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EUROPEAN COMMISSION FOR DEMOCRACY THROUGH LAW
(VENICE COMMISSION)

COMMISSION EUROPEENNE POUR LA DEMOCRATIE PAR LE DROIT
(COMMISSION DE VENISE)

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SESSION REPORT / DE RAPPORT DE SESSION

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Due to the Covid-19 pandemic, the 129th Plenary Session was held both in Venice and online.

1. Adoption of the Agenda

The agenda was adopted without amendments (CDL-PL-OJ(2021)004ann-rev).

2. Communication by the President

Le Président, M. Gianni Buquicchio, souhaite la bienvenue aux nouveaux membres de la Commission de Venise, ainsi qu'aux invités spéciaux et aux délégations, et évoque ses activités récentes telles que présentées dans le document (CDL(2021)054).

3. Communication from the Enlarged Bureau

Le Président informe la Commission des discussions qui se sont tenues lors de la réunion du Bureau élargi le 9 décembre 2021 et, en premier lieu, des propositions d'avis urgents.

Suite à la demande écrite du Président de l'Ukraine, M. Volodymyr Zelensky, le Bureau élargi propose que l'avis sur le projet de loi sur la prévention des menaces à la sécurité nationale, liées à l'influence excessive de personnes ayant un poids économique ou politique significatif dans la vie publique (oligarques) soit émis par la procédure urgente, après des consultations entre le groupe de rapporteurs et l'administration présidentielle.

La Commission autorise la préparation d'un avis urgent sur le projet de loi sur la prévention des menaces à la sécurité nationale, liées à l'influence excessive de personnes ayant un poids économique ou politique significatif dans la vie publique (oligarques).

A la demande du nouveau Président de la Verkhovna Rada, M. Ruslan Stefanchuk, et suite aux discussions d'un groupe de travail incluant des représentants de la société civile ukrainienne, le Bureau élargi propose à la Commission d'autoriser la préparation d'un avis urgent sur le projet de loi sur le référendum local en vue de son adoption lors de la prochaine session de la Verkhovna Rada prévue au début du mois de février 2022.

La Commission autorise la préparation d'un avis urgent sur le projet de loi sur le référendum local en Ukraine.

Si le nouveau cycle de négociations concernant les amendements constitutionnels et électoraux en Bosnie-Herzégovine permettant la mise en œuvre des arrêts de la CEDH du groupe Sejdic et Finci s'avère positif d'ici la fin de l'année, le Bureau élargi propose d'autoriser la préparation d'un avis urgent, en vue de permettre l'adoption de ces amendements dans les meilleurs délais et dans la perspective des élections générales prévues en octobre 2022. Simona Granata-Menghini et Pierre Garrone suivent la question en participant aux réunions de négotiation qui ont lieu à Sarajevo.

La Commission autorise la préparation d'un avis urgent sur le projet d'amendements constitutionnels et électoraux en Bosnie-Herzégovine, s'ils sont adoptés avant la fin de l'année.

Le projet de constitution révisée du Bélarus n'ayant pas été publié à ce jour, M. Buquicchio en accord avec les membres du Bureau élargi suggère de ne pas prendre de décision sur la préparation de l'avis à ce stade, mais de suivre avec attention la situation concernant la réforme constitutionnelle au Bélarus dans la perspective de donner suite à la demande de l'Assemblée Parlementaire du Conseil de l'Europe.

La Commission décide de suivre la situation concernant la réforme constitutionnelle au Bélarus.

Le deuxième point discuté par le Bureau élargi concerne l'élection du Président, des membres du Bureau et du Bureau élargi, ainsi que des sous-commissions et des conseils.

M. Kaarlo Tuori présente oralement les propositions du Comité des sages qui a tenu compte, dans la préparation de la liste, de l'équilibre des genres, de la représentativité régionale ainsi que de l'expérience et des qualifications personnelles des membres (*voir ci-dessous*).

Les membres sont invités à exercer du restreint pendant la discussion des thèmes concernant leur propre pays.

4. Elections

Election of the President

The Group of Wise Persons nominated Ms Claire Bazy Malaurie for the position of President of the Commission.

The Commission unanimously elected Ms Claire Bazy Malaurie to the position of its President.

The new President expressed her gratitude to the members of the Commission. She stressed that the Commission played an important role in the service of democracy, human rights and the rule of law. For 30 years, the Venice Commission has been able to win and maintain the confidence of the member states and organisations. The expertise accumulated by the representatives of the member states of such diverse origins and cultures was at the service of the search for solutions to consolidate the values to which the states had declared their adherence. These recommendations, even the most critical of them, were the fruits of collective work. The President assured her readiness to continue the work accomplished by her predecessors. She expressed her gratitude to Mr Gianni Buquicchio, who had worked for the success of the Commission since the very beginning and who had expressed his availability to continue to serve the Commission as its Special Representative and to share his experience for the benefit of the Commission.

The Secretary General of the Council of Europe, Ms Marija Pejčinović Burić, addressed the Commission. She observed that Mr Buquicchio had dedicated fifty years of his service for the Council of Europe ensuring that the principles of human rights, democracy and the rule of law improve the lives of people across the entire continent. Throughout these years, these efforts had been numerous and important. He played a leading role in the development of recommendations and international treaties which were decisive for the harmonisation of European law. But it is of course to the Venice Commission that he devoted the rest of his career after having worked on its creation. In thirty years of its development, the Venice Commission had become an enlarged agreement bringing together not only all the member states of the Council of Europe, but also many other States in the world. As a result, the Venice Commission took its prominent place and its recommendations were taken into account by the other international organisations. Mr Buquicchio was key to the success of the Venice Commission and he was valued not only for his professionalism but also for his personal qualities such as kind and approachable character and fairness.

Mr Giakoumopoulos, the Director General of Human Rights and Rule of Law of the Council of Europe, congratulated the new President and wished her every success in her tasks. For him it was a historic moment because the Commission under the leadership of Gianni Buquicchio had been an architect of European democracies, ensuring that those democratic constructions were beautiful, solid and balanced. It would be practically impossible to mention even the most visible examples where the Venice Commission had provided decisive support for the rule of law. If it were to be limited to one, that would be the extraordinary commitment to constitutional justice. It

was no exaggeration to say that it was a fundamental part of the European democratic architecture.

Konstantine Vardzelashvili on behalf of Mr Matteo Mecacci, Director of ODIHR, expressed his gratitude to Mr Buquicchio for the excellent co-operation between the Commission and ODIHR in various fields and especially in electoral legislation by preparing joint opinions and organising numerous joint events. He was sure that the excellent co-operation between ODIHR and the Commission would continue.

Ms Bernoussi and Mr Otty took the floor to congratulate the newly elected President and to thank Mr Buquicchio for his role and his agreement to stay with the Commission in his new capacity of Special Representative of the Commission. Numerous other members congratulated the new President and thanked Mr Buquicchio for his service in their messages online.

