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(VENICE COMMISSION)

COMMISSION EUROPEENNE POUR LA DEMOCRATIE PAR LE DROIT

(COMMISSION DE VENISE)

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(online)
11-12 December 2020

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DRAFT SESSION REPORT / PROJET DE RAPPORT DE SESSION

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Due to the Covid-19 pandemic, the 125th Plenary Session was held online.

1. Adoption of the Agenda

The agenda was adopted without amendments (CDL-PL-OJ(2020)004ann).

2. Communication du Président

Le Président se réfère au document présentant ses activités depuis la session d'octobre 2020.

3. Communication from the Enlarged Bureau / Communication du Bureau élargi

Le Président informe la Commission que l'avis sur les amendements constitutionnels en Russie a été reporté à la demande des autorités russes, en raison d'une part de la difficulté d'organiser des vidéoconférences avec les autorités et les parties prenantes pendant la pandémie, et d'autre part de l'intérêt d'attendre l'adoption de la législation de mise en œuvre des amendements constitutionnels. Le Bureau élargi soutient la proposition des rapporteurs de préparer un avis intérimaire pour la session de mars et plus tard un avis final qui prendrait en compte les lois ultérieures.

Mr Buquicchio also informed the Commission that Ukraine President Volodymyr Zelenskyy had sought the Commission's assistance in solving the issue of reinstating the anticorruption mechanisms after the Constitutional Court had annulled them through a controversial decision of late October. Two urgent opinions had just been issued, one on the anticorruption mechanisms and the other one on the reform of the Constitutional Court. The Commission would be called on to endorse these urgent opinions. President Zelenskyy would address the Commission during the Plenary session, discussing future co-operation.

M. Buquicchio informe enfin la Commission que le Bureau élargi a décidé, à contrecœur, que la session de mars 2021 se tiendra de nouveau exclusivement en ligne. Il exprime le souhait et l'engagement que la session du mois de juin 2021 se tienne à Venise, afin de renouer les liens entre les membres.

Finally, Mr Buquicchio informed the Commission that the Enlarged Bureau supported the proposal of the Wise Persons as concerns the election of the Chair and Vice-Chair of the Sub-Commission on Gender Equality. These proposals would be announced at this stage, while the election itself would take place on Saturday morning (see item 4 below).

4. Election of the Chair and Vice-Chair of the Sub-Commission on Gender Equality

On Friday 11 December, following a discussion at the meeting of the Enlarged Bureau on Thursday 10 December, Ms Grainne McMorrow, on behalf of the Wise Persons who had been nominated in view of the December 2019 elections – Mr Nicolae Esanu, Ms Monika Hermanns, Mr Martin Kuijer and herself – reminded the Commission that at that time the Wise Persons had presented their proposals for the elections. The election of the chair and vice-chair of the Sub-Commission on Gender Equality, however, was adjourned in order to explore the viability of the inclusion of a male-gender candidate (both proposed candidates were women). The question was indeed raised that gender equality was not just the responsibility or preserve of women members of the Commission.

The Wise Persons now proposed the following candidates: Ms Lydie Err (Luxembourg) as Chair and Mr Myron Nicolatos (Cyprus) as Vice-Chair. Members had the possibility of making alternative proposals before the election which would take place the following day.

On Saturday 12 December, the session chair, Mr Dimitrov, recalled the candidates proposed by the Wise Persons and noted that no alternative proposals had been presented. He therefore asked the members whether they agreed to elect Ms Lydie Err (Luxembourg) as chair and Mr Myron Nicolatos (Cyprus) as Vice-Chair.

The Commission elected Ms Lydie Err (Luxembourg) as Chair and Mr Myron Nicolatos (Cyprus) as Vice-Chair of the Sub-Commission on Gender Equality for a term expiring in December 2021.

5. Communication du Secrétariat

Mme Simona Granata-Menghini informe la Commission des détails techniques de connexion à la plateforme Kudo, et explique que les créneaux dans l'ordre du jour ont été déterminés en fonction de la participation des représentants des autorités et également des membres de la Commission en raison du décalage horaire. Elle remercie les membres qui résident dans d'autres continents pour leur dévouement pour participer à la session.

6. Follow-up to earlier Venice Commission opinions

The Commission was informed on follow-up to the following opinions (see also document CDL(2020)047).

Hungary – Opinion on the Draft Law on the Transparency of Organisations receiving support from abroad (CDL-AD(2017)015);

Mr Tanyar reminded the Commission that following the Preliminary Opinion on the draft transparency law, issued on 2 June 2017, the draft law had been adopted with some amendments on 13 June 2017.

In its judgment Commission v Hungary (Transparency of associations) (C-78/18), delivered on 18 June 2020, the Grand Chamber of the Court of Justice of the European Union held that by imposing obligations of registration, declaration and publication on certain categories of civil society organisations directly or indirectly receiving support from abroad exceeding a certain threshold and providing for the possibility of applying penalties to organisations that do not comply with those obligations, Hungary had introduced discriminatory and unjustified restrictions with regard to both the organisations at issue and the persons granting them such support.

The Court held that the transactions covered by the Transparency Law fell within the scope of the concept of "movements of capital" and that the law in question constituted a restrictive measure of a discriminatory nature. The Court also considered that the measures which the law lays down were such as to create a climate of distrust with regard to those associations and foundations receiving support from abroad. The public disclosure of information in relation to persons established in other countries which provided financial support to those associations was also such as to deter them from providing such support and constituted an interference with their right to respect for private and family life.

As to the aim of preventing money laundering and terrorism financing, the Court held that Hungary had not submitted any argument as to establish specifically that there is such a threat. Rather, the Transparency Law was founded on a presumption made on the principle that any financial support of civil organisations sent from abroad was intrinsically suspect. The measures rendered significantly more difficult the action and the operation of the associations falling within the scope of that law. The Court observed that the provisions of the Transparency Law could not be justified by any of the objectives of general interest which Hungary relied upon.

Kazakhstan – Opinion on the Draft Code of Administrative Procedures (CDL-AD(2018)020);

Mr Kouznetsov informed the Commission that the Administrative Procedure and Justice Code had been adopted by the Kazakh Parliament on 18 June 2020 and signed by the President of Kazakhstan on 29 June 2020. The structure of the adopted text had been changed in a substantive way compared to the draft examined by the Venice Commission in 2018. The Code followed some of the recommendations of the Venice Commission opinion by including simplified

provisions on the applicable principles and a clearer definition of functions of public authorities in different phases of administrative procedures. However, the drafters had not followed the Commission's recommendation to regulate the administrative procedures and administrative court proceedings in separate acts. Further, the prosecutors continued to play an important role in the administrative procedures and process. The provisions on administrative discretion remained unchanged and could lead to misinterpretation in the future application of the Code.

Following an executive order issued by the Prime Minister on 24 September 2020, other legal acts should be harmonised with the provisions of this Code before it officially entered into force on 1 July 2021.

