

New Prospects for Croatia's Cooperation with the Venice Commission

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The Venice Commission was established with the purpose of helping the countries in transition establish new political and legal infrastructure and strengthen the existing democratic foundations and institutions. The Commission studies the constitutional, legal and international legal aspects of modern European democratic principles and practice, it gives legal opinion on questions such as constitutional reforms, electoral legislation, human rights, etc. The main aspects of these activities are assistance in the building of the legal system, cooperation with constitutional courts, and the study of 'transnational' topics or legal issues of general interest. Croatia has been co-operating with the Commission for a considerable period of time, having received Commission's opinion on the Croatian Constitution and the Constitutional Law on the Constitutional Court in 1994.

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1. Introduction

The Commission on Democracy through Law, better known as the Venice Commission, celebrates its tenth anniversary this year. The Commission was established by a partial agreement within the Council of Europe, which means that only those member countries can take part which have acceded to the agreement and which contribute to the Commission's budget. The Commission's Statute was adopted by the Committee of Ministers on 10 May 1990.¹

The main purpose and task of the Commission is to help the countries in transition establish new political and legal infrastructures, strengthen the existing democratic foundations and institutions,

promote and develop the principles and elements on which true democracy is built. This will help such countries to go through the difficult process of building their new fundamental legal norms as quickly and painlessly as possible and to integrate themselves in the most effective way into the European legal system, fully respecting the main principles and frameworks of Europe's constitutional and legal heritage – democracy, human (especially minority) rights, and the rule of law. The Commission is therefore focused primarily on cooperation with the East European countries. However, in view of its success over the past ten years in helping these countries and providing advice or analyses for the Parliamentary Assembly or the Committee of Ministers of the Council of Europe, the Commission has been increasingly frequently approached by countries outside Europe, asking for assistance, proposing cooperation, and

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offering financial support for specific projects. For this reason, the Committee of Ministers is now considering the enlargement of the original agreement. The enlarged partial agreement would provide for the inclusion of countries which are not members of the Council of Europe but are interested in participation in the Commission's activities and even in funding such activities.² The terms of reference and the composition of the Commission would have to be adjusted.

The Venice Commission is made up of distinguished lawyers, independent experts in constitutional law and international public law, university professors, presidents and judges of constitutional and supreme courts, justice ministers, parliamentarians, and other high officials with distinct international reputations, known for their contributions to legal and political science. The members of the Commission are appointed in their personal capacities, one per country, for four-year terms of office (renewable).

Legal experts from the Council of Europe member states (including Croatia) are for the most part full members of the Democracy through Law Commission. At present, they include experts from Albania, Austria, Belgium, Bulgaria, Croatia, Cyprus, Czech Republic, Denmark, Estonia, Finland, France, Germany, Greece, Hungary, Ireland, Iceland, Italy, Latvia, Liechtenstein, Lithuania, Luxembourg, Macedonia, Malta, Moldova, Netherlands, Norway, Poland, Portugal, Romania, San Marino, Slovakia, Slovenia, Spain, Sweden, Switzerland, Turkey, and Ukraine.³ Associate members are for the most part experts from some of the countries of the former Soviet Union (Armenia, Azerbaijan, Belarus) and Bosnia-Herzegovina. The status of observers is enjoyed by experts from countries outside Europe (Argentina, Canada, Japan, Kazakhstan, Kyrgyzstan, United States, Uruguay) and the Holy See. It should be noted that the Commission has had successful cooperation with South Africa for a number of years under a "special cooperation" arrangement.

The Commission meets in plenary sessions and some dozen sub-commissions (for constitutional matters, for federal and regionalized states, for international law, for the protection of minorities, for constitutional reforms, for democratic institutions, for South Africa, for the Mediterranean region, for administrative and budgetary matters, for UniDem – UniDem Governing Board, etc.). Meetings are held in Venice four times a year, while seminars, work-

ing sessions and working group meetings are held in Strasbourg as required or in different member states or cooperating countries. Strasbourg is the seat of the Commission's Secretariat. The working languages are English, French and Russian. The Chairman of the Commission since its establishment has been Antonia La Pergola (Italy).

2. Main areas of activity

The Democracy through Law Commission of the Council of Europe studies the constitutional, legal and international legal aspects of modern European democratic principles and practice; it gives legal opinion on various questions concerning constitutional reforms, electoral legislation, general human rights and especially the rights of minorities; it collects and systematizes the jurisprudence (case law) of constitutional courts and other bodies responsible for matters of constitutional law; it publishes such texts and puts them at the disposal of interested legal institutions; it organizes seminars and symposia in cooperation with the best European universities and scholarly institutions; it publishes the results of its studies and conclusions of the international conferences that it sponsors.

