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1. Adoption of the Agenda

The agenda was adopted without amendments (CDL-PL-OJ(2022)002ann-rev).

2. Communication by the President

The President, Ms Claire Bazy Malaurie, welcomed the newly appointed or reappointed members of the Venice Commission in respect of Cyprus, Lithuania, Luxemburg, Montenegro, Norway, Poland, Romania, Spain, Türkiye, as well as special guests and delegations, and referred to her recent activities as President set out in the document CDL(2022)025. The President specified that, among other activities, she had important meetings with the Tunisian and the Armenian authorities during two country visits.

She further announced the election of Mr Darmanovic (Montenegro) on 16 June 2022 as Chair of the Council for Democratic Elections for a term ending in March 2023.

3. Communication from the Enlarged Bureau

President Bazy Malaurie informed the Commission of the discussions held at the meeting of the Enlarged Bureau on 16 June 2022 which concerned the vacant positions in the Commission. The Enlarged Bureau proposed to elect the current vice-chairs as chairs of the relevant sub-Commissions and to proceed after the summer break to requesting the Wise Persons who organised the last elections to prepare the election of the remaining vacant positions.

Upon the recommendation of the Enlarged Bureau, the Commission elected, for a mandate expiring in December 2023:

- **Mr Pere Vilanova Trias (Andorra) as Chair of the Sub-Commission on Federal and Regional State;**
- **Mr Ghazi Jeribi (Tunisia) as Chair of the Sub-Commission on the Mediterranean Basin;**
- **Mr Igor I. Rogov (Kazakhstan) as Chair of the Sub-Commission on Ombudsman Institutions.**

4. Communication by the Secretariat

Ms Simona Granata-Menghini presented the Management response and the Action Plan which followed the report on the evaluation of the Venice Commission which was conducted by the Centre for Strategy and Evaluation Services (CSES) and the Evaluation Division of the Directorate of Internal Oversight of the Council of Europe.
(https://rm.coe.int/dio-2022-35-venicecommission-final-report-en/1680a6555f).

She stressed that this exercise had been very interesting and constructive, and thanked Commission members for accepting to participate in it.

The evaluating team had formulated ten recommendations, several of which had already resulted in operational measures which had been agreed between the Secretariat of the Venice Commission and of the other responsible entities of the Council of Europe and would be implemented shortly. These included: an additional exchange of views between the President of the Commission and the Committee of Ministers, specifically devoted to follow up to the Commission's opinions; the identification of contact persons within the secretariat responsible to follow developments in given member states; the provision to those members who agree of the press reviews (headlines and newsletters) prepared by the Directorate of Communication.

The recommendation on the increase of the Commission's resources would be considered by the Secretary General of the Council of Europe and by the Committee of Ministers.

The Sub-commission on Working methods would be convened to reflect on those recommendations which might require a change of the Commission's rules of procedure (concerning in particular the procedure of nomination of Commission members).

5. Co-operation with the Committee of Ministers

Within the framework of its co-operation with the Committee of Ministers, the Commission held an exchange of views with Ambassador Joan Forner Rovira, Permanent Representative of Andorra to the Council of Europe.

The Ambassador briefed the Commission about the budgetary and legal consequences of terminating the membership of the Russian Federation in the Council of Europe. Regarding the budgetary consequences, the Committee of Minister had to assess the situation in both a short-term and in a long-term perspective. It decided to take a step-by-step approach with a view to assuring, firstly, the budget of the Council of Europe for the current year and then moving to the next year and further periods and eventually formulating a strategic vision. In the context of budgetary issues, it was relevant that the Committee of Ministers had made progress in the negotiations on the accession of the European Union to the European Convention on Human Rights. Considerable progress had been visible in comparison to the previous years.

As regards the legal consequences of termination of the membership of the Russian Federation in the Council of Europe, it was important to note that, among the numerous Council of Europe conventions, there are so-called open conventions which can be joined by parties that are not Member States of the Council of Europe. For these conventions, the Committee of Ministers can interfere in a limited manner as it is up to the State Parties to such conventions and the relevant conventional bodies to decide on the internal functioning of such conventions.

6. Co-operation with the Parliamentary Assembly

Mr Constantinos Efstathiou, Member of the Committee on Legal Affairs and Human Rights of the Parliamentary Assembly of the Council of Europe, informed the Commission that the Assembly had approved three reports of the Legal Affairs Committee: on how to put confiscated criminal assets to good use, on preventing excessive and unjustified use of force by law enforcement officers and on ensuring accountability for serious violations of international humanitarian law and other international crimes in the context of the Russian Federation's aggression against Ukraine. In its Resolution 2436 (2022) based on this last report, the Assembly called for the setting up of an *ad hoc* international criminal tribunal to hold to account perpetrators of the crime of aggression against Ukraine. Moreover, it had debated reports on strengthening the strategic partnership between the Council of Europe and the EU, safeguarding and promoting genuine democracy in Europe and the honouring of obligations and commitments by Georgia.

As regards the recent work of the Monitoring Committee, last May, it adopted a report on Malta, which would be debated at the forthcoming Assembly's part-session the following week. The Committee also held a hearing on three controversial Spanish laws (citizens' security law, criminal code provisions relating to sedition and law on secret services). As concerns the citizens' security law, the Committee agreed to decide on a possible request for an opinion of the Venice Commission when the draft law is at further stage of the legislative procedure. Also in May, the Monitoring Committee's rapporteurs went to Türkiye, where they discussed the issue of the implementation of the European Court of Human Rights judgment on Osman Kavala. The Monitoring Committee would soon discuss again the situation of Mr Kavala, as well as the question of a possible visit by the rapporteurs to Ukraine and the issue of the electoral legislation in Bosnia and Herzegovina.

in May, the Committee had adopted reports on ensuring accountability for the downing of flight MH17, reported cases of political prisoners in the Russian Federation and the need to restore human rights and the rule of law in the North Caucasus. The Committee has also established an *ad hoc* Sub-Committee that would carry out a fact-finding visit to Ukraine for the purpose of gathering information on possible war crimes and crimes against humanity. At its meeting of the

following week, it would adopt reports on Daesh foreign fighters and their families returning from Syria to Europe and on misuse of the Schengen Information System as a politically motivated sanction. It would also adopt a report on the follow-up to Assembly's Resolution 2381 (2021) on "Should politicians be prosecuted for statements made in the exercise of their mandate?", referring to the situation in Spain and Türkiye.

Three opinions on the agenda of the current session of the Venice Commission have been requested by the Monitoring Committee *(items 12, 13 and 21)*: on the Media Law of Azerbaijan, on amendments to the Organic Law of Common Courts of Georgia and amendments to the electoral legislation of Türkiye.

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 on 30 June 2022 the next Monitoring Committee meeting would be held in Istanbul at the invitation of the Mayor of Istanbul Mr Ekrem Imamoğlu. The discussions would concern the situation of the election of representatives on the local level addressed in previous Congress reports on Türkiye. This issue had also been the focus of the 2020 Venice Commission Opinion on the replacement of elected candidates and mayors.

In addition, the next Monitoring Committee meeting agenda would feature a debate on the current situation in Ukrainian municipalities and regions. The Congress was in regular contact with the Ukrainian delegation and local government associations. The resistance of the Ukrainian people and cities in fighting against the Russian aggression proves once again the importance of local and regional authorities' role in a democratic system and the need to have strong local and regional communities and leaders who share common values. To help Ukrainian colleagues, the Congress has established an online platform "cities for cities" to directly connect to the needs and demands of Ukrainian cities with offers of assistance coming from their European counterparts. Furthermore, the Congress prepared opinions "On Amendments to certain Laws of Ukraine concerning the Functioning of the State Service and Local Self-Government during Martial Law" and "On the Organisation of Labour Relations during Martial Law".

In line with the Congress priority for 2021-2026 on combatting climate change and resolving environmental issues, the Congress would dedicate an important part of the next Committee meeting to the climate crisis and the role of grassroots' authorities in environmental protection. The Committee will approve a draft resolution on the third volume of the Human Rights Handbook for local and regional authorities on environmental rights and sustainable development. It will also consider a draft report on a fundamental right to environment as a matter for local and regional authorities (towards a green reading of the Charter) that will complement this Handbook.

A 15-member Congress delegation carried out a mission to observe the partial local elections held in Belgrade and several other Serbian municipalities on 3 April 2022. They saw a generally calm and efficiently administered election day. However, it was preceded by a heated election campaign and an unlevel playing field in the media.

An 11-member Congress delegation had also observed municipal elections in the Netherlands on 16 March. Furthermore, the Committee would examine an information report prepared following a remote observation of partial local elections in six Albanian municipalities on 6 March 2022. The opposition participated in this election, unlike the previous one, which had been boycotted by the opposition. For the first time in thirty years, the election results were accepted by all contestants.

