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for Democracy through Law

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Venice Commission



European Commission for Democracy through Law

Venice Commission
of the Council of Europe

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I. WORKING FOR DEMOCRACY THROUGH LAW – AN OVERVIEW OF VENICE COMMISSION ACTIVITIES IN 2020

Key figures

In 2020, despite the limitation of activity and the travelling and movement restrictions brought about by the pandemic, the Venice Commission adopted 32 country-specific opinions, of which 8 related to constitutional amendments, concerning 15 of its member states; 3 were amicus-curiae briefs. 27 of these opinions had been requested by the relevant state, while 5 were requested by the Parliamentary Assembly of the Council of Europe. 10 opinions were issued pursuant to the urgent procedure. Several opinions were prepared jointly with other services of DGI, with OSCE/ODIHR and one was prepared in consultation with UN Special Rapporteur on freedom of religion. All opinions were broadly discussed by the national and international media, and several of them resulted in changes to constitutions and legislations adopted by national parliaments.

The Commission also adopted 12 general reports; these included a very timely report on standards relating to states of emergency, a compilation on states of emergency and a report on anti-COVID-19 measures in EU member states. The latter was requested by the European Parliament.

In 2020 the Commission (co)organised 20 seminars and conferences and provided legal support to all electoral observation missions deployed by the Parliamentary Assembly of the Council of Europe despite the pandemics (4 elections).

The Commission published three e-Bulletins on Constitutional Case Law as well as an e-Bulletin working document for the Conference of European Constitutional Courts, and provided comparative law elements to constitutional courts and equivalent bodies in 17 cases. The Supreme Court of Somalia joined the World Conference on Constitutional Justice (WCCJ), bringing the total number of members to 117. The number of precis in the CODICES database on constitutional case-law exceeded 10,900 cases.

On the occasion of its 30th anniversary, at its October 2020 plenary session and following the adoption of its 1000th opinion, the Venice Commission presented

its jubilee volume “**Thirty-year quest for democracy through law**”. Some sixty authors – members and former members of the Commission, as well as experts – presented in depth various aspects of the work of the Commission, covering the Commission’s wide field of expertise¹.

Voluntary contributions

In 2020 the Commission received an important contribution for future activities from **Belgium** as well as a voluntary contribution from **Sweden** for a number of specific activities.

During 2020, the Commission continued to carry out activities thanks to contributions previously received from **Armenia, Italy, Montenegro, Norway** and **Spain**.

The Commission also implemented a number of activities in Ukraine thanks to contributions from the Council of Europe **Action Plan for Ukraine**.

Certain activities, in particular in Central Asia, Latin America and Tunisia, were financed by the **European Union** in the framework of Joint Projects and Programmes as well as in the Western Balkans and Turkey under the Horizontal Facility II and under the Quick Response Mechanism for Eastern Partnership Countries (cf. Chapters V and VI).

Main activities 2020

Despite lockdowns and travelling restrictions, the Commission was capable of responding to all the 32 requests for opinions which it received in 2020, including the 10 urgent ones (urgency being often motivated by the irregular working rhythms of parliaments and governments also due to the pandemic); these opinions concerned 15 countries. A written procedure replaced the March and June plenary sessions; a written procedure then supplemented the

1. The table of contents of the book and information on orders can be consulted via this link: <https://www.venice.coe.int/files/30YearsQuest.pdf>.



October plenary session of the Venice Commission, Paris/online, 8 October 2020

further 2 online plenary sessions. The Commission thus could adopt formally the opinions, after holding exchanges of views with the authorities and among Commission members.

The Commission's impact may be measured in two main ways: the discussions produced by its opinions in the political circles, the media, the academia and, eventually, the changes in national constitutions and legislations, as well as by the frequency of requests of its assistance. In 2020, the majority of the opinions had impact at national and international level. 2020 opinions have largely determined adequate constitutional and legislative amendments. All these opinions were broadly discussed in the countries concerned and in national and international media, and increasingly often in academic circles and several of them resulted in relevant changes in the constitution or legislation. Several of these opinions were presented at PACE hearings in the presence of the authorities, and on 2019 Opinion was presented at a hearing of LIBE committee of European parliament in presence of authorities.

In 2020, Venice Commission opinions were referred to in judgments of the European Court of Human Rights (Kövesi) and by the Grand Chamber of the European Court of Justice (Commission v Hungary. (Transparency of associations) (C-78/18), 18/06/2020; Commission v. Hungary, (Enseignement supérieur). C-66/18, 06/10/2020).

The Commission was further able to carry out timely and in depth analysis of standards and practice relating to states of emergency: it adopted a report on the standards applicable to states of emergency, a report on anti-COVID19 measures in EU member states, a compilation on Commission's studies and opinions on emergency measures; the Commission also set up an observatory on of situations of emergency in Venice Commission member States, which is available on-line.

The Commission further adopted two sets of revised guidelines (referendum and political parties), set of principles on HR-compliant use of digital technologies in elections, 2 reports on electoral matters, a report on criminal liability for calls for constitutional change, a report on individual access to constitutional justice, two additional (freedom of expression and media, stability of electoral law).

Numerous activities could be organised on-line. Pre-electoral assistance was particularly affected as several elections were canceled or postponed, and then the health conditions prevented international election observation missions. The Commission offered ad hoc assistance (online) on how to organise elections during states of emergency. Assistance was provided to all 4 electoral observation missions which were deployed by PACE Assistance to constitutional courts slowed down in parallel with the slowing down of these courts' activities due to lockdowns, but the relations between them and the Commission remain good and constructive.

In 2020, 32 opinions requests were lodged with the Commission, 27 by the relevant States, and 5 by the Parliamentary Assembly. The high number of requests from the countries themselves testifies to a robust level of trust in the Commission, which is a promising premise for achieving even more impact.

Democratic institutions and fundamental rights

Constitutional reforms and democratic institutions

In 2020, the Venice Commission provided opinions on constitutional reforms in several countries; it also analysed legislative changes which affected the organisation of the constitutional institutions of the State and the system of checks and balances.

In its opinion on the appointment of judges of the Constitutional Court of **Albania** the Commission recommended that the President and the Assembly should agree on the procedure to be followed in line with the constitutional and legal provisions, and the Judicial Appointments Committee (JAC) should accept such interpretation. As long as the Constitutional Court is not functioning and no consensus on the interpretation has been reached by the political stakeholders, the JAC should send the list(s) to the Assembly as soon as the President has proceeded with his/her appointment(s), or after 30 days if he/she fails to do so without justification. An early vacancy should be filled by the authority which appointed the outgoing judge.

The proposed constitutional reform in **Bulgaria** mostly concerned the reorganisation of the bodies of judicial governance. The Venice Commission, in an opinion



Exchange of views with the President of Ukraine during December 2020 plenary session of the Commission, 11 December 2020.

prepared at the request of the Speaker of the National Assembly, welcomed some of the amendments in this area, which followed its previous recommendations – in particular, the proposed separation of the single judicial council for judges and prosecutors into two separate councils. However, the proposed reform did not address all of the problems of the Bulgarian judiciary, in particular the problem of the lack of the accountability of the Prosecutor General. Finally, the proposed constitutional amendments did not receive support in Parliament and were abandoned.

In its Opinion on four draft constitutional bills of **Iceland** on the protection of the environment, on natural resources, on referendums and on the President of Iceland, the Government, the functions of the executive and other institutional matters, the Commission considered that after their attempt, in 2012, to draft a brand-new Constitution for Iceland in the aftermath of the economic crisis in Iceland, the authorities had changed their approach to the constitutional reform and opted for a more cautious method by introducing partial amendments to the Icelandic Constitution. However, the opinion explained that the 2012 draft was submitted to a “consultative” referendum and approved by the people as a basis for a new Constitution for Iceland. Therefore, the Commission considered that the Icelandic people should be given transparent, clear and convincing explanations for the government’s choices and the underlying reasons for any substantive departure from the previous draft should also be explained

to the public. The Commission considered that the amendments were generally positive and in line with international standards. At the same time, some provisions seemed to be left unfinished, which might lead to uncertainty with respect to their interpretation and application.

Following a request by the President of **Ukraine**, the Commission examined the constitutional crisis in this country, created by a series of judgments of the Constitutional Court of Ukraine. Most importantly, by decision no. 13-r/2020 of 27 October 2020 the Constitutional Court paralysed the work of the anti-corruption bodies and declared that criminal law provisions establishing liability for the submission of false financial declarations by public officials are not compatible with the Constitution. In response to this judgment the President introduced a bill effectively proposing the dismantlement of the current Constitutional Court. The Venice Commission, in its two opinions, reiterated that the Constitutional Court is a “gatekeeper of the Constitution” and its judgments should be implemented. At the same time, the Venice Commission criticised judgment no. 13-r/2020 for incoherence, lack of proper reasoning and other defects. It noted that some of the judges were in a situation of a conflict of interest. The Venice Commission recommended the Ukrainian legislator to construe these judgments in harmony with other international obligations of Ukraine, in particular those related to the fight against corruption. It suggested to restore provisions on asset declarations and their verifications



by the anti-corruption bodies, while introducing additional safeguards protecting judicial independence. The Venice Commission also acknowledged that the Constitutional Court should be reformed, both as regards its composition and procedures, and proposed concrete solutions for such a reform.

Over the summer 2020, the Venice Commission prepared and published an **Observatory of situations of emergency** – a systematised description of legal regulations governing emergency regimes in Venice Commission member States and, in particular, measures taken in relation to the COVID-19 pandemic. The Observatory is based on the replies to the questionnaire provided by the individual members of the Commission and permits to look at the functioning of the democratic institutions in the emergency situation from the Rule of Law perspective².

Fundamental rights

In 2020, at the request of the Monitoring Committee, the Commission examined the draft law amending the law on Audio-Visual Media of **Albania**. The draft amendments proposed to extend the administrative law remedies, currently applied to audio-visual broadcasters, also to the internet media. The Venice Commission considered that these amendments are dangerously vague, may produce a “chilling effect” on the freedom of online journalism and are not ready for adoption. The draft amendments were postponed for revision.

The Venice Commission opinion on **Latvia**, requested by the Committee on Equality and Non-Discrimination, focused on the recent amendments to the legislation on education in minority languages. The Commission acknowledged the specific historical developments of Latvia, resulting in a state of asymmetric bilingualism. It recognised that there might be a need in Latvia to foster mastering of the state language in particular amongst pupils attending minority education programmes. However, the Commission equally recalled that the right of persons belonging to minorities to

preserve and develop their language and their ethnic and cultural identity is an obligation for Latvia stemming from its international commitments. Changes introduced into the education system should not undermine the quality of education and disproportionately reduce the opportunity for pupils to have good command of their minority language.

At the request of then Prime Minister Kurti of the Republic of **Kosovo** the Commission examined specific draft amendments to the Criminal Procedure Code (CPC), assessing whether the proposed amendments concerning trial in absentia (Article 306) and suspension of officials from office (Article 177) were compatible with the European Convention on Human Rights (ECHR) and other international standards. Acknowledging the difficulties of the Kosovan legislator to find a solution in a highly sensitive area, the Commission noted that the draft provisions were largely in line with the ECHR and other international standards. Nevertheless, there was a lack of precision, resulting in intended safeguards not being incorporated, ambiguity and thus causing difficulties to their future implementation. The Commission invited the legislator to re-examine the two draft amendments.

The joint opinion on the draft Law “On freedom of conscience and religious organisations in **Uzbekistan**”, took note of positive changes proposed by the new draft law on such issues as the required minimum number of believers to create a religious organisation, the removal of the ban to wear religious attire in public and the requirement that liquidation of a religious organisation would be pronounced by a court instead of administrative bodies. However, a number of recommendations were made, notably to amend the draft law to refer to the “freedom of thought, conscience, religion or belief” while ensuring that non-religious beliefs and not just “religion” as well as “religious or belief organisations” were covered; to remove the blanket prohibition of political parties and public associations with religious attributes; and to remove vague and overbroad wording, which gave too wide discretion to public authorities tasked with implementation of the law, thus potentially leading to arbitrary application/interpretation and undue restriction to the right of freedom of religion or belief.

Following a request by the PACE Committee on Legal Affairs, the Venice Commission prepared a report on criminal liability for **peaceful calls for radical constitutional change**. This question was examined from the standpoint of the case-law of the European Court on Human Rights. The report stressed the importance of free political speech. Only speech which contains calls for violent acts may be prosecuted. Another exception concerns propaganda of ideology hostile to democracy or hate speech, but the opinion warned that the notion of “hate speech” should not be given an overly broad interpretation. The robust criticism of

2. [Observatory of situations of emergency.](#)



The President of the Venice Commission, Mr Gianni Buquicchio, exchanging views with the President of the Republic of Moldova, Mr Igor Dodon, Strasbourg, 29 January 2020.

government – even when it contains calls for secession – is not “hate speech” as such.

Judiciary, prosecution, and the bar

The Opinion on the draft organic law amending the Organic Law on Common Courts of **Georgia** considered some draft amendments to be an improvement to the previous procedure (analysed by the Commission in 2019): removing the vote by secret ballot in the High Council of Justice (HCoJ) and providing that each vote be accompanied by written reasoning that was made public. Other aspects still gave rise to concern, for instance that it was not mandatory for HCoJ members to vote in compliance with the evaluation scores for judge candidates. In addition, the identity of HCoJ members in relation to each vote was not disclosed and doing so would even expose them to “liability”. The opinion recommended to allow public scrutiny of the behaviour of the individual members of the HCoJ, thereby further enhancing the trust of the public in this body. It would also serve as a deterrent against taking political or other irrelevant factors into consideration in the procedure. Although the opinion welcomed that the decision of the HCoJ may be appealed to the Qualifications Chamber of the Supreme Court, the opinion recommended that once a decision had been rendered by the Chamber and remanded to the HCoJ, the new decision by the HCoJ should also be appealable.

In 2020, further to the 2018 Opinion, the Commission adopted two more texts on **Malta**: the one issued in

June 2020, examined proposals for legislative changes following many of the recommendations made in the 2018 Opinion; the one adopted in October dealt with ten bills translating the proposals previously examined in June 2020 into concrete legislative texts. Six of these bills had in the meantime been adopted by parliament. The opinion welcomed the implementation of the proposals for legislative reform, although the legislative process for the adoption of the six bills had been too swift. For that reason, it was recommended to discuss the remaining four bills and any future amendments in a wider framework that includes civil society. Not all recommendations made in the 2018 Opinion were followed by these six acts and four bills.

While the October opinion contained numerous positive appraisals as regards the six acts adopted by parliament, two points on the judiciary needed improvement. Firstly, the election of the chief justice with a two-thirds majority led to depoliticization but could also lead to deadlock in parliament. Secondly, as concerns the publicity of judicial candidates, it was recommended that at least the names of the three judicial candidates presented to the president by the Judicial Appointments Committee (JAC) be made public.

In 2020 the Commission, jointly with the Directorate of Human Rights of the DG-I of the Council of Europe, extensively worked with the **Moldovan** authorities, upon their requests, on the legislation regarding the Superior Council of Magistracy (SCM): it adopted three opinions on the matter. The Urgent Joint Opinion

on the draft law on amending the Law No. 947/1996 on the SCM, issued on 22 January (and endorsed by the Commission in the June 2020 plenary session³), expressed regret that the Parliament did not wait for the urgent opinion to be issued before adopting the relevant draft law on 20 December 2019 and submitting it for enactment. In substance, the opinion welcomed the proposal to increase the number of members of the SCM from 12 to 15, which qualitatively strengthened the evaluation, management, discipline and accountability of judges and would also achieve a better balance within the SCM between judges and lay members, and improve the representation of lower courts. The election of non-judge members by parliament with the vote of the “majority of the elected deputies” was also positively assessed, although a stronger majority involving the opposition would be more appropriate.

The second Joint Opinion assessing *the draft law amending and supplementing the constitution with respect to the SCM* was adopted in March 2020⁴. The opinion considered that the draft amendments to the Constitution could improve the independence, accountability and efficiency of the judiciary and were generally in line with applicable international standards. It recommended, however, that the number of members of the SCM be indicated in the constitution and that the method of election of lay members by parliament, either by a qualified majority with an anti-deadlock mechanism or by a proportional method, be specified in the constitution. The joint opinion expressed serious concern about the manner in which four lay members of the SCM had been elected in March 2020, which hampered the positive impact the constitutional amendments ought to have had. The Commission called upon the Moldovan authorities to suspend the implementation of the legislative amendments of December 2019 and the nomination of the four lay members of the SCM, pending a thorough reform of the constitutional provisions on the SCM. In May 2020 during a series of consultations online, the authorities stated that the constitutional amendments could be discussed in Parliament at the earliest after the presidential elections, probably in January-February 2021. On 21 May 2020, the Parliament adopted amendments to the Law on SCM introducing the possibility of filling vacancies for judge members of the SCM with already elected substitute members pending the convocation of the General Assembly of Judges.

The subsequent Joint Opinion (*on the revised draft provisions on amending and supplementing the Constitution, with respect to the SCM*), adopted in June 2020⁵, found that the revised draft amendments followed, to a large

extent, the previous recommendations concerning the composition of the SCM and requirement for a qualified majority of MPs (three-fifths) in the election of the lay members. It was recommended to indicate in the constitution that the organic law would provide for an anti-deadlock mechanism in case parliament failed to reach a qualified majority of three-fifths. Moreover, the draft had to be amended to provide for renewal of the lay composition of the SCM upon the entry into force of the constitutional amendments, expected to take place at the beginning of 2021, according to the new rules requiring a three-fifths qualified majority in parliament for their election.

At the request of the Marshal of the Senate, the Venice Commission adopted an urgent opinion where it examined the December 2019 amendments to the laws of the judiciary of **Poland**. These amendments were a new step in a judicial reform criticised by the Venice Commission in an earlier opinion of 2017. The Venice Commission reiterated its previous recommendation that judicial members of the National Council of the Judiciary should be elected by their peers, and that the status and role of the two newly created “super-chambers” should be revised. The opinion also observed that the new method of election of the First President of the Supreme Court reduces even further participation of the judges in this process. The Venice Commission noted with regret that the 2019 amendments contradict the position of the European Court of Justice (the ECJ) which held that judges may be required to examine the question of independence of other judicial bodies, by applying criteria developed in the ECJ case-law.

An opinion on **Turkey**, requested by the Monitoring Committee, concerned the July 2020 amendments to the Attorneyship Law, which introduced the possibility to create alternative bar associations in three large cities, and also reduced the quota of representation of large bar associations in the central body of self-governance of the legal profession – the Union of the Turkish Bar Associations (the UTBA). The opinion concluded that there had been no compelling reasons for this reform, that the creation of alternative bar associations would increase the risk of politicization, and that the new institutional design of the UTBA would disturb the representative character of this body. The Venice Commission suggested other solutions for implementing the idea of creating smaller bar associations.

The Joint Opinion on draft Amendments to the Law ‘On the Judiciary and the Status of Judges’ and certain laws on the activities of the Supreme Court and Judicial Authorities of **Ukraine** identified three problems to address: (a) some 2000 judicial vacancies could not be filled since the High Qualification Commission of Judges (HQCJ) had been dissolved in November 2019; (b) there was a high level of mistrust in the judiciary,

3. [CDL-AD\(2020\)015](#).

4. [CDL-AD\(2020\)001](#).

5. [CDL-AD\(2020\)007](#).

including the High Council of Justice (HCJ); (c) eight judges from the former “Supreme Court of Ukraine” (SCU) had to be integrated into the new “Supreme Court” (SC) following a decision of the Constitutional Court. Draft law no. 3711 addressed issues (a) and (c) only. However, the draft law subordinated the new HQCJ to the HCJ. The opinion insisted that the draft law shall focus on the re-establishment of the HQCJ without subjecting it to the HCJ. The integration of the HCJ and the HQCJ would be seen as a long-term goal only. The issues of integrity and ethics of the HCJ were an urgent issue as well.

Ombudsman institutions

On 16 December 2020 the United Nations General Assembly adopted the Resolution A/RES/75/186 on “The role of Ombudsman and mediator institutions in the promotion and protection of human rights, good governance and the rule of law”⁶. The resolution provides strong endorsement of the Principles developed by the Venice Commission on the Protection and Promotion of the Ombudsman Institution – “the Venice Principles”⁷. It establishes these principles as the new global standard for the ombudsmen institutions.

Constitutional justice

Country specific activities

In 2020 the Commission received requests for *amicus curiae* briefs from the Constitutional Courts of Armenia, Kyrgyzstan (cf. Chapter IV) and the Republic of Moldova.

In the *amicus curiae* brief for the Constitutional Court of **Armenia** relating to Article 300.1 of the Criminal Code penalising overthrowing the constitutional order, the Venice Commission observed that there seemed to be no explicit references to constitutions with respect to crimes “*against the constitutional order*”, however, that the conclusion could be drawn that indirect or implicit references to them did exist. The concepts of *constitutional order*, *overthrowing the constitutional order* and *usurpation of power* as such were not defined in the statutory provisions of most member States. Statutory provisions governing such concepts as *constitutional order*, *overthrowing the constitutional order* and *usurpation of power*, for the most part, had not been applied to this day. This, in turn, showed that there was no best practice as to the factual circumstances under which charges of the most similar crime (*high treason*) would be dealt with in member States. With respect to the prohibition of retroactivity of criminal laws and the requirement of providing sufficiently clear and precise definitions of criminal

acts in laws, criticisms of imprecisions regarding the concepts of *constitutional order* and *the overthrowing of the constitutional order* might be appeased in the knowledge that there seemed to be a convergence among the member States of the Venice Commission to leave these concepts undefined or imprecise.

In the Joint Urgent *amicus curiae* brief on three legal questions concerning the mandates of members of Constitutional Bodies of the Republic of **Moldova** the Commission concluded that, as far as it guarantees the continuity of the exercise of the mandates in a balanced way and with the minimum affection of the interests that may be at stake in the transition, the new solution did not seem disproportionate in the sense that it may be reasonably considered as striking a fair balance between the two conflicting interests – the security of the mandate of the lay members of the SCM and the need of maintaining the public order, i.e. removing the negative consequences that followed parliament’s decision in March 2020 to elect the four lay members of the SCM based on the old rules while important draft constitutional amendments also concerning the election and mandate of the lay members were pending. With regard to the question on whether the transitional measure interfered with the right to private life of the lay-members of the SCM, guaranteed by Article 8 ECHR, the brief considered that although the incumbent lay members’ removal, in case they fail to secure confirmation, might be considered as a professional set-back, it appeared to have no implication on their reputation or integrity.

CODICES database

The Venice Commission’s other activities in the field of constitutional justice in 2020 included the CODICES database, (hereinafter, “CODICES”), which is the focal point for the work of the Joint Council on Constitutional Justice, as well as the World Conference on Constitutional Justice. CODICES presents to the public the leading constitutional case-law of constitutional courts and equivalent bodies. In 2020 CODICES contained some 10 900 court decisions (summaries, called *précis*, in English and French as well as full texts of the decisions in 43 languages) together with constitutions, laws on the courts and court descriptions explaining their functioning.

In 2020, constitutional courts and equivalent bodies actively contributed to CODICES, which was regularly updated. Over 484 cases were added to CODICES, which helps constitutional courts and equivalent bodies refer to the experience and the case-law of courts in other countries and participating European and international courts. Constitutional courts and equivalent bodies reported numerous references to international case-law in their judgments, notably to the European Court of Human Rights.

6. [Text of the UN Resolution.](#)

7. [Text of the Venice Principles.](#)

In 2020, with the financial support of the Government of Belgium, a consultant and the Secretariat of the Venice Commission prepared specifications for a new database on constitutional case-law that will replace the current CODICES database (www.codices.coe.int), which is running on the basis of the same technology since its creation in 1996. The new CODICES database will benefit from synergy-sharing technology with a revised web-site of the Venice Commission, VenSite (www.venice.coe.int). The CODICES / VenSite specifications will be subject to public tender in early 2021.

The Venice Commission's Venice Forum dealt with 17 comparative law research requests from constitutional courts and equivalent bodies covering questions which ranged from civil status and adoption to taking and retaining DNA samples.

World Conference on Constitutional Justice

On 20 March 2020, following the spread of COVID-19, the 15th meeting of the Bureau of the World Conference on Constitutional Justice (WCCJ) was replaced by a written procedure. The Bureau accepted the offer by the Constitutional Court of Indonesia to host the 5th Congress of the World Conference in 2022, which will be held in October 2022 on the topic "Constitutional Court and Peace".

The Supreme Court of Somalia joined the WCCJ this year, bringing the total number of members to 117 in December 2020.

Elections, referendums and political parties

In 2020, the Commission continued its activities on electoral matters and political parties. It adopted opinions on elections and referendums in **Albania, Kyrgyzstan, the Republic of Moldova, Montenegro, Turkey and Ukraine**, as well as an *amicus curiae* brief for the Constitutional Chamber of the Supreme Court of Kyrgyzstan. It adopted a report on the **replacement of elected candidates and mayors**, a report on **electoral dispute resolution** and **Principles for a fundamental rights-compliant use of digital technologies in electoral processes**, and revised guidelines on the **holding of referendums**. It took note of a report on "Electoral law and election administration in Europe – A summary study on some recurrent challenges and problems.

These documents were submitted to the Council for Democratic Elections before being adopted by the Commission in plenary session.

Although improvements to electoral legislation remain 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 2020 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 organised **electoral assistance activities** and seminars with partners in Georgia, the Republic of Moldova, Kyrgyzstan, Montenegro, Tunisia and Ukraine.

It also organised the **17th European Conference of Electoral Administrations** on "Electoral law and electoral administration in Europe – Recurrent challenges and best practices". These activities took into account the particular situation due to the COVID-19 pandemic.

The Commission provided legal assistance to **four Parliamentary Assembly election observation missions**.

The **VOTA database** on electoral legislation, which continues to be managed jointly by the Commission and the Federal Electoral Tribunal of Mexico, has been updated.

Political parties

The Commission adopted an opinion on the draft amendments to the legislation on political parties (Armenia) as well as the second edition of the Joint OSCE/ODIHR Guidelines on the Regulation of Political Parties.

Sharing European experience with non-European countries

Mediterranean Basin

In 2020, the Venice Commission further developed its co-operation with the countries of the Southern Mediterranean. Several successful projects were developed in Egypt, Morocco and Tunisia on both the national and the regional level.

The Venice Commission continued its dialogue with the **Tunisian** authorities on the legal framework on the operation of independent bodies in line with the 2014 Constitution. The Commission co-operated with Tunisia on issues related to the operation of the independent institutions in the framework of the joint Council of Europe-European Union Project to support the independent institutions of Tunisia (PAII-T, 2019-2021). The dialogue with the Moroccan authorities continued in the field of the reform of the judiciary and through activities with the ombudsman institution.

In 2020 the Commission continued to organise regional activities, including such important projects as the UniDem (University for Democracy) seminars for the countries of the MENA region and participation in 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, Morocco, Palestine⁸ and Tunisia.

Central Asia

In 2020 the Venice Commission continued to co-operate with the different national institutions and started the implementation of a new co-operation project in the framework of the Joint EU/Council of Europe Central Asia Rule of Law Programme which aims to reinforce human rights, rule of law and democracy in Central Asian partner countries in accordance with European and other international standards by offering assistance to reform processes, based on a demand-driven approach. The Programme is open to all Central Asian countries wishing to benefit from the Council of Europe expertise and meeting the conditions for co-operation.

Latin America

In 2020 the Venice Commission continued to develop its co-operation with countries of Latin America, notably with Argentina, Bolivia, Mexico and with the Organisation of American States (OAS).

A growing number of countries in the region are interested in the Venice Commission's standard-setting documents and in its experience in such fields as constitutional assistance, constitutional justice and reform of the electoral legislation and practice. In 2020 representatives of the Commission were invited to participate in different events in Argentina, Bolivia, Mexico and other countries of the region. The Secretary General of the Organisation of American States (OAS) Mr Luis Almagro and the President of the Venice Commission Mr Gianni Buquicchio signed a co-operation agreement in Washington DC, on 6 June 2020, and in Strasbourg on 9 June 2020, respectively. This agreement will allow for developing the successful co-operation between the two organisations in 2021.

8. This designation shall not be construed as recognition of a State of Palestine and is without prejudice to the individual positions of Council of Europe member States on this issue.



The President of the Venice Commission, Mr Gianni Buquicchio, participating in the video meeting of the Chairs of the Council of Europe Monitoring and Advisory Bodies, Strasbourg, 29 June 2020.

Scientific Council

The Scientific Council of the Venice Commission prepares compilations of studies and opinions, which contain extracts from the Commission's opinions and studies structured thematically around key topics. They 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. The compilations are available on the Commission's website and are regularly updated^{9,11}. For more information on the compilations adopted in 2020 please refer to Chapters II and IV.2.2.

In 2020 the Scientific Council prepared and updated four thematic compilations on:

- ▶ states of emergency (CDL-PI(2020)003);
- ▶ freedom of expression and media (CDL-PI(2020)008);
- ▶ separation of powers (CDL-PI(2020)012);
- ▶ stability of electoral law (CDL-PI(2020)020).

The compilation on states of emergency was presented to the three main PACE committees to facilitate future references to the Commission's doctrine/*acquis* on the subject.

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9. [Web page « Compilations ».](#)

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II. CONSTITUTIONAL REFORMS, STATE INSTITUTIONS, HUMAN RIGHTS AND THE JUDICIARY

Country specific activities

Constitutional reforms, state institutions, checks and balances

Albania

Opinion on the appointment of judges to the Constitutional Court (CDL-AD(2020)010)

This opinion, adopted by the Venice Commission on 19 June 2020 by a written procedure replacing the June 2020 plenary session, was requested by the Speaker of the Albanian Parliament.

In this opinion, the Venice Commission noted that the constitutional crisis in Albania had been caused by the results of the necessary vetting procedure, combining a fundamental obstruction between the Assembly and the President. Due to the inactivity of the Justice Appointments Council (JAC) in 2017 and 2018, many vacancies had to be filled at the same time, with very few suitable candidates applying. Ambiguous (constitutional) provisions could not be clarified due to the paralysis of the Constitutional Court.

The opinion recommended that the President and the Assembly should agree on the procedure to be followed in line with the constitutional and legal provisions, and the JAC should accept such interpretation. As long as the Constitutional Court is not functioning and no consensus on the interpretation has been reached by the political stakeholders, the JAC should send the list(s) to the Assembly as soon as the President has proceeded with his/her appointment(s), or after 30 days if he/she fails to do so without justification. An early vacancy should be filled by the authority which appointed the outgoing judge.

The default mechanism for appointments by the President should preferably be raised to the constitutional level, as is the case for the Assembly. The High Court should make its outstanding appointments as soon as it is functional again. The People's Advocate should be fully associated to the work of the JAC as an observer and the minutes of the JAC meetings should be published in due time. The JAC should adopt its

ranking when the files of all candidates on the list are complete and the JAC's should then immediately send the lists together with the files to the appointing body. Only vetted candidates should be proposed.

In the long run, the Commission recommended removing the sequence rule and filling the vacancies always for a full mandate of nine years.

Follow-up to the opinion

Six Constitutional Court candidates were disqualified, and three others withdrew their candidacies during a Justice Appointments Council (JAC) meeting held on 17 July 2020. Thus, the two Constitutional Court vacancies announced by the Assembly in August 2019 and the President of the Republic in September 2019 cannot be filled. JAC now has to reopen the call for applications for Constitutional Court candidates, which means that Albania will not have a fully functioning Constitutional Court before the end of this year or the beginning of the new one.

Armenia

Opinion on three legal questions in the context of draft constitutional amendments concerning the mandate of the judges of the Constitutional Court (CDL-AD(2020)016)

This Opinion, adopted by the Venice Commission on 19 June 2020 by a written procedure replacing the 123rd plenary session (18-19 June 2020), was requested by the Minister of Justice of the Republic of Armenia [cf. Chapter III].

Follow-up to Joint opinion of the Venice Commission and the Directorate of Human Rights (DHR) of the Directorate General of Human Right, and Rule of Law (DGI) of the Council of Europe, on the amendments to the Judicial Code and some other laws (CDL-AD(2019)024)

The Joint Opinion, adopted at the December 2019 session, was generally positive on the judicial reform. It insisted, however, that the early retirement scheme for judges of the Constitutional Court had to be strictly voluntary.

In view of the continuing conflict between the Constitutional Court and the Government, the President of the Venice Commission, on 3 February 2020, made the following statement:

“Following my statement of 29 October 2019, I remain preoccupied about the open conflict involving the Constitutional Court of Armenia. I share the concerns of the rapporteurs of the Parliamentary Assembly of the Council of Europe in this respect. I would like to recall the recommendations made in the opinion of the Venice Commission adopted in October 2019 that any early retirement scheme at the Constitutional Court has to remain truly voluntary, exclude any undue political or personal pressure on the judges concerned and must be designed not to influence the outcome of pending cases. Recent public statements and acts do not meet these criteria and will not be conducive to deescalating the situation. Democratic culture and maturity require institutional restraint, good faith and mutual respect between State institutions. I call again on all sides to exercise restraint and to de-escalate this worrying situation in order to ensure the normal operation of the constitution of Armenia.”

None of the judges of the Constitutional Court took advantage of the early retirement scheme.

On 6 February 2020 the Armenian parliament decided to put to a referendum an amendment to the transitional provision of the Constitution, which provided that the constitutional court judges appointed prior to the entry into force of the revised Constitution continue to serve until the end of their term of office, as provided under the previous version of the Constitution (i.e. until the age of 65 instead of a 12 year term). According to the proposed amendment, their term of office would end immediately.

The referendum was originally scheduled for 5 April 2020 but postponed due to the state of emergency declared in Armenia to cope with the COVID-19 pandemic.

Belgium

Follow-up to the Amicus curiae brief for the European Court of Human Rights in the case of Mugemangango v. Belgium on procedural safeguards which a State must ensure in procedures challenging the result of an election or the distribution of seats (CDL-AD(2019)021)

This case concerned the procedural guarantees that a State must provide in the context of a procedure for contesting the result of an election or the distribution of seats, and in particular the ratification of the credentials of elected representatives. In its amicus curiae brief, the Commission considered that there must be an effective remedy in electoral matters, including on the results; the appeal body must be impartial and

sufficiently independent of the legislature and the executive. This precludes Parliament from being the sole judge of its own election.

In its judgment of 10 July 2020, the European Court of Human Rights found a violation of Article 3 of Protocol No. 1 to the ECHR and of Article 13 ECHR in conjunction with Article 3 of Protocol No. 1: the Walloon Parliament, which had examined the applicant’s complaint, did not offer the required guarantees of impartiality and its discretion was not circumscribed by the provisions of domestic law to a sufficient level of precision. Nor were the guarantees which Mr. Mugemangango had enjoyed during the proceedings sufficient in so far as they had been put in place in a discretionary manner. His complaints had therefore not been the subject of a procedure affording adequate and sufficient guarantees to rule out arbitrariness and ensure that they were effectively examined. In the absence of such guarantees, that remedy was also not effective within the meaning of Article 13 of the Convention.

The Court therefore followed the Commission in finding that there was no effective remedy, but did not rule out in general terms the possibility that Parliament might be the sole judge of its own election, contrary to the Commission’s position that the appeal body should be independent of Parliament.

Bulgaria

Urgent Interim Opinion on the draft new Constitution (CDL-AD(2020)035)

Further to a request of the President of the National Assembly of Bulgaria, the Venice Commission issued in November and then endorsed at the December 2020 plenary session the Urgent Interim Opinion on the draft new Constitution of Bulgaria.

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

The draft amendments to the Preamble and the chapters on fundamental principles and human rights were in general welcome or not problematic, apart from a few caveats on their interpretation. A blanket restriction on the right to vote for convicts sentenced to imprisonment should be replaced by a more flexible rule. The reduced number of 120 MPs for the composition of Parliament seemed arbitrary. A clearer and more viable justification should be given. The introduction of individual appeal to the Constitutional Court was welcome, while the suppression of the Grand National Assembly should be justified.

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

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

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

Georgia

Follow-up to the opinion on the draft constitutional amendments as adopted on 15 December 2017 at the second reading by the Parliament of Georgia

The most important aspect of the constitutional reform adopted on 26 September 2017 was the passage from a mixed election system (77 proportional – 73 majoritarian) to a proportional election one, which was limited however by three mechanisms: the 5% threshold for legislative elections, the prohibition of party blocs and the distribution of unallocated mandates to the winning party (the so-called bonus system). However, in a very controversial move, the entry into force of the proportional election system was postponed to October 2024. In its opinion, the Commission examined a set of draft amendments according to which, during the 2020 parliamentary

elections exclusively, the political parties would be allowed to form electoral blocks and the election threshold would be 3%. Moreover, the previous system of distribution of unallocated mandates which favoured the strongest parties was replaced by a system of equal distribution which will apply after the elections of 2024.

