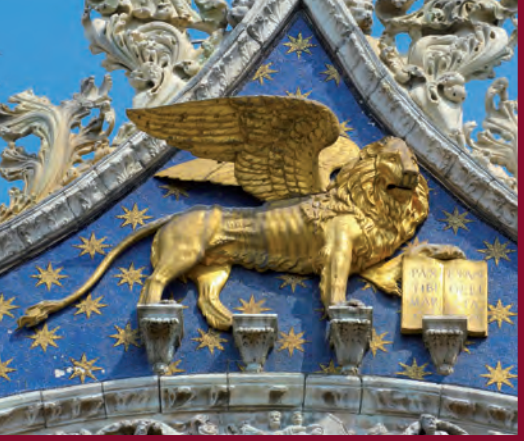
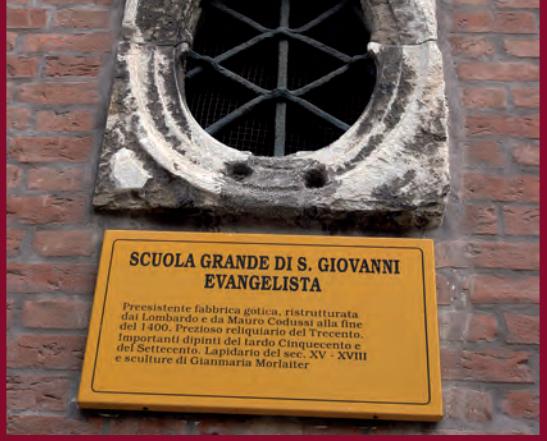
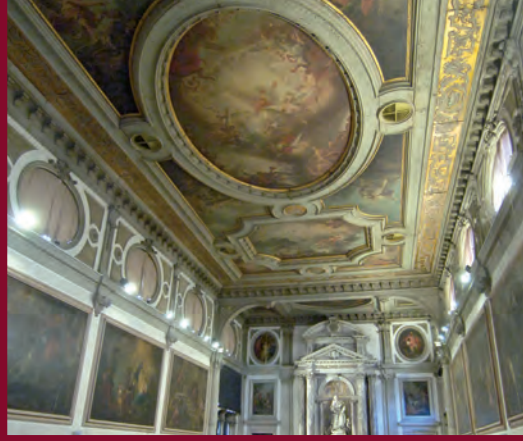


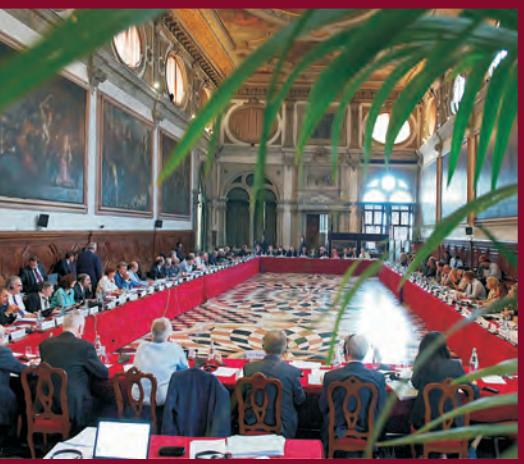




The Venice Commission

2010

Annual activity report



European Commission for Democracy through Law

Member states of the Venice Commission, 2011

Members – 57

Albania (14.10.1996)
Algeria (1.12.2007)
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)
Brazil 01.04.2009)
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)
Israel (1.05.2008)
Italy (10.05.1990)
Republic of Korea (1.06.2006)
Kyrgyzstan (1.01.2004)
Latvia (11.09.1995)
Liechtenstein (26.08.1991)
Lithuania (27.04.1994)
Luxembourg (10.05.1990)
Malta (10.05.1990)
Mexico (3.02.2010)
Moldova (25.06.1996)
Monaco (5.10.2004)
Montenegro (20.06.2006)
Morocco (1.06.2007)
Netherlands (1.08.1992)
Norway (10.05.1990)
Peru (11.02.2009)
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)
Tunisia (1.04.2010)
Turkey (10.05.1990)
Ukraine (3.02.1997)
United Kingdom (1.06.1999)

Associate member

Belarus (24.11.1994)

Observers – 7

Argentina (20.04.1995)
Canada (23.05.1991)
Holy See (13.01.1992)
Japan (18.06.1993)
Kazakhstan (30.04.1998)
United States (10.10.1991)
Uruguay (19.10.1995)

Participants – 4

European Commission
EU Committee of the Regions
OSCE/ODIHR
International Association of Constitutional Law (IACL)

Special co-operation status – 2

Palestinian National Authority
South Africa

European Commission for Democracy through Law

The Council of Europe's Venice Commission

2010 annual activity report

Council of Europe, 2011

European Commission for Democracy through Law –
Venice Commission, Council of Europe
F-67075 Strasbourg Cedex

www.venice.coe.int

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Foreword

One of the highlights for the Venice Commission in 2010 was the celebration of its 20th anniversary on 5 June.

The high-level participation from Council of Europe bodies, international institutions and member states – both European and non-European – shows that the history of the Venice Commission is a successful one. The Council of Europe acted with much foresight when it established the Venice Commission a few months after the fall of the Berlin Wall. It very soon became clear that the Venice Commission would have an important role to play in bringing the new democracies in central and eastern Europe closer to attaining the Council of Europe values of democracy, the rule of law and human rights.

It was less obvious at the time that this role of the Venice Commission would continue for such a long period of time and that its importance would continue to increase after the first phase of the transition. Looking at the present report, it is easy to see that the scope of issues dealt with by the Venice Commission is becoming ever broader. On the one hand, the Venice Commission continues to be the main interlocutor in 2010 for important constitutional reform processes in countries such as Georgia, Kyrgyzstan, Moldova and Ukraine. On the other hand, the Venice Commission dealt with complex and sensitive legislation implementing the constitutions in a large number of European and, increasingly, non-European countries.

While the Venice's Commission's co-operation with its traditional partner countries is deepening in this way, the range of its partners is widening. Additional European countries are now interested in working with the Venice Commission. An example is its co-operation with Turkey on judicial reforms and its opinion on the Electoral Code of Norway. At the same time, non-European countries are turning more and more to the Venice Commission for advice. In 2010, the increase in activities in central Asia was the main example. In 2011 the wave of change that swept over North African and other Arab countries will be a major challenge for the Venice Commission. The Venice Commission will therefore be a key element of the Council of Europe's neighbourhood policy.

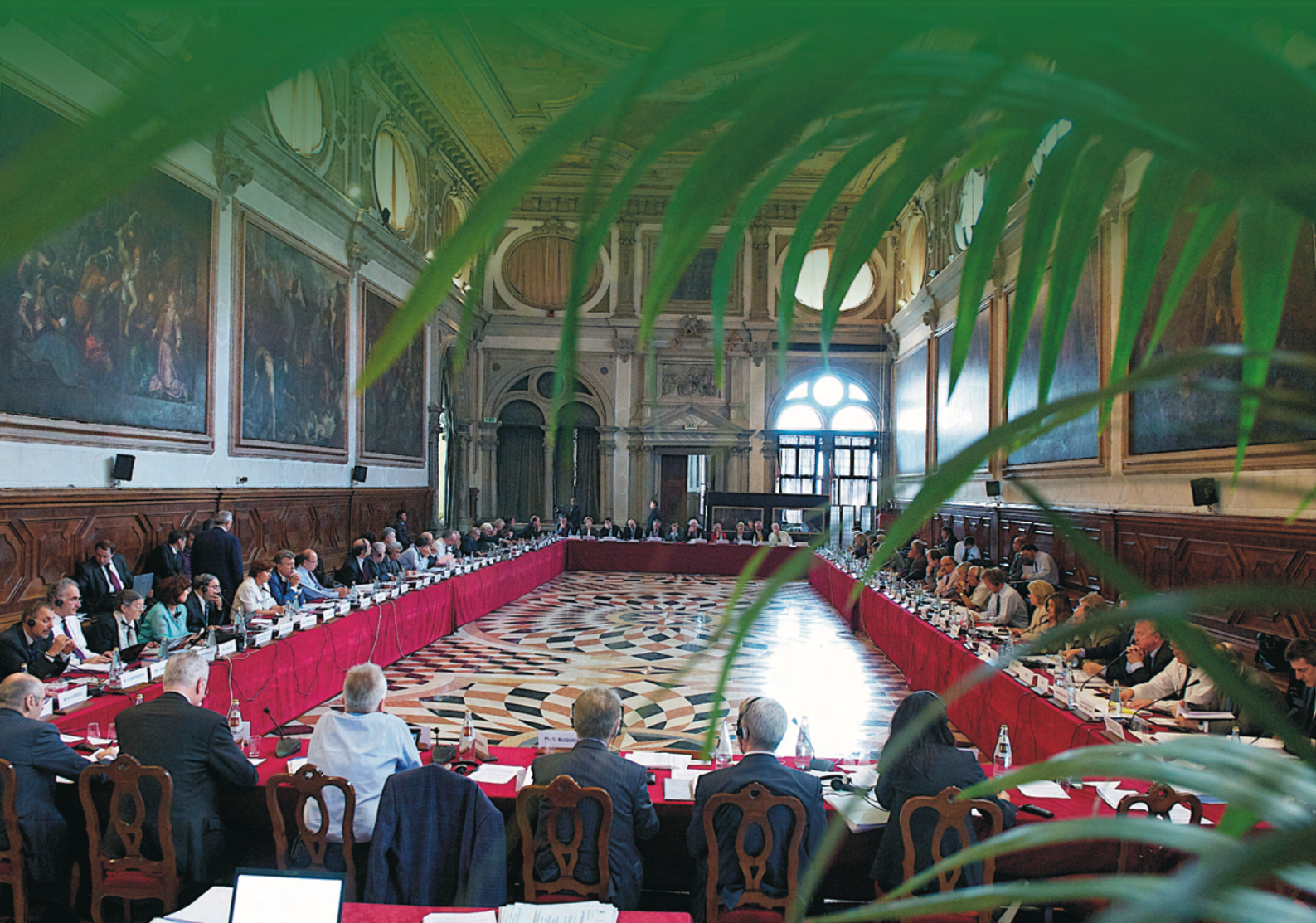
This again shows that the main strength of the Venice Commission is that it is a part of the Council of Europe and based on the universal values of this organisation. The Venice Commission can be effective only thanks to the support from the Council of Europe's bodies, in particular the Committee of Ministers and the Parliamentary Assembly. In addition, its flexible working methods and its close co-operation with other international organisations, first of all with the European Union but also with the OSCE, are key elements of its success.

The Venice Commission stands ready to continue assisting European states in their reform process and at the same time is ready to take on new challenges beyond the borders of our continent. The Venice Commission welcomes these new challenges as new opportunities.

Thomas Markert,
Director, Secretary of the Venice Commission

Contents

Working for democracy through law



The Venice Commission: an introduction

The European Commission for Democracy through Law, better known as the Venice Commission,[1] is a Council of Europe independent consultative body on issues of constitutional law, including the functioning of democratic institutions and fundamental rights, electoral law and constitutional justice. 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. In 2010, it had 57 full members and 13 other entities formally associated with its work. 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 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.

1. For more information, please refer to the Venice Commission's website: http://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'études et de recherches comparatives constitutionnelles et politiques (CERCOP), 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.

As concerns the **working methods,** the Commission's opinions are prepared by a working group composed of members of the Commission, at times assisted by external experts. It is ordinary practice for the working group to travel to the country concerned in order to meet and discuss with the national authorities, other relevant bodies and the civil society. The opinions contain an assessment of the conformity of the national legal text (preferably in its draft state) with European and international legal and democratic standards, and proposals for improvement on the basis of the relevant specific experience gained by the members of the Commission in similar situations. Draft opinions are discussed and adopted by the Commission at one of its plenary sessions, usually in the presence of representatives of the country concerned. Following adoption, opinions are transmitted to the requesting state or body and come into the public domain.

The Commission's approach to advising states is based on dialogue with the authorities: the Commission does not attempt to impose solutions or abstract models; it rather seeks to understand the aims pursued by the legal text in question, the surrounding political and legal context and the issues involved; it then assesses on the one hand the compatibility of the text with the applicable standards, and on the other hand its viability and its prospects for successful functioning. In doing so, the Commission takes into account the specific features and needs of the relevant country.

Although the Commission's opinions are not binding, they are generally 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.

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. The Commission has done so in particular at the request of the European Union.

While most of its work concerns specific countries, the Venice Commission also draws up **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 the independence of the judiciary, on individual access to constitutional justice, on the status of detainees at Guantánamo Bay, on counter-terrorist measures and human rights, on the democratic control of security services and armed forces, on the relationship between freedom of expression and freedom of religion as well as the adoption of codes of good practice in electoral matters, on referendums and in the field of political parties.

These studies may, when appropriate, lead to the preparation of guidelines and even proposals for international agreements. Sometimes they take the form of scientific conferences under the Universities for Democracy (**Uni-Dem**) programme, the proceedings of which are subsequently published in the **"Science and technique of democracy"** series.

Aiming at contributing an appropriate and Council of Europe-oriented implementation of laws by the public

service, the Commission has also been carrying out since 1991 an ambitious and successful programme – the **UniDem Campus** – of legal training for civil servants from 16 countries on topical issues of specific interest.

After assisting states in adopting democratic constitutions, the Commission pursues its action aimed at achieving the rule of law by focussing on their implementation. This is why **constitutional justice** is also one of the Commission's main fields of activity, which has developed close co-operation with the key players in this field, i.e. 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 some 70 countries (including some outside Europe), the European Court of Human Rights, the Court of Justice of the European Communities and the Inter-American Court of Human Rights. Since 1996, the Commission has established **co-operation with a number of regional or language based groups of constitutional courts**, in particular the Conference of European Constitutional Courts, the Association of Constitutional Courts using the French Language, the Southern African Chief Justices' Forum, the Conference of Constitutional Control Organs of Countries of Young Democracy, the Asian Constitutional Courts, the Union of Arab Constitutional Courts and Councils, and the Ibero-American Conference of Constitutional Justice. In January 2009, the Commission organised, together with the Constitutional Court of South Africa, a **World Conference on Constitutional Justice**, which for the first time gathered all these regional groups and their member courts as well as Commonwealth courts and Portuguese-speaking courts. The Conference decided to establish an association, assisted by the Venice Commission and open to all participating courts, with the purpose of promoting co-operation not only within the groups, but also between them on a global scale. In 2010 the Commission, in co-operation with the Federal Supreme Court of Brazil, prepared the Second Congress of the World Conference (16-18 January 2011, Rio de Janeiro).

Since 1993, the Commission's constitutional justice activities have also included the publication of the **Bulletin on Constitutional Case-Law**, which contains summaries in French and English of the most significant decisions over a four-month period. It also has an electronic counterpart, the **CODICES database**, which contains some 7 000 decisions rendered by over 95 participating courts together with constitutions and descriptions of many courts and the laws governing them.[4] These publications have played a vital "cross-fertilisation" role in constitutional case-law.

At the request of a constitutional court or the European Court of Human Rights, the Commission may also provide ***amicus curiae*** **briefs**, not on the constitutionality of the act concerned, but on 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, been able to help

4. CODICES is available on CD-ROM and on line (http://www.CODICES.coe.int/)

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. The latter is asked increasingly to give an opinion on constitutional aspects of 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 **ombudspersons**, through opinions on the legislation governing their work, and by offering them *amicus ombud* opinions on any other subject, opinions which, like *amicus curiae* briefs, 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 ombudspersons 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. 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.

The activities of the Venice Commission and the Council for Democratic Elections also relate to political parties, without which elections in keeping with Europe's electoral heritage are unthinkable.

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 of the Council of Europe. The Council for Democratic Elections also includes an observer from the OSCE/ODIHR. The Council for Democratic Elections and the 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), which is the Council of Europe's reference document in this field, and the **Code of Good Practice for Referendums** (2007),[5] Guidelines on the international status of elections observers (2009) and, in the field of political parties, the **Code of Good Practice in the field of Political Parties** (2008). The other general documents concern such matters as electoral law and national minorities, restrictions on the right to vote or the cancellation of electoral results, as well as the prohibition, dissolution and financing of political parties. The Commission has adopted more than forty studies or guidelines of a general nature in the field of elections, referendums and political parties. In 2010 it adopted in par-

5. These two texts were approved by the Parliamentary Assembly and the Congress of Local and Regional Authorities of the Council of Europe, and the subject of a solemn declaration by the Committee of Ministers encouraging their application.

ticular guidelines on political party regulation and a report on the timeline and inventory of political criteria for assessing an election.

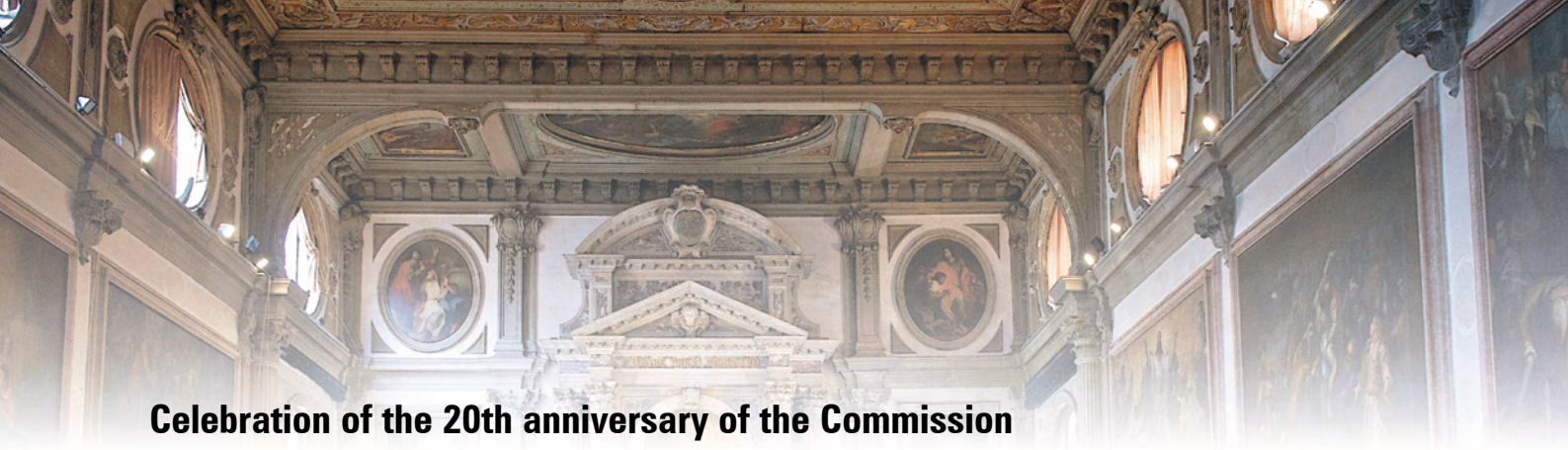
The Commission has drafted more than 80 opinions on **national laws and practices relating to elections, referendums and political parties**, and these have had a significant impact on electoral legislation in the states concerned. Among the states which regularly co-operate with the Commission in the electoral sphere are Albania, Armenia, Azerbaijan, Georgia, Moldova, Serbia and Ukraine. The Commission has played a direct 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 annually the European Conference of Electoral Management Bodies, and is also in very close contact with other international organisations or bodies which work in the election field, such as ACEEEO (Association of European Election Officials), IFES (International Foundation for Electoral Systems) and, in particular, the OSCE (Organisation for Security and Co-operation in Europe). 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 **seminars** on subjects such as the preconditions for democratic elections or the supervision of the electoral process, as well as **training workshops** for those involved in the electoral process.

The Council for Democratic Elections has created the VOTA[6] database containing, *inter alia*, member states' electoral legislation.

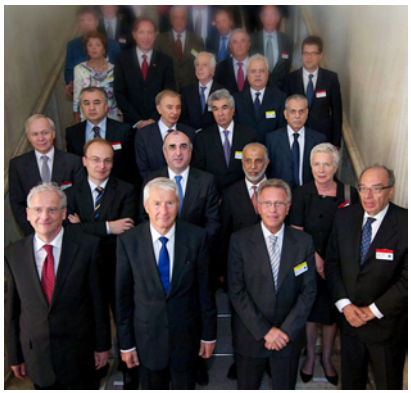
6. VOTA is accessible on-line: http://www.venice.coe.int/VOTA/.



Celebration of the 20th anniversary of the Commission

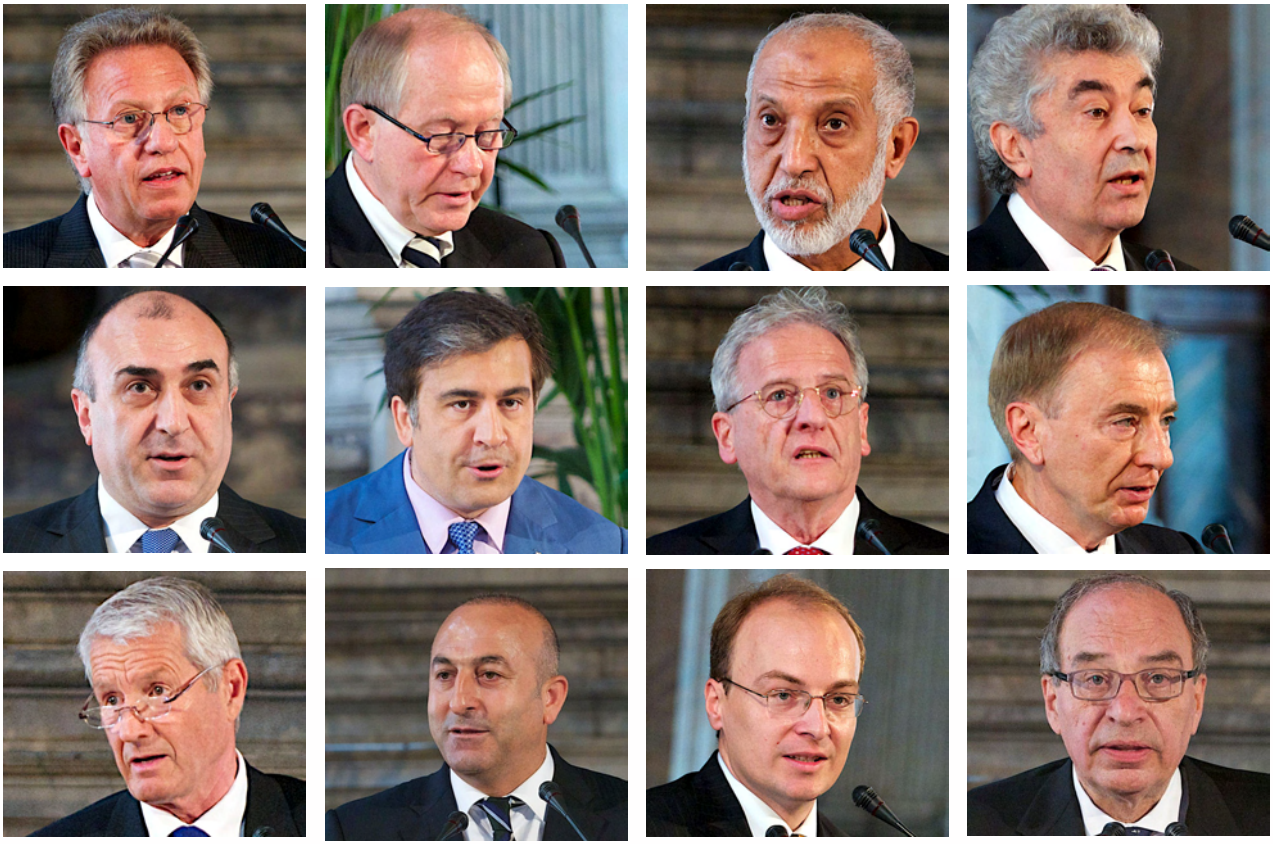
The celebration of the 20th anniversary of the Commission on 5 June was one of the highlights of the Commission's activities in 2010

The ceremony, organised with the support of the Ministry of Foreign Affairs of the Italian Republic, the Regional Government of Veneto, and the Principality of Monaco, was attended by high-level representatives of the Council of Europe – Mr Thorbjørn Jagland, Secretary General of the Council of Europe; Mr Mevlüt Çavuşoğlu, President of the Parliamentary Assembly of the Council of Europe; Mr Antonio Miloshoski, Chair of the Committee of Ministers – and of the States Parties, including non-member states of the Council of Europe.



Other partner international organisations, such as the OSCE, were also present.

The high attendance at this event by leading politicians, diplomats and representatives of the legal community confirmed the importance the Commission has acquired during its twenty years of existence. All speakers confirmed the outstanding contribution by the Commission to the promotion of Council of Europe values, especially but not only in the new democracies in central and eastern Europe. The Commission has become an indispensable partner in building democracy through its impartial and objective legal advice, accepted by all international and national players independent of their political orientation. The demand for the Commission's services has continued to increase.



From left to right (order according to the programme of the ceremony): *Gianni Buquicchio*, President of the Venice Commission; *Jan Helgesen*, First Vice-President of the Venice Commission; *Abdelaziz Belkhadem*, State Minister, Personal Representative of the President of the Republic of Algeria; *Gagik Harutyunian*, President of the Constitutional Court of Armenia; *Elmar Mammadyarov*, Minister for Foreign Affairs of Azerbaijan; *Mikheil Saakashvili*, President of Georgia; *Laszlo Solyom*, President of Hungary; *Igor Rogov*, Chairman of the Constitutional Council of Kazakhstan; *Thorbjørn Jagland*, Secretary General of the Council of Europe; *Mevlüt Çavuşoğlu*, President of the Parliamentary Assembly of the Council of Europe; *Antonio Miloshoski*, Minister of Foreign Affairs of "the former Yugoslav Republic of Macedonia" and Chairman of the Committee of Ministers of the Council of Europe; and *Alfredo Mantica*, Under-Secretary of State, Ministry of Foreign Affairs of Italy.

The Commission in 2010

Member states

New accessions

Mexico became a full member of the Commission in 2010. Tunisia appointed its members in March 2010, thus becoming a full member.[7] The population "covered" by the Commission's expertise is now more than 1.3 billion people.

Voluntary contributions

In 2010 the governments of Ireland, Italy, Monaco and Norway supported the Commission's activities concerning constitutional reform in Georgia, co-operation with the Southern African Chief Justices Forum (SACJF) and the Union of Arab Constitutional Courts and Councils (UACCC), the implementation of the European Union Rule of Law Initiative for Central Asia as well as the organisation of the UniDem (Universities for Democracy) Campus and the 20th anniversary of the Commission.

Scientific Council

In December 2009 the Commission decided to set up a Scientific Council with the task of maintaining the high quality and consistency of the Commission's work. Pending a thorough reflection on its concrete tasks, it was agreed that the composition of the Scientific Council would be as follows: Mr Helgesen (Chairman), Mr Buquicchio, Ms Flanagan, Mr Paczolay, Mr Dimitrijevic, Mr Esanu, Mr Hoffmann-Riem, Mr van Dijk and Mr Jowell.

7. The decision by the Committee of Ministers to invite Tunisia to join the Commission was taken in 2008.

Main activities

Key figures

In 2010 was again a productive year for the Venice Commission: over 50 opinions and texts of transnational interest were adopted, three UniDem Campus seminars for dozens of civil servants and about 30 other conferences and seminars were organised, some 40 comparative law research requests from Constitutional Courts and equivalent bodies were dealt with through the Venice Forum and 10 publications were prepared.

Democratic institutions and fundamental rights

Constitutional reforms

Constitutional reforms are the core of the Venice Commission's work, both because such reforms relate to the foundations of a democratic state, and because it is clear that the Commission will only be asked to participate if it enjoys the trust and respect of the country concerned.

Constitutional reforms are complex and lengthy processes. In some European states, these processes have stretched over several years, and have been accomplished through subsequent sets of amendments. The Venice Commission has co-operated with many of these states and has provided opinions on each of these subsequent reforms.

In 2010, the Venice Commission worked on constitutional reform processes in Georgia, Kyrgyzstan, Moldova and Ukraine. In each of these countries, it had already provided assessments and recommendations in relation to previous reforms or attempts at reform.

These past opinions came back to the forefront in 2010.

In Ukraine, for example, where the Commission, at the request of the Monitoring Committee of the PACE, had to comment on the consequences of the ruling of the Constitutional Court of Ukraine of 30 September 2010 declaring the 2004 Law No. 2222 on the amendments to the Constitution unconstitutional, the debates referred extensively to the Commission's opinion on the Constitution of 1996 and on the amendments adopted in 2004.

In Kyrgyzstan, the new form of government adopted after the revolution of March 2010 has been largely modelled on the recommendations given by the Venice Commission in 2005 (and not followed by the previous authorities).