The most important aspects of these activities are the following:

a) Assistance in the building of the legal system. At the request of a given country (regardless of whether it is a member of the Council of Europe, is planning to become a member, or falls outside of this category altogether), the Parliamentary Assembly or the Secretary General of the Council of Europe, the Commission will study any draft legislation (usually a constitution) submitted to it and give its opinion and suggestions. It should be stressed that the Commission's opinion is purely **advisory** in character: the country concerned may accept it in whole or in part, or it can reject it altogether. In no case does it have any legal, political or moral obligation in relation to the Commission or the Council of Europe, nor does it thereby lose the right to seek the Commission's expert opinion again about an amended version of the same text or a new text. The non-binding nature of the Commission's recommendations, coupled with the high degree of professionalism and proven impartiality of the leading European lawyers, represents the most valuable feature

of the Venice Commission and its recommendations.

The Commission has so far provided assistance to a number of countries: Albania (draft of the first democratic constitution, draft legislation on the organization of the judiciary), Armenia (constitutional controls, electoral law), Azerbaijan, Bosnia-Herzegovina (whole range of opinions on the scope of authority of the Federation, on the constitutionality of the international agreements concluded by Bosnia-Herzegovina and its entities, on the admissibility of objections to the decisions of the Human Rights Committee, on the modalities of the election of the State Presidency, on the reorganization of the mechanisms of human rights protection, on the responsibility for immigration and asylum granting, etc.), Estonia (constitutional reform), Georgia (revision of the constitution), Croatia, South Africa (draft constitution, local self-government and financing, intergovernmental relations), Kyrgyzstan (introduction of private ownership of land, immunity of members of parliament), Republic of Korea, Latvia (constitutional change and human rights), Macedonia (referendum and civic initiatives, draft electoral legislation), Moldova (Gagauzian autonomy, human rights, division of powers), Mozambique, Romania (government organization and responsibilities of the ministries), Russia, Ukraine (reform of executive authorities), etc. In addition, at the request of the European Union Presidency, the Commission gave its opinion on the legal aspects of the possible solution of the Kosovo crisis. A special Working Group on Kosovo was established for that purpose.

b) Cooperation with constitutional courts.

In an effort to achieve the highest possible degree of mutual information about important legal issues frequently faced by the constitutional courts of many countries, the Venice Commission publishes the *Bulletin on Constitutional Case Law*, established in 1993 and published three times a year. The Commission also maintains a rich and valuable database – known as CODICES – which is a systematized thesaurus of texts of national constitutions, laws on constitutional courts, and various constitutional decisions. This information is available in the printed form, on CD-ROM, and on the Internet, URL: <http://www.coe.fr/codices>.

The Centre on Constitutional Justice in Strasbourg is charged with the task of disseminating the knowledge of constitutional law and democratic values in Europe. The Centre gathers and popularizes

the information on the development of the European constitutional jurisprudence. The Centre's services are offered not only to national constitutional courts, justice ministries, universities, and other institutional users, but also to individual scholars, researchers, and the general public. In cooperation with different international organizations or institutions (OSCE, PHARE, COLPI, USAID), the Commission organizes seminars on different aspect of work of constitutional courts under the heading CoCoSem (Cooperation with Constitutional Courts).

c) The study of 'transnational' topics or legal issues of general interest. To make the best possible use of the expertise of the large number of experts among its members, the Commission studies various topics having to do with the strengthening of democratic institutions, interpretation of the existing legal systems, and understanding of the legal culture of the countries cooperating with the Commission. An even wider base for the mobilization of international legal expertise is tapped through close cooperation with universities, research institutions, and legal specialists in many countries. The Venice Commission organizes seminars and round tables on a variety of legal issues within the framework of the University of Democracy (UniDem). The proceedings of such meetings are published in the regular series entitled "The Science and Technique of Democracy", which has so far covered the relations between international and national law, the constitutional aspects of transition towards the market economy, protection of minorities, the contemporary concepts of confederalism, the succession of states and citizenship, local self-government, the activity of democratic institutions in emergency situations, the banning of political parties, constitutional law and European integrations, and many others.

3. The cooperation of the Republic of Croatia with the Democracy through Law Commission

The Republic of Croatia has been cooperating with the Venice Commission for a number of years, practically from the date of its independence. The present author has represented Croatia in the Commission since 1992 – first as an associate member and then, since Croatia's admission to the Coun-

cil of Europe, as a full member. He is a member of the Commission's Bureau, chairman of the sub-commission for the Mediterranean, and an active member of the sub-commissions for international law, for federal states, for the protection of minorities; he is also a member of the working group for the revision of the Commission's Statute.

As far back as 1994, the Commission gave its opinion on the Croatian Constitution and the Constitutional Law on the Constitutional Court. A very successful UniDem seminar on the role of constitutional courts in the protection of fundamental human rights was held at Brijuni, 23-25 September 1995. The proceedings of the seminar were published in the Science and Technique of Democracy series.⁴ The President of the Croatian Constitutional Court, Mr. Jadranko Crnić, was invited by the Chairman of the Commission to take part in the Commission's fortieth session in October 1999.