The Commission welcomed those “measures” as factors which alleviate the detrimental effects of the postponement of the entry into force of the proportional election system for smaller parties. However, the postponement of the entry into force of the proportional election system to October 2024 was highly regrettable and a major obstacle to reaching consensus which is necessary for strong legitimation for the Constitution, including the supplementary amendments, and a guarantee for its stability.

The constitutional revision adopted on 29 June 2020 as well as the legislative reform which followed provide that the parliament elected in the next parliamentary elections (31 October 2020) shall consist of 30 members elected under the majoritarian system and 120 members elected under the proportional system at national level, with a threshold of 1% for political parties, and, for electoral blocks, 1% multiplied by the number of political parties included in the electoral block. Moreover, the percentage of seats (proportional and majoritarian) a party can receive shall not exceed 1,25 times its share in the proportional votes.

Iceland

Opinion on four draft constitutional bills on the protection of the environment, on natural resources, on referendums and on the President of Iceland, the Government, the functions of the executive and other institutional matters (CDL-AD(2020)020)

This Opinion, adopted by the Venice Commission during its October 2020 plenary session held online, was requested by the Prime Minister of Iceland.

In its opinion, the Commission considered that after their attempt, in 2012, to draft a brand-new Constitution for Iceland in the aftermath of the economic crisis in Iceland, the authorities had changed their approach to the constitutional reform and opted for a more cautious method by introducing partial amendments to the Icelandic Constitution. However, the opinion explained that the 2012 draft was submitted to a “consultative” referendum and approved by the people as a basis for a new Constitution for Iceland. Therefore, the Venice Commission considered that the Icelandic people should be given transparent, clear and convincing explanations for the government's

choices and the underlying reasons for any substantive departure from the previous draft should also be explained to the public.

The Venice Commission considered that the amendments were generally positive and in line with international standards. At the same time, some provisions seemed to be left unfinished, which might lead to uncertainty with respect to their interpretation and application.

As concerns the draft bill on the president and functions of the executive, the opinion recommended in particular that a procedure of revocation of an act by the caretaker cabinet, which is in breach of the principle of “necessity” in draft provisions, be envisaged in the constitution. Moreover, the constitutional provision on the criminal liability of ministers should provide rules on investigations, indictments, and judicial proceedings in cases of alleged ministerial misconduct in office.

With respect to the draft amendments on referendums, the clear intention to enhance citizens’

opportunities to influence legislation and more generally the decision-making on issues of key interest for the public was welcomed. However, according to the opinion, the provisions concerning the referendum triggered by a veto of the president and the abrogative referendum provided in the bill should be harmonised. The meaning of the expressions “laws that are passed to implement international obligations” and “resolutions that have legal effect or represent an important policy issue” should be set out in a clearer manner and a provision should be introduced to the effect that the *Althing* (national parliament of Iceland) may not adopt, for the running election period at least, an essentially identical piece of legislation after the referendum has taken place or after the act has been repealed by the *Althing*.

The draft bills on natural resources and on environmental protection were welcomed as they aimed to constitutionally entrench the use and protection of natural resources, as well as the protection of the environment. The opinion recommended, however, that the relationship between the bill on natural resources and the bill on environmental protection be clarified; the meaning of the notion “national ownership” and its relationship to the right to property should be set out in a clear manner and issues relating to natural resources, including economic issues in the draft provision, such as fees and commercial exploitation, should be covered by judicial control. Moreover, the scope of “individual responsibility” for environmental protection and its relationship to “shared responsibility” should be clarified; the duty of the state and its overall responsibility for the protection of the environment and nature could be further emphasised; the enforcement mechanisms, including the judicial

control of the rights and obligations related to environmental protection should be provided explicitly in the text of the constitution.

Kosovo

Opinion on the draft law on the government (CDL-AD(2020)034)

This Opinion, adopted by the Venice Commission during its December 2020 plenary session held online, was requested by the Prime Minister of Kosovo.

In this opinion, the Venice Commission noted that the draft law was part of the broader Kosovo Legislative Agenda for 2020 and aimed to determine the organisation and manner of functioning of the executive, laying down precise rules on the relationship between the government and the assembly. The opinion raised the issue of the importance for laws to have an explanatory memorandum, which are conducive to an inclusive and better debate.

The opinion also referred to concerns with respect to the constitutionality of setting a maximum number of ministers in the draft law on the government, which was the key objective of this draft law. In this context, Article 96.2 of the Constitution of Kosovo however states that this is to be determined by an “internal act of the government”, arguably making the fact that this would be dealt with by a law questionable. As this issue had not yet been examined by the Constitutional Court of Kosovo, the opinion concluded, in a *prima facie* evaluation, that the wording of Article 96.2 did not seem to rule out that it effectively reserved this to the government (i.e. an internal act of the government). A compromise solution was therefore suggested to the extent that the draft law could provide more detail on how many ministers were required e.g. by providing explicit criteria of necessity and then leave to the government the decision to determine how many ministers constitute a maximum number, providing a justification for this.

The request also raised another issue pertaining to the power of the outgoing government, which the Venice Commission saw as unproblematic. Conversely, the draft opinion pointed to a problem with respect to the drafting quality of the draft law, which was overly and unnecessarily descriptive and should be reconsidered.

Peru

Follow-up to Opinion on linking constitutional amendments to the question of confidence (CDL-AD(2019)022)

The Opinion prepared by the Commission upon request by the Speaker of the Congress of the Republic of Peru, concluded that the Peruvian Constitution did not set forth any explicit limitations with respect to the issues which may be linked to a question of

confidence. The opinion pointed out that in comparative law, linking constitutional amendments to a question of confidence was unusual. It belongs to the Constitutional Court to provide interpretation of the corresponding constitutional provisions. The Commission underlined that any constitutional amendment process should preserve the principle of the separation of powers and the requirement of checks and balances between the President and the Congress. The power of the President to link a question of confidence to constitutional amendments might create a risk of being used to alter this balance. The threat of dissolution after a second vote on a question of confidence might make it difficult for Congress to resist attempts to alter it in favour of the President. The Commission also pointed out that in Peru some substantive limitations to constitutional amendments seemed to exist, such as the principle of separation of powers or the republican form of government, which might provide a safeguard against abuse, but their scope was not clearly defined.

At the moment of the adoption of the opinion in October 2019, the Peruvian Congress was already dissolved following a conflict with the executive on the issue of election of constitutional judges. On 26 September 2019, three days after a meeting with the representatives of the Venice Commission, the Committee on Constitution and on Rules of Procedure of the Congress archived the bill proposed by the Executive regarding the advancement of elections from 2021 to 2020. Immediately afterwards, the Congress convened a plenary session for 30 September 2019 to appoint the six new members of the Constitutional Court.

On 27 September 2019, President Martín Vizcarra announced that he would present a bill to modify the system for the election of the members of the Constitutional Court and that, if this proposal was not considered by the Congress, the issue would be subject to a question of confidence. On 30 September 2019 President Vizcarra sent to Congress the announced bill. The same day the plenary session of Congress decided to appoint new members of the Constitutional Court in accordance with the rules in force. During the debate, the President of the Council of Ministers raised a question of confidence about the bill on changes to the procedure of appointment of constitutional judges. The majority of the Congress opted for postponing the debate on the question of confidence to a later date. In the afternoon, the Congress appointed the first new member of the Constitutional Court. President Vizcarra announced that since the question of confidence raised had been “de facto” denied (Art. 133 of the Constitution), he decided to dissolve the Congress in accordance with Art. 134 of the Constitution.

The President of the Congress applied to the Constitutional Court. On 14 January 2020 the

Constitutional Court ruled that the dissolution of Parliament was legal. The election of the new Congress took place on 20 January 2020.

Ukraine

Joint Urgent Opinion of the Venice Commission and the Directorate General of Human Rights and Rule of Law (DGI) of the Council of Europe on the Legislative Situation regarding anti-corruption mechanisms, following Decision N° 13-r/2020 of the Constitutional Court of Ukraine (CDL-AD(2020)038)

Following consultations with the President of the Venice Commission, the President of Ukraine, Mr Zelenskyy, requested an urgent opinion of the Venice Commission on the effects of decision no. 13-r/2020 of 27 October 2020 of the Constitutional Court of Ukraine on the anti-corruption legislation (the other questions put by President Zelenskyy are addressed in the urgent Opinion on the reform of the Constitutional Court of Ukraine¹¹).

In the opinion the Venice Commission stressed that the fight against corruption is an essential element in a state governed by the Rule of Law, but so is respect for the Constitution and for constitutional justice. Parliament and the Executive must respect the role of the Constitutional Court as gatekeeper of the Constitution and need to implement its decisions. In turn, a Constitutional Court, must respect its own procedures and must issue decisions that are generally consistent with its own case-law, and act within the parameters of its legal authority and jurisdiction.

The Venice Commission acknowledged that decision no. 13-r/2020 of the Constitutional Court of Ukraine lacked clear reasoning, had no firm basis in international law, and was possibly tainted with a major procedural flaw – an unresolved question of a conflict of interest of some judges. Such decisions undermine public trust in constitutional justice in general.

However, since the constitutional role of the Constitutional Court must be respected, the Verkhovna Rada should implement the decision by interpreting it in light of the constitutional foundations of the country and applicable international standards. In particular, it is important to keep the duty of public officials (including judges of ordinary courts and of the Constitutional Court) to submit financial declarations, to have an efficient mechanism of verifying such declarations, and to provide in the law for appropriate sanctions for those public officials – including judges and prosecutors – who knowingly submit false declarations/fail to submit declarations.

Criminal liability for the submission of knowingly false declaration/failure to submit declaration should be

11. [CDL-AD\(2020\)039](#).

restored, but the law may specify in greater detail the different sanctions corresponding to the degree of criminal responsibility.

As regards the powers of the National Agency for Corruption Prevention (the NACP) to verify declarations, all its powers in respect of public officials other than judges, may be restored.

As regards the powers of the NACP vis-à-vis judges, additional safeguards may be introduced: the independence of the NACP in practice and the public control over its activities should be improved as per GRECO recommendations. Some of the investigative powers of the NACP may be formulated more precisely, or special exceptions and procedural safeguards in respect of judges may be envisaged; in order to shield judges from potential abuses by the NACP, the law may provide for the supervision of the activities of the NACP in respect of judges either in the form of a complaints mechanism, or in the form of regular reporting by the NACP to an appropriate judicial body. On this last point, the Venice Commission noted that the High Qualification Commission of Judges (the HQCJ) would appear to be the most appropriate body to play this role in the Ukrainian context – provided that the HQCJ is re-established and that it is composed of professional, honest and independent members, as per recommendations of the Opinion of the Venice Commission of October 2020¹².

Follow-up to Amicus curiae brief for the Constitutional Court of Ukraine on draft Law 1027 on the early termination of a Deputy's mandate (CDL-AD(2019)029)

In the *amicus curiae* brief adopted at the December 2019 plenary session, the Venice Commission answered a number of questions from the Constitutional Court.

On 24 December 2019, the Constitutional Court of Ukraine found that draft law No. 1027, which provided for stripping parliamentarians of their parliamentary mandates for absenteeism and not personally casting their votes in the parliament, is unconstitutional. This judgment is in line with the findings of the Venice Commission.

In the meantime, on 19 December 2019, the parliament introduced a fine of up to UAH 85,000 for members of the parliament who fail to cast their votes personally in the parliament. The President signed this law in January 2020.

Follow-up to Opinion on the amendments to the legal framework in Ukraine governing the Supreme Court and judicial self-governing bodies (CDL-AD(2019)027)

In its Opinion adopted at the December 2019 plenary session the Commission recommended inter alia to

12. [CDL-AD\(2020\)022](#).

remove the provision reducing the maximum number of judges of the Supreme Court from 200 to 100. In a judgment of 11 March 2020, the Constitutional Court declared this and other provisions of the amendments to be unconstitutional. The President of the Venice Commission on 12 March made the following statement:

"I welcome that the judgment of the Constitutional Court of Ukraine of 11 March declares unconstitutional the amendment to the Law on the Judiciary and the Status of Judges which reduced the maximum number of judges in the Supreme Court from 200 to 100. In its Opinion of December 2019, the Venice Commission asked for this provision to be removed. The Commission was deeply worried that this amendment would have led to major changes in the composition of the Supreme Court, which had already been comprehensively reformed based on legislation adopted by the previous Verkhovna Rada. Doing so again, following elections, would have sent a message both to the judges and to the general public that it depends on the will of the respective majority in parliament whether judges of the highest court may stay in office or not. I therefore congratulate the Constitutional Court for its decision, which strengthens the independence not only of the Supreme Court but of the Ukrainian judiciary in general.

It should be noted that previously, on 18 February 2020, the Constitutional Court declared some provisions of the 2016 judicial reform unconstitutional. As a consequence, a number of judges of the previous Supreme Court of Ukraine, who did not undergo the vetting, will have to be integrated into the Supreme Court. The Venice Commission never provided an opinion on this law but favoured the constitutional amendments which were at its basis.

Fundamental rights

Albania

Opinion on draft amendments to Law n°97/2013 on the Audiovisual Media Service (CDL-AD(2020)013) and follow-up

The opinion on the draft amendments to the law on the Audio-Visual Media Service was requested by the Monitoring Committee of the PACE. The Venice Commission acknowledged that, as in many other countries, online media is a quickly growing sector of the media market in Albania. Until recently, it was regulated only by the general provisions of the civil law and criminal law on defamation, hate speech etc. The proponents of the reform considered that these legal tools were ineffective, and introduced an "anti-defamation package", which would extend the competency of the Albanian Media Authority (the



Albania – Opinions on the draft amendments to law N° 97/2013 on the Audiovisual Media Service and on the appointment of members of the Constitutional Court – virtual meetings, 11 - 12 June 2020

AMA) and of the Complaints Committee (the CC) to the sector of online media and give this authority new administrative powers in this field.

The Venice Commission, however, concluded that the proposed amendments could jeopardise the freedom of expression of the media and pluralism in Albania. They suffer from vagueness and would be likely to have a “chilling effect” suppressing free discussion and political speech in the Albanian sector of the internet. The opinion identified several main flaws of the proposed amendments: the scope of the law is defined too broadly, which entails the risk that all individual bloggers, users of social networks, etc. will also be targeted by this law. The proposed de-anonymisation of users of the internet is too sweeping and, at the same time, probably inefficient. The CC/AMA are given weighty administrative powers in relation to the online media, but there are doubts about the independence of those bodies. The complaints procedure does not offer sufficient procedural safeguards: the CC/AMA may impose, in a very quick administrative procedure, heavy fines which are immediately enforceable, and order taking down internet content, also with an immediate effect. The “economic capacity” of the media outlet is not a factor defining the amount of a fine, which may result in a situation where the activities of smaller media outlets (or even individual bloggers) are paralysed by disproportionate fines. This will magnify the chilling effect of those provisions and lead to self-censorship to the detriment of the political debate essential to any democracy. Additional safeguards should be introduced to guarantee due process and proportionality of sanctions.

In order to address the problem of malicious or irresponsible media behaviour on the internet, the Venice Commission encouraged the Albanian authorities to support the setting-up of an effectively functioning and independent self-regulatory body involving all relevant stakeholders of the media community and capable of ensuring an effective and respected system of media accountability through self-regulation. It is

furthermore necessary to ensure the effectiveness of the existing legal and, in particular, judicial remedies combatting defamation and hate speech committed via online publications.

Following the adoption of the opinion at the plenary session of the Commission in June 2020, the Albanian Parliament created a working group for the revision of the draft amendments. In December 2020 the Monitoring Committee of the PACE asked the Venice Commission to issue an opinion on the revised version of the draft amendments, once they are formally introduced before the Albanian Parliament.

Follow-up to the Opinion on the draft law on the finalisation of transitional ownership processes (CDL-AD(2019)023)

The draft law was revised in the light of the recommendations of the October 2019 opinion and adopted in May 2020. Following the advice of the Commission to request practical support in the framework of Council of Europe cooperation activities, a parliamentary working group successfully accomplished the revision of the draft law, taking the recommendations of the Venice Commission on board. Despite the global COVID-19 crisis impacting heavily on Albania, the new law came into force on seventh May 2020. Furthermore, the European Court of Human Rights in the case of *Beshiri v. Albania* (application no. 29026/06) and 11 other applications of 7 May 2020 concerning complaints about a prolonged lack of enforcement of final decisions awarding compensation for property expropriated during the communist era, declared the applications inadmissible. In this decision the Court examined in detail the new domestic scheme brought into effect by the 2015 Property Act for dealing with the many outstanding claims over decades-old compensation decisions which had not been enforced.

The Venice Commission had assessed this scheme in its Amicus Curiae Brief for the Constitutional Court on the restitution of property, adopted by the Venice

Commission at its October 2006 plenary session¹³. The Court concluded that the mechanism introduced by the 2015 Property Act was an effective remedy which the applicants had to use, even if their applications had been lodged before the Act had come into force. It declared their applications inadmissible for non-exhaustion of domestic remedies, as premature, or because the applicants were no longer victims of a violation of their rights.

Hungary

Follow-up to the Opinion on Article XXV of 4 April 2017 on the Amendment of Act CCIV of 2011 on National Tertiary Education (CDL-AD(2017)022)

The 2017 opinion concerned licensing and operation of foreign universities in Hungary. While these matters are not regulated in detail by international standards, it was difficult to see reasons for a sudden introduction of new, very stringent rules, and of strict deadlines for complying with them for already existing universities. This could have a detrimental effect on the freedom of education. In October 2017 the Hungarian Parliament extended the deadline for foreign universities to meet the new requirements to 1 January 2019, but the essence of the new law remained. Upon appeal by the European Commission, the Court of Justice of the European Union (ECJ) decided on 6 October 2020 that the legislation, discussed in the 2017 opinion, was in breach of the General Agreement on Trade in Services (GATS) of the WTO, and that it was incompatible with the provisions of the EU Charter of Fundamental Rights on academic freedom, the freedom to found higher education institutions, and the freedom to conduct a business, and also contrary to the EU legislation on free movement of services and the freedom of establishment. According to the Court the contested legislation jeopardized the normal functioning of foreign universities and put academic freedom at risk. Without citing its opinion, the ECJ confirmed in essence the Venice Commission's position.

Kosovo

Opinion on certain provisions of the draft Criminal Procedure Code, namely trial in absentia (art. 306) and suspension of officials from office (art. 177) (CDL-AD(2020)008)

At the request of then Prime Minister Kurti of the Republic of Kosovo the Venice Commission issued an opinion on specific draft amendments to the Criminal Procedure Code (CPC) and assessed whether the proposed amendments concerning trial in absentia (Article 306) and suspension of officials from office (Article 177) were compatible with the European Convention on Human Rights (ECHR) and other

international standards. The drafting of the amendments was initiated by the authorities as part of the reform in the criminal legislation as a need was felt to amend and supplement the current CPC provisions which were considered as lacking and inadequate with regards to their implementation.

The Venice Commission acknowledged the difficult situation the Kosovan legislator is being faced with trying to find a solution in a highly sensitive area as well as the legislative aim to strike a fair balance between the protection of individual rights and the need to guarantee a proper functioning of the justice system, including in the fight against corruption. Noting that the draft provisions were largely in line with the ECHR as interpreted by the Strasbourg Court and other international standards, the Commission observed that the provisions lacked precision, resulting in intended safeguards not being incorporated, ambiguity and thus causing difficulties to their future implementation. Consequently, the Venice Commission invited the legislator to re-examine the two draft amendments, making very concrete recommendations.

As to trial in absentia (Art. 306 CPC proposal), the Commission proposed to precise no. 2.2 referring to a situation in which an accused was 'informed pursuant to subparagraph 2.1 of this Article' in such a manner that the accused needs to be informed of the new trial date and to redraft para 5 to avoid a mix between the necessary procedural safeguards for the individual and the need for the efficiency of justice as well as in an explanatory memorandum to specify criteria to enable the judge to determine whether "reasonable efforts" have been made for no. 5 and 7 of the draft provision. The Commission also recommended to specify that the defence counsel has in the first place to be appointed by the accused and may only be appointed by the court if the accused does not do so, subject to observing certain minimum qualifications in the choice of the defence counsel, such as a minimum experience in criminal law and that the right of the defendant to have a retrial is not subject to any other condition than the one that he had never been present at the trial and that the retrial has to be a complete one on facts and law.

As to suspension of official person from duty (Article 177 CPC proposal), the Commission recommended to insert an explicit reference to Art. 113 of the Criminal Code of 14 January 2019 containing a definition of official persons and to clearly stipulate the responsibility of the prosecutor, employing a harmonised approach, the prosecutor being competent for submitting all requests for suspension of officials before and after the indictment as well as during a trial. The Commission further proposed to provide for a specialised single judge or chamber to take the decision for suspension of a person either at each court or at a higher level to be responsible for all cases under draft Art. 177 in

13. [CDL-AD\(2016\)023](#).



Kosovo – Opinion on the draft law on public gatherings – virtual meetings, 14 - 15 September 2020

the country and to consider either removing draft Art. 177 from the Criminal Procedure Code and placing it into the context of administrative legal provisions or moving the draft provision to the end of the Criminal Procedure Code, clearly indicating its non-coercive but administrative function as well as to consider introducing a right to appeal. Last the Commission suggested introducing provisions regulating the payment of salary during the period of suspension and the rights of the suspended official in the event of an acquittal to be put directly in the draft provision for all public officials in order to ensure a stringent and coherent approach and a harmonised application of the law.

Opinion on the draft law on public gatherings (CDL-AD(2020)030)

On 21 August 2020 the Prime Minister of Kosovo requested an opinion of the Venice Commission on the draft law on public gatherings of Kosovo. The Opinion was discussed and adopted at the October 2020 plenary session of the Commission.

The opinion welcomed and acknowledged the aim of the legislator to strike a fair balance between the protection of the right to freedom of gathering with other rights in line with international standards. The Commission noted that the draft law represented various improvements in comparison with the law in force. However, several important draft provisions lacked in precision, which could cause uncertainties and difficulties in its implementation. Notwithstanding that the Constitution of Kosovo used a very wide concept of gatherings, the opinion recommended adopting a specific approach to “assemblies” as understood under Article 11 ECHR and Article 21 ICCPR. This approach required several changes to the draft law which would allow it to gain in precision, consistency, and clarity. The following recommendations were made:

- ▶ to narrowly define the meaning of “gathering” and “other gatherings” in order to create two different regimes, distinguishing gatherings that fall under the privileged protection of Article 11 of the ECHR and Article 21 ICCPR;
- ▶ to differentiate between “peaceful public gatherings” and “public gatherings”;
- ▶ to harmonise the fines to be imposed for breaching the provisions of the draft law which

heavily burden the organisers and might have a deterring effect for them;

- ▶ to clearly define generic terms such as “real risks”, “considerable reasons”, “competent bodies” or “highest bodies” and to provide clear standards of proof for fact assessment, identifiable competent authorities, and clear description of procedures;
- ▶ to incorporate in the draft law a clear and detailed regulation regarding notification time-limits, competent decision-making bodies and adequate procedures for filing complaints, as well as in relation to the retention of recordings of gatherings.

Kyrgyzstan

Follow-up to Joint Interim Opinion on the Draft Law amending the Law on Non-commercial Organisations and other Legislative Acts of the Kyrgyz Republic (CDL-AD(2013)030)

The opinion made a number of recommendations on reporting, disclosure, oversight powers of the authorities and on proposed sanctions. Among others it strongly criticized additional obligations of non-commercial organizations to report and the creating of a special legal regime for structural units of foreign non-commercial organizations. It also regretted the introduction of the notion of “a foreign agent” into Kyrgyz legislation. The Commission also negatively assessed the legal consequence of non-compliance with registration obligations by NCOs (including de-registration). It also pointed out that the proposed measures would restrict the ability of NGOs to carry out their legitimate work.

In 2013 and 2014 Jogorku Kenesh discussed these amendments aimed at introducing new requirements for NCOs that receive foreign funding, including an obligation to register as “foreign agents.” The proposed draft legislation was rejected by the parliament in 2016.

On 2 February 2020 a group of MPs registered a draft law aimed at introducing amendments to the Laws “On non-commercial organisations” and “On State registration of moral persons, branches (representations)”. Later in February additional amendments to legislation on non-commercial organisations were proposed to the laws “On fight against financing of terrorist activities and money laundering” and to the Tax Code of the Kyrgyz Republic. The new sets of amendments propose to introduce reporting and disclosure obligations similar to the ones proposed in 2013. However, according to the reports of national NGOs and several international organisations they would target most NCOs. The 2020 amendments if applied might restrict the



Latvia – Opinion concerning education in minority languages – country visit, Riga, 20-21 February 2020

ability of NCOs to operate and provide public authorities with a wide, literally unchecked discretion in controlling, monitoring and interfering with their activities.

Latvia

Opinion on the recent amendments to the Legislation on Education in Minority Languages (CDL-AD(2020)012)

At the request of the Committee on Equality and Non-Discrimination of the PACE, the Venice Commission issued an opinion on the recent amendments to the legislation on education in minority languages in Latvia, which are presented by the authorities as part of a long-standing reform of the education system, comprising gradual changes in the use of the state language and minority languages – especially Russian – in favour of the state language.

The Commission noted the specific historical developments that Latvia has gone through over the past decades and centuries and the impact on the linguistic situation in the country that these developments have had, resulting in a state of asymmetric bilingualism. The statistical data and other information provided by the education authorities of Latvia suggested that there might be a need in Latvia to foster mastering of the state language in particular amongst pupils attending minority education programmes. The Commission stressed that increasing the proportion of the use of the Latvian language in minority education programmes in order to improve proficiency of pupils attending such programmes is a legitimate aim. However, for the reform to reach its objective, additional measures necessary to provide schools implementing minority education programmes should be coupled with appropriate teaching methodologies, educational materials as well as teachers who are proficient in Latvian.

The Commission equally recalled that securing the right of persons belonging to minorities to preserve and develop their language and their ethnic and cultural identity is an obligation for Latvia stemming from its international commitments. Even though

the overall direction of the recent amendments was not a reason for concern, some of the changes were, nevertheless, open to criticism as they did not strike a fair balance between the protection of the rights of minorities and their languages and the promotion of the state language. In order to ensure such a balance, the Venice Commission recommended to return to the previous “bilingual approach” in play-based lessons applied to the whole period of pre-school education, take the necessary legislative and other measures to ensure that state schools offer a minority education programme whenever there is sufficient demand for it, to exempt private schools from the mandatory proportions of the use of the Latvian language applied to state schools implementing minority education programmes, and to consider enlarging the possibilities for persons belonging to national minorities to have access to higher education in their minority language, either in their own higher education institutions, or at least in state higher education institutions.

The Venice Commission also called on the Latvian authorities to constantly monitor the quality of education received by pupils attending minority education programmes in order to ensure that the changes introduced into the education system do not undermine the quality of education and disproportionately reduce the opportunity for pupils to have good command of their minority language. The education authorities should also provide schools implementing minority education programmes with the necessary teaching materials and the teachers of these schools with adequate opportunities to continue to improve their Latvian and minority language skills in order to ensure their ability to implement the study process in Latvian, minority language and bilingually.

The opinion was adopted on 18 June 2020 by a written procedure replacing the 123rd plenary session.

Montenegro

Follow-up to Opinion on the draft Law on Freedom of Religion or Beliefs and legal status of religious communities (CDL-AD(2019)010)

The law was adopted by parliament on 24 December 2019 and entered into force on 8 January 2020. Implementation has started.

In March 2020 a working group composed of representatives of the government of Montenegro and of the Metropolitan of Montenegro and the Littoral of the Serbian Orthodox Church was set up in order to find a mutually acceptable solution. It held its first meeting on 11 March 2020.

At the same time, broad demonstrations against some articles of the law (relating to the property issues) have been staged all over Montenegro.



Russian Federation – Opinion on draft Amendments to the Constitution of the Russian Federation (as proposed by the President of the Russian Federation on 15 January 2020) relating to the execution of decisions by international bodies – country visit, Moscow, 02 - 03 March 2020

Russian Federation

Opinion on draft amendments to the Constitution (as signed by the President of the Russian Federation on 14 March 2020) related to the execution in the Russian Federation of decisions by the European Court of Human Rights (CDL-AD(2020)009)

In June 2020, the Commission adopted an opinion on the amendments to the Constitution of the Russian Federation (as signed by the President of the Russian Federation on 14 March 2020) related to the execution of judgments by the European Court of Human Rights. The opinion expressed concern for the constitutional entrenchment of the power of the Constitutional Court of the Russian Federation to declare a judgment non-executable as such (including as concerns individual measures) and for the extension of the possibilities for that Court to declare non-enforceable interstate bodies' decisions based on treaties that collide with the Constitution. These powers of the Court had to be seen against the backdrop of a proposed change empowering the Council of the Federation to dismiss the judges of the Constitutional Court at the request of the President. The opinion concluded that changes to the amendments were necessary.

Follow-up to the opinion

The text of these and other amendments was submitted to a popular vote which was held from 25 June to 1 July 2020, after being postponed due to the COVID-19 crisis. According to the official results, nearly 79% of valid votes supported the changes to the constitution, which entered into force on 4 July 2020.

On 29 May 2020, the Parliamentary Assembly asked an opinion of the Commission on the constitutional amendments and the procedure for their adoption in the Russian Federation. This opinion is in preparation and should be submitted to the Commission at its 126th plenary session in March 2021.

Follow-up to the opinion on the Federal Law on combating extremist activities in the Russian Federation (CDL-AD(2012)016)

In its 2012 opinion, while acknowledging the challenges faced by the Russian authorities in countering

extremism, the Commission stated that the manner in which this aim is pursued in the Extremism Law was problematic. Serious concern was expressed over the lack of precision of the definitions of "extremism", "extremist actions", "extremist organisations" or "extremist materials" provided by the Law, as this could open the door to an overly broad interpretation by the enforcement authorities. The specific preventive and corrective instruments provided by the Law for combating extremism – the written warnings and notices – and the related sanctions (liquidation and/or ban on the activities of public, religious or other organisations, closure of media outlets) were also found to be problematic in the light of the ECHR.

On 6 October 2020 the European Court of Human Rights, in the case of *Karastelev and others v. Russia*, found that the relevant provisions of the anti-extremist legislation were formulated in broad terms, leaving too wide a discretion to the prosecutor and making their application unforeseeable. Nor had the legislation and practice provided adequate protection against arbitrary recourse to the legal procedures used in the applicants' case. The Court thus found a breach of Article 10 and of Article 6 ECHR. The Court referred extensively to the Commission's opinion. In particular, it shared the Commission's criticism that a warning entailed the threat that a failure to comply with the warning – which was not based on a finding of guilt – could result in liability for an administrative offence and that as a result of the vagueness of the Law and of the wide margin of interpretation left to the enforcement authorities, undue pressure is exerted on civil society organisations, media outlets and individuals, which undoubtedly has a negative impact on the free and effective exercise of human rights and fundamental freedoms.

Uzbekistan

Joint opinion of the Venice Commission and OSCE/ODIHR on the draft Law "On freedom of conscience and religious organisations" (CDL-AD(2020)002)

The joint opinion on the draft Law "On freedom of conscience and religious organisations" was prepared upon request from the First Vice President of the

Legislative Chamber of the Parliament (Oliy Majlis) made on 6 August 2020. The opinion took note of positive changes proposed by the new draft law on such issues as the required minimum number of believers to create a religious organisation, the removal of the ban to wear religious attire in public and the requirement that liquidation of a religious organisation would be pronounced by a court instead of administrative bodies.

However, a ban of unregistered religious or belief activities and communities, stringent and burdensome registration requirements or strict limitations regarding the exercise of the right to freedom of religion or belief, such as on religious education, authorised places for worship and the production, import and distribution of religious materials were indicated as areas of concern. A prohibition of missionary activities and “proselytism” that contributed to the so-called “violation of inter-confessional harmony and religious tolerance in society”, remained subject to administrative and criminal sanctions. The opinion also pointed out to such problematic issues as limitations of the autonomy of religious organisations, vague and unclear rules concerning the suspension or dissolution of a religious organisation and too wide a discretion to public authorities, without providing an effective remedy to appeal against their decisions.

The Venice Commission and ODIHR made a number of recommendations aimed at bringing the text of the draft law in line with the international human rights standards, notably to amend the Draft Law to refer to the “freedom of thought, conscience, religion or belief” while ensuring that non-religious beliefs and not just “religion” as well as “religious or belief organisations” were covered; to remove the blanket prohibition of political parties and public associations with religious attributes; and to remove vague and overbroad wording, which gave too wide discretion to public authorities tasked with implementation of the law, thus potentially leading to arbitrary application/interpretation and undue restriction to the right of freedom of religion or belief.

Judiciary, prosecution service and the bar

Georgia

Opinion for Georgia on the draft organic law amending the Organic Law on Common Courts (CDL-AD(2020)021)

This Opinion, adopted by the Venice Commission at its October 2020 plenary session held online, was requested by the Speaker of Parliament. The request came with a very short deadline since the draft Amendments had to be adopted at the last session of the current parliament, which fell on the same day as a series of virtual meetings (30 September

2020) that were held by the Venice Commission with the High Council of Justice (“HCoJ”), NGOs, the Parliamentary Opposition, the Parliamentary Majority and the Deputy Public Defender.

This opinion followed an Urgent Opinion, issued on 16 April 2019, regarding the appointment of judges to the Supreme Court of Georgia and was adopted by the Venice Commission in June 2019. The urgent opinion made several recommendations, some of which were heeded by the Georgian authorities, while others still needed to be addressed.

The opinion considered the draft amendments to be an improvement to the previous procedure, having taken some of the recommendations made in the urgent opinion into account, such as removing the vote by secret ballot in the HCoJ and providing that each vote be accompanied by written reasoning that was made public. Other aspects still gave rise to concern, for instance that it was not mandatory for HCoJ members to vote in compliance with the evaluation scores for judge candidates, even if they had to provide a special justification for their deviation. The opinion considered this to be inconsistent with a merit-based evaluation system. In addition, the identity of HCoJ members in relation to each vote was not disclosed and doing so would even expose them to “liability”. Only where a candidate challenged a decision of the HCoJ before the Qualifications Chamber of the Supreme Court were the HCoJ members’ names revealed to the members of the Chamber, the candidate and his or her representative and the representative of the HCoJ in these proceedings (not to the wider public). The opinion recommended, however, that doing so would allow public scrutiny of the behaviour of the individual members of the HCoJ, thereby further enhancing the trust of the public in this body. It would also serve as a deterrent against taking political or other irrelevant factors into consideration in the procedure.

Although the opinion welcomed that the decision of the HCoJ may be appealed to the Qualifications Chamber of the Supreme Court, the opinion recommended that once a decision had been rendered by the Chamber and remanded to the HCoJ, the new decision by the HCoJ should also be appealable.

Follow-up to the Urgent Opinion on the selection and appointment of Supreme Court judges (CDL-AD(2019)009)

Georgia has followed some of the recommendations made in this opinion, including removing the requirement for non-judge candidates to pass the judicial qualification examination. Other recommendations were not heeded, including abolishing the secret ballot in the selection procedure of judge candidates by the High Council of Justice or introducing reasoned

decisions for the ranking and nomination of judge candidates based on clear and established evaluation criteria or introducing an appeal for judge candidates against decisions of the High Council of Justice.

Another recommendation made in the opinion, was that the current Parliament only appoint the number of Supreme Court judges absolutely necessary to render the work of the Supreme Court manageable. The number should not exceed half of the 18 to 20 positions that will be vacant. Further appointments may then be made by Parliament elected at the next general elections.

In September 2019 the High Council of Justice selected all final Supreme Court judge-candidates to be submitted to the Parliament. On 14 December 2019, the Legal Affairs Committee of Parliament endorsed 14 out of the 20 candidates who were interviewed in this format. Parliament appointed all 14 by a vote – out of which two were already serving (a 10-year term). In their assessment, they consider that the current Parliament has filled in only half of the seats (lifetime appointments) of the Supreme Court, leaving to the next Parliament to appoint the other 14 (the Constitution sets out that the Supreme Court should have at least 28 judges).

Kazakhstan

Follow-up to the Opinion on the Draft Code of Administrative Procedures (CDL-AD(2018)020)

The Administrative Procedure and Justice Code had been adopted by the Kazakh Parliament on 18 June 2020 and signed by the President of Kazakhstan on 29 June 2020. The structure of the adopted text had been changed in a substantive way compared to the draft examined by the Venice Commission in 2018. The Code followed some of the recommendations of the Venice Commission opinion by including simplified provisions on the applicable principles and a clearer definition of functions of public authorities in different phases of administrative procedures. However, the drafters had not followed the Commission's recommendation to regulate the administrative procedures and administrative court proceedings in separate acts. Further, the prosecutors continued to play an important role in the administrative procedures and process. The provisions on administrative discretion remained unchanged and could lead to misinterpretation in the future application of the Code.

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



Malta – Opinion on the Bills implementing concepts for reforms - virtual meetings, 1 September 2020

Malta

Opinion on proposed legislative changes (CDL-AD(2020)006)

This Opinion, requested by the Minister for Justice, Equality and Governance of Malta, was adopted by the Venice Commission on 18 June 2020 by a written procedure replacing the 123rd plenary session (18-19 June 2020; see below).

