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for Democracy through Law

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Venice Commission



European Commission for Democracy through Law

Venice Commission
of Council of Europe

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Plenary Session of the Venice Commission, October 2018

I. WORKING FOR DEMOCRACY THROUGH LAW – AN OVERVIEW OF VENICE COMMISSION ACTIVITIES IN 2018

Key figures

The Venice Commission adopted 35 texts in 2018, including seven documents on constitutional reforms and constitutional amendments concerning Georgia, Malta, the Republic of Moldova and Serbia as well as a report on the term limits of Presidents, eight opinions on fundamental rights and democratic institutions, six opinions and one report on electoral matters and 10 texts on the judiciary and the prosecutor's service, including one *amicus curiae* brief and a report. In addition, the Commission (co)organised 36 meetings and participated in 116 other events, including in 7 PACE election observation missions.

The Commission published one special and three regular Bulletins on Constitutional Case Law and collected comparative law elements for constitutional courts and equivalent bodies in 35 cases. In 2018, the Supreme Constitutional Court of Palestine¹ and the Supreme Court of Finland joined the World Conference on Constitutional Justice (WCCJ), bringing the total number of members to 114 in December 2018. The number of judgments available in the constitutional law database CODICES reached 10,000 in 2018.

Voluntary contributions

In 2018 the Commission received voluntary and “in kind” contributions from the Italian government (*Regione Veneto and Ministry of Foreign Affairs*) for the organisation of the plenary sessions, as well as voluntary contributions from:

- ▶ Sweden for a number of specific activities;
- ▶ Mexico for activities in Latin America;
- ▶ Germany for a number of specific activities;

1. 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.

- ▶ Malta for activities in the Southern Mediterranean region;
- ▶ Norway for co-operation with the countries of the Southern Mediterranean;
- ▶ the *Organisation internationale de la francophonie* for translations into French for the Bulletin on Constitutional Case Law and
- ▶ unearmarked contributions from Armenia, Italy and Ukraine.

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

Certain activities, in particular in Kyrgyzstan, the Western Balkans and the countries of the Eastern Partnership, were financed by the European Union in the framework of Joint Projects and Programmes.

Main activities

Democratic institutions and fundamental rights

Constitutional reforms

In 2018, the Commission examined the draft constitutional amendments which would have enabled the vetting of politicians in **Albania**, initiated by the Albanian parliamentary opposition.

In 2018, the Commission adopted a third opinion concerning the constitutional reform in **Georgia**,² these constitutional amendments enabled the political parties, for the 2020 parliamentary elections exclusively, to form electoral blocks and provided for a lower election threshold for smaller parties.

The 2018 opinion on **Malta** addressed a large spectrum of constitutional issues, including the operation

2. Cf. two previous opinions CDL-AD(2017)023 and CDL-AD(2017)013.



President of the Venice Commission Mr Gianni Buquicchio and the Prime Minister of Armenia Mr Nikol Pashinyan, Yerevan, November 2018

of the Judicial Appointments Committee, the status of the Director of Public Prosecutions, the position of the President of the country, the reduction of the appointment powers of the Prime Minister, and the enhancing of the controlling powers of Parliament.

Two opinions concerning constitutional amendments in the **Republic of Moldova** were issued in 2018: one added the freedom of association to the current constitutional provision guaranteeing the freedom of assembly. Another opinion concerned the judiciary (the removal of probationary periods for judges and the introduction of the functional immunity of judges at the constitutional level).

The Venice Commission examined the revision of constitutional provisions on the judiciary of **Serbia** and made recommendations regarding the composition of the High Prosecutorial Council and the High Judicial Council, the selection of public prosecutors, the grounds for the dismissal of judges and of deputy public prosecutors as well as the method to ensure uniform application of laws. The Serbian government revised the draft amendments to the Constitution, taking the Commission's opinion fully into account.

Democratic institutions and fundamental rights

In 2018, the Commission evaluated the law of **the Republic of Moldova** on preventing and combatting terrorism. It examined the powers the law gave to the Security and Information Service, the system of parliamentary oversight of this Service, the definition of terrorism, and the special legal regime of anti-terrorist operations.

The Commission adopted, jointly with the OSCE/ODIHR, an opinion on the draft law amending the law of **Armenia** on freedom of conscience and on religious organisations, focusing on the criteria for the registration of religious organisations, the status and privileges enjoyed by the Holy Apostolic Church of Armenia, the distinction between acceptable and improper proselytism, the scope of rights and advantages enjoyed by registered and unregistered religious groups.

Several opinions adopted in 2018 concerned the right to freedom of association (**Romania, Ukraine and Hungary**), and more particularly reporting and disclosure obligations imposed on NGOs regarding their funding (notably foreign funding) as well as restrictions on NGOs' ability to seek and secure funds for their activities, and the special taxation regime for NGOs.

In an opinion on **Malta**, the Venice Commission examined constitutional and legislative amendments aimed at the creation of a Human Rights and Equality Commission, a multi-mandate body with broad powers in the field of equality and non-discrimination, as well as re-defining and extending the notions of equality and non-discrimination to new field .

The Venice Commission also examined in 2018 a draft law of "**the former Yugoslav Republic of Macedonia**";³ aimed at establishing a more effective system for the prevention and protection against discrimination.

At the request of the Organization of American States (OAS), in **2018** the Venice Commission prepared a **report on the term-limits of presidents of states**, where it was concluded that such term-limits protect other constitutional principles such as checks and balances and the separation of powers, and do not unduly restrict aspirant candidates or voters' human and political rights.

Judicial reforms

In 2018 the Venice Commission examined a number of reforms concerning the constitutional status of the judiciary and of the bodies of judicial governance (**Republic of Moldova, Serbia, and Malta**).

At the legislative level, the Venice Commission analysed the most recent changes made to the Law on Courts and Law on the Judicial Council of "**the former Yugoslav Republic of Macedonia**".⁴

The Commission also adopted an opinion on the amendments to the law on the Judicial Council and Judges of **Montenegro**, relating to the difficulty of achieving the constitutionally required two-thirds majority in electing the lay members of the Judicial Council, in a situation where the opposition boycotted Parliament.

In an opinion on **Romania**, the Venice Commission examined three drafts on the status of judges and prosecutors, on the judicial organisation and on the Superior Council of Magistracy. In another opinion on Romania, the Commission scrutinized recent draft amendments to the Romanian Criminal and Criminal Procedure Codes in light of the effectiveness of the

3. As of 12 February 2019, the official name of the country changed to North Macedonia.



President of the Venice Commission Mr Gianni Buquicchio and the Prime Minister of Croatia Mr Andrej Plenković, Strasbourg, June 2018

Romanian criminal justice system in the fight against corruption and organised crime.

The Commission also examined provisions on the Prosecutorial Council in the draft law of **Georgia** on the Prosecutor's Office and on the provisions on the High Council of Justice in the Law on General Courts.

An opinion on the concept paper on the reform of the High Judicial Council of **Kazakhstan** analysed a set of measures aimed at increasing the role of this body in the recruitment and promotion of judges, and changing the process of selection of young judges in order to increase their professionalism. Another opinion on Kazakhstan concerned the Administrative Procedure and Justice Code.

Constitutional justice

On 14 November 2018, the President of the Venice Commission published a statement urging the establishment of the Constitutional Court provided for by the Constitution of Tunisia and that it begin to exercise its functions as soon as possible.

The Venice Commission's other activities in the field of constitutional justice in 2018 included:

The CODICES database, which is the focal point for the work of the Joint Council on Constitutional Justice (see below), as well as the World Conference on Constitutional Justice (see below), makes it possible to access around 10 000 constitutional judgments for mutual inspiration and which also serve as a common basis for dialogue among judges in Europe and beyond.

The Commission's Venice Forum dealt with 35 comparative law research requests from constitutional courts and equivalent bodies covering questions which ranged from the status of the Church of the Flying Spaghetti Monster, remuneration of prisoners' labour, transgender rights, the status of refugees to the constitutionality of a referendum and State decorations.

The Commission also co-organised or participated in conferences and seminars in 18 countries.

In March 2018, the Bureau of the World Conference on Constitutional Justice (WCCJ) met in Venice and approved, *inter alia*, the topic for the 5th Congress, which is "Constitutional Justice and Peace" (see below III.6).

Elections, referendums and political parties

In 2018, the Commission continued its work on electoral matters and political parties. The Commission adopted a report on Term limits (Part I – Presidents) and a Report on the identification of electoral irregularities by statistical methods. In addition, the Commission adopted five opinions in the field of elections and political parties, concerning Kosovo, the Republic of Moldova, Tunisia, Turkey and Uzbekistan. The Council for Democratic Elections adopted these opinions and reports before their submission to the plenary session (except for the opinion on Tunisia which was submitted to the Sub-Commission on the Mediterranean Basin).

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 2018 the Commission therefore continued to assist the Council of Europe member States in the implementation of international standards in the electoral field, while developing further its co-operation with non-European countries, especially in the Mediterranean basin and Central Asia.

Electoral legislation and practice

The Commission adopted opinions on the electoral legislation in **the Republic of Moldova, Turkey and Uzbekistan**. The Commission organised electoral assistance activities and seminars in Albania, Kyrgyzstan, Libya and Ukraine.

In addition, the Commission organised in Oslo in co-operation with the Ministry of Local Government and Modernisation of Norway, the 15th Conference of European Electoral Management Bodies, as well as, in co-operation with the Permanent Electoral Authority of Romania, the second Scientific Electoral Experts Debates.

The Commission provided legal assistance to seven Parliamentary Assembly electoral observation missions.

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

Political parties

The Commission adopted opinions on the financing and/or organisation of political parties in Kosovo and in Tunisia. The Commission co-operated with the OSCE/ODIHR on the revision of joint guidelines on political party regulation.

Sharing European experience with non-European countries

Mediterranean Basin

In 2018, the Venice Commission continued and further developed its co-operation with the countries of the Southern Mediterranean. Several successful projects were developed in Egypt, Jordan, Morocco and Tunisia. The Venice Commission organised several regional activities and provided expert assistance to the EU and UNSMIL working on electoral legislation in Libya.

The Venice Commission continued its dialogue with the Tunisian authorities on the legal framework for the new Constitutional Court in line with the 2014 constitution. At the request of the authorities, an opinion on the draft law on political parties was prepared. The Commission also co-operated with Tunisia on issues related to the establishment and operation of the independent institutions. The dialogue with the Moroccan authorities continued in fields such as the reform of the judiciary, notably on the preliminary request of constitutionality. In Jordan the Commission continued its fruitful co-operation with the Constitutional Court of Jordan.

In 2018 the Commission continued to organise regional activities, including such projects as the UNIDEM seminars for the countries of the MENA region and participation in the meetings and exchanges of views with the Organisation of Electoral Management Bodies of Arab countries. These multilateral activities saw an increased participation of various representatives of the national authorities and academia from Algeria, Egypt, Jordan, Lebanon, Libya, Morocco, Palestine⁴ and Tunisia. Egypt engaged more actively in the Venice Commission's various co-operation activities.

4. 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



President of the Venice Commission, Mr Gianni Buquicchio, and the Minister of Foreign Affairs of Tunisia Mr Khemaies Jhinaoui, Tunis, November 2018

Central Asia

In 2018, the Venice Commission continued to co-operate with the national institutions of Kazakhstan, Kyrgyzstan and Uzbekistan, notably in the framework of several projects funded by the European Union as well as some member states.

The Venice Commission continued to organise activities in the framework of the project "Support to strengthening democracy through electoral reform in the Kyrgyz Republic". The project is aimed at helping the country's authorities to elaborate a comprehensive strategy and to reform the electoral legislation and practice in accordance with international standards by making tools and expertise available to national institutions involved in electoral reform.

In the absence of joint projects aimed at the Central Asian region in 2018, the Venice Commission continued bilateral co-operation with the higher judicial bodies of Kazakhstan, Kyrgyzstan, Tajikistan and Uzbekistan which show continued interest in the Venice Commission's assistance. In 2018 the Commission adopted opinions on the draft Administrative Procedure and Justice Code and on the Concept Paper on the reform of the High Judicial Council of Kazakhstan, as well as on the draft election code of Uzbekistan.

Latin America

In 2018 the Venice Commission continued to develop its co-operation with the countries of Latin America, notably with Bolivia and Mexico, with the Organisation of American States (OAS), as well as through its Sub-Commission on Latin America.

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 2018 experts of the Commission were invited to participate in different events in Bolivia, Mexico and other countries of the region. 2018 was marked by a fruitful co-operation with OAS on the issue of the individual right to re-election.

Scientific council

The Scientific Council prepared and updated five thematic compilations of Venice Commission opinions and studies on:

- ▶ qualified majorities and anti-deadlock mechanisms,
- ▶ social and economic rights,
- ▶ digital technologies in the electoral process,
- ▶ prosecutors
- ▶ protection of national minorities.

These compilations, which contain extracts from the Commission's opinions and studies structured thematically around key topics, are intended to serve as a reference to country representatives, researchers as well as experts who wish to familiarise themselves with the Venice Commission's approach in relation to the above-mentioned themes. They are available on the Commission's website and are regularly updated.



The President of the Venice Commission Mr Buquicchio, the Secretary Mr Markert and the Deputy Secretary Mrs Granata-Menghini at the Committee of Ministers of the Council of Europe, Strasbourg, June 2018



Delegation of the Venice Commission and the OSCE/ODIHR exchanging views with Hungarian authorities with regard to “Stop Soros” legislative package, Budapest, May 2018

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

Country specific activities

Constitutional reforms, state institutions, checks and balances

Albania

Vetting of politicians (CDL-AD(2018)034)

The opinion, requested by the Speaker of the Albanian parliament, concerns draft constitutional amendments enabling the vetting of politicians, initiated by the parliamentary opposition. In particular, these amendments proposed to prevent persons who “have contacts with persons involved in organised crime” from being candidates for Parliament or other elective positions, or from holding such positions.

The Venice Commission previously assisted Albania in the past in elaborating the framework for reforming and cleansing the judiciary. Vetting processes are on-going in respect of judges and prosecutors, and the police forces. In addition, persons convicted for specific criminal offences by a final decision are prevented, under the 2015 “Decriminalisation Law”, from accessing elected and appointed positions in public institutions and state administration.

The opinion concluded that despite its legitimate aim, the vetting proposal did not seem to provide added value, as it failed to provide both clear guidance and the safeguards needed for such a complex and sensitive process, with severe implications for the rights of the persons subject to it. Taking account of the Venice Commission’s opinion, the Albanian parliament rejected the proposal.

Legislative initiative of citizens (CDL-AD(2018)026)

At the request of the Speaker of the Parliament of Albania, the Council for Democratic Elections and the Venice Commission adopted in October 2018 the Joint Opinion by the Venice Commission and the OSCE/ODIHR on the draft law on the legislative initiative of citizens. The Venice Commission welcomed the draft, which was intended at implementing the Constitution by introducing the legislative initiative of citizens. It was in line with international standards, in particular the 2008 Venice Commission report on legislative initiative. The three main issues were:

- ▶ the need to distinguish between initiative and petition, which had been clearly defined by the Albanian Constitution as two different instruments, in order to avoid circumventing the constitutional requirement of 20,000 signatures through the use of a petition;
- ▶ the need to take into account the constitutional requirement that any legislative proposal should be accompanied by a report justifying financial expenses and an opinion of the Council of Ministers;
- ▶ more importantly, the need to simplify the procedure to avoid giving the national authorities the discretionary power of checking the process and in particular of supervising the organisational committee.

It was thus recommended to amend a number of provisions, and in particular to require the registration of the initiative committee before the collection of signatures rather than afterwards, giving no discretion to the Central Electoral Commission in this registration, and to provide the initiative groups with the right to organise the collection of signatures as freely as possible.



Exchange of views with Maltese authorities, Valletta, November 2018

Georgia

Constitutional amendments as adopted at the second and third hearings in December 2017 (CDL-AD(2018)005)

At its March 2018 Session, the Venice Commission adopted, at the request of the Chairperson of the PACE Committee on the Honouring of Obligations and Commitments by Member States, an opinion on the draft constitutional amendments adopted by the Parliament of Georgia at the second reading on 15 December 2017. This was the third opinion adopted by the Venice Commission on the constitutional reform launched in 2017.

In the opinions adopted in June 2017 (opinion on the draft revised Constitution of Georgia)⁵ and October 2017 (opinion on the draft revised Constitution of Georgia as adopted in the second reading on 23 June 2017),⁶ the Venice Commission gave a positive assessment about the constitutional reform, but regretted the postponement of the entry into force of the proportional election system to October 2024. The draft revised Constitution, as adopted at the second reading on 23 June 2017, maintained the 5% threshold for elections as from 2024 and the prohibition of party blocks, but replaced the previously envisaged system of distribution of unallocated mandates by a complex new system, which maintained, but limited, the bonus for the winning party. On 13 October 2017, the Parliament of Georgia adopted the constitutional amendments.

The additional constitutional amendments, subject of this opinion, were initiated by the Parliament of Georgia with a view to reflecting the recommendations made by the Venice Commission in the previous opinions and were adopted at the second reading on 15 December 2017. According to the additional constitutional amendments, the postponement of the entry into force of the proportional election system to 2024 was maintained. Electoral blocks would be

5. CDL-AD(2017)013.

6. CDL-AD(2017)023.

allowed at the 2020 parliamentary elections, which would be carried out according to the mixed election system with an election threshold of 3%. For the 2024 (and subsequent) elections, the bonus system foreseen in the draft would be abolished and the unallocated mandates due to the votes for parties not having cleared the 5% threshold would be distributed according to the system of equal distribution. The prohibition on electoral blocks would be maintained during the 2024 and subsequent elections.

In its opinion adopted in March 2018, although the Commission reiterated that the postponement of the entry into force of the proportional election system to October 2024 was regrettable, the specific amendments concerning exclusively the 2020 elections and the possibility for political parties to form electoral coalitions and the reduction of the election threshold to 3% (exclusively for the 2020 elections) were factors which alleviate the detrimental effects of the postponement of the entry into force of the proportional election system and were therefore welcome. The new system of equal distribution of unallocated mandates, which would apply after the elections of 2024 to be held according to the full proportional system, was also welcomed.

The Venice Commission also welcomed a number of amendments in the field of fundamental rights, such as the amendments concerning the right to freedom of religion and in the field of constitutional justice, such as the repeal of the requirement of full consensus of the Plenum of the Constitutional Court when delivering judgments on the unconstitutionality of conducted elections. The Commission noted that a number of its previous recommendations concerning the appointment of Supreme Court judges, the requirement of a qualified majority in Parliament for the election of the Prosecutor General and the prohibition of the creation of political parties on territorial principle were not taken into account in the new draft revised constitution.

Follow-up

On 24 March 2018, the Parliament adopted the last set of amendments at its third and final reading. The revised Constitution entered into force after the presidential elections which were held in October 2018.

