



Strasbourg, 10 May 2022

**CDL-PL-PV(2022)001 \***  
Or. Engl./fr.

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

**130<sup>th</sup> PLENARY SESSION**  
**VENICE / online**  
**18-19 March 2022**

**130<sup>ème</sup> SESSION PLENIERE**

**VENISE / en ligne**  
**18-19 mars 2022**

**SESSION REPORT / RAPPORT DE SESSION**

---

*\*This document has been classified restricted on the date of issue. Unless the Venice Commission decides otherwise, it will be declassified a year after its issue according to the rules set up in Resolution CM/Res(2001)6 on access to Council of Europe documents.*

*This document will not be distributed at the meeting. Please bring this copy.*  
[www.venice.coe.int](http://www.venice.coe.int)

**TABLE OF CONTENTS / TABLE DES MATIERES**

1. Adoption of the Agenda.....	3
2. Communication by the President.....	3
3. Communication from the Enlarged Bureau .....	3
4. Communication by the Secretariat.....	4
5. Co-operation with the Committee of Ministers .....	4
6. Co-operation with the Parliamentary Assembly .....	5
7. Co-operation with the Congress of Regional and Local Authorities of the Council of Europe	5
8. Exchange of views with the Veneto Region .....	6
9. Follow-up to earlier Venice Commission opinions .....	6
10. Armenia .....	6
11. Belarus.....	8
12. Chile .....	9
13. Kosovo.....	10
14. <i>Echange de vues avec le ministre de la Justice du Liban sur le projet de loi sur l'indépendance du pouvoir judiciaire.....</i>	11
15. Croatia .....	12
16. Romania .....	13
17. Ukraine.....	14
18. Report – Domestic Procedures of Ratification and Denunciation of International Treaties	14
19. Compilation concerning legal certainty .....	15
20. Adoption of the Annual Report of Activities 2021 .....	16
21. Information on Conferences and Seminars opinions.....	16
22. Report of the Joint Hybrid Meeting of the Sub-Commission on Democratic Institutions and Latin America (17 March 2022).....	17
23. Report of the Hybrid Meeting of the Sub-Commission on the Judiciary (17 March 2022) ..	17
24. Other business .....	17
25. Dates of the next Sessions .....	18

Due to the Covid-19 pandemic, the 130<sup>th</sup> Plenary Session was held both in Venice and online.

### 1. Adoption of the Agenda

The agenda was adopted without amendments (CDL-PL-OJ(2022)001ann-rev).

### 2. Communication by the President

The President, Ms Claire Bazy Malaurie, welcomed members of the Venice Commission, as well as special guests and delegations, and referred to her recent activities as President set out in the document CDL(2021)029.

### 3. Communication from the Enlarged Bureau

The President informed the Commission of the discussions held at the meeting of the Enlarged Bureau on 17 March 2022 which foremost concerned the Council of Europe's position following the tragic events in Ukraine.

The Committee of Ministers of the Council of Europe had decided on 16 March that the Russian Federation to the Council of Europe ceased to be a member of the Council of Europe as of 16 March 2022; however, the Committee of Ministers had not yet taken the formal decision to exclude the Russian Federation from participation in the work of the Venice Commission. Such decision would be taken on 23 March.

The President also informed the Commission of the decision of the Committee of Ministers on 17 March 2022 to suspend Belarus from its right to participate as an associate member in the work of the Venice Commission.

Ms Granata-Menghini read out a message from Mr Serhiy Holovaty, member of the Venice Commission in respect of Ukraine, who was prevented from taking part in the Plenary Session on account of the war in Ukraine.

Numerous members of the Venice Commission made statements in solidarity with Ukraine and requested the adoption of the statement by the Venice Commission condemning the aggression of the Russian Federation against Ukraine. Nevertheless, they underlined that a clear distinction should be made between the Russian State leadership and the people.

**The Venice Commission adopted the following [public statement in support of Ukraine](#):**

"The Venice Commission fully supports the [public statement on "the aggression of the Russian Federation against Ukraine"](#) made by its President on 1 March 2022.

The Commission expresses its firm condemnation of this act of aggression by the Russian Federation and deplors the loss of lives and the destruction in Ukraine.

The Commission, the full name of which is "European Commission for Democracy through Law", is fully committed, as the preamble of the Council of Europe statute proclaims, to the pursuit of peace based upon justice and international co-operation, which is vital for the preservation of human society and civilization.

It expresses its full solidarity with Ukraine, which is fighting for the protection of our shared European principles and values of democracy, human rights and the rule of law."

The President further proposed, on behalf of the Enlarged Bureau, to appoint Kaarlo Tuori, whose mandate would come to an end shortly and who did not wish to be reappointed as member, as Honorary President of the Venice Commission, in recognition of his exceptional and long service to the Commission.

<b>The Commission appointed Mr Kaarlo Tuori as Honorary President of the Venice Commission, in recognition of his exceptional and long service to the Commission.</b>
---

Mr Tuori underlined the important role of the Venice Commission in his professional life, he emphasised the shift in the Commission's mandate over the years from constitutional assistance to constitutional monitoring which reflects the change of constitutional problems in Europe. However, the dedication, the integrity and the collegiality of the members of the Commission remains unchanged and Mr Tuori felt honoured to be able to make a humble contribution to the development of transnational constitutional doctrine and to the work of the Commission in this regard.

#### **4. Communication by the Secretariat**

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

#### **5. Co-operation with the Committee of Ministers**

Ms Maria Spassova, Permanent Representative of Bulgaria to the Council of Europe, expressed the appreciation of the Bulgarian authorities for the excellent cooperation with the Commission. She referred to the opinions adopted by the Venice Commission in relation to Bulgaria and described the impact these opinions had made. The recommendations developed in the 2019 opinion on draft amendments to the Criminal Procedure Code and the Judicial System Act concerning criminal investigation against top magistrates (CDL-AD(2019)031) were transformed into the ideas reflected in the National Recovery and Resilience Plan and the National Development Programme Bulgaria 2030, concerning, *inter alia*, judicial reform. Ms Spassova elaborated on other initiatives concerning judicial reform in Bulgaria, including the adoption of the Roadmap for the execution of judgements of the European Court of Human Rights in 2021 and the submission by the Government to the National Assembly in March 2022 of a draft Act to Amend and Supplement the Judiciary System Act. Emphasizing the importance of the long-standing and successful cooperation with the Venice Commission, Ms Spassova informed the Commission about the initiation of a national procedure by the Bulgarian Government for providing a voluntary contribution to the Commission's budget for 2022.

