VENICE COMMISSION

Annual report of activities 2012

European Commission
for Democracy through Law

Council of Europe, 2013

VENICE COMMISSION
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European Commission for Democracy through Law

The Venice Commission of the Council of Europe

Annual activity report for 2012

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Dear Reader,

You have before you an overview of all the work done by the Venice Commission of the Council of Europe in the year 2012. When you look through the report, you will quickly understand that we have been dealing with a large number of important and sensitive issues. You will also observe that although the number of opinions adopted by the Commission is not necessarily growing, the issues tend to become more and more complex and sensitive. All of them directly concern the core values of the Council of Europe and remain very much on the agenda of our European member States and are crucial for the Eastern and Southern Neighbourhood as well as beyond.

Over the past twenty years, the Commission was first involved in the constitutional and legal transformation phase of several states, and subsequently in the implementation phase of the reforms. Both phases were in no way easy. We are now witnessing the consolidation phase of the new institutional settings, brought about by the democratic transition, and we now see more clearly than in the past the importance of legal, constitutional and political culture. Cultural changes take time and we note with concern that in many new – and no longer so new – democracies, we still witness a "winner takes all" culture, where the majority which won the elections takes complete control of the State. The Constitution is not considered a framework in which politics take place and which reflects a consensus within society, but rather as an instrument of the majority to impose its will. Often the understanding that the independence of the constitutional court and that of the judiciary and the autonomy of other institutions, such as the Ombudsperson, has to be respected, is still missing. Checks and balances are regarded as an obstacle to and not as a necessary part of a democratic government and of good governance.

I think the Council of Europe in general, and our Commission in particular, has an important role to play not only in Europe but also worldwide, in recalling the need for stable rules that also protect the rights of political minorities and in assisting countries to develop their legislation, as well as their legal culture. The consolidation phase of the democratic institutions is as important as the transition itself, and we should never become complacent and believe that democracy is an acquis and that democratic transitions are irreversible, particularly if the democratic mindset is not itself an irreversible acquis.

In 2012, the Venice Commission has contributed to making the Council of Europe more visible and politically relevant, which is one of the main goals of the recent reform of the Council of Europe.

The fact that we are able to carry out such a wide range of activities in a very timely manner and with limited resources confirms the usefulness of the flexible working methods of the Commission and we will strive to maintain this flexibility.

Finally, I would like to underline that the impact of our activities very much depends on our close co-operation with other parts of the Council of Europe as well as with other international organisations. In this Annual Report, you will find a chapter devoted to co-operation with the organs of the Council of Europe and with other international organisations. Within the Council of Europe, the Parliamentary Assembly is our best partner, asking for the greatest number of opinions. The Secretary General

increasingly requests our opinions and deals with their follow-up at the political level. Moreover, there is a lot of technical co-operation with other parts of DG I and the Democratic Governance Directorate of DG II. As regards other international organisations, we work closely together with, notably, the European Union and OSCE-ODIHR to ensure that states receive the same messages from the various European organisations. The European Union considers us a reliable partner and refers more and more to our recommendations in its relations with candidate states and potential candidate states.

Last, but not least, you are most welcome to contact us for further information about our work.

Best regards,

Thomas Markert,
Director, Secretary of the Venice Commission

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Working for democracy through law – an overview of Venice Commission activities in 2012

1. The Venice Commission: an introduction[1]

The European Commission for Democracy through Law, better known as the Venice Commission, is a Council of Europe 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 2012, it had 58 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.

1. For more information, please refer to the Venice Commission's website: www.venice.coe.int.

2. On the concept of the constitutional heritage of Europe, see *inter alia* "The Constitutional Heritage of Europe", proceedings of the UniDem seminar organised jointly by the Commission and the *Centre d'Etudes et de Recherches Comparatives Constitutionnelles et Politiques* (CERCOP), Montpellier, 22 and 23 November 1996, *"Science and technique of democracy"*, No.18.

The Commission has the primary 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.

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

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.

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 on 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, the opinions are transmitted to the State or the body which requested it, 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 Guantanamo Bay, on counter-terrorist measures and human rights, on 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 (**UniDem**) programme, the proceedings of which are subsequently published in the **"Science and technique of democracy"** series.

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 one of the main fields of activity of the Commission, which has developed close co-operation with the key players in this field, i.e. constitutional courts, constitutional councils and supreme courts, which exercise constitutional 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 the Commission's member, associate member and observer countries, by 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 New Democracy, the Association of Asian Constitutional Courts and Equivalent Institutions, the Union of Arab Constitutional Courts and Councils, the Ibero-American Conference of Constitutional Justice, the Conference of Constitutional Courts of Countries of Portuguese Language and the Conference of Constitutional Jurisdictions of Africa.

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 regional groups and language based groups.

That Conference decided to establish an association, assisted by the Venice Commission and open to all participating courts, with the purpose of promoting co-operation within the groups, but also between them on a global scale. In co-operation with the Federal Supreme Court of Brazil, the Venice Commission organised a Second Congress of the World Conference (16-18 January 2011, Rio de Janeiro) during which a Statute of the World Conference was discussed. This Statute was adopted by the Bureau, composed of representatives of the regional and language based groups, in Bucharest on 23 May 2011 and entered into force on 24 September 2011. At the end of 2012, 60 constitutional courts and equivalent bodies had joined the World Conference as full members. The Venice Commission acts as the secretariat for the World Conference.

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 and 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 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.

4.CODICES is available on DVD and on line (www.CODICES.coe.int).

Lastly, the Commission holds seminars and conferences in co-operation with constitutional and equivalent courts, and provides them a restricted Internet-based "Venice Forum", through which they can speedily exchange information relating to pending cases.

The **ordinary courts** have become a subject of growing importance to the Commission. Increasingly, the latter is asked 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 "the Independence of the Judicial System" (Part I – Independence of Judges (CDL-AD(2010)004 and Part II – Prosecution Service (CDL-AD(2010)040), 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 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; 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 and the **Code of Good Practice in the field of Political parties** (2008). 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 on the prohibition, dissolution and financing of political parties. The Commission has adopted more than fifty studies or guidelines of a general nature in the field of elections, referendums and political parties.

The Commission has drafted more than 100 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,

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.

Armenia, Azerbaijan, Bosnia and Herzegovina, Georgia, Republic of Moldova, Serbia and Ukraine.

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 European electoral heritage, preconditions for democratic elections or 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. It now manages this database jointly with the Electoral Tribunal of the Judicial Power of the Mexican Federation (*Tribunal electoral del poder judicial de la Federación*, TEPJF).

2. The Commission in 2012

Member States

Accession of new member States

On 13 March 2012, Kazakhstan became the 58th member State of the Venice Commission.

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

Voluntary contributions

In 2012, the Commission received voluntary contributions from the government of Norway for Constitutional and Legal Assistance to the authorities in Tunisia and Morocco; from the Italian government (Regione Veneto) for the organisation of the plenary sessions and for the Commission's activities in Arab countries. The government of Finland contributed to the joint EU-Council of Europe programme "Equal before law: Access to Justice for vulnerable groups in Central Asia".[7]

The *Organisation Internationale de la Francophonie* continued to contribute to the translation into French of the Commission's *Bulletin on Constitutional Case-Law*.

Scientific Council

The Scientific Council prepared four thematic compilations of Venice Commission opinions and studies, in the fields of freedom of assembly and freedom of association. These compilations, which contain extracts from the Commission's opinions and studies structured thematically around key words, are intended to serve as a reference to country representatives, researchers as well as experts who wish to familiarise themselves with the Venice Commission's "doctrine". They are available on the Commission's web site and will be regularly up-dated.

Key developments and key figures

In 2012, the Commission's co-operation with the Southern neighbourhood entered into a new phase. The Commission intensified its dialogue with the National Constituent Assembly of Tunisia, organising several exchanges of views on the draft Constitution and other legislative texts. There were frequent contacts with the Moroccan authorities on implementing legislation for

7. Cf. chapter V.

the new Constitution. Co-operation with Jordan started in the area of constitutional justice and a first mission took place to Libya to discuss the process of adopting the new Constitution. The Commission continued work in the Eastern neighbourhood, mainly in Kazakhstan.

The Commission continued to be particularly active in Eastern Europe. At the request of the Parliamentary Assembly it adopted five opinions on important and politically sensitive laws of the Russian Federation. It adopted opinions on legislation on fundamental freedoms of Azerbaijan and Belarus and on the reform of the prosecution service of Ukraine and established co-operation with the Constitutional Assembly of Ukraine.

In South Eastern Europe, the Commission adopted four opinions on Bosnia and Herzegovina, including a comprehensive opinion on legal certainty and the independence of the judiciary at the request of the European Commission. Moreover, it adopted an opinion on draft constitutional amendments of Montenegro and on lustration in "the former Yugoslav Republic of Macedonia."

An unusually high number of opinions concerned member states of the European Union. It adopted eight opinions on Hungary, including two opinions on the judiciary, one opinion on the situation in Romania as well as one opinion on constitutional amendments of Belgium.

Altogether, the Commission adopted 28 opinions and studies in 2012 and worked on many more. In addition, the growing visibility of the Commission's work resulted in numerous invitations to organise, participate, moderate and chair scientific, political and legal international and national forums. The Commission co-organised more than 50 activities and participated in some 60 other events.

Democratic institutions and fundamental freedoms

Constitutional reforms

Constitutional reforms relating to the foundations of a democratic state remain at the core of the Venice Commission's activities. Requests for assistance and the Commission's participation in these processes bear witness to the trust and respect enjoyed by the Commission from the States concerned, as well as from institutional partners.

In 2012, the Venice Commission worked on constitutional reform issues in Belgium, Montenegro, Tunisia and Ukraine. It also examined legislation enacted by Hungary as part of the implementation of the Constitution adopted in 2011 and assessed the compatibility with constitutional principles and the rule of law of actions taken by the Government and the Parliament of Romania in respect of other State institutions, as well as of government ordinances adopted during the summer of 2012. Work will continue in the framework of an assistance process linked to the domestic process of revision of the Constitution launched by the Romanian authorities. At the end of 2012, the Commission received a request to examine the new draft Constitution of Iceland.

Functioning of democratic institutions and the protection of fundamental rights

In the institutional field, the Commission adopted a critical Opinion on the practice of blanket resignation of ministers in the Federation of Bosnia and Herzegovina and an Opinion on the Federal Law on the Federal Security Service of the Russian Federation.

Several opinions are related to legislation on fundamental rights: freedom of assembly (Belarus, Russian Federation), freedom of religion and religious education

(Azerbaijan, Bosnia and Herzegovina, Hungary), freedom of information and data protection (Bosnia and Herzegovina and Hungary), protection of minorities (Hungary). The Opinion on the Federal Law on Combating Extremist Activity of the Russian Federation raises concerns with respect to a number of fundamental freedoms.

Constitutional and ordinary justice, ombudspersons

Strengthening constitutional justice

In 2012, the Commission had to intervene to maintain the independence of the Constitutional Court of Romania, both through statements by its President and through an opinion establishing a serious lack of mutual respect between state organs.

The Commission also adopted opinions on the Law on the Constitutional Court of Hungary and *amicus curiae* briefs for the Constitutional Courts of the Federation of Bosnia and Herzegovina and "the former Yugoslav Republic of Macedonia".

The Venice Commission's Joint Council on Constitutional Justice continued its work in 2012 with constitutional courts and equivalent bodies using its Centre on Constitutional Justice, which publishes the Bulletin on Constitutional Case-Law (5 issues in 2012) and the CODICES database. The Commission's Venice Forum received 18 comparative law research requests this year from constitutional courts and equivalent bodies covering questions ranging from conscientious objection outside the military service context to the use of social networks by judges (twitter, facebook).

Constitutional justice conferences and seminars took place in Albania, Armenia, the Czech Republic, Georgia, Jordan, Korea, Lithuania, Montenegro, Morocco, Romania and Tunisia. The topics covered a variety of themes in 2012, such as the standards of Europe's constitutional heritage, constitutional processes and democratic processes and preliminary requests to constitutional courts.

Ordinary judiciary

The Commission's opinions on the legislation on the judiciary of Hungary attracted a lot of attention. In its first opinion on the initial legislation it concluded that the legislation posed a threat to judicial independence. In its second opinion, it noted that progress had been achieved following the dialogue between the Secretary General of the Council of Europe and the Hungarian authorities. However, concerns remained. The need for such opinions shows that judicial independence cannot be taken for granted, even in the centre of Europe.

The need to ensure the independence of the judiciary and the functioning of the judicial system in the interest of society, continues to play an important role in the Venice Commission's activities. In 2012, the Venice Commission adopted opinions in this area for Bosnia and Herzegovina, Hungary and Romania and participated in seminars and conferences in Bosnia and Herzegovina, Kyrgyzstan, Tunisia and Turkey.

World Conference on Constitutional Justice

2012 was a year of consolidating the World Conference, which had been established in 2011. By the end of 2012, 60 Constitutional Courts, Constitutional Councils and Supreme Courts had joined the World Conference on Constitutional Justice. At its meeting in June 2012 in Venice, the Bureau of the World-Conference took a number of decisions ensuring the smooth functioning of the Conference and exchanges with its members.

After the first two congresses that took place in Cape Town (South Africa) and Rio de Janeiro (Brazil) in 2009

and 2011 respectively, a Third Congress of the World Conference on Constitutional Justice will be hosted by the Constitutional Court of the Republic of Korea in Seoul in 2014.

Elections, referendums and political parties

In 2012, the Commission continued its work on electoral matters and political parties. The Commission adopted four opinions in the field of elections and political parties, while at the same time continuing the drafting of documents of a general nature; a *corpus* of important guidelines now exists in the field. Regarding legislation: even if improvements are desirable or even necessary in several States, the problems to be solved concern more and more the implementation rather than the content of the legislation. The Commission therefore continued to be very involved during 2012 in activities to assist in the implementation of international standards in the electoral field, while developing its co-operation in the electoral field outside Europe, in North Africa, Central Asia and in Latin America.

Electoral legislation and practice

The Commission adopted opinions on electoral laws or draft electoral laws in Hungary, Uzbekistan and Russia. With the exception of the latter, these opinions were drawn up together with the OSCE Office for Democratic Institutions and Human Rights (OSCE/ODIHR). The Commission also adopted an opinion on the law on political parties in Russia.

Moreover, the Commission adopted a number of documents on electoral matters of a general nature, in particular, the report on Measures to improve the democratic nature of elections in the member States of the Council of Europe, as well as the report on Democracy, Limitation of Mandates and Incompatibility of Political Functions.

In addition, the Commission organised long-term assistance to the Central Electoral Commission of Georgia.

The Venice Commission organised the 9th Conference of European Electoral Management bodies in Estonia, as well as an International Conference on "The European Electoral Heritage: 10 years of the Code of Good Practice in Electoral Matters" in the framework of the Albania Chairmanship of the Committee of Ministers. It also organised several seminars on electoral issues in Armenia, Kazakhstan and Ukraine, including a multilateral seminar on electoral lists.

Finally, the Commission provided legal assistance to seven Parliamentary Assembly electoral observation missions. The Commission also carried out an official visit to Mexico to meet the representatives of the various political parties, the Senate, the Congress, the Electoral Tribunal, the Federal Electoral Institute as well as the civil society, in the framework of the on-going preparation of an opinion on the Electoral Code of Mexico.

Political parties

The Commission adopted an opinion on the law on political parties of the Russian Federation. In addition the Commission organised an International Conference on political parties in St Petersburg in September 2012.

Sharing European experience with non-European countries

As an enlarged agreement, the Venice Commission continued through 2012 to co-operate with a significant number of non-European member countries. Its capacity to deal with requests for assistance in an efficient and reactive way resulted in an increased number of activities in different parts of the world. In 2012, the Commission organised or participated in more than 30 activities in

countries of Central Asia, the South Mediterranean basin and Latin America.

Specific mention should be made of the considerable increase of activities in countries of the Southern Mediterranean. Successful projects of the Venice Commission in the field of the building of democratic institutions, constitutional justice and elections attracted special attention from the countries of the region with no history of co-operation with the Venice Commission. The need to reform state institutions in accordance with international standards resulted in concrete projects with Morocco, Tunisia, Jordan and Libya.

In 2012, the Venice Commission was involved in fruitful co-operation with the National Constituent Assembly of Tunisia on the new Constitution of the country and its representatives held fruitful exchanges of views with the Commission in June, July, October and December 2012. Co-operation with the Moroccan authorities focused on the implementation of the new Constitution.

This involvement was possible thanks to the financial support received by the Commission from the European Union and voluntary contributions from Finland, France, Italy, Norway and Turkey.

Democratic development of public institutions and respect for human rights

1. Country specific activities

Azerbaijan

Opinion on the Law on Freedom of Religious Belief of the Republic of Azerbaijan (CDL-AD(2012)022)

Following a request from the Monitoring Committee of the Parliamentary Assembly, the Venice Commission adopted at its October 2012 session, jointly with the OSCE/ODIHR, an Opinion on the compatibility with human rights standards of the Law on Freedom of Religious Belief in force in Azerbaijan, as last amended in 2011.

The opinion contained serious criticism as the Commission's Rapporteurs found that the law, as amended in 2011, sets a legal framework which was in several aspects contrary to international standards and would benefit from additional revisions in order to meet these standards.

The opinion emphasised that, although States bene-fit from a large margin of appreciation in this sphere, this should not be interpreted with such a degree of latitude that would allow the undermining of the substance of human rights values, and refers to the European Court of Human Rights having underlined that freedom of thought, conscience and religion is one of the foundations of a "democratic society".

The law appeared to contain several quite restrictive provisions, which were against international standards. In addition, provisions regulating central issues such as: the scope of the law and of the beneficiaries of the right to freedom of religion and conscience, the registration, the autonomy and liquidation of religious communities; conscientious objection, the issue of proselytism, the publication and circulation of religious materials needed to be reviewed in order to meet international standards. The Law was moreover characterised by a too vague terminology, thus opening the door to arbitrary interpretation and implementation.

Follow-up to the Opinion on the compatibility with human rights standards of the legislation on non-governmental organisations of the Republic of Azerbaijan (CDL-AD(2011)035)

As a follow-up to the Opinion on the compatibility with human rights standards of the legislation on non-governmental organisations of the Republic of Azerbaijan, adopted in October 2011, the Venice Commission together with the International Conference of NGOs of the Council of Europe, presented their respective opinions on the legislation on non-governmental organisations of Azerbaijan and its compatibility with human rights standards, to the civil society of Azerbaijan at a conference in April 2012. Both the conference discussions and the dialogue with civil society participants had confirmed the critical conclusions of the Venice Commission in its Opinion with regard to the legislative and practical developments affecting the situation of local and international NGOs in Azerbaijan.

The Commission was informed that an expert group had already started working, under the Ministry of Justice, on possible amendments aimed at improving the NGO

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

related legislation in the light of the Venice Commission's recommendations.

Belarus

Opinion on the Law on Mass Events of the Republic of Belarus (CDL-AD(2012)006)

At the request of the Political Affairs Committee of the Parliamentary Assembly of the Council of Europe, the Venice Commission, jointly with the OSCE/ODHIR, analysed the compatibility with universal Human Rights standards of the amended Law on Mass Events in the Republic of Belarus, which entered into force on 27 November 2011.

This Opinion, adopted by the Venice Commission at its March 2012 session, had been prepared in the context of three previous opinions delivered by the Venice Commission in 2011, which found, in all cases, the Republic of Belarus in breach of its legally binding obligations to respect and protect the fundamental civil and political rights of freedom of association and expression.

The 2011 Law on Mass Events raised serious concerns regarding its compliance with the relevant international standards. The law had been analysed not only from the angle of freedom of assembly, but also in conjunction with related freedoms of expression and opinion. It was also scrutinised for its potential impact on intimidating and deterring publicly voiced dissent in the Republic of Belarus.

In particular, the opinion found that the definitions and scope of protection, the prohibition of spontaneous and simultaneous assemblies, as well as counter-demonstrations, the citizenship requirement and other restrictions on the organisation of or participation in a mass event, the wide discretion offered to authorities, unlimited surveillance, blanket restrictions and the liability of organisers and participants – as provided for in the law – did not meet international standards.

Furthermore, the Law on Mass Events contained a detailed over-regulation of the procedural aspects of holding assemblies, a complicated procedure of compliance including a rigid and difficult authorisation procedure, while at the same time leaving the administrative authorities with a very wide discretion on how to apply the law. This procedure did not reflect the positive obligation of the State to ensure and facilitate the exercise of freedom of peaceful assembly and freedom of expression. The Law also failed to provide adequate mechanisms and procedures to ensure that these freedoms were effectively enjoyed in practice and not subject to undue bureaucratic regulation. Such over-regulation was likely to restrict excessively the exercise of freedom of assembly and of freedom of speech.

Belgium

Opinion on the revision of the Constitution of Belgium (CDL-AD(2012)010)

At the request of the Parliamentary Assembly of the Council of Europe, the Commission adopted, at its June 2012 session, an Opinion on the revision of the Constitution of Belgium (CDL-AD(2012)010).

The opinion focused on the amendment of the procedure for amending the Constitution. The procedure for constitutional revision in Belgium was strict, in the sense that there are three distinct stages: Parliament draws up a list indicating the constitutional provisions that will be amendable; legislative elections; the adoption by Parliament of the constitutional revision by a two-thirds majority. Article 195 relative to this amendment procedure had been temporarily modified; the first two stages were removed for the revision of a fixed number of provisions.

The opinion concluded that this revision was in conformity with the Belgian Constitution, as well as with international standards. The provisional nature of the amendment

was not a problem. There is no violation of the right to free elections as stated in Article 3 of the first Additional Protocol to the European Convention on Human Rights. The principle of the rule of law was also respected; it was rare for a control on the conformity of the constitutional revision with the Constitution itself to exist.

Taking into account more flexible constitutional amendment procedures throughout Europe and the fact that a Constitution should provide a framework for the proper functioning of a democratic state, the temporary provision, as stipulated in Article 195 transitional provision, faced the on-going crisis in Belgium in a democratic and legally correct way. This would enable the government and the large majority in parliament to carry out the urgent sixth state reform.