Malta

Constitutional arrangements and separation of powers and the independence of the judiciary and law enforcement bodies of Malta (CDL-AD(2018)028)

The Opinion on the constitutional arrangements and separation of powers and the independence of the judiciary and law enforcement bodies of Malta was the result of two requests, from the PACE Committee on Legal Affairs and Human Rights and from the Maltese Minister for Justice, Culture and Local Government. The

scope of both requests was roughly similar, i.e. to look into the constitutional arrangements of the country, the separation of powers, judicial independence and the position of the law enforcement bodies.

The scope was very broad and it was almost impossible to provide a comprehensive and exhaustive analysis of the existing constitutional arrangements. Therefore, the opinion covered only the most relevant topics. The proposed constitutional reform required a holistic approach. In Malta, all interlocutors of the Commission's delegation had acknowledged the need for reform, notably as concerns the judiciary and the role of criminal prosecution. In its written response to the draft opinion, the Government had shown a willingness to accept the opinion as a basis for reform.

Even if the request from PACE was prompted by the assassination of an investigative journalist Daphne Caruana Galizia, the opinion did not look into this specific case or any other individual cases, but was limited to the constitutional arrangements as such.

As concerns the executive power, under the Maltese Constitution, it is the Prime Minister who is clearly the centre of political power. Other actors such as the President, Parliament, the Cabinet of Ministers, the Judiciary or the Ombudsman are too weak to provide sufficient checks and balances. The opinion therefore recommended strengthening these powers. Regarding Parliament, the opinion recommended tightening the rules on conflicts of interest, raising the salaries of 'part-time' MPs so that they would not depend on other remunerated positions attributed to them by the executive power and ensuring that MPs have sufficient access to non-partisan information to perform their controlling function. The President of Malta should be strengthened through powers of – notably judicial – appointments without the intervention of the Prime Minister. The opinion also recommended considering electing the President of Malta with a qualified majority.

As concerns the Judiciary, vacancies for judicial office are not announced or published. The Judicial Appointments Committee (JAC), established by constitutional amendment in 2016, vets candidates for judicial appointment and includes suitable candidates in a permanent register. When a vacancy arises, the Prime Minister is free to choose a candidate from that register or from among the sitting magistrates (first instance judges). The opinion recommended widening the composition of the JAC, publishing judicial vacancies and enabling the JAC to not only vet candidates but also to rank them upon merit. The opinion also recommended abolishing the possibility that judges are dismissed by Parliament.

As concerns prosecution, it is the Police that investigate crimes and then press charges in court. The office of the Attorney General (AG) is involved in prosecution



XXIII Congress of the Ibero-American Federation of Mediators (FIO), Andorra la Vella, November 2018

only for the most serious crimes, however the AG is also the Legal Adviser to the Government. The opinion recommended setting up an office of an independent Director of Public Prosecutions or Prosecutor General with security of tenure, being responsible for all public prosecutions, subject to judicial review. The AG would remain the Legal Adviser to the Government and the Police could focus exclusively on investigative work.

The opinion also covered the issue of the execution of the judgments of the Constitutional Court of Malta. The opinion recommended that the Constitution be amended to ensure that provisions found unconstitutional by the Court lose their force by virtue of the judgments of the Court, without the intervention of Parliament as was currently the practice.

Republic of Moldova

Draft law on amending and supplementing the Constitution of the Republic of Moldova (judiciary) (CDL-AD(2018)003)

The opinion on the draft law amending and supplementing the Constitution of the Republic of Moldova (Judiciary) was requested by the Ministry of Justice of the Republic of Moldova and adopted by the Venice Commission at its March 2018 plenary session.

It was prepared within the framework of the process implementing the national judicial action plan for EU association. The text examined was a constitutional amendment and therefore not as detailed as was required for implementing legislation.

The opinion focused on the composition of the Superior Council of Judiciary. The draft law removed the *ex officio* members, the Minister of Justice, the President of the Supreme Court and the Prosecutor General from the Council. There were no common standards on *ex officio* members and given that even the Minister of Justice had accepted his own removal from the Council, there were no objections against it. It was, however, important that dialogue between the Superior Council of the Judiciary and the other

institutions be ensured by other means. The draft amendments did not specify the part of judges in the Superior Council of Judiciary and the method of appointment of representatives of civil society. The opinion recommended that these issues be clarified.

The removal of probationary periods for judges was welcomed, notably as there was no mechanism for automatic permanent appointments at the end of the probationary period in the absence of disciplinary problems. The opinion also welcomed that functional immunity of judges was introduced on the constitutional level.

Amendments to Article 42 of the Constitution (freedom of association) (CDL-AD(2018)007)

Currently Article 42 of the Moldovan Constitution guarantees freedom of assembly, but not freedom of association. The amendments were aimed at filling this gap, by aligning the constitutional text with Article 11 of the European Convention on Human Rights. In the opinion, requested by the Ministry of Justice, the Commission concluded that this amendment was welcome, but gave rise to certain problems. The relationship between the general limitation clause (listing situations where basic rights and freedoms may be limited) and the specific limitation clause (listing situations where freedom of association may be limited) was unclear. The Commission also recommended specifying that the amendment would not result in less protection for the trade unions. Article 41 (on political parties) had to be harmonised with new the Article 42 and with international standards on political parties.

Law on preventing and combatting terrorism (CDL-AD(2018)024)

The opinion on the 2017 law on preventing and combatting terrorism, requested by the Ministry of Justice, noted that no major controversy has been noted in the application of this law. However, the legal regime established by it and governing the activities of the Security and Information Service (the SIS) had the potential to affect negatively human rights and enable abuses of power.

The list of powers of the SIS had to be specified with more precision. Some of those powers - for example, the power to use resources, collect data and request information from private persons, or to issue "compulsory prescriptions" - should require an external authorisation (a court warrant, a decision by the prosecution, etc.). Also, the co-ordination of anti-terrorist activities should belong to the executive, rather than to the Speaker of Parliament. At the same time, the existing parliamentary control mechanism had to be reinforced, involving either the sub-commission on the SIS, or a mixed expert body, both with a strong presence of the opposition. Anti-terrorist operations should be of limited duration and cover a limited geographical



Providing assistance to the Ministry of Justice of Serbia for the constitutional amendments in the field of the judiciary, Belgrade, January 2018

zone. The security personnel should be liable for grossly disproportionate actions and for inadequate planning and conduct of the anti-terrorist operations. Finally, an effective review mechanism was recommended in relation to the practice of "blacklisting" of alleged terrorists.

Serbia

Draft amendments to the constitutional provisions on the judiciary (CDL-AD(2018)011)

The request for an opinion on the draft amendments to the constitutional provisions on the judiciary was made by the Minister of Justice of Serbia in April 2018. The rapporteurs received a great amount of information before, during and after their visit to Serbia from associations, NGOs and from the Ministry of Justice of Serbia. The draft opinion was discussed at the Sub-commission on the Judiciary on 21 June 2018, where several modifications were made to the draft opinion and agreed upon. The main issues concerned: the separation of powers and the importance of including a clear rule in the Constitution of Serbia on checks and balances; the accountability of judges without affecting their independence; the composition of the High Judicial Council (HJC) and striving to find a best solution for an anti-deadlock mechanism and the importance of having *ex-officio* members in the HJC, as it facilitates dialogue among the various actors.

This opinion was important for Serbia in general and in particular for the process of its EU accession negotiations.

Follow-up

Following this opinion, the Ministry of Justice prepared a first revised version of the amendments in September and, following public discussions in Serbia and contacts with the Secretariat, submitted to the Commission on 12 October 2018 a second revised



President of the Venice Commission Gianni Buquicchio and Hungarian Foreign Minister Péter Szijjártó, Strasbourg, June 2018

version of the amendments. The Secretariat prepared a memorandum, analysing in detail the compatibility of the draft amendments with the Commission's recommendations. The memorandum showed that the new version of the amendments complied not only with the main but also the other recommendations contained in the opinion. The text still had to be discussed and adopted by parliament.

***Secretariat memorandum -
Compatibility of the draft amendments
to the constitutional provisions on the
judiciary of Serbia (CDL-AD(2018)023)***

The Secretariat of the Venice Commission issued a Secretariat Memorandum on 22 October 2018 on the compatibility of the draft amendments to the constitutional provisions on the judiciary as submitted by the Ministry of Justice of Serbia on 12 October 2018 with the Venice Commission's Opinion on the draft amendments to the constitutional provisions on the judiciary. It concluded that the recommendations formulated by the Venice Commission in its opinion CDL-AD(2018)011 had been followed.

The Commission took note of this Secretariat memorandum at its October 2018 Plenary Session.

Ukraine

Follow-up to the Opinion on the draft law on anti-corruption courts and on the draft law on amendments to the Law on the Judicial System and the Status of Judges (concerning the introduction of mandatory specialisation of judges on the consideration of corruption and corruption-related offences) CDL-AD(2017)020)

In its Opinion of October 2017, the Venice Commission had supported the establishment of an effective Anti-corruption Court in Ukraine and the involvement of international experts in selecting its judges, while criticising some aspects of the draft law submitted to it at the time. President Poroshenko, who had been reluctant to support the establishment of a specialised anti-corruption court, reacted immediately to the opinion and submitted a draft law to establish such a Court. This draft was, however, widely criticised by the international community and civil society as not likely to lead to the establishment of a truly effective and independent court. Several international organisations called on Ukraine to provide for a court fully in line with the Venice Commission's recommendations and

the IMF linked the disbursement of credits to Ukraine to the adoption of such a law.

Following an invitation by the Speaker of the Verkhovna Rada, Venice Commission delegations held several exchanges of views in Kyiv on amendments to the draft, focusing on the need to clearly define its jurisdiction and the involvement of international experts in the selection of its judges, who, according to the opinion, should have a crucial role. On 7 June 2018 the Verkhovna Rada adopted a law which seemed to satisfy the requirements of the Venice Commission. In particular, it made it impossible to appoint somebody as a judge to the Court if three or more of the six experts designated by international organisations object to the candidate.

Fundamental rights

Armenia

Freedom of religion (CDL-AD(2018)002)

The opinion requested by the Ministry of Justice and prepared jointly with the OSCE/ODIHR, analysed draft amendments to the Law on Freedom of Conscience and on Religious Organisations. Freedoms and privileges guaranteed by the law should extend not only to religious organisations but also to "belief" organisations. Religious or belief groups should be able to exist and operate without registration, and the list of rights enjoyed by them should be open-ended. Registration requirements should be simplified, and some discriminatory registration conditions removed. In particular, it is not acceptable to deny registration to communities which are not based on a "historically canonised holy book". While the unique status of the Holy Apostolic Church is understandable in the Armenian context, other religious organisations should be able to accede to some of the privileges enjoyed by the Holy Apostolic Church, based on reasonable criteria. "State security" should not be a reason for restricting religious freedom, and only "improper proselytism" may be prohibited.

The Armenian authorities were invited to reconsider the blanket prohibition on foreign funding of religious organisations, to further specify the rules concerning the suspension of religious organisations, and to ensure that the dissolution of a religious organisation would only be a last resort measure.

Hungary

Provisions of the so-called "Stop Soros" draft legislative package which directly affect NGOs (in particular draft article 353A of the Criminal Code on facilitating illegal migration) (CDL-AD(2018)013)

At its June 2018 Plenary Session, the Venice Commission adopted, at the request of the Chairperson of the Committee on Legal Affairs and Human Rights of the Parliamentary Assembly of the Council of Europe, a joint opinion on the compatibility with international human rights standards of the Hungarian “Stop Soros” legislative package. The request indicated that the draft legislative package should be analysed to the extent that it affected NGO activities. Therefore, the joint opinion concentrated especially on the draft amendment to the Criminal Code of Hungary, i.e. draft Article 353A of the Criminal Code. This draft provision criminalised anyone engaging in organising activities to facilitate the initiation of an asylum request in respect of a person, who in their native country or in the country of their habitual residence or in another country through which they have arrived, was not subject to persecution or whose allegations of direct persecution were not well-founded. Equally, the draft provision criminalised organisational activities to assist a person entering Hungary illegally or residing in Hungary illegally, to obtain a title of residence.

In their joint opinion, the Venice Commission and the OSCE/ODIHR considered that although the introduction of a criminal offence establishing criminal liability for intentionally assisting irregular migrants to circumvent immigration rules was not in and by itself contrary to international standards, draft Article 353A went far beyond that by criminalising organisational activities which were not directly related to the materialisation of illegal migration. The joint opinion concluded that assistance by NGOs to asylum seekers in applying for asylum and lodging appeals could not be regarded as circumvention of immigration rules. The proposed amendment therefore criminalised activities which were fully legitimate including activities which support the State in the fulfilment of its obligations under international law. Moreover, “financial gain” was not considered an element of the offence and the draft provision was not accompanied by a humanitarian exception clause.

The draft legislative package, including draft Article 353A, was adopted by the Hungarian Parliament on 20 June 2018, i.e. before the Plenary Session of the Venice Commission took place. The Opinion recommended that the provision infringed upon the right to freedom of association and expression and be repealed.

Section 253 on the special immigration tax of Act XLI of 20 July 2018 amending certain tax laws and other related laws and on the immigration tax (CDL-AD(2018)035)

At its December 2018 Plenary Session, the Venice Commission adopted, at the request of the Chairperson of the Committee on Legal Affairs and Human Rights of the Parliamentary Assembly of the Council of Europe, a Joint Opinion on Section 253 on

the special immigration tax of Act XLI of 20 July 2018 amending certain tax laws and other related laws on the immigration tax.

Section 253 imposed a 25% tax on financial support to any immigration-supporting activity carried out by associations. The aim of the provision, according to its reasoning, was to oblige non-governmental organisations conducting activities in the field of migration, to bear the costs that have arisen as a result of their associative activities, which contributed to the growth of immigration and the growth of public tasks and expenditure. The Venice Commission and the OSCE/ODIHR considered that the special tax constituted an interference with the right to freedom of expression of NGOs, since it limited their ability to undertake research, education and advocacy on issues of public debate. Moreover, as the tax was levied on the act of donating by NGOs expressing a particular opinion, Section 253 treated those NGOs performing immigration-supporting activities differently than others and created the risk of stigmatisation of such organisations.

The Commission and the OSCE/ODIHR considered firstly that the vagueness of some terms used in Section 253 such as “activities that directly aim at promoting migration”, did not meet the requirement of legality. They further noted that certain characteristics of the special tax showed that it was imposed not just to finance a government activity but to discourage a number of legitimate associative activities in the field of migration, which cast serious doubts on the legitimacy of the aim behind the provision. The necessity and proportionality of the imposition of special immigration tax was analysed taking due account of the cumulative effect created by the obligations imposed by the 2017 Law on the Transparency of Organisations receiving Support from Abroad and Article 353A of the Criminal Code on Facilitating Illegal Migration. The joint opinion concluded that the new reporting obligations imposed by Section 253 in addition to the already existing reporting obligations, created an environment of excessive state monitoring, which was not conducive to the effective enjoyment of freedom of association. The joint opinion recommended that Section 253 on special immigration tax be repealed.

Malta

Equality and non-discrimination (CDL-AD(2018)014)

The opinion requested by the Ministry for European Affairs and Equality, analysed constitutional amendments introducing the Human Rights and Equality Commission (HREC), as well as related draft legislation. The HREC was supposed to receive broad powers in the field of protecting and promoting equality, including adjudicative powers. Furthermore, the notions



Delegation of the Venice Commission visiting North Macedonia in the framework of the preparation of an opinion on the draft law on prevention and protection against discrimination; Skopje, January 2018

of equality and non-discrimination were re-defined, in line with the European directives.

The comprehensive revision of the normative framework in this field deserved praise. However, the new mechanisms created tensions with the Constitution, the ECHR, and were not always internally coherent. The HREC was not sufficiently independent, and should include representatives of the civil society and of the opposition, and provide for a security of tenure for its members. The judicial functions of the proposed Human Rights and Equality Board, a body affiliated with the (HREC), overlapped with the competency of the civil courts, which was problematic under the Constitution and could lead to incoherent case-law. In addition, the Board was not sufficiently independent and did not provide for fair trial guarantees; so, either the Board should be stripped of its judicial functions, or its institutional design should be seriously reconsidered.

Finally, the Commission recommended, as a way to advance equality and promote diversity, to set out more specific positive duties for employers, educational institutions, providers of goods and services, and the public administration in the field.

Romania

Draft law no. 140/2017 on amending Governmental Ordinance no. 26/2000 on Associations and Foundations (CDL-AD(2018)004)

At its March 2018 Plenary session, the Venice Commission adopted, at the request of the Committee on Legal Affairs and Human Rights of the Parliamentary Assembly of the Council of Europe, a joint opinion on the compatibility of draft law 140/2017, amending Governmental Ordinance No. 26/2000 on Associations and Foundations with international standards on human rights and fundamental freedoms.

The Venice Commission noted that the aim of the draft law was on the one hand to privilege, in the procedure for obtaining public utility status by associations, some areas of activities which have priority in the satisfaction of the most important needs of the Romanian society and on the other hand, to reduce suspicions regarding the legality of the financing of associations and foundations operating in Romania by imposing a number of reporting obligations on associations concerning the source of their funding.

The Venice Commission and the OSCE/ODIHR welcomed the endeavour of the draft law to be more specific in what is to be regarded as being in “the general or community interest” in deciding whether or not to grant an association the status of public utility. They noted, however, that the draft law was not sufficiently clear and precise to avoid arbitrary decisions in its implementation. Moreover, some important areas such as human rights and the fight against corruption were excluded in the draft law from the benefit of public utility status and the associations which obtained public utility status were banned from conducting any “political activity”. Consequently, the opinion recommended in particular that “democracy, human rights and rule of law” be added to the list of specific areas of general interest in the draft law and that the provision imposing a ban on political activities for associations with public utility status be limited to clear cases of support (for instance explicit fundraising) in favour or against a particular party or candidate.

Concerning the new financial reporting obligations which apply to all associations and foundations (regardless of whether or not they are recognised as public utility associations), the opinion underlined that “public concerns” and “suspicions” about the legality of financing were not sufficient reasons to impose drastic reporting/disclosure obligations on associations concerning their sources of funding without concrete risk analysis pointing to the specific involvement of the civil society sector in the commission of crimes. In their current form the stringent reporting and disclosure requirements coupled with severe sanctions in case of non-compliance were likely to have a chilling effect on civil society. Therefore, the opinion recommended that the new reporting/disclosure obligations be repealed or at a minimum, the reporting obligations should either be limited to reporting to a regulatory body at reasonable intervals or the obligation to disclose the identity of the donors should be limited to the main sponsors.

The Commission was subsequently informed that most of the recommendations made in the opinion had already been taken into account in a revised text of the draft law.



Exchange of views with the authorities of Montenegro on the issue of the appointment of lay members on the new Judicial Council; Podgorica, May 2018

“The former Yugoslav Republic of Macedonia”⁷

Prevention and protection against discrimination (CDL-AD(2018)001)

At the request of the Minister of Labour and Social Policy, the Venice Commission examined the draft law on prevention and protection against discrimination. The existing Law as well as its implementation had been the subject of criticism for the lack of independence and impartiality of the Commission for Protection against Discrimination, the insufficiency of its financial and human resources, the non-inclusion of “sexual orientation” and “gender identity” in the list of grounds for discrimination and the large burden placed on the complainant to prove that discrimination has taken place.

