



Strasbourg, 19 December 2022

**CDL-PI(2022)051**  
Or. Engl.

**EUROPEAN COMMISSION FOR DEMOCRACY THROUGH LAW**  
**(VENICE COMMISSION)**

**COMPILATION**

**OF VENICE COMMISSION OPINIONS AND REPORTS**

**CONCERNING**

**VETTING OF JUDGES AND PROSECUTORS<sup>1</sup>**

---

<sup>1</sup> *This document will be updated regularly. This version contains all relevant opinions and reports adopted up to and including the Venice Commission's 132<sup>nd</sup> Plenary Session (21-22 October 2022).*

**TABLE OF CONTENTS**

I.	Introduction .....	3
II.	Definition.....	3
III.	The Rule of Law .....	6
	A. Appointment of judges and prosecutors.....	6
	B. Independence of judges .....	6
	C. Separation of powers.....	8
	D. Proportionality .....	8
IV.	The competent vetting body (composition, role and competence) .....	9
V.	Pre-vetting of judges and prosecutors.....	14
VI.	Regular vetting .....	15
VII.	Extraordinary vetting.....	17
VIII.	Regulatory level.....	20
IX.	Time limits .....	20
X.	Procedural guarantees and the right to appeal.....	22
XI.	The effects and sanctions of the vetting procedure.....	26
	Appendix – List of opinions and reports quoted in the compilation .....	27

## I. Introduction

The present document is a compilation of extracts taken from opinions and reports/studies adopted by the Venice Commission on issues concerning vetting of judges and prosecutors. The scope of this compilation is to give an overview of the doctrine of the Venice Commission in this field. It does not cover vetting processes regarding State officials (including security services), Human Rights' Defenders or politicians, nor lustration of individuals or groups of individuals too closely related to the previous undemocratic regime to be considered trustworthy.

This compilation is intended to serve as a source of references for drafters of constitutions and of legislation relating to vetting of judges and prosecutors, 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.

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.

The Venice Commission's reports and studies quoted in this compilation seek to present general standards for all member and observer states of the Venice Commission. Recommendations made in the reports and studies will therefore be of a more general application, although the specificity of national/local situations is an important factor and should be taken into account adequately.

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](mailto:venice@coe.int)).

## II. Definition

15. Lustration means "cleansing", and it enables to "exclude persons who lack integrity (even judges) from public institutions".<sup>2</sup>

[CDL-AD\(2014\)044](#) Interim Opinion on the Law on Government Cleansing (Lustration Law) of Ukraine

---

<sup>2</sup> UN High Commissioner on Human Rights, Rule of law tools for post-conflict states, Vetting: an operational framework", UN, New York and Geneva, 2006.

40. Integrity checking and vetting procedures are not explicitly foreseen and regulated by any international instruments. They have however been dealt with, and commented upon, by soft law instruments and by case-law. Most comments relate to the classical lustration-type vetting, which seeks to remove from the public offices, individuals who had close ties to the previous non-democratic regimes and, as such, cannot be trusted to serve the new democratic regime or are found unworthy of representing such a regime.

[CDL-AD\(2018\)034](#) Albania - Opinion on Draft Constitutional Amendments Enabling the Vetting of Politicians

14. (...) In the opinion of the Venice Commission and of the Directorate General, a distinction should be made between the vetting of serving members and the “pre-vetting” of candidates to a position on these bodies. (...)

[CDL-AD\(2021\)046](#) Republic of Moldova - Joint Opinion of the Venice Commission and the Directorate General of Human Rights and Rule of Law (DGI) of the Council of Europe on some measures related to the selection of candidates for administrative positions in bodies of self-administration of judges and prosecutors and the amendment of some normative acts

9. Vetting of judges and prosecutors as examined in earlier VC opinions is a process of examining current office holders. The concept of vetting involves the implementation of a process of accountability mechanisms to ensure the highest professional standards of conduct and integrity in public office. Vetting can run parallel with both Integrity checking and the investigation of criminal wrongdoing but they each serve different purposes and have different procedural and legal features. A criminal investigation is initiated to ascertain whether a criminal offence has been committed, while integrity checks look at the risk or likelihood that improper conduct will happen in the future. Critically, the burden of proof and the standard of proof will often be different. Criminal investigations seek to establish a fact beyond reasonable doubt, meaning that the burden of proof shall fall on the State. In other investigations like wider integrity checking the burden of proof will be discharged on the balance of probability.

10. In a system of prior integrity checks, the decision not to recruit a candidate can be justified in case of mere doubt, on the basis of a risk assessment. However, the decision to negatively assess a current post holder should be linked to an indication of impropriety, for instance inexplicable wealth, even if it cannot be proven beyond doubt that this wealth does come from illegal sources.

11. It is very important that integrity checking be clearly separated from the assessment of the professional capacities of a judge, even if both processes can intervene during recruitment or an evaluation. A lack of professional capacities can possibly be remedied through training but it is clearly a reason not to recruit a person.

12. The UN Secretary General stated that “[v]etting usually entails a formal process for the identification and removal of individuals responsible for abuses, especially from police, prison services, the army and the judiciary.”

13. Integrity checking and vetting procedures are not explicitly regulated by international instruments. They have, however, been dealt with and commented upon, by soft law instruments and by case law.

14. The Venice Commission has dealt with three subcategories of national measures: (i) “pre-vetting” of candidates to a particular position; (ii) integrity checks which are conducted on a more regular basis (for example the obligation to submit annually an asset declaration); (iii) full-fledged vetting procedures.

15. While “pre-vetting” of candidates and integrity checks exercised through the evaluation of asset declarations are quite common and uncontroversial in principle, extraordinary vetting, as stressed by the Venice Commission, might only be justified in case of exceptional circumstances. In the case of Albania, the Commission based its recommendations on the assumption that the comprehensive vetting of the judiciary had wide political and public support within the country, that it was an extraordinary and a strictly temporary measure, and that this measure would not be advised to other countries where the problem of corruption within the judiciary did not reach that magnitude. Experience has shown that each case is different and needs to be assessed on its own merits.

16. Judicial independence is an integral part of the fundamental democratic principles of the separation of powers and the rule of law, and is guaranteed *inter alia* by Article 6 of the European Convention on Human Rights (ECHR) and also by Articles 4 and 31 and Chapter VII of the Constitution of Kosovo. According to international benchmarks, “independence means that the judiciary is free from external pressure, and is not subject to political influence or manipulation, in particular by the executive branch.” The vetting of judges, especially when carried out by an executive body, may constitute such an “external pressure”.

17. At the same time, it must be stressed that the preservation of the necessary authority of the judiciary requires that (a) the legal system puts in place adequate mechanisms to ensure that candidates are not appointed as a judge (or prosecutor) if they do not have the required competences, meet pre-determined eligibility criteria or do not meet the highest standards of integrity; and (b) ordinary means of disciplinary and criminal proceedings result in dismissals of those who are found to be incompetent, corrupt or linked to organised crime. This is not only essential in view of the role a judiciary plays in a state governed by the rule of law, but also because a judge – once appointed for life – will in principle be irremovable except for limited grounds for dismissal.

18. Vetting often involves an interference with the right to private life which is protected *inter alia* by Article 8 of the ECHR. According to the case-law of the European Court of Human Rights (ECtHR), the collection and storage of personal information by a government agency, as well as the transfer of data records between agencies, fall within the ambit of Article 8 ECHR. The Court has made it clear that a person who is dismissed, transferred etc. from public employment, can complain about a violation of Article 8 ECHR. Interference with the right to private life is only acceptable if it is covered by the limitations contained in Article 8 (2) ECHR and if it is proportionate to the aim pursued.

[CDL-AD\(2022\)011](#) Kosovo - Opinion on the Concept Paper on the Vetting of Judges and Prosecutors and draft amendments to the Constitution

50. The evaluation/vetting process described in the drafts may by no means be equalled with the disciplinary proceedings. As the Venice Commission has noted previously, “[e]valuation and disciplinary liability are (or should be) two very different things.” Disciplinary liability requires a disciplinary offence. A negative performance, which leads to a negative overall result of an evaluation, can also originate from other factors than a disciplinary offence. Therefore, a proposal that negative overall evaluation results should lead to the instigation of disciplinary proceedings raises problems. At the same time, the Venice Commission has admitted that there can be established a proper system in which information about errors or misconduct of judges - including those discovered during an evaluation process - can be assessed and transferred to a disciplinary procedure.

[CDL-AD\(2022\)024](#) Republic of Moldova - Joint opinion of the Venice Commission and the Directorate General of Human Rights and Rule of Law (DGI) of the Council of Europe on the draft law on the Supreme Court of Justice

### III. The Rule of Law

#### A. Appointment of judges and prosecutors

34. In addition, in Section IV of the draft Law on PPO [Public Prosecutor's Office] (...), there are very detailed provisions on the procedure for taking up the position of public prosecutor, but the provision in Article 23 seems to indicate that this procedure does not apply to the appointment of the Prosecutor General (this would also seem unlikely). If this is correct, there seem to be no criteria for the appointment of a Prosecutor General and no procedure for the technical vetting of candidates for suitability. There is no procedure whereby a candidate may apply to be considered for the position, which appears to be left entirely in the hands of the President to nominate and Parliament to approve. If this were so, it would seem doubtful whether European standards are met. This should be clarified.