It would, however, have been preferable for parliament to make it more explicit, in its declaration of 7 May 2010, in which Article 195 was opened for amendment, that this would, after the elections, create the possibility of amending the Constitution in one legislative session, also with regard to provisions, which had not been mentioned in the declaration of 7 May 2010. More transparency would have been appropriate. Moreover, the parliamentary procedure, including the debate before the parliamentary vote, was rather quick, even if the issue had been discussed for a long time. A longer formal procedure could have been envisaged in order to ensure proper debate.

Bosnia and Herzegovina

Opinion on the practice of blanket resignation of Ministers in the Federation of Bosnia and Herzegovina (CDL-AD(2012)021)

Following a request, dated 5 September 2012, by the Minister of Justice of the Federation of Bosnia and Herzegovina, the Commission examined the compatibility of the so-called "practice of blanket resignation of ministers" with the general principles of the rule of law, in particular with the principles of legal security, respect for human rights and the prohibition of discrimination. Under the practice of blanket resignation, candidates for ministerial positions sign enveloped resignation letters prior to taking up their duties, which could then be used by their political party to remove those who signed the resignations, in case they failed to follow the directives given by their party during their ministerial mandate.

In its opinion, adopted at its October 2012 session, the Venice Commission considered that the technique of blanket resignation was an extension of the theory of imperative mandate (imperative mandate *largo sensu*) according to which holders of a political position need to follow their party directives in implementing their mandate. Such a mandate, in the Commission's view, was not consistent with the democratic standards in a well-functioning democracy for the following reasons:

Firstly, the liberal democratic tradition is based on the principle of the free and independent political mandate. The elected representatives who represent the whole constituency and not a particular political party, should exercise their mandate freely, seeking to accomplish what they believe is in the best interest of the country. In the Commission's view, although pre-signed resignations of ministers constituted a form of imperative mandate *largo sensu,* the specificities of the executive power may imply that criticism of blanket resignations of elected representatives, i.e. of parliamentary deputies, does not necessarily apply in the case of government members. This practice may even be acceptable, in the context of the executive power, if certain key requirements, such as lawfulness, openness and transparency were met.

The Commission stressed however, that such a blanket resignation practice may serve to move the executive power away from the government to the headquarters of a political party.

Secondly, the practice of pre-signed resignation letters bypasses the legislative and constitutional provisions, which provide specific procedures for the removal of ministers and determine the stakeholders with the initiative of the removal procedure. This practice deprives these stakeholders of the right to initiate the removal procedure as foreseen by legislative and constitutional provisions and gives the possibility to those in possession of the pre-signed resignations to perform a *de facto* removal of a minister.

The opinion stressed that this practice was a fictional, dishonest and non-transparent procedure contrary to the European principles and best practice of democracy and the rule of law, with negative consequences for the functioning of the political system.

Amicus curiae brief on the compatibility with human rights standards of certain articles of the Law on Primary Education of the Sarajevo Canton of the Federation of Bosnia and Herzegovina (CDL-AD(2012)013)

On 2 February 2012, the President of the Constitutional Court of the Federation of Bosnia and Herzegovina asked the Venice Commission to provide an *amicus curiae* Brief on the compatibility of Article 8 of the Law on Primary Education with the Constitution of Bosnia-Herzegovina and with European and International standards, in particular with the European Convention on Human Rights (ECHR).

Article 8 left students and their parents a choice between religious classes and an alternative course on "ethics and/or religion".

This request was related to a submission made by the Prime Minister of the Sarajevo Canton before the Constitutional Court of the Federation of Bosnia and Herzegovina, who argued that Article 8 did not provide any other alternative course for parents and students not wishing to have any education at all related to religion, or wishing only to have a secular education.

In its opinion adopted at its June 2012 session, the Venice Commission considered that the compatibility with international standards fundamentally depended on the content of the alternative course provided. According to the opinion, a state was not prohibited from requiring a student's attendance, without the possibility of exemption, at a course on ethics and/or religion where the student did not attend a denominational religious course. However, such compulsory attendance at a course on ethics and/or religion was only compatible with the ECHR where the course is neutral and did not seek to indoctrinate. It must be conveyed in an objective, critical and pluralistic manner.

In addition, the Commission underlined the importance of issuing some guidelines on how to interpret Article 8 in conformity with the ECHR, as well as on the conditions under which the course "on ethics and/or religion" would fulfil the neutrality and pluralistic requirements.

Hungary

Opinion on Act CCVI of 2011 on Freedom of Conscience and Religion and the Legal Status of Churches, Denominations and Religious Communities of Hungary (CDL-AD(2012)004)

At the request of the Minister for Foreign Affairs of Hungary, the Venice Commission adopted, at its March 2012 session, an Opinion on Act CCVI of 2011 on Freedom of Conscience and Religion and the Legal Status of Churches, Denominations and Religious Communities of Hungary.

The Venice Commission took into account in its assessment that, by enacting a completely new legal regime, the authorities had mainly sought to take measures against the abuse of freedoms of conscience and association and

to reduce the number of registered churches operating in the country.

The Venice Commission found that the Act was a liberal and generous framework for the freedom of religion. It stated in its opinion that states benefit from a large margin of appreciation with regard to the relationship between the church and the state and with regard to the choice of their policies and regulation in this field. The Commission also acknowledged that there was legitimate concern in Hungary to eliminate, while guaranteeing freedom of religion, the abuse of religious organisations which have operated for illicit and harmful purposes or for personal gain.

In spite of this general positive assessment, the Commission found that, although few in number, some important issues remained problematic and fell short of international standards.

The Act set out a range of requirements for the recognition of a church, which were considered to be excessive and based on arbitrary criteria. These included the requirement related to the national and international duration of a religious community and the recognition procedure, based on a political decision.

The opinion also found problematic that, to some extent, the Act introduced an unequal and even discriminatory treatment of religious beliefs and communities, depending on whether they were recognised or not. In this connection, the Commission took note that the Act had led to the deregistration process of hundreds of previously lawfully recognised churches, which, in its view, could hardly be considered in line with international standards.

Following the Venice Commission's opinion, the authorities expressed their intention to introduce amendments to the Act in order to bring the concerned provisions in line with International standards.

Opinion on Act CXII of 2011 in Informational Self-Determination and Freedom of Information of Hungary (CDL-AD(2012)023)

This opinion, prepared by the Venice Commission at the request of the Chair of the Monitoring Committee of the Parliamentary Assembly of the Council of Europe, was adopted at its October 2012 session.

The Venice Commission analysed Act CXII of 2011 on Self-Determination and Freedom on Information with regard to the fundamental rights protected by the Hungarian Fundamental Law as well as by the European Convention on Human Rights in its Articles 8 and 10 and Article 19 of the International Covenant on Civil and Political Rights.

In its opinion, the Venice Commission made an overall positive assessment of the Hungarian law and stressed that the law may be considered as a whole as complying with the applicable European and International standards.

However, the Commission considered that several points would need consideration and improvement, such as: the mode of designation of the President of the National Authority for Data Protection and Freedom of Information, which did not offer sufficient guarantees of independence in that the Parliament was entirely excluded from the process of designation; the protection of media sources, which although guaranteed by media related legislation, should be explicitly protected by Act CXII of 2011; the remedial mechanism provided by the Act, with regard to the access to public information.

Furthermore, the Commission recommended ensuring that the legislation dealing with data protection and access to information was clear, precise and, as far as possible, self-sufficient. More specifically, to exclude any sources of difficulty in the interpretation of the Act, improvement and clarification were needed concerning

some key concepts, such as "personal data", "data subject" and "data public on grounds of public interest".

Opinion on the Act on the Rights of Nationalities of Hungary (CDL-AD(2012)011)

Following a request dated 1 February 2012 from the President of the Monitoring Committee of the Parliamentary Assembly of the Council of Europe, the Venice Commission adopted, at its June 2012 session, an Opinion on the Act on the Rights of Nationalities of Hungary.

In this opinion, the Commission welcomed the Hungarian authorities' efforts to establish a comprehensive legal framework for the protection of minorities, thus confirming Hungary's commitment to the protection of minorities, and took note positively of the rights guaranteed by the new law, in their field of interest, to the thirteen nationalities recognised in Hungary. The opinion however expressed some criticism that the new law appeared to be particularly complex and at times excessively detailed. According to the Commission, this may result in difficulties in its implementation and have an adverse impact on the autonomy provided by the act to Hungary's nationalities.

The Commission judged the regulation of a system of the so-called "nationality self-governments" to be excessively detailed, considering that such overly-detailed regulation could have an adverse effect on the autonomy of the organs of self-government. The Commission also expressed its concern concerning the provisions relating to the control of legality carried out by the Government on the organs of self-government of nationalities, provisions which may lead to too much interference by the executive.

While the Venice Commission welcomed the legislator's effort to accommodate the particular educational needs that may exist amongst the nationalities of Hungary, it considered that some clarification was necessary, in particular concerning the procedure set forth in the law to set the number of educational institutions in the nationality's language and the funding of this education.

Finally, concerning the rights of nationalities related to culture, cultural development and access to the media, the Commission considered that appropriate mechanisms and procedures should be put in place by the law to enable nationalities to have access to public grants and prevent the financial crisis having a disproportionate impact on the implementation of nationalities' cultural projects.

Luxembourg

Follow-up to the Interim Opinion on the draft revision of the Constitution (CDL-AD(2009)057)

In 2009 the Luxembourg Parliament requested an opinion from the Venice Commission on the proposed constitutional review, geared to amending and reorganising the Constitution. The Commission adopted an opinion at its December 2009 session (CDL-AD(2009)057).

The Government took up a position on this revision on 22 June 2011.

On 6 June 2012, the Council of State of Luxembourg delivered its opinion. This opinion made regular references to the Venice Commission's opinion. A proposal for a revision of the Constitution followed. The key issues identified included the necessity for a transversal clause on the issue of limiting fundamental rights. It should also be noted that the Council of State made reference to the Venice Commission without the interim opinion on the Constitution of Luxembourg.

At a later stage in the proceedings, the Chair of the Committee on Institutions and Constitutional Review intends to request a new opinion from the Commission.

Montenegro

Opinion on two sets of draft amendments to the constitutional provisions relating to the judiciary of Montenegro (CDL-AD(2012)024)

At the request of the Speaker of the Parliament of Montenegro, the Venice Commission adopted at its December 2012 session, an Opinion on two sets of draft amendments to the constitutional provisions relating to the judiciary of Montenegro, prepared by the competent parliamentary committee and by an opposition party respectively.

After the legislative elections in Montenegro in October 2012, the time had come for the Montenegrin authorities to accomplish the constitutional reform with the aim of guaranteeing full independence to the judiciary and to the Constitutional Court, according to European standards and the suggestions of the 2007 Venice Commission opinion. The proposed amendments to the Constitution in the two sets of amendments contained positive proposals and attempted to improve the existing situation. They limited the role of Parliament and sought to establish a balanced composition between judges and lay members within the Judicial Council. The Venice Commission recommended including additional guarantees to ensure parity in disciplinary proceedings.

As concerned the Supreme State Prosecutor, there was a positive proposal to appoint and dismiss him or her by Parliament by a two-thirds majority, which took up previous recommendations of the Venice Commission. It was recommended to add an anti-deadlock mechanism in the Constitution. The Venice Commission also considered that the Supreme State Prosecutor should chair the Prosecutorial Council except in disciplinary proceedings.

Opinion on the draft law on free access to information of Montenegro (CDL-AD(2012)017)

Following a request from the Montenegrin authorities, the Venice Commission adopted, at its June 2012 session, an Opinion on the draft law on free access to information.

Montenegro was one of the 12 Member States of the Council of Europe that on 18 June 2009 signed the Convention on Access to Official Documents (hereinafter, CECAOD – CETS No. 205), the first international binding legal instrument that recognises a general right of access to official documents held by public authorities. On 23 January 2012, Montenegro ratified this Convention.

The Commission noted that the draft law on free access to information complied on many points with the Convention on Access to Official Documents and international standards. Many provisions of a first draft had been improved and brought into line with European standards following the visit of a Venice Commission delegation to Podgorica on 5-6 March 2012 and the transmission of the comments made by Commission rapporteurs.

However, the Commission made certain recommendations to further improve the draft law. In particular, it strongly advised the authorities to modify Article 17 of the draft law which stated that: "The public authority shall grant the access to information or part of information … when there is prevailing public interest for disclosure of information unless it proves the existence of other prevailing public interest". Although there might be various and sometimes conflicting public interests, there is, in any case, only one prevailing public interest.

The assessment of the different and possible conflicting public interest must be made at the same time in order to determine which the prevailing public interest is. The Venice Commission recommended among other things to extend some deadlines and to provide for a procedure for anonymous request for information.

Romania

Opinion on the compatibility with constitutional principles and the rule of law of actions taken by the Government and the Parliament of Romania in respect of other State institutions and on the Government emergency ordinance on amendment to the Law N° 47/1992 regarding the organisation and functioning of the Constitutional Court and on the Government emergency ordinance on amending and completing the Law n° 3/2000 regarding the organisation of a referendum of Romania (CDL-AD(2012)026)

On 6 July 2012, the Secretary General of the Council of Europe asked the Venice Commission to provide an Opinion on the compatibility with constitutional principles and the rule of law of actions taken by the Government and the Parliament of Romania in respect of other state institutions. On 9 July 2012, the Prime Minister of Romania requested an opinion from the Venice Commission on the Government Emergency Ordinance on amendment to Law No. 47/1992 regarding the Organisation and Functioning of the Constitutional Court and on the Government Emergency Ordinance on amending and completing Law No. 3/2000 regarding the Organisation of a referendum. The Commission decided to prepare a single opinion covering both requests. A delegation from the Commission visited Bucharest in September 2012. In order not to interfere with the parliamentary election on 9 December 2012 the Commission postponed the adoption of this opinion from October to its December 2012 session.

In early July 2012, the Romanian Government and Parliament had adopted a series of measures in quick succession, which had led to the removal from office of the Advocate of the People, the Presidents of both Houses of Parliament, a limitation on the competences of the Constitutional Court, changes to the conditions for a referendum on the suspension of the President of the Republic and the suspension of the President. The Venice Commission was of the opinion that these measures, both individually and taken as a whole were problematic from the viewpoint of constitutionality and the rule of law.

The events examined in the opinion included ordinances, decisions and procedures whose constitutionality was questionable, especially when taken together in quick succession. The Commission was concerned in particular about the extensive recourse to government emergency ordinances, both by previous and present majorities, which presented a risk for democracy and the rule of law in Romania.

The Commission also found that the events and several statements made demonstrated a worrying lack of respect among representatives of state institutions for the status of other state institutions, including the Constitutional Court as the guarantor of the supremacy of the Constitution.

The Commission was of the opinion that respect for a Constitution cannot be limited to the literal execution of its operational provisions. The Commission pointed out that the very nature of a Constitution is that, in addition to guaranteeing human rights, it provides a framework for the state institutions and sets out their powers and obligations. The purpose of these provisions is to enable the smooth functioning of the institutions based on their loyal co-operation. The Head of State, Parliament, Government, the Judiciary, all serve the common purpose of furthering the interests of the country as a whole,

not the narrow interests of a single institution or the political party having nominated the office holder. Even if an institution is in a situation of power, when it is able to influence other state institutions, it has to do so with the interest of the State as a whole in mind, including, as a consequence, the interests of the other institutions and those of the parliamentary minority.

The Venice Commission was of the opinion that the Romanian state institutions should engage in loyal co-operation between themselves and was pleased about statements from both sides expressing their intention to respect their obligations. The Commission warmly welcomed the fact that its interlocutors were of the opinion that constitutional and legislative reform was required to ensure that a similar situation should not arise again. This opinion referred to elements, which could become part of such reforms.

Russian Federation

Opinion on the Federal Law on the Federal Security Service (FSB) of the Russian Federation (CDL-AD(2012)015)

At the request of the Chair of the Monitoring Committee of the Council of Europe Parliamentary Assembly on 19 December 2011, the Venice Commission adopted, at its June 2012 session, an Opinion on the Federal Law on the Federal Security Service (FSB).

In the Venice Commission's view, it was a legitimate aim to develop more efficient means and measures to safeguard the state's security and ensure citizens' protection against extremism, terrorism and organised crime. However, the Commission stressed that the respect for fundamental rights is an essential condition for the operation of security services in a democratic society.

With regard to the legal basis of the activities of FSB organs, the Venice Commission recommended that the law contain an explicit requirement to duly respect the principles of necessity and proportionality of those activities and to provide effective remedies.

As regards the monitoring and supervision of FSB activities, the Commission stressed the necessity to establish mechanisms to prevent political abuse over security and intelligence agencies. On the other hand, as a requirement of the principle of the rule of law, the Agencies must be subject to legal control. The Commission considered that it was absolutely necessary to have external review mechanisms in order to ensure that operations are being carried out effectively and lawfully. The Commission however, expressed its doubts, as concerned the control of gathering of intelligence on individuals carried out by the prosecutors, that the latter, subjected to the hierarchical control of their superiors, represented a mechanism of "external" control.

Finally, concerning the preventive measures (official warnings to physical persons and requests to legal persons), the opinion positively noted that no sanction was applicable in case of non-compliance with them. However, insofar as these preventive measures were taken at a moment when the conduct they sought to prevent was not yet illegal, they created a "grey zone" between legality and illegality which could be problematic as regards human rights standards. The compatibility with such standards depends on how those preventive measures are applied in practice.

Opinion on the Federal Law of the Russian Federation on Combating Extremist Activity (CDL-AD(2012)016)

Following a request, dated 19 December 2011, by the Chair of the Parliamentary Assembly's Monitoring Committee, the Venice Commission examined the Federal Law on Combating Extremist Activity of the Russian Federation.

In its opinion adopted at its June 2012 session, while acknowledging the challenges faced by the Russian authorities in countering extremism, the Commission stated that the manner in which this aim was pursued in the Extremism Law was problematic. Serious concern in the light of human rights standards, as enshrined in the European Convention on Human Rights (ECHR), was expressed over the lack of precision of the definitions of "extremism", "extremist actions", "extremist organisations" or "extremist materials" provided by the law, as this could pave the way to an overly broad interpretation by enforcement authorities.

The specific preventive and corrective instruments provided by the law for combating extremism – the written warnings and notices – and the related sanctions (liquidation and/or ban on the activities of public, religious or other organisations, closure of media outlets) were also found to be problematic. In particular, the Commission found that the preventive and corrective measures were not defined in the law with sufficient precision having regard to the ECHR requirements of legality, necessity and proportionality.

The Venice Commission recommended that those fundamental shortcomings be addressed in relation to each of the definitions and instruments provided by the Law in order to bring them in line with the European Convention on Human Rights.

Opinion on the Federal Law No. 54-FZ of 19 June 2004 on Assemblies, Meetings, Demonstrations, Marches and Picketing of the Russian Federation (CDL-AD(2012)007)

At the request of the President of the Monitoring Committee of the Parliamentary Assembly of the Council of Europe on 19 December 2011, the Venice Commission prepared an Opinion on the Federal Law on Assemblies, Meetings, Demonstrations, Marches and Pickets of the Russian Federation, which was adopted at its March 2012 session. The opinion focused specifically on "the ambiguous provisions allowing for the refusal to authorise demonstrations".

In its opinion, the Venice Commission underlined that the effective guarantee of the right to freedom of assembly depends *in primis* on the quality of the legal regulation of its exercise, but also on the manner in which such legal regulations are interpreted and implemented. In this context, the Venice Commission recommended in the first place that the presumption in favour of holding assemblies and the principles of proportionality and non-discrimination be expressly included in the Assembly Law.

The Venice Commission criticised the regime of notification and the power of the executive authorities to alter the format of a public event, even where there are no compelling reasons to do so. The opinion thus recommended that the executive authorities take into account the principles of proportionality and the presumption in favour of assemblies in the exercise of their discretionary powers which the legal regulations confer upon them. In a similar vein, the Commission recommended that the grounds for restrictions of assemblies should be narrowed and the reasons for suspension and termination of assemblies be limited to public safety or a danger of imminent violence. The scope of application of blanket prohibitions, that is, absolute prohibitions of assemblies that do not allow for any exception should be narrowed in order to bring the application of the principle of proportionality in line with Article 11.2 of the European Convention on Human Rights.

As far as the appeal proceedings against proposals to change the format of a public event were concerned, the Commission considered that judicial review was potentially rendered ineffective because the courts did not have the power to reverse decisions which were within the broad discretion of the executive authorities and they

could not complete review in time before the proposed date of the public event.

Finally, spontaneous assemblies and urgent assemblies as well as simultaneous and counter demonstrations should be allowed as long as they were peaceful and did not pose direct threats of violence or serious danger to public safety.

"The former Yugoslav Republic of Macedonia"

Amicus Curiae Brief on the Law on Determining a Criterion for Limiting the Exercise of Public Office, Access to Documents and Publishing the Co-operation with the Bodies of the State Security ("Lustration Law") of "the former Yugoslav Republic of Macedonia" (CDL-AD(2012)028)

At the request of the President of the Constitutional Court on 7 September 2012, the Venice Commission prepared an *Amicus Curiae* Brief on the Law on Determining a Criterion for Limiting the Exercise of Public Office, Access to Documents and Publishing the Co-operation with the Bodies of the State Security ("Lustration Law") of "the Former Yugoslav Republic of Macedonia", adopted at its December 2012 session.

The Commission stressed from the outset that the aim of the *amicus curiae* brief was not to assess the constitutionality of the Lustration Law, but to provide the Constitutional Court with information on the applicable standards and on elements of European comparative law and experience. It was the task of the Constitutional Court, and not of the Venice Commission, to consider the case and rule on the constitutionality of the lustration law.

Concerning the temporal scope of application of the law, the Commission underlined that introducing lustration measures to acts dating from a long time ago could only be justified in extreme cases. The application of lustration measures to acts committed after the end of the totalitarian regime (the lustration law would cover acts committed up to 2006) could only be justified in exceptional historic and political conditions, and not in a country with a long-established framework of democratic institutions.

Finally, the Commission stressed the duration of the lustration measures should depend on the progress in establishing a democratic state governed by the rule of law and on the capacity for a positive change of the person subject to the lustration; a fixed duration should be provided. Lustration measures may not be applied to positions in private or semi-private organisations as this goes beyond the aim of lustration which is to exclude certain persons from exercising governmental power.