8. Exchange of views with the President of the European Court of Human Rights

Mr Robert Spano, President of the European Court of Human Rights (ECtHR), observed close synergy between the ECtHR and the Venice Commission, noting that many ECtHR judges, before joining the Court, had been members of the Venice Commission, or, after leaving the

Court, joined the Venice Commission. In terms of the adjudication of cases, the Court seeks the opinion of the Venice Commission as *amicus curiae* briefs in pending cases. This shows the high regard which the Venice Commission has built and holds within the ECtHR. This has already happened seven times most recently, including the 2020 Grand Chamber case of *Mugemangango v. Belgium* which is a landmark judgement in electoral law. The Court on its own initiative has cited the works of the Venice Commission in more than 200 cases. Finally, the Venice Commission references the Court's judgments, thereby helping spread the knowledge about the Court's case law. The relationship between these institutions could be therefore characterised as one of cross-fertilisation.

Moreover, the work of the Venice Commission complements that of the Court. This is done in two ways. Firstly, the anticipatory work done by the Venice Commission prevents many cases from being brought before the Court. The constitutional assistance and engineering by the Commission is especially important in creating a reference framework at national level, which protects democracy and the rule of law. The Strasbourg Court is indeed based on subsidiarity: if a remedy is provided at domestic level, cases will not be brought before the ECtHR. Secondly, once the Court has ruled, the Venice Commission may intervene to ensure that the necessary legislative amendments be adopted. The Venice Commission may also be called upon to give its opinion on matters related to the execution of court judgments. This is an illustration of the principle of shared responsibility, which is one of the keys to the success of the European human rights protection system.

It is remarkable that over the years the Commission has built up what is undoubtedly the most accomplished network in constitutional law, not only in Europe, but worldwide. The Court has tried to follow that example by creating a network of Superior Courts. On 13 April this year, the network welcomed the Constitutional Court of Lithuania, bringing membership to 102 courts from 45 countries. This network is very robust for the principle of subsidiarity and ensures dialogue between the ECtHR and national courts.

Over the last years, the Court has delivered a number of judgments relating to the topic of judicial independence, quoting and relying on the opinions of the Venice Commission. In the recent judgement *Grzęda v. Poland* the Court dealt with the premature determination of the term of office of a judicial member of the National Council of the Judiciary, the body which oversees judicial independence and plays a fundamental role in the judicial appointment procedure. The Venice Commission gave an important opinion on the law that was part of the process and the Court relied upon that opinion, agreeing with the Venice Commission on particular legal issues.

9. Exchange of views with Mr Matteo Mecacci, Director of the OSCE Office for Democratic Institutions and Human Rights

Mr Matteo Mecacci, Director of the OSCE Office for Democratic Institutions and Human Rights (ODIHR), noted that the Venice Commission and ODIHR had been established roughly at the same time and had developed as leading institutions promoting the principles of democracy, rule of law and human rights. Following the Russian aggression against Ukraine, it was more important than ever to work together and to speak with one voice. Since 24 February 2022, ODIHR closely monitored violations of international humanitarian law and provided administrative support to the experts selected under the Moscow Mechanism, and Mr Mecacci thanked Ms Bílková at this occasion. On numerous occasions, ODIHR had publicly expressed concerns about human rights violations committed in Ukraine and called for accountability of perpetrators, ODIHR has also emphasised the need to ensure safety of the civilian population and efficient assistance to refugees. Together with relevant public institutions, the ODIHR was considering various forms of assistance to democratic institutions in Ukraine, as well as to ensure accountability for the violations of the international humanitarian law and human rights law.

References to the expertise of the Council of Europe had appeared in the 1990 Copenhagen document, and the OSCE participating States had directed ODIHR to work closely with the Venice Commission in 1992 already. Since the beginning of the century, joint opinions of the Venice Commission and ODIHR had become the rule in the electoral field. Close to 150 joint

opinions and guidelines had addressed not only electoral legislation, but also freedom of peaceful assembly and association, political party regulation, freedom of religion or belief, and, more recently, constitutional reforms and judicial independence.

The European Court of Human Rights and other international human rights bodies increasingly referred to this work. Moreover, ODIHR co-operated with the Parliamentary Assembly in election observation missions. There were many potential avenues for further strengthening and deepening it, such as: a shared early warning mechanism regarding worrying legislative reforms; more systematic follow-up advocacy for the implementation of the recommendations contained in the joint opinions; a joint mechanism for monitoring more systematically the impact of the joint opinions on the adopted legislation.

10. [not covered]

11. Follow-up to earlier Venice Commission opinions

The President referred to the information document (CDL(2022)024) that covers follow-up to the following opinions:

- Croatia: Follow-up to the opinion on the introduction of the procedure of renewal of security vetting through amendments to the Courts Act (CDL-AD(2022)005)

- Hungary: Opinion on the amendments on the Act on the Organisation and Administration of Courts and the Act on the Legal Status and Remuneration of Judges adopted by the Hungarian parliament in December 2020 (CDL-AD(2021)036)

Mr Varga informed the Commission that the Code of Administrative Procedure had been amended on 1 March 2022 to implement the Venice Commission's opinion so that the deliberation would take place in a panel of five instead of three judges, in conformity with the Venice Commission's opinion. Therefore, all the Venice Commission's recommendations had been implemented but one. The issue which had not been settled was the relationship between the National Judicial Office and the National Judicial Council: apparently the government feared the reaction of judges if the National Judicial Council were not composed of judges but included other stakeholders as recommended by the Venice Commission.

- United Kingdom: Follow-up to the Opinion on the possible exclusion of the Parliamentary Commissioner for Administration (the parliamentary Ombudsman, hereafter the PHSO) and Health Service Commissioner from the "safe space" provided for by the Health and Care Bill (CDL-AD(2021)041)

- Russian Federation: Follow-up to Opinion on Federal Law n. 121-fz on non-commercial organisations ("law on foreign agents"), on Federal Laws n. 18-fz and n. 147-fz and on Federal Law n. 190-fz on making amendments to the criminal code ("law on treason") of the Russian Federation and Opinion on the Compatibility with international human rights standards of a series of Bills introduced to the Russian State Duma between 10 and 23 November 2020, to amend laws affecting "foreign agents";

The European Court of Human Rights delivered a judgment on the compatibility with Articles 10 and 11 ECHR of the legislation on "foreign agents" (Ecodefence and others v. Russia, application no. 9988/13 and others), 14 June 2022.

- Republic of Moldova: the draft Joint Opinion on the Draft law on amending some normative acts (Judiciary) (CDL(2022)019), item 17 below, is a follow-up to the Joint Opinion on the revised draft provisions on amending and supplementing the Constitution, with respect to the Superior Council of Magistracy (CDL-AD(2020)007).

12. Azerbaijan

Joint Opinion of the Venice Commission and the Directorate General of Human Rights and Rule of Law (DGI) on the Media Law of Azerbaijan

Ms Kjerulf Thorgeirsdottir explained that the draft Media Law of Azerbaijan came into force on 8 February 2022. The rapporteurs regretted that there was no real dialogue with the Azerbaijani authorities in the preparation of this draft joint opinion. Hence no input from the authorities was received on this Law, except for written comments sent to the Secretariat on 13 June 2022. The rapporteurs had online meetings on 10 and 12 May 2022 with journalists, media lawyers, representatives of the international community in Azerbaijan and the Office of the OSCE Representative on Freedom of the Media.

The Media Law regulates fundamental aspects of the media sphere in a great level of detail and was passed in less than a fortnight without meaningful consultation with independent media or experts specialising in freedom of expression. Its adoption triggered internal and international criticism of the potential effects of the Law on freedom of expression, including freedom of the media. The Venice Commission had already in earlier opinions referred to considerable problems relating to the enjoyment of freedom of expression in Azerbaijan and related thereto the difficult environment in which journalists and media operate. The Law represents a clear case of overregulation in a legislative environment which was already very restrictive and will have a further "chilling effect".

Many provisions are not in line with European standards on freedom of expression and media freedom and do not allow the media to effectively exercise its role as a "public watchdog". Therefore, the Law should not be implemented as it stands. If the Law were nevertheless not repealed, the Venice Commission urgently calls on the authorities of Azerbaijan to – among others – repeal the excessive restrictions on the establishment of media entities including as regards foreign ownership and foreign funding, in order to foster media pluralism; either abolish the Media Register or repeal the excessively restrictive conditions for journalists and media entities in order to be included in the Media Register; repeal the accreditation scheme for journalists; amend provisions to ensure that the restrictions on content are compatible with the case-law of the Court on Article 10 ECHR; references to the extraterritorial scope of application of the Law need to be deleted; the categorical prohibition on the use of secret audio and video recordings and photographs without the consent of the person concerned or a court order needs to be replaced by a provision that allows for such use in cases in which there is a clear public interest in the publication of such material, provided the rights of third parties are protected. Finally, the existing institutional model of the Media Council would need to be revised, in line with European standards, to ensure it has the capacity to act as an independent regulatory authority.