Opinion on ten Acts and bills implementing legislative proposals subject of Opinion CDL-AD(2020)006 (CDL-AD(2020)019)

This Opinion, requested by the Minister for Justice, Equality and Governance of Malta, was adopted during the Venice Commission's October 2020 plenary session held online.

This opinion was the third in a line of opinions that dealt with the constitutional arrangements in Malta. In December 2018, the Venice Commission concluded that in the then Maltese Constitution, the prime minister clearly was the centre of political power. Other actors such as the president, parliament, the cabinet of ministers, the judiciary or the ombudsman, had too weak an institutional position to provide sufficient checks and balances. The opinion therefore made various recommendations aimed at strengthening those other actors. The opinion also insisted that holistic constitutional changes be adopted as a result of a process of wide consultation of society so as to give citizens a chance to take ownership of these amendments.

The opinion, adopted in June 2020¹⁴, at the request of the Maltese Government, examined proposals for legislative changes following many of the recommendations made in the 2018 Opinion. The present opinion dealt with ten bills translating the proposals previously examined in the June 2020 Opinion into concrete legislative texts. Six of these bills had in the meantime been adopted by parliament.

The opinion welcomed the implementation of the proposals for legislative reform as an important step

14. [CDL-AD\(2020\)006](#).

in the right direction. The legislative process for the adoption of the six bills had been too swift, however, given the fact that the constitutional amendments should have a profound and long-term impact in Malta and hence required wide consultations within Maltese society. For that reason, the opinion recommended that the remaining four bills and any future amendments be discussed in a wider framework that includes civil society. Not all recommendations made in the 2018 Opinion were followed by these six acts and four bills.

While the opinion contained numerous positive appraisals as regards the six acts that had already been adopted by parliament, there were notably two points related to the judiciary that should be improved. The election of the chief justice with a two-thirds majority led to depoliticization but could also lead to deadlock in parliament. A suitable anti-deadlock mechanism might be that the chief justice be elected by the judges of the Supreme Court. As concerns the publicity of judicial candidates, the Venice Commission had considered in its June 2020 Opinion that at least the names of the three judicial candidates presented to the president by the Judicial Appointments Committee (JAC) be made public. In a letter of 17 June 2020, the government had accepted this recommendation. The amended Article 96A of the Constitution, however, stipulates that the list of three candidates presented by the JAC to the president “shall be made public in the president’s decision”, i.e. *after* the president has chosen one of the three judicial candidates. The list of three candidates should be accessible to the public *when* the JAC presents its list to the president.

As concerns the six acts, the recommendations made in the opinion had the character of corrections or adjustments and should be dealt with without delay, rather than left to the future Constitutional Convention.

As regards the four bills that are still pending in parliament, throughout the opinion, recommendations were made as to how the legislative texts could be made more effective, for instance, by having the auditor general not only be empowered, but be obliged to report on corrupt practices to the attorney general. The opinion urged the Maltese authorities to explicitly fix the (low) maximum number of persons of trust and the duration of their engagements in the law.

Moldova, Republic of

Urgent Joint Opinion of the Venice Commission and the Directorate of Human Rights (DHR) of the Directorate General of Human Rights and Rule of Law (DGI) of the Council of Europe on the draft law on amending the Law No. 947/1996 on Superior Council of Magistracy (CDL-AD(2020)015)

This Urgent Joint Opinion, *issued on 22 January 2020* and endorsed by the Venice Commission on 18 June 2020 by a written procedure replacing the 123rd plenary session (18-19 June 2020), was requested by the

Minister of Justice of the Republic of Moldova. The draft law passed the first reading of parliament on 5 December 2019 and the second and final reading on 20 December 2019. Considering the tight timeframe for the enactment of the laws, the Minister of Justice requested the Venice Commission to review the draft law on an urgent basis.

The opinion expressed regret that the Parliament of the Republic of Moldova did not wait for the present urgent opinion to be issued before adopting, at the second and final reading, the draft law amending Law no. 947/1996 on Superior Council of Magistracy (SCM) on 20 December 2019 and submitting it to the president for enactment. It welcomed, however, the information that constitutional amendments relating to the SCM were being prepared and that the Venice Commission’s assistance would be sought in that respect.

The opinion welcomed the proposal to increase the number of members of the SCM from 12 to 15, as the functions of the SCM regarding evaluation, management, discipline and accountability of judges would be qualitatively strengthened with a broader and more representative composition. The result of the proposed amendments was therefore to achieve a better balance within the SCM between judges and lay members. The increase in representation of lower courts on the SCM was particularly welcomed.

The election of non-judge members by parliament with the vote of the “majority of the elected deputies” was also welcomed as a positive step towards a greater support of the candidates by parliament. The opinion considered that a stronger majority would be more appropriate because it would also involve the opposition. This should be examined within the context of the constitutional reform that was in preparation at the time this opinion was adopted.

Joint Opinion of the Venice Commission and the Directorate General of Human Rights and Rule of Law (DGI) of the Council of Europe on the draft law on amending and supplementing the constitution with respect to the Superior Council of Magistracy (CDL-AD(2020)001)

This Joint Opinion, adopted by the Venice Commission on 20 March 2020 by a written procedure replacing the 122nd plenary session, was requested by the Minister of Justice.

The joint opinion considered that the draft amendments to the Constitution of the Republic of Moldova could improve the independence, accountability and efficiency of the judiciary and were generally positive and in line with applicable international standards.

This joint opinion welcomed notably the removal of the probationary periods for judges; the appointment of judges to the Supreme Court of Justice by the



Republic of Moldova – Opinion on the draft law on amending the Constitution – country visit, Chisinau, 19-20 February 2020

president (with a one-time veto), the regulation on functional immunity at the constitutional level; the statement in the constitution that at least half of the members of the Superior Council of Magistracy (SCM) would be judges elected by their peers and that the judge members of the SCM should represent all level courts of law and the consultative role of the SCM in the preparation of the judiciary's budget.

It recommended in particular, however, that the number of members of the SCM be indicated in the constitution and that the method of election of lay members by parliament, either by a qualified majority with an anti-deadlock mechanism or by a proportional method, be specified in the constitution. In the particular circumstances of the Republic of Moldova, the joint opinion advised to mention explicitly in the constitution that the exceptional cases in which the law may provide for judges to be suspended or removed included "corrupt conduct". Moreover, the authorities should consider affirming the principle of security of tenure of the SCM members in the constitution.

The joint opinion nevertheless expressed serious concern about the manner in which four lay members of the SCM had been elected in March 2020, through a controversial, non-consensual manner and for a full mandate of four years, which hampered the positive impact the constitutional amendments ought to have had. The joint opinion therefore called upon the Moldovan authorities to suspend the implementation of the legislative amendments of December 2019 and the nomination of the four lay members of the SCM, pending a thorough reform of the constitutional provisions on the SCM. These nominations should take place after the adoption of the constitutional amendments, in a procedure that ensures transparency and provides sufficient safeguards against politicisation.

Follow-up to the opinion

In May 2020, the Venice Commission participated in a series of videoconference meetings with the Moldovan authorities and stakeholders organised by the Working Group of the Directorate General on the justice reform in Moldova. The Council of Europe delegation insisted that a constitutional reform in the field of judiciary and appropriate measures in order to depoliticise the SCM are essential pre-conditions of any substantial reform concerning the justice sector in Moldova. Further, the lay members of the SCM should be renewed upon adoption of the new rules for their election – qualified majority or equivalent system.

The authorities stated that the constitutional amendments could be discussed in Parliament at the earliest after the presidential elections, probably in January-February 2021. On 21 May 2020, the Parliament adopted amendments to the Law on SCM. The amendments introduced the possibility of filling vacancies for judge members of the SCM with already elected substitute members pending the convocation of the General Assembly of Judges. Subsequently, the SCM decided to detach a judge of the Court of Appeal (who had been elected as substitute member of the SCM in 2017 and who had participated in the September General Assembly of Judges and supported the decision on the revocation of the SCM judge members) as member of the SCM. Being the oldest member, he was also elected as Interim President of the SCM.

Revised draft constitutional amendments are in preparation and should be submitted for the Working Group's opinion by the Moldovan authorities in the coming days, prior to sending them to the Constitutional Court for ex ante review and then to parliament.

Joint Opinion on the revised draft provisions on amending and supplementing the Constitution, with respect to the Superior Council of Magistracy (CDL-AD(2020)007)

This Joint Opinion, adopted by the Venice Commission on 18 June 2020 by a written procedure replacing the 123rd plenary session (18-19 June 2020), was requested by the Minister of Justice of the Republic of Moldova.

The joint opinion reiterates a previous positive assessment that the draft amendments to the Constitution of the Republic of Moldova could improve the independence, accountability and efficiency of the judiciary. The joint opinion moreover found that the amendments were generally positive and in line with applicable international standards. The revised draft amendments followed, to a large extent, the previous recommendations concerning the composition of the Superior Council of Magistracy (SCM) and the method of election of the lay members of the SCM.

The joint opinion welcomed, in particular, that the revised draft provisions provide for a requirement for a qualified majority of MPs (three-fifths) in the election of the lay members. It was recommended to indicate in the constitution that the organic law would provide for an anti-deadlock mechanism in case parliament failed to reach a qualified majority of three-fifths, without specifying which mechanism, as the provision for a decreased majority after a reflexion period of 15 days might not suffice as an incentive for the first round of voting to be successful, but devising an appropriate alternative required more time than was available.

It was further recommended that the draft be amended to provide that the lay composition of the SCM be renewed upon the entry into force of the constitutional amendments, expected to take place at the beginning of 2021, according to the new rules requiring a three-fifths qualified majority in parliament for their election. The joint opinion underlined that the Venice Commission and the Directorate did not have any reason to doubt the professional qualifications of the lay members appointed in March 2020 and they could be given the possibility of reapplying, which should be indicated in the transitional provision.

Follow-up to Amicus Curiae Brief on the criminal liability of constitutional court judges (CDL-AD(2019)028)

The Constitutional Court rendered its judgment on 26 March 2020 (JCC nr.9, Case no. 153b/2019), largely following the recommendations of the Venice Commission, concluding that Constitutional Court judges have functional immunity and therefore are not “legally” liable for exercising their functions e.g.

voting and opinions expressed – and that this immunity continues to apply after the end of their term of office. They are also not criminally liable for offences committed in the realisation of constitutional justice. Prior consent of the plenum of the Constitutional Court is needed to initiate criminal proceedings against a Constitutional Court judge. In addition, the latter is not subject to searches with the exception of flagrant offences, when detained, when arrested or referred to criminal or “contraventional” trial – for which no prior consent of the plenum of the Constitutional Court is necessary.

Follow-up to Amicus Curiae Brief for the constitutional court of the Republic of Moldova on the amendments to the law on the prosecutor’s office (CDL-AD(2019)034)

On 21 May 2020, the Constitutional Court issued the relevant decision. With regard to the appointment of the interim General Prosecutor, the Court noted that the SCP is given a short term to propose an interim GP and its proposal may be rejected by the President. The second proposal being made by the Parliament, the constitutional role of the Council is considerably diminished and the SCP becomes an endorsement body only. The Court concluded that the imposing of limited time to SCP and the redistribution of powers on proposing the candidature of the Interim General Prosecutor are likely to affect the role of the SCP, guaranteed by Articles 125 and 125¹ of the Constitution.

Regarding the pre-selection of candidates for the post of General Prosecutor, the Court noted that the substantive changes in the Law on Prosecutor’s Office led to the reduction of the constitutional role of the SCP. In this regard, the Court mentioned the opinion of the Venice Commission, according to which, while the Constitution empowers the Parliament to define, by a law, the general procedures to be followed by the Superior Council of Prosecutors, the constitutional role of the latter should not be usurped by Parliament - it is the role of forming a list and selecting a candidate to be proposed to the President for appointment. The legislator should not exceed its legislative power to prevent the SCP from exercising its constitutional mandate. The Court considered that the involvement of the Commission set up by the Ministry of Justice in the process of appointing the GP runs counter Article 125 of the Constitution.

With regard to the dismissal of the General Prosecutor, the Court stressed that the constitutional role of the SCP is affected, through the competence given to the Commission on the evaluation of the activity of the GP. The Court concluded that this mechanism may jeopardize prosecutors’ independence and impartiality.

Poland

Joint Urgent Opinion of the Venice Commission and the Directorate General of Human Rights and Rule of Law (DGI) of the Council of Europe on amendments to the Law on the Common Courts, the Law on the Supreme court and some other Laws, (CDL-AD(2020)017)

Further to the request of the Marshal of the Senate of the Republic of Poland, the Venice Commission, jointly with the Directorate Human Rights and Rule of Law (DGI), issued an urgent opinion on the amendments to the laws on the judiciary, passed by the Polish Sejm on 20 December 2019. This opinion was later endorsed at the June 2020 plenary session of the Commission.

The amendments assessed in the opinion were the latest link in a series of reforms. The reform process in Poland started with the reform of the Constitutional Tribunal in late 2015 and in early 2016, which were followed by the amendments to the laws on the judiciary of 2017. The 2017 judicial reform was criticised by the Venice Commission in its Opinion of December 2017. At that time, the Commission expressed concerns over the reform, which was considered as a threat to the judicial independence, in particular because of the reformatting of the National Council for the Judiciary (NCJ), putting it under the political control of the parliamentary majority and because of the creation of two new “super-chambers” within the Supreme Court, composed on newly appointed judges.

The 2017 judicial reform resulted in a division within the Polish judiciary and was publicly criticised by several judges’ and prosecutors’ associations and individual magistrates. The Polish legal order faced a difficult situation as “old” judicial institutions *de facto* refused to recognise the legitimacy of the “new” ones. In December 2019 the governing majority introduced amendments to the legislation on the organisation of the judiciary which would effectively prohibit judges to examine the question of independence of other judges and judicial bodies. That conflicted with the position of the ECJ (the European Court of Justice) which found that it may be required from a judge to assess the independence of another judge in accordance with the standards articulated in the ECJ case-law. In addition, the December 2019 amendments reduced even further the participation of judges of the Supreme Court in the process of the election of the First President of this court.

The amendments of December 2019, in the opinion of the Venice Commission, were not suitable to solve the crisis. They diminished judicial independence and put Polish judges into the impossible situation of having to face disciplinary proceedings for decisions required by the international standards. Thus, the Venice Commission recommended not to adopt those amendments, but to look for other solutions

instead, in order to avoid further deepening of the crisis. In particular, the Venice Commission invited the Polish legislator to implement the main recommendations of the 2017 Opinion, namely to return to the election of the 15 judicial members of the NCJ not by Parliament but by their peers, to significantly revise the composition and internal structure of the two newly created “super-chambers”, and reduce their powers, and to return to the pre-2017 method of election of candidates to the position of the First President of the Supreme Court, or to develop a new model where each candidate proposed to the President of the Republic enjoys support of a significant part of the Supreme Court judges. The Venice Commission also recommended to restore the powers of the judicial community in the questions of appointments, promotions, and dismissal of judges and to ensure that court presidents cannot be appointed and dismissed without the significant involvement of the judicial community.

Romania

Follow-up to the Opinion on draft amendments to Law No. 303/2004 on the Statute of Judges and Prosecutors, Law No. 304/2004 on Judicial Organisation, and Law No. 317/2004 on the Superior Council for Magistracy (CDL-AD(2018)017), and to Opinion on Emergency Ordinances GEO N° 7 and GEO N° 12 amending the Laws of Justice (CDL-AD(2019)014)

In 2018 and 2019 the Venice Commission issued two opinions on the on-going judicial reform in Romania. One of the central aspects of those opinions was the functioning of the Anti-Corruption Directorate (the DNA) within the prosecution service and the procedure for the appointment and removal of the top prosecutorial officials, including the head of the DNA. These two opinions were closely related to the situation around the then Head of the DNA, Ms Kövesi. In 2017 Ms Kövesi was removed, contrary to the advice of the Supreme Council of Magistracy (the SCM). In parallel, the Constitutional Court of Romania held that the President cannot refuse a motion of removal by the Minister even if this motion is running contrary to the opinion of the SCM.

The Commission, in two opinions, observed that in such a model too much power belongs to the Minister of Justice and suggested that either the Minister should act on the basis of the opinion of the SCM, or that the President should have the right to reject the Minister’s proposal with reference to the opinion of the SCM, to counterbalance the Minister’s power. On 5 May 2020 the European Court of Human Rights passed a judgment in the case of Kövesi v. Romania where it found that the removal of Ms Kövesi from her position breached Articles 6 and 10 of the Convention. This judgment contains extensive references to the

opinion of the Venice Commission, including the 2018 opinion of the Venice Commission. From the judgment it follows that under Article 6 procedural fairness can be achieved only by giving a prosecutor access to a court.

Turkey

Joint Opinion by the Venice Commission and the Directorate General of Human Rights and Rule of Law (DG I) on the July 2020 amendments to the 1969 Attorneyship Law of Turkey (CDL-AD(2020)029)

The focus of the opinion, requested by the PACE Monitoring Committee, was on the July 2020 amendments to the original Attorneyship Law of 1969. The 2020 amendments introduced the possibility to create alternative bar associations (the BAs) in three large cities, and also reduced the quota of representation of large BAs in the Union of the Turkish Bar Associations (the UTBA). Since there are few specific international standards directly applicable to this situation, the opinion relied on more general principles of independence and professionalism of lawyers, which could be derived from the human rights treaties, as well as on more specific soft-law standards, which provided for the self-governance of the legal profession and for the representative character of the governance bodies. The opinion examined how the 2020 amendments might affect the independence of the lawyers in Turkey.

The opinion concluded that there had been no compelling reasons for this reform, and it was unclear how it would contribute to making BAs more efficient or to improve the quality of the legal services in Turkey. The amendments were not initiated by the BAs themselves. The creation of alternative BAs would increase the risk of politicization, which was admittedly already present, to a lesser extent, in the old system where all the BAs were organised according to a geographical principle and were henceforth necessarily inclusive. This may lead to the divergence of practice in disciplinary cases and was incompatible with the neutrality of the legal profession. The new system was potentially unstable: a BA has to be liquidated when the number of its members drops below the threshold due to the attorneys joining alternative BAs. Departure from the principle of roughly proportionate representation of lawyers in the UTBA will disturb the representative character of this body. Even though perfectly equal voting power is impossible, the new system is disproportionate as regards the voting power of attorneys from larger cities and smaller provincial centres. If, as the Turkish authorities suggested, the previous model did not ensure that the BAs in large cities were sufficiently representative of their members, it can be addressed by other means, for example by introducing an element of proportionate representation to the election

of delegates to the UTBA. The Venice Commission invited the Turkish authorities to explore the idea of creating smaller BAs while respecting the geographical principle of membership.

Ukraine

Joint Opinion by the Venice Commission and the Directorate General of Human Rights and Rule of Law on draft Amendments to the Law 'On the Judiciary and the Status of Judges' and certain laws on the activities of the Supreme Court and Judicial Authorities (CDL-AD(2020)022)

This Joint Opinion was adopted by the Venice Commission at its 124th plenary session (8-9 October) after it had been examined by a written procedure replacing the meetings of the Sub-commissions.

Three problems were addressed in this joint opinion: (a) some 2000 judicial vacancies could not be filled since the High Qualification Commission of Judges (HQCJ) had been dissolved in November 2019; (b) there was a high level of mistrust in the judiciary, including the High Council of Justice (HCJ); (c) eight judges from the former "Supreme Court of Ukraine" (SCU) had to be integrated into the new "Supreme Court" (SC) following a decision of the Constitutional Court.

Draft law no. 3711 was considered to be a fast track law, addressing issues (a) and (c) only. However, the draft law subordinated the new HQCJ to HCJ. The HQCJ would be composed of a mixed national/international body, the Selection Committee. According to the draft law, the HCJ would adopt the procedure and methodology of the HQCJ. The opinion insisted that the draft law shall focus on the re-establishment of the HQCJ without subjecting it to the HCJ. The integration of the HCJ and the HQCJ would be seen as a long-term goal only. The issues of integrity and ethics of the HCJ were an urgent issue as well.

Transnational activities

Reports and studies

Report on criminal liability for peaceful calls for radical constitutional change from the standpoint of the European Convention on Human Rights (CDL-AD(2020)028)

The report had been requested by the Committee on Legal Affairs and Human Rights of the Parliamentary Assembly of the Council of Europe and was adopted at the Commission's online plenary session in October 2020. This request was triggered by the growing number of prosecutions of politicians for statements calling for radical constitutional change including self-determination and even independence of parts of national territory.

There were visible differences in regulating these matters, even amongst liberal democracies. The report looked at this problem from the perspective of the case-law of the European Court of Human Rights (the ECtHR), essentially under Article 10 of the European Convention guaranteeing freedom of expression. "Expression" can be verbal or can take the form of physical expressive acts. Respective legislation should be foreseeable, but it is impossible to achieve perfect precision here. As regards proportionality, the ECtHR analysis is necessarily contextual; the ECtHR takes into account various factors such as the content of the message, the intensity of the speech, the means of communication and the medium used etc. Free political speech is a precondition of a democratic society, so it is protected under Article 10 of the European Convention even when it offends, shocks, or disturbs. However, it is not protected when it contains calls for violent acts – this is the main limit to the freedom of political speech under the Convention. Another exception concerns propaganda of ideology hostile to democracy or hate speech. The opinion warned that the notion of "hate speech" should not be given an overly broad interpretation. Robust criticism of government – even when it contains calls for secession – is not "hate speech" as such. Whether speech is "peaceful" or not is often a question of fact; calls for violence can be sometimes disguised as peaceful messages, this is why it is important to see the statements in context, especially in the context of an ongoing violent conflict in the country.

From the comparative perspective, in many countries calls for separatism are punishable if associated with calls to violence, but there is at least one clear example to the contrary in Europe, and probably more, if the notions of "violence", "force" etc. are interpreted broadly by the national courts. Consequently, it is difficult to establish a clear consensus on this matter.

The Venice Commission observed in the report that the position of the speaker as an elected politician often provides him/her more protection, which sometimes takes the form of parliamentary immunity. But the opposite is also possible: if a public person makes calls for unlawful actions and incites a riot, that may justify sanctions. Finally, sanctions should be proportionate and even where a criminal sanction is permissible in principle, it may be found too harsh by the ECtHR, given the effect the speech produced or was likely to produce.

"Respect for democracy, human rights and the Rule of Law during states of emergency: reflections" (CDL-PI(2020)005rev)

The report entitled "Respect for democracy, human rights and the Rule of Law during states of emergency: reflections", taken note by the Venice Commission in June 2020, starts by defining the state of emergency: a - temporary - situation in which exceptional powers

are granted to the executive and exceptional rules apply in response to and with a view to overcoming an extraordinary situation posing a fundamental threat to a country.

The report first defines the necessary precondition for declaring a state of emergency: that the powers provided by normal legislation do not suffice for overcoming the emergency. The ultimate goal of any state of emergency should be for the state to overcome the emergency and return to a situation of normalcy. Moreover, the state of emergency should be submitted to the conditions of respect for the Rule of Law (in particular but not only the principle of legality), necessity, proportionality, temporariness, effective (parliamentary and judiciary) scrutiny, predictability of emergency legislation and loyal co-operation of state institutions.

The declaration of a state of emergency should take place in truly exceptional situations only. The report makes a distinction between *de jure* emergency situations (based on a written Constitution or legislation based on it) and *de facto* emergency situations, allegedly based on unwritten constitutional principles, which are to be avoided.

The legal regime of a state of emergency should make a distinction between the activation and the application of emergency powers. The report addresses the possible limitations of and derogations to human rights during a state of emergency, including in the field of elections, as well as the specific measures to ensure free elections during a state of emergency. Moreover, the declaration of the state of emergency often entails horizontal and vertical transfers of competences and powers and should be submitted to parliamentary and judicial control, while its duration should conform to the principle of proportionality.

According to the report's conclusions, the dichotomy between normalcy and exception which is at the basis of a declaration of the state of emergency does not necessarily entail and does not need to entail a dichotomy between effective action against the emergency and democratic constitutionalism, or between protection of public health and the rule of law.

Interim Report on the measures taken in the EU member States as a result of the COVID-19 crisis and their impact on democracy, the Rule of Law and Fundamental Rights (CDL-AD(2020)018)

This Interim Report, adopted by the Venice Commission during its October 2020 plenary session held online, was requested by the President of the European Parliament, Mr David Sassoli. This was the first request made by the European Parliament to the Venice Commission. The request resulted from the support provided by the Conference of Presidents of the European Parliament to the proposal made by the Committee on Civil Liberties, Justice and Home

Affairs (LIBE) to seek a comparative report from the Venice Commission on the situation in EU member states regarding measures taken during the COVID-19 crisis and to identify good and bad practices.

Whereas some countries had opted to declare a state of emergency, others had chosen a different approach to deal with this health crisis. However, all actions taken by EU member states to address the COVID-19 crisis, whether through the declaration of an emergency or equivalent, will have had an impact to a lesser or greater degree on the state of democracy, the rule of law and human rights.

The actions taken by member states of the EU had taken the form of emergency measures. Where these measures were rule of law-compliant, they would have had built-in guarantees against abuse, specifically with respect to the principle of proportionality under its various aspects. This principle was important especially in the electoral field because the impact of a postponement of elections must be balanced against the risks arising from holding free and universal suffrage during an emergency situation. To ensure the respect for the principle of proportionality, emergency measures must be subject to effective, non-partisan parliamentary scrutiny and to meaningful judicial review by independent courts at a national and European level.

Follow-up to the Parameters on the relationship between the parliamentary majority and the opposition in a democracy: a checklist (CDL-AD(2019)015)

In June 2019, the Venice Commission adopted the Parameters on the relationship between the parliamentary majority and the opposition in a democracy: a Checklist. The Checklist is a result of an extensive work carried out by the Venice Commission, following a request by the Secretary General. On 5 February 2020, the Committee of Ministers decided to endorse this document and invited governments, parliaments and other relevant bodies in the member states to take this document into account and to disseminate it widely in the relevant circles. The Committee of Ministers also invited the Secretary General to transmit it to other international organisations for information. A similar motion is pending before the Parliamentary Assembly, proposing the endorsement and wide dissemination of this document.

Follow-up to the Report on the compliance with Council of Europe and other international standards of the inclusion of a not internationally recognised territory into a nationwide constituency for Parliamentary elections (CDL-AD(2019)030)

In December 2019 the Venice Commission adopted this report at the request of the Committee on Rules of Procedure of the Parliamentary Assembly.

On 27 January 2020, the credentials of the delegation of the Russian Federation were challenged on procedural grounds (the same as those raised in June 2019) before the Committee on Rules of Procedure, Immunities and Institutional Affairs of the Parliamentary Assembly. Pursuant to Rule 7.2 of PACE Rules of Procedure, the Committee concluded that the credentials should be ratified, and submitted an opinion to the President of the Assembly, who read it out in the plenary sitting of the Assembly without debate.

Compilations of the opinions and studies of the Commission

Compilation on states of emergency (CDL-PI(2020)003)

In the wake of the pandemic emergency measures were introduced in nearly every member state; to summarize the experience of the Venice Commission in this sphere in April 2020 the Scientific Council issued a Compilation of its general reports and country-specific opinions on constitutional provisions and legislation on emergency situations. This compilation served as a basis for the preparation in June 2020 of the Venice Commission report on the “Respect for Democracy Human Rights and Rule of Law during States of Emergency – Reflections” (cf. Chapter II).

Compilation on freedom of expression and media (CDL-PI(2020)008)

Freedom of expression in general and the role of the media and professional journalists in particular is the subject of this compilation of opinions and reports/studies adopted by the Commission. It contains extracts of the Commission’s documents on issues such as public debate as a cornerstone of democracy; regulation of the media market; defamation, insults and disclosure of personal information; inflammatory speech or obscenities; sanctions, remedies and procedural issues; professional journalism; advertisement and the role of judges, prosecutors in the protection of the freedom of expression.

Compilation on the separation of powers (CDL-PI(2020)012)

The separation of powers is a fundamental element of the rule of law and this principle has been reflected in much of the Commission’s work. The main elements to be retained from the compilation are as follows: the Venice Commission does not advocate a particular political regime, but stresses the importance of checks and balances, especially in a presidential system; there must be a balance between the legislature and the executive, but also between the executive and the judiciary, including the Constitutional Court and the Public Prosecutor’s Office; this applies both to the appointment and composition of judicial bodies and to their powers.



Russian Federation – Xth International Congress of Comparative Law “Constitutional evolution in Russia and in the modern world: dialectics of the universal and national”, 4 - 5 December 2020

Ombudsman institutions – the Venice Principles

On 16 December 2020 the UN General Assembly adopted resolution A/RES/75/186 on “The role of Ombudsman and mediator institutions in the promotion and protection of human rights, good governance and the rule of law”.¹⁵

The resolution strongly supports the Venice Commission’s Principles on the Protection and Promotion of the Ombudsman Institution (“The Venice Principles”).¹⁶ It establishes these principles as the new international standard for mediation institutions.

In this Resolution, the Venice Principles are duly cited, and in particular explicitly on three occasions:

- ▶ *Firstly*, in the introduction, where the Resolution “Acknowledges the principles on the protection and promotion of the Ombudsman institution (the Venice Principles)”. This is the first reference to an international text in the introduction;
- ▶ Secondly, in its item relating to member states, the Resolution urges member states, in the first instance, “to consider establishing ombudsman and mediator institutions in accordance with the Venice Principles”;
- ▶ The third reference to the Venice Principles appears in the first bullet point, which addresses Ombudsman and Mediator institutions by inviting them “to act in accordance with the Paris Principles and the Venice Principles, in order to strengthen their independence and autonomy and to enhance their capacity to assist Member States in the promotion and protection of human rights and the promotion of good governance and respect for the rule of law”.

15. [Text of the UN Resolution.](#)

16. [Text of the Venice Principles.](#)

It should be noted that this formulation puts the Venice Principles on the same level as the Paris Principles. In addition to these explicit references, the Venice Principles have implicitly been taken up *in extenso*, with the Resolution addressing the same issues in the same way, sometimes going into more detail.

The Venice Principles had been the result of a development process involving the global network of the International Ombudsman Institute (IOI) and the main regional Ombudsman networks. Relevant international organisations were also fully involved in the development of these standards.

This new step in the recognition of the Venice Principles by the United Nations was made possible through the intermediary of the Ombudsman of the Kingdom of Morocco, with whom the Commission has been working closely for over a decade.

Conferences and meetings

Xth International Congress of Comparative Law “Constitutional evolution in Russia and in the modern world: dialectics of the universal and national” (4-5 December 2020)

The Institute of Legislation and Comparative Law under the Government of the Russian Federation and the Venice Commission organised the 10th International Congress of Comparative Law entitled “Constitutional evolution in Russia and in the modern world: dialectics of the universal and national” which was held online on 4 and 5 December 2020. The event brought together 60 participants from 15 countries. Preparing the congress, the Institute had used quantitative and qualitative methods to discern references to the notion of constitutional identity in the documents of the Venice Commission. The Commission representatives at this Congress, Ms Kjerulf Thorgeirsdottir and Mr Mathieu, as well as other Commission members participated in the plenary session of the congress as well as in the round tables.

The proceedings of the congress will be published by the Institute in 2021.

The participants of the event were informed that the Institute had published the 5th volume of its collection of the texts of the Venice Commission on electoral law. With this compendium, the Institute made certain Commission reports available in Russian for the first time.

Other conferences and meetings

France

On 10 December 2020, the President of the Venice Commission participated in a hearing organised by the European Affairs Committee of the French Senate on the rule of law in the European Union. He presented the Commission's work in this field.

Ireland

On 9 September 2020 the President of the Venice Commission Mr Gianni Buquicchio participated online in a hearing of the Special Committee on COVID-19 Response appointed by Dáil Éireann (the Irish House of representatives) where he shared the Commission's work of the Observatory on the states of emergency in the member states of the Commission.

Israel

On 24 November 2020, the President of the Commission, Mr Gianni Buquicchio, participated in a webinar on "COVID-19 and the Ombudsperson - Rising to the Challenge of a Pandemic". The event was co-organised by the State Comptroller and Ombudsman of Israel and the International Ombudsman Institute.

Russian Federation

On 17 November 2020, the President of the Commission contributed to a webinar of the IV International Conference on "Human Rights Protection in Eurasia: exchange and best practices of Ombudsmen", organised by the High Commissioner for Human Rights of the Russian Federation. The webinar brought together more than 60 participants and enabled them to compare national experiences, particularly in the aftermath of the COVID-19 pandemic. The webinar brought together more than 60 participants and enabled them to compare national experiences, particularly in the aftermath of the COVID-19 pandemic.

Ukraine

On 23 June 2020 Mr Thomas Markert, Director, Secretary of the Venice Commission, participated in the online discussion devoted to the judicial reform in Ukraine: "Zero Corruption Talk: The High Time for the Real Judiciary Reform in Ukraine". The event was organised by the Ukrainian NGO Anti-corruption Action Centre. Along with Vice-President Jourova of the European Union, representatives of the IMF as well as of the national authorities, Mr Markert acted as a panellist in the discussions on possible ways of accelerating the reforms in the country.



Mr Thomas Markert, Director, Secretary of the Venice Commission, participating in the online discussion "Zero Corruption Talk: The High Time for the Real Judiciary Reform in Ukraine", 23 June 2020

III. CONSTITUTIONAL JUSTICE¹⁷

Opinions and reports¹⁷

Armenia

Opinion on three legal questions in the context of draft constitutional amendments concerning the mandate of the judges of the Constitutional Court (CDL-AD(2020)016)

This Opinion, adopted by the Venice Commission on 19 June 2020 by a written procedure replacing the 123rd plenary session (18-19 June 2020), was requested by the Minister of Justice of Armenia.

Under Article 99 of the Constitution of Armenia (resulting from the 2005 amendments), the Constitutional Court of Armenia is composed of nine members. Four members are appointed by the President of the Republic and five members are appointed by the national assembly upon recommendation of the chairperson of the national assembly. Members of the constitutional court shall serve the office until they attain the age of 65.

Significant modifications had been made to the appointment procedure by the 2015 amendments, appointing authorities and setting the term of office of the judges of the constitutional court. According to new Article 166(1), judges of the constitutional court shall be elected by the national assembly for a term of 12 years by at least three-fifths of the votes of the total number of deputies. The constitutional court shall be composed of nine judges, of which three shall be elected upon the President of the Republic's recommendation, three judges shall be elected upon the government's recommendation, and three judges upon the General Assembly of Judges' recommendation.

Moreover, the 2015 amendments completely modified the method of appointment of the chairperson and excluded the national assembly from the appointment procedure. Under the new provision, the constitutional court shall elect the chairperson and deputy chairperson of the court from among its members. In addition,

the 2005 version of the constitution did not provide for any specific term limit for the office of the chairperson and therefore, the general provision concerning the retirement age for judges and members of the court applied to the office of the chairperson. After the 2015 amendments, the chairperson was elected for a term of six years, without the right to be re-elected.

While these major amendments were introduced by the 2015 amendments, transitional Article 213 of Chapter 16 (Final and Transitional provisions) of the constitution provides that *"the Chairperson and members of the Constitutional Court appointed prior to the entry into force of Chapter 7 of the Constitution shall continue holding office until the expiry of the term of their powers specified in the constitution with the amendments of 2005."*

Therefore, for the appointments made to the constitutional court (including judges and the chairperson) before 9 April 2018, the relevant provisions of the 2005 version of the constitution applied. The new provisions resulting from the 2015 amendments apply only to appointments made after that date. In this legal context, the authorities raised the following three questions:

1. *In the current situation, which is the best way to fully bring to life the new model of the constitutional court, prescribed by the constitution (amended in 2015)?*
2. *In terms of best European standards would it be deemed acceptable defining the scope and relatively short deadline for the court's ex-ante constitutional review to the extent of compliance of the amendments with non-amendable articles of the constitution?*
3. *Should not the parliament have the power to abandon the earlier appointed referendum which was suspended due to emergency situation caused by the pandemic?*

According to the opinion, the first question suggested that by an amendment to transitional Article 213 of the constitution, the new terms of office for judges of the constitutional court introduced in 2015 (12 years) would take effect for all judges, including the judges appointed before the entry into force of 2015 amendments. As a result, judges having served 12 years would be dismissed according to the new rules, while

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



Armenia – Opinion on three legal questions in the context of the draft constitutional amendments concerning the mandate of the judges of the Constitutional Court - virtual meetings, 25 - 27 May 2020

judges appointed before the entry into force of the amendments, but having served less than 12 years, would stay in office until they have served for a total of 12 years.

In view of the importance placed on security of tenure of judges, the Venice Commission considered that the appropriate way of bringing to life a new model of a constitutional court is to maintain the term of office of the current judges and to allow for a gradual introduction of the new terms of office through normal replacements.

