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EUROPEAN COMMISSION FOR DEMOCRACY THROUGH LAW

(VENICE COMMISSION)

COMMISSION EUROPEENNE POUR LA DEMOCRATIE PAR LE DROIT

(COMMISSION DE VENISE)

127th PLENARY SESSION
VENICE | ZOOM (online)

Friday 2 July 2021 (10:00-17:00)
Saturday 3 July 2021 (10:00-12:00)

127e SESSION PLENIERE

VENISE | ZOOM (en ligne)
Vendredi 2 juillet 2021 (10h00-17h00)
Samedi 3 juillet 2021 (10h00-12h00)

SESSION REPORT / RAPPORT DE SESSION

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Due to the Covid-19 pandemic, the 127th Plenary Session was held both in Venice and online.

1. Adoption of the Agenda

The agenda was adopted without any amendments (CDL-PL-OJ(2021)002ann-rev).

2. Communication by the President

President Buquicchio, welcomed the new Members of the Venice Commission, as well as special guests and delegations and referred to his recent activities as set out in document (CDL(2021)029).

The President put the emphasis on two activities.

On 10-11 March 2021, accompanied by Ms Granata-Menghini, he had travelled to Madrid and had an exchange of views with the President of the Spanish Constitutional Court, with the First Vice President of the Government of Spain and Minister of the Presidency, Relations with the Courts and Democratic Memory, with the Secretary General of the Spanish Ombudsman and Head of the Ibero-American Federation of Ombudsmen and with the Director of the Centre of Constitutional and Political Studies. A memorandum of understanding had been concluded between the Centre and the Venice Commission to strengthen cooperation in Latin America in particular.

On 6 June 2021, accompanied by Ms Granata-Menghini, the President had travelled to Kyiv where he had a very constructive exchange of views with the President of Ukraine, Mr Volodymyr Zelensky, and the Speaker of the Verkhovna Rada, Mr Dmytro Razumkov, on the pending judicial reforms, and took part in a very important conference on Anti-corruption (in which Hanna Suchocka also participated).

3. Communication from the Enlarged Bureau

A la réunion du Bureau Elargi, le Président avait confirmé sa volonté de quitter la présidence de la Commission et avait exprimé sa disponibilité pour continuer à travailler pour la Commission en exerçant des fonctions de représentation en accord avec le nouveau/la nouvelle Présidente de la Commission. Suite aux discussions au Bureau Elargi, les vice-Présidents et la Commission demandent à M Buquicchio, dans l'intérêt de la Commission, de rester en fonction jusqu'aux élections en décembre 2021.

M Buquicchio accepte cette proposition. Il explique que la pandémie et ses effets sur les méthodes de travail de la Commission ont contribué à cette décision. La Commission a été sa mission et sa vocation ; il rappelle qu'il a assisté à toutes les sessions plénières dès sa création et même aux réunions préparatoires avant que la Commission ne soit créée, non sans une certaine réticence de plusieurs Etats membres du Conseil de l'Europe, en tant qu'accord partiel.

M Buquicchio rappelle qu'il aura servi pendant plus de 33 ans la Commission, qui a su devenir un organe incontournable du Conseil de l'Europe pour la protection et la promotion de la démocratie et des droits de l'homme, et qui bénéficie aujourd'hui d'une reconnaissance toujours plus étendue puisqu'elle touche tous les continents.

Le Président informe ensuite la Commission des suites à la demande d'avis de l'Ombudsman d'Arménie concernant un projet de loi visant à réduire le budget de l'institution. Le Secrétariat a été récemment informé que les autorités arméniennes ont retiré ce projet de loi. Il n'y a donc plus lieu de traiter de cette question. Le président saisit cette occasion pour remercier les membres de la Commission et du Secrétariat qui ont permis d'aboutir aux Principes de Venise visant à protéger et à promouvoir l'institution du Médiateur au sein des Etats membres du Conseil de l'Europe. Ces Principes sont d'autant plus pertinents que l'on observe actuellement de plus en plus d'attaques vis-à-vis des médiateurs au sein de différents Etats membres.

4. Election of a Committee of Wise Persons

The Enlarged Bureau submitted to the Commission its proposal for the composition of the group of Wise Persons, who will be in charge of preparing the elections which will be held during the December 2021 session: Mr Josep Maria Castellà Andreu, Mr Nicolae Esanu, Ms Grainne MacMorrow, Mr Oliver Kask, Mr Christoph Grabenwarter, Ms Lydie Err and Mr Kaarlo Tuori.

The Commission elected the Committee of Wise Persons proposed by the Enlarged Bureau, in accordance with Article 6, paragraph 1bis of the Revised Rules of Procedure.

The Wise Persons were invited by the Commission to elect their Chair and subsequently inform the Commission members.

President Buquicchio received from Mr Varga the Amicus Curiae Award of the Curia of Hungary and from Mr Philip Dimitrov the Amicus Curiae Award from the Constitutional Court of Bulgaria, both for his achievements for the Venice Commission.

Several members of the Commission took the opportunity of the presence of Mr Thomas Markert for congratulating him for his achievements all along his career at the secretariat of the Commission and in particular in his former capacity of Secretary of the Commission. Mr Thomas Markert thanked the members for their words.

5. Communication du Secrétariat

Ms Simona Granata-Menghini informed the members regarding technical issues in view of an optimal use of the online platform. She then informed the members that the Commission would be under an evaluation this year, carried out by the Council of Europe's Directorate of Internal Oversight. Four criteria of the work of the Commission will be assessed: the relevance of its work, its effectiveness in achieving the expected objectives, its efficiency in conducting its work and the impact of its work. For this purpose, the members will receive a questionnaire by email; they will be invited to duly and timely answer to it. Additionally, some of the members may also be invited for interviews online in order to explain to the auditors how the Commission functions. She encouraged the members to answer the questionnaire and to accept the interviews in order to provide the necessary information for the evaluation to reflect the specificities of the Venice Commission.

Ms Granata-Menghini underlined that four of the opinions submitted to the Commission at this Plenary had been partly financed under the "Quick Response Mechanism" and two under the Expert Coordination Mechanism of the European Commission; she expressed her gratitude for the support, including financial, which the European Commission continued to provide to the Venice Commission.

7. Co-operation with the Parliamentary Assembly

The Commission held an exchange of views with Mr Constantinos Efstathiou, Representative of the Committee on Legal Affairs and Human Rights of the Parliamentary Assembly of the Council of Europe (PACE) on co-operation with the Assembly. Mr Efstathiou informed the Commission on selected activities of the Parliamentary Assembly concerning the arrest of Alexei Navalny, the functioning of democratic institutions in Turkey, the 10th anniversary of the Istanbul Convention and issues related to the protection of minorities, a report on transparency and regulation of foreign donations to political parties, two reports on the situation in Belarus which had benefitted from contributions of the Venice Commission, reports on the legal and human rights preconditions for the use of Covid-19 passes and on the scope of politicians' freedom of speech – the latter referring to several opinions and reports of the Venice

Commission, as well as the election of the new judges of the European Court of Human Rights in respect of Belgium and Croatia.