Principes sur la protection et la promotion de l'Institution de Médiateur, appelés « les Principes de Venise » (CDL-AD(2019)005).

La Commission de Venise avait adopté en mars 2019, les Principes sur la protection et la promotion de l'Institution de Médiateur, appelés « les Principes de Venise ». Le 19 novembre 2020, la Troisième Commission des Nations Unies a adopté un Projet de Résolution sur « Le rôle des institutions d'Ombudsmans et des médiateurs dans la promotion et la protection des droits humains, de la bonne gouvernance et de l'état de droit » (https://undocs.org/fr/A/C.3/75/L.38).

Dans cette Résolution, les Principes de Venise sont dûment cités, et notamment explicitement à trois reprises :

- Tout d'abord dans l'introduction où la Résolution *« Prend acte des principes sur la protection et la promotion de l'institution du Médiateur (Principes de Venise), ».* C'est d'ailleurs la première référence à un texte international faite dans l'introduction ;
- Ensuite dans son point relatif aux Etats membres, la Résolution engage vivement les Etats membres, et ce en premier lieu, «… à envisager de mettre en place des institutions d'ombudsman et de médiateurs conformément aux Principes de Venise» ;

a) La troisième référence aux Principes de Venise apparait au premier point qui s'adresse aux institutions de Médiateurs et d'Ombudsman en les invitant *«… A agir selon les Principes de Paris et les Principes de Venise ; afin de renforcer leur indépendance et leur autonomie et de mieux pouvoir aider les États Membres à assurer la promotion et la protection des droits de l'homme et à promouvoir la bonne gouvernance et le respect l'état de droit ; »*

Il est à noter que cette formulation met les Principes de Venise au même niveau que les Principes de Paris. En outre de ces références explicites, implicitement les Principes de Venise ont été repris *in extenso*, la Résolution traitant des mêmes questions de la même manière, en entrant parfois davantage dans les détails. Cette Résolution sera proposée par la Troisième Commission des Nations Unies à l'adoption par l'Assemblée Générale des Nations Unies, le 16 décembre 2020.

7. Bulgaria

Mr Frendo informed the Commission that the opinion commented only on the most important points of the draft amendments to the Constitution, and focused on the judiciary. The opinion was interim since the constitutional revision process was ongoing.

The opinion regretted that the launching of the constitutional reform had not been preceded by an appropriate public debate, and that the reasons for the amendments were not well-explained. It expressed the hope that, in the future, the Bulgarian authorities would elaborate on the reasons behind each proposal and ensure meaningful participation of the public, experts and all political forces in this process.

The draft amendments to the Preamble and the chapters on fundamental principles and human rights were in general welcome or not problematic, apart from a few caveats on their interpretation. A blanket restriction on the right to vote for convicts sentenced to imprisonment

should be replaced by a more flexible rule. The reduced number of 120 MPs for the composition of Parliament seemed arbitrary. A clearer and more viable justification should be given. The introduction of individual appeal to the Constitutional Court was welcome, while the suppression of the Grand National Assembly should be justified.

The most important amendments related to the judiciary and the prosecution service. Several steps in the right direction included the creation of two separate councils, for judges and prosecutors respectively; the Minister of Justice no longer chaired the plenary of the Supreme Judicial Council and prosecutors were no longer involved in the governance of judges.

A number of issues were however still to be addressed. In particular, the two councils should focus on the appointments, career and discipline of judges and prosecutors, while probationary periods should be removed or conditions for not confirming the tenure should be narrowly defined in the law; at least half of the seats at the council for judges should belong to judges chosen by their peers from all levels of the judiciary; a certain number of lay members sitting on both councils might be nominated by the professional associations of lawyers or universities, in order to increase the diversity within the councils; an anti-deadlock mechanism should be provided for situations where the National Assembly cannot reach the 2/3 of votes for electing lay members; the competencies of the prosecution service outside the criminal law field should be reduced to the strictly necessary minimum; a mechanism of independent prosecution of the Prosecutor General, and for the judicial review of the decisions not to open investigations or not to prosecute should be created, including with a view to facilitating the implementation of ECtHR judgments in the cases of *Kolevi v. Bulgaria* and *S.Z. v. Bulgaria*.

The Secretariat informed the Commission that, on 25 November 2020, the National Assembly had not gathered the necessary 160 votes for the holding of a Grand National Assembly to revise the Constitution. By a ruling of 1 December, the Constitutional Court had terminated, for lack of interest, the examination of the President's request to declare unconstitutional a parliamentary committee in charge of examining the proposals for modification of the draft Constitution.

A draft bill which foresees the creation of a "prosecutor for the investigation of the Chief Prosecutor" was put before Parliament on 3 December. It would be appropriate for the Venice Commission to give an opinion on this draft to ensure its conformity with its previous recommendations.

The Commission endorsed the Urgent Interim Opinion on the draft new Constitution of Bulgaria (CDL-AD(2020)035).

8. Kyrgyzstan

The urgent *amicus curiae* Brief (CDL-PI(2020)015) relating to the postponement of the parliamentary elections in the Kyrgyz Republic motivated by an intended constitutional reform had been issued on 18 November 2020 in accordance with the Protocol on the preparation of Venice Commission urgent opinions. No objection to the endorsement had been raised by any member.

Ms Suchocka informed the Commission that the urgent *amicus curiae* brief had been requested by the Chairman of the Constitutional Chamber of the Supreme Court of the Kyrgyz Republic on 4 November 2020 in relation to the case on the constitutionality of the provisions of the Constitutional Law "On the suspension of certain provisions of the Constitutional Law of the Kyrgyz Republic 'On Elections of the President of the Kyrgyz Republic and Deputies of the Jogorku Kenesh of the Kyrgyz Republic", adopted by the Jogorku Kenesh (Parliament) on 22 October 2020. The Chamber asked four questions: on the extension of powers of the outgoing parliament; on the possibility of carrying out a constitutional reform in the period between the annulment of the election results and the holding of repeat / new elections; on the compatibility with international standards of the amendments to electoral legislation, entailing the suspension of the electoral process; and on the adoption by the outgoing

Parliament of amendments to legislation disregarding the established procedure for the adoption of laws.

The key recommendations of the *amicus curiae* brief were that the postponement of parliamentary elections beyond the time limit determined by the constitution should be supported by special justifications and extraordinary circumstances. During the period of *prorogatio*, i.e. the extension of the constitutional mandate, the Parliament had diminished powers, and was only allowed to carry out some ordinary functions, whereas it was not allowed to approve extraordinary measures, including constitutional reforms.

Any suspension of elections should be for the least possible time. Constitutional reform, however, entailed constitutionally imposed timeframes which were generally long in order to enable a thorough discussion and reaching a broad agreement of the political forces and within the society.

The *amicus curiae* brief underlined that except for the punctual and technical reform necessary to conduct the new election, any other constitutional reform could not be initiated after the postponement of the regular elections. The suspension of the electoral process was limited by the principles of necessity and strict proportionality. An exceptional situation might indeed justify postponing the elections and the Constitutional Chamber would have to determine if the country was in such situation, even though the state of emergency had already been lifted at the time of the decision.