The Venice Commission furthermore stressed that the procedure before the Commission on Verification of the Facts as well as the appeal procedure, should be regulated in great detail and that the person subject to the lustration procedure should benefit from the equality of arms. Finally, the name of the person subjected to the lustration measures should only be published after a final decision by a court.

Ukraine

Constitutional Assembly

On 6 December 2012 an important delegation from the Venice Commission took part in the session of the Constitutional Assembly of Ukraine, a body established by President Yanukovych and chaired by former President Kravchuk. The session was followed by a meeting of the delegation with the Co-ordination Bureau of the Constitutional Assembly. In the afternoon a Round-table on "the Revision of the Chapter on the Judiciary of the Constitution of Ukraine" took place. Co-operation with the Venice Commission is part of the

the Constitutional Assembly's mandate and will continue in 2013.

2. Transnational activities

UniDem conferences

The rule of law as a practical concept (London, 2 March 2012)

The Venice Commission organised, under the auspices of the United Kingdom Chairmanship of the Committee of Ministers of the Council of Europe, in co-operation with the Foreign and Commonwealth Office of the United Kingdom and the Bingham Centre for the Rule of Law, a Conference on "the Rule of law as a practical concept".

This event, which took place on 2 March 2012 at Lancaster House in London, brought together approximately 80 participants from Council of Europe and Venice Commission members States, including some 15 rapporteurs and speakers. Academics, politicians, practicing lawyers, prosecutors, judges and constitutional judges attended the Conference.

The first session, on "the Rule of law as a goal for the XXI century", included a keynote speech by Mr Ronald Dworkin, Frank Henry Sommer Professor of Law at New York University and Professor Emeritus of Jurisprudence at University College, London, as well as presentations on "the Common core of the rule of law and the rechtstaat" by Mr Kaarlo Tuori, Professor of Jurisprudence at the University of Helsinki and Vice-President of the Venice Commission and on "the Rule of law in action" by Mr Serhiy Holovaty, Professor of Jurisprudence at the Taras Shevchenko University of Kyiv, member of the Parliamentary Assembly of the Council of Europe and former Ukrainian member of the Venice Commission.

The second session, on "The quality of the laws" included reports on "Law-making principles under the rule of law" by Mr Sergio Bartole, Professor Emeritus of Constitutional Law at the University of Trieste and Italian substitute member of the Venice Commission and on "the Interaction between the parliament and the government in the law-making process" by Mr Jean-Claude Colliard, President of University Paris 1 Pantheon-Sorbonne, former member of the Constitutional Council and French member of the Venice Commission.

The third session explored the topic "Preventing arbitrariness" through reports on "The control of executive discretion in implementing laws in order to prevent arbitrariness" by Ms Slavica Banić, Judge at the Constitutional Court of Croatia and Croatian substitute member of the Venice Commission, and on "Executive discretion in the field of freedom of assembly" by Ms Finola Flanagan, Law Reform Commissioner and Irish member of the Venice Commission.

There followed a general discussion on "the Rule of law as a practical concept". Participants agreed that the three pillars of the Council of Europe – democracy, respect for human rights and the rule of law – were closely intertwined so that none could be said to exist in the absence of the other two. While it was not necessary to reach a common definition of the rule of law, workable ways could be found to promote this principle in the future. It was possible to identify some core elements of the notion of the rule of law; the Venice Commission had listed some of them in a "checklist" which however, was neither exhaustive nor fixed in time: indeed, it could be further developed and adapted to evolving circumstances.

The important elements of the rule of law discussed at the conference – a due process of drafting laws and due judicial control of acts of the legislative branch as well as of the executive branch – were worth exploring further and developing into practical criteria. Finally,

participants agreed about the importance of including the Rule of Law in the foundation of the regimes in transition in the South Mediterranean.

For the mini-conference on "The Rule of Law as a Practical Concept' in Brno, Czech Republic in May 2012 (see Chapter III).

Constitutional design (Helsinki, 21-22 May 2012)

On 21-22 May 2012, the Venice Commission, in co-operation with the Centre of Excellence of the Helsinki Faculty of Law and with the International Association of Constitutional Lawyers (IACL), organised in Helsinki a seminar on "Constitutional Design". The seminar provided the participants – academics, members of national parliaments, representatives of national constitutional courts etc. – an excellent opportunity to discuss the concepts of constitution and constitutional design in democratic societies, culturally differentiated constitutional models and traditions, as well as to hold an exchange of views on specific examples of constitutional design, both in Europe and in the neighbouring countries (Armenia and Tunisia).

Studies and reports

Study on the Role of the Extra-Institutional Actors in the Democratic System

The preparation of the Study was launched in 2011 at the request of the Parliamentary Assembly, in its Resolution 1744 (2010). An advanced draft study was presented and discussed at the Sub-Commission on Democratic Institutions on 13 December 2012.

This study analysed the phenomenon of extra-institutional actors in national democratic systems in the light of democratic standards. After delimitating the notion of lobbying as commonly accepted, its modalities and the scale of the involvement of lobbying actors in the political processes, it assessed lobbying activities against democratic standards. The study further proposed a reflection on the opportunities offered by lobbying and the risks it entailed for the functioning of democratic institutions, followed by an examination of existing legal systems of lobbying regulations. Finally, the study provided an overview of possible strategies to strengthen the democracy-supportive role of extra-institutional actors in a democratic society. It is planned that the study will be adopted by the Venice Commission at its March 2013 session.

Revised version of joint OSCE/ODIHR-Venice Commission Guidelines on Freedom of Religion or Belief

Following their common decision to revise their joint Guidelines on Freedom of Religion or Belief (CDL-AD(2004)028), the Venice Commission and the OSCE/ODHIR launched, in 2012, a particularly close co-operation in relation to this process. The joint definition of the future content of the revised version of the Guidelines was of particular importance.

On 2 October 2012, the Venice Commission participated in a consultative meeting, organised by the OSCE/ODIHR in parallel to the 2012 OSCE Human Dimension Implementation Meeting (HDIM), in order to discuss the future Guidelines on the Recognition of Religious or Belief Communities. The goal of the meeting was to discuss with civil society representatives, the potential scope and content of these Guidelines, as well as ways of increasing their use.

Additionally, the Venice Commission was invited to designate observers to ODIHR's new Advisory Panel of Experts on Freedom of Religion or Belief, to ensure close consultation between the two bodies on these matters. Mr Vermeulen, Ms Flanagan and Ms Haller were appointed as observer and substitute observers respectively to the Advisory Panel.

Thematic compilations of Venice Commission opinions

In 2012, the Venice Commission endorsed the compilations of Venice Commission opinions and studies concerning Freedom of Assembly (CDL(2012)014) and Freedom of Association (CDL(2012)080).

These thematic compilations are intended to serve as a source of reference for drafters of constitutions, and of legislation, relating to the various topics dealt with by the Venice Commission in its work (such as freedom of peaceful assembly and freedom of association), researchers as well as the Venice Commission's members, who are requested to prepare comments and opinions on such texts. The compilations are not static documents and will continue to be regularly updated with extracts of newly adopted opinions or reports/studies by the Venice Commission.

Constitutional justice, ordinary justice and ombudsman

1. Country specific activities[10]

Albania

International Conference on the "Separation and balancing of powers – the role of constitutional review"

This event, held on the occasion of the 20th anniversary of the Constitutional Court of Albania, gathered together, *inter alia*, the presidents of the Constitutional Courts of Albania, Armenia, Bulgaria, Hungary, Italy, Kosovo, Morocco, Romania and the President of the European Court of Human Rights, to discuss the role of constitutional courts in promoting constitutionalism and the separation of powers, as well as the role of the President of the Republic in the separation and balancing of powers.

Angola

Visit by the Constitutional Court

On 6 March 2012, a delegation from the Constitutional Court of Angola visited Strasbourg in order to discuss electoral issues and possible accession of the Court to the World Conference on Constitutional Justice.

9. The full text of all adopted opinions can be found on the web site: www.venice.coe.int.
10. Information on activities in the field of constitutional justice and ordinary justice concerning Bolivia, Chile and Peru can be found in Chapter V.

Armenia

XVII Yerevan Conference on the "Interaction between the Constitutional Court and other institutions in ensuring the execution of Constitutional Court Judgments"

See Chapter III.3 (CCCOCND).

Bosnia and Herzegovina

Opinion on legal certainty and the independence of the judiciary in Bosnia and Herzegovina (CDL-AD(2012)014)

This Opinion, requested by the European Commission and adopted by the Venice Commission at its June 2012 session, identified several main challenges to legal certainty and the independence of the judiciary that were a direct result of the current situation in Bosnia and Herzegovina. The main challenge was the co-existence of four legal orders in Bosnia and Herzgovina that are more or less separate from each other (the State, the Federation, the Republika Srpska and the Brčko District) and lack clear rules to regulate their relationship. Other challenges included the limited competences of state-level institutions, the backlog and uneven distribution of cases between the courts which can breach the principle of the "natural judge" or the right of access to a tribunal established by law. Several issues concerning the High Judicial and Prosecutorial Council were also identified. The main one concerned its structure, in respect of which the Venice Commission recommended that it create two sub-structures, one for judges and one for prosecutors.

This opinion's main conclusion was that, in the long run, for further structural progress and development to be achieved in Bosnia and Herzegovina constitutional reform will have to be undertaken. Initial steps should be taken to reinforce the effectiveness of institutions at all levels throughout Bosnia and Herzegovina. For the judiciary, efforts are needed to strengthen all institutions and authorities throughout Bosnia and Herzegovina, including at the state level.

Seminar on European Union standards in the field of the independence and professionalism of the justice sector and the role and composition of the High Judicial and Prosecutorial Council (HJPC)

In December 2012, a delegation of the Commission participated in a targeted workshop to facilitate the ongoing dialogue aimed at revising the law on the High Judicial and Prosecutorial Council (HJPC) and to bring it in line with relevant European standards. Discussions covered issues related, in particular, to the professionalism and the independence of the judiciary, in light of the current HJPC reform perspectives. The HJPC has a key role to play in the system, which must be preserved and consolidated.

Hungary

Opinion on Act CLXII of 2011 on the Legal Status and Remuneration of Judges and Act CLXI of 2011 on the Organisation and Administration of Courts (CDL-AD(2012)001)

In reply to a letter by the Secretary General of the Council of Europe, the Minister for Foreign Affairs of Hungary requested the Venice Commission, by a letter of 20 January 2012, to provide *inter alia* an Opinion on legislation relating to the judiciary, namely Act CLXII of 2011 on the Legal Status and Remuneration of Judges and Act CLXI of 2011 on the Organisation and Administration of Courts. A delegation of the Commission visited Budapest in February.

The opinion, adopted at the March 2012 session, dealt with a number of issues: the powers and accountability of the President of the National Judicial Office (together with the role of the National Judicial Council), in particular as regards appointments of judges and court leaders, probationary periods, irremovability of judges, their evaluation, disciplinary proceedings and transfer of cases and referred also to transitional issues (retirement of judges and the appointment of the president of the Curia).

The main question examined in the draft opinion was whether the powers of the President of the National Judicial Office (PNJO) who acted as a single person were too wide and whether there were sufficient means of control by the National Judicial Council. Although States enjoy a large margin of appreciation in establishing a system for the administration of justice, in no other member state of the Council of Europe were such important powers, including the power to select judges and senior office holders, vested in a single person. The PNJO was the crucial decision-maker in practically every respect regarding the organisation of the judicial system and he or she had wide discretionary powers mainly not subject to judicial control. The PNJO was elected without consultation of the members of the judiciary and not accountable in a meaningful way to anyone except in cases of violation of the law. The very long term of office (9 years) added to these concerns.

These strong powers, including in the field of judicial appointments, were exacerbated by the system of supervision (uniformisation procedure), taken together with the strong influence of the PNJO on the appointment of court presidents, who initiate this uniformisation procedure, repetitive probationary periods, possibilities of transfer of judges against their will and the harsh

consequences of a refusal and the transfer of cases by the PNJO to another court.

These issues taken together and looked at also in the light of other problems addressed in this opinion, the Commission came to the conclusion that the essential elements of the reform not only contradicted European standards of the organisation of the judiciary, especially its independence, but were also problematic as concerns the right to a fair trial under Article 6 ECHR.

Opinion on the Act on the Constitutional Court (CDL-AD(2012)009)

By letter of 1 February 2012, the Chair of the Monitoring Committee of the Parliamentary Assembly of the Council of Europe asked the Venice Commission to provide an Opinion on the Act on the Constitutional Court of Hungary (Act CLI of 2011).

The opinion, adopted at the June 2012 session, found the Act on the Constitutional Court, in general, well drafted and coherent. It identified a number of positive elements in the Act, *inter alia*, budgetary guarantees, the exclusion of the re-election of Constitutional Court judges, a time limit for the appointment of new judges and the extension of the mandate of the incumbent member until his or her replacement in order to ensure continuity in the membership of Court, only functional immunity for the Judges of the Court, provisions on access to the Constitutional Court out of time in exceptional circumstance, the binding force of the decisions of the Constitutional Court for ordinary courts and the attenuation of the *ex nunc* effect of Constitutional Court decisions.

Nonetheless, the Commission made a number of recommendations including: the guarantee of independence of the Court and the status of its judges on the constitutional level, procedural safeguards against the exclusion of a judge for "unworthiness", a clarification of the individual complaint procedure without reducing its scope, the introduction of legal aid in proceedings before the Constitutional Court and the abolition of the limitation of the Constitutional Court's control powers in budgetary matters.

Opinion on the Act on the Prosecution Service and the Act on the Status of the Prosecutor General, Prosecutors and other Prosecution Employees and the Prosecution Career (CDL-AD(2012)008)

By letter of 1 February 2012, the Chair of the Monitoring Committee of the Parliamentary Assembly of the Council of Europe asked the Venice Commission to provide an opinion on the Hungarian laws on the prosecution system. The opinion, adopted at the June 2012 session, concluded that, taking into account the variety of possible models for the organisation of the prosecution system in Europe, the general principles for the operation of prosecutors were in line with applicable standards for prosecutors in a democratic society. Act CLXIII of 2011 on the Prosecution Service and Act CLXIV of 2011 on the Status of the Prosecutor General, Prosecutors and Other Prosecution Employees and the Prosecution Career provided for an autonomous body with a hierarchical organisation, enabling non-political activity of prosecutors and contain important anti-corruption rules.

The opinion highlighted a number of positive aspects in the laws, *inter alia:* the obligation to give explanations to victims and applicants; the duty to co-operate with national and international bodies, including human rights organisations; the obligation to present all the facts, pieces of evidence and arguments in court; anti-corruption rules and financial disclosure rules; the possibility to make a request to commit an instruction in writing and the suspension of the instruction until the instruction is written; the possibility to request the issuing of a warning in writing to be able to appeal against

it and the obligation to hear the accused prosecutor in disciplinary proceedings.

The main problem, which the Commission identified in the Acts, was the high level of independence of the Prosecutor General, reinforced by his or her strong hierarchical control over all other prosecutors. Such broad independence and hierarchical model are not contrary to European standards. However, they need to be complemented by sufficient checks and balances, not yet sufficiently developed in the Hungarian system. There was no prosecutorial council, which could effectively exert an influence on the exercise of the Prosecutor General's extremely broad powers within the prosecution system. Most of the issues identified did not stem from the revision of the Acts under the new Fundamental Law but were remnants from the overarching powers, which the prosecution held before the democratic transition in Hungary. Taken on their own, most issues raised in the Opinion did not threaten the rule of law.

The Venice Commission recommended that prosecutors should benefit from a functional immunity only: to limit the obligation for business entities and other organisations to provide data and documents to the prosecutor; to make entry into private premises against the will of the owner of the premises dependent on a court warrant; to introduce criteria under which cases can be taken away from subordinate prosecutors; to define narrowly the supervisory powers allowing the prosecutors to interfere in lawsuits between private parties; to reduce the general supervisory role of prosecution in all administrative procedures; to reduce access to public data required for the investigation of crime; to allow the Prosecutor General to override advice from the prosecutor's council only on the basis of a reasoned decision; the establishment of a prosecutors council with at least some external representation; to provide for a hearing for the Prosecutor General before his or her dismissal; to motivate the revocation of managerial appointments and finally to channel an objection against bias of the Prosecutor General to a prosecutor council.

Opinion on the Cardinal Acts on the Judiciary that were amended following the adoption of Opinion CDL-AD(2012)001 (CDL-AD(2012)020)

The Monitoring Committee of the Parliamentary Assembly of the Council of Europe had asked the Venice Commission to provide an opinion on the amendments to the Cardinal acts on the judiciary that were adopted by the Hungarian Parliament following the adoption of opinion CDL-AD(2012)001 by the Venice Commission. The Committee asked, in particular, whether these amendments had addressed all of the Venice Commission's substantial concerns regarding the cardinal acts on the judiciary as voiced in opinion CDL-AD(2012)001.

Following the adoption of opinion CDL-AD(2012)001 (hereinafter, the "previous opinion") and a visit by the Secretary General of the Council of Europe to Budapest, the Hungarian Government introduced amendments to the legislation examined in the previous opinion.

These amendments addressed many recommendations made in the previous opinion and constituted a commendable step in the right direction. While the President of the National Judicial Office (PNJO) remained the pivotal element of the Hungarian judicial system, a number of his or her competences had been transferred to the National Judicial Council (NJC). The Venice Commission welcomed these amendments, which resulted in improved accountability of the President of the NJO.

The Commission also welcomed that: the amendments attributed the power to the NJC to express a preliminary opinion on persons nominated as PNJO; the PNJO could not be re-elected; the mandate of the PNJO was no

longer automatically extended until the election of a successor by a two-thirds majority in Parliament; the NJC had to determine the applicable principles, which the President of the NJO has to apply when deviating from the ranking in the appointment of judges; the PNJO had to seek the consent of the NJC for a change in the ranking in the appointment of judges; the PNJO had to obtain the approval of the NJC to appoint the chairs and vice-chairs of courts when the candidate has not obtained the approval of the reviewing board; judges could turn to the administrative and labour court or to the service court against the PNJO's decision not to appoint them; the competences of the NJC had been widened substantially; unsuccessful applicants for judicial office could submit an objection against the appointment of the successful candidate; court leaders who did not receive the approval of the reviewing board could only be appointed with the consent of the NJC; the NJC appointed the president and the members of the Service Court; judges had an opportunity to choose between the available judicial posts at courts at the same level if they were transferred; administrative and labour courts could review the transfer of a judge; the NJC determined the principles to be applied by the President of the NJO when appointing a proceeding (receiving) court.

Nonetheless, the powers of the President of the NJO remained very extensive to be wielded by a single person and their effective supervision remained difficult. These amendments did not fully dispel the Venice Commission's concerns.

Among the points which should be addressed, two elements were of a pressing nature. The first was the implementation of Constitutional Court judgment No. 33/2012 of 16 July 2012, annulling the early retirement of all judges over 62 years. The legislator should have adopted provisions re-instating the dismissed judges in their previous position without requiring them to go through a re-appointment procedure. Any additional age discrimination removing judges who are older than 62 years from leading positions should be avoided.

The second urgent issue was the procedure of the transfer of cases. While the NJC adopted criteria on the selection of the court, which was to receive the case, the most critical decision was the selection of individual cases by the president of the overburdened court (usually in Budapest). The amendments did not provide for the establishment of any criteria for this selection. The NJC should have been mandated to establish such criteria, which would have to be objective (e.g. a transparent random selection). The conformity of the selection of a case with such criteria should then be the standard for the judicial review of the transfer.

In addition, further issues were linked to the transfer of cases: the date of notification of the transfer to the parties should be the starting point for the 8 days' deadline for appeals against transfers, not the date of their publication on the web-site; in case of annulment by the *Curia* of the assignment of a case to another court, the case should be dealt with by the original court and the President of the NJO should not simply be able to assign a case to another court instead; even if the *Curia* used the NJC's principles on the transfer of cases, the President of the NJO should be explicitly bound by them (and not only "take them into account") and the judicial review of the transfer of cases should not be restricted to compliance with "legal provisions" but should explicitly include the principles established by the NJC; the competence of the Prosecutor General to give instructions that charges be brought before a court other than the court of general competence should be removed.

A solution to the problem of the transfer of cases was urgent not only because it related to structural issues but, in addition, it directly affected the right to a fair trial. For this reason, this topic had been a particular focus of the

dialogue between the Secretary General of the Council of Europe and the Hungarian authorities. Progress in this issue was commendable, but insufficient. The system of the transferring of cases was not in compliance with the principle of the lawful judge, which is essential to the rule of law.

Further points which needed to be addressed were that: the Vice-President of the NJO, selected by the President of the NJO, should not become the interim President of the NJO; the obligation of the President of the NJO to state the reasons for his or her decisions should be made a general rule; the limitation by the clause "where applicable" should be removed if it could be interpreted as giving discretion to the President of the NJO whether or not to state reasons for his or her decisions; the NJC's principles to be applied by the President of the NJO when deviating from the shortlist of candidate judges should explicitly be made opposable to the President of the NJO in judicial proceedings; the possibility for the President of the NJO to declare the appointment procedure unsuccessful should be removed; an unsuccessful candidate should be able to contest the ranking of candidate judges on the ground that it was not based on objective criteria based on merit and not only on procedural grounds; the supervision of judges by chairs and division heads of courts and tribunals in the uniformisation procedure should be removed; the maximum frequency of temporary transfers of judges ("one year every three years") should be reduced substantially, it should not be possible to transfer a judge so often; the NJC should not be composed exclusively of judges; the 'users of the judicial system' such as advocates, representatives of civil society and the academia should be included as full members (not upon *ad hoc* invitation and with consultative status only) and the system of continuing rotation of the presidency and the membership in the NJC for only one term, which weakens the NJC, should be reconsidered.

Jordan

Workshop on the establishment of a Constitutional Court

In co-operation with the Parliament of Jordan, the Commission organised a Workshop on the establishment of a Constitutional Court (Amman, 28 May 2012). In view of the adoption of a law on the Constitutional Court, various models of constitutional jurisdiction and, in particular, means of access of the individual to the court were discussed (see Chapter V).