Mr Efstathiou underlined that three Venice Commission opinions on the current plenary agenda –concerning Hungary, the Russian Federation and Turkey – had been requested by the Parliamentary Assembly. Finally, he gave special thanks to the Venice Commission for its assessment of the 2020 amendments to the Russian Constitution increasing the possibility for the Constitutional Court to declare international bodies' decisions non-executable. These amendments raised concerns as regards the implementation of ECtHR judgments by Russia. The Commission opinion of June 2020 fed into Assembly Resolution 2358 (2021), which explicitly called on the Russian Federation to change the 2020 amendments to the Constitution.

8. Co-operation with the Congress of Regional and Local authorities of the Council of Europe

Ms Gudrun Mosler-Törnström, new Chair of the Congress' Monitoring Committee, mentioned eight recent "remote monitoring visits" as well as upcoming visits to Ireland, Luxembourg, Turkey and Ukraine. Further, the Congress had adopted a report on holding referendums at local level and the relevant recommendation which called on local and regional authorities in the Council of Europe member states to implement the guidelines and good practices regarding the holding of referendums defined by the Venice Commission in the Code of Good Practice in Electoral Matters and in the Revised Guidelines on the Holding of Referendums, when applicable to the local level. She also thanked the Commission for its involvement in the preparation of the report on legal personality of local public entities (*hromadas*) in Ukraine in the light of the European Charter of Local Self-Government.

Finally, Ms Mosler-Törnström stressed the importance of the Monitoring Committee's post-monitoring activities, and she informed the Commission of the forthcoming local election observation in Morocco early September and, possibly, later this year in Denmark.

8bis. Exchange of views with the Financial Action Task Force

The Commission held an exchange of views with Ms Elisa de Anda Madrazo, Vice-President of the Financial Action Task Force (FATF). Ms de Anda Madrazo recalled that the FATF is an inter-governmental, policy-making body which sets global standards to combat money laundering and prevent terrorist and proliferation financing. She stressed that its standards were truly global, with high level commitments from 205 jurisdictions, which were monitored with the help of 9 FATF-style Regional bodies including the Council of Europe's Committee of Experts on the Evaluation of Anti-Money Laundering Measures (MONEYVAL), one of the FATF's associate members. The FATF core functions consisted in 1) research how money was laundered, and terrorism funded, 2) setting global standards to mitigate those risks and 3) assessing the effectiveness of actions taken by the countries. FATF standards were drafted in a way that recognised that countries had diverse legal, administrative and operational frameworks, and that the FATF was committed to promoting proportionate and measured responses to help prevent serious organised crime and terrorism. Countries needed to focus on high-risk areas and high-risk cases. Finally, Ms de Anda Madrazo noted that the Council of Europe's work on technical assistance on anti-money laundering and counter-terrorist financing, including a regional risk assessment, and the 2018-2022 counter terrorism action plan, were valuable contributions that strengthened the European region's ability to meet the FATF standards and counter illicit finance. Further dialogue and cooperation with the Venice Commission could also be useful.

Several members stressed the need for consistency of global standards and welcomed the interest of FATF in exchanging views and coordinating positions with the Commission.

9. Follow-up to earlier Venice Commission opinions

The Commission was informed on follow-up to the following opinions (see document (CDL(2021)025):

- **Armenia**: Follow-up to the amicus curiae brief for the Constitutional Court of Armenia relating to Article 300.1 of the Criminal Code (CDL-AD(2020)005)

- **Bulgaria**: Law supplementing the Criminal Procedure Code concerning the special prosecutor

- **Hungary**: Follow-up to the Opinion on the draft law on the transparency of organisations receiving support from abroad (CDL-AD(2017)015)

- **Malta:** Follow-up to the Opinion on Constitutional arrangements and separation of powers and the independence of the judiciary and law enforcement (CDL-AD(2018)028)

- **Kyrgyzstan**: Draft Constitution of the Kyrgyz Republic (CDL-AD(2021)007)

10. Armenia

Mr Barrett explained that the Electoral Code had been a subject of discussions in view of its revision since the constitutional amendments of 2015 on which the Venice Commission had issued two opinions. The Urgent Joint Opinion, which had been requested by Mr Ararat Mirzoyan, Speaker of the National Assembly of Armenia, raised *inter alia* the following issues: the 'stable majority in parliament' required by the Constitution; the abolition of territorial candidate lists; the high thresholds for political parties and coalitions to access parliament; the publication of signed voter registers; the campaigning on the Internet; the new provisions aimed at criminalising false information and slander.

An inclusive working group was set up in 2019 in order to revise the Electoral Code, comprising representatives of majority and opposition political parties, as well as representatives of international institutions and the civil society. A broad agreement had emerged from these discussions to abolish the territorial candidate lists and to move to a national closed list only. Mr Barrett added that there was an overall expectation that all the amendments submitted to the Commission be in force in view of next elections. However, a political crisis occurred in the meantime after the recent war and early parliamentary elections were called.

The National Assembly therefore adopted on 1 April 2021 the amendments related to the electoral system by removing the territorial candidate lists in view of their application to the 20 June early parliamentary elections. Because of the broad political agreement aimed at removing territorial candidate lists and as it had been well flagged over the last three years, the Urgent Joint Opinion did not criticise the timing of such changes but was more critical on the other changes envisaged. The National Assembly adopted the broader package of amendments in May 2021, which will enter into force at the very earliest in 2022. Mr Barrett underlined that those changes were rather different from the ones which were under examination in the Joint Urgent Opinion.

Mr Hamadziripi Munyikwa informed the Commission that the OSCE/ODIHR concurred with the Commission and the intervention done by Mr Barrett. He added that the OSCE/ODIHR had held discussions during the reform process and observed the recent early parliamentary elections held on 20 June 2021.

Mr Vardanyan recalled that the reform process had started mid-2019 and had been interrupted due to the war and the COVID-19 pandemic. The package of amendments as discussed had initially been planned to be adopted earlier, which would have left time for implementing the whole package for the next elections. This was eventually impossible, particularly in a political context requiring early elections, which explained that only the amendments related to the

removal of the territorial candidate lists entered in force for the 20 June early parliamentary elections. The other amendments would enter into force in January 2022 or later.

The Commission endorsed the Urgent Joint opinion on draft amendments to the Election Code and related legislation of Armenia (CDL-AD(2021)025).

11. Georgia

Amendments to the Election Code of Georgia and revised draft amendments to the Election Code of Georgia

Mr Alivizatos recalled that the 2018 constitutional reform had paved Georgia's way to a classical parliamentary regime, based on proportional representation, a balance between political forces and a reduction of the powers of the President. However, the full implementation of the reform had been adjourned to 2024 and the old political cleavages arose again after the October 2020 parliamentary elections. The subsequent parliamentary boycott of opposition parties was not illegitimate but an extreme mode of reaction. The political agreement of 19 April 2021 – which has however not been signed by the major opposition party -, the return to Parliament by most opposition parties and the preparation of the current electoral reform were clearly to be welcomed and showed that close cooperation between the EU, the US Government, the Venice Commission and OSCE/ODIHR had helped create a climate of dialogue in Georgia.

