

ANNUAL REPORT OF ACTIVITIES 2016



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for Democracy through Law

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Venice Commission



European Commission for Democracy through Law —

The Venice Commission of the Council of Europe

Annual report of activities 2016

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**I. Working for democracy through law -
an overview of the Venice Commission's activities in 2016**

1. Member States

Accession of a new member State

On 6 July 2016 Costa Rica joined the Venice Commission as a full member bringing its membership to 61.

Voluntary contributions

In 2016 the Commission received voluntary contributions from the Italian government (Regione Veneto) for the organisation of the plenary sessions and from Norway for co-operation with the countries of the Southern Mediterranean as well as contributions from the Action Plan for activities in Ukraine. Certain activities were financed by the European Union in the framework of Joint Projects and Programmes.

2. Main activities

Key figures

The Commission adopted 4 opinions on constitutional reforms and issues in Albania, Azerbaijan, France, Kyrgyzstan and Turkey and 31 opinions on legislative texts or specific legal issues. It adopted 3 texts of a general nature, including the Rule of Law Checklist which was endorsed by the Committee of Ministers and the Congress; published three Bulletins of Constitutional Case Law, (co)organised 17 seminars and conferences, provided legal support to 9 election observation missions and comparative law elements to constitutional courts in 30 cases. In 2016, 7 courts joined the World Conference on Constitutional Justice (WCCJ), bringing the total number of members in December 2016 to 103.

Scientific Council

The Scientific Council prepared and updated six thematic compilations of Venice Commission opinions and studies: on Media and Elections,¹ on Gender Equality,² on Bioethics,³ on Freedom of Expression,⁴ on Political Parties,⁵ and on Constitutional and Legal Provisions for the Protection of Local Self-Government.⁶ These compilations, which contain extracts from the Commission's opinions and studies structured thematically around key

1. Cf. CDL-PI(2015)006

2. Cf. CDL-PI(2016)007

3. Cf. CDL-PI(2016)013

4. Cf. CDL-PI(2016)011

5. Cf. CDL-PI(2016)003

6. Cf. CDL-PI(2016)002

topics, are intended to serve as a reference to country representatives, researchers as well as experts who wish to familiarise themselves with the Venice Commission's approach in relation to the above-mentioned themes. They are available on the Commission's website and are regularly updated. (www.venice.coe.int)

Democratic institutions and fundamental rights

Constitutional reforms

In **2016**, the Commission adopted opinions on the constitutional reforms or on legislative changes of constitutional relevance regarding: the judiciary in **Albania**; the referendum on constitutional amendments in **Azerbaijan**; the draft law on the state of emergency in **France**; the reform of the Constitution of the **Kyrgyz Republic**; a proposed new legal status for the Taraclia district of the **Republic of Moldova**; and the emergency decree laws of **Turkey**. In addition, two other opinions on **Turkey** were adopted in 2016: one concerned lifting parliamentary immunities and the other concerned the legal framework for curfews.

- The work on the **Albanian** constitutional reform, which started in 2015, continued in 2016. Amendments to the Constitution of Albania aimed at reforming the bodies of judicial governance and vetting all sitting judges and prosecutors with the aim of removing corrupt and unprofessional ones, under the supervision of the international community. The Commission adopted a final opinion in which it generally endorsed a comprehensive reform. On 21 July 2016, the Albanian Parliament unanimously passed the amendments. The approved text was generally consonant with many of the Venice Commission's recommendations. Following the constitutional reform, the Parliament adopted a law on the vetting bodies, which was immediately challenged by the opposition before the Constitutional Court. At the request of the Constitutional Court of Albania, the Commission adopted an *amicus curiae* brief on certain issues raised by the vetting law.
- In July 2016 the President of **Azerbaijan** introduced draft amendments to the Constitution. This reform was put to referendum without the involvement of the Parliament and without genuine public discussion. In its opinion, the Commission noted that the position of the President, already very strong, was strengthened even further, which disturbs a proper balance of powers.

- The opinion on **France** (Opinion on the Draft Constitutional Law on “Protection of the Nation”) recommended that the clause on the emergency regime introduced into the Constitution should circumscribe emergency powers of the legislature and that the prolongation of the state of emergency be decided by a qualified majority of votes.
- The preliminary joint opinion by the Venice Commission and the OSCE/ODIHR on draft amendments to the Constitution of the **Kyrgyz Republic**, concluded that the draft amendments would negatively impact the balance of powers by strengthening the powers of the executive, while weakening both the parliament and the judiciary. The draft amendments were subsequently amended taking into account some of the concerns expressed by the Venice Commission.
- The Venice Commission analysed the draft law of the **Republic of Moldova** proposing an “ethno-cultural” status for the district of Taraclia. This opinion, *inter alia*, criticised the lack of clarity of the concept of “ethno-cultural district” and noted that the proposed status raised issues of consistency with both the Moldovan Constitution and the legislation in force.
- Three major opinions on **Turkey** were adopted in 2016. The first concerned the suspension of the second paragraph of article 83 of the Constitution guaranteeing parliamentary immunity. This amendment was criticised as a misuse of the constitutional amendment procedure, which, in addition, encroached on the freedom of the parliamentary debate.
- The second opinion on **Turkey** did not concern permanent modifications to the Constitution but the emergency regime introduced in July 2016. This emergency regime had important effects on the constitutional design of the country, at least temporarily. The Commission acknowledged that vesting the Government with emergency powers might have been justified following the failed *coup d'état* of July 2016, but the measures taken by the Government were excessive. In particular, the Commission expressed concern that the Government was allowed to legislate for over two months without any control by Parliament or by the Constitutional Court, and that it conducted an indiscriminate purge of the State apparatus, which raises serious human rights concerns.
- The third opinion on **Turkey** concluded that the curfew measures decided since Summer 2015 in the South-East of the country did not meet the requirements of legality enshrined in the Constitution and resulting from Turkey’s international obligations in the area of fundamental rights, in particular under the ECHR.

Democratic development of public institutions and respect for human rights

Democratic institutions

The final opinion of 2016 on the constitutional reform in **Albania** examined, *inter alia*, the question of the participation of the executive and legislative branches in the election of the members of the bodies of judicial governance.

The opinion on the constitutional reform of **Azerbaijan** largely concerned the system of checks and balances and further strengthening of Presidential powers vis-à-vis Parliament, already very weak under the Constitution in force. The opinion also examined the (lack of) involvement of Parliament in the process of constitutional amendments.

The 2016 opinion on the state of emergency in **Turkey** examined the Parliament’s controlling powers with regard to the Government during the emergency regime. In another opinion on Turkey the Commission examined the question of parliamentary immunity and its importance for the free debate in Parliament.

The draft constitutional law on the Human Rights Defender (Ombudsman) of **Armenia** welcomed the draft as going in the right direction but made recommendations concerning the selection of candidates to the position of the ombudsperson, and the functional immunity of the ombudsperson.

Fundamental Rights

At the request of the Constitutional Court of **Albania**, in 2016 the Venice Commission adopted an *amicus curiae* brief which analysed legal aspects related to the restitution of property confiscated by the communist regime.

The opinion on the laws on the protection of whistleblowers and on the protection of privacy of “**the Former Yugoslav Republic of Macedonia**” examined *inter alia*, the repercussions of this legislation on investigative journalism. The Joint Opinion on draft legislation on combating cybercrime in **Moldova** examined the powers of the law enforcement agencies and their consequences on the free enjoyment of fundamental rights and recommended clarifying regulations governing searches, data seizures, screening and retention of data, internet blocking. The opinion on amendments to the Police Act of **Poland**, which regulated the powers of the law-enforcement bodies to intercept and analyse private communications, called for stronger procedural safeguards against abuses in this field.

In its opinion on the federal law of **Russia** concerning undesirable activities of foreign and international NGOs, the Commission essentially criticised the vagueness of the criteria according to which NGOs may be declared as “undesirable”.

The Commission also examined a number of articles of the Penal Code of **Turkey**, which defined “verbal acts offences” and limited freedom of speech in the country. Another opinion on Turkey concerned the “Internet Law”; in this opinion the Commission examined, in particular, the power of the Turkish authorities to block access to internet resources, and recommended the introduction in the legislation of less intrusive measures. In 2016 the Venice Commission also adopted an opinion on the curfew regime imposed in certain regions of **Turkey**, in particular concentrating on the legality and the human rights implications of such measures.

Finally, in 2016 the Venice Commission adopted a generally positive opinion (prepared jointly with the OSCE/ODIHR and DGI) on two draft laws on guarantees for freedom of peaceful assembly of **Ukraine**.

In a number of opinions, focusing on constitutional reforms, the Commission had to analyse human rights provisions. While the opinion on the referendum on constitutional amendments in **Azerbaijan** commented on the limitations introduced to freedom of assembly and freedom of speech, the preliminary opinion on the amendments to the Constitution of **the Kyrgyz Republic** expressed concern about the vaguely defined “highest values” in the Constitution, which could be used to restrict human rights and fundamental freedoms. The opinion on the proposed emergency regime in **France** touched upon, *inter alia*, the deprivation of French nationality as an ancillary measure of criminal punishment related to certain categories of offences.

Judicial reforms

In 2016 the Venice Commission was involved in the judicial reform in **Albania**, aimed at the complete overhaul of the judiciary, through two parallel reforms: reorganisation of the permanent bodies of the judiciary, and the introduction of a temporary *ad hoc* vetting procedure supposed to eliminate corrupt judges and prosecutors from the system. Following the adoption of the constitutional amendments, the Commission was asked to prepare an *amicus curiae* brief for the Constitutional Court of **Albania**, which dealt with the law on the vetting of judges adopted in the development of the constitutional reform.

The Commission also examined the new Code of Judicial Ethics of **Kazakhstan**, and adopted an *amicus curiae* brief for the Constitutional Court of **Moldova** on the right of recourse by the State against judges.

One of the most worrying developments concerned mass dismissals of judges on the basis of the emergency decrees adopted in **Turkey** following a failed *coup d'état*. The Venice Commission addressed this issue in its opinion on the emergency decrees of Turkey.

Transnational activities

In March 2016 the Commission adopted the **Rule of Law Checklist** – a comprehensive list of criteria describing the complex notion of the rule of law. The Checklist aims at enabling an objective, thorough, transparent and equal assessment of the Rule of law in a given country. It is proposed as a tool at the disposal of various actors, such as parliaments and other State authorities, the civil society and international organisations. The Checklist was met with great interest: the Committee of Ministers endorsed it in September 2016 and it was discussed at several international *fora*.

Also in 2016, the Commission pursued its work, in cooperation with the OSCE/ODIHR, aimed at revising and updating the 2010 **Joint Guidelines on Freedom of Peaceful Assembly**.

In addition, the Venice Commission started working on updating its 2010 “Report on the role of the opposition in a democratic parliament”, with a view to also examining, in the light of the role, functions and rights of the opposition, the responsibilities incumbent upon the majority and their interaction. This is meant to contribute to the reflection initiated by the Secretary General on possible Council of Europe guidelines concerning the **role and the responsibility of the political majority and its interaction with the opposition**.

Constitutional justice

Strengthening constitutional justice

This year has seen an increase in the number of situations in which pressure was exerted on constitutional courts in the member States of the Venice Commission. The latter has intervened on several occasions in the form of statements and a declaration in an attempt to raise awareness on this issue and offer support to the courts concerned.

The Venice Commission intervened in the following matters:

- On 16 March 2016, the Venice Commission made a Declaration on the undue interference in the work of the constitutional courts in its member States. This topic will also be one of the focal points of the 4th Congress of the World Conference on Constitutional Justice in September 2017 (see below). The cases notably concerned a specific opinion by the Venice Commission, which dealt with the amendments to the Law on the Constitutional Tribunal of **Poland**; statements made by the President of **Turkey** questioning a judgment by the Constitutional Court of his country, which was followed by threats to abolish that Court; the delays in appointing judges to the constitutional courts of **Slovakia** and **Croatia** and the public calls from the executive in **Georgia** to terminate the mandate of

the President of the Constitutional Court of that country.

- On 18 July 2016, the President of the Venice Commission, Mr Gianni Buquicchio, made a statement strongly condemning the attempted *coup d'état* in Turkey, underlining that any changes in the government must follow democratic channels. However, he expressed alarm at the Turkish media reports stating that since the failed coup, two judges of the Constitutional Court and five members of the High Council of Judges and Prosecutors had been arrested. More than 2700 judges had been suspended and many had been detained. Mr Buquicchio emphasised that in reacting to a violent attempt to overthrow an elected government, it was essential to respect the rule of law. Mass dismissals and arrests of judges were not an acceptable means to restore democracy. As any citizen, each judge has the right to a fair procedure – disciplinary and/or criminal – during which his or her responsibility must be duly proved and his or her defence rights must be respected.
- On 23 September 2016, the President of the Venice Commission, Mr Gianni Buquicchio, made a statement with respect to the non-compliance with a decision by the Constitutional Court of Bosnia and Herzegovina of 17 September 2016 to suspend the referendum in the *Republika Srpska*, scheduled for 25 September 2016. The authorities of *Republika Srpska* nevertheless had gone ahead with the organisation of the referendum. Mr Buquicchio reiterated that in a state governed by the rule of law the judgments of the Constitutional Court were implemented and were not made the subject of a vote, whether in parliament or by the people. The Constitutional Court had declared the Day of the *Republika Sprska* unconstitutional because it was discriminatory to non-Serb residents of this Entity. The purpose of the referendum was to undermine the authority of this judgment, which was not acceptable. Following the new decision by the Constitutional Court, the only possible legitimate reaction of the authorities in an Entity belonging to a Council of Europe member State was not to hold the referendum.

The Venice Commission's other activities in the field of constitutional justice include:

The CODICES database, which is the focal point for the work of the Joint Council on Constitutional Justice (see below), as well as the World Conference on Constitutional Justice (WCCJ), make it possible to access nearly 9 000 constitutional judgments for mutual inspiration, as a common basis for dialogue among judges in Europe and beyond.

The Commission's Venice Forum dealt with 30 comparative law research requests from constitutional courts and

equivalent bodies covering questions which ranged from access to online gambling sites and the protection of sign language to the right to leave a country.

The Commission also co-organised or participated in conferences and seminars in Albania, Armenia, Bulgaria, Georgia, Jordan, Kosovo, Latvia, the Republic of Moldova, Poland, Romania, Russia, Turkey and Ukraine.

World Conference on Constitutional Justice (WCCJ)

In 2016, the 10th meeting of the Bureau of the WCCJ was held in Venice, Italy, during which the Bureau adopted, subject to consultation of the General Assembly, the topic "*The Rule of Law and Constitutional Justice in the Modern World*" as the topic for the 4th Congress of the WCCJ (Vilnius, Lithuania, 11-14 September 2017), with the sub-topics:

- The different concepts of the rule of law,
- New challenges to the rule of law,
- The law and the state and
- The law and the individual.

The Bureau also adopted the logo for the 4th Congress; decided to propose to the General Assembly changes to the Statute relating to the election of members to the Bureau and the groups participating in the Bureau and took note of the support provided by the Venice Commission for courts under undue pressure and decided to pursue the discussion on a support mechanism of the WCCJ involving the President of the Venice Commission.

During the course of the year, the number of constitutional courts, constitutional councils and supreme courts, members of the WCCJ, increased to 103.

The CODICES database and the online Venice Forum provide a permanent link between the member courts. The increase in membership of the WCCJ led to a further increase in case-law contributions, notably to the CODICES database of the Venice Commission.

Elections, referendums and political parties

In 2016, the Commission continued its work on electoral matters and political parties. The Commission adopted Guidelines for preventing and responding to the misuse of administrative resources during electoral processes as well as an Interpretative Declaration of the code of good practice in electoral matters on the publication of lists of voters having participated in elections. The Commission adopted seven opinions in the field of elections and political parties, concerning **Armenia, Georgia, the Republic of Moldova, "the former Yugoslav Republic of Macedonia"** and **Ukraine**. The Council for Democratic Elections adopted these opinions and studies before their submission to the Commission.

Regarding electoral legislation, although improvements are desirable or even necessary in several States, the problems to be solved concern more and more the implementation rather than the content of the legislation. During 2016 the Commission therefore continued to assist the Council of Europe member States in the implementation of international standards in the electoral field, while developing further its co-operation with non-European countries, especially in the Mediterranean basin and Central Asia.

Electoral legislation and practice

The Commission adopted opinions on electoral legislation in **Armenia, Georgia, the Republic of Moldova, “the former Yugoslav Republic of Macedonia” and Ukraine.**

The Commission organised electoral assistance activities in **Georgia** and in the **Republic of Moldova**, with particular emphasis on electoral disputes. In addition, the Commission (co)organised seminars on electoral issues in **Ukraine** and in **Belarus.**

The Commission organised in Bucharest the **13th Conference of European Electoral Management Bodies** jointly with the Central Electoral Authority of **Romania** and the first electoral expert debates, as well as a Conference on “**Media freedom as a cornerstone for democratic elections**” in Berlin in co-operation with the Parliamentary Assembly.

The Commission provided legal assistance to nine Parliamentary Assembly electoral observation missions, including in the neighbourhood region in Morocco and in **Tunisia.**

The VOTA database of electoral legislation continues to be jointly managed by the Commission and the Federal Electoral Tribunal of **Mexico.**

Political parties

The Commission adopted an opinion on the draft constitutional law of **Armenia** on political parties and participated in several events relating to legislation on political parties and their funding.

Sharing European experience with non-European countries

Mediterranean Basin

In 2016, the Venice Commission continued its successful co-operation with the countries of the Southern Mediterranean. The need to reform the State institutions in accordance with international standards was confirmed by the implementation of several projects in **Jordan, Morocco and Tunisia.**

The Venice Commission continued its dialogue with the Tunisian authorities on the legal framework for the independent institutions such as the new Constitutional

Court and the High Judicial Council in line with the 2014 constitution. The Commission also co-operated with the Office of the Mediator and the Independent Electoral Institution (ISIE). The dialogue with the Moroccan authorities continued in fields such as legislation in the human rights field, the reform of the judiciary, notably the introduction of the referral of cases on violations of fundamental rights by ordinary courts and support to the new institutions and the consolidation of the rule of law. In Jordan the Commission continued its fruitful co-operation with the Constitutional court and continued its exchanges with the Independent Electoral Commission of Jordan. Venice Commission experts assisted the PACE delegation observing the elections in Jordan and Morocco.

2016 was clearly marked by an increase in regional activities organised or supported by the Commission, including such important projects as the UNIDEM seminars for the countries of the MENA region and participation in the meetings and exchanges of views with the Organisation of Electoral Management Bodies of Arab countries. These multilateral activities saw an increased participation of various representatives of the national authorities and academia from **Algeria, Egypt, Jordan, Lebanon, Libya, the Palestinian National Authority and Tunisia.** **Egypt, Lebanon** and the **Palestinian National Authority** indicated their desire to engage more actively in co-operation with the Venice Commission in 2017.

Central Asia

Since 2007, the Venice Commission has established good co-operation with the national institutions of **Kazakhstan, Kyrgyzstan, Tajikistan** and **Uzbekistan**, notably in the framework of several projects with funding provided by the European Union as well as some member states. In December 2016 the Venice Commission signed a co-operation Agreement with the European Union for the implementation of a new project in the electoral field in **Kyrgyzstan.** The project will help the country's authorities to elaborate a comprehensive strategy and to reform the electoral legislation and practice in accordance with international standards by making tools and expertise available to national institutions involved in the electoral reform.

In the absence of joint projects aimed at the Central Asian region in 2016, the Venice Commission continued bilateral co-operation with higher judicial bodies of the five countries of the region which show continuous interest in bringing further assistance. In 2016 the Venice Commission examined the draft Code of Judicial Ethics of **Kazakhstan** prepared as part of a comprehensive legal reform launched by the President of the country. The Commission advised describing in more detail the grounds for bringing a judge to a disciplinary liability for a breach of “ethical rules”; and recommended clarification of certain vague notions contained in the Code. The Code, adopted in November 2016, took into account many of the Venice Commission's recommendations.

In co-operation with the OSCE/ODIHR the Venice Commission reviewed draft amendments to the Constitution of the **Kyrgyz Republic** proposed in the Draft Law “On Introduction of Amendments and Changes to the Constitution of the **Kyrgyz Republic**”. The Venice Commission found that the draft amendments would negatively impact the balance of powers by strengthening the powers of the executive, while weakening both the parliament and the judiciary. The draft amendments were subsequently amended taking into account some of the concerns expressed by the Venice Commission.

Latin America

In 2016 the Venice Commission continued to develop its co-operation with countries of Latin America through its Sub-Commission on Latin America. **Costa Rica** became a member of the Venice Commission.

The Venice Commission and the Constitutional Court of Peru organised a Conference on “**Constitutional Reform and Democratic Stability: the role of Constitutional**

Courts” on 24 – 25 October in Lima. The event focused on the recent constitutional reforms in the region and on problems encountered in the process of their implementation. The conference was attended by judges and lawyers from the Constitutional Court of Peru, members of the Venice Commission and experts, judges from 10 countries in Latin America, including **Argentina, Chile, Colombia, Guatemala, Ecuador, El Salvador, Mexico, Paraguay, Peru** and **Uruguay**.

The meeting of the Sub-Commission on Latin America took place after the conference. The agenda of the meeting included such issues as the follow-up to the previous opinions of the Venice Commission, the preparation of the road-map for possible activities in Latin America in 2017 and the creation of several working groups including experts from both Europe and Latin America.

In 2016, the Commission continued its contacts with other regional organisations in the Americas, notably the Organisation of American States, UNDP, IFES and the Carter Center.



II. Constitutional reforms, state institutions, human rights and the judiciary

1. Country specific activities

Constitutional reforms, state institutions, check and balances

Albania

Constitutional reform of the judiciary

At the March 2016 plenary session, the Venice Commission adopted a final opinion on Albania which concerned a comprehensive constitutional reform of the judiciary (CDL-AD(2016)009). The reform provided, *inter alia*, for the vetting of all sitting judges and prosecutors and for a thorough reorganisation of two permanent institutions – the High Judicial Council and the High Prosecutorial Council. The Commission approved the general direction taken by the reform and noted that the revised amendments settled most of the questions raised in its 2015 Interim Opinion in relation to the first draft of the amendments.

An important remaining issue concerned the qualified majority needed to elect the members of the governance bodies of the judiciary and of the prosecution service. Either of the two solutions discussed domestically (election by a three-fifths or by a two-thirds majority) was legitimate; alternative models of election would be equally possible. The main concern of the Commission was to ensure a pluralistic composition of the governance bodies. The opinion also suggested shortening the duration of the vetting process, to clarify the role of international observers in the vetting process, and criticised the premature termination of the Prosecutor General's mandate.

The opinion further recommended to not deprive the vetted judges and prosecutors of their right of access to the Constitutional Court, but stressed that the proceedings before the Constitutional Court should not play an obstructive role.

On 21 June 2016, the Albanian Parliament unanimously adopted the reform. The approved text was generally in line with many of the Commission's recommendations. However, as regards the appointment of the members of the vetting bodies, the permanent institutions of the judiciary and prosecution service, the system put in place by the amendments was quite complicated.

The vetting law

The next phase of the reform was the adoption of the implementing legislation and the election of the members

of the newly created bodies. The first package of 7 laws was subject to a vote by the Albanian Parliament in September 2016. The opposition challenged the vetting law before the Constitutional Court, which requested an *amicus curiae* brief from the Venice Commission on several questions raised by the case.

The first question submitted to the Venice Commission was whether or not the fact that the judges of the Constitutional Court would themselves be subject to the vetting law could create a "conflict of interest". The Commission noted that such possible "conflict of interest" would affect the position of all the constitutional judges, and their withdrawal would thus result in the total exclusion of the possibility of judicial review of the vetting law, which was not advisable. The second question related to the involvement of the organs allegedly under governmental control in the vetting process. The Commission noted that the final decision rested on the independent vetting bodies, which possess the characteristics of judicial bodies, which in turn creates sufficient guarantees against interference by the government. The *amicus curiae* brief was adopted at the December 2016 plenary session (CDL-AD(2016)036).

Armenia

Law on the Human Rights Defender

This opinion on the draft constitutional law of the Republic of Armenia on the Human Rights Defender (CDL-AD(2016)033) was requested by the Minister of Justice of Armenia, and adopted by the Venice Commission at its December plenary session.

The draft constitutional law had been prepared as part of the implementation of the new Constitution of Armenia and, although it was a constitutional law, it did not have the same legal force as the Constitution. The main recommendations made in the opinion included: to draw a distinction between the Defender's Ombudsman functions and his or her special functions as the National Preventive Mechanism (NPM); to provide for a transparent competitive selection of the Defender by including proposals from the civil society and from all political parties, as a way to enable the selection of highly qualified candidates and provide legitimacy to the process; to include express provisions on the functional immunity of the Defender, the Defender's staff and experts of the NPM for words spoken or written, recommendations, decisions and other acts undertaken in good faith while performing their functions; to ensure the Defender's access, as the NPM, to all private and public institutions

where persons are held against their will, including “semi-closed” institutions; and to guarantee the institutional participation of NGOs in its work.

The draft constitutional law was adopted by Parliament at its first reading, on 29 November 2016, by 106 votes for and only one vote against and one abstention. The issues raised during the visit of the Venice Commission delegation to Yerevan had been addressed and this would be reflected in the amendments made to the draft constitutional law. Some recommendations could not be followed, because they would have required constitutional changes.

Azerbaijan

Strengthening presidential powers through referendum

The preliminary opinion on the draft modifications to the Constitution of Azerbaijan submitted to referendum on 26 September 2016 (CDL-AD(2016)029) was requested by PACE. The Venice Commission observed that the reform of the Constitution had been put to referendum without the involvement of Parliament; although it was formally not contrary to the current Constitution, the time-frame was very tight and did not permit any genuine public discussion to take place. The constitutional rules governing the reform were unclear. In 2009, the Venice Commission had already criticised Azerbaijan for the removal of the two-term limitation on the presidential mandate. By the proposed modifications, the position of the President was strengthened even further - his term of office was extended to 7 years, he had been given power to choose arbitrarily an earlier date for his re-election, and to single-handedly appoint and remove Vice-Presidents, to dissolve Parliament at his will (while the Parliament has no real power to remove the Cabinet), etc. All these aspects disturbed, in the opinion of the Commission, a proper balance of powers giving excessive powers to the President.

The reform nevertheless contained a number of positive elements in its human rights component. For example, new rights as well as proportionality were henceforth guaranteed at the constitutional level. However, it also introduced a number of limitations on the rights of political participation, which must be interpreted narrowly by the legislator and the courts. The overall assessment of the direction taken by the reform was negative. The preliminary opinion was made available to PACE before the referendum and it was later endorsed by the Venice Commission at its October 2016 plenary session.

France

Constitutional framework for the emergency regime

The opinion on the draft constitutional law « on protection of the Nation » of France (CDL-AD(2016)006) was prepared at the request of PACE. The draft law contains two articles, which introduce the state of emergency

regime as well as provisions on the deprivation of French nationality into the Constitution.

In the Venice Commission’s opinion, regulating the state of emergency regime at the constitutional level is a welcome proposal. [The French Constitution already has two provisions on exceptional regimes – one which governs the extraordinary powers of the President (Article 16), and the other describes the state of siege (Article 36). However, the regime of the state of emergency – which was introduced in France following the two murderous terrorist attacks of 13 November 2015 – is only regulated by the law of 1955, recently revised by Parliament together with the first extension of the state of emergency in November 2015.] Constitutionalising the state of emergency regime opens an opportunity for reviewing the constitutional framework for such a regime and creating safeguards against possible abuse. It is important to inscribe into the Constitution not only the norms regulating the declaration and the extension of the emergency regime, but also formal, temporal and substantive limits for the realisation of this regime. The proposed new Article 36-1 of the Constitution was not, by itself, contrary to international law; the Commission nevertheless stressed how important it was for its text to also stipulate that the crisis, which gives rise to a declaration of a state of emergency, is of such a scale that it endangers “the life of the Nation”, and that the authorities cannot take measures which are not strictly justified by the exigencies of the situation. In addition, the second prolongation of the state of emergency may require a qualified majority vote in Parliament.

As regards deprivation of the French nationality, international law prohibits arbitrary deprivation of nationality and incites the State to avoid statelessness, even if there is no absolute prohibition in the latter regard. Introduction of a single legal regime for all French citizens - be they naturally-born French, naturalised, dual-nationals, etc. - is not contrary to those norms of international law provided that deprivation of nationality is decided following fair examination of the case by the courts and in compliance with the proportionality principle. The opinion, thus, calls for transformation of this measure into an accessory penal sanction, which may be imposed by a competent penal judge.

This opinion was adopted by the Venice Commission at its March 2016 plenary session.

