion.

The Venice Commission's works were cited by the Court in several of its judgments and decisions of 2007: *Russian Conservative Party of entrepreneurs and others v. Russia* judgment of 11 January 2007, *Yumak and Sadak v. Turkey* judgment of 30 January 2007; The *Georgian Labour Party v. Georgia* decision of 22 May 2007 and *Petkov, Gerogiev and Dimitrov v. Bulgaria* decision of 4 December 2007 (code of good practice on electoral matters); *Beric and others v. Bosnia and Herzegovina*, decision of 16 October 2007 (Opinion on the constitutional situation in Bosnia and Herzegovina and the powers of the High Representative); *Behrami and Behrami v. France*, and *Saramati v. France*, Germany and Norway, decision of 2 May 2007 (Opinion on human rights in

Kosovo: Possible establishment of review mechanisms).

Forum for the Future of Democracy

The Venice Commission participated in the third Forum for the Future of Democracy on "Power and Empowerment, the interdependence of democracy and human rights" which took place in Stockholm and Sigtuna (Sweden) on 13-15 June 2007. Several conclusions of the Forum called for follow-up action by the Venice Commission, notably for establishing guidelines on the elimination of democratic deficits in the functioning of democratic institutions.

North-South Centre

In 2007, the Venice Commission co-organised, together with the Commissioner for Human Rights, the Annual Forum of the North-South Centre of the Council of Europe on "National Human Rights Institutions: the Cornerstone for the Promotion and Protection of Human Rights" on 16 to 17 November in Lisbon. Representatives of 39 countries participated in the Forum.

NGO Grouping "Civil Society and Democracy in Europe"

Mr Ritchie, President of the Grouping, informed the Commission at its June session on the activities of this grouping to examine legislation of Council of Europe member states with respect to freedom of association.

Committee of Experts on Terrorism (Codexter)

Mr Cameron (Sweden) presented the Commission's report on democratic oversight of intelligence services at a meeting of Codexter in Strasbourg on 18 October.

2. European Union

Throughout the year the Commission co-operated closely with the EU Special Representative for Moldova, Mr Mizsei, and co-ordinated efforts with the EU Special Representative for the South Caucasus, Mr Semneby. At the request of and in co-operation with the EU Preparation Team, it took part in the preparation of a preliminary draft Constitution for Kosovo. Close co-ordination was maintained with the Council of the European Union in particular with respect to the constitutional situation in Ukraine.

The Commission intensified its close co-operation with the European Commission in South Eastern Europe. The European Commission participated actively in activities related to the new Constitution of Serbia and closely followed activities in Montenegro.

The Venice Commission took part in the Joint Programme of Co-operation between the European Commission and the Council of Europe to promote the democratic process in Ukraine and South Caucasus, more specifically through

activities in the electoral field in Georgia and Ukraine.

The activities of the Commission for Kazakhstan and Kyrgyzstan took place in the framework of a Joint Programme with the European Commission.

3. OSCE

During 2007 the Venice Commission continued its close co-operation with OSCE/ODIHR in electoral matters, in particular through the drafting of opinions on the electoral legislation in Albania, Armenia, Croatia, Moldova and "the former Yugoslav Republic of Macedonia". More details on this co-operation are provided in Part IV above. The OSCE/ODIHR took part in the 4th European Conference of Electoral Management Bodies (Strasbourg, 20-21 September 2007). Moreover, the Venice Commission regularly co-operates with the OSCE field offices in electoral and other matters.

The Venice Commission, OSCE/ODIHR and several OSCE missions also actively co-operated in relation to the adoption of a new Constitutional for Montenegro and to legislative amendments in Azerbaijan and "the Former Yugoslav Republic of Macedonia".

In the course of 2007, the Commission and the OSCE High Commissioner on National Minorities pursued their reflection on the "Dual Voting for Persons Belonging to National Minorities and other ways of facilitating the representation/participation of minorities in national parliaments".

In the course of the OSCE Human Dimension Meeting, in Vienna on 30 March 2007, Mr Paczolay participated in the launch of the OSCE/ODIHR guidelines on freedom of assembly, which were prepared in consultation with the Venice Commission.

4. United Nations

Mr Bartole represented the Venice Commission at the consultation organised by the UN Independent Expert on minority issues on "Issues related to minorities and the denial or deprivation of citizenship" which took place at the United Nations Headquarters in Geneva on 6 and 7 December 2007. Mr Bartole presented the Commission's conclusions in the report on "Non-citizens and minority rights".

5. International Association of Constitutional Law (IACL)

Several representatives of the Venice Commission took part in the VIIth World Congress of the International Association of Constitutional Law in Athens in June 2007.

6. Association of European Election Officials (ACEEEO)

The Venice Commission was represented at the ACEEEO Conference in Strasbourg on 18 and 19 September 2007.

7. International Institute for Democracy and Electoral Assistance (IDEA)

At the invitation of International IDEA, a Venice Commission representative took part in a workshop hosted by International IDEA and UNDP's Democratic Governance Group for leading experts and practitioners on "Strengthening Political Parties for Democracy – Challenges for International Assistance", which took place in Stockholm on 23 January 2007. The aim of the workshop was to assess the state of development of international assistance to parties in new democracies and to seek new ways and platforms to improve work on the field.

8. Asia-Europe Foundation

At the request of the Asia-Europe Foundation Commission representatives took part in the Asia-Europe round table on "Sustaining Peace through Post-Conflict Reconstruction" in Singapore on 23 and 25 April 2007 and in the meeting of the ASEF advisory group on democratisation and justice on "The role of Safeguard and Oversight Bodies in Improving Security in Conflict" in Jakarta on 3 and 4 December.