The Special Representative of the Commission, Mr Buquicchio, thanked all the speakers for their wishes and reminded that he had announced his wish to step down as President of the Commission during the Covid-19 breakout. He had been promoting and defending the values of the Council of Europe for fifty-two years and more than thirty of them had been with the Commission. He participated in its creation together with Antonio La Pergola, who was at the time Minister for European Affairs of Italy. However, it was not easy to implement that idea in practice. It was only in 1990 that the Committee of Ministers consented to the creation of the Venice Commission, albeit only in the form of a partial agreement. Subsequently, gradually, owing to the excellent work of its members and the secretariat, the Commission established itself on the international scene as a key player in the promotion of democracy, human rights and the rule of law. During his dedicated service at the Commission, Mr Buquicchio did not miss any of 129 plenary sessions, he attended two ministerial conferences and three meetings which had preceded the official creation of the Commission. He concluded by wishing success to the Commission and its new President.

The Commission welcomed the new functions of Mr Gianni Buquicchio as its Special Representative .

Election of the 3 Vice-Presidents and 4 members of the Bureau as well as Chairs and Vice-Chairs of the Sub-Commissions

The Group of Wise Persons made the following proposal:

Vice-Presidents: M Frendo (Malta), A. Nussberger (Germany), H. Thorgeirsdottir (Iceland)

Other Bureau members: P. Carozza (USA) P. Dimitrov (Bulgaria) S. Holovaty (Ukraine); R. Kiener (Switzerland)

Sub-Commissions:
Fundamental Rights: Chair: J. Velaers (Belgium); Vice-Chair: V. Petrov (Serbia)
Federal State and Regional State: Chair – T. Khabrieva (Russian Federation), Vice-Chair – P. Vilanova Trias (Andorra)
International Law: Chair – I. Cameron (Sweden), Vice-Chair – F. Maiani (San Marino)
Protection of National Minorities: Chair – Q. Qerimi (Kosovo); Vice-Chair – Mr A. Lavinš (Latvia)
Judiciary: Chair - R. Barrett (Ireland); Vice-Chair – A. Gaspar (Portugal)
Democratic Institutions: Chair – N. Alivizatos (Greece); Vice-Chair – D. Meridor (Israel)
Working methods: Chair – W. Newman (Canada); Vice-Chair –S.T. Lee (South Korea)
Latin America: Chair – J-L. Vargas Valdez (Mexico); Vice-Chair – A. Ferrero Costa (Peru)
Mediterranean Basin: Chair – M. Nicolatos (Cyprus); Vice-Chair – G. Jeribi (Tunisia)
Rule of law: Chair V. Bílková (Czech Republic); Vice-Chair – J. Omejeć (Croatia)
Gender Equality: Chair – T. Otty (UK); Vice-Chair – N. Bernoussi (Morocco)
Ombudsman institutions: Chair – J. Helgesen (Norway); Vice-Chair – I. Rogov (Kazakhstan)

Constitutional Justice: Chair – Z. Knezević (Bosnia and Herzegovina);[1] Vice-Chair – A. Varga (Hungary)
Scientific Council: Chair - B. Mathieu (Monaco); Vice-Chair – P. Bussjäger (Liechtenstein)
Council for Democratic Elections (nomination as candidate): Chair – S. Darmanovic (Montenegro)

Pointing out that she had insisted on the need for due East-West balance in the choice of the candidates as Vice-Presidents, Ms Bílková stated that she would abstain from the vote.

The Commission, with one abstention, elected the President, Vice-Presidents, Members of the Bureau, Chairs and Vice-Chairs of the Sub-Commissions following the proposal of the Group of Wise Persons.

5. Communication by the Secretariat

Ms Simona Granata-Menghini provided practical details for the session.

6. Co-operation with the Committee of Ministers

Mr Janssens de Bisthoven, Permanent Representative of Belgium to the Council of Europe, congratulated the new President on her election and paid tribute to the former President for his leadership, wisdom and tireless work. Belgium and the other members of the Committee of Ministers have fully appreciated the considerable and multifaceted work that the Commission has accomplished in 2020 and during this year. The high number of requests from the countries themselves prove the high level of confidence in the Commission. In addition, the majority of opinions largely determined relevant constitutional and legislative amendments. This shows that the collective work of the Venice Commission has a real impact on the ground. Aware of the financial challenges resulting from this increase in the volume of work, Belgium decided in 2020 to provide support to the Venice Commission over the period 2020 to 2023, by means of a voluntary contribution of one million euros. These resources have already made it possible to support the establishment of the new Codices database and also serve to support the action of the Venice Commission in the development of democratic institutions. Belgium thus intends to demonstrate in concrete terms the importance of the task to the Venice Commission. Hopefully, this step will inspire other Council of Europe member states.

7. Co-operation with the Parliamentary Assembly

Ms Alexandra Louis, Member of the Committee on Legal Affairs and Human Rights of the Parliamentary Assembly of the Council of Europe (PACE), informed the Commission that the PACE Standing Committee met in Rome on 25 and 26 November 2021 where the participants discussed a report on fight against corruption and the general principles of political accountability.

The PACE Monitoring Committee held an exchange of views on the situation in Serbia with Mr Kuijer, substitute member of the Netherlands. In the framework of a discussion on the situation in Moldova, the Monitoring Committee also held an exchange of views with Ms Granata-Menghini, Secretary of the Venice Commission. In addition, new information documents on Ukraine, Georgia, the Republic of Moldova and North Macedonia have been released and a report on the functioning of democratic institutions in Armenia will be debated at the next session of the PACE.

As regards the recent activities of the PACE Legal Affairs Committee, it adopted a report on enforced disappearances in Council of Europe member states and another on the poisoning of Alexei Navalny. The two reports will be considered by the PACE next January. The Committee also held hearings on the accession of the European Union to the European Convention on

[1] The Chairman of the Sub-Commission on Constitutional Justice acts as co-chairman of the Joint Council on Constitutional Justice.

Human Rights, on highlighting the costs of judgments of the European Court of Human Rights in interstate cases, on the abolition of the death penalty, and on the lethal autonomous weapons systems.

To conclude, there were many important topics on which the Commission and the PACE have established effective co-operation. Ms Louis thanked the Commission sincerely as she had already requested its assistance in the context of the preparation of reports on the restrictions on NGO activities and on the human rights situation in Belarus.

Note: The opinion on the compatibility with international human rights standards of Act LXXIX amending certain Acts for the protection of children in Hungary falls into the framework of co-operation with the Parliamentary Assembly (see Item 12).

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

Ms Gudrun Mosler-Törnström, Chair of the Monitoring Committee of the Congress, informed the Commission that through the last months, the Congress had managed to pursue its monitoring and election observation missions as planned, both remotely and on the ground. At the end of November, a Congress monitoring delegation visited Ukraine to update the report on the implementation of the European Charter of Local Self-Government. The Congress received a few complaints from Ukrainian civil society claiming that the voting rights of residents of 18 communities situated in the east of Ukraine, close to the contact line, had been restricted without justified reasons, when the 2020 local elections had not been held there. The Congress found it very useful that the Venice Commission together with OSCE/ODIHR issued an opinion on the draft law “On Improving The Procedure For Establishing The Impossibility Of Holding National And Local Elections, All-Ukrainian and Local Referendums in Certain Territories and Polling Stations” (CDL-AD(2021)045).