This shows that the opinions of the Venice Commission have become a part of the constitutional history of these countries. The Commission has indeed provided advice *to the country* and not only to the particular government which made the request at the time: its opinions therefore continue to be relevant and to be used.

In 2010 the Commission was also involved in the preparation of a number of laws implementing the constitutional amendments approved by referendum in September 2010 in Turkey.

It also continued to follow closely the developments in Bosnia and Herzegovina, where the judgment of the European Court of Human Rights in the case of *Sejdić and Finci* (which should give new impetus for a comprehensive constitutional reform) is still to be implemented.

Functioning of democratic institutions and protection of fundamental rights

In 2010, the Commission provided 19 opinions on legislative reforms. Some of these related to highly sensitive and complex issues: the opinions on the State Language Act of the Republic of Slovakia and on the amendments to the Federal Law on defence of the Russian Federation are worth mentioning in this context. In several cases, the Commission and the national authorities engaged in fruitful co-operation which resulted in successive versions of legislative texts and related interim opinions: the revision of the Draft Law on Forfeiture in favour of the State of Assets acquired through criminal or illegal activities in Bulgaria is a case in point.

The Commission pursued its work on freedom of assembly in co-operation with the OSCE/ODIHR: it adopted the second edition of the joint Venice Commission-OSCE/ODIHR Guidelines on Freedom of Assembly, and adopted opinions on legal texts in Bosnia and Herzegovina (Sarajevo Canton), Serbia, Ukraine. The Commission further examined the situation in Kosovo[8] in respect of human rights review of acts by the international organisations (UNMIK and EULEX).

The Commission also adopted two important studies: one on counter-terrorism measures and human rights and the other on the role of the opposition in a democratic parliament.

Constitutional and ordinary justice, ombudspersons

Strengthening constitutional justice

The Commission's Joint Council on Constitutional Justice continued its support of constitutional courts and equivalent bodies through the Centre on Constitutional Justice, which publishes the *Bulletin on Constitutional Case-Law* (three issues in 2010) and the CODICES database (website – 23 updates – and three CD-ROMs in 2010). The

8. All references to Kosovo shall be understood in full compliance with United Nations Security Council Resolution 1244 and without prejudice to the status of Kosovo.

Commission's Venice Forum successfully dealt with 38 comparative law research requests from constitutional courts on such diverse topics as the restitution of church property, disciplinary responsibility of members of the court of audit, prohibition of outdoor political campaigns, visiting rights of detainees as well as administrative resources and electoral campaigns.

The Commission adopted *amicus curiae* opinions for the Constitutional Courts of Bosnia and Herzegovina, Moldova and "the Former Yugoslav Republic of Macedonia".

Constitutional justice conferences and seminars were held in Armenia, Belarus, Bulgaria, Georgia (2), Libya, Moldova, Peru, Russia, South Africa, Tajikistan and Ukraine as well as in Venice. The topics were quite varied and many issues were dealt with during 2010, such as the notion of judicial activism and judicial restraint, the importance of dissenting and concurring opinions as well as the interaction between the constitutional and the international legal order.

At its December session, the Commission also adopted a major study on Individual Access to Constitutional Justice. The Commission concluded that there is a clear trend in Europe and abroad towards the introduction of individual access to constitutional courts. Although there are very different models, such as direct and indirect access, concentrated and.diffuse review, etc., a consensus is emerging that access to constitutional justice is an essential tool to ensure respect for human rights at the constitutional level.

Looking beyond Europe

In addition to its close co-operation with European constitutional courts and equivalent bodies, the Commission intensified its regional approach in the field of constitutional justice by co-operating with associations of constitutional and supreme courts and councils outside Europe. A major element of that strategy was the preparation of the 2nd Congress of the World Conference on Constitutional Justice (Rio de Janeiro, 16-18 January 2011). In this context, the Commission prepared a draft Statute for the World Conference for discussion at the 2nd Congress.

The essential components of the World Conference are the various regional groups uniting constitutional courts, which co-operate with the Venice Commission (European, Arab, Asian, French-speaking, Ibero-American, New Democracies, Portuguese-speaking, Southern African). Through this co-operation, the Venice Commission is able to reach out even beyond its non-European members and is thus able to promote the values of the Council of Europe: democracy, the protection of human rights and the rule of law, which are universal values, also in other regions of the world. The partner courts and councils actively contribute to the CODICES database and the Venice Forum Newsgroup. In 2010, the contributions from those courts considerably enriched the database and allowed for a useful exchange not only between Europe and other continents but also between non-European courts.

By promoting the dialogue of judges, the Commission creates a space for the exchange of values on which the Venice Commission has developed a number of common, universal standards that can be useful for legislative and constitutional changes, which are happening outside Europe.

By organising and participating in events in Indonesia, Peru or South Africa, the Commission is able to present these standards and to strengthen constitutional justice in the regions concerned.

Ordinary judiciary

The need to ensure the independence of the judiciary, as well as the functioning of the judicial system in the interest of society, plays an ever increasing role in the Commission's activities. Opinions on the laws on Judicial Power and the Criminal Procedure Code of Bulgaria, the High Council for Judges and Prosecutors of Turkey and the Judicial System in Ukraine (3 opinions) were adopted.

Upon request by the Parliamentary Assembly, the Commission adopted two reports on the independence of the judicial system. Part I deals with judges and Part II with Prosecutors. These reports provide an overview of existing standards and point to the necessity of further developing these standards in certain areas.

Ombudspersons

In 2010, the Venice Commission assisted the Parliament of Monaco in the preparation of the establishment of an ombudsman institution in that country. The President of the European Chapter of the International Ombudsman Institute participated in the Commission's December session in order to exchange views on the methods of co-operation, especially in view of the availability of the Commission to provide opinions upon request by ombudspersons.

Electoral matters

In 2010 the Commission continued its work on electoral matters and political parties. The drafting of documents of a general nature was actively pursued in both areas, as well as of opinions specifically relating to the legislation of a state. A *corpus* of important guidelines now exists in the field: regarding legislation, even if improvements are desirable even necessary in several states, the problems to be solved concern more and more the content of the legislation. The Commission was therefore very involved during 2010 in activities to strengthen the efficiency of the electoral administration, aimed at guaranteeing the concrete implementation of the principles of the European electoral heritage.

Electoral legislation and practice

The Commission adopted, mostly together with the OSCE Office of Democratic Institutions and Human Rights (OSCE/ODIHR), opinions and recommendations on laws or draft electoral laws in Belarus, Georgia, Moldova, Montenegro, Norway, Ukraine and the United Kingdom as well as on the draft law on referendum and civil initiative in Serbia.

The Commission also adopted a number of documents on electoral matters of a general nature. The following should be noted in particular: a report on thresholds and other features of electoral systems which bar parties from access to parliament; a report on the timeline and inventory of political criteria for assessing an election; a report on electoral fraud; and a declaration on the participation of people with disabilities in elections.

In addition, the Commission organised five long-term missions to assist the Central Electoral Commissions of Georgia, Kyrgyzstan and Moldova.

The Venice Commission organised in the United Kingdom the 7th Conference of European Electoral Management bodies. It also organised several training workshops in the light of the legislative elections in Azerbaijan, concerning in particular electoral appeals, and participated in electoral training sessions in Moldova.

Finally, the Commission provided legal assistance to five Parliamentary Assembly electoral observation missions.

Political parties

The Commission adopted joint guidelines with the OSCE/ODIHR on political parties which reflect and complete the Commission's previous documents in this regard.

It also adopted an opinion on the draft law on the funding of political activities in Serbia.

The Commission and non-European states

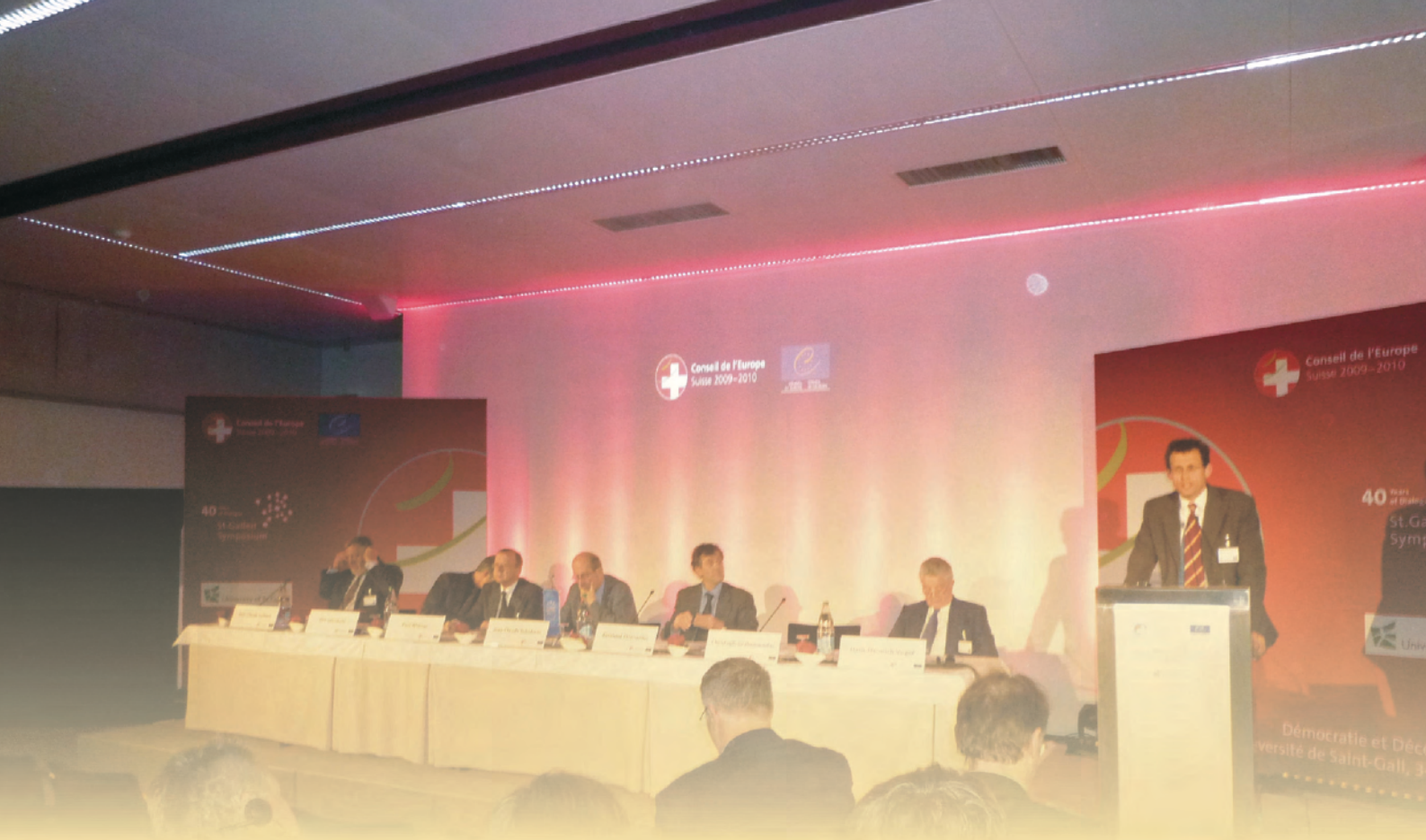
In 2002, the Commission's Statute was revised,[9] making it an Enlarged Agreement open to countries which are not members of the Council of Europe; the Commission has thus become a valuable asset and a potential partner for building democracy beyond Europe.

Since then, four Latin American countries, three states of the Maghreb and two Asian states, as well as Israel, have become full members of the Commission. The population "covered" by the Commission's expertise is thus over 1.3 billion people. South Africa and the Palestinian National Authority enjoy a special co-operation status.

On the initiative of the Latin American members, in 2010 the Commission became involved in different co-operation projects in the Americas; in particular, it participated in conferences organised in Colombia, Mexico, Nicaragua and Peru. Further, upon request from the European Commission, the Venice Commission started to develop a programme of legal reforms aimed at the implementation of the new Constitution of Bolivia.

Following the invitation from the European Union to participate in the "EU-Central Asia Rule of Law Initiative", since 2009 the Commission has been running several rule of law-related projects in Kazakhstan, Kyrgyzstan, Tajikistan and Uzbekistan. An important number of activities were organised in the field of constitutional justice, reform of the judiciary and training of judges, prosecutors and civil servants. In 2010, following the 7 April revolution in Kyrgyzstan, experts of the Venice Commission were involved in the constitutional reform and assisted the electoral administration. Through these activities, the Venice Commission has been able to confirm its reputation of an independent, impartial, competent and reliable partner both with the national authorities of the targeted countries and with different international organisations working in central Asia.

9. In accordance with Resolution (2002) 3, adopted by the Committee of Ministers of the Council of Europe on 21 February 2002 at its 784th meeting.



VENICE COMMISSION
COMMISSION DE VENISE

Democratic development of public institutions and respect for human rights

Country-specific activities

Albania

Follow-up to the Amicus curiae brief on the Law on "the cleanliness of the figure of high functionaries of the Public Administration and Elected Persons of Albania" (CDL-AD (2009) 044)

In December 2008 Parliament adopted a Law "on the cleanliness of the figure of high functionaries of the Public Administration and Elected Persons of Albania". The main opposition party, the socialists, challenged it before the Constitutional Court, which suspended the Law and sought the advice of the Venice Commission. In its related *amicus curiae* brief adopted in October 2009, the Venice Commission, while not opposing lustration measures as such, underlined that such measures needed to respect the Constitution, notably the procedural protection of holders of important state offices (judges of the Constitutional Court and State Court, President, etc.). In relation to the alleged conflict of interest of the judges of the Constitutional Court in deciding the constitutionality of this Law, the Commission found that the Lustration Law ought to have provided for a mechanism of replacement of the judges, failing which, it was more important for the court to function. In January 2010, the Constitutional Court of Albania rendered its judgment on this matter and quashed the Lustration Law.

Armenia

Freedom of religion

By letter dated 26 October 2010, the Minister of Justice of Armenia requested the assessment by the Commission of a draft law related to freedom of religion and conscience in Armenia. This assessment followed a previous joint OSCE/ODHIR/Venice Commission opinion issued in 2009 (CDL-AD (2009) 036).

The recommendations included in the joint opinion issued in 2009 with regard to a previous draft law relating to freedom of religion in Armenia were still valid.

The opinion was generally critical of the restrictive approach taken by the Armenian authorities in regulating freedom of conscience and religious organisation. Many aspects dealt with in the draft – such as the definition of religions and that of religious organisations, the citizenship condition, the freedom to manifest religion in public or in private life, the freedom to change religion, the issue of registration and liquidation of religious organisations and the possible limitations to the freedom of religion – would need serious reconsideration and amendment.

The Holy Apostolic Armenian Church has, *de facto* and *de jure*, a dominant position in Armenia. While the recognition of the Holy Apostolic Armenian Church as a "national church" with a historical contribution in the development of the national identity was not, as such,

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

problematic, it was essential to preserve pluralism and ensure equal respect and protection of other religions as well. In this connection, the Commission expressed its concern over a number of potentially discriminatory issues raised by the draft.

The authorities of Armenia were invited to clarify the scope of application of the law; to guarantee freedom of conscience, religion or belief to everyone, regardless of citizenship; to recognise the freedom to change religion or belief and to guarantee expressly the freedom to manifest religion or belief, in public or in private; to guarantee access of any religious organisation to legal personality; and to reconsider the blanket prohibition on religious advocacy and preaching in all "learning" and "social institutions".

The Commission was informed that a new draft law on freedom of conscience and religious organisations was under preparation and would be soon submitted to the Venice Commission for legal assessment. In the light of that information, the draft was adopted as a joint interim Opinion.

Freedom of assembly

In mid-August 2010, the Human Rights Defender of Armenia and the Office of the President of the Republic of Armenia prepared a new Draft Law on Assemblies of the Republic of Armenia. On 9 November 2010, the Draft Law was presented to the public and extensively discussed among representatives of national authorities, national and international experts (including a Venice Commission delegation and representatives of the OSCE/ODIHR), and by representatives of the civil society. At the request of the Human Rights Defender and the Office of the President of the Republic of Armenia, the Venice Commission, jointly with the OSCE/ODIHR, prepared an assessment of the revised version of this Draft Law. It appeared that the drafters had already taken into account the results of the November meeting, as well as the preliminary comments prepared by the Venice Commission and the OSCE/ODIHR.

According to the joint assessment, the Draft Law was largely in line with international and European standards in the matter, in particular, the Joint Venice Commission - OSCE/ODIHR Guidelines on Freedom of Peaceful Assembly. It contained an over-arching guarantee of freedom of assembly, according to which restrictions on fundamental rights including the right to freedom of assembly may only be imposed in accordance with the law and in pursuit of legitimate aims, and may not exceed the limits defined by international agreements. Also, a general and broad definition of "assemblies" including all types of gatherings, meetings, marches and demonstrations was provided for. In relation to the place of an assembly, the Venice Commission and the OSCE/ODIHR welcomed the explicit reference to "buildings" as it recognises that public spaces are not necessarily "open air".

Some ambiguities remained. Those mainly concerned provisions amounting to blanket prohibitions, including on the location of a peaceful assembly, provisions regulating "organisers" or "leaders" of an assembly, as well as those on remedies and judicial review procedure. The Commission and the OSCE/ODIHR considered it particularly important to stress that improvements in the text of the law needed to be coupled with adequate efforts to ensure its effective implementation in practice.

The joint opinion, adopted in December 2010 (CDL-AD (2010) 049) was an "interim" one as the Armenian author-

ities intended to submit to the Venice Commission the text of the Draft Law once examined by parliament.

Azerbaijan

Opinion on the draft Law on normative legal acts

In November 2009 the Presidential Administration of Azerbaijan requested the Venice Commission's opinion on the draft law on normative legal acts.

The purpose of this draft law is to combine, in a single legal instrument, all the important rules for producing state norms. The draft deals, *inter alia*, with the preparation, drafting, adoption, publication, and bringing into force of normative legal acts. Whilst legally speaking this measure is not strictly necessary, it may nevertheless be seen as entirely desirable, since it is likely to improve the legal, material and formal quality of Azerbaijan's legislation.

In an opinion adopted at the June 2010 session (CDL-AD (2010) 017), the Venice Commission welcomed the initiative of a draft law on normative legal acts. It found the draft law to be of good quality, relatively well structured and comprehensive, since it covers the most important aspects of legislative work. However, some points should be reconsidered, such as the scope of the draft, which had to be consistent with the terms of the Constitution and it had to state explicitly that the rules laid down apply to all normative legal acts regardless of who had authored them or which institution is responsible for adopting them; the rules on public consultation ought to be set out more explicitly; the chapter on the normative process should be reconsidered with a view to clarifying the internal procedures, powers and responsibilities of the administrative entities involved in the drafting of legislation and, in particular, the government's role in it; the terms and conditions governing the repeal or loss of legal force of provisions or normative legal acts should be reconsidered; tacit or implied repeal should be explicitly precluded and explicit repeal had to be the rule, and the issue of corruption should not be confined to normative work.

Belarus

Warning addressed by the Ministry of Justice of Belarus to the Belarusian Association of Journalists

At the request of the Parliamentary Assembly of the Council of Europe, the Venice Commission analysed the official warning addressed by the Ministry of Justice of Belarus on 13 January 2010 to the Belarusian Association of Journalists.

The warning was examined in the light of both the right to freedom of association and the right to freedom of expression. In addition, taking into account that Belarus is a candidate country for membership of the Council of Europe and an associate member of the Venice Commission, it was considered that the *acquis* of the Council of Europe, including the European Convention on Human Rights and relevant case-law of the European Court of Human Rights, also constituted a relevant frame of reference for the Commission to assess the conformity of the warning with international standards.

The right to freedom of association and the right to freedom of expression are of paramount importance in any democratic society and any restriction on these rights has to meet a strict test of justification. The warning failed to meet the strict criteria of justification under international and European standards, which had severe consequences on the effective enjoyment of the above-mentioned rights in Belarus. The Venice Commission expressed its hope

that the opinion (CDL-AD (2010) 053rev) would have a positive impact on the freedom of expression and association in Belarus. In that context, it was underlined that more concrete and pro-active steps, including requests for legal assessment of new draft legislation, were expected from the authorities of Belarus.

Bosnia and Herzegovina

Constitutional reform

Since the adoption of its Opinion on the Constitutional Situation in Bosnia and Herzegovina and the Powers of the High Representative (CDL-AD (2005) 004), the Venice Commission has consistently argued in favour of a constitutional reform in the country which would remove the discriminatory provisions from the Constitution, provide for a more effective functioning of the institutions and increase the responsibilities at the state level. The need for constitutional reform was confirmed by the *Sejdić and Finci* judgment of the European Court of Human Rights in December 2009, which contains extensive references to opinions of the Commission.

Throughout the year the Commission was involved in numerous informal contacts on constitutional reform. In addition, it contributed to the Conference on the Impact of the European Convention on Human Rights on the Constitution and Electoral Code of Bosnia and Herzegovina, organised by the Konrad Adenauer Foundation and the Council of Europe Office in Sarajevo on 28 January 2010; the Conference on Democracy in a Multi-Ethnic Society: Experience and Challenges in Bosnia and Herzegovina, organised by the Faculty of Law of the University of Vienna and the Faculty of Political Science of the University of Sarajevo in Vienna on 16-17 April 2010; and the Conference on How to Implement the *Sejdic and Finci* Judgment of the European Court of Human Rights, organised by the Konrad Adenauer Foundation and the Council of Europe office in Sarajevo on 2 December 2010.

Draft Law on the Prevention of Conflict of Interest in the Institutions of Bosnia and Herzegovina

In 2008, upon the request by the President of the Central Election Commission and the OSCE Mission to Bosnia and Herzegovina, the Venice Commission examined the Law on conflict of interest in governmental institutions of Bosnia and Herzegovina. In its Opinion (CDL-AD (2008) 014), the Commission found that the Law presented several shortcomings. The regulation of conflict of interest in Bosnia and Herzegovina also raised issues of a constitutional nature, related to the state competence for conflict of interest at Entity level.

In 2009, the authorities of Bosnia and Herzegovina prepared a new draft law, which was however rejected in the first reading by the parliament in early 2010. Despite this, in January 2010 the House of Representatives of the Parliamentary Assembly of Bosnia and Herzegovina requested an expert assessment by the Venice Commission of this new draft Law on the prevention of conflict of interest in institutions of Bosnia and Herzegovina ("the Draft Law", CDL (2010) 015).

The Draft Law kept provisions on both general incompatibilities and specific situations of conflict of interest previously criticised by the Commission, and failed to introduce a prohibition of the improper movement of elected officials, executive officeholders and advisers to the private sector ("*pantouflage*"). In its Opinion, adopted in June 2010 (CDL-AD (2010) 018), the Commission reiterated its concern regarding the absence of adequate mechanisms allowing financial declarations to be effectively

reviewed for both repressive and preventive purposes. As to the issue of legislative competence, the Draft Law rightly enabled the Entities to authorise the Central Electoral Commission to implement their laws. The Commission however noted in that respect that, if the Entities did so, they would have to harmonise their laws with the provisions of the Draft Law. In view of the lack of legislative competence of Bosnia and Herzegovina, such an obligation remained problematic, regardless of the desirability of substantive harmonisation.

On 1 June 2010 the Venice Commission was informed about a recent request for the adoption – through an urgent procedure – of an entirely new draft Law on changes and amendments to the Law on the Conflict of Interest in governmental institutions of Bosnia and Herzegovina (currently in force). However, the changes brought in through this new draft law concerned only one single article of the law currently in force. In its Opinion, the Commission regretted the fact that the Bosnian authorities had not waited for its Opinion before re-starting the process of changes and amendments.

Despite the intent of the authorities of Bosnia and Herzegovina to proceed with the adoption of this piece of legislation with urgency, the current Law on the Conflict of Interest continues to be in force in the country.

Law on Public Assemblies of the Sarajevo Canton of Bosnia and Herzegovina

Further to a request by the Minister of Internal Affairs of the Sarajevo Canton of the Federation of Bosnia and Herzegovina, the Venice Commission and the OSCE/ODIHR reviewed the Law on Public Assemblies of the Sarajevo Canton of Bosnia and Herzegovina ("the Law", CDL (2010) 036).

While the Law set out correct statements of principles governing freedom of assembly, it did not sufficiently reflect the presumption in favour of holding assemblies. It was also excessively detailed as to the conditions for exercising the constitutionally guaranteed right of assembly. Furthermore, the Law appeared to impose law enforcement responsibilities on organisers and stewards of public assemblies.

In its Opinion adopted in June 2010 (CDL-AD (2010) 016), the Commission also addressed the issue of legislative competence in this matter. According to the Commission, a possible solution, in harmony with the provisions of Chapter III of the Constitution of the Federation, would be that each Canton adopt its own law on public assemblies, while the legislative activity be co-ordinated by a model law, preferably drafted by the Federation of Bosnia and Herzegovina but open to all the Cantons.

Amicus curiae brief on certain provisions of the election law of Bosnia and Herzegovina, of the Constitution of the Federation of Bosnia and Herzegovina and of the statute of the city of Mostar

At the request of the Constitutional Court of Bosnia and Herzegovina, the Commission prepared and adopted, in October 2010, an *Amicus curiae* brief on certain provisions of the election law of Bosnia and Herzegovina, of the Constitution of the Federation of Bosnia and Herzegovina and of the statute of the city of Mostar (CDL-AD (2010) 032).

The legal situation was a very complex one, with the City Council having 35 councillors, of which 17 were elected in a city-wide electoral constituency and subjected to rules of ethnic representation, and 18 elected in respect of the six city areas (with none elected in respect of the so-called Central Zone of Mostar). The gist of the complaint which the Croat caucus had brought before the Constitutional

Court was that the Croats were discriminated against in their fundamental rights on account of the rules limiting their representation at the local level. In addition, the statute of the city of Mostar was imposed at the constitutional level and prevented the direct election of the mayor. A complaint was also raised concerning the inhabitants of the Central Zone who suffered from discrimination for no legitimate reason.

In the Commission's view, it did not appear arbitrary that rules on ethnic representation were still considered necessary in Mostar. In respect of the Central Zone, however, no objective and sufficient reason appeared to continue to exist which could justify its inhabitants being deprived of the same electoral rights enjoyed by the other inhabitants of the city of Mostar. The opinion concluded in this respect that the situation was in breach of Protocol No. 12 to the European Convention on Human Rights.

In its decision of 26 November 2010 the Constitutional Court of Bosnia and Herzegovina reached substantially the same conclusions as the Venice Commission.

Bulgaria

Draft Law on Forfeiture in favour of the State of Assets acquired through criminal or illegal activities

At the request of the Bulgarian authorities, the Venice Commission assisted Bulgaria in the preparation of the revised Draft Law on Forfeiture in favour of the State of Assets acquired through criminal or illegal activities ("the Draft Law", CDL (2010) 002). Three subsequent versions of this Draft Law were assessed.

The intended purpose of the Draft Law was to introduce a non-conviction based civil forfeiture and therefore enable the state to recover not only assets derived from criminal activities, but also all assets "illegally acquired" by a person, without requiring a criminal conviction. This was presented as a measure enabling the facilitation of the fight against the tendency of organised criminal groups to use their resources to distance themselves from criminal activities and hide the illicit origin of their assets. This was a key issue in Bulgaria.

In its interim Opinion adopted in March 2010 (CDL-AD (2010) 010), the Commission stressed that, despite the justified purpose, it was important that the non-conviction civil forfeiture proceedings be devised and carried out in compliance with the Bulgarian Constitution and taking into account European standards concerning the rule of law and respect for human rights. That was particularly relevant with regard to the questioning and examination proceedings before the newly created Identification of Illegally Acquired Assets Commission. However, the Draft Law did not specify in sufficient detail the evidential threshold required for obtaining the actual forfeiture of presumably criminally or illegally acquired assets. Moreover, it remained silent as to the way in which, to ensure the respect of human rights standards, the Court should apply the statutory assumptions when deciding whether or not to order actual asset forfeiture.

After the adoption of this interim Opinion, the Commission engaged in an intense and fruitful co-operation with the Bulgarian authorities, which resulted in a set of amendments to the Draft Law, prepared along the lines of the Commission's recommendations ("the revised Draft Law", CDL (2010) 040). The revised Draft Law was assessed by the Commission in its second interim Opinion adopted in June 2010 (CDL-AD (2010) 019). One of the most substantial changes brought by the revised Draft Law was its more limited scope of application: it applied

only to assets acquired through "*criminal activity*", thus excluding "illegally acquired assets". It nevertheless kept the possibility for the state to recover criminally obtained assets from a person involved in criminal proceedings and not only, as is the case in the Law currently in force, already convicted.

