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EUROPEAN COMMISSION FOR DEMOCRACY THROUGH LAW
(VENICE COMMISSION)

**COMPILATION OF VENICE COMMISSION
OPINIONS AND REPORTS
RELATING TO QUALIFIED MAJORITIES AND ANTI-DEADLOCK
MECHANISMS**

**IN RELATION TO THE ELECTION BY PARLIAMENT OF
CONSTITUTIONAL COURT JUDGES, PROSECUTORS GENERAL,
MEMBERS OF SUPREME JUDICIAL AND PROSECUTORIAL
COUNCILS AND THE OMBUDSMAN**

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I. INTRODUCTION

The present document is a compilation of extracts taken from opinions and reports/studies adopted by the Venice Commission on issues concerning thresholds. The aim of this compilation is to give an overview of the doctrine of the Venice Commission in this field.

This compilation is intended to serve as a source of references for drafters of constitutions and of legislation relating to elections, researchers as well as the Venice Commission's members, who are requested to prepare comments and opinions on such texts. However, it should not prevent members from introducing new points of view or diverge from earlier ones, if there is good reason for doing so. The present document merely provides a frame of reference.

This compilation is structured in a thematic manner in order to facilitate access to the topics dealt with by the Venice Commission over the years.

The compilation is not a static document and will continue to be regularly updated with extracts of newly adopted opinions or reports/studies by the Venice Commission.

Each opinion referred to in the present document relates to a specific country and any recommendation made has to be seen in the specific constitutional context of that country. This is not to say that such recommendation cannot be of relevance for other systems as well.

Both the brief extracts from opinions and reports/studies presented here must be seen in the context of the original text adopted by the Venice Commission from which it has been taken. Each citation therefore has a reference that sets out its exact position in the opinion or report/study (paragraph number, page number for older opinions), which allows the reader to find it in the corresponding opinion or report/study.

The Venice Commission's position on a given topic may change or develop over time as new opinions are prepared and new experiences acquired. Therefore, in order to have a full understanding of the Venice Commission's position, it would be important to read the entire Compilation under a particular theme. Please kindly inform the Venice Commission's Secretariat if you think that a quote is missing, superfluous or filed under an incorrect heading (venice@coe.int).

II. GENERAL

"Institutions that cannot function do not fulfil their constitutional purpose and give bad name to democracy. So it is crucial to have anti-deadlock mechanisms.

Thus, the Commission stressed the importance of providing for qualified majorities, but warned about the risk of stalemates and recommended to devise effective and solid anti-deadlock mechanisms, giving some examples of possible options.

The Commission has previously underlined that qualified majorities strengthen the position of the parliamentary minority, by giving them the negative power to block decisions: "Parliamentary rules on qualified majority [...] constitute an instrument that may effectively and legitimately protect opposition and minority interests, both when it comes to procedural participation, powers of supervision and certain particularly important decisions. At the same time, this is an instrument that restricts the power of the democratically elected majority, and which should therefore be used with care, and tailored specifically to the national constitutional and political context."

The Commission also found that “the more formal rights and competences the opposition (minority) is given within a constitutional and parliamentary system, the greater the responsibility of the same opposition not to misuse these powers, but to conduct their opposition in a way loyal to the basic system and the idea of legitimate and efficient democratic majority rule. This however, is not an issue that can be legally regulated, or perceived as any form of formal “responsibility”, but is rather to be seen as a political and moral obligation.”

Anti-deadlock mechanisms have to discourage the opposition from behaving irresponsibly but should not create opportunities for the majority by impossible proposals to lead to the necessity for the application of such mechanisms. This is why they should be limited in time and, while avoiding permanent blockages they should not aim at avoiding any blockage at all, which can be an expression of the need for political change.”

[CDL-AD\(2018\)015](#), Opinion on the draft law on amendments to the Law on the Judicial Council and Judges of Montenegro, §§11-15.

“It is true that boycott of parliament by the opposition may frustrate the very intention to provide protection to the opposition itself and lead to the paralysis or dysfunction of the state institutions. The Venice Commission has previously expressed the view that “In principle, the opposition should express its views in the parliament and a boycott is justified only exceptionally.” The Commission nevertheless considered that for processes such as the amendment of the Constitution which require the broadest political support, “even if the ruling coalition has the necessary number of votes in the Parliament to pass the amendments, it does not absolve the Government from conducting a genuine all-inclusive debate”.

One thing is ruling the country in government – which is the job of the majority elected by the people – another thing is changing the fundamental principles of the Constitution which requires the broadest support of a wide number of social and political actors from the majority and the opposition alike. The same can be said in relation to all safeguards procedures and institutions, included the Judicial Council. In a Constitutional state, democracy cannot be reduced to the rule of the majority, but encompasses as well guarantee measures for the opposition.

The Venice Commission is of the view that difficulty of reaching a qualified majority and the ensuing risk of paralysis or dysfunction of an institution – in particular “safeguard institutions” - should not lead to abandon the requirement of a qualified majority but rather to devise tailor-made, effective deadlock-breaking mechanisms. A balance needs to be found between the superior state interest of the preservation of the functioning of the institutions and the democratic exigency that these institutions should be balanced and should not be merely dominated by the ruling majority. In other words, the supreme state interest lies in the preservation of the institutions of the democratic state.”

[CDL-AD\(2018\)015](#), Opinion on the draft law on amendments to the Law on the Judicial Council and Judges of Montenegro, §§17-19.

III. CONSTITUTIONAL COURT JUDGES

“The Venice Commission indeed regularly recommends establishing mechanisms which help to ensure a balanced composition of constitutional courts. In its 1997 Report, the Commission explained what it means by pluralism: “Constitutional justice must, by its composition, guarantee independence with regard to different interest groups and contribute towards the establishment of a body of jurisprudence which is mindful of this pluralism.” Here, the emphasis is on the independence of the judges and their respect for pluralism, not their “representation” of party interests.

[CDL-AD\(2016\)001](#), Opinion on amendments to the Act of 25 June 2015 on the Constitutional Tribunal of Poland, § 116.

“A system in which all judges of the Court are elected by parliament on the proposal of the President “does not secure a balanced composition of the Court”. In particular, “if the President is coming from one of the majority parties, it is therefore likely that all judges of the Court will be favourable to the majority. An election of all judges of the Court by parliament would at least require a qualified majority”. The Venice Commission has also pointed out that it would be preferable to leave the election of the President to the Court itself.”

[CDL-AD\(2011\)010](#) Opinion on the draft amendments to the Constitution of Montenegro, as well as on the draft amendments to the law on Courts, the law on State’s Prosecutor Office and the law on the Judicial Council of Montenegro, paragraph 27.