The previous week, the Congress delegation had gone to Turkey to update its report on this country. It was recalled that in 2020 the Venice Commission, at the request of the Congress, prepared an opinion on the situation of mayors in Turkey (CDL-AD(2020)011). That opinion supported the recommendations of the Congress which considered that the practice of replacement of mayors and elected representatives in Turkey by government appointees undermined democracy and local self-government. The Turkish authorities informed the Congress delegation that they would need more time to consider these recommendations. The Congress therefore intended to prepare written questions to the authorities on those issues.

At the next Congress plenary session in March monitoring reports on Ukraine, Turkey, UK, Germany and Luxembourg would be adopted. The Congress was also exploring the possibility of co-operation with the Republic of Moldova in the implementation of the monitoring roadmap signed last year.

From 13 to 17 November 2021, a Congress delegation carried out an electoral observation mission to Denmark and positively assessed the conduct of local and regional elections. On 2 and 3 December 2021 the Congress delegation carried out remotely an electoral assessment mission in Armenia, in view of the partial local elections.

8a. Address by the OSCE High Commissioner on National Minorities

Mr Kairat Abdrakhmanov, the OSCE High Commissioner on National Minorities addressed the Plenary, congratulated the new President and thanked Gianni Buquicchio for his outstanding leadership over the years.

Mr Abdrakhmanov pointed to the strong history of collaboration and mutual support of his Office and the Venice Commission. He noted that that his Office was part of the OSCE’s politico-military dimension, tasked with early warning and action as regards tensions which have the potential of developing into a conflict involving national minorities. In this respect, the broad discussion

among legislators and policy makers fostered by the Venice Commission, which often positively affected public discourse, has greatly benefited Mr Abdrakhmanov's work, which is necessarily conducted in confidence, seeking to foster dialogue where there is little to none.

Mr Abradkhmanov stressed that there cannot be any meaningful and sustainable conflict prevention or resolution without upholding minority rights within a robust rule of law system that is able to address past injustices. In this context, the opinions of the Venice help underpin the Commissioner's views on intricate legal issues involving national minorities across OSCE participating states. Over the years, the two institutions have co-operated closely on country-specific and thematic issues concerning minorities, for example as regards the Republic of Moldova, contributing to the fostering of relations between the Gagauz autonomy and the central authorities, and Ukraine and many other states, contributing to education reform and laws on languages. It is important for such collaboration to also extend beyond the geographical scope of the Council of Europe, such as Central Asia where there are great opportunities and challenges in the quest to build democratic societies. Furthermore, various thematic recommendations and guidelines of the OSCE High Commissioner on National Minorities draw on opinions of the Commission, the principles underpinning these opinions or consultations with members of the Commission, such as the Bolzano/Bozen Recommendations on National Minorities in Inter-State Relations (which is *inter alia* based on the Report on the Preferential Treatment of National Minorities by their Kin-State, CDL-INF(2001)019) and the Graz Recommendations on Access to Justice and National Minorities.

Mr Abradhkmanov concluded that he looked forward to advancing the shared efforts of his Office and the Venice Commission in supporting justice, equality and cohesion in society and to developing new ideas in this respect in the months and years to come.

9. Follow-up to earlier Venice Commission opinions

The chair referred to the information document that covers the follow-up to the following opinions:

- Armenia: Urgent joint opinion of the Venice Commission and the OSCE/ODIHR on amendments to the Electoral Code and related legislation (CDL-AD(2021)025)
- Georgia: Joint Opinion of the Venice Commission and the OSCE/ODIHR on amendments to the Election Code, the Law on Political Associations of Citizens and the Rules of Procedure of the Parliament (CDL-AD(2021)008)
- Serbia: Follow-up to the Urgent opinion on the draft law on the referendum and the people's initiative (CDL-AD(2021)033)
- Uzbekistan: Follow-up to the OSCE/ODHIR joint opinion on the draft law on freedom of conscience and religious organisations (CDL-AD(2020)002)

10. Albania

Extension of the term of office of the vetting bodies for judges and prosecutors in Albania

Ms Nussberger explained that this opinion had recalled the conditions for extending the process if need be:

In the Albanian case, it appeared that deferring the vetting of the remaining 300 judges to the High Council of Prosecutors and the High Council of Judges would entail risks of lack of consistency and legal uncertainty. In addition, these two bodies would need time to prepare for this new function, so it was not likely that the procedure would be concluded earlier than the extension of the mandate of the current vetting bodies. The results of the vetting process were encouraging. It was necessary nonetheless that the resources allocated to the vetting process be increased so that the efficiency of the judicial system is not undermined.

Ms Klotilda Bushka Head of the Committee of Legal Affairs, Public Administration and Human Rights, Parliament of Albania, explained that Albania was consolidating its reform in the field of

justice and was focussing on its efficiency. The vetting process had had an impact on the judicial system. Of the 800 judges, 300 remained to be vetting. While the constitution provides for mechanisms to take over the process if it cannot be accomplished within the set deadline, these mechanisms would raise issues of legal certainty and consistency; for this reason, it was considered that extending the mandate of the current vetting bodies was the best solution. In parallel, the efficiency of the process was being strengthened, new magistrates were being trained and the budget allocated to the vetting process had been increased. A new judicial roadmap would increase the overall efficiency of the vetting process, enabling the new deadline to be met. She stressed that the Supreme Court and the Constitutional Court had not become operational, and 2 new vacancies on the latter court would be filled shortly. She thanked the Venice Commission once again.

Mr Vardanyan stressed that the extension should made dependent on the actual finalisation of the vetting process.

The Commission adopted the opinion on the extension of the term of office of the vetting bodies for judges and prosecutors in Albania (CDL-AD(2021)053).

The opinion was prepared under the Expertise Co-ordination Mechanism in the framework of the joint European Union and Council of Europe programme "Horizontal Facility for the Western Balkans and Turkey 2019-2022".

11. Cyprus

Three Bills reforming the Judiciary

Mr Kuijer explained that the Minister of Justice and Public Order who had requested the opinion and all stakeholders the delegation met in Nicosia, including those representing the judiciary, agreed that urgent reforms of the judiciary were needed in the country. The problems encountered by the judiciary seem mainly related to the enormous backlog of cases pending before the courts and the average time it takes to get a final judicial decision in any given case. The draft opinion expressed its agreement that holistic reforms of the judiciary are called for and welcomed that a detailed action plan for judicial reform has been prepared over the last few years in consultation with the relevant stakeholders. The main issues at the moment were the re-establishment of the Supreme Constitutional Court, the proposed appointment of the top judges to the Supreme Constitutional Court and the Supreme Court and the proposed appointment of other judges.

Following the intercommunal troubles of 1963-64 the Supreme Constitutional Court and the High Court had been amalgamated in the present Supreme Court. It also acts as the Supreme Council of the Judicature, dealing with judicial appointments, promotions, transfers and disciplinary matters. According to the proposals, the present Supreme Court of 13 justices would be split into a Supreme Constitutional Court – SCC (composed of 9 judges) and the "new" Supreme Court – SC (composed of 7 justices). The opinion expressed the view that no single judicial body – regardless of its high level of independence – should have such a concentration of tasks and responsibilities. It therefore saw no reason to object to the proposal as such. As concerns the choice of the current judges to join one of the two new courts, the opinion recommended stipulating that the President, will as rule, determine the final allocation in accordance with the judge's wishes.