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

119. There is also no provision in the Draft Law for some form of technical vetting as to the suitability of candidates for appointment to the post of the Prosecutor General, which was already noted as being the subject of a recommendation of the Venice Commission regarding a previous draft law. As has been indicated there, such a procedure - which is not inconsistent with the terms of Article 122 of the Constitution - is essential to ensure that the President and the *Verkhovna Rada* are properly informed as to the qualities of candidates before respectively nominating and approving the appointment of a particular individual. **Article 41 should be amended to provide that an advisory body, possibly the High Qualifications and Disciplinary Commission of Public Prosecutors, give non-binding advice on the candidates before the President and the *Verkhovna Rada* take their decision.**

[CDL-AD\(2013\)025](#) Joint Opinion on the Draft Law on the Public Prosecutor's Office of Ukraine

20. In the Venice Commission's view, the reform of the appointment process is essential to the reform of the Constitutional Court generally. It was a missed opportunity to not include this in the current law. (...)

25. (...) the Commission recommends implementing - possibly in separate legislation - its recommendation from the urgent Opinion CDL-AD(2020)029 to establish, a screening body with an international component for Constitutional Court candidates.

[CDL-AD\(2021\)006](#) Ukraine - Opinion on the draft law on Constitutional Procedure (draft law no. 4533) and alternative draft law on the procedure for consideration of cases and execution of judgements of the Constitutional Court (draft law no. 4533 -1)

#### B. Independence of judges

107. (...) To the extent that the re-evaluation is a general measure, applied equally to all judges, decided at the constitutional level, and accompanied by certain procedural safeguards and not related to any specific case a judge might have before him/her, the Venice Commission does not see how this measure may be interpreted as affecting the judge's independence to an extent incompatible with Article 6 [of the European Convention of Human

Rights]. This does not, however, exclude the possibility that the vetting procedure might on a particular occasion be abused in order to influence the judge's position in a particular case: if such allegations were proven, this might require the reopening of that particular case since the judge would not be an "independent tribunal".

[CDL-AD\(2015\)045](#) Albania - Interim Opinion on the Draft Constitutional Amendments of the Judiciary

35. (...) Further, from the point of view of the independence of the judiciary, the Constitutional Court could also consider the importance to ensure, during the proficiency assessment (Articles 40-44 of the Vetting Law), that the legal opinions expressed by judges and/or prosecutors, which may simply be considered as "incorrect" by the evaluators, do not become the ground for negative result. It is essential that negative evaluation follows only in cases of fundamental and serious errors and/or when there is clear and consistent pattern of erroneous judgements that indicate lack of proficiency.

[CDL-AD\(2016\)036](#) Albania - Amicus Curiae Brief for the Constitutional Court on the Law of the Transitional Re-evaluation of Judges and Prosecutors (The Vetting Law)

37. According to Article 96(4) of the Constitution, the Prime Minister may overrule the JAC [Judicial Appointments Committee] by appointing a person who has not passed the vetting (either because s/he did not ask to be vetted or because the person did not pass the vetting). In this case, the Prime Minister has to make a statement in the House of Representatives about his decision, explaining the reasons for overriding the decision of the JAC. This has not happened since 2016, however.

43. In conclusion, the constitutional amendments 2016, which introduced the JAC, were a step in the right direction, but fall short of ensuring judicial independence. Further steps are required. The principle of independence of the judiciary requires that the selection of judges and magistrates be made upon merit and any undue political influence should be excluded. The Prime Minister should not have the power to influence the appointment of Justices and Judges-Magistrates. This would open the door to potential political influence, which is not compatible with modern notions of independence of the judiciary.

[CDL-AD\(2018\)028](#) Malta - Opinion on Constitutional arrangements and separation of powers and the independence of the judiciary and law enforcement

43. It appears that the current draft law is not focused exclusively on implementing the reform of the Supreme Court, but rather it combines such a reform plan aimed at replacing the existing Supreme Court by a new court having a different jurisdiction/function and fewer judges, with a *vetting process*. This amalgamation between the reform of the Supreme Court and the vetting process is particularly evident as the criteria which shall be used by the Evaluation Board/Committee are not only aimed at evaluating the skills of sitting judges in view of the new jurisdiction/function of the Supreme Court, but they also concern an "integrity" and "lifestyle" assessment (...).

44. This is a problematic combination as it is unclear what the real justification for the interference with the principle of irremovability of the judges is. As the draft law is focused on the method of evaluation of existing judges by reference to integrity and performance and not primarily on the new role of the Supreme Court of Justice, the scheme is essentially a vetting process to vet all existing judges of the Supreme Court.

[CDL-AD\(2019\)020](#) Republic of Moldova - Interim Joint Opinion of the Venice Commission and the Directorate of Human Rights (DHR) of the Directorate General of

Human Rights and Rule of Law (DGI) of the Council of Europe on the Draft Law on the Reform of the Supreme Court of Justice and the Prosecutor's Office

36. In both alternatives, the Prime Minister and the Cabinet would not be substantively involved in the appointment of judges and magistrates. This is very welcome. In any case, Article 96(4) of the Constitution, according to which the Prime Minister may overrule the JAC by appointing a person who has not passed the vetting, should be abolished.

[CDL-AD\(2020\)006](#) Malta - Opinion on proposed legislative changes

### **C. Separation of powers**

28. (...) If the process of vetting is conducted or controlled by the executive, the entire process of vetting may be compromised. Therefore, it is important to ensure that the involvement of the executive, in law and in practice, is limited to the extent that is strictly necessary for the effective functioning of the vetting bodies.

[CDL-AD\(2016\)036](#) Albania - *Amicus Curiae* Brief for the Constitutional Court on the Law of the Transitional Re-evaluation of Judges and Prosecutors (The Vetting Law)

53. As to procedural rules and guarantees, no such rules can be found in the draft Law. According to Article 5 of the Final Provisions, the procedure for the selection of judges to the cassation courts within the Supreme Court is to be approved by the newly formed HQCJ in agreement with the HCJ. In the absence of provisions in the Law, the newly formed HQCJ and the HCJ have complete discretion on this procedure.

54. This raises important issues of the rule of law (absence of legal certainty) and the separation of powers, given that the body adopting both criteria and the procedure also applies them in individual cases. This would even allow for *ad hoc* procedural rules to be adopted for a specific set of evaluations of judges. This may lead to arbitrariness in the evaluations.

[CDL-AD\(2019\)027](#) Ukraine - Opinion on Amendments to the Legal Framework Governing the Supreme Court and Judicial Governance Bodies

16. Furthermore, the fact that the integrity checks will be carried out not by the self-governing bodies of the judiciary and procuracy themselves, but rather by an external body to be constituted by Moldova's "development partners" and parliamentary majority and minority requires that the utmost consideration be given to respecting the constitutional principles of separation of powers and checks and balances.

[CDL-AD\(2021\)046](#) Republic of Moldova - Joint Opinion of the Venice Commission and the Directorate General of Human Rights and Rule of Law (DGI) of the Council of Europe on some measures related to the selection of candidates for administrative positions in bodies of self-administration of judges and prosecutors and the amendment of some normative acts

### **D. Proportionality**

52. With regard to the extraordinary measures to vet judges and prosecutors, the Venice Commission remains of the opinion that such measures are not only justified but are necessary for Albania to protect itself from the scourge of corruption which, if not addressed, could completely destroy its judicial system.

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



59. A vetting of the current members of the HCJ by the Ethics Council according to the criteria of professional ethics and integrity can be considered acceptable only as a one-time, exceptional measure. The participation of an international component in the Ethics Council is a necessary guarantee for such an exceptional measure in Ukraine, which establishes a balance between the independence of the members of the HCJ and the necessity to ensure their integrity. In line with the principle of proportionality, current members should not be excluded from the HCJ for minor infringements.

[CDL-AD\(2021\)018](#) Ukraine - Urgent joint opinion of the Venice Commission and the Directorate General of Human Rights and the Rule of Law (DGI) of the Council of Europe on the draft law on amendments to certain legislative acts concerning the procedure for electing (appointing) members of the High Council of Justice (HCJ) and the activities of disciplinary inspectors of the HCJ (Draft law no. 5068)

29. (...) In this context, the implementation of a system of integrity checks should always be strictly in line with the principle of proportionality. Breaches of professional conduct cover a wide range of actions ranging from minor offences to serious misconduct giving rise (potentially) to disciplinary sanctions. This is not to say that breaches of the professional standards may not be of considerable relevance where there has been misconduct sufficient to justify and require disciplinary sanction. However, minor offences should not provide, in the opinion of the Venice Commission and of the Directorate General, a valid ground to reject a candidate.

[CDL-AD\(2021\)046](#) Republic of Moldova - Joint Opinion of the Venice Commission and the Directorate General of Human Rights and Rule of Law (DGI) of the Council of Europe on some measures related to the selection of candidates for administrative positions in bodies of self-administration of judges and prosecutors and the amendment of some normative acts

20. In the view of the Venice Commission, strengthening and improving the already existing mechanisms – e.g., as regards the transparency/accessibility of asset declarations which according to some of the rapporteurs' interlocutors was unsatisfactory, and the initiation of disciplinary proceedings – would seem clearly preferable as a more proportionate avenue of reform. Consequently, the Commission recommends that the Croatian authorities reconsider their approach to prescribe periodic security vetting of all judges and that they develop an alternative strategy to ensure judges' integrity, based on other existing mechanisms.

[CDL-AD\(2022\)005](#) Croatia - Opinion on the Introduction of the Procedure of Renewal of Security Vetting Through Amendments to the Courts Act

#### **IV. The competent vetting body (composition, role and competence)**

58. Following the Interim Opinion the provisions regarding the vetting process have been tidied up and some unnecessary detail has been removed. Thus, the revised Draft Amendments provide for two first-instance Independent Qualification Commissions with its two Public Commissioners playing a prosecutorial role, and a separate appellate body – the Specialised Qualification Chamber, composed of two chambers. The creation of a separate appellate body is in line with the recommendations of the Interim Opinion: the new arrangements serve to emphasise that the appellate chamber is independent from the Commissions.