In September 2010 a Commission delegation visited Sofia to discuss further the revised Draft Law with the Bulgarian authorities. The third revised version of the Draft Law ("the third revised Draft Law", CDL (2010) 082), drafted in the light of the second interim Opinion and the September meeting, was considered by the Commission in its final Opinion, adopted in October 2010 (CDL-AD (2010) 030).

The third revised Draft Law partly extended the scope of its application by providing new grounds for initiating the proceedings for examination and identification of assets deriving from both criminal and illegal activities. Such proceedings could thus be triggered not only by criminal charges against a person but also by certain administrative offences as well as, under certain conditions, *ex officio* by the Commission for Establishing Property Acquired through Illegal Activity (the CEPAIA). On the other hand, the injunction and forfeiture proceedings before a Court could only be formally started when a criminal procedure is opened for one of the crimes listed in the text of the Draft Law. In other words, while the CEPAIA could start the examination proceedings also in the absence of criminal proceedings, it could not do anything with the assets in the absence of, at least, the initiation of pre-trial criminal proceedings. However, it may inform other authorities, such as the Prosecution Office, the Customs authorities or the Police, of the results of the examination, which may be used in other proceedings, as decided by those authorities.

In its third Interim Opinion, adopted at the December 2010 session, the Venice Commission welcomed the efforts made by the Bulgarian authorities to respond to its observations and recommendations. It stressed however, that timely, open and systematic co-operation and co-ordination between law-enforcement agencies (police, customs and other national forces) and the judiciary (both prosecutors and judges), as well as tax authorities and government officials dealing with corruption and organised crime, is key to making the seizure and forfeiture of criminal and illegal assets effective in practice. Notably, the role of the Prosecution office and its willingness to start investigations on the basis of signals and information given by the CEPAIA was underlined. The Opinion also pointed out that insufficient results achieved concerning organised crime and corruption since 2005 (when the current Law on Forfeiture in favour of the State of Assets acquired through criminal activities entered into force) indicated the necessity of coupling improvements in the text of the law with more effective progress in the improvement, in line with best practices in other member states, of the judicial practice in high-level fraud and corruption cases.

Georgia

Constitutional reform

In June 2009 the authorities of Georgia decided to prepare a new Constitution. A State Constitutional Commission was set up, which sought the assistance of the Venice Commission in this process. Throughout the year, the Venice Commission was in constant and prompt contact with the State Constitutional Commission through a liai-

son officer. On 13 January 2010, the State Constitutional Commission sent the draft Constitutional Law of Georgia "On changes and amendments to the Constitution of Georgia. Chapter VII – Local Self-Government" to the Venice Commission for assessment. The Venice Commission adopted its opinion on this Chapter at its March 2010 session.

On 17 May 2010 a comprehensive set of draft constitutional amendments, adopted by the State Constitutional Commission on 11 May, was forwarded to the Venice Commission. The Venice Commission discussed the draft amendments with the Georgian authorities on several occasions, including during a visit to Georgia on 16 and 17 September 2010; subsequently the text of the draft was modified twice by the State Commission.

On 24 September the draft amendments were adopted by the Georgian parliament in the first reading and on 1 October in the second reading. The text of the amendments was sent to the Venice Commission on 2 October for assessment. The Venice Commission adopted its final opinion on the draft law on changes and amendments to the constitution of Georgia (CDL-AD (2010) 028) on 15 October. The opinion was forwarded to the Georgian parliament, which was adopting the constitutional amendments in the third reading.

New Chapter VII of the Constitution on Local Self-Government

The draft law on constitutional changes and amendments contained a new constitutional chapter on local self-government. In the preparation of its opinion on this draft constitutional chapter, the Venice Commission consulted the Directorate General of Democracy and Political Affairs of the Council of Europe. Draft Chapter VII would replace (and expand) the very few provisions on local self-government, which existed under the current Constitution, thus providing a sounder constitutional entrenchment and implementing the European Charter on Local Self-Government (ratified by Georgia and in force there since 2005).

Constitutional entrenchment would mean better protection, insofar as a qualified majority would be needed to amend the principles of the functioning of local self-government. This was to be welcomed. However, the Commission stated in its opinion, adopted in March 2010 (CDL-AD (2010) 008), that the constitutional amendments should have set out more general principles and contained more detailed provisions on local self-government, and not simply delegated, as they did now, those details to the Law. The aim of the reform would be frustrated if the basic principles at least were not included in the Constitution, also because the Constitutional Court would be empowered to decide conflicts and questions relating to self-government, and would therefore need a clear yardstick (notably concerning the allocation of "appropriate" resources).

Changes and amendments to the Constitution of Georgia

The constitutional reform in Georgia aimed at moving from a rather strong presidential system to a mixed one, with a more balanced distribution of powers, as recommended by the Venice Commission in 2004. This was being done through several amendments, in particular to the chapter on the President. The President would no longer be the Head of the Executive, and would instead be primarily the guarantor of the functioning of the institutions. He would lose several of his powers which would be shifted to the government, which would be accounta-

ble before the parliament. The Prime Minister would be chosen by parliament. Under previous versions of the amendments, which the rapporteurs had examined, the President retained too many powers which would jeopardise his position of neutrality and would risk conflict with the government. Following the rapporteurs' recommendations, the President will now represent the country in foreign relations and retain the power to conclude international agreements, appoint some officials, declare martial law but in most cases the counter-signature of the government will be necessary. The powers of the President will be determined only by the constitution, and the impeachment of the President will be easier. In this respect, the amendments were to be welcomed.

Following the constructive dialogue which had taken place between the rapporteurs and the authorities, several improvements had been made to the final set of amendments; in particular, the category of organic laws was retained, the President's powers to call for a referendum and to call and preside over government sittings was removed.

However, two significant issues remained. The procedure of formation of the government is too complex and lengthy, which risked instability. In addition, the procedure for the declaration of non confidence in the government made it excessively difficult for the parliament to dismiss a prime minister. That undermined the principle of accountability of the government before the parliament. In that respect and in respect of budget matters, the powers of the parliament should have been strengthened.

A further problem was the introduction of a probationary period for judges; however, it was to be welcomed that judges would have life tenure. It would have been appropriate nevertheless to extend life tenure to Supreme Court judges.

The Venice Commission was aware of criticism in Georgia about the allegedly personal motivation of the President for the reform. Nevertheless, it considered that the constitutional amendments in question represented a move in the right direction and as such deserved support.

Draft amendments to the Law on Assemblies and Manifestations

On 1 March 2010 the Georgian authorities submitted to the Commission for assessment a set of draft amendments to the Law of Georgia on Assembly and Manifestation. These amendments had been prepared in response to previous comments by the Commission's rapporteurs on the Law on Assembly and Manifestations and the amendments thereto adopted in July 2009 (CDL (2009) 153 and CDL (2009) 152, of which the Commission took note in October 2009). As the work was still in progress, the Commission adopted an interim opinion (CDL-AD (2010) 009) on these new draft amendments.

The Law in force contained blanket restrictions and no indication of the principle of proportionality. In fact, it did not provide an adequate system of permissible restrictions based on the Law, in pursuit of a legitimate aim and in a manner proportionate to that aim and necessary in a democratic society. It was necessary that the Law express the general presumption in favour of the right of assembly.

Many of the proposed amendments were welcomed, as they largely addressed the rapporteurs' concerns: blanket restrictions were mostly replaced by administrative discretion on a case-by-case basis, under a general rule that restrictions must respect the principle of proportionality.

The designation of specific locations for assemblies would be deleted, which was positive. A certain lack of clarity will be addressed by the authorities.

Certain issues remained however, in particular, simultaneous and counter demonstrations should be allowed, and the termination of events should be made explicitly more flexible.

Follow-up to the Opinion on the draft amendments to the Law on Occupied Territories of Georgia (CDL-AD (2009) 051)

The Commission assessed the initial text of the Law on occupied territories as well as draft amendments that had been subsequently prepared in consultation with its experts. The Commission found that the last version of the amendments was a significant step forward and addressed the main concerns it had previously raised. It encouraged the Georgian authorities to adopt those amendments. In its final opinion of December 2009, the Commission underlined the importance of international monitoring of the situation concerning the population of the "occupied territories" and the interpretation of the formula "necessary humanitarian aid" used in the Law. On 26 February 2010, the Georgian Parliament adopted the amendments discussed with the Venice Commission. It is also positive that the Strategy on Occupied territories, adopted by the Government in January 2010, invited "international organisations to […] special monitoring missions within the framework of broader international mechanisms tasked with promoting stability on the ground".

Italy

Follow-up to the Opinion on the compatibility of the laws "Gasparri" and "Frattini" of Italy with the Council of Europe standards in the field of freedom of expression and pluralism of the media (CDL-AD (2005) 017)

In its Recommendation 1897(2010) on "Respect for media freedom", the Parliamentary Assembly of the Council of Europe asked the Venice Commission to "prepare an opinion on whether, and to what extent, legislation in Italy had been adapted to take into account its 2005 Opinion on the compatibility of the laws "Gasparri" and "Frattini" with applicable standards in the field of freedom of expression and pluralism of the media". The Commission subsequently sought information from the Italian authorities. On the basis of their reply, the Commission informed PACE that the laws in question had undergone certain changes which however were unrelated to the object of the Commission's recommendations. The PACE Committee on Culture, Science and Education decided to hold an exchange of views with the Italian delegation to the PACE in January 2011.

Kyrgyzstan

Constitutional reform

In a letter dated 23 April 2010, the Acting Vice Chairman of the Provisional Government of the Kyrgyz Republic, Mr Omurbek Tekebaev, asked the Venice Commission to assist the Provisional Government of the Kyrgyz Republic in its efforts to draft a new Constitution of the Kyrgyz Republic.

At the invitation of the Provisional Government, a Venice Commission delegation visited Bishkek and met the representatives of the Provisional Government, members of the Working Group on the drafting of the Constitution

and representatives of the Constitutional Assembly. The draft Opinion was prepared on the basis of the drafts of the Constitution of 12 and 21 May 2010, transmitted to the delegation by the Working Group on the drafting of the Constitution.

The drafts presented to the experts of the Venice Commission were a step towards improving the system of the separation of powers. They took into account a number of important recommendations made by the Venice Commission in 2007.

The Constitutional draft of 21 May 2010 was praised by the Commission for its intention to introduce, for the first time, a form of parliamentarian regime in Central Asia. Even if this system could present certain disadvantages, the Kyrgyz experience had shown that a presidential regime could easily lead to authoritarianism. Although the party system was less developed in Kyrgyzstan compared to other countries, there was still a fairly strong civil society in Kyrgyzstan, which might be the basis for democratic development within a parliamentary system. At the same time the Commission noted that the President kept a number of important powers, in particular, in respect of the security sector, law enforcement and had extensive powers to veto legislation.

The draft text of the Constitution examined by the Venice Commission resolved a number of problems which existed in the Constitution adopted in 2007, notably, it introduced a more balanced distribution of powers between the President, Parliament and the Executive, provided for an increased role of the legislative power and improved the section on human rights. However, the Commission was of the opinion that a number of constitutional provisions could be further improved, notably in the field of the independence of the judiciary, the rules for the formation of the Government and provisions on the role of the *Procuratura.*

The Venice Commission considered that the abolition of the Constitutional Court was a regrettable step. It hoped that this matter would be reconsidered and that the system of constitutional control chosen by Kyrgyzstan would nevertheless be exercised in a way providing full protection of constitutional rights and freedoms.

The Commission reiterated its position that even a good Constitutional text cannot ensure stability and the democratic development of society without there also being the relevant political will of different political forces, further legislation in line with democratic standards and a sound system of checks and balances that sets the basis for its implementation.

The Venice Commission adopted its opinion on the draft Constitution of Kyrgyzstan at its June 2010 plenary Session.

Draft Law on Peaceful Assembly of Kyrgyzstan

At the request of the Ministry of Justice, belonging to the then provisional government of the Kyrgyz Republic, the Venice Commission prepared and adopted, in December 2010, an Opinion on the Draft Law on Peaceful Assembly of Kyrgyzstan (CDL-AD (2010) 050).

While there was room for improvement, the draft law appeared to reflect a clear understanding of the basic principles of freedom of assembly and to globally comply with the relevant international standards, including the OSCE/ODIHR – Venice Commission Guidelines on Freedom of Peaceful Assembly, 2nd edition. The drafters had generally taken into account many of the recommendations provided in the 2009 Joint Opinion of the OSCE/ODIHR and the Venice Commission (CDL-AD (2009) 034). Neverthe-

less, adequate follow-up to the recommendations contained in the Opinion is essential in order to avoid arbitrary implementation of the provisions of the future law.

In order to improve the draft, the authorities were invited, *inter alia*: to expand the principles enunciated in the draft in order to include, amongst others, the principles of legality and proportionality; to specifically indicate that any restrictions to freedom of peaceful assembly may only be imposed in accordance with the law and in pursuit of legitimate aims; to revise and complete the list of definitions of terms provided in the draft in accordance with the OSCE/ODIHR-Venice Commission Guidelines; to review the provisions regarding the notification procedure as well as those which may amount to blanket prohibitions; to revise the provisions related to obligations and liability of the state and local self-government bodies; to spell out that unlawful, but peaceful assemblies, should also be facilitated by law-enforcement bodies. The Opinion also recommended that the future law use, throughout its provisions, the language of the Kyrgyz Constitution and refer to "everyone" instead of "citizens".

Follow-up to the Joint Opinion by the Venice Commission and the OSCE/ODIHR on the draft law on assemblies of the Kyrgyz Republic (CDL-AD (2009) 034)

In October 2008, the Commission adopted, jointly with the OSCE/ODIHR, an opinion on the amendments to the Law on the right of citizens to assemble peacefully, without weapons, to freely hold rallies and demonstrations. The Commission and the OSCE/ODIHR found, in particular, that the possibility for the authorities to designate assembly locations was incompatible with the freedom of assembly, and suggested its removal from the Law. On 2 March 2010, the Constitutional Court found that provision of the Law, as well as the relevant decree of the Mayor of Bishkek providing the list of special places for public meetings, were in breach of Articles 18 and 22 of the Constitution of Kyrgyzstan.

Moldova

Constitutional reform

On 20 January 2010, the Acting President of Moldova sent a letter to the Venice Commission asking for the Commission's assistance in the preparation of a new Constitution of the country. There were numerous contacts on this issue and several visits of Venice Commission delegations to Moldova and by Moldovan delegations to Strasbourg. It soon became apparent that the conditions for the adoption of a new Constitution based on a national consensus and respecting the provisions of the current Constitution on its amendment were not met. The priority was rather to amend Article 78 of the Constitution on the election of the President as a way out of the crisis in the country (see also below with respect to the *amicus curiae* request). Several attempts to elect the President in accordance with the rules of the current Constitution had failed, and there was a risk of an endless circle of repeat elections and dissolutions of parliament. The Commission therefore underlined both the urgency of amending the constitutional provision on electing the President and the need to do so in full compliance with the requirements of the current Constitution.

Amicus curiae brief for the Constitutional Court of Moldova on the interpretation of Articles 78.5 and 85.3 of the Constitution of Moldova

The Constitutional Court of Moldova, by letter from its President dated 7 December 2009, requested the Venice

Commission to provide an *amicus curiae* brief concerning a case brought by a group of deputies of Parliament on the interpretation of Articles 78.5 (election of the President) and 85.3 (dissolution of Parliament) of the Constitution of Moldova, which gave rise to uncertainty with respect to the timing of the dissolution of Parliament by the President of the Republic.

In the *amicus curiae* brief adopted at its March session (CDL-AD (2010) 002), the Venice Commission was of the opinion that a constitutional reform was needed in order to prevent political stalemates from happening again in Moldova in the future. Frequent dissolutions of Parliament that follow one another at short intervals of only a few months also create obstacles for political negotiations that are necessary for a successful constitutional reform. The Venice Commission recalled its Report on Constitutional Amendment (CDL-AD (2010) 001) adopted in December 2009, where it emphasised that constitutional amendments had to follow the procedures set out in the Constitution in force.

Montenegro

Draft Law on Prohibition of Discrimination of Montenegro

The Commission continued to follow closely the preparation of a draft law on the prohibition of discrimination of the Republic of Montenegro, a process which had started in 2009.

Following a request dated 4 December 2009 from the Minister for the protection of human rights and minorities, the Commission evaluated (CDL-AD (2010) 011) a new draft law on the prohibition of discrimination. This draft follows a previous draft law on which the Commission had given an opinion in 2009 (CDL-AD (2009) 045). The Commission noted that the revised draft contained many of the recommendations previously made by the Venice Commission. In general, the text had been improved and had become more precise and clear. Another important improvement concerned the key definitions used in the draft, in particular relating to direct and indirect discrimination. Those had been aligned with relevant international and European standards. The extension of protection from discrimination to legal persons was also a significant improvement. However, the draft still contained two major shortcomings. Firstly, the law's implementation mechanism remained inadequate and in particular did not correspond to ECRI's recommendations. The mediator appointed as a protection mechanism still lacked the power necessary to carry out that function. Secondly, the system of sanctions and remedies provided for in the law was inadequate and did not correspond to the Recommendations made either by ECRI or the EU, those sanctions should be "effective, proportionate and dissuasive". Finally the Commission noted that the draft showed other weaknesses: the definition of positive action did not correspond to ECRI recommendations or to EU Directives and that the rights of third parties to act or to support victims should be reintroduced (in particular concerning an organisation for the defence of human rights). References to other relevant legislation should be introduced into the text.

Follow-up to the Opinion on the draft Law on prohibition of Discrimination of Montenegro (CDL-AD (2010) 011)

On 27 July 2010 the Parliament of Montenegro adopted a Law on the prohibition of discrimination, after the Venice Commission had adopted two opinions on two draft Laws on the prohibition of discrimination in Montenegro. The Law, as adopted, followed the main recommenda-

tions by the Venice Commission. Some concerns remained, notably the powers given to the Ombudsman were not in conformity with the requirements of Recommendation No. 7 of ECRI.

Russian Federation

Federal Law on the amendments to the Federal Law on Defence

At the request of the Parliamentary Assembly of the Council of Europe, the Venice Commission prepared and adopted, in December 2010, a legal opinion on the Federal Law on the amendments to the Federal Law on Defence of the Russian Federation (CDL-AD (2010) 052). In this context, a delegation of the Commission travelled to Moscow and held fruitful, comprehensive and open discussions with the Russian authorities.

Two sets of changes had been made to the Law on Defence in 2009. Firstly, four legal grounds for dispatching Russian troops abroad had been provided while the Law set out explicitly that any dispatch of troops would have to comply with international law and treaties. The Russian authorities had explained that they intended to have a clear legal basis for any dispatch of troops outside the territory of the Russian Federation: the four cases in question supplemented the law on the fight against international terrorism and the law on peace-keeping operations.

The Commission welcomed the fact that a clear legal basis would be provided for such actions. At the same time, it stressed that international law needed to be complied with in any case, and that each case of dispatch of troops abroad would have to be assessed separately and individually. Of the four grounds, three (armed attack against Russian Armed Forces abroad; armed attack on another state which requests the intervention of the Russian Federation; piracy) did not appear to be problematic if they were interpreted in due conformity with international law. The fourth case (protection of Russian Federation citizens abroad from armed attacks) instead raised some concerns. It was doubtful that a reliable state practice existed in that context, and it could be assumed that if a rescue operation were to exceed a minimum intensity, the protection of a state's own nationals would not constitute an autonomous justification for the use of force.

Secondly, the amendments of 2009 had empowered the President of the Russian Federation to decide on the operational use of the troops dispatched abroad. Dispatching troops abroad was as such within the constitutional competences of the Council of the Russian Federation. A resolution of the Council of December 2009, however, had *de facto* transferred that competence to the President, which had entailed that in practice the level of parliamentary involvement, hence democratic control of this matter, had moved from high, as it is on paper, to low. In the Commission's view, that represented a step backwards, although it did not as such violate the applicable standards.

Serbia

Public Assembly Act of the Republic of Serbia

In 2010 the Ministry of Human and Minority Rights of the Republic of Serbia initiated the process of revision of the current legislation concerning freedom of assembly. The Public Assembly Act of the Republic of Serbia ("the Act"), currently in force, dates back to 1992. In July 2010 the Ministry of Human and Minority Rights of the Republic of Serbia requested the OSCE/ODIHR to review the Act. The latter's Expert Panel on Freedom of Assembly and the

Venice Commission carried out the assessment jointly (CDL-AD (2010) 031).

The Act presented several shortcomings. Among others, the reference to "application" in the Act risked being interpreted as a system of permission and not simple notification of assemblies. Also, the Act did not provide for an exception to notification requirements in the case of spontaneous assemblies. The scope of application of the Act was seen as too limited, as it excluded non-nationals as well as some other categories of people, such as aliens, minors and migrants. Furthermore, provisions related to restrictions on, bans on or termination of assemblies did not sufficiently reflect the principle of proportionality and the presumption in favour of freedom of assembly.

According to the information available, the Working Group of the Ministry of Human and Minority Rights of the Republic of Serbia has continued its work on the process of revision, taking into account the observations and recommendations provided by the Venice Commission and the OSCE/ODIHR.

Slovak Republic

Act on the State Language

On 25 September 2009, the authorities of the Slovak Republic requested the Venice Commission to prepare an opinion on the amendments, adopted in 2009, to Act No. 270/1995 on the State Language of the Slovak Republic. The Opinion (CDL-AD (2010) 035) was adopted by the Venice Commission at its October 2010 plenary session. In the preparation of its legal assessment, the Commission had consulted the Advisory Committee on the Framework Convention for the Protection of National Minorities as well as an expert on the European Charter for Regional or Minority Languages.

In the Commission's view, while enacting laws to protect the official language of a state instead of minority languages was rather unusual, the protection of the state language pursued legitimate aims. Such aims include, *inter alia*, ensuring the access of the State to essential information and communication in its territory, the possibility for the State to intervene where appropriate and be held fully accountable for the action taken. It is also the state's responsibility to provide appropriate conditions for mutual communication among and within the constituent parts of the population and to avoid persons belonging to national minorities being confined to those areas where their minority language is spoken. Promotion of the state language and its use was also an important tool for protecting persons who did not speak minority languages from being discriminated against on that account, particularly in areas where the majority of the local population speaks a minority language.

The Opinion clearly stated that state language protection was not against European standards, provided that the state complied with its obligations in the field of protection and promotion of minority languages. This includes, in particular, the obligations resulting from the Framework Convention for the Protection of National Minorities and the European Charter for Regional or Minority languages.

As to the situation in the Slovak Republic, the Commission found that more co-ordination was necessary between the Act on the State Language and other laws dealing with minority protection. General principles were lacking and a holistic approach would have been preferable. The "principles" of the Slovak government for the im-

plementation of the Act were not binding, and several of them ought to have been enshrined in the law.

To a certain extent, the Act was in conflict with the applicable standards. That was the case in particular for the unconditional obligation for private persons to use the Slovak language in their contacts with the authorities, in areas where minorities made up less than 20% of the population.

In other respects, there was a risk that the Act would impose disproportionate burdens on persons belonging to national minorities. This was true, in particular, in respect of the obligation for minority schools to translate all the pedagogical documents into Slovak.

In general, the obligation to use the state language had to be confined to genuine cases of public order needs and had to bear a reasonable relation of proportionality; the extent of a public order need could depend on the attitude of the national minorities. In other cases where the state deemed necessary, appropriate or desirable to ensure the use of the state language in addition to minority languages, it was for the state to provide adequate facilities and financial means.

Turkey

Constitutional referendum

On 12 September 2010 the Turkish people approved by referendum a number of amendments to the Constitution concerning in particular the Constitutional Court and the judiciary. While the Venice Commission was not officially asked for its opinion on the proposal, its text was prepared taking into account reports and opinions of the Commission and the Venice Commission was asked by the Ministry of Justice to assist in the drafting of implementing legislation.

Status of religious communities in Turkey

Following a request from the Parliamentary Assembly of the Council of Europe the Commission analysed the status of religious communities in Turkey. This opinion (CDL-AD (2010) 005) was the result of a long process of reflection and research. The request from the Parliamentary Assembly raised two questions, different in scope and character, but related. The Commission was invited, on the one hand, to assess the compatibility with European standards of the lack of legal personality for the religious communities in Turkey with European standards and, on the other hand, to examine the right of the Greek Orthodox Patriarchate of Istanbul to use the adjective "Ecumenical" in its name.

The Commission underlined that there is no unique European model for the status of religious communities. This was a sensitive issue in many countries, and the situation in Turkey appeared particularly complex. The Commission welcomed the fact that, over the last few years, there had been many important reforms of Turkish law which had improved the situation of non-Muslim religious communities.

Nonetheless, the Commission underlined that the fundamental right to freedom of religion laid down in Article 9, to be read in conjunction with Article 11 of the European Convention on Human Rights, provides, among other things, the possibility for religious communities to obtain legal personality as such, whilst in Turkey, they could only establish foundations or associations in support of the religious community. The possibility to obtain legal

personality is important, in particular, to ensure access to justice and the protection of property rights.

The Venice Commission therefore encouraged the Turkish authorities to continue the reform process and introduce legislation making it possible for all non-Muslim religious communities as such to acquire legal personality. There are many models in Europe on how this could be done, and the Turkish authorities were free to choose the model they considered most suitable for the situation in their country as long as it was in full compliance with the requirements of the European Convention on Human Rights. Pending such legislation, the existing rules, including the laws on foundations and associations, had to be interpreted in such a way as to minimise the restrictions on freedom of religion following from the fact that the religious communities did not themselves have legal personality.

As regards the right of the Orthodox Patriarchate to use the title "ecumenical", the Commission held that any interference with that right would constitute a violation of the autonomy of the Orthodox Church under Article 9 ECHR. The Commission noted that there was no indication that the Turkish authorities prevented the Patriarchate from using that title and that the Turkish authorities were under no positive obligation to use that title themselves. The Commission nevertheless failed to see any reason, factual or legal, for the authorities not to address the Ecumenical Patriarchate by its historical and generally recognised title.

Ukraine

Draft Law of Ukraine on Peaceful Assemblies

In December 2009, at the request of the Office of the Acting Minister for Foreign Affairs of Ukraine, the Venice Commission and the OSCE/ODIHR adopted a joint opinion (CDL-AD (2009) 052) on a new Draft Law of Ukraine on the Order of Organising and Conducting of Peaceful Events. In June 2009 the Verkhovna Rada had adopted the Draft law in the first reading.

In response to the concerns expressed by the Commission and the OSCE/ODIHR, the Ukrainian authorities prepared a new draft law, which was again submitted to the Venice Commission for assessment. The Venice Commission and the OSCE/ODIHR's Expert Panel on Freedom of Assembly carried out the assessment jointly (CDL-AD (2010) 033).

The new Draft Law of Ukraine on Peaceful Assemblies ("the Draft Law") was a considerable improvement, as many recommendations previously made had been taken into account. Certain issues of concern remained however. The Draft Law did not stress enough either the presumption in favour of assemblies or meetings, and the principle of proportionality. The definitions and types of meetings were too complex and could end up in unintended limitations. Also, the limitation to only citizens was in itself against Article 1 of the European Convention on Human Rights. In addition, the principle of freedom of assembly in every public place was not stated. The system of administrative notifications was problematic, and the deadlines in administrative or judicial decisions inadequate for guaranteeing the speediness of the proceedings. The joint Opinion included several proposals for further improvement of the Draft Law.

Constitutional situation in Ukraine

On 30 September 2010, the Constitutional Court of Ukraine adopted a decision whereby it declared Law No. 2222 on the amendment to the Constitution, adopted on 8 December 2004, unconstitutional. In addition, it required that laws subsequently adopted be brought in line with the previous Constitution of 1996 ("the 30 September Judgment"). This raised a serious problem of legitimacy of government actions, since it turned out that the authorities in Ukraine had been working for several years on the basis of a Constitution declared unconstitutional.

At the request of the Chair of the Monitoring Committee of the Parliamentary Assembly of the Council of Europe, the Venice Commission prepared an Opinion on the constitutional situation in Ukraine, adopted in December 2010 (CDL-AD (2010) 044). Its aim was not to assess the Constitutional Court's Decision, but to examine its consequences and point towards the future, in particular, towards a more balanced and coherent constitutional reform. In its previous opinions on the constitutional reform in Ukraine, the Venice Commission had repeatedly called for a comprehensive constitutional reform that would strengthen the powers of Parliament, and warned against establishing a system that was not coherent.