Under the 1960 Constitution, the appointment of the President and judges of the SCC and the SC are the prerogative of the President. This provision is unamendable. In practice, however, there exists a "convention" - which has been adhered to by the President - that all Presidents of the Republic have so far, before exercising this constitutional power, consulted the Supreme Court. The 'convention' has ensured extensive depolitisation in practice. The reform bills provide for the setting up of the Advisory Judicial Council, which should act as an advisory body to the President on the suitability of candidates. The opinion welcomed the effort to codify this unwritten

"convention" in the law. However, decisions taken by the Advisory Judicial Council should be "made available to applicants on request".

The proposed composition of the Advisory Judicial Council did not raise concerns, with the exception of the Attorney General who also acts as the legal adviser to the executive (see earlier opinion in respect of Malta).

The draft opinion argued that detailed reports on the candidates could enable the President to make an informed choice, and it is not unreasonable to oblige the President to motivate in writing any decision which is contrary to the recommendations of the Council. In addition, the law could be further improved if "pre-existing, clear and transparent criteria for judicial appointment" would be elaborated in the law.

According to Article 157 of the Constitution, the "High Court shall be the Supreme Council of Judicature". The bill proposed to change the composition of the SCJ. The proposed SCJ would consist of 9 members: the President and the three senior judges of the SC, the President of the Court of Appeal, the most senior President of the District Court, the President of the Association of Judges, the Attorney General and the President of the Bar Association. The Commission was informed that there is agreement on a proposal to include the Attorney General and the President of the Bar in the SCJ but without the right to vote.

Generally speaking, the draft opinion welcomed the thrust of the reform which 'opens up' the composition of the judicial council involving all court levels in the court system and introducing a non-judicial component. However, the draft opinion did not take a stance on the constitutionality of the proposal. It did recommend however considering to have the judicial members elected by their peers, instead of selecting them by seniority.

The Secretariat read out a letter from Ms Stephie Dracos, Minister of Justice and Public Order of Cyprus who could not participate in the plenary session. She insisted that under the Cypriot Constitution the appointment power of the President was an unrestricted right provided for in an unamendable provision of the Constitution. The establishment of the Advisory Judicial Council was already a limitation of this right. Any further limitations of this might be held unconstitutional. The Advice of the Advisory Judicial Council could not be challenged under the Cypriot legal system. The newly proposed changes would endanger the delicate agreement reached with stakeholders on the amendments and this could derail the urgently needed legal reform. If that were to happen it might be better to adhere to the unwritten constitutional convention if this were accepted by all stakeholders.

Mr Nicolatos pointed out that the recommendations would lead to constitutional problems. Article 157 of the Constitution which provides that the High (Supreme) Court shall be the Supreme Council of Judicature was not amendable. The criteria for judicial appointment should be set out in an act of the Supreme Court but they should not be included in the law. A right of recourse against the recommendations of the Advisory Council could not be implemented under Cypriot law. The discretion of the President to appoint judges could not be limited under the Constitution.

Mr Kuijer, supported by Mr Knežević, replied that the draft opinion was not intended to endanger the agreements reached in Cyprus but the Commission was obliged to point to applicable international standards. Mr Frendo pointed out that the existing convention that bound the President in respect of judicial appointments had a constitutional character. In these circumstances, limitations could be justified. The willingness of the Cypriot stakeholders to find an agreement could only be warmly welcomed.

The Commission adopted the Opinion on three Bills reforming the Judiciary (CDL-AD(2021)043).

12. Hungary

Compatibility with international human rights standards of Act LXXIX amending certain Acts for the protection of children

Mr Vermeulen explained that the amendments to certain Acts for the protection of children introduce prohibitions and/or restrictions on any depiction or discussion of diverse gender identities and sexual orientations in the public sphere, including schools and the media, by prohibiting or limiting access to content that "propagates or portrays divergence from self-identity corresponding to sex at birth, sex change or homosexuality" for individuals under 18 years of age. Mr Vermeulen expressed gratitude to the interlocutors for instructive and constructive dialogues which contributed to the balanced content of the opinion.

From the outset, the draft opinion regretted the rushed manner of adopting the law without any meaningful consultation with civil society, opposition and other stakeholders, contrary to the Venice Commission recommendations in its Rule of Law Checklist and the Report on the Role of the opposition in a democratic Parliament.

The draft opinion underlined that the amendments to the Child Protection Act and the Family Protection Act, requiring that the right of children to a self-identity corresponding to their sex at birth is protected, is criticized for the same reasons as the Venice Commission developed in its July Opinion on the constitutional amendments adopted by the Hungarian Parliament in December 2020. These amendments fail to include the right to recognition of one's gender, which may be different from one's sex at birth. Gender as a component of personal identity, is protected under Article 8 ECHR.

The draft opinion further emphasised that various amendments to provisions in media and information legislation forbidding to make accessible to persons under 18, content that "propagates or portrays divergence from self-identity corresponding to sex at birth, sex change or homosexuality", contain broad prohibitions and vague terminology without any definition in the specific laws and thus, are incompatible with the Article 10 ECHR requirement "prescribed by law". Moreover, the blanket requirement? to remove from the public domain other than heterosexual identity and gender, does not fulfil the requirement of "necessity" and the aims of protection of morals and of the rights of others.

Concerning education and upbringing, the draft opinion stressed that while no obligation for States to provide information about sexuality and gender, for instance in schools and public media, can be derived from the ECHR, where such information is provided – as is the case in Hungary – this has to be done "in an objective, critical and pluralistic manner, respecting the parents' religious and philosophical convictions".

Finally, the draft opinion concluded that the amendments contribute to forming ideologically motivated "parallel societies", against which minorities are discriminated. They also contribute to creating a "threatening environment", where LGBTQI children can be subject to health-related risks, bullying and harassment. This cannot be considered in conformity with the principles embodied in Article 2 no.1 of the ECHR, Article 13(3) of the ICESCR, Article 18(4) of the ICCPR and Article 14(2) of the CRC.

Mr Csaba Hende, Deputy Speaker of the Hungarian National Assembly, Chairman of the Committee on Legislation, explained that the Act under examination represents a package of legislative amendments focusing on one of the key values of the Hungarian Fundamental Law – the protection of children's rights and it excludes discrimination on any of the prohibited grounds. He further explained that the provisions under discussion guarantee that children are exposed to only certain content, which is not difficult to understand, given their age and level of development, in a form that is appropriate to their parents' choice of education. Furthermore, Mr Hende stressed that Hungarian legislation does not in any way exclude pupils from learning about or discussing certain aspects of social reality which introduces issues related to sex education.

In relation to the amendments to media and information legislation, Mr Hende noted that, the recommendation on the classification of media content by the independent Media Council, gives proper guidance for the application of the new rules, including on "portrayal or propagation of divergence from self-identity corresponding to sex at birth, sex change or homosexuality".

In conclusion, Mr Hende noted that Article 15 of the Fundamental Law prohibits discrimination on the widest possible grounds, along with the Equal Treatment Act which expressly prohibits direct or indirect discrimination, on the grounds of, *inter alia*, sexual orientation and gender identity.

The Commission adopted the Opinion on the compatibility with international human rights standards of act LXXIX amending certain acts for the protection of children (CDL-AD(2021)050).