Appendix I – List of member countries

Members

Albania (14.10.1996)

Algeria (01.12.2007)

Andorra (1.02.2000)

Armenia (27.03.2001)

Austria (10.05.1990)

Azerbaijan (1.03.2001)

Belgium (10.05.1990)

Bosnia and Herzegovina (24.04.2002)

Bulgaria (29.05.1992)

Chile (1.10.2005)

Croatia (1.01.1997)

Cyprus (10.05.1990)

Czech Republic (1.11.1994)

Denmark (10.05.1990)

Estonia (3.04.1995)

Finland (10.05.1990)

France (10.05.1990)

Georgia (1.10.1999)

Germany (3.07.1990)

Greece (10.05.1990)

Hungary (28.11.1990)

Iceland (5.07.1993)

Ireland (10.05.1990)

Italy (10.05.1990)

Republic of Korea (01.06.2006)

Kyrgyzstan (01.01.2004)

Latvia (11.09.1995)

Liechtenstein (26.08.1991)

Lithuania (27.04.1994)

Luxembourg (10.05.1990)

Malta (10.05.1990)

Moldova (25.06.1996)

Monaco (05.10.2004)

Montenegro (20.06.2006)

Morocco (01.06.2007)

Netherlands (1.08.1992)

Norway (10.05.1990)

Poland (30.04.1992)

Portugal (10.05.1990)

Romania (26.05.1994)

Russian Federation (1.01.2002)

San Marino (10.05.1990)

Serbia (3.04.2003).

Slovakia (8.07.1993)

Slovenia (2.03.1994)

Spain (10.05.1990)

Sweden (10.05.1990)

Switzerland (10.05.1990)

"the former Yugoslav Republic of Macedonia" (19.02.1996)

Turkey (10.05.1990)

Ukraine (3.02.1997)

United Kingdom (1.06.1999)

Associate member

Belarus (24.11.1994)

Observer

Argentina (20.04.1995)

Canada (23.05.1991)

Holy See (13.01.1992)

Israel (15.03.2000)[1]

Japan (18.06.1993)

Kazakhstan (30.04.1998)

Mexico (12.12.2001)

United States (10.10.1991)

Uruguay (19.10.1995)

Participants

European Commission

OSCE/ODIHR

Special co-operation status

South Africa

1. Israel was invited to accede to the Englarged Agreement by the Committee of Ministers on 16 January 2008.

Appendix II – List of members[1]

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

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

Mr Kaarlo TUORI (Finland), Vice-President, Professor of Jurisprudence, University of Helsinki
(Substitute: Mr Matti NIEMIVUO, Former Director at the Department of Legislation, Ministry of Justice)

Mr Valeriy ZORKIN (Russia), Vice-President, President of the Constitutional Court
(Substitute: Mr Valeriy MUSIN, Head of Division, Legal Faculty, St Petersburg State University)

Mr Ergun ÖZBUDUN (Turkey), Professor, University of Bilkent, Vice President of the Turkish Foundation for Democracy
(Substitute: Mr Erdal ONAR, Associate Professor, Faculty of Law, Ankara University)

Mr Peter JAMBREK,[2] (Slovenia), Professor, Dean, Graduate School of Government and European Affairs, Former Minister of the Interior, Former President of the Constitutional Court, Former Judge at the European Court of Human Rights
(Substitute: Mr Miha POGACNIK, Professor of International and European Law, Faculty for Postgraduate State and European Studies)

Mr Cyril SVOBODA (Czech Republic), Member of Parliament, Former Deputy Prime Minister, Former Minister of Foreign Affairs
(Substitute: Ms Eliska WAGNEROVA, Vice-President, Constitutional Court)

Mr Aivars ENDZINS (Latvia), Head of Department of Public Law, Turiba School of Business Administration, Former President, Constitutional Court

Mr Stanko NICK (Croatia), Former Ambassador of Croatia in Hungary
(Substitute: Ms Jasna OMEJEC, Judge, Constitutional Court)

1. By order of seniority.
2. Resigned on 18 January 2008. A new member has not yet been appointed.

Mr Hjörtur TORFASON (Iceland), Former Judge, Supreme Court of Iceland
(Substitute: Ms Herdis THORGEIRSDOTTIR, Professor, Faculty of Law, Bifrost School of Business)

Mr Pieter VAN DIJK (The Netherlands), State Councillor, Former Judge at the European Court of Human Rights
(Substitute: Mr Ben VERMEULEN, Professor of Constitutional, Administrative and Education Law, University of Amsterdam)

Mr Jeffrey JOWELL (United Kingdom), Professor of Public Law, University College London
(Substitute: Mr Anthony BRADLEY, Professor)

Mr Gaguik HARUTUNIAN (Armenia), President, Constitutional Court
(Substitute: Mr Armen HARUTUNIAN, Counsellor, Constitutional Court, Rector, State Administration Academy)

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

Ms Finola FLANAGAN (Ireland), Director General, Senior Legal Adviser, Head of the Office of the Attorney General
(Substitute: Mr James HAMILTON, Director of Public Prosecutions)

Ms Lydie ERR (Luxembourg), Member of Parliament

Mr Vojin DIMITRIJEVIC, (Serbia), Professor of Public International Law, Union University School of Law, Director, Belgrade Human Rights Centre