Kyrgyz Republic

New constitutional amendments strengthening the power of the executive

The joint preliminary opinion on draft amendments to the Constitution of Kyrgyzstan (CDL-AD(2016)025) was prepared at the request of the Kyrgyz Parliament. This opinion was prepared jointly with the OSCE/ODIHR.

The opinion expressed concern that the draft amendments would negatively impact the balance of powers by strengthening the powers of the executive, while weakening both parliament and the judiciary. The role of the Constitutional Chamber as an effective organ of constitutional control would be seriously affected. Some of the proposed amendments raised concerns with regard to key democratic principles, in particular the rule of law, the separation of powers and the independence of the judiciary. This concerned notably reference to vaguely defined 'highest values' in the Constitution, which could be used to restrict human rights and fundamental freedoms. The provisions on the appointment of the judges of the Constitutional Chamber and the Supreme Court would give wide discretion to the President in their selection. Provisions on mandatory waivers of judges' privacy rights were problematic. The removal of provisions obliging the Kyrgyz authorities to restore the rights of persons following decisions of international human rights bodies, which confirm violations of human rights and freedoms, was a dangerous step back. As already recommended in a previous opinion on this matter, the opinion recommended that the constitutional procedure for amendments be followed.

Since the publication of this opinion, some of the key recommendations have been addressed. Other provisions of the amendments remained in the draft, particularly those regarding the weakening of the status of international human rights standards in the Kyrgyz legal order and the deletion of the provisions guaranteeing access to effective remedies in cases of violation of human rights and fundamental freedoms.

The opinion was adopted by the Venice Commission at its October 2016 plenary session.

Republic of Moldova

Ethno-cultural Status for the District of Taraclia

In its Opinion on the Draft Law on the Ethno-cultural Status of the District of Taraclia of the Republic of Moldova (CDL-AD(2016)035), requested by the Moldovan authorities, the Commission examined a proposed special status for the Taraclia district, where the Bulgarian community forms the majority of the population within its borders.

While noting that it was a legitimate aim to protect the linguistic and cultural identity of Bulgarians in Taraclia, the opinion nevertheless concluded that the draft law raised serious issues of legal certainty, as well as of constitutionality (to be ultimately assessed by the Moldovan Constitutional Court) and consistency with the relevant domestic legislation. It failed to a great extent to provide clear, precise and consistent legal definitions and regulations for the proposed ethno-cultural status and the envisaged division of responsibilities between the central authorities and the district.

Moreover, the draft law appeared to bring little added value to the existing legal framework.

The Commission recommended that the Moldovan authorities - with whom the decision to grant or not to grant such status to Taraclia lies - examine the constitutionality of the proposed status and its consistency with the relevant domestic legislation, and to ensure that the implementation of future administrative-territorial reforms will not result in a reduction of the enjoyment of the rights of the persons belonging to national minorities, including Bulgarians in Taraclia.

The opinion was adopted by the Venice Commission at its December 2016 plenary session.

Turkey

State of emergency and the Government's emergency powers

At the request of PACE, the Venice Commission examined the emergency decree laws nos. 667-676, adopted after the failed coup of 15 July 2016 (CDL-AD(2016)037). The opinion strongly condemned the attempted violent overthrow of the government and recognised that the failed coup was a national emergency threatening the life of the nation, warranting extraordinary measures. However, Parliament did not exercise its supervisory functions for over two months and the government was left alone to legislate with emergency decree laws. Despite the large margin of appreciation, limits to the government's emergency powers are set by the Constitution and international law, and the state of emergency should not be protracted.

Measures enacted through the emergency decree laws adopted by the government during that period were excessive: they went beyond the catalogue of emergency measures set in the 1983 Law on the State of Emergency. The legal effects of those measures transcended the emergency period, and introduced some permanent structural changes to the Turkish legislation, which should normally be done through ordinary legislative process.

The decree laws contained lists of thousands of public officials to be dismissed: however, such dismissals had not been individualised and had not been based on verifiable evidence. These mass collective dismissals were based on a very vague concept of connections to the conspiracy. Furthermore, the emergency decree laws did not set a list of criteria for establishing connections to illegal organisations. These criteria were not officially published. There was only an unofficial list, which was extremely long, making it possible to declare nearly anyone as having connections with terrorists. Most importantly, there had been no individualised decisions, referring to the specific situation of each person; the vast majority of dismissals had been ordered by lists attached to the decrees, which only contained names. The opinion also noted that mass dismissals had not even been accompanied by minimal due process guarantees.

The government simplified rules for criminal investigations for terrorism-related activities, but certain measures (such as extending the time-limit for detention in custody without judicial review for up to 30 days) were clearly excessive, while other measures (in particular those limiting confidential contacts of a detainee with a lawyer) should be applied with caution.

The opinion finally expressed serious concern over the seeming lack of effective domestic remedies against mass dismissals of those public servants, whose dismissals had been ordered directly by the decree laws.

The opinion was adopted by the Venice Commission at its December 2016 plenary session.

Legal framework of curfews

An earlier opinion on the Legal Framework governing curfews in Turkey (CDL-AD(2016)010), requested by the PACE, examined, in the light of Turkey's obligations under international law, in particular the ECHR, the legal basis for the decisions by which curfews had been imposed, since August 2015, in certain towns and districts in South-East Turkey.

The opinion, adopted at the June plenary session, recognised the scale and complexity of the challenges facing the Turkish authorities in their efforts to combat terrorism. It stressed that while it is a legitimate aim and a state's duty to protect its citizens from terrorist attacks, it is also crucial in a democratic society to strike the right balance between security needs and the exercise of rights and freedoms, showing due regard for the requirements of the rule of law.

Despite the seriousness of the situation they were facing, the Turkish authorities had made the choice not to declare a state of emergency to engage in the security operations they considered necessary, although these operations and related measures (including curfew decisions) inevitably entail restrictions to rights and freedoms. The curfews imposed since August 2015 had thus not been based on the constitutional and legislative framework which specifically governs the use of exceptional measures in Turkey, including curfews, but on the Provincial Administration Law, which gives wide powers to local governors but does not contain any reference to curfews.

The opinion concluded that the Provincial Administration Law and the decisions themselves did not meet the requirements of legality. The opinion recommended that the Turkish authorities no longer use the Provincial Administration Law as a legal basis for curfews and ensure that all emergency measures including curfews be carried out in compliance with the constitutional and legislative framework for exceptional measures in force in Turkey and the relevant international standards; to ensure that, when a state of emergency is formally declared, all related exceptional measures, including curfew, be subject to an effective review

of legality; to provide a clear description, in the State of Emergency Law, of the material, procedural and temporal conditions for the implementation of curfews, including parliamentary and judicial supervision.

Lifting of parliamentary immunities through constitutional amendments

This opinion was requested by Mr Pedro Agramunt, President of the Parliamentary Assembly, and adopted by the Venice Commission at its October 2016 plenary session.

By way of a constitutional amendment of 12 April 2016, the inviolability had been lifted for all pending prosecution requests relating to 139 members of the Turkish Parliament. However, the normal procedure for lifting immunity, which provided ample guarantees, had been kept in place for all future cases. The opposition parties were disproportionately concerned by the amendment. Due to the already difficult situation of the Turkish judiciary, not only prior to the coup but also after it, the lifting of immunity had come at the worst possible moment. The draft opinion welcomed that only inviolability was abrogated while non-liability for statements made in parliament was maintained. Nevertheless, most of the files for which inviolability was removed by the amendment concern offences related to speech, although speech by members of parliament outside parliament, related to offences such as insulting the President, insulting a public officer, terror propaganda or incitement to hatred.

The European Court of Human Rights had found numerous violations of the right to freedom of expression in Turkey and the Commission's opinion on certain articles of the Turkish Penal Code (CDL-AD(2016)002), had concluded that these articles provided for excessive sanctions and that they had been applied too widely by the Turkish courts. The opinion found that the amendment was not proportionate. Instead of simplifying its procedure for lifting immunity, the Turkish Parliament completely removed all guarantees for the MPs concerned. The amendment was a temporary, "one shot", *ad hoc* and *ad homines* constitutional legislation, concerning 139 individually identifiable deputies. This constituted a misuse of the constitutional amendment procedure. Governments must fight terrorism, but they must do so on the basis of the rule of law. The workload of Parliament could not be an excuse for also removing the appeal to the Constitutional Court against the lifting of immunity.

Fundamental rights

Albania

Restitution of property

At the request of the Constitutional Court of Albania the Commission prepared an *amicus curiae* brief on the conformity of the Law no. 133/2015 "On the treatment of property and finalisation of the process of compensation

of property” with the requirements of Article 1, Protocol No. 1 ECHR” and related case-law. This *amicus curiae* brief was adopted by the Venice Commission at its October 2016 plenary session (CDL-AD(2016)023).

The question raised by the Constitutional Court was whether or not Law no. 133/2015 “*On the treatment of property and finalisation of the process of compensation of property*” was in conformity with the requirements of Article 1 of Protocol No. 1 to the European Convention on Human Rights and the respective case-law of the European Court of Human Rights.

The restitution of property issue was a longstanding one in Albania, which had led to administrative or judicial decisions that in turn had led to several different situations: (1) Final administrative or judicial decisions containing a specific amount of compensation to be granted, but which had not yet been enforced, indisputably raised a “legitimate expectation” and would not be reassessed under Law no. 133/2015. There was no “interference” in these cases, within the meaning of Article 1 of Protocol No. 1 to the ECHR, as long as these decisions were duly enforced; and (2) Decisions determining restitution or compensation only on the surface and not on financial worth – did not create a clear legitimate expectation.

Law no. 133/2015 introduced a new compensation scheme, which changed the evaluation method that could lead to lower compensation. Even if lower compensation cannot be qualified as formal expropriation, it could qualify as “*other interference*” under Article 1 of Protocol No.1 to the ECHR. But, since the interference had a clear legal basis in Law no. 133/2015, there seemed to be a sufficiently clear and detailed legal basis for the interference at issue. It also seemed to pursue a legitimate aim, since Law no. 133/2015 aims to effectively finalise the process of treatment of property through recognition and compensation. Taking into consideration the various problems of an effective completion of restitution and compensation in Albania, the intentions of this Law also appeared to be in the public interest within the meaning of Article 1 of Protocol No. 1 to the ECHR. In addition, the interference could be considered proportionate if the financial fund of 50 billion Albanian Leks attributed to the compensation scheme over a period of 10 years had been carefully determined in the light of the state budget as a whole and the Albanian GDP.

Republic of Moldova

Powers of law enforcement agencies in combating the cybercrime

At the request of the Moldovan authorities, the Commission adopted at its December session the Joint Opinion on draft law No. 161 amending and completing existing legislation in the field of combating cybercrime (CDL-AD(2016)039). The Opinion was prepared jointly with experts from the Cybercrime Division, the Human

Rights National Implementation Division and the Media Co-operation Unit of the Directorate General of Human Rights and Rule of Law (DGI) of the Council of Europe.

The opinion concluded that - provided its recommendations were properly taken into account, and the draft law’s provisions were adequately correlated with relevant provisions subject to other pending legislative processes - the proposed amendments would improve the Moldovan legislation concerned and contribute to aligning it further to applicable standards.

In order to meet those standards, the opinion recommended that the law *inter alia* provide for: appropriate safeguards for the grounds, procedure and deadlines to authorise a search, and the execution of the search; precise rules for the screening of the data obtained through surveillance, for storing and the destruction of such data; increased clarity with regard to data retention obligations. The opinion also recommended revising, in line with the applicable international standards, the criminal provisions on «child pornography» and the obligation on doctors to report in the case of evidence of child victims of sexual abuse; to ensure an accurate incrimination of the material facts involving illegal access to computer systems; to bring the provisions on Internet access blocking fully into conformity with fundamental rights and safeguards.

Montenegro

Minority rights

The draft law on minority rights and freedoms of Montenegro, already examined by the Commission in 2015, had been revised by the Ministry of Human and Minority Rights of Montenegro and transmitted to the Commission for an assessment of its compliance with the 2015 recommendations.

At its June plenary session, the Commission took note of the Secretariat Memorandum (CDL-AD(2016)022), which concluded that almost all key recommendations contained in the 2015 opinion had been addressed, as follows: according to the revised draft, *ex officio* members of the minority councils cannot take part in the election of the other members of the councils; the composition of the Management Board of the Minority Support Fund has been amended to ensure that each minority council will have its representative on the Management Board; eligibility criteria/incompatibilities for the Management Board and the Director of the Minority Fund, which the Venice Commission had considered excessive, have been excluded; a 30% cap on the operational expenses of the Fund has been introduced, as a way to prevent unlimited discretion of the Board over the allocation of money.

The recommendations on increased clarity notably concerning the functions and institutional position of the Centre for Minority Culture and on entrusting the Management Board of the Fund with the power to prescribe project evaluation modalities and required

forms and documentation had not been addressed. In the absence of specific information on the newly established Council for Minority Nations and Other National Minority Communities, the Commission reserved its position.

Poland

Amended Police Act (secret surveillance and metadata collection)

The Opinion on the Act of 15 January 2016 amending the Police Act and certain other Acts of Poland (CDL-AD(2016)012), was drawn up at the request of the Monitoring Committee of PACE and adopted by the Venice Commission at its June 2016 session. The opinion focused on the different surveillance techniques employed by the security services under the amended legislation. The Police Act had been amended following a 2014 judgment of the Constitutional Tribunal of Poland; while some of the amendments followed the recommendations contained in that judgment, the amended Act still left room for abuse of surveillance powers. The opinion first examined Article 19 of the Police Act, which regulated “classical” surveillance methods (such as wire-tapping). It recommended elaborating on the principle of proportionality to the effect that:

- secret surveillance should be employed only in the most serious cases,
- the courts should examine specific facts, and
- there should be a probability that the surveillance may bring important information.

The law should exclude explicitly any possibility of surveillance of communications clearly covered by lawyer-client privilege, and describe conditions in which it is possible to obtain access to the communications of those who are not themselves suspected of any criminal acts.

It was also recommended that Article 20c concerning the collection of metadata (such as location of mobile devices, telephone numbers dialled and calls received, web-sites visited etc.) should incorporate the principle of proportionality.

As to the authorisation and oversight procedures, surveillance under Article 19 is most often ordered by a court, which is positive. However, given that the authorisation proceedings take place *ex parte*, they must be supplemented by other mechanisms (privacy advocate, notification and complaints mechanism, *ex-post* review by an independent body). Judicial pre-authorisation for metadata collection may not be practicable (except for the most sensitive types of content-related metadata, such as web-logs, for example). An independent expert body should be required to check the files on metadata collection and apply appropriate remedies.

Russian Federation

Law on “undesirable” foreign and international organisations

The Opinion on the Federal Law No. 129-FZ (Federal Law on Undesirable Activities of Foreign and International Non-Governmental Organisations) was requested by the PACE (CDL-AD(2016)020). The opinion acknowledged the right of States to monitor the activities of NGOs on their territory and to introduce sanctions for associations, in case of violation of relevant regulations. It reiterated however that any sanction must be consistent with the principle of proportionality and in line with the applicable international standards, as enshrined in particular in the European Convention on Human Rights.

The opinion recommended that concrete criteria as to the grounds for including foreign and international NGOs in the list of NGOs the activities of which are deemed “undesirable”, be introduced. Also, the inclusion of an NGO in the list should be decided by a judge and not by the Office of the Prosecutor General. Should the existing procedure, not involving prior judicial review, be maintained, then all procedural guarantees should be clearly indicated: the Office of the Prosecutor General should provide detailed reasons for the inclusion of an NGO in the list, a notification procedure of the concerned NGO should be provided and the possibility of a judicial appeal, with a possibility of a *suspensive* effect of the decision, should be unequivocally indicated.

The opinion, which was adopted by the Venice Commission in its June 2016 plenary session, concluded that the prohibitions imposed on listed NGOs may only be considered acceptable if all the above-mentioned amendments are introduced in the Federal Law - and notably if the decision to include an NGO in the list is taken by a judge or the decision is subject to a meaningful judicial appeal, and is proportionate to the threat the concerned NGO constitutes.

Amended law on the Constitutional Court (the power to verify whether judgments of the European Court of Human Rights are compatible with the Russian Constitution)

Two opinions were prepared in connection with the amendments to the Federal constitutional law on the Constitutional Court of the Russian Federation; they relate to the power of the Constitutional Court to examine whether the Government has to enforce decisions of the international jurisdictions, in particular the European Court of Human Rights. For more details see the Chapter on constitutional justice below (see in particular CDL-AD(2016)016).

“The former Yugoslav Republic of Macedonia”

The Law on protection of privacy and the Law on protection of whistleblowers

The opinion on the Law on protection of privacy and the Law on protection of whistleblowers (CDL-AD(2016)008),

requested by the Macedonian authorities, concerned two laws adopted in 2015 following a scandal caused by a massive illegal wiretapping of public figures, allegedly organised by the Macedonian secret service.

The purpose of the Privacy Law was to stop further publication of the material which had been illegally intercepted; some of that material had already been leaked to the press in 2015, while some remained in private hands. A Special Prosecutor had been appointed to investigate the wiretappings, but the Commission's opinion stressed that this should not deprive the public of its right to know important information "of public interest," which those audiotapes may contain. The law may legitimately punish those responsible for having organised the wiretapping, but not the *bona fide* journalists. Furthermore, it is legitimate to protect the privacy of those targeted by the wiretapping; however, given that the victims of wiretapping were mainly public figures, the existence of a "public interest" in their conversations should be taken as a starting point. Thus, the absolute ban on the publication of such materials is not justified. It should be up to the journalist to decide whether the information contained on the audiotapes is "of public interest" and deserves publication; and, in any event, heavy criminal sanctions (such as imprisonment) should be avoided.

The opinion, adopted by the Venice Commission at its March 2016 plenary session, assessed positively the law on whistleblowers. This law followed a recent trend that provides protection to employees who breach the duty of confidentiality to report an unlawful activity within their institution. The law described very restrictively the conditions in which public disclosure of confidential information was possible, and the opinion recommended being more explicit as to whether and when the protection given to whistleblowers goes beyond labour-law sanctions and covers criminal or civil sanctions.

Turkey

Penal Code and criminal offences related to the freedom of speech

The Opinion on Articles 216, 299, 301 and 314 of the Penal Code of Turkey (CDL-AD(2016)002), requested by PACE, addressed the use of criminal sanctions for "verbal offences" (i.e. related to the exercise of the freedom of expression). This opinion examined not only the wording of the criminal provisions in question, but also the practice of the domestic courts. The opinion concluded that, despite a number of positive amendments already made, the four articles of the Penal Code in question needed either to be repealed, amended or applied in a radically different manner.

Thus, Article 216 (which concerned provoking hatred) should not be used to punish harsh criticism against government policies or mere blasphemy without the element of incitement to violence. Article 299 (insulting the

President of the Republic), having regard to its excessive and growing use, should be repealed. Article 301 (Degrading the Turkish Nation, State of Turkish Republic, the Organs and Institutions of the State) should be redrafted and amended to clarify all the notions it covers. The established criterion in the case-law of the Court of Cassation with respect to membership of an armed organisation (Article 314) should have a strict application. Committing offences on behalf of an armed organisation (Article 220(6)), and aiding and abetting an organisation knowingly and willingly (Article 220(7)) should not be sentenced under Article 314, but other, separate sanctions should be applied to those crimes.

The opinion was adopted by the Venice Commission at its March plenary session.

The Internet Law

The Opinion on the Internet Law (CDL-AD(2016)011), requested by PACE, analysed Law No. 5651 regulating publications on the Internet and combating crimes committed by means of such publication. The opinion focused on the powers of the Presidency of Telecommunication to issue orders blocking Internet platforms without prior judicial review, as well as a number of alternative procedures for access-blocking/removal of content on different grounds. The opinion also examined the crucial role played by the Constitutional Court in this sphere, both by annulling some provisions of the Internet Law, and by examining individual applications concerning restrictions of Internet freedoms.

The opinion distinguished between different types of access blocking procedures; it found that, while in one of the procedures the access-blocking measure appeared to be a "precautionary measure" taken within criminal proceedings, the other three procedures appeared to be fullyfledged autonomous measures through which substantive decisions on access blocking may be taken without a hearing and without even informing the provider and do not depend on any subsequent criminal or civil substantive procedure.

The opinion, which was adopted by the Venice Commission at its June plenary session, recommended that these three procedures be considered as precautionary, with the consequence that the urgent decision to remove the content of a webpage or to block a website must be considered as temporary and must be swiftly confirmed by a judge following a procedure focused on the substance of the question and respecting procedural rights of the provider, failing which the decision becomes automatically null and void.

Should those three procedures be maintained as fully fledged, autonomous procedures, then appropriate procedural guarantees should be introduced: the judge should be given sufficient time to make a thorough and reasoned proportionality assessment of the interference, a hearing should be held and an appeal against the

decisions on access blocking before a higher court should be possible. Furthermore, a list of less intrusive measures should be introduced in the law and access-blocking should become a measure of last resort. The opinion also recommended that the system of access-blocking by a decision of the Presidency of Telecommunication without prior judicial review should be reconsidered.

Ukraine

Freedom of peaceful assembly

At the request of the *Verkhovna Rada* (Parliament) of Ukraine, the Venice Commission jointly with the OSCE/ODIHR, examined two draft laws on Guarantees for Freedom of Peaceful Assembly of Ukraine (CDL-AD(2016)030), containing similar provisions, from both a structural and substantive point of view. The opinion became the fifth opinion of the Venice Commission concerning freedom of assembly in Ukraine; it was adopted by its October session.

There was a legislative gap in the Ukrainian legislation concerning the organisation and conduct of assemblies. It was up to the Ukrainian authorities to fill this gap, either by enacting a specific law on assemblies or by amending the existing legislation in order to introduce rules on assemblies; nonetheless, the substance of the observations and recommendations of the Venice Commission remained applicable in either case.

The Joint Opinion mainly recommended that some clarification be made concerning the definition of assembly in the draft laws, that the concept of spontaneous assembly be introduced, that content-based restrictions on peaceful assemblies be excluded and that exceptions to the rule that only courts may order restrictions to the freedom of assembly be provided. In addition, the draft laws should set out the conditions under which the law-enforcement bodies may, in a proportionate manner, use force.

Judiciary

Albania

Constitutional reform of the judiciary

The final opinion on Albania examined a comprehensive constitutional reform of the judiciary (CDL-AD(2016)009), including the vetting of judges and prosecutors and a deep reorganisation of the High Judicial Council and the High Prosecutorial Council. The Venice Commission approved the general design of the constitutional reform, while making a number of important recommendations. The Venice Commission also prepared an *amicus curiae* brief for the Constitutional Court of Albania, in connection with the vetting law – one of the first legislative acts implementing new provisions of the Constitution (CDL-AD(2016)036). For more details on this reform, see the section above on “Constitutional reforms”.

Kazakhstan

Code of judicial ethics

The Opinion on the draft Code of judicial ethics of Kazakhstan (CDL-AD(2016)013), was requested by the Supreme Court of Kazakhstan; it analysed a new code, prepared in 2016 by the Union of Judges of Kazakhstan to replace a previous Code of 2009. The draft Code regulated the conduct of judges in a professional context, in private and in public spheres.

Breaches of the Code might possibly lead to the disciplinary liability of judges, the opinion therefore also dealt with the constitutional law on the system of courts and the status of judges of 2000. This law provided for disciplinary liability in cases of violation of ethical norms. Apparently, that was meant to refer to the Code of Ethics, but the law itself should regulate such matters in more detail.

According to the opinion adopted by the Venice Commission at its June 2016 session, the law should also indicate the status of the findings of the Ethics Commissions (i.e. bodies created by the Union of Judges to examine cases under the Code) in the proceedings before the Disciplinary Commissions (disciplinary bodies established by the law). As to the material rules regulating judges’ behaviour, the Code in some respects seemed to go too far. Although the Code was supposed to apply also to retired judges, many of its rules are irrelevant or unnecessary in respect of a retired judge. The opinion also recommended clarification of certain dangerously vague notions contained in the Code.

Republic of Moldova

Individual liability of judges for their decisions

At the request of the Constitutional Court of the Republic of Moldova, the Commission prepared an *amicus curiae* brief on the right to recourse action by the State against judges (CDL-AD(2016)015). (See under Chapter III. Constitutional justice)

2. Transnational activities

Reports and studies

Rule of Law Checklist (CDL-AD(2016)007)

The Venice Commission adopted the Rule of Law Checklist at its March 2016 plenary session. It had drafted this document following the adoption of the Report on the Rule of Law in 2011, which identified common features of the Rule of Law, *Rechtsstaat* and *Etat de droit*: legality; legal certainty; prevention of abuse of powers; equality before the law and non-discrimination; access to justice.

The Checklist contains detailed questions developing these principles, thus enabling an objective, thorough,

transparent and equal assessment of the Rule of Law in any given country. The Checklist is a practical tool at the disposal of various actors, such as parliaments and other State authorities, civil society and international organisations. It could be used by the European Union when applying the mechanism provided for by Article 7 of the Treaty on European Union: prevention of the risk of a serious breach by a Member State of the values common to the Member States and sanctioning of such breaches. The Checklist focuses on public power and the prevention of the abuse of public power, but also stresses the importance of complying with the Rule of Law principles in private activities when public functions are outsourced to private actors. The benchmarks contained in the checklist put the emphasis on legal issues, but it is understood that the Rule of Law may only function in an enabling environment, where there is a supporting legal and political culture.

There is a very close interrelation between the Rule of Law and the other two Council of Europe pillars: democracy and respect for human rights.

The assessment based on the Rule of Law checklist will not merely consist of counting the right answers, but provide a global overview of the situation, while focusing on the respect for the most important criteria.

The Rule of Law Checklist was endorsed by the Committee of Ministers as well as by the Congress of Local and Regional Authorities of the Council of Europe. The Parliamentary Assembly is preparing a report on the issue.

Conferences organised by the Commission

International Conference on “Global Constitutional Discourse and Transnational Constitutional Activity”, Venice, 7 December 2016

The conference was co-organised by the Venice Commission, International IDEA and IACL. Each co-organiser was responsible for its panel. It appeared clearly from the discussions that the Venice Commission had a specific and unique role to play among the transnational actors, which came closer to that of a Constitutional Court than that of a constituent legislator. The Venice Commission was also part of a monitoring process, due to its interaction with the Parliamentary Assembly and other political actors.

One of the conclusions drawn from the discussions was that, while a diversity of constitutional cultures certainly exists, there is a common constitutional language which makes a global constitutional discourse possible. It was essential that these constitutional cultures be based on the principles of constitutional democracy.

Other conferences and meetings

In 2016 the Venice Commission participated in the following events in the field of democratic institutions and human rights:

Azerbaijan

- Baku, 31 May 2016 – Round table on defamation, organised by the Council of Europe within the PCF;

Bosnia and Herzegovina

- Sarajevo, 21-22 June 2016 - International forum “Dialogue of courts - a tool for harmonisation of judicial practice”, organised by the Council of Europe with the support of the Ministry of Foreign Affairs of Norway;
- Sarajevo, 28-29 September 2016 – Conference on “State and Religions in Bosnia and Herzegovina and Austria: A Legal Framework for Islam in a European Context”, organised by the Austrian Federal Ministry for Europe, Integration and Foreign Affairs.

Moldova

- Strasbourg, 14 December 2016 - EU-Moldova Parliamentary Association Committee

Romania:

- Bucharest, 31 October 2016 - Conference on “Parliamentary and judicial control of security and intelligence agencies: Romania and EU”, organised by Friedrich-Ebert-Stiftung Romania and the National Union of Romanian Judges.

Russian Federation:

- Moscow, 27 May 2016 - “Judicial power during the formative phase of statehood building based on the rule of law”, organised by the State Higher School of Economics;
- Moscow, 1-2 December 2016 - VIth Congress of comparative law on “Modern judiciary: international and national dimensions”, organised by the Institute of Legislation and Comparative Law under the government of the Russian Federation

International events by international organisations:

- Brussels, 26 February 2016 - CEPS (Centre for European Policy Studies) Ideas Lab 2016 - Session on «Rule of Law Threats in the EU: The Challenges of a New Rule of Law Mechanism», organised by CEPS;
- Warsaw, 11-12 April 2016 - Panel meeting of the OSCE-ODIHR on the revision of the joint guidelines on freedom of assembly;
- Brussels, 29 June 2016 - European Economic and Social Committee - Public hearing on the European control mechanism on the Rule of Law and fundamental rights;
- Prague, 10-11 November 2016 - Conference on “Public service media and democracy”, co-organised by the Council of Europe and the European Broadcasting Union.



III. Constitutional justice

1. Opinions and conferences / meetings⁸

Albania

Amicus Curiae brief on the restitution of property in Albania (CDL-AD(2016)023)

Cf. Chapter II.