However, recognising the legitimacy of the authorities' wish to ensure that the composition of the constitutional court reflects within a reasonable time-frame the provisions of the current constitution, the Venice Commission considered that a possible solution aimed at reconciling the different conflicting interests at stake, may be to amend current Article 213 and provide for the renewal of the constitutional court while envisaging a transitional period which would allow for a gradual change in the composition of the court in order to avoid any abrupt and immediate change. Concerning the chairperson of the court, it was recommended to envisage also a transitional period instead of immediately terminating the mandate of the current chairperson.

As to the second question, the Venice Commission noted that limiting the scope of a general *ex ante* review of constitutional amendments by the constitutional court to a control of conformity with non-amendable provisions of the constitution was in line with European standards. The scope of judicial review depended on the definition of unamendable provisions by the constitution itself and the

“unamendability” under the constitution should be interpreted narrowly. The Venice Commission warned against an expansive interpretation by the constitutional court of its own power of review based on vague principles loosely connected with or based on a broad interpretation of the unamendable provisions in the constitution.

As to the third question, it is a general principle of public law that general norms and decisions adopted by a competent public body may be annulled by a new decision of the same body following the same procedure. Therefore, parliament should have the authority to annul its earlier decision to call a referendum, which was suspended due to the emergency situation caused by the pandemic.

Amicus curiae brief for the Constitutional Court of Armenia relating to Article 300.1 of the Criminal Code (CDL-AD(2020)005)

In this *amicus curiae* brief adopted by a written procedure replacing the March 2020 plenary session, the Venice Commission noted that the material received from most of its member states on this topic showed significant differences in the issues addressed and the detail provided. For this reason, the conclusions drawn in this *amicus curiae* brief were only tentative. For instance, the Commission noted that there seemed to be no explicit references to constitutions with respect to crimes “against the constitutional order”, however that the conclusion could be drawn that indirect or implicit references to them did exist. The concepts of *constitutional order*, *overthrowing the constitutional order* and *usurpation of power* as such were not defined in the statutory provisions of most member states. There was also a lack of case-law on

the concepts of *constitutional order*, *overthrowing the constitutional order* and *usurpation of power*, showing that, for the most part, statutory provisions governing these concepts had not been applied to this day. This, in turn, showed that there was no best practice as to the factual circumstances under which charges of the most similar crime (*high treason*) would be dealt with in member states.

With respect to the prohibition of retroactivity of criminal laws and the requirement of providing sufficiently clear and precise definitions of criminal acts in laws, criticisms of imprecisions regarding the concepts of *constitutional order* and *the overthrowing of the constitutional order* might be appeased in the knowledge that there seemed to be a convergence among the member states of the Venice Commission to leave these concepts undefined or imprecise. No conclusion could therefore be drawn with respect to what constitutes a best practice from the perspective of legal certainty. Nevertheless, in view of this principle and the principle of proportionality, it seemed only reasonable to expect that the more broadly the statutory provision was worded, the more consideration should be given to the individual freedoms and basic rights of the accused. Such a provision should be interpreted narrowly, taking into account the principle *in dubio pro reo*.

Kyrgyzstan

Urgent amicus curiae brief relating to the postponement of elections motivated by constitutional reform (CDL-AD(2020)040)

See Chapter IV.

Moldova, Republic of

Urgent joint Amicus Curiae Brief on three legal questions concerning the mandate of members of Constitutional Bodies (CDL-AD(2020)033)

This Urgent Joint *Amicus Curiae* Brief, endorsed by the Commission at its December 2020 plenary session held online, was requested by the President of the Constitutional Court of the Republic of Moldova, and was prepared jointly by the Commission and the Directorate General of Human Rights and Rule of Law (DG-I) of the Council of Europe.

The *amicus curiae* brief referred to the criticism by the Venice Commission and the Directorate strongly with respect to the way the four lay-members of the Superior Council of Magistracy (SCM) were elected by parliament in March 2020 while the draft constitutional amendments were pending, in a controversial procedure without the participation of the parliamentary opposition and that they recommended that the lay composition of the SCM be changed.

Following this recommendation, the government introduced a new draft Article which provided that “Members of the SCM from among judges in office on the date the present law enters into force shall exercise their mandate until the expiration of the term for which they have been elected, save for the ex officio members and tenured professors whose office shall cease on the date the present law enters into force. The tenured professors shall exercise their mandate until the appointment of the new members of the SCM (...)”

In its Opinion issued on 22 September 2020 concerning the draft constitutional amendments, the constitutional court concluded that the termination of the mandate of the lay members upon the entry into force of the draft law was a disproportionate measure, contrary to the provisions of the constitution. On 30 September 2020, the government approved new draft constitutional amendments. The new draft provides that “the mandate of the lay members who are in office on the date of entry into force of the present law, is to be confirmed, for a term of office of 6 years in total, with the vote of three-fifths of elected MPs.”

The new draft amendments were sent to the constitutional court for opinion. In this context, the court raised with the Venice Commission three legal questions concerning the mandate of members of constitutional bodies.

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

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

Following the publication of the *amicus curiae* brief on 16 November 2020, the Constitutional Court of the Republic of Moldova issued its opinion on the revised draft constitutional amendments on 3 December 2020. Referring to the present *amicus curiae* brief, it considered that the aim of this measure is to strengthen the legitimacy and independence of the lay members

who were elected in March 2020 and to remove the negative consequences of the flawed procedure in their election. The court agreed that a renewed mandate and renewed political confirmation for the lay members may restore their impaired independence, which is a proportionate measure in view also of the new functions of the SCM in guaranteeing the independence of the judiciary. In conclusion, the court considered that the draft law on amending the constitution complied with the conditions for the revision as to the substance and the procedure and could be submitted to parliament for consideration.

Ukraine

Urgent Opinion on the Reform of the Constitutional Court (CDL-AD(2020)039)

This Urgent Opinion, requested by President Zelenskyy, was endorsed by the Venice Commission on 11 December 2020 at its December 2020 plenary session held online.

This urgent opinion, against the background of the shortcomings of constitutional court's decision 13-r of 27 October 2020, addressed a possible reform of the constitutional court itself. This decision raised a number of deeply troubling questions regarding the institutional integrity of the court itself. These problems had provoked a significant number of legislative proposals to reform the court, including one from President Zelenskyy to terminate the powers of the current constitutional court judges altogether. The very grave repercussions of this situation, which threatened the entire system of constitutionalism and the rule of law in Ukraine, had made it necessary for the Venice Commission to enter into the details of, and evaluate the integrity of, this specific constitutional court decision much more than is usual in the Venice Commission's practice.

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

Secondly, the court's procedures relating to this case failed to deal adequately with serious allegations of possible conflicts of interest on the part of at least four of the 12 constitutional court judges who had participated in the decision. Notwithstanding clear requirements of recusal in the Law on the Constitutional Court,

as well as formal recusal requests, the court and the individual judges in question had made no effort whatsoever to justify their denial of the recusal requests.

Thirdly, the reach of decision 13-r/2020 went substantially beyond the scope of the request for constitutional review that had been submitted to the court. The practices of other constitutional courts showed that such an extension of the petition was not always unjustified, but it was important to note that in Ukraine an explicit legislative authorisation for the constitutional court to extend the scope of a petition had been repealed by the legislature in the most current law, in force since 2016.

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

In reaction to decision 13-r/2020, President Zelenskyy presented a draft law in parliament that would declare null and void decision 13-r/2020, restore the annulled provisions of the Criminal Code and the Law on the Prevention of Corruption; terminate the powers of the judges of the constitutional court; and ensure the selection and appointment of new judges of the court. For this reason, it was necessary for the Venice Commission's opinion to go beyond a discussion of decision 13-r/2020 itself and to also enter into a more general discussion on possible ways of addressing the structural problems that were exposed by the decision in question.

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

Nevertheless, it was reasonable to see decision 13-r/2020 as a strong indication that a reform of the constitutional court was warranted. Finally, the opinion appealed to all constitutional actors to give due regard to the principle of loyal co-operation among state bodies, to overcome the current impasse.

Report on individual access to constitutional justice¹⁸

The Commission adopted the revised Report on individual access to constitutional justice at its December 2020 plenary session. The report updated and geographically expanded the original report on individual access to constitutional justice¹⁹ adopted in 2010. The revised Report incorporated changes which had occurred notably in Algeria, Hungary, Lithuania, Morocco, Tunisia, Turkey and Ukraine since 2010. All member and observer states of the Venice Commission had provided at least some form of individual access to constitutional justice. The lack of shared standards regarding individual access to constitutional justice rendered the comprehensive comparative analysis provided by this report particularly helpful.

The Venice Commission favours direct access through individual complaints before a constitutional court (or bodies with equivalent jurisdiction), and especially full constitutional complaints, as the main constitutional remedy. While indirect access to individual justice is a very important tool for ensuring respect for individual human rights at the constitutional level, it should only be seen as a complementary process to direct access. The Venice Commission sees an advantage in combining indirect access with direct access, to balance the advantages and disadvantages of the different mechanisms. Moreover, the Venice Commission favours full constitutional complaints in light of the subsidiary role of the European Court of Human Rights (ECtHR). Only full constitutional complaints can constitute effective remedies under the European Convention on Human Rights. Therefore, only full constitutional complaints can settle violations of Conventions rights at the national level, thus serving as national “filters” which limit the number of cases that reach the ECtHR.

Conferences and meetings

Ukraine

“Mutual Achievements of the Venice Commission and Bodies of Constitutional Justice; the problems of interpretation in constitutional adjudication” - international conference

The Constitutional Court of Ukraine in cooperation with the Venice Commission and with the support of OSCE Project Co-ordinator in Ukraine, organised an international online conference on the occasion of the 24th anniversary of the Constitution of Ukraine and the 30th anniversary of the Venice Commission.

18. CDL-AD(2021)001. The Report was issued at the beginning of 2021 following the incorporation of additional information provided by the members of the Commission after the December 2020 plenary session.

19. CDL-AD(2010)039rev.



Algeria – Conference on the «Protection of rights and freedoms by the Constitutional Council», 23 - 24 February 2020

The conference’s title was “Mutual Achievements of the European Commission for Democracy through Law (Venice Commission) and Bodies of Constitutional Justice; the problems of interpretation in constitutional adjudication”. It was opened by the Commission’s President, Mr Gianni Buquicchio.

Other conferences and meetings

In 2020 the Venice Commission contributed to the following events in the field of constitutional justice:

Algeria

On 23-24 February 2020, a Venice Commission delegation, headed by its President, participated in the Conference on the “Protection of rights and freedoms by the Constitutional Council,” on the occasion of the 30th anniversary of the Constitutional Council of **Algeria**.

Columbia

On 25-26 September 2020, the President of the Venice Commission Mr Gianni Buquicchio participated in the virtual meeting of the XIIIth Congress of the Ibero-American Conference of Constitutional Justice (CIJC) on “Constitutional control, a fundamental tool during the pandemic to guarantee democratic stability and fundamental rights” at which the constitutional challenges deriving from the COVID-19 pandemic (health and ensuing social and economic crisis) were discussed. Presidents, vice presidents and magistrates of 21 tribunals, courts and chambers took part in this event. The central goal of the event, however, was to bring constitutional justice closer to Ibero-American citizens, and the following impressive numbers suggest that that goal was attained: (i) 37,813 people registered on the virtual platform; (ii) 24,800 people visited the virtual auditorium; (iii) 156,007 views were reached on Facebook Live; and (iv) 53,043 video reproductions were recorded.



Ukraine - 24th anniversary of the Constitution – international online conference, Kyiv, 25 June 2020

Ecuador

On 29 September 2020, a teleconference took place between representatives of the Venice Commission and the Constitutional Court of Ecuador. The issues related to the work of the Venice Commission in Latin-America, the Venice Commission's ongoing projects in the region, as well as cooperation perspectives between the court and the Venice Commission were addressed by the participants.

Indonesia

On 2 September 2020, the President of the Venice Commission Mr Gianni Buquicchio addressed a short video message to the Constitutional Court of Indonesia on the occasion of its 17th anniversary.

Kazakhstan

On 27-28 August 2020, the Venice Commission made an opening presentation at the online IVth Congress of the Association of Asian Constitutional Courts and Equivalent Institutions (AACC), hosted by the Constitutional Court of the Republic of Kazakhstan on the topic "The XXI Century Constitution – the rule of law, the human rights and the effectiveness of the state".

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 Venice Commission within the framework of the Joint Council on Constitutional Justice (JCCJ).

The 19th meeting of the JCCJ was scheduled to take place on 2-4 July 2020 in Zagreb, hosted by the Constitutional Court of Croatia, however, due to an earthquake as well as the COVID-19 pandemic, the event was cancelled.

The previous meeting took place in Rome on 23-24 May 2019, hosted by the Constitutional Court of Italy in the *Palazzo della Consulta*.

e-Bulletin on Constitutional Case-Law and the CODICES database

In 2020, the fully electronic "e-Bulletin on Constitutional Case-Law" continued to be published three times a year, containing summaries of the most important decisions provided by the constitutional courts or equivalent bodies of all 62 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 e-Bulletin are supplied by liaison officers appointed by the courts themselves.

The e-Bulletin's main purpose is to encourage an exchange of information between courts and to help judges settle sensitive legal issues, which often arise in several countries simultaneously. 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 cooperation and exchange of information as well as from the judgments of their counterparts in other countries.

In 2020, a Special Bulletin was published and the *précis* on 484 judgments were published in three regular issues of the e-Bulletin.

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. In 2020, 36 posts were made in the Newsgroup.
- ▶ The restricted Classic Venice Forum enables courts to ask other courts for specific information on case-law. In 2020, the Classic Venice Forum dealt with 17 comparative law research requests covering questions that ranged from civil status and adoption to taking and retaining DNA samples.
- ▶ The Constitutional Justice Media Observatory provides an overview of the work of courts as reported in online media. As in previous years, the Venice Commission has 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. In 2020, 848 of these Constitutional Justice Media Observatory emails were sent to members and liaison officers.
- ▶ 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).

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 Francophone Constitutional Courts (ACCF)

The 9th congress of the ACCF will take place in Senegal in 2022.

Association of the Asian Constitutional Courts (AACC)

On 23-25 September 2020, the Venice Commission participated in a video conference of the AACC on “Freedom of expression: experience of the AACC members”, was organised by the Secretariat for Research and Development established by the AACC.

Conference of European Constitutional Courts (CECC)

Since 1999, the Joint Council on Constitutional Justice of the Venice Commission 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*. Due to the COVID-19 crisis, the XVIIIth Congress of the CECC on “Human Rights and Fundamental Freedoms: the Relationship of International, Transnational and National Catalogues in the 21st Century” was postponed to February 2021.

Conference of the Constitutional Control Organs of the Countries of New Democracy (CCCOCND) / Eurasian Association of Constitutional Review Bodies (EACRB)

On 26 August 2020, the Venice Commission and the World Conference on Constitutional Justice participated on-line in the meeting of the Board of Members of the Association of the Asian Constitutional Courts and Equivalent Institutions (AACC) and the meeting of the Eurasian Association of Constitutional Review Bodies (EACRB).



The President of the Venice Commission, Mr Gianni Buquicchio, participating online in the XIIIth Congress of the Ibero-American Conference of Constitutional Justice, Bogota (Colombia), 25 - 26 September 2020

Ibero-American Conference of Constitutional Justice

The President of the Venice Commission Mr Gianni Buquicchio participated in the online XIIIth Congress of the Ibero-American Conference of Constitutional Justice on 25-26 September 2020.

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 117 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 exchange of information that takes place between judges in the WCCJ further reflects on the 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 countries.

In 2020, the Bureau of the World Conference accepted the offer by the Constitutional Court of Indonesia to host the 5th Congress of the World Conference in 2022, which will be held in October 2022 on the topic “Constitutional Court and Peace”. The Supreme Court of Somalia joined the WCCJ as full member, bringing the number of members to 117.

IV. ELECTIONS, REFERENDUMS AND POLITICAL PARTIES / ELECTIONS, REFERENDUMS ET PARTIS POLITIQUES

Country specific activities

Albania

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

Further to a request of the President of the Republic of Albania, the Council for Democratic Elections approved and the Venice Commission adopted at its December 2020 plenary session the Joint Opinion of the Venice Commission and the OSCE/ODIHR on the amendments to the Constitution of 30 July 2020 and to the Electoral Code of 5 October 2020.

This opinion has to be seen in the political context of Albania, where nearly all opposition MPs had left Parliament to create an extra-parliamentary opposition, being partly replaced by candidates who appeared lower on the lists (who now constitute the parliamentary opposition). The current amendments will apply to the parliamentary election of 25 April 2021.

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

the amendments, taken either separately or together, did not look fundamental.

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

Follow-up to the Opinion on the powers of the President to set the dates of elections (CDL-AD(2019)019)

In the Opinion, the Commission was of the view that - although the President may have exceeded his constitutional competences by cancelling and postponing the local elections beyond the electoral mandate of the local authorities without a specific legal basis - these acts might not meet the requisite criteria of sufficient seriousness in the circumstances to warrant an impeachment of the President.

On 27 July 2020, the Albanian Parliament approved a motion not to impeach President Meta with 78 votes in favour and 17 against (8 abstentions). According to the report by the Commission of Inquiry President Meta exceeded his powers, but the violations are not of such magnitude as to justify his impeachment.

Prime Minister Rama reiterated the stance of his party that President Meta should have been dismissed for serious violations of the constitution, but that the majority chose to respect the opinion of the Venice Commission.



Armenia – Opinion on draft amendments to the legislation concerning political parties – country visit, Yerevan, 2 - 3 March 2020

Armenia

Joint Opinion of the Venice Commission and OSCE/ODIHR on draft amendments to the legislation concerning political parties (CDL-AD(2020)004)

The Venice Commission adopted in March 2020 the Joint Opinion of the Venice Commission and OSCE/ODIHR on draft amendments to the legislation concerning political parties. The President of the National Assembly of the Republic of Armenia had made a request on the draft constitutional law on making amendments and supplements to the Law of the Republic of Armenia on Political Parties, the draft constitutional law on making amendments and supplements to the Code of the Republic of Armenia on Administrative Offences as well as the draft law on making amendments and supplements to the Criminal Code of the Republic of Armenia.

The OSCE/ODIHR and the Venice Commission welcomed many of the proposals in the draft amendments which, if implemented adequately, could help to further political pluralism in line with international standards on political party regulation.

At the same time, the draft amendments would have benefitted from certain revisions and improvements to ensure that political party registration is not too burdensome, internal party processes are not over-regulated and loopholes in political party funding are closed.

In order to further improve the compliance of the draft amendments with international human rights standards and OSCE commitments, OSCE/ODIHR and Venice Commission made the following main recommendations:

- ▶ to remove other overly burdensome requirements for founding and registering a political party and refrain from too detailed regulation of a political party's governing bodies and decision-making processes;
- ▶ to ensure that all in-kind donations, including volunteer work for services which normally carry a reasonable expectation of payment, are counted as donations;

- ▶ to abolish the requirement of the workplace of a donor to be disclosed or published when making a donation;
- ▶ to separate promoting the political participation of certain groups from awareness raising about the goals and ideology of political parties;
- ▶ to develop a clear mechanism of oversight by the commission for the prevention of corruption with a clear delineation of mandates and a detailed procedure and to ensure that sufficient staff and budget is allocated to the commission for the prevention of corruption within its mandate of oversight of political party finance;
- ▶ to amend the law so that the term "gross nature of the violation of the law" reflects the gravity of the violation.



Azerbaijan - Briefing for OSCE and PACE observers of early parliamentary elections, Baku, 9 February 2020

Azerbaijan

Early parliamentary elections - legal assistance to PACE election observation delegation (Baku, 9 February 2020)

A Venice Commission delegation accompanied the Parliamentary Assembly of the Council of Europe (PACE) election observation delegation to advise on the legal framework of the 9 February 2020 early parliamentary elections in Azerbaijan. The delegation observed the opening of polling stations, the voting and counting processes.

Georgia

Follow-up to the Opinion on the draft constitutional amendments (relating to the electoral system) as adopted on 15 December 2017 at the second reading by the Parliament of Georgia (CDL-AD(2018)005)

The most important aspect of the constitutional reform adopted on 26 September 2017 was the passage from a mixed election system (77 proportional – 73 majoritarian) to a proportional election one,



Georgia – parliamentary election – legal assistance to the PACE election observation mission, Tbilisi, 29/10 - 01 November 2020

which was limited however by three mechanisms: the 5% threshold for legislative elections, the prohibition of party blocs and the distribution of unallocated mandates to the winning party (the so-called bonus system). However, in a very controversial move, the entry into force of the proportional election system was postponed to October 2024.

In its opinion, the Commission examined a set of draft amendments according to which, during the 2020 parliamentary elections exclusively, the political parties would be allowed to form electoral blocks and the election threshold would be 3%. Moreover, the previous system of distribution of unallocated mandates which favoured the strongest parties was replaced by a system of equal distribution which will apply after the elections of 2024. The Commission welcomed those “measures” as factors which alleviate the detrimental effects of the postponement of the entry into force of the proportional election system for smaller parties. However, the postponement of the entry into force of the proportional election system to October 2024 was highly regrettable and a major obstacle to reaching consensus which is necessary for strong legitimisation for the Constitution, including the supplementary amendments, and a guarantee for its stability.

The constitutional revision adopted on 29 June 2020 as well as the legislative reform which followed provide that the parliament elected in the next parliamentary elections (31 October 2020) shall consist of 30 members elected under the majoritarian system and 120 members elected under the proportional system at national level, with a threshold of 1% for political parties, and, for electoral blocks, 1% multiplied by the number of political parties included in the electoral

block. Moreover, the percentage of seats (proportional and majoritarian) a party can receive shall not exceed 1,25 times its share in the proportional votes.

Technical Webinar: preparation for elections security (4 September 2020)

The Venice Commission took part in a Technical webinar on “Preparation for elections security”, in the framework of the CyberEast project on cybercrime and electronic evidence in the Eastern Partnership countries, managed by the Cybercrime Programme Office of the Council of Europe (Bucharest).

The purpose of the webinar for the Georgian authorities was to bring together all relevant national stakeholders, and to focus on awareness raising, inter-institutional coordination, information sharing, best practices, previous experiences, and lessons learnt in terms ensuring cyber-security of elections.

The webinar focused on the following aspects of elections security:

- ▶ Identifying critical infrastructures/systems/ potential “weak links” for elections security and ensuring resilience against cyber-attacks;
- ▶ Tackling social engineering, fake news and online disinformation campaigns, especially from foreign actors;
- ▶ Coordination and joint response needs and responsibilities.

Holding elections during a pandemic – Webinar (20 October 2021)

The Venice Commission organised in cooperation with the Central Election Commission of Georgia a webinar on “Holding elections during a pandemic”.

A member and experts of the Venice Commission intervened on the following topics:

- ▶ “Elections under states of emergency – Reflections issued from the Report on respect for Democracy, Human Rights and Rule of Law during states of emergency”.
- ▶ national examples of elections held recently under the health crisis.

Parliamentary election – legal assistance to the PACE election observation mission (31 October 2020)

Tbilisi - A delegation of the Venice Commission accompanied the Parliamentary Assembly of the Council of Europe (PACE) election observation delegation to advise on the legal framework of the parliamentary election held on 31 October 2020 in Georgia. The delegation held meetings with other international observers, representatives of the political parties, media and civil society.

The delegation observed the opening, voting and counting processes of the elections.

Manuals on the fight against the abuse of the use of state resources during an election period and on the handling of electoral disputes

The Venice Commission contributed in 2020 to the content of two handbooks in co-operation with the Directorate General for Democracy of the Council of Europe, aimed in particular at political actors and civil society in the country. The two contributors to the Venice Commission wrote the chapters dealing respectively with the theme of the use of public media during an election period and the theme of the legal or illegal use of public resources during an election.

Italy

Follow-up to Opinion on the Citizens' bill on the regulation of public participation, citizens' bills, referendums and popular initiatives and amendments to the Provincial Electoral Law of the Autonomous Province of Trento (Italy) (CDL-AD(2015)009)

In its Opinion of June 2015, the Commission recommended to the authorities of the Trento region to:

- ▶ better delimit the obligation for the authorities to assist drafters of citizens' bills and referendums;
- ▶ define less extensively petitions and the obligation for the Provincial Council to address them;
- ▶ to reconsider the institution of "prytanies", provided with supervisory powers with respect to the provincial authorities, including with the right to introduce a motion of no confidence against the President of the Province and the members of the government;
- ▶ reconsider the possibility for the citizens' bill to be transformed into a popular initiative without observing the requisites for the latter;
- ▶ ensure and examine the conformity of all citizens' bills, requests for referendums and popular initiatives with all superior law before they are submitted to the vote;
- ▶ reconsider the extension of initiatives and referendums to administrative acts in the competence of the executive;
- ▶ reconsider the possibility to submit specific provisions of a provincial law, a provincial regulation or an administrative act to a confirmative referendum.

The opinion addressed a citizens' initiative bill. This bill was not adopted but – much less ambitious – amendments to the law on provincial referendums were made on 18 October 2019. They did not retain the proposals mentioned above as problematic, but, *inter alia*:

- ▶ modified the composition of the referendum commission, making it a permanent body (for the duration of the term of the provincial council);
- ▶ provided for a public audition on citizens' initiatives on provincial laws;
- ▶ reduced the turn-out quorum from 50 % to 40 % for the votes on popular initiatives.

The examination of the conformity of citizens' bills with superior law remains incomplete.

Kyrgyzstan

Joint opinion of the Venice Commission and OSCE/ODIHR on the amendments to some legislative acts related to sanctions for violation of electoral legislation (CDL-AD(2020)003) and the follow-up

On 25 December 2019, Ms Aida Kasymalieva, Deputy Chairperson of Jogorku Kenesh of the Kyrgyz Republic requested an Opinion on the draft law on amendments to some legislative acts related to sanctions for violation of electoral legislation.

The draft law included amendments to the Criminal Code, Code on Minor Offences, Code on Infractions, and Code of Administrative Procedure with respect to electoral offences.

The draft law had been prepared with active participation of the Central Commission for Elections and Referenda and received input from academics, practitioners, state officials and civil society organisations. The inclusiveness of the drafting process is welcome and the Venice Commission and ODIHR encouraged the authorities to ensure that all legislation, notably on elections, was elaborated in a similarly inclusive manner. The two organisations also reminded that it was of particular importance to fully implement the electoral legislation in good faith.

The opinion pointed out that the draft law had addressed several issues noted in ODIHR and the Parliamentary Assembly of the Council of Europe (PACE) election observation reports and the corresponding recommendations. It established responsibility for the abuse of administrative resources, introduced changes to the legal framework to counter vote-buying, and clarified the deadlines for lodging appeals against violations of electoral rights. Among other recommendations made in relation to the draft law the Venice Commission and ODIHR recommended to exclude from the draft law Article 422 to the Code on Infractions, which introduced sanctions for voters for providing knowingly false information to an election commission regarding change of an electoral address. It also invited the drafters to amend draft Article 871 to the Code on Minor Offences to include officials within the meaning of electoral legislation

among the subjects of responsibility for the abuse of administrative resource. The opinion recommended to reconsider draft Article 872 to the Code on Minor Offences, relating to provision by a candidate to an elected office of deliberately false information and if this offence was retained to consider its inclusion in the Code on Infractions.

Amendments were adopted by the Kyrgyz parliament on 25 June and signed by the President on 24 July 2020. The law took into account most of the recommendations made by the Joint opinion. In particular:

- ▶ Article 87(1) to the Code on Minor Offences has been amended to include officials within the meaning of electoral legislation among the subjects of responsibility for the abuse of administrative resources;
- ▶ a definition of abuse of administrative resources has been included in the Code on Minor Offences;
- ▶ Article 87 (3) amending the Code on Minor Offences that would sanction persons who report vote-buying to the law enforcement bodies even if they co-operate in the investigation or prosecution of vote-buying has been deleted;
- ▶ Article 192.2 on vote-buying has been amended by including members of the family of the candidates in the list of potential offenders as recommended by the opinion.

The Government of the Kyrgyz Republic was to harmonise other legal acts with the provisions of this law in three months. The changes are to be applied to the next parliamentary elections (on 4 October 2020).

Urgent amicus curiae brief relating to the postponement of elections motivated by constitutional reform (CDL-AD(2020)040)

The urgent *amicus curiae* brief (CDL-PI(2020)015) relating to postponement of elections motivated by constitutional reform of the Kyrgyz Republic was issued on 18 November 2020 in accordance with the Protocol on the preparation of Venice Commission urgent opinions.

The urgent *amicus curiae* brief had been requested by the Chairman of the Constitutional Chamber of the Supreme Court of the Kyrgyz Republic on 4 November 2020 in relation to the case on the constitutionality of the provisions of the Constitutional Law of the Kyrgyz Republic "On the suspension of certain provisions of the Constitutional Law of the Kyrgyz Republic "On Elections of the President of the Kyrgyz Republic and Deputies of the Jogorku Kenesh of the Kyrgyz Republic", adopted by the Jogorku Kenesh on 22 October 2020. The Chamber asked four questions: on the extension of powers of the outgoing parliament; on the possibility of carrying out a constitutional

reform in the period between the annulment of the election results and the holding of repeat / new elections ; on compatibility with international standards of the amendments to electoral legislation, entailing suspension of the electoral process; and on the adoption by the outgoing parliament of amendments to legislation disregarding the established procedure for the adoption of laws.

The key recommendations of the *amicus curiae* brief pointed out that the postponement of parliamentary elections beyond the time limit determined by the constitutional duration should be supported by special justifications and extraordinary circumstances. During the period of *prorogation*, i.e. of diminished powers, the Parliament was only allowed to carry out some ordinary functions, whereas it was not allowed to approve extraordinary measures, including constitutional reforms. Any suspension of elections should be for the smallest time possible. Constitutional reform, however, entailed constitutionally imposed time-frames which are generally long in order to enable a thorough discussion and reaching a broad agreement of the political forces and within the society. The brief underlined that except for punctual and technical reform necessary to conduct the new election, any other constitutional reform could not be initiated after the postponement of the regular elections. The suspension of the electoral process is limited by the principles of necessity and strict proportionality. An exceptional situation might indeed justify postponing the elections and the Constitutional Chamber would have to determine if the country was in such situation. As to the procedure for the adoption of legislation it was pointed out that the substantive respect of constitutional procedures and rules and the adequate involvement of public in discussions and political debate were of fundamental importance during the legislative process. The adoption of important changes to electoral legislation outside the procedures established by the Constitution and by the legislation in force undermined the principles of parliamentary democracy.

On 2 December 2020 the Constitutional Chamber of the Supreme Court declared the adoption of the constitutional law by the Parliament of Kyrgyzstan postponing repeat parliamentary elections as not being contrary to the Constitution of the Kyrgyz Republic. The Chamber concluded that it was an exceptional necessity in the period of political instability. As to the powers of the outgoing legislature the Chamber considered that the Constitution defined the conditions of termination of powers - the day when newly elected members of the next Parliament were sworn in and the first session of the new Parliament took place.

Moldova, Republic of

Urgent Joint Opinion of the Venice Commission and OSCE/ODIHR on the draft law no. 263 amending the Electoral Code, the Contravention Code and the Code of Audiovisual Media Services (CDL-AD(2020)027)

Further to a request of the Minister of Justice of the Republic of Moldova, an Urgent Joint Opinion of the Venice Commission and OSCE/ODIHR on draft law No. 263 on Amending the Electoral Code No. 1381/1997, the Contravention Code No. 218/2008 and the Code on Audiovisual Media Services No. 174/2018 was issued in August and later endorsed by the Venice Commission at the October 2020 plenary session.

The key recommendations of the opinion firstly concerned restrictions on freedom of expression, which should be drafted and interpreted in conformity with constitutional and international human rights law, and in particular: prohibitions on participation in campaigning (“electioneering”) by non-government, trade unions, charity organisations, as well as during processions and/or religious services, as well as by media; provisions on hate speech and incitement to discrimination. Secondly, provisions on (mis-use of) administrative resources should be further refined, including introducing an effective enforcement mechanism to prevent these violations. Thirdly, draft amendments needed to be re-considered to continue allowing observers to observe all stages of the electoral process, and fourthly, sanctions should respect the principles of proportionality and equality. Other recommendations concerned the need not to provide for excessive regulative delegation to the Central Election Commission, to clarify provisions on complaints and appeals, concerning in particular the actions, inactions and decisions subject to challenge by appeal, the competences and the decision-making power of the various bodies, including the courts.

Webinar “Holding elections during a pandemic” (15 October 2020)

On 15 October 2020, the Venice Commission, in cooperation with the Central Election Commission (CEC) of the Republic of Moldova, organised a webinar on “Holding elections during a pandemic” for the members and secretariat of the CEC of the Republic of Moldova. A member and experts of the Venice Commission spoke on the following topics:

- ▶ Elections in a State of Emergency - Reflections from the Report on Respect for Democracy, Human Rights and the Rule of Law in a State of Emergency; and
- ▶ national examples of elections held during this period of health crisis.

Montenegro

Urgent Joint Opinion of the Venice Commission and OSCE/ODIHR on the draft law on elections of members of parliament and councillors (CDL-AD(2020)026)

Further to a request of the Vice President of the Parliament of Montenegro, an urgent Joint Opinion of the Venice Commission and OSCE/ODIHR on the draft law on elections of members of parliament and councillors was issued in July and later endorsed by the Venice Commission in October 2020.

The key recommendations of the opinion concerned cases and procedures for dismissal or replacement of members of election commissions – including polling boards – which should be made more precise, and open to judicial review - consideration should be given to defining a dispute settlement mechanism in order to prevent and/or to counteract any abuse of the Parliament’s right to dissolve the CEC; the need for ensuring adequate representation of national minorities in membership of election commissions; the need for detailed rules for signature collection and verification, as well as for clear liability rules and sanctions for violations; the limitation of repeat elections to cases of gross violation of the law where the discrepancy could have affected the election results and subsequently the allocation of mandates. Other recommendations related to the harmonisation of electoral legislation, ensuring level playing field to all contestants, introducing a limit on the amount of paid political advertising; and to consider prescribing obligatory online publication by all election commissions of their decisions on complaints immediately upon adoption of these decisions.

Webinar on “Holding Elections during a Pandemic” (25 August 2020)

On 25 August 2020, the Venice Commission and the State Election Commission of Montenegro co-organised a webinar on the holding of elections during a pandemic for members and the secretariat of the State Election Commission of Montenegro. Views were exchanged on the theoretical aspects and practical implications of holding elections during a pandemic, particularly in the context of the Montenegrin elections.

Poland

First and second rounds of the presidential election - legal assistance to the PACE election observation delegation (Warsaw, 28 June and 12 July 2020)

A Venice Commission delegation accompanied the Parliamentary Assembly of the Council of Europe (PACE) election observation delegations to advise on the legal framework of the first and second rounds



Turkey - Opinion on replacement of elected candidates and mayors – country visit, Ankara, 6-7 February 2020

of the presidential elections held on 28 June and 12 July 2020 in Poland. The delegations observed the opening of polling stations, the voting and counting processes in both rounds.

Romania

Videokonference on “Using new technologies in the electoral process” (21 July 2020)

The videoconference was organised jointly by the Venice Commission and the Permanent Electoral Authority of Romania. Two experts gave presentations on e-voting (international standards and national experience) on behalf of the Commission, following an introduction provided by the Secretariat. A written document including the expert presentations was published on the Commission website.

Turkey

Opinion on the replacement of elected candidates and mayors (CDL-AD(2020)011)

The opinion had been requested by the Secretary General of the Congress of Local and Regional Authorities of the Council of Europe and was approved by the Council for Democratic Elections and adopted by the Venice Commission in June 2020. It concerned a number of decisions regarding elected candidates and mayors taken after the 31 March 2019 local elections in the south-east of Turkey. These decisions had denied a number of successful candidates a mayoral mandate and removed from office the mayors of the metropolitan cities of Diyarbakır, Mardin and Van and replaced them with Governors of each region as “trustees”.

The Venice Commission noted that the terrorist threat in the South-Eastern part of Turkey might justify unusual measures, including the removal of elected officials who might use their office to favour terrorist activities, but that any such measures had to respect the relevant legal provisions, be based on evidence,

and be proportionate to the aim pursued. It further noted with concern that based on the framework of the emergency regime – which had ended in 2018 – changes of a structural nature to the system of local government in place in Turkey had been introduced on a permanent basis.

Both the decisions by the Supreme Election Council of 11 April 2019 and by the Ministry of the Interior of 19 August 2019 on the replacement of elected candidates and mayors were linked to the measures taken under the state of emergency. In the first situation, candidates banned from public service by virtue of emergency decree law were *ex post* considered ineligible, although their candidacies had been validated; in the second situation, mayors were suspended because of terrorism-related charges, on the basis of legal amendments introduced by emergency decree law, although they had been considered eligible at the time of elections when many of the investigations or charges against them had already been initiated.