Finally, as to the procedure for the adoption of legislation, the brief pointed out that the substantive respect of constitutional procedures and rules and the adequate involvement of the public in discussions and political debate were of fundamental importance during the legislative process. The adoption of important changes to the electoral legislation outside the procedures established by the Constitution and by the legislation in force undermined the principles of parliamentary democracy.

The Commission was informed that on 2 December 2020 the Constitutional Chamber of the Supreme Court had declared the adoption of the constitutional law by the Parliament of Kyrgyzstan postponing repeat parliamentary elections as not being contrary to the Constitution. The Chamber concluded that this had been necessary as an exception in a period of political instability. As to the powers of the outgoing legislature, the Chamber considered that the Constitution defined the conditions of termination of powers – the day when newly elected members of the next Parliament were sworn in and the first session of the new Parliament took place.

As far as the constitutional reform was concerned, the Kyrgyz Parliament had published the text of the draft constitution on its website and announced public consultations. In parallel, a Constitutional Assembly had been asked to work on the text of the new constitution.

Mr Mamyrov reminded the Commission that the results of the 4 October 2020 parliamentary elections had been cancelled by the Central Electoral Commission of Kyrgyzstan on the grounds of serious violations of electoral legislation. These elections were followed by public unrest which led to the resignation of the Government and the President of the Republic. He welcomed the *amicus curiae* brief prepared by the Venice Commission and regretted that the Constitutional Chamber had declared the adoption of the law changing the electoral law as not being contrary to the Constitution.

Mr Tokon Mamytov, Ombudsman of the Kyrgyz Republic, expressed his concerns with the on-going process of constitutional reform. He informed the Commission that he had addressed a request to the Venice Commission and the OSCE/ODIHR to prepare an opinion on the proposed text of the new constitution and expressed the hope that it would be accepted.

Mr Konstantin Vardzelashvili confirmed that the OSCE/ODIHR had received a request on 9 December 2020 and that it was ready to prepare a joint opinion with the Venice Commission on the constitutional reform in the Kyrgyz Republic.

The Commission endorsed the urgent *amicus curiae* brief (CDL-PI(2020)015) relating to the postponement of elections motivated by constitutional reform of the Kyrgyz Republic.

9. Republic of Moldova

Mr Barrett explained that this urgent Joint *amicus curiae* brief on legal questions concerning the mandate of members of constitutional bodies had been issued by the Commission on 16 November 2020 in accordance with the Protocol on the preparation of Venice Commission urgent opinions and that the Constitutional Court of the Republic of Moldova had already issued its opinion on the draft constitutional amendments including the requirement that the mandate of the lay members in office at the date of the entry into force of the constitutional amendments was to be endorsed by a three-fifths majority of the elected MPs. No objection to the endorsement had been raised by any member.

Mr Barrett underlined that the Venice Commission was not an abstract outside observer of the constitutional reform in Moldova, but the Commission and the Directorate General had also participated in the discussions at the national level leading to the preparation of the draft amendments under consideration by the Constitutional Court, in the context of which the Court raised the three legal questions addressed in the present *amicus curiae* brief. He reminded that in their previous joint opinion, the Commission and the Directorate had strongly criticised the way in which the four lay members of the Superior Council of Magistracy (SCM) had been elected by the Parliament in March 2020, while the draft constitutional amendments were pending, in a controversial procedure without the participation of the parliamentary opposition, and that they had recommended that the lay composition of the SCM be changed. He underlined that the Commission and the Directorate did not have any objection concerning the professional qualities of the current lay members, but they criticised the non-consensual procedure which led to their election. Mr Barrett also emphasised that as opposed to the previous draft amendments, the current amendment did not provide for the automatic termination of the mandate of the lay members, but the requirement that their mandate be reconfirmed by a qualified majority of the MPs.

The *amicus curiae* brief concluded that, as far as it guaranteed the continuity of the exercise of the mandates in a balanced way and with the minimum affection of the interests that may be at stake in the transition, the new solution did not seem disproportionate in the sense that it may be reasonably considered as striking a fair balance between the two conflicting interests – the security of the mandate of the lay members of the SCM and the need to maintain public order, i.e. removing the negative consequences that followed Parliament's decision in March 2020 to elect the four lay members of the SCM based on the old rules while important draft constitutional amendments also concerning the election and mandate of the lay members were pending.

With regard to the question as to whether the transitional measure interferes with the right to private life of the lay members of the SCM, guaranteed by Article 8 ECHR, the brief considered that although the incumbent lay members' removal, in case they fail to secure confirmation, might be considered as a professional set-back, it appeared to have no implication for their reputation or integrity.

The Secretariat informed the Commission that following the publication of the *amicus curiae* brief on 16 November, the Constitutional Court had issued its opinion on the revised draft constitutional amendments on 3 December 2020. Referring to the brief, it considered that the aim of the amendments was to strengthen the legitimacy and independence of the lay members who were elected in March and to remove the negative consequences of the flawed procedure in their election. The Court agreed that a renewed mandate and renewed political confirmation for the

lay members may restore their impaired independence, which was a proportionate measure in view also of the new functions of the SCM in guaranteeing the independence of the judiciary. In conclusion, the Court considered that the draft constitutional amendments complied with the conditions for the revision as to the substance and the procedure and could be submitted to the Parliament for consideration.

The Commission endorsed the Urgent Joint Amicus Curiae brief on specific legal questions concerning the mandate of members of constitutional bodies of the Republic of Moldova (CDL-AD(2020)033), with the abstention of Mr Varga.

10. Kosovo

Mr Maiani presented the draft Opinion on the draft Law on the Government (the "draft Law"), requested by the Prime Minister of Kosovo on 26 October 2020. The draft Law aimed to determine the organisation and manner of functioning of the executive and laid down precise rules on the relationship between the Government and the Assembly. Two main issues were highlighted in the draft opinion: the first was whether the draft Law was circulated without an explanatory memorandum –an issue which was brought up during the virtual conferences with the stakeholders – a lack of which falls short of drafting standards, as it was conducive to an inclusive and better debate. The second concerned the constitutionality of setting a maximum number of ministers in this draft Law, which was the key objective of the draft Law. However, the Constitution stated that this was to be determined by an "internal act of the Government". The issue had not yet been examined by the Constitutional Court. The opinion concluded, in a *prima facie* evaluation, that the wording of Article 96.2 of the Constitution did not rule out that it reserved this to the Government. Hence, a compromise solution was suggested to the extent that the draft Law could provide more detail on how many ministers were required e.g. by providing explicit criteria of necessity and then leave to the Government the decision to determine how many ministers constituted a maximum number, providing a justification for this. The request raised another issue pertaining to the powers of the outgoing government, which the Venice Commission saw as unproblematic. Conversely, the draft opinion pointed to a problem with respect to the drafting quality of the draft Law, which was overly and unnecessarily descriptive.