The Venice Commission adopted the Joint Opinion of the Venice Commission and the Directorate General of Human Rights and Rule of Law (DGI) on the Media Law of Azerbaijan (CDL-AD(2022)009).

13. Georgia

Opinion on the December 2021 amendments to the Organic Law on Common Courts of Georgia

Mr Holmøyvik reminded the Venice Commission that it had adopted several opinions on the Georgian Organic Law on Common Courts over the past four years. The present opinion is on yet further amendments to the Organic Law on Common Courts, which focus on the appointment of judges, the secondment (transfer) of judges, the membership of the High Council of Justice (HCoJ), broadening its powers with respect to judges and notably with respect to the disciplinary liability of judges.

The HCoJ is a key institution in Georgia's judicial system which should be composed of 15 members (14+ 1 *ex officio*), however, it is currently composed of only ten members: nine judge-members and one non-judge member; the latter was appointed by the President of Georgia. This

composition is marred by criticism both internally and internationally for having been done in neither a competitive nor transparent manner.

With respect to the amendments, the most notable issue concerned the secondment or transfer of judges without their consent. Before December 2021, if a judge did not consent to be transferred, the HCoJ could if *"necessary in the interests of justice"* by a reasoned decision second a judge to a court of the same instance, "primarily" to a court "nearby". In case of secondment from a Court of Appeal to a city/district court, consent was always required. The judge to be seconded was chosen by drawing lots. A judge could provide grounds for not being seconded, and if accepted by the HCoJ, a new judge was selected by drawing lots.

With the adoption of the 2021 Amendments, the HCoJ is allowed to select a judge to be seconded without drawing lots and without a geographical limitation. This means that the HCoJ may now freely pick judges to be seconded against their will to serve in a court anywhere in Georgia for up to four years. Also, the HCoJ may now second a judge from the Court of Appeal to a city/district court as well as the other way around. Although the principle of irremovability is not absolute, as a rule, the transfer of judges without their consent is only permissible in exceptional cases, such as general reforms of the judicial system and because of disciplinary sanctions. No explanation or justification for introducing such changes to the transfer of judges were provided by the Georgian authorities. The opinion therefore recommends that for secondments of judges, clear reasons be provided, and it be limited to exceptional cases.

The opinion also recommends, with respect to the criterion that applies to the recusal of judges, be made more specific, because having a *"reasonable belief, that remaining on this position he/she will prevent disciplinary proceedings and/or recovery of damages caused by disciplinary misconduct, and/or will continue violation of labour discipline"* is not sufficiently clear.

With respect to the disciplinary liability of judges, the Georgian authorities had followed the Venice Commission's recommendation in its 2014 Opinion, lowering the majority requirement from two-thirds majority to absolute majority for the HCoJ's decisions on "*disciplinary matters*". But a simple majority by judge-members alone with the current composition of the HCoJ, will allow them to vote in their interest only.

With respect to the legislative procedure, the draft opinion states that the Georgian authorities had provided no reason or explanation for having adopted these amendments through an accelerated procedure: introducing them on 27 December 2021 and adopting them on 30 December 2021 – in a mere four days, without meaningful consultation with the opposition, stakeholders, and civil society.

The Venice Commission adopted the Opinion on the December 2021 amendments to the Organic Law on Common Courts of Georgia (CDL-AD(2022)010).

14. Lebanon

Opinion on the draft law on the independence of judicial courts of Lebanon

Ms Bernoussi introduced the opinion, requested by the former Minister of Justice of Lebanon in 2021 and concerning a proposal of the draft law on the independence of the judiciary. Overall, the draft Law goes in the right direction and brings the Lebanese system closer to standards and best practices. This reform should be seen in the context of the general economic crisis and in the light of the confessional principle of organisation of the State structures in Lebanon, enshrined in the Constitution. The strategic goal of the Constitution is to abolish confessionalism, so every reform should aim at changing the status quo, while respecting the confessional and gender balance within the judiciary.

Constitutional entrenchment of the composition of the Superior Council of Magistracy (the CSM) would be desirable. The law should clearly provide for the independence of the Prosecutor General vis-à-vis the executive. The new model of the CSM, where 7 members out of 10 will be

judges elected by their peers constitutes a clear progress compared to the current system, where only 2 members are elected. However, lower courts' judges should be better represented in this body. The *ex officio* members should be appointed in a simpler and clearer procedure by the Government based on a short-list composed by the CSM. The opinion proposes adding to the composition of the CSM non-judicial members, representing other legal professions or civil society; while judges in Lebanon are generally opposed to this idea, it would bring a fresh perspective to the CSM. The Judicial Inspection should be more independent from the Ministry of Justice and the power to bring disciplinary cases should belong neither to the executive alone nor to the judges alone.

The composition of and procedures before the disciplinary councils seem to be adequate. Concerning the Evaluation Commission, its members should be appointed based on the binding opinion of the CSM. In the matters of promotions and transfers, the CSM should be able to overcome the Minister's veto by a simple majority of votes. The list of evaluation criteria should be reviewed and the relation between disciplinary breaches and the removal of judges for "incompetence" should be clarified in the law.

The Minister of Justice of Lebanon, Mr Henri El Khouri, thanked the rapporteurs for their work and for the fruitful exchanges he had with them and with the Venice Commission. There is an ongoing battle for the judicial independence in Lebanon. While it is important to ensure compliance with the international standards in this area, specific features of the Lebanese legal order are to be taken into account. In the current conditions, abolition of confessionalism in the organisation of the State institutions is not possible. Similarly, the political situation is not favourable to finding broad support necessary to pass constitutional amendments. On the substance of the recommendations, the Minister stressed that the Prosecutor General enjoys sufficient independence in Lebanon. Women are well-represented in the judiciary.

The Ministry is opposed to the idea of inclusion of external (non-judicial) members in the CSM, and this position is shared by the judges as well. Nonetheless, the Ministry is ready to implement several recommendations of the opinion, namely regarding the simplification of the process of appointment of the three *ex officio* members of the CSM and the reduction of the role of the Minister in this process, exclusion of the President of the Judicial Inspection from the process of deciding on disciplinary cases, etc. Overall, the opinion represents a very thoughtful document which will contribute to the discussions about the future direction of the reform.

Mr Frendo and Mr Mathieu complemented the presentation by Ms Bernoussi by referring to some amendments which were introduced following the Ministry's comments to the draft opinion.

The Venice Commission adopted the Opinion on the draft law on the independence of judicial courts of Lebanon, previously examined at the Joint Meeting of the Sub-Commissions on the Rule of Law, the Judiciary and the Mediterranean Basin on 16 June 2022 (CDL-AD(2022)020).

15. Kosovo

Opinion on the Concept Paper on the Vetting of Judges and Prosecutors and draft amendments to the Constitution

Ms McMorrow informed the Commission that this opinion had been on the agenda of the last plenary session but, upon request by the Minister of Justice of Kosovo, it had been postponed to the present session, to enable a dialogue between the stakeholders on the envisaged reforms and to enable the rapporteurs to come to Kosovo and meet in person the stakeholders. Indeed, she had visited Pristina on 19-20 May 2022. The meetings had provided insights into the critical situation of the judiciary, which needed urgent reform. In the light of cases of corruption and nepotism, the authorities were of the opinion that only a vetting of all judges and prosecutors, based on constitutional amendments, could remedy these problems. The opinion examined the five options discussed in the Concept Paper submitted for analysis as well as two sets of draft

constitutional amendments, based on option 5. The second set of constitutional amendments presented, was shorter and more precise, as had been recommended in the draft opinion submitted to the March plenary session. The opinion established that various legislative changes where necessary to overcome these problems. Integrity checks, however, should be confined to the members of the judicial and prosecutorial councils, as well as to court presidents and chief prosecutors. Other cases should then be dealt with through ordinary disciplinary proceedings. The term "vetting" was being used in wide sense in Kosovo. Taken together, legislative reforms and integrity checks could amount to a "vetting" as sought for by the authorities. A precise model for the reforms should be developed together with the stakeholders concerned.

Ms Albulena Haxhiu, Minister of Justice of Kosovo, welcomed the opinion and pointed out that the reforms were being done in dialogue with the stakeholders.

Ms Bertrand pointed out that, in general, the Venice Commission should not refer to "the civil society" because civil society had a wide spectrum of views and, to the extent possible, the Commission's opinions should point out whose views were reflected.

The Venice Commission adopted the Opinion on the Concept Paper on the Vetting of Judges and Prosecutors and draft amendments to the Constitution of Kosovo, previously examined at the Joint Meeting of the Sub-Commissions on the Rule of Law, the Judiciary and the Mediterranean Basin on 16 June 2022 (CDL-AD(2022)011).