“Under the present Constitution, the judges of the Constitutional Court are elected and dismissed by parliament on the proposal of the President of the Republic, without any qualified majority, for a renewable term. In this respect, the Venice Commission had previously stated that this manner of election seriously undermined the independence of the constitutional court in that it did not secure a balanced composition of the court, and was not in line with international standards. The Venice Commission had therefore recommended that, if constitutional judges were to be elected by parliament, their election should be made by a two-third majority with a mechanism against deadlocks, and that the mandate of the constitutional judges should be non-renewable (CDL-AD(2007)047, §§ 122,123; CDL-AD(2012)024, § 35). The Commission had also stated that while the “parliament-only” model provides for high democratic legitimacy, appointment of the constitutional judges by different state institutions has the advantage of shielding the appointment of a part of the members from political actors (CDL-AD(2012)009, § 8).

Draft Article 153 provides for appointment and dismissal of constitutional judges by parliament on the proposal of the President of Montenegro (two candidates) and of the relevant committee of parliament (five candidates) by a two-thirds majority. The qualified majority requirement is welcome, as it has been strongly recommended by the Venice Commission.

As an anti-deadlock mechanism, a second-round of voting is proposed with two options: either a) by the majority of all MPs or b) by a three-fifths majority. The Venice Commission finds that the second option is clearly preferable, as the first option would provide no incentive for the majority to reach a compromise with the minority and would therefore leave room for the election of five members all belonging to the ruling parties.”

[CDL-AD\(2013\)028](#) Opinion on the draft amendments to three constitutional provisions relating to the Constitutional Court, the Supreme State Prosecutor and the Judicial Council of Montenegro, paragraphs 21-23.

“Article 6 puts into effect the new constitutional rules dealing with the selection and election of constitutional judges. The President of Montenegro and the “responsible working body of the Parliament” (together referred to as “the proposers”) issue a public call for the selection of candidates. [...] The same person may be elected President or judge of the Constitutional Court only once. In the first voting in the Parliament, a Constitutional Court judge is elected by a two-thirds majority vote, and in the second voting by a three-fifths majority vote of all deputies. The President of the Constitutional Court is elected by the judges of the Constitutional Court from among their own number.

This mechanism guarantees good transparency and enhances public trust in the Constitutional Court but it could be further improved. The objective of the 2013 constitutional amendments was to ensure a balanced composition of the Constitutional Court. Therefore it is recommended

that the Law on the Constitutional Court explicitly regulate the composition of the “competent working body of the Parliament” such that the representatives of all political parties are represented therein.”

[CDL-AD\(2014\)033](#) Opinion on the Draft Law on the Constitutional Court of Montenegro, paragraph 12-16.

“Pursuant to Article 10.3 of the draft Law, the Constitutional Court shall notify the proposer that nominated a judge for election six months before the expiry of the term of office of the judge or before the fulfillment of the conditions for receiving an old-age pension. In accordance with Article 154 of the Constitution, the draft Law regulates the reasons and procedure for the termination of judicial office (Articles 10-12), however, it does not regulate what the consequences are if a nominated candidate is not elected even in a repeated vote. In order to avoid a situation in which judicial positions are vacant due to the fact that new judges have not been elected, the law should explicitly provide that upon the expiry of the term for which a Constitutional Court judge has been elected, s/he continues to perform his/her office until the new judge takes up office.”

[CDL-AD\(2014\)033](#), Opinion on the Draft Law on the Constitutional Court of Montenegro, § 20

“It is most important to ensure that after the end of office of a judge, the position does not remain vacant for a prolonged period. In a few countries in Europe, Parliament was indeed very late with the appointment of new judges and in one case, the Court was in-operational for more than a year and a half because the number of remaining judges had fallen below the quorum. Therefore, Article 10 should provide that judges remain in office until their successor takes up office. A number of countries have specific provisions to this effect (e.g. Latvia, Russia, Slovenia, Spain). The Working Group argued that such a provision would be unconstitutional because it would effectively prolong the term of office of a judge to more than the nine years specified in the Constitution. This could be argued as concerns the judges whose term of office ends but this should not be an obstacle for those judges who retire for reason of age because their nine year term has not yet ended.”

[CDL-AD\(2008\)030](#), Opinion on the Draft Law on the Constitutional Court of Montenegro , § 25

“However, it has to be ensured that the governmental majority cannot alone elect the judges. Various means are available in order to ensure this. The most frequent is a high qualified majority, e.g. two thirds. The idea is that both majority and opposition will propose highly qualified candidates which are acceptable for the other side. Admittedly, this can lead to a trade-off, both side accepting also less qualified candidates in exchange for acceptance of their own less qualified candidates. In some countries, the political culture is not developed enough to allow for compromise between majority and opposition and it is very hard to reach a two thirds majority. Anti-blocking measures can be introduced, like nominations of new candidates by neutral bodies, following several unsuccessful votes in Parliament.”

[CDL-AD\(2015\)037-e](#), First Opinion on the Draft Amendments to the Constitution (Chapters 1 to 7 and 10) of the Republic of Armenia, § 162

“The changing of the composition of a Constitutional Court and the procedure for appointing judges to the Constitutional Court are among the most important and sensitive questions of constitutional adjudication and for the preservation of a credible system of the rule of constitutional law. It is necessary to ensure both the independence of the judges of the Constitutional Court and to involve different state organs and political forces into the appointment process so that the judges are seen as being more than the instrument of one or the other political force. This is the reason why, for example, the German Law on the Constitutional Court (the *Bundesverfassungsgerichtsgesetz*) provides for a procedure of electing

the judges by a two-third majority in Parliament. This requirement is designed to ensure the agreement of the opposition party to any candidate for the position of a judge at the Constitutional Court. The German experience with this rule is very satisfactory. Much of the general respect which the German Constitutional Court enjoys is due to the broad-based appointment procedure for judges.

It would be advisable if the draft would provide for the inclusion of a broad political spectrum in the nominating procedure. So far, neither the Constitution nor the Law on the Constitutional Court provide for a qualified majority for the appointment of the two judges elected by Parliament.”

[CDL-AD\(2004\)043](#) Opinion on the Proposal to Amend the Constitution of the Republic of Moldova (introduction of the individual complaint to the constitutional court), paragraphs 18-19.

“Especially due to the fact that Parliament elects the judges with a simple majority, the procedure before the election has to be as transparent as possible in order to ensure a high professional level of the judges.”

[CDL-AD\(2008\)030](#) Opinion on the Draft Law on the Constitutional Court of Montenegro, paragraph 19.

“A qualified majority should be required in all rounds of voting in the election of members of the Court.”