Ms Cholpon BAEKOVA (Kyrgyzstan), Vice Speaker of the Parliament

Mr Lätif HÜSEYNOV (Azerbaijan), Professor of Public International Law

Mr Anton STANKOV (Bulgaria), Judge, Sofia City Court
(Substitute: Mr Eugeni TANCHEV, Judge, Constitutional Court of Bulgaria)

Ms Marijana LAZAROVA TRAJKOVSKA, [1] ("The former Yugoslav Republic of Macedonia"), Judge, Constitutional Court

1. Resigned on 24 January 2009. A new member has not yet been appointed

Mr Carlos CLOSA MONTERO (Spain), Professor, Sub-Director for Studies and Investigation, Centre for Political and Constitutional Studies
(Substitute: Mr Angel J. SANCHEZ NAVARRO, Professor of Constitutional Law, Complutense University, Madrid)

Mr Serhiy HOLOVATY (Ukraine), Member of Parliament, Former Minister of Justice, President, Ukrainian Legal Foundation

Mr Dominique CHAGNOLLAUD (Monaco), Member of the Supreme Court, Professor, University of Law, Economics and Social Science Paris II
(Substitute : Mr Christophe SOSSO, Defence Lawyer)

Mr Nicolae ESANU (Moldova), Deputy Minister of Justice

Mr Peter PACZOLAY (Hungary), Judge, Constitutional Court
(Substitute: Mr Laszlo TROCSANY, Professor of Constitutional Law University of Szeged)

Mr Oliver KASK (Estonia), Head of Public Law Division, Legislative Politics Department, Ministry of Justice

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

Mr Luis CEA EGANA (Chile), President, Constitutional Court
(Substitute: Mr Juan COLOMBO CAMPBELL, Judge, Constitutional Court)

Mr Egidijus JARASIUNAS (Lithuania), Counsellor to Chairman of the Constitutional Court
(Substitute: Ms Zivile LIEKYTE, Director, Department of Legislation and Public Law, Ministry of Justice)

Mr Jean-Claude COLLIARD (France), Professor of Public Law, Member of the Constitutional Council
(Substitute: Mr Olivier DUTHEILLET DE LAMOTHE, State Counsellor, member of the Constitutional Council

Mr Hubert HAENEL, Member of the Council of State, Senator Haut-Rhin, President of the Senate delegation to the European Union)

Mr Christoph GRABENWARTER (Austria), Judge, Constitutional Court
(Substitute: Ms Gabriele KUCSKO-STADLMAYER, Professor, University of Vienna)

Ms Gret HALLER (Switzerland), Senior lecturer, Johann Wolfgang Goethe University, Frankfurt am Main, Former Speaker of the Swiss Parliament
(Substitute: Ms Monique JAMETTI GREINER, Vice Director, Head of the international relations Department, Federal Office of Justice)

Ms Kalliopi KOUFA (Greece), Professor of International Law, University Aristote, Thessaloniki
(Substitute: Ms Fani DASKALOPOULOU-LIVADA, Assistant Legal Adviser, Legal Department, Ministry of Foreign Affairs)

Mr Frixos NICOLAIDES (Cyprus), Supreme Court Judge
(Substitute: Mr Myron NICOLATOS, Supreme Court Judge)

Mr Jan VELAERS (Belgium), Professor, University of Antwerp
(Substitute: Mr Jean-Claude SCHOLSEM (Belgium), Professor, Law Faculty, University of Liège

Mr Lucian MIHAI (Romania), Professor, Faculty of Law, University of Bucharest
(Substitute: Mr Bogdan AURESCU, Director General, Ministry of Foreign Affairs)

Mr Kong-hyun LEE (Republic of Korea), Justice, Constitutional Court

Mr Boohwan HAN, Attorney at Law

Mr Ledi BIANKU[1] (Albania), Executive Director, European Centre, Tirana

Mr Srdjan DARMANOVIC (Montenegro), Professor, University of Montenegro, Director, Centre for Democracy and Human Rights

Mr Harry GSTÖHL (Liechtenstein), Princely Justice Counsellor, Attorney at Law
(Substitute: Mr Wilfried HOOP, Partner, Hoop and Hoop)

Ms Maria Fernanda PALMA (Portugal), Professor, University of Lisbon
(Substitute: Mr Pedro BACELAR de VASCONCELOS)

Mr Jorgen Steen SORENSEN (Denmark), Director of Public Prosecutions
(Substitute: Mr Michael Hansen JENSEN, Professor, University of Aarhus)

1. Resigned on 8 February 2008. A new member has not yet been appointed.

N.N. (San Marino)[1]
(Substitute: Ms Barbara REFFI, State Attorney)

Ms Evetta MACEJKOVA (Slovakia), President, Constitutional Court

Mr Marc VILA AMIGO (Andorra),

Mr Wolfgang HOFFMANN-RIEM (Germany), Judge, Federal Constitutional Court
(Substitute: Ms Angelika NUSSBERGER, Professor, University of Cologne)

Mr George PAPUASHVILI (Georgia), President, Constitutional Court
(Substitute: Mr Levan E. BODZASHVILI, Ministry of Foreign Affairs)

Mr Sergio BARTOLE (Italy), Professor, University of Trieste
(Substitute : Mr Guido NEPPI MODONA, Judge, Constitutional Court of Italy)

N.N. (Algeria)

N.N. (Morocco)

Associate members

N.N. (Belarus)

Observers

N.N. (Argentina)

Mr Yves de MONTIGNY (Canada), Judge, Federal Court of Canada
(Substitute: Mr Gérald BEAUDOIN, Professor, University of Ottawa, Former Senator)

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

Mr Dan MERIDOR (Israel), Chairman, The Jerusalem Foundation, Senior Partner, Haim Zadok and Co