The President expressed the gratefulness of the Commission for the voluntary contribution, recalling that the Commission was heavily dependent on such extrabudgetary resources in order to face the increasing workload.

Mr Christian Meuwly, Permanent Representative of Switzerland to the Council of Europe reassured the Commission of Switzerland's unwavering support for its work. He elaborated on the sequence of events since 21 February – recognition of the so-called 'peoples' republics' of Donetsk and Luhansk by the Russian Federation in violation of international law and the decisions of the Committee of Ministers leading to the cessation of the membership of the Russian Federation to the Council of Europe on 16 March 2022 ([CM/Res\(2022\)2](#)). Belarus, appearing as an accomplice to the aggression of the Russian federation to Ukraine, was consequently [suspended](#) on 17 March 2022 by the Committee of Ministers of its rights to participate as observer or in any other capacity in meetings and activities of various organs and bodies of the Council of Europe, including of its right to participate, as associate member, in the work of the Venice Commission. After the cessation of the membership of the Russian Federation based on Article 8 of the Statute of the Council of Europe, consequences of this decision had to be assessed in relation to all agreements, including partial agreements and enlarged agreements. Another topic which had to be further discussed in the coming week by the Committee of Ministers were the legal consequences of CM/Res(2022)2 for the work of the European Court of Human Rights. Mr Meuwly explained that the CM Resolution might have a positive impact on the "47+1" negotiations on EU accession to the ECHR, as the process had been delayed due to a strong position taken by the Russian Federation in this regard.

## 6. Co-operation with the Parliamentary Assembly

Mr Rik Daems, former President of the Parliamentary Assembly of the Council of Europe (online), underlined the excellent cooperation between the Parliamentary Assembly and the Venice Commission. He informed the Commission that the Parliamentary Assembly was unanimous in taking the unavoidable decision to cease the membership of the Russian Federation to the Council of Europe which had numerous implications, *inter alia*, for the protection of human rights. In conclusion, Mr Rick Daems emphasised the importance of the financial support to the Venice Commission to ensure its unhindered and high-quality operation.

Ms Alexandra Louis, Member of the Committee on Legal Affairs and Human Rights of the Parliamentary Assembly, informed the Commission about the extraordinary session of the Assembly which took place on 14 and 15 March 2022 to debate the consequences of the Russian Federation's aggression against Ukraine and the unanimous opinion of the Assembly that the Russian Federation can no longer be a member State of the Organisation and that the Committee of Ministers should request the Russian Federation to immediately withdraw from the Council of Europe ([Opinion 300\(2022\)](#)). This decision was based on the fact that the Russian Federation committed grave violations of the Council of Europe Statute, incompatible with the status of a Council of Europe Member State. This decision is indispensable and at the same time very painful as it will bear consequence for the Russian CSOs as well as individuals who would like to bring applications to the European Court of Human Rights against the Russian Federation.

As regards other activities of the Parliamentary Assembly, in January 2022, it had approved two reports adopted by the Committee on Legal Affairs and Human Rights, one on ending enforced disappearances on the territory of the Council of Europe and another on the poisoning of Alexei Navalny. On 27 January 2022, the Assembly approved a report by the Monitoring Committee and adopted a resolution on functioning of democratic institutions in Armenia. Among other issues, the report expresses concern about the extreme politization of the disciplinary procedures within the judicial system and stresses that is essential to provide strong guarantees against political interference.

Ms Louis elaborated on the requests for opinions including the request concerning Romania on the draft law on the dismantling of the section for investigating criminal offences within the judiciary and the request concerning Georgia on December 2021 amendments to the Organic Law on Common Courts. As to the follow-up to the previous opinions of the Venice Commission, the Monitoring Committee rapporteurs visited the Republic of Moldova in October 2022 and welcomed the ratification of the Istanbul Convention following the *amicus curiae* Brief of the Venice Commission (CDL-AD(2021)044). The Monitoring Committee also welcomed the adoption of the constitutional amendments on the judiciary in Serbia following the respective opinion of the Venice Commission opinion (CDL-AD(2021)048). She concluded that there were many important topics on which the Commission and the PACE have established effective co-operation, including the opinion on Constitutional Reform in Belarus to be endorsed by the Commission. The Monitoring Committee will follow with great interest the report on the domestic procedures of ratification and denunciation of international treaties. The opinions of the Venice Commission are valuable more than ever in these difficult circumstances.

*The Opinion on Constitutional Reform in Belarus and its compliance with Council of Europe standards, and the Report on the Domestic Procedures of Ratification and Denunciation of International Treaties fall into the framework of co-operation with the Parliamentary Assembly (see Items 10 and 17 below).*

## 7. 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 the Congress had condemned the unjustified and unprovoked

aggression of the Russian Federation against Ukraine, both in its President and Bureau statements and expressed its solidarity with the Ukrainian people. The Russian Federation not only attacked European principles and values when it waged a war of aggression against its neighbour, but by disrespecting international law, it threatened the integrity of the international rule-based world order. Ms Mosler-Törnström announced that the situation in Ukraine will be discussed at the next plenary session of the Congress to take place on 22-24 March, which will result in the adoption of a declaration condemning the Russian Federation's war against Ukraine. She also briefed the Commission about other activities of the Congress – monitoring visit to Czech Republic (2-4 March 2022) and Belgium (8-10 March 2022) and its future plans – monitoring visits to Sweden and Denmark. In conclusion, the Commission was informed about the agenda of the 42<sup>nd</sup> plenary session of the Congress in March to adopt the monitoring reports on implementing the European Charter of Local Self-Government in Turkey, Germany, the United Kingdom and Luxemburg. As to the Congress's electoral observation activities, the results of the remote observations of partial local elections in some municipalities of Albania were brought to the Commission's attention. The information report of the Congress on the partial elections in Albania was under preparation. On 16 March 2022, the Congress deployed an election observation team to the Netherlands to assess the local elections and on 3 April, the Congress will deploy an on-sight observation mission to observe the elections in the city of Belgrade and 10 other municipalities in the Republic of Serbia.