These ongoing effects of the previous emergency regime gave rise to serious concerns, and both sets of decisions were in the Commission’s opinion incompatible with basic principles of democracy – the respect for the free expression of the will of the voters and the rights of elected officials – and of the rule of law – including legality, legal certainty, and foreseeability of the law.

The Commission concluded, firstly, that the decisions by the Supreme Election Council were not consistent with international norms and standards and should be reversed. It was crucial for the proper functioning of democracy that the candidates who received the highest number of votes were deemed elected, and not second placed candidates from other political parties. Moreover, it needed to be ensured that the ineligibility criteria were aligned with international standards. While the removal of elected officials might exceptionally be justified by the need to prevent them from abusing their office to favour terrorist activities,

replacing elected officials by candidates who lost the election, without fresh elections, could not be justified on this basis.

Secondly, the Commission concluded that the decisions by the Ministry of the Interior based on state of emergency-rooted legislation undermined the very nature of local self-government and should be repealed. The Commission considered that it was a matter of grave concern that suspensions for an extended period of time could be based on allegations of terrorism-related offences which appear to be interpreted extremely broadly, *inter alia*, with regard to the offence of making propaganda for a terrorist organisation; such a broad interpretation was repeatedly considered by the European Court of Human Rights as going against the Convention. In the present cases, where most of the allegations had already been made before the candidacies for election had been validated, it needed to be ensured that the choice of the local population was respected. This could be achieved either by reinstating the suspended mayors or by other means such as determination of replacement mayors by the elected municipal councils or by organising repeat elections in the electoral zones concerned.

Ukraine

Urgent Joint Opinion of the Venice Commission and the OSCE/ODIHR on draft Law 3612 on democracy through all-Ukraine referendum (CDL-AD(2020)024)

Following a request from the Speaker of the Verkhovna Rada of Ukraine the Urgent Joint Opinion by the Venice Commission and the OSCE/ODIHR (CDL-PI(2020)009) on draft Law 3612 on democracy through all-Ukraine referendum was prepared and issued on 21 July 2020 in accordance with the Protocol on the preparation of Venice Commission urgent opinions.

The key recommendations of the opinion concerned clarification of the relation between the popular initiative referendum of abrogation of laws or parts of laws and the referendum on “resolving matters of nationwide significance”; increasing the role of the Parliament before the vote, as well as, if necessary, after the vote and in conformity with the results; ensuring equal opportunities for the supporters and the opponents of issues submitted to referendum in referendum commissions of different levels; extension of the deadline for collecting the signatures for referendums on popular initiative and synchronising the provisions of the Draft law on funding of referendum campaign with the legislation on financing of political parties. The opinion also recommended to exclude from the draft law provisions on electronic voting and regulate these issues globally at a later date by way of a separate law, which would also address local, parliamentary and presidential elections.



70th meeting of the Council for Democratic Elections, Hybrid: Strasbourg/online, 10 December 2020

The law on all-Ukraine referendum was adopted by the Verkhovna Rada of Ukraine on 26 January 2021.

Transnational activities

Studies and reports

Report on of electoral dispute resolution (CDL-AD(2020)025)

This report, approved by the Council for Democratic Elections in June 2020 and adopted by the Commission in October 2020, was prepared on the basis of the electoral legislation of 59 of the 62 member states of the Venice Commission. It has the particularity of offering a unique comparative approach to the issue of electoral disputes at the international level, which goes beyond the strictly European framework. After elaborating on the existing international instruments, the report takes stock of the effectiveness of electoral complaints systems in the different member states, highlighting the strengths and weaknesses of the relevant legislation and its implementation on the following topics: the competent bodies; the grounds for appeals; the persons entitled to lodge appeals; the time limits for lodging and processing appeals; the decision-making power of the electoral court; and various key procedural issues, such as the right to appeal, fair trial and the transparency of the electoral complaints systems. The report also reflects the case law of the European Court of Human Rights and in particular its recent development concerning the Grand Chamber judgment *Mugemangango v. Belgium* of 10 July 2020.

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

After the adoption of the Report on digital technologies and elections at the June 2019 plenary session, the Venice Commission had decided to identify a set of principles addressed to law-makers and major actors in this field, such as powerful internet companies.

The Principles were approved by the Council for Democratic Elections and adopted by the Venice Commission at the December 2020 plenary session. They bear in mind that various advantages and concerns are related to the use of digital technologies in relation to elections including the risks of manipulation of the electorate, the protection of fundamental rights such as freedom of expression and personal data protection which has gained critical importance in the digital age, and that the internet's founding principle of net neutrality must be upheld in line with Council of Europe and other European standards. The main focus of the Principles is on electoral campaign issues.

The document stresses the need to find the right balance between different fundamental rights and interests at stake and it includes eight principles centred on freedom of expression in the digital environment, removal by private companies of clearly defined third-party content from the internet at the request of a competent impartial body, the open internet and net neutrality – which are among the basic principles of the internet and recognised in European standards –, personal data protection, periodical review of rules and regulations on political advertising and on the responsibility of internet intermediaries, regulations and institutional capacities to fight cyberthreats, international co-operation and public-private co-operation as well as self-regulatory mechanisms. It also refers to the ongoing co-operation of the Commission with other relevant Council of Europe bodies, namely the Ad Hoc Committee on Artificial Intelligence (CAHAI), the European Committee on Democratic Governance (CDDG) and the Committee of Experts on Media Environment and Reform (MSI-REF).

Revised Guidelines for the Holding of Referendums (CDL-AD(2020)031)

In October 2020, the Council for Democratic Elections approved and the Venice Commission adopted the revised guidelines on the holding of referendums.

A revision of the code of good practice on referendums was launched in 2016, in particular to take into account problematic developments related to both the procedure for launching a referendum and the substance of the proposed changes. The Venice Commission worked closely with the Parliamentary Assembly, which adopted a recommendation on updating the guidelines for ensuring fair referendums in Council of Europe member states; it also co-operated with the Congress and the OSCE/ODIHR.

The guidelines are not intended to assess the appropriateness, frequency or purpose of referendums. Referendums are intended to complement representative democracy. The most important changes from the 2007 Code of Good Practice on Referendums include the role of an impartial body in the referendum process, including consideration of the clarity of the

question; the balanced provision of information and the organisation of the referendum; the role of political parties in the process; the need for legislation to be adopted with a broad consensus after extensive public consultation with all stakeholders; and the possibility for a non-judicial body to decide in the final instance, if it provides sufficient guarantees of independence and impartiality. An approval quorum or a specific majority requirement is acceptable for referendums on issues of fundamental constitutional importance and new guidelines have been developed on the effects of referendums. An explanatory report is expected to be adopted in 2021.

Guidelines on Political Party Regulation – 2nd edition (CDL-AD(2020)032)

The Council for Democratic Elections approved in October 2020 and the Venice Commission adopted in December 2020 the 2nd edition of the Joint Guidelines of the Venice Commission and OSCE/ODIHR on Political Party Regulation.

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

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

As was the case with the previous ones, these revised Guidelines are not intended to be of a binding

character *per se*. They contain a set of principles which for the larger part have been laid down in international treaties, in particular the principles of freedom of association and freedom of expression, the principle of free elections at regular intervals, the principle of equality and the right to an effective legal remedy, as well as the requirement of legality and proportionality of any restriction of these rights and freedoms. The principles also contain elements that do not, or at least not yet, have the status of binding law but are taken into account as so called “soft law”, based on evolving state practice as reflected, *inter alia*, in domestic legislation and in national, international and regional jurisprudence, as well as in the resolutions, views and declarations of international bodies. Even though the right to equal treatment is a fundamental right to which every individual and association are entitled, it is not an absolute right: the prohibition for political parties to differentiate in the admission of members and in the treatment among members must be balanced against the hard core of the right to freedom of association and the right to freedom of religion and conviction.

The guidelines provide various definitions and classifications. Especially of importance are the different dimensions which the Guidelines distinguish, notably internal relations within political parties, the relation between political parties and the state and the relation between political parties. These three dimensions correspond to two model types of what a political party is. One model, the liberal or free market model, gives primacy to a large associational freedom of political parties in their internal and external functioning. According to this model emphasising freedom of association, political parties are seen as private associations that should be free to establish their own internal organisation and should not be hindered by regulations that limit free competition and political pluralism. In the egalitarian-democratic model, because parties are vital for political participation and to a certain extent have a public function, they should respect equality and democracy in their internal organisation and may be restricted by external regulations for reasons of giving the parties a fair and equal chance in electoral competitions. National systems do not completely fulfil the characteristics of just one ideal type but combine traits of one model with those of the other. Which model of political party regulation is dominant to a large measure depends on a country's constitution, legislation, history and practice. Indeed, there have been fundamental changes these last decades. Many countries have evolved from a liberal model towards increased regulation of political parties, introducing requirements as to internal democracy and equality, external accountability and respect for the basic elements of the constitutional order.

Report on electoral law and electoral administration in Europe - Synthesis study on recurrent challenges and problematic issues (CDL-AD(2020)023)

The Council for Democratic Elections and the Venice Commission took note of the report at the October 2020 plenary session. The main objective of the report was to identify both improvements as well as remaining and new challenges in the electoral legislation and the electoral administration in Europe against the background of international standards and good practices in electoral matters, which have been observed since the 2006 report on the same issue. Challenges remained in relation to the various fundamental principles of electoral law (universal, equal, direct, secret and free suffrage).

Concerning universal suffrage, a tendency could be identified to grant the right to vote in national elections to all citizens where possible, both legally and de facto; the remaining restrictions on the right to vote were increasingly under discussion. Concerning equal suffrage and freedom of voters to form an opinion, main challenges were the distortion of political competition conditions, especially through misuse of administrative resources and unbalanced coverage in the media, negative campaigning and – what is new – the inadaptation of legislation to the digital environment. Freedom of voters to express their votes and free suffrage continued to be challenged from time to time by irregularities in the voting process as well in the counting and tabulation of results. This also entailed anybody being able to lodge complaints and appeals in the case of electoral irregularities and that these are followed up effectively.

Follow-up to the Amicus curiae brief for the European Court of Human Rights in the case of Mugemangango v. Belgium on procedural safeguards which a State must ensure in procedures challenging the result of an election or the distribution of seats (CDL-AD(2019)021)

See Chapter II.

Compilation of opinions and reports and glossary

Compilation on the stability of electoral law (CDL-PI(2020)020)

This compilation has been prepared at an opportune moment because of the growing tendency of States to make important constitutional or legislative reforms, including in the area of elections and, too often, shortly before an election. In particular, the COVID-19 crisis and its dramatic social and economic consequences have exacerbated the need for urgent decisions but have also provided an opportunity for sometimes hasty legislation without proper justification. This

compilation thus aimed at recalling the need for stability and trust in the democratic institutions of the member States. The Venice Commission has repeatedly stressed in its opinions and reports the importance of the principle of stability in electoral law, while a number of countries have carried out or are still carrying out electoral reforms that require a broad political consensus, particularly when it comes to fundamental elements of electoral law.

Revised electoral glossary (CDL-PI(2020)021)

In 2020, the Venice Commission Secretariat carried out a major revision of the English-French electoral glossary, which had previously been revised in 2016. This latest revision consists first of all of the addition of a number of new expressions. Secondly, expressions were removed from the glossary, either because they were no longer used, or because they were not specifically related to the electoral field, or because certain expressions are commonly used and known and do not or no longer need to be included in the electoral glossary. Finally, this revision made it possible to add notes explaining several technical expressions. Once adopted, the glossary was sent to the Council of Europe's Terminology Department.

Conferences organised by the Commission

17th European Conference of Electoral Administrations, on "Electoral law and electoral administration in Europe - Recurrent challenges and best practices" (online, 12-13 November 2020)

For the first time and due to the COVID-19 health crisis, the 17th (annual) European Conference of Electoral Administrations was held online, from the Council of Europe headquarters. The conference was dedicated to the theme "Electoral law and electoral administration in Europe - Recurrent challenges and best practices". Representatives of electoral administrations from the member States of the Venice Commission, namely from Europe and the Americas, among others, participated in the conference. The role of electoral administrations was addressed by the conference while dealing with the following topics

- ▶ preventing and responding to recurrent irregularities during campaigns and voting operations;
- ▶ preventing and responding to irregularities or malpractice regarding counting, tabulation and transmission of election results;
- ▶ holding elections during emergency situations – challenges met and solutions found during the current COVID-19 pandemic.

The conference was an online public event; approximately 160 participants followed the debates. The conference was organised in the framework of the



IFES Webinar Series: Administering Elections in Europe During a Pandemic - Webinar 4: "Inclusion of persons with disabilities in the electoral process", 24 September 2020

Greek Chairmanship of the Committee of Ministers of the Council of Europe.

On the topic of recurrent challenges and good practices, the discussions were mainly based on the report on this subject adopted by the Venice Commission (CDL-AD(2020)023) and in particular on the need for greater transparency of electoral processes, and the fight against the abuse of administrative resources or hate speech during election campaigns. The other major topic was the holding of elections during a pandemic, for which contributions were provided by, inter alia, the Republic of Moldova, Montenegro, the OSCE/ODIHR and the International Foundation for Election Systems (IFES). Despite being held online, the 2020 edition provided an opportunity to maintain contact between election administration officials.

IFES - Webinar series on "Administering elections in Europe during a pandemic" - Webinar N° 4: "Inclusion of people with disabilities in the electoral process" (24 September 2020)

The International Foundation for Election Systems (IFES) organised a series of webinars on "Election administration in Europe during a pandemic". On 24 September 2020, the fourth online session focused on "How to Build a Democracy Designed for All? Promoting Access and Inclusion of Persons with Disabilities". A representative of the Venice Commission spoke at this session. This event focused on innovative approaches to enable people with disabilities to participate equally in the upcoming elections across Europe and practical recommendations for managing inclusive elections.

UN Partnership on the Rights of Persons with Disabilities - Side event at COSP13 (online, 1 December 2020)

The Venice Commission participated in an online event on "Advancing the participation of persons with intellectual and psychosocial disabilities in

political and public life”, which was a side event of the UN Convention on Social and Political Rights (COSP13) organised by the UN Partnership on the Rights of Persons with Disabilities. The speaker from the Venice Commission concluded the discussion and presented the relevant standards formulated by the Venice Commission in the field of elections.

Protecting electoral integrity in the digital age – virtual presentation (29 May 2020)

The National Electoral Institute of Mexico, in cooperation with the Kofi Annan Foundation, organised a presentation of the Report “Protecting electoral integrity in the digital age”, prepared by the Commission on Elections and Democracy in the Digital Age of that Foundation. The event was attended by representatives of electoral management bodies of several Latin American countries. A representative of the Venice Commission participated in the discussions.

For information on cooperation with other international organisations please refer to the Chapter VI.

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 and it proposes a search tool as well as a systematic thesaurus. The texts of relevant laws 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 (<https://vota.te.gob.mx/>). 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.

Following a complete revision in 2017 which was carried out thanks to financial support from the European Union, the database has been even more modernised and is constantly updated.



“The legal limits of direct democracy” – International workshop, Zurich, 28 February 2020

Other conferences and meetings

In 2020 the Commission participated in the following events:

- ▶ EU TAIEX workshop on political party financing, organised by the European Commission in cooperation with Bosnia and Herzegovina Election Commission, 27 January 2020, Sarajevo.
- ▶ Workshop “The legal limits of direct democracy”, organised by Institute for International and Comparative Constitutional Law of the University of Zurich with the support of the European Research Council, 28 February 2020, Zurich.
- ▶ Meeting of the Working Groups on electoral technology and on online campaign observation – drafting of the Declaration of Principles for International Election Observation (DOP), organised by the EEAS (20 May, 22 July, and 30 September, online).
- ▶ Hearing on “Membership obligations and the conduct of democratic elections in the context of the pandemic of COVID-19”, organised by the Parliamentary Assembly, 22 June 2020, online.
- ▶ 2nd plenary meeting of the Ad Hoc Committee on Artificial Intelligence (CAHAI), 6-8 July 2020, online.
- ▶ Committee on Media Environment and Reform (MSI-REF), 22-23 September 2020, online.
- ▶ Meeting of the Working Group on E-Democracy (GT-ED), 22 October 2020, online. 3rd plenary meeting of the CAHAI, 15-17 December 2020, online.

V. CO-OPERATION IN THE COUNCIL OF EUROPE NEIGHBOURHOOD AND OUTSIDE EUROPE²¹

Mediterranean Basin

Country-specific activities

Egypt

The National Council for Human Rights of Egypt, in cooperation with the Commission, organised an introductory seminar on “Open Government” on 25-26 February 2020 in Cairo, Egypt. The event was attended by some 60 participants from ten countries as well as the Vice-President of the Commission and members on behalf of Bulgaria and Cyprus. Ombudsmen from Morocco and Tunisia were among the participants in the conference.

The conference presented the different components of the “open government” concept and the main international standards in this field. The programme also provided an opportunity to compare international standards with national implementation and interpretation, both in Europe and in the Mediterranean region.

Tunisia

Supporting independent bodies of Tunisia (project PAII-T)

In 2020, the Venice Commission provided specific support to the strengthening of the independent bodies of Tunisia (PAII-T project) funded by the Council of Europe and the European Union and implemented by the Council of Europe. This bilateral project (2019-2021) was launched in June 2019. The Venice Commission’s expertise was sought with regard to the finalisation of the regulatory framework of all Tunisian independent bodies some of which had been created by the 2014 Constitution. Seminars and workshops organised by the Venice Commission in 2020 were a follow-up to the excellent co-operation launched in 2019 and aimed at supporting the process of institutional development and helping the independent institutions of Tunisia to exercise their powers in an effective, efficient and accountable manner.

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



Egypt – international conference by the National Human Rights Council on “Open government”, Cairo, 25 - 26 February 2020

In 2020, the Venice Commission continued to support the independent bodies of Tunisia by delivering expertise aiming to improve the legislative and regulatory framework of the institutions, as well as their financial and administrative independence, and strategic communication. This support has been based on the recommendations established in the “Diagnosis of the Tunisian legislative framework”, prepared by the Venice Commission in 2019.

On 4 May 2020, the Venice Commission organised a video conference on the subject “Legislative and regulatory framework of Tunisian independent bodies: current situation and challenges”.

An online workshop dedicated to the strategic communication of the independent bodies and their relations with the media took place on 20 October 2020. The meeting focused on possible practical solutions to existing problems of effective communication strategy including the growing role of the digital solutions and social media.

The Venice Commission also delivered targeted support to the Independent High Authority for elections (ISIE). The three events organised in collaboration with ISIE in 2020 allowed the Venice Commission to take stock of the ongoing cooperation and agree on the future activities (18 June 2020), to support the



5th coordination meeting of the UniDem project for the southern Mediterranean, Rabat, 6 February 2020

improvement of the electoral legal framework based on recommendations of international observation missions (16 July 2020), and to discuss the role of the ISIE in monitoring the written press and social media during election campaigns (13 November 2020).

In 2020, the Venice Commission also supported the activities of the 'League' of Independent institutions of Tunisia in order to strengthen the synergies between them, to facilitate the resolution of possible conflicts of jurisdiction and to identify common concerns.

Regional cooperation

UniDem Med Campus

In 2020, the Venice Commission continued to support the process of modernising public administration in the Southern Mediterranean through the UniDem Med Campus. The project was also affected by the health situation in Europe and the Southern Mediterranean region. The Venice Commission adapted to the new situation by organising the 2020 seminars in an online format. The Commission organised the 11th UniDem Med webinar in co-operation with the Ministry of Economy, Finance and Administration Reform of the Kingdom of Morocco on the theme "Towards a user-oriented administration" from 13 to 15 October 2020.

The 12th UniDem Med was also held online from 13 to 15 December 2020 in co-operation with the Presidency of the Government of Tunisia. The event was entitled "Reform of Public Administration: New Challenges and New Methods of Operation". The two webinars strengthened the legal capacities of around 300 senior public officials from the Southern Mediterranean, namely Algeria, Egypt, Jordan, Morocco, Palestine* and Tunisia, who exchanged best practices on the development of a modern, user-centred public administration based on the management and planning of professional competences and on the respect of the fundamental principles of the rule of law and democracy. The UniDem Med project is supported by the network of national coordinators which enables the project to develop and achieve its strategic objectives. The annual meeting of the co-ordinators

took place in Rabat on 6 February 2020. The meeting discussed national priorities, venues and themes for the 2020 seminars and ways to improve the impact and reach of the project.

The two seminars and the coordinators' meeting were funded by the joint Council of Europe-European Union programme "Regional support to reinforce human rights, the rule of law and democracy in the Southern Mediterranean" (South Programme IV).

Co-operation with the Organisation of the Electoral Management Bodies of Arab countries

The Venice Commission, the United Nations Development Programme (UNDP) and the Independent High Electoral Commission of Mauritania contributed to the organisation of the 4th General Assembly of Arab Electoral Management Bodies (Arab EMB). The Assembly which took place in Nouakchott, Mauritania from 4 to 6 March 2020 was followed by an international conference on the role of media in elections. The conference gave an opportunity to the Electoral Management Bodies from Arab states to exchange views about the international principles and standards in the field of electoral campaign and to identify the key challenges facing the Arab EMBs and media during the electoral process.



4th General Assembly of the Arab EMBs and international conference "Role of the media in election", Nouakchott (Mauritania), 04 - 06 March 2020

On 20 May representatives of the Venice Commission participated in a meeting organised by the Organisation of the Electoral Management Bodies of Arab countries (Arab EMBs) on the impact of the COVID-19 pandemic on electoral process. During the meeting among other issues the participants discussed the results of the questionnaire prepared by the organisation on the impact of COVID-19 on EMBs and on additional measures that have to be taken by the electoral administration in order to ensure the electoral process. Members of the Arab EMBs and representatives of the international organisations participating in the event had an exchange on possible co-operation activities during the pandemic.

Central Asia

In 2020, the Venice Commission pursued its co-operation with the different national institutions of Kazakhstan, Kyrgyzstan and Uzbekistan. This co-operation was developed in the framework of the project "Promote efficient functioning of state institutions and public administration" which aims to promote efficient functioning of state institutions and public administration in accordance with European and other international standards in the Central Asia partner countries (Kazakhstan, Kyrgyzstan, Tajikistan, Turkmenistan and Uzbekistan).

Country-specific activities

Kazakhstan

The President of the Venice Commission, Mr Gianni Buquicchio, addressed an online international roundtable entitled «Modern digital and Human Resources technologies in the selection of candidates for judges, assessment of work and promotion of judges», which took place on 25 November 2020.

Experts of the Venice Commission as well as senior civil servants and experts from UNDP, World Bank, OSCE/ODIHR, France, Spain, Italy, Russian Federation, Kyrgyz Republic and Uzbekistan participated in this online regional event organised by the High Judicial Council and the Supreme Court of the Republic of Kazakhstan, the World Bank and the UNDP.

The participation of the Venice Commission was funded by the Joint Council of Europe -European Union Central Asia Rule of Law Programme 2020-2023.

Kyrgyzstan

Expert discussion on amendments to the Law on Non-commercial Organisations

On 30 April representatives of the Venice Commission participated in a videoconference on the proposed amendments to legislation on non-commercial

organisations (NCOs) organised by the Delegation of the European Union in Kyrgyz Republic and the Regional Office of the UN High Commissioner for Human Rights in Central Asia. Representatives of the authorities, NCOs, national and international experts exchanged views on proposals to change national legislation and introduce new reporting rules for NCOs.

The participants shared the opinion that the draft amendments could seriously affect the ability of NGOs to seek, receive and use financial, material and human resources and would unnecessarily and disproportionately restrict the exercise of the right to freedom of association in Kyrgyzstan. The amendments were not adopted by the Kyrgyz parliament.

Joint opinion of the Venice Commission and OSCE/ODIHR on the amendments to some legislative acts related to sanctions for violation of electoral legislation (CDL-AD(2020)003)

See Chapter IV.

Urgent amicus curiae brief relating to the postponement of elections motivated by constitutional reform (CDL-AD(2020)040)

See Chapter IV.

Uzbekistan

In 2020 co-operation between Uzbekistan and the Venice Commission increased in the framework of joint co-operation projects financed by the EU and implemented by the Venice Commission. An active dialogue was engaged with the parliament, the National Human Rights Center, the Ministry of Foreign Affairs, Ministry of justice and the Supreme Court. Following a request from the First Vice President of the Legislative Chamber of the Parliament (Oliy Majlis), the Venice Commission and ODIHR prepared a joint opinion on the draft Law "On freedom of conscience and religious organisations" (see Chapter I).

Latin America

Country-specific activities

Bolivia

IVth National Seminars: Evidential reasoning, fundamental rights and constitutional interpretation (9-12 November 2020)

On 11 and 12 November 2020 two representatives of the Venice Commission participated in the "IVth National Seminars: Evidential reasoning, fundamental rights and constitutional interpretation" organised by the Plurinational Constitutional Court of Bolivia on 9 - 12 November 2020. The purpose of the seminar was to discuss the issues of evidential reasoning,

fundamental rights and constitutional interpretation - important concepts for the application of the Constitutional Procedural Law.

The working sessions focused on exchange of experiences in the resolution of constitutional issues based on the identification of constitutional interpretation applicable to the area; and on the application of different models to concrete practical cases.

Mexico

In 2020 co-operation between INE and the Venice Commission focused on issues related to the protection of electoral rights in the time of pandemic.

On 30 October the National Electoral Institute of Mexico and the Venice Commission organised an online conference entitled “COVID-19. States of emergency and democratic values. New contribution to the debate - reports of the Venice Commission.”

The activity was opened by Mr L. Cordoba, Chair of INE and Mr G. Buquicchio, President of the Venice Commission. Representatives from several Latin American countries took part in the exchange.

This event was organised in the framework of the Memorandum of Understanding signed between the Venice Commission of the Council of Europe and the National Electoral Institute on March 16, 2019, which indicates the commitment of both institutions to organise and develop international forums aimed at promoting good practices in the field of electoral legislation and practice.

Regional co-operation

The Secretary General of the Organisation of American States (OAS) Mr Luis Almagro and the President of the Venice Commission Mr Gianni Buquicchio signed a co-operation agreement in Washington DC, on 6 June 2020, and in Strasbourg on 9 June 2020, respectively. This agreement opens new possibilities for developing the successful co-operation between the two organisations in 2021.

Other conferences and meetings

On 24 April 2020 the President of the Venice Commission, Gianni Buquicchio, participated in a video conference on “Presidential government. Constitutional practice and political practices” organised by the Foundation of the 1st President of **Kazakhstan**, the Constitutional Council and the Ministry of Justice of Kazakhstan.

On 30 April, Mr Josep Maria Castella Andreu, member in respect of Spain, Mr Rafael Rubio Nunez, substitute member in respect of Spain, Mr José Luis Vargas Valdez, substitute member in respect of Mexico,



The President of the Venice Commission, Mr Gianni Buquicchio, participating in the international video conference “Presidential government. Constitutional practice and political practices”, Astana, 24 April 2020

and the Deputy Secretary of the Commission, Ms Simona Granata-Menghini, participated in the Fifth Scientific Committee Meeting of the **Global Network on Electoral Justice** held online.

On 7 May 2020 the President of the Commission participated in the virtual seminar on “Evaluation of the first mandatory presidential debate and its implementation”, organised by the *Cámara Nacional Electoral of Argentina*.

On 12 August 2020 the President of the Venice Commission Mr Gianni Buquicchio participated at the opening of the Samarkand Human Rights Web Forum. The event was dedicated to the International Youth Day in the framework of the UN75 Initiative of the UN and was organised by the National Centre for Human Rights of the Republic of **Uzbekistan**.

On 9 September 2020 representatives of the Venice Commission participated in the Third Webinar of the **Global Network on Electoral Justice** entitled “Digital Electoral Justice and COVID-19: Challenges, Opportunities, and Implications of Incorporating New Technologies”.



Seminar on «Evaluation of the first mandatory presidential debate and its implementation» in Argentina, Buenos Aires, 07 May 2020

VI. CO-OPERATION BETWEEN THE COMMISSION AND ORGANS AND BODIES OF THE COUNCIL OF EUROPE, THE EUROPEAN UNION AND OTHER INTERNATIONAL ORGANISATIONS

Council of Europe

Committee of Ministers

Until 2020 representatives of the Committee of Ministers of the Council of Europe regularly participated in the plenary sessions of the Venice Commission. However, due to the COVID 19 pandemic in 2020 the usual exchanges of views with the Ambassadors, Permanent Representatives to the Council of Europe, were suspended.

On 5 February 2020, the Ministers' Deputies endorsed the "Parameters on the relationship between the parliamentary majority and the opposition in a democracy" elaborated by the Venice Commission²¹. On this occasion, the Deputies invited governments, parliaments and other relevant authorities in the member states to take this document into account and to disseminate it widely in the relevant circles

and invited the Secretary General of the Council of Europe to transmit it to other international organisations for information.

On 25 February 2020 the Committee of Ministers adopted a Reply to the PACE [Recommendation 2163 \(2019\)](#) "Ombudsman institutions in Europe – the need for a set of common standards", where the Committee of Ministers reiterated its support to the "Venice Principles"²² of the Commission.

On 17 June 2020 the President of the Venice Commission presented to the Committee of Ministers the Annual Report of Activities of the Commission accomplished in 2019. The presentation was followed by an exchange of views with the Ambassadors of the member and observer states of the Council of Europe.

On 9 November 2020 the President of the Venice Commission participated in the Conference of Ministers of Justice of the member states of the Council of Europe on the "Independence of Justice and the

21. [CDL-AD\(2019\)015](#).

22. [CDL-AD\(2019\)005](#).



The President of the Venice Commission, Mr Gianni Buquicchio, presenting the annual report of activities of the Commission accomplished in 2019 to the Committee of Ministers of the Council of Europe, Strasbourg, 17 June 2020

Rule of Law". This online conference was organised by the Greek Chairmanship of the Committee of Ministers of the Council of Europe. The 17th European Conference of Electoral Management Bodies was organised by the Venice Commission under the Greek Chairmanship of the Council of Europe on 12 and 13 November 2020.

Parliamentary Assembly

In 2020 the Commission and the Assembly continued their fruitful co-operation in spite of the fact that the members of the Assembly didn't attend the online plenary sessions of the Commission.

Opinions requested by the Assembly

In 2020, at the request of the Parliamentary Assembly, the Venice Commission adopted the following texts:

- ▶ Report on the **criminal liability for peaceful calls for radical constitutional change** from the standpoint of the European Convention on Human Rights²³;
 - ▶ **Albania** - Opinion on draft amendments to the Law n°97/2013 on the Audiovisual Media Service²⁴;
 - ▶ **Latvia** – Opinion on the recent amendments to the Legislation on Education in Minority Languages²⁵;
 - ▶ **Russian Federation** - Opinion on draft amendments to the Constitution (as signed by the President of the Russian Federation on 14 March 2020) related to the execution in the Russian Federation of decisions by the European Court of Human Rights²⁶;
 - ▶ **Turkey** - Opinion on the draft amendments to the attorneyship law of 1969²⁷.
- In addition, the requests were made by the PACE at the end of 2020 on the following issues:
- ▶ the compatibility with European standards of certain criminal law provisions used to prosecute peaceful demonstrators and Members of the **Belarusian** "Coordination Council";
 - ▶ the recent amendments to the Law on Electronic Communications and the Law on Broadcasting in **Georgia**;
 - ▶ the compatibility with international human rights standards of a series of Bills introduced by the State Duma of the **Russian Federation** between 10 and 23 November 2020, to amend Laws affecting so-called "foreign agents".

The relevant draft opinions will be adopted in 2021.

23. CDL-AD(2020)028.

24. CDL-AD(2020)013.

25. CDL-AD(2020)012.

26. CDL-AD(2020)009.

27. CDL-AD(2020)029.

Promoting European standards together

References to the Commission's texts

In 2020 the Parliamentary Assembly referred to the Commission's documents in the following adopted texts:

- ▶ Setting **minimum standards for electoral systems** in order to offer the basis for free and fair elections, Resolution 2332 (2020)²⁸;
- ▶ Democracies facing the **COVID-19 pandemic**, Resolution 2337 (2020)²⁹;
- ▶ The impact of the **COVID-19 pandemic** on human rights and the rule of law, Resolution 2338 (2020)³⁰;
- ▶ Rights and obligations of **NGOs** assisting refugees and migrants in Europe, Recommendation 2192 (2020)³¹;
- ▶ **"The principles and guarantees of advocates"** Report of 29 September 2020³²;
- ▶ New crackdown on political opposition and civil dissent in **Turkey**: urgent need to safeguard Council of Europe standards, Resolution 2347 (2020)³³.

The report on the post-monitoring dialogue of the PACE with **Montenegro** on specific subjects such as the independence of judiciary, minority rights and fight against discrimination, property rights, electoral process, fight against corruption and freedom of religion was based mainly on the recommendations of the Commission expressed in its opinions³⁴.

Participation in PACE activities

Transnational topics

On 30 January 2020 a member of the Bureau of the Venice Commission took part on behalf of the Commission in a hearing of the Committee on Political

28. Text adopted on 15 September 2020 (see Doc. 15027, report of the Committee on Political Affairs and Democracy).

29. Text adopted by the Standing Committee, acting on behalf of the Assembly, on 13 October 2020 (see Doc. 15157, report of the Committee on Political Affairs and Democracy, and Doc. 15164, opinion of the Committee on the Honouring of Obligations and Commitments by Member States of the Council of Europe (Monitoring Committee). See also Recommendation 2179 (2020).

30. Text adopted on 13 October 2020 (see Doc. 15139, report of the Committee on Legal Affairs and Human Rights, and Doc. 15158, opinion of the Committee on Culture, Science, Education and Media). See also Recommendation 2180 (2020).

31. [Text adopted on 4 December 2020](#) (see Doc. 15161, report of the Committee on Migration, Refugees and Displaced Persons; and Doc. 15174, opinion of the Committee on Legal Affairs and Human Rights).

32. Cf. [Doc. 15152](#).

33. [Text adopted on 23 October 2020](#) (see Doc. 15171, report of the Committee on the Honouring of Obligations and Commitments by Member States of the Council of Europe (Monitoring Committee).

34. Post-monitoring dialogue with Montenegro, Report by the PACE Monitoring Committee, [Doc. 15132](#), 02 September 2020.

Affairs and Democracy of the Parliamentary Assembly on the topic «**Countering ill democracies in Europe**».

Throughout the year 2020 the Commission's representatives took part in several events organised by the PACE on the **emergency situations** in general and the COVID-19 pandemics in particular. On 27 April 2020, a member of the Venice Commission took part in an exchange of views with Mr Boris Cilevics, Chairperson of the Parliamentary Assembly Committee on Legal Affairs and Human Rights, Mr Vladimir Vardanyan, Chairperson of the Sub-committee on Human Rights and Ms Dunja Mijatovic, Council of Europe Commissioner for Human Rights on '**The impact of COVID-19 on human rights and the rule of law**'. For other activities related to the COVID-19 pandemics, please refer to the part on the cooperation with the PACE in the field of elections.

On 9 November 2020 a member of the Venice Commission participated in the meeting of the PACE Committee on Legal Affairs and Human Rights held by videoconference where he presented the work of the Venice Commission concerning the **freedom of association**, with a specific focus on restrictions imposed in member states on foreign funding of associations, which was the subject of the Commission's relevant Report³⁵.

Country specific action

On 5 October 2020 a Venice Commission member presented to the PACE Monitoring Committee the Commission's work on the constitutional reform in **Armenia**.

On 29 September 2020 the President of the Venice Commission Mr G. Buquicchio participated in an exchange of views on the current situation in **Belarus** with the members of the Committee on Political Affairs and Democracy.

On 29 June 2020 the Committee on Legal Affairs and Human Rights of the PACE held an exchange of views with the Venice Commission on draft amendments to the Constitution of the **Russian Federation** related to the execution in the Russian Federation of decisions by the European Court of Human Rights, which were the subject of the Commission's opinion³⁶.

On 13 November 2020 members of the Venice Commission participated in an online exchange of views with the PACE Monitoring Committee on:

- ▶ the Law on Common Courts and on the selection and appointment of Supreme Court judges of **Georgia**;
- ▶ the draft amendments to the Law on the Audiovisual media of **Albania**, and

- ▶ the follow-up to Resolution 2347(2020) on "New crackdown on political opposition and civil dissent in **Turkey**: urgent need to safeguard Council of Europe standards" regarding the situation of dismissed and replaced mayors.

Co-operation in the field of elections and political parties

Council for Democratic Elections

The Parliamentary Assembly continued to participate in the Council for Democratic Elections – a body 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 PACE members of the Council for Democratic Elections in 2020 were as follows:

Members

- ▶ Mr Antonio GUTIÉRREZ, Committee on Legal Affairs and Human Rights
- ▶ Mr Piero FASSINO, Committee on Political Affairs and Democracy
- ▶ Mr Tiny KOX, Committee on the Honouring of Obligations and Commitments by member states of the Council of Europe (Monitoring Committee)

Substitute members

- ▶ Sir Christopher CHOPE, Committee on Legal Affairs and Human Rights
- ▶ Mr Corneliu Mugurel COZMANZIUC, Committee on Political Affairs and Democracy
- ▶ Mr Aleksander POCIEJ, Committee on the Honouring of Obligations and Commitments by member states of the Council of Europe (Monitoring Committee)

COVID-19 pandemic and elections

On 28 May 2020 the Venice Commission participated in an exchange of views on "**The role of national parliaments and the holding of elections during emergency situations**" with the Committee on *Political Affairs and Democracy* of the PACE.