Mr Akira TAKANO (Japan), Consul, Consulate General of Japan, Strasbourg

1. Member resigned on 13 March 2007. A new member has not yet been appointed.

Mr Almaz N. KHAMZAYEV (Kazakhstan), Ambassador of Kazakhstan in Rome

Ms Maria AMPARO CASAR (Mexico), Professor

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

Mr Jorge TALICE (Uruguay), Ambassador of Uruguay in Paris

Secretariat

Mr Gianni BUQUICCHIO

Mr Thomas MARKERT

Mrs Simona GRANATA-MENGHINI

Mr Pierre GARRONE

Mr Rudolf DÜRR

Mr Alain CHABLAIS

Mr Sergueï KOUZNETSOV

Ms Caroline MARTIN

Ms Tanja GERWIEN

Mr Jorg NOBBE

Mr Gaël MARTIN-MICALLEF

Ms Tatiana MYCHELOVA

Ms Helen MONKS

Ms Monica PETROVICI

Ms Brigitte AUBRY

Ms Marian JORDAN

Mrs Emmy KEFALLONITOU

Mrs Brigitte RALL

Ms Ana GOREY

Mrs Marie-Louise WIGISHOFF

Ms Caroline GODARD

Mrs Rosy RIETSCH

Appendix III – Offices and composition of the sub-commissions

- **President:** Mr Helgesen
- **Vice-Presidents:** Ms Suchocka, Mr Tuori, Mr Zorkin
- **Bureau:** Messrs Colliard, Endzins, Holovaty, Paczolay
- **Council for Democratic Elections**: Chair: Mr Luc van den Brande (Parliamentary Assembly) Venice Commission – Vice-Chair: Ms Lazarova Trajkovska: Members: Messrs Chagnollaud, Colliard, Kask, Mifsud Bonnici Paczolay, Sanchez Navarro, Torfason
- **Parliamentary Assembly** – Ms Josette Durrieu, Mr Andreas Gross, Ms Hanne Severinsen
- **Congress of Local and Regional authorities** – Mr Ian Micallef, Mr Keith Whitmore
- **Joint Council on Constitutional Justice**: Chair: Mr van Dijk: Members: Messrs Bartole, Endzins, Harutunian, Holovaty, Jarasiunas, Jowell, Messrs Lee, Mihai, Neppi Modona, Ms Omejec, Mr Paczolay, Ms Thorgeirsdottir, Mr Torfason, Ms Wagnerova, as well as 90 liaison officers from 65 Constitutional Courts or Courts with equivalent jurisdiction
- **Federal State and Regional State**: Chair: Mr Closa Montero: Members: Messrs Nick, Scholsem
- **International Law**: Chair: Mr Dimitrijevic: Members : Messrs Cameron, Dutheillet de Lamothe, Messrs Haenel, Huseynov, Ms Koufa, Messrs Mifsud Bonnici, Nick, Torfason
- **Protection of Minorities**: Chair: Mr Velaers: Members: Messrs Bartole, van Dijk, Dimtrijevic, Ms Koufa, Messrs Nick, Scholsem, Trocsanyi
- **Fundamental Rights**: Chair: Mr Helgesen: Members: Messrs Gstöhl, Kask, Ms Koufa, Messrs Mifsud Bonnici, Musin, Neppi Modona, Nick, Ms Nussberger, Ms Omejec, Ms Suchocka, Mr Sorensen, Ms Thorgeirsdottir, Messrs Torfason, Velaers

- **Democratic Institutions**: Chair: Mr Jowell: Members: Messrs Bradley, Closa Montero, Darmanovic, Dutheillet de Lamothe, Endzins, Ms Err, Messrs Gstöhl, Haenel, Holovaty, Jarasiunas, Jensen, Mifsud Bonnici, Neppi Modona, Özbudun, Paczolay, Scholsem, Ms Thorgeirsdottir, Mr Torfason
- **Judiciary**: Chair: Ms Flanagan: Members: Messrs Bartole, Bradley, Endzins, Gstöhl, Haenel, Holovaty, Jowell, Kask, Mazak, Mihai, Neppi Modona, Ms Nussberger, Mr Özbudun, Ms Suchocka, Mr Torfason
- **External Relations**: Chair: Mr Mifsud Bonnici: Members: Messrs Jowell, Nick, Trocsany

Appendix IV – Meetings of the Venice Commission in 2007[1]

1. Plenary sessions

70th Session	16-17 March
71st Session	1-2 June
72nd Session	19-20 October
73rd Session	14-15 December

Bureau

Meeting enlarged to include the Chairpersons of Sub-Commissions – 15 March

Meeting enlarged to include the Chairpersons of Sub-Commissions – 31 May

Meeting enlarged to include the Chairpersons of Sub-Commissions – 18 October

Meeting enlarged to include the Chairpersons of Sub-Commissions – 14 December

Followed by a joint meeting with the Committee on Legal Affairs and Human Rights of the Parliamentary Assembly of the Council of Europe

2. Sub-commissions

Democratic Institutions	31 May
	18 October
Fundamental Rights	15 March

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

Judiciary	15 March
Protection of Minorities	18 October (Joint Meeting with the Sub-Commission on Democratic Institutions)

3. Democratic development of public institutions and respect for human rights

Meetings of working groups and rapporteurs

Azerbaijan

Freedom of Assembly	21 November (Baku)

Bulgaria

Constitutional reform	12-13 November (Sofia)

Finland

Evaluation of the constitution	7-8 June (Helsinki and Turku)