The Opinion addressed at the outset the issue of the participation of constitutional courts in the constitutional amendment process. It was considered that where a constitutional court has competence to review constitutional amendments already adopted, the principle of legal certainty requires that the final decision be based on a proportionality test, balanced against the negative consequences of the annulment of the constitutional amendments in question, especially when a considerable period of time has elapsed since their adoption. Also, it was important that such a decision include unambiguous transitory provisions and set a precise time-limit for bringing lower norms and the functioning of state institutions into harmony with the Constitution in force.

The main consequence of the 30 September Judgment was the reinstatement of the 1996 version of the Constitution. In strictly legal terms, this situation raised two main issues. Uncertainty resulted regarding the length of the parliamentary term (four years as provided for by the 1996 version of the Constitution or five years as provided for by the 2004 version of the Constitution), a question which had given rise to two constitutional petitions. In early October 2010, the parliamentary majority had submitted a draft amendment to the Constitution, extending the mandate of Parliament and local government bodies by one additional year (from four to five years). That draft constitutional amendment had been approved by the Constitutional Court in November 2010. In parallel, the Central Election Commission had requested the Constitutional Court's interpretation of Article 77 of the 1996 version of the Constitution on elections to Parliament. At the time of the adoption of the Opinion, the case was pending before the Constitutional Court, and the CEC had not declared the start of the election campaign. In the Venice Commission's opinion, it was up to the state Constitutional Court, as the only authority competent to give an official interpretation of the Constitution, to take its decision on the matter as soon as possible.

The Opinion also addressed the issue of bringing national legislation into conformity with the 1996 Constitution, a process which seemed to proceed too hastily and without the involvement of all relevant actors in the country. The Opinion called upon the Ukrainian authorities to ensure, when adopting and revising national legislation to imple-

ment the Constitution, full respect for all the rules of procedure, including by fully involving the opposition parties in that process.

In conclusion, the Opinion stressed that the current constitutional framework, based on a ruling of the Constitutional Court, does not enjoy sufficient legitimacy, which only the regular constitutional procedure for constitutional amendments in the *Verkhovna Rada* can ensure. The Commission thus called for a comprehensive constitutional reform, based on the regular constitutional procedure for constitutional amendments and involving all political forces in the country.

Transnational activities

Report on counter-terrorism measures and human rights

In its Resolution 1634 (2008) on "Proposed law on forty-two-day pre-charge detention in the United Kingdom", the Parliamentary Assembly of the Council of Europe (PACE) requested the Venice Commission's assistance in the preparation of a thorough study on "fighting terrorism while respecting human rights and the rule of law" (§7). PACE then considered that the British draft legislation should be examined within a more general comparative study of anti-terrorism legislation in Council of Europe member states in order to assess, in particular, the compatibility of such legislation with the requirements of the European Convention on Human Rights and the case-law of the European Court of Human Rights.

In September 2009 in Florence, the Venice Commission organised, in co-operation with PACE and the European University Institute, a Round Table on "Fight against Terrorism: Challenges for the Judiciary." The Commission adopted its final report (CDL-AD (2010) 022) in June 2010.

While it does not address specific anti-terrorism measures in different countries or the way that domestic courts have responded to those measures, the report outlines the most recurring issues arising at the national level, and the range of their possible incompatibilities under the European Convention on Human Rights. It has drawn in most part on the case-law of the European Court of Human Rights, which demonstrates how fundamental human rights and the fight against terrorism may complement each other without unduly compromising their respective aims. Issues addressed include terrorist offences and the principle of legality, surveillance powers, arrest, interrogations and length of detention, treatment of detainees, military and special tribunals as well as targeted sanctions against individuals or groups.

The report stresses that the security of the state and its democratic institutions, as well as the safety of its population, are vital public and private interests that deserve protection, if necessary, at high costs. States are even obliged to provide protection. However, states not only have the duty to protect state security, and the individual and collective safety of their inhabitants, they also have the duty to protect the (other) rights and freedoms of those inhabitants. Real security means that everybody in society can exercise his or her basic human rights without being threatened by violence; maintaining security is meant to be in the interest of ensuring human rights, and

thus should respect those rights. State security and fundamental rights are, consequently, not competitive values; they are each other's precondition.

The report also underlined the gravity of the potential harm that counter-terrorism measures may cause. It stressed that it is of particular importance to evaluate to what extent such measures can contribute, whilst remaining within the framework of the rule of law and human rights, to enhancing the state capacity to identify, apprehend and prosecute individuals planning terrorist attacks. This is why it is of vital importance, both for their legality and for their acceptability in society, that such far-reaching police powers as those relating to data-matching, surveillance, arrest, search and seizure – both their legal regulation and their application in practice – are eventually reviewed for their full conformity with the general principles of legality, necessity, proportionality and non-discrimination. In addition to parliamentary control and internal executive checks, judicial review thus remains of the utmost importance with, as an extra guarantee, supervision by an independent international tribunal.

Report on the role of the opposition in a democratic parliament

In its Resolution 1601 (2008) on "Procedural guidelines on the rights and responsibilities of the opposition in a democratic parliament", the Parliamentary Assembly of the Council of Europe (PACE) invited the Venice Commission to undertake a study on "the role of the opposition in a democratic society".

The report (CDL-AD (2010) 025) deals principally with parliamentary systems in Europe and the most common situations. It contains an analysis of the functions of parliamentary opposition, and an overview of the different legal means by which the rights of the parliamentary opposition and minorities can be protected. The report reviews and examines the main categories of parliamentary opposition and the rights of parliamentary minorities, including the right to participate in parliamentary procedures, the powers of supervision and control, the right to block or to delay decisions made by the majority, the right to introduce a constitutional appeal against laws or texts of the majority, protection against abuse by the majority. The duties and responsibilities of a democratic parliamentary opposition are also the subject of the Commission's analysis and a chapter in the report.

In legal terms, this report is an extension of Resolution 1601 (2008), which it supports to a large extent. The report concludes that the opposition is generally well protected in most European countries, even if the level of institutionalisation of the rights of the opposition varies from country to country. Some common European standards on the issue may emerge and are highlighted in the report, as well as some legal techniques to protect the rights of the opposition. From this point of view the report may constitute a source of information and inspiration for reforms on this question. Finally, the report also presents a summary of the large number of opinions which the Commission has had the opportunity to give and which concern to a more or less extent the question of the role of opposition in a democratic society.

Revised OSCE/ODIHR Guidelines on Freedom of Assembly

In the light of the increasing number of requests for legal assessment of legislation relating to freedom of assembly, the Venice Commission and the OSCE/ODIHR Panel of

Experts decided to review the Guidelines on Freedom of Assembly that had been prepared by the ODIHR Panel of Experts, in 2007, and had been subsequently endorsed by the Venice Commission. From the outset, the Guidelines were meant to be a living document, and to be updated in the light of relevant developments in this field at legislative and practical level. Several meetings of the ODIHR panel of experts were held in this context. In particular, the principle of one's right to review and appeal the substance of any restrictions or prohibitions on an assembly were introduced. New definitions were added, notably that of counter-demonstrations. The Commission adopted the Guidelines on freedom of peaceful assembly – 2nd edition (CDL-AD (2010) 020) at its 83rd Plenary Session in June 2010.

Opinion on the existing mechanisms to review the compatibility of acts by UNMIK and EULEX with human rights standards

In its opinion of 2004 on "Human Rights in Kosovo: possible establishment of review mechanisms" (CDL-AD (2004) 033)", the Venice Commission had recommended the establishment of an advisory panel in respect of acts by UNMIK in Kosovo.[2] The Human Rights Advisory Panel – HRAP – of UNMIK was established in March 2006. The Human Rights Review Panel – HRRP – of EULEX (which had taken over most of the executive tasks previously exercised by UNMIK) was set up in 2009. At the request of the Parliamentary Assembly, the Venice Commission examined both panels.

2. All references to Kosovo shall be understood in full compliance with United Nations Security Council Resolution 1244 and without prejudice to the status of Kosovo.

The Commission observed that the HRAP had taken up most of its main recommendations of 2004. The significant delay between the setting up of the UN mission and the establishment of the panel had however caused certain problems, which had affected the panel's functionality and effectiveness. While the panel's achievements had to be welcomed, it appeared essential that the backlog pending before it (over 600 cases) be dealt with shortly. Several recommendations were made in this respect, notably that the mandate of the panel be prolonged and its current composition be maintained; that a procedure of deliberations and decisions by electronic means be followed; that recourse be made more often to alternative forms of moral compensation than pecuniary ones, and in cases where the latter appeared indispensable, external funding could be sought pending the solution to the impossibility for UNMIK to pay for moral damage.

As for HRRP, the Commission observed that it had been operating since June 2010. It had started its activities in a very effective and proactive manner, which was to be welcomed and encouraged. It was generally in conformity with the general recommendations made by the Venice Commission in 2004, although those had been thought for a post-war period of crisis, which no longer pertained to Kosovo: a more thorough system of human rights review could nowadays be envisaged. Certain concerns were raised in respect of the procedure of appointment of the panel members: an external input, in some form, was necessary to preserve the objective appearance of independence of the panel. Further, the length of the members' mandate had to be prolonged, within the limits of the mandate of EULEX. The reasons for not abiding by the panel's recommendations had to be made public by the Head of Mission. Finally, in the absence of the possibility

for the HRRP to recommend the payment of financial compensation, the procedure for claiming such compensation under the insurance scheme of EULEX needed to be quick and effective. On the latter point, the Commission welcomed the commitment of the Head of Mission to ensure this.

During the preparation of this opinion, the Venice Commission held constructive exchanges with the representatives of UNMIK, EULEX and all the other stakeholders concerned.

UNMIK had informed the Commission that there existed some problems which it had to face in connection with the HRAP, including in terms of additional resources which the relations with the HRAP required. The proposal to have recourse to a wide range of restorative measures was welcomed, and would be duly considered against the background of the pertaining practical and political constraints.

EULEX, on its part, was satisfied that the Venice Commission had found that the HRRP was in compliance with the applicable standards and made known to the Venice Commission that its recommendations would be useful for all the EU executive missions in the field of justice. The establishment of the HRRP had been decided very early as a complementary channel for EULEX accountability. The EU would itself assess the efficiency and functioning of the panel. The Commission's recommendations had been duly noted and would be submitted for consideration to the Council of the European Union.

UniDem Campus – legal training for civil servants

Aware that good laws are not sufficient to achieve democracy, and that implementation is as important an element of the democratic process as are appropriate political choices and good law-making, the Venice Commission launched, in 2001, its UniDem Campus Programme of 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. The seminars take place in Trieste (Italy) and are funded by the regional government of Trieste.

In 2010, thanks to the financial support of the joint programme between the Venice Commission and European Commission "Rule of Law Initiative in Central Asia", two UniDem seminars were also opened to civil servants from four central Asian countries: Kazakhstan, Kyrgyzstan, Tajikistan and Uzbekistan.

The main goal of this successful programme is to strengthen efficient administration and good governance, as well as democratisation and human rights, including the rights of persons belonging to national minorities, law enforcement and institution building. In 2010 three seminars were held on the following topics:

- "Interregional and transfrontier co-operation: promoting democratic stability and development";
- "Administrative discretion and the rule of law"; and
- "The quality of law".

In accordance with the established practice, the seminars were organised on the basis of an interactive method. This mainly includes lectures introducing the subject, followed by questions from participants and discussion of practical examples proposed by the lecturer. The aim is to help civil servants from different countries identify common European values that can be applied in their respective states and exchange experience. National delega-

tions often make short presentations of the specific situation prevailing in their respective countries in the field covered by the topic of the seminar.

"Training of trainers" is an important component of this programme. After the seminar, participants are requested to pass on the insights gained and the material acquired at the seminar to their colleagues in their respective countries. One session of the seminar is entirely dedicated to a practical workshop, designed to help participants become "trainers" themselves. In 2010, 69 participants took part in the three seminars, and 377 civil servants were subsequently trained by the participants.

Constitutional justice, ordinary justice and ombudsman

Country-specific activities

Armenia

15th Yerevan International Conference

The Constitutional Court of Armenia organised, in co-operation with the Venice Commission, the International Association of Constitutional Law and with the support of the German Technical Co-operation (GTZ), the 15th Yerevan Conference to celebrate the 15th anniversary of the Constitution of Armenia, on the topic "Safeguarding and protection of Human Constitutional rights in the practice of Constitutional Justice, taking into account the legal positions of the European Court of Human Rights" in Yerevan, Armenia from 21 to 23 October 2010.

The Conference brought together around 70 participants, including judges of the European Court of Human Rights, Presidents or judges of the Constitutional and Supreme Courts of, *inter alia*, Bulgaria, Georgia, Greece, Kazakhstan, Luxembourg, Mexico, Moldova and Russia, as well as academics and the President of the International Association of Constitutional Law.

The Conference itself was split into four working sessions and covered such topics as interaction of the European Court of Human Rights and national systems of constitutional justice in the safeguarding and protection of human rights; particularities of functioning and problems of improving the capability of instituting an individual complaint; procedural aspects of improving the system of individual constitutional complaint and particularities and problems of implementation of constitutional court decisions adopted on the basis of an individual constitutional complaint. Part of the discussions focused on the high number of cases pending before the European Court of Human Rights.

Austria

Visit of a delegation of the Austrian Constitutional Court to the Venice Commission

The President of the Constitutional Court, as well as a delegation composed of nine members, made a visit to the Venice Commission in July 2010.

The delegation and the President of the Venice Commission discussed the relationship between the Austrian Constitutional Court and the Commission, as well as the preparation of the Congress of the Conference of European Constitutional Courts, to be held in Vienna in 2014, and its preparatory meeting to take place in Vienna in September 2012.

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

Belarus

Conference on "Theoretical and Practical Aspects when Dealing with Individual Constitutional complaints in the European model of constitutional justice"

The Venice Commission co-organised with the Constitutional Court of Belarus an international conference on "Theoretical and Practical Aspects when Dealing with Individual Constitutional Complaints in the European Model of Constitutional Justice", which took place in Minsk in April 2010.

Members of the Constitutional Courts of Belarus, Bulgaria, Hungary and Russia as well as experts and members of the Venice Commission attended the conference. The discussions included topics such as the practical implications of direct and indirect access to the Constitutional Court in different contexts, the organisational issues and the relationship between ordinary courts and the constitutional courts.

Bulgaria

Opinion on the draft Law amending the Law on Judicial Power and the draft Law amending the Criminal Procedure Code of Bulgaria

By a letter of 19 July 2010, Mr Mihail Bozhkov, *Chargé d'affaires* a.i. of the Permanent Representation of the Republic of Bulgaria to the Council of Europe, on behalf of the Parliament of Bulgaria, requested an opinion of the Venice Commission on the draft Law amending the Law on Judicial Power and on the draft Law amending the Criminal Procedure Code of Bulgaria.

The amendments introduced specialised criminal courts, prosecutors' offices and investigative bodies. While the idea of setting up such courts was not in itself objectionable, a number of points needed to be clarified in order to bring the relevant provisions into line with European standards.

Concerning the Criminal Procedure Code, in the Venice Commission's view, it would be important to monitor how it worked out in practice, particularly, but not exclusively, with regard to the work of the prosecutors who still continued to have very wide powers to direct the pre-trial investigation and the trial towards the specialised court. That power seemed to be contained by the fact that the criminal procedure before the specialised criminal court was (with very few exceptions) the ordinary procedure. Monitoring by courts in individual cases of appeal and cassation, by the Constitutional Court and by the legal community, both on a national and international level would probably be the best guarantee for a correct application of the new provisions. It would be desirable to preclude any non-compliance with European standards in practice by ensuring that any defendants tried in a court other than the specialised criminal court have a genuine opportunity to present to the latter court all relevant material on their behalf and to respond to submissions from the prosecution with respect to both the basis for their conviction and the appropriate penalty where it is responsible for sentencing and also, by bringing the deadline set for giving verdicts into line with that set for other criminal proceedings.

Canada

Visit of the Supreme Court of Canada to the Council of Europe and the Venice Commission

A delegation of the Supreme Court of Canada composed of its Chief Justice, Ms Beverley McLachlin, Justices Ian Binnie, Louis LeBel, and legal officer Andrès Garin, met Thomas Markert, Secretary of the Venice Commission, and Rudolf Dürr, Head of the Constitutional Justice Division of the Commission. The fruitful co-operation of Canada and the Venice Commission in the last twenty years was discussed as well as further ways of strengthening co-operation with Canada in the future.

Germany

Second meeting of the European Forum of Constitutional Law and congress on "The Progressing Internationalization of Constitutional Law in Europe, in particular, the Impact of the Lisbon Treaty"

Professor Rainer Arnold and Professor Didier Maus organised an international congress on "The Progressing Internationalisation of Constitutional Law in Europe, in particular, the Impact of the Lisbon Treaty", which took place, along with the second meeting of the European Forum of Constitutional Law in Regensburg, Germany, in September 2010. The Venice Commission was invited to participate in this event, at which the launching of the Venice Monnet forum (see below) was discussed with the participating academics and judges.

Georgia

Conference on "Judicial activism and restraint: theory and practice of constitutional rights"

The Venice Commission, in co-operation with the Constitutional Court of Georgia, the Public Defender's Office and the Centre for Constitutional Studies of Ilia State University, organised a conference on "Judicial activism and restraint: theory and practice of constitutional rights", which took place on 13 and 14 July 2010 in Batumi.

The conference brought together judges from the Constitutional Court of Georgia, a judge form the European Court of Human Rights, members of the Venice Commission, academics, from Europe (such as the University of Sienna and Tbilisi State University) and from the United States (Columbia Law School, Washington University Law School and George Washington University Law School), judges from the Supreme Court, from the Batumi regional court and representatives from international and local NGOs and from the School of Magistrates.

The concepts of judicial activism and restraint in common law and continental systems were discussed, analysing further the example and the interpretation techniques of the European Court of Human Rights as well as those of some countries, such as Finland, Hungary, Ireland, Italy, Poland, the United States and Georgia. Judicial activism and restraint were seen as two approaches to constitutional judicial review. The need to choose, as it were, between the two approaches arose in particular when the courts were to interpret constitutional rights, usually following societal developments. The seminar stated two main reasons for active constitutional review: the necessity to develop human rights standards and to ensure effectively

the supremacy of the Constitution over ordinary legislation.

Black Sea Regional conference on the "Importance of dissenting and concurring opinions in the development of judicial review"

The Constitutional Court of Georgia, in co-operation with the Venice Commission and the German GTZ (*Gesellschaft für Technische Zusammenarbeit*), organised a conference on the "Importance of dissenting and concurring opinions in the development of judicial review". This conference took place on 17 and 18 September 2010 in Batumi.

The conference brought together for the first time the Constitutional Courts of the Black Sea region. Members from the Constitutional Courts of Armenia, Azerbaijan, Bulgaria, Georgia, Moldova, Romania and Turkey attended the conference, as well as members of the Georgian Supreme Court and other regional Courts, representatives from the Parliament and from NGOs and several experts from the Venice Commission and the GTZ.

Separate opinions, including both dissenting (in which judges disagree on the legal solution reached) and concurring (in which judges disagree on the reasoning, but not on the legal solution) is a practice frequently found in and originating in common law systems. The UK, USA, Canada, Australia and other courts embraced them largely and made the expression of opinions an important tool for supporting the independence of the judiciary, as some matters are quite controversial and constitutional judges may not always reach a common conclusion on a case. The civil law and continental countries have been traditionally based on the collegial authority of courts and therefore on the lack of dissident voices. Strong opposition exists in Italy and France, where separate opinions are perceived as potentially delegitimising this authority, showing divided courts. However, Austria, Germany, Bulgaria, Romania, Slovenia, Spain, etc. have the possibility for constitutional judges to express a dissenting opinion.

Moldova

15th anniversary of the Constitutional Court of Moldova and conference on "Guaranteeing the Constitution's supremacy, basic function of the Constitutional Court"

The Constitutional Court of Moldova organised, in co-operation with the Venice Commission, the German Foundation for International Legal Co-operation (IRZ) and UNDP Moldova, a conference to celebrate the 15th anniversary of the Constitutional Court of Moldova, on the topic "Guaranteeing the Constitution's supremacy, basic function of the Constitutional Court" in Chişinău, Moldova, on 25 and 26 February 2010.

The conference brought together around 100 participants and was opened by the Prime Minister of Moldova, Mr Filat. The conference included a discussion with the Acting President of the Republic, Mr Ghimpu. Participants in the conference included the Minister of Justice, judges from the Constitutional Court of Moldova; presidents and judges from the constitutional courts of Albania, Azerbaijan, Belarus, Bulgaria, Croatia, Kyrgyzstan, Poland, Romania, Russia, Slovakia and Ukraine; presidents of the International Commercial Arbitration Court, the Chamber of Commerce and Industry of Moldova, the Supreme Court, the Court of Appeal, ordinary courts; representatives of the Security and Information Service, the General Prosecutor's Office, the Public Prosecutor's Office and the Mayor of Chisinau; representatives of the

Centre for Human Rights, the Lawyers' Union of Moldova; law professors from Belgium, Germany and Moldova; and representatives from the OSCE and the EU delegation to Moldova.

The participants discussed, among other matters, how to deal with the growing caseload in their respective constitutional courts. Participants also referred to the theories of monism and dualism and the relationship between international treaties and constitutions and how the Vienna Convention on the Law of Treaties of 1969 provides no guidelines on this issue as it does not mention constitutions. Discussions covered preliminary rulings of the European Court of Justice and the case-load of that Court. Finally, participants debated the pros and cons of the system of mandatory preliminary control of constitutionality of all draft laws (passed by Parliament, but not yet signed by the President) in Belarus.

Monaco

Meeting of the Parliament of Monaco and the Council of Europe on the establishment of an ombudsman institution in Monaco

On 23 April 2010 the Secretariat participated in a meeting in Monte Carlo with the Foreign Relations Committee of the Parliament of Monaco and the Legislative Support and National Human Rights Structures Division of the Council of Europe/DGHL on the subject of the establishment of an ombudsman.

Monaco is one of the few countries in Europe without an ombudsman institution or human rights commission. With a view to introducing such an institution, the Foreign Relations Committee of the Parliament of Monaco was keen on studying various models of ombudsman institutions, in particular, the functioning and powers of the Human Rights Protector of Spain and the French *Médiateur*. The Venice Commission Secretariat provided information on various opinions given by the Venice Commission on ombudsmen and the applicable standards.

Peru

International seminar on Constitutional and International Human Rights Justice

The Venice Commission co-organised with the Constitutional Court of Peru an international seminar on Constitutional and International Human Rights Justice in Lima, Peru, in June 2010.

Members of the Constitutional Court of Peru, as well as judges from the Supreme Courts and equivalent bodies from Croatia, Mexico, Uruguay, Brazil and Colombia and experts from different countries gathered together to discuss different topics, including the impact of human rights treaties such as the European Convention on Human Rights on member states and the implementation techniques and the role of constitutional courts in determining the status of international standards in national legal orders.

Russian Federation

13th International Forum on Constitutional Justice "ECHR in the 21st Century: Practice, Problems and Prospects of Implementation"

The Venice Commission co-organised with the Constitutional Court of the Russian Federation, the Institute of Law and Public Policy and the St Petersburg State Univer-

sity the 13th International Forum on Constitutional Justice in St Petersburg, from 18 to 20 November 2010.

Members of the Constitutional Court of the Russian Federation, the President and other judges of the European Court of Human Rights, Venice Commission members, judges from national Constitutional and Supreme Courts as well as experts from different countries discussed in a constructive manner problems and prospects of the implementation of the European Convention on Human Rights in the 21st century.

Serbia

Follow-up to the opinions on

– the High Judicial Council of Serbia (CDL-AD (2008) 006)

– the draft laws on judges and on the organisation of Courts of Serbia (CDL-AD (2008) 007)

– the draft Criteria and Standards for the election of judges and Court Presidents of Serbia (CDL-AD (2009) 023)

– the rules of procedure on Criteria and Standards for the evaluation of the qualification, competence and worthiness of candidates for bearers of public prosecutor's function of Serbia (CDL-AD (2009) 022)

At the end of 2009 and the beginning of 2010 a process of re-appointment of judges took place in Serbia. The judges who were not re-appointed were provided with neither a reasoned decision nor a proper appeal. The Venice Commission's opinions on the judicial reform in Serbia touched upon the question of the re-appointment of judges. The Serbian authorities subsequently prepared amendments and supplements to the Law on the High Judicial Council and the Law on Judges, following a request made by the European Commission (EC). On 16 December 2010, a Venice Commission delegation held an exchange of views on the draft amendments with a delegation of the Ministry of Justice of Serbia, notably Ms Malović, the Minister, as well as a representative from the European Commission and an expert appointed by the Legal and Human Rights Capacity Building Department of the Directorate General of Human Rights and Legal Affairs.

It was agreed during this meeting that the Ministry of Justice would turn to the Venice Commission for assistance in the on-going judicial reform process during the course of 2011. In this context, the Ministry of Justice intends to send the Venice Commission several byelaws with respect to the re-appointment process for comments and an opinion.

The Venice Commission was informed that the EC would adopt its final report on Serbia in October 2011.

Tajikistan

Conference on "Bodies of Constitutional Control in conditions of integration of legal systems: the international experience and practice of Tajikistan"

The Constitutional Court of Tajikistan, the German GTZ (*Gesellschaft für Technische Zusammenarbeit*), the Open Society Institute, and the Venice Commission organised a conference on "Bodies of Constitutional Control in conditions of integration of legal systems: the international experience and practice of Tajikistan" on the occasion of the 15th anniversary of the Constitutional Court. The event took place in Dushanbe on 4 and 5 November 2010.

The conference was opened by the President of the Republic, Mr Rahmon, and participants included the presidents and judges from the Constitutional Courts and Councils of Armenia, Azerbaijan, Estonia, Germany,

Kazakhstan, Latvia, Lithuania, Moldova, Mongolia, Russia, Ukraine and Turkey.

The aim of the conference was to exchange views on the problems concerning the execution of judgments and the right to appeal and access to justice for persons in pre-trial detention. The experience of Tajikistan in finding its way to democracy after the civil war and the experience of the Constitutional Court were presented. The exchange with constitutional courts from other regions was seen as an important element to further develop Tajik case-law.

"The former Yugoslav Republic of Macedonia"

Amicus curiae brief for the Constitutional Court on amendments to several laws relating to the system of salaries and remunerations of elected and appointed officials

The Constitutional Court of "the former Yugoslav Republic of Macedonia" requested the Venice Commission to prepare an *amicus curiae* brief concerning a case introduced by the Constitutional Court on its own initiative, on the system of salaries and remunerations of elected and appointed officials including the judges of the Constitutional Court. The salaries of these officials had been reduced, whereas judges of ordinary courts, public prosecutors, members of the Judicial Council, and of the Prosecutors Council had been exempted from the salary reduction.

The Constitutional Court submitted the following two questions to the Venice Commission: Is the rule i.e. prohibition on reduction of judges' salaries valid in times of crisis? And, if yes, does this prohibition apply to the judges of the Constitutional Court? The Venice Commission, in its *amicus curiae* brief adopted at its December session (CDL-AD (2010) 038), considered that an exceptional situation justifying a reduction of the salaries of judges might exist when a country suffers considerably from the consequences of an economic crisis and for good reasons the legislature finds it necessary to cut the salaries of all state officials. In such a situation, a general reduction of salaries funded by the state budget may include the judiciary, and cannot be qualified as a breach of the principle of the independence of judges.

Such a general measure is in line with the Venice Commission's Report on the Independence of the Judicial System which states that "the level of remuneration should be determined in the light of the social conditions in the country and compared to the level of remuneration of higher civil servants. The remuneration should be based on a general standard and rely on objective and transparent criteria". Finally, it may be seen as a token of solidarity and social justice, demanding of judges a proportional responsibility for eliminating the consequences of the economic and financial crisis of their country, by putting on them a burden equal to that for other public officials. The salaries of the judges of the Constitutional Court follow the same principles as those applicable to the other judges in this respect.

Turkey

Interim opinion on the draft law on the High Council for judges and prosecutors

By letter of 27 September 2010, Mr Sadullah Ergin, Minister for Justice of Turkey, requested an opinion on draft laws implementing the constitutional amendments approved by referendum on 12 September 2010. The letter referred, in particular, to four draft laws:

- on the High Council for Judges and Prosecutors,

- on the Organisation of the Ministry of Justice,
- on the Organisation of the Constitutional Court and
- on Judges and Prosecutors.

The final interim Opinion adopted following the request deals with the draft Law on the High Council for Judges and Prosecutors ("draft Law on HSYK"); however, this draft Law was assessed within the context of the broader constitutional reform package.