Opinion on the Draft Law N°08/L-121 on the State Bureau for Verification and Confiscation of Unjustified Assets

Mr Meridor informed the Commission that the opinion had been requested by the President of the Assembly of Kosovo and that it dealt with the introduction of non-conviction based civil confiscation, as a new tool for fighting organised crime and corruption. Without having to prove that the acquisition of specific assets was based on criminal activity, it would be possible to confiscate them in case the owner was not able to prove their legal origins. The draft law also established a new body, the Bureau, competent for initiating and conducting verification procedures and submitting confiscation proposals to the court.

The Venice Commission had in principle accepted such an approach previously, in the case of Bulgaria. That said, it was crucial that such confiscation be in compliance with human rights guarantees such as the right to property (Article 1, Protocol 1 to the ECHR), with fair trial requirements guaranteed under Article 6(1) of the ECHR and with basic rule of law principles.

The opinion stressed that the proposed new legislation alone could not be expected to resolve all the problems linked to corruption and needed to be embedded in a broader approach which would include practical measures aimed at proper implementation of existing legislation and at enhancing the law enforcement system. It also seemed questionable whether the establishment of a new body, the Bureau as foreseen in the draft law, would make the fight against corruption indeed more effective. In any case, it was essential that clear mechanisms of cooperation with other relevant bodies be introduced and that the new verification and confiscation system be combined with the already existing asset declaration system of senior public officials which was in the hands of the Anti-Corruption Agency.

Furthermore, such a human-rights sensitive legislation as proposed in the draft law was only acceptable if it was built on an independent mechanism with all the necessary powers and resources to fight effectively against high-level corruption and organised crime. The draft law, in its current wording, presented a certain number of shortcomings which were identified in the opinion and needed to be remedied. *Inter alia*, it was necessary to define precisely according to what criteria the Bureau should collect information *ex officio* before starting the formal verification procedure and under what conditions the verification procedure can and must be initiated, and to introduce stronger guarantees of the parties and other persons' human rights.

Mr Hamilton added that such non-conviction based civil confiscation had proved to be highly effective in some countries, e.g., in Ireland. At the same time, it could not be meant to supplant the criminal justice system.

Ms Albulena Haxhiu, Minister of Justice of Kosovo, indicated that the high level of corruption required new measures such as proposed in the draft legislation. The draft law would be amended to take account of the recommendations included in the opinion, in particular to ensure that the new Bureau would be free from political influence and that human rights of the persons concerned by the confiscation would be protected.

The Commission adopted the Opinion on the draft law N°08/L-121 of Kosovo on the State Bureau for Verification and Confiscation of Unjustified Assets, previously examined at the Joint Meeting of the Sub-Commissions on Fundamental Rights and the Mediterranean Basin on 16 June 2022 (CDL-AD(2022)014).

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

16. Ukraine

Amicus curiae Brief for the Constitutional Court of Ukraine on the limits of subsequent (a posteriori) review of constitutional amendments by the Constitutional Court

Mr Vargas Valdes explained that the Constitutional Court of Ukraine had asked the Venice Commission for an *amicus curiae* brief on whether it was competent to review constitutional amendments not only *a priori,* under Articles 158 and 159 of the Constitution, but also once the amendments had entered into force and what the consequences of such a ruling on unconstitutionality would be. The draft brief recognised that review of constitutional amendments can be a valid and efficient mechanism when constitutions contain "eternal clauses" and when there is clear and established doctrine on the subject.

In its Article 157, the Ukrainian Constitution foresees such "eternal clauses", or unamendable provisions and it provides for mandatory *a priori* judicial review of draft laws on constitutional amendments (Article 159). However, the Constitution remains silent on the possibility of the Constitutional Court exerting *a posteriori* review of constitutional amendments once they have entered into force. The analysed case-law indicated that the Constitutional Court may have the power to apply *a posteriori* review of constitutional amendments. Two opposing interpretations of the Constitution seemed possible. In any case, it will be for the Ukrainian Constitutional Court to provide a final interpretation.

The recognition of the power for *a posteriori* review of constitutional amendments would be in line with the strong support that the Venice Commission had expressed to all systems that allow for effective and democratic supervision of constitutional amendment procedures. This would be in line with the most recent Ukrainian case-law, and since there is no "sanction" for not complying with the mandatory *a priori* review, such and interpretation would protect the will of the constituent legislator that such a review should take place. However, such powers could only be exercised within the limits and for the purposes provided in the Constitution, they do not imply meta-constitutional nor constituent powers to amend pre-existing constitutional provisions.

Finally, as concerns the legal consequences of declaring unconstitutional the law amending the Constitution, even though Article 152.2 of the Constitution clearly establishes such consequences, the Court should not exercise its review powers in a manner that completely deprives of effects the acts of the constituent legislator. Instead, the Parliament should be enabled to reinstate the amendment procedure rather than the Court completely annulling the amendments.

Mr Langášek raised the question whether a distinction should be made between the sovereign original constituent power and the powers of the "ordinary" constituent power that must respect the limitations imposed in the constitutional amendment procedure. A discussion ensued about the concept of "unconstitutional constitutional amendments" or "basic structure doctrine" (India) under which a considerable number of constitutional (or supreme) courts had found constitutional amendments "unconstitutional". This phenomenon had increased in recent years. This development could not yet be considered in the Commission's 2010 Report on Constitutional Amendment (CDL-AD(2010)001).

The Commission adopted the amicus curiae Brief for the Constitutional Court of Ukraine on the limits of subsequent *(a posteriori)* review of constitutional amendments by the Constitutional Court (CDL-AD(2022)012).

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17. Republic of Moldova

Joint Opinion on the draft law on amending some normative acts (Judiciary)

Mr Gaspar informed the Commission that with the adoption of the draft Law, the 2022 constitutional amendments would find their development in the legislation strengthening the independence, accountability, and efficiency of the judiciary. The draft law was therefore to be assessed positively and essentially was a follow-up to the constitutional amendments. The draft opinion, requested by the Minister of Justice of the Republic of Moldova, welcomed, in particular, the removal of the probationary periods for judges, the unification of the judicial appointment procedure which excludes involvement of Parliament; the shifting of the power of appointment of court presidents and vice-presidents to the Superior Council of Magistracy (the SCM); the implementation of new model of the composition of the SCM and the election of its members; the consultative role of the SCM in the preparation of the budget for the judiciary.

However, to improve the draft Law further, the draft opinion recommended that voluntary transfer of a judge to a court of the same level or to a lower court could be made without involvement of the President of the Republic. The principle of security of tenure should be elaborated in legislation to ensure adequate substantive and procedural safeguards in the proceedings concerning the SCM members.

Mr Baramidze observed that the new constitutional principles regarding the SCM had to be duly implemented in the draft Law, including the election of lay members of the SCM. During the meetings with domestic stakeholders there had been a lot of discussions concerning the anti-deadlock mechanism in the procedure for the election of the lay members of the SCM. Pursuant to the current draft amendments, if Parliament fails to elect a lay member of the SCM by three-fifths of all elected members of Parliament, consultations should take place between the parliamentary factions with a view to reaching a compromise and approval by the same qualified majority. However, if the consultations fail, Parliament shall be empowered to elect those members by a simple majority. Such an anti-deadlock mechanism did not appear to be effective and required further improvement. More specifically, when a simple majority of MPs becomes sufficient to elect a lay SCM member, another condition could be introduced that such a candidate should obtain support from an institution which has no political affiliation. Tentatively, the Bar or the Ombudsperson could play this role. Such a limited intervention of independent institutions might enhance the overall mechanism and help counterbalancing the lack of a larger consensus at earlier stages of appointing process.

Furthermore, according to the draft opinion the extension of powers of the SCM members beyond their constitutional term of office (six years) is not the best way to ensure the continuity in the work of the SCM. The focus should be on facilitating the identification of new members before

terms. As to the decision-making process in the SCM, the constitutional design of the SCM, notably the idea of representation of judges and lay members in this body, had to be taken into account. It was therefore important that the decision-making majorities in the SCM cannot be secured exclusively by votes of one of those groups.

Ms Veronica Mihailov-Moraru, Secretary of State at the Ministry of Justice of the Republic of Moldova, stated that the draft law was prepared to elaborate the constitutional amendments in the judiciary and to follow the relevant international recommendations. The authorities were grateful for the proposed recommendations which would be considered for implementation. Ms Mihailov-Moraru admitted that the SCM could be given more discretion in the appointment of court presidents, as proposed in the draft opinion. She explained however that the reluctance to give that discretion to the SCM had been caused by the past negative experience of unfounded decisions of the SCM on such matters. As to the advisory vote of the peer judges on the election of the court presidents, such recommendation in the draft opinion was a good option in the current context. Undoubtedly, the anti-deadlock mechanism for the election process of SCM lay members could be improved in the way proposed by the Venice Commission. Similarly, the authorities accepted the proposal on the improvement of legal provisions regarding the security of tenure of the SCM members.