Kazakhstan

Constitutional reform	14-15 May (Almaty and Astana)

Kyrgyzstan

Constitutional reform	27-28 February (Bishkek)

Moldova

Status of Transnistria	21 February (Paris) 9 November (London) 19 December (Brussels)

Montenegro

Constitutional reform	12 January (Monaco) 26 April (Podgorica) 18 September (Paris)*Serbia*

Serbia

Meetings on the Constitution of Kosovo	30 January (Pristina) 8 April (Vienna) 13-16 June (Skopje)
Workshop on New Constitution	1-3 November (Mitrovica)
New Constitution of Serbia	5 March (Paris)

"The former Yugoslav Republic of Macedonia"

Draft law on the legal status of a church, religious community and a religious group	6-7 March (Skopje)

Ukraine

Constitutional reform	16 July (Kyiv)

Forum for the future of democracy

13-15 June (Stockholm)

Democratic oversight of national security in Council of Europe member States

26 March (Paris)

Democratic control of armed forces

31 May

25 September (Paris)

Blasphemy, religious insult and incitement to religious hatred

23 February (Paris)

Other seminars and conferences organised by the Commission or in which the Commission was involved

Forum on constitutional reform : the view of the civil society	16-18 February (Odessa)
Meeting with the European Union on co-operation in South East Europe	22 February (Brussels)
Colloquy on questions relating to the state and religion, organised by the Culture Committee of the Parliamentary Assembly	27 February (Strasbourg)
Executive Committee IACL	22 March (Bologna)
OSCE Human Dimension Meeting on freedom of assembly, association and expression	30 March (Vienna)
Meeting of the Parliamentary Assembly on the state of human rights and democracy in Europe	18 April (Strasbourg)
European Conference on "the religious dimension of the intercultural dialogue"	23-24 April (San Marino)
UniDem Seminar on the participation of minorities in public life	18-19 May (Zagreb)
5th Asia Europe Round Table	23-25 May (Singapore)
VIIth World Conference of Constitutional Law	15 June (Athens)
Seminar on the draft commentary on the participation of persons belonging to national minorities in cultural, social and economic life and public affairs	2-4 October (Bolzano)
Participation in meeting of the Committee of Experts on Terrorism (CODEXTER)	18 October (Strasbourg)
Hearing of the Monitoring Committee of the Parliamentary Assembly on frozen conflicts	5-6 November (Berlin)
Meeting of the Scientific Council of the foundation "Venezia per la pace"	12 November

The role of international organisations in advancing minority protection in Georgia	12 November (Brussels)
Meeting organised by the UN Independent Expert on Minority Issues on "issues related to minorities and the denial or deprivation of citizenship"	6-7 December (Geneva)

4. Strengthening constitutional justice as guarantor of democracy, human rights and the rule of law

Meeting of the Working Group on the systematic thesaurus	29 May
Joint Council on Constitutional Justice (Meeting with Liaison officers from Constitutional Courts)	29-30 May
6th Annual Conference ACCPUF	28-30 November (Strasbourg)

Meetings of working groups and rapporteurs

Montenegro

Judicial Council	7-8 December (Podgorica)

Ukraine

Law on judiciary and status of judges	12-13 February (Kyiv)

Constitutional justice seminars

Conference on "constitutionalism, the key to democracy, human rights and the rule of law"	31 March-1 April (Lesotho)
Seminar on "Jurisdiction of the Constitutional Court and the European Court of Human Rights in conflict zones"	6-7 July (Batumi)
Seminar on political questions in constitutional review	6-7 September (Tallin)
Seminar with the ombudsman of Kazakhstan on the development of the Ombudsman Institution of the Republic of Kazakhstan	18 September (Astana)
12th Yerevan Conference	5-6 October (Yerevan)

Seminar "Interaction between national courts and the European Court of Human Rights"	6-7 October (Batumi)
10th International Forum "Constitutional review: the constitutional principle of the social state and its application by the Constitutional Courts"	12-13 October (Moscow)
2007 Lisbon Forum "Constitutionalism – the key to democracy, human rights and the rule of law" in co-operation with the North-South Centre	28-29 November (Lisbon)
15th Anniversary Constitutional Court of Romania	6-7 December (Bucharest)

Other seminars and conferences in which the Commission participated

Training Seminar on the Preparation of Decisions ACCPUF	19-21 February (Strasbourg
3rd Conference of Judges	26-27 March (Rome)
CCJE Working group on the Council for Justice	28-29 March (Rome)
10th Round Table of European Ombudsmen and the Council of Europe Commissioner for Human Rights	12-13 April (Athens)
CCJE-GT Meeting	25-26 June (Graz)
Conference 100th Anniversary Association of Austrian Judges	27 June (Graz)
Meetings with Israeli and Palestinian authorities	29-30 August (Tel Aviv)
10th Anniversary of Constitutional Court of Algeria	4 September (Algiers)
5th Conference of Asian Constitutional Court Judges	10-11 October (Seoul)
World public forum: Dialogue of civilisations	11-12 October (Rhodes)
Meeting of Union of Arab Constitutional Courts and Councils with Venice Commission	18 October
5th Ibero-American Conference of Constitutional Justice	28-30 November (Cartagena)
Advisory Group Asia-Europe	3-4 December (Jakarta)
South African Judges Council Registrars' meeting	6-8 December (Johannesburg and Cape Town)
20th Anniversary Constitutional Court of Tunisia	14-15 December (Tunis)

5. Democracy through free and fair elections

Council for Democratic Elections

17 March
2 June
18 October
13 December

Meetings of working groups and rapporteurs

Albania

Workshop on electoral systems in Albania	10 October (Tirana)