Korea (Republic)

Visit by the President of the Commission

On the occasion of the Inaugural Congress of the Association of Asian Constitutional Court and Equivalent Institutions (see below), the President of the Venice Commission met with the Minister of Justice of Korea, Mr Kwon Jae-jin, in May 2012. The Minister expressed his satisfaction with the work of the Commission and informed the President of the Commission that his Ministry systematically translated the annual reports of the Commission into the Korean language.

Kyrgyzstan

Participation in the "Judiciary Dialogue"

A delegation of the Commission participated in the "Judiciary Dialogue" in Kyrgyzstan and held discussions with the Parliament's judiciary working group, Bishkek, March 2012. This event was organised by the EU-UNDP Parliament project. The subject of the discussions was the definition and implementation of the judicial reform strategy. In 2011, the Commission had given three opinions on the draft law on the council for the selection of Judges (CDL-AD(2011)019), on the Constitutional Law on the Status of Judges (CDL-AD(2011)017) and on the Constitutional Law on the Constitutional Chamber

of the Supreme Court (CDL-AD(2011)018). A point of particular importance in the discussions was the need to establish the Constitutional Chamber of the Supreme Court (on co-operation with Kyrgyzstan, see also Chapter V).

Lithuania

Conference on the occasion of the 20th Anniversary of the Constitution of Lithuania

On 25 October 2012, the Commission organised in co-operation with the Constitutional Court of Lithuania and Vilnius University a conference on the "Standards of Europe's constitutional heritage" on the occasion of the 20th anniversary of the Constitution of Lithuania. Discussions focused on key elements of "historic" constitutions in Europe, which still influenced modern constitutions and how the European constitutional heritage had become a common standard (see also CDL-JU(2012)030syn).

Montenegro

Visit to the Constitutional Court

In May 2012, the President of the Venice Commission visited the President of the Constitutional Court of Montenegro in Podgorica and discussed bilateral co-operation as well as issues linked to constitutional reform in Montenegro.

Morocco

1st Intercultural Workshop on "Constitutional processes and democratic processes, experiences and perspectives"

In March 2012, the Commission organised, in co-operation with the Moroccan Association of Constitutional Law, the International Association of Constitutional Law and the Constitutional Council of Morocco the 1st Intercultural Workshop on the topic "Constitutional processes and democratic processes, experiences and perspectives" in Rabat. Both national and international participants discussed various features of the constitutional reform in Morocco and the means of its implementation.

Seminar on preliminary requests to Constitutional Courts

In co-operation with the Constitutional Council of Morocco, the Venice Commission organised a seminar on "Preliminary Requests to Constitutional Courts", (Rabat, November 2012). Presidents and judges of the Constitutional Courts and Councils of Belgium, Egypt, France, Italy, Romania and Spain presented their systems of preliminary requests. The numerous alternative solutions as concerns the role of the parties, of the requesting judge, various filters and the effects of preliminary judgments, were discussed in detail in the view of the preparation of an organic law, which is foreseen in the new Constitution of Morocco (see Chapter V).

Romania

Conference on the occasion of the 20th Anniversary of the Constitutional Court and of 100 years of constitutional review in Romania

A delegation of the Commission participated in the Conference on the occasion of the 20th Anniversary of the Constitutional Court and of 100 years of constitutional review in Romania (Bucharest, 21-22 June 2012).

On 4 July and 7 August 2012, the President of the Venice Commission made statements calling for the respect of the independence of the Constitutional Court of Romania.

South Africa

Visit by the Constitutional Court

A delegation from the Constitutional Court of South Africa, under its Chief Justice Mogoeng Mogoeng, participated at the June 2012 Plenary Session and visited Strasbourg for meetings with the President of the European Court of Human Rights and the Secretariat of the Commission.

"The former Yugoslav Republic of Macedonia"

Amicus curiae brief

At request of the Constitutional Court of "the former Yugoslav Republic of Macedonia", the Commission adopted an *amicus curiae* brief on the so-called "Lustration Law" (see Chapter II above).

Tunisia

Workshop on "The Role of an independent judiciary in the Middle East and North Africa"

In January 2012, a delegation from the Commission participated in the American Bar Association-Rule of Law Initiative (ABA ROLI) – Arab Council for Judicial and Legal Studies (ACJLS) Workshop on "The Role of an Independent Judiciary in the Middle East and North Africa", Tunis, 17-18 January 2012. The delegation presented common standards on the independence of the judiciary as well as the experience of Central and Eastern European countries in judicial reforms.

Study visit of members of the Constituent Assembly to Strasbourg and Karlsruhe

On 29-30 March 2012, members of the Constituent Assembly of Tunisia made a study visit to Strasbourg and Karlsruhe. The 11-person delegation from the drafting group on the "justice" chapter of the new Tunisian Constitution, were invited to Strasbourg by the Venice Commission for a study visit to both the Council of Europe bodies (including the European Court of Human Rights and the Parliamentary Assembly) and Karlsruhe, Germany to visit the Federal Supreme Court and the Federal Constitutional Court.

Seminar on the independence of the judiciary

The Commission organised a seminar on the independence of the Judiciary (Tunis, 21-22 March 2012, see Chapter V).

Visit to Tunis on judicial reform

In December 2012, a joint delegation from the Venice Commission and the OSCE/ODIHR held discussions in Tunis with the Ministry of Justice of Tunisia on the reform of the judiciary (see chapter V).

Turkey

Symposium on the occasion of the 50th Anniversary of the Constitutional Court of Turkey

A delegation of the Venice Commission participated in the Symposium on the occasion of the 50th anniversary of the Constitutional Court of Turkey, Ankara/Istanbul, 25-26 April 2012. A key issue discussed was the introduction of the individual complaint to the Constitutional Court as of September 2012. The Venice Commission had given an opinion on this issue (CDL-AD(2011)040). It was expected that this reform would reduce the number of Turkish cases before the European Court of Human Rights.

Expert Seminar on "The Independence and Integrity of the Judiciary"

A member of the Venice Commission presented a report on "External and Internal Aspects of the Independence of the Judiciary" to the Seminar which was organised by the OECD (Istanbul, 28-30 June 2012).

Ukraine

Opinion on the draft Law on the Public Prosecutor's Office of Ukraine (prepared by the Ukrainian Commission on strengthening Democracy and the Rule of Law) (CDL-AD(2012)019)

This opinion, requested by the Monitoring Committee of the Parliamentary Assembly of the Council of Europe and adopted at the October 2012 session, recommended that the scope of functions of the Public Prosecutor's Office be reduced, as they exceeded the scope of functions that a prosecution service should have in a democratic society. The opinion welcomed the draft law's stance on abandoning the supervisory role prosecutors currently hold over the administration and the fact that it took into consideration much of the criticism made by the Venice Commission in previous opinions.

While this opinion was being prepared, the Secretariat of the Venice Commission received a letter from the Minister for Justice of Ukraine informing it that another draft law on the same topic was being prepared by a different working group and that it would be submitted to the Venice Commission for an opinion in due course.

The draft law would represent an important step if it were to be adopted. However, while the Venice Commission was looking at this draft law, the Ukrainian authorities appeared to have gone in the opposite direction, adopting amendments which seemed to have made the supervisory role of the administration permanent.

2. Transnational activities

5th Conference of Secretaries General of Constitutional Courts and Equivalent Bodies, Yerevan, 13-14 April 2012

In co-operation with the Constitutional Court of Armenia, the Venice Commission organised the 5th Conference of Secretaries General of Constitutional Courts and Courts with Equivalent Jurisdiction on the topic "Procedural time-limits and Reactions to negative criticism of Court judgments" (Yerevan, 13-14 April 2012). The Conference gathered together 22 secretaries general of constitutional courts from all over Europe as well as from the Constitutional Council of Morocco and the Constitutional Tribunal of Peru.

The reports and discussions focused on two themes: (1) procedural time-limits (time-limits for litigants/time-limits for the court) in which the role of time-limits, ranging from stemming the flow of cases heading to the Constitutional Court and avoiding overburdening it, to taking into consideration the decision-making time allocated to the Court, were discussed; (2) reactions to negative criticism of court judgments, in which the importance that courts are open to criticism was discussed and how they should deal with the points raised in the criticism they received, including how to deal with the source of the criticism, which can emanate from individual letters of complaint addressed to the President of the Court to criticism received from the legal community or from the media. Participants agreed that the interaction of the court with the public was important and that events such as "open house days", which open the doors to the public to visit the court, are important to create trust and transparency. They also agreed that ensuring judgments are written clearly and that an abstract is provided which explains the decision in layman's terms can clear up misunderstandings.

11th meeting of the Joint Council on Constitutional Justice (Brno, 31 May-1 June 2012)

The 11th meeting of the Joint Council on Constitutional Justice was hosted by the Constitutional Court of the Czech Republic and opened by its President. The meeting focussed on the publication of the Bulletin on Constitutional Case-Law and the CODICES database, on the improvement of the classic Venice Forum, which is open to courts participating in the Joint Council and of the Venice Forum Newsgroup, which is also open to constitutional courts, which are in partnership with the Venice Commission on the basis of an agreement with a regional or language based group of Constitutional Courts or equivalent bodies (see below Section 3).

The Joint Council also held a mini-conference on the theme of "The Rule of Law as a Practical Concept". This choice of topic of the mini-conference was made as a follow up to the Unidem seminar on the Rule of Law in London in March 2012 (see Chapter II above). The liaison officers presented the case-law of their courts on the rule of law and frequently made reference to the Venice Commission's Report on the Rule of Law (CDL-AD(2011)003rev).

3. Regional Co-operation

The Venice Commission co-operates closely with constitutional courts and equivalent bodies in its member, associate member and observer states. These courts meet with the Commission in the framework of the Joint Council on Constitutional Justice. The publication of case-law in English and in French in the printed Bulletin on Constitutional Case-Law, access to the classic Venice Forum (quick on-line requests to other constitutional courts on cases relevant for pending cases) are reserved to courts represented in the Joint Council.

On the basis of various co-operation agreements, constitutional courts united in regional or language based groups can contribute to the CODICES database and the Venice Forum Newsgroup (various on-line announcements and requests).

Conference of European Constitutional Courts (CECC)[11]

Since 1999, a tradition had developed for the Joint Council to produce working documents upon request by the Presidencies of the CECC on the topics of the CECC congresses. These working documents consist of extracts from the CODICES database complemented by additional information provided by the liaison officers. Following the congresses, the working documents are published as special editions of the *Bulletin on Constitutional Case-Law*.

At its 6th meeting in Brno on 30 May-1 June 2012, the Venice Commission's Joint Council on Constitutional Justice decided to prepare a working document, followed by a Special Bulletin on the topic of the XVIth Congress of the Conference of European Constitutional Courts (Vienna, 2014) on "Co-operation of Constitutional Courts in Europe – current situation and perspectives, 1) Constitutional Courts between constitutional law and European law, 2) Interaction between Constitutional Courts and 3) Interaction between European Courts." This topic of the XVIth Congress covered very well the Joint Council's purpose to promote co-operation between the Courts.

In July 2012, the Special Bulletin on "State Powers", prepared as a working document for the XVth Congress of the CECC was published.

11. See the co-operation page: www.venice.coe.int/CECC/.

Association of Constitutional Courts using the French Language (ACCPUF)[12]

On the basis of the Vaduz Agreement and its Djibouti Protocol with ACCPUF, the Venice Commission continued to include the case-law of ACCPUF Courts into the CODICES database.

The Commission's Secretariat presented the Commission's Report on "Individual access to constitutional justice" (CDL-AD(2010)039rev) at the 6th Congress of ACCPUF in Marrakech, Morocco, on the "Citizen and the Constitutional Judge" on 3-5 July 2012.

Southern African Chief Justices Forum (SACJF)[13]

The Secretariat attended the Annual Workshop and the General Assembly of the SACJF in Maputo, Mozambique on 27-28 July 2012.

Conference of the Constitutional Control Organs of the Countries of New Democracy (CCCOCND)[14]

In co-operation with the Conference of the Constitutional Control Organs of the Countries of New Democracy and the Constitutional Court of Armenia, the Venice Commission organised a conference on the topic "Interaction between the constitutional court and other institutions in ensuring the execution of constitutional judgments" (Yerevan, 5-6 October 2012).

The topic chosen – the execution of judgments of constitutional courts – was approached from various angles. While in most countries the execution of constitutional court judgements is smooth and without major problems, some Constitutional Courts at times face resistance not only from other state powers but occasionally even from the ordinary judiciary in the implementation of constitutional judgements. A convincing reasoning of these judgements, presented in a clear language, which is understandable also to political actors and the media is a key element for their acceptance.

12. See the co-operation page: www.venice.coe.int/ACCPUF/.
13. See the co-operation page: www.venice.coe.int/SACJF/
14. See the co-operation page: www/venice.coe.int/CCCOCND

Association of Asian Constitutional Courts and Equivalent Institutions (AACC)[15]

A delegation from the Commission participated in the Founding Congress of the Association of Asian Constitutional Courts and Equivalent Institutions in Seoul, Korea in May 2012. This new Association (11 members from Indonesia, Korea, Malaysia, Mongolia, Pakistan, Philippines, Russia, Tajikistan, Thailand, Turkey and Uzbekistan) was born out of the Conference of Asian Constitutional Judges, which co-operated with the Venice Commission since 2005. On the occasion of the Inaugural Congress, a co-operation agreement was concluded, which provides for access of the AACC members to the CODICES database and the Venice Forum Newsgroup.

Ibero-American Conference of Constitutional Justice (CIJC)[16]

A delegation of the Commission participated in the IXth Ibero-American Conference of Constitutional Justice on "Presidentialism and parliamentarism in constitutional jurisprudence" that was held in Cadiz, Spain on 16-19 May 2012, on the occasion of the bicentenary of the Constitution of Cadiz.

15. See the co-operation page: www.venice.coe.int/AACC/
16. See the co-operation page: www.venice.coe.int/CIJC/

Union of Arab Constitutional Courts and Councils (UACCC)[17]

A delegation from the Commission participated in the 7th Colloquium of the Union of Arab Constitutional Courts and Councils on "Constitutional justice and the separation of powers", hosted by the Constitutional Council of Lebanon (Beirut, Lebanon 24-25 October 2011). The co-operation with the UACCC, based on a co-operation agreement, was further strengthened by the Arab Spring (for co-operation with Arab countries in general, see Chapter V).

Conference of Constitutional Courts of Portuguese Speaking Countries (CJCPLP)[18]

A delegation from the Commission participated in the Conference of Constitutional Courts of Portuguese-Speaking Countries (Maputo, 15-16 May 2012). On this occasion, a co-operation agreement was signed, which provides for contributions of the member courts of the CJCPLP to the CODICES database and access to the Venice Forum Newsgroup.

Conference of Constitutional Jurisdictions of Africa (CCJA)[19]

In discussions with the Presidency and Secretariat of the Conference of Constitutional Jurisdictions of Africa the conclusion of a co-operation agreement has been prepared for conclusion in 2013.

17. See the co-operation page: www.venice.coe.int/UACCC
18. See the co-operation page: www.venice.coe.int/CJCPLP
19. See the co-operation page: www.venice.coe.int/CJCA

4. World Conference on Constitutional Justice

The World Conference on Constitutional Justice unites 62 Constitutional Courts and Councils and Supreme Courts in Africa, the Americas, Asia and Europe. It promotes constitutional justice – understood as constitutional review including human rights case-law – as a key element for democracy, the protection of human rights and the rule of law (Article 1.2 of the Statute).

The World Conference pursues its objectives through the organisation of regular congresses, by participating in regional conferences and seminars, by promoting experiences and case-law and by offering good services to members on their request (Article 1.2 of the Statute).

The main purpose of the World Conference is to facilitate judicial dialogue between constitutional judges on a global scale. Due to the obligation of judicial restraint, constitutional judges sometimes have little opportunity to conduct a constructive dialogue on constitutional principles in their countries. The exchanges that take place between judges in the World Conference further reflection on arguments which promote the basic goals inherent in the national constitutions. Even if these texts often differ substantially, discussion on the underlying constitutional concepts unites constitutional judges from various parts of the world who are committed to promoting constitutionalism in their own country.

The Bureau of the World Conference met on 16 June 2012 in Venice to discuss, inter alia, the preparation of the 3rd Congress of the WCCJ in Seoul, the report on the membership of the WCCJ, the financial report regarding contributions to the WCCJ, the relationship between the WCCJ and bilateral agreements concluded between regional and linguistic groups and the Venice Commission and the choice of a logo. The Bureau appointed the Head of the Constitutional Justice

Division of the Venice Commission as Secretary of the World Conference.

By the end of 2012, 60 Constitutional Courts and equivalent bodies had joined the World Conference as full members (membership at time of publication of this report: 62).

The 3rd Congress of the World Conference on Constitutional Justice will be hosted by the Constitutional Court of the Republic of Korea in Seoul on 28 September-1 October 2014. This congress will be open only to courts which are members of the World Conference.

5. Bulletin on Constitutional Case-Law and the CODICES database

The Bulletin on Constitutional Case-Law, first published in January 1993, contains summaries of the most important decisions sent in by the constitutional courts or their equivalents of more than 60 countries, the European Court of Human Rights and the Court of Justice of the European Union. The contributions to the Bulletin are supplied by liaison officers appointed by the courts themselves.

The regular issues are supplemented by a series of special bulletins on specific topics or containing descriptions of the courts and basic material, such as extracts from constitutions and legislation on the courts, thus enabling readers to put the different courts' case-law into context. The Bulletin's main purpose is to encourage an exchange of information between courts and help judges to settle sensitive legal issues, which often arise simultaneously in several countries. It is also a useful tool for academics and all those with an interest in this field. The newly established constitutional courts in Central and Eastern Europe benefit from such co-operation and exchanges of information as well as from the judgments of their counterparts in other countries.

In July 2012, the Special Bulletin on "State Powers", prepared as a working document for the XVth Congress of the CECC was published. In 2012, four regular issues of the Bulletin were published.

The Commission is grateful to the *Organisation Internationale de la Francophonie* for its support for the publication of the Bulletin in the French language (see also Chapter VI.6).

6. Venice Forum

The Venice Forum is a restricted platform where liaison officers appointed by Constitutional Courts or Courts with equivalent jurisdiction can share information about pending cases that should not be made public. In 2012, the Forum received 18 questions on topics that covered such issues as conscientious objection outside the military service context to the use of social networks by judges (Twitter, Facebook).

The Venice Forum Newsgroup is also open to Courts working with the Venice Commission in the framework of regional agreements (see Section 3 above). The restricted Newsgroup enables the Courts to make online announcements on changes in their composition, on key judgements handed down and to make various requests to other Courts.

Elections, referendums and political parties

Before dealing with the Venice Commission's activities in the electoral field, it is worth mentioning the role of the Council for Democratic Elections which is in charge of the analysis of draft opinions and studies of the Venice Commission in the electoral field before their submission to the plenary session.

The aim of the Council for Democratic Elections is to ensure co-operation in the electoral field between the Venice Commission as a legal body and the Parliamentary Assembly and the Congress of Local and Regional Authorities of the Council of Europe as political bodies in charge of election observation, in order to promote the European common values in this field – the principles of the European electoral heritage.

The Council for Democratic Elections (CDE) is made up of representatives of the Venice Commission, the Parliamentary Assembly and the Congress of Local and Regional Authorities of the Council of Europe. It has also encouraged the European Parliament, the European Commission, the Office for Democratic Institutions and Human Rights as well as the Parliamentary Assembly of the Organisation for Security and Co-operation in Europe (OSCE) to join in its work in an observer capacity. The OSCE/ODIHR participates regularly in its work.

1. Country specific activities

Albania

Round table on election administration

On 26-27 March 2012, the Venice Commission participated in a Round Table on Election Administration organised by the Special Parliamentary Committee on Electoral Reform of the National Assembly of Albania. This event dealt with the following two issues: new voting technologies and election administration.

Armenia

Round table with the judicial school on electoral disputes

At the request of the Judicial School of Armenia, the Venice Commission co-organised on 29 February to 1 March 2012, a Round Table with judges of administrative Courts on the theme Electoral Disputes linked to the legislative elections of May 2012. On this occasion, two Venice Commission experts met around 20 judges during the two working sessions.

Legal assistance to an election observation mission

At the request of the Parliamentary Assembly of the Council of Europe (PACE), the Venice Commission provided legal assistance to PACE's election observation mission in the context of the legislative elections of 6 May 2012.

On this occasion, the delegation met leaders of the political parties in contention or their representatives, the President of the Central Electoral Commission, the civil society as well as representatives of the media, before observing the ballot on 6 May.

Bosnia and Herzegovina

Workshop on the amendments to the Law on Conflict of Interest, the Law on Political Party Financing and the Election Law of Bosnia and Herzegovina

On 2-4 April 2012, the Venice Commission participated in a Workshop which took place in Jahorina (Bosnia and Herzegovina) on the amendments to the Law on Conflict of Interest, the Law on Political Party Financing and the Election Law of Bosnia and Herzegovina, at the request of the Interdepartmental Working Group responsible for these amendments. As the authorities wished to adopt the revised laws very quickly, no official request for an opinion was made.

Georgia

Participation of women in public life

On 7 and 8 February 2012, the Venice Commission took part in a meeting on the participation of women in public life held in Tbilisi. This activity was organised under the Council of Europe Eastern Partnership Facility programme financed by the European Union. The representative of the Venice Commission spoke on the topic "Gender issues in elections and political parties".

Assistance to the Central Election Commission

At the request of the Central Election Commission of Georgia (CEC) in the context of the parliamentary elections held on 1 October 2012, the Venice Commission assisted the CEC in preparing the elections, by sending an expert to the country from 6 September to 17 October 2012. The expert advised the CEC on legal and technical issues, notably for the preparation of CEC instructions.

Legal assistance to an election observation mission

At the request of the Parliamentary Assembly of the Council of Europe (PACE), the Venice Commission provided legal assistance to PACE's Election Observation Mission in the context of the parliamentary elections of 1 October 2012.

The delegation met with heads of political parties taking part in the elections or their representatives, the Chairman of the Central Electoral Commission, civil society and media representatives, before observing the ballot on 1 October.