[CDL-AD\(2011\)040](#) Opinion on the law on the establishment and rules of procedure of the Constitutional Court of Turkey, paragraph 24.

“Article 148 does not provide that the 6 members appointed by the Verkhovna Rada are elected with a qualified majority. This possibility should be taken into consideration by the Ukrainian Constitutional Commission¹⁵, as in Ukraine the President is not a politically neutral institution, and there could therefore arise a situation in which twelve judges are chosen by the same political majority, with no say of the opposition. The Venice Commission is nonetheless conscious of the difficulty of obtaining a qualified majority in the current political context in Ukraine.”

[CDL-AD\(2015\)027](#) Opinion on the proposed amendments to the Constitution of Ukraine regarding the judiciary as approved by the Constitutional Commission on 4 September 2015, paragraph 25.

“Another issue in comparative terms is the majority required for the election of the judges. While in the Slovak Republic and some other countries the judges are elected by a simple majority in Parliament, an election of constitutional judges by qualified majority allows depoliticisation of the process of the judges’ election, because it requires that the opposition also has a significant position in the selection process. It is true that a qualified majority can lead to a stalemate between majority and opposition but this can be overcome through specific anti-deadlock mechanisms.

From a comparative perspective, the Venice Commission recommends considering the introduction of a qualified majority for the election of the candidates for the position of Constitutional Court judges in the Slovak Republic together with appropriate anti-deadlock mechanisms.”

[CDL-AD\(2016\)001-e](#)(Opinion on Questions Relating to the Appointment of Judges of the Constitutional Court of Slovak Republic, paragraphs 58-59.

“..., the election of three constitutional judges by the Parliament with the ordinary majority (compare Article 125 with Article 78 p. 1 of the Constitution) deserves attention. In the European

constitutional experience, the election by parliament of constitutional judges is often supported by the requirement of a qualified majority in view of ensuring a choice shared by a pluralistic support of political parties, and not by the majority only. This is particularly important when the President and the Parliament are of the same political color and may appoint 2/3rds of judges synchronically. In normal circumstances this risk is not very high, given the transitional provisions on the gradual replacement of the sitting CC judges (see Article 179 p. 1)...”

[CDL-AD\(2016\)009](#), Final Opinion on the Revised Draft Constitutional Amendments on the Judiciary of Albania, paragraph 37.

“Admittedly, it can be difficult to reach a qualified two-thirds majority and this may on occasion lead to deadlock, particularly where there is no culture of sufficient democratic compromise among the political forces. In order to avoid such situations, “anti-deadlock mechanisms”, should be introduced, such as, for example, a lowering of the required majority to three-fifths following the third unsuccessful vote, and/or the nomination of candidates by other neutral bodies after several unsuccessful votes.”

[CDL-AD\(2015\)024](#), Opinion on the Draft Institutional Law on the Constitutional Court of Tunisia, paragraph 21.

“Three judges of the Constitutional Court (9 judges in total) shall be elected by a majority of the total members of Parliament. It would be advisable if the draft would provide for the inclusion of a broad political spectrum in the nominating procedure. It is recommended to provide for a qualified majority for the appointment of the three judges elected by Parliament. A suitable dead-lock breaking mechanism could also be introduced in the appointment procedure of constitutional judges by the Parliament. The procedure before the election has to be as transparent as possible in order to ensure a high professional level of the constitutional judges”

[CDL-AD\(2017\)013](#), Opinion on the draft revised Constitution of Georgia, paragraph 74.

“While it is obviously not a good moment, under the present circumstances, to discuss reform of the Constitution and possible amendments, the Venice Commission nonetheless recommends that the Constitution be amended in the long run to introduce a qualified majority for the election of the Constitutional Tribunal judges by the Sejm, combined with an effective anti-deadlock mechanism.

A valid alternative would be to introduce a system by which a third of the judges of the Constitutional Tribunal are each appointed / elected by three State powers – the President of Poland, Parliament and the Judiciary. Of course, even in such a system, it would be important for the parliamentary component to be elected by a qualified majority.

[CDL-AD\(2016\)001](#), Opinion on amendments to the Act of 25 June 2015 on the Constitutional Tribunal of Poland, § 140, 141.

IV. PROSECUTOR GENERAL

“No single, categorical principle can be formulated as to who - the president or Parliament - should appoint the Prosecutor General in a situation when he is not subordinated to the Government.[...] Advice on the professional qualification of candidates should be taken from relevant persons such as representatives of the legal community (including prosecutors) and of civil society.

In countries where the prosecutor general is elected by Parliament, the obvious danger of a politicisation of the appointment process could also be reduced by providing for the preparation

of the election by a parliamentary committee, which should take into account the advice of experts. The use of a qualified majority for the election of a Prosecutor General could be seen as a mechanism to achieve consensus on such appointments. [...]"

[CDL-AD\(2010\)040](#), Report on European Standards as regards the Independence of the Judicial System: Part II - the Prosecution Service, §§35-38, 40

"Where it exists, the composition of a Prosecutorial Council should include prosecutors from all levels but also other actors like lawyers or legal academics. If members of such a council were elected by Parliament, preferably this should be done by qualified majority. If prosecutorial and judicial councils are a single body, it should be ensured that judges and prosecutors cannot outvote the other group in each other's' appointment and disciplinary proceedings [...]. [...]"

[CDL-AD\(2010\)040](#), Report on European Standards as regards the Independence of the Judicial System: Part II - the Prosecution Service, §66

"Under Section 22.2.a ASPGPOPEPC the Prosecutor General will, after the expiry of his or her mandate, continue to exercise his powers until the beginning of the mandate of the new Prosecutor General.

There is, however, a transition problem when the mandate of the Prosecutor General expires. Section 22.2.a ASPGPOPEPC means that 1/3 plus one member of Parliament can effectively keep him or her in office by blocking the election of a new Prosecutor General and they could thus extend his or her mandate indefinitely. It is not clear to what extent this question was considered in detail when the Fundamental Law and the ASPGPOPEPC were passed. However, the Fundamental Law lays down a long mandate of nine years of service for the Prosecutor General and it would seem unacceptable that a minority of the members of Parliament can in fact keep him or her in office indefinitely by creating a deadlock in the election of a successor.

There may be various solutions. One possibility may be to prescribe a deadline - in the Fundamental Law or the ASPGPOPEPC - within which Parliament must have elected a new Prosecutor General. Another solution might be simply to repeal Section 22.2.a ASPGPOPEPC, so that the mandate of the Prosecutor General automatically expires after the termination of his or her mandate. Both solutions of course create the problem that there may be a period without a formally elected Prosecutor General but this may put the necessary pressure on Parliament to elect the successor. What needs to be avoided as well is that the same blocking 1/3 minority can indefinitely extend an interim period under the Deputy Prosecutor General, who was appointed by the outgoing Prosecutor General."