In its Opinion the Commission praised the draft as a real improvement on the Law. Yet, further improvements were needed to ensure that it fully conforms to applicable standards. The Commission notably recommended additional safeguards for ensuring a real independence for the Commission for Protection against Discrimination, namely: to amend the provisions concerning the election and dismissal of its members, to provide for a unique mandate for its members, and to remove the possibility of filing a complaint to the State Administrative Inspectorate (an administrative organ within the Ministry of Justice), in case the Commission fails to act within the legal deadline. It was also recommended to reconsider the early termination of the mandate of the Commission’s members as a result of the entry into force of the draft law, which would be highly problematic for the independence of the Commission.

Ukraine

Financial reporting requirements for NGOs (CDL-AD(2018)006)

The Joint Opinion of the Venice Commission and OSCE/ODIHR on financial reporting requirements for NGOs was requested by the PACE Monitoring Committee and

7. As of 12 February 2019, the official name of the country changed to North Macedonia.

adopted by the Venice Commission in March 2018. The two draft laws under scrutiny (Nos. 6674 and 6675) were designed to replace previously imposed and widely criticised e-declaration requirements for anti-corruption activists through a regime of burdensome tax reporting and enhanced public disclosure of detailed financial information, to be submitted by civil society organisations (public associations) whose total annual income exceeded 300 subsistence minimums (currently approximately 14 350€) and individual beneficiaries of international technical assistance. Both the new financial disclosure regime for civil society organisations and the e-declaration requirements for anti-corruption activists conflicted with human rights and fundamental freedoms, namely, the freedom of association, the right to respect for private life and the prohibition of discrimination.

No legitimate aim for such far-reaching disclosure rules had been substantiated. It was therefore crucial that the e-declaration requirements be cancelled (as foreseen by draft law No. 6674), before the deadline of 1 April 2018, for submission of the first e-declarations by anti-corruption activists, and that the new financial reporting and disclosure requirements under draft laws No. 6674 and 6675 either be removed in their entirety or, at a minimum, be narrowed down substantially. In their current form, the stringent disclosure requirements, coupled with severe sanctions in case of non-compliance, were likely to have a chilling effect on the civil society and might even jeopardise the very existence of a number of civil society organisations which might lose their non-profit status as a sanction.

Judiciary

Georgia

Provisions on the Prosecutorial Council in the draft law of Georgia on the Prosecutor’s Office and on the provisions on the High Council of Justice in the Law on General Courts (CDL-AD(2018)029)

An opinion on the provisions on the Prosecutorial Council in the draft law of Georgia on the Prosecutor’s Office and on the provisions on the High Council of Justice in the Law on General Courts was requested by the Chairperson of the Monitoring Committee of the Parliamentary Assembly of the Council of Europe and adopted by the Venice Commission at its December 2018 plenary session. This opinion focused on the constitutional status of employees of the Prosecutor’s Office, the subordination of the prosecutors, the disciplinary responsibility of the Prosecutor’s Office’s and the role of the Prosecutorial Council (PC). For the High Council of Justice (HCJ), the relevant provisions in the existing Law on General Courts were analysed.

The main recommendations for the PC in light of its new role under Article 65(3) of the Constitution



Exchange of views on the revision of the Romanian laws on judiciary; Bucharest, June 2018

included: that its composition be revised to include members from civil society; the Prosecutor's Office's external and internal independence should be ensured in relation to the legislative and executive powers; that the internal independence of the prosecutors should be ensured and to do so the PC should be attributed with the role of ensuring at least a minimum set of guarantees. To achieve a balance between the hierarchical control over and the independence of prosecutors, the PC's powers should be increased regarding the careers of prosecutors. The draft law also needed to expressly indicate how the PC was to guarantee the transparency of the Prosecutor's Office. For the HCJ, the terminology for the grounds for terminating the powers of a member of the HCJ needed to be made clear and precise. Objective criteria should be established setting out what was deemed proper or improper fulfilment of duty.

Kazakhstan

Concept paper on the High Judicial Council (CDL-AD(2018)032)

At the request of the High Judicial Council of Kazakhstan (the HJC), the Venice Commission evaluated a concept paper on the reform of this body. The concept paper proposed to redistribute some powers and functions related to the judicial careers from the Supreme Court and its bodies to the HJC. While this was a reasonable approach, it was important that the HJC itself become more independent from the President, which may require either an amendment to the Constitution, or at least some legislative amendments. In particular, the law had to define the exact number of the members of the HJC, introduce guarantees against their early removal, and provide for the nomination of members of the HJC by Parliament and by the general assembly of all judges. The President had to be, as a rule, bound by the proposal of the HJC as regards judicial appointments.

The opinion also commented on the process of the qualification exam for aspiring judges, which should involve neither psychological testing by external experts nor a "lie detector" test.

The severity of the qualification exam should not be a goal on its own, and a system of grading of all

successful candidates was suggested. The law should define the relative weight of "objective" and "subjective" criteria for the selection of judges, and distinguish clearly between ethical breaches, disciplinary offences, and bad evaluations. A more comprehensive reform (going beyond the concept paper) could be envisaged for a longer perspective.

Administrative Procedure and Justice Code (CDL-AD(2018)020)

The opinion, requested by the Minister of Justice, analysed the new Code which regulates administrative procedures and administrative court proceedings together in one legal act. Taking into account that there were significant differences in the principles governing the administrative procedure and the administrative court proceedings, the Venice Commission was of the view that a more appropriate solution would be to regulate them separately. The Commission also recommended, as a way of ensuring normative consistency, simplicity and transparency, to simplify the chapter on general principles by placing the procedural rules into respective articles of the Code. It further recommended reconsidering the prosecutors' role in the administrative procedures and process, so as to limit their intervention to exceptional cases clearly indicated in specific articles of the Code. It was also recommended to clarify the provisions on the suspension of an administrative act pending the adoption of an appropriate decision, and to review the provisions on administrative discretion in order to avoid misinterpretation in future application of the Code. The authorities of Kazakhstan expressed their readiness to pursue the co-operation with the Venice Commission, on this text in 2019, on the basis of the Commission's recommendations.

Montenegro

Anti-deadlock mechanisms in judicial election (CDL-AD(2018)015)

Following exchanges held by Venice Commission representatives with the authorities on the election of the lay members of the Judicial Council, draft amendments to the Law on the Judicial Council and Judges were prepared and submitted to the Venice Commission for examination.



Exchange of views with the Prime Minister of Armenia Mr Nikol Pashinyan, November 2018

In its opinion the Commission stressed the need to provide for anti-deadlock mechanisms in respect of elections with a qualified majority of “safeguard institutions”. In line with common practice in Europe, the Commission recommended providing that the sitting lay members of the Judicial Council would sit on the new Council pending the appointment of the new ones. These acting functions would not represent a new mandate. The procedure for the election of the lay members could be changed so as to remove the need to elect all four members simultaneously. The Parliament of Montenegro adopted the amendments, following the Commission’s recommendations. Thanks to the anti-deadlock mechanism now contained in the law, the new Judicial Council started to function on 4 July 2018.

Morocco

International seminar on the management of the prosecution service (Rabat, 29 March 2018)

The Venice Commission participated in this seminar, organised by CEPEJ in the framework of the South Programme III, which brought together 140 participants, all prosecutors and attorneys general, to provide support to the Presidency of the Public Prosecutor for the creation of an independent and efficient public prosecutor’s office. It was the first seminar organised by the Presidency of the Public Prosecutor, which is a new body (October 2017), to discuss the European practice regarding the management of the prosecution service.

Poland

Follow-up to the 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 (CDL-AD(2017)031)

In its opinion of December 2017 the Commission concluded that the reform of the Polish judiciary posed a grave threat to judicial independence. In 2018 the legislative amendments were put into practice; this gave rise to a major controversy between the

European Commission and the Polish Government and resulted in at least two sets of proceedings before the European Court of Justice (the ECJ). The first concerned an extradition request for a suspected criminal from Ireland to Poland, due to concerns about the integrity of the Polish justice system. The ECJ held that the extradition may be postponed if the Irish court found that the person being extradited was exposed to a risk of a flagrant denial of justice. In November, the Irish court decided that despite serious doubts about the independence of the Polish judiciary, the applicant’s specific situation was not such as to conclude that he would not receive a fair trial back home.

The second case was referred to the ECJ by the European Commission on 2 October 2018. It concerned one of the major aspects of the reform, namely the retroactive lowering of the retirement age for judges of the Supreme Court. Many Supreme Court judges, including the First President, had refused to leave, considering this change unconstitutional. The European Commission believed that this measure also infringed EU law. While the proceedings were pending the Commission requested an interim measure, and on 19 October the Vice-President of the ECJ ordered the suspension of early retirement of judges and the appointment of the new judges to the SC. At the end of November, the Polish Government introduced draft legislation which would reinstate the Supreme Court judges (including the First President) who were supposed to leave under the new rules. This was positive, but other issues, noted in the 2017 opinion, remained unresolved.

Romania

Judicial laws; Criminal Code and Criminal Procedure Code

At the request of the President of Romania and the Monitoring Committee of the Parliamentary Assembly the Venice Commission prepared an opinion (CDL-AD(2018)017) in respect of three drafts amending to a large extent the laws on the status of judges and prosecutors, on the judicial organisation

and on the Superior Council of Magistracy. Criticised for being excessively fast and lacking inclusiveness and transparency, the legislative process had proved to be very divisive for the Romanian society.

While acknowledging some proposed positive changes, the opinion highlighted important new features which seen alone, but especially taking into account their cumulative effect, in the complex political context prevailing in Romania, were likely to undermine the independence of Romanian judges and prosecutors, the public confidence in the judiciary, as well as the country's fight against corruption. These included in particular: a new system for the appointment and dismissal of Chief prosecutors and the role of the Ministry of Justice therein, the limitation of freedom of expression of magistrates, the new provisions dealing with magistrates' liability and the new Section for investigating offences of magistrates, as well as the arrangements weakening the role of the Superior Council of Magistracy, as the guarantor of the independence of the judiciary.

Following their entry into force, the three judicial laws were modified through a government emergency ordinance, subsequently confirmed by Parliament. One amendment, the postponement (by one year) of the entry into force of the new early retirement scheme, addressed an issue raised in the Venice Commission's opinion. On the other hand, following a further emergency ordinance, the new Section for investigating offences committed by magistrates, criticised in the preliminary opinion, became operational.

The Commission also adopted, at the request of the Monitoring Committee of the Parliamentary Assembly, an opinion (CDL-AD(2018)021) on recent amendments to the Criminal Code and the Criminal Procedure Code. Officially, the amendments were mainly intended to bring the Romanian legislation in line with a number of decisions of the Constitutional Court and EU Directives.

The opinion, however, noted that some amendments went far beyond the requirements resulting from the case law of the Constitutional Court or the country's international obligations. Some amendments (such as those related to abuse of office) would seriously impair the effectiveness of the efforts to eradicate corruption in Romania, and their potential impact appeared to be even wider. They could significantly impact the criminal justice system and its effective and efficient operation as such. The Romanian authorities were invited to conduct an overall re-assessment of the amendments, in order to come up with a coherent legislative proposal, benefiting from broad support in society and taking fully into account the applicable standards. A number of more specific recommendations were made in relation to some proposed amendments to the two Codes. An important number of amendments to the two Codes, among them many

provisions criticized by the Venice Commission, were invalidated by the Constitutional Court and would have to be re-examined by the Romanian Parliament.

The Committee of Ministers of the Council of Europe, as well as the European Parliament and the European Commission, called upon the Romanian authorities, with reference to the Venice Commission's recommendations, to re-consider the recent amendments adopted in the sphere of the judiciary.

"The former Yugoslav Republic of Macedonia"⁸

Legislation on courts and on the Judicial Council

The Venice Commission examined the legislation on the judiciary on several occasions. In its 2015 opinion the Commission noted that legal regulations in this area were overly complicated, overlapping and obscure. An incremental revision of the legislation led to many improvements; the first step was taken in 2017, when the so-called Council for the Establishment of Facts was abolished, and its functions were transferred to the Judicial Council.

In 2018 the Venice Commission examined amendments to the Law on Courts and the Law on the Judicial Council.⁹ The overall assessment of the reform was positive. Instead of two parallel procedures both possibly leading to the dismissal of a judge, the legislation now provides for a single legal avenue. The new institutional arrangements and procedural rules were simpler, and better protect judicial independence.

However, the Law on the Judicial Council failed to specify who had the filtering function in the new system of disciplinary proceedings. It was not clear whether the Judicial Council was bound by the Inquiry Commission's proposal, and which decisions would require a qualified majority of votes. The Venice Commission commented on the scoring system for the performance evaluations. It also noted that the grounds for disciplinary liability contained in the different provisions of the Law on Courts were largely overlapping, and that the fault of the judge and the gravity of the consequences is a *conditio sine qua non* for a sanction. Finally, the Commission stressed that the finding of a violation by the ECtHR engaged the international liability of the State, but should never lead automatically to the dismissal of the judge involved in domestic proceedings.

Later in 2018 the Ministry of Justice reviewed the Law on Courts, largely in line with the Commission's recommendations. The Venice Commission adopted a follow-up opinion (CDL-AD(2018)033), in which it made certain mostly technical suggestions to the revised text.

8. As of 12 February 2019, the official name of the country changed to North Macedonia.

9. Cf. opinion CDL-AD(2018)022.

Transnational activities

Reports and studies

Freedom of assembly

In 2018 the Venice Commission continued the process of the preparation of a 3rd version of its joint Guidelines on Freedom of Peaceful Assembly, revised and updated in the light of the most recent developments in the field. The draft guidelines will be finalised and submitted to the Commission for adoption in the first part of 2019.

Ombudsman Institutions

In June 2017, the Commission decided to codify, on the basis of its previous work, a set of constitutional and legal principles (so-called “Venice Principles”) specifically devoted to the ombudsman institution. A broad process of consultation and exchanges on the “Venice Principles” with ombudsman institutions from all over the world as well as with international stakeholders took place during 2018. The draft text is due for adoption by the Venice Commission in 2019.

Funding of associations

During 2018 the Commission continued preparing, in the light of the most recent developments in this field, a study on the funding of associations. The draft study will be submitted to the plenary for adoption during its March 2019 Plenary Session.

Recall of mayors and other local representatives

Following Congress Resolution 420 and the request from the Secretary General of the Congress of 7 November 2017, in 2018 the Commission started the preparation of the study on the compatibility of local recall referendums aimed at cutting short the term of office of a local elected representative, with international standards and best practice (“Recall of mayors”). The draft study is due for adoption by the Venice Commission in 2019.

Interrelation majority - opposition

In 2018, the Venice Commission pursued its reflection on the interrelation between the opposition and the majority in a democratic parliament. A check-list including questions and examples of best practices in this field will be finalised and submitted to Commission for adoption in the first part of 2019.

Compilations of Venice Commission opinions and reports

The Commission endorsed two¹⁰ new compilations prepared by the Scientific Council. One concerned qualified majorities and anti-deadlock mechanisms (CDL-PI(2018)003). It describes mechanisms which may help to overcome a stalemate in Parliament where the requirement to obtain a qualified majority of votes for a decision (usually the decision to appoint an office-holder) cannot be fulfilled due to political cleavages.

Another compilation (CDL-PI(2018)005) concerned social and economic rights. These rights enjoy a somewhat weaker protection in the national constitutions, and yet their constitutional status shows that they are more than mere declarations of good will.

The Scientific Council also updated the compilations on prosecutors (CDL-PI(2018)001) and on the protection of national minorities (CDL-PI(2018)002).

10. For the information on the third new compilation, endorsed in 2018, please refer to the Chapter IV.



Participants of the 17th meeting of the Joint Council on Constitutional Justice; Lausanne, June 2018

III. CONSTITUTIONAL JUSTICE¹¹

Opinions, reports and conferences / Meetings¹²

Report on separate opinions (CDL-AD(2018)030)

The Report on Separate Opinions was adopted by the Venice Commission at its December 2018 plenary session. It is divided into three main parts: an overview of the advantages and disadvantages of separate opinions, the rules governing these opinions and a conclusion with recommendations. It explains that arguments against separate opinions claim that they endanger the unity of the court and undermine its authority whereas arguments in support of them claim that they democratise the judiciary, making it more transparent and thereby strengthening its authority and credibility.

The choice of whether or not to introduce separate opinions remains with the states. However, for those which have them, the report's main recommendations should be considered. These include that the law should treat separate opinions as a right and not a duty of judges; that these opinions should remain loyal to the court and its institutional role in order to ensure the legitimacy of judicial decision-making; that a separate opinion should be considered as an *ultima ratio* solution; that the majority must be able to respond to a written separate opinion to ensure the quality of judgments and the collegiality within the court; that the judges' code of conduct/ethics should deal with separate opinions setting out which lines should not be crossed; that a disrespectful separate

opinion breaching the code of conduct/ethics must be published regardless of whether or not a procedure has been launched against the dissenting or concurring judge and that a separate opinion forms a part of the judgment and should therefore be published in every case together with the majority judgment and *ex officio*, not only upon request by the judges, who formulate these opinions.

Andorra

Conference on "Constitutional Courts guarantors of the democratic quality of societies?" (Andorra la Vella, 12-14 July 2018)

The event organised on the occasion of the 25th anniversary of the Constitutional Court of Andorra gathered together 38 constitutional courts from Europe, Africa and Asia to discuss guarantees for the separation of powers, fundamental rights, the protection of courts – a democratic necessity, the protection of the independence of constitutional judges and the protection of the constitutional decision-making process.

The aim of the Venice Commission's participation was to raise constitutional courts' awareness to the Venice Commission's role in promoting and defending constitutional justice.

Angola

Visit by the Constitutional Court of Angola (Strasbourg, 29 May 2019)

A delegation from the Constitutional Court of Angola, headed by its President, visited the Council of Europe and held meetings with Ms Simona Granata-Menghini, Deputy Secretary of the Venice Commission and with Mr Schnutz Dürr, Secretary General of the World Conference on Constitutional Justice. The delegation also met with Mr Guido Raimondi, President of the European Court on Human Rights and with Mr Paul Rübzig, Member of the European Parliament.

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

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

Armenia

Conference on “The new millennium constitutionalism” (Yerevan, 1-2 November 2018)

The theme of this Conference was “The new millennium constitutionalism” and the event was organised by the “Constitutional Culture” International Analytical Centre of the Constitutional Court of Armenia.

The President and the Secretary of the Venice Commission both participated in this event.

The goal of the Conference was to identify the challenges in ensuring constitutionalism in the 21st century and to discuss the mechanisms of ensuring constitutionalism. Topics discussed included the current challenges to justice and the constitution, in particular, effective justice monitoring, judicial power in crisis situations, further strengthening of democracy through the rule of law, etc. Participants included the Chairman of the Constitutional Court of Mongolia, the Vice-President of the Constitutional Court of Bosnia and Herzegovina, judges of constitutional and supreme courts, representatives of the OSCE/ODIHR, judges of different international tribunals of the UN, lawyers and other high-ranking foreign officials.