Mr Besnik Tahiri, First Deputy Prime Minister of Kosovo, thanked the Venice Commission for this draft Opinion and concluded, firstly, that it was clear that no maximum number of ministers may be set by this draft Law or there was a real risk that it may be struck down as unconstitutional and introducing explicit criteria of necessity would be a good alternative. Secondly, there was no issue with respect to the provisions on the outgoing government. He then concluded by saying that the draft Law should be finalised within the next two weeks.

Mr Mentor Borovci, Director of Legal Affairs, Office of the Prime Minister, informed the Venice Commission of the existence of an explanatory memorandum for this draft Law entitled "Consultation Document on the Draft Law on Government," which was available in English and would be sent to the Venice Commission immediately. The draft Opinion should therefore be modified accordingly.

Mr Maiani pointed out that the existence of an explanatory memorandum had not been pointed out to the Venice Commission nor referred to in the request or at any other time nor had it come up during the virtual meetings – except by civil society, claiming there was no explanatory memorandum. However, the draft Opinion would be amended to take the existence of such a text into account.

Discussions ensued on the term "human rights impact assessment" and the meaning it had acquired as a term of art – no longer meaning merely assessing the impact on human rights, but bringing with it other substantial additional requirements.

The Venice Commission adopted the Opinion on the draft Law on the Government of Kosovo (CDL-AD(2020)034).

11. Ukraine

Mr Kuijer explained that President Zelenskyy had requested an urgent opinion on the situation following decision 13-r/2020 on anti-corruption legislation by the Constitutional Court of Ukraine. The Bureau had decided to prepare two separate urgent opinions, one on the state of the anti-corruption mechanism (CDL-PI(2020)018) and one of the reform of the Constitutional Court (CDL-PI(2020)018).

As concerned the first urgent opinion on the impact of the Constitutional Court judgment on the anti-corruption mechanisms, prepared jointly with DGI experts, Decision 13-r/2020 seriously curtailed the powers of the anti-corruption agency – the NACP – and invalidated Article 366-1 of the Criminal Code (criminal liability for submitting false declarations and/or the failure to submit a declaration). There were serious allegations that the Constitutional Court had not respected its own procedures and that some of the judges had a possible conflict of interests. It was very unusual for the Venice Commission to criticize a constitutional court, but in this case the Constitutional Court's reasoning was flawed in many respects and the decision produced severe adverse effects for the functioning of anticorruption bodies.

This undermined public trust in constitutional justice. At the same time, it was essential to respect the decision of a Constitutional Court and its role as the "gatekeeper of the Constitution". The Ukrainian legislature should therefore implement the Decision 13-r/2020, taking into account international obligations of Ukraine in this area.

As regarded Article 366-1 of the Criminal Code, criminal liability for false declarations must be maintained, but more tailor-made sanctions may be provided in a revised provision. At the same time, the continuity of the system of financial declarations should be ensured to avoid a situation of impunity. As to the investigative powers of the NACP, only the provisions regarding judges needed to be amended. As concerned the powers of the NACP in relation to other public officials, they should be reinstated as soon as possible. This followed from the CCU's main line of reasoning, which distinguished between the situation of judges and other public officials.

Insofar as the NACP's powers in respect of judges were concerned, the opinion demonstrated – looking at international standards – that the duty to declare assets and financial interests was as such uncontroversial, and that there was no single model as to how the verification was to be organised. This plurality of models was acknowledged by the CCJE and by the Venice Commission 2019 Opinion on Armenia. To address the concerns of the CCU, the opinion recommended: (1) increasing the independence of the NACP and improving public control over this body (as recommended by GRECO), (2) reviewing some of the broadly formulated investigative powers of the NACP, and / or (3) giving a supervisory role over the NACP to a judicial body.

It was not necessary that all procedural steps of the NACP in respect of judges be authorised by a court or another judicial body. Rather, some elements of *ex post* supervision of the activities of the NACP in respect of judges could be introduced. In the opinion, the rapporteurs identified two modalities. The first was a "complaints mechanism", enabling judges to complain about alleged abusive actions of the NACP. The second option would be to require the NACP to submit periodic general reports about the measures taken by the NACP during a given period in connection with the verification of the declarations of judges. The power to review such reports might be allocated to the High Qualification Commission of Judges, but only if this body was re-established with professional and independent members, in line with the recommendations of the Commission's Opinion adopted in October 2020.

Mr Carozza presented the second urgent opinion on the Reform of the Constitutional Court, which addressed, against the background of the shortcomings of Constitutional Court's Decision 13-r

of 27 October 2020, a possible reform of the Constitutional Court itself. This decision raised a number of deeply troubling questions regarding the institutional integrity of the Court itself. These problems had provoked a significant number of legislative proposals to reform the Court, including one from President Zelenskyy to terminate the powers of the current Constitutional Court judges altogether. The very grave repercussions of this situation, which threatened the entire system of constitutionalism and the rule of law in Ukraine, had made it necessary for the Venice Commission to enter into the details of, and evaluate the integrity of, this specific Constitutional Court decision much more than is usual in the Commission's practice.

The urgent opinion therefore began by identifying a number of serious shortcomings in the Constitutional Court Decision, and in the related procedures and practices of the Constitutional Court, singling out four of them. Firstly, the reasoning of Decision 13-r was incomplete and unpersuasive. This conclusion was not based in any way on the Venice Commission's interpretation of Ukrainian law, which would not be appropriate, but rather on the Decision's misuse of international standards and of general principles of constitutionalism regarding separation of powers and judicial independence. The decision lacked any reasoned explanation both about the general principles it invoked and also about the specific legislative provisions that it invalidated.

Secondly, the Court's procedures relating to this case failed to deal adequately with serious allegations of possible conflicts of interest on the part of at least four of the 12 Constitutional Court judges who had participated in the decision. Notwithstanding clear requirements of recusal in the Law on the Constitutional Court, as well as formal recusal requests, the Court and the individual judges in question had made no effort whatsoever to justify their denial of the recusal requests.

Thirdly, the reach of Decision 13-r went substantially beyond the scope of the request for constitutional review that had been submitted to the Court. The practices of other constitutional courts showed that such an extension of the petition was not always unjustified, but it was important to note that in Ukraine an explicit legislative authorisation for the Constitutional Court to extend the scope of a petition had been repealed by the legislature in the most current law, in force since 2016.

Fourthly, in contrast to the common practice of the Constitutional Court in previous cases involving the unconstitutionality of important legislative provisions, the Court in this case (and without explanation) had not provided for any period of delay in the entry into force of the judgment, which would have provided Parliament with the possibility of amending the legislation in order to avoid legal caps and uncertainty following the Court's judgment.

In reaction to Decision 13-r, President Zelenskyy presented a draft law in Parliament that would declare null and void Decision 13-r, restore the annulled provisions of the Criminal Code and the Law on the Prevention of Corruption; terminate the powers of the judges of the Constitutional Court; and ensure the selection and appointment of new judges of the Court. For this reason, it was necessary for the Venice Commission's opinion to go beyond a discussion of Decision 13-r itself and to enter also into a more general discussion regarding possible ways of addressing the structural problems that were exposed by the decision in question.