[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, §§55, 57, and 59

"According to Article 65(2) of the draft revised Constitution, the Prosecutor General is elected for a six years term by a majority of the total members of the Parliament. The requirement of a qualified majority in Parliament for the election of the Prosecutor General is recommended."

[CDL-AD\(2017\)013](#), Opinion on the draft revised Constitution of Georgia, §83

"The revised Draft Amendments provide for the positions of the High Justice Inspector (HJI) and Prosecutor General (PG). These office-holders cannot be elected through a proportionate system. There is no single model for their election; at the same time, it seems desirable that such important appointments should attract a high degree of consensus, and (if this is attainable) without compromising on the qualities of the successful candidate. However, it is

difficult to see a principled argument for requiring a 2/3rds majority rather than a 3/5ths – again, this is more a political than a legal question.”

[CDL-AD\(2016\)009](#), Final Opinion on the revised draft constitutional amendments on the Judiciary (15 January 2016) of Albania, §21

[...] [T]he system of subjecting the prosecution to political control is not in contrast with European standards. [...] [T]he appointment of the Supreme State Prosecutor by parliament can be deemed acceptable, but it would have been necessary to require a qualified majority. [...]

[CDL-AD\(2007\)047](#), Opinion on the Constitution of Montenegro, §§108-109

V. MEMBERS OF THE PROSECUTORIAL COUNCIL

“Where it exists, the composition of a Prosecutorial Council should include prosecutors from all levels but also other actors like lawyers or legal academics. If members of such a council were elected by Parliament, preferably this should be done by qualified majority. If prosecutorial and judicial councils are a single body, it should be ensured that judges and prosecutors cannot outvote the other group in each other’s’ appointment and disciplinary proceedings [...]. [...]”

[CDL-AD\(2010\)040](#), Report on European Standards as regards the Independence of the Judicial System: Part II - the Prosecution Service, §66

[...] [A]ll members of the prosecutorial council [are] elected and dismissed by the parliament. No qualified majority is required. This [...] leaves the Council in the hands of the parliament majority; this, coupled with the appointment and dismissal of all prosecutors by parliament with no qualified majority, makes the prosecutorial system [...] too vulnerable to political pressure and jeopardises the possibility for the prosecutorial functions to be carried out in an independent manner according to the principle of legality.”

[CDL-AD\(2007\)047](#), Opinion on the Constitution of Montenegro, §§110-111

[...] [A]ll members of the prosecutorial council are appointed and dismissed by parliament with no qualified majority. The prosecutorial system [...] is therefore totally under the control of the ruling party or parties: [t]his is not in conformity with European standards.”

[CDL-AD\(2007\)047](#), Opinion on the Constitution of Montenegro, §104; See also CDL-AD(2008)005, Opinion on the Draft Amendments to the Law on the State Prosecutor of Montenegro, §13

“In addition, an anti-deadlock mechanism should be foreseen for the election of the eminent lawyers, e.g. a three-fifth majority for subsequent voting, as provided for in Article 91 of the Constitution for the election of the lay members of the Judicial Council, or the proposal of a higher number of candidates and the election with the absolute majority of the components of the Parliament, or the election by Parliament using a proportional system, or to transfer of the power to elect to university faculties and lawyers’ representatives.”

[CDL-AD\(2014\)042](#), Interim Opinion on the Draft Law on the State Prosecution Office of Montenegro, §49; See also CDL-AD(2015)003, Final Opinion on the revised draft Law on the public Prosecution Office of Montenegro, §23

[...] [U]nder the Draft Law the politicisation of the Council is somehow reduced by the fact that two out of the four members elected by the Parliament come from civil society and not from the ranks of MPs. However, these candidates still have to obtain the approval of the governing

majority (see Article 81 par 2 (d)) which may predetermine their position for the entire period of their service. In order to make those persons less dependent on the will of the ruling majority, it is necessary to put in place additional guarantees, applied both at the stages of nomination and of election of candidates.

First of all, the nomination of members of civil society and academia (Article 81 par 2 (d)) should be done in a transparent manner, with the selection process following clear rules and criteria, which should be set out in the Draft Law. A range of options could be considered here. One possibility (the simplest option) is for certain office holders to gain membership of the Council automatically, e.g. the head of a law faculty, or the President of the Bar Association may become ex officio members of the Prosecutorial Council without being elected by Parliament.

Additionally, a possible option would be to appoint one or more members of the judiciary to the Prosecutorial Council. Judges could bring their own practical expertise in the criminal justice system to the work of the Council, and would also help enhance the independence of this body, and thereby the public's trust in the Council's work. A range of possible judges could be considered for this position, including chairpersons of certain courts (e.g. the Supreme Court, the Tbilisi city court and/or regional courts).

An alternative solution, which is closer to the scheme proposed by the Draft Law, would be to give the nominating power to one or several independent bodies outside of the Ministry of Justice or the Prosecutorial Council, such as the High Council of Justice, the Bar Association, or a body representing law universities and academic institutions. In this process, consideration should be given to the need to achieve proper gender balance amongst the candidates. The nominating power may also be given to certain well-established NGOs, which will increase transparency of the Prosecutorial Council and public trust in its autonomy. In cases where the power to nominate candidate would belong to external actors, the Parliament should still retain the power to approve or not approve them.

At the same time, if there are too many nominating bodies, and, as a result, too many candidates, it might be useful to establish a parliamentary committee composed of an equal number of representatives of all parties represented in Parliament. The role of such committee would be to pre-select a certain number of candidates and propose them to the Parliament for elections. It is important to ensure the plurality of candidates at this stage: the Parliament should have at least two or ideally three candidates for each vacant position to choose from.

At the stage of elections by the Parliament it is important to ensure that the resulting composition of the four Council members elected by the Parliament is not politically monolithic. To achieve this, two alternative solutions may be considered: election by a qualified majority or the introduction of quotas for the opposition.

The most radical solution would be to require that at least two out of the four members elected by Parliament are elected by qualified majority (one member representing the Parliament, and one member representing civil society). This would ensure that at least two members of the Council are elected as the result of a compromise, which would somehow counterbalance those two members whose election depends more on the support of the ruling majority, and the fact that the Minister of Justice sits on the Council ex officio.