Follow-up to the Opinion on the draft constitutional law on the Constitutional Court (CDL-AD(2017)011)

The need to adopt a new law on the Constitutional Court of Armenia came as a result of the adoption of the new Constitution. In its opinion, adopted in June 2018, the Venice Commission welcomed the draft law as a positive step in ensuring the Constitutional Court of Armenia’s role as an effective guardian of the Constitution, while making a number of recommendations to further improve the text. On 27 January 2018, the Armenian President enacted the Constitutional Law on the Constitutional Court.

As recommended by the opinion, the adopted Law limits the immunity of judges of the Constitutional Court to acts committed in the exercise of their functions and reduces the powers of the President of the Constitutional Court by removing his competence to adopt the rules of procedure of the Court. The adopted Law also provides, as recommended, that the decisions of the Constitutional Court enter into force when published on the web-site of the Court.

The opinion recommended setting out the procedure for the appointment of the judges of the Constitutional Court in a clear manner, at least by reference to the relevant provisions of the Rules of Procedure of Parliament. While the draft law made a general reference to the Rules of Procedure of Parliament, the



Conference on “Constitutional justice and the principle of proportionality”; Sucre, Bolivia, December 2018

adopted Law refers to the Constitution and legislation in general.

On a positive note, the adopted Law establishes that the Court’s President must inform the other state bodies about an upcoming vacancy six months before the end of the mandate of the judge concerned.

Azerbaijan

Conference on “The state governed by the rule of law and the constitutional justice: values and priorities” (Baku, 6 July 2018)

The President of the Venice Commission participated in this international conference which was devoted to the 20th anniversary of the Constitutional Court of the Republic of Azerbaijan.

In his opening speech, the President of the Commission underlined the importance of political dialogue and commitment to engaging in open discourse in a democracy and insisted on the crucial role of constitutional courts in the effective implementation of human rights standards, notably, in the fields of freedom of expression and association. He also emphasised the importance of the principle of “accountability” in guaranteeing the rule of law and insisted on the need to address the corruption problem.

The activity was carried out within the framework of the Partnership for Good Governance (PGG) funded by the European Union and the Council of Europe and implemented by the Council of Europe.

Bolivia

Conference on “Constitutional justice and the principle of proportionality” (Sucre, 7 December 2018)

On 7 December 2018, the Plurinational Constitutional Court of Bolivia and the Venice Commission organised a conference on “Constitutional justice and the principle of proportionality” at the seat of the Court in Sucre.

The conference gathered together around 200 participants and was streamed live via the Internet, including at seven Bolivian universities. Local and remote participants were able to ask questions to the speakers. The Venice Commission invited international experts from Costa Rica, Germany, Peru and a former Judge of the European Court of Human Rights (Spain), as speakers.

The discussions developed along the idea that the principle of proportionality, which had developed in Germany and spread world-wide via the European Court of Human Rights, is a legal technique that enables control of whether or not human rights restrictions are “necessary in a democratic society”. Human rights – with a few exceptions – are not absolute and can be limited, not least because they may be in conflict with other human rights.

The participants discussed how judges can use the principle of proportionality as a vehicle to achieve equilibrium in balancing the nature and extent of the interference against the reason for the interference.

This event was funded by a voluntary contribution from the Government of Mexico.

Czech Republic

XVIIIth Congress of the Conference of European Constitutional Courts (CECC) (Prague, 13-14 June 2018)

While the Venice Commission regularly participates in the meetings of the Circle of Presidents of the CECC, the Czech Presidency requested, for the first time, that the Commission present a report to the CECC on its work in support of the constitutional courts in its member states. The Commission presented this report covering opinions, *amicus curiae* briefs and declarations made since 2016.

The Plenum of the Circle of Presidents had asked the Venice Commission to prepare a special issue of the Bulletin on Constitutional Case-Law as a working document for the XVIIIth Congress (see below).

Egypt

10th Symposium of the Union of Arab Constitutional Courts and Councils (UACCC) (Cairo, 23 April 2018)

The President of the Venice Commission participated in the UACCC’s 10th Symposium, which gathered together the 15 members of the UACCC to discuss the experiences of the Arab constitutional judiciary on the right of equality and religious and cultural freedoms (see under co-operation with the UACCC below).

During this event, the President of the Commission invited UACCC Member Courts to contribute to the CODICES database and the Venice Forum by virtue of



Exchanging views with the Georgian authorities in the framework of the preparation of an opinion concerning the High Judicial Council of Justice and the Prosecutorial Council of Georgia; Tbilisi, November 2018

the co-operation agreement with the UACCC. He also invited members of the UACCC not having yet done so to join the World Conference on Constitutional Justice and confirmed that the Bureau of the World conference had accepted the proposal of the Algerian Council for the topic of the 5th Congress in 2020: “Peace and Constitutional Justice”.

The discussions were frank and related, *inter alia*, to the question to which extent Sharia is (the sole) source of law; the limits of religious freedoms; constitutional limits to the control of death penalty; the rights of ‘non-heavenly’ religions (other than Muslims, Jews and Christians); freedom to build places of worship for religions other than Muslim; equality in privileges for pilgrimage or linguistic diversity.

Georgia

Constitutional amendments as adopted at the second and third hearings in December 2017 (CDL-AD(2018)005)

In its opinion adopted in March 2018, the Venice Commission welcomed, *inter alia*, a number of amendments in the field of fundamental rights, such as the amendments concerning the right to freedom of religion and in the field of constitutional justice, such as the repeal of the requirement of full consensus of the Plenum of the Constitutional Court when delivering judgment on the unconstitutionality of conducted elections. The Commission noted that a number of its previous recommendations concerning the appointment of Supreme Court judges, the requirement of a qualified majority in Parliament for the election of the Prosecutor General and prohibition of the creation of political parties on territorial principle were not taken into account in the new draft revised constitution. For a more complete presentation of this opinion, see chapter II.

3rd Congress of the Association of Constitutional Justice of the Countries of the Baltic and Black Sea Regions (BBCJ), "Role of the Constitutional Courts in European integration process" (Tbilisi, 16-17 May 2018)

The Congress gathered together around 80 participants, including five BBCJ member courts (Georgia, Republic of Moldova, Lithuania, Poland and Ukraine) and judges from the constitutional courts of Latvia and Turkey, academics, students and representatives of the civil and international community of Georgia, the Council of Europe, the EU and diplomats.

Discussions focused on the sharing of experience in the EU integration process by the Lithuanian and Polish constitutional courts and that case law of countries not yet members of the EU already referred to the case law of the Court of Justice of the EU.

This activity was carried out within the framework of the Partnership for Good Governance (PGG) for Armenia, Azerbaijan, Georgia, the Republic of Moldova, Ukraine and Belarus, funded by the EU and the Council of Europe and implemented by the Council of Europe.

Amicus curiae brief for the Constitutional Court of Georgia on the effects of Constitutional Court decisions on final judgments in civil and administrative cases (CDL-AD(2018)012)

This *amicus curiae* brief was requested by the President of the Constitutional Court of Georgia, Mr Zaza Tavadze, on the effects of the decisions of constitutional courts in civil and administrative cases and adopted by the Venice Commission at its June 2018 plenary session. The brief replied to the questions raised by the President of the Constitutional Court with an analysis of comparative law. The brief found that there was a variety of systems, ranging from moderate *ex tunc* systems to strict *ex nunc* systems, sometimes with a specific rule for the instant case. No model was particularly dominant.

The Georgian legislation established an *ex nunc* system, but the legislation did not provide for a direct answer to all the aspects of the effects of decisions of the Constitutional Court on final judgments of the ordinary courts that were based on legal provisions that were found unconstitutional. It did not fall short of European standards that the Civil Procedure Code of Georgia did not include decisions of the Constitutional Court as explicit grounds to reopen final court decisions. In interpreting the applicable provisions, it would be up to the Constitutional Court to find a balance between the principles of individual remedy and legal security.

Jordan

1st Bilateral Steering Committee Meeting with the Hashemite Kingdom of Jordan (Amman, 5 May 2018)

This event dealt with several important areas: justice reform / constitutional justice; prevention of corruption, money laundering and terrorism and more generally, the partnership networks between the Council of Europe and Jordan.

The Venice Commission intervened under the topic of justice reform and constitutional justice, underlining that Jordan and the Venice Commission have been actively co-operating since 2012, notably in the areas of constitutional justice and on electoral matters. The overall objective remains to strengthen the Constitutional Court and the Independent Electoral Commission and to further develop co-operation with the Venice Commission in other areas, notably the Ombudsman institution.

This event was funded by the Council of Europe and the European Union under the Joint South Programme III (2018-2020) entitled "*Ensuring Sustainable Democratic Governance and Human Rights in the Southern Mediterranean*".

Seminar on "Legal stability and the case for reversing precedent" (Amman, 4 December 2018)

Around 20 people attended this event, including judges and staff and the President of the Constitutional Court of Jordan. Discussions focused on the role of precedent and when it can and should be reversed and to provide the judges of the Constitutional Court of Jordan with the opportunity to ask international experts questions regarding the practice in their courts and international practice in general on this issue.

The Jordanian Constitutional Court judges actively participated in the Q&A sessions and were very interested about how different legal systems treated precedent. Many questions also ventured outside the scope of the conference's subject, but remained within the field of constitutional law. For instance, constitutionally protected rights and the hierarchy between national constitutions and international treaties; the effect on a law that has been declared unconstitutional by the constitutional court.

This event was organised by the Constitutional Court of Jordan together with the Venice Commission and funded by the Council of Europe and the European Union under the Joint South Programme III (2018-2020) entitled "*Ensuring Sustainable Democratic Governance and Human Rights in the Southern Mediterranean*".

Kazakhstan

Conference “A constitution: the embodiment of the values of the rule of law, civil society and the modern state”, dedicated to the Day of the Constitution of the Republic of Kazakhstan and meeting of the Conference of Constitutional Control Organs of the Countries of New Democracy (CCCOCND) (Astana, 28 August 2018)

The event gathered together 42 constitutional courts and courts with equivalent jurisdiction. The aim of the Venice Commission’s participation in this event was to maintain contact with the new Kazakh presidency of the CCCOCND (see III.5 below) and to promote freedom of association.

At the meeting of the CCCOCND, the Constitutional Court of Azerbaijan was admitted as a new member. The Kazakh presidency presented the new web-site and promised to continue publishing the Conference’s journal. The question of whether the CCCOCND should adopt a formal statute was discussed. The participants were informed about the topic of and progress in the preparation of the 5th Congress of the WCCJ and were invited to contribute to the CODICES database.

Korea



President Buquicchio at the conference on the 30th anniversary of the Constitutional Court, Seoul, September 2018

1st Research Conference of the Association of Asian Constitutional Courts and Equivalent Institutions Secretariat for Research and Development (AACC SRD) on the topic “Jurisdictions and organisation of AACC members” (Seoul, 29 May – 1st June 2018)

This event was hosted by the Constitutional Court of Korea and the AACC Secretariat for Research and Development.

The event gathered together representatives of constitutional courts from 13 member courts of the AACC and guests from the European Court of Human Rights. The aim of this event was to gather information regarding the jurisdiction of the member courts of the

AACC and their internal organisation and functioning. Discussions revolved around access to constitutional justice and the types of complaints that exist in the courts of different countries in that respect. The proceedings of this event were published.

The aim of the Venice Commission’s participation in this event was to maintain relations with the AACC, request contributions to CODICES from Asian courts and encourage their active use of this database as well as to invite AACC members to join the World Conference on Constitutional Justice (WCCJ).

Conference in commemoration of the 30th anniversary of the Constitutional Court of Korea (Seoul, 2-5 September 2018)

This event gathered together around 100 participants from 33 constitutional courts or courts with equivalent jurisdiction to discuss the past and present status of constitutional justice and parliament, elections and constitutional justice as well as protecting human rights through constitutional justice and how to cope with the challenges of the 21st century.

Kosovo

Opening of the 9th Judicial Year of the Constitutional Court of Republic of Kosovo (Pristina, 25 October 2018)

The President of the Venice Commission took part in the opening of the 9th Judicial Year of the Constitutional Court of Kosovo. In his presentation, he referred to the co-operation between the Venice Commission and Kosovo, notably since 2014, when it became a member of the Venice Commission and encouraged the authorities to make requests for an opinion/*amicus curiae* brief to the Venice Commission.

Latvia

Conference “The role of constitutional courts in the globalised world of the 21st century” dedicated to the 100th anniversary of the State of Latvia (Riga, 24-25 May 2018)

This event gathered together representatives of constitutional jurisdictions from 25 countries, *inter alia*, from Italy, France, Germany, and Spain. Scholars and legal experts, guests from the European Court of Human Rights and the Court of Justice of the European Union, as well as official representing Latvian institutions and the Council of Europe.

Discussions revolved around how globalisation has influenced the functioning of constitutional courts and courts with equivalent jurisdiction and their case law as well as possible improvements in these courts’ work, in view of the significant and constantly growing supra-national influence of these institutions.



"The Constitution at the era of global change and the aims of constitutional control", St Petersburg, May 2018

Malta

Constitutional arrangements and separation of powers and the independence of the judiciary and law enforcement bodies of Malta (CDL-AD(2018)028)

The opinion on the constitutional arrangements and separation of powers and the independence of the judiciary and law enforcement bodies of Malta covered, *inter alia*, the issue of the execution of the judgments of the Constitutional Court of Malta. The opinion recommended that the Constitution be amended to ensure that provisions found unconstitutional by the Court lose their force by virtue of the judgments of the Court, without the intervention of Parliament as was currently the practice.

For a more complete presentation of this opinion see chapter II above.

Panama

XIIth Ibero-American Conference on Constitutional Justice (CIJC) on the relationship between constitutional and ordinary jurisdiction (Panama, 16-18 May 2018)

The Venice Commission's aim in taking part in this event was to maintain relations with the Ibero-American Courts; invite them to join the World Conference on Constitutional Justice (WCCJ) and to contribute actively to the CODICES database and the Venice Forum.

Discussions at this event focused on the rights of vulnerable persons and the difficulties related to their access to courts.

Suggestions were made that individuals should have the fundamental right to know algorithms which determine decisions relating to them. The individuals should then benefit from an algorithm ombudsman who would be able to understand the technical elements of the description of the algorithm and who could intervene on their behalf.

Bilateral discussions focused on training sessions on contributions to the CODICES database.

Russian Federation

Final session of the VII Annual Crystal Themis Moot Court Competition (Moscow, 31 January – 2 February 2018)

The Institute for Law and Public Policy, under the auspices of the Association of Lawyers of Russia and with the support of the Venice Commission, completed the Seventh All-Russian Moot Court Competition for the Russian law school students' teams called "Crystal Goddess of Justice (Crystal Themis)". The case brought before the court this year was entitled "Exploring the Arctic, or the Case of Nickel Ore". 16 teams took part in the moot court competition. The runners-up were the three teams that had won the quarter-final rounds and competed in the semi-finals: Immanuel Kant Baltic Federal University, Lomonosov Moscow State University, and the Russian State University of Justice. The students from the Ural State Law University won the main Crystal Themis prize.

Conference on "Constitution in the global change epoch and the goals of constitutional review" (St. Petersburg, 15 May 2018)

In celebration of the 25th anniversary of the adoption of the Constitution of the Russian Federation, the Russian Constitutional Court organised an international conference on "Constitution in the global change epoch and the goals of constitutional review".

The Secretary of the Venice Commission spoke about how far constitutional review had spread and whether this happened by accident or whether there was a link between globalisation and constitutional review.

Slovakia

Conference on "Constitutional justice – challenges and perspective" on the occasion of the 25th anniversary of the Constitutional Court (Košice, 11 April 2018)

Delegations from constitutional courts and courts with equivalent jurisdiction from over 20 countries attended this event.

Discussions revolved around the constitutional and legal positions of different constitutional courts, the role of the case law of the European Court of Human Rights in interpreting constitutional provisions and the re-opening of proceedings after a judgment by this Court as well as the role of EU law and the Charter of Fundamental Rights.

Follow-up to the Opinion on questions relating to the appointment of judges of the Constitutional Court of the Slovak Republic (CDL-AD(2017)001)

At the December 2017 session, the Venice Commission was informed that, following the Opinion, the First Senate of the Constitutional Court had decided that

by not appointing candidates elected by Parliament to the Constitutional Court, the President of Slovakia had violated the fundamental right of access to elected office of the rejected applicants.

The President of Slovakia subsequently appointed three judges to the Constitutional Court and the Court was once again complete. In January 2018, the President of the Venice Commission wrote a letter to the Speaker of the National Assembly and the Prime Minister expressing his satisfaction that the vacancies had been filled. In his letter, the President also offered the assistance of the Venice Commission to support legislative and constitutional reforms in the light of the opinion. The opinion had not only recommended that the President follow the judgment of the Constitutional Court, but also proposed constitutional and legislative changes to avoid similar situations from occurring in the future.

Turkey

Symposium on the occasion of the 56th anniversary of the Constitutional Court of Turkey (Ankara, 25-26 April 2018)

The President of the Venice Commission attended this event. In his speech he deplored the cases of non-execution of judgments of Constitutional Courts. He also insisted that it was the role of the Constitutional Court to uphold human rights even in difficult situations.

Discussions also revolved around the issue of the execution of the Constitutional Court's judgments and the unfortunate trend of their non-implementation.

Around 20 constitutional courts and courts with equivalent jurisdiction attended this event.

First International Conference of the Constitutional/Supreme Courts of the OIC Member Countries on the "Role of the higher judiciary in protecting the rule of law and fundamental rights" (Istanbul, 14-16 December 2018)

Professor Osman Can, former member of the Venice Commission, represented the Venice Commission at this event.

At this event, the idea of establishing a forum for Constitutional/Equivalent institutions consisting of the OIC member states was discussed and concluded in an Istanbul Declaration signed on 15 December 2018, which set out that conferences will be held regularly to discuss constitutionalism and human rights; that a working committee of experts will be established to deal with this forum and that conferences should be organised every two years.

Ukraine

Conference "The Individual constitutional complaint to the Constitutional Court of Ukraine" (Kyiv, 10 September 2018)

The presentations by the experts made a clear distinction between the full constitutional complaint (e.g. Germany) and the normative constitutional complaint (such as in Poland). An important part of the discussion was devoted to Article 89.3 of the Law on the Constitutional Court of Ukraine, which enabled this Court to go further than the pure normative complaint by referring a case back to the Supreme Court when the Constitutional Court comes to the conclusion that the challenged law was constitutional, but that its application by the courts was unconstitutional. It was still unclear to what extent the Constitutional Court would use the full scope of this provision, which was discussed also in the Venice Commission's opinion (CDL-AD(2016)034). Depending on its interpretation of Article 89.3, the Constitutional Court could turn the constitutional complaint into a "quasi full constitutional complaint".

At this event, the Venice Commission announced that it would provide, as result of a tender, Professor M. Granat, former judge of the Constitutional Court of Poland, as a long-term advisor for the Constitutional Court of Ukraine within the framework of the Ukraine Action Plan.