Above all, the Opinion made clear that in relation to the specific case decided by the Court, the Constitutional Court's decisions were final and binding. Its decisions were not infallible and could legitimately be criticized, but they were final nonetheless, even when considered wrong. More broadly, political bodies must not be allowed to terminate the powers of individual judges of the Constitutional Court (except through processes of impeachment established by the Constitution), or of the whole body of the Court collectively. Nor should Parliament block the activity of the Constitutional Court through financial pressure or procedural obstacles or similar efforts. These actions would amount to a major, severe, breach of the Rule of Law, and the constitutional principles of the separation of powers and the independence of the judiciary.

Nevertheless, it was reasonable to see Decision 13-r as a strong indication that a reform of the Constitutional Court was warranted. The Opinion went on to examine a number of possible, constitutionally legitimate, avenues of reform, including:

- strengthening the requirements for the Court to provide reasoned decisions;
- improving the legislative provisions, and the Court's practices, regarding the definition and handling of potential conflicts of interest and the recusal of judges;
- providing greater clarity regarding the possible disciplinary procedures and sanctions to which judges may be subject when violating their judicial obligations;
- improving the procedural legitimacy of Constitutional Court decisions;
- considering whether and how Constitutional Court decisions and proceedings may be reopened after a judgment has already been rendered; and
- establishing better processes for identifying candidates and selecting judges to the Constitutional Court, including through the creation of a new screening body, which could help ensure that judges have the requisite high moral character and integrity.

Finally, the Opinion appealed to all constitutional actors to give due regard to the principle of loyal co-operation among State bodies, to overcome the current impasse.

President Zelenskyy thanked the Commission for its long-standing professional co-operation with Ukraine. He described the difficult situation created by decision no. 13/r-2020 of the Constitutional Court of Ukraine. The Constitutional Court had been instrumentalized by forces which wanted to hinder the anti-corruption effort. However, the efficient fight against corruption was a part of Ukraine's international obligations. The opinions were consonant with the position of the President: the Constitutional Court had disregarded its own procedures, its decision was unclear and it disrupted the trust in constitutional justice in general. The implementation of the judgement of the Constitutional Court was impossible, since the judges of the Constitutional Court had exceeded their powers.

President Zelenskyy welcomed that the Venice Commission supported the reinstatement of asset declarations, insisting on appropriate sanctions. More generally, it was necessary to conduct an audit of the efficiency of the implementation of the judicial reform in the country. Both the ordinary judiciary and the Constitutional Court should undergo a reform, which should result inter alia in a more transparent and fair procedure of appointment of the judges of the Constitutional Court. This may require further constitutional reforms in which the Constitutional Court should refrain from interfering.

Ms Suchocka stressed that so far the process of legal reforms in Ukraine had not always been very coherent; the Venice Commission would expect a more comprehensive approach, based on the Rule of Law. Solutions to the current constitutional crisis should be found, indeed, but should be respectful of the principles of the Rule of Law.

Mr Serhiy Holovaty, who had not been involved in the procedure of preparation and approval of the urgent opinions, did not participate in the 125th Plenary Session.

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 Legislative Situation regarding anti-corruption mechanisms, following Decision N° 13-R/2020 of the Constitutional Court of Ukraine, (CDL-AD(2020)038) and**

- **the Urgent Opinion on the Reform of the Constitutional Court of Ukraine (CDL-AD(2020)038).**

12. Albania

Ms Pabel stated that the Joint Opinion by the Venice Commission and the OSCE/ODIHR on amendments to the Constitution of Albania and to the Electoral Code had to be seen in the political context of Albania, where nearly all opposition MPs had left Parliament to create an extra-

parliamentary opposition, being partly replaced by candidates who appeared lower on the lists (who now constitute the parliamentary opposition). The current amendments would apply to the parliamentary election of 25 April 2021.

A first round of amendments had been broadly discussed, including with the extra-parliamentary opposition, and adopted consensually on 23 July 2020. On the contrary, the second round of amendments, which was the object of the opinion, had been adopted in a very hasty way, without wide consultations providing an adequate timeframe among political stakeholders and non-governmental organisations. The whole procedure had lasted less than one month; while there were no international standards on the duration of the procedure, the amendments had taken place less than nine months before elections, which implied a special need for consultation. This was regrettable. However, it did not seem that the principle of stability of electoral law had been violated, since the amendments, taken either separately or together, did not look fundamental.

While most recommendations should be applied after the parliamentary elections scheduled for April next year, several more pressing ones, which would not imply legislative amendments, needed to be put into practice before the elections. In particular, all authorities should enter into a constructive dialogue and do their utmost to implement the electoral law on time; and leaders of the political parties should refrain from standing as candidates in multiple constituencies. Legislative amendments to be addressed after the next parliamentary elections concerned in particular abolishing such possibility to compete in several constituencies and introducing the possibility for individual candidates to appeal against the allocation of seats inside a list.

Mr Ilir Meta, President of Albania, stated that four opinions of the Venice Commission on Albania had been asked for since last October because key institutions were missing: the Constitutional Court and the High Court, while Parliament and the municipalities were under the control of the majority. The opinion addressed unilateral changes which had taken place after a consensus had already been found on inclusive electoral amendments with the involvement of the international community.

Ms Klotilda Bushka, MP, stated that the revision process had been inclusive, including constitutional experts and the OSCE/ODIHR, and that no fundamental change had taken place. The majority had to take account of two oppositions, one in Parliament and one outside Parliament. Even if the parliamentary procedure had been rapid due to the proximity of elections, the constitutional and legal rules of procedure had been followed. The amendments to the electoral law were a condition put by the European Union for the opening of accession negotiations. The recommendations of the Venice Commission and the OSCE/ODIHR would be a basis for Parliament.

The Commission adopted the Joint Opinion of the Venice Commission and OSCE/ODIHR on amendments to the Constitution of Albania of 30 July 2020 and to the Electoral Code of Albania of 5 October 2020 (CDL-AD(2020)036).

13. Revised Joint Guidelines on Political Parties

Mr Richard Katz, expert for the OSCE/ODIHR, USA, explained that although the basic structure of the Guidelines remained the same, the substance had been revised in a number of ways, both in response to perceived shortcomings of the first edition and to reflect developments in the body of relevant law since the first edition was completed. The present text also responded to questions and suggestions raised along the way in extensive consultations between the OSCE/ODIHR and the Venice Commission. In particular, the second edition took explicit cognisance of the complexities of defining political parties for regulatory purposes and the existence of alternative models, explicitly recognized as legitimate by the European Court of Human Rights, of their role in the proper functioning of democracy.