The Urgent Joint Opinion on draft amendments to the Election Code of Georgia, requested by Mr Archil Talakvadze, then Chairperson of the Parliament of Georgia and issued on 30 April 2021, included a number of specific recommendations relating to the first version of the draft amendments submitted by the Speaker of Parliament. Key recommendations were aimed at introducing a qualified parliamentary majority vote for the election of the chairperson and non-partisan members of the Central Election Commission (CEC), removing the specific restrictions of the right for a party to appoint a member to the CEC (i.e. the conditions that the party is entitled to state funding and that at least one of the party members actually "carries out activities of the member of the Parliament"), clearly setting out in the law on what grounds the removal of party-nominated election commission members may be based and ensuring the timely handling of election disputes.

Ms Pabel pointed out that according to the Urgent Joint Opinion on revised amendments to the Election Code of Georgia issued on 18 June 2021, the revised version of the draft amendments – which had been submitted by the Speaker of Parliament to the Venice Commission after the first reading in Parliament – took into account significant elements of the above-mentioned key recommendations, in particular with respect to the composition of commissions. At the same time, several previous recommendations were still pending and in addition, the revised draft amendments included some new elements which should be reviewed. Inter alia, the significant increase in non-partisan members of lower-level election commissions should be reconsidered and the right to submit complaints to election commissions should not be limited to persons registered in an electronic registry of persons authorised for election disputes. More generally, both opinions called for a more comprehensive and systemic reform of the Georgian electoral law which would not be limited to "micromanagement".

Ms Pabel informed the Commission that on 28 June 2021, the amendments to the Electoral Code were adopted by Parliament, with some further changes. While no official translation of the final version of the law was available at this stage, it appeared that some recommendations issued in the second urgent joint opinion had been followed.

Mr Frendo underlined that the practice in Georgia of frequently amending the electoral legislation was an issue of concern. Stability of the law was crucial to the credibility of the

electoral process. Furthermore, broad consensus of all relevant stakeholders was an important element of successful electoral reforms. The rapporteurs were pleased to see progress in this respect. The two urgent joint opinions had facilitated this, but there was no substitute for the process taking place on the ground.

The Commission endorsed the Urgent Joint Opinion on draft amendments to the Election Code of Georgia (CDL-AD(2021)022) and the Urgent Joint Opinion on revised draft amendments to the Election Code of Georgia (CDL-AD(2021)026).

Amendments to the Organic Law on Common Courts

Mr Eşanu reminded the Commission that it had dealt with the Georgian judiciary on numerous occasions and in the present context of the Organic Law on Common Courts, it had already issued two opinions in 2019 and in 2020.

One of the problems dealt with in this urgent opinion, which had been requested by Mr Archil Talakvadze, then Chairperson of the Parliament of Georgia and issued on 28 April 2021, concerned the nomination and appointment of several new judges to the Supreme Court of Georgia as well as, in this context, the functioning of the High Council of Justice (HCoJ).

The current urgent opinion concerned further amendments to the Law on Common Courts, which the Georgian Parliament had adopted in early 2021. The Venice Commission was requested to review these amendments in the light of its previous opinions. This meant that the current opinion essentially compared the new amendments with the Venice Commission's previous opinions.

The amendments focused on the procedures for appointment of judges to the Supreme Court, and in its opinion, the Venice Commission noted that the Georgian authorities had taken up several of the Venice Commission's previous recommendations, which was to be welcomed. However, there remained several issues for which the Venice Commission's recommendations did not appear to have been fully taken into account. This mainly concerned the appeal to the Supreme Court of decisions rendered by the HCoJ.

The opinion repeated a recommendation to consider whether the composition of the HCoJ should be changed in situations where the Supreme Court had quashed a decision of the Council in a certain case, and a new decision therefore needed to be made. For example, if the Supreme Court had found a member of the HCoJ to be biased, that member should not be in the panel of the Council to decide on the same case a second time.

The opinion then emphasised that where an appeal to the Supreme Court had been made, the appointments procedure in the HCoJ should be stayed until the Supreme Court had reached a decision. This followed from the fact that the HCoJ must, under the Constitution, comply with the findings of the Supreme Court, otherwise appeals would be meaningless.

The opinion then stressed that the competition for recruiting Supreme Court judges was ongoing which meant that different procedures could apply to different candidates within the same competition. For the sake of equal treatment of candidates, the selection procedure for this particular competition needed to be restarted.

As to the selection of candidates by the HCoJ, it was difficult to base an efficient merit-based appointment on a voting procedure. However, the level of transparency together with the possibility for an appeal were seen as an improvement.

Finally, as the formal decision for the approval of the full list of selected candidates was subject to a 2/3 majority of the full membership of the HCoJ, an antideadlock mechanism was necessary.

The Commission endorsed the Urgent Opinion on the Amendments to the Organic Law on Common Courts of (CDL-AD(2021)020).

12. Ukraine

Draft Law amending provisions of the Code of Administrative Offences and the Criminal Code of Ukraine regarding the liability of public officials for inaccurate asset declaration (no. 4651, of 27 January 2021)

The joint urgent opinion, requested by Mr Dmytro Razumkov, Chairperson of the Verkhovna Rada, concerned a bill introduced by President Zelenskyy in January 2021, in response to a situation created by the controversial Decision 13-r/2020, whereby the Constitutional Court had invalidated Article 366-1 of the Criminal Code establishing criminal liability for submitting false declarations and for a persistent failure to submit a declaration by public officials.

In December 2020 the Venice Commission had issued an urgent opinion (see CDL-AD(2020)038) criticising Decision 13-r/2020 and calling the Ukrainian authorities to reinstate criminal liability for those offences and imprisonment for the most serious ones. On 4 December 2020, the Verkhovna Rada had introduced two new provisions to the Criminal Code (replacing Articles 366-1); however, the sanctions provided by those two new provisions were relatively mild: in particular, they did not provide for deprivation of liberty as a potential sanction.

In January 2021, President Zelensky had introduced a bill which *inter alia* would increase the level of sanctions and re-introduce deprivation of liberty for the most serious violations of the obligation to submit an accurate asset declaration. This bill was in line with the international obligations of Ukraine, which required *inter alia* that the obligation of public officials to submit asset declarations should be supported by appropriate sanctions having a deterrent effect. The reinstatement of the penalty of imprisonment was also in line with the Venice Commission's recommendations in CDL-AD(2020)038. The Verkhovna Rada had reduced the maximum term of imprisonment for the persistent non-submission of an asset declaration from two years to one. Despite this change, new Article 366-3 was still generally in line with the Venice Commission's recommendations.