The Venice Commission adopted the interim opinion at its December session (CDL-AD (3020) 042). In general, it supports the recent constitutional reform package of 2010, as a clear step in the right direction. However, the Venice Commission noted that there was still a need for a broader constitutional reform. It also noted that the issue of constitutional reform had been very high on the political agenda in Turkey for years, and that it still attracted great political and public attention. The Venice Commission considered that the process should be continued, and that it should be as broad, open and inclusive as possible, including the opposition and civil society. The Venice Commission noted that the eventual success of the new HSYK rested not only on the new legal provisions, but also on the way they were going to be implemented and applied in the years to come. The considerable powers of the new HSYK should be exercised in an objective, impartial and professional manner in order to prove as unfounded the criticism that the new system still remained under political control, and to ensure that the judiciary in Turkey would be an organ for society at large and not only for the state. The Venice Commission encouraged the Turkish authorities to speed up the process of judicial reform in general, including the establishment of regional courts of appeal, which should serve to strengthen the quality of the judicial procedures and results. The overall aim of the judicial reform should be to have a system that is perceived as legitimate by the parties concerned and which renders good judgments. In such a system, there would be less need for centralised inspection, and any disagreement with the judgments rendered would be channelled more generally through appeals through the ordinary system instead of as complaints to a central authority in the capital.

Ukraine

Joint Opinion on the Law on the Judicial System and the Status of Judges

By letter dated 15 June 2010, the Deputy Minister of Justice of Ukraine, Mr Prytyka, and by letter dated 28 June 2010, the Chair of the Monitoring Committee of the Parliamentary Assembly, Mr Dick Marty, asked the Venice Commission to prepare an opinion on the draft Law of Ukraine on the Judiciary and the Status of Judges. The Law was adopted on 7 July 2010 by the *Verkhovna Rada* and signed by President Yanukovych on 27 July 2010. A Commission delegation visited Kyiv on 4 and 5 October to discuss the Laws with the authorities and civil society. The Commission prepared the opinion in co-operation with the Directorate of Co-operation within the Directorate General of Human Rights and Legal Affairs of the Council of Europe.

In its opinion, adopted at its October 2010 session (CDL-AD (2010) 026), the Venice Commission considered that the Law was an improvement in comparison to earlier texts, but there were two main problems related to the drastically reduced role of the Supreme Court and the increased role of the High Council of Justice in judges' ap-

pointment, discipline and dismissal. The Law in fact deprived the Supreme Court of the opportunity to influence the practice of those courts. Indeed, it lost the authority to give explanations to the courts on the interpretation and application of the legislation, although the high specialised courts retained such powers. Furthermore, the Court could revise the decisions of the high specialised courts only in the case of different application of norms of substantive law, but not of procedural law.

Another problematic important feature of the Law was the important role attributed to the High Qualifications Commission of Judges and the High Council of Justice. While the former presented characteristics that seemed compatible with European standards, the latter definitely was not compatible with those standards. It was recommended that the Constitution be amended, so as to bring the composition of the High Council of Justice in line with the European standards. The Commission wished to point out that it did not criticise the present members of the High Council of Justice but insisted that in the absence of constitutional guarantees for a balanced composition of the High Council of Justice, the powers of the latter should be reduced rather than increased. In view of this problem of the constitutional composition, strict rules of incompatibility of the Council's members should be followed.

The Commission found that there were still fundamental problems in the system envisaged for the appointment and removal of judges, notwithstanding the fact that improvements had been made. In particular, the role of the Verkhovna Rada was deeply problematical. The system of judicial self-government was too complicated and there were too many institutions.

A number of issues resulted directly from problems in the Constitution, which would need a profound revision. The main problems included the involvement of Parliament in judicial appointments and the removal of judges as well as the complicated system of judicial self-government. Further problems concerned the powers of the Head of State to establish courts, the complicated court structure, the too-wide immunity for judges, the five-year probationary period for judges, the possible consideration of unspecified "other documents" by the High Qualification Commission and judicial training.

The reactions by the Ukrainian authorities were quite positive, even though the opinion was critical. The Minister of Justice included a reform of the judiciary in the working programme. As an indirect reaction to the opinion, the Head of the Secret Service of Ukraine was discharged from his duties as member of the High Judicial Council upon his own request. A visit to Kyiv showed that there was substantial pressure on the judges of the Supreme Court to resign or to retire. The European Court of Human Rights referred to the opinion in its judgment of 9 December in the case of *Bulanov and Kupchik v. Ukraine* (Applications nos. 7714/06 and 23654/08).

Joint opinion on the Law amending certain legislative acts of Ukraine in relation to the prevention of abuse of the right to appeal

By letter dated 28 June 2010, the Chair of the Monitoring Committee of the Parliamentary Assembly, Mr Dick Marty, requested an opinion on Law No. 2181-VI Amending certain Legislative Acts in relation to the Prevention of Abuse of the Right to Appeal. This Law was adopted by the *Verkhovna Rada* on 13 May 2010. This Law is closely connected with the former one on the judiciary and the

status of judges, as they both impact on each other. The Commission prepared the opinion in co-operation with the Directorate of Co-operation within the Directorate General of Human Rights and Legal Affairs of the Council of Europe.

In its opinion adopted at its October 2010 session (CDL-AD (2010) 029), the Venice Commission considered that part of the criticism addressed to the Law derived from the Constitution, mainly concerning the composition of the High Council of Justice, the excessive number of levels of courts and the role of the *Verkhovna Rada*. However, several issues of concern stemmed from the law itself, mainly concerning the reduced quorums in the High Council of Justice and its large powers. In the dismissal of judges, the role of the HCJ was not totally clear and the issue of the breach of the oath seemed to open the door to possible abuses.

Conference on "Criminal Justice: Law and Procuracy and Criminal Procedure Code"

The Venice Commission, together with the US Embassy in Kyiv, organised a conference on the Law on the Prosecutor's General Office, which took place in Kiev, Ukraine in May 2010.

The opinion given by the Venice Commission in respect of the Law and the European standards concerning prosecutors was discussed on this occasion, and the common values shared by the Council of Europe were presented to the audience, composed, among others, of judges, prosecutors, civil society and experts in the field.

Transnational activities

The Venice Commission's Division on Constitutional Justice promotes the exchange of information and case-law through the publication of the *Bulletin on Constitutional Case-Law,* the database CODICES and the on-line Venice Forum.

Bulletin on Constitutional Case-Law

The Venice Commission provides a number of services to Constitutional Courts and equivalent bodies, including 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 2010 three regular issues were published. The Bulletin is highly appreciated by the courts because it enables regular exchanges of case-law between them, which would otherwise not be possible, notably due to language barriers.

CODICES database

All regular and special issues of the Bulletin are included in the CODICES database (http://www.CODICES.coe.int), which at the end of 2010 contained some 7000 cases. Non-European decisions are included by virtue of the full member or observer status of the respective countries or by virtue of the Venice Commission's co-operation with regional partners (see below). CODICES enables a full text search or a thematic search to be carried out through 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 of information between constitutional courts and equivalent bodies. Liaison officers from one court may ask questions about specific topics to all the other courts and receive their replies in time for the preparation of a case pending before their court. The Forum exists in three forms:

- the classic Forum, which allows exchanges of information via e-mail, moderated by the Secretariat;
- the Forum Newsgroup, which allows the courts to post their requests directly on a restricted site.
- a new Venice Monnet web forum has been created, the purpose of which is to enable academic discussion on case law, being open to members of the Commission, researchers, in particular those of the International Association of Constitutional Law and liaison officers at the constitutional courts and equivalent bodies.

The classic Forum is open to courts of member and observer states of the Venice Commission, whereas the Newsgroup is also open to courts of regional partnerships (see below). In 2010, 38 requests were made via the Forum. The replies sent to the Courts contained a rich content on the issues involved.

Observatory

An Observatory of constitutional justice was also created in 2010, providing information on case-law adopted by Constitutional Courts in the framework of the World Conference on Constitutional Justice (see below). This enabled members and Courts to informed of the most striking cases in a very short period of time.

Report on Individual Access to Constitutional Justice

In 2009, on behalf of the German Government, the then Permanent Representative of Germany to the Council of Europe, Mr Eberhard Kölsch, requested an opinion from the Venice Commission on individual access to constitutional justice. He pointed out that "such a study could be a valuable contribution to the promotion of national remedies for human rights violations and could thereby essentially help to guarantee the long-term effectiveness of the European Court of Human Rights". The report on individual access to Constitutional Justice was adopted by the Venice Commission at its December 2010 session.

The report stated that individual access to constitutional justice was important not only on the national level, in order to ensure the protection of constitutional rights, but also on the European level. A key aspect of individual complaints to the Constitutional Court (or equivalent body) against human rights violations was the question whether such a complaint had to be exhausted according to Article 35.1 of the European Convention on Human Rights before a person could apply to the European Court of Human Rights. The discussion of that topic was relevant in view of the large case-load of the Court (some 140,000 cases at the end of 2010) and the need to solve human rights issues on the national level before they reach the Strasbourg Court, as called for by paragraph 4 of the Interlaken Declaration, which emphasises the subsidiary nature of the Convention mechanism. The statistics of the European Court of Human Rights show that countries, in which a full constitutional complaint mechanism exists, have a lower number of complaints before the Court than other countries.

The Venice Commission saw an advantage in *combining indirect and direct access*, thereby creating a balance between the different existing mechanisms. It expressed reservations as to the *actio popularis*, which can result in the overburdening of the court.

The report looked into various possible filters (time limits, exhaustion of remedies, court fees etc.) but maintained that those could not be too strict in order to allow for effective human rights protection.

The Commission also analysed the fate of a complaint once it was withdrawn or the act complained against lost validity. In those cases the Commission considered that the Constitutional Court should have some discretion to act in the public or individual interest.

One part of the report is dedicated to the effects of decisions of the Constitutional Court, which can be complex and have to be carefully designed to enable the Court to ensure that its decisions have an effect on human rights protection.

Regional co-operation

The Venice Commission pursues a regional approach by co-operating with associations of constitutional courts and equivalent bodies both in and outside Europe.

Conference of the Association of Asian Constitutional Courts and Equivalent institutions

The Venice Commission participated in the 7th Conference of Asian Constitutional Court Judges on "Election laws", organised by the Constitutional Court of Indonesia with the support of the Konrad Adenauer Foundation, which took place in Jakarta, Indonesia, from 12 to 15 July 2010.

The conference presented and discussed Asian electoral systems and most recent case-law on electoral complaints and appeals. The Conference also officially launched the Association of the Asian Constitutional Courts and Equivalent Institutions. Representatives of Indonesia, Republic of Korea, Mongolia, Thailand and Uzbekistan signed the Statute of the Association.

Association of Constitutional Courts using the French language (ACCPUF)

On 18 and 19 November 2010, the Head of the Constitutional Justice Division, Mr Dürr, participated in the 7th Seminar for national correspondents of ACCPUF on "The functioning of the Constitutional Court during election time", which took place in Paris, France. In his intervention, he presented the CODICES database, to which the national correspondents (liaison officers) contribute. He also drew their attention to the Code of Good Practice in electoral matters, which can also be a reference document for Constitutional Courts and Councils outside Europe. This seminar also allowed the preparation of the ACCPUF's contribution to the 2nd Congress of the World Conference on Constitutional Justice in Rio de Janeiro in January 2011.

Conference of Constitutional Control Organs of Countries of Young Democracy

As part of its co-operation with the Conference of Constitutional Control Organs of Countries of Young Democracy, the Venice Commission co-organised the 15th Yerevan International Conference on "Safeguarding and protection of human constitutional rights and the practice of the constitutional justice, taking into account the legal position of the European Court of Human Rights" in Yerevan, Armenia (see above under Armenia, page 49).

Conference of European Constitutional Courts

Upon request by the Constitutional Court of Romania, holding the Presidency of the Conference of European Constitutional Courts, the Joint Council on Constitutional Justice decided to prepare a special Bulletin as a working document for the 2011 Congress of the Conference on the topic "Constitutional Justice: functions and relations with the other public authorities".

Ibero-American Conference of Constitutional Justice

Upon the invitation of the Supreme Court of Nicaragua, the Secretariat participated in the 8th Ibero-American Conference of Constitutional Justice on "Constitutional Justice and Economic and Social Rights", which took place from 7 to 9 July 2010 in Managua, Nicaragua. The Constitutional and Supreme Courts of Andorra, Brazil, Chile, Colombia, Costa Rica, Guatemala, Mexico, Panama, Peru, Portugal, Spain and Uruguay participated in this event.

Apart from the topic of the Conference, the participants also discussed the strengthening of co-operation between the courts, their participation in the upcoming 2nd Congress of the World Conference of Constitutional Justice in January 2011 in Rio de Janeiro and the draft Statute for this Conference.

Southern African Chief Justices Forum

Conference on "Sustaining the independence of the judiciary" and annual general meeting of the Southern African Chief Justices' Forum

The Southern African Chief Justices' Forum organised, together with the Venice Commission, a Conference on "Sustaining the independence of the judiciary", followed by the Annual General Meeting of the Chief Justices Forum. This Conference took place in Johannesburg on 13 and 14 August 2010.

The Conference brought together the chief justices from 16 countries, assistants and a representative from the Konrad Adenauer Foundation, 20 people in all. The new chief justices from Botswana, the Seychelles and Swaziland were welcomed to their first Chief Justices Forum meeting. The chief justices welcomed the Chief Justice of Zanzibar, although Zanzibar is a part of the United Republic of Tanzania, as a full member of the Southern African Chief Justices Forum.

Under the theme of the conference, five issues raised by several member countries of the Chief Justices Forum were discussed in detail, notably the dangers of politicising the judiciary, brought up by Lesotho, a topic with respect to which the chief justices agreed that courts must continue to resist any interference or political pressure with their decisions and underlined the importance for judges in different forums to speak with one voice. The discussion also evolved around the relevance of commer-

cial courts to the modern judiciary and the computerisation of the judiciary, raising how this could improve efficiency and that member countries should share information and experience on computerisation, using, for example, the Venice Commission Newsgroup. The modern challenges to the independence of the judiciary were also discussed, as well as the role of the law and the judiciary in preventing child abuse.

The chief justices also voiced their support for the upcoming Second Congress of the World Conference on Constitutional Justice on the topic "Separation of powers and independence of constitutional courts and equivalent bodies" (Rio de Janeiro, Brazil, January 2011).

Union of Arab Constitutional Courts and Councils (UACCC)

The Venice Commission, in co-operation with the Union of Arab Courts and Councils (UACCC) and the Supreme Court of Libya, organised an international symposium, on the occasion of the 13th meeting of the UACCC and its 6th International Scientific Forum.

The participants included members of the Venice Commission as well as presidents and judges of the Arabic Courts and Councils. The aim of the symposium was to have an analysis of different constitutional guarantees for human rights. The issue of the relationship between Islamic law and national constitutions was discussed, offering a link between values contained in the Koran and constitutional principles. The debate showed that the Arabic courts follow with interest the case-law of the European Court of Human Rights.

The discussions also dealt with the strengthening of the Venice Commission's co-operation with the General Assembly of the Union of Arab Constitutional Courts and Councils, which met on the occasion of the Scientific Forum and decided to set up a Committee with the mandate to prepare amendments to the Statute of the Union, which should enable it to work more effectively with the Commission. The Union also confirmed its support for the establishment of the World Conference on Constitutional Justice.

Conference of Constitutional Jurisdictions using the Portuguese Language

The Conference of Constitutional Jurisdictions using the Portuguese Language took the opportunity of the First World Conference on Constitutional Justice, which took place in Cape Town in January 2009, to meet as a group. It held its founding meeting in Lisbon, Portugal from 20 to 22 May 2010.

At the latter meeting of the Conference of Constitutional Jurisdictions using the Portuguese Language, in Lisbon the Statute of the Conference was adopted. The Conference encouraged co-operation with the Venice Commission. The President of the Conference was the Chair of the Constitutional Court of Mozambique, and in the discussions it was established that the next formal meeting will be held in Mozambique in 2012 preceded by a seminar in Angola in 2011.

International Organisation of the Francophonie (OIF)

In May 2010, the Venice Commission participated in the International Network Seminar of the OIF on the occasion

of the 10th anniversary of the OIF Bamako Declaration, in Paris. The universality of human rights, as essential values of democracy, and the role of the OIF in promoting these values through its activities were discussed and presented. The participants were from the countries which are members of the OIF, experts, judges, NGOs and the International Criminal Court, which has been always strongly supported by the OIF.

The OIF kindly supports the translation into the French language of contributions to the Bulletin on Constitutional Case-Law from member and observer states of the OIF.

World Conference on Constitutional Justice

The World Conference gives the Courts the opportunity to discuss issues relating to their independence in their relations with other state powers, especially with respect to pressure from the executive or the legislative power but also at times from the media.

The purpose of the Congress was to enable judges to draw inspiration for dealing with such situations from their peers from other countries, especially at a time when constitutional justice is in danger in a number of countries. Reference to similar cases in other countries can give an added legitimacy to a judgment. This can be crucial in cases where a judge expects the decision to be disliked by the other state powers. Discussions among judges may provide the moral support necessary to remain faithful to the Constitution even in difficult situations.

The discussions focused on the independence of the constitutional court or equivalent body as an institution, the constitutional independence of individual judges and operating procedures of courts as a means to guarantee their independence. The discussions revealed that these aspects are closely linked.

The participants also discussed a draft Statute for the World Conference as a permanent body, which is expected to be opened for accession during the course of 2011.

Transnational activities – ordinary judiciary

Report on the independence of the judicial system

Part I. The independence of judges

By letter of 11 July 2008, the Chairperson of the Committee on Legal Affairs and Human Rights of the Parliamentary Assembly requested the Venice Commission to give an opinion on "European standards as regards the independence of the judicial system". The Venice Commission decided to prepare two reports on the independence of the judiciary, one focusing on judges and one on prosecutors.

Part I of the report was discussed in several meetings of the Sub-Commission on the Judiciary, and the text is an in-depth analysis of current European standards in this field. Financial resources of courts, the rules on the appointment of judges, the tenure of their mandate, the composition of high judicial councils, case-allocation, budget and staff were among the issues which were dealt with in the report, which was adopted in the March 2010 session (CDL-AD (2010) 004).

The report concluded that the following standards should be respected by states in order to ensure internal and external judicial independence:

- The basic principles relevant to the independence of the judiciary should be set out in the Constitution or equivalent texts. These principles include the judiciary's independence from other state powers; that judges are subject only to the law, that they are distinguished only by their different functions, as well as the principles of the natural or lawful judge pre-established by law and that of his or her irremovability.

- All decisions concerning appointment and the professional career of judges should be based on merit applying objective criteria within the framework of the law.

- Rules of incompatibility and for the challenging of judges are an essential element of judicial independence.

- It is an appropriate method for guaranteeing the independence of the judiciary that an independent judicial council have decisive influence on decisions on the appointment and career of judges. While respecting the variety of legal systems existing, the Venice Commission recommends that states not yet having done so consider the establishment of an independent judicial council. In all cases the council should have a pluralistic composition, with a substantial part if not the majority of the members being judges. With the exception of ex-officio members these judges should be elected or appointed by their peers.

- Ordinary judges should be appointed permanently until retirement. Probationary periods for judges are problematic from the point of view of their independence.

- Judicial councils, or disciplinary courts, should have a decisive influence in disciplinary proceedings. The possibility of an appeal to a court against decisions of disciplinary bodies should be provided for.

- A level of remuneration should be guaranteed to judges which corresponds to the dignity of their office and the scope of their duties.

- Bonuses and non-financial benefits for judges, the distribution of which involves a discretionary element, should be phased out.

- As regards the budget of the judiciary, decisions on the allocation of funds to courts should be taken with the strictest respect for the principle of judicial independence. The judiciary should have the opportunity to express its views about the proposed budget to Parliament, possibly through the judicial council.

- Judges should enjoy functional – but only functional – immunity.

- Judges should not put themselves into a position where their independence or impartiality may be questioned. This justifies national rules on the incompatibility of judicial office with other functions and is also a reason why many states restrict political activities of judges.

- States may provide for the incompatibility of the judicial office with other functions. Judges shall not exercise executive functions. Political activity that could interfere with impartiality of judicial powers shall not be authorised.

- Judicial decisions should not be subject to any revision outside the appeals process, in particular not through a protest of the prosecutor or any other state body outside the time limit for an appeal.

- In order to shield the judicial process from undue pressure, one should consider the application of the prin-

ciple of *"sub judice"*, which should be carefully defined, so that an appropriate balance is struck between the need to protect the judicial process on the one hand and freedom of the press and open discussion of matters of public interest on the other.

- The principle of internal judicial independence means that the independence of each individual judge is incompatible with a relationship of subordination of judges in their judicial decision making activity.

- As an expression of the principle of the natural or lawful judge pre-established by law, the allocation of cases to individual judges should be based on objective and transparent criteria established in advance by the law or by special regulations on the basis of the law, e.g. in court regulations. Exceptions should be motivated.

Part II. The prosecution service

On the basis of the same request, the Venice Commission adopted a second partial report focusing on prosecutors (CDL-AD (2010) 040). The report underlined the existing wide range of systems and that no single model would apply to all countries. The independence of the prosecutors is less categorical and different in nature from that of judges.

The report deals with the powers of the prosecutors and makes distinctions, especially between the opportunity and legality models. In its conclusions, it states that the "independence" of prosecutors is not of the same nature as the independence of judges. While there is a general tendency to provide for more independence of the prosecution system, there is no common standard that would call for it. Independence or autonomy are not ends in themselves and should be justified in each case by reference to the objectives sought to be attained.

In order to provide for guarantees of non-interference, the Venice Commission recommends:

- In the procedure of appointing a Prosecutor General, advice on the professional qualification of candidates should be taken from relevant persons such as representatives of the legal community (including prosecutors) and of civil society.

- In countries where the Prosecutor General is elected by Parliament, the danger of a politicisation of the appointment process could be reduced by providing for the preparation of the election by a parliamentary committee.

- The use of a qualified majority for the election of a Prosecutor General could be seen as a mechanism to promote a broad consensus on such appointments.

- A Prosecutor General should be appointed permanently or for a relatively long period without the possibility of renewal at the end of that period. The period of office of the Prosecutor General should not coincide with Parliament's term in office.

- If some arrangement for further employment for the Prosecutor General (for example as a judge) after the expiry of the term of office is to be made, this should be made clear before the appointment. On the other hand, there should be no general ban on the Prosecutor General's possibilities of applying for other public offices during or after his term of office.

- The grounds for dismissal of the Prosecutor General must be prescribed in law and an expert body should give an opinion whether there are sufficient grounds for dismissal.

• The Prosecutor General should benefit from a fair hearing in dismissal proceedings, including before Parliament.

• Accountability of the Prosecutor General to Parliament in individual cases of prosecution or non-prosecution should be ruled out. The decision whether to prosecute or not should be for the prosecution office alone and not for the executive or the legislature. However, the making of prosecution policy seems to be an issue where the Legislature and the Ministry of Justice or Government can properly have a decisive role.

• As an instrument of accountability the Prosecutor General could be required to submit a public report to Parliament. When applicable, in such reports the Prosecutor General should give a transparent account of how any general instructions given by the executive have been implemented.

• The biggest problems of accountability (or rather a lack of accountability) arise, when the prosecutors decide not to prosecute. If there is no legal remedy – for instance by individuals as victims of criminal acts – then there is a high risk of non-accountability.

• In order to prepare the appointment of qualified prosecutors other than the prosecutor general, expert input will be useful.

• Prosecutors other than the Prosecutor General should be appointed until retirement.

• In disciplinary cases the prosecutor concerned should have a right to be heard.

• An appeal to a court against disciplinary sanctions should be available.

• The safeguard provided for in Recommendation 2000 (19) against allegedly illegal instructions is not appropriate and should be further developed because it does not prevent an allegedly illegal instruction from being given. Any instruction to reverse the view of an inferior prosecutor should be reasoned and in case of an allegation that an instruction is illegal a court or an independent body like a Prosecutorial Council should decide on the legality of the instruction.

• Threats of transfers of prosecutors can be used as an instrument for applying pressure on the prosecutor or a "non obedient" prosecutor can be removed from a delicate case. An appeal to an independent body such as a Prosecutorial Council or a similar one should be available.

• Prosecutors should not benefit from a general immunity.

• A prosecutor should not hold other state offices or perform other state functions, which would be found inappropriate for judges, and prosecutors should avoid public activities that would conflict with the principle of their impartiality.

• Where it exists, the composition of a Prosecutorial Council should include prosecutors from all levels but also other actors like lawyers or legal academics. If members of such a council are elected by Parliament, this should preferably be done by qualified majority.

• If prosecutorial and judicial councils are a single body, it should be ensured that judges and prosecutors cannot influence each others' appointment and discipline proceedings.

• Remuneration of prosecutors in line with the importance of the tasks performed is essential for an efficient and just criminal justice system.

- An expert body like a Prosecutorial Council could play an important role in the definition of training programmes.
- Prosecutor's actions which affect human rights, like search or detention, have to remain under the control of judges.
- In some countries a "prosecutorial bias" seems to lead to a quasi-automatic approval of all such requests from the prosecutors. This is a danger not only for the human rights of the persons concerned but for the independence of the judiciary as a whole.
- The prosecution service should have its primary focus on the criminal law field.

VENICE COMMISSION
COMMISSION DE VENISE

Democracy through free and fair elections

Country-specific activities

Armenia

Electoral reform

In 2008 the Venice Commission adopted a joint opinion with the OSCE/ODIHR on the Election Code of the Republic of Armenia as amended up to December 2007 (CDL-AD (2008) 023). This opinion underlined that a number of improvements were still necessary in electoral legislation and practice, especially concerning complaints and appeals and the balance in the composition of election commissions. In 2008, a working group on the electoral reform, composed of the various political factions and members of the civil society as well as of representatives of the international community, was established. In 2009, the Venice Commission and the OSCE/ODIHR made informal comments on the basis of proposals for revising the Election Code by the working group mentioned above.

On 22 and 23 November 2010 the Venice Commission took part in a Symposium on electoral standards held in Yerevan entitled "Armenia's proposed Electoral Code and an International Perspective". The symposium was co-organised by USAID, IFES, the OSCE Office in Armenia, the Council of Europe Office in Armenia, the Delegation of the European Union to Armenia, the National Assembly and the Central Election Commission of Armenia.

This symposium brought together the various actors involved in electoral matters in Armenia. Thus, political parties, NGOs and the media were represented in addition to the organising institutions. The symposium enabled the main issues to be dealt with in the new electoral code, namely, the administration of elections, the financing of political parties and electoral campaigns, the use of administrative resources, appeals and the prevention of electoral fraud, to be discussed. On this occasion the Chairman of the Legal Affairs Committee of the National Assembly of Armenia, Mr Davit Harutyunyan, stated that a working group made up of the various political forces represented in the National Assembly would meet in order to reach an agreement on the different provisions of the future electoral code, provisions which are still under discussion in particular concerning the composition of the electoral administration.

A request for a formal opinion on the new draft electoral code should be sent to the Venice Commission and the OSCE/ODIHR at the beginning of 2011.

Azerbaijan

Electoral training sessions

With a view to the legislative elections on 7 November 2010 the Venice Commission organised and participated in several training sessions.

On 12 and 13 April 2010 a member of the Venice Commission Secretariat travelled to Baku to meet representatives of the authorities responsible for the organisation of the

1. This chapter covers questions related to elections, referendums and political parties.

elections. A detailed plan was drawn up including the different activities to be implemented with a view to the elections on 7 November 2010.

On 7 and 8 July 2010 the Commission organised, with the Central Electoral Commission of Azerbaijan, a seminar to train members of Electoral Commissions on appeals. This seminar brought together representatives of groups of local experts responsible for dealing with electoral appeals. It helped raise awareness not only of the revised provisions of the electoral code concerning electoral appeals, but also of the practices in other countries. On 24 and 25 September 2010 the Venice Commission and the Azeri authorities organised a second seminar on electoral appeals for judges and lawyers.

From 29 June to 1 July and then on 21 September 2010, the Venice Commission organised, in co-operation with the Presidential administration of Azerbaijan, two seminars on freedom of association and electoral campaigns, for representatives of the local authorities and the police.

From 5 to 8 October 2010, at the request of the Central Electoral Commission of Azerbaijan, the Venice Commission sent two trainers to participate in training sessions for representatives of Territorial Electoral Commissions.

Assistance to an electoral observation mission

In the framework of the legislative elections on 7 November 2010, a Venice Commission delegation participated, from 4 to 8 November 2010, as legal adviser to the Parliamentary Assembly election observation mission in Azerbaijan. Its task consisted of giving advice to the delegation on all legal aspects of the election.

Belarus

Joint Opinion of the Venice Commission and the OSCE/ODIHR on the Amendments to the Electoral Code of the Republic of Belarus as of 17 December 2009 (CDL-AD (2010) 012)

On 18 March 2010, the Political Affairs Committee of the Parliamentary Assembly of the Council of Europe asked the Venice Commission to prepare an opinion on the amendments recently introduced to the Belarusian Electoral Code.