This event was organised within the framework of the Ukraine Action Plan.

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 17th meeting of the JCCJ was hosted by the Federal Court of Switzerland in Lausanne on 27-28 June 2018.

In this meeting, the JCCJ:

- ▶ elected Ms Mirjana Stresec, liaison officer for the Constitutional Court of Croatia, as Co-President for the liaison officers;
- ▶ was informed about the follow up to the letter signed by the Co-Presidents of the JCCJ sent to the Turkish authorities regarding one of the former liaison officers of the JCCJ from the Constitutional Court of Turkey, Justice Bekir Sözen, who had been detained on 16 July 2016, following the failed *coup d'état* in Turkey. Justice Bekir Sözen had been released in May 2018, after nearly

two years in solitary confinement, but his trial was to continue;

- ▶ held exchanges of views with representatives of the regional and linguistic groups co-operating with the Venice Commission and was informed about this co-operation;
- ▶ invited the liaison officers to contribute to the Venice Forum;
- ▶ was informed about the Constitutional Justice Observatory;
- ▶ was informed about activities of and opinions adopted by the Venice Commission in the field of constitutional justice;
- ▶ was informed about the participation in and co-organisation of conferences and seminars in co-operation with Constitutional Courts and equivalent bodies (CoCoSems);
- ▶ the liaison officers agreed that there will no longer be a paper version of the *Bulletin on Constitutional Case-Law*; that a list of *précis* with indexing, which provides links to the full *précis* (with headnotes and summary) in CODICES, will be sent by e-mail three times a year; that a new system of subscription to alerts of new *précis*, indicating the liaison officer's interests in topics of the Systematic Thesaurus and/or countries will be elaborated; that the JCCJ will continue the practice of choosing its own topic for its mini-conference and that one Special Bulletin will be published every three years for the CECC;
- ▶ was informed that the 19th meeting will be hosted by the Constitutional Court of Croatia in Zagreb in 2020.

The 17th meeting of the JCCJ was followed by a mini-conference on the topic "*Gender, equality and discrimination*". The presentations and subsequent discussions raised awareness on many issues pertaining to gender, equality and discrimination. Discussions were held on various of the main topic:

- ▶ on wage discrimination between genders;
- ▶ that within the ECHR system, states have a margin of appreciation when it comes to discrimination (except for core rights), for instance military service discriminates between men and women as it is an obligation for men and often not for women; women are allowed to retire earlier than men etc.
- ▶ that although paternity leave exists, it is often very difficult for men to invoke it without being discriminated against, revealing that both men and women were discriminated against when they start a family;
- ▶ that there is an emerging trend in protecting the rights of homosexual couples that includes the recognition of same-sex partnerships and

marriage in some countries, the right to adopt, tenancy and pension rights, even solitary confinement in prison to avoid harassment and violence;

- ▶ that domestic violence has been recognised as gender bias by the ECtHR;
- ▶ that women should also be allowed to transmit their last names to their children;
- ▶ that sexual intimidation and harassment on the street was being tackled by some countries through the introduction of laws making it an offence under their criminal code;
- ▶ that in some countries, a person as young as 16 can request the registry to change the description of their gender (self-declaration), whereas in others more restrictions and safeguards are imposed for this not to be misused (time and stability of the decision).

Participants agreed that education and awareness was key in furthering the rights of those who are still stigmatised today.

All the presentations made during this mini-conference were published on the site of the Venice Commission and as a brochure, which is available at: www.codices.coe.int in the "Reports" section.

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

This year saw a major overhaul of the Bulletin on Constitutional Case-Law, first published in January 1993. The Bulletin has now become fully electronic, no paper form will be published from now on, with the exception of thematic special Bulletins requested by the CECC (see below), and has been renamed the electronic Bulletin (e-Bulletin on Constitutional Case-Law). The e-Bulletin will continue to be published three times a year, containing summaries of the most important decisions provided by the constitutional courts or equivalent bodies of all 61 member States (102 courts counting those from non-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 co-operation and exchange of information as

well as from the judgments of their counterparts in other countries.

In 2018, précis on 355 judgments were published in three regular issues of the Bulletin and 280 in the Special Bulletin on Constitutional Principles.

The CODICES database presents the leading constitutional case-law of Constitutional Courts and Courts with equivalent jurisdiction to the public. The CODICES database contains over 10,000 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. The contributions, presented in CODICES, are prepared by liaison officers appointed by the Courts themselves. This is an essential guarantee for the quality of the information presented in CODICES.

In 2018, the Constitutional Courts contributed actively to the CODICES database, which was updated regularly. More than 400 cases were added to the CODICES database, which helps the constitutional courts to refer to the experiences and the case-law of courts in other countries and participating European and international courts. The number of page visits of the CODICES database increased significantly. The constitutional courts reported numerous references to international case-law in their judgments, notably to the European Court of Human Rights.

In 2018, the CODICES database was improved by simplifying the server structure and by speeding up the production of the database. Main elements of new Alert Management System and an on-line data entry mask have been added to CODICES. Eventually, the Alert Management System will allow the users to register requests for new alerts on constitutional case-law summaries fulfilling certain criteria.



Mini-conference on gender, equality and discrimination, Lausanne, June 2018

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 2018, 22 posts were made in the Newsgroup.
- ▶ The restricted *Classic Venice Forum* enables courts to ask other courts for specific information on case-law. In 2018, the *Classic Venice Forum* dealt with 35 comparative law research requests covering questions that ranged from the status of the Church of the Flying Spaghetti Monster, remuneration of prisoners' labour, transgender rights, the status of refugees to the constitutionality of a referendum and State decorations.
- ▶ 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 2018, 822 of these Constitutional Justice Media Observatory articles were sent to subscribers (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.



At the meeting of the Conference of the Constitutional Control Organs of the Countries of New Democracy (CCCOCND) in Astana, August 2018

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 Asian Constitutional Courts and Equivalent Institutions (AACC)

In addition to the Training Secretariat in Ankara, Turkey, there is one AACC Secretariat in Seoul, Korea, which deals with research and development, and another Secretariat in Jakarta, Indonesia, which deals with planning and co-operation. An international symposium was organised in Seoul in October of 2017 as an inaugural event for the AACC Research and Development Secretariat. The Research and Development Secretariat in Seoul was currently setting up a secondment programme and so far, there were two secondments, one from Mongolia and the other from Indonesia.

The secretariat of the AACC in Indonesia, which deals with planning and co-operation, regularly holds an annual event in August. This event did not however take place in 2018, due to the local and regional election cases that the Constitutional Court had to deal with. There were many cases which needed to be dealt with between July and August 2018. The international symposium was therefore rescheduled to take place on 1-4 October 2018 in Jakarta on the theme “*Constitutional courts and constitutionalism in political dynamics*” – on the second and third day a short course for registrars and researchers were held.

There was also a meeting of liaison officers of the AACC in Indonesia on 18 October 2018.

The AACC participated in the WCCJ’s 13th Bureau meeting in Venice, Italy on 17 March 2018 (see below).

Association of Constitutional Courts using the French Language (ACCPUF)¹³

On the basis of the Vaduz Agreement and its Djibouti Protocol with ACCPUF, the Venice Commission continued to include the case-law of ACCPUF Courts in the CODICES database in 2018.

The 8th congress of ACCPUF will take place in Montréal, Canada on 30 April-3 May 2019.

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

The Chairman of the Constitutional Council of Kazakhstan, Mr Kairat Abdrazakuly Mami, was elected chair of the CCCOCND in December 2017. In May 2018, the CCCOCND organised a meeting in St. Petersburg, on the occasion of the international conference organised by the Constitutional Court of the Russian Federation on “*Constitution in the Global Change Epoch and the Goals of Constitutional Review*”, at which it changed its logo, decided to create a website and the members agreed to continue co-operation with the Venice Commission and the WCCJ.

Another meeting of the CCCOCND took place in Astana, Kazakhstan on 28 August 2018 on the Constitution Day of Kazakhstan. The Venice Commission participated in both events.

The CCCOCND participated in the WCCJ’s 13th Bureau meeting in Venice, Italy on 17 March 2018 (see below).

Conference of Constitutional Jurisdictions of Africa (CCJA)

Co-operation between the CCJA and the Venice Commission is based on a co-operation agreement signed in Cotonou, Benin, in May 2013.

The Venice Commission regularly takes part in the activities of the CCJA. The CCJA held its 9th session of the executive bureau in Durban. It will hold a 5th Congress in June 2019 in Luanda, Angola. A 3rd International seminar will be organised together with the 10th session of the executive bureau, however no date or place has yet been fixed.

The CCJA participated in the WCCJ’s 13th Bureau meeting in Venice, Italy on 17 March 2018 (see below).

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



Circle of Presidents of European Constitutional Courts, in preparation for the eighteenth congress of the CECC; Prague, June 2018

Conference of European Constitutional Courts (CECC)¹⁴

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

The Constitutional Court of the Czech Republic currently holds the chairmanship of the Conference of European Constitutional Courts (CECC).

The Venice Commission was represented at the preparatory meeting of the Circle of Presidents for the XVIIIth Congress of the CECC, which took place in Prague on 13-14 June 2018. The Venice Commission had been asked for the first time to present a report to the CECC in support of the constitutional courts in member states and beyond. The Venice Commission presented opinions and declarations since 2016.

At this meeting, it was decided that the XVIIIth Congress will take place in June 2020 on the topic *“Human Rights at the national, supranational and international level in the 21st century”*. The Circle of Presidents (not only the CECC chairmanship) had asked the Venice Commission to prepare a special issue of the *Bulletin on Constitutional Case-Law* as a working document for the XVIIIth Congress.

Vice-President Fenyk of the Czech Constitutional Court was elected general rapporteur for the XVIIIth Congress and the CECC had received a request for associate membership from the Constitutional Court of Kosovo, which the Circle of Presidents has added to the agenda of its next meeting.

The CECC also participated in the WCCJ's 13th Bureau meeting in Venice, Italy on 17 March 2018 (see below).

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

Conference of Constitutional Courts of Portuguese Speaking Countries (CJCLP)

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

The Supreme Court of Guinea Bissau had held the presidency of the CJCLP since 2016, but was now unable to carry out any activities due to the political situation in the country. There was no government since the beginning of 2018. There is a proposal to ask the Constitutional Court of Portugal to take over the presidency, however, no formal decision had yet been made.

Ibero-American Conference of Constitutional Justice (CIJC)

The Venice Commission's co-operation deepened with the Ibero-American Conference of Constitutional Justice (CIJC), presided by the Supreme Court of Panama, which chaired a group meeting at the 4th Congress of the WCCJ in Vilnius and joined the WCCJ shortly after that.

The XIIth Conference of the CIJC which took place in Panama in May 2018 had very fruitful discussions on the relations between constitutional courts and ordinary courts, which can be strained especially when there is a full individual constitutional complaint to the constitutional court. It was decided during this conference that the XIIIth Conference of the CIJC will take place in Colombia in 2020.

The CIJC participated in the WCCJ's 13th Bureau meeting in Venice, Italy on 17 March 2018 (see above).



Symposium of the Union of Arab Constitutional Courts and Councils; Cairo, April 2018

Southern African Chief Justices Forum (SACJF)

The co-operation agreement signed in Maseru, Lesotho in 2007 forms the basis of the co-operation between the Venice Commission and the SACJF.

The SACJF informed the Venice Commission about its support for the Supreme Court of the Seychelles, notably that upon invitation by the Judiciary of the Seychelles, the SACJF undertook a fact-finding mission to the Seychelles in the context of disciplinary proceedings against the Chief Justice with a view to impeaching her. The overall objectives of the mission were to establish facts on the ground and to make practical suggestions to resolve fundamental issues affecting the rule of law, separation of powers as well as the independence of the judiciary in that country. Chief Justice Shivute led the mission and was accompanied by the Chief Justice of Malawi. They compiled a public Final Report of their finding. The report was shared with all the key Seychelles State institutions and within the SACJF. The report was well-received, both inside and outside the Seychelles and the SACJF's mission made an important contribution to efforts aimed at resolving issues affecting the judiciary of the Seychelles..

Union of Arab Constitutional Courts and Councils (UACCC)

Co-operation between the Venice Commission and the UACCC is based on a co-operation agreement signed in Cairo, Egypt, in June 2008.

The President of the Venice Commission participated in the UACCC's 10th symposium in Cairo, Egypt in April 2018. A workshop took place in Jordan in co-operation

with the Venice Commission on 4 December 2018 in Amman (see chapter V).

The UACCC participated in the WCCJ's 13th Bureau meeting in Venice, Italy on 17 March 2018 (see below).

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 114 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,



13th meeting of the Bureau of the World Conference on Constitutional Justice (WCCJ), Venice, March 2018

who are committed to promoting constitutionalism in their own countries.

In 2018, two constitutional courts and equivalent bodies joined the WCCJ as full members. These are: the Supreme Constitutional Court of Palestine¹⁵ and the Supreme Court of Finland.

On 17 March 2018, the 13th meeting of the Bureau of the WCCJ took place in Venice, Italy. During this meeting, the Bureau:

- ▶ took note of the financial report submitted by the Secretariat and decided that the World Conference should cover the expenses of the Least Developed Countries' representatives from regional or linguistic groups, but only if a request to do so was made and the group was unable to meet the cost;
- ▶ approved "Constitutional Justice and Peace" as the topic of the 5th Congress in Algiers in 2020 and invited the Constitutional Council of Algeria and the Secretariat to prepare a concept note and questionnaire on this topic;

- ▶ approved the preparation of a training session on CODICES and the Venice Forum in co-operation with the Constitutional Court of the Dominican Republic in February 2019;
- ▶ requested the Secretariat to prepare a note on how Member Courts under undue pressure could be supported by the WCCJ;
- ▶ decided that the next Bureau meeting will be held in the first week of February 2019 in the Dominican Republic.

The latter part of 2018 was devoted to the preparation of the 1st WCCJ Training on CODICES and the Venice Forum (February 2019).

15. 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.



Participants of the 15th European Conference of Electoral Management Bodies "Security in elections", Oslo, April 2018

IV. ELECTIONS, REFERENDUMS AND POLITICAL PARTIES

Country specific activities

Albania

In October 2017, an Ad-Hoc Parliamentary Committee “On the Implementation of the Electoral Reform” had been established to address the recommendations of the OSCE/ODIHR Reports on the last three elections of 2013, 2015 and 2017, with the aim of preparing draft amendments to the Electoral Code and other election related legislation.

In February 2018, the Albanian Speaker forwarded an official request to the Venice Commission to assist the work of the Ad-Hoc Committee. The proposed activities for the Venice Commission’s expert assistance had been defined in close co-ordination with the co-chairs of the Ad-Hoc Committee and international partners in order to ensure maximum coherence and avoid the duplication of efforts. Four areas were targeted: new voting technologies, out-of-country voting for emigrants, media and campaign issues, and election administration.

Venice Commission experts prepared reports on new voting technologies and out-of-country voting. They also participated in the workshops organised by the Ad-Hoc Committee in co-operation with the OSCE on the four above-mentioned issues.

Armenia

Follow-up to the Joint Opinion on the draft law on referendum (CDL-AD(2017)029)

The Constitutional Law on Referendum was adopted by the Parliament on March 23, 2018 and had been in force since 9 April 2018. A number of key recommendations of the joint opinion have been followed, at least partially,



The participants in the meeting on the draft law on the legislative initiative of citizens, Tirana, September 2018

concerning: the need for a clear and not misleading question; the provision of objective information (more precisely, explanatory reports from both the “yes” and “no” sides, albeit to the polling stations and not to voters); the clarification of the rules on the collection of signatures. The adopted law also followed other recommendations of the joint opinion: it provided for the duty of neutrality of administrative authorities, by prohibiting public sector employees from taking part in campaigns; it provided for the formation of precinct electoral commissions with representation of the referendum proposal’s supporters and opponents; it made observation by NGOs easier by extending it to those created six months rather than one year before the elections. Some key recommendations had however not yet been followed, concerning the need: to address clearly the unity of content of the referendum proposal; to ensure the review of draft popular initiatives by the Constitutional Court before and not after additional signatures had been collected; to enable more than one structure for the “yes” and “no” votes, respectively.

Declaration by the President of the Venice Commission

On 19 October 2018 the President of the Venice Commission made the following statement:

“Following the discussions between the Venice Commission and the First Deputy Prime Minister of Armenia at the Venice Commission’s 116th plenary session, the President of the Venice Commission:

- ▶ Acknowledges and supports the peaceful manner in which the Armenian people is carrying out change;
- ▶ Acknowledges the specific situation in Armenia, which requires the holding of early elections;
- ▶ Welcomes the commitment of the Armenian authorities to abide by international standards when revising the Electoral Code;
- ▶ Notes that the proposed amendments pursue legitimate aims and seem mostly positive;
- ▶ Welcomes in particular all steps taken to facilitate the exercise of the right to vote, to extend access to media, the rights of observers and more generally the transparency of the electoral process, as well as to struggle against electoral fraud;
- ▶ Welcomes the abolition of restrictions on the number of participants in coalitions to be formed after the first round, in conformity with a key recommendation of the Venice Commission and ODIHR;
- ▶ Welcomes the implementation of other recommendations of the Venice Commission and ODIHR, concerning in particular:
 - ▶ The reduction of the electoral thresholds and thresholds applied for returning electoral deposits; the reduction of the amount of deposits;
 - ▶ The reduction of deadlines for the accreditation of observers and media representatives, as well as the suppression of obstacles to the work of observers, such as the possibility to limit their number;
 - ▶ Guarantees to ensure free vote by the military.
- ▶ Recalls the reservations of the Venice Commission with respect to major changes in the electoral system, such as the abolition of district lists, within the year preceding the elections;
- ▶ Notes that these reservations are less relevant if there is consensus among political forces about the change.”

Legal assistance to the Parliamentary Assembly delegation observing the early parliamentary elections (9 December 2018)

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 early parliamentary

elections which took place on 9 December 2018 in Armenia. The delegation observed the opening, voting and counting processes.

Azerbaijan

Legal assistance to the Parliamentary Assembly delegation observing the early presidential elections (11 April 2018)

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 early presidential elections which took place on 11 April 2018 in Azerbaijan. The PACE delegation observed the opening, voting and counting processes.

Bosnia and Herzegovina

Expert assistance on the revision of the electoral legislation (Sarajevo, 22-24 May 2018 and 4-5 June 2018)

As agreed by the political parties of the Federation of Bosnia and Herzegovina, in the context of the EU/US facilitation efforts on electoral reform, and following a formal request made by the EU, the Venice Commission attended two series of meetings with the relevant electoral stakeholders in order to provide expert assistance in the process of on-going discussions on necessary changes to the electoral legislation, in particular concerning the election of the House of Peoples of the Federation of Bosnia and Herzegovina.

Legal assistance to the Parliamentary Assembly delegation observing the general elections (7 October 2018)

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 general elections which took place on 7 October 2018 in Bosnia and Herzegovina. The PACE delegation observed the opening, voting and counting processes of the parliamentary elections.