Follow-up to opinions in the field of elections and political parties

At its March 2012 session, the Venice Commission was informed about the follow-up to:

- the joint Opinion by the Venice Commission and the OSCE/ODIHR on the draft election code of Georgia (CDL-AD(2011)043). The version of the Code adopted by the Georgian Parliament on 27 December 2011 showed some improvement in particular concerning complaints and appeals and, to a certain extent, the reduction of the residency requirement for running for parliamentary elections; the introduction of the possibility to film and to take photographs of the electoral process was less positive; the main problem, the very unequal representation of voters of the various constituencies, remained unaddressed. The Georgian authorities however had announced their intention to address this issue after the next elections.
- the joint Opinion by the Venice Commission and the OSCE/ODIHR on the draft law on amendments and additions to the organic law of Georgia on political unions of citizens (CDL-AD(2011)044rev). The revised law, adopted on 28 December 2011, included numerous amendments which had

not been submitted to the Venice Commission. Therefore, the Venice Commission could not be said to have analysed or approved the revised law. Substantial amendments, which added restrictions to the financing of political parties, had been introduced into the final version of the text. In particular, they extended the scope of the law to people with links to political parties. Discussions on the interpretation of these provisions were taking place with NGOs and it was likely that amendments would be made to the text in response to certain concerns.

Hungary

Opinion on the Act on the Elections of Members of Parliament (CDL-AD(2012)012)

At the request of the Minister of Foreign Affairs of Hungary, the Council for Democratic Elections and the Venice Commission adopted, at the June 2012 session, a Joint Opinion with the OSCE/ODIHR, on the Act on the elections of Members of Parliament of Hungary.

The opinion concluded that Act CCIII revising the rules on elections of members of parliament of Hungary as from 2014, which is a Cardinal Law, was a good basis for the conduct of genuine and democratic parliamentary elections. The Venice Commission and the OSCE/ODIHR underlined positive developments such as specific provisions for favouring the better participation of national minorities in parliament.

Nevertheless, the Venice Commission and the OSCE/ODIHR recommended some changes in the Act, essentially to ensure that nationality voters were not limited in their choice and to include clearer procedural guidelines and formulas for the delimitation of electoral constituencies, without defining the constituencies themselves in the Cardinal Act. The actual delimitations should be done by an independent commission.

The Venice Commission and the OSCE/ODIHR regretted that new legal provisions on fundamental aspects of the electoral process, such as the choice of the electoral system and of the method of distribution of seats or the delimitation of electoral constituencies were not broadly discussed among all the relevant stakeholders and in particular the political parties before adoption. As was the case with other electoral systems, the electoral system chosen may lead to unintended random effects. The Venice Commission and the OSCE/ODIHR recommended that any future changes, in particular the revision of fundamental provisions of the text be carried out through a broad political consensus in an open, transparent and inclusive manner.

The Venice Commission and the OSCE/ODIHR recommended that the Act on Election Procedures be amended in due time in order to harmonise and detail procedures emanating from the new Election Act, including those related to the organisation of voting abroad, the collection of nomination coupons and ensuring the secrecy of the vote. It was further recommended that adoption of these amendments be the result of a broad consensus, achieved in an open, transparent and inclusive manner.

Kazakhstan

Legal assistance to an election observation mission and informal opinions

See Chapter V.

Mexico

Visit in the framework of the preparation of an opinion on the Electoral Code of Mexico

See Chapter V.

Montenegro

Legal assistance to an election observation mission

At the request of the Parliamentary Assembly of the Council of Europe (PACE), the Venice Commission provided legal assistance to PACE's election observation mission in the context of the legislative elections of 14 October 2012.

Russian Federation

At the request of the Monitoring Committee of the Parliamentary Assembly, the Council for Democratic Elections and the Venice Commission adopted, at the March 2012 session, an opinion on the Federal Law on the election of deputies of the State Duma of the Russian Federation as well as an opinion on the law on political parties.

In the framework of the preparation of these opinions, a Venice Commission delegation travelled to Moscow on 16-17 February 2012 and met the various authorities concerned, as well as members of the civil society, political parties not represented in the Duma and associations which had attempted to register, without success, as political parties.

Opinion on the electoral law (CDL-AD(2012)002)

The main problem was the gap between the text of the law and its implementation. The conduct of genuinely democratic elections not only depended on a detailed and solid Electoral Code, but also on full and proper implementation of the legislation.

The main substantial issue to be addressed was that of impartiality of the election administration. Independent and impartial electoral commissions are necessary to ensure that elections are properly carried out. The present rules were insufficient to ensure the impartiality of the election administration. The Venice Commission therefore recommended modifying the rules on the composition of election commissions, and in particular their appointment procedures, in order to effectively ensure their independence and impartiality.

The main other issues where improvement was required were the following:

- The Law on State Duma Elections included detailed rules on election observers. These rules should be amended in order not to be interpreted in a too restrictive way, and to avoid any discrimination between national and international observers. Moreover, non-partisan national observers should be admitted and election observation should be extended to the post-electoral process, in conformity with international standards.

- Neutrality of the authorities during the election campaign was essential for ensuring equality of opportunity between candidates. In particular, effective separation between state and party, as well as equal access to the media should be guaranteed. The rules aimed at ensuring such equal access should be reconsidered in order to prevent excessive restrictions to freedom of expression.

- In order to ensure effective equality of opportunity, it was advisable to reconsider the rules on funding of the electoral campaigns and to envisage some public financing.

- The Law on State Duma Elections, combined with the Law on Basic Guarantees, provided for a quite complete, but also complex system of complaints and appeals. It should be simplified but also clarified in order to fill any loophole and to prevent rejection of complaints without any legal reasoning.

Opinion on the law on political parties (CDL-AD(2012)003)

The opinion pointed out that the law, as it was submitted to the Venice Commission, established important obstacles to the very existence of political parties. The drastic reduction in the number of registered political parties and the limited number of parties participating in the *Duma* elections in December 2011 (seven political parties ran) confirmed the negative impact of the law on the existence and functioning of political parties in the Russian Federation. This was not in line with European standards and particularly Articles 10 and 11 of the European Convention on Human Rights.

The main concerns in the Law on political parties which needed to be addressed related to:

– *The registration of political parties:* a registration requirement *per se* does not contradict European standards. However, the Law on Political Parties did not meet the applicable European standards, based on Article 11 of the ECHR and the case law of the European Court of Human rights, as well as the Guidelines adopted by the Venice Commission and the OSCE/ODIHR. Particularly,

- The minimum membership requirement should be considerably lowered and intrusive control mechanisms in the context of initial registration reduced.
- The general requirement on regional representation should be at least reduced, if not abolished.
- The restrictions on individual membership in political parties were also problematic and should be revised in order to be in conformity with the European standards.

– *The internal control of political parties by the State authorities:*

- The parties should be able to control their own internal procedures, with appeals to courts where appropriate, but it should not be a function of the state to monitor every aspect of the life of a political party and be regularly provided with a list of party members, as was the case in this Law.
- The Venice Commission recommended that any supervisory powers and control of political parties should be given to an independent authority and not to part of the executive branch in order to ensure transparency and build institutional trust.

Follow-up to the Opinion on political parties

In June 2012, the Commission was informed of the adoption of amendments to the law on political parties. These amendments concerned: the number of members necessary to register a political party (reduced to 500); the requirements for territorial representation of political parties (necessity to be represented not in "more than half of the subjects" but in "less than half of the subjects"; the reporting period to the Central Electoral Commission (need to report every three years instead of every year). These amendments respected some of the Commission's recommendations and should be welcomed.

Legal assistance to an election observation mission

At the request of the Parliamentary Assembly of the Council of Europe (PACE), the Venice Commission provided legal assistance to PACE's election observation mission in the context of the Presidential elections of 4 March 2012.

The delegation met candidates for election or their representatives, the Central Electoral Commission, as well as representatives of NGOs and the media, before observing the vote on 4 March.

Serbia

Legal assistance to an election observation mission

At the request of the Parliamentary Assembly of the Council of Europe (PACE), the Venice Commission provided legal assistance to PACE's election observation mission in the context of the Legislative and Presidential elections of 6 May 2012.

"The former Yugoslav Republic of Macedonia"

Opinion on the Electoral Code

In August 2012, at the request of the Minister of Foreign Affairs of "the former Yugoslav Republic of Macedonia", the Venice Commission prepared a Joint Opinion with the OSCE/ODIHR on the draft amendments to the Electoral Code and to the Law on the Funding of Political Parties of this country. The Monitoring Committee of the Parliamentary Assembly then requested an opinion on the Electoral Code which should be adopted in 2013.

Tunisia

Electoral issues

See Chapter V.

Ukraine

The legal framework for the 2012 parliamentary elections

At the invitation of the International Foundation for Electoral Systems (IFES), the Venice Commission participated in a meeting on the legal framework for the 2012 Parliamentary Elections in Ukraine, which took place in Kyiv on 14 March 2012.

During this event the latest joint opinion by the Venice Commission and the OSCE/ODIHR on the draft law relating to the election of people's deputies of Ukraine (CDL-AD(2011)037), was presented. This opinion had been drawn up in the context of the revision of this law. The importance of a sincere implementation by all electoral stakeholders (authorities and political parties in particular) as well as the need to avoid fundamental changes close to the elections was highlighted.

Round table on the law on the 2012 parliamentary elections

On 19-20 March 2012, a Round Table on the implementation of the new law on the parliamentary elections in Ukraine took place in Kyiv. This event dealt with the setting up of electoral commissions, constituencies, the electoral campaign and electoral disputes. It was organised in co-operation with the Verkhovna Rada (Parliament) of Ukraine and the Central Electoral Commission.

Seminar on voters' lists and registers

In the framework of the Eastern Partnership Programme of the European Union, the Venice Commission, in co-operation with the Central Electoral Commission of Ukraine, organised a Seminar on electoral lists and voters' registers, which took place in Kyiv on 26-27 March 2012. The participants discussed new technological possibilities for keeping voters' lists up-to-date. The Central Electoral Commission of Ukraine shared its experience in creating and maintaining electronic voters' registers.

Training seminar on electoral disputes

The Venice Commission participated in a Training Seminar on electoral disputes, co-organised by the Council of Europe and the High Administrative Court of Ukraine, which took place in Kyiv on 19 October 2012. This seminar aimed at presenting European standards and good practice in this field to Judges responsible for electoral disputes.

Legal assistance to an electoral observation mission

At the request of the Parliamentary Assembly of the Council of Europe (PACE), the Venice Commission provided legal assistance to PACE's election observation mission in the context of the legislative elections of 28 October 2012.

Follow-up to an opinion on the electoral legislation

At its December 2012 session, the Venice Commission was informed about the follow-up to the Joint Opinion on the Draft Law on Election of People's Deputies of Ukraine (CDL-AD(2011)037).

The last parliamentary elections confirmed what was said in this opinion: the electoral system had to be changed by consensus – such a change had taken place; on the basis of past experience, it had been underlined that mixed systems led to abuses in their plurality part and this was confirmed; the absence of criteria for drawing constituencies led to some of them being drawn up arbitrarily; the fear that lower-level election commissions would not be pluralistic enough was confirmed.

Uzbekistan

Opinion on the electoral law

See Chapter V.

2. Transnational Activities

Studies and reports

Measures to improve the democratic character of elections in the member states of the Council of Europe

Following a request from the Political Affairs Committee of the Parliamentary Assembly, the Council for Democratic Elections and the Venice Commission adopted at the March 2012 session, a report on "Measures to improve the democratic character of elections in the member states of the Council of Europe" (CDL-AD(2012)005). This report was intended first of all to provide a brief overview of what had been achieved in this field, often referred to as "Europe's electoral heritage" and secondly, to identify areas where progress could still be made in the near future.

In October 2012, the Council decided that the following points would be a priority for future work:

- the method of nominating candidates within political parties (including by primary elections);
- the question of open lists (paragraph 8.1.3 of the Assembly Resolution); this study should also include consequences for women's representation.

Non-partisan election observation and monitoring

At the June 2012 session, the Council for Democratic Elections and the Venice Commission endorsed the Declaration of Global Principles for Non-Partisan Election Observation and Monitoring by Citizen Organisations and the Code of Conduct for Non-Partisan Citizen Election Observers and Monitors, prepared by the Global Network of Domestic Election Monitors (GNDEM) (CDL-AD(2012)018). This document, which only applies to non-partisan observers, follows on from the 2005 Declaration of Principles for International Election Observation (CDL-AD(2005)036), endorsed by the Council and the Commission in October 2005.

Portrayal of migrants and refugees during election campaigns

At its Third Part Session 2012, the Parliamentary Assembly of the Council of Europe adopted Resolution 1889 (2012) on the portrayal of migrants and refugees during election campaigns. The Assembly requested the Venice Commission to study this question and, if

necessary, modify the Code of Good Practice in Electoral Matters in order to take this issue into account.

Having reviewed existing Council of Europe and Venice Commission documents dealing with the issue of migrants and refugees, the Commission considered, at its October 2012 session and notwithstanding the elements already found in previous work, that this issue is a political question and therefore does not fall into the Venice Commission's sphere of competence.

Limitation of mandates and incompatibility of political functions

The Venice Commission received a request from the Parliamentary Assembly's Political Affairs Committee on the limitation of terms of political office, covering two aspects: the limitation of the duration of terms of office of elected representatives and concurrent offices.

Further to this request, a report on "Limitation of mandates and incompatibility of political functions" was submitted to the Council for Democratic Elections and adopted by the Venice Commission in December 2012 (CDL-AD(2012)027).

The report first examined the theoretical references to the limitation of the mandates and the right to re-election of the holders of political mandates, and then dealt with the legal practice in Europe from a comparative point of view. For example, there is a general trend in Europe to allow presidents to be re-elected only once, whereas limitations in time for other public (political) functions are quite rare.

The report underlined that a democratic political system can only function with or through the limitations that it has set for itself as being legitimate and reasonable. The democratic character of the political system cannot be threatened by limitations in time of the mandates of the highest officials of the executive branch; such measures reinforce on the contrary the democratic system against authoritarian trends. The Venice Commission reiterated its critical approach towards constitutional provisions allowing for more than one re-election of the head of state in presidential or semi-presidential systems. The situation is different for members of the legislature: prohibiting re-election of parliamentarians involves the risk of the legislative branch of power being dominated by inexperienced politicians. This may lead to an increase in the imbalance in favour of the executive.

Incompatibilities – and possibly ineligibility for holders of an elected mandate to be elected to another function – do not go either against democratic principles because they are based on the principle of separation of powers. Incompatibility between ministerial and parliamentary duties is applied in a number of states, but not so much in parliamentary regimes, which are based on close collaboration between the legislature and the executive. On the contrary, in bicameral systems, no-one should be simultaneously a member of both houses. A member of the legislative or executive branch of government cannot belong to a judicial body. Private occupations are in principle compatible with parliamentary mandates, but specific provisions often deal with the issue of conflict of interest.

Conferences and Seminars

UniDem Conference on "The European electoral heritage: ten years of the Code of Good Practice in Electoral Matters"

On 2-3 July 2012, the Venice Commission organised in Tirana, in co-operation with the National Assembly of Albania and the Central Electoral Commission of Albania, and under the auspices of the Albanian Chairmanship of the Committee of Ministers of the Council of Europe, a Conference on "The European

electoral heritage: ten years of the Code of Good Practice in Electoral Matters".

The Conference brought together around 50 participants, in particular academics, representatives of electoral administrations, politicians as well as other specialists on electoral questions.

Ten years after the adoption by the Venice Commission of the Code of Good Practice in Electoral Matters, the Council of Europe's reference document in this field, the Conference focused on its implementation. The following presentations were made: the experience of the Congress of Local and Regional Authorities in this field, as well as the Role of the Code in the Albanian Reforms and the Participation of Albanian Society in the Electoral Process and its Relation to the Code of Good Practice in Electoral Matters. Recurrent Challenges and Problematic Issues of Electoral Law – and therefore the obstacles to the Code's application – appeared in a specific report.

Three specific themes were thereafter dealt with: Electoral Administration, How to ensure the Representativeness of elected bodies – in particular regarding women and minorities – and the role of the Code of Good Practice in Electoral Matters in the case-law of the European Court of Human Rights.

The conclusions underlined the importance of an effective application of the Code of Good Practice in Electoral Matters in law as well as in practice.

9th European Conference of Electoral Management Bodies: "Innovative solutions for elections" (Tallinn, 4-5 June 2012)

The ninth European Conference of Electoral Management Bodies entitled "Innovative solutions for elections" was organised by the Venice Commission in co-operation with the Estonian National Electoral Committee on 4-5 June 2012 in Tallinn. The issues which were addressed during the conference included electronic voters' lists and registers of voters, new technologies used for training of electoral officials and observers as well as fighting electoral fraud and securing e-enabled voting.

Around 80 participants from the national electoral management bodies of the following countries attended the conference: Armenia, Austria, Azerbaijan, Bosnia and Herzegovina, Estonia, Georgia, Germany, Kazakhstan, Latvia, Republic of Moldova, Netherlands, Norway, Russian Federation, Slovenia, Spain, Sweden, Switzerland, Tunisia, Ukraine, United Kingdom, as well as members of the Venice Commission and representatives of the Parliamentary Assembly, the Congress of Local and Regional Authorities of the Council of Europe and representatives of other Council of Europe Directorates.

Also represented were the Organisation for Security and Co-operation in Europe/Office for Democratic Institutions and Human Rights, International IDEA and several international NGOs active in the electoral field.

The conference addressed the following issues: electronic voters' lists and registers of voters – new technologies facilitating registration – advantages and challenges; using new technologies for training officials of electoral management bodies and election observers; fighting electoral fraud and securing e-enabled voting – the role of the electoral administration and observation of voting. In particular, the conference took note of the importance of the proper management of new technologies in maintaining the accuracy of voters' lists and registers, in providing high quality training programmes for electoral officials, observers and voters; underlined that new technologies can contribute to providing training for electoral officials, observers and voters; and reminded that new technologies should be developed taking into

account international standards and good practices aimed at fighting electoral fraud.

Electronic voting – international conference (Bregenz, 11-14 July 2012)

The Venice Commission participated in the 5th International Conference on electronic voting (EVOTE2012), which was preceded by the 4th Council of Europe meeting to review developments made in the field of electronic voting. A workshop organised by IFES on developing a manual on electronic voting followed the Conference.

21st ACEEEO (Association of European Electoral Officials) conference on "The participation of vulnerable groups in electoral processes: minorities and persons with disabilities" (Sarajevo, 13-15 September 2012)

The Venice Commission's main documents on this issue were presented at this conference. The debates focused in particular on the possibility for persons with physical disabilities to participate in elections.

Conference on "Political parties in a democratic society: legal basis of organisation and activities" (St Petersburg, 27-28 September 2012).

This conference was co-organised by the Venice Commission and the Constitutional Court of the Russian Federation. It was aimed at discussing the challenges and the crises in political parties in Europe, and more particularly the internal party democracy. In addition to several members of the Venice Commission, representatives of the European Court of Human Rights, the Parliamentary Assembly of the Council of Europe and the Group of States against Corruption (GRECO), the conference brought together members of the Russian Constitutional Court, the Central Electoral Commission, representatives of the State *Duma*, the State Council of the Russian Federation, the Ministry of Justice, the Court of Accounts, the Institute of Legislation and Comparative Law as well as the Committee of Civil initiatives. It was organised in the aftermath of the adoption of substantial changes to the Law on Political Parties in April 2012, further to the opinion on this law which theVenice Commission adopted at its March 2012 session (CDL-AD(2002)003).

The debates addressed the action of political parties in public life; balancing external and internal regulations of political parties; and the issue of financing political parties. There was a consensus concerning the need to respect European standards and a progressive approach towards the Council of Europe is shared values, based on mutual knowledge.

Regional seminar on the participation of people with disabilities in public life (Zagreb, 15-16 November 2012)

The Venice Commission participated in the Regional Seminar on the participation of persons with disabilities in public life organised by the Council of Europe and the Croatian Ministry of Social policy and Youth. During the Seminar the Venice Commission representative presented a report on "the Role of the Council of Europe in promoting the participation of all citizens in the democratic processes in Europe: voting rights for people with disabilities".

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, French, as well as in Spanish (www.venice.coe.int/VOTA). This database is now jointly managed with the Electoral Tribunal of the Judicial Power of the Mexican Federation (*Tribunal electoral del poder judicial de la Federación,TEPJF*), which has given support to the database technically, adding new features, as well as indexing and adding documents. The new database will be fully operative and up-to-date by the end of 2013.

3. International co-operation in the field of elections and political parties

Activities in the Electoral field in the Council of Europe neighbourhood and outside Europe are dealt with in Chapter V.

Co-operation with the European Union and other international organisations is dealt with in Chapter VI.

Co-operation in the Council of Europe neighbourhood and outside Europe

V. Co-operation in the Council of Europe neighbourhood and outside Europe[21]

In 2012, the Venice Commission continued its fruitful co-operation with its partners outside Europe, notably in the South Mediterranean and in Central Asia.[20]

1. Mediterranean basin

The Arab Spring gave new impetus to the co-operation between the Venice Commission and the countries of the Mediterranean basin and in 2012 successful projects of the Venice Commission in the field of building of democratic institutions, constitutional justice and elections in Tunisia and Morocco attracted special attention from the countries of the region without a history of co-operation with the Venice Commission, such as Jordan and Libya.

Jordan

Following preliminary contacts between Jordan and the Council of Europe, the Venice Commission engaged in a constructive dialogue with the authorities on possible co-operation in the field of constitutional justice. The new Constitution of Jordan foresees the creation of a Constitutional Court.

After these first contacts the Commission organised a workshop for members of parliament and other officials at the Constitutional Court in Amman on 28 May 2012. The participants had an opportunity to hold an exchange of views on different models of constitutional justice. This workshop was organised in the framework of the programme funded by the EU Programme "Strengthening democratic reform in the Southern Neighbourhood".

One of the important outcomes of this first activity was a request by the authorities to have a specific co-operation programme in the field of constitutional justice. The Delegation of the European Union in Jordan welcomed this initiative and decided to provide financial support to this programme, which should start in 2013.

Libya

On 27 September 2012, the Vice-President of the General National Congress of Libya Dr Saleh Mohammed Almkhozom, asked for the Venice Commission's support to the Congress in its work of developing a constitution for a new democratic Libya.

Following this request a delegation from the Venice Commission travelled to Tripoli in November 2012 and had meetings with the National Congress of Libya and with the Presidency of the country on the process of preparing and adopting the new Constitution. The Commission plans to continue its dialogue with the authorities in 2013.