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)

Ms Suchochka pointed out that this opinion, requested by the Speaker of the Rada, also related to the fight against corruption in Ukraine. A more holistic approach would be required in for the reform of the judiciary. Draft law no. 5068 intended establishing trust in the HCJ by creating an Ethics Council that would select candidates for the HCJ and would do an evaluation of the current members of the HCJ. The Ethics Council would be a mixed national / international body. The opinion supported the establishment of the Ethics Council and that the participation of international experts would be temporary only. The most difficult issue had been the voting rules. The urgent Opinion recommended that decisions should be adopted if at least four of the six members vote in favour, among which are at least two international experts. In case of a tie, the vote should be repeated but eventually the vote of the group which includes at least two international experts should prevail.

Mr Andrii Kostin, Chair of the Committee on Legal Policy of the Verkhovna Rada, on behalf of President Zelenskyy and Speaker Razumkov expressed gratitude for the professional assistance provided by the Venice Commission over the years to the Ukrainian authorities. He emphasised the importance of the Venice Commission's last opinions in the work of the Parliament during the summer session. In particular, in May and June two draft laws had been examined – one on the composition of the High Council of Justice (HCJ) and the work of the Ethical Council, which provided *inter alia* for the international participation in the work of this body and established rules

on screening candidates to the HCJ (draft law No. 5068, adopted in the first reading), and another on the administrative and criminal liability for inaccurate asset declarations by public officials (draft law no. 4651, adopted and sent to the President for signature). Mr Kostin informed the Commission about the Presidential Decree defining strategic priorities in the development of the

judiciary and expressed hope in the continuation of fruitful cooperation with the Venice Commission in this process.

In the ensuing discussion, Mr Kostin informed the Commission about the progress towards the adoption of the draft law on the constitutional procedure. More than 1200 amendments were proposed and discussed in the Committee on Legal Policy of the Verkhovna Rada; the draft law includes *inter alia* a mixed selection commission checking the integrity of future candidates. MPs from some parties were opposed to the establishment of such a body, however. These amendments were currently being examined by the legal department of the Rada. It was likely that the bill with the amendments would be on the agenda of the Rada after the summer recess.

The Commission endorsed:
- the Urgent Joint Opinion by the Venice Commission and the Directorate General of Human Rights and Rule of Law (DGI) of the Council of Europe on the Draft Law amending provisions of the Code of Administrative Offences and the Criminal Code of Ukraine regarding the liability of public officials for inaccurate asset declaration (no. 4651, of 27 January 2021) (CDL-AD(2021)028) and
- the 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)018).

13. Bosnia and Herzegovina

Mr Kask explained that the opinion on the draft Law on the conflict of interest in the institutions of Bosnia and Herzegovina (requested by the Minister of Justice, Mr Josip Grubeša), was the third opinion on this issue. The first two opinions on the previous versions of the same law had been issued by the Venice Commission in 2008 and 2010. The currently existing system was somewhat dysfunctional: for a prolonged period of time the Conflict of Interests Commission (the CoIC) had been unable to perform its tasks, so the EU had requested to address this issue in the framework of the accession negotiations. The draft Law prepared by the Ministry of Justice had serious flaws. Firstly, it would be necessary to address the fragmentation of the legislation: such matters should be delegated to the State level and a harmonised system of regulations/enforcement should be created. Next, the personal scope of the draft Law needed to be revised: MPs and appointed officials would have to be governed by different regimes. Certain substantive rules needed to be changed: in particular, appearances of a conflict of interest should be covered by the law, it should be made clear that private interests of the officials may also lead to a conflict of interest even without going against the public interest, the definition of close relatives should be expanded, the prohibition of parallel employment for appointed officials should be nearly absolute, while exceptions could be made for MPs. There were also some shortcomings in the asset declarations system: while in this part the draft Law introduced welcome amendments, declarations should include rented property and there should be clear rules on their publications.

As regards the implementation mechanism, a collective body – like the CoIC – was not necessarily the best solution, but it did not go against international standards. Under the draft Law, members of the CoIC were to be appointed by a simple majority in the Parliament: this should be reconsidered, in order to avoid politicisation. It would be preferrable to have a proportional system of representation or to require a qualified majority of MPs to elect members

of the CoIC. Ethnic quotas should be abandoned, the selection of the members should be merit-based.

The proposed voting procedure in the CoIC was too cumbersome, and the distinction between important issues and current affairs was unclear. It would be preferrable to have a simpler decision-making procedure within the CoIC, while extending deadlines for taking decisions. Sanctions should be reviewed and must involve criminal liability for serious violations of the obligation to submit asset declarations. The appeal procedure should be described in the law more clearly.

Mr Tuori added that the situation with the fight against corruption in Bosnia and Herzegovina had not been progressing in the recent years, and that the previous institutional model – with the Central Electoral Commission as a central enforcement body – had been working better compared to the CoIC created in 2013 and composed of politicians and along ethnic lines.

Ms Ines Krtalić, Head of the Cabinet of the Minister of Justice, emphasised the significance of the fight against corruption for Bosnia and Herzegovina – not only because it was one of the key priorities for the EU, but also because the society demanded it. Corruption represented a serious problem in Bosnia and Herzegovina, but many other countries also faced this threat. Any reform in this field should take into account the complex constitutional and political structure of Bosnia and Herzegovina. The notion of a "constituent people" was a constitutional category reflected in the composition of many State institutions. The balance between the three constituent peoples should be preserved in order to build trust and avoid capture of this independent body by one ethnic group. Ethnic quotas were necessary to protect the CoIC from lobbying and external pressures. The recommendations of the Venice Commission would guide the authorities of Bosnia and Herzegovina in the revision of the draft Law.

In the ensuing discussion Mr Tuori and Mr Kask noted that ethnic quotas were not a constitutional obligation, and that insisting on them might lead to blockages. The CoIC should be a professional, not a political, body. Ms Krtalić responded that once the trust in the independence of this institution was established, it might be possible to reconsider the model of appointments/decision-making.

The Commission adopted the Opinion on the draft Law on preventing conflict of interests in the institutions of Bosnia and Herzegovina (CDL-AD(2021)024).

14. Russian Federation

Ms Nussberger presented the draft opinion on the compatibility with international human rights standards of a series of bills introduced to the Russian State Duma between 10 and 23 November 2020 to amend laws affecting "foreign agents". The opinion had been requested by the Chairperson of the Committee on Legal Affairs and Human Rights of the Parliamentary Assembly of the Council of Europe, Mr Boriss Cilevičs.

From the perspective of comparative law, Ms Nussberger listed notable differences that rendered the Russian legislation more far-reaching and restrictive than similar laws in the United States and in Israel. From the perspective of human rights law, Ms Nussberger emphasised the significant chilling effect of the law due to its burdensome administrative obligations, harsh sanctions, and the risk of arbitrary application.