Since such a qualified majority may be hard to achieve in the current political context in Georgia, an alternative solution is also possible: the Draft Law might introduce quotas for members appointed by opposition parties. This means that opposition parties should have the right to appoint at least one member of the Council, regardless of their number of seats in Parliament. Given the current relative strength of the opposition in the Georgian Parliament, the opposition might even be given two seats out of four: one for an MP and one for a

representative of civil society whom the opposition wishes to nominate. Whichever solution is chosen, the parliamentary majority would still control more seats in the Prosecutorial Council, due to the participation of the Minister of Justice, but its decisive influence within the Council would be reduced and the Council would become more politically balanced; in order to pass important decisions or to block them, candidates chosen by the parliamentary majority would need to obtain support of those elected by qualified majority or appointed by the opposition, or those members which are elected by the Conference of Prosecutors.”

[CDL-AD\(2015\)039](#), Joint Opinion of the Venice Commission, the Consultative Council of European Prosecutors (CCPE) and OSCE Office for Democratic Institutions and Human Rights (OSCE/ODIHR), on the draft Amendments to the Law on the Prosecutor's Office of Georgia, §§45-52

“Regarding the civil society members of the SCP, it could be useful to specify, in the light of their relevance to the functioning of the criminal justice system, the most relevant sectors that they should come from (the bar, human rights NGOs etc.) and their suitable legal training/experience. In addition, their appointment by the Parliament seems problematic if the goal is really to have a Council free of political influence. If this system is maintained, one option could be to establish a committee within Parliament, on which all parties are represented equally, to deal, according to a transparent procedure, with the issue of appointment of civil society members. Another solution could be to provide for their appointment by representatives of their profession - Lawyers' Union, assembly of university senates, etc.”

[CDL-AD\(2015\)005-e](#) - Joint Opinion on the draft Law on the Prosecution Service of the Republic of Moldova, adopted by the Venice Commission at its 102nd Plenary Session (Venice, 20-21 March 2015) § 132

VI. MEMBERS OF THE JUDICIAL COUNCIL

“The participation of the legislative branch in the composition of such an authority is characteristic. “In a system guided by democratic principles, it seems reasonable that the Council of Justice should be linked to the representation of the will of the people, as expressed by Parliament.” In general, the legislative bodies are entitled to elect part of the members of the high judicial councils among legal professionals, however in some systems members of parliament themselves are members of the judicial council. However, there are also systems where the appointment of judges is in the hands of the executive, and Members of Parliament are excluded from membership of the Judicial Council.

However, in order to insulate the judicial council from politics its members should not be active members of parliament. The Venice Commission is also strongly in favour of the depolitisation of such bodies by providing for a qualified majority for the election of its parliamentary component.¹⁸ This should ensure that a governmental majority cannot fill vacant posts with its followers. A compromise has to be sought with the opposition, which is more likely to bring about a balanced and professional composition.”

[CDL-AD\(2007\)028-e](#), Report on Judicial Appointments, §§ 31, 32

“The participation of lay members is essential for the functioning of the Judicial Council, as the Judicial Council is a “mixed body” meant to ensure the independence of the judiciary without separating or detaching it from the other branches of government. Lay members are necessary in order to avoid the risk that the Judicial Council become a self-regulatory body of the judiciary and for this reason in Montenegro its President is elected from among the lay members (Article 127 of the Constitution), the “President convenes and chairs the meetings of the Judicial

Council (Article 25 LJCJ) and the disciplinary panels must be chaired by one of the lay members (Article 114 LJCJ).”

[CDL-AD\(2018\)015](#), Opinion on the draft law on amendments to the Law on the Judicial Council and Judges of Montenegro, § 22

“The Venice Commission in principle supports the prolongation of the term of office of members of the Judicial Council as a tool to preserve the functioning the democratic institutions of the state. As stated by the government of Montenegro in the statement of reasons, the operation of the Judicial Council is crucial to guarantee the independence of the judiciary; this is an essential element of the Rule of Law. Such prolongation may also function as an anti-deadlock mechanism.”

[CDL-AD\(2018\)015](#), Opinion on the draft law on amendments to the Law on the Judicial Council and Judges of Montenegro, § 25

“The three constitutional provisions under consideration all contain alternative proposals insofar as the manner of election is concerned, and specifically as regards the anti-deadlock mechanisms.

The Venice Commission has repeatedly stressed the importance of providing for anti-deadlock mechanisms in order to ensure the functioning of the state institutions.

Qualified majorities aim to ensure that a broad agreement is found in parliament, as they require the majority to seek a compromise with the minority. For this reason, qualified majorities are normally required in the most sensitive areas, notably in the elections of office-holders in state institutions. However, there is a risk that the requirement to reach a qualified majority may lead to a stalemate, which, if not addressed adequately and in time, may lead to a paralysis of the relevant institutions. An anti-deadlock mechanism aims to avoid such stalemate. However, the primary function of the anti-deadlock mechanism is precisely that of making the original procedure work, by pushing both the majority and the minority to find a compromise in order to avoid the anti-deadlock mechanism. Indeed, qualified majorities strengthen the position of the parliamentary minority, while anti-deadlock mechanisms correct the balance back. Obviously, such mechanisms should not act as a disincentive to reaching agreement on the basis of a qualified majority in the first instance. It may assist the process of encouraging agreement if the anti-deadlock mechanism is one which is unattractive both to the majority and the minority.

The Venice Commission is aware of the difficulty of designing appropriate and effective anti-deadlock mechanisms, for which there is no single model. One option is to provide for different, decreasing majorities in subsequent rounds of voting, but this has the drawback that the majority may not seek a consensus in the first round knowing that in subsequent rounds their candidate will prevail. Other, perhaps preferable, solutions include the use of proportional methods of voting, having recourse to the involvement of different institutional actors or establishing new relations between state institutions. Each state has to devise its own formula.”

[CDL-AD\(2013\)028](#) Opinion on the draft amendments to three constitutional provisions relating to the Constitutional Court, the Supreme State Prosecutor and the Judicial Council of Montenegro, paragraphs 5-8.

“In the view of the Venice Commission, entrusting the Parliament with the power to elect all the four lay members of the Judicial Council with a qualified majority is in keeping with the fundamental function of the Judicial Council to avoid both the risk of politicization and the risk of corporatist and self-perpetuating government of the judiciary. The three-fifths majority in the second round as provided for in the alternative b) seems to be an appropriate solution, also in order to compensate for the removal of the power to appoint two lay members of the President

of the Republic, as is provided in Article 127 of the present Constitution. On the contrary, alternative a) providing for the majority of all MPs in the second round of voting does not represent an acceptable solution, as it would act as a disincentive for the majority to reach an agreement in the first round of voting.”