13. Kosovo

Draft amendments to the law on the Prosecutorial Council

Mr Gaspar explained that the opinion on the draft amendments to the law on the Prosecutorial Council had been requested by the Minister of Justice of Kosovo. The Ministry argued that the Kosovo Prosecutorial Council (the KPC) urgently needed a reform to combat the alleged lack of efficiency and corporatism. The currently existing KPC was composed almost exclusively of prosecutors. Under the proposal, the KPC would have 7 members, 3 of them would be prosecutors elected by their peers. In the future Council, the prosecutors would still represent a "substantive part" of the membership, which is acceptable, provided that the lay component of the Council is sufficiently pluralistic.

There were arguments pro and contra the participation of the Prosecutor General in the future Council – the opinion explained which factors define the answer to this question. The selection of members of the KPC would be entrusted to a special parliamentary selection commission (for lay members) and an electoral commission (as regards the prosecutorial members). The commissions would be able to reject candidates on the basis of their "moral integrity", which is a very vague criterion. The pre-selection procedure proposed by the draft law was too complex and not very clear. By contrast, the election of lay members by the Assembly would be done by a simple majority. The draft opinion proposed to provide for a proportional system or for the election by a qualified majority, to avoid politicisation. Under the proposed system, the prosecutors would have very little influence in the electoral commission. The replacement of the old KPC with a newly composed KPC would take place in three phases, and the draft opinion noted that in the first phase the KPC could function without any prosecutorial members. However, this proposal was contrary to the standards. The early termination of the mandate of the currently sitting members was also problematic – it could be justified only by very serious considerations of a profound improvement of the current system. The draft opinion proposed exploring other forms of renewal of the composition of the KPC. The draft opinion welcomed the readiness of the Ministry to revise the draft law.

Ms Albulena Haxhiu, Minister of Justice of Kosovo, stressed that the prosecutorial system of Kosovo suffered from lack of integrity, and did not enjoy public trust. The KPC was heavily dominated by the prosecutorial members and was in fact captured by a small group of prosecutors. The draft law proposed to change the balance, in order to make the prosecutorial system more accountable. The process of selection of lay members would be in the hands of a pluralistically composed selection commission, which would have a majority of members appointed by the opposition and independent institutions. That would ensure the independence of this commission. The Ministry was ready to review the process of election of the lay members and include additional safeguards to the law, as recommended by the opinion. As to the early termination of the mandates of the currently sitting prosecutorial members, it was justified by the

intention of the reform to make the KPC more efficient. The opinion of the Venice Commission would be taken into account in the work on the final version of the draft law.

Mr Hamilton pointed out that there were no international standards on the composition of the prosecutorial councils. There are important differences between judges and prosecutors. Judges always have individual independence; prosecutors are often subject to some form of hierarchical control. That has consequences for the organisation of the prosecutorial councils. There should be no assimilation between standards on the judicial and prosecutorial councils. It is important that the prosecutorial councils should not be dominated by political appointees, but they should equally not be in the hands of the Prosecutor General or the prosecutors themselves.

The Commission adopted the Opinion on the draft amendments to the Law on the prosecutorial Council of Kosovo (CDL-AD(2021)051), previously examined at the joint meeting of the Sub-Commission on the Rule of Law and on the Judiciary on 9 December 2021.

The opinion was prepared under the Expertise Co-ordination Mechanism in the framework of the joint European Union and Council of Europe programme "Horizontal Facility for the Western Balkans and Turkey 2019-2022".

14. Republic of Moldova

Amicus curiae brief on the ratification of the Council of Europe Convention on preventing and combating violence against women and domestic violence (Istanbul Convention)

Ms Kjerulf Thorgeirsdottir explained that this amicus curiae Brief was based on a case in which two Members of the Moldovan Parliament had challenged before the Constitutional Court the constitutionality of the law ratifying the Istanbul Convention, claiming that it violated freedom of conscience and the rights to education and to family life. The electoral block of communists and socialists had not participated in the voting procedure after their amendment requiring the term "gender" to be limited to biological gender was not carried. The Orthodox Church was opposed to its ratification as well. The Venice Commission had already given a similar opinion for Armenia in 2019 (CDL-AD(2019)018), also approaching these issues from an angle of international human rights protection. The Istanbul Convention is the most comprehensive treaty preventing violence against women, notably requiring its criminalization. Violence against women is also a serious problem in the Republic of Moldova but, as was the case in other countries, false narratives about the contents of the Istanbul Convention had been spread. The Istanbul Convention does not state that women and men are the same or should be the same, and it does not seek to regulate family life or family structures. The Istanbul Convention does not require State Parties to take any measures to legally recognise the various categories of persons under the gender term, but simply that persons may not be denied protection against violence or the status of victim due to their gender.

In reply to the questions asked by the Moldovan Constitutional Court, the *amicus curiae* Brief concluded that, in line with the Moldovan constitutional provisions on equality and family, Article 3.c of the Istanbul Convention aims to eradicate violence perpetuated by the prevailing attitude of women being inferior to men. With respect to Article 14 of the Istanbul Convention (on education), the amicus curiae Brief pointed to the obligation to protect, among others, women and girls against violence by virtue of Articles 3 and 6 ECHR, as well as Articles 7 and 17 of the ICCPR. This called for an interpretation of Article 35 of the Moldovan Constitution in harmony with its Article 54, thereby allowing for restrictions to certain rights and freedoms to the extent required for the protection of rights, freedoms and the dignity of other persons. With respect to Article 28 of the Istanbul Convention, the obligation to make professional reporting possible "under appropriate conditions" (which may also include the condition of prior consent of the alleged or potential victim) does not appear to be in violation of freedom of conscience. Article 31 of the Moldovan Constitution qualifies the exercise of the freedom of conscience by stating that its exercise should be in a spirit of tolerance and mutual respect. Article 42 of the Istanbul

Convention obliges State Parties to ensure that, in criminal procedures concerning violence against women and domestic violence, culture, custom, religion, tradition or so-called “honour” shall not be regarded as justifications for such acts. The Moldovan Constitution may not be interpreted as intending to define freedom of opinion, religion and conviction, and the right to education in such a way as to justify serious crimes.

In the discussion, the need to fight honour crimes and the need to educate children on this issue was raised. It was also necessary to train doctors, police officers and teachers, as they could be witnesses. The vagueness of Chapter III of the Istanbul Convention was also discussed. This led to the possibility for wide ranging interpretations, notably as to the difference between men and women. Caution was required. The point was also raised whether it was even necessary at all to refer in the *amicus curiae* Brief to the restriction of rights as the obligations deriving from the Istanbul Convention did not limit such rights. It was also pointed out that political violence against women had to be prevented.

The Commission adopted the *amicus curiae* Brief for the Constitutional Court of the Republic of Moldova on the constitutional Implications of the ratification of the Council of Europe Convention on preventing and combating violence against women and domestic violence (Istanbul Convention) (CDL-AD(2021)044).

Amendments of 24 August 2021 to the Law on the Prosecution Service

Ms Deskoska explained that the opinion had been requested by the President of the Superior Council of Prosecutors (the SCP) of the Republic of Moldova and the Prosecutor General (the PG), Mr Stoianoglo, who, in October 2021, has been suspended in relation to a criminal case pending against him.