59. The process of appointment of members of the IQC is two-phased: first, pre-selection following an open call for candidates (Article C p. 6) and then their election by the 3/5<sup>th</sup> majority of the Parliament.

60. As to the pre-selection of candidates, it is acceptable that the Ombudsman of Albania should conduct the open and transparent application process for members of the IQC, judges of the SQC, and for the Public Commissioners. The Commission observes with regret that § 127 of the Interim Opinion has been interpreted as endorsement of the views expressed by some members of the opposition regarding alleged affiliation of the Ombudsman with the current government. The Venice Commission stresses that it has no reasons to call into question the integrity or the independence of the current Ombudsman. It is reasonable that the openness and transparency of the process be guaranteed by an independent and credible institution such as, for example, the Ombudsman's office. During the visit of the rapporteurs to Albania, the Ombudsman confirmed that he was willing to undertake this role and considered it appropriate that he should do so.

61. The second phase is the election of candidates by the 3/5<sup>ths</sup> majority of votes in the Parliament. The opposition, as in the case with the HJC and HPC, insists that members of the IQC should be elected by a 2/3<sup>ds</sup> majority. The Venice Commission reiterates that both solutions would be legitimate; however, in order to avoid political stalemate, which is highly probable in the case of too high of a threshold, the legislator might consider other alternative models of election of the members of the IQC and judges of the SQC. That being said, the Venice Commission reiterates that it ultimately belongs to the Albanian legislator to choose an appropriate system for electing members of the IQC and judges of the SQC.

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

77. The President did not ask the Venice Commission to make proposals *pro futuro*, when examining the situation of the appointment of judges of the Constitutional Court but the Venice Commission encountered several issues in the appointment procedure. In order to avoid similar situations in the future, the Venice Commission recommends considering the following proposals in a future reform of the Constitutional Court procedure:

(...) 3. The President of the Slovak Republic or his representatives should participate actively in the parliamentary vetting procedure for candidates in order to avoid a second vetting procedure. (...)

[CDL-AD\(2017\)001](#) Slovak Republic - Opinion on questions relating to the appointment of Judges of the Constitutional Court

28. Given the above reasons for establishing the HACC [High Anti-Corruption Court], it appears logical and necessary to introduce some special regulations for its functioning; in particular, its judges need to be specialised and experienced, adequately protected and, in line with the spirit of the on-going judicial reform, selected in a way which provides strong safeguards for their integrity and independence. Bearing in mind the urgency of the matter, there is no time to wait for completion of the current judicial reform – which includes vetting of all ordinary judges and is clearly a promising process towards a more healthy judicial body.

42. (...) The appointment procedure follows the same pattern as that provided for in respect of Supreme Court judges and includes a qualification assessment administered by the HQC – adjusted to the requirements on anti-corruption judges –, a special verification procedure including integrity checks, vetting by the Public Integrity Council, interviews and nomination by the HQC [High Qualifications Commission of Judges] and the HCJ [High Council of Judges], appointment by the President of Ukraine. (...)

43. The above arrangements seem to be in line with the requirements of Article 128 of the Constitution, according to which judges shall be appointed by the President of Ukraine on submission of the HCJ due to the procedure prescribed by law, on the basis of a competition.

As explained above, the introduction of extra elements appears justified and necessary, given that anti-corruption judges will have to decide on highly sensitive cases including against judges. This is also stressed in the above-mentioned “common understanding” of international donors. That said, the draft provisions on the formation of the Competition Commission deserve closer examination.

44. According to draft article 15, the Competition Commission consists of three persons appointed by the President of Ukraine, three persons elected by the *Verkhovna Rada* and three persons appointed by the Minister of Justice. Commission members must fulfil certain eligibility criteria, e.g. they must have high professional and moral qualities and significant experience in the field of corruption prevention and counteraction. The appointment of members by the Minister of Justice must be based on the recommendations of at least two governments of foreign States or international organisations (labelled in the draft as “agencies”). The Minister may not appoint a member not recommended by any of the agencies and may refuse to appoint members recommended by the agencies only if they do not comply with the criteria laid down in draft article 15. According to draft law No. 6011, the Competition Commission is actively involved in the entire recruitment process and its decisions on the ability and rating of candidates and appointment proposals are binding on the HQC, the HCJ and ultimately the President of Ukraine. Decisions by the Competition Commission require consent of at least seven members, thus including consent of at least one member recommended by foreign “agencies”.

45. In this context, it must be noted that the Venice Commission has repeatedly supported measures taken by Ukraine to reduce risks of political influence on judges. Thus, in the course of the 2016 constitutional reforms, the election of judges by the *Verkhovna Rada* had been replaced by presidential appointment on the binding recommendation of the reformed HCJ.

47. It therefore seems necessary to introduce additional safeguards to ensure that the procedure for the appointment of judges is independent of the executive and legislative powers. In this regard, inspiration could be drawn from the Venice Commission’s recommendations concerning the designation of HCJ members. That being said, the Venice Commission would have a clear preference for more substantial amendments, namely for assigning the task of nominating Commission members to a non-political body such as the HQC – in its capacity as judicial self-governance body which is already involved in the appointment procedure – subject to the role of international donors as discussed below. Another option would be not to create an additional body such as the proposed Competition Commission but, as a temporary measure pending completion of the judicial evaluation, to include experts proposed by international donors as supernumerary members of the HQC to participate in the selection procedure for judges in the anti-corruption courts and to give them a crucial role in that procedure similar to that envisaged for them in the Competition Commission by draft law No. 6011. It is of utmost importance that the anti-corruption courts and their judges are, and are seen to be, independent – not least with regard to the requirements of Article 6§1 ECHR.

51. (...) care should be taken to ensure that the procedure for the appointment of anti-corruption judges does not deviate more than necessary from the general appointment procedure (e.g. when it comes to the qualifications evaluation of candidates). (...)

67. (...) the further question arises of how the selection of anticorruption judges from the existing judicial body would be co-ordinated with the planned vetting of all sitting judges. For the time being, such vetting has only been carried out with respect to Supreme Court judges. It appears particularly worrying that at the appeal courts, specialised judges might be elected by the relevant assembly of judges (which generally would be welcome, in terms of independence of the judiciary) before the latter have undergone the vetting procedure.

[CDL-AD\(2017\)020](#) Ukraine - Opinion on the Draft Law on Anticorruption Courts and on the Draft Law on Amendments to the Law on the Judicial System and the Status of Judges (concerning the introduction of mandatory specialisation of judges on the consideration of corruption and corruption-related offences)

55. Therefore, the Venice Commission and the Directorate recommend that the number of members of the Evaluation Committee with a judicial background (i.e. former judges or former constitutional court judges) should be increased to the extent that a substantial number of members (if not half) has judicial background. In order to ensure their independence of all external pressures and impartiality, members of the Evaluation Committee should be given immunity for any acts they carry out in the performance of their functions (functional immunity).

58. Lastly, candidates to the Evaluation Committee should pass an evaluation of their assets and background.

[CDL-AD\(2019\)020](#) Republic of Moldova - Interim Joint Opinion of the Venice Commission and the Directorate of Human Rights (DHR) of the Directorate General of Human Rights and Rule of Law (DGI) of the Council of Europe on the Draft Law on the Reform of the Supreme Court of Justice and the Prosecutor's Office

19. The idea of having non-judicial members within the [Ethics and Disciplinary Commission] is commendable, since it makes the activities of this commission more open for some external scrutiny. However, it is unclear why judges of the Court of Cassation (the highest court in the system of courts of general jurisdiction) are not eligible to sit in the EDC, while those judges are usually amongst the most experienced ones. The proposed model can arguably be explained by the desire to reduce the informal influence of the most senior judges within the judicial system. This model is not against the European standards; however, the Venice Commission invites the authorities to evaluate whether the total exclusion of the Court of Cassation judges is justified in the Armenian context.

20. Next, the presence in the composition of the EDC of a staff member of the office of the Human Rights Defender may raise issues. First of all, it is questionable whether it is compatible with the role of the Human Rights Defender vis-à-vis the judiciary. Second, there is a risk that the same person may at the same time be called to examine certain facts as a member of the Human Rights Defender office and as a member of the EDC. If the Human Rights Defender is to retain a role in this institution, it can be reduced to the nomination of an expert (not a staff member of his or her office) to serve as one of the non-judicial members of the EDC.

[CDL-AD\(2019\)024](#) Armenia - Joint Opinion of the Venice Commission and the Directorate of Human Rights (DHR) of the Directorate General of Human Rights and Rule of Law (DGI), on the amendments to the Judicial Code and some other Laws

13. (...) Law No. 193-IX reduced the number of judges of the Supreme Court from a maximum of 200 judges to 100 judges and provided for a vetting of the Supreme Court Judges, even though they all had already been vetted. Judges who would not be selected to remain at the Supreme Court would be transferred to courts of appeal or could be dismissed. According to the Commission's Opinion, the reduction in size of the Supreme Court to 100 effectively amounted to a second vetting and should be removed. The goal of reducing the number of judges could be pursued at a later stage, once the Supreme Court had cleared its current backlog of cases and access filters had become effective for new cases. A future reduction of the number of judges could probably be achieved by means of natural reduction (retirements) or voluntary transfers.