Ceremony on the occasion of the adoption of the constitutional reform on justice (Tirana, 28 July 2016)

On 28 July 2016, Mr Gianni Buquicchio, President of the Venice Commission, participated in the ceremony organised by the *Ad hoc* Committee on Justice System Reform of the Albanian Parliament on “*Justice reform: the challenges of today, the guarantee of the future*”. The ceremony was held at the Presidential Palace in Tirana, in the presence of the highest national authorities, the EU and US Ambassadors.

Armenia

XXIth Yerevan International Conference on “The role and importance of constitutional courts decisions in addressing legislative gaps and legal uncertainty” (Yerevan, 20-23 October 2016)

On 20-23 October 2016, a Conference on “*The role and importance of constitutional courts decisions in addressing legislative gaps and legal uncertainty*” co-organised by the Constitutional Court of Armenia, the Venice Commission and the Conference of the Constitutional Control Organs of the Countries of New Democracy took place in Yerevan.

This Conference was financed by the CoE/EU programme: “*Programmatic Co-operation Framework in the Eastern Partnership Countries*.”

Bosnia and Herzegovina

Cf. Chapter IV.

Indonesia

Visit of the Chief Justice of the Constitutional Court of the Republic of Indonesia (Strasbourg, 3 October 2016)

On 3 October 2016, HE Mr Arief Hidayat, Chief Justice of the Constitutional Court of the Republic of Indonesia

visited Strasbourg to meet with the Venice Commission, in line with the outcome of the 3rd Congress of the AACC, which focused on how a Constitutional Court could play a more significant role in upholding and protecting citizens’ rights.

Georgia

Opinion on the Amendments to the Organic Law on the Constitutional Court and to the Law on Constitutional Legal Proceedings (CDL-AD(2016)017)

This opinion was requested by the President of Georgia, when the amendments had already been adopted and he disposed of only 10 days to decide whether to enact the law or to veto it. Under the circumstances, the rapporteurs had to prepare a preliminary opinion within one week. This opinion welcomed the new election system for the President of the Court, which ensured a real choice for the judges, the introduction of an automatic case-distribution system and the entry into force of acts of the Constitutional Court upon their publication on the website of the Court.

However, other provisions needed to be reconsidered in order to ensure the proper functioning of the Court. A strict limitation of the term of the judges should only be introduced together with a constitutional amendment providing that the outgoing judge continue in office until the new judge enters into office; a provision which reduced the powers of the judges during the last three months of their term should be removed; the requirement of a minimum of six votes to take decisions in the plenary session should be lowered and a provision enabling a single judge to refer a case to the plenary session should be amended. During the examination of these amendments, the rapporteurs noted other problems in the legislation, which should be addressed in future amendments.

Following the publication of the preliminary opinion, the President of Georgia had vetoed the amendments and proposed certain changes to Parliament, which the latter had accepted. The revised amendments had entered into force. These changes concerned the three months’ rule limiting the power of outgoing judges and the procedure for rejection by the plenary of requests from an individual judge to deal with a case in the plenary. The increased quorum and voting majority in the plenary had been maintained only for cases relating to organic laws.

International conference entitled “Constitutional justice in transitional democracy: success and challenges of

7. The full text of all adopted opinions can be found on the web site www.venice.coe.int.

8. Information on activities in the field of constitutional justice and ordinary justice concerning Peru can be found in Chapter V.

constitutional review in Georgia and Eastern Europe” (Batumi, 10-11 September 2016)

On 10-11 September 2016, a delegation of the Venice Commission participated in the international conference on “*Constitutional justice in transitional democracy: success and challenges of constitutional review in Georgia and Eastern Europe*” held in Batumi, Georgia. This event was organised by the Constitutional Court of Georgia, on the occasion of its 20th anniversary together with the Venice Commission under the Programmatic Co-operation Framework (PCF); GIZ and Human Dynamics.

The aim of this conference was to discuss and take stock of the developments made with respect to the functioning of institutions (predominantly constitutional courts) which guarantee the rights and freedoms of citizens on the domestic level.

Presentations addressed the role of the European Court of Human Rights with respect to constitutional courts and *vice versa*, the importance of a dialogue between them and their mutual support; the 20-year experience of the Constitutional Court of Georgia; the experience of constitutional courts of Azerbaijan, Kazakhstan and Ukraine; political intervention in constitutional justice; crisis and their effect on human rights protection and the importance of securing the supremacy of the constitution.

Jordan

Conference on “Arab Constitutional Courts and Councils: Possible Reforms and Challenges in Light of Regional Changes” (Dead Sea, 28-29 February 2016)

On 28-29 February 2016, Mr Gianni Buquicchio, President of the Venice Commission, and a delegation of the Venice Commission participated in the Conference on “Arab Constitutional Courts and Councils: Possible Reforms and Challenges in Light of Regional Changes” held at the Dead Sea in Jordan. This Conference was co-organised by the Venice Commission and the Constitutional Court of Jordan within the framework of the Regional Rule of Law programme Middle East/North Africa run by the Konrad Adenauer Stiftung.

The Conference was intended for the members of the Union of the Arab Constitutional Councils and Courts (UACCC). On the basis of a co-operation agreement between the Venice Commission and the UACCC, signed on 24 June 2008 in Cairo, the Venice Commission includes the case-law of UACCC Courts and Councils in the CODICES database.

Kosovo

Information seminar on cooperation with the Venice Commission (Pristina, 8 November 2016)

On 8 November 2016, an information seminar took place in Pristina, which was organised by the Venice

Commission together with the Council of Europe Office in Pristina for the Constitutional Court of Kosovo as well as the Ministry of Justice of Kosovo.

The aim of this seminar was to explain how co-operation with the Venice Commission works, how member states can request opinions and how constitutional courts may turn to the Venice Commission for an *amicus curiae* brief.

Kyrgyzstan

Joint opinion by the Venice Commission and the OSCE/ODIHR on the introduction of amendments and changes to the Constitution of the Kyrgyz Republic (CDL-AD(2016)025)

This opinion was requested by Mr Shikmamatov, Acting Chairperson of the Committee on Constitutional Legislation, State Structures and Regulations of the Kyrgyz Parliament, the OSCE/ODIHR had invited the Venice to prepare a preliminary joint opinion on the draft amendments. This opinion was endorsed by the Venice Commission at its October 2016 plenary session.

The draft amendments related to constitutional provisions on the status of international human rights treaties and their position in the hierarchy of norms, the separation of powers, the dismissal of members of Cabinet, the manner of appointing/dismissing heads of local state administration, the independence of the judiciary and of judges as well as the roles of the Supreme Court, and of the Constitutional Chamber, among others. The draft amendments would negatively impact the balance of powers by strengthening the powers of the executive, while weakening both the parliament and the judiciary. The role of the Constitutional Chamber, as an effective organ of constitutional control, would be seriously affected.

Some of the proposed amendments raised concerns with regard to key democratic principles, in particular the rule of law, the separation of powers and the independence of the judiciary. This concerned notably reference to vaguely defined “highest values” in the Constitution, which could be used to restrict human rights and fundamental freedoms. The Provisions on the appointment of the judges of the Constitutional Chamber and the Supreme Court would give wide discretion to the President in their selection. Provisions on mandatory waivers of judges’ privacy rights were problematic. The removal of provisions obliging the Kyrgyz authorities to restore the rights of persons following decisions of international human rights bodies which confirm violations of human rights and freedoms, was an important step back.

As already recommended in the 2015 Joint Opinion, the constitutional procedure for amendments should be followed (adoption by a two-thirds majority and only following at least three readings with a two months’ interval between).

Latvia

International Conference on “Judicial Activism of Constitutional Courts in a Democratic State” (Riga, 26-27 May 2016)

On 26-27 May 2016, the Constitutional Court of the Republic of Latvia together with the Venice Commission organised an International Conference on “*Judicial Activism of Constitutional Courts in a Democratic State*” in celebration of the Court’s 20th anniversary.

The speakers addressed the role of constitutional courts and judicial activism from the perspective of their respective countries’ experience and the specific role of the European Court of Human Rights and that of the CJEU were also presented.

Participants agreed that judicial activism, in its positive sense, has a clear and legitimate constitutional basis whereby constitutional courts carry out their rightful role as the guarantors of the constitution. Participants also agreed that legitimacy is key in the acceptance by society of constitutional as well as international and European courts’ judgments. The limit of the competence of constitutional courts is the constitution and for international or European courts, it is international or European treaties. There are several elements at stake for constitutional courts, more specifically that constitutional review must be strict if the legislator gets involved in defining fundamental rights, the protection of minority interests must be taken into account and other safeguards that the constitutional courts must ensure for a democratic system to function properly.

This activity was organised with the support of the Programmatic Co-operation Framework (PCF), which is a programme financed by the European Union and implemented by the Council of Europe.

Moldova, Republic of

Amicus curiae brief on the right to recourse action by the state against judges (CDL-AD(2016)015)

This *amicus curiae* brief was requested by Mr Alexandru Tănase, President of the Constitutional Court of the Republic of Moldova, and adopted by the Commission at its June 2016 plenary session.

The question raised in the request by the Constitutional Court (with respect to Article 27 of the Moldovan Law no.151 on Government Agent) was whether a judge could be held individually liable for a judgment rendered on the national level, which was appealed to the European Court of Human Rights (ECtHR) and resulted in a finding of a violation of the European Convention on Human Rights (ECHR) by the member State, either by a judgment, a friendly settlement or a unilateral declaration, without an actual finding of guilt by a national court against the individual judge concerned; or whether

this was an inadmissible interference in the procedural guarantees of judges, in breach of the principle of the independence of judges.

The *amicus curiae* brief concluded that although judges’ liability was admissible, it could only be raised where there was a culpable mental state (intent or gross negligence) on the part of the judge. Therefore, liability of judges brought about by a negative judgment of the ECtHR should be based on a national court’s finding of either intent or gross negligence on the part of the judge and that a judgment of the ECtHR cannot be used as the sole basis for judges’ liability. Where liability of judges was brought about by a friendly settlement of a case before the ECtHR or by a unilateral declaration acknowledging a violation of the ECHR, this must also be based on a finding by a national court of either intent or gross negligence on the part of the judge.

The Commission was informed that the Constitutional Court of the Republic of Moldova had rendered a judgment on 25 July 2016 on the constitutionality of Article 27 of the Moldovan Law no.151 on Government Agent. This judgment took most of the recommendations made by the Commission in its *amicus curiae* brief for this Court on the Right of Recourse by the State against Judges into account.

The Constitutional Court held that recourse action in itself was not contrary to the Constitution, as long as the independence of judges was guaranteed, since judicial independence is a prerequisite for the rule of law and a fundamental guarantee of a fair trial. It found that Article 27 exceeds the general framework of the liability of judges, because it does not require the existence of a national judicial decision rendered in a separate trial proving the individual’s guilt, but is only based on a judgment by the European Court of Human Rights. The Constitutional Court therefore declared Article 27 only constitutional to the extent that recourse action is based on a sentence handed down by separate judicial proceedings at the national level, finding the individual has committed actions or omissions intentionally or through gross negligence, which contributed to the violation of the European Convention on Human Rights.

Poland

Opinion on constitutional issues addressed in amendments to the Act of 25 June 2015 on the Constitutional Tribunal of Poland (CDL-AD(2016)001)

This opinion was requested by Mr Witold Waszczykowski, Minister for Foreign Affairs of Poland, and adopted by the Commission at its March 2016 plenary session.

The constitutional crisis in Poland had started with a provision in the June 2015 Act on the Constitutional Tribunal, which allowed the 7th *Sejm* to elect judges for all vacancies at the Tribunal that opened in 2015. In October 2015, the 7th *Sejm* elected five judges but only three of

these vacancies occurred during the mandate of the 7th *Sejm*. In December, the 8th *Sejm* elected five other judges. This resulted in overlapping mandates of three “October judges” and three “December judges”. As the problem of the composition of the Tribunal was intrinsically linked to the amendments of 22 December, the opinion also had to deal with this issue.

The main problems of the amendments were the introduction of a quorum of 13 out of 15 judges for the full bench, the requirement of a two-thirds majority for decisions by the full bench, a rule that the dates of hearing should follow the order of registration of cases, a minimum delay of three months before a hearing could be held, the introduction of disciplinary proceedings against the judges of the Tribunal by the President of Poland and the Minister of Justice and the dismissal of the judges by Parliament rather than the Tribunal itself.

The opinion established that these provisions, notably taken together, were not in line with European and international standards and would risk blocking the Tribunal. On 9 March 2016, the Tribunal - composed of the 12 sitting judges - had found the amendments to be unconstitutional. The Government had indicated that it would refuse to publish that judgment. For the issue of the appointment of judges, a solution had to be found on the basis of the judgments of the Tribunal. The rapporteurs proposed changes to the opinion, which also called for the publication of the 9 March judgment.

Opinion on the Act on the Constitutional Tribunal of Poland (CDL-AD(2016)026)

This opinion was requested by Mr Thorbjørn Jagland, Secretary General of the Council of Europe, to examine rapidly the draft Act on the Constitutional Tribunal of Poland, which had been adopted by the *Sejm* in the second reading on 7 July 2016. This opinion was adopted by the Commission at its October 2016 plenary session.

As compared to the Amendments to the previous Act, adopted in December 2015, which had been the object of the Commission’s opinion in March, the new Act contained some improvements, notably the majority required for taking decisions in the Constitutional Tribunal had been reduced from two-thirds to a simple majority, the quorum had been reduced from 13 to 11 judges and the President of Poland and the Minister of Justice could no longer initiate disciplinary sanctions against the judges of the Tribunal. However, several measures of the new Act, individually and cumulatively, could slow down the work of the Tribunal. Some issues endangered the independence of the Tribunal and its position as final arbiter in constitutional matters. Three judges had the possibility to refer any case to the full bench without the possibility for the full bench to reject such a request. Four judges could postpone a case for up to six months. The Prosecutor General could block important cases through his or her absence

from hearings. The Constitution gave the judges a role in selecting their President but introduced a system whereby candidates who did not have sufficient support from the judges could be appointed. However, the main concern was that the Act gave the executive the power to control the validity of the judgments of the Tribunal. The President of the Tribunal had to make an application to the Prime Minister for the publication of its judgments. Since 9 March 2016, the Prime Minister had already refused to publish judgments and when the Prime Minister did publish judgments she did so on the basis of a provision of the new Act which declared them to be illegal. Finally, the new Act forced the President of the Tribunal to assign cases to the so-called “December judges”. The President still refused to accept the oath of the judges who had been legally elected in October 2015.

Members expressed their dismay about the unparalleled attacks against the Constitutional Tribunal and the attempts of the current majority to change the Constitution without a constitutional majority. European fundamental principles such as the rule of law and the separation of powers also applied to Poland and had to be applied by all state powers, including the Constitutional Tribunal itself. The position of constitutional court judges was becoming delicate not only in Poland but also in other countries.

Conference on “The Constitutional Court as Guardian of Constitutional Values” (Gdansk, 17 October 2016)

On 17 October 2016, the President of the Venice Commission, Mr Gianni Buquicchio, was in Gdansk to participate in the Conference on “The Constitutional Court as Guardian of Constitutional Values” co-organised by the Constitutional Tribunal of Poland and the Mayor of Gdansk, held in celebration of the 30th anniversary of the Constitutional Tribunal of Poland. In his welcome speech, Mr Buquicchio informed the participants about the adoption of the Commission’s Opinion on the Act on the Constitutional Tribunal on 14 October 2016.

Russian Federation

Opinions on the Amendments to the Federal Constitutional Law on the Constitutional Court (CDL-AD(2016)016)

Two opinions were prepared in connection with the amendments to the Federal constitutional law on the Constitutional Court of the Russian Federation, at the request of the PACE in 2015⁹. They relate to the power of the Constitutional Court to declare decisions of international courts, notably of the European Court of Human Rights (further: ECtHR), as “unenforceable”, based on the incompatibility of such decisions with the “fundamentals of the Russian constitutional system” and the “human rights regime established by the Constitution of the Russian Federation.”

9. Interim opinion CDL-AD(2016)005 and final opinion CDL-AD(2016)016, adopted respectively in March and in October 2016.

According to the Venice Commission, a possible declaration of unenforceability of a judgment of the ECtHR violates Article 46 of the European Convention on Human Rights, which is an unequivocal legal obligation and includes the obligation for the State to abide by the interpretation and the application of the Convention made by the Court in cases brought against it. The interpretation of the Convention by the ECtHR, as reflected in its decisions/judgments, is as compulsory for the States parties as the decisions/judgments themselves and the Convention per se. The freedom of choice as to the execution of judgments refers to the manner of execution, which is not absolute. The State has to execute; only the modality of execution may be at States' discretion, although even this discretion is not unfettered.

In the view of the Venice Commission, should the 2015 amendments be maintained, the Federal Constitutional Law on the Constitutional Court, as modified, would however need to be amended. At least the following measures should be taken:

- The power and any reference to the power of the Constitutional Court to rule on the “enforceability” of an international decision should be removed from the Law and “enforceability” be replaced by “compatibility with the Russian Constitution of a modality of enforcement, proposed by the Russian authorities, of an international decision”; this power should be excluded in respect of a specific measure of execution indicated by the ECtHR itself in its judgment;
- The Law should make clear that individual measures of execution contained in judgments of the ECtHR may not be the object of an assessment of constitutionality;
- New Article 1044 paragraph 2 and Article 106 part 2 of the Federal Constitutional Law on the Constitutional Court should be removed;
- Provision should be made in the Law for the duty of the Russian authorities, if the Constitutional Court rules that a measure of enforcement is incompatible with the Constitution, to find alternative measures for executing the international decision (including by the way of legal and/or even constitutional amendments)
- the Law should be amended to ensure that any proceedings before the Constitutional Court involving the assessment of the constitutionality of a measure of execution of an international decision should necessarily involve the individual who acted as applicant before the relevant international court or body.

Turkey

Opinion on the suspension of Article 83 of the Constitution of Turkey (Parliamentary inviolability) (CDL-AD(2016)027)

Cf. Chapter II.

Ukraine

Opinion on the draft law on the Constitutional Court of Ukraine (CDL-AD(2016)034)

This opinion was requested by Mr Petro Poroshenko, President of Ukraine, and adopted by the Commission at its December plenary session.

The draft law on the Constitutional Court had been prepared following amendments to the Constitution of Ukraine. The draft opinion welcomed a number of positive provisions of the draft law, notably the competitive selection of judges; the acceptance of the judges' oath before the Court itself; time limits for the appointment and election of the judges; the dismissal of the judges only by the Court itself; the removal of the dismissal for the “breach of oath”, time limits for proceedings; automatic assignment of cases to boards and the possibility for the Court to postpone the invalidity of the law found unconstitutional. The three appointing authorities, the President of Ukraine, Parliament and the Congress of Judges would establish screening committees that would establish lists of recommended candidates. The draft opinion recommended regulating more clearly the establishment of these committees.

The draft law excluded persons who had been politically active during the two years prior to their candidacy from becoming judges. The opinion recommended removing this limitation. In a democracy, political activity was positive and should not be discouraged. If there were doubts as to the independence of a candidate, then it was for the screening committees not to recommend that person. The opinion also recommended making it mandatory for a Senate wishing to deviate from previous case-law to relinquish jurisdiction to the Grand Chamber. The introduction of a normative constitutional complaint - against laws only - was a step in the right direction. While this could not replace a full constitutional complaint, it was positive that the draft law allowed the Court also to decide that the application of a law was unconstitutional in cases when it found that the challenged law itself was constitutional. In order to focus on the main recommendations and taking into account a revised version of the draft law, some changes were introduced in the draft opinion.

Meeting on “De-communisation” with the Ukrainian authorities (Strasbourg, 26 January 2016)

On 26 January 2016, a delegation from Ukraine met with Venice Commission and OSCE/ODIHR experts in Strasbourg, France, to discuss the Law on the condemnation of the Communist and National Socialist (Nazi) regimes and prohibition of their symbols and possible amendments to this Law, following the interim opinion adopted by the Venice Commission in December 2015.

No further progress was made on this opinion during 2016. A final opinion will be prepared on the amendments and discussed at one of the next plenary sessions of the Venice Commission.

2. Joint Council on Constitutional Justice (JCCJ)

The Venice Commission co-operates closely with constitutional courts and equivalent bodies in its member, associate member and observer states. These courts meet with the Commission within the framework of the Joint Council on Constitutional Justice.

The Joint Council on Constitutional Justice held its 15th meeting in Venice, Italy (7-8 June 2016). The meeting was opened by Mr Schnutz Dürr, Head of the Constitutional Justice Division of the Venice Commission.

The Joint Council:

- was informed that Ms Juliane Alberini-Boillat's, liaison officer to the Swiss Federal Court, was retiring;
- elected Ms Marjolein van Roosmalen, liaison officer for the Council of State of the Netherlands, Co-President of the Joint Council on Constitutional Justice;
- held exchanges of views with representatives of the regional and linguistic groups co-operating with the Venice Commission and was informed about this co-operation;
- invited the liaison officers to contribute to the Venice Forum;
- was informed about the Constitutional Justice Observatory;
- was informed about activities of and opinions adopted by the Venice Commission in the field of constitutional justice;
- was informed about the participation in and co-organisation of conferences and seminars in co-operation with Constitutional Courts and equivalent bodies (CoCoSems);
- was informed that the working document of the XVIIth Congress of the CECC on «*The role of constitutional courts in the maintenance and application of constitutional principles*» will be published in 2017 in a special issue of the Bulletin on Constitutional Case-Law;
- was reminded that the 4th Congress of the World Conference on Constitutional Justice (WCCJ) will take place in Vilnius, Lithuania on 11-14 September 2017 and that the official website for the event is: <http://www.wccj2017.lt/>;
- was informed about the progress made in updating constitutions and laws on courts (see Status of Updates of constitutions and laws in CODICES (CDL-JU(2016)003).

The meeting was followed by a mini-conference on the topic "Migration". The presentations and the discussions showed that national constitutional courts and the European Court of Human Rights had addressed various aspects of migration over the years, which is a wide-ranging topic, which includes questions such as asylum, deportation, shelter

or freedom of movement. Many of the applicants were in vulnerable situations. Some courts had resorted to interim measures to prevent immediate deportation to places where the migrant's life or physical integrity was in danger. Referendums on immigration were identified as a dangerous tool that could infringe human rights. For EU member States, recent migration movements had shown the limits of the Dublin II Regulation. Courts had to determine admissible distinctions between foreigners and nationals. In many cases, the constitutional basis for deciding on rendering decisions were the principles of equality and non-discrimination, proportionality and human dignity.

All presentations made during this mini conference are published in the proceedings of this event. The papers are also available as individual documents at:

<http://www.venice.coe.int/webforms/events/?id=2079>

3. Bulletin on Constitutional Case-Law and the CODICES database

The Bulletin on Constitutional Case-Law, first published in January 1993, contains summaries of the most important decisions sent in by the constitutional courts or equivalent bodies of over 61 member States, associate member states and observer states as well as the European Court of Human Rights, the Court of Justice of the European Union and the Inter-American Court of Human Rights. The contributions to the Bulletin are supplied by liaison officers appointed by the courts themselves.

The regular issues of the Bulletin are supplemented by a series of special bulletins on specific topics or containing descriptions of the courts and basic material, such as extracts from constitutions and legislation on the courts, thus enabling readers to put the different courts' case-law into context. The Bulletin's main purpose is to encourage an exchange of information between courts and to help judges settle sensitive legal issues, which often arise simultaneously in several countries. It is also a useful tool for academics and all those with an interest in this field. The newly established constitutional courts in Central and Eastern Europe benefit from such co-operation and exchanges of information as well as from the judgments of their counterparts in other countries.

4. Venice Forum

The on-line Venice Forum is a restricted platform on which liaison officers, appointed by constitutional courts or courts with equivalent bodies can exchange information. The Venice Forum contains several elements:

The restricted Newsgroup enables courts to actively share information with each other, e.g. to make on-line announcements on changes to their composition, on recent key judgments and to make various requests for general information.

The restricted classic Venice Forum enables courts to ask other courts for specific information on case-law. In 2016, the classic Venice Forum dealt with 30 comparative law research requests covering questions that ranged from limits to the reimbursement of legal costs to the adoption of children by same-sex partners.

The Constitutional Justice Media Observatory provides an overview of the work of courts as reported in online media. In 2016, the Venice Commission offered all members and liaison officers the possibility of subscribing to the Constitutional Justice Media Observatory. The Observatory is sent in the form of an e-mail and presents information on news agency dispatches and press articles relating to constitutional courts and equivalent bodies. The information presented is the result of an Internet search in English and in French and does not purport to provide a complete picture of any decision or development of constitutional justice in general. Although the Venice Commission cannot vouch for the accuracy of the information sent, it can add any information provided by the court concerned or remove an alert, upon request.

The Interim Bulletin enables the liaison officers to follow the progress of their contributions to the Bulletin on Constitutional Case-Law in real time, through all the stages of the production (proof-reading in the original language – English or French, control of headnotes and indexing according to the Systematic Thesaurus, translation into the other language, and parallel proof-reading of the translation). Other liaison officers can also access the contributions of their peers at all these stages.

The Newsgroup, the Constitutional Justice Observatory and the Venice Forum are also open to courts working with the Venice Commission within the framework of regional agreements (see below).

5. Regional co-operation

On the basis of various co-operation agreements, constitutional courts united in regional or language based groups can contribute to the CODICES database and to the Venice Forum (see above).

Association of Constitutional Courts using the French Language (ACCPUF)¹⁰

On the basis of the Vaduz Agreement and its Djibouti Protocol with ACCPUF, the Venice Commission continued to include the case-law of ACCPUF Courts in the CODICES database.

A delegation of the Venice Commission participated in ACCPUF's 8th Congress, which took place on 27-30 September 2016 in Chisinau, Republic of Moldova on the topic "*The organisation of the adversarial principle*". The proceedings are published on ACCPUF's website: <https://www.accpuf.org>.

10. See the co-operation page: <http://www.venice.coe.int/ACCPUF/>.

accpuf.org/actualites-de-l-association/309-28-et-29-septembre-2016-8eme-conference-des-chefs-d-institution.

Conference of European Constitutional Courts (CECC)¹¹

Since 1999, the Joint Council produces working documents upon request of the presidencies of the CECC on the topics of their congresses. These working documents consist of extracts from the CODICES database complemented by additional information provided by the liaison officers. Following the congresses, the working documents are published as special editions of the *Bulletin on Constitutional Case-Law*.

A working document for the XVIIth Congress of the CECC will be published as a special edition of the *Bulletin on Constitutional Case-Law* in 2017.

Southern African Chief Justices Forum (SACJF)

The co-operation agreement signed in Maseru in 2007 forms the basis of the co-operation with the Southern African Chief Justices Forum.

On 23-24 September 2016, the Venice Commission and the World Conference on Constitutional Justice participated in the Conference and Annual General Meeting of the SACJF on "*Contemporary Issues in the Prevention of Organised Crime*" held in Windhoek, Namibia.

Conference of the Constitutional Control Organs of the Countries of New Democracy (CCCOCD)

On the basis of the co-operation agreement with the Conference of the Constitutional Control Organs of the Countries of New Democracy, signed in Yerevan in October 2003, the Venice Commission co-organised together with the Constitutional Court of Armenia, the XXIth Yerevan International Conference.

This event took place in Yerevan on 20-23 October 2016 on "*The role and importance of constitutional courts decisions in addressing legislative gaps and legal uncertainty*" (see above).

Association of Asian Constitutional Courts and Equivalent Institutions (AACC)

On 8-13 August 2016, at the 3rd Congress of the AACC held in Nusa Dua, Indonesia, the President of the Venice Commission highlighted in his key-note speech the close co-operation between the Venice Commission and the AACC and the latter's contribution to the establishment of the WCCJ. He expressed the support of the Venice Commission and the WCCJ for Constitutional Courts, which are under undue pressure from other state powers. He also welcomed the initiative by the Constitutional Court of the Republic of Korea to establish an Asian Court of Human Rights.

11. See the co-operation page: <http://www.venice.coe.int/CECC/>.

Ibero-American Conference of Constitutional Justice (CIJC)

Co-operation with the CIJC is based on a co-operation agreement signed in June 2008.

On 28 June to 1 July 2016, the Venice Commission and the WCCJ participated in the XIth Ibero-American Conference of Constitutional Justice on “*Constitutional State and Economic Development*,” which was held in Lima, Peru.

Union of Arab Constitutional Courts and Councils (UACCC)

Co-operation with the UACCC is based on a co-operation agreement signed in June 2008.

Conference of Constitutional Courts of Portuguese Speaking Countries (CJCPLP)

On 7-8 April 2016, the President of the Venice Commission participated in the IVth General Assembly of the Conference of Constitutional Jurisdictions of the Portuguese-Speaking Countries (CJCPLP) held in Brasilia.