Deriving from this, the second edition, while remaining strongly committed to certain basic norms that must be respected by all OSCE participating States and Venice Commission member States, recognised a wide *margin of appreciation* to be accorded to those states in adopting regulations appropriate to their own histories, institutions, and understandings of the proper functioning of democracies. The second edition thus also paid more explicit attention to the distinctions between hard law, soft law and good practice. Finally, the second edition recognised that governments needed to be effective in practice, as well as democratic in abstract theory. Even if pluralism was essential to democracy, too much pluralism in the form of excessive fragmentation could become destructive of the very democracy it was meant to support. Reasonableness and proportionality were more explicitly recognised as important criteria in the drafting and evaluation of regulations.

Mr Vermeulen, speaking also on behalf of the Commission's former member, Mr Pieter van Dijk, underlined that as was the case with the previous ones, these revised Guidelines were not intended to be of a binding character *per se*. They contained a set of principles which for the larger part had been laid down in international treaties, in particular the principles of freedom of association and freedom of expression, the principle of free elections at regular intervals, the principle of equality and the right to an effective legal remedy, as well as the requirement of legality and proportionality of any restriction of these rights and freedoms. The principles also contained elements that did not, or at least not yet, have the status of binding law but were taken into account as so called "soft law", based on evolving state practice as reflected, *inter alia*, in domestic legislation and in national, international and regional jurisprudence, as well as in the resolutions, views and declarations of international bodies. Even though the right to equal treatment was a fundamental right to which every individual and association was entitled, it was not an absolute right, or rather, in this context: the prohibition for political parties to differentiate in the admission of members and in the treatment among members must be balanced against the hard core of the right to freedom of association and the right to freedom of religion and conviction. Although the prohibition of unequal treatment and discrimination had been emphasised more and more in international treaties, declarations and case law, its precise scope and the outcome of the balance just mentioned had not yet been firmly established.

Mr Vermeulen explained that the guidelines provided various definitions and classifications. Especially of importance were the different dimensions which the Guidelines distinguished, notably internal relations within political parties, the relation between political parties and the state and the relation between political parties. These three dimensions were theoretical constructs forming the extremes of a conceptual continuum. They corresponded to two model types of what a political party was. One model, the liberal or free market model, gave primacy to a large associational freedom of political parties in their internal and external functioning. According to this model emphasising freedom of association, political parties were seen as private associations that should be free to establish their own internal organisation and should not be hindered by regulations that limit free competition and political pluralism. In the egalitarian-democratic model, because parties were vital for political participation and to a certain extent had a public function, they should respect equality and democracy in their internal organisation and may be restricted by external regulations for reasons of giving the parties a fair and equal chance in electoral competitions. Mr Vermeulen also underlined that national systems did not completely fulfil the characteristics of just one ideal type but combined traits of one model with those of the other. In general, a party system rested upon some kind of compromise, a mixture between aspects of these two value systems in order to reach an adequate balance.

Which model of political party regulation was dominant to a large measure depended on a country's constitution, legislation, history and practice. Indeed, there had been fundamental changes these last decades. Many countries had evolved from a liberal model towards increased regulation of political parties, introducing requirements as to internal democracy and equality, external accountability and respect for the basic elements of the constitutional order. The principle of non-intervention was no longer the dominant paradigm.

For the Secretariat of the OSCE/ODIHR, Mr Marcin Walecki explained that the Guidelines were the result of many years of hard work by the OSCE/ODIHR and the Venice Commission and an example of good co-operation between the two institutions. Ten years had passed since the

publication of the first edition and the new edition endeavoured to reflect developments both in international standards and comparative law. Also for the OSCE/ODIHR, Mr Kote Vardzelashvili underlined that the guidelines would be used as a means to protect the political party rights and thanked the rapporteurs for their efforts in bringing this long and fruitful process to an end.

The Commission adopted the Revised Joint Guidelines on Political Party Regulation (2nd Edition) of the Venice Commission and the OSCE/ODIHR (CDL-AD(2020)032).

14. Principles for a fundamental rights-compliant use of digital technologies in electoral processes

Ms Kjerulf Thorgeirsdottir informed the Commission that, after the adoption of the Report on digital technologies and elections at the June 2019 plenary session, the Venice Commission had decided to identify a set of principles addressed to law-makers and major actors in this field, such as powerful internet companies. She drew attention to various advantages and concerns related to the use of digital technologies in relation to elections including the risks of manipulation of the electorate. The protection of fundamental rights such as freedom of expression and personal data protection had gained critical importance in the digital age, and the internet's founding principle of net neutrality must be upheld in line with Council of Europe and other European standards.

Mr Barrett stressed the main focus of the Principles was on electoral campaign issues. He added that this was a dynamic subject and that further relevant developments might be expected. Mr Vargas Valdez pointed out that the Principles should be presented to national and international stakeholders and could be the basis of further work in this area. He referred in this connection to the ongoing co-operation of the Commission with other relevant Council of Europe bodies, namely the Ad Hoc Committee on Artificial Intelligence (CAHAI), the European Committee on Democratic Governance (CDDG) and the Committee of Experts on Media Environment and Reform (MSI-REF). A presentation of the Principles to CAHAI was foreseen at its 3rd plenary session on 15 December 2020.

Mr Vargas Valdez underlined that the main challenge was to find the right balance between different fundamental rights and interests at stake. The document included eight principles which were centred on freedom of expression in the digital environment, removal by private companies of clearly defined third-party content from the internet at the request of a competent impartial body, the open internet and net neutrality which were among the basic principles of the internet and recognised in European standards, personal data protection, periodical review of rules and regulations on political advertising and on the responsibility of internet intermediaries, regulations and institutional capacities to fight cyberthreats, international co-operation and public-private co-operation as well as self-regulatory mechanisms.

The Commission adopted the Principles for a fundamental rights-compliant use of digital technologies in electoral processes (CDL-AD(2020)037).

15. Information on constitutional developments in observer States

Japan

Ms Akiba-Saito, Consul at the Consulate General of Japan in Strasbourg, pointed out that Japan, as the only Venice Commission observer state from Asia, shared the three main values of the Council of Europe, and had been intensively following the activities of the Venice Commission. Next year would be Japan's 25th Anniversary as an observer at the Venice Commission.

In January 2020, the Supreme Court of Japan had adopted a judgement on the Act on Special Cases in Handling Gender Status for Persons with Gender Identity Disorder. Under this law, persons with gender identity disorder had to undergo surgery to remove reproductive glands if

they wished to change the recognition of their gender status. The applicant claimed that this provision would violate several constitutional rights, notably the right to the pursuit of happiness, the right of self-determination and equality under law.

The Supreme Court acknowledged that the provision constrained the freedom of persons from invasion into their bodies against their will but it found no violation of the Constitution in the light of a comprehensive examination of the purpose of the challenged provision and current social circumstances at this point in time. The purpose of the provision included preventing any social confusion in the parent and child relationship as a result of a child born using the reproductive function of the original gender status. Rapid changes had to be avoided in a situation where a person's gender status had long been determined based on biological gender status.