## 8. Exchange of views with the Veneto Region

Mr Cristiano Corazzari, Minister for Culture of the Veneto Region, underlined the importance of the Venice Commission's work and recalled the history of its formation at a crucial time for Europe. The Veneto Region immediately and enthusiastically accepted the idea of setting up the Commission and it is proud of being able to host such a noble initiative for such a long time. Mr. Corazzari stressed the hard work by the Venice Commission over the decades to strengthen constitutional democracy in many countries and to consolidate an effective and transparent electoral system, the rule of law and mechanisms for the protection of human rights. In conclusion, Mr Corazzari expressed shock over the aggression of the Russian Federation against Ukraine and informed the Commission about the initiatives of the Veneto Region to support refugees from Ukraine. The horrifying events taking place in Ukraine reminded everyone that the democracy and peace are never to be taken for granted, but they require constant attention and care.

## 9. Follow-up to earlier Venice Commission opinions

The President referred to the information document (CDL(2022)007) that covers follow-up to the following opinions:

- Albania : *amicus curiae* Brief on the competence of the Constitutional Court regarding the validity of the local elections (CDL-AD(2021)037)
- Kazakhstan : Opinion on the draft law "on the Commissioner for Human Rights" (CDL-AD(2021)049)
- Republic of Moldova : *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)
- Serbia : Urgent Opinion on the revised draft constitutional amendments on the judiciary (CDL-AD(2021)048) and the Urgent Opinion on the revised draft law on the referendum and the people's initiative (CDL-AD(2021)052)

## 10. Armenia

*Draft Laws on making amendments to the Constitutional Law on the Judicial Code and to the Constitutional Law on the Constitutional Court*

Ms Monika Hermanns explained that this opinion was requested by the Minister of Justice in the context of the introduction of a "light vetting procedure" to address the issue of sitting judges who,

in the past, had committed serious human rights violations, leading to condemnations of the Armenian State by the European Court of Human Rights. This has undermined the general public's trust in the Armenian judiciary, which needed to be addressed.

She explained, however, that there seemed to be no need for new measures as the current Judicial Code provides strong grounds to hold judges liable for the violation of human rights. The new Criminal Code (which enters into force in July 2022) and the old one (still in force), provide criminal sanctions for obviously unjust judgments or other judicial acts, delivered for “mercenary purposes” or for other personal interest. Although this will not cover all cases of human-rights violations by judges, they provide sanctions for at least the most serious and obvious cases.

The draft amendments would neither be introduced by a separate new law on this issue nor by an amendment to the Constitution, but by simply referring to Article 164.6 of the Constitution (on the status of judges), which allows the introduction of further *incompatibility requirements* for judges to be added to the Law on the Constitutional Court and to the Judicial Code. It would therefore be a disciplinary measure disguised as an incompatibility requirement, which allows sitting judges to be dismissed for a deliberate violation of a fundamental human right that is based on a decision/judgment (“act”) by an international court or another international institution – where 15 years have not elapsed since the rendering of this act.

However, incompatibility requirements are barriers to engaging in activities other than the judge's professional activity. There was therefore a general concern regarding the place of the new incompatibility requirement within the Judicial Code and what amounts to the essence of what an incompatibility requirement is.

Other issues that raised concern were the importance of not using a judgment of the ECtHR against Armenia as the sole basis for a judge's liability; that liability should only be based on a national court's or the Supreme Judicial Council's (acting as a court) finding of either intent (deliberateness) or gross negligence on the part of a judge. That the use of two different terms, notably “deliberate” and “intentional” violation, raised concerns with respect to legal certainty and should be clarified.

That the fundamental human rights referred to be clearly defined as those stipulated in international treaties to which the Republic of Armenia is a party, including the ECHR; that a “deliberate violation” should be attributable to a judge; that the procedural rules that will apply to the proceedings that lead to the termination of powers of a judge on the basis of this new incompatibility ground be clearly set out and that retroactive legislation be excluded altogether to ensure that it does not create yet further possible challenges against the Armenian state before the ECtHR.

Mr Karen Andreasyan, Minister of Justice of Armenia, thanked the Venice Commission and said that the authorities will take the recommendations into consideration. He reiterated that the draft Amendments would avoid the drafting of a separate law, or the amendment of the Constitution, and their adoption would help in dealing with the issue of the “soft vetting” of sitting judges, who had violated fundamental human rights. The issue to be addressed was not the assessment of cases by the ECtHR, but their use as a basis of morality for judges involved in the cases that led to the condemnation of the State of Armenia. There had been political prisoners in Armenia for a number of years, yet the judges who rendered these sentences were still holding office in complete impunity, paid for by the Armenian taxpayers, which included the victims of these illegal decisions.

He ended by saying that a “soft vetting” of these sitting judges was an urgent matter for Armenia.

**The Venice Commission adopted the Joint Opinion on the draft Laws on making amendments to the Constitutional Law on the Judicial Code and to the Constitutional Law on the Constitutional Court ([CDL-AD\(2022\)002](#)).**

*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.*

## 11. Belarus

### Urgent Interim Opinion on Constitutional Reform

Mr Mathieu informed the Commission that the Urgent Interim Opinion which had been issued on 21 February 2022 ([CDL-PI\(2022\)002](#)). The urgency was called by the fact that the draft amendments, which had been made public at the end of 2021, were to be adopted in February 2022 already. The Opinion essentially dealt with two aspects: (a) the constitution amending procedure and (b) the distribution of powers in the draft amendments. As to the procedure, the process started with setting up a Constitutional Commission, which was assisted by a Working Group, probably controlled by the President's Office. It was regrettable that the national Parliament was not involved in the drafting process. That process lacked transparency and the draft amendments were made publicly available for a short time only. Free public debate was not possible in fact. As to the distribution of powers, the profound imbalance of powers in favour of the President has not been addressed by that constitutional reform which, moreover, offered broad immunities to the President. In addition to Parliament, the amendments provided for the establishment of an All-Belarusian People's Assembly with wide powers. Its Presidium, probably to be chaired by the current President, would be decisive at the operational level. In parallel to this official constitutional process within the country, the opposition in exile had prepared their own draft constitution with more parliamentary features and checks and balances in place.