On 22 June 2020 the Venice Commission participated in a remote Hearing on "**Membership obligations and the conduct of democratic elections in the context of the pandemic of COVID-19**". This meeting was organised by the Monitoring Committee of the Parliamentary Assembly of the Council of Europe (PACE).

On 3 July 2020 the Venice Commission participated in the exchange of views between the PACE President Mr Rick Daems and the Georgian Parliament devoted to the concrete **modalities of elections in the context**

35. [CDL-AD\(2019\)002](#).

36. [CDL-AD\(2020\)009](#).



The Venice Commission members participating in an exchange of views with the Committee on Political Affairs and Democracy of the PACE on the role of national parliaments and the holding of elections during emergency situations, 28 May 2020

of health emergencies such as the COVID-19 pandemic. The event was organised by the PACE and the Legal Committee of the Parliament of Georgia.

Legal assistance to election observation

In accordance with the co-operation agreement concluded between the Venice Commission and the Parliamentary Assembly, in 2020 representatives of the Venice Commission ensured legal assistance to the Parliamentary Assembly delegations observing early parliamentary elections in **Azerbaijan**, parliamentary elections in **Georgia** and the 1st and the 2nd rounds of the presidential elections in **Poland**. Due to the COVID-19 pandemic, other election observation missions were cancelled in 2020.

Charter of European Political Parties for a non-racist society

The Venice Commission participated in the Joint hearing with the PACE Committee on Political Affairs and Democracy and the No Hate Parliamentary Alliance on the Charter of European Political Parties for a non-racist society (27 November) on "Updating and relaunching the Charter of European Political Parties for a Non-Racist Society". A member of the Venice Commission introduced the work of the Venice Commission and the possible future involvement of the Venice Commission in the field.

Congress of Local and Regional Authorities

The Congress is working in close co-operation with the Venice Commission, particularly in the field of election observation and the monitoring of the European Charter of Local Self-Government. In 2020 the Congress continued to refer to the opinions and reports of the Commission in its documents, notably to the Codes of Good Practice in Electoral Matters and on Referendums, to the Report on the Respect for Democracy, Human Rights and the Rule of Law during States of Emergency and to the

Revised Guidelines on the holding of referendums. Following the observation of local and/or regional elections the Congress prepares reports and recommendations³⁷. In the conduct of such observation missions, the Congress applies the Commission's Code of Good Practice in Electoral Matters ([CDL-AD\(2018\)009](#))³⁸.

The debates of the 37th session of the Congress of the Council of Europe (October 2020), under the umbrella theme of "Mayors safeguarding democracy", focused on *inter alia*, on the **Venice Principles** on the protection and promotion of the ombudsman institution³⁹ which were presented by the Commission's President Mr Gianni Buquicchio.

In its report "Monitoring of the European Charter of Local Self-Government in **Hungary**"⁴⁰, the Committee on the Honouring of Obligations and Commitments by Member States of the European Charter of Local Self-Government (Monitoring Committee of the Congress), adopted at the 39th Session, the Congress referred to the Commission's opinions on the judiciary and the constitution-making process in Hungary.

In a Recommendation, adopted on 28 September 2020⁴¹, concerning the 20 October 2019 local elections in the Republic of **Moldova**, the Congress called on the Moldovan authorities to improve the legal framework and the practical management of electoral processes, referring notably to the Commission's Code of Good Practice in Electoral Matters.

37. See Statutory Resolution [CM/Res\(2020\)1](#).

38. Cf. "A contemporary commentary by the Congress on the explanatory report to the European Charter of Local Self-Government" by the Committee on the Honouring of Obligations and Commitments by member States of the European Charter of Local Self-Government (Monitoring Committee), Report [CG-FORUM\(2020\)02-05final](#), 7 December 2020.

39. Activity Report of the Congress of Local and Regional Authorities (Mid-October 2019 – June 2020) - Communication by the Secretary General of the Congress at the 1380^{bis} meeting of the Ministers' Deputies, [CG37\(2019\)24](#), 08/07/2020.

40. Cf. [CG\(2020\)39-17prov](#), 12 February 2020.

41. Local elections in the Republic of Moldova, [Recommendation 443 \(2020\)](#).

Request for opinion by the Congress

On 17 December 2019 the Secretary General of the Congress of Local and Regional Authorities of the Council of Europe, Mr Andreas Kiefer, requested the opinion of the Venice Commission on the replacement of elected candidates and mayors in Turkey. This request concerned a number of decisions regarding elected candidates and mayors taken after the 31 March 2019 local elections in the south-east of **Turkey**. These decisions denied a number of successful candidates a mayoral mandate and removed from office the mayors of the metropolitan cities of Diyarbakır, Mardin and Van and replaced them with Governors of each region as “trustees”. The opinion, adopted by the Commission at its June 2020 plenary session⁴², was strongly supported by the Congress rapporteurs on the matter. For more information on this opinion, please refer to Chapter IV.

Council for Democratic Elections

The Congress also continued to participate in the Council for Democratic Elections (CDE). The relevant Congress members of the Council in 2020 were as follows:

Members / Membres

- ▶ Mr Stewart DICKSON, Chamber of Regions
- ▶ Mr Jos WIENEN, Chamber of Local Authorities

Substitute members / Membres suppléants

- ▶ Ms Rosaleen O’GRADY, Chamber of Regions
- ▶ Mr Vladimir PREBILIC, Chamber of Local Authorities

As part of the 69th meeting of the Council for Democratic Elections, which took place online on 7 October 2020, Mr Jos Wienen (EPP/CCE, Netherlands) and Stewart Dickson (ILDG, United Kingdom), Thematic Spokespersons of the Congress on electoral matters, presented the new report issued by the Congress on local and regional elections in major crisis situations⁴³. In his presentation Mr Wienen referred to the Commission’s Revised Guidelines on the holding of referendums, adopted in 2020⁴⁴.

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 Venice Commission’s work, by referring to the norms emanating from the Commission’s documents. In 2020 the European Court of Human

42. CDL-AD(2020)011.

43. Report CG-FORUM(2020)01-05 on local and regional elections in major crisis situations; see also Resolution 460 (2020).

44. CDL-AD(2020)031.

Rights referred to the Venice Commission’s documents in 14 judgments and 6 decisions.

Reference to the Commission’s documents in the judgments

Hungary

In its judgment on the *case of Atv Zrt v. Hungary* the ECtHR extensively quoted the Commission’s Opinion on Media Legislation (Act CLXXXV on Media Services and on the Mass Media, Act CIV on the Freedom of the Press, and the Legislation on Taxation of Advertisement Revenues of Mass Media of Hungary)⁴⁵. In its judgment on the case of *Mándli and others v. Hungary* the ECtHR referred to the Commission’s Report on the Rule of Law⁴⁶. In its Grand Chamber judgment on the *case of Magyar Kétfarkú Kutya Párt v. Hungary* of 20/01/2020 the ECtHR referred to the Code of Good Practice in Electoral Matters⁴⁷ and to the Guidelines on the holding of referendums of 2006⁴⁸.

Russian Federation

The Guidelines on Freedom of Peaceful Assembly⁴⁹ were referred to in the judgment on the *case of Berkman v. Russia* of 01/12/2020 and the Opinion on the Federal Law of the Russian Federation on Combating Extremist Activity⁵⁰ was cited in the judgment on the *case of Karastelev and others v. Russia* of 06/10/2020.

Turkey

- ▶ In the Grand Chamber *case of Selahattin Demirtaş v. Turkey (No. 2)* of 22/12/2020 the European Court of Human Rights referred to the following opinions of the Commission:
- ▶ Opinion on Articles 216, 299, 301 and 314 of the Turkish Criminal Code⁵¹;
- ▶ Opinion on the suspension of the second paragraph of Article 83 of the Constitution⁵²;
- ▶ Opinion on the amendments to the Constitution adopted by the Grand National Assembly on 21 January 2017 and submitted to a national referendum on 16 April 2017⁵³;
- ▶ Opinion (no. 852/2016) on the duties, competences and functioning of the “criminal peace judgeships”⁵⁴.

45. CDL-AD(2015)015.

46. CDL-AD(2011)003rev.

47. CDL-AD(2002)023rev.

48. CDL-AD(2006)027rev.

49. CDL-AD(2019)017.

50. CDL-AD(2012)016.

51. CDL-AD(2016)002.

52. CDL-AD(2016)027.

53. CDL-AD(2017)005.

54. CDL-AD(2017)004.

In the judgment on the *case of Pişkin v. Turkey* of 15/12/2020 the ECtHR referred to the Commission's Opinion on Emergency Legislative Decrees Nos. 667 to 676 of Turkey⁵⁵. To the same opinion the ECtHR referred in the judgment on the *case of Baş v. Turkey* of 03/03/2020 as well as to the Opinion on the duties, competences and functioning of the criminal peace judgeships⁵⁶.

Other countries

The judgment on the *case of Religious Community of Jehovah's Witnesses v. Azerbaijan* of 20/02/2020 contains references to the Joint Opinion on the Law on Freedom of Religious Belief of the Republic of Azerbaijan adopted by the Commission and the OSCE/ODIHR⁵⁷.

In the Grand Chamber judgment on the *case of Mugemangango v. Belgium* of 10/07/2020 the ECtHR refers to the Commission's Amicus Curiae Brief, adopted in October 2019⁵⁸ upon request by the President of the Grand Chamber of 5 July 2019. This Brief concerned procedural safeguards which a state must ensure in procedures challenging the result of an election or the distribution of seats, and in particular, the ratification of the powers of elected representatives. In Belgium, this power of ratification belongs to Parliament, at the federal level - according to the Constitution - as well as to the communities and regions, and no appeal is possible. For more information please refer to Chapter II.

The Grand Chamber judgment on the *case of Guðmundur Andri Ástráðsson v. Iceland* of 01/12/2020 contains references to the following Commission's texts:

- ▶ Report on Judicial Appointments (CDL-AD(2007)028),
- ▶ the Rule of Law Checklist (CDL-AD(2016)007),
- ▶ Opinion on the Laws on the Disciplinary Liability and Evaluation of Judges of "The Former Yugoslav Republic of Macedonia" (CDL-AD(2015)042).

The ECtHR referred to the Report on the effectiveness of national remedies in respect of excessive length of proceedings⁵⁹ and to the replies to the questionnaire designed for the purposes of the Report in its judgment on the *case of Keaney v. Ireland* of 30/04/2020.

The judgment on the *case of Čivinskaitė v. Lithuania* of 15/09/2020 contains reference to the Amicus Curiae brief in the case of *Rywin v. Poland* (Applications Nos

6091/06, 4047/07, 4070/07)⁶⁰ requested by the ECtHR on 28 January 2014.

The ECtHR in its judgment on the *case of Kövesi v. Romania* of 05/05/2020 referred to the Opinion on draft amendments to Law No. 303/2004 on the Statute of Judges and Prosecutors, Law No. 304/2004 on Judicial Organisation and Law No. 317/2004 on the Superior Council for Magistracy⁶¹ and to the Opinion on Emergency Ordinances GEO No. 7 and GEO No. 12 amending the Laws of Justice⁶².

References to the Commission's documents in the ECtHR's decisions

The European Court of Human Rights in the case of *Beshiri against Albania* (application no. 29026/06) and 11 other applications of 7 May 2020 concerning complaints about a prolonged lack of enforcement of final decisions awarding compensation for property expropriated during the communist era, declared the applications inadmissible. In this decision the ECtHR examined in detail the new domestic scheme brought into effect by the 2015 Property Act for dealing with the many outstanding claims over decades-old compensation decisions which had not been enforced. The Venice Commission had assessed this scheme in its Amicus Curiae Brief for the Constitutional Court on the restitution of property, adopted by the Commission in 2016⁶³. The ECtHR concluded that the mechanism introduced by the 2015 Property Act was an effective remedy which the applicants had to use, even if their applications had been lodged before the Act had come into force. It declared their applications inadmissible for non-exhaustion of domestic remedies, as premature, or because the applicants were no longer victims of a violation of their rights.

In its decision on the case *Privacy International and Others against the United Kingdom* (Application no. 46259/16), the ECtHR referred to the Report on the Democratic oversight of the Security Services⁶⁴, recalling its judgment in *Szabó and Vissy v. Hungary*, no. 37138/14.

The Code of Good Practice in Electoral matters was referred to in the ECtHR's decision concerning the Application no. 11398/18 *Artūras Galakvoščius against Lithuania*. In its decision regarding the Application no. 75865/11 *Centre for democracy and the rule of law against Ukraine*, the ECtHR referred to the Opinion on the constitutional situation in Ukraine⁶⁵.

The ECtHR in its decision concerning Application no. 25240/20 *Alvina Gyulumyan and Others against Armenia* extensively referred to:

60. CDL-AD(2014)013.

61. CDL-AD(2018)017.

62. CDL-AD(2019)014.

63. CDL-AD(2016)023.

64. CDL-AD(2007)016.

65. CDL-AD(2010)044.

55. CDL-AD(2016)037.

56. CDL-AD(2017)004.

57. CDL-AD(2012)022.

58. CDL-AD(2019)021.

59. CDL-AD(2006)036rev.

- ▶ Joint opinion of the Venice Commission and the Directorate of Human Rights (DHR) of the Directorate General of Human Rights and Rule of Law (DGI) of the Council of Europe, on the amendments to the Judicial Code and some other laws⁶⁶,
- ▶ Opinion on three legal questions in the context of draft constitutional amendments concerning the mandate of the judges of the Constitutional Court adopted by the Venice Commission on 19 June 2020⁶⁷;
- ▶ 2010 Report on Constitutional Amendment.

The following texts by the Commission were referred to in the decision re. Application no. 43447/19 *Joanna Reczkowicz against Poland (and 2 other applications)*:

- ▶ Report on the Independence of the Judicial System,
- ▶ Opinion on the Draft Act Amending the Act on the National Council of the Judiciary, on the Draft Act Amending the Act on the Supreme Court proposed by the President of Poland and on the Act on the Organisation of Ordinary Courts,
- ▶ Joint Urgent Opinion of the Venice Commission and the Directorate General of Human Rights and Rule of Law (DGI) of the Council of Europe on Amendments to the Law on the Common Courts, the Law on the Supreme Court, and some other laws⁶⁸.

Commissioner for Human Rights

The work of the Council of Europe Human Rights Commissioner and the Venice Commission is complementary: based on the expertise of its members, the Venice Commission can provide an in-depth analysis while, on his/her side, the Commissioner analyses the broader context and reacts in a quick and flexible manner to emerging threats.

In 2020 HR Commissioner Dunja Mijatović regularly referred to the Commission's documents to support her calls for action in the member states. She supported the recurrent criticism expressed by the Venice Commission and GRECO about reforms of the judiciary in **Hungary** since 2011 and stressed the importance of maintaining the independence of the judiciary and urged the authorities to give effect to the recommendations of the Venice Commission and GRECO in this regard⁶⁹. She also urged Hungary's Parliament to postpone the vote on draft bills amending the Constitution and other legislative instruments that could have far-reaching adverse effects on human

66. [CDL-AD\(2019\)024](#).

67. [CDL-AD\(2020\)016](#).

68. [CDL-PI\(2020\)002](#).

69. [Commissioner urges Hungary's Parliament to postpone the vote on draft bills, 20/11/2020](#).

rights in the country and called for "*consultation with the Venice Commission prior to a careful reconsideration of the bills to ensure their human rights compliance*".

Also in 2020 the Commissioner addressed **San Marino** authorities asking them to refrain from actions jeopardising the independence of the judiciary and recommended "*to make full use of the assistance and guidance of specialised Council of Europe bodies, such as the Venice Commission, the Consultative Council of European Judges and the Group of States against Corruption (GRECO)*"⁷⁰.

In her letter to **Polish** authorities of 22 October 2020 the Commissioner called for the continuity, independence and effectiveness of the Ombudsman institution, referring to the Venice Principles⁷¹.

In her statement on the **Russian Federation**⁷² of 7 December 2020 criticising *inter alia* the use of stigmatising labels such as "foreign agent", the Commissioner, referred to the similar criticism expressed by the Commission⁷³.

Reacting to a controversial disperse of a demonstration in **Belgrade**, Ms Mijatović recalled the Joint Guidelines on freedom of peaceful assembly issued jointly by the Council of Europe Venice Commission and OSCE/ODIHR in 2019⁷⁴.

In addition, in 2020 the office of the HR Commissioner published Reports following her visits to the **Republic of Moldova** (from 9 to 13 March 2020), to **Bulgaria** (from 25 to 29 November 2019) and to **Turkey** (from 1 to 5 July 2019), where she called on the authorities to follow the Commission's recommendations expressed in its respective opinions.

Other Council of Europe organs and departments

Directorate General of Human Rights and Rule of Law (DGI)

Five opinions were prepared in 2020 by the Commission and the Directorate General jointly:

- ▶ **Republic of Moldova** - Joint Opinion of the Venice Commission and the Directorate General

70. [Commissioner's letter to the authorities of San Marino, 8/09/2020](#).

71. [Commissioner's for Human Rights letter to the Minister of Foreign Affairs of Poland, 13/10/2020](#).

72. "Commissioner for Human Rights calls on the State Duma to refrain from adopting legislation which violates the rights of NGOs and civil society activists", [Statement by the Commissioner of 07/12/2020](#).

73. Cf. [CDL-AD\(2014\)025](#) - Opinion on Federal Law n. 121-fz on non-commercial organisations ("law on foreign agents"), on Federal Laws n. 18-fz and n. 147-fz and on Federal Law n. 190-fz on making amendments to the criminal code ("law on treason") of the Russian Federation.

74. "Commissioner calls for effective investigations into cases of police violence in Belgrade", [Statement of 08/07/2020](#).

of Human Rights and Rule of Law (DGI) of the Council of Europe on the draft law on amending and supplementing the constitution with respect to the Superior Council of Magistracy⁷⁵;

- ▶ **Republic of Moldova** - Urgent Joint Opinion of the Venice Commission and the Directorate of Human Rights (DHR) of the Directorate General of Human Rights and Rule of Law (DGI) of the Council of Europe on the draft law on amending the law No. 947/1996 on Superior Council of Magistracy⁷⁶;
- ▶ **Poland** - Joint Urgent Opinion of the Venice Commission and the Directorate General of Human Rights and Rule of Law (DGI) of the Council of Europe on amendments to the Law on the Common courts, the Law on the Supreme court and some other Laws⁷⁷;
- ▶ **Turkey** - Joint Opinion of the Venice Commission and the Directorate General of Human Rights and Rule of Law (DGI) of the Council of Europe on the July 2020 amendments to the attorneys-hip law of 1969⁷⁸;
- ▶ **Ukraine** – Joint Opinion of the Venice Commission and the Directorate General of Human Rights and Rule of Law (DGI) of the Council of Europe on the draft amendments to the Law ‘on the Judiciary and the Status of Judges’ and certain Laws on the activities of the Supreme Court and Judicial Authorities (draft Law no. 3711)⁷⁹.

Ad hoc Committee on Artificial Intelligence (CAHAI)

The Venice Commission participated in the second and third meetings of the Ad Hoc Committee on Artificial Intelligence (CAHAI) (Strasbourg, 6-8 July and 15-17 December 2020). At the latter meeting, a representative of the Commission presented its work on a fundamental rights-compliant use of digital technologies in electoral processes.

The Commission also participated in a meeting of the CAHAI Policy Development Group (PDG) on 21-22 September 2020.

Committee of Experts of the Council of Europe on Media Environment and Reform (MSI-REF)

The Venice Commission participated in the first meeting of the Committee of Experts of the Council of Europe on Media Environment and Reform (MSI-REF) online on 23-24 September 2020.

75. [CDL-AD\(2020\)001](#).
76. [CDL-AD\(2020\)015](#).
77. [CDL-AD\(2020\)017](#).
78. [CDL-AD\(2020\)029](#).
79. [CDL-AD\(2020\)022](#).

The following documents will be prepared for the attention of the Council of Europe member state representatives by this Committee of Experts:

- ▶ draft recommendation by the Committee of Ministers to member States on guiding principles for media and communication governance;
- ▶ draft recommendation by the Committee of Ministers to member States on election communication and media coverage of electoral campaigns;
- ▶ note on regulatory/policy requirements, compatible with freedom of expression and information.

Directorate General for Democracy - DGII

European Committee on Democracy and Governance

Working group on democracy and technology (GT-DT)

The working group has a mandate to do the preparatory work for the study on digital transformation and its impact on democracy and governance and the recommendation/guidelines on new technologies and the different stages of the electoral process in the form of a Committee of Ministers’ recommendation or guidelines. The Commission participated in the meetings of the Working group on 27-28 January and 22-23 October 2020. Two members of the Commission presented the draft Principles for a fundamental rights-compliant use of digital technologies in electoral processes, adopted later on by the Commission at its December 2020 plenary session (cf. Chapter IV).

Working group on accountability (GT-RE)

The mandate of this Working group of the European Committee on Democracy and Governance is to prepare a draft a recommendation for the Committee of Ministers on democratic accountability of elected officials and bodies at local and regional level with a view to complementing Recommendation CM/Rec(2019)3 on the supervision of local authorities’ activities and updating previous work in this area. The Commission participated in the meeting of the Working group on 13-14 February 2020 where the “Report on the recall of mayors and local elected representatives” was presented⁸⁰.

Working Group on E-Democracy (GT-ED)

A member of the Commission presented the Commission’s draft Principles on digital technologies in electoral processes to the Working Group on E-Democracy (GT-ED) on 22 October 2020.

80. [CDL-AD\(2019\)011rev](#).

Ad Hoc Group of experts on ensuring effective access of athletes to justice and fair trial (T-DO HR)

The T-DO Monitoring Group established an Ad Hoc Group of experts on ensuring effective access of athletes to justice and fair trial (T-DO HR) in May 2019. The T-DO HR completed drafting the General principles of fair procedure applicable to anti-doping proceedings in sport (“the Principles”) in June 2020. The Chair of the Scientific Council of the Venice Commission Mr Jan Erik Helgesen participated in the work of the Ad Hoc group in 2020.

2. European Union

In 2020, the co-operation between the Venice Commission and the European Union further developed, in spite of the pandemic and, therefore, a reduced number of direct exchanges of views. It has become customary for the Venice Commission to provide input to the on-going EU efforts to support reforms in member and candidate states as well as neighbourhood states. The European Union systematically invited these countries to follow the Venice Commission’s recommendations. The Venice Commission was equally involved in consultations with the EU bodies on transnational topics concerning EU policies. In 2020 the Venice Commission continued to rely on the financial support from the EU for the implementation of its activities through the Joint EU-Council of Europe programmes.

The reference to the *acquis*/soft law of the Venice Commission became practically systematic in the respective EU documents. In 2020 for the first time the European Parliament requested an opinion of the Venice Commission. The first Annual Report on the Rule of Law situation issued by the European Commission in 2020 names the Venice Commission as the stakeholder in identifying rule of law challenges and helping Member states to find solutions.

Council of the European Union / European Council

In the Council Conclusions on EU priorities for cooperation with the Council of Europe 2020-2022 as approved by the Council (Foreign Affairs) on 13 July 2020, it states:

*“24. The EU benefits greatly from the **Venice Commission’s expertise on democracy through law**, not least in its external action, where the EU relies on the know-how of the Venice Commission to help improve constitutional standards and electoral law. The Venice Commission also assists in judicial, governance and other reform processes, in particular in the candidate countries and potential candidates and in the European Neighbourhood Policy (ENP)*

countries. EU seeks strengthened cooperation with the Venice Commission and its Secretariat, for example in fostering electoral reforms based on EU EOM recommendations in regions such as Latin America and North Africa.”⁸¹

On 27 March 2020 the EU High Representative for Foreign Affairs and Security Policy /Vice President of the Commission (further: HR/VP), Mr Josep Borrell, on behalf of the Council of the EU urged the authorities of the **Russian Federation** to review current legislation on so-called “undesirable organisations” in order to bring it in line with the relevant Venice Commission opinions⁸².

On 28 January 2020 the Council of the EU in the Joint press statement following the 6th Association Council meeting between the EU and **Ukraine**, the Association Council encouraged Ukraine to implement the recommendations of the Venice Commission as regards the law on state language⁸³.

European Parliament

The co-operation between the Commissions and various Committees of the Parliament continued to intensify in 2020.

First request for an opinion from the European Parliament

On 1 July 2020, the President of the European Parliament, Mr David Sassoli, requested a report from the Venice Commission on the measures taken in the EU Member states as a result of the COVID-19 crisis and their impact on democracy, the rule of law and fundamental rights. This was the first request made by the European Parliament to the Venice Commission. The request resulted from the support provided by the Conference of Presidents of the European Parliament to the proposal made by the Committee on Civil Liberties, Justice and Home Affairs (LIBE) to seek a comparative report from the Venice Commission on the situation in EU Member states regarding measures taken during the COVID-19 crisis and to identify good and bad practices. (cf. Chapter II.)

The President of the Venice Commission Mr Gianni Buquicchio participated in an online meeting between the Interparliamentary Committee and national parliaments on the “First Annual Rule of Law Report by the Commission and the role of national parliaments”, organised by the European Parliament on 10 November 2020. The President presented the Venice

81. [Council Conclusions on EU priorities for cooperation with the Council of Europe 2020-2022.](#)

82. [“Russia: Declaration by the High Representative on behalf of the EU on listing the European Endowment for Democracy as an “undesirable organisation”.](#)

83. [Joint press statement following the 6th Association Council meeting between the EU and Ukraine.](#)



European Parliament - online Interparliamentary Committee Meeting on the “First Annual Rule of Law Report by the Commission and the role of national Parliaments”; 10 November 2020

Commission’s Interim Report on the measures taken in the European Union member states as a result of the COVID-19 crisis and their impact on democracy, the rule of law and fundamental rights, adopted by the Commission at its October 2020 plenary session.

References to the Venice Commission texts

The Rule of Law Checklist of the Commission is referred to by the European Parliament in its Resolution of 7 October 2020 on the establishment of an **EU Mechanism** on Democracy, the Rule of Law and Fundamental Rights⁸⁴.

On 15 October 2020, EP LIBE Committee held a discussion on the **impact of COVID-19 measures on democracy, fundamental rights and rule of law**. The draft resolution refers extensively to the Council of Europe standards, including the texts by the Venice Commission, namely; the Compilation of Venice Commission Opinions and Reports on States of Emergency, the Report on “Respect for Democracy, Human Rights and Rule of Law during States of Emergency, Reflections”, the Observatory of situations of emergency in Venice Commission member States, as well as the 2011 Report on the Rule of Law and the 2016 Checklist of the Rule of Law.

On 10 September 2020 the EP LIBE Committee held a hearing on the “State of Play of the Co-operation and Verification Mechanism” delivered by Vice President of the Commission Ms V. Jourová; the implementation of the Venice Commission’s recent recommendations by **Bulgaria** was discussed. The 2019 Opinion on **Bulgaria** (on the draft constitutional amendments) was discussed at that hearing in the presence of the authorities and resulted in the 2020 opinion request on the draft constitution by the latter. On 8 October 2020 the EP adopted the Resolution on the rule of law and fundamental rights in **Bulgaria**⁸⁵ which

contains numerous references to the Opinions of the Commission on Bulgaria concerning the draft constitutional reform, the independence of the judiciary and the electoral legislation.

The Interim report on the proposal for a Council decision on the determination of a clear risk of a serious breach by the Republic of **Poland** of the rule of law⁸⁶ by the EP Committee on Civil Liberties, Justice and Home Affairs (LIBE Committee) dated 20 July 2020, contains numerous references to the Urgent Joint Opinion of 16 January 2020 as well as to the Code of Good Practice in Electoral Matters, to the Report on Respect for Democracy Human Rights and Rule of Law during States of Emergency – Reflections, and other opinions concerning Poland. Debating on the rule of law and situation of the LGBTI persons in Poland on 14 September 2020 the European Parliament referred to the Venice Commission’s Code of Good Practice in Electoral Matters, the Urgent Joint Opinion of 16 January 2020 on Judiciary and to the Opinion on the Act on the Public Prosecutor’s office.

In 2020 the European Parliament also adopted other texts where it referred to the Venice Commission’s work:

- ▶ Resolution of 20 October 2020 on the implementation of the EU Association Agreement with the Republic of **Moldova** (2019/2201(INI));
- ▶ Resolution of 25 November 2020 on the foreign policy consequences of the **COVID-19** outbreak (2020/2111(INI));
- ▶ Report on stocktaking of European elections, 06 November 2020⁸⁷

Exchanges of view

The President of the Venice Commission Mr Gianni Buquicchio addressed the EP Delegation to the

84. [2020/2072\(INI\)](#).
85. [2020/2793\(RSP\)](#).

86. [A9-0138/2020](#).
87. [A9-0211/2020](#).

EU-Turkey Joint Parliamentary Committee at its meeting online on 17 December 2020 on “Rule of Law, judiciary and fundamental rights in Turkey”. He exchanged views with the EU Delegation on recent opinions issued by the Commission on Turkey.

European Commission

Reference to the Venice Commission's *acquis*/work has become practically systematic in the relevant documents of the European Commission. The European Commission services relied on the concrete, consistent and constructive contribution of the Venice Commission in the assessment of complex reform processes in member countries as well as in candidate and potential candidate countries. The monitoring undertaken under the European Rule of Law Mechanism by the European Commission takes into account the expertise of the Venice Commission's in the area, notably its Rule of Law Checklist, which is used to identify specific risks and weaknesses in the member states. The Commission's opinions were instrumental in the EU rule of law proceedings initiated against Poland and Hungary according to Article 7 of the TEU.

In 2020 representatives of the European External Action Service and Legal Service – CFSP and External relations Team participated in the meetings of the Council for Democratic Elections and in the October and December 2020 plenary sessions held online.

2020 Rule of law report: the rule of law situation in the European Union

On 30 September 2020 the European Commission published the first EU-wide report on the rule of law⁸⁸. The report is part of the new annual rule of law cycle – the Rule of Law Mechanism. The Report names the Venice Commission as an important stakeholder in identifying rule of law challenges and helping member states to find solutions.

The report contains references to the Venice Commission's 2020 document entitled “Respect for democracy, human rights and the rule of law during states of emergency – reflections”⁸⁹ and to the Rule of Law Checklist. The European Parliament request for an opinion on the measures taken in member states and their impact on democracy, the rule of law and fundamental rights⁹⁰ is also mentioned in the report. Furthermore, references to the Venice Commission opinions on Bulgaria, Malta and Poland are made.

88. [2020 Rule of Law Report: the rule of law situation in the European Union](#), Brussels, 30.09.2020, COM(2020) 580 final.

89. [CDL-PI\(2020\)005rev](#).

90. Cf. Chapter II: Interim Report on the measures taken in the EU member States as a result of the COVID-19 crisis and their impact on democracy, the Rule of Law and Fundamental Rights, [CDL-AD\(2020\)018](#).

Prior to the publication of the report, at the webinar entitled “The relevance of safeguarding the rule of law for the future of Europe” organised by the Centre for European Policy Studies (CEPS) on 08 April 2020, Commissioner for Justice Mr Didier Reynders referred to the Venice Commission as a relevant source for the first annual report on the Rule of Law in EU.

Other references to the Venice Commission's work

On 4 September 2020, the EU Delegation to the Council of Europe organised a well-attended online public event for the launch of the new EU priorities for the cooperation with the Council of Europe 2020-2022. In her opening remarks, EU Ambassador to the Council of Europe, Ms Meglena Kuneva, stated that:

“the European Commission relied on the Council of Europe's expertise, notably through the European Court of Human Rights, the Venice Commission, GRECO, the Commissioner for Human right and the Parliamentary Assembly of the Council of Europe (PACE).”

In its Staff Working Document on the Republic of **Albania**⁹¹, the Commission recalled that “the ruling majority publicly committed to follow up on the guidance of the Venice Commission” regarding property rights legislation⁹², freedom of expression⁹³; and referred to the opinions on the appointment of judges to the Constitutional Court⁹⁴, and on the scope of the power of the President to set the dates of elections⁹⁵.

In their Joint statement on the holding of local elections in Mostar of 21 December 2020, HR/VP Mr Josep Borrell, and the Commissioner for Neighbourhood and Enlargement, Mr Olivér Várhelyi, called on the authorities of **Bosnia and Herzegovina** to implement *inter alia* relevant Venice Commission recommendations, ensure the transparency of political party financing, and start addressing the Sejdić-Finci case law of the European Court of Human Rights⁹⁶.

On 29 September 2020 HR/VP Mr Josep Borrell met in Brussels with the Prime Minister of **Georgia**, Mr Giorgi Gakharia, where he called on Georgia to take on board the recommendations of the Venice Commission

91. [SWD\(2020\) 354 final](#).

92. Albania - Opinion on the draft law on the finalisation of transitional ownership processes, [CDL-AD\(2019\)023](#).

93. Albania - Opinion on draft amendments to the Law n°97/2013 on the Audiovisual Media Service, [CDL-AD\(2020\)013](#).

94. Albania - Opinion on the appointment of judges to the Constitutional Court, [CDL-AD\(2020\)010](#).

95. Albania - Opinion on the powers of the President to set the dates of elections, [CDL-AD\(2019\)019](#).

96. Cf. Venice Commission's Amicus Curiae Brief in the cases of Sejdić and Finci v. Bosnia and Herzegovina (Applications no. 27996/06 and 34836/06) pending before the European Court of Human Rights, [CDL-AD\(2008\)027](#).

as regards the selection process of Supreme Court judges⁹⁷.

*Vice-President of the European Commission, Ms Věra Jourová, at the European Parliament plenary debate on the rule of law in **Malta** on 17 December 2020⁹⁸, strongly encouraged Malta to properly consult the Venice Commission and to fully comply with the recommendations expressed in its Opinion of December 2018.*

On 23 September 2020, the European Union and the Republic of **Moldova** held by videoconference the eleventh round of their annual Human Rights Dialogue⁹⁹. On this occasion, the EU called on Moldova to “fully address the outstanding recommendations of the Venice Commission and OSCE/ODIHR and to adopt without further delay the corresponding changes in the electoral legislation after an inclusive and consultative process”.

In its 2020 Report on **North Macedonia**¹⁰⁰, the Commission referred to the recommendations of the Venice Commission expressed in its opinions concerning judiciary, elections and protection of minorities.

*HR/VP Josep Borrell in his Declaration of 27 March 2020 on behalf of the EU on listing the European Endowment for Democracy as an “undesirable organisation”¹⁰¹ in the **Russian Federation**, urged the Russian authorities to “review current legislation in order to bring it in line with its own commitments under European and international human rights law including the relevant Venice Commission opinions”.*

*The “2020 Association Implementation Report for **Ukraine**”¹⁰² contains references to the Opinions of 2019 and 2020 on Ukraine concerning the legislation on judiciary and on education.*

The European Commission reacted publicly to other Venice Commission’s opinions adopted recently, namely on Moldova, Russia and Turkey. Below are some examples:

- ▶ Republic of **Moldova**: Statement on the upcoming presidential elections - [30/09/2020](#)
- ▶ **Russia**: Statement on the nationwide voting on constitutional amendments - [02/07/2020](#)
- ▶ **Turkey**: Statement on the latest developments on local democracy - [18/05/2020](#)

97. Meeting between High Representative/Vice-President Josep Borrell and Prime Minister Giorgi Gakharia, Brussels, [30/09/2020](#); see also **Georgia**: Statement by the Spokesperson on the selection process of Supreme Court judges - [05/10/2020](#).

98. [Speech of Vice-President Jourová on the Rule of Law in Malta at the European Parliament plenary debate, 17/12/2020.](#)

99. [EU-Moldova Human Rights Dialogue, Brussels, 23/09/2020.](#)

100. [SWD\(2020\) 351 final.](#)

101. [Russia: Declaration by the High Representative on behalf of the EU, 27 March 2020.](#)

102. [2020 Association Implementation Report for Ukraine, 1 December 2020.](#)

Joint European Union – Council of Europe Projects

Thanks to generous contributions from the European Union, the Commission was able to intensify its activities in Central Asia in the Framework of the Joint Programme for the Eastern Neighbourhood and continue its activities in the Southern Neighbourhood in the framework of South Programme IV. The EU is also supporting specific Venice Commission activities in Latin America.

In 2020, the Venice Commission continued its co-operation with several countries within the framework of the following joint projects:

- ▶ “Ensuring sustainable democratic governance and human rights in the Southern Mediterranean” (a segment of the South Programme IV);
- ▶ “Promote efficient functioning of state institutions and public administration in Central Asia”;
- ▶ “Support to reforms of electoral legislation and practice and regional human rights instruments and mechanisms in countries of Latin America, Central Asia and Mongolia”.