The 2nd series of meetings with the actors of the electoral process in Bosnia and Herzegovina, Sarajevo, June 2018

Egypt

See chapter V.

Georgia

Legal assistance to the Parliamentary Assembly delegation observing the presidential elections (28 October and 28 November 2018)

A Venice Commission delegation accompanied the Parliamentary Assembly of the Council of Europe (PACE) election observation delegation to advise on the legal framework for both rounds of the presidential elections which took place on 28 October and 28 November 2018 in Georgia. The PACE delegation observed the opening, voting and counting processes.

Italy

On 3 December 2018, a member of the Venice Commission participated in a hearing of the Committee on Constitutional Affairs of the Chamber of Deputies of Italy on a draft constitutional amendment on popular legislative initiatives.

Kyrgyz Republic

See chapter V.

Kosovo

Draft law on amending and supplementing the Law on the Financing of Political Entities (CDL-AD(2018)016)

The opinion was requested by the Prime Minister of Kosovo and adopted by the Venice Commission in June 2018. The Commission welcomed that the Government of Kosovo had submitted this first request for a legal opinion, four years after becoming a full member of the Commission in 2014. The draft law under scrutiny contained significant amendments to the Law on the Financing of Political Entities and the Law on General Elections. It clarified the definition of a contribution to a political entity, strengthened publication requirements with respect to information on political entities' finances and included new tools for monitoring compliance with the rules. At the same time, the draft opinion recommended several further amendments, in particular giving the competent Office under the Central Election Commission a clear mandate for financial monitoring, strengthening its independence and operational capacities, enhancing the regime of sanctions available for infringements of party and campaign funding rules and providing for consistent appeal channels. Moreover, the need to involve various political parties – including from the opposition – more broadly and effectively in the further legislative process should be given more emphasis.

Mexico

See chapter V.

Republic of Moldova

Amendments to the electoral legislation (CDL-AD(2018)008)

At the request of the Chair of the Monitoring Committee of the Council of Europe's Parliamentary Assembly, the Council for Democratic Elections and the Venice Commission adopted in March 2018 a Joint Opinion by the Venice Commission and the OSCE/ODIHR on Amendments to the Electoral Legislation of the Republic of Moldova, which was a follow-up to the opinion adopted in June 2017 on the draft amendments to this legislation. It focused on amendments adopted after the previous opinion and had to be read in conjunction with the opinion on the financing of political parties adopted in December 2017. The legislation under consideration had introduced a mixed system, while the 2017 and 2014 opinions had raised serious concerns over the introduction of such a system, since single-member constituencies could be vulnerable to undue influence of local business-people. This conclusion was still valid in the absence of new information.

A considerable number of recommendations had been addressed, at least partially. However, the opinion still made several recommendations for improvement, notably following the introduction of single-member constituencies. In particular, it reiterated the recommendation to lower thresholds. Concerning the establishment and drawing of constituencies, the law provided for an independent commission appointed by the government; while its composition was broad and inclusive, too wide a discretion was given to the government, so there was no guarantee of a balanced representation. The criteria for constituency borders were clearly set out in the law, in conformity with the Code of good practice in electoral matters; however, a number of constituencies exceeded the law's maximum size. The establishment of constituencies and polling stations in Transnistria and abroad raised particular challenges: the criteria for their establishment could be further clarified.

Montenegro

Legal assistance to the Parliamentary Assembly delegation observing the presidential elections (15 April 2018)

A Venice Commission delegation accompanied the Parliamentary Assembly of the Council of Europe (PACE) election observation delegation to advise on the legal framework for the presidential elections which took place on 15 April 2018 in Montenegro.

The PACE delegation observed the opening, voting and counting processes.

Norway

Electoral reform

On 17 April 2018 the Venice Commission participated in a meeting with the Election Act Commission of Norway at its invitation. Composed of representatives from the political and academic world as well as experts, this Commission was established by decree for a 2-year term and tasked to make proposals for the reform of the Electoral Law of Norway to the Storting (Parliament of Norway) by 2020. During this meeting the Venice Commission experts presented the principles and submitted recommendations on the following issues: the processing of electoral appeals; the distribution of seats within constituencies; the deprivation of the right to be elected; the use of digital technologies in elections; the participation of persons with disabilities in elections.

“The former Yugoslav Republic of Macedonia”¹⁶

Legal assistance to the Parliamentary Assembly delegation observing the referendum (30 September 2018)

A Venice Commission delegation accompanied the Parliamentary Assembly of the Council of Europe (PACE) election observation delegation to advise on the legal framework for the consultative referendum which took place on 30 September 2018 in “the former Yugoslav Republic of Macedonia”.¹⁸ This consultative referendum related to the bilateral agreement with Greece on constitutional amendments that would have changed the name of the country to the “Republic of North Macedonia”.

The PACE delegation observed the opening, voting and counting processes.

Tunisia

Opinion on the draft institutional law on the organisation of political parties and their funding (CDL-AD(2018)025)

See Chapter V.

Turkey

Amendments to the electoral legislation and related “harmonisation laws” adopted in Turkey in March and April 2018 (CDL-AD(2018)031)

At the request of the Chair of the Monitoring Committee of the Council of Europe’s Parliamentary



Joint delegation of the Venice Commission and the OSCE/ODIHR visiting Turkey in the framework of the preparation of the opinion on the “harmonisation laws”; Ankara, November 2018

Assembly, the Council for Democratic Elections and the Venice Commission adopted in December 2018 a Joint Opinion by the Venice Commission and the OSCE/ODIHR on amendments to the electoral legislation and related “harmonisation laws” adopted in Turkey in March and April 2018. The amendments had been adopted in a hasty and non-inclusive way just a few weeks before the elections, contrary to the principle of stability of the fundamental elements of electoral law. Most amendments – at least the March ones – were not made necessary by the constitutional revision. On substance, the opinion acknowledged that the new possibility of alliances could partly mitigate the too high threshold, but not for the parties which did not belong to alliances; the opinion also criticised changes in the composition and leadership of the electoral administration, and that a number of safeguards for transparency and security had been affected.

Legal assistance to the Parliamentary Assembly delegation observing the early presidential election and the parliamentary elections (24 June 2018)

A Venice Commission delegation accompanied the Parliamentary Assembly of the Council of Europe (PACE) election observation delegation to advise on the legal framework for the early presidential election and the parliamentary elections which took place on 24 June 2018 in Turkey. The PACE delegation observed the opening, voting and counting processes.

Ukraine

Follow-up to the Opinion on the amendments to the Law of Ukraine on elections regarding the exclusion of candidates from party lists (CDL-AD(2016)018)

On 16 February 2016 the Verkhovna Rada of Ukraine adopted Law N° 1006-VIII amending the Law on elections of people’s deputies of Ukraine allowing the exclusion of candidates for people’s deputies of Ukraine from the election list in the national

16. As of 12 February 2019, the official name of the country changed to North Macedonia.

multi-member constituency after the tabulation of electoral results. Several political parties immediately excluded a number of candidates from their lists.

Further to a request from the Monitoring Committee of the Parliamentary Assembly, the Commission adopted an opinion on this law in June 2016. It considered as contrary to international standards the empowerment of political parties *ex post facto* to deny the electorate the right to make a choice and to choose who to place on party lists in a position to be elected. It recommended that the power of political parties to remove from their lists, after an election has taken place, candidates who at the time were “deemed unelected” but retained the potential to be elected, should be removed in the light of European standards.

The 2016 opinion was widely discussed in Ukraine in 2017.

On 21 December 2017, the Constitutional Court of Ukraine declared unconstitutional the right of political parties to exclude candidates from their lists after the tabulation of electoral results. The Court’s decision made direct references to the Venice Commission’s 2016 opinion.

Follow-up to the Opinion on the Law on National Referendum of Ukraine (CDL-AD(2013)017)

On 27 April 2018 the Constitutional Court of Ukraine, referring to Venice Commission texts, declared the Law on National Referendum unconstitutional, both on procedural and on substantive grounds, since the law enabled the Constitution to be amended directly by referendum, without following the constitutional amendment procedure requiring a qualified majority in the Verkhovna Rada. This aspect of the law was strongly criticised in the Venice Commission’s opinion. The issue is in effect much older since already in its opinion on the referendum launched by President Kuchma in 2000 (CDL-INF(2000)011) the Venice Commission had underlined that the Verkhovna Rada could not be bypassed by the President submitting constitutional amendments directly to referendum. It had insisted on this point repeatedly in its subsequent opinions on planned constitutional reforms in Ukraine, since also other Presidents had been tempted by the idea of increasing their powers by referendum. This judgment by the Constitutional Court now removed a threat for the functioning of democracy in Ukraine.

Round Table on the reform of electoral legislation (Kiev, 4 – 5 April 2018)

In the framework of the “Electoral systems week” and in co-operation with IFES, USAID and other international partners the Venice Commission co-organised a Round Table on the electoral reform process in Ukraine. This event brought together representatives of the Ukrainian authorities, MPs, NGOs, national and



2nd round of regional meetings on the draft electoral code of Ukraine, July 2018

international experts who discussed the current initiatives aimed at reforming the electoral legislation in Ukraine.

Participants welcomed the establishment of a Working Group by the Parliamentary Committee on Legal Policy and Judiciary to prepare the draft election code for the second reading. They expressed their hope that the Working Group would organise its work in a transparent, inclusive, thorough and expedited manner.

Round Tables on the draft election code of Ukraine organised in regional centres

From June to September 2018, the Venice Commission organised regional public discussions on the draft election code of Ukraine in 12 regional centres of Ukraine: Vinnytsia, Chernigov, Rivne, Chernivtsi, Khmelnytsky, Odessa, Mykolayiv, Kherson, Zaporizhia, Kropyvnytsky, Dnipro and Lviv. More than 500 participants took part in these regional discussions. These events were aimed at discussing the main issues of the draft election code with the interested parties, as well as developing recommendations for the Rada’s Working Group in preparation of the draft code for the second reading in the Rada.

Based on the results of these regional public discussions on the draft election code of Ukraine, a document entitled “Analysis and proposals for amendments to the draft election code” was prepared and published. The publication included analytical materials, conclusions and recommendations of experts aimed at helping the Verkhovna Rada’s working group on reform of electoral legislation and competent committees to prepare the draft code for the second reading. This publication was sent to MPs, and also transmitted to the Working Group of the Committee on Legal Policy and Judiciary of the Verkhovna Rada.

Pilot training course for judges “Election dispute resolution” (Odessa, 19 – 20 July 2018)

In 2018 the Venice Commission together with the National School of Judges of Ukraine, prepared and launched the training course for judges of administrative courts “Election dispute resolution”.

The course included such topics as: international standards and principles of democratic election; overview of national election law; classification of electoral disputes during the election process; peculiarities of

protection of rights of voters during the electoral and referendum process; and European Court of Human Rights case law on electoral disputes.

The training course was developed by the National School of Judges of Ukraine in co-operation with the Council of Europe Projects “Supporting constitutional and legal reforms, constitutional justice and assisting the Verkhovna Rada in conducting reforms aimed at enhancing its efficiency” and “Supporting the transparency, inclusiveness and integrity of electoral practice in Ukraine” in the framework of the 2018-2021 Council of Europe’s Action Plan for Ukraine.

Training for trainers of judges on election dispute resolution (Kyiv, 26 – 28 November 2018)

The training session was attended by 20 judges from the administrative courts of Ukraine - trainers of regional training centres of the National School of Judges of Ukraine. This training course was extremely relevant for judges of administrative justice, especially in the light of the country’s plans to hold presidential and parliamentary elections in 2019.

The course used the materials prepared on the basis of the conclusions and recommendations of the pilot training that had taken place in Odessa in July 2018.

This Training of Trainers activity used interactive forms of training. It is intended that, after approval, the course “Election dispute resolution” will be actively used by the regional centres of the National School of Judges in view of the forthcoming presidential and parliamentary elections in 2019.

The training course was developed by the National School of Judges of Ukraine as part of the Council of Europe Projects “Supporting constitutional and legal reforms, constitutional justice and assisting the Verkhovna Rada in conducting reforms aimed at enhancing its efficiency” and “Supporting the transparency, inclusiveness and integrity of electoral practice in Ukraine” within the framework of the Council of Europe Action Plan for Ukraine for 2018-2021.



Training for trainers of judges on election dispute resolution, Kyiv, November 2018

Uzbekistan

Joint Opinion on the draft election code (CDL-AD(2018)027)

See chapter V.

Transnational activities

Studies and reports

Report on term limits - Part I – presidents (CDL-AD(2018)010)

By a letter dated 24 October 2017, the Secretary General of the Organization of American States (OAS) invited the Venice Commission to undertake a study on the right to re-election, against the background of a recently observed bad practice of modification of presidential terms through a decision of constitutional courts rather than through a constitutional reform process.

The Report on term limits - Part I - presidents, adopted by the Commission in March 2018, states first of all that there is no specific right to be re-elected: the limit on this is only a modality of or a restriction to the right to be elected, which is an aspect of the right to political participation. Eliminating limits to re-election may lead to excessive concentrations of power, which could undermine the right to participate. The possibility to be re-elected depends on the constitutional model.

Democracies set limits on mandates in their constitutions, particularly in presidential or semi-presidential systems where a system of checks and balances is necessary. These limits should derive from a sovereign choice justified by the maintenance of democracy. Therefore, limits to presidential terms do not restrict the rights of aspiring candidates in an excessive manner.

Also, restriction on voters’ rights is not disproportionate; the ability to choose is primarily limited by the reduced number of places available, by the legal requirement of the right to vote and by the electoral rules. Limiting the presidential term is a self-limitation of the right to vote in order to preserve other democratic values. On the contrary, the limitation of the mandate protects the right to participate.

Any change to the limitations of the presidential term must follow the constitutional procedure and be subject to extensive public debate. Modifications resulting in an increase in executive power should not enter into force for the incumbent president. A referendum can only be envisaged if it is provided for by the constitution, and after the adoption of constitutional amendments by the constituent power. Finally, constitutional or supreme courts should only play a role after adoption by the constituent power.



At a polling station, early presidential and parliamentary elections in Turkey, Ankara, June 2018

Identification of electoral irregularities through statistical methods (CDL-AD(2018)009)

The Council for Democratic Elections and the Venice Commission took note of the report on the identification of electoral irregularities through statistical methods in March 2018.

According to the report, statistical identification of electoral irregularities was a new, quickly developing field. Since most results were accessible online, methods which needed little staff and money could be used to help identify electoral irregularities, in combination with classical methods. However, they could be bypassed by fraudsters.

The report referred to three approaches:

1) Numeral based methods, which relied on the occurrence of the last or other digits. These methods were based on the following assumptions: (a) Frequencies of numerals in correct elections are known and invented numbers will not correspond to them; (b) the results are correct subject to evidence to the contrary; (c) there is a threshold for evidence of irregularity; however, there were problems with all these assumptions.

Another group of numeral methods, instead of asking “were there irregularities”, asked “what was their extent”, so there was no need for an arbitrary threshold. The results were then split into two groups: the questioned results and the results believed to be correct, to be compared.

2) Shares based methods: for example, shares of voters who turned out, or yes votes in various polling stations were compared, and suspect results were identified (such as an excessive number of similar turnouts, or clusters of polling stations with suspect shares of winner’s/invalid votes).

3) Risk limiting audits: this was the most rigorous method. It required physical access to ballots or records assuming that the results were not correct, and led to an audit on a random sample. It implied assuming that certain results were not correct, and looking for evidence that they were.

In short, there were multiple statistical methods, which were a less expensive complement to conventional methods and did not suffice for definitive conclusions.

Different methods were sensitive to different forms of irregularities. Methods complemented each other, since each of them could not alone bring a conclusion. There was also new research on combining different sources of evidence such as election observation or reports by voters. For example, these kinds of evidence could help to identify polling stations which are better candidates for auditing.

Follow-up to the Joint Opinion on the draft checklist for compliance with international standards and best practices preventing misuse of administrative resources during electoral processes at local and regional level of the Congress of Local and Regional Authorities of the Council of Europe (CDL-AD(2017)006)

Further to a request by the Congress, the Venice Commission adopted in March 2017 a joint opinion with the OSCE/ODIHR on the compatibility of the Congress’ draft checklist for compliance with international standards and best practices preventing misuse of administrative resources during electoral processes at local and regional level with international standards in the electoral field and the related reference documents of the Venice Commission. The Commission’s opinion concluded that the checklist is in conformity with international electoral standards as established *inter alia* by the Venice Commission and OSCE/ODIHR documents dedicated to the misuse of administrative resources during electoral processes.

However, the opinion suggested several improvements, in particular to make the checklist more user-friendly. These improvements could not be made before the adoption of the Checklist on 20 March 2017. They were however made in the document entitled “Administrative resources and fair elections – a practical guide for local and regional politicians and public officials”, published in 2018. In particular, this document includes lists of questions entitled “reference points to assess the situation” which make it practical and user-friendly.

Update of guidelines to guarantee fair referendums in the member States of the Council of Europe

See Chapter VI.1.

Compilation of Venice Commission opinions and reports concerning new technologies in the electoral process (CDL-PI(2018)011)

The Venice Commission endorsed the Compilation of Venice Commission opinions and reports concerning new technologies in the electoral process in December 2018. This compilation is to be seen in the context of the Commission's further activities in this highly topical field, including the 15th European Conference of Electoral Management Bodies on "Security in elections" (Oslo, 19-20 April 2018) and the current preparation of a study on "Social media and elections" whose adoption is envisaged for 2019.

Conferences co-organised by the Commission

15th European Conference of Electoral Management Bodies on "Security in elections" (Oslo, 19-20 April 2018)

The Conference was organised by the Venice Commission and the Electoral Department of the Ministry of Local Government and Modernisation of Norway. It covered not only the physical security and physical integrity of people during the electoral process but also cybersecurity. After referring to the norms, standards and best practices for securing elections and in particular the essential role of the Budapest Convention on Cybercrime, the participants in the conference discussed electoral security which aims to ensure integrity and therefore electoral legitimacy. On the second day, participants focused their discussions on combating cybercrime and ways to improve cyber security.

Around 150 participants from 31 countries attended the conference, representing national electoral management bodies and other bodies involved in electoral processes, as well as specialists in information and technologies' systems and communication, academics and representatives of non-governmental organisations. Several international institutions were also represented at the conference.

In its conclusions the conference referred to the main relevant Council of Europe reference documents, in particular the Budapest Convention, as well as the Council of Europe recommendation on e-voting. The conclusions also stressed that electoral management bodies should co-operate with other public institutions, such as the police, not only within the country but also abroad; as far as disinformation and fake news on social media were concerned, it was necessary to co-operation with private actors such as Facebook and Twitter.



Meeting of the Council for Democratic Elections, Venice, October 2018

Second Scientific Electoral Experts Debates – Equal suffrage (Sinaia, Romania, 3-4 May 2018)

The Second Scientific Electoral Experts Debates co-organised by the Permanent Electoral Authority of Romania (PEA) and the Venice Commission were held in Sinaia, Romania on 3-4 May 2018 on the theme of "Equal suffrage".