A Joint Opinion of the Venice Commission and the OSCE/ODIHR on the Amendments to the Electoral Code of the Republic of Belarus as of 17 December 2009 was adopted by the Council for Democratic Elections and the Venice Commission in June 2010 (CDL-AD(2010)012). According to the opinion's conclusions, the amendments provide a mixed response to the concerns of the OSCE/ODIHR and the Venice Commission. They represent a step towards removing some flaws in Belarus' election legislation although they are unlikely to resolve the underlying concern that the legislative framework for elections in Belarus continues to fall short of providing a basis for genuinely democratic elections. Major problems still exist, in particular, concerning the independence of election commissions and the rights of election observers.

Bosnia and Herzegovina

Electoral reform

In 2010 the Venice Commission continued its co-operation with Bosnia and Herzegovina on electoral issues. This activity can only be considered in conjunction with the question of the constitutional reform necessary to put an end to the discriminatory rules highlighted in the deci-

sion of 22 December 2009 of the European Court of Human Rights in the case *Sejdić and Finci v. Bosnia and Herzegovina* (the Venice Commission adopted an *amicus curiae* brief on this case (CDL-AD (2008) 027).

It is in this framework that the Venice Commission took part, on 28 January 2010 in Sarajevo, in a Conference on "the impact of the European Convention on Human Rights on the Constitution of Bosnia and Herzegovina and the Electoral Code".

Assistance to an electoral observation mission

In the framework of the legislative elections on 3 October 2010, a Venice Commission delegation participated, from 1 to 4 October 2010, as legal adviser to the Parliamentary Assembly election observation mission in Bosnia and Herzegovina. Its task consisted of giving advice to the delegation on all legal aspects of the election.

Bulgaria

Electoral reform

On 3 December 2010, the President of the Congress of Local and Regional authorities of the Council of Europe requested the Venice Commission's opinion on the unified electoral code which had already been submitted to the Bulgarian parliament in its first reading. An opinion on this issue will be adopted in 2011.

Georgia

Electoral reform

Further to a request by the Georgian authorities dated 10 February 2010, the Venice Commission and the OSCE/ODIHR drafted a Joint Opinion on the Election Code of Georgia as amended up to March 2010, which was adopted by the Council for Democratic Elections and the Venice Commission in June 2010 (CDL-AD (2010) 013).

This opinion concludes that overall, the amendments made to the Election Code of Georgia in December 2009 and March 2010 constitute an improvement. Nonetheless, a number of provisions in the current Code are of serious concern or raise questions due to the fact that the text of the Code is ambiguous or lacks clarity in some areas.

Among these issues are: overly stringent restrictions on the active and passive suffrage rights of citizens; the formation of electoral districts that undermine the principle of equality of suffrage; the absence of provision for allowing independent candidates to run for office; an overly long residency requirement for candidates in local elections; and shortcomings in the complaints and appeals process.

As in former opinions, the Venice Commission and the OSCE/ODIHR reiterated that good faith implementation of electoral legislation remained crucial. As recommended in previous opinions, the Georgian Parliament could, rather than adopting further amendments to the current Code, constructively enact a new Code in the near future. Following these recommendations, the Parliament started a new process of electoral reform aiming at adopting a new code in 2011.

Assistance to the Central Election Commission

At the request of the Central Election Commission of Georgia (CEC), a Venice Commission election expert carried out a mission of assistance to the CEC from 14 to 30 April 2010, in the context of the upcoming local elections (30 May 2010). He offered technical assistance on the mode of operation/decision-making of the CEC, as well as legal assistance – on the implementation of the Election

Code, in drafting instructions and decrees and, on the schedule for the preparation of the upcoming elections. The expert concluded, *inter alia*, that the efforts of the authorities in Georgia to improve the election legislation were in line with some of the recommendations of the Venice Commission and the OSCE/ODIHR. Also, the declared readiness for more constructive dialogue for future reforms was perceived as a positive trend.

Kyrgyzstan

Assistance to the Central Electoral Commission

In the framework of the European Commission initiative for the rule of law in Central Asia, and following a request from the European Union delegation in Bishkek and the Kyrgyz authorities, two electoral experts were deployed, long term, to assist the Central Electoral Commission of Kyrgyzstan in the preparation of the legislative elections on 10 October 2010. The first expert was present from 12 to 26 August and the second from 15 September to 15 October 2010.

Moldova

Following the 5 April 2009 parliamentary elections and the huge demonstrations which followed, and due to the absence of a majority in Parliament for electing the President, repeat parliamentary elections were held in July 2009. As the President was not elected, the political crisis went on in 2010 and led, in September 2010, to a constitutional referendum aiming at introducing direct election of the President. The referendum was declared invalid due to a low turnout. Repeat parliamentary elections were therefore organised in November 2010. During this whole period of institutional crisis, the Council of Europe and more especially the Venice Commission was particularly involved in assisting the Moldovan authorities in the electoral process.

Electoral reform

In March 2010, draft amendments to the electoral code of Moldova were drafted and immediately submitted to the Venice Commission. In a Joint Opinion on the Draft Working Text amending the Election Code of Moldova adopted by the Council for Democratic Elections and the Venice Commission in June 2010 (CDL-AD (2010) 014), the Commission concluded that, if adopted, the proposed amendments would improve the Election Code and enhance the quality and integrity of the election process. They also would have the potential to increase the level of public trust in the institutions of government. If implemented in good faith and with the necessary political will, the amendments could help resolve many of the issues related to the administration and conduct of elections that had arisen in previous elections.

Assistance to the Central Electoral Commission

At the request of the Central Electoral Commission of Moldova (CEC) two Venice Commission electoral experts assisted the CEC on two occasions, from 2 to 13 August and then from 19 August to 10 September 2010, in the framework of the preparation of the constitutional referendum of 5 September 2010.

In this context, the Venice Commission participated in a seminar on the resolution of electoral disputes for judges of local courts.

From 9 November to 10 December 2010, at the request of the Central Electoral Commission of Moldova, an electoral expert assisted the CEC in the preparation of the early legislative elections on 28 November 2010.

Assistance to electoral observation missions

In the framework of the constitutional referendum of 5 September 2010, the Venice Commission provided, from 3 to 6 September 2010, legal assistance to the election observation mission of the Parliamentary Assembly of the Council of Europe.

In the context of the legislative elections of 28 November 2010, a Venice Commission delegation participated, from 25 to 29 November 2010, as legal adviser to the Parliamentary Assembly election observation mission. Its task consisted of giving advice to the delegation on the legal aspects of the election.

Electoral training sessions

At the request of the Central Electoral Commission of Moldova and in the framework of the Action Plan between the Council of Europe and Moldova in view of the early legislative elections of 28 November 2010, the Venice Commission took part, on 15 and 16 October 2010, in Chisinau, in a training programme for presidents and secretaries of district electoral Commissions of the country. Furthermore, from 22 to 26 November 2010, the Commission participated in a training session for observers specialised in short term observation.

On 6 and 7 November 2010 the Venice Commission participated in a training session for national short term observers in the framework of the early legislative elections of 28 November 2010.

Follow-up to the Opinion on the amendments to the Moldovan electoral code (CDL-AD (2008) 022).

The Venice Commission was informed about the judgment of the European Court of Human Rights of 27 April 2010 in the case of *Tănase v. Moldova* (application no. 7/08). The case concerned the impossibility for those Moldovan citizens who also held other citizenships and had not started a procedure to renounce them, to take their seats as members of Parliament following their election. The Court had unanimously held that this ban was unjustified and infringed the European Convention on Human Rights (Article 3 of Protocol No.1 – right to free elections). The Court had referred to and agreed in substance with the Venice Commission's opinion on the amendments to the Moldovan electoral code. The Moldovan authorities had already implemented the previous Chamber decision and had already removed the impugned provisions from the electoral code.

Montenegro

Electoral reform

Further to a request by the Speaker of the Montenegrin Parliament, the Council for Democratic Elections and the Venice Commission adopted, in June 2010, a joint opinion with the OSCE/ODIHR on the Draft Law on Amendments and Supplements to the Law on the Election of Councillors and Members of Parliament of Montenegro, as amended through July 2006 (CDL-AD (2010) 023).

Upon accession to the Council of Europe in 2007, Montenegro made the commitment to revise the electoral law in order to harmonise it with the new Constitution. The Constitution provides that "Persons belonging to minority nations and other minority national communities shall be guaranteed […] the right to authentic representation in the Parliament of the Republic of Montenegro and in the assemblies of the local self-government units in which they represent a significant share in the population, according to the principle of affirmative action".

The draft law introduces a system of "authentic" representation of minorities, based on the following principles: affirmative action extended to all minority groups (not only the Albanians as previously); not only political parties and coalitions, but also groups of citizens may submit lists of candidates; two different kinds of measures of affirmative action are foreseen for larger minority groups and for smaller ones (less than 2%); the declaration of belonging to a minority group is purely voluntary: there is no maximum numerical threshold for a national group to benefit from the affirmative measures foreseen in the law (Montenegrins and Serbs lists are free to declare that they represent a minority group); the votes expressed in favour of a certain minority are not lost; there are no reserved seats: in order to obtain a seat it is necessary to have received a certain number of votes; in certain conditions, however, the smallest minorities are guaranteed a seat, provided that they reach a certain threshold.

The opinion concluded that overall, the amendments were positive, representing improvements to both the technical nature of voting and the protection of basic fundamental rights, such as that of non-discrimination. The use of a uniform model for all minority nations or other minority national communities, without reserved seats, was introduced by the Draft Law. However, it was considered that a more detailed elaboration of the proposed provisions would help increase understanding and evaluation of the draft provisions, as the interrelations between the Draft Law and other pieces of legislation are quite complicated.

Some improvements concerning other aspects of the electoral law would be necessary, in particular, the suppression of the length of residence requirement for national elections and its reduction to six months for local elections.

Norway

Electoral legislation

The Norwegian Ministry of Local Government and Regional Development requested the Venice Commission to examine aspects of the Norwegian election system relating to the resolution of electoral disputes. The request was more specifically to evaluate the provisions relating to the consideration of appeals and the validation of the elections as well as how they fit into Norway's international obligations. This request is part of the initiatives taken by Norway to implement the recommendations made in the final report of the Office for Democratic Institutions and Human Rights of the Organisation for Security and Co-operation in Europe (OSCE/ODIHR) following its evaluation of the 14 September 2009 legislative elections.

On 10 December 2010 the Council for Democratic Elections and the Venice Commission adopted a opinion drawn up jointly with the OSCE/ODIHR on the electoral legislation of Norway (CDL-AD(2010)046).

The Constitution and the Norwegian Electoral law stipulated that Parliament is competent for appeals concerning the right to vote in the case of legislative elections. The electoral law stipulated that the National Electoral Commission was competent for other appeals. The law did not provide for the right of further appeal to a Court.

The draft opinion pointed out that Norway had a long tradition of holding democratic elections which enjoy a high level of public confidence. The current Norwegian legislation on electoral dispute resolution was based on constitutional and legal traditions, maintaining a separation of

powers to ensure the sovereignty of the parliament. However, the system of appeals in electoral matters diverged from Norway's international commitments and standards, as well as good practice. In order to meet international standards and commitments, Norway should include the judiciary in the process of electoral dispute resolution. It should provide for final appeal on all election-related complaints to a court. Furthermore, the final validation of the election should include a possibility of appeal to a high level judicial body, such as the Supreme Court. Finally, good practice suggests that establishing time limits for complaints and appeals would be beneficial.

Serbia

Referendum and civil initiative

Following a request from the Minister of Public Administration and Local Self-Government of Serbia, the Council for Democratic Elections and the Venice Commission adopted in March 2010 an opinion on the draft Law on Referendums and Civil Initiative of Serbia dated 15 October 2009 (CDL-AD (2010) 006).

The draft law was considered to be generally in conformity with the standards of European electoral heritage; it followed in particular a number of specific recommendations which are part of the Venice Commission's Code of good practice on Referendums.

However, the opinion concluded that the structure of the draft law would need some revision in order to make it clearer and more coherent. Amongst the issues which needed to be re-examined in particular were, quorums (with a view to abolishing them), appeals which should fully guarantee the protection of citizens' rights, the definition of the composition of referendum commissions and electoral boards as well as the definition of the effects of "advisory" referendum.

Draft law on financing of political activities

At the request of the Ministry of Justice of Serbia, the Venice Commission prepared, jointly with the OSCE/ODIHR, an opinion on the draft law on the financing of political activities of Serbia. This opinion was adopted by the Venice Commission in December 2010 (CDL-AD (2010)048).

The system of financing political activities in Serbia proposed by the draft law constituted a step forward in creating a modern and comprehensive political financing system in Serbia, dealing with both public and private financing. The draft law took largely into account the recommendations of the Council of Europe and the OSCE on the question. The draft opinion nonetheless made a number of recommendations. In particular, it encouraged the Serbian authorities to modify the text to focus more on prevention of possible abuse rather than the imposition of sanctions, in that participation, particularly of women, should be promoted, and in that the rules of control and transparency be extended to political actors not represented in Parliament. Finally, the sanctioning regime needed to be completed, so that sanctions were both dissuasive and proportional. The law provided in fact a list of sanctions but did not differentiate at all between minor and major violations.

"The former Yugoslav Republic of Macedonia"

Out of country voting

On 17 and 18 March 2010 in Skopje the Venice Commission took part in a workshop on out of country voting or-

ganised by the governmental working group on out of country voting. This meeting was a follow up to the joint opinion by the Venice Commission and the OSCE/ODIHR on the electoral code of "the former Yugoslav Republic of Macedonia", adopted in June 2009 (CDL-AD(2009)032), which largely concerned the new provisions on out of country voting.

Ukraine

Assistance to Parliamentary Assembly electoral observation missions

In the context of the Presidential elections of 17 January and 7 February 2010, a Venice Commission delegation participated, from 14 to 18 January and from 5 to 9 February 2010, as legal adviser, in the Parliamentary Assembly election observation mission. Its task consisted of giving advice to the delegation on the legal aspects of the election.

Electoral reform

At its October 2009 session, the Venice Commission adopted a joint opinion with the OSCE/ODIHR on the Law amending some legislative Acts on the election of the President of Ukraine, adopted by the *Verkhovna Rada* of Ukraine on 24 July 2009 (CDL-AD (2009) 040). It considered that the adopted law had a considerable number of shortcomings. The opinion pointed out that the amendments to the law included a number of provisions that marked a step backwards in some aspects of the election legislation. Among other problems, the adopted law included restrictive amendments that undermined the possibility to challenge election results and the right of citizens, parties and other stakeholders to seek effective redress for violations. Later on, the Constitutional Court declared a number of these amendments unconstitutional, but some important issues remained unaddressed, such as the deadlines for appeals or the prohibition of domestic non-partisan observers. In addition, the election legislation was changed between the two rounds of the January-February 2010 presidential elections, which was against international standards. This led the Venice Commission to go on with its co-operation with the Ukrainian authorities in view of the adoption of a unified electoral code. On 28 April 2010, the Commission took part in a round table on a unified electoral code.

At the request of the President of the Parliament of Ukraine, the Council for Democratic Elections and the Venice Commission adopted, in December 2010, an opinion on the draft electoral code of Ukraine, presented by several members of parliament (CDL-AD (2010) 047). The Commission found that the text, which included many of the recommendations made by international organisations, was an important step forward in the electoral reform process in Ukraine. Some improvements were necessary, and should be able to be discussed later in the process. The Commission particularly welcomed the commitment of the Ukrainian authorities to reform the electoral legislation and to adopt an electoral code that would unify all the electoral legislation of Ukraine.

The co-operation activities with the Ukrainian authorities with a view to drafting a unified electoral code will continue in 2011. The Commission hopes that the working group set up by the President of Ukraine will, to a large extent, be open to the opposition and to the civil society and that it will take due account of the draft code reviewed by the Commission and the relevant recommendations.

Follow-up to the Joint Opinion of the Venice Commission and the OSCE/ODIHR on the Law amending some legislative Acts on the election of the President of Ukraine, adopted by the Verkhovna Rada of Ukraine on 24 July 2009 (CDL-AD (2009) 040).

The joint opinion dealt with amendments made in July 2009, which were considered to be a step backwards. The Constitutional Court had declared a number of these amendments unconstitutional. Some important issues remained unaddressed, such as the deadlines for appeals or the prohibition of domestic non-partisan observers. In addition, the election legislation had been changed between the two rounds, which was against international standards. This, fortunately, did not influence the electoral process too much, but Ukraine should adopt a unified electoral Code in any event. The Verkhovna Rada had put together a group to work on this issue, but it had not yet begun its work. The Venice Commission continued to work with the Ukrainian authorities on this matter during 2010.

United Kingdom

Code of good practice for electoral observers

Following a request from the United Kingdom Electoral Commission, the Council for Democratic Elections and the Venice Commission adopted, in December 2010, an opinion on the code of good practice for electoral observers, drawn up by the above-mentioned Electoral Commission (CDL-AD (2010) 045).

The Venice Commission emphasised both the excellent initiative of the United Kingdom Electoral Commission in drawing up this code of practice for electoral observers, aimed at clarifying the electoral law for those who receive the code, and the quality of the guidelines it contained. The code of practice was largely in conformity with international standards.

The code granted the same rights to both national and international observers. Among the most important recommendations, the opinion proposed extending the observation period, which was limited to the voting day in the code. The text could also be simplified to avoid some redundancies. It was also recommended that there should be an appeals procedure in case of removal of observers. Finally, should the president of a polling station need to limit the number of observers present for the good administration of the vote, the choice should be politically balanced.

Transnational activities

Studies and reports

Thresholds and other features of electoral systems which bar parties from access to parliament

Following the conclusions of the 2007 Forum on the Future of Democracy, the Advisory Committee of the Forum called for a more detailed examination of the issue of thresholds for parliamentary representation. The Venice Commission therefore commenced a study on this issue.

Following the adoption of a first report on the issue in 2008 (CDL-AD (2008) 038), the Commission drafted a second text which examined in detail the effects of the dif-

ferent domestic laws. This report was adopted by the Council for Democratic Elections and the Venice Commission in March 2010 (CDL-AD (2010) 007).

The main points raised in the report are as follows:

The purpose of the elections

Elections are there not only to select parliamentarians representing the people, but are also, and perhaps above all, the means whereby the people indirectly but effectively appoint a prime minister, as well as his or her team; a reasonable quorum may be justified to ensure the achievement of this objective.

Finding the balance

Most electoral laws establish thresholds to avoid fragmentation, but when does a threshold become excessive? In established democracies, the 3% threshold recommended by the Parliamentary Assembly may be considered somewhat low; the report suggests 3%-5%. A higher threshold (but not more than 10%) is recommended for the new democracies, as their party systems are still being formed.

Fairness of the system

What is important is that the election rules on these issues are clear and easily assimilated by the actors, i.e. parties and voters, so that they can adjust their behaviour accordingly. For example, if districts have fewer than 10 seats, there are very few chances of obtaining one of the seats with 5% of the votes.

More generally, it is unrealistic to strive towards a uniform electoral system in all Council of Europe countries. The solution may be to set limits based on the above considerations and to allow each country to choose the system best suited to its situation, given its history and its party system, enabling each country to strike a satisfactory balance between the two potentially conflicting requirements of representativeness and governability.

At the same session, the Council for Democratic Elections and the Venice Commission adopted, for the attention of the Committee of Ministers, comments on Parliamentary Assembly Recommendation 1898 (2010) on "Thresholds and other features of electoral systems which have an impact on representativity of parliaments in Council of Europe member states" (CDL (2010) 030), whereby it is stated as follows:

"The Commission noted that its own work leads it to consider that the issue of electoral thresholds comprises not only that of the explicit threshold but also those of implicit (natural) thresholds which electoral legislation comprises.

The Commission considers that the wide variety of national provisions makes the development of European standards other than very general ones extremely difficult. Nevertheless, it is willing to consider this possibility if the Assembly so wishes."

Impact of electoral systems on women's representation in politics

At the request of the Committee on equal opportunities for women and men of the Parliamentary Assembly the Venice Commission drafted a report on the impact of electoral systems on women's representation in politics (CDL-AD (2009) 029). This document was adopted by the Council for Democratic Elections in March 2009 and by the Venice Commission in June 2009.

In March 2010, the Council for Democratic Elections and the Venice Commission adopted, for the attention of the Committee of Ministers, comments on Parliamentary As-

sembly Recommendation 1899 (2010) "Increasing women's representation in politics through the electoral system" (CDL (2010) 031), in which the following essential elements were pointed out.

"It is essential to bear in mind that there is a wide variety of socio-economic, cultural and political factors that can hamper or facilitate women's access to parliament; moreover, the electoral system, apart from favouring women's representation, can also pursue other political aims, including enabling the formation of stable governing majorities and ensuring a close voter-representative relationship. Since some of the objectives are antagonistic, no electoral system fulfils all requirements completely. Consequently, the appropriateness of an electoral system is dependent on the political aims which are given priority in a particular socio-cultural and political context."

Equal access to local and regional elections

In June 2010, the Council for Democratic Elections and the Venice Commission adopted, for the attention of the Committee of Ministers, comments on Recommendation 273 (2009) of the Congress of Local and Regional Authorities of the Council of Europe entitled "Equal access to local and regional elections" (CDL-AD (2010) 021). The Venice Commission drew attention to the documents it has developed in line with the Congress' Recommendation, including the relevant extracts of the Code of Good Practice in Electoral Matters relating to the participation of women in elections, the right of foreigners to vote locally, information in the languages of national minorities, and access to the media or the financing of political parties.

Timeline and inventory of political criteria for assessing an election

Since 2009 the Council for Democratic Elections had been working on a document entitled "Timeline and inventory of political criteria for assessing an election". This report's purpose is to analyse the preconditions necessary for organising free and fair elections, as well as the possible measures needed to ensure voter confidence in the system and in election observation by domestic observers.

The Council for Democratic Elections and the Venice Commission adopted the report at the June 2010 session (CDL-AD (2010) 037).

The report concluded as follows. Elections are more than technical matters. Electoral processes are part of a compact between citizens and the government that represents them. Elections are indicative of how a government treats and respects citizens through a wide range of institutions and processes. In its turn, the quality of an election is derived from the quality of the process and generally reflects the level of democracy in a society. An election is best judged politically on how fully the principles for a democratic election are observed and implemented in a state.

In this context a state's openness to the international scrutiny of an electoral process bodes well for the prospects of a further fine-tuning of its democracy. By contrast, a state's unwillingness to invite international election observers is a criterion in itself and should give rise to serious concerns and be followed up by international institutions, even though there is no legal obligation of a state to invite international observers. Moreover, an election marred by mass scale gross systemic violations puts into question the legitimacy of the thus elected Office,

being aware that legitimacy is the most precious product of truly free and fair elections.

Electoral fraud

The Council for Democratic Elections decided to draw up a report on figure based management of possible electoral fraud. In fact, electoral observation missions, in particular, have consistently found suspicious situations which may be subject to a figure based assessment, but this has not been systematically examined.

The report on figure based management of possible electoral fraud (CDL-AD (2010) 043) was adopted by the Council for Democratic Elections and by the Venice Commission in December 2010. Having made a distinction between inexperience and fraud (intentional deception), the report highlights possible frauds which may be detected by statistics. These frauds concern in particular, voter registration, participation and variation in the results at different stages of the electoral process. The report then examines the aspects of the electoral process which are essential to prevent possible figure-based fraud – transparency of the process, the responsibility of all state representatives involved in organising the election and public confidence in the process.

The report reached the following conclusions:

- Detection and prevention of possible figure-based fraud requires a detailed analysis of the legal provisions that have an impact on the election results and outcome, in particular when voters' choices result in narrow margins.

- Voter registration fraud requires significant resources; therefore, issues related to potentially incorrect voter registration figures are more likely to arise from an insufficient understanding of the system for voter registration and sloppy performance of the responsible authorities rather than due to intentional fraud.

- The most efficient methods to combat figure based election fraud stem from transparency of the electoral process.

- Distinction should always be made between possible fraud and insufficient election administration experience; reasonable allegations of committed fraud should only be made after an in-depth analysis of the relevant circumstances.

Out of country voting

The Council for Democratic Elections decided to examine the question of the voting rights of citizens residing abroad. This is a topical issue in Europe, especially since the dissolution of the USSR and Yugoslavia which greatly increased the number of people residing abroad.

On the basis of a comparative study of the situation in the member states of the Venice Commission, a first report was prepared, which mainly dealt with active suffrage (and not eligibility). First of all it was necessary to ascertain whether, in principle, the right to vote is reserved only to residents. This is still the case only in a minority of states concerned. Amongst the main issues was the question of who is entitled to vote, whether it is necessary to have lived in the country or whether a prolonged absence means loss of the right to vote. It was also necessary to determine in which elections expatriates are entitled to vote. In general, the latter case was more open for national elections than for elections at a lower level. Subsequently, it was necessary to establish the procedures for voting (at the consulate, or so as to enable more people to vote, by correspondence, proxy or Internet).

The Venice Commission will continue work on the issue of out of country voting in 2011.

Participation of people with disabilities in elections

In 2010 the Venice Commission continued its co-operation with the Committee of Experts on the participation of people with disabilities in political and public life (CAHPAH-PPL). In particular, on 26 May 2010 the Commission took part in this Committee's third meeting and gave legal advice notably with a view to drawing up recommendations aimed at improving the participation of people with disabilities in political and public life.

In October 2010 the Council for Democratic Elections and the Venice Commission adopted an interpretative declaration to the code of good practice in electoral matters on the participation of people with disabilities in elections (CDL-AD (2010) 036). This declaration was based on proposals from CAHPAH and focused on ways to guarantee effectively universal, equal, free and secret suffrage for people with disabilities.

Following a request from the Social, Health and Family Affairs Committee of the Parliamentary Assembly of the Council of Europe the Commission will continue its work on the electoral rights of people with disabilities in 2011.

Joint Guidelines on political parties by the OSCE/ODIHR and the Venice Commission

In 2009 the Commission had taken part in two meetings with the OSCE/ODIHR in view of drafting guidelines on legislation relating to political parties. This co-operation went on in 2010. In particular, the OSCE/ODIHR organised on 17 and 18 February 2010 in Brussels a round table on banning political parties and on similar measures, as well as on the role of the political parties in elections. In October 2010, following consideration by the Sub-Commission on Democratic Institutions, the Commission adopted the Joint Guidelines on Political Party Regulation by the OSCE/ODIHR and the Venice Commission. This document (CDL-AD (2010) 024) is based in particular on the case-law of the European Court of Human Rights; on the guidelines already adopted by the Venice Commission in the field of political parties, such as the Guidelines on Prohibition and Dissolution of Political Parties and Analogous Measures (CDL-INF (2000) 001), the Guidelines and Report on the Financing of Political Parties (CDL-INF (2001) 008), the Report on the Establishment, Organisation and Activities of Political Parties (CDL-AD (2004) 004) and the Code of Good Practice in the Field of Political Parties (CDL-AD (2009) 021); and on OSCE documents, notably the 1990 Copenhagen Document.

The Guidelines complement the existing recommendations and codes of good practice and do not replace the documents on political parties previously adopted by the Venice Commission. They address a large number of issues concerning political parties, such as the freedom of association for political parties; the internal functioning of political parties; the party structure and activities; the funding of political parties; and the monitoring of political parties. They put the emphasis on fundamental principles such as legality, proportionality, non-discrimination, political pluralism, and the right to an effective remedy for violation of rights and accountability.

Conferences and seminars

7th European Conference of Electoral Management Bodies "Every voter counts" (London, 22-23 June 2010)

The 7th European Conference of Electoral Management Bodies – "Every Voter Counts" – was organised by the Venice Commission in co-operation with the United

Kingdom Electoral Commission on 22 and 23 June 2010. The issues which were addressed during the conference included recent elections in member states, as well as a range of issues concerning ways of ensuring that electors' interests are given the importance they deserve in the planning and management of elections and electoral systems.

Around 50 participants from national electoral management bodies of the following countries attended the conference: Armenia, Austria, Belgium, Bosnia and Herzegovina, Brazil, Finland, Germany, Kyrgyzstan, Lithuania, Mexico, Netherlands, Norway, Portugal, Russian Federation, Slovak Republic, Spain, Sweden, Ukraine and the United Kingdom, as well as members of the Venice Commission and the Congress of Local and Regional Authorities of the Council of Europe, and representatives of the Council of Europe's Directorate General of Democracy and Political Affairs, and Directorate General of Human Rights and Legal Affairs.

Also represented were the OSCE/ODIHR, the United Nations and the Organization of American States.