This activity was carried out jointly with the International Management Group (IMG) and within the framework of the co-operation of the country with the European Union. IMG and the EU Delegation suggested to the Libyan authorities that they ask for the Venice Commission's assistance.

20. Some activities in the field of constitutional justice are dealt with in chapter III.

Morocco[21]

Co-operation with the Moroccan authorities focused on the implementation of the new Constitution. A constructive dialogue engaged by the Commission with Morocco resulted in several exchanges of views and activities in such fields as institutional reform, constitutional justice and human rights.

High level contacts with the authorities

In 2012, the Venice Commission pursued its constructive dialogue with the authorities. In April 2012 the President of the Venice Commission travelled to Rabat for an official visit. Mr Buquicchio met with the Secretary General of the Ministry of Foreign Affairs and several high officials and discussed future co-operation activities with Morocco. These contacts contributed to the successful development of co-operation between the Commission and different institutions in Morocco.

Intercultural Workshop on democracy

On 29-30 March 2012, the Venice Commission in co-operation with the Moroccan Association of Constitutional Law, the International Association of Constitutional Law and the Constitutional Council of Morocco co-organised the 1st Intercultural Workshop on Democracy on "Constitutional processes and democratic processes, experiences and perspectives" in Marrakech. The discussions focused on a number of important issues of the constitutional reform such as different ways of conducting a constitutional reform, institutional design, choice of electoral system, relations between the parliament and the government and other issues. This exchange of views gave an opportunity to study recent constitutional reforms in different countries, including Morocco, and to define possible areas where additional changes were needed.

Co-operation with the Mediator/Ombudsman Institution

The Commission contributed to the 9th training session for collaborators of members of the Association of Ombudsmen and Mediators of the Mediterranean which took place in Rabat on 22-24 May 2012. This activity contributed to the establishment of a permanent exchange of information with the Office of Mediator of Morocco. The authorities asked for continued support for activities in this area in 2013.

This activity was financed by the EU Programme "Strengthening democratic reform in the Southern Neighbourhood".

Request for assistance in setting up the Authority for Parity and Fight against Discrimination as well as the Consultative Council for Family

In October 2012, Mrs Hakkaoui, Minister for Solidarity, Women, Family and Social Development, requested the Venice Commission's assistance to set up the Authority for Parity and Fight against Discrimination as well as the Consultative Council for Family and Childhood.

Since both bodies are foreseen by the specific provisions of the Constitution, the Ministry for Solidarity, Women, Family and Social Development decided to ask for the assistance of the Venice Commission. A delegation from the Venice Commission travelled to Rabat on 7-8 November to discuss with the Minister the modalities for co-operation between the Venice Commission and the Moroccan authorities. It was agreed that, after the concrete work plan of such co-operation was drafted, experts from the Ministry would meet representatives of the Venice Commission in Strasbourg early in 2013.

21. Activities in Morocco were financed by a voluntary contribution from the Government of Norway unless otherwise stated.

Seminar on preliminary requests to Constitutional Courts

On 29-30 November, the Commission organised, in co-operation with the Constitutional Council of the Kingdom of Morocco, a seminar on preliminary requests to the Constitutional Court. The exchanges of views that took place during this event could help the drafters of the corresponding legislation to benefit from the experience of other countries.

Co-operation with the Parliament of Morocco

In 2012, the Venice Commission joined the Parliamentary Assembly of the Council of Europe in its effort to engage in a constructive dialogue with both Chambers of the Moroccan parliament. As a result it participated in several exchanges of views with the representatives of the Moroccan parliament, notably, in such important events as a workshop on responsibility of the Government before the parliament and in exchanges of views organised by the Chamber of Councillors of Morocco in the context of the preparation of the future organic law on the protection of the Amazigh language.

Tunisia[22]

2012 was marked by the on-going work of the Constituent National Assembly on the text of the new constitution of Tunisia. The Venice Commission was involved in a number of exchanges of views with the constitution drafters and established very constructive working relations with the constitutional commissions of the Assembly. However, the co-operation was not limited only to constitutional co-operation. A substantial contribution was made to the process of reforming the judiciary and improving the electoral legislation and practice.

22. Activities in Tunisia were financed by voluntary contributions from the Government of France and Norway unless otherwise stated.

Co-operation with the National Constituent Assembly

Representatives of the Constituent National Assembly of Tunisia, notably from its different constitutional commissions, held fruitful exchanges of views with the Commission in June, July, October and December 2012.

On 16 and 17 January 2012, the President of the Venice Commission Mr Gianni Buquicchio and the Deputy Secretary of the Commission Ms Simona Granata-Menghini participated in the visit of a delegation from the Parliamentary Assembly of the Council of Europe (PACE) to Tunisia. This visit followed the observation mission by the PACE of the elections of the Constituent Assembly on 23 October 2011. The Venice Commission had participated in the observation mission in its capacity as legal adviser to PACE.

This visit contributed to the establishment of excellent working relations with the new Constituent National Assembly and strengthened the Venice Commission's relations with other Tunisian institutions and partners.

As a result of these contacts a delegation of 12 members from the National Constituent Assembly came to Strasbourg in March 2012 for discussions at the Council of Europe, followed by meetings in Karlsruhe, Germany, at the Federal Supreme Court and the Federal Constitutional Court.

This first successful exchange of views on the constitutional chapter on the judiciary was followed by discussion of other chapters of the future constitution.

Other Commissions of the Assembly were involved in a constructive dialogue with the Venice Commission to the extent that it was decided to organise a meeting between a delegation of Chairpersons of Constitutional Committees and Members of the Venice Commission in parallel to the 91st plenary session of the Venice Commission in June 2012.

During a working visit to France, a delegation from the Committee on Regional and Local self-government bodies of the National Constituent Assembly and from the Ministry of the Interior of Tunisia held an exchange of views with the Venice Commission and the Congress of Local and Regional Authorities of Europe. The questions of the manner of election of representatives at the local and governorate levels, the control of the acts of the local self-government bodies and the respect of the principle of autonomy of self-government bodies were discussed among others.

The visit was organised at the initiative of the International Association of Francophone Mayors and the Embassy of France in Tunis, who also funded the visit. The programme was developed by the French Ministry of Foreign Affairs, with support from the Embassy in Tunis, the Association internationale des maires francophones (AIMF), the Centre national de la function publique territorial (Paris) (CNFPT) and the French Ministry of the Interior.

This dialogue was pursued in July and the Commission received an invitation to participate in a hearing at the Assembly on 26 July 2012. A delegation from the Venice Commission held exchanges of views with the National Constituent Assembly of Tunisia in the hemicycle of the Palais Bardo in Tunis. The discussion focused on the advantages and disadvantages of different constitutional systems. This activity was possible thanks to a voluntary contribution from France.

In addition, representatives of the Venice Commission and of the Congress of Local and Regional Authorities of the Council of Europe held a working meeting with the Committee on Regional and Local Self-Government of the National Constituent Assembly.

During the Commission's October plenary session a new round of exchanges of views between representatives of the National Constituent Assembly of Tunisia and members of the Venice Commission took place. The delegation of the National Constituent Assembly included:

- Mr Larbi Abid, Vice-President;
- Mr Habib Khedher, General Rapporteur on the Constitution;
- Mr Najar Abdelmajid, Rapporteur, Committee on the Preamble, the fundamental principles and the revision of the Constitution;
- Mr Amor Chetoui, President of the Constitutional Committee on Legislative and Executive powers and the relations between the two;
- Mr Imed Hammami, President of the Constitutional Committee on local and regional self-government bodies;
- Ms Farida Labidi, President of the Constitutional Committee on Rights and Liberties;
- Mr Mohamed Elarbi Fadhel Moussa, President of the Constitutional Committee on Ordinary, Administrative, Financial and Constitutional Justice;
- Mr Jamel Touir, President of the Constitutional Committee on Constitutional Bodies.

At this meeting, the six chapters of the draft new constitution prepared by the six constitutional committees were analysed thoroughly.

The President of the National Constituent Assembly, Mr Mustapha Ben Jaafar, addressed the Commission at the December 2012 session.

Judiciary

On 21-22 March 2012, the Venice Commission and the Department for the independence and efficiency of Justice of the Council of Europe organised, in co-operation with the Trade Union of the Tunisian judges

and the Union of the administrative judges, a seminar on the independence of the judiciary.

The participants had an opportunity to hold in-depth discussions, in particular concerning the constitutional guarantees of the independence of the judiciary, the judiciary councils, the judges' career and statutory guarantees.

This seminar was organised in the framework of the EU programme "Strengthening democratic reform in the Southern Neighbourhood".

The reform of the judiciary is one of the top priorities of the authorities of Tunisia; however, co-operation with the Venice Commission was relatively slow during 2012 owing to the on-going process of the drafting of the new constitution of the country. However, through different exchanges of views between the Commission and the authorities it was clear that the Commission might play an important role in this area of co-operation in 2013-2014.

In December 2012, a joint delegation of the Venice Commission and the OSCE/ODIHR held discussions in Tunis with the Ministry of Justice of Tunisia on the reform of the judiciary following the revolution. The subject of the discussions was the existing legislation in the court system and ways for its improvement.

Electoral issues

On 12-13 March 2012, representatives of the Venice Commission participated in a conference organised by IFES on "the Legal Framework for Elections in Tunisia: National and International Perspectives". The discussion focused on the results of the 2011 elections to the National Constituent Assembly and on possible ways to improve the electoral legislation and practice in the country.

Following this general discussion in Tunis, the Venice Commission opened a more focused dialogue with the Assembly. On 18-19 December 2012, a delegation from the Commission of general legislation of the Tunisian Constituent Assembly visited the Council of Europe and met experts from the Venice Commission to discuss the issue of electoral systems. These exchanges of views would continue in 2013.

2. Central Asia

In 2012, the Venice Commission continued its fruitful co-operation with countries of Central Asia. Different activities were carried out mainly through two programmes: a joint programme between the European Commission and the Council of Europe "Support to electoral process in Kazakhstan" and "Equal before the law: access to justice for vulnerable groups" supported by the Ministry of Foreign Affairs of Finland.

Kazakhstan

Joint programme between the European Commission and the Council of Europe "Support to the election process in Kazakhstan"

Following the signature in 2011 of the Joint programme between the European Commission and the Council of Europe "Support to the election process in Kazakhstan", the Venice Commission, in co-operation with the Central Electoral Commission of Kazakhstan, organised several events with the aim of training members of different levels of electoral Commissions as well as representatives of other institutions involved in the election process.

In March 2012, representatives of the Venice Commission and the Central Electoral Commission met in Astana and developed a programme of activities for the year 2012 which included 4 types of activity: seminars on the

problems of organisation of the electoral administration and on electoral disputes, training workshops for members of electoral commissions, comparative studies on electoral law and practice and study visits to the European Institutions and to electoral administrations in European countries.

Legal assistance to an electoral observation mission

At the request of the Parliamentary Assembly of the Council of Europe, the Venice Commission provided legal assistance to the *ad hoc* Committee observing the early legislative elections in Kazakhstan on 15 January 2012.

The delegation met political parties, whether they participated in the elections or not, as well as representatives of NGOs and the media, before observing the vote on 15 January 2012.

Conferences and training workshops

The Venice Commission organised a Conference on "Electoral complaints and appeals: Comparative analysis of international standards and national practices" which took place in Almaty on 26-28 June 2012.

This event was aimed at judges, prosecutors, defence lawyers and members of the electoral commissions of Astana and Almaty. During three days, the participants in the Conference worked mainly on issues such as standards in the field of electoral complaints and appeals, models for electoral disputes, complaints and appeals during the electoral campaign. The exchanges of views during the event enabled the system for disputes in Kazakhstan to be evaluated and suggestions for improvement to be made.

A second Conference on "Voters' lists: establishment of electoral commissions and the participation of political parties in elections" took place in Astana on 4-8 December 2012. During this event, judges, prosecutors, defence lawyers and members of different levels of electoral commissions examined problems such as:

- European standards on voter's lists and composition and operation of electoral management bodies
- Standards in the field of participation of political parties in elections
- Different models of electoral lists and electronic electoral registers
- Different models of the composition of electoral commissions
- Participation of representatives of political parties in electoral commissions

Speeches on specific themes were followed by workshops which enabled animated discussion and informal exchanges between the participants and the lecturers.

The Conferences were completed by training workshops for members of territorial electoral commissions. A first training for trainers workshop for Kazakh electoral Commissions was held in Astana on 1-2 June 2012.

This training session was aimed at professionals from the four regional electoral commissions in Kazakhstan with a global objective to improve their knowledge in training others, by strengthening their skills of public speaking, by increasing their knowledge of the main techniques and methods, as well as the main rules concerning visibility of material.

In November and December 2012, similar seminars were organised in the towns of Aktobe, Uralsk and Ust-Damenogorsk.

Study visits for staff of the Central and regional electoral Commissions of Kazakhstan

The Joint Programme between the European Commission and the Venice Commission enabled representatives of

the Electoral Administration of Kazakhstan to take part in several study visits at the European Institutions and at the Electoral Administrations of other countries.

A first study visit for staff of Central and regional electoral Commissions of Kazakhstan focusing on the theme "the Council of Europe standards in the field of elections and recent developments related to the case-law of the European Court of Human Rights on elections" was organised by the Venice Commission in Strasbourg on 3-4 April 2012.

The participants were able to follow closely the work of the Venice Commission, the Parliamentary Assembly, the Congress of Local and Regional Authorities, as well as other Council of Europe bodies and Departments dealing with electoral standards.

Following this first positive experience, a second study visit for members of the electoral administration took place in Austria on 3-5 July 2012. The delegation was composed of representatives of the Central Electoral Commission and Regional Commissions of Kazakhstan. This event was organised with the co-operation of the Austrian Election Management Body and the co-ordination office of the Austrian Federal Election Commission of the Federal Ministry of the Interior.

The participants were able to familiarise themselves with the work of the Austrian authorities in the electoral field. They also visited the Provincial Electoral Authority of Vienna and the Austrian Parliament.

The third and final visit was carried out at the Dutch Election Management Body in the Hague on 21-22 November 2012.

Comparative studies on electoral disputes and on the selection and appointment of members of Electoral Commissions

Following a request from the Central Electoral Commission of Kazakhstan, Venice Commission experts prepared two comparative studies on electoral disputes and on the selection and appointment of members of Electoral Commissions.

The first document compared the different systems on electoral disputes which exist in the member States of the Venice Commission. The report detailed not only the national legislation and practice but also examined the influence of the recommendations of various international organisations, including the Venice Commission on the development of standards and their implementation by the States concerned. The last part of the report compared the legislation of Kazakhstan and its implementation with the experience of other countries and suggested some possible improvements

The report on the selection and appointment of Electoral Commission members gave a fairly complete description of the models for the selection of members of Electoral Commissions. It compared the advantages and disadvantages of Commissions composed of representatives of political parties and those formed based on the independence of the members of the electoral administration, while underlining that it was for the country to choose and that the main criteria should be that the different political forces and the voters had trust in the body responsible for organising elections.

Both reports were welcomed by the Central Electoral Commission of Kazakhstan which stated its wish to continue this type of co-operation with the Commission in 2013-2014.

Other activities in Central Asia

In addition to the electoral assistance programme in Kazakhstan, the Commission continued its co-operation with the countries of Central Asia in other fields. Some activities were financed by the joint programme between the Venice Commission and the Ministry of Foreign Affairs of Finland "Equal before law: access to justice for vulnerable groups".

Multilateral activities

On 18-20 June, the Commission organised a study visit to the Council of Europe for judges, magistrates, lawyers as well as representatives of NGOs from the 5 Central Asian countries: Kazakhstan, Kyrgyzstan, Tajikistan, Turkmenistan and Uzbekistan, focusing on "Council of Europe standards and recent developments concerning the case law of the European Court of Human Rights on women's rights".

The participants were able to follow closely the work of the Venice Commission as well as other Council of Europe departments in the field of women's rights.

This activity was organised in the framework of the project "Equal before law: access to justice for vulnerable groups", funded by the Ministry of Foreign Affairs of Finland and implemented by the Venice Commission.

Kyrgyzstan

In 2012, the Commission, in co-operation with other international partners, continued its assistance activities to the Kyrgyz authorities. On 19-20 March 2012 a member of the Venice Commission participated in a legal dialogue and in the discussions with the Parliament's Judiciary Working Group, organised by the EU-UNDP Parliamentary Project in Bishkek.

In May the Venice Commission participated in a Round table on electoral disputes organised by the OSCE/ODIHR in co-operation with the OSCE in Bishkek. This activity was aimed at all those involved in settling legal disputes. In addition, this activity provided a platform for discussion between the Kyrgyz authorities and the civil society with a view to making recommendations to improve the electoral dispute system based on international standards in this field.

Tajikistan

An International Conference on "Guaranteeing women's rights and improving mechanisms of access to justice for vulnerable groups" was organised in Dushanbe on 13-14 November 2012.

This Conference, organised following the discussions which took place during the visit of representatives from the interested countries to Strasbourg in June 2012, was aimed at both legal and justice professionals and representatives of the civil society of the five Central Asian States – Kazakhstan, Kyrgyzstan, Tajikistan, Turkmenistan and Uzbekistan. The participants discussed the issues of access to justice for women and other vulnerable groups, including victims of domestic violence. They also spoke about the socio-economic rights of women, as well as legal and social mechanisms to ensure women's rights through mediation and free legal aid.

This activity was organised in the framework of the project "Equal before law: access to justice for vulnerable groups", funded by the Ministry of Foreign Affairs of Finland and implemented by the Venice Commission of the Council of Europe.

Uzbekistan

At the invitation of the National Centre for Human Rights of Uzbekistan, representatives of the Venice Commission participated in the Conference "Experience in Constitutional building in Uzbekistan and international practice" in Tashkent on 27-28 September 2012. This activity enabled exchanges of experience on constitutional reforms between members of parliament, judges of the Constitutional and Supreme Court, academics from Uzbekistan and international experts.

On 20-21 November, representatives of the Venice Commission participated in a Conference on "Ensuring the rule of law, promoting the protection of the rights and interests of the individual – the most important goal of democratisation and liberalisation of the judicial-legal system in Uzbekistan" organised by the Supreme Court and the Constitutional Court of Uzbekistan.

Opinion on the electoral law (CDL-AD(2012)025)

Further to a request by the Deputy Speaker of the Oliy Majlis of the Republic of Uzbekistan, the Venice Commission adopted, at its December 2012 session, a joint opinion with the OSCE/ODIHR on the draft amendments and addenda to the law "on elections to the Oliy Majlis of the Republic of Uzbekistan" and "on elections to the regional, district and city councils (Kengesh) of people's deputies of Uzbekistan".

The draft amendments introduced certain improvements. Notably, the draft amendments provided for voting and voter registration in penitentiary facilities. They also regulated early voting in more detail and introduced certain safeguards to protect the integrity of votes cast early. Likewise, the admission of international observers to the election of the Ecological Movement of Uzbekistan representatives was now provided for.

However, numerous recommendations contained in previous OSCE/ODIHR reports and assessments remained unaddressed by the draft amendments. Additionally, some of the draft amendments were overly complex and could be improved by being stated in a more clear and concise manner so that they were easily understandable to all electoral stakeholders. Progress was needed in particular concerning: the *ex officio* representation of the ecological movement in the lower chamber, whereas the upper chamber was indirectly elected or appointed; denial of voting rights to prisoners; election campaign regulations; early voting; the exclusion of non-partisan observers; the prohibition of election polls less than three days before election day.

3. Latin America

Bolivia

On 8-9 February 2012, the Venice Commission and the Public Prosecution Office of Bolivia, co-organised an international seminar on "Human rights in the work of the public prosecution office in Bolivia". The activity was aimed at prosecutors and judges from all different levels in order to discuss the application of international and constitutional human rights in the work of prosecutors.

The Venice Commission experts were actively involved in the discussions, including the explanation of the Inter-American Human Rights system obligations for Bolivia, the standards of proof and the respect for human rights inside and outside the criminal procedures. The participants had an opportunity to learn about the different experiences of European countries in integrating international standards. Over 100 participants from different regions of Bolivia attended this event.

This seminar was organised in the framework of the Joint Programme with the European Union on the implementation of the new Constitution in Bolivia.

Mexico

Visit in the framework of the preparation of an opinion on the Electoral Code of Mexico

At the request of the Mexican authorities and in particular, the Federal Electoral Institute of Mexico (FEI), representatives of the Venice Commission travelled to Mexico on 12-13 November 2012 to meet with deputies and senators of the political party in power as well as the main opposition political parties, the FEI (Federal Electoral Institute), the Electoral Tribunal of the judicial power of the Federation, representatives of the media and the civil society. The opinion will be adopted during 2013.

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

1. Council of Europe

Committee of Ministers

Representatives of the Committee of Ministers participated in all the Commission's plenary sessions during 2012. The following ambassadors, Permanent Representatives to the Council of Europe, attended the sessions in 2012 (in order of attendance):

- Ambassador Julius Georg LUY, Germany,
- Ambassador Tatiana PÂRVU, Republic of Moldova,
- Ambassador Ellen BERENDS, the Netherlands,
- Ambassador Josep DALLERES, Andorra,
- Ambassador Armen PAPIKYAN, Armenia,
- Ambassador Petter WILLE, Norway,
- Ambassador Urszula GACEK, Poland,
- Ambassador Pekka HYVÖNEN, Finland,
- Ambassador Ana VUKADINOVIĆ, Montenegro,
- Ambassador Berglind ÁSGEIRSDÓTTIR, Iceland,
- Observer ad interim Lydia MADERO, Mexico.

Under the United Kingdom Chairmanship of the Committee of Ministers of the Council of Europe, the Venice Commission organised in co-operation with the Foreign and Commonwealth Office of the United Kingdom and with the Bingham Centre for the Rule of Law an International Conference on "the Rule of Law as a Practical Concept" (London, 2 March 2012).[23]

23. See chapter II above.

In the framework of the Albanian Chairmanship of the Committee of Ministers of the Council of Europe, the Commission organised, in co-operation with the National Assembly and the Central Election Commission of Albania, a conference on the "European Electoral Heritage – Ten Years of the Code of Good Practice in Electoral Matters" (Tirana, 2-3 July 2012). The Conference called the member states to implement the Code of Good Practice in Electoral Matters.[24]

Parliamentary Assembly

During 2012, the following members of the Parliamentary Assembly attended the plenary sessions of the Venice Commission:

- Jean-Claude MIGNON, President of the Parliamentary Assembly;
- Mevlüt ÇAVUŞOĞLU, Former President of the Parliamentary Assembly;
- Andreas GROSS, Chair of the Socialist Group;
- Tiny KOX, Chair of the United European Left Group;
- Robert WALTER, Chair of the European Democrat Group;
- Serhiy HOLOVATY, Member of the Committee on Legal Affairs and Human Rights.