The Commission adopted the Opinion on the draft law on amending some normative acts (Judiciary), previously examined at the Joint Meeting of the Sub-Commissions on the Rule of Law, the Judiciary, and the Mediterranean Basin on 16 June 2022 (CDL-AD(2022)019).

Draft amendments to the Law no 3/2016 on the Prosecutor's Office

Ms Deskoska explained that the opinion, requested by the Ministry of Justice in May 2022, focused on the draft amendments to Law no. 3/2016 on the Public Prosecution Service, which were developed by the Ministry following the Opinion of the Venice Commission on the same law adopted in December 2021. The December 2021 opinion analysed amendments introduced to this law in August 2021. These amendments resulted in the reshuffling of the Superior Council of Prosecutors (the SCP) and the suspension of the then Prosecutor General. It is positive that, contrary to 2021, this time the Government decided to consult the Venice Commission beforehand.

The composition of the SCP is to be changed again, by adding there the Prosecutor General (the PG) as an *ex officio* member but the balance of prosecutorial and lay members remains acceptable. The security of the mandate of the members of the SCP should be guaranteed at the constitutional level. The introduction of the performance evaluation criteria in the text of the law is positive, but they need to be clarified and reformulated. It is positive that the evaluation will not bind the SCP. There is still no benchmark for triggering the evaluation of the PG's performance, which may be conducted every year and perturb his or her work. As regards the suspended PG, it is necessary to avoid retroactive application of the new performance evaluation criteria. Ms Deskoska also described amendments which were agreed by the rapporteurs in reply to the Ministry's comments: in particular, the opinion took note of the Ministry's explanation that the performance evaluation of the suspended PG will be conducted on the basis on the pre-existing rules, and not the new evaluation criteria.

The Secretary of State of the Ministry of Justice, Ms Mihailov-Moraru, explained that the aim of the draft amendments to Law no. 3/2016 was to respond to the recommendations contained in the December 2021 Opinion of the Venice Commission. As to the possible constitutional entrenchment of the security of mandate of the members of the SCP, excessive details in the constitutional regulations should be avoided. The draft

amendments seek to ensure accountability of the PG by introducing new performance evaluation criteria. The August 2021 amendments have introduced new procedure of performance evaluation regarding the PG, but the substantive rules on performance of the PG had already existed at this time. As to the suspended PG, new substantive rules will not be applied to him. The draft amendments have already been submitted to public consultation.

The Venice Commission adopted the Opinion on draft amendments to Law No 3/2016 on the Public Prosecution Service of the Republic of Moldova (CDL-AD(2022)018).

18. Tunisia

Avis urgent sur le cadre constitutionnel et législatif concernant le référendum et les élections annoncées par le Président de la République et notamment le décret-loi n° 22 du 22 Avril 2022 sur l'ISIE.

Mr Pinelli presented the context in which this opinion had been requested. In July 2021, the President of Tunisia, invoking Article 80 of the Constitution on the state of emergency, suspended the functions of the Government, and later of Parliament for one month. Further, he extended these exceptional measures "until further notice". He gave himself legislative power and issued a decree law regulating the exercise of emergency measures and suspended parts of the Constitution. He subsequently dissolved Parliament but did change the date of the early elections scheduled for December 2022. In April, he issued a new decree which changed the composition and functioning of the electoral management body (ISIE) and subjected it to presidential control. The Venice Commission was asked to assess the situation at this stage. However, the benchmarks for this assessment continued to change, as a new commission was set up to write a new constitution, with the aim of establishing a democratic regime, based on the separation of powers and a real balance amongst them, guaranteeing the rule of law and human rights protection. The National Dialogue Commission was due to prepare the text for 20 June, to be published by 30 June, while the referendum would be held on 25 July. The Venice Commission objected that the timeframe was excessively short and that referendums should not be used to circumvent the parliamentary amendment procedure.

M Seners précise que, l'avis est sévère car la situation institutionnelle en Tunisie est en contraste avec beaucoup d'orientations du code de bonne conduite et même de la Constitution. Les rapporteurs ont néanmoins essayé de trouver un équilibre entre l'analyse objective et une approche constructive, afin d'aider les autorités à retrouver un chemin de fonctionnement institutionnel normal. C'était le sens également de la visite de la Présidente de la Commission de Venise en mars dernier. L'avis urgent formule un certain nombre de suggestions : accélérer le calendrier de renouvellement de l'Assemblé nationale des représentants, mener une large consultation des forces politiques pour les règles électorales, confier la préparation du référendum et des élections à l'instance indépendante des élections dans sa forme antérieure à la réforme du Président. On observait plusieurs signaux négatifs, y compris la réaction du Président à la publication de l'avis urgent, et il restait nécessaire de suivre les développements de cette crise politique mais également économique. L'avis de la Commission de Venise a été largement lu et commenté en Tunisie ; la Tunisie n'a pas rompu les liens avec notre Commission. Certes, le calendrier électoral serré et intenable a été maintenu : l'opacité du processus n'a pas changé non plus ; la situation sociale se dégrade aussi. Il reste à déterminer quel rôle peut avoir la Commission de Venise dans le futur de la Tunisie.

Mr Marcus Cornaro, Ambassador of the European Union in Tunisia, thanked the Venice Commission for responding to the opinion request by EEAS by producing a high-quality legal analysis in a short time. The Tunisian Minister of Foreign Affairs was aware of the discussion at the Plenary Session of the Venice Commission and had expressed the wish that the discussions would maintain a constructive approach.

Ambassador Cornaro recalled that the publication of the draft constitution was foreseen for 30 June and the referendum for 25 July. The question arose of whether the flawed process of preparation of the constitution deserved to be supported or not. There were worrying signals but there were people in Tunisia who were interested in restoring democracy, and they deserved support. It was necessary to continue to follow the situation closely. The EU had open questions but maintained dialogue with the authorities on how to take into consideration the Venice Commission's concerns and avoid authoritarian degenerations. Ambassador Cornaro considered that it was important that the Tunisian Minister of Foreign Affairs had been given by the Commission the opportunity to comment on the draft opinion and that his comments had been reflected in the urgent opinion. This proved the added value of the Commission's procedure, of which the publicity of the final text was essential. He underlined the importance for all parties to remain politely and constructively committed to dialogue.

Mr Frendo echoed the Venice Commission President in assuring that the Venice Commission would continue to engage politely and constructively with the Tunisian authorities to avoid any straying away from democracy.

Mr Vermeulen expressed support for the cautious approach of the urgent opinion consisting in warning of the existence of a real issue with democracy and fundamental rights while trying to find common grounds and space for dialogue. There might not be a real line of communication with the Tunisian authorities now, but for the Tunisian people, NGOs, and opposition, it was necessary to maintain a line of communication through this opinion which deserved full support.

Ms Granata-Menghini added that the Committee of Ministers of the Council of Europe had been informed about this urgent opinion and had expressed full support for it. The Committee of Ministers would follow the developments closely. The Parliamentary Assembly would hold a debate on the situation in Tunisia the following week in which the President of the Venice Commission would participate.

A hearing had also been held at the European Parliament (LIBE Committee) in which Jean Claude Scholsem, one of the rapporteurs, had participated.

La Commission de Venise entérine l'avis urgent sur le cadre constitutionnel et législatif concernant le référendum et les élections annoncées par le Président de la République de la Tunisie et notamment le décret-loi n° 22 du 22 Avril 2022 sur l'ISIE (CDL-AD(2022)017).

Draft Opinion on the draft State Property Code of Tunisia

Le projet d'avis, demandé par le ministre des Domaines de l'Etat et des Affaires foncières de la Tunisie, concerne le projet de code des biens de l'Etat. Ce projet de code a été préparé par le ministère des Domaines de l'Etat et des affaires foncières, et intervient dans un contexte national, juridique et politique, pour lequel la plus grande réserve doit être exprimée eu égard notamment à la procédure de préparation et d'adoption du projet de code à la lumière de la liste des critères de l'Etat de droit.

Le projet de code poursuit quatre objectifs : la simplification du droit ; la modernisation des procédures ; le renforcement de la protection de la propriété publique et la lutte contre la corruption. Les objectifs ainsi invoqués semblent être légitimes et relèvent des priorités politiques poursuivies par le pouvoir politique en Tunisie.

Néanmoins, le projet de code présente des lacunes et des défauts essentiels qui peuvent être regroupés sous trois catégories principales : a) l'incompatibilité avec le principe de légalité et de prévisibilité ainsi que de l'intelligibilité des normes de droit interne, b) la protection non effective des droits procéduraux des personnes concernées et c) le non- respect du principe de proportionnalité en ce qui concerne les sanctions pénales prévues.