The August 2021 amendments changed the composition of the SCP. After the amendments the prosecutors still represented a “substantive part” of the membership of the SCP, which was in line with the standards, but the composition of the SCP should be regulated in the Constitution.

The draft opinion said that as concerns the choice of the *ex officio* members, there are arguments for and against keeping the MoJ and the PG in the SCP. The early retirement of members who had been appointed under the previously existing rules should not, without a very good reason, perturb their legitimate expectation to serve their original mandates.

Further, the law provided for (brief explanation of performance evaluation) . It did not establish specific indicators of underperformance, which however should not be left to the discretion of the SCP. The Evaluation Commission (EC) might operate without prosecutors in its composition, which was objectionable. The EC has already started to evaluate the performance of Mr Stoianoglo, but this seemed to be a retroactive application of the performance evaluation procedure introduced only in August 2021.

The appointment of the interim PG should not last too long. The SCP should verify whether the suspension of the PG was needed in case criminal proceedings were brought against him or her. Automatic dismissal of all the Deputies was unjustified and should be reconsidered. The opinion has been examined at the joint meeting of the Sub-commissions on the Rule of Law and on Democratic Institutions on 9 December 2021.

The President of the Supreme Prosecutorial Council, Ms Angela Motuzoc, stressed the role of the SCP in ensuring the independence of the prosecution service. The amendments of August 2021 had had a serious impact on the functioning of the SCP and on the mandate of the PG. The legislative procedure had been rushed; in the past years the composition of the SCP had been repeatedly changed. Under the August 2021 amendments, the PG was excluded from the SCP. The draft opinion gave arguments why the PG should remain an *ex officio* member of this body. The Moldovan legal order does not provide for the performance evaluation procedure of other office holders having a constitutional mandate. The professional evaluation of the prosecutors

should not be politically motivated. Only the SCP should have the power to decide on the performance of the PG.

Mr Iulian Rusu, State Secretary, Ministry of Justice of the Republic of Moldova, stressed that in the new SCP prosecutors still represented a "substantive part" which was in line with the international standards. The participation of the PG in the SCP should be decided in the light of the national context – in a hierarchical system, like in Moldova, the PG enjoyed significant procedural and administrative powers so removing him/her from the SCP was justified. The mandate of the PG was 7 years, whereas the mandate of the prosecutorial members was 4 years only, which meant that they would return to the prosecution service while the PG was still in office. The case of *Kolevi v. Bulgaria* showed the danger of having the SCP subordinated to the PG. As regards the age limit for lay members, the goal of the amendments was to achieve equality between the lay members and the prosecutorial members. The evaluation criteria should be based on certain principles which were indicated in the law. Indeed, it should be possible to define them more clearly in the law itself. The law left such a large discretion to the SCP because the amendments of 2019 (defining the procedure of appointment of the PG) had been declared unconstitutional because, according to the Constitutional Court, the SCP's discretion had been unduly limited by the law. The provision providing for the dismissal of the Deputy PGs was justified because the PG and the Deputy were seen as a team, and keeping the Deputies in place while suspending a PG might jeopardize the efficiency of any investigation against the PG.

The Commission adopted the Opinion on the amendments of 24 August 2021 to the Law on the Prosecution Service of the Republic of Moldova (CDL-AD(2021)047), previously examined at the joint meeting of the Sub-Commission on the Rule of Law and on the Judiciary on 9 December 2021.

Draft law on some Measures related to the Selection of Candidates for Administrative Positions in Bodies of Self-Administration of Judges and Prosecutors and the Amendment of some Normative Acts

Mr Barrett explained that the opinion had been prepared jointly with DGI. The procedure in question was part of a larger vetting plan for the near future. The Supreme Council of Magistrates and the Supreme Council of Prosecutor would have a central role in that plan according to the Constitution; there were vacancies on these bodies and the proposal was to apply integrity evaluation to candidates before the elections by the assemblies of judges and prosecutors take place. Only candidates having passed the integrity process may proceed to the election itself.

The draft joint opinion stressed at the outset that the preparation of such a law must involve consultations with relevant stakeholders notably SCM and SCP, and called upon the authorities to have wider consultations before the finalisation of the draft law.

The process at this point was not a judicial vetting but an evaluation of candidates; the evaluation was not in relation to their role as judges or prosecutors but only in relation to their role on the councils. Their role was an administrative one, but a crucial one in the judicial system.

The draft joint opinion indicated that, as stated by the opinion of the CCJE, the selection should be transparent. The evaluation must have a specific basis in law a narrow and exhaustive list of criteria and must provide for an appeal. The evaluation committee was independent, and was composed of 6 members, 3 elected by parliament and 3 proposed by Moldova's development partners and subsequently elected by parliament. The concept of international partners required clarification. Judges or prosecutors in the last three years were excluded from election, which was objectionable. The powers of the evaluation committee required clarification. The draft law did not contain a definition of integrity but numerous cross references to the applicable codes of professional ethics; the joint opinion recommended that only serious breaches of these codes be hurdles for the selection. It was recommended to set up a deadlock mechanism for possible tie votes of the Evaluation Committee. There was a need to clarify the duration of mandate of this Evaluation Committee.

Mr Iulian Rusu, State Secretary, Ministry of Justice of the Republic of Moldova, thanked the Commission for the quick response to this request. The efforts in the government were geared toward a comprehensive assessment of integrity in the justice sector. The mandates of the SCM and many of the SCP members have expired, hence the exercise is very timely. The authorities welcomed the recommendations made in the draft opinion. They considered however that the decisions on candidates must need to have a partial publicity; the safeguard would be that no personal information would be disclosed. Once the CSM and CSP are integer, it can be proceeded to the integrity check of all the judges.

To avoid suspicion that the committee was being set up for ulterior motives, the draft law now specified that it applied to positions which are vacant at the moment of entry into force of the law. The authorities further agreed that the appeal by the unsuccessful candidates should not be suspensive.

The Commission adopted the Joint opinion with the Directorate General of Human Rights and Rule of Law (DGI) of the Council of Europe on some measures related to the selection of candidates for administrative positions in bodies of self-administration of judges and prosecutors and the amendment of some normative acts of the Republic of Moldova (CDL-AD(2021)046).

14a. Meeting between the Enlarged Bureau of the Venice Commission and the Presidential Committee of the Parliamentary Assembly

The President of the Parliamentary Assembly of the Council of Europe (PACE), Mr Rik Daems, expressed his gratitude to Mr Buquicchio for the outstanding co-operation over the years and congratulated Ms Bazy Malaurie on behalf of the whole Assembly on her election.

Mr Daems gave a short overview of meeting between the Venice Commission's Enlarged Bureau and PACE's Presidential Committee (which comprises chairpersons of the political groups, representing almost 80% of the PACE members). He stressed that it would be useful to hold such exchanges more often, to allow for a more strategic discussion on where PACE can best have an added value to the Commission's work and to allow for a more direct impact of the Commission's expertise on the issues that come up for scrutiny and debate in PACE. He highlighted that the participation of the chairpersons of political groups in the exchange had shown to be very beneficial, giving additional insights to the Venice Commission on how to approach certain files (e.g. as regards the developments in Poland) by including views from both the majority and the opposition.