16. On 18 February 2020, the Constitutional Court adopted decision No. 2-p/2020, which annulled large parts of Law No. 193-IX. The key elements of this decision are the following: (...) 2. the vetting and the reduction in size of the Supreme Court were annulled because they were not linked to a substantive revision of the Court's functions and the changes had been adopted without proper consultations. The reduction of the salaries of the Supreme Court judges (only) was deemed to infringe judicial independence; (...)

21. These criteria provide for the creation of (a) a new "High Qualification Commission of Judges of Ukraine" through a transparent selection procedure conducted by a Selection Commission with international participation and (b) an "Ethics Commission" with international participation to carry out a one-time assessment of the integrity and ethics of members of the High Council of Justice. The Ethics Commission would recommend to the electing (appointing) authorities the dismissal of HCJ members having failed the vetting. It would also establish a pool of pre-selected candidates from which the electing (appointing) authorities for members of the HCJ would draw their nominations.

[CDL-AD\(2020\)022](#) Ukraine - Joint Opinion of the Venice Commission and the Directorate General of Human Rights and Rule of Law (DGI) of the Council of Europe on the draft amendments to the Law 'on the Judiciary and the Status of Judges' and certain Laws on the activities of the Supreme Court and Judicial Authorities (draft Law no. 3711)

59. A vetting of the current members of the HCJ by the Ethics Council according to the criteria of professional ethics and integrity can be considered acceptable only as a one-time, exceptional measure. The participation of an international component in the Ethics Council is a necessary guarantee for such an exceptional measure in Ukraine, which establishes a balance between the independence of the members of the HCJ and the necessity to ensure their integrity.

[CDL-AD\(2021\)018](#) Ukraine - Urgent joint opinion of the Venice Commission and the Directorate General of Human Rights and the Rule of Law (DGI) of the Council of Europe on the draft law on amendments to certain legislative acts concerning the procedure for electing (appointing) members of the High Council of Justice (HCJ) and the activities of disciplinary inspectors of the HCJ (Draft law no. 5068)

22. It is positive that the revised draft law provides several guarantees for the members of the evaluation committee, in order to ensure their independence and impartiality (Article 5 §2). However, while the requirements that members of the evaluation committee must meet as regards their competence, experience, integrity, and non-affiliation to the Parliament or a political party are reasonable (Art. 6(2)), the requirement that the member "has not held the position of judge or prosecutor in the Republic of Moldova for the last 3 years" seems to lack of reasonable justification. The Information Note does not give any reasons for the creation of such extra-judicial mechanism, nor does it indicate the ratio for the period of three years. The international standards on this matter are well-established and rather clear: judicial members of the Councils for the Judiciary should be elected by their peers. Given that integrity checks are *de facto* a consisting part of the selection process of members of the SCM, SCP and other specialized bodies, the proposed requirement implying that judges and/or judiciary per se cannot be trusted is arbitrary and should be rejected. (...)

[CDL-AD\(2021\)046](#) Republic of Moldova - Joint Opinion of the Venice Commission and the Directorate General of Human Rights and Rule of Law (DGI) of the Council of Europe on some measures related to the selection of candidates for administrative positions in bodies of self-administration of judges and prosecutors and the amendment of some normative acts

25. As regards more specifically the special Supreme Court panel, the draft law only provides that this panel is composed of five judges of the Supreme Court appointed by the General Assembly of the Court, and that it makes the final assessment of the existence of security obstacles. According to the draft, the procedure of selecting members and the functioning of the panel shall be governed by the Rules of Procedure of the Supreme Court. The authorities indicated that amendments to the Rules of Procedure to that effect would have to be enacted by the president of the Supreme Court upon the opinion of its General Assembly. Such amendments have not yet been drafted. Given the important role of that panel and the possible impact of the security vetting process on the judges' life and the judiciary as a whole, the Venice Commission recommends regulating more details in the law, namely the duration of the mandate of the members of the special Supreme Court panel, the powers of that panel, guarantees of fair trial, the decision-making rules, and the question how the panel members themselves would be vetted.

27. The draft law provides that the application by court presidents for basic security vetting with the competent security intelligence agency shall be made via the Ministry of Justice and Public Administration. The authorities indicated that the role of the Ministry would be purely intermediary, "given the limited capacity of the competent Agency", and that it would not come into contact with any data from the security vetting applications. Nonetheless, the Venice Commission cannot see how such an involvement would significantly lower the administrative burden on the SOA and would be strictly necessary. The Commission is also concerned that even such a limited involvement of the Ministry might be seen by the public as an undue interference in the process and further decrease citizens' trust in the independence of the judiciary. The Venice Commission recommends removing from the law the Ministry's role as an intermediary in the security vetting process.

[CDL-AD\(2022\)005](#) Croatia - Opinion on the Introduction of the Procedure of Renewal of Security Vetting Through Amendments to the Courts Act

44. (...) The vetting scheme must be implemented within the framework of the constitutional guarantees, notably as concerns the independence of the judiciary, and can only be justified in case of exceptional circumstances, after having considered all other methods of judicial accountability. It should be clear however that the ethical evaluation is in fact concentrated on data about possible corruption, i.e. another aspect of the same issue that is explored by the financial evaluation.

[CDL-AD\(2022\)024](#) Republic of Moldova - Joint opinion of the Venice Commission and the Directorate General of Human Rights and Rule of Law (DGI) of the Council of Europe on the draft law on the Supreme Court of Justice

## **V. Pre-vetting of judges and prosecutors**

14. (...) In the opinion of the Venice Commission and of the Directorate General, a distinction should be made between the vetting of serving members and the "pre-vetting" of candidates to a position on these bodies. As a matter of principle, the security of the fixed term of the mandates of members of (constitutional) bodies serves the purpose of ensuring their independence from external pressure. Measures which would jeopardise the continuity in membership and interfere with the security of tenure of the members of this authority (vetting) would raise a suspicion that the intention behind those measures was to influence its decisions, and should therefore be seen as a measure of last resort. Integrity checks targeted at the candidates to the position of SCM [Superior Council of Magistracy], SCP [Superior Council of Prosecutors] and their specialized bodies represent a filtering process and not a judicial vetting process, and as such may be considered, if implemented properly, as striking

a balance between the benefits of the measure, in terms of contributing to the confidence of judiciary, and its possible negative effects.

[CDL-AD\(2021\)046](#) Republic of Moldova - Joint Opinion of the Venice Commission and the Directorate General of Human Rights and Rule of Law (DGI) of the Council of Europe on some measures related to the selection of candidates for administrative positions in bodies of self-administration of judges and prosecutors and the amendment of some normative acts

## **VI. Regular vetting**

79. Further, the specialisation of judges in this qualification examination should also be taken into account. Judges will very often during their career engage in a degree of specialisation. Some will remain generalists and pursue a career across a broad spectrum, but others will specialise to a greater or lesser extent. In some cases the specialisation may be very marked. In many systems, some of the judges deal only with a narrow range of cases in which they will be expected to have a very profound knowledge. (...) It would seem preferable, therefore, that the assessment to be carried out under the transitional Article 6 would focus on the individual judge's work record rather than taking the form of a written examination.

[CDL-AD\(2015\)007](#) Ukraine - Joint Opinion of the Venice Commission and the Directorate of Human Rights (DHR) of the Directorate General of Human Rights and Rule of Law (DGI) of the Council of Europe on the Law on the Judicial System and the Status of Judges and Amendments to the Law on the High Council of Justice of Ukraine

49. As to the background assessment, it can hardly be doubted that it would be grossly improper for a judge or a prosecutor to have inappropriate contacts with persons involved in organised crime. Having regard to the permitted limitations on the exercise of the right to respect for private and family life contained in Article 8 ECHR, it seems clear that the existence of inappropriate contacts between judges and organised criminals would be contrary to the interests of national security, contrary to public safety, likely to encourage rather than prevent disorder or crime, and likely to threaten rather than protect the rights and freedoms of others. As a matter of fact, the vetting legislation is clearly aimed at ensuring the safeguards of the rights through the "re-establishment of the proper function of the rule of law and true independence of the judicial system, as well as public trust and confidence in these institutions." (Article 1 of the Vetting Law).

[CDL-AD\(2016\)036](#) Albania - Amicus Curiae Brief for the Constitutional Court on the Law of the Transitional Re-evaluation of Judges and Prosecutors (The Vetting Law)

58. As a rule, criteria for ineligibility or loss of a mandate must be exact and applicable without a wide margin of appreciation, in order to guarantee the implementation of the law in equal and transparent manner. However, key terms in the proposed provisions - in particular, the wording of the second proposed ground [have "contacts with persons involved in the organized crime"] - appear as too general and imprecise to be an acceptable constitutional basis for a limitation to a fundamental right.

[CDL-AD\(2018\)034](#) Albania - Opinion on Draft Constitutional Amendments Enabling the Vetting of Politicians

71. Under draft article 5(5), any person may provide to the Evaluation Committee information about the judge under evaluation. The provision is unclear and vague, especially taking into account that judges often have to make unpopular decisions. It is therefore necessary to set

out more precisely what is the relevance and probative value of such information in determining facts.