“Ensuring sustainable democratic governance and human rights in the Southern Mediterranean” (a segment of the South Programme IV)

Launched in 2012, and re-conducted in 2015, 2017 and 2019, 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.

In 2020 the Venice Commission actively co-operated with the countries of the Southern Mediterranean on issues related to democratic governance and human rights. As in previous years the UniDem Med Campus seminars provided an opportunity for representatives of public administrations of Algeria, Egypt, Jordan, Lebanon, Morocco, Palestine and Tunisia to exchange on issues of enhancing the capacity of national administrations to refer to and use the international standards.

For more information on these activities please refer to Chapter V.

“Promote efficient functioning of state institutions and public administration in Central Asia”

The project is implemented by the Venice Commission in the framework of the Joint EU/Council of Europe Central Asia Rule of Law Programme which aims to reinforce human rights, rule of law and democracy in Central Asian partner countries in accordance with European and other international standards by offering assistance to reform processes, based on a demand-driven approach. The Programme is open to all Central Asian countries wishing to benefit from the Council of Europe expertise and meeting the conditions for co-operation.

In 2020 project activities were successfully implemented against the backdrop of an unprecedented sanitary crisis. As a mitigation measure, contacts with national authorities have been pursued through e-mail exchanges and online events and some activities were postponed for 2021.

On 27 August 2020, the President of the Venice Commission delivered an opening speech at the IV Congress of the Association of Asian Constitutional Courts and Equivalent Institutions (AACC), which was organised in an online format. Kazakhstan holds the presidency of the Association in 2020.

Following the exchanges with the High Judicial Council of Kazakhstan, its Chairman Mr Donakov invited the Venice Commission to participate in a round table on the issue of appointment of judges of administrative courts. The international roundtable entitled «Modern digital and Human Resources technologies in the selection of candidates for judges, assessment of work and promotion of judges», took place on 25th November 2020.

In September 2020 the President of the Venice Commission, made a video address on the state of cooperation between the Commission and Uzbekistan since 2011 and presented possible cooperation in the framework of the Central Asia Rule of Law programme. The video was broadcasted on national TV channels.

The Venice Commission has closely followed the rapidly changing political situation in the country. Following the postponement of the 2020 parliamentary elections in the Kyrgyz Republic motivated by a constitutional reform, the Commission received on 4th of November 2020 a request from the Constitutional Chamber of the Supreme Court of Kyrgyzstan for an urgent joint amicus curiae brief on this issue.

For more information on these activities please refer to Chapter V.

“Support to reforms of electoral legislation and practice and regional human rights instruments and mechanisms in countries of Latin America, Central Asia and Mongolia”

The project started in May 2019 with funding provided by the European Union and the Council of Europe. The overall objective of this project is to support the national authorities of Latin American and Central Asian countries in their endeavours to improve electoral system and practice, to conduct legislative and constitutional reforms and to promote rule of law and human rights mechanisms in line with applicable European and international standards.

In 2020 the Project enabled the preparation of the joint opinion of the OSCE/ODIHR and the Venice Commission on draft laws related to sanctions for violation of electoral legislation in Kyrgyzstan, which was adopted at the 122nd plenary session of the Commission on 20 March 2020. The Joint opinion pointed out that the reviewed draft amendments to the Criminal Code, the Code on Minor Offenses, the Code on Infractions, and the Code of Administrative Procedure with respect to electoral offences lacked, in some cases, legal certainty, or were redundant.

Following the exchanges with the National Electoral Institute of Mexico (INE), two experts and two representatives of the Venice Commission took part at the video conference “Presentation of the reports of the Venice Commission: COVID-19. States of emergency and democratic values. New contribution to the debate” held online on 30 October 2020. During the conference the work and reports of the Venice Commission on emergency situations and the rule of law during the COVID-19 were presented to a large audience in the internet and discussed by representatives from several Latin American countries.

The project allowed the participation of representatives of the electoral commissions of Kazakhstan and Kyrgyzstan in the 17th European EMB conference in Strasbourg which took place on 12 November 2020. The activity had to be adapted to a videoconference participation due to COVID-19 travel restrictions.

Other activities

Working group on electoral Information and Communication Technologies (e-ICT)

The opportunities and the risks involved in the use/introduction of new electoral Information and Communication Technologies (e-ICT) has garnered considerable attention in recent years. The challenges posed by the COVID-19 pandemic has heightened interest, with the search under way for technological solutions to some of the difficulties of running elections under conditions of social distancing and lockdown. The Venice Commission cooperated with the EEAS and subscriber organisations of the Declaration of Principles for International Election Observation (DOP) through participation in the Working Groups on electoral technology and on online campaign observation on 20 May, 22 July, and 30 September 2020.

Technical Assistance and Information Exchange instrument

The Venice Commission took part in an EU TAIEX (Technical Assistance and Information Exchange instrument of the European Commission) workshop on political party financing organised by the European Commission in co-operation with Bosnia and Herzegovina Election Commission on 27 January 2020 in Sarajevo. The Venice Commission shared its *acquis* in the area.

European Court of Justice

The Commission's 2017 Opinion on Hungary on the draft law on transparency of organisations receiving support from abroad was confirmed by the Grand Chamber of the European Court of Justice in *Commission v Hungary* (Transparency of associations, C-78/18), delivered on 18 June 2020¹⁰³.

In this judgment the Grand Chamber of the European Court of Justice held that, by imposing obligations of registration, declaration and publication on certain categories of civil society organisations directly or indirectly receiving support from abroad exceeding a certain threshold and providing for the possibility of applying penalties to organisations that do not comply with those obligations, Hungary had introduced discriminatory and unjustified restrictions with regard to both the organisations at issue and the persons granting them such support.

The Court held that the transactions covered by the Transparency Law fell within the scope of the concept of 'movements of capital' in Article 63(1) TFEU and that the law in question constitutes a restrictive measure of a discriminatory nature. The Court also considered that the measures which the law lays down are such as to create a climate of distrust with regard to those associations and foundations receiving support from abroad. The public disclosure of information in relation to persons established in other member states or in third countries which provide financial support to those associations is also such as to deter them from providing such support and constitutes an interference with their right to respect for private and family life.

As to the aim of preventing money laundering and terrorism financing, the Court held that Hungary has not submitted any argument as to establish specifically that there is such a threat. Rather, the Transparency Law is founded on a presumption made on principle that any financial support of civil organisations that is sent from abroad is intrinsically suspect. The measures provided for by the Transparency Law limited the right to freedom of association, as they rendered

103. Cf. Opinion of Advocate General Campos Sánchez-Bordona delivered on 14 January 2020, [ECLI:EU:C:2020:1](#).

significantly more difficult the action and the operation of the associations falling within the scope of that law.

The Court observed that the provisions of the Transparency Law could not be justified by any of the objectives of general interest which Hungary relied upon¹⁰⁴.

The Commission's 2017 Opinion on the amendments to the Law on National Higher Education of Hungary was confirmed in substance (without citing) by the CJEU in its judgment *Commission v Hungary* (Case C-66/18) of 6 October 2020¹⁰⁵. Upon appeal by the European Commission, the Court decided that the legislation was in breach of the General Agreement on Trade in Services (GATS) of the WTO, and that it was incompatible with the provisions of the EU Charter of Fundamental Rights on academic freedom, the freedom to found higher education institutions, and the freedom to conduct a business, and also contrary to the EU legislation on free movement of services and the freedom of establishment. According to the Court the contested legislation jeopardized the normal functioning of the foreign universities and put academic freedom at risk.

In addition, the judgment of the Court (Grand Chamber) of 16 July 2020 "*Data Protection Commissioner v Facebook Ireland Limited and Maximillian Schrems*" (Case C-311/18)¹⁰⁶ referred to the Venice Commission's Report of 2015 on the democratic oversight of signals intelligence agencies¹⁰⁷.

2.5. European Committee of the Regions

In its Opinion "Strengthening the rule of law within the Union – A blueprint for action" (February 2020)¹⁰⁸, the European Committee of the Regions expressed its support to the European Commission's proposal to create an annual monitoring system covering all member states, with objective and transparent parameters for monitoring. The Committee listed the Venice Commission's Rule of Law Checklist as major source for these parameters along with the case law of the Court of Justice, the EU Justice Scoreboard models, and, more generally, the experience gained by the bodies of the Council of Europe.

104. [Text of the judgment of the ECJ](#).

105. *Commission v Hungary* (Case C-66/18) - ECJ judgment of 6 October 2020 – [Press release](#).

106. Opinion of Advocate General Saugmandsgaard Øe delivered on 19 December 2019, [ECLI:EU:C:2019:1145](#)

107. CDL-AD(2015)011.

108. Cf. "Follow-up Provided by the European Commission to the Opinions of the European Committee of the Regions - Plenary session of February 2020 - 90th Report, [Ref. Ares\(2020\)3005555 - 10/06/2020](#).

OSCE

In 2020 the Commission continued its co-operation with the OSCE in the field of elections and political parties and the protection of fundamental rights.

OSCE/ODIHR

The Commission appreciates its long-standing co-operation with the OSCE/ODIHR. Joint co-operation started in the electoral field in the early 1990s when ODIHR was established. This co-operation was and still is primarily motivated by the need to avoid forum shopping on the one hand and speaking with one voice on the other hand. Since then, the ODIHR and the Venice Commission have employed their shared expertise to prepare joint legal opinions: since 2002 - joint elections-related legal reviews and from 2005 onwards - in other areas, such as freedom of assembly and association and political party regulations and freedom of religion.

As customary, in 2020 OSCE/ODIHR representatives participated in the plenary sessions of the Commission.

Elections, referendums and political parties

In 2020 the OSCE/ODIHR representatives participated in the online meetings of the Council for Democratic Elections of the Venice Commission held online.

Joint documents

In 2020, the Commission and the OSCE/ODIHR prepared jointly the following opinions in the field of elections:

- ▶ **Albania** – Joint Opinion on the amendments to the Constitution of 30 July 2020 and to the Electoral Code of 5 October 2020 - [CDL-AD\(2020\)036](#);
- ▶ **Armenia** – Joint Opinion of the Venice Commission and OSCE/ODIHR on draft amendments to the legislation concerning political parties - [CDL-AD\(2020\)004](#);
- ▶ **Republic of Moldova** – Urgent Joint Opinion on the draft law no. 263 amending the Electoral Code, the Contravention Code and the Code of Audiovisual Media Services - [CDL-AD\(2020\)027](#);
- ▶ **Montenegro** – Urgent Joint Opinion on the draft law on elections of members of parliament and councillors - [CDL-AD\(2020\)026](#).

In December 2020, the Venice Commission adopted the 2nd edition of the Joint Guidelines of the Venice Commission and OSCE/ODIHR on **Political Party Regulation** (cf. Chapter IV).

Participation in events

On 27 April 2020 a videoconference was held between representatives of OSCE/ODIHR and the Venice Commission on the one side, and a delegation of the National Assembly of Armenia on the other side, on the implementation of the 2020 Joint opinion of the Venice Commission and OSCE/ODIHR on draft amendments to the legislation concerning political parties¹⁰⁹.

The representatives of the OSCE/ODIHR participated in the 17th European Conference of Electoral Management Bodies on “Electoral law and electoral administration in Europe - Recurrent challenges and best practices” organised by the Commission online on 12-13 November 2020 (cf. Chapter IV).

Protection of fundamental rights

In 2020 an Opinion of the Venice Commission and OSCE/ODIHR on the draft Law “On freedom of conscience and religious organisations” of **Uzbekistan**¹¹⁰ was prepared by both organisations jointly. For more information please see Chapter II.

The OSCE High Commissioner on National Minorities organised together with the OSCE Parliamentary Assembly and the Speaker of the Parliament of **Moldova** a High-Level Dialogue meeting on issues related to Gagauz autonomy on 29 September 2020. The President of the Commission, Mr Gianni Buquicchio, addressed the participants of the meeting, recalling the Commission’s opinions concerning the Gagauz region of the Republic of Moldova¹¹¹.

United Nations

The cooperation with the United Nations intensified in 2020.

United Nations General Assembly

On 16 December 2020 the United Nations General Assembly adopted the Resolution A/RES/75/186 on “The role of Ombudsman and mediator institutions in the promotion and protection of human rights, good governance and the rule of law”¹¹². The resolution provided strong endorsement of the Principles developed by the Venice Commission on the Protection and Promotion of the Ombudsman Institution – “the Venice Principles”¹¹³. It establishes these principles as the new global standard for the ombudsmen institutions. Throughout 2020 the Venice Commission participated in the elaboration of the text of this Resolution.

109. [CDL-AD\(2020\)004](#).

110. [CDL-AD\(2020\)002](#).

111. [CDL-AD\(2007\)033](#), [CDL-AD\(2002\)020](#), [CDL\(1998\)075](#), [CDL\(1998\)041](#).

112. [Text of the UN Resolution](#).

113. [Text of the Venice Principles](#).



President of the CCJE, Ms Nina Betetto, Deputy Secretary of the Venice Commission, Ms Simona Granata-Menghini, and the Irish member of the Commission, Mr Richard Barrett, at the High-level Meeting of the UN Global Judicial Integrity Network, Doha, Qatar, 25 - 27 February 2020

UN Special Rapporteur on freedom of religion

The Joint opinion of the Venice Commission and OSCE/ODIHR on the draft law "On freedom of conscience and religious organisations" of Uzbekistan¹¹⁴, was prepared in consultation with the UN Special Rapporteur on freedom of religion Mr Ahmed Shaheed.

UN Office of the High Commissioner for Human Rights (OHCHR)

Following the established practice, the Commission regularly contributes to the reports on the human rights situation in the member states requested by the UN Office of the High Commissioner for Human Rights (OHCHR) in view of the regular sessions of the Universal Periodic Review (UPR). In 2020, information on the Commission's opinions on Georgia and Latvia was provided for the 37-38 UPR session.

Representatives of the Venice Commission participated in a videoconference on proposed amendments to legislation on non-commercial organisations (NCOs) organised by the Delegation in Kyrgyz Republic and the Regional Office of the UN High Commissioner for Human Rights in Central Asia in Bishkek on 30 April 2020. Representatives of the authorities, NCOs, national and international experts exchanged views on proposals to change national legislation and introduce new reporting rules for NCOs.

UN Special Rapporteur on the independence of judges and lawyers

Special Rapporteur on the independence of judges and lawyers, Mr Diego García-Sayáni, in his communication

114. [CDL-AD\(2020\)002](#).

on Turkey on 14 September 2020¹¹⁵, referred to the Commission's Opinions on the Amendments to the Constitution Adopted by the Grand National Assembly on 21 January 2017 and to be Submitted to a National Referendum on 16 April 2017¹¹⁶, on the draft law on the High Council for Judges and Prosecutors of Turkey¹¹⁷, and to the Report on judicial appointments¹¹⁸.

Upon request of the UN Special Rapporteur on the independence of judges and lawyers to contribute to his forthcoming report on the impact of the COVID-19 pandemic on the administration of justice, the Venice Commission contributed with a submission detailing its work on the Observatory of the situations of emergency, and informing of the interim Report on the measures taken in the EU member states as a result of the COVID-19 crisis and their impact on democracy, the Rule of Law and Fundamental Rights adopted in October 2020.

UN Global Judicial Integrity Network

Launched in April 2018 in Vienna, the Global Judicial Integrity Network is one of the key results of the efforts of the UNODC Global Programme for the Implementation of the Doha Declaration, which aims to assist member states in implementing key areas of the Doha Declaration adopted at the Thirteenth United Nations Congress on Crime Prevention and Criminal Justice in 2015.

The Deputy Secretary of the Venice Commission, Ms Simona Granata-Menghini, participated in the 2nd High-level Meeting of the UN Global Judicial Integrity Network entitled "Past, Present, Future". The event was

115. [OL TUR 15/2020](#).

116. [CDL-AD\(2017\)005](#).

117. [CDL-AD\(2010\)042](#).

118. [CDL-AD\(2007\)028](#).

organised with the assistance of the United Nations Office on Drugs and Crime and the Constitutional Court of Qatar on 25-27 February 2020 in Doha, Qatar.

United Nations Partnership on the Rights of Persons with Disabilities

The Commission participated in an online event on “Advancing the participation of people with intellectual and psychosocial disabilities in political and public life”, which was a side event of the UN Convention on Social and Political Rights (COSP13), organised online by the UN Partnership on the Rights of Persons with Disabilities on 1 December 2020. (See Chapter IV).

United Nations Development Programme (UNDP)

The Venice Commission, the United Nations Development Programme (UNDP) and the Independent High Electoral Commission of Mauritania co-organised the 4th General Assembly of Arab Electoral Management Bodies (Arab EMB). The Assembly which took place in Nouakchott, Mauritania, from 4 to 6 March 2020, was followed by an international conference on the role of media in elections. In addition, on 20 May 2020 representatives of the Venice Commission participated in a meeting organised by the Organisation of Arab EMBs on the impact of COVID-19 on electoral process. (cf. Chapter V).

Co-operation with other international organisations

Associations of Constitutional Courts

In 2019, 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 Francophone Constitutional Courts (ACCF);
- ▶ Association of Constitutional Justice of the Countries of the Baltic and Black Sea Regions (BBCJ);
- ▶ Conference of the Constitutional Control Organs of the Countries of New Democracy (CCOCND) / Eurasian Association of Constitutional Review Bodies (EACRB);
- ▶ Conference of Constitutional Jurisdictions of Africa (CCJA);
- ▶ Conference of European Constitutional Courts (CECC);
- ▶ Ibero-American Conference of Constitutional Justice (CIJC);

- ▶ Conference of Constitutional Courts of Portuguese Speaking Countries (CJCLP);
- ▶ Southern African Chief Justices Forum (SACJF);
- ▶ Union of Arab Constitutional Courts and Councils (UACCC).

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

Arab Electoral Management Bodies (Arab EMBs)

The Organisation of Electoral Management Bodies (EMBs) of Arab countries, assisted by the UN Development Programme’s Regional Electoral Support Project (UNDP), the National Independent Election Commission of Mauritania and the Venice Commission, organised the 4th General Assembly of Arab EMBs and the international conference on the role of media in elections. Nouakchott, Mauritania from 4 to 6 March 2020. The conference gave the EMBs from Arab countries an opportunity to exchange views on international principles and standards in the field of media coverage of elections and identify key challenges facing Arab EMBs and other authorities in charge of organising elections.

On 20 May 2020 representatives of the Venice Commission participated in a meeting organised by the Organisation of Arab EMBs on the impact of COVID-19 on electoral process. (cf. Chapter V).

Association of European Election Officials (ACEEEO)

The Commission participated in 29th ACEEEO Annual Conference - Elections and Communications - The role of Electoral Management Bodies in conducting and facilitating effective communication¹¹⁹ – organised online by the Central Electoral Commission of Georgia on 10 September 2020. A member of the Commission shared the information on the work of the Venice Commission on digital technologies and elections.

International Commission of Jurists (ICJ)

The International Bar Association’s Human Rights Institute (IBAHRI), the International Commission of Jurists (ICJ) and the Centre for Civil and Political Rights (CCPR Centre) in its Joint Expert Opinion examined the conformity of the Draft Law “On the Procedure of Organising and Holding Peaceful Assemblies in the Republic of **Kazakhstan**” - which was under consideration before the Senate of Kazakhstan - with Kazakhstan’s international human rights obligations. In this document the ICJ referred to the Commission’s Joint Guidelines on Peaceful Assembly, and invited the

119. [More information on the Conference.](#)

Kazakh authorities to seek guidance on the matter from the Venice Commission.¹²⁰

In their statement of 5 February 2020¹²¹ the ICJ Commissioners and Honorary Members of the ICJ denounced “the rapidly escalating rule of law crisis in **Poland**, after a new law was passed that would result in harassment of judges upholding the independence of the judiciary”. They referred to the Opinion of the Venice Commission on Poland.

International Foundation for Election Systems (IFES)

The International Foundation for Election Systems (IFES) organised a series of webinars on “Election administration in Europe during a pandemic”. On 24 September 2020, the Venice Commission participated in the fourth online session on “How to build a democracy designed for all? Promoting access and inclusion of people with disabilities”. In 2020 a representative of IFES participated in the meetings of the Council for Democratic Elections.

International IDEA – International Institute for Democracy and Electoral Assistance

In 2020 the Commission’s representatives took part in a series of webinars organised by IDEA in relation with the COVID-19 crisis, on the following issues:

- ▶ special voting arrangements (10 June);
- ▶ online political advertising and microtargeting (18 June);
- ▶ postal voting (27 October);
- ▶ early voting (3 November);
- ▶ mobile voting (17 November).

The three latter activities were co-organised by the ACEEEO.

International Ombudsman Institute (IOI)

Throughout 2020 the IOI and the Venice Commission participated in the elaboration of the text of the UNGA Resolution on the ombudsman institution (cf. above).

Global Network on Electoral Justice

On 9 September 2020 representatives of the Venice Commission participated in the Third Webinar of the Global Network on Electoral Justice entitled “Digital Electoral Justice and COVID-19: Challenges, Opportunities, and Implications of Incorporating New Technologies”.

120. [Joint Expert Opinion.](#)

121. [ICJ statement of 5 February 2020.](#)



The Secretary General of the Organisation of American States (OAS), Mr Luis Almagro, and the President of the Venice Commission, Mr Gianni Buquicchio, signing a cooperation agreement in Washington DC and in Strasbourg, June 2020

National Electoral Institute of Mexico (INE)

In 2020 the Venice Commission further developed its co-operation with the National Electoral Institute of Mexico. The two institutions have been co-operating since 2005 successfully promoting international standards and best practices in the field of electoral legislation and practice. Due to COVID-19 restrictions different exchanges of views and activities were organised in the form of videoconferences. (Cf. Chapter V).

Organisation of American States (OAS)

The Secretary General of the Organisation of American States (OAS) Mr Luis Almagro and the President of the Venice Commission Mr Gianni Buquicchio signed a co-operation agreement in Washington DC, on 6 June 2020, and in Strasbourg on 9 June 2020, respectively. This agreement implements the Memorandum of Understanding between the Council of Europe and the OAS in the field of competences of the Venice Commission. It will allow for further developing the successful co-operation between the two organisations in 2021.

APPENDIX I

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.¹²² The Commission holds four plenary sessions a year in Venice. In 2002, once all Council of Europe member states had joined, the Commission became an enlarged agreement, opening its doors to non-European states, which could then become full members. In 2020, it had 62 full members and 13 other entities formally associated with its work. The Commission 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.

Assistance to member-states in constitutional and legislative reforms

The Commission's prime function is to provide **constitutional assistance** to states, mainly (but not exclusively) to those which participate in its activities.¹²³ This assistance comes in the form of opinions, prepared by the Commission at the request of states and of organs of the Council of Europe, more specifically the

Parliamentary Assembly, the Committee of Ministers, the Congress of Local and Regional Authorities and the 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 made crucial contributions to the development 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 of the compatibility of laws and constitutional provisions 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 a 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, sometimes with the assistance of external experts. It is common practice for the working group to travel to the country concerned in order to hold meetings and discussions on the issue(s) concerned with the national authorities, other relevant bodies and 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 their 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 prefers to acquire an understanding of the aims

122. 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.

123. 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.

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 to function successfully. 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 in question has been adopted.

The Commission has also played, and continues to play, an important role in the interpretation and development of constitutional law in countries which have experienced, are experiencing or run the risk of ethnic/political conflicts. In this role, it provides 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 Venice Commission opinions on specific countries cover a wide range of topics. The Commission is often invited to examine the system **of checks and balances**, and the relations amongst different branches of power, and the **territorial organisation** of the states. In the past years it gave advice on comprehensive constitutional reforms in several countries, which changed the way how democratic institutions are formed and function. Some of its opinions touch upon matters of **public international law**. Another area where the advice of the Venice Commission is sought are constitutional and legal provisions on **fundamental rights and freedoms**, in particular the freedom of speech, the freedom of assembly and the freedom of religion. The Commission is often confronted with the legislation on national minorities and minority languages, on anti-discrimination, on the powers of law-enforcement and security services. In addition to examining substantive provisions governing fundamental rights issue, the Commission also deals with regulatory bodies in this field, their composition, powers and procedures. Organisation of the bodies of the **constitutional justice** and their functioning is at the heart of some of the opinions of the Commission. **Ordinary courts** have become a subject of growing importance for the Commission. The latter is increasingly asked to give an opinion on constitutional aspects of legislation relating to those courts. In this area, it frequently co-operates with other Council of Europe departments, to ensure that the constitutional law viewpoint is supplemented by other aspects. The Commission also co-operates with

ombudspersons. The Commission promotes relations between ombudspersons and constitutional courts with the aim of furthering human rights protection in member countries. In 2019 the Commission adopted the Principles on the protection and promotion of the ombudsman institutions – the so-called “the Venice Principles” which were endorsed by all three Statutory organs of the Council of Europe. In 2020 UN General Assembly established these principles as the “new global standard” for the ombudsmen institutions.

In the past three decades, the Venice Commission has examined the constitutional and legal framework of **emergency powers** in many countries. It has also prepared several general reports on this topic. In its Rule of Law Checklist, the Venice Commission elaborated specific benchmarks for the exceptions to the principle of legality in the emergency situations. In 2020 the Commission summarised its work in this topical field in a compilation of its reports and opinions and issued a report on the “Respect for Democracy Human Rights and Rule of Law during States of Emergency – Reflections”.

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 in 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 body is made up of members of the Commission and liaison officers appointed by participating courts in the Commission's member, associate and observer states, by the European Court of Human Rights, the Court of Justice of the European Union 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 Francophone Constitutional Courts, the Southern African Chief Justices' Forum, the Eurasian Association of Constitutional Review Bodies, 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.

This 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 themselves 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 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. The Venice Commission acts as the secretariat for the World Conference. At the Third Congress, which was 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. At the Fourth Congress, which was co-organised with the Constitutional Court of Lithuania in Vilnius on 11-14 September 2017, the topic of “The Rule of Law and Constitutional Justice in the Modern World” was discussed by 91 Courts. The Fifth Congress will be hosted by the Constitutional Court of Indonesia on the topic “Constitutional Justice and Peace” in 2022.

At the end of 2020, 117 constitutional courts and equivalent bodies had joined the World Conference as full members.

Since 1993, the Commission’s constitutional justice activities have also included the publication of the **Bulletin on Constitutional Case-Law**, which has now become electronic, the e-Bulletin, and contains summaries in French and English of the most significant decisions over a four-month period. It also has a counterpart, the **CODICES database**, which contains more than 10,900 decisions rendered by over 100 participating courts together with constitutions and descriptions of many courts and the laws governing them.¹²⁴ 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.

124. CODICES is available online (<http://www.CODICES.coe.int>).

One final area of activity in the constitutional justice sphere is the support provided by the Commission to constitutional and equivalent courts when they come under undue pressure by other state authorities. The Commission has, on several occasions, been able to help courts threatened with dissolution to remain in existence. It should also be pointed out that, in general, by facilitating access to foreign case-law, the e-Bulletin and the CODICES database also help strengthen judicial authority.

Lastly, the Commission holds seminars and conferences in co-operation with constitutional and equivalent courts and makes an Internet forum available exclusively to them – the “Classic Venice Forum” – through which they can speedily exchange information relating to pending cases.

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.

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),¹²⁵ **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, women’s representation

125. 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.

in political systems, preventing the misuse of administrative resources during electoral campaigns as well as digital technologies and elections. 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 as 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 more than 140 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, the 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 17th edition took place in 2020 online), 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 Security and Co-operation in Europe). Thus, in principle, opinions on electoral matters are drafted jointly with the OSCE/ODIHR, with which there is longstanding, regular co-operation.

The Commission also holds scientific **seminars**. In particular, it co-organises with the Permanent Electoral Authority of Romania the Scientific Electoral Experts Debates; the first edition in 2016 dealt with “Electoral Law and New Technologies”, while the second one in 2018 addressed “Equal suffrage”. The third edition is planned to take place in 2021. 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 VOTA¹²⁶ 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*).

126. VOTA is accessible online: <http://www.venice.coe.int/VOTA>.

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 states of emergency, 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. With its Report on the independence of the judicial system (Part I - Independence of judges and Part II - Prosecution Service), the Commission produced a reference text, which it uses in its opinions on specific countries.

The Commission has also elaborated a comprehensive **Rule of Law Checklist** as a tool for assessing the degree of respect for this major standard in any country. Another example of a general report are the **Parameters on the relationship between the parliamentary majority and the opposition**. The Committee of Ministers has endorsed these documents and has called on member states to use and widely disseminate them. The Principles on the protection and promotion of the Ombudsman institution – **the Venice Principles** – is another example of a successful initiative by the Venice Commission in formulating international standards.

These studies may, where 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.¹²⁷

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 Agreement 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

127. See Appendix V.

full-scale co-operation programmes with Central Asia, Southern Mediterranean and Latin America.

The Venice Commission has been working in **Central Asia** for some 15 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. In the framework of these projects, the Venice Commission co-operated with the authorities of Central Asian states on topics such as constitutional justice, reform of the electoral legislation and practice 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 since 2007. In 2020 the Commission started the implementation of a new regional project in Central Asia which will give an opportunity to intensify co-operation in several areas with its partners in the region.

The Commission actively co-operates with countries of the **Southern Mediterranean region**. It established good contacts with Arab countries after it became an enlarged agreement and this farsightedness proved very useful. After the Arab spring the Commission established a close 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 Algeria, Egypt, Jordan, Lebanon 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 the countries of the Maghreb and the Middle East. In 2015 the Commission launched the UniDem-Med programme and assisted in the establishment of the Conference of Arab Election Management Bodies. Since 2019 the Commission is actively involved in the projects of assistance to Tunisia focusing on independent bodies and the reform of the judiciary. The Authorities of Algeria, Egypt, Lebanon and Palestine¹²⁸ actively participated in different multilateral activities organised by the Venice Commission.

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. 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. In recent years the Commission with its partners in Argentina, Bolivia, Brazil, Chile, Mexico and Peru prepared and successfully carried out activities and projects in the above-mentioned fields. In 2019 the Commission co-organised activities in the electoral field in Argentina and Mexico and prepared an opinion on the question of confidence upon request from the Peruvian authorities. The Commission enjoys particularly fruitful co-operation with the Electoral Tribunal of the Judicial Power of the Mexican Federation (*Tribunal electoral del poder judicial de la Federación, TEPJF*) and the Mexican National Electoral Institute (INE). Since 2017 the Venice Commission has been actively co-operating with the Organization of American States (OAS). In 2020 the OAS and the Venice Commission signed a formal cooperation agreement which will solidify further development of the fruitful relations between the two organisations.

128. This designation shall not be construed as recognition of a State of Palestine and is without prejudice to the individual positions of Council of Europe member States on this issue.

VENICE COMMISSION OF THE COUNCIL OF EUROPE

KEY FACTS



ESTABLISHMENT



10 MAY 1990

by **18** 
Council of Europe member States

TO DATE

62 MEMBER STATES

INCLUDING
15 NON
Council of Europe
MEMBERS + **4 observer**
countries and
1 associate
member



CLOSE COOPERATION WITH
EU, OSCE/ODIHR and OAS
3 INTERNATIONAL ORGANISATIONS
PARTICIPATING IN THE WORK OF THE COMMISSION

+ **2** with special cooperation status + **9** countries beneficiaries of cooperation programmes

OVER
1000
OPINIONS AND REPORTS

OVER
100
MAJOR INTERNATIONAL CONFERENCES

TRAINING IN

- human rights
- rule of law
- good governance
- electoral administration and justice

WORLD CONFERENCE ON CONSTITUTIONAL JUSTICE*



*SINCE 2009

COURTS
117
MEMBERS

NUMBER OF JUDGMENTS IN CODICES DATABASE OVER
11,000

EUROPEAN COURT OF HUMAN RIGHTS

references in over
200 JUDGEMENTS AND DECISIONS*

*Since 2001



requests for
7 amicus curiae BRIEFS**

**Since 2005

IN 2020

OPINIONS/REPORTS

The Venice Commission **adopted**

40

TEXTS

8 TEXTS on constitutional issues

concerning
Albania
Armenia
Bulgaria
Iceland
Kyrgyzstan
Republic of Moldova
Russia

12 TEXTS of a general nature

17 OPINIONS on (draft) legislative texts

including **3** AMICUS CURIAE BRIEFS

EVENTS/MEETINGS

It (co)organised

20 MEETINGS



4 ELECTION OBSERVATION MISSIONS



published
3 BULLETINS on Constitutional Case-Law

responded to
17 VENICE FORUM REQUESTS by constitutional courts on the **VENICE FORUM**

CONSTITUTIONAL CASE LAW



NUMBER OF JUDGMENTS ADDED TO CODICES DATABASE

482

WWW.CODICES.COE.INT

APPENDIX II

MEMBER COUNTRIES

Members

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)
Canada (12.06.2019)
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)
North Macedonia (19.02.1996)
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)
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)

Participants

European Commission
OSCE/ODIHR

Special co-operation status

Palestine¹²⁹
South Africa

129. This designation shall not be construed as recognition of a State of Palestine and is without prejudice to the individual positions of Council of Europe member States on this issue.