En somme, le projet d'avis recommande tout particulièrement de palier au déficit des notions, notamment par une meilleure définition des biens privés et publics ; d'apporter davantage de clarté et de détermination dans la formulation des normes en évitant des formulations trop ouvertes ; de réduire considérablement les exceptions et dérogations au régime commun, comme les procédures de gré à gré ; lorsqu'elles sont maintenues, les encadrer de garanties procédurales clairement établies ; d'introduire des règles procédurales claires afin que la propriété publique puisse faire l'objet d'une protection adéquate et que le droit des tiers puisse être garanti ; de réviser le niveau des sanctions envisagées en gardant à l'esprit le nécessaire besoin de proportionnalité ; d'Introduire des circonstances atténuantes, notamment la bonne foi.

La Commission adopte l'avis sur le projet de code des biens de l'Etat, précédemment examiné lors de la réunion conjointe des sous-commissions des Droits fondamentaux et du Bassin méditerranéen, le 16 juin 2022 (CDL-AD(2022)021).

19. Exchange of views with the European Commissioner for Justice

Mr Didier Reynders, European Commissioner for Justice, observed that the EU Commission and the Venice Commission share a common objective – to protect and promote the rule of law in Europe. The EU Commission has been relying on and using the Venice Commission opinions to develop the EU's Rule of Law policy, within and outside the EU. The basis for this work has always been the European standards on rule of law, such as those concerning courts and judges, councils for the judiciary, and prosecution service. It is established practice that the Venice Commission examines national rules both in terms of EU law as well as European standards. Such European standards are established in Recommendations of the Committee of Ministers, in judgements of the European Court of Human Rights, and in opinions of the Venice Commission.

The EU Commission values and relies on the European standards, including those on independence of courts and judges, and on the judicial councils. Among these, are particularly notable the Committee of Ministers Recommendation and the Venice Commission Report on Judicial Independence, both from 2010, as well as several Venice Commission opinions. Both the 2010 Recommendation that had been adopted by the Committee of Ministers unanimously and the Venice Commission Report on Judicial Independence contain important standards. They evoke the election and appointment of members of councils for the judiciary. It is up to each EU Member State to organise its justice system, including the decision on whether to establish a Council for the Judiciary. However, if a country chooses to establish such a council, it should be in line with European standards and EU law and be independent. Moreover, the 2010 Recommendation shows that even if the national justice systems in Europe are quite different, it is still possible to establish common standards, to ensure both the independence and the accountability of justice systems.

Many discussions in the EU revolved on how to take into account the specific national identity of the Member States. The systems can be diverse, but they have to be in compliance with common standards. The involvement of independent councils for the judiciary in the appointment of judges, if a country decided to establish such a body, is one of the essential guarantees for independence of courts and judges. The European Court of Human Rights and the Court of Justice of the EU had handed down a series of decisions on judicial appointments. Their case-law was more and more aligned. Structural independence was required to dispel any reasonable doubts on possible external influence on the judiciary. Rules on the appointment and dismissal had to establish essential guarantees of the rule of law. In judicial councils, a majority of members had to be judges elected by their peers.

The Court of Justice of the EU considers that the participation of such a body, in the context of a process for the appointment of judges, may, in principle, contribute to making the process more objective. However, the Court clearly states that this is the case only if "that body is itself sufficiently independent of the legislature and executive".

Under the EU Treaties, the rule of law is a guiding principle for the Union's international action. The EU is supporting third countries to carry out rule of law reforms ensuring the independence of the judiciary, with full respect for fundamental rights, as well as an effective fight against corruption and organised crime.

Respect for the rule of law is becoming even more important for countries that wish to join the European Union. For instance, the pace of the enlargement process depends primarily on the progress in reforms concerning the so-called "fundamentals", in particular the rule of law. This also applies to the new applications for EU membership, from Ukraine, the Republic of Moldova, and Georgia. Political will was the main issue for the required reforms.

Indeed, alignment with EU law and European standards are crucial for all countries that wish to accede to the EU. These countries should therefore be encouraged to timely consult with the Venice Commission on any important legislation regarding the structure and effectiveness of their justice systems and to rigorously implement its recommendations afterwards.

Venice Commission opinions for third countries on rule of law standards were particularly relevant in the accession process and rule of law standards were essential from the beginning to the end of the accession process. The EU Commission regularly invited both EU Member States and third countries to request Venice Commission opinions in time. The states concerned should wait with the adoption of legislation until the Venice Commission's opinion was available.

A new rule of law culture was being installed and, with very few exceptions, the reactions from most Member States were very positive. Part of an effective dialogue were also infringement procedures, including Article 7 procedures. Financial conditionality in the field of rule of law and anti-corruption measures was an efficient tool. The EU would continue to rely on Venice Commission opinions.

Mr Pinelli informed the Commission about the main Conclusions of the International Roundtable on "Shaping judicial councils to meet contemporary challenges" which took place in the Sapienza University of Rome on 21-22 March 2022. He stressed that judicial councils need not to be created in each member state, but they are recommended in those where the independence of the judiciary is more fragile. Independence should go hand in hand with the accountability of the judiciary – therefore the Venice Commission continues to insist that the judicial councils should be composed of at least half of judicial members elected by their peers, but that other members should be selected by Parliament.

Mr Varga noted that the change of the composition of a judicial council in a particular state always touches on various interests, including the interests of judges and other stakeholders. A country which tries to implement the recommendations of the Venice Commission therefore may be criticised by certain stakeholders. The question arose if such country may be sure that, due to the complaints of the stakeholders, the European Commission will not criticise the way in which the recommendation of the Venice Commission is implemented.

Mr Reynders first observed that the Member States are not asked to apply exactly the same system, they are asked to follow the general principles that can ensure the independence and accountability of the judicial system. Secondly, the European Commission is, of course, an independent body that will have its own assessment of the developments in the country concerned. It is natural, however, that in doing such assessment the EU Commission will pay due attention to the recommendations of the Venice Commission, in view of their cooperation in the pursuit of the common objectives in that regard. In any case, the decisions of the Court of Justice had to be implemented.

Mr Frendo inquired about the possibilities of engagement of the EU Commission with the national parliaments regarding the follow up to the EU rule of law reports. He observed that the national parliaments could be an important source of reflection and debate on the matters of the rule of law.

Mr Reynders replied that the EU Commission did intensive work in the preparatory stages of its rule of law reports, including numerous country visits with different partners, not only the government authorities, but also the national parliaments, judicial authorities, the civil society, and many other different stakeholders.

The rule of law reports would now follow a cycle and would focus on developments since the last report. The recommendations to Member States are added at the very end of the preparation of the reports. During each EU Council presidency, starting with the Swedish Presidency, a focus should be placed on the situation in five Member States. The situation in all Member States should be examined also in dialogue with the EU Parliament. Contrary to other topics, it was difficult do motivate wider discussion on issues such as judicial discipline, but it was necessary to reach out to the public to instil a rule of law culture.

President Bazy Malaurie remarked that sometimes States requested urgent opinions from the Venice Commission because of EU deadlines. Mr Reynders pointed out that the EU Commission always invited States to request opinions well in time and to wait for the opinions before adopting texts. The Venice Commission was an independent body but, as with constitutional and supreme courts, constant dialogue was necessary. Contrary to the Venice Commission, the EU Commission did not give opinions on draft texts, only on legislation in force.

As concerns prosecutors, Mr Reynders opined that there was a movement towards more independence of the prosecution system, but more independence had to come with additional accountability. This topic could be further explored in cooperation with the Venice Commission.

20. Mongolia

Joint opinion of the Venice Commission and the OSCE/ODIHR on the draft law on political parties of Mongolia

Ms Deskoska stated that Mongolia's efforts to amend its legal framework relating to political parties, with a view to bringing it into compliance with international human rights standards, were to be welcomed. It was commendable that this draft law intended to enhance the role, status and importance of political parties and stimulate the development of democratic political parties as an important tool of democratic governance.

The draft law addressed a number of recommendations made by ODIHR in 2019, such as the removal of the ban on religious or ethnic political parties; the suppression of the requirement of being a member of only one party at the same time; the opening of the access to public funding to non-parliamentary political parties; the introduction of gender and diversity criteria for the allocation of public funding as well as other provisions aimed at promoting the participation of women, youth and persons with disabilities; the regulation of third-party financing; the introduction of some procedural safeguards to contest the decisions on denial of registration, suspension or dissolution of a political party before a court.

At the same time, the draft law could still benefit from some clarifications and improvements to ensure its full compliance with international standards and OSCE commitments.