[CDL-AD\(2019\)020](#) Republic of Moldova - Interim Joint Opinion of the Venice Commission and the Directorate of Human Rights (DHR) of the Directorate General of Human Rights and Rule of Law (DGI) of the Council of Europe on the Draft Law on the Reform of the Supreme Court of Justice and the Prosecutor's Office

60. The evaluation of judges is normally intended as a means to improve the judge's work and as a means to decide on the promotion of judges. In the case of a promotion, a negative outcome of the evaluation means that the status quo applies. In this case, the evaluation is meant to decide between the status quo and what is effectively a demotion of the judge to a lower court and which may entail a transfer to a different part of the country or even dismissal. While not formally a disciplinary measure, a negative result of the evaluation procedure entails negative consequences for the judges' irremovability and security of tenure, which is an effect that resembles the effect of disciplinary sanctions. Moreover, unlike disciplinary measures which are based on specific violations, the evaluation criteria are general and leave a wide margin of discretion to the evaluating body. The process, as set out in Law No. 193-IX, instead amounts to a vetting of the judges of the Supreme Court. (...)

[CDL-AD\(2019\)027](#) Ukraine - Opinion on Amendments to the Legal Framework Governing the Supreme Court and Judicial Governance Bodies

14. One of the issues that still needed to be dealt with on the Government's agenda was the "vetting of sitting judges". This was to be done by neither introducing a separate new law on this issue nor by amending the Constitution. It was to be done by simply referring to existing Article 164.6 of the Constitution (on the status of judges), which allows the introduction of further incompatibility requirements for judges to be added to the Law on the Constitutional Court and to the Judicial Code. This would serve as a basis for a vetting mechanism for sitting judges.

20. This new "incompatibility requirement" is in effect a disciplinary measure disguised as an incompatibility requirement. It allows sitting judges to be dismissed for a deliberate violation of a fundamental human right that is based on a decision/judgment ("act") by an international court or another international institution (...).

51. Although it may be problematic if domestic courts fail to examine allegations – it makes a difference if the judge's wrongdoing is based on a procedural failure or is related to a decision on the detention of a person or whether a decision clearly led to the torture and death of a person. It is therefore important that in this context, a restrictive interpretation be applied. For instance, it would be disproportionate to terminate the powers of a judge due to a violation of incompatibility requirements because this judge has, contrary to Article 6 ECHR, not conducted an oral hearing. Yet, the Draft Amendments lack a threshold defining the level of violation and, in addition, any form of graduated sanctions; the only sanction to a fundamental human rights violation seems to be the termination of powers. For the latter sanction, the threshold must be a violation which has resulted in a fundamental breach of human rights and/or freedoms (...) and has been committed deliberately or with gross negligence, i.e., which is clearly incompatible with judicial office.

52. The current wording in the Draft Amendments as to any threshold remains vague at best and should be made explicit. In addition, if not only very serious and obvious violations of human rights shall be covered by the Draft Amendments, but also less serious violations of human rights, then a form of graduated sanctions should be introduced in this context to not have all violations end with the termination of the powers of a judge.



[CDL-AD\(2022\)002](#) Armenia - Joint Opinion of the Venice Commission and the Directorate General of Human Rights and the Rule of Law (DGI) of the Council of Europe on the Draft Laws on Making Amendments to the Constitutional Law on the Judicial Code and to the Constitutional Law on the Constitutional Court

33. The Venice Commission furthermore notes that neither the draft law nor the existing legal acts and regulations seem to clearly specify the assessment criteria for the existence of security obstacles. As mentioned above, the questionnaire covers a wide range of data and it is not clear a) what kind of information would justify the conclusion that there is misuse or risk of misuse of official position or duty by a judge and b) what the criteria are for concluding that the existence of security obstacles constitutes a disciplinary offence. The Venice Commission recommends that the assessment criteria for concluding on the existence of security obstacles and, on that basis, of a disciplinary offence be specified in the law. In addition, the law should provide for an explicit presumption in favour of the judge subject to security vetting: if the information is not sufficient to clearly establish a security obstacle, there should not be any consequences for him or her as a result of the security vetting process.

[CDL-AD\(2022\)005](#) Croatia - Opinion on the Introduction of the Procedure of Renewal of Security Vetting Through Amendments to the Courts Act

## **VII. Extraordinary vetting**

71. (...) The qualification assessment under Transitional Article 6 is a different procedure [than the assessment made when judges apply for new positions] and is carried out with respect to sitting judges under a time schedule: judges of the Supreme Court and the high specialized courts are to be assessed within six months as of the date of the enactment of this Law and judges of appellate courts, within two years of that date, and finally all other existing judges.

72. (...) [The] representatives of the authorities gave detailed explanations as to the purpose of this provision. They underlined the major problems both with corruption and incompetence among the judiciary which are a result of political influence on judges' appointments in the previous period. In addition, the representatives of the authorities also emphasized almost complete lack of public confidence in either the honesty or the competence of the judiciary. According to the representatives of the authorities, in these circumstances, the choice was between dismissing all the judges and inviting them to reapply for their positions (which would not be preferable) or assessing them in the manner now proposed by the transitional Article 6.

73. If the situation is as described by the representatives of the authorities, it may be both necessary and justified to take extraordinary measures to remedy those shortcomings. Such extraordinary measures should indeed be aimed at identifying the individual judges who are not fit to occupy a judicial position. In this respect, dismissal of every member of the judiciary appointed during a particular period would not be an appropriate solution to the problems indicated by the authorities. That is particularly so in the case of judges who were appointed in a lawful manner in a country which had a democratic system, although imperfect in many respects and allowing too great a political influence in the appointment of judges.

74. However, such measure as the qualification assessment as provided for in transitional Article 6 should be regarded as wholly exceptional and be made subject to extremely stringent safeguards to protect those judges who are fit to occupy their positions.

[CDL-AD\(2015\)007](#) Ukraine - Joint Opinion of the Venice Commission and the Directorate of Human Rights (DHR) of the Directorate General of Human Rights and Rule of Law (DGI) of the Council of Europe on the Law on the Judicial System and the Status of Judges and Amendments to the Law on the High Council of Justice of Ukraine

98. The necessity of the vetting process is explained by an assumption – shared by nearly every interlocutor met by the rapporteurs in Tirana – that the level of corruption in the Albanian judiciary is extremely high and the situation requires urgent and radical measures. The question is whether this wide consensus creates a sufficient basis for subjecting all the sitting judges (including the honest ones) to re-evaluation, irrespective of the specific circumstances of each individual judge. This is a question of political necessity, and the Venice Commission is not in a position to pronounce on it. It must be remembered, however, that such radical solution would be ill-advised in normal conditions, since it creates enormous tensions within the judiciary, destabilizes its work, augments public distrust in the judiciary, diverts the judges' attention from their normal tasks, and, as every extraordinary measure, creates a risk of the capture of the judiciary by the political force which controls the process.

100. The Venice Commission believes that a similar drastic remedy [as was referred to in the previous referred opinion on Ukraine] may be seen as appropriate in the Albanian context. However, it remains an exceptional measure. All subsequent recommendations in the present interim opinion are based on the assumption that the comprehensive vetting of the judiciary and of the prosecution service has wide political and public support within the country, that it is an extraordinary and a strictly temporary measure, and that this measure would not be advised to other countries where the problem of corruption within the judiciary did not reach that magnitude.

[CDL-AD\(2015\)045](#) Albania - Interim Opinion on the Draft Constitutional Amendments of the Judiciary

52. With regard to the extraordinary measures to vet judges and prosecutors, the Venice Commission remains of the opinion that such measures are not only justified but are necessary for Albania to protect itself from the scourge of corruption which, if not addressed, could completely destroy its judicial system.

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

47. However, firstly, it must be borne in mind that vetting is not a default remedy. All the other elements of the legislative framework should be taken into account. Disciplinary procedures, regular evaluation and in extreme cases criminal investigation and prosecution are the regular methods of judicial accountability. It must be clear why those avenues are not available before the vetting option can be considered. The fact that there might be a very low level of confidence in the judiciary requires that the problems be examined but it of itself does not require considering a vetting process as a solution until all other avenues are excluded.

84. As the Venice Commission has considered in the past in other contexts, critical situations in the field of the judiciary, as extremely high levels of corruption, may justify equally radical solutions, such as a vetting process of the sitting judges. At the end, it falls ultimately within the competence of the Moldovan authorities to decide whether the prevailing situation in the Moldovan judiciary creates sufficient basis for subjecting all the sitting Supreme Court judges to extraordinary re-evaluation as provided by the draft law.

85. One major concern in the reform process is that the current draft law combines such a vetting process with the reform of the Supreme Court of Justice aimed at replacing the existing Supreme Court by a new court having a different jurisdiction and fewer judges. This combination between two different purposes obstructs the justification for subjecting all the sitting Supreme Court judges to extraordinary re-evaluation and for the interference with the principle of irremovability of judges. This justification is even more important as a vetting scheme may create a dangerous precedent and may lead to an expectation that there will be

a vetting scheme after each change of government, which would undermine the motivation of the judiciary and reduce its independence.

[CDL-AD\(2019\)020](#) Republic of Moldova - Interim Joint Opinion of the Venice Commission and the Directorate of Human Rights (DHR) of the Directorate General of Human Rights and Rule of Law (DGI) of the Council of Europe on the Draft Law on the Reform of the Supreme Court of Justice and the Prosecutor's Office

62. (...) the Venice Commission is of the opinion that subjecting all judges of the Supreme Court to a new selection procedure when there are complaints about the appointment of some judges only effectively amounts to a second vetting, which is not justified and clearly not proportionate. If there really had been problems in the application of the procedure of appointments of judges, the recommendations of the Public Integrity Council should provide sufficient indications as to which cases would need to be reviewed on an individual basis.