A Co-operation Agreement between the Conference of Constitutional Courts of Portuguese Speaking Countries and the Venice Commission was signed in May 2012 in Maputo, Mozambique. Shortly after its establishment, the CJCPLP became one of the founding regional groups of the World Conference on Constitutional Justice (WCCJ).

Conference of Constitutional Jurisdictions of Africa (CCJA)

Co-operation between the Conference of Constitutional Jurisdictions of Africa (CCJA) and the Venice Commission is based on the agreement signed in Cotonou, Benin, in May 2013.

Association of Constitutional Justice of the Countries of the Baltic and Black Sea Regions

On 29 June to 1 July 2016, Ms Hanna Suchocka, Honorary President of the Venice Commission, participated in the 1st Congress of the Association of Constitutional Justice of the Countries of the Baltic and Black Sea Regions, organised by the Constitutional Court of Moldova in Chisinau.

6. World Conference on Constitutional Justice (WCCJ)

According to the Statute of the WCCJ, the Venice Commission acts as the Secretariat of the WCCJ.

The WCCJ unites 103 constitutional courts and councils and supreme courts in Africa, the Americas, Asia and Europe. It promotes constitutional justice – understood as constitutional review including human rights case-law – as a key element for democracy, the protection of human rights and the rule of law (Article 1.2 of the Statute).

The WCCJ pursues its objectives through the organisation of regular congresses, by participating in regional conferences and seminars, by promoting the exchange of experiences and case-law and by offering good services to members at their request (Article 1.2 of the Statute).

The main purpose of the WCCJ is to facilitate judicial dialogue between constitutional judges on a global scale. Due to the obligation of judicial restraint, constitutional judges sometimes have little opportunity to conduct a constructive dialogue on constitutional principles in their countries. The exchanges that take place between judges in the WCCJ further reflect on arguments which promote the basic goals inherent in national constitutions. Even if these texts often differ substantially, discussion on the underlying constitutional concepts unites constitutional judges from various parts of the world who are committed to promoting constitutionalism in their own country.

By the end of 2016, 103 constitutional courts and equivalent bodies had joined the WCCJ as full members.

7. Other conferences and meetings

The Commission participated in the following activities in 2016:

Bulgaria

- Sofia, 21-22 September 2016 – International Conference on “The Protection of Fundamental Citizens’ Rights and National Security in the Modern World. The Role of Constitutional Courts,” organised by the Constitutional Court of Bulgaria on the occasion of its 25th anniversary.

Moldova

- Chisinau, 20 May 2016 – Roundtable on “Constitutionality of Constitutional Amendments,” organised by the Constitutional Court of Moldova in Chisinau.

Romania

- Bucharest, 31 May-1 June 2016 – Conference on “the Role of Assistant Magistrates in the Jurisdiction of Constitutional Courts,” organised by the Constitutional Court of Romania.

Russia

- St Petersburg, 17 May 2016 – International conference on “Modern Constitutional Justice: Challenges and Prospects,” organised by the Constitutional Court of the Russian Federation on its 25th anniversary.

Turkey

- Ankara, 25-26 April 2016 – Symposium on “The Effects of Judgments Concerning Individual Applications,” organised by Constitutional Court of Turkey on the occasion of its 54th anniversary.



IV. Elections, referendums and political parties

1. Country specific activities

Armenia

First joint opinion by the Venice Commission and the OSCE/ODIHR on the draft electoral code of Armenia as of 18 April 2016 (CDL-AD(2016)019)

By letter dated 15 January 2016, the Minister of Justice of Armenia requested the Venice Commission's co-operation on the reform of the electoral code. The revised Constitution, adopted on 6 December 2015, stipulated that the new code be adopted before 1 June 2016 (Article 210). On 15 February 2016 the new draft code was submitted to the Commission for expertise; an opinion was prepared jointly with the OSCE/ODIHR. In March 2016, the Venice Commission authorised the rapporteurs to send the opinion to the authorities prior to the June session, since the newly adopted Constitution required the Code to enter into force by 1 June 2016. The preliminary opinion was therefore sent to the Armenian authorities in May 2016.

The opinion stressed that the new electoral system proposed in the draft code was rather complex, mainly with respect to the way in which it addressed the constitutional requirement to guarantee a "stable majority". It established a number of significant deviations from a purely proportional system, which, in combination with the short time period allocated to carry out the reform, could affect voters' trust in the electoral system.

The opinion considered that the draft electoral code could provide an adequate basis for the conduct of democratic elections, and had addressed some prior Venice Commission and OSCE/ODIHR recommendations, improving voter identification and enhancing the Central Electoral Commission's regulatory powers. The opinion was, however, critical on a number of issues. The draft code introduced limitations and deadlines for the formation of coalitions after the first round of elections: the opinion recommended reconsidering the restrictions on the number of participants in a coalition and extending the time period for forming coalitions after the first round. The opinion further recommended, as a confidence-building measure, to allow meaningful consultation of signed voter lists by stakeholders under specific conditions. The introduction of new technologies in respect of voter registration and identification would be a welcome change, but a proper implementation of new technologies had to be ensured. The Council for Democratic Elections and the Venice Commission endorsed the opinion at the June plenary session.

Second joint opinion of the Venice Commission and the OSCE/ODIHR on the electoral code of Armenia (as amended on 30 June 2016) (CDL-AD(2016)031)

During the June 2016 session, the Armenian Minister of Justice requested a new joint opinion on the extent to which, following the publication of the preliminary opinion, the new amendments (dated 30 June 2016) addressed the recommendations presented therein. Given the urgency of this matter (the local elections were to take place in October 2016 and the electoral code had to be adopted beforehand), the Commission authorised the rapporteurs to prepare a new preliminary joint opinion and send it to the Armenian authorities before the October session. This was done on 19 July.

An extraordinary session of the National Assembly was held on 27-30 June 2016, at which two laws were adopted. The first one aimed at improving technical aspects of the process; its entry into force was dependent on the adoption, before 1 September 2016, of a Central Electoral Commission decision on the availability of relevant financial means. The second law contained amendments which addressed some of the recommendations presented by the Venice Commission and the OSCE/ODIHR in their first Joint Opinion. This second law entered into force on 30 July 2016.

The new electoral code as amended on 30 June 2016 took into account a significant number of the recommendations made in the previous opinion, notably:

- The time-period for the formation of political coalitions after the first round of elections had been doubled in order to avoid a second round;
- Access to the stamped voter lists had been made possible;
- The mandatory test for citizen observers had been removed. According to the draft Code, the requirement for specific provisions in the charter of the citizen observer organisations to have been in force for at least three years preceding the elections had been reduced to one year, but regrettably not totally removed;
- The requirement for the President to appoint the acting chairperson or a member of the CEC "in consultation with parliamentary factions" had been added;
- Women's representation had been enhanced by increasing the minimum quotas for each gender on candidate lists;

- The CEC was now obliged to develop and publish training materials for members of all electoral commissions, specialists, candidates, proxies, observers, and voters.

The first joint opinion had recommended reconsidering the restrictions on the number of participants in coalitions. This recommendation had not been followed, as well as some others of lesser importance.

The Council for Democratic Elections and the Venice Commission endorsed the opinion at the October plenary session.

Follow-up to the second joint opinion on the electoral code of Armenia (as amended on 30 June 2016)
(CDL-AD(2016)031)

Following the extraordinary session of the National Assembly, held on 27-30 June 2016, two laws were adopted. However, the introduction of the planned law on technical innovations had not been possible owing to its non-implementation. A new political agreement between the coalition and the opposition, also drawing on consultations with civil society representatives, had followed on 13 September 2016. Even though the authorities were not in favour and were aware that this was not in conformity with the Code of good practice on electoral matters, they then accepted wide access to the list of voters having participated in elections, at the request of the opposition and the civil society.

The Commission was further informed that the mutual agreement of 13 September 2016 also contained an item on the establishment of a new offence of «*submission of a false statement on behalf of a third person or use of a statement containing a false signature*». The electoral code and the Criminal Code had subsequently been amended on 20 October 2016. Reports of «*impersonation*» of voting could be made before the central electoral commission and criminal complaints could also be lodged. Intentional false reporting is now punishable with 2 to 5 years imprisonment with or without the deprivation of the right to hold any position in state or local self-government bodies and to be members of electoral commissions, proxies or observers for a term of 1 to 3 years. False reporting «*with inadvertent negligence*» is punishable with a fine or imprisonment of up to 2 years.

Joint opinion of the Venice Commission on the draft constitutional law on political parties of Armenia
(CDL-AD(2016)038)

At the October 2016 session of the Venice Commission, the Minister of Justice of Armenia requested the opinion of the Venice Commission on Armenia's draft constitutional law on political parties. The draft law had been prepared following the adoption of a new Constitution in Armenia in December 2015. There was therefore a constitutional mandate to adopt a new Law on political parties, which replaced the 2002 Law currently in force.

This draft required a qualified majority of 3/5 of the deputies of the Assembly to be adopted.

The draft followed the constitutional mandate and would liberalise the formation and registration of political parties in Armenia. The draft reduced the number of founding members, as well as the minimum amount of members required to register the party, and it also lowered the territorial representation of parties. The need to reduce territorial and membership requirements had been raised in the past and it was positive that relevant provisions had been changed in the draft. At the same time, the draft law would benefit from certain revisions and additions. Political parties were in most democracies understood and treated as an extra-constitutional category. Over-regulation in this field was always dangerous, and while a law might in some way create a legal backdrop for improving internal democracy, regulating intra-party organisation too much might not actually be useful for achieving greater intra-party democracy. In particular, the draft law contained provisions that extensively regulated the internal operation of political parties but did not cover a number of aspects concerning the financing of political parties, nor did it promote and encourage intra-party gender equality. The rules on suspension of political parties and the meaning of «*gross violation of the law*» had to be clarified and strictly defined. The Council for Democratic Elections and the Venice Commission adopted the opinion at the December 2016 plenary session.

Belarus

Parliamentary elections

The Commission provided legal assistance to the Parliamentary Assembly of the Council of Europe's delegation observing parliamentary elections in Belarus held on 11 September 2016.

Bosnia and Herzegovina

Amicus Curiae Brief for the Constitutional Court of Bosnia and Herzegovina on the mode of elections in the House of Peoples of the Parliament of the Federation of Bosnia and Herzegovina (CDL-AD(2016)024)

This *amicus curiae* brief was requested by the Constitutional Court of Bosnia and Herzegovina and was adopted by the Venice Commission at the October plenary session.

The context of this request is a claim brought before the Constitutional Court of Bosnia and Herzegovina concerning the constitutionality of certain provisions of the election law of Bosnia and Herzegovina relating to the election of delegates to the House of Peoples of the Parliamentary Assembly of the Federation of Bosnia and Herzegovina.

The question addressed to the Venice Commission was whether the mode of election of delegates to the House

of Peoples of the Parliament of the Federation of Bosnia and Herzegovina, in particular the complex way of distributing seats in the 10 cantons, and having regard to the specificities of the constitutional situation and the decision of the Constitutional Court on constituent peoples, is compatible with the principles underlying Europe's electoral heritage.

The composition of the House of Peoples of the Federation should not merely be designed to reflect the participation of its 10 cantons in the legislative process but should instead ensure the representation of the constituent peoples on a parity basis, ensuring that each constituent people has the same number of representatives and basically acts like a "veto" chamber of the Federation's legislature.

Although this distortion of proportionality in the electoral system might not be consistent with principles of European electoral heritage if the election was for a directly elected part of the legislature, it can however be justified that the concept of equal voting should not apply to the special parts of the BiH legislature, which are designed to ensure representation of constituent peoples and "others". The aim is legitimate because it is the very basis of Bosnia and Herzegovina. It must be distinguished from Sedjić and Finčić as well as from Zornić, where there was an absolute exclusion, which is not the case in this application, since the constituent peoples are all represented.

The Court gave its judgment on 1 December 2016 in plenary session; the translation was not available at that time.

Bulgaria

Presidential elections

The Commission provided legal assistance to the Parliamentary Assembly of the Council of Europe's delegation observing the 1st round of the parliamentary elections in Bulgaria on 6 November 2016.

Georgia

Joint opinion on amendments to the election code of Georgia of 8 January 2016 (CDL-AD(2016)003)

By letters of 14 January 2016 and 22 January 2016, the Georgian authorities requested an opinion of the Venice Commission on two organic laws amending the election code of Georgia. The Council for Democratic Elections and the Venice Commission adopted a joint opinion with the OSCE/ODIHR on the matter in March 2016.

The OSCE/ODIHR and the Venice Commission positively assessed the amendments related to the redrawing of single-member constituencies and to the threshold to elect members of parliament under the majority system. The amendments pertaining to the redrawing of constituencies represented an important step forward to hold elections respecting *inter alia* the principle of equal

suffrage. Deviations among the number of voters in constituencies that previously undermined the principle of equal suffrage were largely addressed.

Nevertheless, both institutions underlined that the election code could have benefited from certain revisions to ensure the effectiveness of these new provisions. In this respect, the OSCE/ODIHR and the Venice Commission made the following key recommendations for the improvement of the election code:

- to ensure that fundamental provisions, including delimitation of boundaries, are finalised no less than one year before an election;
- to define in the law the method for distributing single-mandate constituencies (if maintained after the forthcoming parliamentary elections) as well as to note a clear timeline for any future review of all boundaries;
- to define in the law the maximum permitted deviation among electoral constituencies, and justification for any exceptional cases;
- to ensure inclusive consultation to increase public confidence in the boundary delimitation process, in line with international obligations and standards and good practice, which could include establishing an independent ad hoc or permanent commission in charge of drawing electoral constituency boundaries.

Follow-up to the Joint opinion on amendments to the election code of Georgia as of 8 January 2016 (CDL-AD(2016)003)

Following the adoption of amendments to the Election Code of Georgia on 8 January 2016, the new delimitation of electoral constituencies was in force at the time the Venice Commission and the OSCE/ODIHR issued the joint opinion.

After the Parliament adopted the changes to the legislation on the borders of the majoritarian districts in other parts of the country, it was left to the Central Election Commission to define the boundaries of the majoritarian districts in the four main cities of Georgia (30 in total): Tbilisi, Rustavi, Kutaisi, and Batumi.

According to the Central Election Commission, the Commission had held consultative meetings in order to proceed openly to the redrawing of the 30 majoritarian districts. Such meetings were held with political parties, NGOs, diplomatic missions, international organisations, national minorities and female members of local self-governing bodies.

On 31 March 2016, the Central Election Commission adopted the model of the delimitation of single mandate majoritarian districts in these cities. For the 2016 parliamentary elections, Tbilisi elected 22 members of Parliament, Rustavi two MPs, Kutaisi three MPs and Batumi three MPs.

According to the information from the Central Election Commission, the election administration met the objectives set by the decision of the Constitutional Court according to which the deviation between the districts could not exceed 15%. Indeed, out of these 30 districts, whose boundaries had been defined by the CEC, none exceeded even 15% deviation.

Legal assistance to the Central Election Commission of Georgia (Tbilisi, 8 August - 18 September 2016)

At the request of the Central Election Commission of Georgia, the Venice Commission assisted the electoral authority by providing an election expert who assisted the Commission on legal matters in the context of the parliamentary elections held on 8 October 2016.

Parliamentary elections

The Commission provided legal assistance to the Parliamentary Assembly of the Council of Europe's delegation observing the 1st round of the parliamentary elections in Georgia held on 8 October 2016.

"The former Yugoslav Republic of Macedonia"

Follow-up to the joint opinion on the electoral code of "the former Yugoslav Republic of Macedonia" (CDL-AD(2013)020)

This opinion was adopted by the Venice Commission in June 2013. A number of recommendations remained unaddressed in the revised electoral code which had entered into force in November 2015. This included *inter alia* the following issues: withdrawal of candidates and candidate lists; restrictive campaign regulations; voting rights in local elections for long-standing foreign residents; decision-making process of the State Election Commission; complaints and appeals procedures. On a more positive note, the electoral code included provisions which improved the text, related *inter alia* to stricter rules regarding the use and dissemination of the voters' list and more detailed financial reporting by parties. Finally, the electoral code contained a number of new provisions that had not been reviewed by the Venice Commission, in particular the following important changes: new constituencies abroad and consequently an increased number of members of parliament; composition, method of election and term of members of the State Election Commission; maintenance of voters' lists; campaign coverage for media; and penal provisions dealing with electoral matters. Both the unaddressed recommendations and the new provisions would have required an opinion of the Venice Commission and of the OSCE/ODIHR on the revised election code.

Joint opinion on the electoral code of "the former Yugoslav Republic of Macedonia" as amended on 9 November 2015 (CDL-AD(2016)032)

At the request of the Monitoring Committee of the Parliamentary Assembly, the Council for Democratic

Elections and the Venice Commission adopted at the October 2016 plenary session, a joint opinion with the OSCE/ODIHR on the electoral code of "the former Yugoslav Republic of Macedonia" as amended on 9 November 2015. The amendments addressed a number of recommendations raised in previous opinions of the Venice Commission and the OSCE/ODIHR, as well as in election observation reports of the OSCE/ODIHR, including on the principle of equal suffrage for out-of-country voting, the composition and competences of the State Election Commission, the level playing field in terms of media coverage during the election period, party and campaign finance reporting and auditing, the deadlines for courts to decide on electoral disputes, procedures to enhance the accuracy of voter lists and mechanisms for promoting women's participation as candidates.

However, a number of previous Venice Commission and OSCE/ODIHR recommendations remained unaddressed and some gaps and ambiguities needed to be eliminated. The Code would benefit from a complete review in order to harmonise it internally and with other relevant laws. Key recommendations pertaining to parliamentary elections that remained to be addressed included:

- Candidate registration, especially those related to signature collection;
- Dismissal of members of the election administration;
- Restrictive campaign regulations related to the length of the campaign, and to the broad definition of campaign activities;
- Public hearings on complaints and appeals;
- Periodic reallocation of seats or review of district boundaries by an independent body.

Jordan

See Chapter V.

Malta

Follow-up to the joint opinion on the draft act to regulate the formation, the inner structures, functioning and financing of political parties and their participation in elections of Malta (CDL-AD(2014)035)

In October 2014, the Venice Commission adopted a joint opinion with the OSCE/ODIHR on the draft act to regulate the formation, inner structures, functioning and financing of political parties and their participation in elections. The OSCE/ODIHR and the Venice Commission welcomed the draft act, which constituted a significant step forward in ensuring the transparency of political party and campaign finance in Malta. Comprehensive legislation in the field of political parties in Malta, and, particularly, rules on the financing of political parties, had been recommended by numerous institutions in the past.

However, the draft act did not regulate many aspects of the financing of political parties, including election campaign financing, foreign funding of political parties, restrictions on the use of personal resources by candidates, the use of public resources or intra-party gender equality. The important roles of the Electoral Commission and of the Minister of Justice in the control, oversight and enforcement provided for by the draft act could also be problematic and had to be reconsidered. Finally, sanctions had to be proportional and ensure compliance with the legislation.

The Act was adopted on 28 July 2015 and entered into force on 1 January 2016. It included some of the Commission's recommendations, such as the prohibition of anonymous donations, the publication of financing accounts and reports on the website of the Central Electoral Commission, the establishment of an independent audit and the introduction of a new regime of sanctions, although criminal penalties do not seem to have been revised.

Republic of Moldova

Joint opinion on the draft law on changes to the election code of the Republic of Moldova (CDL-AD(2016)021)

At the request of the Moldovan authorities, the Council for Democratic Elections and the Venice Commission adopted at its June 2016 plenary session a joint opinion on the draft law on changes to the election code of the Republic of Moldova. The revision of the Election Code was necessary after the Constitutional Court had annulled the amendments to the Constitution introducing the election of the President of the Republic by Parliament, adopted in 2000.

The opinion stated that, while the draft law was generally in accordance with international obligations and standards, a number of provisions had to be reconsidered. In particular, restrictions on the right to stand for elections provided by the Constitution could not be dealt with in the present legislative amendments. The 10-year residence requirement was excessive, and the 40-year age requirement could be considered high. Proficiency of state language testing had to be reasonable, objective and verifiable. Removing the turnout requirement in the first round would be suitable to avoid endless rounds of failed elections. The election code had to provide for clearer rules on the recall of the President of the Republic; the procedure had to be submitted to legal conditions, to be addressed by the Constitutional Court. The opening of polling stations abroad was quite an important practical issue, since about one quarter of potential voters resided abroad. Polling stations were not equally available in all countries. The opinion suggested a broad consensus on this issue.

Follow-up to the joint Opinion on the draft law on changes to the electoral code of the Republic of Moldova (CDL-AD(2016)021)

The amendments were adopted on 29 July 2016. The adopted version of the law differed from the draft only

on two points, the most important one being the introduction of a cap of 25,000 signatures for the nomination of candidates. The time for revising the draft was very short due to the proximity of the presidential elections, but hopefully the recommendations of the Venice Commission and the OSCE/ODIHR will be taken into account after the elections. One of the controversial issues was the number and location of polling stations abroad; some more were opened for the presidential elections of 30 October and 13 November 2016.

Training Sessions on election dispute resolution (Chisinau, 12-15 September 2016)

In the context of the presidential elections held on 30 October 2016, the Venice Commission, in co-operation with the training Centre of the Central Electoral Commission of Moldova, organised four training sessions on election dispute resolution for various groups of participants (judges, members and staff of the Central Election Commission and chairpersons of the District Election Commissions). The sessions were devoted to best practices on electoral dispute resolution, case studies and European standards.

Presidential elections

The Commission provided legal assistance to the Parliamentary Assembly of the Council of Europe delegation observing the 1st round of the parliamentary elections in the Republic of Moldova held on 30 October 2016.

Morocco

See chapter V.

Montenegro

Parliamentary elections

The Commission provided legal assistance to the Parliamentary Assembly of the Council of Europe delegation observing the 1st round of the parliamentary elections in Montenegro held on 16 October 2016.

Serbia

Parliamentary elections

The Commission provided legal assistance to the Parliamentary Assembly of the Council of Europe's delegation observing the parliamentary elections in Serbia held on 24 April 2016.

Ukraine

Joint opinion on the amendments to the law of Ukraine on election of people's deputies regarding the exclusion of candidates from party lists (CDL-AD(2016)018)

On 15 March 2016, Mr Cezar Florin Preda, Chair of the Monitoring Committee of the Parliamentary Assembly,

requested the Commission to prepare an opinion on the Ukrainian law on amendments to the law on the election of the people's deputies of Ukraine.

In February 2016 the Verkhovna Rada of Ukraine by a majority of 236 votes adopted Law N° 1006-VIII amending the law on elections of people's deputies of Ukraine allowing the exclusion of candidates for people's deputies of Ukraine from the election list in the national multi-member constituency after the tabulation of electoral results. The Law stated that it "covered electoral lists of candidates for people's deputies of Ukraine from political parties, which had been subjects of electoral process at snap elections of people's deputies of Ukraine on 26 October, 2014."

The law was criticised by a number of national NGOs, including OPORA, the Committee of Voters of Ukraine (KVU) and the Reanimation Package of Reforms Initiative (RPR), which noted that it violated the principle of legal certainty, could open the door to political corruption and would have a negative impact on internal party democracy thus violating the constitutional principle of direct suffrage.

The opinion of the Venice Commission adopted at its June 2016 plenary session considered as contrary to international standards the empowerment of political parties *ex post facto* to deny the electorate its choice and to choose who to place on its party list in a position to be elected. The Commission strongly recommended that the power of political parties to remove from their lists, after an election had taken place, candidates who at the time were "deemed unelected" but retained a potential to be elected, should be removed from the national legislation in the light of European standards.

"Electoral system week": a workshop on "Electoral system design and the increased participation of women in politics" and a National Round Table (Kyiv, 2-4 February 2016)

Following an agreement with IFES Ukraine and a number of national stakeholders the Venice Commission and IFES co-organised an "Electoral System Week" in Kyiv from 2 to 4 February 2016. This major event included three activities: an election system expert workshop, a workshop on gender issues and a National Round Table on electoral reform. The Election System Expert Workshop brought together leading international and national experts on election system design and focused on possible choices for an electoral system for Ukraine. Experts agreed that the proportional electoral system with open lists could increase the transparency and integrity of elections as well as build trust in elected representatives. An important number of participants from national NGOs and national experts insisted that different options should be discussed in an open manner between different actors involved in electoral process, i. e. MPs, independent experts and NGOs specialised in the electoral issues. Such exchanges should take place

under the auspices of the Verkhovna Rada and, if possible, in the framework of a specific working group.

On 3 February 2016, numerous gender and electoral systems experts, parliamentarians and civic activists attended the gender and election systems workshop, which discussed the participation of women in political life in Ukraine and mechanisms to facilitate the balanced representation of the sexes in elected office through changes to the electoral systems. Today women make up just 12% of MPs in Ukraine, compared to the worldwide average of 23%. The vast majority of Ukraine's women MPs were elected via the party list vote, confirming the well-documented fact that one-member constituencies disfavour women candidates. During the workshop it was demonstrated by the different speakers (both national and international) that specific mechanisms could be devised to facilitate a more balanced representation in any electoral system, including various types of gender quotas.

The Electoral Systems Week finished on 4 February 2016 with a National Round Table at the Verkhovna Rada, where participants discussed two draft versions of the electoral code registered in the Parliament, focusing on the intended and potentially unintended effects of an electoral system on representation.

International conference on electoral reform in Ukraine (Kyiv, 26-27 May 2016)

The conference on "Elections in Ukraine in the context of European democratic standards" co-organised by the Venice Commission in Kyiv on 26-27 May 2016, brought together representatives of academia, MPs, independent experts from Ukraine and international experts. The participants had the opportunity to discuss international standards and their implementation in Ukraine in areas such as the choice of electoral systems, election campaigns and electoral complaints and appeals system.

Meeting with representatives of the working group on electoral reform of Ukraine (Strasbourg, 22-23 June 2016)

In early May 2016, Mr Paruby, Speaker of the Verkhovna Rada, created an informal working group which was entrusted with the task of preparing a new law on the parliamentary elections in Ukraine. This working group included parliamentarians from the different groups in Parliament, as well as experts in electoral law and representatives of non-governmental organisations. The Venice Commission supported this initiative and organised a number of exchanges with the group. The meeting held on 22-23 June 2016, organised at the Venice Commission's initiative, was an opportunity to discuss the possibilities for amendment to the electoral law of Ukraine, in particular concerning the electoral system, media and elections as well as measures which could be taken to combat the misuse of administrative resources.

In 2016 the informal working group on electoral reforms met several times and examined five draft laws on parliamentary elections registered in the Rada. However, representatives of different political forces failed to find a compromise on the choice of the electoral system; most MPs from single-member constituencies opposed the introduction of a proportional system with open lists in 2014.

It is expected that some amendments to electoral legislation could be agreed upon in 2017, and the Venice Commission could be involved, in co-operation with the OSCE, the European Union and IFES could be involved in the assessment of these texts.

Workshop “Regional outlook on the electoral reform in Ukraine” (Kramatorsk, 17 November 2016)

Experts of the Venice Commission took part in a workshop “Regional outlook on the electoral reform in Ukraine”, which took place in Kramatorsk (Donetsk region) on 17 November 2016. The purpose of the event was to promote effective dialogue and interaction between the executive authority of the central and local levels, civil society and the expert community in advancing reforms at the regional level.

Representatives of political parties, NGOs and mass media of the Donetsk region discussed the prospects of electoral reform in Ukraine and the establishing of the upcoming parliamentary elections in the proportional electoral system with open lists, public funding of political parties and the issue of internal democracy.

Legal assistance to the PACE election observation missions

In accordance with the co-operation agreement concluded between the Venice Commission and the Parliamentary Assembly of the Council of Europe, representatives of the Commission ensured legal assistance to the Parliamentary Assembly delegations observing elections.

In 2016 the Commission participated as a Legal advisor in the parliamentary elections in **Belarus, Georgia** (1st round), **Montenegro, Jordan, Morocco, Serbia, “the former Yugoslav Republic of Macedonia”** and the 1st round of the presidential elections in **Bulgaria** and the **Republic of Moldova**.

Publication of Venice Commission opinions and reports in the electoral field

In 2016 the Venice Commission published a book containing its main reference texts in the field of elections and political parties in Russian language. This publication was funded by the European Union and the Ministry of Foreign Affairs of Finland.

In addition, the Commission, in co-operation with the Election Law Institute of Ukraine, released a new

publication in Ukrainian on all recent electoral opinions on Ukraine and general reports in the electoral field adopted by the Commission. This publication was funded through the Action Plan for Ukraine 2015-2017.