The opinion argued that the best solution would be to abandon the entire special regime of registration, reporting, and public disclosure requirements for "foreign agent" associations, media outlets and individuals, including the related administrative and criminal sanctions. Alternatively, the "foreign agent" legislation should at least be thoroughly revised by significantly narrowing the legal definition of a "foreign agent" to serve the stated aim of transparency. Specifically, the notions of "political activities" and "foreign support" should be abandoned in favour of indicators

that would more reliably track objectionable forms of foreign interference. At a minimum, the stigmatising and misleading "foreign agent" label should be abandoned in favour of a more neutral and accurate designation.

Mr Andrey Klishas, Chairman of the Committee on Constitutional Legislation and State Construction of the Federation Council of the Russian Federation assured the Commission that its recommendations would be looked at very carefully by the Federation Council and the State Duma. Mr Klishas disagreed with the Commission's overall assessment that the "foreign agent" legislation had a chilling effect on civil society, claiming that "foreign agent" non-commercial organisations ("NCOs") continued to thrive since the introduction of the law in 2012. He further argued that the most recent amendments were not related to Russia's constitutional reforms of 2020 and that the law's terminology was not vague considering the jurisprudence of the Constitutional Court of the Russian Federation.

Ms Olga Vorobyeva, Deputy Director of the Department for Non-Profit Organisations of the Ministry of Justice emphasised that the NCO sector in Russia was young and growing, and that regulating this sector constituted a priority for the state. She informed the Commission that in March 2021, the Ministry of Justice had set up a working group with representatives of NCOs on the issue of foreign funding. As a result, several recommendations had been adopted concerning the responsibility and accountability of NCOs.

In the discussion which followed, several members expressed their concern about the sanctions against "foreign agents", the severe consequences that the stigmatising label and the burdensome administrative obligations imposed on "foreign agent" NCOs, as well as the chilling effect for the civil society.

Mr Klishas and Ms Vorobyeva underlined that there were no sanctions for being a "foreign agent" as such, but that sanctions only applied to the failure to comply with administrative requirements. The exception for foreign journalists was not vague because the activities that are incompatible with professional journalistic activity, and which might serve as a ground for designating foreign journalists as "foreign agents", were defined in Law 2124 and included such behaviours as incitement to hatred and terrorism

Administrative and criminal sanctions applied to the failure to comply with administrative obligations. During their meetings with the Russian authorities, the rapporteurs had learned that criminal sanctions had not yet been applied to "foreign agent" NCOs, but that administrative sanctions had been applied around 40 times, sometimes repeatedly to the same organisation.

Ms Nussberger stated that it was still too early to assess the effects of the recent amendments, but similar effects should be expected. She also underlined that the rapporteurs disagreed with the authorities and considered that the legislation went against the principles of legal certainty and of proportionality.

The Commission adopted the Opinion on the compatibility with international human rights standards of a series of bills introduced to the Russian State Duma between 10 and 23 November 2020 to amend laws affecting "foreign agents" (CDL-AD(2021)027), previously examined by the Sub-Commissions on Democratic Institutions and Fundamental Rights at their joint hybrid meeting on 1 July 2021.

15. Hungary

Mr Vermeulen presented the draft Opinion on the constitutional amendments adopted by the Hungarian parliament in December 2020, which was requested by the Monitoring Committee of the Parliamentary Assembly of the Council of Europe. As the full scope and import of the constitutional changes can only be understood in the light of its implementing legislation, some of the analysis and conclusions of the draft opinion were unavoidably depending on legislation in force or to be adopted. The amendments were adopted within a highly compressed timeframe

and during a period of emergency lockdown due to the Covid-19 pandemic, which raised concern, especially for a constitutional revision.

The so-called Ninth Amendment to the Fundamental Law of Hungary covered a variety of different areas, which the draft opinion had grouped together as follows: i) issues of marriage and family, sexual orientation, gender identity and the raising of children; ii) issues related to the establishment of "public interest asset management foundations performing public duties" and the definition of public funds; iii) issues related to exceptional situations such as war or state of emergency. As to the first point, the opinion recognised, in line with the ECtHR case-law, that States have a margin of appreciation in defining marriage and are not required to extend access to marriage to same-sex couples. At the same time, the new provision stating that "*The mother shall be a woman, the father shall be a man*" should not be applied in such a way as to discriminate on the basis of sexual orientation, for example in the adoption process. Secondly, the opinion recommended repealing the new provision "*Hungary shall protect the right of children to a self-identity corresponding to their sex at birth*" or, at a minimum, ensuring that the amendment does not have the effect of denying the rights of transgender people to legal recognition of their acquired gender identity. Thirdly, the opinion admitted that the requirement of raising children "*in accordance with the values based on the constitutional identity and Christian culture of our country*" may be considered consistent with European standards so long as the public-school system provides an objective and pluralist curriculum, avoiding indoctrination and discrimination on all grounds, and respecting parental convictions and their freedom to choose between religious and non-religious classes for their children.

As to the second point, the opinion suggested reconsidering the constitutionalisation of the newly created foundations and recommended that they be regulated by statutory law (without a reinforced majority) that should clearly set out the relevant duties of transparency and accountability for the management of their funds, as well as appropriate safeguards of independence for the composition and functioning of the boards of trustees of the foundations.

Finally, the draft opinion did not identify substantive problems with the new provisions on the special legal order, while emphasising that their impact on the system of checks and balances of the State will depend on the content of the corresponding legal texts to be adopted in the future, which could eventually raise questions regarding the powers of the State during states of exception.

Mr Gergely Ekler, state secretary for the Ministry of Family Affairs of Hungary, highlighted that the Hungarian system had a firm legal basis for non-discrimination. In particular, he reiterated that the only new element in the procedure for adoption is the final consent of the Minister of Family Affairs for individuals wishing to adopt a child.

Ms Anikó Raisz, state secretary for the Ministry of Justice of Hungary, provided elucidations as to the new institution of the public interest asset management foundations performing public duties and the intention of the Hungarian authorities to create a constitutional model that takes advantage of a more flexible framework for private institutions in the field of higher education, also for funding. She stressed that the new provisions strengthened the independence of universities and preserved freedom of scientific teaching while requiring accountability and transparency which stem from the so-called Info-Act. Ms Raisz underlined that the amendment concerning public funds is not related to the establishment of the new foundations and is solely aims at defining public funds and concluding related disputes. She described the changes affecting the special legal order which have been built on the basis of a comparative analysis of twenty European legal orders and she concluded by noting that there was no contradiction between references to the Christian culture and tolerance.

Mr Mathieu noted that the opinion cannot be understood as making a link between the Christian tradition and discrimination, which would obviously not be acceptable.

Mr Alivizatos raised the general question of what can or cannot be included in a constitution. He wondered whether the inclusion of a rule in the constitution would potentially restrict public

dialogue and the choice of electors in the next election, due to the special majority requirements for a constitutional revision. The discussion led to the conclusion that this issue could not be addressed in detail in the present opinion.

On a question concerning the adoption process, Mr Ekler replied that it was not changed but it simply added the need for a consent of the Minister to adoptions by single persons.