The draft opinion included key recommendations to simplify the process for establishing and registering a political party and ensure political parties' autonomy to decide on their internal organisation, structure and decision-making rules; to remove from Article 5.1 of the draft law the requirement of being "eligible to vote" to establish or join a political party, and more generally to repeal or reconsider the existing restrictions relating to the eligibility to vote in Mongolia; to reconsider the grounds for dissolution related to two years of inactivity on the basis of non-presentation of candidates to the *State Great Hural* elections during two consecutive terms, or inactivity of its governing bodies for five years; also removing the prohibition of the party to participate in elections if it is considered inactive, but not dissolved; to repeal the requirement for political parties' electoral platforms to be confirmed by the State Audit Office for their economic feasibility and adherence to specific policy-based requirements; to consider lowering the

threshold of 3 percent of the total votes to access public funding; to consider introducing a provision that would trigger suspension of public funding for failure to comply with certain regulatory requirements only after a reasonable period of time following a warning received from relevant authorities; to introduce sanctions that are objective, effective and proportionate to ensure compliance with the legislative requirements; to specify in the law or other applicable legislation that the Supreme Court has full adjudication powers to review law and facts and is not bound by the decision of the General Election Commission on the dissolution of a political party.

Ms Deskoska noted that the Constitution provided that, from 2028 on, the minimal number of members of a political party should be equal to one percent of the electorate, however, the authorities planned to suppress this excessive limitation. She also recommended an inclusive process for the adoption of the law.

Mr Konstantine Vardzelashvili, Head of the Democratisation Department of OSCE/ODIHR, welcomed the constructive dialogue with the authorities, which should lead to the full implementation of the 2019 ODIHR opinion. The postponement of the entry into force of the one percent rule to 2028 followed this recommendation; the rule had not been simply abrogated due to a constitutional provision forbidding to amend constitutional provisions within eight years of their adoption, but the authorities had agreed to amend this provision in conformity with international standards.

The Commission adopted the joint opinion of the Venice Commission and the OSCE/ODIHR on the draft law on political parties of Mongolia (CDL-AD(2022)013).

21. Türkiye

Joint opinion of the Venice Commission and OSCE/ODIHR on the amendments to the electoral legislation of Türkiye by Law No. 7393 of 31 March 2022

Ms Pabel stated that the lowering of the threshold, one of the highest worldwide, was a step in the right direction, but the opinion encouraged lowering it further. The allocation of seats to members of an alliance would not need two stages anymore, which did not go against international standards. The Venice Commission and OSCE/ODIHR were more concerned about the suppression of the possibility for political parties to run in elections if they have a political group in the Grand National Assembly, leaving as the sole condition (stricter than before) to have held two congresses: there was a need to clarify that this did not apply to new parties because it could impede their participation in elections. The opinion also recommended reconsidering the modifications in the system for composing district and provincial electoral boards, replacing seniority by lot, a change which had been considered by opposition parties and NGOs as the most problematic one. The Turkish authorities had submitted written comments which clarified a number of issues and were taken account of in the amendments approved by the Council for Democratic Elections.

Ms Fitzgerald, Head of the Election Department of OSCE/ODIHR, underlined that the lowering of the threshold and the facilitation of the participation of visually impaired voters were positive steps, while other amendments had to be reconsidered, especially concerning the composition of the electoral administration. On the conditions for candidacy, she welcomed the interpretation of the Turkish authorities, but the present formulation was problematic. The Venice Commission and ODIHR had consistently said that any successful change to electoral legislation should be built on the adoption of legislation by broad consensus after extensive public consultations with all relevant stakeholders but there had been no comprehensive consultation.

Mr Ömer Yılmaz, Deputy Head of Department, Department for Human Rights, Ministry of Justice of Türkiye stated that the opposition had been involved in the parliamentary discussion, after a public debate of nearly two years, and that several articles had been adopted by consensus. There was no European consensus on the threshold. The change from two stages to one in the allocation of seats could be favourable to smaller parties. New parties needed only one grand congress before registering for the next elections, and it was not necessary for a party to

be organised in all districts. There was no possibility of pressure when lots were drawn for the selection of the mid-level election administration.

The Commission adopted the joint opinion of the Venice Commission and OSCE/ODIHR on the amendments to the electoral legislation of Türkiye by Law No. 7393 of 31 March 2022 (CDL-AD(2022)016).

22. Explanatory Memorandum – Code of Good Practice on Referendums

Mr Kask stated that the explanatory memorandum took account of the recent opinions and guidelines of the Venice Commission (*e.g.,* on preventing and responding to the misuse of administrative resources), and addressed new developments introduced by the revised guidelines, such as transparency and limits of financing, or the involvement of an impartial authority in the wording of the question submitted to the vote. The wording of the question belonged to issues addressed in more detail, like secret suffrage; the organisation of referendums by impartial bodies; effects of referendums, especially for generally worded questions; and the date/timing of the referendum.

The revised Code of Good Practice on Referendums will be submitted for endorsement – as was the original version - to the Committee of Ministers, the Parliamentary Assembly and the Congress of Local and Regional Authorities of the Council of Europe.

Ms Fitzgerald, Head of the Election Department, noted that OSCE/ODIHR, when observing referendums, had regularly used the Code of Good Practice on Referendums. It heavily welcomed the adoption of its revised version.

The Commission adopted the Explanatory Report of the Code of Good Practice on Referendums (CDL-AD(2022)015).

23. Information on Conferences and Seminars

The Commission was informed on the results and conclusions of:

- International Round Table on Shaping Judicial Councils to meet Contemporary Challenges in Rome on 21 and 22 March 2022 (link to Conclusions);

See Mr Pinelli's intervention under item 19 above.

- European Conference of Prosecutors in Palermo on 4 and 5 May 2022;

Ms Bazy Malaurie informed the Commission about her participation in the Conference of European Prosecutors in Palermo. Ms Hanna Suchocka and Mr James Hamilton also took part in this conference as speakers. The focus of this conference was on the question of the balance between the independence of the prosecutors and their accountability. Institutional design of bodies of governance of the prosecution system – in particular the Superior Councils of Prosecutors in those countries where they exist, or joint judicial-prosecutorial councils – are of paramount importance for finding this balance. The conference lay the foundation for future work on the standard-setting in this area.

- Conference on International Standards of the Venice Commission: a comparative analysis of the Mexican electoral justice system organised by the Electoral Tribunal of the Judicial Power of the Federation of Mexico (TEPJF) on 12 and 13 May 2022;

Mr Vargas Valdez informed the Commission that the participants analysed good practices that had contributed to the creation of international standards on electoral matters. They discussed the opinions adopted by the Venice Commission on some Latin American countries. The

speakers highlighted the importance of judicial independence for the protection of human rights, especially during the electoral processes. They evaluated the results of international support missions during previous Mexican electoral processes. Moreover, the participants discussed the methodology for the decision-making process for judicial rulings. Apart from that, an analytical report on the practices of the Electoral Tribunal was presented. Overall, the exchange during this conference would certainly be useful for the Mexican authorities and for the Venice Commission and contribute to strengthening the rule of law, democracy, and electoral justice in the Latin American region.

- Conference on the Judiciary as Guardian of Democracy in Yerevan on 8 and 9 July 2022

Ms Bazy Malaurie explained that the conference was devoted to the current issues of the judiciary in Armenia and attracted a lot of attention in Armenia.

- 15th UniDem Med seminar on “Public service policies: paradigms for change” on 17 and 18 May 2022, online and in Ramallah (Palestine*)

Ms Granata-Menghini informed the Commission that she had participated in the seminar on public service policies which had taken place online and in Ramallah, Palestine*. It was opened by the Prime Minister and the President of the General Council of the Public Service of Palestine*. More than 200 international experts and senior public officials from the Southern Mediterranean (Algeria, Egypt, Jordan, Lebanon, Morocco, Palestine* and Tunisia) attended the event. The seminar included workshops attended by international experts who addressed various issues on public service policies. As the previous seminars of this series, the present one proved to be a successful tool to train many officials. These seminars were a precious tool financed by the EU Action Plan, which hopefully would be extended in 2023.

The Commission was informed on upcoming conferences and seminars:

- International Seminar on “Bicameralism: phenomenology, evolution, and current challenges of a ‘contested’ institution” to be held in Madrid on 4 and 5 July 2022.

Ms Granata-Menghini pointed out that the preparation of the opinion for Chile had shown that the previous work of the Commission bicameralism had been quite old. The conference should allow a renewed scientific reflection on this issue. The national presentations at the conference in Madrid should eventually lead to a new report on this topic.

- Conference on “Freedom of association and its limitations: in search of a fair balance” in the framework of the Irish CM Chairmanship (Strasbourg, 13 September 2022)

Ms Granata-Menghini informed the Commission that the main topics of this conference in the framework of the Irish Presidency in the Committee of Ministers will be the role of civil society in law making processes and foreign funding of associations.

- La 19e Conférence européenne des administrations électorales sur l'intelligence artificielle et son impact potentiel sur les processus électoraux à Strasbourg en novembre 2022.