Armenia

Seminar on holding and supervision of elections	25-26 April (Tsakhkadzor)

Azerbaijan

Meetings on revision of electoral code	11-13 April (Baku) 30 May (Baku) 6 November (Baku)
Round table of electoral complaints	7-8 November (Baku)
Round table on the composition of electoral commissions	9 November (Baku)

Georgia

Technical round table discussion on the draft amendments to the legislation dealing with party and campaign financing	26-27 February (Strasbourg)
Electoral reform	3-5 May (Tbilisi) 5 October (Strasbourg) 25 October (Vienna)

Kyrgyzstan

Meetings on electoral code	28-29 August (Bishkek)

Moldova

Conference on promoting transparency and accountability of political parties in Moldova	22-23 May (Chișinău)

"The former Yugoslav Republic of Macedonia"

Workshop on amendments to the electoral legislation	6-7 July (Ohrid)
Working group on functioning of electoral campaigns	8 November (Skopje)
Seminar on electoral standards pertaining to ballot secrecy	3 December (Skopje)

Ukraine

Co-ordination meeting with OSCE and ODIHR on the implementation of the co-operation programme with Ukraine	23 February (Warsaw)
Meeting co-organised with OSCE on the electoral legislation of Ukraine	20-21 March (Warsaw)
Conference on European election standards experience and prospects of Ukraine	13 September (Kyiv)
Seminar for Judges on election proceedings	14-15 September (Kyiv)
Seminar monitoring the 2007 electoral process in penitentiary facilities of Ukraine	25 September
10th Anniversary of Electoral commission of Ukraine	12-14 November (Kyiv)

United Kingdom

Meeting on electoral law	10 December (London)

Electoral law training workshops

11-13 December (Yerevan)
18-20 December (Tbilisi)

Electoral assistance

Assistance to Central Electoral Commission Armenia	27 March-13 April (Yerevan)
Assistance to Central Electoral Commission Georgia	7-31 December (Tbilisi)

Election observation

Observation elections in Serbia	19-22 January (Belgrade)
Observation elections in Armenia	10-13 May (Yerevan)
Observation elections in Ukraine	28 September–1 October (Kyiv)

Other seminars and conferences organised by the Commission or in which the Commission was involved

Conference International IDEA	23 January (Stockholm)
Conference "the parliamentary dimension of election observation: applying common standards"	15-16 February (Strasbourg)
Meeting organised by the Media Division of the Council of Europe on the revision of Rec R(99)15 on media coverage of election campaigns	26-27 March (Strasbourg)
Global Electoral Organisation (GEO) Conference	27-29 March (Washington, D.C.)
Seminar "Setting global standards in political finance"	30 March (Washington, D.C.)
Seminar on elections in the Basque country	21-23 May (Bilbao)
Regional meeting of Balkan election officials	19-20 June (Skopje)
ACEEEO Conference and General Assembly meeting	18-19 September (Strasbourg)
4th Conference of electoral management bodies	20-21 September (Strasbourg)

Seminar for international observers and consultants from national elections	3-5 October (St Petersburg)

6. Unidem campus for the legal training of the civil service

National Co-ordinators Meeting	16 November (Strasbourg)
Legislative evaluation	11-14 June (Trieste)
European integration – constitutional and legal reforms	10-13 September (Trieste)
Concerted efforts at the European level to protect ethnic, linguistic and national minorities	26-29 November (Trieste)

Appendix V – List of publications of the Venice Commission

Series – science and technique of democracy[1]

No. 1 Meeting with the presidents of constitutional courts and other equivalent bodies[2] (1993)

No. 2 Models of constitutional jurisdiction*[3] 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*[3] 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* by Ergun Özbudun and Mehmet Turhan (1995)

1. Publications are also available in French unless otherwise indicated.

2. Speeches in the original language (English or French).

3. Publications marked with * are also available in Russian.

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* (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 21st 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)

No. 30 European Integration and Constitutional Law (2001)

No. 31 Constitutional implications of accession to the European Union[2] (2002)

No. 32 The protection of national minorities by their kin-State[2] (2002)

No. 33 Democracy, Rule of Law and Foreign Policy[2] (2003)

No. 34 Code of good practice in electoral matters* (2003)

No. 35 The resolution of conflicts between the central State and entities with legislative power by the Constitutional Court[2] (2003)

No. 36 Constitutional Courts and European Integration[4] (2004)

No. 37 European and United States Constitutionalism[4] (2005)

No. 38 State Consolidation and National Identity[4] (2005)

No. 39 European Standards of Electoral Law in Contemporary Constitutionalism[1] (2005)

No. 40 Evaluation of fifteen years of constitutional practice in Central and Eastern Europe* (2005)

No. 41 Organisation of elections by an impartial body[4] (2006)

No. 42 The status of international treaties on human rights[4] (2006)

No. 43 The preconditions for a democratic election[4] (2006)

No. 44 Can excessive length of proceedings be remedied? (2007)

Other publications

Bulletin on Constitutional Case-Law 1993-2006 (three issues per year); 2007-1

Special bulletins

- Description of Courts (1999)*
- Basic texts – extracts from Constitutions and Laws on Constitutional Courts – issues Nos. 1-2 (1996), Nos. 3-4 (1997), No. 5 (1998), No. 6 (2001), No. 7 (2007)
- Leading cases of the European Court of Human Rights (1998)*
- Freedom of religion and beliefs (1999)
- Special Edition Leading Cases 1 – Czech Republic, Denmark, Japan, Norway, Poland, Slovenia, Switzerland, Ukraine (2002)