Mr Vermeulen concluded that the opinion respected the margin of appreciation of the Hungarian authorities. There was only one specific issue that was clearly against international human rights law, concerning the legal gender recognition of transgender people who have undergone a gender reassignment surgery. The opinion concluded that other amendments did not go against international standards as such, but it pointed at several dangers to which these amendments might lead in terms of potential abuse and discrimination in the implementing legislation and practice.

The Venice Commission adopted the Opinion on the constitutional amendments adopted by the Hungarian parliament in December 2020 (**CDL-AD(2021)029**), **previously examined by the Sub-Commissions on Democratic Institutions and Fundamental Rights at their joint hybrid meeting on 1 July 2021.**

16. Turkey

Ms Kjerulf Thorgeirsdottir presented the draft opinion on the compatibility with international human rights standards of Law No. 7262 on the Prevention of Financing of the Proliferation of Weapons of Mass Destruction, requested by the Committee on Legal Affairs and Human Rights of the Parliamentary Assembly of the Council of Europe on 1 February 2021.

She informed the Commission about the rationale invoked by the Turkish authorities for its adoption - to ensure full compliance with relevant UNSC resolutions concerning financing of the proliferation of the weapons of mass destruction and the recommendations contained in the 2019 Financial Action Task Force (FATF) mutual evaluation report on Turkey regarding its anti-money laundering (AML) /combating financing of terrorism (CFT) system. However, the scope of the changes went beyond the stated intention and negatively affected the civil society, inter alia, by further tightening the government's control on its activities, going beyond what is legitimate, proportional and necessary in a democratic society.

The draft opinion assessed the compatibility of the amendments with international human rights standards set forth in the European Convention on Human Rights and the International Covenant on Civil and Political Rights to which Turkey is a party. Whilst recognising the difficult security situation faced by Turkey, the draft opinion underlined that Council of Europe member states have to comply with all their obligations under international law, when taking steps to counter terrorism.

Ms Kjerulf Thorgeirsdottir explained that the provisions relating to aid collection activities of associations, in their indiscriminate scope, did not seem to meet the requirements of necessity and proportionality and could result in a serious restriction of their freedom of association. The proposed system of audits based on a non-transparent risk-assessment process and applied indiscriminately to the entire civil society sector, rather than to specific NGOs identified as being vulnerable to financing by terrorist entities, could be overly far-reaching and comported a risk of having a chilling effect on NGOs, due also to the increased sanctions for breach of auditing obligations. The draft opinion also raised concerns as to the ability of the authorities to remove the board members of an association and replace them with trustees without consulting with the members of the NGO concerned as a guarantee that the trustees take the best interests of the NGO into consideration. Finally, the opinion regretted a rushed manner of adopting the law without any meaningful consultation with civil society and other stakeholders.

Mr Birol Özcan, Deputy Head of Department for Relations with Civil Society of the Ministry of Interior of Turkey, referring to the 2019 FATF mutual evaluation report on Turkey, elaborated on the need to adopt Law No. 7262 on the Prevention of Financing of the Proliferation of Weapons of Mass Destruction. He further explained that to-date, new provisions had not been applied by the Minister of Interior for temporary suspending staff members and / or executives of civil society organisations prosecuted on terrorism-related charges as envisaged by amended Article 30/A of the Law on Associations. Furthermore, Mr Özcan stressed that ceasing the activities of the associations under paragraph 2 of the same Article was a measure of last resort and subject to judicial review. Regarding the substantial increase in fines and penalties for breach of auditing obligations and risks related to their disproportionate application, Mr Özcan observed that their application was always guided by law and the principle of proportionality. He explained moreover that the audits were conducted in accordance with the risk-based approach recommended and required by the FATF. In conclusion, the amendments were proportionate to the aims pursued, in conformity with freedom of association.

The Commission adopted the Opinion on the compatibility with international human rights standards of Law No. 7262 on the Prevention of Financing of the Proliferation of Weapons of Mass Destruction of Turkey (CDL-AD(2021)023), previously examined by the Sub-Commissions on Democratic Institutions and Fundamental Rights at their joint hybrid meeting on 1 July 2021.

17. Romania

Ms Suchocka presented the draft opinion on the draft Law for dismantling the section for the investigation of offences committed within the judiciary (SIOJ) of Romania, requested by the Minister of Justice of Romania by letter of 29 March 2021.

The SIOJ was set up nearly three years ago. The Constitutional Court of Romania described this specialised structure as having been created to carry out investigations and constituting a legal guarantee for the principle of the independence of justice, and found that it did not infringe the principle of equality of rights under the ECHR nor the right to access to justice. However, the creation of the SIOJ had been criticised by the Venice Commission in its opinions of 2018 and 2019.

The rationale behind dismantling the SIOJ was that, at best, it was underperforming as a result of being understaffed and centralised– making quick and efficient investigations impossible. At worst, it contributed to corruption by not dealing with cases, which was likely to be the result of the sheer caseload (some 6000 cases) combined with a lack of sufficient staff to deal with it.

The Venice Commission had received two draft laws for this opinion. One draft adopted by the Government and an amended version adopted by the Chamber of Deputies of Parliament. The Parliament's draft introduced additional safeguards, which raised issues with respect to standards regarding the inviolability of judges and prosecutors. The opinion reiterated that the Venice Commission's position was that judges and prosecutors should enjoy purely functional immunity for actions carried out in good faith in pursuance of their duties or in the exercise of their functions. There should be no immunity for intentional crimes (for instance, taking bribes). Singling out judges and prosecutors as needing additional special safeguards – beyond those rightly enjoyed under functional immunity – would send the wrong signal and could be detrimental to the image of the profession in Romania. In addition, there were sufficient safeguards under existing law.

Also, it was important that criminal proceedings that fall outside the scope of functional immunity, not fall within the competence of the Superior Council of Magistracy (SCM), which was an administrative body that should not have any judicial tasks. Such cases should be

brought directly before the courts of law without the SCM's prior screening. For this reason, it was important that in the planned reform for the adoption of essential legal provisions aimed at consolidating the organisation and functioning of the judiciary a holistic approach was adopted. In this respect, it was to be welcomed that the Romanian authorities intended to take a two-step approach: first to dismantle the SIOJ and then to adopt three laws on the status of judges, on judicial organisation and on the SCM. This opinion therefore supported the draft Law prepared by the Government of Romania and rejected the amendments made to this draft Law by the Chamber of Deputies of Parliament.

Mr Stelian-Cristian Ion, Minister of Justice of Romania explained that the opinion displayed a dual significance: it proved the willingness of the Government to carry out a consistent and honest dialogue with its partners, whilst reconfirming the importance of experts' opinions in finding the right solution at a time when the national debate was overwhelmed by emotion. The Government approved and sent for adoption to Parliament a draft Law on dismantling the SIOJ in view of restoring the situation pre-dating its establishment. The reinstatement of the competence of the National Anti-Corruption Directorate was of essential significance because it would be a sign that the fight against corruption was being strengthened. The National Anti-Corruption Directorate, unlike the SIOJ, had shown efficiency and resilience, which were fundamental institutional features in combating corruption in Romania.