The conference was opened by Ms Jenny Watson, Chair of the United Kingdom Electoral Commission, Professor Jeffrey Jowell, member of the Venice Commission, and Mr Thomas Markert, Secretary of the Venice Commission.

The conference heard key addresses from Mr Keith Whitmore, member of the Congress of Local and Regional Authorities of the Council of Europe, member of the Council for Democratic Elections; Mr Konrad Olszewski, former Deputy Head of the Elections Department, OSCE/ODIHR; Mr Dovydas Vitkauskas, Consultant on European Human Rights Law; and Mr Andrew Scallan, Director of Electoral Administration, United Kingdom Electoral Commission.

The conference discussed how to ensure that "every voter counts" in relation to three main areas: electoral modernisation; the accessibility and inclusiveness of the electoral process; and the professionalism of electoral management bodies. It adopted a number of recommendations to electoral management bodies and policy-makers intended, *inter alia,* to help understand and meet the needs of electors.

Election dispute

At the invitation of the OSCE/ODIHR, Venice Commission representatives participated in a meeting of experts responsible for up-dating the OSCE/ODIHR handbook on electoral disputes in its member states, which had been adopted in 2000. This meeting took place in Warsaw on 15 and 16 February 2010. The recommendations drawn up during this meeting will help prepare an up-dated version of this publication.

Sincerity and democracy

The Venice Commission took part in an academic Colloquium organised by the French University, Aix-en-Provence III "Paul Cézanne", on the theme "Sincerity and democracy". The Venice Commission representative presented a report on "Sincerity and elections – a European perspective".

Colloquium on "The Developments of the Secondary Electoral Legislation in Europe"

On 11 June 2010 the Venice Commission took part in the 3rd Italian-Polish Colloquium on institutional changes entitled "The developments of secondary electoral legislation in Europe". A representative of the Commission

made a keynote speech on "The party constitutional system in old and new democracies".

Annual Conference of the Association of European Election Officials (ACEEEO)

The Venice Commission was represented at the annual conference of the ACEEEO on "developing accurate voter lists" (Tbilisi, 9-11 September 2010). In particular, it made comments on the draft handbook on 'Developing accurate voter lists in transitional democracies' prepared in the framework of the ACEEEO.

VOTA, the Venice Commission's electoral database

The VOTA database was set up in 2004 as part of the joint Venice Commission and European Commission programme "Democracy through Free and Fair Elections". It contains the electoral legislation of the Venice Commission's member states and other states involved in the Commission's work. Over 100 laws and statutes from about 50 states, as well as Venice Commission opinions in the field of elections, are already available in the database, in English and French (http://www.venice.coe.int/VOTA/).

In 2010 the Secretariat of the Venice Commission in co-operation with some of the European Electoral Bodies continued up-dating the database on the basis of the results of a survey conducted in 2008. New functionalities were added to the database. The work on some further technical improvements to the database will be continued in 2011.

International co-operation in the electoral field

OSCE/ODIHR

The Venice Commission and the OSCE/ODIHR co-operate in the area of electoral assistance, through joint expert reviews of electoral codes, and on several projects related to human rights, democracy and the rule of law in a number of countries.

In the field of elections, referendums and political parties:

Throughout 2010 the Venice Commission continued its close co-operation with the ODIHR in electoral matters, in particular, through the drafting of joint opinions on the electoral legislation in Belarus, Georgia, Moldova, Montenegro and Norway. The ODIHR took part regularly in the meetings of the Council for Democratic Elections. Co-operation is taking place, *inter alia,* on the revision of electoral legislation in Armenia and "the former Yugoslav Republic of Macedonia".

In 2010 the Commission took part in two meetings with the OSCE/ODIHR in view of drafting guidelines on legislation relating to political parties. This co-operation continued throughout 2010 and led the Commission, in October 2010, to adopt the Joint Guidelines on Political Party Regulation by the OSCE/ODIHR and the Venice Commission. The OSCE/ODIHR and the Venice Commission organised on 17 and 18 February 2010 in Brussels a round table on banning political parties and on similar measures, as well as on the role of political parties in elections.

The Council of Europe participated in the following events organised by the ODIHR:

• Round table on electoral disputes (Warsaw, Poland, 15-16 February 2010) – Venice Commission

• Meeting of the Panel of Experts on drafting of the OSCE guidelines on political parties (Munich, Germany, 9-10 September 2010) – Venice Commission

The ODIHR participated in the following events organised by the Council of Europe:

• the 7th European Conference of Electoral Management Bodies – "Every Voter Counts" – co-organised by the Venice Commission and the United Kingdom Electoral Commission on 22-23 June 2010

Association of European Election Officials (ACEEEO)

The Venice Commission was represented in the annual conference and the General Assembly of the ACEEEO on "developing accurate voter lists" (Tbilisi, 9-11 September 2010). In particular, it made comments on the draft handbook on "Developing accurate voter lists in transitional democracies" prepared in the framework of the ACEEEO.

Inter-American Union of Electoral Bodies (UNIORE)

The Venice Commission participated in the 10th Conference of the Inter-American Union of Electoral Bodies which took place from 11 to 13 November 2010 in Merida, Mexico.

Co-operation with other organs and bodies of the Council of Europe, the European Union and other international organisations

Council of Europe

Committee of Ministers

Representatives of the Committee of Ministers participated in all the Commission's plenary sessions during 2010. The following ambassadors, Permanent Representatives to the Council of Europe, attended the sessions in 2010:

- Ambassador Andrey Tehov, Permanent Representative of Bulgaria,
- Ambassador Dragana Filipović, Permanent Representative of Serbia,
- Ambassador Daniel Ospelt Permanent Representative of Liechtenstein,
- Ambassador Anica Djamić, Permanent Representative of Croatia,
- Ambassador Zohrab Mnatsakanian, Permanent Representative of Armenia

Several ambassadors attended the Commission's 20th anniversary celebrations in Venice on 5 June 2010. In addition, the Chair of the Committee of Ministers, the Minister of Foreign Affairs of "the former Yugoslav Republic of Macedonia", Mr Antonio Miloshoski addressed the Commission on this occasion.

In 2010 the Commission adopted relevant comments in view of replies by the Committee of Ministers to the following recommendations**:**

- **PACE Recommendation 1898 (2010)** on thresholds and other features of electoral systems which have an impact on representativity of parliaments in Council of Europe member states (CDL (2010) 030);
- **PACE Recommendation 1899 (2010)** on increasing women's representation in politics through the electoral system (CDL (2010) 031);
- **Congress Recommendation 273 (2009)** on equal access to local and regional elections (CDL-AD (2010) 021).

Upon request by the Permanent Representative of Germany, the Commission adopted in 2010 a report on individual access to constitutional justice (see under Chapter III, page 49).

The Commission co-organised, together with the Swiss Presidency and in co-operation with the University of St-Gallen, a conference on "Democracy and decentralisation – Strengthening democratic institutions through participation" (3-4 May 2010, St Gallen, Switzerland). The Commission also participated in two international conferences organised in the framework of the chairmanship of "the former Yugoslav Republic of Macedonia" of the Committee of Ministers on:

- "Media, beliefs and religions – the role of the media in fostering intercultural dialogue, tolerance and mutual understanding: freedom of expression in the media and respect towards cultural and religious diversity" (13-14 September 2010, Ohrid)
- "Strengthening subsidiarity: integrating the Court's case-law into national and judicial practice" (1-2 October 2010, Skopje)

Parliamentary Assembly

Mr Serhiy Holovaty and Mr Lluis Maria de Puig represented the PACE at the plenary sessions of the Commission in 2010. The President of the Assembly, Mr Mevlüt Çavuşoğlu, addressed the Commission on the occasion of its 20th anniversary on 5 June 2010 in Venice.

During the December 2010 session the Enlarged Bureau of the Commission exchanged views with the Presidential Committee of the PACE. The Assembly was represented at the session as follows:

- Mr Mevlüt Çavuşoğlu, President of the Parliamentary Assembly,
- Mr Lluis Maria de Puig, former President of the Parliamentary Assembly
- Mr Serhiy Holovaty, Member of the Committee on Legal Affairs and Human Rights
- Mr Andreas Gross, Chair of the Socialist Group
- Mr Tiny Kox, Chair of the United European Left Group
- Ms Karin Woldseth, Vice-President of the European Democrat Group
- Mr Paolo Giaretta, Vice-President of the Alliance of Liberals and Democrats for Europe
- Mr Jean-Claude Mignon, on behalf of the European People's Party Group

The representatives of the Parliamentary Assembly informed the Commission about the activities of the Parliamentary Assembly of particular interest to the Commission. The complementarity between the Parliamentary Assembly and the Venice Commission's work was noted as an important aspect of the co-operation between the two institutions.

A number of texts were adopted at the request of the Parliamentary Assembly in 2010, including the opinions on:

- the legal status of religious communities in Turkey and the right of the Orthodox Patriarchate of Istanbul to use the adjective "ecumenical";
- the 2009 amendments to the law on Defence of the Russian Federation;
- the Law of Ukraine on Amendments to Legislative Acts concerning the "Prevention of abuse of the right to appeal" and the Draft Law on the Judicial System and the Status of Judges of Ukraine;
- the "constitutional situation" in Ukraine, following the adoption of the Constitutional Court's decision of 1 October 2010;
- the compatibility of the warning addressed by the Justice Ministry of Belarus on 13 January 2010 to the Belarussian Association of Journalists with universal human rights standards.

In Recommendation 1897 (2010) "Respect for media freedom" PACE asked the Venice Commission to follow up on its 2005 opinion on the compatibility of the laws "Gasparri" and "Frattini" of Italy with Council of Europe standards in the field of freedom of expression and pluralism of the media. The Commission subsequently sought information from the Italian authorities. On the basis of their reply, the Commission informed PACE that the laws in question had undergone certain changes which however were unrelated to the object of the Commission's recommendations. The PACE Committee on Culture, Science and Education decided to hold an exchange of views with the Italian delegation to the PACE in January 2011.

In addition, the following studies were adopted at the request of the Parliamentary Assembly in 2010:

- European standards as regards the independence of the judicial system – Part I – Judges and Part II – Prosecutors;
- Counter-terrorism measures and human rights;
- Role of the opposition in a democratic parliament.

Amongst the texts adopted at the request of the Parliamentary Assembly is the Commission's opinion on the law on amendments and modifications to some laws of the Republic of Belarus regulating the conduct of elections and referendums.

The Parliamentary Assembly continued to participate actively in the Council for Democratic Elections created in 2002 as a tripartite organ of the Venice Commission, the Parliamentary Assembly and the Congress of Local and Regional authorities of the Council of Europe (see Part IV above). During 2010 a member of the Parliamentary Assembly, Mr Andreas Gross chaired the Council for Democratic Elections, and several of its activities were launched at the initiative of the Parliamentary Assembly representatives.

In accordance with the co-operation agreement concluded between the Venice Commission and the Parliamentary Assembly, representatives of the Commission participated in PACE election observation missions in Bosnia and Herzegovina, Moldova and Ukraine.

Congress of Local and Regional Authorities

Mr Alain Delcamp and Mr Keith Whitmore represented the Congress at the plenary sessions of the Commission in 2010. Mr Whitmore also attended the 20th anniversary ceremony on 5 June 2010.

The Congress also continued to participate 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, page 71).

European Court of Human Rights

In 2010 the European Court of Human Rights referred to the works of the Venice Commission in several judgments. It quoted the Commission's works in electoral matters (notably the Code of Good Practice in Electoral Matters, the report on the compatibility of distance voting and electronic vote with Council of Europe standards and the report on electoral law and electoral administration in Europe) in the cases:

- *Sitaropoulos and others v. Greece* (judgment of 8 July 2010, currently pending before the Grand Chamber);
- *Alajos Kiss v. Hungary* of 20 May 2010;
- *Namat Aliyev v. Azerbaijan* of 8 April 2010;
- *Grosaru v. Romania* of 2 March 2010.

In the case of *Tănase v. Moldova* (judgment of 27 April 2010) the Court had referred, *inter alia,* to the Venice Commission's recommendation to lower the electoral threshold for political parties, expressed in its opinion on the amendments to the Moldovan electoral code (CDL-AD (2008)022).

In the case of *Korolev v. Russia* (no. 2) of 1 April 2010, the Court referred to the Commission's opinion on the Prosecutor's Office of the Russian Federation (CDL-AD (2005) 014). In the case of *Floarea Pop v. Romania* of 6 April 2010, the Court referred to the Commission's Report on the effectiveness of national remedies in respect of excessive length of proceedings (CDL-AD (2006) 036). In the case of

Nilsen v. the United Kingdom of 9 March 2010 the Court referred to the Commission's work on the dissolution of political parties. The Guidelines for legislative reviews of laws affecting religion or belief (CDL-AD (2004) 028) were quoted in the case of *Sinan Isik v. Turkey* (decision of 2 February 2010).

Forum for the Future of Democracy

The President of the Venice Commission participated in the 6th Forum for the Future of Democracy entitled "Perspectives 2020: Democracy in Europe – Principles and Challenges" held from 19 to 21 October 2010 in Yerevan, Armenia.

North-South Centre

The President of the Commission participated in a Council of Europe awareness-raising seminar on the activities of the North-South Centre and the Council of Europe which took place in Rabat, Morocco (22-23 February 2010). A member of the Commission participated in the Lisbon Forum on "Freedom of expression, conscience and religion" organised by the North-South Centre (4-5 November 2010, Lisbon) and presented a paper on "Infringements against religion and the rule of law".

Committee of Experts on the participation of people with disabilities in political and public life

In 2010 the Venice Commission continued its co-operation with the Committee of Experts on the participation of people with disabilities in political and public life (CAHPAH-PPL) (see Chapter IV above, page 71).

European Union

The President of the Venice Commission made a presentation to the EU Working Party on the OSCE and the Council of Europe (COSCE) on 21 May 2010. He also took part in the High Level Meeting on the Western Balkans, organised by the Spanish EU Presidency, on 2 June 2010.

The European Commission, represented by its Legal Service, participated in all plenary sessions of the Venice Commission during 2010.

The Venice Commission maintained close co-operation with the European Union in particular with respect to constitutional issues in Bosnia and Herzegovina, Moldova and Ukraine and judicial reforms in Serbia and Turkey. The European Union repeatedly invited countries to follow Venice Commission recommendations.

In addition, the Venice Commission continued to actively participate in the Joint Programme between the European Commission and the Council of Europe entitled **"South Caucasus – Moldova – Support to free and fair elections"**, through activities in Armenia, Azerbaijan, Georgia and Moldova.

In 2010 the Venice Commission also continued co-operation with **Bolivia** on the implementation of the new Constitution with the financial support of the European Commission. A Venice Commission delegation held talks with the Bolivian national authorities in charge of draft-

ing the legislation on the Constitutional Court, the judiciary and the Electoral authority of Bolivia on 14 and 15 June 2010 in La Paz. Following the visit, the Venice Commission provided preliminary comments to the Bolivian authorities on the Law on the Constitutional Court and on the Law on the jurisdictional competencies.

EU-Central Asia Rule of Law Initiative

Following a successful co-operation programme with the five countries of the region carried out in 2009 with the financial support of the Ministry of Foreign Affairs of Germany, an agreement for joint action in the framework of the "EU-Central Asia Rule of Law Initiative" between the Venice Commission and the European Commission was signed in December 2009. This Programme, which will run until December 2011, covers five countries of the Central Asia region: Kazakhstan, Kyrgyzstan, Tajikistan, Turkmenistan and Uzbekistan. The Programme aims at contributing to the development of the judicial system, law enforcement and reform of legislation. It offers tools for Central Asian countries to further develop the rule of law, comprising assistance to judicial systems and legal professions, as well as advisory services and regional exchange in the field of legislation.

The objectives of the Programme are as follows:

- further development of constitutional mechanisms aimed at strengthening the principles of rule of law, separation of powers and legal certainty through reform of the existing legislation and its effective implementation;
- enhancing the efficiency and independence of the judiciary in general and Constitutional Councils and Courts in particular;
- assistance in the reform of the institution of public prosecution and other investigative bodies;
- further integration of international law into national legal systems;
- assistance in the reform of electoral systems and improvement of election administration;
- training of public administration officials, judges and lawyers.

"EU-Central Asia Rule of Law Initiative" delivers these objectives through the provision of targeted expertise and training by international and national experts, and various activities such as regional conferences, workshops, round tables and seminars.

The project activities in 2010 mainly focused on the problems identified with the authorities and with representations of the European Union in each one of the target countries. This approach made it possible to concentrate on the specific problems of each country and to identify common problems and possible ways of promoting regional co-operation between the beneficiary countries.

To enhance the efficiency and independence of Constitutional Councils and Courts and the judiciary in general, the project organised a number of activities in Kazakhstan and Tajikistan, notably, a Conference on "Constitutional control in the integration of the legal systems: the international experience and practice of Tajikistan" on 4 and 5 November 2010 in Dushanbe, Tajikistan co-organised together with the Judicial Training Centre of the Supreme Court of Tajikistan.

Very good progress towards the achievement of the objective to further integrate international law into national legal systems of the Central Asia states was made in 2010.

The Commission organised a number of activities, including:

- a Round Table on "The implementation of a Code of Criminal Procedure in CIS and abroad" on 25 and 26 March in Dushanbe, Tajikistan;

- a Conference on "Mediation in court proceedings: the Experience of Uzbekistan and international practice" on 20 and 21 May 2010 in Tashkent and a Round Table on plea bargaining on 23 and 24 May 2010 in Bukhara, Uzbekistan;

- two seminars on "The Implementation of Habeas Corpus in the legal system of Uzbekistan" on 30 and 31 August in Tashkent and on 2 and 3 September 2010 in Samarkand, Uzbekistan;

- a Round Table on the "International experience in implementing the criminal procedure code: Problems and solutions" on 21 and 22 October 2010 in Dushanbe, Tajikistan.

To support the reform of the electoral systems and the improvement of the election administration, representatives of the Kyrgyz authorities took part in the 7th European Conference of Electoral Management Bodies – "Every Voter Counts" which took place on 22 and 23 June 2010 in London.

Special attention was given to the training of public officials and judges in the framework of the "EU-Central Asia Rule of Law Initiative". In 2010 four activities were completed in four of the project countries (Kazakhstan, Kyrgyzstan, Tajikistan and Uzbekistan). Representatives of the Central Asia states participated in the second and third UniDem Campus training seminars on "Administrative discretion and the rule of law", from 12 to 15 April 2010 and on "The quality of law" from 14 to 17 June 2010 in Trieste, Italy.

As a result of good co-operation and the level of trust developed between the Venice Commission and its partners in the four countries, at the end of 2010 the first Regional Conference was organised in November 2010 and hosted by the Supreme Court of the Republic of Uzbekistan This activity showed the clear interest of the countries in the region for multilateral projects.

The proceedings of the activities which took place in the region were published by the project partners in Tajikistan and Uzbekistan.

In 2011 the Venice Commission will focus on the organisation of more regional activities in Kazakhstan, Kyrgyzstan, Tajikistan and Uzbekistan.

Joint Programme for Kyrgyzstan

In addition, following the events of 7 April in Kyrgyzstan and the constitutional referendum in June 2010, the Venice Commission was asked by the authorities to provide urgent assistance in implementing the constitutional reform. The European Commission provided financial support to different activities ranging from the preparation of opinions on the draft legislation to the deployment of long-term experts to the Central electoral commission and to the Ministry of Justice of Kyrgyzstan. Different activities in the framework of this project will continue during 2011.

OSCE/ODIHR

The Venice Commission and the OSCE/ODIHR co-operate in the area of electoral assistance through joint expert reviews of electoral codes, as well as on several projects related to human rights, democracy and the rule of law in a number of countries. The First Vice President of the Venice Commission and the Secretary of the Commission visited Warsaw on 18 March 2010 to discuss the modalities of further co-operation with the Director of ODIHR.

The Venice Commission participated in the following events organised by ODIHR:

- Round table on electoral disputes (Warsaw, Poland, 15-16 February 2010)
- Conference on Strengthening Judicial Independence in the OSCE, Joint OSCE-MPI Project on Judicial independence, third workshop, 15 March 2010, Max Planck Institute, Heidelberg
- Workshop on Rule of Law assistance in the OSCE area (Vienna, 25-26 March 2010)
- Meeting of the Panel of Experts on drafting of the OSCE guidelines on political parties (Munich, Germany, 9-10 September 2010).

OSCE/ ODIHR participated in:

- all plenary sessions of the Commission in 2010 as well as all meetings of the Council for Democratic Elections;
- the 7th European Conference of Electoral Management Bodies – "Every Voter Counts" – co-organised by the Venice Commission and the United Kingdom Electoral Commission on 22 and 23 June 2010.

Electoral issues

Throughout 2010 the Venice Commission continued its close co-operation with ODIHR in electoral matters, in particular, through the drafting of joint opinions on the electoral legislation in Belarus, Georgia, Moldova, Montenegro and Norway. ODIHR regularly took part in the meetings of the Council for Democratic Elections. Co-operation is taking place, *inter alia,* on the revision of electoral legislation in Armenia and "the former Yugoslav Republic of Macedonia".

Revised OSCE/ODIHR Guidelines on Freedom of Assembly

In the light of the increasing number of requests for legal assessment of legislation relating to freedom of assembly, the Venice Commission and the OSCE/ODIHR Panel of Experts decided to review the Guidelines on Freedom of Assembly that had been prepared by the ODIHR Panel of Experts in 2007 and subsequently endorsed by the Venice Commission. From the outset, the Guidelines were meant to be a living document, and to be up-dated in the light of relevant developments in this field at legislative and practical level. Several meetings of the ODIHR panel of experts were held in this context. In particular, the principle of the right to review and appeal the substance of any restrictions or prohibitions on an assembly was introduced. New definitions were added, notably that of counter-demonstrations. The Commission adopted the Guidelines on freedom of peaceful assembly – 2nd edition (CDL-AD (2010) 020) at its 83rd Plenary Session in June 2010.

Joint Venice Commission-OSCE/ODIHR Guidelines on Political Party Regulation

In 2009 the Commission took part in two meetings with the OSCE/ODIHR with a view to drafting guidelines on legislation relating to political parties. This co-operation continued during 2010 and resulted in the adoption, in October 2010, of the Joint Guidelines on Political Party Regulation by the OSCE/ODIHR and the Venice Commission. The OSCE/ODIHR and the Venice Commission organised on 17 and 18 February 2010 in Brussels a Round Table on the prohibition of political parties and similar measures, as well as on the role of political parties in elections.

United Nations

Alliance of Civilizations (AoC) (initiative under UN auspices)

The Venice Commission participated in the 1st Regional Conference for the Mediterranean organised on 8 and 9 November 2010 in Valetta, Malta.

Commonwealth of Independent States

The Commission participated in the 35th Plenary Session of the Interparliamentary Assembly of the CIS Member Nations and in an international conference on Kazakhstan's OSCE Presidency, organised on 28 October 2010 in St Petersburg (Russian Federation). The President of the Commission presented the activities of the Venice Commission in the electoral field and recommendations for election observers.

Other international bodies[1]

Association of Central and Eastern European Election Officials (ACEEEO)

ACEEEO enjoys observer status with the Council for Democratic Elections, a tripartite body of the Council of Europe, comprising representatives of the Venice Commission, Parliamentary Assembly and the Congress of the Council of Europe.

The Venice Commission was represented at the annual conference of ACEEEO on "Developing accurate voter lists" which took place in Tbilisi from 9 to 11 September 2010.

1. See also Chapter III, page 49, and Chapter IV, page 71.

Association of Asian Constitutional Courts and Equivalent institutions

The Venice Commission participated in the 7th Conference of Asian Constitutional Court Judges on "Election laws", organised by the Constitutional Court of Indonesia with the support of the Konrad Adenauer Foundation, which took place from12 to 15 July 2010 in Jakarta, Indonesia. On this occasion Indonesia, the Republic of Korea, Kyrgyzstan, Malaysia, Mongolia, the Philippines, Thailand and Uzbekistan set up the Association of Asian Constitutional Courts and Equivalent Institutions.

Association of Constitutional Courts using the French Language (ACCPUF)

On 18 and 19 November 2010 the Venice Commission participated in the 7th Seminar for ACCPUF national correspondents on "The functioning of the Constitutional Court during election time", which took place in Paris.

Conference of Constitutional Control Organs of Countries of Young Democracy (CCCOCYD)

As part of its co-operation with the Conference of Constitutional Control Organs of Countries of Young Democracy, the Venice Commission co-organised the 15th Yerevan International Conference on "Safeguarding and protection of human constitutional rights and the practice of the constitutional justice, taking into account the legal position of the European Court of Human Rights" which took place from 21 to 23 October 2010 in Yerevan, Armenia.

Conference of European Constitutional Courts (CECC)

At the request of the Constitutional Court of Romania, holding the Presidency of the Conference of European Constitutional Courts, the Joint Council on Constitutional Justice of the Venice Commission decided to prepare a special Bulletin as a working document for the 2012 Congress of the Conference on the topic "Constitutional Justice: functions and relations with the other public authorities".

Ibero-American Conference of Constitutional Justice (CIJC)

The Venice Commission participated in the 8th Ibero-American Conference of Constitutional Justice on "Constitutional justice and Economic and Social Rights", which took place from 7 to 9 July 2010 in Managua, Nicaragua.

Inter-American Union of Electoral Bodies (UNIORE)

The Venice Commission participated in the 10th Conference of the Inter-American Union of Electoral Bodies which took place from 11 to 13 November 2010 in Merida, Mexico.

International Association of Constitutional Law (IACL)

IACL and Venice Commission co-operate on the basis of a special agreement concluded in 2004. The President of IACL attends Venice Commission plenary sessions.

In 2010 the Venice Commission participated in a round table entitled "Unconstitutional Constitutional Amendments" held on 25 and 26 April 2010 in Jerusalem, Mount Scopus, Beit Maiersdorff, as well as in the World Congress

of Constitutional Law from 6 to 10 December 2010 in Mexico.

International Organisation of La Francophonie (IOF)

The Venice Commission participated in the International Network Seminar of the IOF on the occasion of the 10th anniversary of the IOF Bamako Declaration, which was held in Paris in May 2010.

The IOF supports the translation into the French language of contributions from IOF member and observer states to the Commission's Bulletin on Constitutional Case-Law.

Southern African Chief Justices' Forum (SACJF)[2]

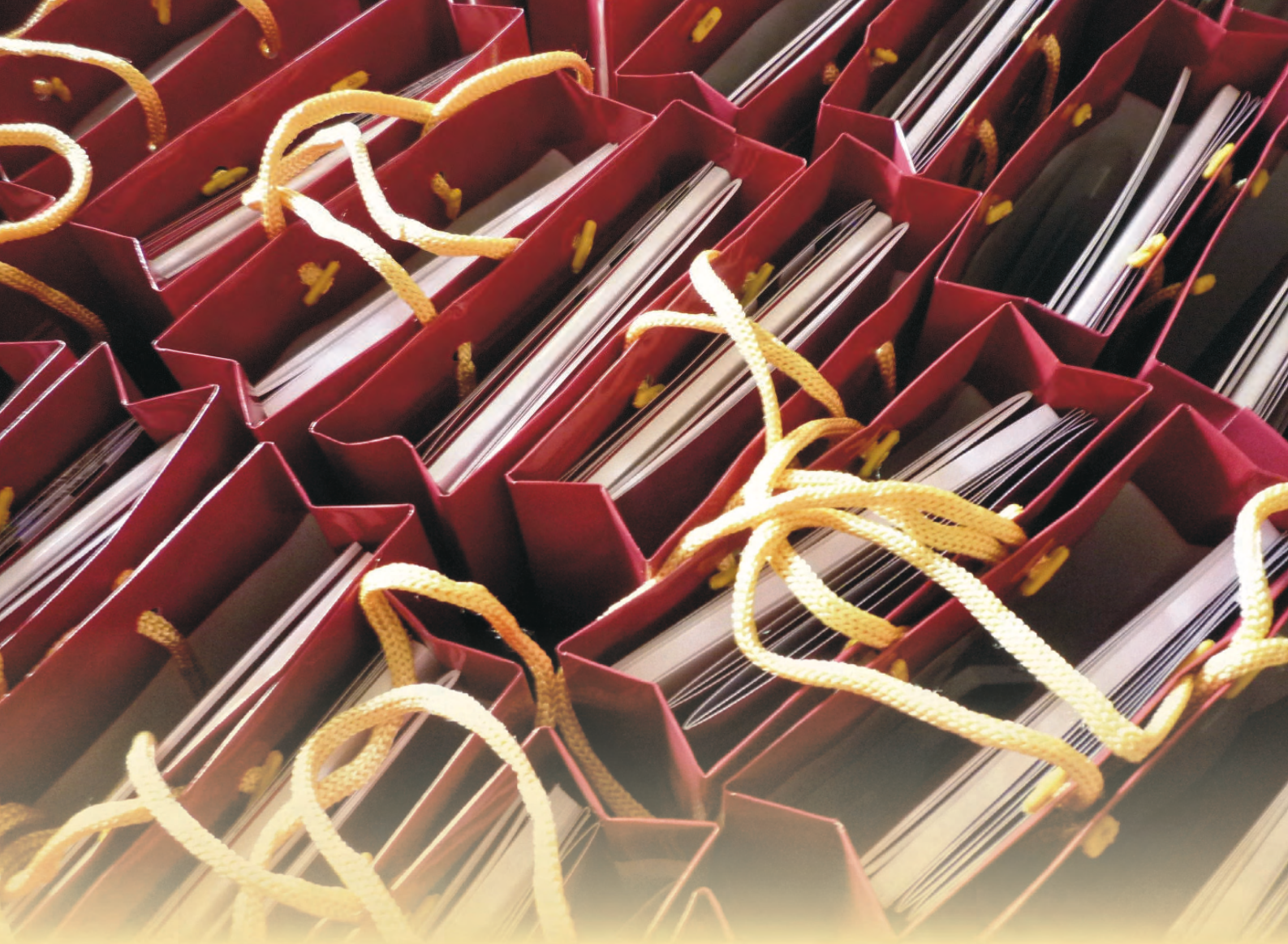
SACJF organised, together with the Venice Commission, a conference on "Sustaining the independence of the judiciary", followed by the Annual General Meeting of the SACJF, which took place on 13 and 14 August 2010 in Johannesburg, South Africa.