APPENDIX III

INDIVIDUAL MEMBERS¹³⁰

Albania

- ▶ Mr Sokol BERBERI, Lecturer, Albanian School of Magistrates, Former Judge, Constitutional Court
- ▶ Ms Elira KOKONA (Substitute member), Deputy Secretary General, Council of Ministers of Albania

Algeria

- ▶ Mr M. Kamel FENICHE, President, Constitutional Council
- ▶ Mr Mohamed HABCHI (Substitute member), Vice-President, Constitutional Council
- ▶ Ms Salima MOUSERATI (Substitute member), Member, Constitutional Council

Andorra

- ▶ Mr Pere VILANOVA TRIAS, Professor of Political Science and Public Policy, University of Barcelona

Armenia

- ▶ Mr Gagik G. HARUTYUNYAN, Former President, Constitutional Court, Doctor of Law, Professor
- ▶ Mr Ara KHZMALYAN (Substitute member), Partner, ADWISE Business and Legal Consulting LLC

Austria

- ▶ Mr Christoph GRABENWARTER, President, Constitutional Court of Austria
- ▶ Ms Katharina PABEL (Substitute member), Professor, Vienna University of Economics and Business
- ▶ Mr Andreas HAUER (Substitute member), Judge, Constitutional Court

Azerbaijan

- ▶ Mr Rövşən İSMAYILOV, Judge, Constitutional Court

Belgium

- ▶ Mr Jan VELAERS, Professor, University of Antwerp
- ▶ Mr Jean-Claude SCHOLSEM (Substitute member), Professor Emeritus, University of Liege

Bosnia and Herzegovina

- ▶ Mr Zlatko KNEŽEVIĆ, President, Constitutional Court
- ▶ Mr Nedim ADEMOVIĆ (Substitute member), Lawyer
- ▶ Mr Marko BEVANDA (Substitute member), Assistant Professor, Faculty of law, University of Mostar

Brazil

- ▶ Ms Cármen Lúcia ANTUNES ROCHA, Former President, Federal Supreme Court
- ▶ Mr Gilmar Ferreira MENDES (Substitute member), Justice, Federal Supreme Court

Bulgaria

- ▶ Mr Philip DIMITROV, Vice-President of the Venice Commission, Judge, Constitutional Court
- ▶ Mr Plamen KIROV (Substitute member), Former Judge, Constitutional Court

Canada

- ▶ Mr Warren NEWMAN, Senior General Counsel, Constitutional, Administrative and International Law Section, Department of Justice

¹³⁰. As at 31 December 2020

Chile

- ▶ Mr Gonzalo GARCIA PINO, Judge, Constitutional Tribunal
- ▶ Mr José Ignacio VÁSQUEZ MÁRQUEZ (Substitute member), Judge, Constitutional Tribunal

Costa Rica

- ▶ Mr Fernando CASTILLO VÍQUEZ, President, Constitutional Chamber of the Supreme Court
- ▶ Ms Nancy HERNÁNDEZ LÓPEZ (Substitute member), Magistrate, Full member of the Constitutional Chamber

Croatia

- ▶ Ms Jasna OMEJEC, Professor of Administrative Law, Law Faculty, University of Zagreb
- ▶ Mr Toma GALLI (Substitute member), Director, Directorate of International Law, Ministry of Foreign and European Affairs

Cyprus

- ▶ Mr Myron Michael NICOLATOS, Former President, Supreme Court
- ▶ Mr Yiasemis N. YIASEMI (Substitute member), Judge, Supreme Court

Czech Republic

- ▶ Ms Veronika BÍLKOVÁ, Lecturer, Law Faculty, Charles University
- ▶ Ms Kateřina ŠIMÁČKOVÁ (Substitute member), Judge, Constitutional Court

Denmark

- ▶ Mr Jørgen Steen SØRENSEN, Supreme Court Judge
- ▶ Mr Michael Hansen JENSEN (Substitute member), Professor, University of Aarhus

Estonia

- ▶ Mr Oliver KASK, President, National Election Commission of Estonia
- ▶ Ms Ene ANDRESEN (Substitute member), Counsellor, Supreme Court

Finland

- ▶ Mr Kaarlo TUORI, Professor of Jurisprudence, Department of Public Law, University of Helsinki
- ▶ Ms Palvi HIRVELA (Substitute member) Justice, Supreme Court

France

- ▶ Ms Claire BAZY MALAURIE, Vice-President of the Venice Commission, Member, Constitutional Council, Former member of the Auditors' Board
- ▶ Mr Alain JUPPÉ (Substitute member), Member of the Constitutional Council

Georgia

- ▶ Mr Mindia UGREKHELIDZE, Former judge at the European Court of Human Rights, Professor, Head of the Department for Legal Studies, Caucasus International University
- ▶ Mr Gocha LORDKIPANIDZE (Substitute member) Deputy Minister of Justice

Germany

- ▶ Ms Angelika NUSSBERGER, Former Vice-President, European Court of Human Rights, Professor, University of Cologne, Director, Institute for Eastern European Law
- ▶ Ms Monika HERMANN (Substitute member), Justice, Federal Constitutional Court

Greece

- ▶ Mr Nicos C. ALIVIZATOS, Professor of Constitutional Law, Athens Law School
- ▶ Mr Ioannis KTISTAKIS (Substitute member), Associate Professor of public international Law, Democritus University of Thrace

Hungary

- ▶ Mr András Zs. VARGA, Judge, Constitutional Court, Professor, Pázmány Péter Catholic University Faculty of Law and Political Sciences
- ▶ Mr András MÁZI (Substitute member), Deputy State Secretary for relations with Judicial Professions, Ministry of Justice

Iceland

- ▶ Ms Herdis KJERULF THORGEIRSDÓTTIR, Attorney at Law
- ▶ Mr Thorgeir ÖRLYGSSON (Substitute member), President, Supreme Court
- ▶ Mr Hjortur TORFASON (Substitute member), Former Judge, Supreme Court

Ireland

- ▶ Mr Richard BARRETT, Former Deputy Director General, Office of the Attorney General
- ▶ Ms Grainne McMORROW (Substitute member), Senior Counsel, Professor of Law NUI Galway (Adjunct)

Israel

- ▶ Mr Dan MERIDOR, Lawyer, Former Prime Minister and Minister of Justice
- ▶ Mr Barak MEDINA (Substitute member), Dean, Faculty of Law, The Hebrew University of Jerusalem

Italy

- ▶ Mr Gianni BUQUICCHIO, President of the Venice Commission
- ▶ Ms Marta CARTABIA (Substitute member), Minister of Justice, Former President Constitutional Court
- ▶ Mr Cesare PINELLI (Substitute member), Head of the Public Law Section, Legal Science Department, "La Sapienza" University

Kazakhstan

- ▶ Mr Igor Ivanovich ROGOV, Deputy Executive Director, Nursultan Nazarbayev Foundation
- ▶ Ms Unzila SHAPAK (Substitute member), Member, Constitutional Council

Korea, Republic

- ▶ Mr Suk-Tae LEE, Justice, Constitutional Court
- ▶ Mr Jung-Won KIM (Substitute member), Deputy Secretary General, Constitutional Court
- ▶ Mr Sungkook KANG (Substitute member), Deputy Minister for Legal Affairs, Ministry of Justice

Kosovo

- ▶ Mr Qerim QERIMI, Professor, Law Faculty, University of Pristina
- ▶ Mr Visar MORINA (Substitute member) Lecturer, Law Faculty, University of Pristina

Kyrgyzstan

- ▶ Mr Kanat KEREZBEKOV, Member of Parliament
- ▶ Mr Erkinbek MAMYROV (Substitute member), Judge, Constitutional Chamber of the Supreme Court

Latvia

- ▶ Mr Aldis LAVIŅŠ, Judge, Constitutional Court
- ▶ Mr Artūrs KUČS (Substitute member), Judge, Constitutional Court

Liechtenstein

- ▶ Mr Peter BUSSJÄGER, Judge, Constitutional Court
- ▶ Mr Wilfried HOOP (Substitute member), Partner, Hoop & Hoop

Lithuania

- ▶ Mr Gediminas MESONIS, Law Professor, Mykolas Romeris University
- ▶ Mr Dainius ŽALIMAS (Substitute member) President, Constitutional Court

Luxembourg

- ▶ Ms Lydie ERR, Former Ombudsman
- ▶ Ms Claudia MONTI (Substitute member), Ombudsman

Malta

- ▶ Mr Michael FRENDU, Former Speaker, House of Representatives

Mexico

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

Moldova, Republic of

- ▶ Mr Alexandru TĂNASE, Advisor, Programme “Promotion of the Rule of Law in Central Asia”, Former President, Constitutional Court
- ▶ Mr Nicolae EȘANU (Substitute member), Former Legal Advisor of the Prime Minister

Monaco

- ▶ Mr Bertrand MATHIEU, Professor, Faculty of Law, Sorbonne-Université Paris I, Senior Member of the Council of State, Vice-President of IACL
- ▶ Mr Christophe SOSSO (Substitute member), Defence Lawyer, Court of Appeal

Montenegro

- ▶ Mr Srdjan DARMANOVIĆ, Minister of Foreign Affairs, Professor of Comparative Politics, University of Montenegro
- ▶ Mr Zoran PAZIN (Substitute member), Deputy Prime Minister, Minister of Justice

Morocco

- ▶ Ms Nadia BERNOUSSI, Professor of Constitutional Law, Mohammed VI University
- ▶ Mr Ahmed ESSALMI (Substitute member), Member, Constitutional Court

Netherlands

- ▶ Mr Ben VERMEULEN, Member and Judge, Dutch Council of State, Professor of Education Law, Radboud University Nijmegen
- ▶ Mr Martin KUIJER (Substitute member), Supreme Court Judge

North Macedonia

- ▶ Ms Renata DESKOSKA, Professor of Constitutional Law, University “Ss. Cyril and Methodius”, Law Faculty “Iustinianus Primus”, Former Minister of Justice

Norway

- ▶ Mr Jan Erik HELGESEN, Professor, University of Oslo
- ▶ Mr Eirik HOLMØYVIK (Substitute member), Professor of Law, University of Bergen

Peru

- ▶ Mr José Luis SARDÓN DE TABOADA, Judge, Constitutional Tribunal
- ▶ Mr Eloy ESPINOSA-SALDAÑA BARRERA (Substitute member), Judge, Constitutional Tribunal
- ▶ Mr Carlos RAMOS NÚÑEZ (Substitute member), Judge, Constitutional Tribunal

Poland

- ▶ Mr Marcin WARCHOL, Undersecretary of State, Ministry of Justice
- ▶ Mr Mariusz MUSZYŃSKI (Substitute member), Vice-President, Constitutional Court

Portugal

- ▶ Mr António Henriques GASPAR, Judge Counsellor, Supreme Court of Justice, Former President of the Supreme Court and of the High Judicial Council
- ▶ Mr Paulo PIMENTA (Substitute member), Professor, Universidad Portucalense

Romania

- ▶ Mr Tudorel TOADER, Former Minister of Justice, Former Judge, Constitutional Court
- ▶ Mr Bogdan Lucian AURESCU (Substitute member), Minister of Foreign Affairs, Professor, Faculty of Law, University of Bucharest, Member of the UN International Law Commission

Russia

- ▶ Ms Taliya KHABRIEVA, Academician, Russian Academy of Sciences, Director, Institute for Legislation and Comparative Law
- ▶ Mr Anatoli KOVLER (Substitute member), Head of the Center of Legal Problems of Integration and International Co-operation, Institute for Legislation and Comparative Law, Former judge at the European Court of Human Rights

San Marino

- ▶ Mr Francesco MAIANI, Professor of EU Law, Law Faculty, University of Lausanne
- ▶ Ms Altea ROSSI (Substitute member), Researcher in international law, Geneva Academy of International Humanitarian Law and Human Rights

Serbia

- ▶ Mr Ćedomir BACKOVIĆ, Assistant Minister of Justice
- ▶ Mr Vladan PETROV (Substitute member), Professor, Law Faculty, Belgrade University

Slovakia

- ▶ Ms Jana BARICOVÁ, Judge, Constitutional Court
- ▶ Mr Peter MOLNAR (Substitute member), Judge, Constitutional Court

Slovenia

- ▶ Mr Ernest PETRIČ, Former Judge and President, Constitutional Court, Former Ambassador, Professor (New University), Senior Adviser to the President of the Republic
- ▶ Ms Verica TRSTENJAK (Substitute member), Professor of European Union Law, Former Advocate General, European court of Justice

Spain

- ▶ Mr Josep Maria CASTELLA ANDREU, Professor of Constitutional Law, University of Barcelona
- ▶ Mr Rafael RUBIO NUÑEZ (Substitute member), Professor of Constitutional Law, Complutense University of Madrid
- ▶ Ms Paloma BIGLINO CAMPOS (Substitute member), Full Professor of Constitutional Law, Valladolid University

Sweden

- ▶ Mr Iain CAMERON, Professor, University of Uppsala
- ▶ Mr Johan HIRSCHFELDT (Substitute member), Former President, Svea Court of Appeal

Switzerland

- ▶ Ms Regina KIENER, Vice-President of the Venice Commission, Professor of Constitutional and Administrative Law, University of Zurich
- ▶ Ms Monique JAMETTI GREINER (Substitute member), Judge, Federal Tribunal

Tunisia

- ▶ Mr Ghazi JERIBI, Former Minister of Justice
- ▶ Ms Neila CHAABANE (Substitute member), Dean, Faculty of Legal, Political and Social Sciences of Tunis

Turkey

- ▶ Mr Yavuz ATAR, Professor of Constitutional Law, Ibn Haldun University
- ▶ Ms Melek SARAL (Substitute member), Marie Curie Research Fellow, School of Law, SOAS University of London

Ukraine

- ▶ Mr Serhiy HOLOVATY, Judge, Constitutional Court, Professor of Constitutional Law, Taras Shevchenko National University of Kyiv, President of the Ukrainian Legal Foundation

United Kingdom

- ▶ Mr Timothy OTTY, Barrister at Law
- ▶ Mr Murray HUNT (Substitute member), Director, Bingham Centre for the Rule of Law

United States of America

- ▶ Mr Paolo CAROZZA, Professor of Law and Political Science, University of Notre Dame Law School
- ▶ Mr James P. KELLY III (Substitute member), President, Solidarity Center for Law and Justice

ASSOCIATE MEMBERS

Belarus

- ▶ Ms Natallia A. KARPOVICH, Deputy Chair, Constitutional Court

OBSERVERS

Argentina

- ▶ Mr Alberto Ricardo DALLA VIA, President, National Electoral Chamber
- ▶ Mr José Adrian PEREZ (Substitute observer), Secretary of Political and Institutional Affairs, Ministry of the Interior, Public Works and Housing

Holy See

- ▶ Mr Vincenzo BUONOMO, Rector, Pontifical Lateran University of Rome

Japan

- ▶ Ms Chihiro AKIBA-SAITO, Consul, Consulate General of Japan in Strasbourg, liaison officer, Supreme Court

Uruguay

- ▶ Ms Laura DUPUY LASSERRE, Ambassador, Embassy of Uruguay in the Hague

SPECIAL STATUS

European Union

European Commission

- ▶ Mr Lucio GUSSETTI, Director – Principal Legal Adviser, European Commission - Legal Service - CFSP and External relations Team
- ▶ Ms Mihaela CARPUS CARCEA, Legal Advisor, European Commission - Legal Service CFSP and External relations Team

Committee of the Regions

- ▶ Mr Luc VAN DEN BRANDE, Member, Former President of CIVEX

OSCE

Office for Democratic Institutions and Human Rights

- ▶ Mr Alexander SHLYK, Head of the Elections Department
- ▶ Mr Marcin WALECKI, Head of the Democratisation Department

SPECIAL CO-OPERATION STATUS

Palestine¹³¹

- ▶ Mr Ali ABU DIAK, Minister of Justice

South Africa

- ▶ N. N.

SECRETARIAT

- ▶ Mr Thomas MARKERT, Director, Secretary of the Commission¹³²
- ▶ Ms Simona GRANATA-MENGHINI, Deputy Secretary of the Commission¹³³
- ▶ Mr Pierre GARRONE, Head of the Division on Elections and Referendums
- ▶ Mr Rudolf DÜRR, Head of the Division on Constitutional Justice
- ▶ Ms Silvia GRUNDMANN, Head of the Division on Democratic Institutions and Fundamental Rights
- ▶ Mr Serguei KOUZNETSOV, Head of the Division on Neighbourhood Co-operation
- ▶ Ms Caroline MARTIN, Legal Officer
- ▶ Ms Tanja GERWIEN, Legal Officer
- ▶ Mr Grigory DIKOV, Legal Officer
- ▶ Mr Gaël MARTIN-MICALLEF, Legal Officer
- ▶ Mr Ziya Caga TANYAR, Legal Officer
- ▶ Mr Michael JANSSEN, Legal Officer
- ▶ Ms Svetlana ANISIMOVA, Administrator
- ▶ Ms Martina SILVESTRI, Legal Officer
- ▶ Ms Bozidarka KRUNIC, Legal Officer
- ▶ Ms Sophia WISTEHUBE, Legal Officer
- ▶ Ms Tatiana MYCHELOVA, Public Relations Officer
- ▶ Ms Helen MONKS, Financial Support Officer
- ▶ Mr Hristo HRISTOV, Project Manager
- ▶ Mr Jorge PORTOCARRERO-QUISPE, Project Manager
- ▶ Ms Brigitte AUBRY, Assistant to the Head of the Division on Democratic Institutions and Fundamental Rights
- ▶ Ms Jayne APARICIO, Assistant to the Head of the Division on Constitutional Justice
- ▶ Mrs Vicky LEE, Assistant to the Head of the Division on Elections and Referendums
- ▶ Ms Emily WALKER, Assistant to the Secretary, the Deputy Secretary and the President of the Commission
- ▶ Ms Ana GOREY, Bulletin on Constitutional Case Law and CODICES
- ▶ Ms Isabelle SUDRES, Project Assistant
- ▶ Ms Rosy DI POL, Project Assistant
- ▶ Ms Haifa ADDAD, Project Assistant
- ▶ Ms Viktoria MESHAYKINA, Project Assistant
- ▶ Ms Stella CHIGNAC, Project Assistant
- ▶ Ms Mireille KOPF, Project Assistant
- ▶ Ms Héra BEY BEN MILED, Project Officer, Tunis Office
- ▶ Ms Safa CHERNI, Project Assistant, Tunis Office
- ▶ Mr Serguei TKACHENKO, Project Officer, Kyiv Office
- ▶ Ms Anastasiia DEVOS, Project Assistant, Kyiv Office

131. This designation shall not be construed as recognition of a State of Palestine and is without prejudice to the individual positions of Council of Europe member States on this issue.

132. To 31 August 2020.

133. Acting Director from 1 September 2020 and Director from 1 February 2021.

APPENDIX IV

OFFICES¹³⁴ AND SUB-COMMISSIONS 2020

President:

- ▶ Mr Buquicchio

Honorary Presidents:

- ▶ Mr Peter Paczolay (Hungary)
- ▶ Ms Hanna Suchocka (Poland)

Bureau

- ▶ Vice-Presidents: Ms Bazy Malaurie, Mr Dimitrov, Ms Kiener
- ▶ Members: Ms Bílková, Mr Frendo, Ms Kjerulf-Thorgeirsdottir, Ms Khabrieva

Scientific Council:

- ▶ Chair: Mr Helgesen; Vice-Chair: Mr Atar
- ▶ Members: Mr Buquicchio, Ms Kjerulf Thorgeirsdottir, Ms Bílková, Mr Frendo, Ms Err, Mr Grabenwarter, Mr Jeribi, Mr Kask, Ms Kiener, Mr Tuori, Mr Velaers, Mr Vermeulen, Ms Khabrieva

Council for Democratic Elections:

- ▶ President: Mr Kask
- ▶ Vice-President:

Venice Commission

- ▶ Members: Mr Darmanovic, Ms Otálora Malassis, Mr Vermeulen
(Substitutes: Mr Barrett, Mr Holmøyvik, Ms Pabel, Mr Vilanova Trias)

Parliamentary Assembly

- ▶ Members: Mr Antonio Gutierrez, Mr Piero Fassino, Mr Tiny Kox
(Substitutes: Sir Christopher Chope, Mr Corneliu Mugurel Cozmanziuc, Mr Aleksander Pocij)

Congress of local and regional authorities

- ▶ Members: Mr Jos Wiene, Mr Stewart Dickson
(Substitutes: Ms Rosaleen O'Grady, Mr Vladimir Prebili)

Joint Council on Constitutional Justice:

- ▶ Chair: Mr Alivizatos:
- ▶ Co-Chair (Liaison Officers): Ms Mirjana Stresec
- ▶ Members of the Sub-Commission on Constitutional Justice (see list below) as well as 90 liaison officers from 65 Constitutional Courts or Courts with equivalent jurisdiction

SUB-COMMISSIONS

Constitutional Justice:

- ▶ Chair: Mr Alivizatos; Vice-Chair: Mr Varga:
- ▶ Members: Mr Carozza, Mr Espinosa-Saldaña, Mr Grabenwarter, Mr Harutyunian, Mr Holovaty, Mr Kask, Ms Kjerulf Thorgeirsdottir, Mr Knežević, Ms McMorrow, Ms Omejec, Mr Pazin, Mr Ramos, Ms Saral, Ms Šimáčková

134. From December 2019 to December 2021.

Federal State and Regional State:

- ▶ Chair: Mr Castella Andreu; Vice-Chair: Mr Carozza:
- ▶ Members: Ms Kiener, Mr Maiani, Mr Scholsem, Mr Velaers, Mr Vilanova Trias

International Law:

- ▶ Chair: Mr Cameron; Vice-Chair: Mr Maiani:
- ▶ Members: Mr Aurescu, Ms Bílková, Mr Qerimi, Mr Varga

Protection of Minorities:

- ▶ Chair: Mr Velaers; Vice-Chair: Mr Newman:
- ▶ Members: Mr Aurescu, Mr Habchi, Mr Knežević, Ms McMorrow, Mr Scholsem, Mr Tuori

Fundamental Rights:

- ▶ Chair: Mr Vermeulen; Vice-Chair: Ms Omejec:
- ▶ Members: Mr Aurescu, Mr Barrett, Mr Cameron, Mr Carozza, Mr Dimitrov, Ms Err, Mr Eşanu, Mr Hirschfeldt, Mr Holovaty, Ms Karpovich, Mr Kask, Ms Khabrieva, Ms Kjerulf Thorgeirsdottir, Mr Knežević, Mr Kuijer, Mr Lee, Mr Maiani, Ms McMorrow, Mr Pazin, Mr Qerimi, Mr Ramos, Ms Saral, Mr Toader, Mr Tuori, Mr Velaers

Democratic Institutions:

- ▶ Chair: Mr Tuori; Vice-Chair: Mr Meridor:
- ▶ Members: Mr Cameron, Mr Carozza, Mr Darmanovic, Ms Err, Mr Eşanu, Mr Frenedo, Mr Hirschfeldt, Mr Jensen, Mr Kask, Ms Kiener, Mr Nicolatos, Mr Qerimi, Mr Sardon, Mr Scholsem, Mr Toader, Mr Velaers, Mr Vilanova Trias

Judiciary:

- ▶ Chair: Mr Barrett; Vice-Chair: Mr Knežević:
- ▶ Members: Mr Carozza, Ms Err, Mr Eşanu, Mr Gaspar, Mr Habchi, Mr Hirschfeldt, Mr Holovaty, Mr Kask, Ms Kiener, Mr Kuijer, Mr Lee, Ms McMorrow, Mr Nicolatos, Ms Omejec, Mr Pazin, Mr Qerimi, Ms Šimáčková, Mr Toader, Mr Tuori, Mr Ugrekheldze, Mr Varga, Mr Velaers

Rule of Law:

- ▶ Chair: Mr Holovaty; Vice-Chair: Mr Qerimi:
- ▶ Members: Ms Bílková, Mr Carozza, Mr Gaspar, Mr Helgesen, Mr Kuijer, Mr Maiani, Ms McMorrow, Mr Newman, Mr Nicolatos, Mr Tuori, Mr Ugrekheldze, Mr Vilanova Trias

Working Methods:

- ▶ Chair: Mr Mathieu; Trias: Vice-Chair: Mr Otty:
- ▶ Members: Mr Barrett, Mr Buquicchio, Mr Grabenwarter, Mr Helgesen, Ms Kiener, Ms Kjerulf Thorgeirsdottir, Mr Vilanova Trias

Latin America:

- ▶ Chair: Ms Otálora Malassis; Vice-Chair: Mr Sardon:
- ▶ Members: Ms Antunes Rocha, Ms Biglino, Ms Bílková, Mr Buquicchio, Mr Carozza, Mr Castella Andreu, Mr Darmanovic, Mr Espinosa-Saldaña, Mr Garcia Pino, Ms Hernandez Lopez, Mr Hirschfeldt, Ms Kjerulf Thorgeirsdottir, Mr Kuijer, Ms McMorrow, Mr Mendes, Mr Ramos, Mr Vargaz Valdez

Mediterranean Basin:

- ▶ Chair: Mr Jeribi; Vice-Chair: Mr Feniche:
- ▶ Members: Mr Frenedo, Ms McMorrow

Gender Equality

- ▶ Chair: Ms Err; Vice-Chair: Mr Nicolatos:
- ▶ Members: Ms Chaâbane, Mr Eşanu, Ms McMorrow, Ms Omejec

APPENDIX V

PUBLICATIONS^{135 136}

Series “Science and Technique of Democracy”

- ▶ No. 1 Meeting with the presidents of constitutional courts and other equivalent bodies¹ (1993)
- ▶ No. 2 Models of constitutional jurisdiction² (1993)
- ▶ No. 3 Constitution making as an instrument of democratic transition (1993)
- ▶ No. 4 Transition to a new model of economy and its constitutional reflections (1993)
- ▶ No. 5 The relationship between international and domestic law (1993)
- ▶ No. 6 The relationship between international and domestic law² (1993)
- ▶ No. 7 Rule of law and transition to a market economy¹ (1994)
- ▶ No. 8 Constitutional aspects of the transition to a market economy (1994)
- ▶ No. 9 The protection of minorities (1994)
- ▶ No. 10 The role of the constitutional court in the consolidation of the rule of law (1994)
- ▶ No. 11 The modern concept of confederation (1995)
- ▶ No. 12 Emergency powers² (1995)
- ▶ No. 13 Implementation of constitutional provisions regarding mass media in a pluralist democracy¹ (1995)
- ▶ No. 14 Constitutional justice and democracy by referendum (1996)
- ▶ No. 15 The protection of fundamental rights by the Constitutional Court² (1996)
- ▶ No. 16 Local self-government, territorial integrity and protection of minorities (1997)
- ▶ No. 17 Human Rights and the functioning of the democratic institutions in emergency situations (1997)
- ▶ No. 18 The constitutional heritage of Europe (1997)
- ▶ No. 19 Federal and Regional States² (1997)
- ▶ No. 20 The composition of Constitutional Courts (1997)
- ▶ No. 21 Citizenship and state succession (1998)
- ▶ No. 22 The transformation of the nation-state in Europe at the dawn of the 21st century (1998)
- ▶ No. 23 Consequences of state succession for nationality (1998)
- ▶ No. 24 Law and foreign policy (1998)
- ▶ No. 25 New trends in electoral law in a pan-European context (1999)
- ▶ No. 26 The principle of respect for human dignity in European case-law (1999)
- ▶ No. 27 Federal and regional states in the perspective of European integration (1999)
- ▶ No. 28 The right to a fair trial (2000)
- ▶ No. 29 Societies in conflict: the contribution of law and democracy to conflict resolution¹ (2000)
- ▶ No. 30 European integration and constitutional law (2001)

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

136. Publications marked with:

“1” contain speeches in the original language (English or French);

“2” are also available in Russian;

“3” are only available in English;

“4” are also available in Arabic;

“5” are only available in electronic form;

“6” are also available in Italian;

“7” are also available in Spanish

“8” are also available in Ukrainian

- ▶ No. 31 Constitutional implications of accession to the European Union¹ (2002)
- ▶ No. 32 The protection of national minorities by their kin-State¹ (2002)
- ▶ No. 33 Democracy, rule of law and foreign policy¹ (2003)
- ▶ No. 34 Code of good practice in electoral matters² (2003)
- ▶ No. 35 The resolution of conflicts between the central state and entities with legislative power by the constitutional court¹ (2003)
- ▶ No. 36 Constitutional courts and European integration³ (2004)
- ▶ No. 37 European and U.S. constitutionalism³ (2005)
- ▶ No. 38 State consolidation and national identity³ (2005)
- ▶ No. 39 European standards of electoral law in contemporary constitutionalism (2005)
- ▶ No. 40 Evaluation of fifteen years of constitutional practice in Central and Eastern Europe³ (2005)
- ▶ No. 41 Organisation of elections by an impartial body³ (2006)
- ▶ No. 42 The status of international treaties on human rights³ (2006)
- ▶ No. 43 The preconditions for a democratic election³ (2006)
- ▶ No. 44 Can excessive length of proceedings be remedied?³ (2007)
- ▶ No. 45 The participation of minorities in public life³ (2008)
- ▶ No. 46 The cancellation of election results³ (2010)
- ▶ No. 47 Blasphemy, insult and hatred³ (2010)
- ▶ No. 48 Supervising electoral processes³ (2010)
- ▶ No. 49 Definition of and development of human rights and popular sovereignty in Europe³ (2011)
- ▶ No. 50 10 years of the Code of good practice in electoral matters³ (2013)

Other collections

Collection “Points of view – points of law”

- ▶ Guantanamo – violation of human rights and international law? (2007)
- ▶ The CIA above the laws? Secret detentions and illegal transfers of detainees in Europe (2008)
- ▶ Armed forces and security services: what democratic control? (2009)

Collection “Europeans and their rights “

- ▶ The right to life (2005)
- ▶ Freedom of religion (2007)
- ▶ Child rights in Europe (2008)
- ▶ Freedom of expression (2009)

Bulletin on Constitutional Case-Law

- ▶ 1993-2019 (three issues per year)¹³⁷

Special Bulletins on Constitutional Case-Law

- ▶ Description of Courts (1999)²
- ▶ Basic texts – extracts from Constitutions and laws on Constitutional Courts – issues No.1-2 (1996), Nos. 3-4 (1997), No.5 (1998), No.6 (2001), No.7 (2007), No.8 (2011)
- ▶ Leading cases of the European Court of Human Rights (1998)²
- ▶ Freedom of religion and beliefs (1999)
- ▶ Leading cases 1 – Czech Republic, Denmark, Japan, Norway, Poland, Slovenia, Switzerland, Ukraine (2002)
- ▶ Leading cases 2 – Belgium, France, Hungary, Luxembourg, Romania, USA (2008)
- ▶ Inter-Court Relations (2003)
- ▶ Statute and functions of Secretary Generals of Constitutional courts (2006)

¹³⁷. From the issue 2018/1 onwards, the Bulletin is available only in electronic form.

- ▶ Criteria for Human Rights Limitations by the Constitutional Court (2006)
- ▶ Legislative omission (2008)
- ▶ State Powers (2012)
- ▶ Leading Cases of the European Court of Justice (2013)
- ▶ Descriptions of Courts (2014)
- ▶ Co-operation between Constitutional Courts in Europe (2015)¹³⁸
- ▶ Role of Constitutional Courts in upholding and applying constitutional principles (2018)

Annual Reports

- ▶ 1993 – 2020

Other titles

- ▶ Tackling blasphemy, insult and hatred in a democratic society (2008)
- ▶ Electoral Law (2008)
- ▶ Joint OSCE/ODIHR – Venice Commission Guidelines on Fundamental rights (2015)⁴
- ▶ Freedom of Association – joint OSCE/ODIHR – Venice Commission Guidelines (2015)^{2,4}
- ▶ Mass surveillance: who is watching the watchers? (2016)
- ▶ Central Asia – judicial systems overview (2016)¹³⁹
- ▶ Main documents of the Venice Commission in the field of electoral law and political parties (2016)¹⁴⁰
- ▶ Electoral opinions on Ukraine and general reports in the electoral field – Part I, Part II (2016)¹⁴¹
- ▶ “Thirty-year quest for democracy through law” - jubilee volume, 2020

Brochures

- ▶ 10th anniversary of the Venice Commission (2001)
- ▶ Revised Statute of the European Commission for Democracy through Law (2002)
- ▶ UniDem (Universities for Democracy) Campus – Legal training for civil servants (2003)⁶
- ▶ 20th Anniversary – Publications (2010)
- ▶ Selected studies and reports (2010)
- ▶ Key Facts (2011) ^{2,7}
- ▶ Services provided by the Venice Commission to Constitutional Courts and equivalent bodies (2011)
- ▶ 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)⁵
 - 8th Conference on Elections in a changing world (Vienna, 2011)⁵
- ▶ Main reference texts of the Venice Commission (2013)⁴
- ▶ The Venice Commission of the Council of Europe (2014)⁴
- ▶ UniDem (Universities for Democracy) Campus for the Southern Mediterranean countries (2015, 2017)⁴
- ▶ Rule of Law Checklist (2016)^{2,4,7,8}
- ▶ Code of Good Practice in Electoral Matters (2016)^{2,4,7}
- ▶ Preventing and responding to the misuse of administrative recourses during electoral processes – Joint guidelines (2017)²
- ▶ European Conference of Electoral Management Bodies (2017)²

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

139. Available only in Russian; “Introduction” also in English.

140. Available only in Russian.

141. Available only in Ukrainian.

- ▶ Venice Commission: cooperation with Constitutional courts (2017)^{2,7}
- ▶ Reference texts in the field of judiciary (2017)
- ▶ The Venice Commission of the Council of Europe – Key facts (2017, 2018, 2019, 2020)
- ▶ UniDem Campus for the southern Mediterranean⁴, 2018
- ▶ The Venice Principles – Principles of protection and promotion of the ombudsman institutions^{2,4,7}, 2019

APPENDIX VI

DOCUMENTS ADOPTED IN 2020

Written Procedure replacing the 122nd plenary session (20 March 2020)

- CDL-AD(2020)001 **Republic of Moldova** - Joint opinion of the Venice Commission and the Directorate General of Human Rights and Rule of Law (DGI) of the Council of Europe on the draft law on amending and supplementing the Constitution with respect to the Superior Council of Magistracy
- CDL-AD(2020)003 **Kyrgyzstan** - Joint opinion¹⁴² on the amendments to some legislative acts related to sanctions for violation of electoral legislation
- CDL-AD(2020)004 **Armenia** - Joint opinion on draft amendments to the legislation concerning political parties

Written Procedure replacing the 123rd plenary session (18-19 June 2020)

- CDL-AD(2020)005 **Armenia** - Amicus curiae brief relating to Article 300.1 of the Criminal Code
- CDL-AD(2020)006 **Malta** - Opinion on proposed legislative changes
- CDL-AD(2020)007 **Republic of Moldova** - Joint opinion of the Venice Commission and the Directorate General of Human Rights and Rule of Law (DGI) of the Council of Europe on the revised draft provisions on amending and supplementing the Constitution, with respect to the Superior Council of Magistracy
- CDL-AD(2020)008 **Kosovo** - Opinion on certain provisions of the draft Criminal Procedure Code, namely trial in absentia (art. 306) and suspension of officials from office (art. 177)
- CDL-AD(2020)009 **Russian Federation** - Opinion on draft amendments to the Constitution (as signed by the President of the Russian Federation on 14 March 2020) related to the execution in the Russian Federation of decisions by the European Court of Human Rights
- CDL-AD(2020)010 **Albania** - Opinion on the appointment of judges to the Constitutional Court
- CDL-AD(2020)011 **Turkey** – Opinion on the replacement of elected candidates and mayors
- CDL-AD(2020)012 **Latvia** - Opinion on the recent amendments to the Legislation on Education in Minority Languages
- CDL-AD(2020)013 **Albania** - Opinion on draft amendments to the Law n°97/2013 on the Audiovisual Media Service
- CDL-AD(2020)014 **Report** - Respect for democracy, human rights and the rule of law during states of emergency: reflections
- CDL-AD(2020)015 **Republic of Moldova** - Urgent joint opinion of the Venice Commission and the Directorate of Human Rights (DHR) of the Directorate General of Human Rights and Rule of Law (DGI) of the Council of Europe on the draft law on amending the law No. 947/1996 on Superior Council of Magistracy
- CDL-AD(2020)016 **Armenia** - Opinion on three legal questions in the context of draft constitutional amendments concerning the mandate of the judges of the Constitutional Court
- CDL-AD(2020)017 **Poland** - Joint urgent opinion of the Venice Commission and the Directorate General of Human Rights and Rule of Law (DGI) of the Council of Europe on amendments to the Law on the Common courts, the Law on the Supreme court and some other Laws

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

124th online plenary session (8-9 October 2020)

CDL-AD(2020)002	Uzbekistan - Joint opinion of the Venice Commission and OSCE/ODIHR on the draft Law "On freedom of conscience and religious organisations"
CDL-AD(2020)018	Interim Report on the measures taken in the EU member States as a result of the COVID-19 crisis and their impact on democracy, the Rule of Law and Fundamental Rights
CDL-AD(2020)019	Malta - Opinion on ten Acts and bills implementing legislative proposals subject of Opinion CDL-AD(2020)006
CDL-AD(2020)020	Iceland – Opinion on four draft constitutional bills on the protection of the environment, on natural resources, on referendums and on the president of Iceland, the government, the functions of the executive and other institutional matters
CDL-AD(2020)021	Georgia - Opinion on the draft Organic Law amending the Organic Law on Common Court
CDL-AD(2020)022	Ukraine – Joint opinion of the Venice Commission and the Directorate General of Human Rights and Rule of Law (DGI) of the Council of Europe on the draft amendments to the Law 'on the Judiciary and the Status of Judges' and certain Laws on the activities of the Supreme Court and Judicial Authorities (draft Law no. 3711)
CDL-AD(2020)023	Report on electoral law and electoral administration in Europe - Synthesis study on recurrent challenges and problematic issues
CDL-AD(2020)024	Ukraine - Urgent joint opinion of the Venice Commission and the OSCE/ODIHR, on the draft law 3612 on democracy through all-Ukraine referendum
CDL-AD(2020)025	Report on election dispute resolution
CDL-AD(2020)026	Montenegro - Urgent joint opinion on the draft law on elections of members of parliament and councillors
CDL-AD(2020)027	Republic of Moldova – Urgent joint opinion on the draft Law no. 263 amending the Electoral Code, the Contravention Code and the Code of Audiovisual Media Services
CDL-AD(2020)028	Report on the criminal liability for peaceful calls for radical constitutional change from the standpoint of the European Convention on Human Rights
CDL-AD(2020)029	Turkey - Joint opinion of the Venice Commission and the Directorate General of Human Rights and Rule of Law (DGI) of the Council of Europe on the July 2020 amendments to the attorneyship law of 1969
CDL-AD(2020)030	Kosovo - Opinion on the draft law on public gatherings
CDL-AD(2020)031	Revised guidelines on the holding of referendums

125th online plenary session (11-12 December 2020)

CDL-AD(2020)032	Joint Guidelines on Political Party Regulation
CDL-AD(2020)033	Republic of Moldova - Urgent joint amicus curiae brief of the Venice Commission and the Directorate General of Human Rights and Rule of Law (DGI) of the Council of Europe on three legal questions concerning the mandate of members of Constitutional Bodies
CDL-AD(2020)034	Kosovo - Opinion on the draft law on the government
CDL-AD(2020)035	Bulgaria - Urgent interim opinion on the draft new Constitution
CDL-AD(2020)036	Albania – Joint opinion of the Venice Commission and the OSCE/ODIHR on the amendments to the Constitution of 30 July 2020 and to the Electoral Code of 5 October 2020

- CDL-AD(2020)037 Principles for a **fundamental rights-compliant use of digital technologies in electoral processes**
- CDL-AD(2020)038 **Ukraine** - Urgent joint opinion of the Venice Commission and the Directorate General of Human Rights and Rule of Law (DGI) of the Council of Europe on the Legislative Situation regarding anti-corruption mechanisms, following Decision N° 13-R/2020 of the Constitutional Court of Ukraine
- CDL-AD(2020)039 **Ukraine** - Urgent opinion on the Reform of the Constitutional Court
- CDL-AD(2020)040 **Kyrgyzstan** - Urgent amicus curiae brief relating to the postponement of elections motivated by constitutional reform

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The Council of Europe is the continent's leading human rights organisation. It comprises 47 member states, including all members of the European Union. All Council of Europe member states have signed up to the European Convention on Human Rights, a treaty designed to protect human rights, democracy and the rule of law. The European Court of Human Rights oversees the implementation of the Convention in the member states.