4. Available in English only.

- Inter Court Relations (2003)
- Role and functions of the Secretary General of the Constitutional Court or equivalent body (2006)
- Criteria for the limitation of Human Rights by the Constitutional Court (2006)

Annual reports

1993-2007

Brochures

- 10th anniversary of the Venice Commission (2001)*
- Revised Statute of the European Commission for Democracy through Law (2002)
- The Venice Commission (2002)
- UniDem Campus – Legal training for civil servants (2003)

Appendix VI – List of documents adopted in 2007

CDL-AD(2007)003	Opinion on the Draft Law on the Judiciary and the Draft Law on the Status of Judges of Ukraine adopted by the Venice Commission at its 70th Plenary Session (Venice, 16-17 March 2007)
CDL-AD(2007)004	Opinion on the Constitution of Serbia adopted by the Commission at its 70th plenary session (Venice, 17-18 March 2007);
CDL-AD(2007)005	Opinion on the Draft Law on the Legal Status of a Church, a Religious Community and a Religious Group of "the former Yugoslav Republic of Macedonia" adopted by the Venice Commission at its 70th Plenary Session (Venice, 16-17 March 2007);
CDL-AD(2007)006	Preliminary Report on the National Legislation in Europe concerning Blasphemy, Religious Insults and Inciting Religious Hatred adopted by the Commission at its 70th plenary session (Venice, 16-17 March 2007);
CDL-AD(2007)007	Opinion on the Convention on the Standards of Democratic Elections, Electoral Rights and Freedoms in the Member States of the Commonwealth of Independent States adopted by the Venice Commission at its 70th plenary session (Venice, 16-17 March 2007);
CDL-AD(2007)008	Code of Good Practice on Referendums adopted by the Council for Democratic Elections at its 19th meeting (Venice, 16 December 2006) and the Venice Commission at its 70th plenary session (Venice, 16-17 March 2007);
CDL-AD(2007)009	Opinion on the Law on Disciplinary Responsibility and Disciplinary Prosecution of Judges of Common Courts of Georgia adopted by the Venice Commission at its 70th Plenary Session (Venice, 16-17 March 2007);
CDL-AD(2007)011	Opinion on the Draft Law on the Public Prosecutors Office and the Draft Law on the Council of Public Prosecutors of "the former Yugoslav Republic of Macedonia" adopted by the Venice Commission at its 70th Plenary Session (Venice, 16-17 March 2007);

CDL-AD(2007)012 Joint Opinion on the draft working text amending the Election Code of "the former Yugoslav Republic of Macedonia" by the Venice Commission and the OSCE Office for Democratic Institutions and Human Rights (OSCE/ODIHR) adopted by the Venice Commission at its 70th plenary session (Venice, 16-17 March 2007)

CDL-AD(2007)013 Final Joint Opinion on Amendments to the Electoral Code of the Republic of Armenia by the Venice Commission and the OSCE Office for Democratic Institutions and Human Rights (OSCE/ODIHR) adopted by the Venice Commission at its 70th plenary session (Venice, 16-17 March 2007);

CDL-AD(2007)014 Opinion on Video Surveillance in Public Places by Public Authorities and the Protection of Human Rights adopted by the Venice Commission at its 70th Plenary Session (Venice, 16-17 March 2007);

CDL-AD(2007)015 Preliminary Opinion on the Draft Law on the Parliamentary Opposition in Ukraine adopted by the Venice Commission at its 70th plenary session (Venice, 16-17 March 2007);

CDL-AD(2007)016 Report on the Democratic oversight of the Security Services adopted by the Venice Commission at its 71st Plenary Session (Venice, 1-2 June 2007)

CDL-AD(2007)017 Interim Opinion on the Draft Constitution of Montenegro adopted by the Venice Commission at its 71st Plenary Session (Venice, 1-2 June 2007);

CDL-AD(2007)018 Opinion on the Law on Amendments to the Legislation concerning the Status of Deputies of the Verkhovna Rada of the Autonomous Republic of Crimea and of Local Councils in Ukraine adopted by the Venice Commission at its 71st Plenary Session, (Venice, 1-2 June 2007);

CDL-AD(2007)019 Opinion on the Draft Law on the Parliamentary Opposition in Ukraine adopted by the Venice Commission at its 71st Plenary Meeting (Venice, 1-2 June 2007);

CDL-AD(2007)020 Opinion on the possible reform of the Ombudsman Institution in Kazakhstan adopted by the Venice Commission at its 71st Plenary Session (Venice, 1-2 June 2007);

CDL-AD(2007)021 Opinion on legislative provisions concerning early elections in Ukraine adopted by the Venice Commission at its 71st Plenary Session (Venice, 1-2 June 2007);

CDL-AD(2007)022 Opinion on proposed changes to Recommendation R(99)15 on Media Coverage of Election Campaigns adopted by the Venice Commission at its 71st Plenary Session (Venice, 1-2 June 2007;

CDL-AD(2007)023 Joint Opinion on the 26 February 2007 Amendments to the Electoral Code of the Republic of Armenia by the Venice Commission and the OSCE Office for Democratic Institutions and Human Rights (OSCE/ODIHR);

CDL-AD(2007)024 Opinion on the Draft Law on the People's Advocate of Kosovo adopted by the Venice Commission at its 71st Plenary Meeting, (Venice, 1-2 June 2007);

CDL-AD(2007)025 Comments on the Draft Law on Political Parties of Moldova endorsed by the Venice Commission at its 71st plenary session (Venice, 1-2 June 2007);