The Supreme Court was aware that the necessity and appropriateness of these restraints may change according to the variable social circumstances such as the recognition of gender according to identity rather than biological traits and changes in the understanding of the family system. Consequently, it pointed out that constant examination was required to determine whether such provisions are still in compliance with the Constitution.

In their concurring opinion, two Judges referred to the 2017 judgment A. P., Garçon and Nicot v. France of the European Court of Human Rights. This could be seen as evidence that Japan was putting high importance on discussions in the field of international human rights law, notably the Strasbourg case-law.

The concurring Judges stated that, although the provision was not unconstitutional as of now, its legitimacy was becoming more and more questionable. In reference to the judgment of the European Court, they pointed out that an increasing number of countries did not require the permanent loss of the reproductive function for the recognition of gender change. The concurring opinion stated that "the hardship that people with gender identity disorder have to go through regarding the concept of gender results from deficiencies of a society, which should embrace the diversity of gender identity. We hope that the understanding for many issues surrounding the people with gender identity disorder will be deepened and that there will be appropriate responses in various occasions in the light of respecting personality and individuality of each and every person."

Ms Akiba-Saito pointed out that this case could become a cornerstone for further discussion in Japan. Depending on the situation in society, changes could be brought about through another constitutional judgement or legislative amendments even before that.

16. Information on constitutional developments in other countries

Chile

Mr Garcia Pino informed the Commission on the Chilean national plebiscite on 25 October 2020 on whether a new constitution should be prepared. 78% of voters approved the proposal giving preference to an option where the new text should be drafted by a Constitutional Convention, made up by directly elected members. The voter turnout was 51%. It was the first time in Chilean history that a new constitution was being prepared using this mechanism.

A second vote, to be held alongside the municipal and gubernatorial elections on 11 April 2021, would elect the members of the Constitutional Convention according to the same rules applied to parliamentary elections with additional measures aimed at ensuring gender parity (at least 45% of women). In addition, the Convention would have 17 seats reserved for representatives of indigenous peoples.

Mr Garcia Pino highlighted that there was a debate on the powers of this Convention, notably whether it should have the right to change or even abolish existing institutions. However, the Convention would not have the right to act instead of the existing state powers and it must respect the democratic nature of the State, judicial decisions in force and current international

obligations of Chile. The Convention would establish its own rules of procedure; its decisions must be taken by a 2/3 majority of its members.

The draft constitution to be prepared by the Convention would have to be submitted to a referendum. If approved, it would have to be adopted in accordance with Article 142 of the current Constitution.

Peru

Mr Sardon informed the Commission that on 9 November 2020 Peru's Congress had voted in favour of the destitution (a "motion of vacancy") of the President of the Republic Martin Vizcarra, due to his "permanent moral incapacity" on the basis of Article 113.2 of the Constitution and Article 59-A of the Rules of Procedure of Congress. The main reason for this were the allegations of bribes received by Mr Vizcarra a decade ago, during his tenure as Governor of Moquegua in Southern Peru. According to the Constitution, the Speaker of Congress, Mr Manuel Merino became President ad interim. However, following strong protests all over the country, President Merino resigned on 15 November 2020. Two days later, Mr Francisco Sagasti, a member of the only parliamentary group that had voted against Vizcarra's destitution, became interim President.

When the decision on the destitution of President Vizcarra was announced, the Constitutional Court of Peru was dealing with a complaint by the Executive against the Congress, regarding a previous motion of vacancy. However, that motion had already been moot, as it united only 32 votes of MPs. In a four against three decision, the Court declared that the claim was without object and rejected it.

In Mr Sardon's opinion, there had been an additional reason to reject the complaint: the examined case was substantively similar to the one the Tribunal had solved in 2003. On that occasion, the Tribunal suggested, among other things, to increase to two-thirds the number of votes required to approve a motion of vacancy. In 2004, Congress had accepted this proposal.

Mr Sardon reminded the Commission that the November 2020 crisis was closely linked to the dissolution by President Vizcarra of the previous Congress on 30 September 2019 by virtue of a question of confidence. None of the parties elected to the new Congress in January 2020 represented the President. Moreover, the new Congress was very fragmented with the strongest force having only 19 per cent of seats. This was an additional factor of political instability which could negatively affect democratic institutions and processes.

United States of America

M. Carozza briefed the Commission about the 2020 US Presidential Election during the COVID-19 Pandemic. In the United States, each state is able to establish its own electoral rules. Starting in early 2020, states began to change how voting would take place - early voting (in-person or by mail) and absentee voting (entirely by mail). Both methods had historical precedents. Further differences between states were the various state timelines regarding exactly when people were able to vote, and whether the postal votes received day after the Election Day should be counted.

The changes in states' voting policies led to a dramatic increase in pre-election lawsuits. Generally, Democrats sought to relax the usual requirements, while Republicans typically sought to prevent or stop this loosening of the ordinary legal requirements. These competing outlooks were grounded, in part, in different views on the separation of powers: political conservatives in the US generally consider state legislatures – and not the courts – to be the proper body to alter election rules, while political liberals tend to be more open to empowering the courts to decide matters related to the administration of elections. Some of this pre-election litigation reached the United States Supreme Court. The same fault lines concerning the separation of powers were also seen in the Supreme Court justices.

Mr Carozza outlined the events following the election night of 3 November 2020, counting of votes in the swing states and described President Trump's post-election litigation campaign ,

contesting the election processes, vote counting, and vote certification procedures in multiple states. There was a huge gap between President Trump's public statements about the election fraud and the position of his legal team. His lawsuits were rejected across the country, sometimes in a summary manner. President Trump also attempted to influence state legislatures to convince them to change their electors for the Electoral College. Although such a move by a State legislature would not be technically contrary to the Constitution, it would be a profoundly antidemocratic attempt to circumvent the popular vote. All 50 states and the District of Columbia have now certified their election results, and with that certification they have also finalised their slates of electors, who are pledged to vote for the candidate favoured by their states' voters.

Mr Carozza concluded that, firstly, there was a need for greater clarity, predictability, and certainty in US electoral processes, especially with regard to voting by mail, in order to preserve the integrity and public credibility of electoral processes. Secondly, notwithstanding the President's attempts to undermine confidence in the electoral system, in fact US institutions had remained uniformly consistent and successful in protecting the integrity of democracy and maintaining the rule of law.

Italy

Ms Cartabia informed the Commission that constitutional amendments had been approved in Italy in October 2020, following a constitutional referendum, whereby the number of members of the Chamber of Deputies had been reduced from 630 to 400 and the number of senators from 315 to 200. These changes would enter into force at the next ordinary or early elections. This reform had been introduced in the programme of the Conte I Government and had been carried out by the Conte II Government which was supported by a different political majority; indeed the support for it had been extremely broad.

The grounds for the reform were the concern for reducing public expenditure and the concern to increase the effectiveness and speed of the parliamentary activity. The referendum was not mandatory; it was initially scheduled for March 2020 and then postponed due to the pandemic to September 2021, at the same time as the local elections. A complaint to the Constitutional Court on account of the coincidence with the local elections was rejected for the Court on formal grounds. Almost 70% of the voters supported the reform. Further reforms would be required, notably of the electoral system and in the rules of procedure of Parliament.