2. Transnational activities

Studies and reports

Publication of lists of voters having participated in elections - Interpretative declaration of the Code of good practice in electoral matters (CDL-AD(2016)028)

The Council for Democratic Elections was invited to follow-up on the debate concerning the question of the possible publication of lists of voters having participated in elections. The Code of good practice in electoral matters was not in favour of this practice, but the question was still discussed, for example in Armenia, following allegations of fraud in particular due to identity theft of voters *de facto* abroad.

In short, the interpretative declaration was in favour of meaningful access to lists of voters having participated in the elections, but not of the publication of such lists. The Council for Democratic Elections and the Venice Commission adopted the interpretative declaration at the October 2016 plenary session.

Joint Guidelines for preventing and responding to the misuse of administrative resources during electoral processes (CDL-AD(2016)004)

Following the adoption of the report on the misuse of administrative resources during electoral processes in December 2013 (CDL-AD(2013)033) and the 11th European Conference of electoral management bodies on this theme, the Council for Democratic Elections and the Venice Commission adopted at the March 2016 plenary session Guidelines jointly prepared with the OSCE/ODIHR aimed at preventing and responding to the misuse of administrative resources during electoral processes.

The main purpose of the Guidelines was to avoid that public resources, whether financial or in-kind, be used during electoral processes for or against electoral stakeholders. The Guidelines aimed at preventing such misuses as well as at responding to them. After detailing the main principles applicable to the use of administrative resources (Rule of law, political freedoms, impartiality, neutrality, transparency, equality of opportunity), the Guidelines address the ways of preventing and responding to misuses. Preventive measures include the adoption of specific legal provisions, audit, information and awareness-raising, without forgetting the political will. Proper responses included complaints and appeals mechanisms, as well as sanctions.

These Guidelines address lawmakers who are invited to make use of them in order to reinforce the existing legislation on the use of administrative resources during electoral processes.

Report on exclusion of offenders from Parliament (CDL-AD(2015)036) – follow-up

In October 2015, the Commission adopted the report on exclusion of offenders from Parliament following a request from the Albanian authorities. This report considered that serious offenders are excluded from elected bodies, either by the voters themselves or by specific legal mechanisms. The duration of ineligibility is subject to the principle of proportionality. Convictions abroad should have the same effect as convictions in-country as soon as they comply with the rules on fair trial.

On 17 December 2015, the Albanian Parliament adopted the “Law on guaranteeing the integrity of public officials”. This text prohibits running and being elected to a high public function for a specific duration depending on the seriousness of the crime committed. The same prohibition applies subsequent to a number of convictions (even if non-final) and other measures, including evictions, taken in the EU, US, Canada, Australia, and other countries listed by a resolution of Parliament. This text takes into account the need to exclude serious offenders from Parliament, the principle of proportionality, as well as convictions abroad.

The law applies to officials who, at the time of its entry into force, hold a mandate or a public office, when the facts have occurred before the taking of public office. The issue of whether or not such retroactive restriction is acceptable is still to be decided by the European Court of Human Rights.

On 4 March 2016, the Albanian Assembly approved by-laws focusing in particular on the self-declaration form. This form shall include cases of arrest/conviction of the concerned person. The data included in the form are confidential. Every political party can initiate a “data verification” procedure by a request to the General Prosecution.

Whereas the new legislation appears to be generally in conformity with the conclusions of the Venice Commission’s report, its effects cannot be fully assessed *a priori*. Its proper implementation, in conformity with the principles of equality and proportionality, will be crucial for establishing whether it is in line with the Venice Commission’s recommendations.

Revised electoral glossary (CDL-EL(2016)004)

The Council for Democratic Elections adopted at the June 2016 plenary session the revised electoral glossary. The Glossary gathers terms and expressions used in the electoral field; it is made up of two documents, one starting with entries in English and one starting with entries

in French. The Glossary was the result of a major update in 2016. It had been previously updated in 2011. The revised Electoral Glossary incorporated proposals made by the Council of Europe’s Terminology Office, the OSCE/ODIHR and the Venice Commission Secretariat. This update saw the entry of many new expressions including those related to electoral systems, new voting technologies and issues concerning parity between men and women. Expressions which were no longer used had been removed from the Glossary. This Glossary is aimed at helping translators of electoral opinions from one official language to the other, but it is also very useful for the Secretariat as well as for members and experts of the Venice Commission.

Compilation of Venice Commission opinions and reports concerning gender equality (CDL-PI(2016)007)

The compilation on gender equality was endorsed by the Venice Commission at the June 2016 plenary session. This compilation could be the basis for a new study by the Venice Commission on the constitutional protection of the principle of gender equality, to be prepared in 2017.

Conferences co-organised by the Commission

1st Scientific electoral experts debates (Bucharest, 12-13 April 2016)

On 12-13 April 2016, the Venice Commission organised, in co-operation with the Permanent Electoral Authority of Romania, the 1st Scientific electoral experts debates on “Electoral Law and New Technologies: Legal Challenges”.

The debates, which brought together representatives from more than 30 European and Latin American countries, focused on the implications of constitutional and international law principles in the field. Such implications are not limited to the application of the fundamental principles of electoral law (universal, equal, free, secret and direct suffrage, stability of electoral law). They also include more general aspects of constitutional law such as legality, the separation of powers, federalism, as well as access to justice, proportionality and transparency.

The proceedings of the debates were published in a special edition of the “Electoral expert” review, edited by the Permanent Electoral Authority of Romania, on paper and online. The Venice Commission and the Permanent Electoral Authority of Romania decided to organise the electoral expert debates on a regular.

13th European Conference of the electoral management bodies (Bucharest, 14-15 April 2016)

The Venice Commission organised, in co-operation with the Permanent Electoral Authority of Romania the thirteenth European Conference of electoral management bodies. The conference was dedicated to «New Technologies in Elections: Public Trust and Challenges for Electoral Management Bodies».

160 participants attended the Conference. The participants came from national electoral management bodies and other bodies involved in the electoral field from 23 European countries and 9 other countries.

Among other conclusions, the Conference recommended ensuring the compatibility of e-enabled elections with the Council of Europe's Convention No.108 for the protection of individuals with regard to automatic processing of personal data. The conference also recommended raising awareness of voters regarding the use of new technologies in elections, including through civic education and public outreach programmes. The conference pointed to the issue of verifiability of the vote if electronic voting is used and the importance of providing effective means of verification whilst conducting e-enabled elections. The Conference also noted that electronic voting poses a challenge to traditional methods of election observation and underlined the need to ensure the effectiveness of domestic and international election observation where electronic voting is used.

International Parliamentary Conference (Berlin, 4 July 2016)

The Parliamentary Assembly of the Council of Europe organised a parliamentary conference on «Media freedom as a cornerstone for democratic elections», in co-operation with the Venice Commission. The Venice Commission delegation intervened on standards for media in the context of elections, media ethics and transparency regarding party political interests and on the role of parliaments in ensuring media freedom in the context of elections. The event was hosted by the Deutsche Bundestag (Federal Parliament of Germany).

3. VOTA, the Commission's electoral database

The VOTA database was set up in 2004 as part of the joint Venice Commission and European Commission programme "Democracy through free and fair elections". It contains the electoral legislation of the Venice Commission's member States and other states involved in the Commission's work. Over 100 laws and statutes from about 50 states, as well as Venice Commission opinions in the field of elections, are available in the database, in English, French, as well as in Spanish (<http://www.venice.coe.int/VOTA>). This database is now jointly managed with the Electoral Tribunal of the judicial Power of the Mexican Federation (*Tribunal electoral del poder judicial de la Federación, TEPJF*), which has given support to the database technically, adding new features, as well as indexing and adding new documents.

The database has been modernised and is constantly updated with electoral legislation. The Venice Commission will prepare and sign a memorandum of understanding with International IDEA concerning the VOTA database to strengthen further the co-operation in this field.

4. International co-operation

See Chapter VI.3.

5. Other conferences and meetings

The Venice Commission participated in the following country specific conferences and meetings:

Belarus

- Minsk, 18 May 2016 - Round Table on "Electoral standards and improvement of the electoral process in Belarus", co-organised by the Parliamentary Assembly of the Council of Europe and the National Assembly of the Republic of Belarus.

Georgia

- Lopota Lake, 16-17 February 2016 - 6th *Annual Meeting of Electoral Management Bodies*, organised by the Georgian CEC;
- Tbilisi, 18-19 February 2016 - Regional conference on money in politics, organised by the State audit office of Georgia, USAID, OSCE/ODIHR, International IDEA, the Netherlands institute for multiparty democracy, IFES and the Council of Europe;
- Kvareli, 27-31 August 2016, and Kacheti, 16-18 September 2016 - Seminars on election dispute resolution for election commissioners and for judges;

Jordan

- Amman, 30 May 2016 - International conference on political parties and the parliament, co-organised by PACE and by the Chamber of Representatives of Jordan;
- Dead Sea, 19-21 April 2016 - International workshop on women's participation in elections, organised by the Organisation of Electoral Management Bodies of Arab countries;

Malta

- Valletta, 4 May 2016 - Meeting on electronic voting, organised by the Electoral Commission of Malta;

Mexico

- Mexico City, 5 May 2016 - Forum on "Financing of political parties and electoral campaigns", organised by the Mexican National Electoral Institute;
- Mexico City, 26-27 May 2016 - International conference on the role of courts and the protection of political rights, Organised by the Mexican Federal Electoral Tribunal (TEPJF);
- Mexico City, 24-26 August 2016 - Conference on electoral justice, organised on the occasion of the 20th anniversary of the Mexican Federal Electoral Tribunal (TEPJF);

Spain

- Valladolid, 16 April 2016 - International workshop on political parties

Ukraine:

- Kyiv, 5 April 2016 - Conference on media and elections in Ukraine: challenges and possible solutions, co-organised by the Council of Europe, the Central Election Commission (CEC) of Ukraine, the Parliament of Ukraine, and the National Council of Television and Radio Broadcasting of Ukraine;
- Kyiv, 6-7 July 2016 - Political party expert workshop, organised *inter alia* by the National University of Kyiv-Mohyla Academy, the OSCE/ODIHR and IFES;

USA

- Atlanta, 14-15 January 2016 - Conference on human rights and electoral standards, organised by the Carter Center.

Council of Europe

- Strasbourg, 22-23 March 2016 – 1st meeting of the committee of experts on media pluralism and transparency of ownership (MSI-MED)
- Strasbourg, 27-28 September 2016 - 2nd meeting of the Committee of Experts on media pluralism and transparency of ownership (MSI-MED);
- Strasbourg, 3-4 November 2016 - 2nd meeting of the Ad hoc Committee of Experts on legal, operational and technical standards for e-voting (CAHVE)

Legal assistance to PACE observation missions:

- **Serbia** - Parliamentary elections - 24 April 2016.
- **Belarus** - Parliamentary elections - 11 September 2016.

- **Jordan** - Parliamentary elections - 20 September 2016.
- **Morocco** - Parliamentary elections - 7 October 2016.
- **Georgia** - Parliamentary elections (1st round) - 8 October 2016.
- **Montenegro** - Parliamentary elections - 16 October 2016.
- **Republic of Moldova** - Presidential election (1st round) - 30 October 2016.
- **Bulgaria** - Presidential election (1st round) - 6 November 2016.
- **“the former Yugoslav Republic of Macedonia”** - Parliamentary elections - 11 December 2016.

Other International organisations

- Prague, 22 April 2016 - Conference on the political finance community of practice, organised by IFES;
- London, 19 July 2016 - Conference on the political finance community of practice, organised by the Westminster Foundation for Democracy;
- Tirana, 22-23 September 2016 – 25th Annual Conference of the Association of European Electoral Officials (ACEEEO);
- Vienna, 24-25 October 2016 - OSCE anti-corruption expert meeting;
- Venice, 24-25 October 2016 - Regional Conference on follow-up to electoral recommendations, organised by the OSCE;
- Vienna, 2 November 2016 - OSCE/ODIHR Seminar on election observation and follow-up of recommendations
- Brussels, 28 November 2016 - Expert meeting on implementation of EU/OSCE election mission' recommendations and follow-up



V. Co-operation in the Council of Europe neighbourhood and outside Europe

1. Mediterranean Basin

Country-specific activities

Jordan

International Workshop on women's participation in elections (Dead Sea, 19-21 April 2016)

A Venice Commission delegation participated in a workshop entitled «The role of electoral management bodies in enhancing women's participation in elections», which took place at the Dead Sea in Jordan, on 19-21 April 2016. This meeting was organised by the Organisation of Electoral Management Bodies of Arab countries. Speakers from different international organisations including UNDP, the Arab League, IFES and the Venice Commission presented reports on the standards and action taken by them in different countries. The exchanges between the participants revealed a number of interesting initiatives taken by the countries of the region that would need international support. The Commission's participation in the event was funded through the South Programme «Towards strengthened democratic governance in the Southern Mediterranean», a joint programme funded by the European Union and implemented by the Council of Europe.

Parliamentary elections

The Commission provided legal assistance to the Parliamentary Assembly of the Council of Europe delegation observing the parliamentary elections in Jordan on 20 September 2016. The delegation welcomed the professionalism of the Independent Electoral Commission, which organised the poll with integrity and in full transparency. The delegation noted that some aspects of the electoral process could be improved by heeding the advice of the Council of Europe's Venice Commission.

Morocco

Implementation of organic laws

A delegation of members of the Venice Commission and the CEPEJ met representatives of the Ministry of Justice and Freedoms and professional associations of judges for a first exchange of views on the implementation of two organic laws (on the High Judicial Council and on the Status of Judges) prepared in accordance with Title VII of the Constitution of the Kingdom of Morocco, adopted in July 2011.

12. Some activities in the field of constitutional justice are dealt with in Chapter III.

The main objective of this meeting was to make comments on these two Moroccan organic laws, enacted in March 2016. The delegation was asked to provide reference material concerning European legislation, in order to enable the future High Judicial Council to learn from positive experiences in this area, or to avoid negative national experiences.

As the quality of the Organic Laws was raised, the exchange of views made it possible to present clearly issues in their implementation and in particular in drafting.

Ombudsman Institution

The Venice Commission contributed to the organisation of two training sessions for collaborators of the mediator institutions members of the AMOF (Association of Mediators and Ombudsman of the Francophonie) and the AMO (Association of Mediterranean Ombudsman).

The first seminar was held in Rabat on 17-19 May 2016 on the theme «Communication objectives and strategies for the mediation institutions in times of the social web». The general subject of the second training session held in Rabat on 22-24 November 2016 was «The Ombudsmen's role in the protection of the rights of children on the move during their migratory journey».

These seminars brought together around 25 representatives from different institutions and offered a privileged framework for exchanges of experience and good practices. In addition, staff from the regional offices of the Ombudsman Institution have regularly been able to take part in these specific training sessions.

Electoral issues – parliamentary elections

The Venice Commission provided legal assistance to the Parliamentary Assembly (PACE) delegation observing the legislative elections which took place on 7 October 2016 in Morocco. In its Press Release, the Parliamentary Assembly delegation welcomed the professionalism of the National Human Rights Council (NHRC) and of the Interior Ministry which had organised the vote with integrity and in a transparent manner. The delegation also noted that some aspects of the electoral process could be improved through the advice of the Venice Commission, of which Morocco is a full member.

UniDem Seminars

In co-operation with the Ministry of Public Service and Modernisation of the Administration of the Kingdom

of Morocco, the Venice Commission organised two Campus UniDem (University for Democracy) seminars in Rabat. For more information, see under the chapter “regional activities” below.

Tunisia

Institution of the Administrative Mediator

The Venice Commission organised on 25 February 2016 in co-operation with the Association of Mediterranean Ombudsmen (AMO) an evaluation of the legislation on the Administrative Ombudsman of Tunisia in the light of the «Paris Principles» and other European and international texts. The organisational structures of the institution (internal procedures, management, public relations) as well as training needs were identified.

Independent Bodies

The Venice Commission took part in a brainstorming workshop on «the foundations of the independence of independent bodies.» The event was organised by the instance of Truth and Dignity, by the UNDP and by the UN High Commissioner for Human Rights.

This workshop brought together representatives of independent bodies created after the revolution (ISIE, HAICA, INLUCC, IVD, IPSJJ) and aimed to discuss the foundations of the independence of these bodies with particular emphasis on the following issues:

- the process of selecting and removing members of the instances;
- the mechanisms and arrangements for monitoring of the instances;
- the administrative and financial autonomy of the instances;
- the relationship between the independent authorities and other authorities.

Regional Activities – UniDem Seminars

In co-operation with the Ministry of Public Service and Modernisation of the Administration of the Kingdom of Morocco, the Venice Commission organised in Rabat on 4-7 April 2016, its third UniDem (University for Democracy) Seminar on the theme “Open Government”.

The fourth UniDem Seminar was organised from 30 October to 3 November 2016 on the theme “reform of the general statute of the public service”.

Each of these seminars brought together 50 participants including senior government officials from the MENA region (Algeria, Jordan, Lebanon, Mauritania, Morocco, Palestinian National Authority, Tunisia) as well as experts from the two shores of the Mediterranean. The Seminar on the reform of the general statute of the public service was closed by the Minister for Public Service and Modernisation.

This type of interactive seminar has proved very useful to accompany societal, political, institutional and administrative changes in the countries of the MENA region in order to make them more intelligible and more efficient and to enable them to manage more effectively the transition to democracy and modernity. These seminars are also a highly valued tool for strengthening the links between administrations on both sides of the Mediterranean.

These seminars also provided an opportunity for the Commission to initiate promising synergies with OECD and SIGMA in this area.

2. Latin America

Argentina

In 2016 representatives of electoral management bodies of Argentina, which is an observer state in the Venice Commission, showed their interest in co-operating with the Venice Commission. After initial contacts in the framework of international events organized by OAS and INE, Mr Dalla Via, President of the National Electoral Chamber of Argentina, participated in the meeting of the Sub-Commission on Latin America, held in Peru in October 2016. He also attended the plenary session of the Commission in December 2016. During these events he informed the Commission about different possibilities of co-operation, mainly in the field of electoral reform and constitutional justice.

Peru

Conference on “Constitutional Reform and Democratic Stability: the role of Constitutional Courts” (Lima, 24 October 2016)

This event was organised by the Commission and by the Constitutional Court of Peru. Its aim was to provide an opportunity for an exchange of experiences on recent constitutional reforms and the problems encountered in the process of implementation of these changes; and to promote dialogue between national courts, electoral academics and representatives of governments and international institutions, opening up a forum for direct dialogue and discussion on the role of constitutional courts.

The conference was attended by judges and lawyers from the Constitutional Court of Peru, six members of the Venice Commission, experts and judges from 10 countries in Latin America, including Argentina, Chile, Colombia, Guatemala, Ecuador, El Salvador, Mexico, Paraguay, Peru and Uruguay.

Meeting on the Sub-Commission on Latin America (Lima, 25 October 2016)

The meeting of the Sub-Commission on Latin America was attended by representatives from Latin American

member states of the Venice Commission and several other countries of the region. The agenda of the meeting included such issues as the follow-up to the previous opinions of the Venice Commission, the preparation of the road-map for possible activities in Latin America in 2017 and the creation of several working groups including experts from both Europe and Latin America.

The meeting of the Sub-Commission on Latin America, as well as the international conference, proved that a growing number of Latin American countries were interested in regular contacts with the Venice Commission.

3. Central Asia

In 2016, the Venice Commission continued its fruitful co-operation with several countries of Central Asia. **Kazakhstan** and **Kyrgyzstan**, being members of the Venice Commission, benefited from the fully-fledged co-operation such as participation in multilateral activities, preparation of opinions and organisation of bilateral meetings.

Moreover, the Venice Commission prepared a proposal on the co-operation with the Kyrgyz authorities in the electoral field. A joint project financed by the European Union and the Council of Europe was signed at the end of 2016 for the next two years.

Co-operation with **Uzbekistan** was limited to participation in a conference organised by the Uzbek authorities.

Country-specific activities

Kazakhstan

Opinion on the Draft Code of Judicial Ethics of Kazakhstan (CDL-AD(2016)013)

At the request of the Supreme Court of Kazakhstan dated 20 January 2016, a Venice Commission delegation visited Astana on 4 and 5 April 2016 with a view to preparing an opinion on the draft Code of Judicial Ethics of Kazakhstan.

The Draft Code had been prepared in 2016 by the Union of Judges of Kazakhstan to replace a previous Code of 2009. It regulated the conduct of judges in a professional context, in private and in public spheres. Breaches of the Code might possibly lead to the disciplinary liability of judges, therefore the draft opinion also looked at the Constitutional Law on the system of courts and the status of judges of 2000. This law provided for disciplinary liability in cases of violation of ethical norms. Apparently, that was meant to refer to the Code of Ethics, but the law itself should regulate such matters in more detail.

Amongst the most important recommendations, aimed at improving further the legislation and the Draft Code, the Venice Commission stressed the following:

- the Constitutional Law should describe in more detail the grounds on which a judge may be brought to disciplinary liability for a breach of “ethical rules”; in addition, it should specify that disciplinary sanctions may be imposed only for manifest and gross violations of judicial ethics; finally, the Constitutional Law should specify to what extent the findings of the Ethics Commissions are mandatory in the disciplinary proceedings against the judges;
- the Draft Code should specify that professional errors may be punishable with disciplinary liability only when a judge has roughly and systematically infringed his/her own competence;
- while certain limitations on the freedom of speech of judges contained in the Code are permissible, the Court should specify that the judge should be able to express, with necessary moderation, critical opinions about the State’s policies; application of the Draft Code to former judges should be limited to the strict minimum;
- in regulating the behaviour of the judges in the private context the Draft Code should avoid relying on vague concepts such as “immoral behaviour” or “healthy lifestyle”;
- certain most intrusive regulations (such as, for example, the duty to report to the president of the court on the grounds of divorce) should be removed.

Members of the Venice Commission held an exchange of views with Mr Mami, President of the Supreme Court of Kazakhstan, who was present at the June plenary session of the Commission when this opinion was adopted.

Conference on “Modernisation of procedural law – guarantee of the efficiency of justice and law enforcement” (Ak-Bulak, 3-6 March 2016)

The Conference provided an opportunity to discuss new developments in the implementation of the Criminal Code and Criminal Procedure Code which had entered into force on 1 January 2015. The first day was prepared by the Supreme Court and focused to the Civil Procedure Code, in particular on investment dispute settlement, judicial review, access to justice, as well as on the application of modern legal mechanisms aimed at the simplification of the civil procedure. The second part of the Conference was run by the Prosecutor’s office and focused on the implementation of the new Criminal Procedure Code.

Other issues discussed at the Conference with the participation of international experts concerned judicial reform, in particular:

- transition from the five-level justice system (first instance, appeal, cassation, supervising and

- re-supervising) to a three-level (first instance, appeal and cassation) system;
- extension of trial by jury to new categories of cases, and providing in the law for mandatory jury trial for certain categories of criminal cases (and not optional);
- strengthening mechanisms for ensuring the accountability of judges;
- introduction of audio and video recording of all trials;
- gradual extension of powers of the investigative judge related to the authorisation of actions that limit constitutional human and civil rights;
- creation of separate regulations on legal proceedings concerning the investment disputes;
- establishment of an International Arbitration Centre in Astana;
- limitation of the prosecutor's participation in civil proceedings.

Kyrgyzstan

Joint opinion on the draft law "On Introduction of amendments and changes to the Constitution of the Kyrgyz Republic" (CDL-AD(2016)025)

On 15 August 2016, Mr. Shykmamatov, Acting Chairperson of the Committee on Constitutional Legislation, State Structures and Regulations of the *Jogorku Kenesh* (Parliament) of the Kyrgyz Republic, sent a letter in which he requested the OSCE/ODIHR, in co-operation with the Venice Commission, to review the draft amendments to the Constitution of the Kyrgyz Republic proposed in the draft law "On Introduction of amendments and changes to the Constitution of the Kyrgyz Republic".

By letter of 18 August 2016, the OSCE/ODIHR invited the Venice Commission to prepare a joint opinion on the draft amendments to assess their compliance with international human rights and rule of law standards and OSCE commitments. In view of the urgency of the matter, as the period for public consultations on the draft amendments was scheduled to end on 29 August 2016, the OSCE/ODIHR and the Venice Commission agreed to prepare a preliminary joint opinion on the compliance of the draft amendments with international human rights standards and OSCE commitments.

The draft amendments related to constitutional provisions on the status of international human rights treaties and their position in the hierarchy of norms, the separation of powers, the dismissal of members of the Cabinet, the manner of appointing/dismissing heads of local state administration, the independence of the judiciary and of judges as well as the roles of the Supreme Court, and of the Constitutional Chamber, among others. The draft amendments could negatively impact the

balance of powers by strengthening the powers of the executive, while weakening both the parliament and the judiciary. The role of the Constitutional Chamber as an effective body of constitutional control would be seriously affected. Some of the proposed amendments raised concerns with regard to key democratic principles, in particular the rule of law, the separation of powers and the independence of the judiciary. This concerned notably reference to vaguely defined 'highest values' in the Constitution, which could be used to restrict human rights and fundamental freedoms. The provisions on the appointment of the judges of the Constitutional Chamber and the Supreme Court would give wide discretion to the President in their selection. Provisions on the mandatory waivers of judges' privacy rights were problematic. The removal of provisions obliging the Kyrgyz authorities to restore the rights of persons following decisions of international human rights bodies which confirm violations of human rights and freedoms was a serious step back.

As already recommended in the 2015 Joint Opinion on the previous draft constitutional amendments, the constitutional procedure for amendments should be followed (adoption by a two-thirds majority and only following at least three readings with a two months' interval between).

The Commission endorsed the preliminary joint opinion by the Venice Commission and the OSCE/ODIHR on the introduction of amendments and changes to the Constitution of the Kyrgyz Republic at its October 2016 plenary session.

Joint EU-Council of Europe Project on "Support to strengthening democracy through electoral reform in Kyrgyzstan"

A Venice Commission delegation visited Bishkek, Kyrgyzstan from 13-15 June 2016 with the purpose of preparing a project proposal on "Support to strengthening democracy through electoral reform in Kyrgyzstan". Members of delegation met representatives of the Central Election Commission, the State Registration Service, the Presidential working group on the measures to improve the electoral system, Parliament, the Constitutional Chamber of the Supreme Court of the Kyrgyz Republic as well as international organisations OSCE, KOICA, UNDP, IFES, NDI and civil society.

The project will help the Kyrgyz authorities to endorse their responsibilities in undertaking the electoral reform in line with the EU Agreement "Strengthening democracy through electoral reform – sector reform contract" as well as the national strategy for sustainable development for the period 2013-2017. The project will contribute to building/reinforcing national capacity to deliver this reform through electoral bodies that work in line with international standards and enjoy public trust and confidence in the electoral processes in the country. The project will support the national counterparts through

the provision of advice on further legislative reform and its effective implementation. This, in turn, will ensure a higher degree of credibility, inclusiveness and transparency of electoral processes contributing to an increased legitimacy of elected bodies and public confidence in democratic institutions.

Transnational activities

Publication on judicial systems of the Central Asian countries

In 2016 the Commission published a collection of reports entitled “*Judicial systems of Central Asia: a comparative overview*” (the overview is in Russian, with an introductory article translated into English). In the summer of 2015 a group of experts of the Commission had visited the five Central Asian countries (Kazakhstan, Kyrgyzstan, Uzbekistan, Tajikistan and Turkmenistan) and prepared an overview of judicial systems of these countries, with emphasis on the status of judges and the structure of the bodies governing the judiciary. This publication may serve as a useful source of information for academic exchanges and as a tool for designing future reforms in the area of the judiciary in this region.

This research project was funded by the European Union and the Ministry of Foreign Affairs of Finland.

Publication in the field of elections

In 2016 the Venice Commission finalised a publication entitled “Main reference texts in the field of elections and political parties” in the Russian language. This publication was funded by the European Union and the Ministry of Foreign Affairs of Finland.

4. Other conferences and meetings

The Commission participated in the following other activities in 2016:

Egypt:

- Alexandria, 27-30 May 2016 - Regional Youth Exchange Programme «Do we need a gender (female representation) agenda for politics?» organised by the Swedish Alexandria University and by the Danish Egyptian Dialogue Institute.

Jordan:

- Amman, 28 February 2016 – Conference “Arab Constitutional Courts and Councils: possible reforms and challenges in light of regional changes” organised by the Constitutional Court of Jordan and the Konrad Adenauer Foundation.
- Amman, 30 May 2016 – Conference on “Parliamentary Democracy: political parties and parliament” organised by the Parliamentary assembly of the Council of Europe and the House of Representatives of the Parliament of Jordan.

Morocco:

- Rabat, 19 February 2016 - Parliamentary forum for social justice on the theme: “Promoting human dignity for living in unity” organised by the House of Councillors of Morocco.

