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INVENTARIO

1. ARTICLES

**THE VENICE COMMISSION OF THE COUNCIL OF EUROPE
FROM ADVISORY BODY**

TO ACTOR IN THE DEFENCE OF THE RULE OF LAW AND DEMOCRACY (1990-2022)

by **Thomas Markert**, Strasbourg

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I. Introduction

The European Commission for Democracy through Law, better known as the Venice Commission, has gained steadily increasing importance since its foundation in 1990. In many states, especially in Central and Eastern Europe, it has considerable influence on the development of the constitution and the legislation. At the international level, the EU in particular uses its expert opinions to justify legal requirements addressed not only to candidate countries but also to third countries and member states. The Commission has contributed decisively to the further development of constitutional justice and maintains close contacts with constitutional courts from all over the world.

A comprehensive account of the history and activities of the Commission is lacking so far, although a considerable number of articles on specific topics have been published, in particular in a *Festschrift* for the 30th anniversary of the Commission.¹

II. Establishment, mandate and functioning of the Commission**1. Establishment and status of the Commission**

At the beginning of the Commission there was one man and one idea: Antonio La Pergola, one of the most renowned professors of constitutional law in Italy and a former President of the Italian Constitutional Court with excellent international contacts, saw the need to strengthen and institutionalise international cooperation in the field of constitutional law. The Council of Europe seemed to him the appropriate organisation to host a forum of constitutional lawyers. In 1988, in his capacity as Italian Minister of State for European Affairs, he proposed to the then Secretary General of the Council of Europe, Marcelino Oreja, one of his former students, that such a forum be established within the Council of Europe.²

This proposal was received with great reluctance by the member states of the Council of Europe and proposals to establish a commission on democracy through law failed several times in the Committee of Ministers, which at that time was composed of the representatives of the 23 Western European democracies. Constitutional law appeared to many states to be too sensitive and too strongly

linked to national sovereignty to make interference by an international body appear desirable. States such as the Netherlands and the United Kingdom were afraid that they would be pressured by such a commission to establish a constitutional court.

However, the Italian Foreign Minister Gianni de Michelis, a Venetian, supported La Pergola's initiative. Italy organised two conferences in 1989 and 1990 with the participation of European ministers of justice and foreign affairs, which advocated the establishment of a commission for democracy through law within the framework of the Council of Europe. The decisive factor was that, with the fall of the Iron Curtain, the need for a European advisory body in the field of constitutional law became obvious.

As a result, on 10 May 1990, the representatives of 18 states³ adopted Resolution (90)6 of the Committee of Ministers of the Council of Europe "on a Partial Agreement Establishing the European Commission for Democracy through Law".⁴ This establishment as a Partial Agreement meant that not all member states of the Council of Europe automatically became members of the Commission, but only the interested states. Non-member states of the Council of Europe could become associate members or observers at the invitation of the Committee of Ministers. It was explicitly stated that the Commission could cooperate with Council of Europe member states and with non-member states, especially in Central and Eastern Europe.

Germany joined the Partial Agreement a few weeks later, the other member states of the Council of Europe, which expanded greatly in the 1990s, in the following years. The European Union participated in the work of the Commission from the beginning. By 2002 all member states of the Council of Europe had become members of the Commission.

Thereupon, the Committee of Ministers of the Council of Europe adopted Resolution (2002)3 which transformed the Partial Agreement into an Enlarged Agreement and to which a revised Statute of the Commission is appended. This meant that from now on all member states of the Council of Europe are automatically members of the

* Thomas Markert started working for the Venice Commission in 1992. From 2010 until his retirement in 2020 he was the head of the Secretariat of the Commission.

¹ S. Granata-Menghini / Z. Tanyar (eds.), *Venice Commission – Thirty Years of Quest for Democracy through Law 1990-2020*, 2020.

² The most detailed description of the founding phase of the Commission is G. Buquicchio, "Vingt ans avec Antonio La Pergola pour le développement de la démocratie", in: P. van Dijk / S. Granata-Menghini (eds.), *Liber amicorum Antonio La Pergola*, 2008, pp. 29 ff.

³ Austria, Belgium, Cyprus, Denmark, Finland, France, Greece, Ireland, Italy, Luxembourg, Malta, Norway, Portugal, San Marino, Spain, Sweden, Switzerland and Turkey.

⁴ The common name Venice Commission is based on the fact that the Commission holds its four annual plenary sessions in Venice.