Union of Arab Constitutional Court and Councils (UACCC)[3]

The Venice Commission, in co-operation with the Union of Arab Courts and Councils (UACCC) and the Supreme Court of Libya, organised an international Symposium on the "Economic and Political Rights from a Constitutional point of view", on the occasion of the 13th Regular Meeting of the Union of Arab Constitutional Courts and Councils and of the 6th International Scientific Forum of the UACCC (10-11 January 2010, Tripoli, Libya).

2. The designated countries are: Kingdom of Lesotho, Kingdom of Swaziland, Republic of Angola, Republic of Botswana, Republic of Kenya, Republic of Malawi, Republic of Mauritius, Republic of Mozambique, Republic of Namibia, Republic of South Africa, Republic of Seychelles, Republic of Uganda, Republic of Zambia, Republic of Zimbabwe, United Republic of Tanzania.

3. According to the preparatory meeting which was held in Cairo on 25 and 26 February 1997, the Constitutional Councils and Courts in the following Arab entities are members: the Republic of Tunisia, the Democratic and popular Republic of Algeria, the Republic of Sudan, Palestinian National Authority, the State of Kuwait, the Republic of Lebanon, the Socialist people's Libyan Arab Jamahiriya, the Arab Republic of Egypt, the Kingdom of Morocco, the Islamic Republic of the Mauritania, the Republic of Yemen.



Appendices

Member countries

Members – 57

Albania (14.10.1996)
Algeria (1.12.2007)
Andorra (1.2.2000)
Armenia (27.3.2001)
Austria (10.5.1990)
Azerbaijan (1.3.2001)
Belgium (10.5.1990)
Bosnia and Herzegovina (24.4.2002)
Brazil (1.4.2009)
Bulgaria (29.5.1992)
Chile (1.10.2005)
Croatia (1.1.1997)
Cyprus (10.5.1990)
Czech Republic (1.11.1994)
Denmark (10.5.1990)
Estonia (3.4.1995)
Finland (10.5.1990)
France (10.5.1990)
Georgia (1.10.1999)
Germany (3.7.1990)
Greece (10.5.1990)
Hungary (28.11.1990)
Iceland (5.7.1993)
Ireland (10.5.1990)
Israel (1.5.2008)
Italy (10.5.1990)
Republic of Korea (1.6.2006)
Kyrgyzstan (1.1.2004)
Latvia (11.9.1995)
Liechtenstein (26.8.1991)
Lithuania (27.4.1994)
Luxembourg (10.5.1990)
Malta (10.5.1990)
Mexico (3.2.2010)
Moldova (25.6.1996)
Monaco (5.10.2004)
Montenegro (20.6.2006)
Morocco (1.6.2007)
Netherlands (1.8.1992)
Norway (10.5.1990)
Peru (11.2.2009)
Poland (30.4.1992)
Portugal (10.5.1990)
Romania (26.5.1994)
Russian Federation (1.1.2002)
San Marino (10.5.1990)
Serbia (3.4.2003).
Slovakia (8.7.1993)
Slovenia (2.3.1994)
Spain (10.5.1990)
Sweden (10.5.1990)
Switzerland (10.5.1990)
"The former Yugoslav Republic of Macedonia" (19.2.1996)
Tunisia (1.04.2010)
Turkey (10.5.1990)
Ukraine (3.2.1997)
United Kingdom (1.6.1999)

Associate member

Belarus (24.11.1994)

Observers – 7

Argentina (20.4.1995)
Canada (23.5.1991)
Holy See (13.1.1992)
Japan (18.6.1993)
Kazakhstan (30.4.1998)
United States (10.10.1991)
Uruguay (19.10.1995)

Participants – 4

European Commission
EU Committee of the Regions
OSCE/ODIHR
International Association of Constitutional Law (IACL)

Special co-operation status – 2

Palestinian National Authority
South Africa

The Venice Commission

Members[1]

Mr Gianni BUQUICCHIO (Italy), President, Former Director, Council of Europe
(Substitute: Mr Sergio BARTOLE, Professor Emeritus, University of Trieste
Mr Guido NEPPI MODONA, Professor, University of Turin)

Mr Jan HELGESEN (Norway), First Vice-President, Professor, University of Oslo
(Substitute: Mr Fredrik SEJERSTED, Professor, University of Oslo)

Ms Finola FLANAGAN (Ireland), Vice-President, Director General, Senior Legal Adviser, Head of the Office of the Attorney General
(Substitute: Mr James HAMILTON, Director of Public Prosecutions; President, International Association of Prosecutors)

Mr Peter PACZOLAY (Hungary), Vice-President, President, Constitutional Court
(Substitute: Mr Laszlo TROCSANY, Ambassador of Hungary to France; former Judge, Constitutional Court; Professor of Constitutional Law, University of Szeged)

Mr Ergun ÖZBUDUN (Turkey), Professor, Department of Political Science, University of Bilkent, Vice-President of the Turkish Foundation for Democracy
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Ms Hanna SUCHOCKA (Poland), Ambassador of Poland to the Holy See

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

Mr Kaarlo TUORI (Finland), Professor of Jurisprudence, University of Helsinki
(Substitute: Ms Tuula MAJURI, Counsellor on Legislation, Ministry of Justice)

Mr Pieter VAN DIJK (Netherlands), State Councillor, President of the Administrative Jurisdiction Division, Council of State, 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
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Mr Gaguik HARUTUNIAN (Armenia), President, Constitutional Court
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Ms Lydie ERR (Luxembourg), Member of Parliament
(Substitute: Mr Marc FISCHBACH, Mediator)

Mr Ugo MIFSUD BONNICI (Malta), President Emeritus

1. By order of seniority, at 31 December 2010.

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

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

Mr Dominique CHAGNOLLAUD (Monaco), Member of the Supreme Court, Professor, University of Law, Economics and Social Science Paris II
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Mr Nicolae ESANU (Moldova), Former Deputy Minister of Justice
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Mr Hubert HAENEL, Member, Constitutional Council)

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Mr Kurt HELLER, Honorary Professor of the University of Linz, Former Justice of the Constitutional Court)

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(Substitute: Ms Monique JAMETTI GREINER, Vice Director, Head of the international relations Department, Federal Office of Justice)

Ms Kalliopi KOUFA (Greece), former Professor of International Law, Aristotle University, Thessaloniki
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(Substitute: Mr Myron NICOLATOS, Supreme Court Judge)

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

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Mr Kong-hyun LEE (Republic of Korea), Justice, Constitutional Court
(Substitute: Mr Boohwan HAN, Attorney at Law, former Vice Minister of Justice)

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(Substitute: Mr Zoran PAZIN, lawyer)

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(Substitute: Mr Wilfried HOOP, Partner, Hoop and Hoop)

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Mr Eugeni TANCHEV (Bulgaria), President, Constitutional Court
(Substitute: Mr Plamen KIROV, Judge, Constitutional Court)

Mr Dan MERIDOR (Israel), Deputy Prime Minister, Minister of Intelligence and Atomic Energy
(Substitute: Mr Eyal BENVENISTI, Professor, Tel Aviv University)

Mr Joan MONEGAL BLASI (Andorra), Lawyer

Ms Maria Angeles AHUMADA RUIZ (Spain), Director General for Legal Coordination, Ministry of the Presidency of the Government

Ms Marina STAVNIYCHUK (Ukraine), Deputy Head of the Presidential Secretariat
(Substitutes: Mr Sergii KIVALOV, Chairman, Committee on Justice, Verkhovna Rada of Ukraine
Mr Petro MARTYNENKO, Dean, Professor of Law, International Salomon University, Law Faculty)

Mr Iain CAMERON (Sweden), Professor, University of Uppsala
(Substitute: Mr Johan HIRSCHFELDT, Former President, Svea Court of Appeal)

Mr Carlos MESIA RAMIREZ (Peru), Vice President, Constitutional Tribunal
(Substitute: Mr Ernesto FIGUEROA BERNARDINI, Secretary Rapporteur, Constitutional Tribunal)

Mr Ivan SIMONOVIC (Croatia), Minister of Justice
(Substitute: Ms Jasna OMEJEC, President, Constitutional Court)

Mr Gilmar Ferreira MENDES (Brazil), Justice; former President, Federal Supreme Court
(Substitute: Mr Antonio PELUSO, Vice President, Federal Supreme Court)

Mr Mario FERNANDEZ BAEZA (Chile), Judge, Constitutional Court
(Substitute: Ms Marisol PENA TORRES, Judge, Constitutional Court)

Mr Boualem BESSAÏH (Algeria), President, Constitutional Council
(Substitute Mr Mohamed HABCHI, Member, Constitutional Council

Mr Hachemi ADALA, Member, Constitutional Council)

Ms Maria del Carmen ALANIS FIGUEROA (Mexico), Chief Magistrate, President, Federal Electoral Tribunal
(Substitute: Mr Manuel GONZALEZ OROPEZA, Magistrate, Federal Electoral Tribunal)

Mr Fathi ABDENNADHER (Tunisia), President, Constitutional Council
(Substitute: Ms Radhia BEN SALAH, Member, Constitutional Council)

Mr Kestutis JANKAUSKAS (Lithuania), Director of Law Department, Constitutional Court
(Substitute: Ms Vygante MILASIUTE, Head of International Agreement Law Division, Ministry of Justice)

Mr Miquel Àngel CANTURRI MONTANYA (Andorra), Ambassador of Andorra to the Holy See

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

N.N. (Kyrgyzstan)[2]

Ms Jasna OMEJEC (Croatia), President, Constitutional Court
(Substitute: Ms Slavica BANIC, Judge, Constitutional Court)

Ms Paloma BIGLINO CAMPOS (Spain), Full Professor of Constitutional Law, Valladolid University, Director, Centre for Political and Constitutional Studies

Ms Veronika BILKOVA (Czech Republic), Lecturer, Law Faculty, Charles University
(Substitute: Ms Katerina SIMACKOVA, Judge, Supreme Administrative Court)

Mr Francesco MAIANI (San Marino),[3] Assistant Professor, Swiss Graduate School of Public Administration
(Substitute: Ms Barbara REFFI, State Attorney)

Associate members

Mr Alexander V. MARYSKIN (Belarus), Deputy Chairman, Constitutional Court

2. Member resigned on 7 July 2010. A new member has not yet been appointed.
3. Appointed on 15 March 2011.

Observers

N.N. (Argentina)

N.N. (Canada)

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

Mr Hiroyuki MINAMI (Japan), Consul, Consulate General of Japan, Strasbourg

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

Ms Sarah CLEVELAND (United States of America), Professor, Columbia Law School

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

Special status

European Commission

Mr Patrick HETSCH, Principal Legal Adviser
Mr Esa PAASIVIRTA, Legal Adviser

Palestinian National Authority

Mr Ali KHASHAN, Minister of Justice, Ministry of Justice

South Africa

N. N.

Secretariat

Mr Thomas MARKERT
Ms Simona GRANATA-MENGHINI
Mr Pierre GARRONE
Mr Rudolf DÜRR
Ms Artemiza-Tatiana CHISCA
Mr Serguei KOUZNETSOV
Ms Caroline MARTIN
Ms Tanja GERWIEN
Ms Dubravka BOJIC
Mr Gaël MARTIN-MICALLEF
Ms Tatiana MYCHELOVA
Ms Svetlana ANISIMOVA
Ms Helen MONKS
Ms Brigitte AUBRY
Ms Marian JORDAN
Mrs Brigitte RALL
Ms Ana GOREY
Mrs Caroline GODARD
Mrs Marie-Louise WIGISHOFF
Ms Théa CHUBINIZE
Ms Rosy DI POL

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First Vice-President and Chair of the Scientific Council: Mr Helgesen

Vice-Presidents: Ms Flanagan, Mr Paczolay,

Members: Mr Endzins, Ms Koufa, Messrs Lee and Zorkin

Scientific Council

Mr Helgesen (Chair), Mr Buquicchio, Ms Flanagan, Mr Paczolay, Mr Dimitrijevic, Mr Esanu, Mr Hoffmann-Riem, Mr van Dijk and Mr Jowell

Council for Democratic Elections

President: Mr Gross (Parliamentary Assembly)

Vice-President: Mr Colliard

Venice Commission – Members: Mr Mifsud Bonnici, Mr Paczolay, Mr Torfason
(Substitutes: Ms Alanis Figueroa, Mr Darmanovic, Mr Jaklic, Mr Kask)

Parliamentary Assembly – Members: Ms Josette Durrieu, Mr Andreas Gross, Ms Karin Woldseth
(Substitutes: Mr Michael Hancock, Ms Marietta de Pourbaix-Lundin)

Congress of local and regional authorities – Members: Mr Ian Micallef, Mr Keith Whitmore
(Substitute: Mr Jean-Claude Frecon)

Joint Council on Constitutional Justice

Chair: Mr Grabenwarter; Members : Ms Aaviksoo, Ms Alanis Figueroa, Ms Banic, Mr Barany, Mr Bradley, Mr Gonzalez Oropeza, Ms de Guillenchmidt, Mr Gumi, Mr A. Harutunian, Mr G. Harutunian, Mr Jankauskas, Mr Kask, Mr Lee, Ms Macejkova, Mr Mendes, Mr Mihai, Mr Neppi Modona, Ms Omejec, Ms Palma, Mr Papuashvili, Mr Pazin, Ms Pena Torres, Ms Siljanovska-Davkova, Ms Stavnychuk, Ms Thorgeirsdottir, Mr Torfason, as well as 90 liaison officers from 65 Constitutional Courts or Courts with equivalent jurisdiction

Federal State and Regional State

Chair: Mr Hoffmann Riem; Members: Mr Scholsem, Mr Velaers

International Law

Chair: Mr Dimitrijevic; Members: Mr Aurescu, Ms Bilkova, Mr Cameron, Mr Huseynov, Ms Koufa, Mr Mifsud Bonnici, Ms Milasiute

Protection of Minorities

Chair: Mr Velaers; Members: Mr Aurescu, Mr Bartole, Mr Bessaïh, Mr Habchi, Mr Hamilton, Ms Koufa, Mr Mifsud Bonnici, Mr Scholsem, Ms Siljanovska-Davkova, Mr Tuori

Fundamental Rights

Chair: Mr Tuori; Members: Ms Aaviksoo, Ms Alanis Figueroa, Mr Aurescu, Ms Banic, Mr Bradley, Mr Cameron, Mr van Dijk, Ms Err, Mr Esanu, Mr Gonzalez Oropeza, Mr Gstöhl, Mr Haenel, Ms Haller, Mr Heller, Mr Hirschfeldt, Mr Hoffmann-Riem, Mr Huseynov, Mr Kask, Ms Koufa, Mr Mifsud Bonnici, Ms Milasiute, Ms Omejec, Mr Papuashvili, Mr Pazin, Ms Thorgeirsdottir, Mr Torfason, Mr Velaers, Mr Zorkin

Democratic Institutions

Chair: Mr Jowell Members: Mr Bartole, Mr Cameron, Mr Darmanovic, Ms Err, Mr Esanu, Mr Gstöhl, Ms Haller, Mr Hamilton, Mr A. Harutunian, Mr Hirschfeldt, Mr Jensen, Mr Kask, Mr Mendes, Mr Nicolatos, Mr Özbudun, Mr Papuashvili, Mr Scholsem, Mr Sejersted, Ms Siljanovska-Davkova, Ms Thorgeirsdottir, Mr Torfason, Mr Tuori

Judiciary

Chair: Ms Suchocka; Members: Mr Bartole, Mr Bessaih, Mr Bradley, Mr Canturri Montanya, Mr van Dijk, Ms Err, Mr Esanu, Mr Gstöhl, Ms de Guillenchmidt, Mr Habchi, Mr Hamilton, Mr Hirschfeldt, Mr Hoffmann-Riem, Mr Kask, Mr Mendes, Mr Mihai, Mr Neppi Modona, Mr Nicolatos, Mr Papuashvili, Mr Pazin, Ms Simackova, Mr Torfason

External Relations

Chair: Mr Mifsud Bonnici

Working Methods

Chair: Mr van Dijk; Members: Mr Dimitrijevic, Ms Haller, Mr Hoffmann-Riem, Mr Mifsud Bonnici, Mr Sejersted

Publications

Series – Science and Technique of Democracy[4]

No. 1. Meeting with the presidents of constitutional courts and other equivalent bodies[5] (1993)

No. 2. Models of constitutional jurisdiction[6] 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[6] by Constantin Economides (1993)

No. 7. Rule of law and transition to a market economy[5] (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[6] by Ergun Özbudun and Mehmet Turhan (1995)

No. 13. Implementation of constitutional provisions regarding mass media in a pluralist democracy[5] (1995)

No. 14. Constitutional justice and democracy by referendum (1996)

No. 15. The protection of fundamental rights by the Constitutional Court[6] (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[6] (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)

4. Publications are also available in French unless otherwise indicated.
5. Speeches in the original language (English or French).
6. Also available in Russian.

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[5] (2000)

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No. 36. Constitutional Courts and European Integration (2004)[7]

No. 37. European and US Constitutionalism (2005)[7]

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Other publications

Collection "Points of view – points of law"

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Collection "Europeans and their rights"

- The right to life (2006)

7. Available only in English.

- Freedom of religion (2007)
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European Conference of Electoral Management Bodies

- 2nd Conference (Strasbourg, 2005)
- 3rd Conference (Moscow, 2006)
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- Tackling blasphemy, insult and hatred in a democratic society (2008)
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- 1993-2010 (three issues per year)

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)
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- Leading cases 2 – Belgium, France, Hungary, Luxembourg, Romania, USA (2008)
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Annual reports

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Brochures

- Revised Statute of the European Commission for Democracy through Law (2011)
- Services provided by the Venice Commission to Constitutional Courts and equivalent bodies (2011)
- Venice Commission – Key Facts (2010)[6]
- Publications of the Venice Commission (2010)
- Selected studies and reports (2010)
- The Venice Commission of the Council of Europe[6] (2009)
- UniDem Campus – Legal training for civil servants (2003)
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Documents adopted in 2010

CDL-AD (2010) 002 – Amicus Curiae Brief for the Constitutional Court of **Moldova** on the Interpretation of Articles 78.5 and 85.3 of the Constitution of Moldova adopted by the Venice Commission at its 82nd Plenary Session (Venice, 12-13 March 2010)

CDL-AD (2010) 003 – Joint Opinion on the Draft Law on the Judicial System and the Status of Judges of **Ukraine** by the Venice Commission and the Directorate of Co-operation within the Directorate General of Human Rights and Legal Affairs of the Council of Europe, adopted by the Venice Commission at its 82nd Plenary Session (Venice, 12-13 March 2010)

CDL-AD (2010) 004 – Report on the **Independence of the judicial system**: *Part I – the independence of judges*, adopted by the Venice Commission at its 82nd Plenary Session (Venice, 12-13 March 2010)

CDL-AD (2010) 005 – Opinion on the Legal Status of Religious Communities in **Turkey** and the Right of the Orthodox Patriarchate of Istanbul to use the adjective "Ecumenical", adopted by the Venice Commission at its 82nd Plenary Session (Venice, 12-13 March 2010)

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CDL-AD (2010) 009 – Interim Opinion on the Draft Amendments to the Law on Assembly and Manifestations of **Georgia**, adopted by the Venice Commission at its 82nd Plenary Session (Venice, 12-13 March 2010)

CDL-AD (2010) 010 – Interim Opinion on the Draft Act on Forfeiture in favour of the State of Illegally acquired Assets of **Bulgaria**, adopted by the Venice Commission at its 82nd Plenary Session (Venice, 12-13 March 2010)

CDL-AD (2010) 011 – Opinion on the Draft Law on Prohibition of Discrimination of **Montenegro**, adopted by the Venice Commission at its 82nd Plenary Session (Venice, 12-13 March 2010)

CDL-AD (2010) 012 – Joint Opinion on the Amendments to the Electoral Code of the Republic of **Belarus** as of 17 December 2009, adopted by the Council for Democratic Elections at its 33rd meeting (Venice, 3 June 2010) and by the Venice Commission at its 83rd Plenary Session (Venice, 4 June 2010)

CDL-AD (2010) 013 – Joint Opinion on the Election Code of **Georgia** as amended through March 2010, adopted by the Council for Democratic Elections at its 33rd meeting (Venice, 3 June 2010) and by the Venice Commission at its 83rd Plenary Session (Venice, 4 June 2010)

CDL-AD (2010) 014 – Joint Opinion on the Draft Working Text amending the Election Code of **Moldova**, adopted by the Council for Democratic Elections at its 33rd meeting (Venice, 3 June 2010) and by the Venice Commission at its 83rd Plenary Session (Venice, 4 June 2010)

CDL-AD (2010) 015 – Opinion on the Draft Constitution of the **Kyrgyz Republic** (version published on 21 May 2010), adopted by the Venice Commission at its 83rd Plenary Session (Venice, 4 June 2010)

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CDL-AD (2010) 018 – Opinion on the Draft Law on the Prevention of Conflict of Interest in the Institutions of **Bosnia and Herzegovina**, adopted by the Venice Commission at its 83rd Plenary Session (Venice, 4 June 2010)

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CDL-AD (2010) 021 – Recommendation 273 (2009) of the Congress of Local and Regional Authorities of the Council of Europe "**Equal access to local and regional elections**" Comments by the Venice Commission in view of the reply of the Committee of Ministers, adopted by the Council for Democratic Elections at its 33rd meeting (Venice, 3 June 2010) and by the Venice Commission at its 83rd Plenary Session (Venice, 4 June 2010)

CDL-AD (2010) 022 – Report on **counter-terrorism measures and human rights**, adopted by the Venice Commission at its 83rd Plenary Session (Venice, 4 June 2010)

CDL-AD (2010) 023 – Joint Opinion on the Draft Law on Amendments and Supplements to the Law on the Election of Councillors and Members of Parliament of **Montenegro** as amended through July 2006, adopted by the Council for Democratic Elections at its 33rd meeting (Venice, 3 June 2010) and by the Venice Commission at its 83rd Plenary Session (Venice, 4 June 2010)

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CDL-AD (2010) 026 – Joint opinion on the law on the judicial system and the status of judges of **Ukraine** by the Venice Commission and the Directorate of Co-operation within the Directorate General of Human Rights and Legal Affairs of the Council of Europe, adopted by the Venice Commission at its 84th Plenary Session (Venice, 15-16 October 2010)

CDL-AD (2010) 028 – Final opinion on the draft constitutional law on amendments and changes to the constitution of **Georgia**, adopted by the Venice Commission at its 84th Plenary Session (Venice, 15-16 October 2010)

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CDL-AD (2010) 035 – Opinion on the act on the state language of the **Slovak Republic**, adopted by the Venice Commission at its 84th Plenary Session (Venice, 15-16 October 2010)

CDL-AD (2010) 036 – Interpretative declaration to the **Code of good practice in electoral matters on the participation of people with disabilities in elections**, adopted by the Council for Democratic Elections at its 34th meeting (Venice, 14 October 2010) and by the Venice Commission at its 84th Plenary Session (Venice, 15-16 October 2010)

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CDL-AD (2010) 038 – Amicus Curiae Brief for the Constitutional Court of **"the former Yugoslav Republic of Macedonia"** on Amendments to several laws relating to the system of salaries and remunerations of elected and appointed officials, adopted by the Venice Commission at its 85th Plenary Session (Venice, 17-18 December 2010)

CDL-AD (2010) 039rev – Study on **individual access to constitutional justice**, adopted by the Venice Commission at its 85th Plenary Session (Venice, 17-18 December 2010)

CDL-AD (2010) 040 – Report on **European standards as regards the independence of the judicial system**: *Part II – the prosecution service*, adopted by the Venice Commission at its 85th plenary session (Venice, 17-18 December 2010)

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CDL-AD (2010) 042 – Interim Opinion on the Draft Law on the High Council for judges and Prosecutors (of 27 September 2010) of **Turkey**, adopted by the Venice Commission at its 85th Plenary Session, Venice (17-18 December 2010)

CDL-AD (2010) 043 – Report on **figure based management of possible election fraud**, adopted by the Council for Democratic Elections at its 35th meeting (Venice, 16 December 2010) and by the Venice Commission at its 85th Plenary Session (Venice, 17-18 December 2010)

CDL-AD (2010) 044 – Opinion on the Constitutional Situation in **Ukraine**, adopted by the Venice Commission at its 85th Plenary Session, Venice (17-18 December 2010)

CDL-AD (2010) 045 – Opinion on the Code of Practice on observing elections of the **United Kingdom**, adopted by the Council for democratic elections at its 35th meeting (Venice 16 December 2010) and by the Venice Commission at its 85th plenary session (Venice, 16-18 December 2010)

CDL-AD (2010) 046 – Joint opinion on the electoral legislation of **Norway**, adopted by the Council for Democratic Elections at its 35th meeting (Venice, 16 December 2010) and by the Venice Commission at its 85th Plenary Session (Venice, 17-18 December 2010)

CDL-AD (2010) 047 – Opinion on the draft election code of the Verkhovna Rada of **Ukraine**, adopted by the Council for Democratic Elections at its 35th meeting (Venice, 16 December 2010) and by the Venice Commission at it 85th Plenary Session (Venice, 17-18 December 2010)

CDL-AD (2010) 048 – Joint opinion on the draft law on financing political activities of the **Republic of Serbia** by the Venice Commission and the OSCE/ODIHR, adopted by the Venice Commission at its 85th plenary session (Venice, 17-18 December 2010)

CDL-AD (2010) 049 – Interim joint opinion on the draft law on assemblies of the Republic of **Armenia** by the Venice commission and OSCE/ODIHR, adopted by the Venice Commission at its 85th Plenary Session (Venice, 17-18 December 2010)

CDL-AD (2010) 050 – Joint opinion on the draft law on peaceful assemblies of the **Kyrgyz Republic** by the Venice commission and OSCE/ODIHR, adopted by the Venice Commission at its 85th Plenary Session (Venice, 17-18 December 2010)

CDL-AD (2010) 051 – Opinion on the existing mechanisms to review the compatibility with human rights standards of acts by UNMIK and EULEX in **Kosovo**,[8] adopted by the Venice Commission at its 85th Plenary Session (Venice, 17-18 December 2010)

CDL-AD (2010) 052 – Opinion on the Federal Law on the Amendments to the Federal Law on Defence of the **Russian Federation**, adopted by the Venice Commission at its 85th Plenary Session (Venice, 17-18 December 2010)

CDL-AD (2010) 053rev – Opinion on the warning addressed to the Belarusian association of journalists on 13 January 2010 by the Ministry of Justice of **Belarus**, adopted by the Venice Commission at its 85th Plenary Session, (Venice, 17-18 December 2010)

CDL-AD (2010) 054 – Interim joint opinion on the law on making amendments and supplements to the law on freedom of conscience and religious organisations and on the laws on amending the criminal code, the administrative offences code and the law on charity of the **Republic of Armenia** by the Venice commission and OSCE/ODIHR, adopted by the Venice Commission at its 85th Plenary Session (Venice, 17-18 December 2010)

8. All references to Kosovo shall be understood in full compliance with United Nations Security Council Resolution 1244 and without prejudice to the status of Kosovo.

The Council of Europe

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