[CDL-AD\(2013\)028](#) - Opinion on the Draft Amendments to three Constitutional Provisions relating to the Constitutional Court, the Supreme State Prosecutor and the Judicial Council of Montenegro, § 12

“The Venice Commission considers that the same result could be achieved in line with Article 127 by providing, should the new lay members not be timely elected by parliament, that only the lay members sitting on the old Judicial Council will sit on the new one as acting lay members, preferably for a limited period of time. This alternative solution would enable the new members who have already been appointed to start sitting on the new Judicial Council, which would provide the latter with more legitimacy than allowing all the members of the expired Council to continue to operate even if for example the new judicial members have been duly elected. This solution also appears like a logical follow up to the possibility, introduced by the draft amendments, for parliament to appoint fewer than all the four members at the same time (see below).

In order to ensure compatibility with Article 18 LJ CJ, which provides that “a member of the Judicial Council from among the judges or eminent lawyers may be re-appointed as a member of the Judicial Council after the expiry of four years from the termination of the previous mandate in the Judicial Council”, it would be useful to specify in this provision that sitting on the new Judicial Council as acting lay member pending the appointment of the new lay members by parliament does not amount to a re-appointment.

As regards the prolongation of the mandate of the President of the Judicial Council, it would seem more acceptable from the viewpoint of legitimacy if the members of the new Judicial Council could elect a new temporary President from among the (acting) lay members: while it is possible that the former President will be re-elected, the choice belongs to the members of the new Council. When the new lay members are appointed by parliament and the Judicial Council gets to a full composition, a new President will be elected. This seems to be the preferable solution even if on the new Judicial Council sit some newly elected Reputable Lawyers and some acting ones (see below).

[CDL-AD\(2018\)015](#), Opinion on the draft law on amendments to the Law on the Judicial Council and Judges of Montenegro, § 28-30

“[...] [T]he Venice Commission recommends that the authorities consider election of the lay members of the JC by a qualified majority in the Parliament. In its Report on Judicial Appointments the Venice Commission emphasised that it is ‘strongly in favour of the [depoliticisation] of [Judicial Councils] by providing for a qualified majority for the election of its parliamentary component’ (§ 32). At the same time the Venice Commission is mindful of the fact that requiring a too high number of votes from the non-majority MPs may lead to a political stalemate, where few people would be able to block elections of lay members to the JC.”

[CDL-AD\(2014\)026](#), Opinion on the seven amendments to the Constitution of “the former Yugoslav Republic of Macedonia” concerning, in particular, the judicial Council, the competence of the Constitutional Court and special financial zones, §67

“[...] [T]he delegation reiterated the proposal of the Commission to have the parliamentary component of the Council elected with a qualified majority. This would make sure that this component reflected the composition of the political forces in Parliament and would effectively make it impossible that the majority in Parliament fills all positions with its own candidates as it had been the case in the past.”

[CDL-AD\(2003\)012](#), Memorandum: Reform of the Judicial System in Bulgaria, §15 ; See also CDL-AD(2003)016, Opinion on the Constitutional Amendments reforming the Judicial System in Bulgaria, §25 ; See also CDL-AD(2008)006, Opinion on the Draft Law on the High Judicial Council of the Republic of Serbia, §§19, 21 ; see also CDL-AD(2008)009, Opinion on the Constitution of Bulgaria, §25

“[...] [A] solution should therefore be found ensuring that the opposition also has some influence on the composition of the Council. One possibility would be to require a two-thirds (as in Spain) or three-fourths majority for the election of members by Parliament, another to provide that one of the two lawyer members should be designated by the parliamentary opposition. In any case, the presence of members nominated by the opposition but elected by parliament should be ensured while taking procedural safeguards against the risk of a stalemate.”

[CDL-INF\(1998\)009](#), Opinion on recent amendments to the law on major constitutional provisions of the Republic of Albania, §19

“The Venice Commission is of the opinion that elections from the parliamentary component should be by a two-thirds qualified majority, with a mechanism against possible deadlocks or by some proportional method which ensures that the opposition has an influence on the composition of the Council. It is a matter for the Georgian authorities to decide which solution is appropriate, but the anti-deadlock mechanism should not act as a disincentive to reaching agreement on the basis of a qualified majority in the first instance.”

[CDL-AD\(2013\)007](#), Opinion on the Draft Amendments to the Organic Law on Courts of General Jurisdiction of Georgia, §§52-53

“Article 11d of the Draft Act describes what happens if a 3/5th majority cannot be reached. In this case a second round of election is held, in which candidates are elected “by a roll call” (§ 1). Under Article § 2, each MP has one vote, and may vote only for one candidate. Under § 3, “candidates who have received the highest number of votes shall be deemed to have been elected”, and each MP may vote “for” or “against” a candidate, or abstain. In the case of a tie, a candidate who received fewer votes “against” will be elected.

The system of voting in the second round is not entirely clear.¹⁵ The requirement of a qualified majority in the first round of elections encourages the ruling majority and the opposition to find a compromise and select more neutral figures to serve on the NCJ. This mechanism, however, would not be effective if in the second round candidates supported only by the ruling party may be elected by a simple majority of votes.”

[CDL-AD\(2017\)031](#), Poland - Opinion on the Draft Act amending the Act on the National Council of the Judiciary; on the Draft Act amending the Act on the Supreme Court, proposed by the President of Poland, and on the Act on the Organisation of Ordinary Courts, §§21,22

“ [According to Article 95.7 of the Constitution, the Council has three components: “[t]he Council of Judges, the parliamentary majority and the parliamentary opposition correspondingly shall elect one third of the composition of the Council on selection of judges”. Article 95.7 of the Constitution also provides that “[t]he Council on selection of judges is composed of judges and representatives of the civil society”, but does not determine the distribution of judges and representatives of the civil society for each of the three components. Even under the current Constitution, it seems possible to achieve a composition with a substantial part of the members of the Council being judges, even if not all of them would be elected by their peers. To that end, the draft Law could provide that the majority and the opposition elect also some judges to the Council.] [...]

Article 5.3 sets out that the members of the Council who are proposed by the majority and the opposition of Parliament are to be elected separately at the meeting of the fractions. However, this mechanism can be used only when the majority and the opposition are composed of a

single fraction or parliamentary group. In practice, the majority and opposition each will often be composed of more than one fraction. The Council's members should be elected at separate meetings of the deputies from majority and opposition. In order to avoid a blocking of the process (especially by the opposition) within these meetings, the draft Law should establish a low quorum or even no quorum at all."

[CDL-AD\(2011\)019](#) Opinion on the draft law on the council for the selection of judges of Kyrgyzstan adopted by the Venice Commission at its 87th Plenary Session (Venice, 17-18 June 2011)

"When commenting on the Bulgarian Supreme Judicial Council in its previous opinions, the Venice Commission has already pointed out that the system in place for the election of the "parliamentary" component of the SJC (11 members of the Supreme Judicial Council elected by the National Assembly by simple majority) was giving rise to a risk of politicisation of this body and has repeatedly recommended its revision. Already in 2002, the Commission had stressed that "[t]he composition of the Supreme Council of Justice should be depoliticised by providing for a qualified majority for the election of its members."