Mexico:

- Mexico City, 5 May 2016 - Forum on “Financing of political parties and electoral campaigns”, organised by the Mexican National Electoral Institute;
- Mexico City, 26-27 May 2016 - International conference on the role of courts and the protection of political rights, organised by the Mexican National Electoral Tribunal;
- Mexico City, 24-26 August 2016 - Conference on electoral justice, organised on the occasion of the 20th anniversary of the Mexican Electoral Tribunal.

Kazakhstan:

- Astana, 29-30 August 2016 - Conference on “Constitution - a basis for the dynamic development of society and state”, organised by the Constitutional Council of Kazakhstan

Uzbekistan:

- Tashkent, 20 - 21 October 2016 - Conference dedicated to the 20th anniversary of the establishment of national human rights institutions of Uzbekistan on «National system for ensuring reliable protection of human rights and freedoms in Uzbekistan: achievements over the years of independence», organised by the National Centre for Human Rights.



VI. Co-operation between the Commission and organs/bodies of the Council of Europe, the European Union and other international organisations

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1. Council of Europe

Committee of Ministers

Representatives of the Committee of Ministers participated in all four Commission's plenary sessions in 2016. The following Ambassadors, Permanent Representatives to the Council of Europe, attended the sessions (in order of attendance):

- Ambassador Miroslav PAPA, Permanent Representative of Croatia;
- Ambassador Guido BELLATTI CECCOLI, Permanent Representative of San Marino;
- Ambassador Božidarka KRUNIĆ, Permanent Representative of Montenegro;
- Ambassador Katrin KIVI, Permanent Representative of Estonia to the Council of Europe and Chair of the Ministers' Deputies;
- Ambassador Zoran POPOVIĆ, Permanent Representative of Serbia;
- Ambassador Erdoğan İŞCAN, Permanent Representative of Turkey;
- Ambassador Onno ELDERENBOSCH, Permanent Representative of the Netherlands;
- Ambassador Ágnes KERTÉSZ, Permanent Representative of Hungary;
- Ms Amy P. WESTLING, Consul General, Deputy Permanent Observer of the United States of America;
- Ambassador Torbjörn HAAK, Permanent Representative of Sweden;
- Ambassador Gerhard KÜNTZLE, Permanent Representative of Germany;
- Ambassador Satu MATTILA-BUDICH, Permanent Representative of Finland.

Mr Gianni Buquicchio, President of the Venice Commission, addressed a High-level International Conference on "Strengthening Judicial Independence and Impartiality as a Pre-condition for the Rule of Law in Council of Europe member States" organised by the Bulgarian Chairmanship of the Committee of Ministers in Sofia, Bulgaria on 21-22 April 2016.

On 6 September 2016 the Committee of Ministers of the Council of Europe endorsed the Rule of Law Checklist elaborated by the Venice Commission and adopted at its March 2016 plenary session (CDL-AD(2016)007). On this occasion the Committee of Ministers invited

relevant authorities in the member States to make use of the Checklist and to disseminate it widely in the relevant circles.

Parliamentary Assembly

In 2016, at the request of the Parliamentary Assembly, the Venice Commission adopted the following opinions on:

- the Referendum proposing Amendments to the Constitution of **Azerbaijan**;
- the amendments to the **French** Constitution (on emergency state);
- the draft Amendments to the Law on the Police and other Laws of **Poland**;
- the draft law of the **Russian Federation** which empowered the Constitutional Court to determine whether findings by the international bodies on protection of human rights and freedoms (including those of the European Court of Human Rights) are to be implemented;
- the compatibility with international standards and human rights and fundamental freedoms, of the Law of 19 May 2015 "on undesirable foreign and international organisations" of the **Russian Federation** (Federal Law No. 129-F3 on Amending Certain Legislative Acts of the Russian Federation);
- the amended electoral code of November 2015 of "**the former Yugoslav Republic of Macedonia**";
- five issues on Turkey: the emergency decrees; the suspension of Article 83 of the Constitution (parliamentary inviolability); the legality of the recent curfew measures; the restrictions to Internet access; and on the amendments to the Penal Code of **Turkey** limiting freedom of speech;
- the amendments to the Law of **Ukraine** on election of people's deputies regarding the exclusion of candidates from party lists.

In addition, the PACE's Monitoring Committee and the Committee on Human Rights and Legal Affairs requested the Venice Commission's opinion on the following issues:

- the **Bulgarian** Law on Judicial Power as amended by the two packages of amendments passed in March and July 2016;
- the amendments to the Electoral Code of **Bulgaria** as adopted by the Bulgarian Parliament in 2016;

- the Law on the changes to the powers of the Constitutional Court of **Spain** and the «Citizens' Security Law » of **Spain**;
- “the duties, competences and functioning” of the “criminal courts of peace” established by the Law 5235 of **Turkey** (institution of criminal peace judgeships).

These opinions are to be adopted in 2017.

The Venice Commission organised in co-operation with the Parliamentary Assembly, the Parliamentary Conference on “**Media Freedom as cornerstone for democratic elections**” in Berlin on 4 July 2016.

Mr Gianni Buquicchio, President of the Venice Commission, participated in the session of the **PACE Standing Committee** which took place at the French National Assembly in Paris on 4 March 2016. Ms Herdis Kjerulf-Thorgeirsdottir, Vice-President of the Venice Commission, reported on the **Rule of Law Checklist** to the Committee of Legal Affairs and Human Rights of the Parliamentary Assembly in Strasbourg on 21 June 2016, in the presence of the Estonian Chair of the Committee of Ministers, Minister Kaljurand. The Parliamentary Assembly has started preparing a report on the Rule of Law Checklist.

The Venice Commission also participated in the round-table on electoral standards organised by the PACE in Minsk, Belarus on 18 May in co-operation with the National Assembly of **Belarus** and in the exchange of views on the parliamentary elections in Belarus on 23 June 2016 with the participation of a member of the House of Representative of the National Assembly of Belarus and of the opposition which was organised by PACE's Committee on Political Affairs and Democracy. Mr Thomas Markert, Secretary of the Venice Commission, addressed the latter Committee on the recent developments in **Turkey** on 7 November 2016; Mr Markert also briefed the Committee on Rules of Procedure, Immunities and Institutional Affairs on parliamentary inviolability issues in Turkey.¹³ The Commission was represented at the meeting on “**The right to vote for all**” organised by the Sub-Committee on Disability and Inclusion of the Assembly's Committee on Equality and Non-Discrimination, held in Strasbourg on 10-13 October 2016.

The Parliamentary Assembly continued to participate actively in the **Council for Democratic Elections** created in 2002 as a tripartite organ of the Venice Commission, the Parliamentary Assembly and the Congress of Local and Regional Authorities of the Council of Europe. The relevant members of the Council for Democratic Elections in 2016 were as follows:

13. Cf. relevant Opinion of the Commission adopted at the request of the PACE CDL-AD(2016)027.

Members

- Ms Josette DURRIEU, Committee on Political Affairs and Democracy
- Lord Richard BALFE, Committee on Legal Affairs and Human Rights
- Mr Jordi XUCLA, Monitoring Committee

Substitute Members

- Ms Eka BESELIA, Committee on Legal Affairs and Human Rights
- Lord Donald ANDERSON, Committee on Political Affairs and Democracy
- Mr Tiny KOX, Monitoring Committee

In accordance with the co-operation agreement concluded between the Venice Commission and the Parliamentary Assembly, representatives of the Venice Commission ensured legal assistance to the Parliamentary Assembly of the Council of Europe delegations observing parliamentary elections in **Belarus, Georgia** (1st round), **Montenegro, Jordan, Morocco, Serbia, “the former Yugoslav Republic of Macedonia”** and the 1st round of the presidential elections in **Bulgaria** and the **Republic of Moldova**.

Congress of Local and Regional Authorities

The Congress also continued to participate in the Council for Democratic Elections (CDE). In 2016, a member of the Congress, Mr Jos Wienen, chaired the Council for Democratic Elections. The relevant members of this Council in 2016 were as follows:

- Mr Jos Wienen, Chamber of Local Authorities
- Mr Stewart Dickson, Chamber of Regional Authorities

Mr Jan Helgesen, Chair of the Scientific Council, introduced the Rule of Law Checklist before the Monitoring Committee of the Congress on 28 June 2016. On 21 October 2016, the Congress adopted Resolution 408(2016) on the Rule of Law Checklist of the Venice Commission calling “on the Congress and its members to embrace and use the rule of law checklist as it is a relevant tool offering all levels of governance, and notably local and regional authorities, guidelines that can enable them to consolidate their political and legal culture and prompt them to adopt mechanisms and procedures to ensure respect for the rule of law in their law-making and standard-setting work.”

European Court of Human Rights

In order to interpret the exact scope of the rights and freedoms guaranteed by the European Convention on Human Rights and to support its reasoning, the European Court of Human Rights (ECtHR) makes use, *inter alia*,

of the work of the Venice Commission,¹⁴ by referring to the norms emanating from the Commission's documents. In 2016 the European Court of Human Rights referred to the Venice Commission's documents in more than 20 judgments.

The ECtHR referred to the **Code of Good Practice in Electoral Matters**¹⁵ in the case of *Uspaskich v. Lithuania* (Application no. 14737/08) and in the case of *Yabloko Russian United Democratic Party and others v. Russia* (Application no. 18860/07).

The Guidelines and explanatory report on legislation on **political parties**,¹⁶ Joint Guidelines on political party regulation¹⁷ were referred to in the case of *Cumhuriyet Halk Partisi v. Turkey* (Application no. 19920/13) and in the *Yabloko Russian United Democratic Party and others v. Russia* (Application no. 18860/07). The judgment in the latter case also contained references to the Reports on the participation of political parties in elections¹⁸ and on the method of nomination of candidates within political parties.¹⁹

The Reports on the role of the opposition in a **democratic parliament**²⁰ and on parliamentary immunities²¹ were mentioned in the case of *Karácsony and others v. Hungary*, (Applications nos. 42461/13 and 44357/13). The Report on the **imperative mandate** and similar practices²² and the Opinion on the Constitution of Serbia²³ were referred to in the case of *Paunović and Milivojević v. Serbia* (Application no. 41683/06). Opinions on the constitutional situation in Bosnia and Herzegovina and the powers of the High Representative²⁴ and on different proposals for the election of the Presidency of Bosnia and Herzegovina²⁵ were quoted in the case of *Pilav v. Bosnia and Herzegovina* (Application no. 41939/07). The Report on **electoral rules and affirmative action for national minorities**' participation in the decision-making process in European countries²⁶ was mentioned in the judgment in the case of *Partei Die Friesen v. Germany* (Application no. 65480/10). The *Amicus Curie Brief* for the Constitutional Court of Georgia on the question of the defamation of the deceased²⁷ was mentioned in another case against Germany: *Madaus v. Germany* (Application no. 44164/14).

14. The first case where the Court cited the Venice Commission was *Hirst v. the United Kingdom (No. 2)*, no. 74025/01, § 24, 30 March 2004. The source quoted was the Code of Good Practice in Electoral Matters, CDL-AD(2002)023rev).

15. CDL-AD(2002)023rev

16. CDL-AD(2004)007rev

17. CDL-AD(2010)024

18. CDL-AD(2006)025

19. CDL-AD(2015)020

20. CDL-AD(2010)025

21. CDL-AD(2014)011

22. CDL-AD(2009)027

23. CDL-AD(2007)004

24. CDL-AD(2005)004

25. CDL-AD(2006)004

26. CDL-AD(2005)009

27. CDL-AD(2014)040

The Venice Commission's Report on the **independence of the judicial system - Part I: the independence of judges**, (CDL-AD(2010)004) was quoted in the cases of *Jakšovski and Trifunovski v. "the former Yugoslav Republic of Macedonia"* (Applications nos. 56381/09 and 58738/09), *Miracle Europe Kft v. Hungary* (Application no. 57774/13) and *Ramos Nunes De Carvalho e Sá v. Portugal*, (Applications nos. 55391/13, 57728/13 and 74041/13). The latter judgment also contains references to other Venice Commission documents, such as:

- Report on judicial appointments (CDL-AD(2007)028),
- Joint Opinion of the Venice Commission and the Directorate of Human Rights (DHR) of the Directorate General of Human Rights and the Rule of Law (DGI) of the Council of Europe on the draft law on making changes to the Law on disciplinary liability and disciplinary proceedings of judges of general courts of Georgia (CDL-AD(2014)032), and
- Opinion on the Laws on the disciplinary liability and evaluation of judges of "the former Yugoslav Republic of Macedonia" (CDL-AD(2015)042).

The Opinion on the draft constitutional amendments concerning the reform of the judicial system in "the former Yugoslav Republic of Macedonia"²⁸ was quoted in the case of *Gerovska Popčevska v. "the former Yugoslav Republic of Macedonia"* (Application no. 48783/07). The Court referred to the Opinion on Act CLXII of 2011 on the Legal Status and Remuneration of Judges and Act CLXI of 2011 on the organisation and administration of courts of Hungary²⁹ in the case of *Miracle Europe Kft v. Hungary*, (Application no. 57774/13) and in the case of *Baka v. Hungary* (Application no. 20261/12). In addition, the judgment in the latter case contained references to the following Venice Commission texts:

- Opinion on the Fourth Amendment of the Fundamental Law of Hungary (CDL-AD(2013)012),
- Opinion on the new Constitution of Hungary (CDL-AD(2011)016);
- Opinion on the draft law on introducing amendments and addenda to the Judicial Code of Armenia (term of office of court presidents, CDL-AD(2014)021);
- Opinion on the draft law on amendments to the Organic Law on General Courts of Georgia, (CDL-AD(2014)031);
- Report on the implementation of international human-rights treaties in domestic law and the role of courts (CDL-AD(2014)036).

The Joint Guidelines on **freedom of peaceful assembly**³⁰ were referred to in the cases of *Novikova and others v. Russia*, (Applications nos. 25501/07, 57569/11, 80153/12, 5790/13 and 35015/13) and *Frumkin v. Russia*,

28. CDL-AD(2005)038

29. CDL-AD(2012)001

30. CDL-AD(2010)020

(Application no. 74568/12). Two Commission's opinions on the Law on Freedom of Assembly of Azerbaijan³¹ and on the draft amendments to that law³² were analysed in the judgment regarding the case of *Ibrahimov and others v. Azerbaijan*, (Applications nos. 69234/11, 69252/11 and 69335/11). The judgment in the case of *Novikova and others v. Russia*, (Applications nos. 25501/07, 57569/11, 80153/12, 5790/13 and 35015/13) also contains references to the Opinion on Federal Law no. 65-FZ of 8 June 2012 amending Federal Law no. 54-FZ of 19 June 2004 on assemblies, meetings, demonstrations, marches and picketing and the Code of Administrative Offences³³ and to the Compilation of Venice Commission Opinions concerning freedom of assembly.³⁴

The Court referred to the Opinion on the legal status of religious communities in Turkey and the right of the Orthodox Patriarchate of Istanbul to use the adjective "ecumenical",³⁵ the Guidelines for legislative reviews of laws affecting **religion or belief**³⁶ and Joint Guidelines on the legal personality of religious or belief communities³⁷ in the case of *Izzettin Doğan and others v. Turkey*, (Application no. 62649/10).

The Report on the democratic oversight of the **security services**³⁸ and its update³⁹ were referred to in the case of *Szabó and Vissy v. Hungary*, (Application no. 37138/14). In the case of *Ivanovski v. "the former Yugoslav Republic of Macedonia"* (Application no. 29908/11) the Court referred to the *Amicus Curiae* Brief on the Law on determining a criterion for limiting the exercise of public office, access to documents and publishing, the co-operation with the bodies of the state security ("Lustration Law") of «the former Yugoslav Republic of Macedonia»⁴⁰.

A general reference to the Venice Commission's work used by the Court in its interpretation of the ECHR was made in the judgement of the case of *Muršić v. Croatia* (Application no. 7334/13).

Amicus Curiae brief in the case of *Rywin v. Poland* (Applications Nos 6091/06, 4047/07, 4070/07) before the European Court of Human Rights (on Parliamentary Committees of inquiry) (CDL-AD(2014)013) – follow up

In January 2014, the European Court of Human Rights requested an *amicus curiae* brief in the framework of the case *Rywin v. Poland*. The Venice Commission adopted this brief at its March 2014 plenary session. The decision was rendered on 18 February 2016.

31. CDL-AD(2006)034

32. CDL-AD(2007)042

33. CDL-AD(2013)003

34. CDL-PI(2014)003

35. CDLAD(2010)005

36. CDL-AD(2004)028

37. CDL-AD(2014)023

38. CDL-AD(2007)016

39. CDL-AD(2015)006

40. CDL-AD(2012)028

The decision refers to the Venice Commission's opinion to consider that there is no violation of Article 6 § 1 and 2 of the Convention. The Venice Commission had, in particular, considered that the discovery of possible criminal offences should not in itself stop an otherwise legitimate parliamentary process of inquiry and that the members of the Parliamentary Committee of inquiry should exercise caution so as not to make assessments or statements on the issue of guilt or in other ways infringe the principle of the presumption of innocence. When referring to the Venice Commission's opinion, the Court considered that "distinction should be made, however, between decisions or statements that reflect the perception that the person concerned is guilty and those which restrict themselves to describing a state of suspicion". The Court held that neither the resolution creating the Committee of Inquiry nor the conclusions of this Committee constituted a declaration of guilt. There was therefore no violation of Article 6 of the ECHR. Three judges expressed partially dissenting opinions which, also on the basis of the Venice Commission's opinion, considered that there was a breach of the presumption of innocence, since the words used by the Parliamentary Committee of Inquiry and especially the Diet's final report affirmed the commission of an offence and the court had used similar terms.

Commissioner for Human Rights

Mr Nils Muižnieks, Council of Europe Commissioner for Human Rights, addressed the Venice Commission's October 2016 plenary session. In his address, the Commissioner highlighted, in particular, his work on the issues of the rule of law and of the administration of justice and mentioned examples of countries (such as Albania, Poland, the Russian Federation or Turkey) in respect of which, in his dialogue with the state authorities, he had systematically echoed the position taken by the Venice Commission in its opinions, or had recommended that the Venice Commission be invited to provide a legal opinion on the issue at stake.

The Commissioner further stressed that the work of the two institutions was complementary: based on the high expertise of its members, the Venice Commission can provide an in-depth analysis while, on his side, the Commissioner can analyse the broader context and can react in a quick and flexible manner to emerging threats. He expressed his satisfaction with the excellent co-operation between the two institutions.

Other Council of Europe institutions

Ad-hoc Committee of Experts on Legal, Operational and Technical Standards for E-Voting (CAHVE)

The Venice Commission participated in the second meeting organised by CAHVE on e-voting in Strasbourg, France on 3 November 2016. Since 2002 the Venice Commission has been involved in the issue of the use of

e-technologies in the electoral process, in particular by its participation in the drawing up of Recommendation Rec(2004)11 of the Committee of Ministers to member states on legal, operational and technical standards for e-voting which CAHVE continued to update in 2016.

CEPEJ, CCJE and CCPE

The Venice Commission co-operated with the European Committee for the Efficiency of Justice (CEPEJ), the Consultative Council of European Judges (CCJE) and the Consultative Council of European Prosecutors (CCPE) on the implementation of the law on the High Judicial Council of Morocco.

Council of Europe Development Bank

The Director of the CEB attended the Venice Commission's October 2016 plenary session and informed the participants about the Bank's recent activities.

European Committee on Legal Co-operation (CDCJ)

In 2016 the Venice Commission continued to contribute to the work of the drafting group within the European Committee on Legal Co-operation (CDCJ) on a recommendation on legal regulation of lobbying activities.

Committee of Experts on Media Pluralism and Transparency of Ownership (MSI-MED)

The Committee of Experts on Media Pluralism and Transparency of Ownership (MSI-MED) continued preparing feasibility studies on gender equality in the context of media coverage of elections, as well as on the use of Internet in elections. The Venice Commission participated in the First and Second meetings of the Committee of Experts on Media Pluralism and Transparency of Ownership (MSI-MED) held in Strasbourg, France on 22-23 March and 27-28 September 2016, respectively.

Gender Equality Commission

The Venice Commission participated in the 9th and 10th meetings of the Council of Europe Gender Equality Commission held in Strasbourg, France on 27-29 April and 16-18 November 2016 respectively. A compilation on gender equality, updated in 2016 by the Venice Commission, was presented to the Gender Equality Commission. This compilation includes all Venice Commission opinions and documents dealing with the issue of gender equality.

2. European Union

In 2016, the co-operation between the Venice Commission and the European Union further consolidated.

It has become customary for the European Union to invite its member and candidate states to follow the Venice Commission's recommendations. The European Commission Services commended the consistent and

constructive contribution of the Venice Commission to the assessment of complex reform processes in both candidate and potential candidate countries. The Venice Commission provided input to the on-going EU efforts to support reforms in enlargement countries, channelling them within well designed technical boundaries while still respecting domestic ownership at all stages. Of particular importance were the Venice Commission's opinions on judicial reform in Albania, which made it possible to carry out this essential reform for the European perspective of the country.

The Venice Commission was involved in consultations with the EU bodies on topics concerning EU policies and its relations with the countries - members of the EU, candidate States and neighbourhood States - such as Poland, Albania, the Balkan states, Central Asian states, states of the MENA region and Ukraine. In addition, during 2016 Venice Commission representatives held working meetings with the European Commission (DG-NEAR, DG-JUST, EEAS and DEFCO).

The EU and the Venice Commission worked closely on the situation concerning the Constitutional Tribunal in **Poland**. On 13 January 2016, the European Commission started a structured dialogue with the Polish authorities under the EU Rule of Law Framework, taking into account the relevant opinions adopted by the Venice Commission. On 27 July 2016, the European Commission adopted a Rule of Law Recommendation on the situation in Poland, concluding that there was a systemic threat to the rule of law in the country. On 21 December 2016, the European Commission adopted a complementary Recommendation in which it asked the Polish authorities to take the opinions of the Venice Commission on the Constitutional Tribunal fully into account. There were numerous references to the Venice Commission, *inter alia*:

"65...(c) ensure that any reform of the Law on the Constitutional Tribunal respects the judgments of the Constitutional Tribunal, takes the Opinions of the Venice Commission fully into account and ensures that the effectiveness of the Constitutional Tribunal as a guarantor of the Constitution is not undermined;"⁴¹

European Parliament

In 2016, the European Parliament increased its references to the Venice Commission's work and consultations with its representatives on important issues.⁴²

41. The fact sheet on the EC Recommendation can be consulted at: http://europa.eu/rapid/press-release_MEMO-16-4479_en.htm.

42. The EP quoted the work of the Commission in such documents as EU mechanism on democracy, the rule of law and fundamental rights: Interim European Added Value Assessment accompanying the Legislative initiative Report (April 2016); European Parliament resolution of 21 January 2016 on Association Agreements / Deep and Comprehensive Free Trade Areas with Georgia, Moldova and Ukraine (2015/3032(RSP)). For more references to the work of the Commission by the EU please refer to the Venice Commission's website page "References": http://www.venice.coe.int/WebForms/pages/?p=02_references&lang=EN

A representative of the Commission presented the Venice Commission to the Pan-European Working Group of the European Parliament in Strasbourg on 19 January 2016. Ms Simona Granata-Menghini, Deputy Secretary of the Venice Commission, participated in the 16th meeting of the Delegation to the EU-Armenia Co-operation Committee, held on 20-21 January 2016 in Strasbourg, France and briefed the participants on the constitutional reform and the constitutional referendum in Armenia.

The European Parliament adopted, on 14 September 2016, a resolution on “The recent developments in Poland and their impact on fundamental rights as laid down in the Charter of Fundamental Rights of the European Union” (2016/2774(RSP)), in which it referred to the opinions of the Venice Commission on the Constitutional Tribunal of Poland.

Co-operation with other EU institutions

In 2016, technical consultations were held on developments in the Balkans and Ukraine as well as in Central Asia and the countries of the MENA region. In addition, the Venice Commission co-operated in 2016 with the EU delegations in countries such as Kazakhstan, Kyrgyzstan, Jordan, Morocco, Tunisia and Ukraine. Mr Thomas Markert, Secretary of the Venice Commission, held meetings with EU officials on *inter alia* Poland, Turkey, Ukraine on 17 November 2016 in Brussels, Belgium. The Commission was also represented at the Donor co-ordination meetings with EU institutions (DG Enlargement of the Commission, the European External Action Service) held in Brussels on 18 November 2016.

In addition, the Venice Commission participated in the Conference on Strengthening the Rule of Law in the EU held in Brussels on 26 February 2016. On 24 May 2016, in Strasbourg, France, the Venice Commission met with a delegation from the Court of Justice of the European Union. The Secretary of the Venice Commission presented its latest work to delegates from the Working Party on the OSCE and the Council of Europe (COSCE) on 27 May 2016 in Brussels. The Venice Commission was represented at the Council of Europe and the European Union meeting (CATS) held on 16 November 2016 in Strasbourg. On 28 November 2016, the Venice Commission participated in an Expert meeting on the implementation of EU/OSCE on election missions’ recommendations and follow-up thereto.

Representatives of the European Union Agency for Fundamental Rights, the Legal Service and DG Justice, the European External Action Service as well as from the Committee of the Regions participated in the plenary sessions of the Venice Commission in 2016.

EU Agency for Fundamental Rights (FRA)

The Director of the European Union Agency for Fundamental Rights delivered an address to the Venice

Commission’s October 2016 plenary session, where he underlined the substantial contribution of the Venice Commission to the promotion and enforcement of rule of law standards, through both its country opinions and more practical tools, such as its recent Rule of Law Checklist, highly valued and appreciated by the EU institutions and the member States. In this context, he informed the Venice Commission about on-going related work of the Agency, in particular under the EU Rule of Law Framework.

Joint European Union – Council of Europe Projects

In 2016, the Venice Commission started implementing a segment of the Joint Programme entitled “Horizontal Facility for the Western Balkans and Turkey” and continued its co-operation with several countries within the framework of other joint projects:

- Programmatic Co-operation Framework (PCF 2015-2017), segments on elections and constitutional justice, and
- “Towards a Strengthened Democratic Governance in the Southern Mediterranean” (segment in the South Programme II).

In December 2016 the Venice Commission signed a co-operation Agreement with the European Union for the implementation of a new project in the electoral field in Kyrgyzstan. The project will help the country’s authorities to elaborate a comprehensive strategy and to reform the electoral legislation and practice in accordance with the international standards by making available tools and expertise to national institutions involved in the electoral reform.

Programmatic Co-operation Framework

In 2016, the Venice Commission continued to implement the parts of the Programmatic Co-operation Framework (PCF) 2015-2017 relating to electoral assistance and to constitutional justice, aimed at supporting reforms in the six Eastern Partnership countries (Armenia, Azerbaijan, Belarus, Georgia, Republic of Moldova and Ukraine), financed by the European Commission.

For more information cf. Chapters III (constitutional justice) and IV (elections, referendums and political parties).

Towards a Strengthened Democratic Governance in the Southern Mediterranean” (a segment of the South Programme II)

Launched in 2012, and stepped up for 2015-2017, the South Programme is a strategic European Union-Council of Europe initiative to support democratic reforms in the southern Mediterranean in response to demand from the partners in the region. From legislative expertise to strengthening institutions’ capacities

through peer-to-peer exchanges and networks, the South Programme aims *inter alia* to support the development of new constitutional and legislative frameworks and democratic governance bodies in countries in the region and to contribute to the establishment of a common legal area between Europe and the southern Mediterranean.

The support provided by the Council of Europe within its areas of expertise, through tailored training programmes such as the PATHS Programme, further provides an opportunity to develop and strengthen the capacities of the target groups – public administrations, legal professions, civil society – and to foster a culture of respect for human rights, democracy and the rule of law in the southern Mediterranean countries (Algeria, Egypt, Jordan, Lebanon, Libya, Morocco, Palestinian National Authority, Tunisia), which is one of the goals of the South Programme.

Horizontal Facility for the Western Balkans and Turkey

The European Union/Council of Europe Horizontal Facility for the Western Balkans and Turkey (Horizontal Facility) is a co-operation initiative of the European Union and the Council of Europe for South East Europe. Launched in May 2016, the Horizontal Facility is a Joint Programme, which covers activities of the Council of Europe in Albania, Bosnia and Herzegovina, Montenegro, Serbia, “the former Yugoslav Republic of Macedonia” as well as Kosovo. It includes the Council of Europe Expertise Co-ordination Mechanism (ECM), by which the Council of Europe in general and of the Venice Commission in particular provide expertise to respond to requests for legislative analysis and policy advice from Horizontal Facility beneficiary countries.

3. OSCE

In 2016, co-operation with the OSCE continued to be fruitful. The Venice Commission maintained regular and frequent high-level and working-level contacts with the organisation’s representatives. The OSCE/ODIHR was represented at all four plenary sessions of the Venice Commission in 2016.

