

VENICE COMMISSION NEWSLETTER

No. 03/2022

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COUNCIL OF EUROPE



CONSEIL DE L'EUROPE

I. RECENT NOMINATIONS AND DEVELOPMENTS



MEMBERSHIP



CZECH REPUBLIC – REAPPOINTED:

- **Ms Veronika BÍLKOVÁ**
Lecturer, Law Faculty, Charles University
- **Mr Tomáš LANGÁŠEK** (Substitute member)
Judge, Supreme Administrative Court

RECENT DEVELOPMENTS (1/2)

NEW KINDS OF OPINIONS

Following a meeting of the Commission's Bureau on 22 November, a new kind of opinions - **the Follow-up Opinions** - will be prepared when a country or the body which had requested an opinion further requests the Commission's assessment of the legal text revised in the light of the Commission's recommendations. These follow up opinions will only assess the compliance of the revised text with the Commission's previous recommendations and, as a norm, will not require country visits.

Three such opinions (on Serbia, Moldova and Kosovo) will be submitted to the Plenary for adoption in December.

VOLUNTARY CONTRIBUTIONS

The Commission has received a voluntary contribution of **€62,500 from Sweden**.

MONTENEGRO



Montenegro is undergoing a very deep political and institutional crisis, resulting in particular in difficulties in the formation of a new government following the vote of no confidence in the previous one in August 2022. The President has vetoed a law amending the Law on the President as concerns the President's powers to nominate a Prime Minister designate and has sought an urgent opinion of the Venice Commission.

The Constitutional Court of Montenegro is not operational, as parliament has failed to elect the four missing judges by qualified majority. The Venice Commission President has issued a **public statement** urging the election of the four constitutional court judges with no further delay. Both the adoption of the law and the election of the constitutional court judges are on the agenda of the Montenegrin parliament for 12 December. The urgent opinion will be issued shortly and will be submitted to the Plenary for endorsement in December.

II. RECENT DEVELOPMENTS (2/2)



RECENT DEVELOPMENTS (2/2)

ROMANIA



On the basis of a request from the PACE Monitoring Committee, the Commission prepared an **urgent opinion** on three - then - draft Laws concerning the justice system of Romania.

In view of ongoing discussions on whether the EU would terminate its Mechanism for Cooperation and Verification (CVM) in respect of Romania, the Minister of Justice asked for this opinion to be dealt with under the urgent procedure.

The urgent opinion, issued on 18 November 2022, made several recommendations on how to further improve the three laws but it concluded that - on the whole - they seemed to be heading in the right direction.

Referring *inter alia* to the urgent opinion, the European Commission concluded in its CVM Progress Report of 22 November 2022 that the progress made was sufficient to meet Romania's EU accession commitments. Future cooperation and monitoring of the justice system and anti-corruption policies in Romania should be carried out under the Rule of Law Report and the Rule of Law Toolbox that apply to all member States.

SERBIA



An opinion on the two laws implementing the constitutional amendments as to the prosecutions service, as well as a follow-up opinion on the revised laws implementing the constitutional amendments as to the judiciary will be submitted to the Plenary in December. These draft opinions were requested by the Minister of Justice of Serbia. Another, more general, draft opinion on the functioning of the democratic institutions in Serbia, requested by the

Parliamentary Assembly of the Council of Europe and focusing on the electoral legislation and its implementation, will also be submitted to the Plenary in December.

UKRAINE



Cooperation with the Ukrainian authorities has resumed. On 23 November, the **urgent opinion** on the draft law amending procedure for selecting candidate judges of the Constitutional Court of Ukraine, requested on 10 October by the Speaker of the Verkhovna Rada was issued. The Verkhovna Rada is expected to adopt the law, revised following the Commission's recommendations, shortly.

Work on the Law of Ukraine on the prevention of threats to national security, associated with excessive influence of persons having significant economic or political weight in public life (oligarchs) has resumed. More information on the timeframe will be given at the next Plenary Session.