Mr Ion said that this opinion would set the direction and pace of the judicial reform and the fight against corruption for the period to come. The end purpose must be the swift adoption of the draft Law on dismantling the SIOJ, which will be followed by a larger reform with another three draft laws on the status of judges, on judicial organisation and on the SCM.

Mr Ion ended by saying that, within this framework, the dialogue with the Venice Commission will continue so as to identify the best legislative solutions. **The Commission adopted the Opinion on the draft Law for dismantling the section for the investigation of offences committed within the judiciary of Romania (CDL-AD(2021)019).**

18. Malta

Mr Barrett explained that this urgent opinion, requested by the Minister of Justice, Equality and Governance of Malta, deals with the special difficulties for a jurisdiction which does not have a tradition of administrative penalties to later adopt them when over time the pressures of efficiency/effectiveness or the expectations of external bodies (often the EU) make them necessary. In some states it leads to a constitutional dilemma, if as in Malta only courts can apply significant sanctions and only in a criminal process. Indeed, in Malta there is caselaw from the Constitutional Court which does not allow non-judicial regulators to apply criminal penalties.

As Malta, like all our states, has a wide range of regulators with a variety of powers, the government decided to take action to address this issue. It envisaged two alternative approaches: 1. to amend the constitution in order to enable non-judicial regulators to apply criminal sanctions (Bill 166; this requires a special majority); and 2. to enact an ordinary law to interpret what a criminal penalty is. (Bill 198). The latter approach had raised strong opposition in the legal circles in Malta, which viewed as a disguised attempt to modify the constitution without a qualified majority.

The case-law of the European Court of Human Rights identifies an autonomous concept of criminal offence and makes it clear that administrative sanctions and de-criminalisation cannot avoid ECHR safeguards; a regulator can apply heavy sanctions if there is due process and an appeal to or review by the ordinary courts. The Maltese Constitutional Court has interpreted the Maltese constitution to provide for a stricter guarantee than that of Art 6 ECHR, as only courts can apply significant sanctions which qualify as criminal. The Commission did not find that Article 53 required the Maltese Constitution to be aligned to the ECHR, to the extent that the protection afforded under the Maltese system is higher than that afforded by Article 6 ECHR.

As concerns Bill 198, the Opinion expressed the view that the rules about amending the constitution are not legal technicalities, and the special majority which is required to adopt constitutional amendments serves a democratic purpose to ensure broad agreement; accordingly, the reform should be pursued through an amendment of Article 39 of the Constitution of Malta rather than through an amendment of the Interpretation Act.

The opinion noted that the ”dual track system” already introduced in other sectors might overwhelm the courts of a small jurisdiction such as Malta. At any rate, as concerns Bill 166, if independent regulatory authorities would be empowered to impose criminal sanctions subject to judicial review, it seemed necessary to clarify that the constitutional and legal protections constraining the exercise of power by the regulatory authorities would continue to apply when they exercise the new sanctioning competence.

The Commission had been informed that, in the light of the conclusions of the Urgent Opinion, which had been issued on 1 June 2021, the Maltese authorities had decided not to pursue the interpretative approach but to reconsider the prospects for a constitutional amendment.

The Commission endorsed the Urgent Opinion on the reform of fair trial requirements relating to substantial administrative fines in Malta (CDL-AD(2021)021).

19. Montenegro

Mr Gaspar introduced the Urgent Opinion, requested by Mr Dritan Abazović, Deputy Prime Minister of Montenegro. This urgent opinion was a follow-up to the Opinion on the draft amendments to the Law on the State Prosecution Service and the draft law on the Prosecutor’s Office for organised crime and corruption of Montenegro, adopted at the March 2021 Plenary Session. The original reform, analysed in the March 2021 Opinion, consisted of three main proposals: it would change the ratio between lay members and prosecutorial members in the Prosecutorial Council (PC), replace all currently sitting members of the PC, and would lead to the replacement of the head of the Special Prosecutor’s Office due to the renaming of his office.

Following the March 2021 Opinion, the Government of Montenegro reviewed the two legislative proposals. Mr Gaspar welcomed the authorities’ openness to dialogue. Several key recommendations of the March Opinion had been taken into account. Thus, the idea of removing the Special Prosecutor under the pretext of an institutional reform, which would entail the redistribution of cases dealt with by his office, had been abandoned. That was positive. Furthermore, the revised draft had addressed the concern expressed by the Venice Commission in the March 2021 Opinion about the risk of politicisation of the new PC because of the appointment of its lay members by a simple majority in the Parliament. Under the new proposal, this risk would be reduced by the introduction of stricter ineligibility rules for the candidates, and by the introduction in the composition of the PC of one lay member nominated by civil society representatives. However, certain questions remained. In particular, it was unclear whether this member would be really representative of the civil society. In general, these amendments were going in the right direction.

By contrast, the immediate replacement of all currently sitting members of the PC seemed to be unjustified. A procedure for assessing, on a case-by-case basis, their compatibility with the new incompatibility criteria, could instead be devised. The replacement of the outgoing Prosecutor General with an interim one was not the best solution but might be necessary, as a transitional arrangement, to avoid a constitutional impasse. Finally, it was important that the obligation of the two top prosecutors to present reports before the Parliament should not involve an obligation to report on individual cases.

The Commission endorsed the Urgent Opinion on the revised draft amendments to the Law on the State Prosecution Service of Montenegro (CDL-AD(2021)030)

19bis. Constitutional developments in member and associate member states

a. Belarus

Ms Natallia A. Karpovich, Deputy Chair, Constitutional Court, informed the Commission on the work of the Constitutional Commission of Belarus established by presidential decree on 21 March 2021. The Commission chaired by the President of the Constitutional Court of Belarus, included MPs, representatives of local authorities, national expert community, NGOs, scientists, and the business sector. It had as an objective to prepare a text of constitutional amendments and organise public discussions before 1 August 2021. The Commission identified amendments to more than 60 articles of the Constitution in such areas as, for example, protection of personal data, cybersecurity and the right to association. The proposals also included the establishment of an ombudsman institution. Several amendments concerned the Constitutional Court. Ms Karpovich put a particular emphasis on amendments concerning constitutional complaints (including referral by ordinary courts), as well as new powers of the Court to interpret constitutional provisions, to intervene in the process of elections and referendums and on changes concerning the election of judges of the Constitutional Court. The work and standards elaborated by the Venice Commission were duly taken into consideration by the Constitutional Commission of Belarus. The final text of amendments would be submitted to a national referendum.