Mr Garrone indique que la 19e conférence européenne des administrations électorales se tiendra à Strasbourg les 14-15 novembre 2022 et portera sur « Intelligence artificielle et intégrité électorale ». Elle vise à examiner l’impact de l’usage des systèmes d’intelligence artificielle dans l’organisation et la tenue des processus électoraux ainsi que sur le travail des administrations électorales ; et les enseignements à en tirer. La conférence sera divisée en trois parties :

- L’acquis du Conseil de l’Europe en matière d’intelligence artificielle par ses conventions, ses recommandations et son expertise ainsi que les principes fondamentaux en jeu ;
- Les questions relatives à l’usage des systèmes d’intelligence artificielle lors des périodes pré-électorale, électorale et post-électorale, dans une perspective pratique ;

- L'implication de questions transversales essentielles pour les systèmes d'intelligence artificielle : la transparence, la supervision, l'audit et la redevabilité des acteurs de systèmes d'intelligence artificielle ; la gouvernance des processus électoraux et décisionnels ; la lutte contre la fraude électorale.

24. Information on constitutional developments in other countries

Ms Shapak informed the Commission of constitutional developments in Kazakhstan. The draft law on amendments to the Constitution was adopted by referendum held on the 5 June 2022. Recommendations of the Venice Commission were taken into account in the amendments. Constitutional changes can be divided into several blocks.

The first set of amendments is intended to consolidate the final transition from the "super presidential" form of government to a classical presidential republic with an influential parliament and an accountable government. In this regard, the Head of State has transferred several of his powers to the other state bodies or will exercise them in agreement with them. To increase political competition, a requirement has been introduced that the President must not be a member of a political party during his term of office.

Many changes relate to strengthening the role of Parliament and local representative bodies improving the legislative process. In this regard, the procedure for the formation of both chambers of Parliament has been revised. The presidential quota in the Senate, the upper Chamber of Parliament, has been reduced from 15 to 10 deputies. Moreover, five of them will be proposed by the Assembly of the People of Kazakhstan. This innovation will provide mandates to various ethnic groups in the upper Chamber. It was decided to introduce a proportional electoral system to the lower Chamber (Mazhilis) which will better reflect the interests of voters. At the same time, the right of citizens to recall a deputy elected by them in case of failure to fulfil his or her electoral promises has been introduced.

The innovations of the legislative process include submission by Parliament (and not by the Senate as it is now) to the President for signature of the law; adoption of constitutional laws at a joint session of the Chambers to form a more balanced parliamentary system. The Senate will have power to approve or not approve laws already adopted by the Mazhilis.

To respond promptly to conditions that endanger the life and health of the population and other values, the Government has been granted the right to adopt temporary normative legal acts having the force of law. The pandemic and other modern threats show the need for such urgent action.

The guarantees of local state administration and self-government are being strengthened. New regional governors (*akims*) will be appointed by the President of the Republic with the consent of the deputies of all local representative bodies present in the region and not just the regional representative body. At the same time, the Head of the State will propose at least two candidates.

An important set of amendments concerns the issues of the law enforcement system, including to finally consolidate the decision to abolish the death penalty. The constitutional status of the Commissioner for Human Rights has been strengthened. The adoption of the separate constitutional law on the prosecutor's office is foreseen to implement the recommendation of the Venice Commission.

The Constitutional Council would be transformed into a Constitutional Court. The right of application to the Court would be extended to the Prosecutor General, the Commissioner for Human Rights and, most importantly, the citizens.

The implementation of the above constitutional amendments requires the adoption of more than 20 laws.

25. Report of the Joint Meeting of the Sub-Commissions on the Rule of Law, the Judiciary, and the Mediterranean Basin (16 June 2022)

Ms Bílková informed the Commission that on 16 June 2022 the joint meeting of the Sub-Commissions on the Rule of Law, the Judiciary and the Mediterranean Basin had discussed the draft opinion by on the Concept Paper on the Vetting of Judges and Prosecutors and draft amendments to the Constitution of Kosovo, the draft opinion on the draft Law Amending Legislative Decree n° 150/1983 on the Organisation of the Judiciary of Lebanon and the draft joint opinion on amending some normative acts (Judiciary) of the Republic of Moldova.

26. Report of the Joint Meeting of the Sub-Commissions on Fundamental Rights and the Mediterranean Basin (16 June 2022)

Mr Velaers informed the Commission that the Joint Meeting of the Sub-Commissions on Fundamental Rights and the Mediterranean Basin draft opinion by on the Draft Law N°08/L-121 on the State Bureau for Verification and Confiscation of Unjustified Assets of Kosovo and the draft opinion on the draft State Property Code of Tunisia.

27. Report of the meeting of the Council for Democratic Elections (16 June 2022)

The newly elected President of the Council for Democratic Elections, Mr Darmanović, reported on the meeting of the Council. The joint opinion on the draft law on political parties of Mongolia, the joint opinion of the Venice Commission and the OSCE on the electoral legislation of Türkiye, the urgent opinion on the constitutional and legislative framework on the referendum and elections announced by the President of the Republic, and in particular on the decree-law n°22 of 21 April 2022 amending and completing the organic law on the independent high authority for elections (ISIE) of Tunisia as well as the Code of Good Practice on Referendums were dealt with above under items 20, 21, 18 and 22 above. The revised Code of Good Practice on Referendums would be submitted for discussion and approval to the Committee of Ministers, the Parliamentary Assembly and the Congress of Local and Regional Authorities of the Council of Europe.

28. Other business

Mr Carozza outlined the role of the Meta Oversight Board of which he became a member. Meta is the parent company of Facebook, Instagram, and other products. It created the oversight board to address complex issues related to freedom of expression and other human rights on its social media platforms. The oversight board which has been structured legally, financially and administratively in a way that makes it entirely independent of Meta, receives appeals from Facebook and Instagram users or references from Meta itself regarding content moderation disputes. It selects among those appeals a number of cases that it considers to be the most emblematic of widespread, difficult and important issues, and decides those cases with a commitment to upholding freedom of expression and other principles of human dignity and safety, within the framework of international human rights norms. The board makes decisions without regard to Meta's economic, political, or reputational interests. Meta is required to implement the board's decisions unless implementation could violate the law. The oversight board also issues more general policy recommendations and advisory opinions on broader issues relating to human rights on Meta's platforms.

The Board is composed of a diverse group of 23 members from around the world with expertise in a range of areas. As a unique and innovative attempt at private sector self-regulation of global online media, the board has the potential to be very significant not only for freedom of expression, but also for democratic processes and institutions around the world and to contribute to the development of norms and practices guaranteeing human rights in those areas.

The number of appeals that the oversight board has received in its first two years of existence, already has exceeded a million. And the selection has been, of course, very small, given the number of board members. Only several dozens of cases have been decided of that. So, it is a small percentage, which requires that much work be done in advance precisely to identify those

issues, those specific cases that have more general relevance, that can establish principles and practices that then can be more widely applied.

As to the timeframe, the Board operates quite expeditiously: from the time that the appeal is received and accepted, the board is required to decide it within 90 days. Then Meta is required within 90 days to both implement the decision and to respond to any related policy recommendations with transparent explanation of whether the recommendations are accepted or not. In fact, many of the recommendations have been accepted, including in very important areas, for example, privacy. Moreover, these recommendations seem to be having an influence on other social media platforms. Many of the other areas, especially regarding transparency and procedure have been implemented by Meta. As to those decisions that Meta has chosen not to implement, they almost always have reasons of technical difficulty when the board requests method to do something that technologically its platforms are not capable of doing. And there remains a huge gap and challenge between the normative framework that the board is trying to develop and the technological reality of the way that social platforms work.

Mr Otty informed the Commission on the preparation of inter-state legal challenges by Ukraine against the Russian Federation at the European Court of Human Rights. Since the Court's session on 22 March 2022, it was clear that the Court would retain jurisdiction against the Russian Federation until 16 September 2022. Ukraine was thus entitled to bring such proceedings. Mr Otty is part of Ukraine's legal team, which would soon present a first round of primary submissions. The Russian Federation had caused and continued to cause loss of life, injury and trauma, population displacement and damage to property on a scale not yet seen in Europe since WWII. Equally large-scale compensation would be sought. Mr Otty was also member of the Ukrainian Task Force, convened by Amal Clooney and others, looking into wider issues of compensation, enforcement of compensatory awards, criminal liability, and sovereign immunity. He asked the members of the Commission members to assist in establishing contact to their government's legal advisors on these issues.

29. Dates of the next Sessions

The Commission confirmed the dates of its next session:

132nd Plenary Session	21-22 October 2022
133rd Plenary Session	16-17 December 2022
134th Plenary Session	10-11 March 2023
135th Plenary Session	30 June-1 July 2023
136th Plenary Session	6-7 October 2023
137th Plenary Session	15-16 December 2023

Link to the list of participants