Human Dimension events

The Venice Commission presented its Rule of Law Checklist at a side-event of the OSCE Annual Supplementary Human Dimension Meeting held on 23 September in Warsaw.

OSCE/ODIHR

Activities regarding protection of fundamental rights

Joint Guidelines on the Freedom of Peaceful Assembly

The Venice Commission continued contributing to the update of the 2nd edition of the Joint Guidelines on the

Freedom of Peaceful Assembly adopted in 2010. It participated in the Conference for the revision of the Joint Guidelines held by the OSCE/ODIHR in Warsaw, Poland on 11-12 April 2016.

Joint Opinions

In 2016 the Venice Commission prepared jointly with the OSCE/ODIHR the opinions on:

- two draft laws on guarantees for freedom of peaceful assembly in Ukraine (CDL-AD(2016)030)⁴³.
- the draft law «on Introduction of amendments and changes to the Constitution» of the Kyrgyz Republic (CDL-AD(2016)025).

For more information on these opinions please refer to the Chapter II.

Elections, referendums and political parties

In 2016, the Venice Commission continued its work in close co-operation with the OSCE/ODIHR in the field of elections and political parties. The Venice Commission and the OSCE/ODIHR prepared joint opinions concerning Armenia, Georgia, the Republic of Moldova, “the former Yugoslav Republic of Macedonia” and adopted Joint Guidelines for preventing and responding to the misuse of administrative resources during electoral processes. The OSCE/ODIHR took part in all four meetings of the Council for Democratic Elections.

Joint Guidelines on Political Party Regulation

The Venice Commission was invited to participate in the annual meeting of the core group of experts on political parties, organised by the OSCE/ODIHR, held in Warsaw, Poland on 11-12 November 2016. The aim of this meeting was to review the Joint Guidelines on Political Party Regulation, drawn up by the OSCE/ODIHR and the Venice Commission in 2010, following a broad and inclusive process.

The “Joint Guidelines” is a document, which is being continuously adapted to new developments related to political party regulation. The incorporation of new experiences, the need to make the guidelines more accurate and to reflect new trends, as well as the introduction of specific topics, such as ensuring that both women and men are able to access political party structures and decision-making on an equal footing, were some of the key topics debated. At the last meeting, it was agreed to continue revising the Joint Guidelines by selecting several key subjects:

- definition of political parties;
- rules on party autonomy and internal democracy;
- measures to improve the principle of gender equality in political parties;
- rules governing the financing of political parties and new technologies.

43. For more information on this opinion, cf. Chapter II

Several members of the Venice Commission will continue working on the revision of this text in 2017.

Joint Guidelines for Preventing and Responding to the Misuse of Administrative Resources during Electoral Processes (CDL-AD(2016)004)

This document was drawn up by the Venice Commission and the OSCE/ODIHR and adopted by the Venice Commission at its March 2016 plenary session. These Guidelines are intended for lawmakers who are invited to make use of them in order to reinforce the existing legislation on the use of administrative resources during electoral processes.

For more information please refer to Chapter IV.2.

Joint opinions in the field of elections and political parties

In the field of elections and political parties the Venice Commission elaborated jointly with the ODIHR and adopted the following opinions on:

- the draft Electoral Code of Armenia of 18 April 2016 (CDL-AD(2016)019);
- the Electoral Code of Armenia as amended on 30 June 2016 (CDL-AD(2016)031);
- the draft constitutional law of Armenia on political parties CDL-AD(2016)038);
- the amendments to the Election Code of Georgia of 8 January 2016 (CDL-AD(2016)003);
- the draft law on changes to the electoral code of the Republic of Moldova (CDL-AD(2016)021);
- the Electoral Code of “the former Yugoslav Republic of Macedonia” as amended on 9 November 2015 (CDL-AD(2016)032);

For more information on these opinions please refer to the Chapter IV.1.

The Venice Commission also participated in the OSCE/ODIHR Conference on the follow-up to electoral recommendations held in Vienna, Austria on 2 November 2016.

4. United Nations

UN High Commissioner for Human Rights

The Venice Commission participated in a brainstorming workshop on the “Foundations of the independence of independent bodies» organised by the Independent Instance for Truth and Dignity of Tunisia, by the UNDP and by the UN High Commissioner for Human Rights held in Tunis, Tunisia on 25–26 May 2016.

UN Human Rights Committee

Mr Rodriguez-Rescia, Member of the UN Human Rights Committee, participated in the Venice Commission’s March 2016 plenary session.

UNDP

The Venice Commission successfully co-operates with the UNDP in Central Asia and the countries of the Southern Mediterranean. In 2016, this co-operation focused mostly on issues of constitutional justice and reform of the electoral legislation and practice.

Central Asia

The Venice Commission has been co-operating with the UNDP Office in Kyrgyzstan for a number of years. In 2016, both organisations focused on the proposed constitutional reform and the constitutional referendum in Kyrgyzstan. The UNDP provided a follow-up to the activities carried out by the Venice Commission in 2015, both in the field of constitutional reform and in supporting the Constitutional Chamber. Moreover, the Venice Commission relied in its work on the information provided by UNDP on the evolving situation in the country.

Arab States

In 2016, the Venice Commission continued its fruitful co-operation with the UNDP Regional Hub for Arab States by assisting the electoral management bodies of Jordan, Lebanon, Libya and the Palestinian National Authority in reinforcing the capacities of the Organisation of Arab Electoral Management Bodies (EMBs). The next meeting of the General Assembly and a thematic conference of Arab EMBs is planned for February 2017. The Venice Commission will assist in the organisation of this event in close co-operation with the UNDP and other international partners.

5. Co-operation with other international organisations

5.1. Constitutional law, democracy and fundamental rights

International Association of Constitutional Law (IACL-AIDC)

The Venice Commission and IACL work together on the basis of a co-operation agreement signed a decade ago. In 2016, the co-operation continued: on 7 December in Venice, Italy the Commission and IACL, in co-operation with the International Institute for Democracy and Electoral Assistance (IDEA), organised an international conference entitled “Global Constitutional Discourse and Transnational Constitutional Activity”. For more information on the conference please refer to Chapter II.

Mr Cepeda-Espinosa, President of IACL, attended the Venice Commission’s December 2016 plenary session.

Inter-American Court of Human Rights

The President of the Court Mr Roberto Caldas attended the Venice Commission’s June and December 2016

plenary sessions, where he informed the participants of the key judgments delivered by the Court in 2016 and about the complex context in which the Inter-American system had to operate in the first half of 2016. There had been three main challenges during this period:

- the unprecedented number of refugees and undocumented migrants;
- the political crisis in Brazil, for which the Court had been able to establish certain standards;
- the financial crisis of the Inter-American system.

The Venice Commission expressed its support for the Inter-American Court of Human Rights and called on its member states to help overcome its financial crisis. It was stressed that the good relationship between key institutions in the field of democracy, rule of law and human rights, such as the Venice Commission and the Inter-American Court of Human Rights, were essential for defending democracy in their member countries.

International IDEA

On 7 December 2016, the Venice Commission in co-operation with the International Institute for Democracy and Electoral Assistance (IDEA) and the International Association of Constitutional Lawyers (IACL-AIDC), organised an international Conference entitled “Global Constitutional Discourse and Transnational Constitutional Activity”. (cf. Chapter II). Since 2015, this institution enjoys observer status with the Council for Democratic Elections – a tripartite body comprised of representatives of the Venice Commission, PACE and the Congress of the Council of Europe.

5.2. Constitutional Justice

In 2016 the Venice Commission co-operated with the following international organisations active in the constitutional justice field:

- Association of Asian Constitutional Courts and Equivalent Institutions (AACC);
- Association of Constitutional Courts using the French Language (ACCPUF);⁴⁴
- Conference of the Constitutional Control Organs of the Countries of New Democracy (CCCOCND);
- Conference of Constitutional Jurisdictions of Africa (CCJA);
- Conference of European Constitutional Courts (CECC);⁴⁵
- Ibero-American Conference of Constitutional Justice (CIJC);
- Union of Arab Constitutional Courts and Councils (UACCC).

For more information on co-operation with these organisations please refer to Chapter III.

5.3. Elections, referendums and political parties

Association of European Election Officials (ACEEEO)

The Venice Commission participated in the 25th Annual conference and the General Assembly of the ACEEEO entitled “25 years of electoral processes” held in Tirana on 21-23 September 2016. The representative of the Venice Commission intervened in the panel entitled “Developments and trends of the electoral systems in the last 25 years - World Leaders Summit of the election stakeholder organisations”.

Carter Center

A Venice Commission representative participated in the Conference on “Human rights and election standards” organised by the Carter Center in co-operation with the Office of the High Commissioner for Human Rights on 14-15 January 2016 in Atlanta, USA.

International Foundation for Electoral Systems (IFES)

At its June 2016 meeting in Venice, Italy, the Council for Democratic Elections – a tripartite body composed of the members of the Venice Commission, PACE and the Congress of the Council of Europe, decided to invite IFES as an observer; consequently IFES took part in the October and December 2016 meetings of the Council for Democratic Elections.

In 2016, the Venice Commission co-operated on numerous occasions with IFES in Ukraine. The main focus was on the reform of the electoral legislation (cf. Chapter IV). The Venice Commission also participated in the Conference of the Political Finance Community of Practice, organised by IFES in Prague, Czech Republic on 22 April 2016.

Organisation of American States

In 2016 the Venice Commission contributed to a peer review of the publication on electoral justice prepared by the OAS. The Venice Commission and competent services of the OAS continued their regular exchange of information in the electoral field.

Further information on the member States of the Enlarged Agreement, individual members of the Commission, Meetings held and opinions adopted as well as the list of the Commission’s publications is available on the Venice Commission’s web site at : <http://www.venice.coe.int>

44. See the co-operation page: <http://www.venice.coe.int/ACCPUF/>.

45. See the co-operation page: <http://www.venice.coe.int/CECC/>.

CODE DE BONNE CONDUITE EN MATIÈRE ÉLECTORALE



مبادئ توجيهية بشأن الحقوق الأساسية (Guidelines On Fundamental Rights)

THE RULE OF LAW CHECKLIST



Compliance with the law
International law
Constitutional justice
Equality
Access to justice
Accessibility of legislation and court decisions
Prevention of abuse of powers
Rule of Law
Equality before the law
Non-retroactivity
Effectiveness of judicial decisions
Law
Access to courts
Consistency of law
Equality before the law
Presumption of innocence
Supremacy of the law
Consistency of law
Non-discrimination
Prosecution service: autonomy and control
Stability and consistency of law
Law-making procedures



THE VENICE COMMISSION: AN INTRODUCTION

The European Commission for Democracy through Law, better known as the Venice Commission, is a Council of Europe independent consultative body on issues of constitutional law, including the functioning of democratic institutions and fundamental rights, electoral law and constitutional justice. Its members are independent experts. Set up in 1990 under a partial agreement between 18 Council of Europe member States, it has subsequently played a decisive role in the adoption and implementation of constitutions in keeping with Europe's constitutional heritage.⁴⁶ The Commission holds four plenary sessions a year in Venice, working mainly in three fields: constitutional assistance, constitutional justice and election and referendum issues. In 2002, once all Council of Europe member States had joined, the Commission became an enlarged agreement of which non-European states could become full members. In 2016, it had 61 full members and 13 other entities formally associated with its work. It is financed by its member States on a proportional basis which follows the same criteria as applied to the Council of Europe as a whole. This system guarantees the Commission's independence vis-à-vis those States which request its assistance.

1. Constitutional assistance

The Commission has the prime function of providing **constitutional assistance** to States, mainly, but not exclusively, those which participate in its activities.⁴⁷ Such assistance takes the form of opinions prepared by the Commission at the request not only of States, but also of organs of the Council of Europe, more specifically the Parliamentary Assembly, Committee of Ministers, Congress of Local and Regional Authorities and Secretary General, as well as of other international organisations or bodies which participate in its activities. These opinions relate to draft constitutions or constitutional amendments, or to other draft legislation in the field of constitutional law. The Commission has thus made an often crucial contribution to the development

46. On the concept of the constitutional heritage of Europe, see *inter alia* "The Constitutional Heritage of Europe", proceedings of the UniDem seminar organised jointly by the Commission and the Centre d'Etudes et de Recherches Comparatives Constitutionnelles et Politiques (CERCOP), Montpellier, 22 and 23 November 1996, "Science and technique of democracy", No.18.

47. Article 3, paragraph 3, of the Statute of the Commission specifies that any State which is not a member of the agreement may benefit from the activities of the Commission by making a request to the Committee of Ministers of the Council of Europe.

of constitutional law, mainly, although not exclusively, in the new democracies of central and eastern Europe.

The **aim of the assistance** given by the Venice Commission is to provide a complete, precise, detailed and objective analysis not only of compatibility with European and international standards, but also of the practicality and viability of the solutions envisaged by the States concerned. The Commission's recommendations and suggestions are largely based on common European experience in this sphere.

As concerns the **working methods**, the Commission's opinions are prepared by a working group composed of members of the Commission, at times assisted by external experts. It is ordinary practice for the working group to travel to the country concerned in order to meet and discuss with the national authorities, other relevant bodies and the civil society. The opinions contain an assessment of the conformity of the national legal text (preferably in its draft state) with European and international legal and democratic standards, and on proposals for improvement on the basis of the relevant specific experience gained by the members of the Commission in similar situations. Draft opinions are discussed and adopted by the Commission at one of its plenary sessions, usually in the presence of representatives of the country concerned. Following adoption, the opinions are transmitted to the State or the body which requested it, and come into the public domain.

The Commission's approach to advising States is based on dialogue with the authorities: the Commission does not attempt to impose solutions or abstract models; it rather seeks to understand the aims pursued by the legal text in question, the surrounding political and legal context and the issues involved; it then assesses on the one hand the compatibility of the text with the applicable standards, and on the other hand its viability and its prospects for successful functioning. In doing so, the Commission takes into account the specific features and needs of the relevant country.

Although the Commission's opinions are not binding, they are generally reflected in the law of the countries to which they relate, thanks to the approach taken and to the Commission's reputation of independence and objectivity. Furthermore, even after an opinion has been adopted, the Commission remains at the disposal of the State

concerned, and often continues to provide its assistance until the constitution or law has been finally adopted.

The Commission has also played, and continues to play, an important role in the interpretation and development of the constitutional law of countries which have experienced, are experiencing or run the risk of ethnic/political conflicts. In this role, it supplies technical assistance relating to the legal dimension of the search for political agreement. The Commission has done so in particular at the request of the European Union.

The **ordinary courts** have become a subject of growing importance to the Commission. The latter is asked increasingly to give an opinion on constitutional aspects of legislation relating to the courts. Frequently, it co-operates in this sphere with other Council of Europe departments, so that the constitutional law viewpoint is supplemented by other aspects. With its report on the independence of the judicial system (Part I - Independence of judges (CDL-AD(2010)004 and Part II - Prosecution Service (CDL-AD(2010)040), the Commission produced a reference text, which it uses in its opinions on specific countries.

The Commission also co-operates with **ombudspersons**, through opinions on the legislation governing their work, and by offering them *amicus ombud* opinions on any other subject, opinions which, like *amicus curiae* briefs, present elements of comparative and international law, but contain no verdict on the possible unconstitutionality of a text, a decision which only the constitutional court itself can take. The Commission promotes relations between ombudspersons and constitutional courts with the aim of furthering human rights protection in member countries.

2. Studies and reports on subjects of general interest

While most of its work concerns specific countries, the Venice Commission also draws up **studies and reports on subjects of general interest**. Just a few examples demonstrating the variety, complexity and importance of the matters dealt with by the Commission are its reports on a possible convention on the rights of minorities, on “kin minorities”, on independence of the judiciary, on individual access to constitutional justice, on the status of detainees at Guantanamo Bay, on counter-terrorist measures and human rights, on democratic control of security services and armed forces, on the relationship between freedom of expression and freedom of religion as well as the adoption of codes of good practice in electoral matters, on referendums and in the field of political parties. Recently the Commission has elaborated a comprehensive Rule of Law Checklist as a tool for assessing the degree of respect for this major standard in any country. The Committee of Ministers has endorsed it and has called on member States to use and disseminate the Checklist widely.

These studies may, when appropriate, lead to the preparation of guidelines and even proposals for international agreements. Previously, they took the form of scientific conferences under the Universities for Democracy (**UniDem**) programme, the proceedings of which were subsequently published in the “**Science and technique of democracy**” series.⁴⁸

3. Constitutional justice

After assisting States in adopting democratic constitutions, the Commission pursues its action aimed at achieving the rule of law by focussing on their implementation. This is why **constitutional justice** is one of the main fields of activity of the Commission, which has developed close co-operation with the key players in this field, i.e. constitutional courts, constitutional councils and supreme courts, which exercise constitutional jurisdiction. As early as 1991, the Commission set up the Centre on Constitutional Justice, the main task of which is to collect and disseminate constitutional case-law. The Commission’s activities in this field are supervised by the **Joint Council on Constitutional Justice**. This is made up of members of the Commission and liaison officers appointed by the participating courts in the Commission’s member, associate member and observer countries, by the European Court of Human Rights, the Court of Justice of the European Communities and the Inter-American Court of Human Rights.

Since 1996, the Commission has established **co-operation with a number of regional or language based groups of constitutional courts**, in particular the Conference of European Constitutional Courts, the Association of Constitutional Courts using the French Language, the Southern African Chief Justices’ Forum, the Conference of Constitutional Control Organs of Countries of New Democracy, the Association of Asian Constitutional Courts and Equivalent Institutions, the Union of Arab Constitutional Courts and Councils, the Ibero-American Conference of Constitutional Justice, the Conference of Constitutional Courts of Countries of Portuguese Language and the Conference of Constitutional Jurisdictions of Africa.

In January 2009, the Commission organised, together with the Constitutional Court of South Africa, a **World Conference on Constitutional Justice**, which for the first time gathered regional groups and language based groups.

That Conference decided to establish an association, assisted by the Venice Commission and open to all participating courts, with the purpose of promoting co-operation within the groups, but also between them on a global scale. In co-operation with the Federal Supreme Court of Brazil, the Venice Commission organised a Second Congress of the World Conference (16-18

48. See Appendix V.

January 2011, Rio de Janeiro) during which a Statute of the World Conference was discussed. This Statute was adopted by the Bureau, composed of representatives of the regional and language based groups in Bucharest on 23 May 2011 and entered into force on 24 September 2011. At the end of 2016, 103 constitutional courts and equivalent bodies had joined the World Conference as full members. The Venice Commission acts as the secretariat for the World Conference. At the Congress co-organised with the Constitutional Court of Republic of Korea in Seoul on 28 September – 1 October 2014, around 90 Courts discussed the challenges of social integration for constitutional justice.

Since 1993, the Commission's constitutional justice activities have also included the publication of the **Bulletin on Constitutional Case-Law**, which contains summaries in French and English of the most significant decisions over a four month period. It also has an electronic counterpart, the **CODICES database**, which contains some 9,000 decisions rendered by over 100 participating courts together with constitutions and descriptions of many courts and the laws governing them.⁴⁹ These publications have played a vital "cross-fertilisation" role in constitutional case-law.

At the request of a constitutional court and the European Court of Human Rights, the Commission may also provide **amicus curiae briefs**, not on the constitutionality of the act concerned, but on comparative constitutional and international law issues.

One final area of activity in the constitutional justice sphere is the support provided by the Commission to constitutional and equivalent courts when these are subjected to pressure by other authorities of the State. The Commission has even, on several occasions, been able to help some courts threatened with dissolution to remain in existence. It should also be pointed out that, generally speaking, by facilitating the use of support from foreign case-law, if need be, the Bulletin and the CODICES database also help to strengthen judicial authority.

Lastly, the Commission holds seminars and conferences in co-operation with constitutional and equivalent courts, and makes available to them on the Internet a forum reserved for them, the "Venice Forum", through which they can speedily exchange information relating to pending cases.

4. Elections and referendums

Elections and referendums which meet international standards are of the utmost importance in any democratic society. This is the third of the Commission's main areas of activity, in which the Commission has, since it was set up, been the most active Council of Europe body, leaving aside election observation operations.

49. CODICES is available on line (<http://www.CODICES.coe.int>).

The activities of the Venice Commission also relate to political parties, without which, elections in keeping with Europe's electoral heritage are unthinkable.

In 2002, the Council for Democratic Elections was set up at the Parliamentary Assembly's request. This is a subordinate body of the Venice Commission comprising members of the Commission, the Parliamentary Assembly and the Congress of Local and Regional Authorities of the Council of Europe. The Council for Democratic Elections also includes an observer from the OSCE/ODIHR. In order to give electoral laws certain stability and to further the construction of a European electoral heritage, the Venice Commission and the Council for Democratic Elections developed the principles of the European electoral heritage, in particular by drafting the **Code of Good Practice in Electoral Matters** (2002), which is the Council of Europe's reference document in this field, and the **Code of Good Practice for Referendums** (2007),⁵⁰ **Guidelines on the international status of elections observers** (2009) and, in the field of political parties, the **Code of Good Practice in the field of Political parties** (2008). The other general documents concern such matters as recurrent challenges and problematic issues of electoral law and electoral administration, electoral law and national minorities, electoral systems, including thresholds, and women's representation in political systems, preventing the misuse of administrative resources during electoral campaigns. In the field of political parties, the Venice Commission has also drafted joint guidelines on political party regulation with the OSCE/ODIHR, and addressed the prohibition, dissolution and financing of political parties, as well the method of nomination of candidates in political parties. The Commission has adopted more than sixty studies or guidelines of a general nature in the field of elections, referendums and political parties.

The Commission has drafted some 130 opinions on **national laws and practices relating to elections, referendums and political parties**, and these have had a significant impact on electoral legislation in the States concerned. Among the States which regularly co-operate with the Commission in the electoral sphere are Albania, Armenia, Georgia, Republic of Moldova and Ukraine.

The Council for Democratic Elections has developed **regular co-operation with election authorities in Europe and on other continents**. It organises annually the European Conference of Electoral Management Bodies (the 13th edition took place in 2016 in Bucharest), and is also in very close contact with other international organisations or bodies which work in the election field, such as ACEEEO (Association of European Election Officials), IFES (International Foundation for Electoral Systems) and, in particular, the OSCE (Organisation for

50. These two texts were approved by the Parliamentary Assembly and the Congress of Local and Regional Authorities of the Council of Europe, and the subject of a solemn declaration by the Committee of Ministers encouraging their application.

Security and Co-operation in Europe). Thus, in principle, opinions on electoral matters are drafted jointly with the OSCE/ODIHR, with which there is exemplary co-operation.

The Commission also holds **seminars** on subjects such as the European electoral heritage, the preconditions for democratic elections or the supervision of the electoral process. It is responsible for training sessions for Central Electoral Commissions and judges on electoral disputes and other legal issues, as well as for long-term assistance to these Commissions. The Commission also provides legal assistance to PACE delegations observing elections.

The Council for Democratic Elections has created the VOTA⁵¹ database containing, inter alia, member States' electoral legislation. It now manages this database jointly with the Electoral Tribunal of the Judicial Power of the Mexican Federation (*Tribunal electoral del poder judicial de la Federación, TEPJF*).

5. Neighbourhood policy

The Commission is a unique international body **which facilitates dialogue between countries on different continents**. Created in 1990 as a Partial Agreement the Commission was transformed into an Enlarged one in 2002. Since this date several non-European countries became full members of the Commission. The new statute and the financial support provided by the European Union and several Council of Europe member States, made it possible to develop full-scale co-operation programmes with Central Asia, Southern Mediterranean and Latin America.

The Venice Commission has been working in **Central Asia** for over 10 years. This co-operation was possible in the framework of several bilateral and regional projects with funding provided by the European Union. The national institutions of Kazakhstan, Kyrgyzstan, Tajikistan and Uzbekistan were assisted in order to build their capacity to carry out reforms of their legal systems in line with European and international human rights standards, including the European Convention on Human Rights and the case-law of the European Court of Human Rights. Within the projects, the Venice Commission organised a number of events providing opportunities for exchanging views with the authorities

of Central Asian States on topics such as constitutional justice, electoral reform and access to justice. All the countries of the Central Asian region are engaged in a constructive dialogue and the impact of concrete actions undertaken by the Commission has been constantly increasing. At the end of 2016 the Commission signed a co-operation Agreement with the European Union for the implementation of a new project in the electoral field in Kyrgyzstan.

The Commission actively co-operates with countries of the **Southern Mediterranean region**. It established contacts with Arab countries even before the Arab Awakening and this farsightedness proved very useful. After the Arab spring the Commission established a very good co-operation with Morocco and Tunisia. Successful projects in these countries helped to establish and to develop a dialogue with other countries of the region such as Egypt, Jordan and Libya. In this respect 2013 was a crucial year since it provided the basis for exploring new possibilities for the Venice Commission's assistance to countries of Maghreb and Middle East. In 2015 the Commission launched the UniDem-Med programme and assisted the establishment of the Conference of Arab Election Management Bodies.

Latin American countries have always been interested in sharing experiences and best practices with Europe, in such fields as democratic transition, constitution-building, constitutional justice and electoral legislation and practice. The Venice Commission became crucial for making such dialogue possible. In recent years the Commission with its partners in Brazil, Chile, Mexico and Peru prepared and successfully carried out activities and projects in the above-mentioned fields. Supported by the EU the Commission also successfully completed a project focussed on the implementation of the new constitution in Bolivia in 2011 - 2012. The Commission created a specific Sub-Commission on Latin America which further developed dialogue on a number of issues in particular concerning fundamental rights, constitutional law, constitutional justice and elections. The Commission enjoys particularly fruitful cooperation with the Mexican National Electoral Institute and the Electoral Tribunal of the Judicial Power of the Mexican Federation (*Tribunal electoral del poder judicial de la Federación, TEPJF*).