[CDL-AD\(2019\)027](#) Ukraine - Opinion on Amendments to the Legal Framework Governing the Supreme Court and Judicial Governance Bodies

12. The creation of ad hoc bodies to assess the integrity of judges and prosecutors is based on the assumption that the justice system has extremely serious deficiencies and that there are systemic doubts about the integrity of magistrates. However, based on this assumption, the establishment of the proposed model of ad hoc committees for assessing integrity entails, in itself, a double risk. On the one hand, it assumes, even if it is only in terms of appearances (which in this very sensitive area do matter) that the system is generally affected, which can be extraordinarily unfair for many of its competent and upstanding elements, that are consequently tainted by a general suspicion; on the other hand, such method may prove ineffective, as far as judges and prosecutors are concerned, to remove and eliminate the fatal doubt that the model itself creates or may generate.

[CDL-AD\(2021\)046](#) Republic of Moldova - Joint Opinion of the Venice Commission and the Directorate General of Human Rights and Rule of Law (DGI) of the Council of Europe on some measures related to the selection of candidates for administrative positions in bodies of self-administration of judges and prosecutors and the amendment of some normative acts

14. At the same time, it must be stressed that the authority of a judiciary can only be maintained if (a) the legal system puts in place adequate mechanisms to ensure that candidates are not appointed as a judge if they do not have the required competences or do not meet the highest standards of integrity; and (b) the judiciary is cleansed of those who are found to be incompetent, corrupt or linked to organised crime. This is not only essential in view of the role a judiciary plays in a state governed by the rule of law, but also because a judge – once appointed for life – will in principle be irremovable except for limited grounds for dismissal.

18. As far as the authorities refer to recent “individual, high-profile cases of frequent inappropriate contacts and behaviour of judges”, it seems that this concerns a quite limited number of cases which are currently subject to disciplinary and criminal proceedings. This situation must be considered as a normal functioning of the system. There does not seem to be clear evidence that corruption in the Croatian judiciary has reached such a scale to justify the introduction of such a far-reaching measure. The mere fact that public perception as regards corruption in the judiciary is very high cannot justify in itself such a measure. Furthermore, the lack of citizens' trust in the judiciary on account inter alia of corruption seems to be linked to a perceived lack of independence of the judiciary notably on account of alleged interference or pressure from government and politicians. There is a risk that such perceptions

would even be aggravated if the security vetting of judges by an executive body were introduced.

20. In the view of the Venice Commission, strengthening and improving the already existing mechanisms – e.g., as regards the transparency/accessibility of asset declarations which according to some of the rapporteurs' interlocutors was unsatisfactory, and the initiation of disciplinary proceedings – would seem clearly preferable as a more proportionate avenue of reform. Consequently, the Commission recommends that the Croatian authorities reconsider their approach to prescribe periodic security vetting of all judges and that they develop an alternative strategy to ensure judges' integrity, based on other existing mechanisms.

[CDL-AD\(2022\)005](#) Croatia - Opinion on the Introduction of the Procedure of Renewal of Security Vetting Through Amendments to the Courts Act

71. In the light of proposals made in the alternative drafts and arguments presented during the video meetings, the Commission can provide a few guideposts for addressing these wider issues:

(...) 10. In addition, concerns over some judges of the Supreme Court persist. No new vetting of the judges already vetted can be envisaged, but a reformed HCJ should be able to efficiently deal with specific individual cases in the framework of disciplinary procedures.

[CDL-AD\(2020\)022](#) Ukraine - Joint Opinion of the Venice Commission and the Directorate General of Human Rights and Rule of Law (DGI) of the Council of Europe on the draft amendments to the Law 'on the Judiciary and the Status of Judges' and certain Laws on the activities of the Supreme Court and Judicial Authorities (draft Law no. 3711)

### **VIII. Regulatory level**

78. (...) it is not appropriate that this matter, which introduces a substantial change in the Law and which could have important consequences, be dealt with in the transitional provisions as now proposed. The matter needs to be dealt with in a substantive legal provision in much more detail and requires constitutional underpinning.

[CDL-AD\(2015\)007](#) Ukraine - Joint Opinion of the Venice Commission and the Directorate of Human Rights (DHR) of the Directorate General of Human Rights and Rule of Law (DGI) of the Council of Europe on the Law on the Judicial System and the Status of Judges and Amendments to the Law on the High Council of Justice of Ukraine

### **IX. Time limits**

102. The "expiry date" for the Annex is not very clear either. (...) the duration of the mandate of the IQC [Independent Qualification Commissioners] may be prolonged by a simple majority of the Parliament (see the last phrase of Article 61). This is a potentially dangerous norm: first, it creates a risk of transforming the vetting process into a de facto permanent arrangement, parallel to the ordinary accountability mechanisms. The Draft Amendments should make it clear that once a sitting judge passes through the vetting, his/her accountability would be further regulated by the ordinary rules contained in the Constitution and in the implementing legislation. The mandate of the IQC might be prolonged only if the vetting process has not been completed for objective reasons (i.e. not all of the sitting judges have passed through it). Second, the possibility of extending the mandate may affect the independence of the commissioners: it is well known that the eventual prolongation or reappointment makes office holders more compliant vis-à-vis the authority which decides on it. So, the conditions in which the mandate of the commissioners is prolonged should be described in the law, and this decision should belong to a larger majority.

[CDL-AD\(2015\)045](#) Albania - Interim Opinion on the Draft Constitutional Amendments of the Judiciary

54. One general critical remark, however, remains: under the revised Draft Amendments the mandate of the members of the Independent Qualification Commissions (IQC) and judges of the Specialised Qualification Chamber (SQC) responsible for the vetting process will be 9 years without the right of re-appointment (Article 179/b p.3), while the whole vetting process is supposed to last 11 years or less if Albania joins the EU on an earlier date (Article 179/b p. 4). This duration is too long. In the Interim Opinion, the Venice Commission recognized the need for the vetting under condition that “it is an extraordinary and a strictly temporary measure” (§ 100). The vetting structures should not replace ordinary constitutional bodies, such as the HJC or HPC; they may co-exist with them for some time, but should not turn into parallel quasi-permanent mechanisms.

55. The Venice Commission is not in a position to indicate exactly how much time will be necessary to vet all sitting judges and prosecutors. It is conceivable that in the most complex case vetting procedures may take more than three years or even longer. It is up to the legislator to ensure that the persons subject to the vetting cannot artificially delay the vetting procedures, and that the commissioners, members of the IQC and judges of the SQC have the necessary resources and powers to complete the procedures within reasonable time. In sum, the Venice Commission recommends to reconsider Articles 179/b pp. 3 and 4 and Article C p. 1 and reduce significantly the duration of the vetting process.

56. It would be desirable to put a fixed time-limit of about 3-5 years on the length for which the IQC and the SQC would exist. There should be a possibility, provided for by the Constitution, for the extension of that period under conditions to be established by law. Following the winding-up of the vetting bodies, ordinary institutions and courts might assume any residual function of deciding on the vetting procedures which had not been concluded.

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

80. Besides the undoubted positive aspects on the quality of the judiciary in the long term, in the short term a vetting process by definition impacts the number of active judges, thereby creating temporary practical problems linked to their replacement. (...)

83. (...) However, for the Commission it is obvious that the vetting process must be conducted as swiftly as possible, albeit providing a fair examination of each case. Appropriate modalities must be found, and changed if necessary, for this process not to prevent the functioning of the judicial institutions of Albania. The Commission cannot but recommend speeding up and rationalising the vetting process, it being understood that the vetting on the level of the Independent Qualification Commission as well as the Special Appeal College will have to continue to be applied in a coherent manner. (...)

[CDL-AD\(2020\)010](#) Albania - Opinion on the Appointment of Judges to the Constitutional Court

61. As the draft law stands currently, the provision that the Ethics Council needs to complete its assessment of the current members of the HCJ within 3 months from the date of the approval of its composition seems entirely unrealistic, as the Council would first – on the basis of Article 9-1 (12) – need to establish its understanding of the criteria it will apply and approve its rules of procedure before applying those criteria and procedure in respect of the 17 persons currently acting as a member of the HCJ. This deadline should therefore be extended.

[CDL-AD\(2021\)018](#) Ukraine - Urgent joint opinion of the Venice Commission and the Directorate General of Human Rights and the Rule of Law (DGI) of the Council of Europe on the draft law on amendments to certain legislative acts concerning the procedure for electing (appointing) members of the High Council of Justice (HCJ) and the activities of disciplinary inspectors of the HCJ (Draft law no. 5068)

18. In its 2015 opinion, the Commission gave as an example of an “objective reason” for the need to prolong the process that “not all of the sitting judges have passed through it”. Now, if the mandate of the IQC and of the PC are not extended, approximately one third of the vetting procedures will be carried out by ordinary institutions, the High Judicial Council and the High Prosecutorial Council (as far as the IQC is concerned) and the Chief Special Prosecutor of the Special Prosecution Office (as far as the PC is concerned).

19. The Venice Commission finds that the reasons for the delay in the finalisation of the vetting process constitute such ‘objective reasons’. While it may be open to question whether the need to put in place the vetting institutions and procedures provided a valid justification for the delay, the difficulties encountered due to COVID-19 are real and could not readily have been anticipated. It is true that in 2020 the Commission expressed concerns as to the pace at which the vetting procedures were being carried out.

27. Last, but not least, the Venice Commission deems it essential that the vetting procedure does not render the justice system dysfunctional. (...) It is necessary to stress that the vetting procedure must not result in a continued paralysis of the judicial institutions, as such a state of affairs would be irreconcilable with the right of access to court guaranteed by Article 6 of the ECHR and enjoyed by all those within the jurisdiction of Albania.