Prior to Croatia's admission to the Council of Europe, the President of the Republic and the Speaker of the Croatian Parliament signed an undertaking specifying 21 conditions that Croatia would fulfil as demanded by that international organization. One of the conditions was the adoption of three recommendations drafted by the Venice Commission. They were as follows:

- prompt re-examination of the Constitutional Law (1995) on the temporary suspension of certain provisions (actually, 44 out of the total of 65 articles!) of the 1991 Constitutional Law on Human Rights and Freedoms and Rights of Ethnic and National Communities and Minorities, with a view to secure the local autonomy of the minorities in the Republic of Croatia, as envisaged by the European Charter of Local Self-Government and Recommendation 1201 (1993) of the Council of Europe's Parliamentary Assembly;
- participation of legal experts from the Council of Europe's member states in the work of the Constitutional Court of the Republic of Croatia when cases dealing with the rights of minorities are discussed;
- a broad campaign to promote the legal and procedural possibilities for the protection of human and minority rights.

Only the second of the three recommendations has been implemented – to the distinct satisfaction

of the Republic of Croatia, the Venice Commission and the Council of Europe. The involvement of the international community in the constitutional and legal protection of minorities represents an important precedent, a departure from the old concept of exclusive responsibility of states in the domain of human rights. It introduces a new quality in the protection of minority rights and human rights more generally.

Croatian legal specialists and Council of Europe experts have prepared the text of a publication dealing with the European standards of human and minority rights and their protection. It will soon be published and will be available in Croatia as well. This publication will undoubtedly prove useful, not only to the courts, lawyers, the Ombudsman, many government bodies and local government authorities, but also, and in the first place, to the members of the minorities, their organizations, and all Croatian citizens.

Nothing has been done, however, to implement the first and most important of the Commission's three recommendations, namely, the one relating to a re-examination of the Constitutional Law on the temporary suspension of certain provisions of the Constitutional Law on Human Rights and Freedoms and Rights of Ethnic and National Communities and Minorities. This has prompted the Parliamentary Assembly of the Council of Europe to express its "regret that Croatia has achieved small progress in fulfilling the obligations that it undertook regarding the fundamental principles of the Council of Europe".⁵

The progress that the Resolution refers to (albeit "small" in the language of the Resolution) refers to the creation of the Council of National Minorities, a coordinating and advisory body composed of representatives of the associations of national minorities in the Republic of Croatia. The Council coordinates the work of organizations of national minorities and establishes linkages between them to better protect their rights and take a common stand in relation to the legislative, executive and judicial authorities. Though the early results of that body were rather modest, given the circumstances in which it operates, its work attracted considerable attention of the Commission and the Council of Europe. The Commission's representatives visited Zagreb on a number of occasions and even took part in the Coun-

cil's deliberations, while the chair person and her deputy were invited to Venice to address the 34th session of the Commission. The Council of National Minorities submitted a well-prepared and carefully balanced amendment to the proposed new electoral legislation (with the support of the Venice Commission!), but the lawmakers did not take it into consideration. The result is that the percentage of MP's representing the national minorities in the Croatian Parliament is significantly smaller than it was under the old legislation (5 out of 151 deputies, as against 12-18 out of 124 deputies in the previous parliament).

4. Prospects for Croatia's further cooperation with the Commission

In the post-Tudman era and following the major political changes in Croatia, new prospects open for its cooperation with the Democracy through Law Commission. We can justly expect that the new government will resolutely pursue democratic reforms and integration into the democratic processes in Europe. There can be no doubt that changes will also affect minority rights and general human rights, as well as the position of the mass media and a number of other aspects of political and social life now in the focus of attention of the European public opinion.

It is certain that the next, 42nd regular meeting⁶ of the Commission will pay full attention to

changes and developments on the Croatian political scene. This will be an excellent opportunity for Croatia to present its new, more democratic and more European, face to its partners. Of course, nobody expects new Croatia to fulfil all its obligations and repay old debts to Europe (and to itself and its citizens in the first place!) at once, but obviously it should not miss this opportunity to demonstrate its resolve to move quickly in this direction. The presence of the new Croatian Justice Minister, the President of the Constitutional Court, or even the Foreign Minister at the Commission's forthcoming meeting would underscore that resolve.

The Council of Europe and its Democracy through Law Commission can give valuable help to the Croatian authorities as they prepare to catch the train for Europe. This may benefit the newly elected Parliament, the executive branch (the Government and the Ministry of Justice in the first place), and the judiciary (primarily the newly appointed Constitutional Court). The opinions and suggestions of the Commission's independent, impartial and highly professional experts may prove invaluable at every stage of drafting and adoption of important new legislation – from the new (or amended) Constitution, through the Constitutional Law on the Constitutional Court, the Constitutional Law on Minority Rights, to the new Electoral Law.

After that, with luck, comes the legislation preparing Croatia for accession to the European Union. ■

NOTES

1. The Statute was adopted as an appendix to Resolution (90) 6.
2. Thus, for instance, Canada, Japan, the United States, Argentina and Uruguay have the status of observers in the Commission.
3. The United Kingdom remained outside the Commission until very recently. Now it has acceded to the enlarged agreement

- and is in the process of nominating its member to the Commission.
4. See Publication no. 15 entitled The protection of fundamental rights by the constitutional court, Brioni, Croatia, 23-25 September 1995 (in English and Russian).
5. Resolution 1185, dated 29 April 1999.
6. To be held in Venice, 30 March - 1 April 2000.