A number of texts were adopted at the request of the Parliamentary Assembly in 2012, including the opinions on:

- the Federal Laws of the **Russian Federation** on:

24. See chapter IV above.

- Political Parties;
- the Deputies of the State Duma;
- meetings, rallies, marches and pickets and on the June 2012 amendments;
- the Federal Security Service (FSB);
- Combating Extremist Activity;

- the laws of **Hungary** on:
  - the Status and Remuneration of Judges and on the Organisation and Administration of Courts and on the amendments to these laws,
  - Freedom of Conscience and Religion and the Legal Status of Churches, Denominations and Religious Communities,
  - the Rights of Nationalities,
  - the Prosecution Service of Hungary and on the Act on the Status of the Prosecutor General, Prosecutors and other Prosecution employees and the Prosecution career;
  - the Constitutional Court of Hungary;
- the law on freedom of religious faith of **Azerbaijan**;
- the revision of the Constitution of **Belgium**; and on
- the draft law on the Public prosecutor's office of **Ukraine**.

The request for an opinion on the transitional provisions of the Constitution of Hungary was put aside by the Commission as the provisions were pending before the Constitutional Court of Hungary. For the same reason, the Commission postposed the adoption of an opinion on the amendments of June 2012 to the law on rallies of the Russian Federation.

In addition, the reports on **measures to improve the democratic character of elections** in the Council of Europe member states and on the **limitation of mandates and incompatibility of political functions** were adopted at the request of the PACE.

In 2012 the Commission received requests from the PACE to give opinions on

- the Constitution of Monaco;
- the Electoral Code of "the former Yugoslav Republic of Macedonia";
- the Law on referendum of Ukraine and
- keeping political and criminal ministerial responsibility separate from a comparative constitutional perspective;
- the issue of the prohibition of so-called propaganda of homosexuality in the light of recent legislation in some Council of Europe member states, including the Republic of Moldova, the Russian Federation and Ukraine.

The Assembly asked for an update of the study on the democratic oversight of the security services adopted by the Commission in 2007.

These requests will be dealt with by the Commission in 2013.

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. During 2012 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 November 2012, the Commission's President Mr Buquicchio joined the Committee of Ministers Chair, Minister Panariti and the Assembly's President Mr Mignon, for their official visit to **Tunisia**.

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 Armenia, Georgia, Kazakhstan, Montenegro, the Russian Federation, Serbia and Ukraine.

The Enlarged Bureau of the Commission and the Presidential Committee of PACE met on 15 December in Venice. The situation in a number of member States and co-operation with Central Asia and North Africa were discussed. The complementarity between the Parliamentary Assembly and the Venice Commission's work was again noted as an important aspect of the co-operation between the two institutions.

Congress of Local and Regional Authorities

Mr Lars O. Molin, Chair of the Monitoring Committee of the Congress, represented the Congress at the plenary sessions of the Commission in 2012.

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.

European Court of Human Rights

In 2012, the European Court of Human Rights continued to refer to the work of the Venice Commission in its judgments. Among the eleven recent cases where the documents of the Commission are mentioned, two concern Italy and two Ukraine; there are also cases against France, Greece, Hungary, Romania, Russia, Slovakia and "the former Yugoslav Republic of Macedonia".

As is the case since 2002, the Code of Good Practice in the Electoral Matters and its explanatory report is cited most frequently. In 2012 this concerned the c*ases of Scoppola v. Italy* (No. 3), *(Application No. 126/05)* of 22 May 2012,[25] *Sitaropoulos and Giakoumopoulos v. Greece* (Application No. 42202/07) of 15 March 2012,[26] the case of *the Communist Party of Russia and Others v. Russia (application No. 29400/05*) of 19 September 2012.

The 2006 report on electoral law and electoral administration in Europe and 2010 report on out-of-country voting were also referred to in the case of *Sitaropoulos and Giakoumopoulos v. Greece* (Application No. 42202/07) of 15 March 2012.

As for other texts where the Commission identified and developed European standards and constitutional heritage, the following are now in the case-law of the Court:

- the 2011 rule of law report in the case *of Albu and others v. Romania*, (*Applications nos. 34796/09 and 63 other cases) of 10 August 2012;*[27]

- the 2005 Opinion on the compatibility of the "Gasparri" and "Frattini" laws of Italy with the Council of Europe standards in the field of freedom of expression and pluralism of the media *in the Grand Chamber case of Centro Europa 7 S.R.L. and Di Stefano v. Italy (Application No. 38433/09) of 7 June 2012;*

25. Provisions concerning the circumstances in which people may be deprived of the right to vote or to stand for election were evoked.
26. The right to vote and to be elected accorded to citizens residing abroad was referred to.
27. The report states in its relevant parts that, "in order for the principle of legal certainty, essential for maintaining confidence in the judicial system and the rule of law, to be achieved, the State must make the law easily accessible and must also apply the laws it has enacted in a foreseeable and consistent manner. As the existence of conflicting decisions within the highest courts may be contrary to this principle, it is therefore necessary for these courts to establish mechanisms to avoid conflicts and ensure the coherence of their case-law."

- the 2006 opinion on the international legal obligations of Council of Europe Member States in respect of secret detention facilities and inter-state transport of prisoners in the Grand Chamber judgment in the *case of El-Masri v. "the Former Yugoslav Republic of Macedonia" (No. 39630/09) of 13 December 2012*;

- the 2010 independence of the judiciary report was evoked by the applicant in the case of *Harabin v. Slovakia (No. 58688/11) of 20 November 2012*;

- the 2010 Guidelines on Freedom of Peaceful Assembly, evoked by the applicant government and interpreted by the Court in the case *Tatár and Fáber v. Hungary (application nos. 26005/08 and 6160/08) of 12 September 2012;*[28]

- the 2002 report on the implementation of the judgments of the European Court of Human Rights was referred to in the case of *Fabris v. France (No. 16574/08, Grand Chamber) of 07 February 2013*.

Country specific texts were mentioned in the case of *Lutsenko v. Ukraine (application No. 6492/11) of 19 November 2012*[29] and in the case of *Oleksandr Volkov v. Ukraine (No. 21722/11) of 09 January 2013.*[30]

World Forum for Democracy

The President of the Venice Commission participated in the first edition of the World Forum for Democracy, which took place from 5 to 11 October 2012 at the Council of Europe in Strasbourg and brought together more than 1500 participants and speakers from a hundred and twenty countries. Mr Buquicchio chaired the Forum's thematic Conference "One size fits all? Democracy and globalisation" on 8 October.

2. European Union

In 2012, co-operation between the Venice Commission and the European Union further intensified. The Venice Commission participated in meetings organised by the European Parliament on Hungary, Turkey and the Arab countries. In its Resolution of 12 December 2012 on the situation of fundamental rights in the EU (2010-2011), the European Parliament "*Calls for closer co-operation between Union institutions and other international bodies, particularly with the Council of Europe and its European Commission for Democracy through Law (Venice Commission) and to make use of their expertise in*

28. The Government also pointed out that to regulate a gathering of at least two persons in a public place for a common expressive purpose as an assembly is not contrary to European standards (cf. paragraph 16 of the Explanatory Notes to the Guidelines on Freedom of Peaceful Assembly adopted by the Venice Commission on 4 June 2010). As regards the Government's suggestion concerning the Guidelines on Freedom of Peaceful Assembly adopted by the Venice Commission, the Court would take the view that the Explanatory Notes to those Guidelines specify the minimum number of participants required for the constitution of an assembly; however, those Guidelines can by no means be interpreted as stipulating that any common expressive action of two individuals necessarily amounts to an assembly, especially in the absence of intentional presence of further participants, as in the present case.

29. 2010 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 (CDL-AD(2010)026) and Joint opinion on the draft law amending the law on the judiciary and the status of judges and other legislative acts of Ukraine by the Venice Commission and the Directorate of Justice and Human Dignity within the Directorate General of Human Rights and Rule of Law of the Council of Europe (CDL-AD(2011)033).

30. The 2010 Joint Opinion on the Law Amending Certain Legislative Acts of Ukraine in Relation to the Prevention of Abuse of the Right to Appeal

upholding the principles of democracy, human rights and the rule of law;"

The Venice Commission maintained close co-operation with the European Union in particular with respect to constitutional issues in Ukraine and judicial reforms in Bosnia and Herzegovina and Serbia. In 2012, the European Commission requested the opinion on legal certainty and the independence of the judiciary in Bosnia and Herzegovina (see Chapter III above). Technical consultations with the European Commission were held on the developments in the Balkans, the Republic of Moldova and Turkey as well as in Central Asia and North Africa. The European Union repeatedly invited States to follow the Venice Commission's recommendations.

The President and the Deputy Secretary of the Venice Commission participated in the activities concerning the Arab Spring organised by the European Parliament (19 January 2012, Strasbourg and 24 January 2012 in Brussels). The Secretary and the Deputy Secretary exchanged views with the Monitoring Group on the situation in the Southern Mediterranean of the EP in Strasbourg on 25 October 2012.

The Venice Commission was represented at a seminar organised by the Ministry of Foreign Affairs of the Netherlands on "EU Mechanisms to Monitor Rule of Law and Justice in Member States" (The Hague, 28 June 2012).

On 28 June 2012, the Venice Commission participated in the **RELIGARE** (Religious Diversity and Secular Models in Europe – Innovative Approaches to Law and Policy) Policy Dialogue Meeting on "Negotiating Religious Pluralism in Europe: Between the EU and the ECHR". The Venice Commission's representative contributed to the debates on the impact of the Council of Europe on national and EU policy.

Representatives from the European Union (from the Legal Service of the Commission, the European External Action Service as well as the President of the Committee for citizenship, governance, institutional and external affairs of the Committee of the Regions) participated in the plenary sessions of the Venice Commission in 2012.

Joint European Union – Council of Europe Programmes[31]

Following its successful co-operation with different countries of Central Asia in the framework of a Joint programme with the European Commission "Rule of law in Central Asia" in 2010-2011, the Venice Commission started to implement country-specific programmes in the region.

In 2012, the Commission developed a successful co-operation programme in the electoral field with the Central Electoral Commission of Kazakhstan (see Chapter V above).

The Arab Spring gave new impetus to the co-operation between the Venice Commission and the countries of the Mediterranean basin. In 2012, the Commission conducted several activities in Tunisia and Morocco in the framework of the Joint programme between the European Commission and the Council of Europe "Strengthening democratic reform in the Southern Neighbourhood" (South Programme).

In 2012, the Venice Commission officially concluded a joint programme concerning the implementation of the new Constitution in Bolivia.

31. Further information on these Joint Programmes can be found in Chapter V.

Eastern Partnership

Under the Council of Europe Eastern Partnership Facility programme which aims to provide support to the reform processes in the six partner countries – Armenia, Azerbaijan, Belarus, Georgia, Republic of Moldova and Ukraine –, in 2012, the Venice Commission continued implementing one of the specific objectives of the programme, namely facilitating the co-operation regarding the administration of elections and in particular taking concrete action aimed at the further integration of Council of Europe electoral standards into the legislation and practice of the six beneficiary countries. The Programme covers core areas under the EU Eastern Partnership Platform 1 "Democracy, good governance and stability" and is financed by the European Commission.

The following activities took place in the framework of this programme (see Chapter IV):

- On 7 and 8 February 2012, the Venice Commission took part in a meeting on "The participation of women in public life" held in Tbilisi.
- On 26 and 27 March 2012, the Venice Commission organised in Kyiv a seminar devoted to voters' lists and registers management.

3. OSCE

Human Dimension Meetings

On 12 and 13 July 2012, the Venice Commission participated in the OSCE Human Dimension meeting on election observation. The Venice Commission was also represented at the OSCE Human Dimension Implementation Meeting (HDIM)'s Working session specifically devoted to freedom of thought, conscience, religion or belief (Warsaw, 1 October 2012), and in the OSCE Supplementary Human Dimension Meeting on Freedom of Assembly and Association (Vienna, 9 November 2012).

OSCE Mission in Bosnia and Herzegovina

On 29-30 October 2012 in Sarajevo, the Constitutional and Legal Committees of the BiH Parliamentary Assembly, with the support of the OSCE Mission in Bosnia and Herzegovina and the Konrad-Adenauer-Stiftung, organised the Conference of Constitutional and Legal Committees, and the Committees for European Integration, from the countries of the former Yugoslavia and Albania. The topic of the conference was "The Role of parliaments in the European integration process: constitutional and legislative Changes". The Secretary of the Venice Commission participated in the 2nd panel entitled "Constitutional and legislative changes – a necessity or a goodwill gesture?"

OSCE/ODIHR

Fundamental rights and freedoms

Venice Commission representatives attended two meetings of the OSCE/ODIHR Expert Panel on Freedom of Peaceful Assembly (Warsaw, 8-9 May 2012, and Vienna, 8 November 2012).

In 2012, following a common decision to revise their joint Guidelines on Freedom of Religion or Belief (CDL-AD(2004)028), the Venice Commission and OSCE/ODHIR launched a particularly close co-operation. The joint definition of the future content of the revised version of the Guidelines was of particular importance. On 2 October 2012, the Venice Commission participated in a consultative meeting, organised by the OSCE/ODHIR in parallel to the 2012 OSCE Human Dimension Implementation Meeting (HDIM), in order to discuss with civil society representatives the potential

scope and content of these Guidelines, as well as ways of increasing their use.[32]

Additionally, the Venice Commission was invited to designate observers on ODIHR's new Advisory Panel of Experts on Freedom of Religion or Belief, to ensure close consultation between the two bodies on these matters. Mr Vermeulen, Ms Flanagan and Ms Haller were appointed as observer and substitute observers respectively to the Advisory Panel.

Elections, referendums and political parties

During the year 2012, the Venice Commission continued its close co-operation with the OSCE/ODIHR in the area of elections and political parties. Opinions on the electoral legislation of Hungary and Uzbekistan were written jointly. The OSCE/ODIHR regularly attended meetings of the Council for Democratic Elections.

OSCE/ODIHR Core Group of Experts on Political Parties

On 17 May 2012, the Venice Commission took part in the meeting of the OSCE/ODIHR Core Group of Experts on Political Parties in Warsaw. During the meeting the participants discussed the latest developments in OSCE/ODIHR member States in the field of political parties' regulations. Among other issues discussed were the impact of new technologies on the operation of political parties and gender issues.

OSCE High Commissioner on National Minorities

At its October plenary session, the Commission held an exchange of views with Mr Knut Vollebæk, OSCE High Commissioner for National Minorities, on past and future co-operation.

4. United Nations

At its 91st plenary session the Venice Commission endorsed the Declaration of Global Principles for non-partisan election observation and monitoring by citizen organisations and Code of Conduct for non-partisan citizen election observers and monitors (CDL-AD(2012)018). The Declaration, establishing for the first time global standards for citizen election observation, was initiated by the Global Network of Domestic Election Monitors (GNDEM) and launched on 3 April 2012 at the United Nations.

In addition, at the request of the UN Office of the High Commissioner for Human Rights (OHCHR), the Commission contributed to the 14th, 15th and 16th sessions of the Universal Periodic Review (UPR) on the human rights situation with information on the documentsadopted, since 2009, with regard to specific countries (Azerbaijan, Luxemburg, Montenegro, Serbia, the Russian Federation, Ukraine).

5. NATO

On 21 March 2012, the Secretary of the Venice Commission presented the Commission's activities to the NATO Deputy Permanent Representatives' Committee.

6. Other International bodies[33]

International Organisation of the Francophonie (OIF)

Co-operation between the Venice Commission and the OIF is based on the Common Declaration on the

32. For more information on the work on the Revised version of the joint OSCE/ODHIR-Venice Commission Guidelines on Freedom of Religion or Belief please see also Chapter II. 2

33. See also Chapters II, III, IV and V above.

strengthening of co-operation between the Council of Europe and the OIF signed in May 2008 and on Agreement Protocols regularly renewed for financing the translation into the French language of the Bulletin on Constitutional Case-Law. This financial support enables the Venice Commission to translate into French contributions received in English from member and observer states of the OIF.

International Association of Constitutional Law (IACL)

On 4 May 2012, the President of the Venice Commission took part in a Round Table on "Main developments in constitutionalism and constitutional law between 1981 and 2011", held in Belgrade on the occasion of the 30th anniversary of the IACL.

International Foundation for Electoral Systems (IFES)

Representatives of the Venice Commission participated in a conference organised by IFES on "the Legal Framework for Elections in Tunisia: National and International Perspectives", which took place in Tunis on 12-13 March 2012. The participants discussed the perspectives of the electoral reform in Tunisia. In addition, the Venice Commission was represented at a Round Table on "A Public dialogue: the outlook for the 2012 parliamentary elections" organised by IFES in co-operation with several Ukrainian NGOs on 14 March 2012 in Kiev.

International Management Group (IMG)

On 27 September 2012, the Vice-President of the General National Congress of Libya, Dr Saleh Mohammed Almkhozom, asked for the Venice Commission's support for the Congress in its work of developing a constitution for a new democratic Libya. Following this request a delegation from the Venice Commission travelled to Tripoli in November 2012 and had meetings with the National Congress of Libya and with the Presidency of the country on the process of preparing and adopting the new Constitution.

This activity was carried out jointly with the International Management Group (IMG) and within the framework of the co-operation of the country with the European Union. The IMG and the EU Delegation suggested to the Libyan authorities that they ask for the assistance of the Venice Commission.

Association of European Election Officials from Central and Eastern Europe (ACEEEO)

21st ACEEEO (Association of European Electoral Officials) Conference on "The participation of vulnerable groups in electoral processes: minorities and persons with disabilities" (Sarajevo, 13-15 September 2012)

See Chapter IV.

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Further information on the member states of the Enlarged Agreement, individual members of the Commission, Meetings held and opinions adopted as well as the list of the Commission's publications is available on the Venice Commission's web site at: www.venice.coe.int

Appendices

List of member countries in 2012

Members – 58

Albania (14.10.1996)
Algeria (01.12.2007)
Andorra (01.02.2000)
Armenia (27.03.2001)
Austria (10.05.1990)
Azerbaijan (01.03.2001)
Belgium (10.05.1990)
Bosnia and Herzegovina (24.04.2002)
Brazil (01.04.2009)
Bulgaria (29.05.1992)
Chile (01.10.2005)
Croatia (01.01.1997)
Cyprus (10.05.1990)
Czech Republic (01.11.1994)
Denmark (10.05.1990)
Estonia (03.04.1995)
Finland (10.05.1990)
France (10.05.1990)
Georgia (01.10.1999)
Germany (03.07.1990)
Greece (10.05.1990)
Hungary (28.11.1990)
Iceland (05.07.1993)
Ireland (10.05.1990)
Israel (01.05.2008)
Italy (10.05.1990)
Kazakhstan (09.11.2011)
Korea (Republic of) (01.06.2006)
Kyrgyzstan (01.01.2004)
Latvia (11.09.1995)
Liechtenstein (26.08.1991)
Lithuania (27.04.1994)
Luxembourg (10.05.1990)
Malta (10.05.1990)
Mexico (03.02.2010)
Moldova (Republic of) (25.06.1996)
Monaco (05.10.2004)
Montenegro (20.06.2006)
Morocco (01.06.2007)
Netherlands (01.08.1992)
Norway (10.05.1990)
Peru (11.02.2009)
Poland (30.04.1992)
Portugal (10.05.1990)
Romania (26.05.1994)
Russian Federation (01.01.2002)
San Marino (10.05.1990)
Serbia (03.04.2003).
Slovakia (08.07.1993)
Slovenia (02.03.1994)
Spain (10.05.1990)
Sweden (10.05.1990)
Switzerland (10.05.1990)
"The former Yugoslav Republic of Macedonia" (19.02.1996)
Tunisia (01.04.2010)
Turkey (10.05.1990)
Ukraine (03.02.1997)
United Kingdom (01.06.1999)

Associate member

Belarus (24.11.1994)

Observers

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

Participants

European Union
OSCE/ODIHR

Special co-operation status

Palestinian National Authority
South Africa

List of members[1]

Mr Gianni BUQUICCHIO (Italy), *President*, Former Director, Council of Europe
(Substitutes: Mr Sergio BARTOLE, Former Professor, 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 Hanna SUCHOCKA (Poland), *Vice-President,* Ambassador of Poland to the Holy See
(Substitute: Mr Krzysztof DRZEWICKI, Associate Professor, University of Gdansk)

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

***

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

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

Mr Gaguik HARUTUNIAN (Armenia), President, Constitutional Court
(Substitute: Mr Grigor MURADYAN, First Deputy Minister of Justice)

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

Ms Lydie ERR (Luxembourg), Ombudsman
(Substitute: Mr Marc FISCHBACH, Former Ombudsman)

Ms Finola FLANAGAN (Ireland), Law Reform Commissioner, Law Reform Commission of Ireland
(Substitute: Mr James HAMILTON, Former Director of Public Prosecutions, President, International Association of Prosecutors)

Mr Ugo MIFSUD BONNICI (Malta), President Emeritus

1. By order of seniority.

Mr Vojin DIMITRIJEVIC[2], (Serbia), Professor of Public International Law, Union University School of Law, Director, Belgrade Human Rights Centre
(Substitute: Mr Vladimir DJERIC, Lawyer)

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
(Substitute: Mr Christophe SOSSO, Defence Lawyer, Court of Appeal)

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

Mr Nicolae ESANU (Moldova), Lecturer, Law faculty, Moldova State University, Former Deputy Minister of Justice
(Substitute: Ms Rodica SECRIERU, Acting Chief of Secretariat, Constitutional Court of Moldova)

Mr Oliver KASK (Estonia), Judge, Tallinn Court of Appeal
(Substitute: Ms Berit AAVIKSOO, Lecturer in Constitutional Law, University of Tartu)