The exchanges with members focused on such issues as the need for additional guarantees for freedom of assembly and association, the necessity for the Constitutional Court to act independently and ensure the protection of individual rights and freedoms, and the need to reinforce the independence of ordinary courts while dealing with cases of violation of fundamental rights of individuals. Answering a question of possible co-operation with the Venice Commission on constitutional reform, Ms Karpovich said that the authorities were considering possible ways of such interaction.

b. Bosnia-Herzegovina

Ms Granata-Menghini informed the Commission of the work of the Inter-Agencies Working Group (IAWG) established in May 2021 in order to prepare amendments to the Constitution and to the electoral law of Bosnia and Herzegovina. This had to be understood in the framework of the inexecution of a number of judgments of the ECHR concerning ethno-territorial discrimination in the composition of the Presidence and the House of Peoples of Bosnia and Herzegovina, starting from the *Sejdic and Finci* case.

The IAWG was tasked to deal with:

1) Constitutional issues
2) “Electoral issues”, that is legislative rules intended at implementing the case-law of the ECHR and the Constitutional Court
3) “Electoral standards”, that is more technical rules which should be adapted to deal with deficiencies identified by ODIHR and GRECO

To implement the case-law of the Court, amendments were necessary not only to the election law, but also to the Constitution.

For the time being, the Group, which included members of the House or Representatives, the House of Peoples and the Committee of Ministers, met on a weekly basis but progress was slow. It had to be noted that the Committee of Ministers had fixed a deadline to 1 September 2021 for more steps to be made in the implementation of the above-mentioned case-law.

The Central Electoral Commission, which did not take part in this work of the IAWG, had sent a draft revised election law for opinion to the Venice Commission; since this draft was now put before the IAWG, the Venice Commission was invited to postpone its examination.

The Group could ask for external advice and the Venice Commission was invited to approve co-operation with it. Four members had expressed their readiness to work with the IAWG and others were invited to join.

Mr Knezevic informed the Commission about the readiness of the authorities of Bosnia and Herzegovina to co-operate with the international community in the implementation of the ECHR case-law, but also on the need to implement the judgments of the Constitutional Court of Bosnia and Herzegovina (in particular *Ljubic*).

The Commission decided not to examine the draft revised election law submitted by the Central Electoral Commission of Bosnia and Herzegovina at this stage, and confirmed its readiness to co-operate with the Inter-Agencies Working Group.

20. Information on conferences and seminars / Information sur les conférences et séminaires

Audition de la commission des Affaires institutionnelles du Sénat belge

M. Grabenwarter informe la Commission de sa participation, le 21 mai 2021, à une audition de la commission des Affaires institutionnelles du Sénat belge sur trois projets de loi spéciale modifiant la loi spéciale sur la Cour constitutionnelle belge datant de l´année 1989 relative à la composition de la Cour. Les trois propositions, entre autres, visent à changer la composition de la Cour en augmentant le nombre relatif des juges d'expression néerlandaise par rapport aux juges d'expression française, à soumettre les candidats issus d'un parlement à un examen préalable dont les modalités seraient prévues par la Cour et à élargir les conditions de nomination des candidats de la catégorie « professeurs de droit » en incluant des « chargés de cours ».

Lors de l'audition, M. Grabenwarter a abordé trois aspects : les règles de procédure de sélection des juges en droit comparé et notamment le rôle des parlements et des commissions d'experts dans cette sélection ; des possibles conditions à l'exercice de la fonction de juge constitutionnel (âge, formation juridique, nationalité, intégrité morale), et la procédure d'élection (majorité qualifiée).

High-Level Conference on the Rule of Law in Europe in the context of the COVID-19 pandemic

Mr Alivizatos informed the Commission about his participation in the High-Level Conference on the Rule of Law in Europe in the context of the COVID-19 pandemic, organised by the LIBE Democracy, Rule of Law and Fundamental Rights Monitoring of the European Parliament under the Portuguese Presidency of the EU, hosted (online) at the Faculty of Law of the University of Coimbra on 17-18 May 2021. The participants included EU and government officials, civil society organisations, journalists and legal scholars.

Mr Alivizatos participated in a panel on the importance of the rule of law in the context of the COVID-19 pandemic; his position, as a general rule, was that the reaction to the pandemic occurred under and within - and not over and above the law. Mr Alivizatos referred to the Venice Commission's Interim Report on the measures taken in the EU Member States as a result of the COVID-19 crisis and their impact on democracy, the rule of law and fundamental rights of October 2020, in which reference was made to the speed in which governments reacted to the crisis by introducing urgent legislation and executive action. He pointed to the fact that only a few Member States of the EU formally declared a state of emergency under their constitutions or their ordinary laws and that the significance of this will be analysed in the final report. He pointed out that some countries, under exceptional measures, allowed the

executive to legislate on its own initiative, speeding up measures, as did the existence of urgent procedures in parliament that facilitated the task of parliamentary majorities. This, however, needed to be counterbalanced by scrutiny and oversight first by parliaments themselves and second by the judiciary. Parliaments tried to strike a balance between, on the one hand, protecting their members and staff against COVID-19 and, on the other, carrying out their job, and checking executive action was all the more important in times of crisis. In some countries, unfortunately, the crisis was used by governments as an opportunity to adopt unpopular legislation on issues that were not necessarily related to the pandemic. The other major guarantee against abuse was judicial review of emergency measures. Individuals affected by these measures must be able to challenge them in court. To that end, courts must remain as open and accessible as under normal circumstances, being at least ready to impose interim measures – this also applies to the ECHRs and the CJEU to ensure a European judicial oversight. In conclusion, all branches of government of most countries, including the judiciary, had reacted in a much more responsible and efficient manner than in the past to the crisis that resulted from the COVID-19 pandemic, thus abiding by the rule of law.

International seminar "Execution of decisions of the Constitutionals Courts and equivalent bodies – theory and practice"

Mr Tanase informed the Commission about the on-line international seminar "Execution of decisions of the Constitutionals Courts and equivalent bodies – theory and practice", co-organised by the Constitutional Council of Kazakhstan and the Venice Commission which took place in Astana on 25 June 2021. The event brought together presidents and judges of the constitutional justice bodies of Kazakhstan, Kyrgyzstan, Tajikistan, Uzbekistan as well national and international experts. The President of the Venice Commission, Mr Buquicchio, as well as Mr Dimitrov, Ms Šimačkova and Mr Tanase, members of the Commission, participated in this regional seminar. Mr Tanase underlined the importance of such exchanges for the Constitutional Courts and Councils of the region and expressed his hope that the Commission will continue its active co-operation with countries of Central Asia.

21. Other business

There were no items under other business.

22. Dates of the next sessions

The Commission confirmed its schedule of sessions for 2021 and 2022 as follows:

128th Plenary Session	15-16 October 2021
129th Plenary Session	10-11 December 2021
130th Plenary Session	18-19 March 2022 (tbc)
131st Plenary Session	17-18 June 2022
132nd Plenary Session	21-22 October 2022
133rd Plenary Session	16-17 December 2022

Sub-Commission meetings as well as the meetings of the Council for Democratic Elections will take place on the day before the Plenary Sessions.

Link to the list of participants