[CDL-AD\(2021\)053](#) Albania - Opinion on the Extension of the Term of Office of the Transitional Bodies in Charge of the Re-evaluation of Judges and Prosecutors

## **X. Procedural guarantees and the right to appeal**

116. As to the approach of the Venice Commission, traditionally it was favourable to the introduction of the right of appeal to a court against decisions of the bodies deciding on disciplinary liability of judges. Turning to the specific case of Albania, the Venice Commission admits that the introduction of the right of appeal may be problematic, because all courts, starting from the High Court, will be subjected to the vetting procedure by the IQC, and, quite evidently, they cannot be judges in their own cases. Probably, a possible solution in this situation would be a staged introduction of the right of appeal, where the power to examine appeals is given to the Supreme Court once the vetting has been concluded there.

117. In the Draft Amendments the power to examine appeals against the decisions of the IQC remains with the Appellate Commission. In this case, a formal definition of the Commission as “Independent” will not be sufficient. The legislator will have to ensure that the members of the Appellate Commission enjoy status similar to that of “judges”. The Appellate Commission should have sufficient distance from the body making the decision at first instance (...). The Appellate Commission should also have appropriate powers vis-à-vis the lower instances, for example, the power to transfer abusive proceedings, to require the lower commissions to take specific fact-finding steps or to observe proper legal procedures. Finally, the procedures before the Appellate Commission should correspond to the “fairness” and “publicity” requirements contained in Article 6 § 1 of the ECHR (but not in §§2 and 3 since the latter only concern criminal trials). In essence, the Appellate Commission should have the basic characteristics of a “court” and give fair trial to the dismissed judges.

[CDL-AD\(2015\)045](#) Albania - Interim Opinion on the Draft Constitutional Amendments of the Judiciary

62. The Venice Commission recalls that United Nations' Basic Principles on the Independence of the Judiciary emphasize the right of a judge to a fair hearing, and stress that decisions in disciplinary proceedings should be subject to an independent review (principle 20). The Venice Commission has also consistently argued in favor of the possibility of an appeal to a court against decisions of disciplinary bodies. The recommendation CM/Rec(2010)12 of the Committee of Ministers (§ 48) states that the "candidate should have the right to challenge the decision, or at least the procedure under which the decision was made".

63. Article C gives an acceptable solution to the problem of the judicial guarantee to the persons affected by the vetting procedure: it creates within the High Court a Specialised Qualification Chamber (the SQC). This body is evidently a sort of a specialised court which is not an *Ad hoc* extraordinary judge – because it is not created in view of a single specific case – and it is supposed to stay in activity during the whole duration of the vetting procedure.

65. Under the revised Draft, the SQC appears to be the final instance in the vetting process. The revised Draft Amendments explicitly exclude the possibility of a complaint to the Constitutional Court by a judge or a prosecutor who has been dismissed as a result of the vetting process.

66. The Venice Commission observes that this is a serious limitation which prevents judges and prosecutors from lodging constitutional complaints against a decision which may terminate their employment (...) it is necessary to specify that the SQC [Specialised Qualification Chamber] should do everything which is necessary to protect the fundamental rights of the assesses. Second, it is recommended to keep the right of the dismissed judges and prosecutors to complain to the Constitutional Court about violations of their fundamental rights. (...) The role of the Constitutional Court should be limited to ensuring that the judges' fundamental rights were respected. Furthermore, a special rule may be applicable to the vetting of the judges of the Constitutional Court themselves. (...)

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

67. (...) as the draft law under consideration aims at conducting a screening process of the Supreme Court of Justice, it would defeat such purpose to give the Supreme Court of Justice the power to review the relevant decisions. Therefore, the appeal against the decision of the Superior Council in the evaluation procedure before the Supreme Court of Justice could only be possible in respect of prosecutors. As to the evaluation procedure of Supreme Court judges, the draft law should provide for an appeal before a judicial body which will have to be designed outside the cohort of judges of the Supreme Court of Justice (if this is possible under Chapter IX of the Constitution concerning the judiciary). The law could give to the Superior Council of Magistracy the task of setting up such judicial body, but should define the criteria and the procedure. The members of this judicial body will need to pass an evaluation of their assets and their background. The currently proposed three-day time-limit for the judge to lodge an appeal is definitely too short.

72. It is positive that under draft Article 6(1) the hearing held by the evaluation board during which the judge under evaluation may present any information in defense of his position, is a public hearing. The Commission considers in the first place that the draft should provide for the right of the judge concerned to appear before the Committee and to participate in the procedure before it. The draft law should specify that the evaluation committee can refuse a public hearing or part of it for reasons of personal information about third parties or on the

basis of national security considerations. However, these considerations should not jeopardise the right of the judge to be present.

73. Lastly, in view of the above recommendation that the Superior Council of Magistracy should be entrusted with the power to take the decisions in the extra-judicial evaluation procedure, it should also be added that the -negative- report drawn up by the Evaluation Committee should not be made public until the Superior Council of Magistracy takes its decision, or the appellate judicial body confirms it if there is an appeal, lest the reputation of the judge be jeopardised before a final decision is taken. (...)

[CDL-AD\(2019\)020](#) Republic of Moldova - Interim Joint Opinion of the Venice Commission and the Directorate of Human Rights (DHR) of the Directorate General of Human Rights and Rule of Law (DGI) of the Council of Europe on the Draft Law on the Reform of the Supreme Court of Justice and the Prosecutor's Office

32. The proposed amendments contain a new provision on “appealing” decisions of the SJC (see new Article 156-1). However, this mechanism can hardly be characterised as a proper “appeal”. It rather resembles a re-opening by the same body (the SJC) of a previously decided case on newly discovered circumstances. The very notion of “appeal” implies the control by another body of the legality and merits of the decision based on the same (and not newly discovered) facts and evidence. So, the proposed mechanism cannot replace an appeal in the proper sense of this word.

34. In the opinion of the Venice Commission, there are several reasons to seriously consider introducing an appeal against the decisions of the SJC. First, Article 6 of the European Convention on Human Rights (ECHR) guarantees, implicitly, the right of access to court. Assuming that a disciplinary sanction against a judge affects his or her civil rights and obligations, this judge must be given such access. The question is whether the Armenian SJC qualifies as a “court”. In the case of *Ramos Nunes de Carvalho e Sá v. Portugal* the Grand Chamber of the European Court of Human Rights (ECtHR) concluded that since the Portuguese High Council of the Judiciary was an administrative body, Article 6 would require “subsequent control by a judicial body that has full jurisdiction” (§ 132), i.e. full appeal. In other words, *if* the ECtHR finds that the SJC does not satisfy the requirements of a judicial body (contrary to what is proclaimed in Article 175 (2) of the Constitution), the necessity to have an appeal to a court of law would stem from the requirements of the European Convention.

35. Secondly, even if no question under Article 6 arises, the need to have an appeal to a court of law in disciplinary matters stems from a number of European documents, such as, for example, Opinion no. 10 by the CCJE. P. 39 of Opinion no. 10 says that “some decisions” of the [Judicial Code] such as “the decisions in relation to [...] discipline and dismissal of judges” should be “subject to the possibility of a judicial review”. The standards of the Committee of Ministers are more flexible: Recommendation CM(2010)12, in p. 69, says that disciplinary proceedings “should be conducted by an independent authority or a court with all the guarantees of a fair trial and provide the judge with the right to challenge the decision and sanction.” So, the CM Recommendation will be complied with if there is a possibility to challenge the sanction – but it is not specified whether the body hearing an appeal needs to be a court of law. In any event, the CM requires a second degree of jurisdiction in those matters, which is absent in the Armenian system.

[CDL-AD\(2019\)024](#) Armenia - Joint Opinion of the Venice Commission and the Directorate of Human Rights (DHR) of the Directorate General of Human Rights and Rule of Law (DGI), on the amendments to the Judicial Code and some other Laws

62. The draft law should clarify that judicial protection is available to a candidate who is deemed *not* to meet the criteria of professional ethics and integrity by the Ethics Council. As



it stands, the draft law does not refer to the procedure for appeals against decisions of the Ethics Council. During the online meetings, the Ukrainian authorities pointed out that that in conformity with other legislation, any individual public act can be appealed against. This means that a decision that terminates a candidacy for a position at the HCJ or that establishes the non-compliance of a current member of the HCJ with ethics and integrity criteria can be appealed against in court.

63. Draft Law no. 5068 should explicitly provide for appeals against the decisions of the Ethics Council to the Supreme Court, even if the parallel draft law no. 5067 already envisages reducing the jurisdiction of the unreformed Kyiv City Administrative Court.

[CDL-AD\(2021\)018](#) Ukraine - Urgent joint opinion of the Venice Commission and the Directorate General of Human Rights and the Rule of Law (DGI) of the Council of Europe on the draft law on amendments to certain legislative acts concerning the procedure for electing (appointing) members of the High Council of Justice (HCJ) and the activities of disciplinary inspectors of the HCJ (Draft law no. 5068)

32. It is positive that the revised draft law provides several procedural guarantees of candidates (to be informed about the initiation of the evaluation; to be assisted by a lawyer or a trainee lawyer during the evaluation procedure; to get acquainted with the evaluation materials; to submit in written form data and additional information to those accumulated by the evaluation committee; and to challenge the evaluation committee's decision). The candidate's right to become acquainted with the 'evaluation materials' should encompass all the materials gathered by the committee and taken into account in its decision.