Mr Alivizatos expressed the view that there was a profound link between the lack of constitutional guarantees on separation of powers and the Belarussian support of Russian military invasion of Ukraine. He stressed that unjust and offensive wars are universally considered as illegitimate. However, such consideration is not likely to be followed by the domestic leaders who are not subject to proper accountability procedures and who are not acting in the framework of effective constitutional checks and balances. Moreover, the fairness of the electoral process for domestic parliaments is a very important condition for ensuring the Executive accountability. These two criteria – Executive accountability and fairness of the electoral process – are the necessary tools for the effective constitutional systems and good democratic governance.

Mr Zalimas pointed out that the new Constitution had replaced the provision on neutrality with a prohibition of using the territory of Belarus for aggression against other countries. With the Russian attack on Ukraine from the territory of Belarus this provision had already been violated. The new provision on the preservation of historical truth on the Great Patriotic War would even provide a justification for that attack. The final opinion should also take into account the alternative Constitution prepared by the opposition.

Mr Alivizatos proposed that the Commission prepare a report on the relations between Constitutions and war. Several members supported this proposal, inter alia pointing out that even though war was prohibited under public international law, most constitutions still contained provisions on the declaration of war. Mr Cameron pointed out that this report could build on the 2008 Report on the Democratic Control of the Armed Forces. Mr Mathieu proposed that work should start with a compilation of constitutional provisions relating to war.

<b>The Commission endorsed the urgent interim Opinion on the Constitutional Reform in Belarus (<a href="#">CDL-AD(2022)008</a>).</b>
--



## 12. Chile

On 5 January 2022, Ms Ximena Rincón González, President of the Senate of the Republic of Chile and Mr Raúl Guzmán Uribe, Secretary of the Senate as well as 22 senators requested an opinion of the Venice Commission on certain questions related to the drafting and adopting of the new Constitution of Chile.

Mr Carozza reminded the Commission that Chile was involved in major constitutional revision of its 1980 constitution. The process had begun in November 2019 with changes to the constitution, after significant period of social unrest which opened the way to a referendum held in October 2020 and the election of a Constitutional Convention representatives in May 2021. The Convention was entrusted with the drafting of a new Constitution by July 2022, which should be submitted to a further referendum to consider approval or not.

Following the request, a delegation of the Venice Commission visited Chile and held meetings with the authorities and different parties involved in the reform process from 28 February to 2 March 2022. The rapporteurs were grateful to Constitutional Convention and the authorities of Chile for the high-quality discussions during the visit and the Ambassador of the European Union for support and for facilitating the meeting with the ambassadors. Considering the urgency of the matter the rapporteurs had very short period of time for preparing the opinion. They tried to stay on level of broad and general principles but worked on the text taking into account the important elements of country's constitutional tradition and experience.

The opinion grouped the questions submitted by the Senate under 10 headings, almost all of them touching upon very fundamental areas of constitutionalism. The text made an emphasis on the need to seek a very broad consensus in society, and to respect the rule of law. The rapporteurs welcomed the broad participatory mechanisms devised by the Convention but noted that any change to the 2/3 rule for decision making by the Convention would require a prior amendment to the current constitution. While considering the issue of unicameral vs bicameral legislature, the opinion stated that no general preference could be supported since both options were consistent with constitutional democracy. Regarding the possible elimination of the Constitutional Tribunal the rapporteurs affirmed longstanding Venice Commission recommendation that there should be a separate and specialized body in charge constitutional judicial review, while acknowledging that in some constitutional systems a supreme court of more general jurisdiction could effectively accomplish that function.

In respect of the questions related to the judicial branch, the draft opinion affirmed that a system of evaluation must be structured in a way that does not interfere with judicial independence, that it would be preferable to allow ordinary judges to remain in office until retirement, that a limited functional judicial immunity should be maintained. The rapporteurs thought that it would be advisable to establish an autonomous body such as a judicial council, responsible for the selection and formation of judges and that encouraging gender parity in judicial structure was a goal consistent with international principles, but with the awareness that an inflexible quota could undermine the judicial system. When addressing the question of legal pluralism and indigenous peoples, the opinion stressed that a system could be functional and consistent with the principle of the rule of law, many complex questions of coordination, scope, jurisdiction, etc. need to be resolved; and in any case international standards of human rights need to be adhered to no less than in the ordinary justice system. Similarly, the proposal of reserving seats in the legislature for representatives of indigenous peoples could be a legitimate choice, but it would require considerable further specification in order to be functional and fair. Other recommendations of the opinion focused on the necessity to respect of the principle of *pacta sunt servanda*, the fundamental rights in general and the right to property in particular and the rules of procedure for the final referendum on the text of the draft Constitution.

In conclusion Mr Carozza stressed that many of these questions ultimately came down to the sovereign choices of the people of Chile and that the Convention and the citizens of Chile could make those decisions in an even more informed and thoughtful way, with the aim of successfully

devising a constitution that would function well and provide a lasting and stable basis for governing the country.

Senator Juan Castro Prieto thanked the Commission on behalf of the President of Chile and the twenty-three members of the Chilean Senate who requested the opinion for the opinion and for the excellent co-operation. The opinion fully took into account the bicentennial constitutional tradition of Chile and provided recommendations that would be extremely helpful in the upcoming drafting of the new Constitution. In his view there was a high level of polarisation in Chile on some of the essential aspects of the possible new constitution and he hoped that the opinion would help to find appropriate solutions in line with the constitutional traditions of Chile and international standards.

**The Commission adopted the Opinion on the drafting and adoption of the new Constitution of Chile ([CDL-AD\(2022\)004](#)), previously examined by the Sub-Commissions on Democratic Institutions and on Latin America at their joint hybrid meeting on 17 March 2022.**

### 13. Kosovo

*Concept Paper on the Vetting of Judges and Prosecutors* and draft amendments to the constitution

The chair, Mr Dimitrov, informed the participants that the Minister of Justice of Kosovo had requested the postponement of the adoption of the opinion to the next session in order to give more time for dialogue with all stakeholders. On the basis of the positive views of the rapporteurs the Enlarged Bureau had accepted this request, which also had been discussed by the Sub-Commission on the Judiciary at its hybrid meeting on 17 March 2022.