CDL-AD(2007)026 Joint Opinion on the Draft Law on State Register of Voters of Ukraine by the Venice Commission and the OSCE Office for Democratic Institutions and Human Rights (OSCE/ODIHR) adopted by the Venice Commission at its 71st Plenary Session (Venice, 1-2 June 2007);

CDL-AD(2007)027 Opinion on video surveillance by private operators in the public and private spheres and by public authorities in the private sphere and human rights protection adopted by the Venice Commission at its 71st Plenary Session (Venice, 1-2 June 2007);

CDL-AD(2007)028 Judicial Appointments – Report adopted by the Venice Commission at its 70th Plenary Session (Venice, 16-17 March 2007);

CDL-AD(2007)029 Amicus Curiae Opinion on the Law on Legalisation, Urban Planning and Integration of Unauthorised Buildings of the Republic of Albania;

CDL-AD(2007)030 Joint Opinion on the Draft Law on Voters Lists of Croatia by the Venice Commission and the OSCE Office for Democratic Institutions and Human Rights (OSCE/ODIHR) adopted by the Venice Commission at its 71st Plenary Session (Venice, 1-2 June 2007);

CDL-AD(2007)031 Opinion on the Draft Amendments to the Law on the Status of People's Deputy in Ukraine adopted by the Venice Commission at its 72nd Plenary Session (Venice, 19-20 October 2007);

CDL-AD(2007)032 Comments on the Draft Opinion of the Consultative Council of European Judges on Judicial Councils adopted by the Venice Commission at its 72nd Plenary Session (Venice 19-20 October 2007);

CDL-AD(2007)033 Opinion on the Law of the Gagauz Autonomous Territorial Unit on the Election of the Governor of Gagauzia (Moldova) adopted by the Council for Democratic elections at its 22nd meeting (Venice, 18 October 2007) and the Venice Commission at its 72nd plenary session (Venice, 19-20 October 2007);

CDL-AD(2007)034 Summary Report on the Secrecy of the Vote in the context of Elections by Parliament adopted by the Council for Democratic Elections at its 21st meeting (Venice, 2 June 2007) and the Venice Commission at its 72nd plenary session (Venice, 19-20 October 2007);

CDL-AD(2007)035 Joint Opinion on Amendments to the Electoral Code of the Republic of Albania by the Venice Commission and the OSCE/ODIHR adopted by the Council for Democratic Elections at its 22nd meeting (Venice, 18 October 2007) and the Venice Commission at its 72nd plenary session (Venice, 19-20 October 2007);

CDL-AD(2007)036 Opinion on Draft Amendments to the Law on the Constitutional Court, the Civil Procedural Code and the Criminal Procedural Code of Azerbaijan adopted by the Venice Commission at its 72nd Plenary Session (Venice 19-20 October 2007);

CDL-AD(2007)037 Report on choosing the date of an election adopted by the Council for Democratic Elections at its 22nd meeting (Venice, 18 October 2007) and the Venice Commission at its 72nd plenary session (Venice, 19-20 October 2007);

CDL-AD(2007)038 Comments on the conformity of certain provisions of the Statute of the International Criminal Court with the Constitution of Moldova endorsed by the Commission at its 72nd plenary session (Venice, 19-20 October 2007);

CDL-AD(2007)039 Comments on the Draft Law on the Constitutional Court of the Republic of Serbia endorsed by the Venice Commission at its 72nd Plenary Session (Venice, 19-20 October 2007);

CDL-AD(2007)040 Joint Opinion on the Electoral Code of Moldova as of 27 March 2007 by the Venice Commission and the OSCE Office for Democratic Institutions and Human Rights (OSCE/ODIHR) adopted by the Council for Democratic Elections at its 23rd meeting (Venice, 13 December 2007) and the Venice Commission at its 73rd plenary session (Venice, 14-15 December 2007);

CDL-AD(2007)041	Opinion on the Draft Law on Freedom of Religion, Religious Organisations and Mutual Relations with the State of Albania adopted by the Venice Commission at its 73rd Plenary Session (Venice, 14-15 December 2007)
CDL-AD(2007)042	Opinion on the Draft Amendments to the Law on Freedom of Assembly of Azerbaijan adopted by the Venice Commission at its 73rd Plenary Session (Venice, 14-15 December 2007)
CDL-AD(2007)043	Comments on the compatibility of Article 301 of the Criminal Code of Armenia with European Standards endorsed by the Venice Commission at its 73rd Plenary Session (Venice, 14-15 December 2007)
CDL-AD(2007)044	Opinion on the Draft Law on conflict of interest in Moldova adopted by the Venice Commission at its 73rd Plenary Session (Venice, 14-15 December 2007)
CDL-AD(2007)045	Opinion on the constitutional situation in the Kyrgyz Republic adopted by the Commission at its 73rd plenary session (Venice, 14-15 December 2007)
CDL-AD(2007)046	Opinion on the Electoral Law of the United Kingdom Adopted by the Council for Democratic Elections at its 23rd meeting (Venice, 13 December 2007) and the Venice Commission at its 73rd plenary session (Venice, 14-15 December 2007)
CDL-AD(2007)047	Opinion on the Constitution of Montenegro adopted by the Venice Commision at its 73rd Plenary Session (Venice, 14-15 December 2007)
CDL-AD(2008)001	Opinion on the Draft Law on Prohibiting Discrimination of the Republic of Serbia endorsed by the Venice Commission at its 73rd Plenary Session (Venice, 14-15 December 2007)