In spite of the above-mentioned recommendations of the Venice Commission, and notwithstanding the conclusions of its general reports on the judiciary, the current Draft amendments do not address the issue of the majority, which implies that the present voting rule remains unchanged. The Bulgarian Constitution actually does not contain any provision for the required majority to elect the SJC members; hence, it is assumed that this majority, both in Parliament and in the General Meetings of the Judges, Prosecutors and Investigating Magistrates is to be understood as a simple majority. In concrete terms, this means that the party or the coalition of government parties having the majority in the National Assembly are in a position to elect by themselves (as already happened in the past), all eleven SJC members from the "parliamentary quota".

In the Explanatory Note to the Draft amendment (see p. 3), the drafters however express their view that "a high degree of consensus amongst the political forces should be sought at the selection of members of the Supreme Judicial Council from the Parliament quota." The Venice Commission recommends taking up this view and enforcing it by introducing a requirement for a qualified majority such as, for example, a two-thirds majority, as it is already the case, under current Article 132a (paragraphs 2 and 3), for the Chief Inspector and the inspectors of the inspectorate to the SJC.

The issue of the number of judges or prosecutors members of the SJC Chambers elected by their peers would be of less weight, if the election by the National Assembly would be linked to a qualified majority; this would allow for a larger base of consensus on the persons to be elected, even if some retain that a qualified majority requirement, in the present configuration of the Bulgarian parliament, could lead to a series of bargains in order to reach agreement or could result in a deadlock situation. In the ideal case such "bargains" lead to the election of truly independent candidates as should be the case in a mature democracy. In the event of "political horse-trading", at least the candidates of the majority and opposition will "even out" political influence.

The delegation of the Venice Commission was informed about difficulties to achieve a qualified majority in the Bulgarian Parliament. The Commission acknowledges that the political context can lead to serious problems in this respect. However, it should be possible to overcome these difficulties through carefully designed anti-deadlock mechanisms, which are conducive to achieve consensus.

A simple system would be, for instance, a three-fifth majority requirement after three voting rounds, followed, if needed, by the absolute majority of the members of the National Assembly. More complex systems could be devised, including for instance involving the intervention of the

President of the Republic or proposals for candidates from neutral bodies. The Venice Commission welcomes the openness noted during the Rapporteurs' visit to Sofia, among some interlocutors, including during talks at the National Assembly, with regard to the recommendation to introduce a qualified majority requirement. The Commission is ready to work with the Bulgarian authorities on developing such anti-deadlock systems.”

[CDL-AD\(2015\)022-e](#) - Opinion on the draft Act to amend and supplement the Constitution (in the field of the Judiciary) of the Republic of Bulgaria, adopted by the Venice Commission at its 104th Plenary Session (Venice, 23-24 October 2015), §§ 46-51

“Under Article 19b, lay members are elected by a majority of 2/3rd of the MPs. This is a welcome approach, in line with the previous Venice Commission recommendations. The Venice Commission has recommended several anti-deadlock mechanisms in case this majority cannot be reached. The Commission has also proposed to work with the Bulgarian authorities to develop some other anti-deadlock mechanisms. This proposal remains valid. [...]”

[CDL-AD\(2017\)018-e](#) - Bulgaria - Opinion on the Judicial System Act, adopted by the Venice Commission at its 112th Plenary Session (Venice, 6-7 October 2017) § 16

VII. OMBUDSMAN

“Article 10 of the Law provides that the Ombudsman «shall be appointed and dismissed by the House of Representatives and the House of Peoples following a joint proposal by the competent body of the House of Representatives and the House of Peoples. The competent body shall adopt the proposal by a majority of two thirds of its members».

The Working Group's preliminary draft provided for a two-thirds majority at all stages of the appointment procedure, i.e. in the competent joint committee, in the House of Representatives and in the House of Peoples. As indicated by the Working Group in its final report on the Ombudsman institutions in Bosnia and Herzegovina, the provisions in the draft laws regarding the composition and the appointment of Ombudsman «are intended to ensure the broadest possible consensus on the persons concerned. This is the only way of making the institution's impartiality an objective fact, recognisable in the eyes of all citizens» (CDL-INF(99)10). The appointment of the Ombudsman as provided for in Article 10 of the Law, i.e. by a simple majority of members present in the two Houses, seems to be inadequate. Simple majority does not require a broad consensus of all tendencies in the Houses and appointment of Ombudsman without such a consensus may compromise the institution's credibility.»

The Working Group would therefore recommend that the Law be amended in such a way as to require for the appointment of the Ombudsman a two thirds majority in both Houses.”

[CDL-INF\(2001\)007](#) (English only) – Memorandum on the Organic Law on the Institution of the Ombudsman of the Federation of Bosnia and Herzegovina , approved by the Venice Commission at its 46th Plenary Meeting (Venice, 9- 10 March 2001), §2

“The Commission welcomes the new provision in Article 2 par. 1 that «The Ombudsman shall be elected by 83 votes of the deputies of the Milli Mejlis of the Republic of Azerbaijan of three candidates proposed by the President of the Republic». The election by the increased majority in the Parliament will certainly strengthen the Ombudsman's impartiality, independence and legitimacy. This is a very positive change compared to the provision of the first draft, which stated that «the Ombudsman shall be appointed by the Milli Mejlis of the Republic of Azerbaijan following a recommendation of the President of the Republic of Azerbaijan». The proposal to also involve other persons (such as academics and/or judges of the highest judicial authorities)

in the selection of persons proposed for the office of Ombudsman to the Milli Mejlis has not been retained.”

[CDL\(2001\)083](#) - Consolidated Opinion On the Law on Ombudsman in the Republic of Azerbaijan (Strasbourg, 7 September 2001), §8 (see CDL(2001)PV 47, §6)

“Election of the candidate by a 2/3 majority would be a better solution than a 3/5 majority provided by the existing law and by the constitutional amendments. Indeed, in the previous opinion on the Defender the Venice Commission welcomed the election of the Defender by a 3/5 majority, by contrast with the previously existing system; however, the question remains whether 3/5 represents “qualified majority of votes sufficiently large as to imply support from parties outside government”, required by p. 7.3 of the PACE Recommendation 1615 (2003). The Venice Commission also draws attention to CDL-PI(2015)015rev where it recommended to the Armenian authorities to consider the election of the Defender by a two- third majority (§ 192). In addition to that, the ideal of “nearly-consensual” election of the Defender would better be served by ensuring personal voting in the Parliament instead of voting “by delegation.