Ms Albulena Haxhiu, Minister of Justice of Kosovo, thanked the rapporteurs for the draft opinion ([CDL\(2022\)005](#)). The vetting of judges and prosecutors in Kosovo was necessary to re-establish trust in the judiciary. The Concept Paper set out options on how to achieve this goal in line with international standards and best practices. The draft opinion had identified deficiencies and a need for reform. She requested to postpone the adoption of the opinion to the next session to allow for discussions with all stakeholders on suitable steps on the basis of transparency, fairness and efficiency. She invited the rapporteurs to come to Kosovo to meet all stakeholders, including the judicial and prosecutorial councils, the EU, the US and the UK representatives. The vetting was necessary to allow Kosovo to become a State under the rule of law.

Ms McMorrow pointed out that the vetting of judges and prosecutors challenged the European Convention on Human Rights. A general vetting of all judges and prosecutors was possible only in exceptional circumstances of widespread corruption. The online meetings had shown that there were significant problems in the Kosovo judiciary, including as concerns the length of proceedings. Achieving accountability was urgent. The Concept Paper was an excellent effort to set out the issues and possible solutions. The Judiciary had problems of oversight, functioning and significant delays in rendering justice. Reform was necessary. Other legislative changes should be undertaken before a vetting, on the basis of constitutional amendments, should be envisaged. Detailed regulations on vetting should not be included in the Constitution.. The rapporteurs agreed to the postponement of the adoption of the opinion. Further dialogue between the stakeholders could bring about improvements.

**The Commission decided to postpone the adoption of the opinion in the Concept Paper on the Vetting of Judges and Prosecutors and draft amendments to the Constitution to its next plenary session.**

*Revised draft amendments to the Law on the Prosecutorial Council of Kosovo*

Mr Gaspar explained that the opinion on the revised draft amendments to the law on the Prosecutorial Council of Kosovo (the KPC) had been requested by the Minister of Justice of Kosovo following opinion [CDL-AD\(2021\)051](#) of December 2021. The main idea of the draft amendments – both the original and the revised ones – was to reorganize the KPC by reducing the dominance of the prosecutors in this body and renewing its composition. The December opinion made certain key recommendations which have been addressed in the revised draft. The future model of the KPC proposed by the revised draft – with 3 prosecutors elected by their peers, the Prosecutor General *ex officio* and three lay members – is generally in accordance with the standards, in particular given that one lay member is appointed by the Ombudsman. The transitional provisions are more respectful of the security of tenure of the current prosecutorial members since three of them will be selected by lot and will remain until the end of their mandate. However, the special majority required within the new council to take certain decisions may lead to blockages, and an anti-deadlock mechanism would be needed. In general, efforts of the Kosovo government to amend the originally proposed model in line with the recommendations of the Venice Commission must be welcomed.

Ms Albulena Haxhiu, the Minister of Justice, stressed the lack of efficiency and the problem of corporatism within the prosecution system and the need to reform it, by reforming the KPC. Both the original and the revised draft amendments have been prepared in close consultations with the main stakeholders. The Ministry implemented the main recommendations of the December opinion and will take due account of the opinion on the revised draft.

<p><b>The Commission adopted Opinion on the revised draft amendments to the Law on the Prosecutorial Council of Kosovo (<a href="#">CDL-AD(2022)006</a>).</b></p>
---

The draft opinions for Kosovo were 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.

**14. *Echange de vues avec le ministre de la Justice du Liban sur le projet de loi sur l'indépendance du pouvoir judiciaire***

M. Henry Khoury, ministre de la Justice du Liban, s'adresse à la Commission dans le cadre de la préparation de l'avis sur le projet de loi sur l'indépendance du pouvoir judiciaire au Liban. L'avis avait été demandé par le prédécesseur de M. Khoury, la ministre Marie Claude Najm, le 6 septembre 2021. M. Khoury informe la Commission du processus de préparation des réformes judiciaires et des discussions sur l'indépendance de la justice au Liban. Le 21 février 2022, le projet de loi a été discuté au Parlement et, à la demande du ministre, renvoyé à la commission parlementaire compétente pour une élaboration plus approfondie, notamment afin d'impliquer plus activement le Conseil supérieur de la magistrature (le CSM) dans ce processus. Le texte du projet de loi a été retravaillé et est en cours de traduction en anglais.

M. Kuijer demande quels sont les principaux points de controverse dans la discussion nationale lors de la préparation de ce projet. M. Khoury répond que la question clé était la composition du CSM, ainsi que l'efficacité de l'Inspection et, plus généralement, l'indépendance du pouvoir judiciaire. Mme Bernoussi note que la composition du CSM pourrait bénéficier de membres externes (professionnels) pour contrer le risque de corporatisme et elle décrit l'expérience marocaine pour assurer la représentation équitable des femmes au sein du CSM. M. Khoury souligne que plus de la moitié des juges libanais sont des femmes mais qu'il n'y a pas de pratique de quotas par sexe et compte tenu de la taille modeste du système judiciaire (environ 520 à 530 juges au total), il n'est pas prévu d'augmenter le nombre de membres du CSM afin d'y inclure des membres laïcs.

M. Dimitrov s'enquiert du rôle du ministère de la Justice vis-à-vis du CSM. Il souligne également la distinction entre l'indépendance du pouvoir judiciaire et l'indépendance des juges. M. Khoury explique que le pouvoir du ministre en matière de mutation et de nomination des juges se limite

à formuler des objections qui peuvent être rejetées par le CSM à une majorité spéciale. M. Khoury souligne également que les juges sont indépendants et décident des affaires sur la base de la loi et de leur conviction intime. Mais, en revanche, l'indépendance du pouvoir judiciaire – notamment en ce qui concerne les nominations judiciaires – pourrait être améliorée. M. Knežević évoque l'avis pour la Chypre comme source d'inspiration pour le Liban et échange avec le ministre sur les contraintes résultant du caractère multiconfessionnel de la société libanaise.

## 15. Croatia

### *Opinion on the introduction of the procedure of renewal of security vetting through amendments to the Courts Act*

Mr Kuijer informed the Commission that the opinion had been requested by the Minister of Justice and Public Administration of Croatia and that it dealt with periodic security vetting of judges. It was regrettable that the draft amendments had already been adopted in the meantime, as part of broader judicial reforms. It would have been preferable to pause the process so that the results of the Commission's opinion could have been taken into account.