17. Report on individual access to constitutional justice

Ms Nussberger presented the revised Report on individual access to constitutional justice, which updated and geographically expanded on the original report on individual access to constitutional justice (CDL-AD(2010)039rev) adopted in December 2010. The revised Report incorporated changes which had occurred notably in Algeria (presented by Mr Feniche), Hungary, Lithuania, Morocco, Tunisia, Turkey and Ukraine since 2010. All member and observer States of the Venice Commission had provided at least some form of individual access to constitutional justice. The lack of shared standards regarding individual access to constitutional justice rendered the comprehensive comparative analysis provided by this report particularly helpful.

The Report recommended that constitutional courts should be able to extend the norms under review beyond those challenged in the complaint if this was necessary for the coherence of the legal order. In its Urgent Opinion on the Reform of the Constitutional Court of Ukraine that had been endorsed the previous day (CDL-AD(2020)039), the Venice Commission had not criticised an extension of the scope of review in general but specifically the lack of reasoning of the Ukrainian decision.

Ms Nussberger invited members to adopt the very detailed Report and to inform the Secretariat by 4 January 2021 of any changes possibly required in respect of their own country. The Report would be issued following the incorporation of any such changes.

Mr Paczolay emphasized the subsidiary role of the European Court of Human Rights and the

importance of individual access to constitutional justice for the exhaustion of domestic remedies. constitutional courts should review individual complaints for violations of Convention rights, thereby acting as filters for the European Court of Human Rights.

Mr Newman welcomed the depth of the report and discussed the use of the term “constitutional control” versus “constitutional review”.

The Commission adopted the revised Report on Individual access to constitutional justice and invited all members to provide additional relevant information relating to their country by 4 January 2021.

18. Compilation sur la stabilité du droit électoral

M. Helgesen présente la Compilation sur la stabilité du droit électoral, soulignant son actualité en raison de la tendance grandissante des États à procéder à d’importantes réformes constitutionnelles ou législatives, y compris dans le domaine des élections et, trop souvent, très proches des jours de scrutin. En particulier, la crise de la COVID-19 et ses conséquences sociales et économiques dramatiques ont exacerbé la nécessité de prendre des décisions urgentes, mais ont également donné l’occasion de légiférer parfois de manière précipitée sans justification appropriée. M. Helgesen souligne le besoin de stabilité et de confiance dans les institutions démocratiques des États membres. La Commission de Venise a d’ailleurs souligné à plusieurs reprises dans ses avis et rapports l’importance du principe de stabilité du droit électoral, alors qu’un certain nombre de pays ont procédé ou procèdent encore à des réformes électorales qui nécessitent un large consensus politique, notamment lorsqu’il s’agit d’éléments fondamentaux du droit électoral.

La Commission entérine la compilation des avis et rapports de la Commission de Venise sur la stabilité du droit électoral (CDL-PI(2020)020).

19. Report of the meeting of the Council for Democratic Elections (10 December)

Mr Kask informed the Commission that the main issues addressed by the Council were the draft opinion on Albania and the draft principles for a fundamental rights-compliant use of digital technologies in electoral processes, dealt with under items 12 and 14 above.

The Council had also adopted an updated version of the French-English electoral glossary (CDL-PI(2020)021), and taken note of the activities of the Venice Commission and the OSCE/ODIHR in the electoral field since its last meeting, including the 17th European Conference of Electoral Management Bodies (see item 21 below).

20. Dates of the next sessions

The Commission decided, upon proposal by the Enlarged Bureau, to hold the 126th Plenary Session exclusively online, due to the Covid-19 pandemic.

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

126th Plenary Session	19-20 March 2021 (exclusively online)
127th Plenary Session	18-19 June 2021
128th Plenary Session	15-16 October 2021
129th Plenary Session	10-11 December 2021

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

21. Other business

Information sur les Conférences et les Séminaires

17e Conférence européenne des administrations électorales (en ligne, 12-13 novembre 2020)

M. Kask informe la Commission du déroulement de la 17e Conférence européenne des administrations électorales qui s'est tenue pour la première fois en ligne, les 12 et 13 novembre 2020. Environ 160 participants ont suivi les débats, qui portaient d'une part sur les défis récurrents et bonnes pratiques du droit électoral et de l'administration des élections et d'autre part sur la tenue d'élections pendant une pandémie. Sur le thème des défis récurrents et des bonnes pratiques, les discussions se sont appuyées principalement sur le rapport de M. Krennerich sur le sujet (CDL-AD(2020)023) et notamment sur la nécessité de plus de transparence des processus électoraux, la lutte contre l'abus de ressources administratives ou encore le discours de haine pendant les campagnes électorales. L'autre sujet majeur a concerné la tenue d'élections pendant une pandémie, sujet pour lequel il y a eu des contributions notamment de la République de Moldova, du Monténégro, de l'OSCE/BIDDH et de l'IFES. Bien que tenue en ligne, l'édition de cette année a permis de maintenir le contact entre responsables des administrations électorales en attendant autant que possible l'organisation en présentiel de la 18e édition des conférences européennes des administrations électorales en 2021.

X International Congress of Comparative Law "Constitutional Evolution in Russia and in the Modern World: Dialectics of the Universal and National", Moscow, 4-5 December 2020

M. Kovler informe la Commission des résultats du Xe Congrès international de droit comparé intitulé « L'évolution constitutionnelle en Russie et dans le monde moderne: dialectique de l'universel et du national », organisé par l'Institut de législation et de droit comparé sous le gouvernement de la Fédération de Russie et la Commission de Venise. Ce congrès, tenu en ligne, a réuni 600 participants de 15 pays. En outre des représentants de la Commission, Mme Kjerulf Thorgeirsdottir et M. Mathieu en séance plénière, d'autres membres de la Commission ont participé dans les tables rondes. Pour la préparation du Congrès, l'Institut avait employé des méthodes quantitatives et qualitatives pour discerner les références à l'identité constitutionnelle dans les documents de la Commission de Venise.

L'enregistrement du Congrès est disponible et les actes seront publiés par l'institut. Le sujet du prochain congrès pourrait être lié aux restrictions des droit de l'homme pendant la pandémie. L'Institut a publié un 5e volume, sur le droit électoral, dans son recueil des travaux de la Commission de Venise. Moyennant ce recueil, l'Institut rend pour la première fois accessible certains rapports de la Commission.

Publication of 30th Anniversary book

Ms Granata-Menghini presented the printed copy of the "Venice Commission - thirty-year quest for democracy through law 1990 – 2020". She thanked Prof. Hans-Heinrich Vogel and the University of Lund for their generous help in the publication of the book. The publisher will make it available with a watermark for a registered individual download. Until the availability of such a download, the book will remain available to members at the link https://www.venice.coe.int/webforms/documents/default.aspx?pdffile=CDL-PI(2020)013-bil.

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Link to the list of participants