51. VOTA is accessible on line: <http://www.venice.coe.int/VOTA>.

MEMBER COUNTRIES

Members - 61

Albania (14.10.1996)

Algeria (01.12.2007)

Andorra (01.02.2000)

Armenia (27.03.2001)

Austria (10.05.1990)

Azerbaijan (01.03.2001)

Belgium (10.05.1990)

Bosnia and Herzegovina (24.04.2002)

Brazil (01.04.2009)

Bulgaria (29.05.1992)

Chile (01.10.2005)

Costa Rica (06.07.2016)

Croatia (01.01.1997)

Cyprus (10.05.1990)

Czech Republic (01.11.1994)

Denmark (10.05.1990)

Estonia (03.04.1995)

Finland (10.05.1990)

France (10.05.1990)

Georgia (01.10.1999)

Germany (03.07.1990)

Greece (10.05.1990)

Hungary (28.11.1990)

Iceland (05.07.1993)

Ireland (10.05.1990)

Israel (01.05.2008)

Italy (10.05.1990)

Kazakhstan (13.03.2012)

Republic of Korea (01.06.2006)

Kosovo (12.09.2014)

Kyrgyzstan (01.01.2004)

Latvia (11.09.1995)

Liechtenstein (26.08.1991)

Lithuania (27.04.1994)

Luxembourg (10.05.1990)

Malta (10.05.1990)

Mexico (03.02.2010)

Moldova (25.06.1996)

Monaco (05.10.2004)

Montenegro (20.06.2006)

Morocco (01.06.2007)

Netherlands (01.08.1992)

Norway (10.05.1990)

Peru (11.02.2009)

Poland (30.04.1992)

Portugal (10.05.1990)

Romania (26.05.1994)

Russian Federation (01.01.2002)

San Marino (10.05.1990)

Serbia (03.04.2003)

Slovakia (08.07.1993)

Slovenia (02.03.1994)

Spain (10.05.1990)

Sweden (10.05.1990)

Switzerland (10.05.1990)

“The former Yugoslav Republic of Macedonia” (19.02.1996)

Tunisia (01.04.2010)

Turkey (10.05.1990)

Ukraine (03.02.1997)

United Kingdom (01.06.1999)

United States of America (15.04.2013)

Associate member

Belarus (24.11.1994)

Observers

Argentina (20.04.1995)

Canada (23.05.1991)

Holy See (13.01.1992)

Japan (18.06.1993)

Uruguay (19.10.1995)

Participating International Organisations

European Commission

OSCE/ODIHR

Special co-operation status

Palestinian National Authority

South Africa

INDIVIDUAL MEMBERS⁵²

Mr Gianni BUQUICCHIO (Italy), President, Former Director, Council of Europe
(Substitutes: Mr Sergio BARTOLE, Former Professor, University of Trieste
Mr Guido NEPPI MODONA, Professor, University of Turin)

Mr Kaarlo TUORI (Finland), First Vice-President, Professor of Jurisprudence, University of Helsinki
(Substitute: Ms Elina PIRJATANNIEMI, Professor, Åbo Akademi University)

Ms Herdis KJERULF THORGEIRSDOTTIR (Iceland), Vice-President, Professor, President European Women Lawyers' Association, Faculty of Law, Bifrost University
(Substitute: Mr Thorgeir ORLYGSSON, Supreme Court Judge)

Mr Christoph GRABENWARTER (Austria), Vice-President, Judge, Constitutional Court
(Substitutes: Ms Katharina PABEL, Head of Department for Administrative Law and Administrative Studies, University of Linz
Mr Johannes SCHNIZER, Judge, Constitutional Court)

* * *

Mr Jan HELGESEN (Norway), Professor, University of Oslo
(Substitute: Mr Eirik HOLMØYVIK, Professor of Law, University of Bergen)

Mr Aivars ENDZINS (Latvia), Head of Department of Public Law, Turība School of Business Administration, Former President, Constitutional Court (Substitute: Mr Gunars KUTRIS, Former President, Constitutional Court)

Mr Gagik HARUTUNIAN (Armenia), President, Constitutional Court
(Substitute: Mr Vardan POGHOSYAN, Team Leader Armenia, GIZ Programme «Legal Approximation towards European Standards in the South Caucasus»)

Ms Lydie ERR (Luxembourg), Ombudsman
(Substitute: Mr Marc FISCHBACH, Former Ombudsman)

Mr Lätif HÜSEYNOV (Azerbaijan), Professor of Public International Law, Baku State University

Mr Nicolae ESANU (Moldova), Deputy Minister of Justice
(Substitute: Mr Vladimir GROSU, Former Minister of Justice)

Mr Oliver KASK (Estonia), Judge, Tallinn Court of Appeal
(Substitute: Ms Ene ANDRESEN, Lecturer of Administrative Law, Tartu University)

Mr Jan VELAERS (Belgium), Professor, University of Antwerp
(Substitute: Mr Jean-Claude SCHOLSEM (Belgium), Professor Emeritus, University of Liège)

Mr Srdjan DARMANOVIC (Montenegro), Minister of Foreign Affairs, Former Ambassador of Montenegro to the United States of America (Substitute: Mr Zoran PAZIN, Minister of Justice)

N.N.(Liechtenstein)⁵³
(Substitute: Mr Wilfried HOOP, Partner, Hoop and Hoop)

Mr Jorgen Steen SORENSEN (Denmark), Parliamentary Ombudsman
(Substitute: Mr Michael Hansen JENSEN, Professor, University of Aarhus)

Ms Ivetta MACEJKOVA (Slovakia), President, Constitutional Court
(Substitute: Ms Jana BARICOVA, Judge, Supreme Court)

52. By order of seniority as of 31 December 2016.

53. Member resigned on 19 October 2016. A new member has not yet been appointed.

- Mr Wolfgang HOFFMANN-RIEM (Germany), Former Judge, Federal Constitutional Court
(Substitute: Ms Monika HERMANNNS, Justice, Federal Constitutional Court)
- Mr Dan MERIDOR (Israel), Member of Parliament, Lawyer
(Substitute: Mr Barak MEDINA, Dean, Faculty of Law, the Hebrew University of Jerusalem)
- Mr Iain CAMERON (Sweden), Professor, University of Uppsala
(Substitute: Mr Johan HIRSCHFELDT, Former President, Svea Court of Appeal)
- Ms Jasna OMEJEC (Croatia), Former President, Constitutional Court, Professor, Law Faculty, University of Zagreb
Substitute: Mr Toma GALLI, Director, Directorate of International Law, Ministry of Foreign and European Affairs)
- Ms Veronika BILKOVA (Czech Republic), Lecturer, Law Faculty, Charles University
(Substitute: Ms Katerina SIMACKOVA, Judge, Constitutional Court)
- Mr Francesco MAIANI (San Marino), Assistant Professor, Swiss Graduate School of Public Administration
(Substitute: Ms Barbara REFFI, State Attorney)
- Mr Richard CLAYTON QC, (United Kingdom), Barrister at Law
(Substitute: Mr Paul CRAIG, Professor of Law, University of Oxford)
- Mr Ciril RIBICIC (Slovenia), Professor of Constitutional Law, University of Ljubljana, Former Justice and Vice President of the Constitutional Court
(Substitute: Mr Aleš GALIČ, Professor, Faculty of Law, University of Ljubljana)
- Mr Ben VERMEULEN (The Netherlands), Professor of Constitutional, Administrative and Education law, University of Amsterdam
(Substitute: Mr Martin KUIJER, Senior Legal Adviser, Ministry of Security and Justice)
- Mr Igor Ivanovich ROGOV (Kazakhstan), Chairman, Constitutional Council
(Substitute: Ms Unzila SHAPAK, Member, Constitutional Council)
- Mr Sergii KIVALOV (Ukraine), Member of Parliament, Chairman, Committee on Justice, Verkhovna Rada of Ukraine
(Substitutes: Mr Volodymyr PYLYPENKO, Member of Parliament)
- Mr Serhiy HOLOVATY, Founder of the Ukrainian Legal Foundation, Advisor on constitutional issues to the President of the Verkhovna Rada (Parliament)
- Mr Oscar URVIOLA HANI (Peru), Former President, Constitutional Tribunal
(Substitute: Mr Carlos MESIA RAMIREZ, Member, Constitutional Tribunal)
- Mr Milenko KRECA, (Serbia), Professor, Law Faculty, Belgrade University
(Substitute: Mr Vladan PETROV, Professor, Law Faculty, Belgrade University)
- Mr Il-Won KANG, (Republic of Korea), Justice, Constitutional Court
(Substitutes: Mr Joon Gyu KIM, Attorney)
- Mr Yong-Hun KIM, Secretary General, Constitutional Court)
- Ms Sarah CLEVELAND (United States of America), Professor, Columbia Law School
(Substitute: Ms Evelyn M. ASWAD, Law Professor, University of Oklahoma, College of Law)
- Ms Taliya KHABRIEVA (Russia), Director, Institute for Legislation and Comparative Law
(Substitutes: Mr Vladimir LAFITSKY, Deputy Director, Institute for Legislation and Comparative Law)
- Mr Anatoli KOVLER, Senior Researcher, Institute for Legislation and Comparative Law, Former judge at the European Court of Human Rights)
- Mr Michael FRENDI (Malta), Former Speaker, House of Representatives
- Ms Regina KIENER (Switzerland), Professor of Constitutional and Administrative Law, University of Zurich
(Substitute: Ms Monique JAMETTI GREINER, Judge, Federal Tribunal)
- Mr Zlatko KNEŽEVIĆ (Bosnia and Herzegovina), Vice-President, Constitutional Court
(Substitutes: Mr Nedim ADEMOVIC, Lawyer)
- Mr Marko BEVANDA, Assistant Professor, Faculty of law, University of Mostar)

- Mr Andras Zs. VARGA (Hungary), Judge, Constitutional Court, Professor, Pázmány Péter Catholic University, Faculty of Law and Political Sciences
(Substitute: Mr Laszlo SZEKELY, Commissioner for Fundamental Rights)
- Mr Juan José ROMERO GUZMAN (Chile), Judge, Constitutional Tribunal
(Substitute: Mr Domingo HERNANDEZ EMPARANZA, Judge, Constitutional Tribunal)
- Mr Nikos ALIVIZATOS (Greece), Professor of Constitutional Law, Athens Law School
(Substitute: Ms Fani DASKALOPOULOU-LIVADA, International Law expert)
- Mr Gediminas MESONIS (Lithuania), Judge, Constitutional Court
(Substitute: Ms Vygante MILASIUTE, Head of International Agreement Law Division, Ministry of Justice)
- Mr Myron NICOLATOS (Cyprus), President, Supreme Court
(Substitute: Mr George EROTOCRITOU, Supreme Court Judge)
- Mr Richard BARRETT (Ireland), Deputy Director General, Office of the Attorney General
(Substitute: Ms Grainne McMORROW, Senior Counsel)
- Mr Osman CAN (Turkey), Professor, Marmara University Law School
(Substitute: Ms Oyku Didem AYDIN, Associate Professor, Hacettepe University Law School)
- Mr Josep Maria CASTELLA ANDREU (Spain), Professor of Constitutional Law, University of Barcelona
(Substitute: Ms Paloma BIGLINO CAMPOS, Full Professor of Constitutional Law, Valladolid University)
- Mr Tudorel TOADER (Romania), Judge, Constitutional Court
(Substitute: Mr Bogdan AURESCU, Presidential Advisor for Foreign Policy)
- Mr Omurbek TEKEBAYEV (Kyrgyzstan), Member of Parliament
- Mr Ghazi JERIBI (Tunisia), Minister of national defence
(Substitute: Ms Neila CHAABANE, Secretary of State for Women and the Family)
- Mr Enver HASANI (Kosovo), Former President, Constitutional Court
(Substitute: Ms Arta RAMA HAJRIZI, President, Constitutional Court)
- N.N. (Brazil)⁵⁴
(Substitute: Ms Carmen Lucia ANTUNES ROCHA, Judge, Federal Supreme Court)
- Mr Joao CORREIA (Portugal), Lawyer
(Substitute: Mr Paulo PIMENTA, Professor, Universidad Portucalense)
- Mr Khalid NACIRI (Morocco), Professor of Constitutional law, former Minister of Communication
(Substitute: Mr Ahmed ESSALMI, Professor of Constitutional Law, Law Faculty, Hassan II University Casablanca)
- Ms Claire BAZY MALAURIE (France), Member, Constitutional Council, Former member of the Auditors' Board
(Substitute: M. Jean-Jacques HYEST, Member, Constitutional Council)
- Mr Mindia UGREKHELIDZE (Georgia), Member of the State Constitutional Commission
(Substitute: Mr Alexander BARAMIDZE, First Deputy Minister of Justice)
- Mr Pere VILANOVA TRIAS (Andorra), Professor of Political Science and Public Policy, University of Barcelona
- Ms Tanja KARAKAMISHEVA-JOVANOVSKA ("the former Yugoslav Republic of Macedonia"), Professor, Law Faculty, University St. Cyril and Methodius
- Mr Bogusław BANASZAK (Poland), Professor, University of Zielona Góra
(Substitute: Mr Mariusz MUSZYŃSKI, Judge, Constitutional Tribunal)
- Mr Ernesto JINESTA LOBO (Costa Rica), President, Constitutional Chamber of the Supreme Court
(Substitute: Mr Fernando CASTILLO VIQUEZ, Judge, Supreme Court)
- Mr Laurent ANSELMY (Monaco), Head of the Legal Affairs Department of the Government
(Substitute: Mr Christophe SOSSO, Defence Lawyer, Court of Appeal)

54. Member resigned on 29 September 2016. A new member has not yet been appointed.

Ms Aurela ANASTAS (Albania), Professor, Faculty of Law, University of Tirana
(Substitute: Mr Artur METANI, Deputy General Secretary, Director of Department of Legislation, Monitoring of Programmes and Anticorruption, Council of Ministers)

M. Mourad MEDELICI (Algeria), President, Constitutional Council
(Substitute: Mr Mohamed HABCHI, Vice-President, Constitutional Council)

Mr Philip DIMITROV (Bulgaria), Judge, Constitutional Court
(Substitute: Mr Plamen KIROV, Former Judge, Constitutional Court)

Ms Janine M. OTÁLORA MALASSIS (Mexico), President, Federal Electoral Tribunal
(Substitute: Mr José Luis VARGAS VALDEZ, Judge Federal Electoral Tribunal)

Associate members

Ms Olga G. SERGEEVA, (Belarus), Deputy Chair, Constitutional Court

Observers

N.N. (Argentina)

N.N. (Canada)

Mr Vincenzo BUONOMO (Holy See), Professor of International Law, Latran University

Mr Shun KITAGAWA (Japan), Consul, Consulate General of Japan, Strasbourg

Mr Alvaro MOERZINGER (Uruguay), Ambassador, Embassy of Uruguay in the Hague

Participating International Organisations

European Union

European Commission

Mr Lucio GUSSETTI, Director, Legal Department

Mr Esa PAASIVIRTA, Legal Adviser

Committee of the Regions

Mr Luc VAN DEN BRANDE, President CIVEX

OSCE

Office for Democratic Institutions and Human Rights

Mr Alexander SHLYK, Head of Election Department

Mr Marcin WALECKI, Head of the Democratisation Department

Ms Alice THOMAS, Head of Legislative Support Unit, Democratisation Department

Special cooperation status

Palestinian National Authority

Mr Ali KHASHAN, Former Minister of Justice

South Africa

N. N.

Secretariat

Mr Thomas MARKERT, Director, Secretary of the Commission

Ms Simona GRANATA-MENGHINI, Deputy Secretary of the Commission

Mr Pierre GARRONE, Head of the Division on Elections and Referendums
Mr Rudolf DÜRR, Head of the Division on Constitutional Justice
Ms Artemiza-Tatiana CHISCA, Head of the Division on Democratic Institutions and Fundamental Rights
Mr Serguei KOUZNETSOV, Head of the Division on Neighbourhood Co-operation
Ms Charlotte de BROUDELLES, Legal Officer
Ms Caroline MARTIN, Legal Officer
Ms Tanja GERWIEN, Legal Officer
Mr Grigory DIKOV, Legal Officer
Mr Gaël MARTIN-MICALLEF, Legal Officer
Ms Amaya UBEDA DE TORRES, Legal Officer
Mr Ziya Caga TANYAR, Legal Officer
Ms Svetlana ANISIMOVA, Administrator
Ms Tatiana MYCHELOVA, Public Relations Officer
Ms Helen MONKS, Financial Officer
Mr Hristo HRISTOV, Project Manager
Ms Brigitte AUBRY
Ms Ana GOREY
Mrs Caroline GODARD
Ms Jayne APARICIO
Mrs Vicky LEE
Mr Domenico VALLARIO
Mrs Marie-Louise WIGISHOFF
Ms Sorana OTETEA
Ms Rosy DI POL
Ms Isabelle SUDRES
Ms Ana GORYACHEVA
Ms Haifa ADDAD
Ms Isabelle JUNG

OFFICES⁵⁵ AND SUB-COMMISSIONS 2016

President: Mr Buquicchio (Italy)

Honorary Presidents: Mr Paczolay (Hungary); Ms Suchocka (Poland)

Bureau:

- First Vice-President: Mr Tuori
- Vice-Presidents: Mr Grabenwarter, Ms Kjerulf Thorgeirsdottir
- Members: Mr Endzins, Mr Harutyunian, Mr Kang, Ms Khabrieva
- **Scientific Council:** Chair: Mr Helgesen: Vice-Chair Mr Can
- Members: Mr Buquicchio, Mr Tuori, Mr Grabenwarter, Ms Kjerulf Thorgeirsdottir, Ms Bilkova, Mr Clayton, Ms Err, Mr Esanu, Mr Frendo, Mr Hoffmann-Riem, Mr Jeribi, Mr Kask, Ms Kiener, Ms Omejec, Mr Romero Guzman, Mr Velaers, Mr Vermeulen, Ms Khabrieva

Council for Democratic Elections:

President: Mr Wienen (Congress of Local and Regional Authorities)

Vice-President: Mr Kask

Venice Commission - Members: Mr Darmanovic, Mr Endzins, Mr Kask, Ms Otálora Malassis
(Substitutes: Mr Barrett, Ms Biglino Campos, Mr Craig, Mr Vermeulen)

Parliamentary Assembly - Members: Ms Josette Durrieu, Lord Richard Balfe, Mr Jordi Xucla
(Substitutes: Mr Jean-Claude Frecon, Ms Eka Beselia, Mr Tiny Kox)

Congress of local and regional authorities - Members: Mr Jos Wienen, Mr Stewart Dickson)

Joint Council on Constitutional Justice:

Co-Chair: Ms Omejec

Co-Chair (Liaison Officers): Ms Marjolein van Roosmalen

Members of the Sub-Commission on Constitutional Justice and 90 liaison officers from 65 Constitutional Courts or Courts with equivalent jurisdiction

SUB-COMMISSIONS

Constitutional Justice:

Chair: Ms Omejec

Members: Ms Anastas, Mr Can, Mr Grabenwarter, Mr Harutyunian, Mr Holovaty, Mr Huysenov, Mr Kang, Ms Karakamisheva-Jovanovska, Mr Kask, Ms Kjerulf Thorgeirsdottir, Ms Macejkova, Ms McMorrow, Mr Medelci, Mr Neppi Modona, Mr Pazin, Mr Ribicic, Ms Simackova, Mr Varga

⁵⁵. From December 2015 to December 2017.

Federal State and Regional State:

Chair: Ms Kiener; Vice-Chair: Ms Cleveland;

Members: Mr Castella Andreu, Mr Hoffmann-Riem, Mr Maiani, Mr Scholsem, Mr Velaers, Mr Vilanova Trias

International Law:

Chair: Ms Bilkova; Vice-Chair: Mr Cameron;

Members: Mr Aurescu, Ms Cleveland, Mr Hasani, Mr Hüseyinov, Mr Kreca, Mr Maiani, Ms Milasiute, Mr Pylypenko

Protection of Minorities:

Chair: Mr Velaers; Vice-Chair: Mr Knežević;

Members: Mr Aurescu, Mr Bartole, Mr Habchi, Mr Hasani, Ms Karakamisheva-Jovanovska, Mr Kreca, Ms McMorrow, Mr Scholsem, Mr Tuori

Fundamental Rights:

Chair: Mr Vermeulen; Vice-Chair: Mr Alivizatos;

Members: Mr Aurescu, Mr Barrett, Mr Cameron, Mr Can, Mr Clayton, Ms Cleveland, Ms Err, Mr Esanu, Mr Hasani, Mr Hirschfeldt, Mr Hoffmann-Riem, Mr Holovaty, Mr Huseynov, Ms Karakamisheva-Jovanovska, Mr Kask, Ms Khabrieva, Ms Kjerulf Thorgeirsdottir, Mr Knežević, Mr Kuijer, Mr Maiani, Ms McMorrow, Mr Medelci, Mr Mesia Ramirez, Ms Milasiute, Ms Omejec, Mr Pazin, Mr Pylypenko, Mr Toader, Mr Tuori, Mr Velaers

Democratic Institutions:

Chair: Mr Frendo; Vice-Chair: Mr Meridor;

Members: Mr Bartole, Mr Cameron, Mr Castella Andreu, Mr Darmanovic, Ms Err, Mr Esanu, Mr Hasani, Mr Hirschfeldt, Mr Hoffmann-Riem, Mr Jensen, Ms Karakamisheva-Jovanovska, Mr Kask, Ms Kiener, Mr Nicolatos, Mr Pylypenko, Mr Ribicic, Mr Scholsem, Mr Toader, Mr Tuori, Mr Velaers, Mr Vilanova Trias

Judiciary:

Chair: Mr Esanu; Vice-Chair: N.N.

Members: Mr Bartole, Mr Correia, Ms Err, Mr Habchi, Mr Hasani, Mr Hirschfeldt, Mr Hoffmann-Riem, Mr Holovaty, Mr Kang, Ms Karakamisheva-Jovanovska, Mr Kask, Ms Kiener, Mr Knežević, Mr Kreca, Mr Kuijer, Ms McMorrow, Mr Neppi Modona, Mr Nicolatos, Mr Pazin, Mr Pylypenko, Ms Simackova, Mr Toader, Mr Tuori, Mr Ugrekhelidze, Mr Varga, Mr Velaers

Rule of Law:

Chair: Mr Hoffmann-Riem; Vice-Chair: N.N.

Members: Mr Bartole, Ms Bilkova, Ms Cleveland, Mr Craig, Mr Helgesen, Mr Holovaty, Ms Karakamisheva-Jovanovska, Mr Kivalov, Mr Kuijer, Mr Maiani, Ms McMorrow, Ms Milasiute, Mr Nicolatos, Mr Tuori, Mr Ugrekhelidze, Mr Vilanova Trias

Working Methods:

Chair: Mr Clayton; Vice-Chair: Mr Barrett;

Members: Mr Buquicchio, Mr Grabenwarter, Mr Helgesen, Mr Hoffmann-Riem, Ms Kiener, Ms Kjerulf Thorgeirsdottir

Latin America:

Chair: Mr Romero; Vice-Chair: N.N.

Members: Ms Bilkova, Mr Buquicchio, Mr Castella Andreu, Ms Cleveland, Mr Correia, Mr Darmanovic, Mr Hirschfeldt, Ms Kjerulf Thorgeirsdottir, Mr Kuijer, Ms McMorrow, Mr Mesia Ramirez

Mediterranean Basin:

Chair: Mr Jeribi; Vice-Chair: N.N.

Members: Mr Frendo, Ms McMorrow,

Gender Equality:

Chair: Ms Err; Vice-Chair: N.N.

Members: Ms Anastas, Ms Chaabane, Mr Esanu, Ms Karakamisheva-Jovanovska, Ms McMorrow, Ms Milasiute, Ms Omejec

PUBLICATIONS

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56. Publications are also available in French unless otherwise indicated.

57. Publications marked with "2" contain speeches in the original language (English or French).

58. Publications marked with * are also available in Russian.

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59. Publications marked with "4" are available in English only.

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- Freedom of Association - joint OSCE/ODIHR – Venice Commission Guidelines (2015)*, ⁵
- Tackling blasphemy, insult and hatred in a democratic society (2008)
- Electoral Law (2008)
- European Conferences of Electoral Management Bodies:
 - 2nd Conference (Strasbourg 2005)
 - 3rd Conference (Moscow, 2006)
 - 4th Conference (Strasbourg, 2007)
 - 5th Conference (Brussels, 2008)
 - 6th and 7th Conference (The Hague, 2009 and London 2010)^{3, 65}
 - 8th Conference (Vienna, 2011)³

Brochures

- 10th anniversary of the Venice Commission (2001)
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- UniDem (Universities for Democracy) Campus - Legal training for civil servants (2003)^{4, 66}
- 20th Anniversary - Publications (2010)
- Selected studies and reports (2010)

60. Requested by the Conference of European Constitutional Courts (CECC)

61. Available only in Russian; only "Introduction" is also in English.

62. Available only in Russian

63. Available only in Ukrainian

64. Publications marked with "5" are available also in Arabic.

65. Publications marked with "3" are available in electronic form only.

66. Also available in Italian.

- Key Facts (2011)*,⁶⁷
- Services provided by the Venice Commission to Constitutional Courts and equivalent bodies (2011)
- Code of Good Practice in Electoral Matters (2016)*,⁶⁸
- Main reference texts of the Venice Commission (2013)⁵
- The Venice Commission of the Council of Europe (2014)⁵
- UniDem (Universities for Democracy) Campus for the Southern Mediterranean countries (2015)⁵
- Rule of Law Checklist (2016) *⁵

67. Also available in Spanish

68. Also available in Spanish

DOCUMENTS ADOPTED IN 2016

106th plenary session (Venice, 11-12 March 2016)

CDL-AD(2016)001	Poland - Opinion on amendments to the Act of 25 June 2015 on the Constitutional Tribunal
CDL-AD(2016)002	Turkey - Opinion on articles 216, 299, 301 and 314 of the Penal Code
CDL-AD(2016)003	Georgia - Joint Opinion ⁶⁹ on amendments to the Election Code as of 8 January 2016
CDL-AD(2016)004	Joint Guidelines for preventing and responding to the misuse of administrative resources during electoral processes
CDL-AD(2016)005	Russian Federation - Interim Opinion on the amendments to the Federal Constitutional Law on the Constitutional Court
CDL-AD(2016)006	France - Opinion on the Draft Constitutional Law on «Protection of the Nation»
CDL-AD(2016)007	Rule of Law Checklist
CDL-AD(2016)008	“The former Yugoslav Republic of Macedonia” - Opinion on the Law on the Protection of Privacy and on the law on the Protection of Whistleblowers
CDL-AD(2016)009	Albania - Final Opinion on the revised draft constitutional amendments on the Judiciary (15 January 2016)

107th plenary session (Venice, 10-11 June 2016)

CDL-AD(2016)010	Turkey - Opinion on the Legal Framework governing Curfews
CDL-AD(2016)011	Turkey - Opinion on Law No. 5651 on regulation of publications on the Internet and combating crimes committed by means of such publication («the Internet Law»)
CDL-AD(2016)012	Poland - Opinion on the Act of 15 January 2016 amending the Police Act and certain other Acts
CDL-AD(2016)013	Republic of Kazakhstan - Opinion on the Draft Code of Judicial Ethic ⁷⁰
CDL-AD(2016)015	Republic of Moldova - Amicus Curiae Brief for the Constitutional Court on the Right of Recourse by the State against Judges
CDL-AD(2016)016	Russian Federation - Final Opinion on the Amendments to the Federal Constitutional Law on the Constitutional Court
CDL-AD(2016)017	Georgia - Opinion on the Amendments to the Organic Law on the Constitutional Court and to the Law on Constitutional Legal Proceedings
CDL-AD(2016)018	Ukraine - Opinion on the Amendments to the Law on elections regarding the exclusion of candidates from party lists
CDL-AD(2016)019	Armenia - Joint Opinion on the draft electoral code as of 18 April 2016
CDL-AD(2016)020	Russian Federation - Opinion on federal law no. 129-fz on amending certain legislative acts (Federal law on undesirable activities of foreign and international non-governmental organisations)
CDL-AD(2016)021	Republic of Moldova - Joint Opinion on the draft law on changes to the electoral code

69. “Joint Opinion” refers to opinions drafted jointly by the Venice Commission and the OSCE/ODIHR unless specified otherwise.

70. For technical reasons, no document was issued under CDL-AD(2016)014.

CDL-AD(2016)022 **Montenegro** - Secretariat Memorandum on the Compliance of the revised draft Law on Minority Rights and Freedoms, as submitted by the Ministry of Human and Minority Rights on 4 May 2016 (CDL-REF(2016)039), with the Opinion of the Venice Commission on the draft Law on Amendments to the Law on Minority Rights and Freedoms (CDL-AD(2015)033)

108th plenary session (Venice, 14-15 October 2016)

CDL-AD(2016)023 **Albania** - Amicus Curiae Brief for the Constitutional Court on the restitution of property

CDL-AD(2016)024 **Bosnia and Herzegovina** - *Amicus curiae* Brief for the Constitutional Court of Bosnia and Herzegovina on the mode of elections in the House of Peoples of the Parliament of the Federation of Bosnia and Herzegovina

CDL-AD(2016)025 **Kyrgyz Republic** - Joint opinion on the draft law «on Introduction of amendments and changes to the Constitution

CDL-AD(2016)026 **Poland** - Opinion on the Act on the Constitutional Tribunal

CDL-AD(2016)027 **Turkey** – Opinion on the suspension of the second paragraph of Article 83 of the Constitution (parliamentary inviolability)

CDL-AD(2016)028 Interpretative Declaration of the code of good practice in electoral matters on the **publication of lists of voters having participated in elections**

CDL-AD(2016)029 **Azerbaijan** - Opinion on the draft modifications to the Constitution submitted to the Referendum of 26 September 2016

CDL-AD(2016)030 **Ukraine** - Joint Opinion of the Venice Commission, the Directorate of Human Rights (DHR) of the Directorate General of Human Rights and Rule of Law (DGI) of the Council of Europe and the OSCE Office for Democratic Institutions and Human Rights (OSCE/ODIHR), on two Draft Laws on Guarantees for Freedom of Peaceful Assembly

CDL-AD(2016)031 **Armenia** - Second Joint Opinion on the Electoral Code (as amended on 30 June 2016)

CDL-AD(2016)032 «**The former Yugoslav Republic of Macedonia**» - Joint Opinion on the Electoral Code, as amended on 9 November 2015

109th plenary session (Venice, 9-10 December 2016)

CDL-AD(2016)033 **Armenia** - Opinion on the draft Constitutional Law on the Human Rights Defender

CDL-AD(2016)034 **Ukraine** - Opinion on the draft Law on the Constitutional Court

CDL-AD(2016)035 **Republic of Moldova** - Opinion on the Draft Law on the Ethno-Cultural Status of the District of Taraclia

CDL-AD(2016)036 **Albania** - *Amicus curiae* Brief for the Constitutional Court on the Law on the Transitional Re-evaluation of Judges and Prosecutors (The Vetting Law)

CDL-AD(2016)037 **Turkey** - Opinion on Emergency Decree Laws N°s667-676 adopted following the failed coup of 15 July 2016

CDL-AD(2016)038 **Armenia** - Joint Opinion on the Draft Constitutional Law on Political Parties

CDL-AD(2016)039 **Republic of Moldova** - Joint Opinion of the Venice Commission and of the Directorate General of Human Rights and Rule of Law (DGI) of the Council of Europe on the Draft Law N°161 amending and completing Moldovan Legislation in the field of Cybercrime

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