The Scientific Electoral Experts Debates are to become a regular event involving electoral law experts, including academics and election administrators, with diverse backgrounds, to discuss issues of both theoretical and practical significance. The reports presented during the Debates were published in the only European review devoted to electoral law, the Romanian Electoral Expert Review (formerly "Electoral Expert"), volume VI, n° 1, 2018.

The participants discussed in particular the following issues:

- ▶ The various aspects of the principle of equality and their implications in the electoral field;
- ▶ Equal voting power and allocation of seats to constituencies;
- ▶ Equality and parity of the sexes;
- ▶ Equality in a changing environment.

Joint Parliamentary Seminar on "The misuse of administrative resources during electoral processes: a major challenge for democratic elections" (Tirana, 10-11 April 2018)

The Venice Commission and the Parliamentary Assembly of the Council of Europe co-organised a regional conference which brought together members of Parliament from Albania and Bosnia and Herzegovina as well as a panel of international experts. The discussions focused in particular on the misuse of both material and immaterial resources, including abuse of public employees, on the fundamental principles involved and the means preventing or dealing with such misuse, in particular by improving the legal framework.



High Level Conference by the European Commission's European Political Strategy Centre on "Election interference in the digital age. Building resilience to cyber-enabled threats"; Brussels, October 2018

"Preventing and combating misuse of administrative resources in the electoral processes". (Chisinau, 30 November 2018)

The Central Electoral Commission of the Republic of Moldova, the Division of electoral assistance of Directorate General II (DGII) and the Venice Commission organised this workshop. On this occasion an expert of the Commission presented the "Guidelines on prevention and combating misuse of administrative resources in the electoral processes", jointly developed by the Commission and the OSCE/ODIHR.

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/vota_elections/). 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.

International cooperation

See chapter VI.3.

Other conferences and meetings

The Venice Commission also participated in the following conferences and meetings:

European Commission

- ▶ Brussels, 26 April 2018 – "Democratic participation and electoral matters".
- ▶ Brussels, 10-11 October 2018 - High level conference on "The future of international election observation".
- ▶ Brussels, 15-16 October 2018 - High level conference on "Election interference in the digital age. Building resilience to cyber-enabled threats".

Albania

- ▶ Tirana, 23 January 2018 – Conference on "Voting of Albanian citizens abroad", organised under the auspices of the Assembly of Albania, by the Minister of State for Diaspora with the support of the OSCE Presence in Albania
- ▶ Tirana, 6 June 2018 – workshop of the Parliamentary Ad Hoc Committee on Electoral Reform on new voting technologies which was organised with the support of the OSCE Presence in Albania
- ▶ Tirana, 27 June 2018 – Workshop on out-of-country voting organised by the Parliamentary Ad Hoc Committee on Electoral Reform with the support of the OSCE Presence in Albania
- ▶ Tirana, 3 July 2018 – Workshop on "electoral administration" organised by the Parliamentary Ad Hoc Committee on Electoral Reform with the support of the OSCE/ODIHR
- ▶ Tirana, 4 July 2018 – Workshop on "the role of the media during the electoral campaign" organised by the Parliamentary Ad Hoc Committee on Electoral Reform with the support of the OSCE/ODIHR

Egypt

- ▶ Cairo, 8-9 January 2018 – First International Conference organised by the Arab Union of Administrative Justice on the “Role of administrative courts in electoral disputes”,
- ▶ Cairo, 13-14 November 2018 – 2nd Forum of Electoral Management Bodies in Arab States, organised by the League of Arab States and the United Nations.

Georgia

- ▶ Tbilisi, 26 June 2018 – Regional international conference entitled “Money in politics”, organised by the State Audit Office of Georgia, the Council of Europe, IFES, International IDEA, the OSCE/ODIHR, Transparency International TI-Georgia, and by the Eastern European Centre of Multiparty Democracy (EECMD).

Kosovo

- ▶ Pristina, 4 October 2018 – High level Workshop entitled “Financing of political parties” organised by the Office of the European Union in Kosovo / Special Representative of the EU and the OSCE Mission in Kosovo.

Montenegro

- ▶ Cetinje, 8-9 November 2018 - Cetinje Parliamentary Forum, entitled “Election laws, participants and campaigns: is the voter in the spotlight?” The Venice Commission intervened in the two sessions, respectively on “Improvement of election laws and cooperation with international organisations” and “Impact of campaigns and financing of political actors on election integrity”.

Romania

- ▶ Sinai, 5-6 May 2018 - International conference on free elections, parliaments and nation building.

OSCE/BIDDH

- ▶ Vienna, 30 October 2018 - Seminar on “Election observation and election campaigns”.

Uzbekistan

- ▶ Bukhara, 16-17 November 2018 – International conference on “Election legislation and practice of democratic elections: the experience of Uzbekistan”, organised in the framework of the electoral reform.



1st international conference on the “Role of administrative courts in electoral disputes”, organised by the Arab Union of Administrative Justice; Cairo, January 2018



Presidential election in Georgia, autumn 2018

Legal Assistance to PACE delegations observing elections

- ▶ **Armenia** – Early parliamentary election – 9 December 2018
- ▶ **Azerbaijan** – Early presidential election – 11 April 2018
- ▶ **Bosnia and Herzegovina** – General elections – 7 October 2018
- ▶ **Georgia** – Presidential election, 1st and 2nd rounds – 28 October and 28 November 2018
- ▶ **Montenegro** – Presidential election – 15 April 2018
- ▶ **“The former Yugoslav Republic of Macedonia”¹⁷** – Referendum, 30 September 2018
- ▶ **Turkey** – Early presidential and parliamentary elections – 24 June 2018

17. As of 12 February 2019, the official name of the country changed to North Macedonia.



Workshop of the Ad Hoc Parliamentary Committee for Electoral Reform in Albania on voting abroad, Tirana, June 2018



Meeting of the Sub-Commission for Latin America, Mexico, November 2018



8th UniDem Med regional seminar entitled "Transformation and innovation in the senior civil service: challenges and perspectives"; Tunis, September 2018



Round Table on cybercrime and cyber security; Bishkek, December 2018

V. CO-OPERATION IN THE COUNCIL OF EUROPE NEIGHBOURHOOD AND OUTSIDE EUROPE¹⁸

Mediterranean Basin

Country-specific activities

Egypt

10th Symposium of the Union of Arab Constitutional Courts and Councils (UACCC, Cairo, 23 April 2018)

See Chapter III.

International conference “Voting in elections and referendums – between right and duty” (Cairo, 8–9 October 2018)

The Egyptian Council of State organised in collaboration with the Venice Commission of the Council of Europe and the Arab Union of Administrative Judiciary an international conference entitled “Voting in elections and referendums – between right and duty” in Cairo on 8–9 October 2018. This event gathered together judges and academia from Egypt, other countries from the region and European experts.

The participants discussed such issues as guarantees of voters’ participation in elections, measures to enhance participation in elections and issues related to compulsory voting and international standards in the electoral field.

The conference provided an excellent opportunity to compare the constitutional and legal practice and the analysis of the socio-political situation of countries from four different continents: an endeavour – that of extended comparative work – which the Venice Commission has been practicing for a long time with very satisfactory results. Exchanges on the phenomenon of reluctance to participate in voting and its causes showed that there were a considerable number of areas where specific actions could and should be taken.

The participants agreed that new technologies offered an alternative to the traditional means of political participation through political parties and elections.

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

By encouraging discussion on topics close to citizens’ interests, they stimulated and enabled individual and direct participation in decision-making. New technologies may therefore reinforce political participation. As such, they should be positively viewed.

The participation of the Venice Commission was financed by the joint Council of Europe-European Union South Programme III.¹⁹

Jordan

First Bilateral Steering Committee Meeting with the Hashemite Kingdom of Jordan (Amman, 5 May 2018)

For more information please see chapter III.

International conference “Legal stability and the case for reversing precedent” (Amman, 4 December 2018)

The Venice Commission and the Constitutional Court of Jordan organised a conference on “Legal stability and the case for reversing precedent”. For more information please see chapter III.

Libya

Assistance to the working group on electoral legislation in Libya organised by United Nations Support Mission in Libya (UNSMIL)

In 2018 at the request of the EU Delegation to Libya, a Venice Commission expert, Mr Peter Wardle, was involved in the working group in charge of the preparation of the draft laws on referendum, parliamentary and presidential elections put in place by UNSMIL. Mr Wardle participated in 7 meetings of the Working group organised between January and July 2018.

The substantial contribution of the Venice Commission’s expert to the process was highly praised by the EU Delegation, UNSMIL and representatives of Libya.

19. Most activities in Southern Mediterranean countries in 2018 were funded through the South Programme III “Ensuring sustainable democratic governance and human rights in the Southern Mediterranean”, a joint programme funded by the European Union and implemented by the Council of Europe.



Exchange of views with the Minister of Foreign Affairs of Tunisia, Mr. Khemaies Jhinaoui, Tunis, November 2018

Initial drafts of the three laws had been prepared with the direct involvement of Mr Wardle and later shared with the Libyan authorities.

In Autumn 2018 Mr Wardle advised the working group on such issues as election observation, accreditation mechanisms and training of national observers from NGOs.

Morocco

Co-operation with the Ministry of Justice and Freedoms

At the request of the Ministry of Justice and Freedoms, a Venice Commission delegation met the Moroccan authorities on 18 September 2018 in Rabat with a view to the preparation of the draft organic law on the preliminary question of constitutionality. The delegation consisted of members of the Venice Commission and members of the constitutional courts of France and Italy. The Venice Commission delegation also met on 19 September 2018 members of the Constitutional Court of Morocco to exchange views and national experiences on the preliminary question of constitutionality.

Mr Mohamed Auajjar, Minister of Justice and Freedoms, participated in the 116th plenary session (11-12 October 2018) in order to present the Ministry's priorities and the means deployed in the implementation of the organic laws on the High Council of the Judiciary (HCJ) and the status of Judges on which the Commission, in co-operation with the European Commission for the efficiency of Justice (CEPEJ), had provided expertise.

Co-operation with the Constitutional Court

At the invitation of the Constitutional Court, the Commission participated in an international Conference entitled "Access to constitutional justice: new challenges to the *a posteriori* constitutional review" in Marrakech on 27-28 September 2018. For more information see Chapter III.

High Judicial Council

The Venice Commission, in co-operation with the European Commission for the efficiency of Justice (CEPEJ), contributed to the organisation of a meeting with the High Judicial Council of Morocco (HJC) on the theme "The functioning of High Judicial Councils, methods and strategic working tools" which took place in Rabat on 12 December 2018.

This meeting was the first meeting between the Council of Europe and the newly established High Council of the Judiciary. At this event several High judicial councils presented their national experiences.

Ombudsman Institution

The Venice Commission, in co-operation with the Office of the Ombudsman Institution of the Kingdom of Morocco and with the Association of Mediterranean Ombudsmen (AOM), organised a training session for collaborators of members of the AOM on "The rights of detainees in the national territory and of those detained abroad: the role of the Ombudsman Institutions" in Rabat on 28-29 November 2018. Around 20 collaborators from different Ombudsman Institutions discussed international standards and best practices in this field.

Tunisia

Meeting between the Venice Commission President and the Minister of Foreign Affairs (14 November 2018)

On the side-lines of the 6th Intercultural Workshop on Democracy, the President of the Venice Commission, Mr Gianni Buquicchio, and the Deputy Secretary of the Commission, Ms Simona Granata-Menghini, held an exchange of views with the Minister of Foreign Affairs of Tunisia Mr Khemaies Jhinaoui.

They discussed the political situation in Tunisia and agreed to continue co-operation in order to fully implement the Constitution, in particular by proceeding with the setting up of the Constitutional Court and independent constitutional bodies.

Opinion on the draft institutional law on the organisation of political parties and their funding (CDL-AD(2018)025)

This opinion was requested by the Minister for Relations with Constitutional Bodies, Civil Society and Human Rights and adopted by the Commission in October 2018. Following the 2011 revolution, a new Constitution and new legislation on political parties were introduced which reflected a liberal spirit and favoured the creation of a large number of political parties (currently there are more than 200, including 19 which are represented in Parliament). If this development was not a problem in itself, it seemed that a number of parties had governance problems; there also seemed to be a broad consensus that the transparency of party financing needed to be strengthened. The draft law aimed to



Participants of the 6th Intercultural Workshop on Democracy; Tunis, November 2018

improve the transparency of political parties in general and their funding in particular. The planned measures were in principle in harmony with relevant international standards, and the draft law was consistent with the constitutional mandate to legislate in this area. That said, a few amendments were recommended to ensure the right balance between the freedom of association enjoyed by political parties and their members, on the one hand, and the necessary restrictions and controls, on the other.

In particular, it was recommended to make reference in the draft law to the freedom not only to form political parties, but also to join them and conduct activities within them, and to add the principle of proportionality and necessity in a democratic society with regard to the permitted restrictions of this freedom; to introduce shorter deadlines for deciding on applications for the registration of political parties and on appeals against refusals to register; to guarantee that the identity of donors is not made public, but only to the supervisory body, in the case of clearly defined small donations; to ensure that the method of calculating the amount of the payment and the number of votes to be obtained for payment of the annual public funding by political parties not represented in Parliament are defined in the law itself; to strengthen the system for the financial oversight of political parties; and to review the sanctions system in particular to limit even further the scope for the dissolution of political parties and to reconsider the powers for imposing sanctions on parties.

Regional co-operation

Campus UniDem Med seminars

In 2018 the Venice Commission continued to support the process of the modernisation of the public administration in the southern Mediterranean in the framework of the UniDem Med campus. The Commission organised in co-operation with the Ministry of the Reform of the Administration and the Civil Service of Morocco the 7th UniDem Med in Rabat (23-26 April 2018) on the theme "Improving the relations between the administration and the citizens: a democratic

imperative". The 8th UniDem Med took place in Tunis (24-27 September 2018) in co-operation with the Presidency of the Government of Tunisia entitled "Transformation and innovation in the senior civil service: challenges and opportunities".

The two seminars in 2018 enabled the strengthening of the legal capacities of more than 100 senior civil servants from the southern Mediterranean namely Algeria, Jordan, Lebanon, Morocco, Mauritania, Palestine²⁰ and Tunisia who have exchanged best practices in the field of innovation in the civil service on a peer-to-peer level with their European counterparts against a backdrop of respect for the rule of law and basic civil service values and principles. The UniDem Med project is sustained by the work of the seven national coordinators who help develop the project and achieve its strategic objectives. The annual coordinators' meeting took place in Paris on 5 February 2018. The participants discussed national priorities, the venues and the themes of the 2018 seminars and ways to streamline its outreach activities.

The two seminars and co-ordinators' meeting were funded by the joint Council of Europe-European Union program "Ensuring Sustainable Democratic Governance and Human Rights in the Southern Mediterranean", South Programme III.

6th Intercultural workshop on democracy (Tunis, 14 – 15 November 2018)

The Venice Commission, in co-operation with the Ministry of Foreign Affairs of Tunisia, organised the 6th Intercultural Workshop on Democracy on "The role and place of independent bodies in a democratic state".

This regional event was held in Tunis from 13 to 14 November 2018 bringing together leading European experts and senior official from independent bodies of Tunisia and other countries of the Southern Mediterranean.

The debates focused on themes such as: relations of independent bodies with the executive, legislative

20. 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.

and judicial powers, composition, technical skills, accreditation and funding of bodies etc.

The workshop was funded by the Joint Council of Europe-European Union Programme “Ensuring the sustainability of democratic governance and human rights in the Southern Mediterranean”, South Program III.

Latin America

Bolivia

See Chapter III.

Mexico

International Congress “The guarantees of democratic process: international standards and constitutional principles in a comparative perspective” (Mexico City, 29-30 November 2018)

The Federal Electoral Tribunal of Mexico and the Venice Commission organised an international Congress “The guarantees of democratic processes: international standards and constitutional principles in a comparative perspective”. This exchange of views included representatives of different authorities, national NGOs, academia and international and regional organisations. Among other issues the participants discussed the role of international standards in strengthening electoral integrity at the local level; the main threats that the rule of law faces in modern democracies; rule of law and equality and national cultural and political traditions and the rule of law.

Meeting of the Sub-Commission on Latin America (Mexico City, 29 November 2018)

The Sub-Commission was informed of the activities which the Organization of American States – OAS – had carried out to make known the Commission’s opinion “on the calling of elections to a National Constituent Assembly in Venezuela” and its report “On term limits for presidents”.²¹ Both texts had been requested and widely circulated by the OAS and referred to in Latin America. Indeed, the OAS has started a very fruitful co-operation with the Commission. Its requests for opinions and studies had made it possible for the Commission to provide in 2018 a useful input in the discussion of the most topical constitutional issues on the Latin American continent.

The Sub-Commission also discussed and adopted the second and third parts of the report on term limits of MPs, locally elected representatives, governors and mayors. This report distinguished between the situation of elected representatives sitting on collegiate bodies – MPs, locally elected representatives – and that of single-person executive official – Governors, mayors. For the first category, limitations on mandates

21. See Chapter IV.



At the international congress entitled “The guarantees of democratic processes: international standards and constitutional principles in a comparative perspective”; Mexico City, November 2018

do not appear necessary as there is not a high risk of concentration of powers and of manipulation of votes or undue influence in view of re-election. In balance, having examined the arguments in favour and against, and having noted the very few examples in national experience, the report concluded that term-limits for MPs and locally elected representatives are not recommended. Directly elected executive officials, however, are closer to the situation of Presidents in presidential regimes, and for this reason term-limits could be seen as more justified. Indirectly elected mayors, instead, are responsible before and require the continued confidence of the municipal councils and, as such, are in a similar situation as Prime Ministers in parliamentary regimes. Term-limits therefore did not seem appropriate. This draft report would be submitted to the Plenary in March 2019.

Progress in the preparation of the Venice Principles was presented and the excellent co-operation with the Federation of Ibero-American Ombudsmen was stressed. After the adoption of the Venice Principles foreseen for March 2019, the Secretariat intended to propose some joint activities with the Federation, thanks in particular to a voluntary contribution received from the European Commission.

In 2018, the Commission continued its contacts with other regional organisations in the Americas, notably with the OAS, UNDP and IFES.

Central Asia

In 2018 **Kazakhstan** and **Kyrgyzstan**, as members of the Venice Commission, benefited from fully-fledged co-operation such as participation in multilateral activities, preparation of opinions and organisation of bilateral meetings. Co-operation with **Uzbekistan** included the preparation in co-operation with the OSCE of a joint opinion on the electoral legislation and the participation of representatives of the Commission in several activities in the field of elections and human rights.

Moreover, the Venice Commission is implementing a joint project financed by the European Union and the Council of Europe “Support to strengthening democracy through electoral reform in the Kyrgyz Republic” initially planned from January 2017 to 31 December 2018 and extended until 30 April 2019.

Country-specific activities

Kazakhstan

In 2018 the Venice Commission adopted two opinions on the draft code of administrative procedure opinion on the draft Administrative Procedure and Justice Code and on the Concept Paper on the reform of the High Judicial Council. For more information please see Chapter II on Democratic institutions and fundamental rights.