Furthermore, an anti-deadlock mechanism should be put in place for situations where a candidate does not obtain the necessary qualified majority of votes in the Parliament. The purpose of such mechanism would be “to create incentives for both the majority and the opposition in Parliament to find a reasonable compromise (or, rather, to create disincentives to prevent situations where they are not capable of finding a compromise).”

[CDL-AD\(2015\)017](#) - Opinion on the Law on the People's Advocate (Ombudsman) of the Republic of Moldova, adopted by the Venice Commission at its 103rd Plenary Meeting (Venice, 19-20 June 2015), §§48,49;

“ It would be preferable to have the ombudsperson appointed and dismissed by a qualified majority in Parliament....» [...]”

Article 3 provides for the appointment of the ombudsperson by the National Assembly by simple majority. However, a broad consensus for the choice of the ombudsperson is important in order to ensure public trust in the independence of the ombudsperson. Consequently, a qualified majority in Parliament for the appointment of the ombudsperson is appropriate (2/3 or 3/5 of votes cast). If existing constitutional provisions render the fulfilment of such requirement impossible, other possibilities should be explored, which would allow to come to the same result. However, such modalities would have to be safeguarded on the level of law.”

[CDL-AD\(2004\)041](#) - Joint Opinion on the Draft Law on the Ombudsman of Serbia by the Venice Commission, the Commissioner for Human Rights and the Directorate General of Human Rights of the Council of Europe.(Strasbourg, 6 December 2004), §§8.1,11

“As a final matter under this head, it is to be noted that according to the above general standards, the normative text regulating the status and functions of the Ombudsman for Human Rights should be embodied in legislation of the national parliament, and the person of the Ombudsman should be elected by the parliament by a majority large enough to ensure a reasonable consensus, i.e. by a qualified majority of all members.»

[CDL-AD\(2007\)020](#) - Opinion on the possible reform of the Ombudsman Institution in Kazakhstan adopted by the Venice Commission at its 71st Plenary Session (Venice, 1-2 June 2007), §11

«The Venice Commission acknowledges that, in the particular context of BiH, the decision-making in parliament, which can be subject to multiple vetoes, is extremely difficult to achieve. Introducing a qualified majority requirement would create additional difficulties and further complicate the procedure, notably in the appointment of the Ombudspersons. In the light of these considerations, the Commission believes that it belongs to the authorities of BiH to

assess whether a qualified majority rule may be successfully introduced and implemented or, from a more pragmatic perspective, a joint decision of the two Houses could serve as a sufficient guarantee for the “broad consensus” needed both to appoint an Ombudsman or to decide on the early termination of his/her mandate. »

[CDL-AD\(2015\)034](#) - Opinion on the Draft Law on Ombudsman for Human Rights of Bosnia and Herzegovina, adopted by the Venice Commission at its 104th Plenary Session (Venice, 23-24 October 2015), §63

«The election of the Ombudsman (Article 91a(1)) should require a qualified majority to provide the office with a politically and socially broad base.»

[CDL-AD\(2008\)009](#) – Opinion on the Constitution of Bulgaria adopted by the Venice Commission at its 74th Plenary Session (Venice, 14-15 March 2008), §81; see also

“According to Article 8(2) of the Law, in order to be elected as People’s Advocate, a candidate is required to get the majority of votes in the Parliament. This provision is not in line with the European standards. Recommendation 1615(2003) requires “qualified majority of votes sufficiently large as to imply support from parties outside government.” Also, the Venice Commission has repeatedly stressed that the election of an Ombudsman by a broad consensus in the Parliament would certainly strengthen the Ombudsman’s impartiality, independence and legitimacy and contribute to the public trust in the institution. Article 8.2 should therefore be amended in such a way as to require for the appointment of the People’s Advocate a qualified majority in the Parliament. This may require a constitutional amendment. »

[CDL-AD\(2015\)017](#) - Opinion on the Law on the People's Advocate (Ombudsman) of the Republic of Moldova, adopted by the Venice Commission at its 103rd Plenary Meeting (Venice, 19-20 June 2015), §50

“More in general, the fact that Article 6.2 allows for the election of the Peoples Advocate by simple majority after one unsuccessful vote by a qualified majority, makes it too easy to overcome the requirement of the qualified majority. The governmental majority could simply obstruct the first vote in order to be able to have its candidate accepted by simple majority in the second vote. It is therefore recommended that at least three failed votes should be necessary before reverting to a simple majority. Attempts to negotiate a ‘ticket’ of the candidates with most of the votes could be made obligatory (allowing one to become the People’s Advocate and the other to become Deputy).”

[CDL-AD\(2007\)024](#) - Opinion on the Draft Law on the People's Advocate of Kosovo* adopted by the Venice Commission at its 71st Plenary Meeting, (Venice, 1-2 June 2007) , § 32

“In its 2015 Joint Opinion, the Venice Commission questioned whether a 3/5th majority of the total number of deputies would indeed provide the Defender with sufficient support from parties outside the Government. It is not hard to imagine a parliamentary context in which one political party or a coalition of parties controls 3/5th of the votes in the National Assembly. It should be remembered that a key criterion of PACE Recommendation 1615 (2003) on Ombudsman Institutions is not a qualified majority in itself, but the requirement of support for the Defender among parties, including those outside the Government. A qualified majority is only a means to achieve wide political support for the Defender, and the majority requirement in the draft constitutional law should be aligned to the specific parliamentary system of Armenia. This would ensure a broader consensus, and thus consolidate the impartiality of the institution. In the same vein, the First Opinion on the Draft Amendments to the Constitution also recommended that “as the broadest possible consensus on the person elected should be ensured, the election by a two-third majority should be considered”. However, as this recommendation was not followed, Article 12.2 now corresponds to Article 192.1 of the new

Constitution, making it difficult to change this provision without having to amend the Constitution.

It should be pointed out that a qualified-majority requirement increases the risk of a parliamentary deadlock in the election of the Defender. However, Article 138 of the new Constitution (Temporary Appointment of Officials) only provides a provisional remedy to this problem. Article 138 applies to a broad range of public officials and notably provides that should a 3/5th majority not be reached, then the President of the Republic of Armenia appoints a Human Rights Defender ad interim until the procedure is repeated and a Defender is elected. This can of course not be considered a viable solution if repeated elections also fail.”

[CDL-AD\(2016\)033-e](#) - Armenia - Opinion on the draft Constitutional Law on the Human Rights Defender, adopted by the Venice Commission at its 109th Session (Venice, 9-10 December 2016), §§ 35-36