Mr Daems outlined that the Presidential Committee and the Enlarged Bureau discussed several topical issues, such as the situation in Belarus, Poland and Tunisia, and also discussed the major crisis in respect of the rule of law and the compliance with judgments of the European Court of Human Rights. He stressed that this is a fundamental issue, which PACE and the Venice Commission should address together. In this context, Mr Daems also pointed to the recent judgment of the Constitutional Tribunal of Poland, indicating that in his personal view this meant that the authorities would simply have to adapt their system to comply with the ECHR. It cannot be ruled out that PACE would ask the Venice Commission for an opinion on how Poland would need to amend its constitution to be compliant with the ECHR.

Mr Daems furthermore outlined how the meeting not only focused on issues related to Council of Europe member states but also on non-Council of Europe member states. This is in line with the Assembly's new logic: As developments outside the Council of Europe (for example in Kazakhstan, Tunisia and Belarus, but also as regards refugees from Afghanistan) have a direct impact on the daily life of citizens of Council of Europe member states, PACE increasingly tries to also connect to issues related to non-member states. More specifically, as regards one of those non-member states, the Venice Commission is already directly involved. Given the lack of information from the authorities of Belarus on the constitutional reform, Mr Daems requested the Venice Commission to provide its assessment of the proposals by the united opposition.

Ms Bazy Malaurie agreed with Mr Daems that it would be useful to have meetings more frequently. More specifically as regards Poland, she noted that recent judgments of the European Court of Human Rights and the Court of Justice of the EU were similar to the Commission's earlier opinions on the judicial reform. She would welcome a continuation of the exchange of views on this. As regards Belarus, she stated that in the coming weeks the Commission would identify what could be done in respect of the constitutional proposals put forward by various groups in and outside of Belarus. As regards Tunisia, it was clear that the Venice Commission remained very involved, even if at this point in time it is unclear in which direction the developments are going. She furthermore stressed that the meeting between PACE's Presidential Committee and the Commission's Enlarged Bureau had been a good opportunity to take stock of the worrying developments as regards compliance with the ECHR. Promotion of the values enshrined in the ECHR is certainly something that can be done jointly, notwithstanding the political role of PACE vs the Venice Commission's judicial one.

Ms Suchocka expressed her disappointment that some constitutional courts, which were set up as guardians of the constitution, have become instruments in the hands of politicians.

15. Ukraine

Mr Buquicchio recalled that two judges of the Constitutional Court of Ukraine had been removed by Presidential decree, but appeal proceedings were still pending so that the legality of their dismissal had not been finally established. He drew the attention of the Commission to the recent decision of the Constitutional Court of Ukraine to swear in the two members newly appointed by the President only once the legal situation concerning the two members removed by the President would be finally established.

The Commission welcomed the decision of the Constitutional Court of Ukraine in respect of the swearing in of two newly appointed judges of the Court.

Joint opinion on the draft law on improving the procedure for establishing the impossibility of holding national and local elections, all-Ukrainian and local referendums in certain territories and polling stations

Mr Ulvi Akhundlu, on behalf of ODIHR, informed the Commission that the decision not to hold the 2020 local elections in 18 territorial communities for security reasons had been subject to public and international criticism. The corresponding ODIHR election observation report had underlined that the legal framework for that decision lacked transparent criteria and the resolution itself lacked transparency, which undermined public trust in the process. Against this background, the present initiative of Ukrainian legislators to amend the applicable legislation was to be welcomed. At the same time, the draft opinion offered several recommendations to further improve the draft law. *Inter alia*, it should be made clear that the decision not to hold elections in certain territories could only be the last resort, and alternative solutions needed to be sought; the Central Election Commission and other relevant stakeholders should be involved in the assessment/decision-making process; and the assessment criteria should be introduced in the law.

Mr Barrett stressed that the extended suspension or cancellation of elections in certain territories would risk infringing electoral rights, in particular in the absence of a formal derogation from relevant international human rights guarantees; while Ukraine had entered derogations from international human rights obligations, they did not relate to the right to free elections. In any case, be it about cancellation or about temporary suspension of elections, any measures restricting the right to vote and to be elected must be proportional. Furthermore, the draft law should provide for more precise procedural rules, for instance regarding the question how the assessment process was triggered and how the involvement of different agencies was coordinated.

Mr Andrii Klochko, Chair of the Committee on the Organisation of State Power, Local Self-Government, Regional Development and Urban Planning of the Parliament of Ukraine, noted that the key innovation of the draft law was the assignment of the decision-making authority in this area to the National Security and Defence Council, a co-ordinating body directly responsible to the President. The draft law was aimed at ensuring more objective decision-making and better protecting electoral rights of citizens.

The Commission adopted the Opinion on the draft law of Ukraine "On improving the procedure for establishing the impossibility of holding national and local elections, all-Ukrainian and local referendums in certain territories and polling stations" (CDL-AD(2021)045).

The opinion was prepared under the Quick response Mechanism in the framework of the EU/CoE joint programme "Partnership for Good Governance", co-funded by the Council of Europe and the European Union and implemented by the Council of Europe.

16. Kazakhstan

Draft law on the Commissioner for Human Rights

Mr Sørensen focused on five main issues in the opinion. First, he recalled that the Commissioner's institution had been established in 2002 by a Presidential decree, hence the introduction of a draft law constitutes a stronger basis for the institution, which is to be welcomed. However, the Institution could be addressed more thoroughly in a constitutional provision which could, for instance, specify the mandate and basic procedures for the elections and the dismissal of the Ombudsman. Second, the jurisdiction of the Commissioner could be made more precise in the draft to clarify that the judiciary does not fall under it. Third, the immunity as foreseen in the draft is, on the one hand, too broad since it does not appear to be only functional and, on the other hand, too narrow since the Public Prosecutor may cancel the immunity of the Commissioner at his or her own discretion. Furthermore, the draft does not provide for any immunity for the staff, nor does it provide for an immunity after leaving the institution. Fourth, regarding the election of the Commissioner, the opinion invites the drafters to provide for a public and transparent procedure and to consider the possibility of an election by Parliament, as envisaged by the Venice Principles, by a qualified majority, for a term of no less than seven years and preferably with a non-renewable term of office. Fifth, regarding the term of office, the opinion points out some weaknesses in the draft due to the vagueness of criteria of termination, a lack of openness and transparency of the procedures and the absence of a mechanism for appeal to the judiciary.

Mr Shakirov, Deputy Chairman Senate of the Parliament of Kazakhstan, thanked the Commission for this valuable opinion. The draft law had already undergone two readings in the lower Chamber of the Parliament and is now before the Senate. The recommendations of the opinion are very useful and will, as far as possible, be considered in the law so that the requirements of international standards are met. However, some of the recommendations could be implemented only in the context of a constitutional reform or required changes to other pieces of legislation that are linked to this draft law. As Kazakhstan is engaged in a reform process, it will be possible to implement the recommendations at a later stage. Regarding the jurisdiction of the Commissioner, Mr Shakirov underlined that the draft introduces the possibility for the Ombudsman to act in court and to assist or represent claimants, which is a step forward that deserves to be mentioned.