The security vetting of all judges by an intelligence agency was a far-reaching measure that called for a sound substantiation of its necessity before its introduction. Given that the existing legislation already provided for a wide array of mechanisms to ensure the integrity of the judicial corpus, the opinion came to the conclusion that the introduction of such a new and far-reaching measure did not appear necessary. The main recommendation was therefore that the Croatian authorities reconsider their approach to prescribe periodic security vetting of all judges and that they develop an alternative strategy to ensure judges' integrity, based on other existing mechanisms.

The opinion furthermore included more specific recommendations intended for the event that the authorities nevertheless persisted in their choice for periodic vetting of all judges. In particular, the functioning of the special Supreme Court panel tasked with assessing the security vetting reports should be regulated in greater detail; the judge concerned and the bodies responsible for acting upon the security vetting report should explicitly be guaranteed access to detailed information on the security vetting report; the assessment criteria for concluding on the existence of security obstacles should be specified in the law; the law should provide for an explicit presumption in favour of the judge subject to security vetting; the role of the Ministry of Justice and Public Administration as an intermediary in the security vetting process should be removed from the law; the retention period of data (currently 70 years) should be changed, especially in the case of judges in respect of whom the Supreme Court panel did not find any security obstacle; a minimum financial threshold for movable property to be disclosed by judges should be included in the security vetting questionnaire, and changes to the content of the security vetting questionnaire should be made subject to parliamentary oversight.

Mr Ivan Malenica, Minister of Justice and Public Administration of Croatia, indicated that the adoption of the Amendments to the Courts Act was necessary due to the obligations arising from the Croatian Recovery and Resilience Facility Plan. He expressed his view that the newly introduced mechanism brought a substantial added value to the existing system of strengthening the integrity and responsibility of judges. The general idea of the amendments was to emphasise the leading role of the judiciary in the security vetting process. That said, if the new mechanism proved to be unsatisfactory and possibly open to inconsistencies and arbitrary decision-making within the judiciary, the Ministry would agree with the proposal to reconsider the current normative solution and to make further adjustments to the implementation of periodic security vetting in line with some of the remarks by the Venice Commission.

**The Commission adopted the Opinion on the introduction of the procedure of renewal of security vetting through amendments to the Courts Act of Croatia ([CDL-AD\(2022\)005](#)), following its discussion at the Sub-Commission on the Judiciary at its hybrid meeting on 17 March 2022.**

## 16. Romania

*Opinion on the draft law on the dismantling of the section for investigating criminal offences within the judiciary*

Mr Tuori outlined that, given that the law already entered into force on 14 March 2022, the Opinion first of all criticises the haste with which the draft law on the dismantling of the section for investigating criminal offences within the judiciary has been adopted, without waiting for the Opinion of the Venice Commission. He outlined that this is the fourth opinion of the Venice Commission dealing with the section for investigating criminal offences within the judiciary (hereinafter: SIOJ) since 2018. The Venice Commission has always been very critical of the SIOJ for two main reasons: 1) The independence of the judiciary, given the possibility of the SIOJ placing undue pressure on individual judges; 2) The efficacy of anti-corruption investigations, given that the powers of the Anti-Corruption Directorate - the DNA - to investigate and prosecute corruption offences committed by judges and prosecutors were transferred to the SIOJ. This criticism was shared by various domestic and international stakeholders (as also shown in the progress reports of the Cooperation and Verification Mechanism and three recent preliminary rulings of the Court of Justice of the European Union).

A previous draft law abolishing the SIOJ was positively assessed by the Venice Commission in 2021 but stalled in the Romanian Parliament. The current law has one crucial difference compared to this previous draft law: The competences of the SIOJ will be transferred to designated prosecutors of the prosecutor's offices attached to the High Court of Cassation and Justice and the courts of appeal. Thus, the competences of the DNA vis-à-vis corruption offences committed by judges and prosecutors will not be re-established. In this context, similar to 2018, references were made during the on-line meetings to alleged abuses of the DNA. The rapporteurs were not able to conduct a thorough investigation into these allegations but got the impression that these entailed individual cases or mistakes by individual prosecutors rather than a structural problem on the side of the DNA. The Opinion emphasises that dismantling of the SIOJ should not be an objective in itself but should primarily be seen as a means to strengthen the prosecution of corruption in Romania. In order to achieve this objective, the rapporteurs take the view that the powers of the DNA as regards judges and prosecutors should be re-established. The DNA's expertise, dedication, functional independence, relative autonomy and the technical means at its disposal favour such a solution.

He recalled that the dismantling of the SIOJ is only a first step in a wider reform which the Romanian authorities are encouraged to continue. The Venice Commission stands ready to assist with this wider reform.

Mr George Cătălin Șerban, Secretary of State at the Ministry of Justice of Romania, drew attention to the three other attempts to abolish the SIOJ: a parliamentary initiative in 2019, a second parliamentary initiative in 2020 and a first government initiative in 2021. Given the difficult conditions, the adoption of the law in such a short time, in a form agreed to by the Superior Council for Magistracy (SCM), should be considered a step forward in normalising the situation. Mr Șerban emphasised that, contrary to what was mentioned in the draft Opinion, no new structure would be created, as jurisdiction over crimes committed by judges and prosecutors would now be transferred to the General Prosecutor's Office and the 15 prosecutor's offices attached to the courts of appeal. The advantage of this solution was that it offers an immediate functionality: As the organisational framework and necessary material resources already existed, once appointed the prosecutors could immediately address the backlog of 7000 cases of the SIOJ. Furthermore, as up to 59 prosecutors (compared to six at the SIOJ) would work in all regions and rely on pre-existing expertise (given that these prosecutor's offices have always been

competent to investigate and prosecute so-called petty corruption offences), the new mechanism would ensure an effective fight against corruption in the justice system.

Mr Șerban explained that his authorities also disagreed with the criticism in the Opinion of the selection criteria. The draft law ensured that prosecutors would be selected with sufficient experience (more than is required for appointment to the DNA) and professional seniority and would have passed numerous and rigorous examinations over the course of their career. It also establishes in a concrete manner how these criteria are to be assessed. As the selection process would be open to all prosecutors, including those from the DNA, those with relevant experience in the field of combating corruption can also apply. Prosecutors designated under the new law would additionally have the judicial police at their disposal, who have all the necessary expertise and technical means to effectively support prosecutors in investigating and prosecuting corruption offences.