Mr Valeriy ZORKIN (Russia), President of the Constitutional Court
(Substitute: Mr Sergey MAVRIN, Vice President, Constitutional Court)

Mr Jean-Claude COLLIARD (France), President of PREF-HESAM- Panthéon-Sorbonne, former member of the Constitutional Council
(Substitutes: Ms Jacqueline DE GUILLENCHMIDT, Member, Constitutional Council, Former State Councillor
Mr Hubert HAENEL, Member, Constitutional Council)

Mr Christoph GRABENWARTER (Austria), Judge, Constitutional Court
(Substitutes: Mme Gabriele KUCSKO-STADLMAYER, Professor, University of Vienna)
Mr Kurt HELLER, Honorary Professor of the University of Linz, Former Justice of the Constitutional Court

Ms Gret HALLER (Switzerland), Former Speaker of the Swiss Parliament
(Substitute: Ms Monique JAMETTI GREINER, Vice Director, Head of the international relations Department, Federal Office of Justice)

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

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

2. Deceased on 5 October 2012.

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

Mr Lucian MIHAI (Romania), Professor, Faculty of Law, University of Bucharest, Former President of the Constitutional Court
(Substitute: Mr Bogdan AURESCU, Secretary of State for Strategic Affairs, Ministry of Foreign Affairs)

Mr Srdjan DARMANOVIC (Montenegro), Ambassador of Montenegro to the United States of America
(Substitute: Mr Zoran PAZIN, Lawyer)

Mr Harry GSTÖHL (Liechtenstein), Former President of the Constitutional Court, Princely Justice Counsellor, Attorney at Law
(Substitute: Mr Wilfried HOOP, Partner, Hoop and Hoop)

Ms Maria Fernanda PALMA (Portugal), Professor, University of Lisbon, former Judge, Constitutional Court
(Substitute: Mr Pedro BACELAR de VASCONCELOS, Professor of Constitutional Law, Minho University)

Mr Jorgen Steen SORENSEN (Denmark), Parliamentary Ombudsman,
(Substitute: Mr Michael Hansen JENSEN, Professor, University of Aarhus)

Ms Ivetta MACEJKOVA (Slovakia), President, Constitutional Court
(Substitute: Ms Jana BARICOVA, Judge, Supreme Court)

Mr Wolfgang HOFFMANN-RIEM (Germany), Former Judge, Federal Constitutional Court
(Substitute: Ms Anne PETERS, Chair of public international law and Swiss constitutional law, Basel University)

Mr George PAPUASHVILI (Georgia), President, Constitutional Court
(Substitute: Mr Konstantin VARDZELASHVILI, Deputy President, Constitutional Court)

Mr Viktor GUMI (Albania), General Director of Codification, Ministry of Justice

Mr Abdellatif MENOUNI (Morocco), Adviser to His Majesty the King, Professor, Law Faculty, Rabat University
(Substitute: Mr Abdelaziz LAMGHARI, Professor, Public Law Department, Rabat)

Ms Gordana SILJANOVSKA-DAVKOVA ("the former Yugoslav Republic of Macedonia"), Professor of law, University "Ss Cyril and Methodius"
(Substitutes: Mr Abdula ALIU, Professor, South East European University
Mr Adnan JASHARI, Professor, Member of Assembly)

Mr Eugeni TANCHEV (Bulgaria), Former 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 Barak MEDINA, Dean, Faculty of Law, The Hebrew University of Jerusalem)

Ms Marina STAVNIYCHUK (Ukraine), Deputy Head of the Presidential Secretariat
(Substitute: Mr Sergii KIVALOV, Chairman, Committee on Justice, Verkhovna Rada of Ukraine)

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

Mr Carlos MESIA RAMIREZ (Peru), Member, Constitutional Tribunal
(Substitute: Mr Gerardo ETO CRUZ Judge, Constitutional Tribunal)

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

M. Boualem BESSAÏH (Algeria), Former President, Constitutional Council
(Substitutes Mr Mohamed HABCHI, Former Member, Constitutional Council
Mr Hachemi ADALA, Member, Constitutional Council)

Ms Maria del Carmen ALANIS FIGUEROA (Mexico), Justice, Federal Electoral Tribunal
(Substitutes: Mr Manuel GONZALEZ OROPEZA, Magistrate, Federal Electoral Tribunal
Mr Arturo ZALDIVAR LELO DE LARREA, Justice, Supreme Court of the Nation)

Mr Fathi ABDENNADHER (Tunisia), Former President, Constitutional Council
(Substitute: Mr Rafaa BEN ACHOUR, Ambassador of Tunisia to Morocco, Professor of Law)

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, President European Women Lawyers' Association, Faculty of Law, Bifrost University
(Substitutes: Mr Hjörtur TORFASON, Former Judge, Supreme Court of Iceland
Mr Pall HREINSSON, Supreme Court Judge)

N.N. (Kyrgyzstan)[3].

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
(Substitutes: Mr Miguel Angel AZPITARTE, Professor of Constitutional Law, University of Granada
Mr Angel SANCHEZ NAVARRO, Professor of Constitutional Law, Complutense University, Deputy Director, Centre for Political and Constitutional Studies)

3. Member resigned on 7 July 2010. A new member has not yet been appointed.

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

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

Mr Hernan VODANOVIC SCHNAKE (Chile), Judge, Constitutional Court
(Substitute : Ms Marisol PENA TORRES, Judge, Constitutional Court)

Mr Richard CLAYTON QC, (United Kingdom), Barrister at Law
(Substitute: Mr Paul CRAIG, Professor of Law, University of Oxford)

Mr Ciril RIBICIC (Slovenia), Professor of Constitutional Law, University of Ljubljana, Former Justice and Vice President of the Constitutional Court
(Substitute: Ms Dragica WEDAM LUKIC, Professor, Faculty of Law, University of Ljubljana, Former Justice and President of the Consitutional Court)

Mr Ben VERMEULEN (The Netherlands), Professor of Constitutional and Administrative Law, Free University of Amsterdam
(Substitute: Wilhelmina THOMASSEN, Justice, Supreme Court, former judge at the European Court of Human Rights)

Mr Igor ROGOV (Kazakhstan), Chairman, Constitutional Council
(Substitute: Mr Talgat DONAKOV, Deputy Head, Presidential Administration)

Mr Han-Chul PARK, (Republic of Korea), Justice, Constitutional Court
(Substitute: Mr Boohwan HAN, Attorney at Law, former Vice Minister of Justice)

Associate members

Mr Alexander V. MARYSKIN (Belarus), Judge, Constitutional Court

Observers

N.N. (Argentina)

N.N. (Canada)

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

Mr Hideaki GUNJI (Japan), Consul, Consulate General of Japan, Strasbourg

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

Mr Alvaro MOERZINGER (Uruguay), Ambassador, Embassy of Uruguay in the Hague

Special Status

European Union

Mr Lucio GUSSETTI, Director, Legal Service, European Commission

Mr Esa PAASIVIRTA, Legal Adviser, Legal Service, European Commission

Palestinian National Authority

Mr Ali KHASHAN, Minister of Justice

South Africa

N. N.

Secretariat

Mr Thomas MARKERT, Director, Secretary of the Commission
Ms Simona GRANATA-MENGHINI, Deputy Secretary of the Commission
Mr Pierre GARRONE, Head of the Division on Elections and Referendums
Mr Rudolf DÜRR, Head of the Division on Constitutional Justice
Ms Artemiza-Tatiana CHISCA, Head of the Division on Democratic Institutions and Fundamental Rights
Mr Serguei KOUZNETSOV, Head of Division on Neighbourhood Cooperation
Ms Charlotte de BROUTELLES, Legal Officer
Ms Caroline MARTIN, Legal Officer
Ms Tanja GERWIEN, Legal Officer
Mr Gaël MARTIN-MICALLEF, Legal Officer
Ms Amaya UBEDA DE TORRES, Legal Officer
Ms Tatiana MYCHELOVA, Public Relations Officer
Ms Svetlana ANISIMOVA, Project manager
Ms Helen MONKS, finances and plenary sessions
Ms Brigitte AUBRY
Ms Marian JORDAN
Mrs Brigitte RALL
Ms Ana GOREY
Mrs Caroline GODARD
Mrs Marie-Louise WIGISHOFF
Ms Valérie SCHAEFFER
Ms Théa CHUBINIZE
Ms Rosy DI POL

Ms Tetiana KUDRIA
Ms Nato CHIKOVANI
Ms Isabelle SUDRES

Offices and sub-commissions

Bureau[4]

President: Mr Buquicchio

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

Vice-Presidents: Ms Suchocka, Mr Tuori

Members: Mr Endzins, Mr Mendes, Mr Tanchev and Mr Zorkin

Scientific Council

President: Mr Helgesen

Members: Mr Buquicchio, Ms Flanagan, Mr Paczolay, Mr Esanu, Mr Hoffmann-Riem

Council for Democratic Elections:

President: Mr Gross (Parliamentary Assembly of the Council of Europe)
Vice-President: Mr Colliard

Venice Commission - Members: Mr Kask, Mr Mifsud Bonnici, Mr Paczolay
(Substitutes: Ms Alanis Figueroa, Ms Biglino Campos, Mr Craig, Mr Darmanovic)

Parliamentary Assembly – Members: Ms Durrieu, Mr Gross, Ms Woldseth
(Substitute: Ms de Pourbaix-Lundin)

Congress of local and regional authorities – Members: Mr Molin, Ms Mosler-Törnström
(Substitutes: Mr Mermagen, Ms Rossi)

Joint Council on Constitutional Justice:

Chair: Mr Grabenwarter,

Co-Chair (Liaison Officers): Ms Anne Rasson

Members: Ms. Aaviksoo, Ms Alanis Figueroa, Ms Banic, Mr Gonzalez Oropeza, Ms de Guillenchmidt, Mr Gumi, Mr Harutunian, Mr Jankauskas, Mr Kask, Ms Macejkova, Mr Mendes, Mr Mihai, Mr Neppi Modona, Ms Omejec, Ms Palma, Mr Papuashvili, Mr Pazin, Mr Ribicic, Ms Siljanovska-Davkova, Ms Simackova, Ms Stavnychuk, Ms Thorgeirsdottir, Mr Torfason, as well as 90 liaison officers from 65 Constitutional Courts or Courts with equivalent jurisdiction

4. The Bureau may meet as the Enlarged Bureau which includes the Chairs of the sub-commissions.

Federal State and Regional State:

Chair: Mr Hoffmann-Riem

Members: Mr Scholsem, Mr Velaers

International Law:

Chair: Mr Dimitrijevic[5]

Members: Mr Aurescu, Mr Cameron, Mr Hüseynov, Ms Koufa, Mr Mifsud Bonnici, Ms Milasiute, Ms Peters, Ms Simackova

Protection of Minorities:

Chair: Mr Velaers

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

Fundamental Rights:

Chair: Ms Thorgeirsdottir

Members: Ms Aaviksoo, Ms Alanis Figueroa, Mr Aurescu, Ms Banic, Mr Cameron, Ms Err, Mr Esanu, Mr Gonzalez Oropeza, Mr Gstöhl, Mr Haenel, Ms Haller, Mr Heller, Mr Hirschfeldt, Mr Huseynov, Mr Kask, Ms Koufa, Mr Mesia Ramirez, Mr Mifsud Bonnici, Ms Milasiute, Ms Omejec, Mr Papuashvili, Mr Pazin, Mr Torfason, Mr Tuori, Mr Velaers, Ms Wedam Lukic, Mr Zorkin

Democratic Institutions:

Chair: Mr Paczolay

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

Judiciary:

Chair: Ms Flanagan

Members: Mr Bartole, Mr Bessaih, Mr Canturri Montanya, Ms Err, Mr Esanu, Mr Gstöhl, Ms de Guillenchmidt, Mr Habchi, Mr Hamilton, Mr Hirschfeldt, Mr Hoffmann-Riem, Mr Kask, Mr Kivalov, Mr Mendes, Mr Mihai, Mr Neppi

5. Deceased on 5 October 2012.

Modona, Mr Nicolatos, Mr Papuashvili, Mr Pazin, Ms Siljanovska-Davkova, Ms Simackova, Mr Torfason, Ms Wedam Lukic,

External Relations:

Chair: Mr Mifsud Bonnici

Working Methods

Chair: Mr Sorensen

Members: Mr Dimitrijevic, Ms Haller, Mr Hoffmann-Riem, Mr Mifsud Bonnici, Mr Sejersted

Latin America

Chair: Ms Alanis Figueroa

Members: Mr Buquicchio, Mr Darmanovic, Ms Flanagan, Mr Gonzalez Oropeza, Hirschfeldt, Ms Palma, Mr Paczolay, Mr Mendez, Mr Mesia Ramirez and Ms Siljanovska-Davkova

Mediterranean Basin

Chair: Mr Menouni

List of publications of the Venice Commission

Series - Science and Technique of Democracy[6]

No.1 Meeting with the presidents of constitutional courts and other equivalent bodies[7] (1993)
No.2 Models of constitutional jurisdiction* [8] (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* (1993)
No.7 Rule of law and transition to a market economy[2](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)
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No.13 Implementation of constitutional provisions regarding mass media in a pluralist democracy[2](1995)
No.14 Constitutional justice and democracy by referendum (1996)
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No.17 Human Rights and the functioning of the democratic institutions in emergency situations (1997)
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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)

6. Publications are also available in French unless otherwise indicated.
7. Speeches in the original language (English or French).
8. Publications marked with * are also available in Russian.

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

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

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

No.29 Societies in conflict: the contribution of law and democracy to conflict resolution[2] (2000)

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

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

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

No 44 Can excessive length of proceedings be remedied? [4] (2007)

No 45 The participation of Minorities in public life[4] (2008)

No 46 The cancellation of election results[4] (2010)

No 47 Blasphemy, insult and hatred[4] (2010)

No 48 Supervising electoral processes[4] (2010)

No 49 Definition of and development of human rights and popular sovereignty in Europe[4] (2011)

1. Available in English only.

Other publications

Collection *"Points of view - points of law"*

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- The CIA above the laws? Secret detentions and illegal transfers of detainees in Europe (2008)
- Armed forces and security services: what democratic control? (2009)

Collection *"Europeans and their rights"*

- The right to life (2005)
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- Child rights in Europe (2008)
- Freedom of expression (2009)

Other titles

- Tackling blasphemy, insult and hatred in a democratic society (2008)
- Electoral Law (2008)
- European Conferences of Electoral Management Bodies
  - 2nd Conference (Strasbourg 2005)
  - 3rd Conference (Moscow, 2006)
  - 4th Conference (Strasbourg, 2007)
  - 5th Conference (Brussels, 2008)
  - 6th and 7th Conference (The Hague, 2009 and London 2010[2])

Bulletin on Constitutional Case-Law

1993-2012 (three issues per year)

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- 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), No.8 (2011)
- Leading cases of the European Court of Human Rights (1998)*
- Freedom of religion and beliefs (1999)

2. Available only in electronic form.

- Special Edition Leading cases 1 – Czech Republic, Denmark, Japan, Norway, Poland, Slovenia, Switzerland, Ukraine (2002)
- Special Edition Leading cases 2 – Belgium, France, Hungary, Luxembourg, Romania, USA (2008)
- Inter-Court Relations (2003)
- Statute and functions of Secretary Generals of Constitutional courts (2006)
- Criteria for Human Rights Limitations by the Constitutional Court (2006)
- Legislative Omission (2008)
- State Powers (2012)

Annual Reports

- 1993-2012

Brochures

- 10th anniversary of the Venice Commission (2001)
- Revised Statute of the European Commission for Democracy through Law (2002)
- UniDem Campus – Legal training for civil servants (2003)[3]
- 20th Anniversary – Publications (2010)
- Selected studies and reports (2010)
- Key Facts (2011)[4]
- Services provided by the Venice Commission to Constitutional Courts and equivalent bodies (2011)
- Code of Good Practice in Electoral Matters (2011)[5]
- The Venice Commission of the Council of Europe (2012)

3. Also available in Italian.
4. Also available in Russian and Spanish.
5. Also available in Arabic, Russian and Spanish.

List of documents adopted in 2012

90th plenary session (Venice, 16-17 March 2012)

CDL-AD(2012)001	Opinion on Act CLXII of 2011 on the Legal Status and Remuneration of Judges and Act CLXI of 2011 on the Organisation and Administration of Courts of Hungary
CDL-AD(2012)002	Opinion on the Federal Law on the election of the Deputies of the State Duma of the Russian Federation
CDL-AD(2012)003	Opinion on the law on political parties of the Russian Federation
CDL-AD(2012)004	Opinion on Act CCVI of 2011 on the right to freedom of conscience and religion and the legal status of churches, denominations and religious communities of Hungary
CDL-AD(2012)005	Report on measures to improve the democratic nature of elections in Council of Europe member states
CDL-AD(2012)006	Joint opinion6 on the law on mass events of the Republic of Belarus
CDL-AD(2012)007	Opinion on the Federal Law no. 54-FZ of 19 June 2004 on assemblies, meetings, demonstrations, marches and picketing of the Russian Federation

91st plenary session (Venice, 15-16 June 2012)

CDL-AD(2012)008	Opinion on Act CLXIII of 2011 on the Prosecution Service and Act CLXIV of 2011 on the Status of the Prosecutor General, Prosecutors and other Prosecution Employees and the Prosecution Career of Hungary
CDL-AD(2012)009	Opinion on Act CLI of 2011 on the Constitutional Court of Hungary
CDL-AD(2012)010	Opinion on the Revision of the Constitution of Belgium
CDL-AD(2012)011	Opinion on the Act on the Rights of Nationalities of Hungary
CDL-AD(2012)012	Joint Opinion on the Act on the Elections of Members of Parliament of Hungary
CDL-AD(2012)013	Amicus Curiae Brief on the Compatibility with Human Rights Standards of certain articles of the Law on Primary Education of the Sarajevo Canton of the Federation of Bosnia and Herzegovina
CDL-AD(2012)014	Opinion on Legal Certainty and the Independence of the Judiciary in Bosnia and Herzegovina
CDL-AD(2012)015	Opinion on the Federal Law on the Federal Security Service (FSB) of the Russian Federation
CDL-AD(2012)016	Opinion on the Federal Law on Combating Extremist Activity of the Russian Federation
CDL-AD(2012)017	Opinion on the Draft Law on Free Access to Information of Montenegro

6. "Joint Opinion" refers to opinions drafted jointly by the Venice Commission and the OSCE/ODIHR unless specified otherwise.

CDL-AD(2012)018 Declaration of Global Principles for non-partisan election observation and monitoring by citizen organizations and Code of Conduct for non-partisan citizen election observers and monitors – Commemorated 3 April 2012 at the United Nations, New York – Initiated by the Global Network of Domestic Election Monitors (GNDEM)

92nd plenary session (Venice, 12-13 October 2012)

CDL-AD(2012)019 Opinion on the Draft Law on the Public Prosecutor's Office of Ukraine (prepared by the Ukrainian Commission on Strengthening Democracy and the Rule of Law

CDL-AD(2012)020 Opinion on the Cardinal Acts on the Judiciary that were amended following the adoption of Opinion CDL-AD(2012)001 on Hungary

CDL-AD(2012)021 Opinion on the practice on blanket resignation of Ministers in the Federation of Bosnia and Herzegovina

CDL-AD(2012)022 Joint Opinion on the Law on Freedom of Religious Belief of the Republic of Azerbaijan

CDL-AD(2012)023 Opinion on Act CXII of 2011 on informational Self-determination and Freedom of Information of Hungary

93rd plenary session (Venice, 14-15 December 2012)

CDL-AD(2012)024 Opinion on two Sets of draft Amendments to the Constitutional Provisions relating to the Judiciary of Montenegro

CDL-AD(2012)025 Joint Opinion on the Draft amendments and addenda to the law "on elections to the Oliy Majlis of the Republic of Uzbekistan" and "on elections to the regional, district and city councils (Kengesh) of people's deputies of Uzbekistan"

CDL-AD(2012)026 Opinion on the compatibility with Constitutional principles and the Rule of Law of actions taken by the Government and the Parliament of Romania in respect of other State institutions and on the Government emergency ordinance on amendment to the Law N° 47/1992 regarding the organisation and functioning of the Constitutional Court and on the Government emergency ordinance on amending and completing the Law N° 3/2000 regarding the organisation of a referendum of Romania

CDL-AD(2012)027 Report on Democracy, Limitation of Mandates and Incompatibility of Political Functions

CDL-AD(2012)028 Amicus Curiae Brief on the Law on determining a criterion for limiting the exercise of public office, access to documents and publishing, the co-operation with the bodies of the state security ("Lustration Law") of "the former Yugoslav Republic of Macedonia"

Members – 59

Albania (1996), Algeria (2007), Andorra (2000), Armenia (2001), Austria (1990), Azerbaijan (2001), Belgium (1990), Bosnia and Herzegovina (2002), Brazil (2009), Bulgaria (1992), Chile (2005), Croatia (1997), Cyprus (1990), Czech Republic (1994), Denmark (1990), Estonia (1995), Finland (1990), France (1990), Georgia (1999), Germany (1990), Greece (1990), Hungary (1990), Iceland (1993), Ireland (1990), Israel (2008), Italy (1990), Kazakhstan (2011), Republic of Korea (2006), Kyrgyzstan (2004), Latvia (1995), Liechtenstein (1991), Lithuania (1994), Luxembourg (1990), Malta (1990), Mexico (2010), Republic of Moldova (1996), Monaco (2004), Montenegro (2006), Morocco (2007), Netherlands (1992), Norway (1990), Peru (2009), Poland (1992), Portugal (1990), Romania (1994), Russian Federation (2002), San Marino (1990), Serbia (2003), Slovakia (1993), Slovenia (1994), Spain (1990), Sweden (1990), Switzerland (1990), "the former Yugoslav Republic of Macedonia" (1996), Tunisia (2010), Turkey (1990), Ukraine (1997), United Kingdom (1999), United States (2013)

Associate member

Belarus (1994)

Observers – 5

Argentina (1995), Canada (1991), Holy See (1992), Japan (1993), Uruguay (1995)

Participants – 2

European Union, OSCE/ODIHR

Special co-operation status – 2

Palestinian National Authority, South Africa

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Venice Commission

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