The Commission adopted the Opinion on the draft law "On the Commissioner for Human Rights" of Kazakhstan (CDL-AD(2021)049).

17. Serbia

Draft revised constitutional amendments on the judiciary

Mr Kuijer informed the Commission that this urgent opinion issued on 1 December 2021 on the revised draft constitutional amendments on the judiciary of Serbia followed the opinion adopted in October 2021. That opinion had generally welcomed the draft amendments which were generally in line with European standards; but some recommendations were made concerning the High Judicial Council and the High Prosecutorial Council. The draft joint opinion found that Most of the key recommendations from the first opinion were heeded, i.e. those related to the composition of the High Judicial Council (HJC): 11 members, 6 judges elected by their peers, the President of Supreme court and four prominent lawyers elected by the National Assembly. This composition meets international parameter. However, the revised draft did not follow the recommendation related to the anti-deadlock mechanism for the election of the lay members of the HJC, and the recommendation related to the composition of the HPC had only partly been followed. These recommendations nonetheless did not relate to international standards as such. The Commission insisted once again on the need to reduce the risks of politicisation of the two Councils. It also stressed that the legislative changes necessary for the full implementation of the constitutional amendments should be prepared on an urgent basis, through a holistic reform of the relevant organic laws. The new HJC and NPC should not be formed prior to the adoption of the implementing legislation.

Mr Kuijer added that the constitutional amendments had in the meantime been adopted. The Serbian authorities had expressed their intention to involve the Commission in the further steps, which was to be welcomed. PACE had requested another opinion on a broader opinion on the functioning of democratic institutions in Serbia.

The Commission endorsed the urgent Opinion on the revised draft Law on the Referendum and the People's Initiative of Serbia (CDL-AD(2021)052).

The draft opinion was prepared under the Expertise Co-ordination Mechanism in the framework of the EU/CoE joint programme "Horizontal Facility II", co-funded by the Council of Europe and the European Union and implemented by the Council of Europe.

Revised draft Law on the Referendum and the People's Initiative

Mr Kask informed the Commission that this opinion was a follow-up to the previous Urgent Opinion endorsed in December (CDL-AD(2021)033). On the procedural aspect, he reminded that the draft had only come out in 2021 while the Constitution had been amended in 2006, the legislation on referendums had to be updated up to the end of 2008, and a constitutional referendum was imminent. On the substance, the revised draft law had followed, totally or partially, most of the substantive recommendations of the previous urgent opinion, aimed at ensuring its conformity with international standards. This had to be welcomed.

However, some issues remained to be addressed, in particular:

- To abolish, or at least significantly lower the fees for signature authentication;
- To extend the right to appeal to all voters and further extend the deadlines for complaints and appeals;
- To consider a broader and long-term reform of the composition of the electoral administration to be applicable after the next constitutional referendum and elections;
- To give to the electoral commissions the power to check signatures, and to provide objective information to voters.
- To further extend the deadline for providing objective information;
- To provide that the extended deadlines before a new referendum can be organised on a given issue after a positive result applies in case of negative result too;
- The assessment of the question put to referendum should be done by an independent body instead of Parliament;

- In the future, a constitutional revision should extend the minimum time between calling a referendum and the vote.

Mr Petrov informed the Commission that the National Assembly of Serbia had adopted this draft law on 10 December 2021 following the important recommendation to abolish the fees for signatures authentication.

The Commission endorsed the Urgent Opinion on the revised draft Law on the Referendum and the People's initiative of Serbia (CDL-AD(2021)052).

The draft opinion was prepared under the Expertise Co-ordination Mechanism in the framework of the EU/CoE joint programme "Horizontal Facility II", co-funded by the Council of Europe and the European Union and implemented by the Council of Europe.

18. Information on constitutional developments in observer States

Mr Hikaru Iwaki from the Consulate General of Japan in Strasbourg and liaison officer with the Supreme Court of Japan, congratulated the new President of the Venice Commission and expressed his gratitude to Mr Buquicchio. He announced the appointment of an additional observer from Japan, a constitutional scholar, Mr Masakazu Doi, Professor at Kyoto University Law School.

Mr Iwaki drew the attention of the Commission to a judgment of the Grand Bench of the Supreme Court of Japan regarding the separation of state and church. The Supreme Court ruled that that exemption of rent by a city on Okinawa for an association, which built a Confucius Temple on land owned by the city, violated the separation of state and church, provided by Article 20 of the Constitution. While the state's involvement with religions is not prohibited, it will be deemed unconstitutional when this involvement is too deep to assure freedom of religion. In this context, the Supreme Court considered in particular that Confucian statues were displayed and worshipped in the temple, similar to temples, shrines and churches of other religions; that the worship was not solely for touristic purposes; that the building was new, not historical; and, that the amount of exempted rented was quite large (around 45,000 EUR). The judgment will be published in Codices and in the Third Bulletin on Constitutional Case Law of this year.

19. Other business

Ms Bílková informed the Commission on progress of the preparation of the **report on the ratification and withdrawal from Council of Europe conventions**. This report is based on PACE Resolution 2376 on the functioning of democratic institutions in Turkey, following the country's withdrawal from the Istanbul Convention without involvement of the parliament, requesting the Commission to prepare a comparative study and possible guidelines about the modalities that should govern the ratification and withdrawal from Council of Europe Conventions. She outlined that so far, the rapporteurs have identified two main approaches or models: 1) the so-called symmetrical model, in which the approval is needed from Parliament both to accede to and withdraw from an international treaty; and 2) the asymmetrical model in which approval is needed from Parliament only for the accession to an international treaty. The first model appears to be more common in Venice Commission member states. On behalf of the rapporteurs, Ms Bílková asked all members of the Venice Commission to double-check information in the study relating to their country by 15 January 2022.

Ms Granata-Menghini informed the Commission of the preparation of a **round table on the composition of judicial councils**. Many countries struggle with this issue, *inter alia* as regards the election of lay members. It would be a good time to further discuss the model the Venice Commission has consistently proposed over the years, including in the opinions that are on the agenda of this Plenary Session. Italy will soon also face this issue and its Minister of Justice has expressed an interest to take this up under its current chairmanship of the Committee of Ministers of the Council of Europe. This roundtable could tentatively take place immediately after the Plenary Session in March. Mr Cesare Pinelli from La Sapienza University would be ready to

organise and host this event.

On the basis of a decree of the President of Romania, **Ms Granata-Menghini was awarded the national order of faithful service, in the rank of commander**, by Mr Bogdan Aurescu, the Minister of Foreign Affairs of Romania, as a sign of appreciation for her services in promoting democratic values, human rights and the rule of law and the availability with which she supported the dialogue with the Romanian authorities. Ms Granata-Menghini in turn thanked the Minister for the honour and for the recognition of the collective work of the Venice Commission.

21. Dates of the next Sessions

The Commission confirmed the dates of its next sessions:

130th Plenary Session	16-19 March 2022
131st Plenary Session	17-18 June 2022
132nd Plenary Session	21-22 October 2022
133rd Plenary Session	16-17 December 2022

Sub-commissions meetings as well as the meeting of the Council for Democratic Elections will take place on the day before the Plenary Session.

Link to the list of participants