Furthermore, contrary to the criticism expressed in the Opinion that there is too much importance attached to the plenary of the SCM (in which judges have a majority), the authorities consider that such a role of the plenary of the SCM is appropriate given that, pursuant to the Romanian Constitution, it acts as a guarantor of the independence of justice and that the newly designated prosecutors will investigate both prosecutors and judges (as also noted in the 2018 Opinion of the Venice Commission).

In conclusion, referring to two old codes of criminal procedure, which provided a general jurisdiction of the prosecutor's offices attached to the High Court of Cassation and Justice and the courts of appeal over crimes committed by judges and prosecutors, Mr Șerban recalled that the solution adopted by the law was not new. Replacing the SIOJ by an existing and already functional mechanism would ensure effective investigations and prosecutions of offences committed by judges and prosecutors while safeguarding their individual independence.

Ms Suchocka emphasised that the rapporteurs would have welcomed a more holistic approach to the judicial reform in Romania, as well as a less rushed procedure. Mr Tuori thanked the Secretary of State, indicating that the rapporteurs were familiar with the arguments presented. As for the reference to a new structure in paragraph 22 of the Opinion, this was a presentation of concerns raised by various domestic and international observers, not something that should be attributed to the rapporteurs themselves.

**The Commission adopted the Opinion on the draft law on the dismantling of the section for investigating criminal offences within the judiciary in Romania, previously examined by the Sub-Commission on the Judiciary at its meeting on 17 March 2022 ([CDL-AD\(2022\)003](#)).**

## 17. Ukraine

The President informed the Commission that the Bureau had decided to postpone the discussion of items on Ukraine in view of the current situation (see also item 3 above).

## 18. Report – Domestic Procedures of Ratification and Denunciation of International Treaties

Mr Carozza indicated that in April 2021, the Parliamentary Assembly of the Council of Europe adopted a resolution on “The functioning of democratic institutions in Turkey”, within which the Assembly asked the Venice Commission to prepare a comparative study and possible guidelines about the modalities that should govern the ratification and withdrawal from Council of Europe conventions, in relationship with Turkey's denunciation of the Istanbul's convention. The present report examined the domestic procedures for the ratification and denunciation of international treaties in member states of the Council of Europe. It additionally mentioned other Member States of the Venice Commission that were not at the same time Council of Europe members, and it selectively included some non-Council of Europe/Venice Commission

countries, and the European Union as well as the Eurasian Economic Community, for the purpose of gaining a broader perspective on the possible trends and on the possibility of any customary rule emerging.

On the basis of the information collected, the rapporteurs concluded that it would not be possible to identify “guidelines”, inasmuch as the requirements of international law as well as the practices of states admitted very substantial variations and contained very few clear rules. However, the report did undertake an analysis of the data gathered and an assessment of some of the major normative arguments in question. It focused more on denunciation of, or withdrawal from, treaties rather than on ratification of treaties, in light of the context in which the request was received.

Mr Carozza explained that the general rules applicable to denunciation of treaties were enshrined in the 1969 Vienna Convention on the Law of Treaties and they applied as a fallback if the treaty in question did not regulate the grounds for withdrawal and the procedure in its own provisions. However, neither the Convention nor specific international treaties contained rules relating to the *domestic* procedure of denunciation of treaties. This procedure was regulated by the domestic law of individual states.

The comparative study revealed a clear trend towards parliamentary involvement not only in the conclusion but also in the denunciation of treaties (symmetrical model) in Council of Europe countries, but the report concluded that it could not yet be considered that the requisites existed to consider this to be a new rule of regional customary international law. Nevertheless, the report identified a number of normative arguments supporting the involvement of the legislator in the denunciation of treaties. They stemmed primarily from the constitutional principle that essential, important governmental action should be based on a formal act of the legislative branch and must be subject to its control. Involvement of the legislative branch composed of elected representatives of the people gave a stronger democratic basis to the decision. Also, it offered the possibility of a more intense deliberation and debate and allowed for public oversight, all of which contributed to publicity and transparency. That said, as a matter of international law, the question of whether to adopt a symmetrical or asymmetrical model remained one within the sovereign discretion of each state, and even among symmetrical models there were significant variations regarding the degree and manner of legislative involvement in the denunciation of treaties.

Mr Christian Meuwly, Ambassador Extraordinary and Plenipotentiary, Permanent Representative of Switzerland to the Council of Europe, appreciated this highly relevant report. Against the background of the current political situation, a further study by the Commission on the question to what extent contracting states could be excluded from international treaties might be useful. President Bazy-Malaurie stated that a precise request by the Committee of Ministers for such a report would be welcome.

**The Commission adopted the Report on the Domestic Procedures of Ratification and Denunciation of International Treaties ([CDL-AD\(2022\)001](#)).**

## 19. Compilation concerning legal certainty

Mr Matthieu introduced the Compilation concerning legal certainty. He underlined the importance of this topic in the Commission’s ‘jurisprudence’ and described the wide range of questions dealt with by the Compilation (accessibility of the legislation and of judicial decisions, foreseeability and clarity of the law, stability of the law, the principles of non-retroactivity, *nullum crimen, nulla poena sine lege*, etc.). Ms Granata-Menghini stressed the importance of the compilations as working tools in the preparation of the opinions. The Commission would certainly continue to prepare such compilations, which had also been recommended by the Council of Europe Directorate of Internal Oversight in its recent evaluation of the Venice Commission.

**The Commission endorsed the Compilation of Venice Commission opinions and reports concerning Legal Certainty ([CDL-PI\(2022\)004](#)).**

## 20. Adoption of the Annual Report of Activities 2021

Ms Simona Granata-Menghini explained that the Annual Report of Activities for 2021 had changed format from the previous annual reports. It was more dynamic and presented opinions and summaries by topic and not by country, making it more reader friendly.