III. MAJOR DECISIONS OF THE OCTOBER 2022 PLENARY SESSION



The Venice Commission held its 132nd plenary session in Venice, at the Scuola Grande di San Giovanni Evangelista, on 21 - 22 October 2022, and adopted the following opinions on:

- the law on the creation and functioning of the Ombudsman of **Andorra**;
- constitutional reform in **Belarus** and its compliance with Council of Europe standards - final opinion;
- the draft amendments to the Judicial System Act concerning the Inspectorate to the Supreme Judicial Council of **Bulgaria**;
- the draft amendments to the Criminal Procedure Code and the Judicial System Act of **Bulgaria**;
- the draft constitutional law on the Commissioner for Human Rights of **Kazakhstan**
- the amendments to the Audiovisual Media Services Code and to some normative acts including the ban on symbols associated with and used in military aggression actions of the Republic of **Moldova**;
- the clarity of provisions on combating extremist activity - amicus curiae brief for the Constitutional Court of the Republic of **Moldova**;
- the draft law on the Supreme Court of Justice of the Republic of **Moldova** - jointly with the Directorate General of Human Rights and Rule of Law (DGI) of the Council of Europe;
- the draft electoral code of the Republic of **Moldova** - the joint opinion of the Venice Commission and OSCE/ODIHR ;
- relating to the offence of illicit enrichment - the joint with OSCE/ODIHR amicus curiae brief for the Constitutional Court of the Republic of **Moldova** ;
- the draft constitutional amendments concerning the electoral system of **Mexico**,
- three draft laws of **Serbia** implementing the constitutional amendments on the Judiciary,
- certain questions related to the election and discipline of the members of the High Council of Justice of **Ukraine** - the joint amicus curiae brief of the Venice Commission and the Directorate General of Human Rights and Rule of Law (DGI) of the Council of Europe for the Constitutional Court;

The Commission also adopted the comments on Recommendation 2235 (2022) of the Parliamentary Assembly of the Council of Europe: "Recent challenges to security in Europe: what role for the Council of Europe?", upon request by the Committee of Ministers of the Council of Europe.

- Endorsed the urgent opinions on:

- the Amendments to the Criminal Procedure Code adopted by the Parliament of **Georgia** on 7 June 2022, issued on 1 August 2022;
- the draft amendments to the Penal Code of **Türkiye** regarding the provision on "false or misleading information", issued on 7 October 2022;
- the draft law on local referendum in **Ukraine**, issued on 10 February 2022.

ALL THE DECISIONS OF THE OCTOBER 2022 PLENARY

IV. OPINIONS UNDER PREPARATION

(BY ORDER OF REGISTRATION)

1/2



- **1071/2021 - SERBIA - Opinion on the constitutional and legal framework governing the functioning of democratic institutions (electoral law and electoral administration)**

Request: Council of Europe, Monitoring Committee – 16/12/2021

Adoption: 12/2022

- **1101/2022 - ARMENIA – Joint Opinion on the Judicial Code**

Request: Minister of Justice – 25/08/2022

Adoption: 12/2022

- **1103/2022 - BOSNIA AND HERZEGOVINA – Amicus curiae brief on the functioning on the State Court**

Request: Constitutional Court, Head of Constitutional Case-Law Section – 13/09/2022

Adoption: postponed

- **1104/2022 - BOSNIA AND HERZEGOVINA – Opinion on the draft law on courts**

Request: Minister of Justice – 30/08/2022

Adoption: postponed

- **1105/2022 - ROMANIA – Urgent Opinion on the three laws concerning the justice system**

Request: PACE, Monitoring Committee – 12/09/2022

Publication: 18/11/2022

Endorsement: 12/2022

- **1106/2022 – SERBIA - Opinion on two draft laws implementing the Constitutional Amendments of the Prosecution Service**

Request: Minister of Justice – 12/09/2022

Adoption: 12/2022

- **1107/2022 – GEORGIA - Joint Opinion on draft amendments to the Election Code and to the Law on Political Associations of Citizens**

Request: Speaker of Parliament – 10/10/2022

Adoption: 12/2022

- **1108/2022 - ARMENIA – Amicus curiae brief on the non-conviction-based forfeiture of assets**

Request: President of the Constitutional Court – 12/09/2022

Adoption: 12/2022

- **1109/2022 – UKRAINE - Urgent opinion on improving the procedure for the selection of candidates for the position of judge of the Constitutional Court on a competitive basis**

Request: Speaker – 10/11/2022

Publication: 23/11/2022

Endorsement: 12/2022

IV. OPINIONS UNDER PREPARATION

(BY ORDER OF REGISTRATION)