33. (...) In the opinion of the Venice Commission and of the Directorate General, the draft should provide for the right of the candidate concerned to appear before the evaluation committee and to participate in the procedure before it if he/she so requests. On the other hand, if the Evaluation Committee invites the candidate to participate in a hearing and the latter refuses with no objective justification, thus waiving his or her right to appear in person, the Evaluation Committee should proceed in his or her absence. In addition, in the opinion of the Venice Commission and of the Directorate General, hearings with candidates should not be in public. Public hearings could indeed discourage candidates who have something to hide but also those who fear dealing again with allegations they may have fended off already. Open hearings may discourage those who do not wish to display in public their family's business in a forum with questions. There should be full transparency in relation to those who are allowed to proceed. If (in the public hearing proposal in the revised draft) a candidate applies for a private hearing but it is refused, they should be able to withdraw their candidacy without any stain.

[CDL-AD\(2021\)046](#) Republic of Moldova - Joint Opinion of the Venice Commission and the Directorate General of Human Rights and Rule of Law (DGI) of the Council of Europe on some measures related to the selection of candidates for administrative positions in bodies of self-administration of judges and prosecutors and the amendment of some normative acts

23. (...) The Venice Commission recommends explicitly regulating access to detailed information and results of the security vetting by – exclusively – the disciplinary bodies, the judges concerned, and the criminal judge. While access to absolutely all information would be quite far-reaching and unusual, especially when it comes to covert sources, it must be ensured that access to information can only be limited if this is necessary for security reasons, and in conformity with fair trial requirements.

34. (...) These procedural safeguards are in line with international standards and are to be welcomed. That said, attention is drawn to the particular difficulties which arise when bodies unfamiliar with evaluating intelligence are given intelligence material and expected to take decisions which can have decisive influence on a person's career. This is particularly pertinent in the present case. While it is up to each country to find an adequate solution to such difficulties, it should be noted that some countries have created special mechanisms for controlling the disclosure of intelligence in vetting cases.

[CDL-AD\(2022\)005](#) Croatia - Opinion on the Introduction of the Procedure of Renewal of Security Vetting Through Amendments to the Courts Act

## **XI. The effects and sanctions of the vetting procedure**

76. (...) In its current reading, it appears that a judge who fails the integrity part of the evaluation process is offered a different judicial office, despite the fact that he or she has failed to overcome the suspicion of lack of integrity and this failure has been made public. The text should be clearer on this point. It should be stressed that under the normal procedures, a failure to meet the integrity requirements leads to a disciplinary sanction, not to a transfer. Given that Moldova is one of the countries where actual and/or perceived corruption in the judiciary is a matter of major concern among the public, this rather vague provision sends out the wrong signal with regard to the political will to take all necessary steps to guarantee and foster a culture of judicial integrity concerning all levels of the court system. The Venice Commission and the Directorate thus are of the view that the negative report by the Evaluation Committee regarding the judge's integrity should trigger a disciplinary sanction by the Superior Council. The gravity of the sanction should depend on the gravity of the disciplinary offence. Transfer should not be offered when breaches of integrity are at issue. The situation is clearly different for failure to meet the evaluation of professionalism.

[CDL-AD\(2019\)020](#) Republic of Moldova - Interim Joint Opinion of the Venice Commission and the Directorate of Human Rights (DHR) of the Directorate General of Human Rights and Rule of Law (DGI) of the Council of Europe on the Draft Law on the Reform of the Supreme Court of Justice and the Prosecutor's Office

39. Finally, the revised draft law makes it clear that the results of the integrity assessment will have no effect on the candidate's career as a judge or a prosecutor. This derives from the principle of inamovibility of judges and the constitutionally entrenched exclusive competence of the Supreme Councils to impose sanctions or dismiss a judge or prosecutor. However, the question remains how would the society's trust in judicial institutions be enhanced if the IEC finds that a judge or a prosecutor has failed to stand the integrity test and, nevertheless, the same judge or prosecutor retains his/her post pretending that nothing has happened. The Minister of Justice has underlined in this respect that all judges and prosecutors will be subjected to an extraordinary assessment procedure and that the results of this assessment as candidates may trigger further procedures before the anti-corruption authorities. Given that Moldova is one of the countries where actual and/or perceived corruption in the judiciary is a matter of major concern among the public, this clarification sends out the wrong signal with regard to the political will to take all necessary steps to guarantee and foster a culture of judicial integrity concerning all levels of the court system.

[CDL-AD\(2021\)046](#) Republic of Moldova - Joint Opinion of the Venice Commission and the Directorate General of Human Rights and Rule of Law (DGI) of the Council of Europe on some measures related to the selection of candidates for administrative positions in bodies of self-administration of judges and prosecutors and the amendment of some normative acts

## Appendix – List of opinions and reports quoted in the compilation

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

[CDL-AD\(2013\)025](#) Joint Opinion on the Draft Law on the Public Prosecutor's Office of Ukraine

[CDL-AD\(2014\)044](#) Interim Opinion on the Law on Government Cleansing (Lustration Law) of

Ukraine

[CDL-AD\(2015\)007](#) Ukraine - Joint Opinion of the Venice Commission and the Directorate of Human Rights (DHR) of the Directorate General of Human Rights and Rule of Law (DGI) of the Council of Europe on the Law on the Judicial System and the Status of Judges and Amendments to the Law on the High Council of Justice of Ukraine

[CDL-AD\(2015\)045](#) Albania - Interim Opinion on the Draft Constitutional Amendments of the Judiciary

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

[CDL-AD\(2016\)036](#) Albania - *Amicus Curiae* Brief for the Constitutional Court on the Law of the Transitional Re-evaluation of Judges and Prosecutors (The Vetting Law)

[CDL-AD\(2017\)001](#) Slovak Republic - Opinion on questions relating to the appointment of Judges of the Constitutional Court

[CDL-AD\(2017\)020](#) Ukraine - Opinion on the Draft Law on Anticorruption Courts and on the Draft Law on Amendments to the Law on the Judicial System and the Status of Judges (concerning the introduction of mandatory specialisation of judges on the consideration of corruption and corruption-related offences)

[CDL-AD\(2018\)028](#) Malta - Opinion on Constitutional arrangements and separation of powers and the independence of the judiciary and law enforcement

[CDL-AD\(2018\)034](#) Albania - Opinion on Draft Constitutional Amendments Enabling the Vetting of Politicians

[CDL-AD\(2019\)020](#) Republic of Moldova - Interim Joint Opinion of the Venice Commission and the Directorate of Human Rights (DHR) of the Directorate General of Human Rights and Rule of Law (DGI) of the Council of Europe on the Draft Law on the Reform of the Supreme Court of Justice and the Prosecutor's Office

[CDL-AD\(2019\)024](#) Armenia - Joint Opinion of the Venice Commission and the Directorate of Human Rights (DHR) of the Directorate General of Human Rights and Rule of Law (DGI), on the amendments to the Judicial Code and some other Laws

[CDL-AD\(2019\)027](#) Ukraine - Opinion on Amendments to the Legal Framework Governing the Supreme Court and Judicial Governance Bodies

[CDL-AD\(2020\)006](#) Malta - Opinion on proposed legislative changes

[CDL-AD\(2020\)010](#) Albania - Opinion on the Appointment of Judges to the Constitutional Court

[CDL-AD\(2020\)022](#) Ukraine - Joint Opinion of the Venice Commission and the Directorate General of Human Rights and Rule of Law (DGI) of the Council of Europe on the draft amendments to the Law 'on the Judiciary and the Status of Judges' and certain Laws on the activities of the Supreme Court and Judicial Authorities (draft Law no. 3711)

[CDL-AD\(2021\)006](#) Ukraine - Opinion on the draft law on Constitutional Procedure (draft law no. 4533) and alternative draft law on the procedure for consideration of cases and execution of judgements of the Constitutional Court (draft law no. 4533 -1) adopted by the Venice Commission at its 126th Plenary Session (online, 19-20 March 2021)

[CDL-AD\(2021\)018](#) Ukraine - Urgent joint opinion of the Venice Commission and the Directorate General of Human Rights and the Rule of Law (DGI) of the Council of Europe on the draft law on amendments to certain legislative acts concerning the procedure for electing (appointing) members of the High Council of Justice (HCJ) and the activities of disciplinary inspectors of the HCJ (Draft law no. 5068)

[CDL-AD\(2021\)038](#) Ukraine - Opinion on the draft law “On the Principles of State Policy of the Transition Period” adopted by the Venice Commission at its 128th Plenary Session (Venice and online, 15-16 October 2021)

[CDL-AD\(2021\)046](#) Republic of Moldova - Joint Opinion of the Venice Commission and the Directorate General of Human Rights and Rule of Law (DGI) of the Council of Europe on some measures related to the selection of candidates for administrative positions in bodies of self-administration of judges and prosecutors and the amendment of some normative acts

[CDL-AD\(2021\)053](#) Albania - Opinion on the Extension of the Term of Office of the Transitional Bodies in Charge of the Re-evaluation of Judges and Prosecutors

[CDL-AD\(2022\)002](#) Armenia - Joint Opinion of the Venice Commission and the Directorate General of Human Rights and the Rule of Law (DGI) of the Council of Europe on the Draft Laws on Making Amendments to the Constitutional Law on the Judicial Code and to the Constitutional Law on the Constitutional Court

[CDL-AD\(2022\)005](#) Croatia - Opinion on the Introduction of the Procedure of Renewal of Security Vetting Through Amendments to the Courts Act

[CDL-AD\(2022\)011](#) Kosovo - Opinion on the Concept Paper on the Vetting of Judges and Prosecutors and draft amendments to the Constitution

[CDL-AD\(2022\)024](#) Republic of Moldova - Joint opinion of the Venice Commission and the Directorate General of Human Rights and Rule of Law (DGI) of the Council of Europe on the draft law on the Supreme Court of Justice