She explained that the Venice Commission had adopted 50 opinions in 2021 on 23 countries, compared to 25 to 30 opinions in previous years. It was difficult to identify a reason for this increase in requests, whether it was due to the COVID-19 pandemic or the change in approach, however many requests were for follow-up opinions. The PACE had requested its regular and consistent number of opinions i.e., 12 opinions in 2021. There was an increase in the number of urgent opinions, the procedure for which was formalised in 2018, when the need was felt for the Venice Commission to become more responsive. The preparation of joint opinions had also continued in 2021, notably on the issue of the judiciary with the Directorate General I on Human Rights and the Rule of Law of the Council of Europe.

In 2021, the subject of most opinions concerned the judiciary, with the main area of interest being judicial and prosecutorial councils, which allowed the Venice Commission to identify certain recurring issues. This had led to the organisation of an international round table entitled “*Shaping judicial councils to meet contemporary challenges*” which was to be held online and in Rome on 21-22 March 2022 (see item 21 below).

The Venice Commission also dealt with thematic presentations on certain topics, for instance the Principles on the Protection and Promotion of the Ombudsman Institution (the “Venice Principles”) that had created wide interest among Ombudsman institutions. It also adopted many opinions in the electoral field and assisted and took part in all election observation missions organised by the PACE.

Ms Granata-Menghini ended by saying that the Annual Report also referred to the Venice Commission’s budget and staff (providing statistics), which had been stretched to capacity with the number of opinions having doubled, while the number of staff and the budget remained the same. The Venice Commission relied heavily on voluntary contributions that were not earmarked for specific activities or countries, allowing it to maintain its flexibility. She finally thanked the Venice Commission members for their excellent co-operation and commitment and the secretariat for its hard work, commitment and resilience.

## 21. Information on Conferences and Seminars opinions

### *Conférence des Chefs des Cours Suprêmes des Etats membres de l’Union européenne*

Mme Bazy Malaurie informe la Commission de la [Conférence des Chefs des Cours Suprêmes des Etats membres de l’Union européenne](#), qui s’est tenue le 22 février 2022 à Paris, et à laquelle elle a participé. Cette conférence a été organisée par le Conseil constitutionnel, le Conseil d’État et la Cour de cassation sous la présidence française du Conseil de l’Union européenne en 2022.

Cette conférence s’est tenue dans quatre lieux différents : à la Cour de cassation, à la Conciergerie, au Conseil d’Etat et au Conseil constitutionnel. Trois tables rondes ont abordé les sujets suivants: (1) Les juges face aux nouveaux défis sanitaires, technologiques et environnementaux ; (2) Le juge et le temps : le juge de l’instant et le juge du temps long et (3) la protection des droits fondamentaux : les enjeux de l’articulation du droit national et des droits européens.

### *International Round Table on “Shaping judicial councils to meet contemporary challenges”*

Ms Granata-Menghini informed the Venice Commission that the International Round Table on “Shaping judicial councils to meet contemporary challenges”, organised by the Venice Commission together with the University of La Sapienza, Rome and the University of



Barcelona, was to be held online and in Rome at the *Palazzo del Rettorato* of the University of La Sapienza on 21-22 March 2022. Ten members of the Venice Commission would take part in this event as well as different interlocutors, including representatives of authorities, civil society and experts.

The event would examine several national models of judicial governance based on a judicial council and similar institutions. It was divided into three sessions with a panel each and would deal with: (1) the status of the members of the Judicial Council; (2) election / appointment of the members of the judicial council and (3) the role and the powers of the judicial council.

The discussions would revolve around European standards in this field and the approaches of the Council of Europe and its bodies (i.e. European Court of Human Rights, the Venice Commission, CCJE, and GRECO) and, building on recent national experiences and the work of the European institutions, it was expected that further recommendations regarding the composition and the mandate of the judicial councils would be formulated.

The aim pursued by this International Round Table was to identify elements for the Venice Commission to continue its reflection on and devise more detailed standards relating to judicial councils in view of ensuring the ultimate goal of protecting and strengthening the independence of the judiciary, while providing specific solutions adapted to the prevailing context in each state. This was being coordinated by the Venice Commission together with the University of La Sapienza and the University of Barcelona and will be reported on at the next plenary session of the Commission.

## **22. Report of the Joint Hybrid Meeting of the Sub-Commission on Democratic Institutions and Latin America (17 March 2022)**

The Chair pointed out that the only point on the Sub-Commission agenda – Chile – had already been dealt with under item 12 above.

## **23. Report of the Hybrid Meeting of the Sub-Commission on the Judiciary (17 March 2022)**

Mr Barrett pointed out that the items on the agenda Croatia, Kosovo and Romania had been dealt with under items 13, 15 and 16 above.

## **24. Other business**

Mr Schnutz Dürr informed the Venice Commission about the meeting of the Bureau of the World Conference on Constitutional Justice (WCCJ), held right after the plenary session of the Venice Commission (on 19 March 2022). He explained that the WCCJ has 118 member Courts (Constitutional Courts and Councils and Supreme Courts in Africa, the Americas, Asia, Australia/Oceania and Europe) from 114 countries and the Venice Commission ensures the secretariat of the WCCJ. He explained that the Bureau of the WCCJ will be discussing the preparation of the 5<sup>th</sup> Congress of the WCCJ that will be hosted by the Constitutional Court of Indonesia on 4-7 October 2022. Members of the Venice Commission were invited to take part in this event, however, the WCCJ would not be able to cover their expenses.

Mr Dürr explained that the aggression of the Russian Federation on Ukraine has repercussions not only on membership in the Council of Europe and the Venice Commission, but also on membership in the WCCJ. A number of requests had been made by member Courts for the suspension of the participation of the Constitutional Court of the Russian Federation and the Constitutional Court of Belarus in the WCCJ – as the statute of the WCCJ only allows for the suspension of a member Court, not the termination of its membership. This was on the agenda of the Bureau of the WCCJ.

**25. Dates of the next Sessions**

The Commission confirmed the dates of its next sessions:

131 <sup>st</sup> Plenary Session	17-18 June 2022
132 <sup>nd</sup> Plenary Session	21-22 October 2022
133 <sup>rd</sup> Plenary Session	16-17 December 2022

Ms Bazy Malaurie reminded the members of the Venice Commission that the plenary sessions will be held in Venice, in person, from now on. The plenary sessions will therefore no longer be accessible remotely.

[Link to the list of participants](#)