2/2



- **1110/2022 - MONTENEGRO - Opinion on the draft amendments to the Law on the Judicial Council and Judges**

Request: Minister of Justice 11/10/2022

Adoption: 12/2022

- **1111/2022 - MONTENEGRO - Urgent Opinion on the amendments to the Law on the President of Montenegro**

Request: President – 09/11/2022

Publication: 09/12/2022

Endorsement: 12/2022

- **1112/2022 - SERBIA – Follow-up Opinion on three revised draft laws implementing the constitutional amendments on the judiciary**

Request: Minister of Justice - 15/11/2022

Adoption: 12/2022

- **1113/2022 - KOSOVO - Follow-up Opinion regarding the amendments on the draft law on the State Bureau for verification and compensation of unjustified assets**

Request: President of the Assembly of Kosovo -18/11/2022

Adoption: 12/2022

- **1114/2022 - REPUBLIC OF MOLDOVA - Joint Follow-up Opinion on the draft law on the Supreme Court of Justice**

Request: Minister of Justice - 11/11/2022

Adoption: 12/2022

- **1115/2022 – REPUBLIC OF MOLDOVA - *Amicus curiae* brief on the prohibition of political parties**

Request: President of the Constitutional Court ad interim - 17/11/2022

Adoption: 12/2022

V. ACTIVITIES (CO-)ORGANISED BY THE VENICE COMMISSION



- 25/10/2022 - Vilnius, LITHUANIA

„FROM THE NATIONAL CONSTITUTION TO THE TRANSNATIONAL CONSTITUTIONALISM“ - INTERNATIONAL CONFERENCE

The Constitutional Court of Lithuania in cooperation with the Venice Commission held an international conference on the occasion of the 100th anniversary of the Constitution of 1922 and the 30th anniversary of the Constitution of 1992 of the Republic of Lithuania.

[Learn more](#)

- 14-15/11/2022 - Strasbourg, FRANCE

19TH EMBS CONFERENCE “ARTIFICIAL INTELLIGENCE AND ELECTORAL INTEGRITY”

By linking the concepts of artificial intelligence and electoral integrity, the 19th EMBS Conference assessed:

- the impact of the use of AI systems in the organisation and conduct of electoral processes,
- the impact of the AI systems on the work of electoral administrations, and
- the lessons to be learned.

[More information here](#)



- 22-24/11/2022 - Rabat, MOROCCO

16TH UNIDEM SEMINAR "THE DIGITAL TRANSFORMATION OF PUBLIC ADMINISTRATION"

Around 70 international experts and senior public officials from the Southern Mediterranean (Egypt, Jordan, Morocco, Palestine* and Tunisia) were invited to present their experience and exchange views during the seminar.

[Learn more](#)

FORTHCOMING ACTIVITIES

- 8-9/12/2022 - Astana, KAZAKHSTAN

“ADVERSARIAL TRIAL AND EQUALITY OF ARMS IN CRIMINAL PROCEEDINGS” (HYBRID)

- 9/12/2022 - Astana, KAZAKHSTAN

“JUDICIAL REFORMS IN THE REPUBLIC OF KAZAKHSTAN” (HYBRID)

- 12/12/2022 - Budapest, HUNGARY

POST-ELECTION SEMINAR FOLLOWING THE 3 APRIL 2022 ELECTIONS (ONLINE)

VI. REPORTS AND STUDIES, COMPILATIONS AND PUBLICATIONS



REPORTS AND STUDIES

- **LEGAL FRAMEWORK AND PRACTICES OF EU MEMBER STATES DURING THE COVID-19 CRISIS – FINAL REPORT**
- **KEY PRINCIPLES OF DEMOCRACY IN UNION GOVERNANCE, IN PARTICULAR THE SEPARATION OF POWERS, ACCOUNTABILITY AND CHECKS AND BALANCE - STUDY**
- **FEDERALISM AND BICAMERALISM - STUDY**

COMPILATIONS

- **VETTING OF JUDGES AND PROSECUTORS**
- **CONSTITUTIONAL JUSTICE (UPDATE)**
- **PROTECTION OF NATIONAL MINORITIES (UPDATE)**

PUBLICATIONS



- **E-BULLETIN ON CONSTITUTIONAL CASE-LAW - [ISSUE 2022/1](#)**



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