Administrative Procedure and Justice Code (CDL-AD(2018)020)

By letter dated 29 June 2018, Mr Beketayev, Minister of Justice of the Republic of Kazakhstan, requested the Venice Commission’s opinion on the draft administrative procedure code. The rapporteurs of the Commission visited Astana on 28 – 29 August 2018 to exchange views with the authorities. For more information on this opinion, please refer to Chapter II.

Draft concept paper on the reform of the High Judicial Council of Kazakhstan (CDL-AD (2018)032)

At the request of the authorities of the Republic of Kazakhstan, a delegation of the Venice Commission visited Astana on 15 and 16 November 2018 with a view of preparing an opinion on the draft concept paper on the reform of the High Judicial Council of Kazakhstan. For more information on this opinion, please refer to Chapter II.

Kyrgyzstan

Joint European Union - Council of Europe Project on “Support to strengthening democracy through electoral reform in the Kyrgyz Republic

In 2018, the Venice Commission continued the implementation of the project “Support to strengthening democracy through electoral reform in the Kyrgyz Republic” which had been launched in 2017. The main areas of project activities are:

- ▶ Support the authorities of the Kyrgyz Republic in the elaboration of a comprehensive electoral reform strategy
- ▶ Capacity building of the State Registration Service and the Central Election Commission, the main beneficiaries of the project
- ▶ Support the authorities in improving the system of electoral dispute resolution
- ▶ Support relevant actors to enhance data protection mechanisms
- ▶ Capacity building of electoral commissions, political parties, relevant actors and other participants in the electoral process.

In 2018 a number of activities were held in the framework of the aforementioned project.

By mutual agreement between the Venice Commission and the Delegation of the European Union in Kyrgyzstan the project has been extended until April 2019.

Workshop on cybersecurity in elections (Bishkek, 3 April 2018)

Representatives of the State Registration Service (SRS), State Security Council as well as the Civil Society of the Kyrgyz Republic learnt the founding principles of the Budapest Convention, as well as the implications of cybersecurity during electoral processes.



International Conference “The Constitution: the incarnation of the values of the rule of law, civil society and the modern state”, Astana, August 2018

Study visit on establishing independent supervisory authority for data protection, (Malta, 5-6 April 2018)

A study visit to Malta for representatives of the SRS, State Security Council and the civil society was organised to learn the process and history of establishing the Data Protection Commissioner's office and ensuring its independence. The participants also visited the Electoral office of Malta and were informed about the setting up and functioning of the Digital Malta Strategy. They also had an opportunity to visit the Data Centre and to receive detailed explanations on how it works.

Meetings of the Venice Commission expert with relevant judges of Supreme, Mezhrayonny and Pervomaysky courts to discuss electoral complaints (Bishkek, 23-24 April 2018)

A specialised questionnaire on revealing existing disadvantages of the EDR system in the Kyrgyz Republic was developed and an expert of the Commission was deployed to Bishkek to hold meetings/interviews with a number of judges from Supreme, Mezhrayonny and Pervomaysky courts to discuss the matter in question. The results of the interviews with judges were summarised in a report.

On the basis of these exchanges a comprehensive analysis was developed taking into account case materials from the 2011 Presidential, the 2015 Parliamentary and the 2017 Presidential elections, which were provided to the Venice Commission by the courts..

Conference on freedom of expression - speech and press: further ways to develop the media legislation (Bishkek, 26 May 2018)

A Republic-wide conference of journalists of the Kyrgyz Republic was organised in partnership with the Media Development Centre. The conference targeted all the regions of the Kyrgyz Republic and focused on such topics as freedom of expression, media monitoring practices during elections, media regulation, etc.

Round Table on independent supervisory authority on data protection (Bishkek, 27 June 2018)

This discussion was organised together with the OSCE office in Bishkek on ways of establishing an independent supervisory authority for data protection. Two experts of the Venice Commission from Georgia and Malta participated in this Round Table and presented relevant experience of their own countries.

Round Table on cybercrime and cybersecurity (Bishkek, 7 December 2018)

Representatives of the Government of the Kyrgyz Republic including the State Security Council, the State Registration Service (SRS), the Ministry of the Interior, the General Prosecutor's office and other national

institutions, together with civil society representatives were provided with an opportunity to gain knowledge and share experiences about existing international standards in the field of cybersecurity and cybercrime. The Round Table served as a forum for sharing best practices from other countries in this field .

Round Table on the case-law of national courts on electoral disputes (Bishkek, 14 December 2018)

The Round Table was a continuation of the work already carried out in the field of electoral dispute resolution within the project. After a thorough consultation with the judges, the Venice Commission's expert drew a comprehensive analysis of judicial case materials of election related complaints. The analysis also included the results of the interviews previously held with judges, as well as a set of recommendations on how to improve further the legislation in the field . The Round Table participants further discussed the overview and exchanged views on the issue in order to finalise the work started during Summer 2018.



Conference on freedom of expression; Bishkek, May 2018



The Joint Venice Commission - OSCE/ODIHR delegation exchanging views with the Uzbek authorities; Tashkent, September 2018

Uzbekistan

Draft election code (CDL-AD(2018)027)

At the request of the Central Election Commission of the Republic of Uzbekistan, the Venice Commission and the OSCE/ODIHR issued an opinion in October 2018. The opinion underlined with satisfaction that the draft election code unified the different electoral laws, unifying in this respect a sparse electoral legislation, responding at the same time to a number of previous recommendations from international experts. However the opinion raised concerns on a number of unaddressed long-standing recommendations, in particular:

- ▶ To review the overall campaign financial regulations in order to ensure transparency and accountability of the use of public money and administrative resources;
- ▶ To avoid undue restrictions on voting rights based on incapacitation, on-going criminal proceedings and conviction;
- ▶ To review the length of residency requirement, in respect of candidacy rights;
- ▶ To review procedures for the appointment of lower-level commissions to better safeguard their independence; and
- ▶ To ensure transparency of tabulation and publication of election results.

At the October 2018 plenary session of the Venice Commission and on the occasion of the international conference held in Bukhara, Uzbekistan, on 16-17 November 2018, the Uzbek representatives expressed their readiness to address several of these recommendations.

Other conferences and meetings

The Commission participated in the following other activities in 2018:

Dominican Republic

- ▶ Santo Domingo, 7-9 November 2018 – XIIIth Inter-American Meeting of Electoral Authorities, organised by the Department of Electoral Cooperation and Observation (DECO) of the Organization of American States (OAS).

Egypt

- ▶ Cairo, 8-9 January 2018 – 1st International Conference organised by the Arab Union of Administrative Justice on the “Role of administrative courts in electoral disputes”;²²
- ▶ Cairo, 13-14 November 2018 – 2nd Forum of Electoral Management Bodies in Arab States, organised by the League of Arab States and the United Nations.

Kazakhstan

- ▶ Astana, 28-29 August 2018 - International conference “A Constitution: the embodiment of the values of the rule of law, civil society and the modern state”, dedicated to the Day of the Constitution of the Republic of Kazakhstan and the meeting of the Conference of Constitutional Control Organs of the Countries of New Democracy (CCOCND).

Mexico

- ▶ Cancun, 3 – 5 December 2018 – 2nd Plenary Assembly of the Global Network on Electoral Justice, organised by the Electoral Tribunal of the Federal Judiciary of Mexico (TEPJF).

Morocco

- ▶ Rabat, 5 July 2018 - Regional Conference on “Women in politics: how to progress towards equality?” organised by the Parliamentary Assembly of the Council of Europe (PACE) and the Parliament of Morocco.



XIIIth Inter-American Meeting of Electoral Authorities; Santo Domingo, November 2018

²². See Chapter IV.



Annual address by the President of the Venice Commission Mr Gianni Buquicchio to the Committee of Ministers of the Council of Europe, Strasbourg, June 2018

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

Representatives of the Committee of Ministers participated in all four plenary sessions in 2018. The following Ambassadors, Permanent Representatives to the Council of Europe, attended the sessions (in order of attendance):

- ▶ Ambassador Corina CĂLUGĂRU, Republic of Moldova
- ▶ Ambassador Gilles HEYVAERT, Belgium
- ▶ Ambassador João Maria CABRAL, Portugal
- ▶ Ambassador Rémi MORTIER, Monaco
- ▶ Ambassador Ivars PUNDURS, Latvia
- ▶ Ambassador Răzvan RUSU, Romania
- ▶ Ambassador Irakli GIVIASHVILI, Georgia
- ▶ Ambassador Stephan MÜLLER, Luxembourg
- ▶ Ambassador Katrin KIVI, Chair of GR-EXT, Estonia
- ▶ Ambassador Marek EŠTOK, Slovak Republic
- ▶ Ambassador Elisabeth WALAAS, Norway

On 30 May 2018 the President of the Commission presented the Venice Commission's 2017 Annual Report of Activities to the Committee of Ministers.

On 16 October 2018 the President of the Venice Commission, Mr Gianni Buquicchio, spoke at the meeting of the External Relations Committee of the Committee of Ministers (GR-EXT) on "the Role of the Venice Commission in the Policy of the Council of Europe towards Neighbouring Regions" at the Council of Europe, in Strasbourg.

At its October 2017 session the Commission adopted the elements for the Committee of Ministers' reply to Parliamentary Assembly Recommendation 2110(2017) on "The implementation of judgments

of the European Court of Human Rights"²³ In its comments the Commission highlighted its great attachment to supporting and strengthening the execution of the judgments of the European Court of Human Rights and argued that it had the capacity to contribute to preparing general measures in compliance with international standards and to assist the member States in bringing their existing legislation which generated violations of the ECHR into conformity with the latter and in ensuring compliance of their draft legislation with the ECHR before being adopted, thus avoiding further violations. The Commission was ready to play a more active role in this respect.

In its reply adopted on 7 February 2018, the Committee of Ministers expressed, as had the Parliamentary Assembly, the need to strengthen the synergies between all the stakeholders concerned with the execution. The Committee referred to the Commission's important work and further supported and encouraged "the possible advisory role of the Venice Commission in the preparation of general measures of implementation of judgments."

The Chair of GR-EXT and Permanent Representative of Estonia to the Council of Europe, Ambassador Katrin Kivi, participated in the December 2018 plenary session of the Commission. She referred to the fruitful exchange of views with the Commission's President at the GR-EXT meeting in October 2018, on the role of the Venice Commission in the Council of Europe's policy towards neighbouring regions, especially in Central Asia and the Mediterranean countries. It was stressed that the Committee of Ministers in its work with neighbouring countries relied on the Venice Commission's *acquis*.

23. CDL-AD(2017)017.

Parliamentary Assembly

In 2018 the Commission and the Assembly continued their close co-operation.

Opinions requested by the Assembly

In 2018, at the request of the Parliamentary Assembly, the Venice Commission adopted the following opinions:

- ▶ **Romania** - Joint Opinion on draft law No. 140/2017 on amending Governmental Ordinance No. 26/2000 on Associations and Foundations - CDL-AD(2018)004;
- ▶ **Georgia** - Constitutional amendments as adopted on 15 December 2017 at the second hearing by the Parliament of Georgia - CDL-AD(2018)005;
- ▶ **Ukraine** - Joint Opinion on draft law No. 6674 "On introducing changes to some legislative acts to ensure public transparency of information on financial activity of public associations and of the use of international technical assistance" and on draft law No. 6675 "On introducing changes to the Tax Code of Ukraine to ensure public transparency of the financing of public associations and of the use of international technical assistance" - CDL-AD(2018)006;
- ▶ **Republic of Moldova** - Joint Opinion on the law for amending and completing certain legislative acts (electoral system for the election of Parliament) - CDL-AD(2018)008;
- ▶ **Hungary** - Joint Opinion on the provisions of the so-called "Stop Soros" draft legislative package which directly affect NGOs (in particular draft article 353A of the Criminal Code on facilitating illegal migration) - CDL-AD(2018)013;
- ▶ **Romania** - Opinion on draft amendments to the Criminal Code and the Criminal Procedure Code - CDL-AD(2018)021;
- ▶ **Malta** - Opinion on constitutional arrangements and separation of powers - CDL-AD(2018)028;
- ▶ **Georgia** - Opinion on the provisions on the Prosecutorial Council in the draft organic law on the prosecutor's office and on the provisions on the High Council of Justice in the existing Organic Law on General Courts - CDL-AD(2018)029;
- ▶ **Turkey** - Joint Opinion of the Venice Commission and ODIHR on amendments to the electoral legislation and related "harmonisation laws" adopted in March and April 2018 - CDL-AD(2018)031;
- ▶ **Hungary** - Joint Opinion on Section 253 on the special immigration tax of Act XLI of 20 July 2018 amending certain tax laws and other related laws and on the immigration tax - CDL-AD(2018)035.

On 29 May 2018, the President and the Secretary of the Commission took part in an exchange of views organised in Paris by the PACE Monitoring Committee on the **judiciary in Poland** with the participation of representatives of the Ministry of Justice, the National Council of the Judiciary and civil society organisations active in Poland. On this occasion they presented the Commission's opinions on the matter, some of which had been requested by PACE.²⁴

Promoting European standards together

In 2018 the Parliamentary Assembly continued to call on the Venice Commission's expertise by referring to the Commission's texts and by inviting the Commission to share its expertise in the framework of its various activities. At the same time, Ms Stella Kyriakides, former President of the Parliamentary Assembly, and Mr Sergiy Vlasenko, Member of the Committee on Legal Affairs and Human Rights, regularly represented the PACE at the plenary sessions of the Commission in 2018.

References to the Commission's texts

In the report "Regulating foreign funding of Islam in Europe in order to prevent radicalisation and Islamophobia" adopted on 17 September 2018, the Assembly referred to the Commission's Joint Opinion on the draft law on the insertion of amendments on freedom of conscience and religious organisations in Ukraine²⁵ and the Guidelines for legislative reviews of laws affecting religion or belief.²⁶

The Assembly's report on "**New restrictions on NGO activities** in Council of Europe member States" contains numerous references to the Commission's relevant opinions and reports.²⁷ PACE Recommendation 2134/2018 on the same subject contains an intention to develop guidelines on foreign funding of NGOs in the member States, which would be based on the Commission's report on the subject, to be adopted in 2019.

On 4 December 2018 the PACE Committee on Culture, Science, Education and Media adopted a report on "**Media freedom as a condition for democratic elections**" which contains references to the Commission's Code of Good Practice in Electoral Matters and the Guidelines on Media Analysis during Election Observation Missions.

In PACE Report 14620 of 21 September 2018 entitled "**Private and family life: achieving equality regardless of sexual orientation**", the Committee on Equality

24. CDL-AD(2016)012, CDL-AD(2017)028, CDL-AD(2017)031.

25. CDL-AD(2006)030.

26. CDL-AD(2004)028.

27. CDL-AD(2018)004, CDL-AD(2018)006, CDL-AD(2017)015, CDL-AD(2016)020, CDL-AD(2016)037, CDL-AD(2014)025, CDL-AD(2014)043 and "Joint with OSCE/ODIHR guidelines on freedom of association" of 2014, CDL-AD(2011)035,



Regional Conference on “Misuse of administrative resources during electoral processes: a major challenge for democratic elections”, Tirana, April 2018

and Non-Discrimination, refers to the Commission’s Opinion on the draft revised constitution of Georgia.²⁸

In addition, the Parliamentary Assembly referred to the Venice Commission’s opinions in its work with Albania, Armenia, Russia (Chechen Republic), Iceland, Libya, Republic of Moldova, “the former Yugoslav Republic of Macedonia”,²⁹ Morocco, Turkey and Ukraine.³⁰

Participation in PACE activities

On 9 October 2018 a representative of the Venice Commission participated in the hearing of the PACE Legal Affairs and Human Rights Committee on the **implementation of the judgments of the European Court of Human Rights**. He explained how the Venice Commission could help States Parties to implement judgments of the Strasbourg Court.

On 25 June 2018 the Deputy Secretary of the Commission, Ms Simona Granata-Menghini, participated in a hearing of the PACE Political Affairs Committee entitled “Democracy hacked” where she talked about **security in elections**, a topic which had been discussed at the 15th EMB conference earlier in the year.

The President and the Secretary of the Commission participated in an international parliamentary conference entitled “Building **democratic security in the Mediterranean: common challenges, shared responsibility**”, organised by the Assembly on 6 November 2018 in Dubrovnik, Croatia. They shared with the participants the Commission’s experience in the region.

The 1st Vice-President of the Venice Commission participated in the Regional Conference on “**Women in politics: how to progress towards equality?**” organised by the Parliamentary Assembly of the Council of Europe (PACE) at the invitation of the Parliament of the Kingdom of Morocco, on 5 July 2018 in Rabat.

On 25 January 2018 in Strasbourg at the Council of Europe Mr Jan Helgesen, President of the Scientific

28. CDL-AD(2017)013.

29. As of 12 February 2019, the official name of the country changed to North Macedonia.

30. For more information please refer to the page “References” of the website of the Commission www.venice.coe.

Council of the Venice Commission, exchanged views with PACE’s Committee on Legal Affairs and Human Rights on “**Ombudsman Institutions in Europe – the need for a set of common standards**” and informed the MPs on the preparation by the Venice Commission of the so-called “Venice Principles” – a standard setting document in the field of the protection and promotion of the Ombudsman Institution.

Cooperation in the field of elections

On 24 January 2018 during the PACE winter session held in Strasbourg, the President of the Venice Commission, Mr Gianni Buquicchio spoke to the PACE Committee on Political Affairs and Democracy on “**A commitment to introduce rules to ensure fair referendums in Council of Europe member States**”. A member of the Commission presented the Venice Commission’s relevant reference texts before the Committee on Legal Affairs and Democracy of the Assembly at its meeting on “Updating guidelines to ensure fair referendums in Council of Europe member States” on 10 October 2018 at the Council of Europe, Strasbourg.

The Venice Commission and the Parliamentary Assembly, in co-operation with the Congress of Local and Regional Authorities organised a regional conference on “**The misuse of administrative resources during electoral processes: a major challenge for democratic elections**” on 10 – 11 April 2018 in Tirana.

Council for Democratic Elections

The Parliamentary Assembly continued to participate actively in the Council for Democratic Elections created in 2002 as a tripartite organ of the Venice Commission, the Parliamentary Assembly and the Congress of Local and Regional Authorities of the Council of Europe. The relevant members of the Council for Democratic Elections in 2018 were as follows:

Members

- ▶ Mr Corneliu Mugurel COZMANCIUC, Committee on Political Affairs and Democracy

- ▶ Lord Richard BALFE, Committee on Legal Affairs and Human Rights
- ▶ Mr Tiny KOX, Monitoring Committee

Substitute Members

- ▶ Lord George FOULKES, Committee on Political Affairs and Democracy
- ▶ Ms Eka BESELIA, Committee on Legal Affairs and Human Rights
- ▶ Mr Aleksander POCIEJ, Monitoring Committee

Legal assistance to election observation

In accordance with the co-operation agreement concluded between the Venice Commission and the Parliamentary Assembly, in 2018 representatives of the Venice Commission ensured legal assistance to the Parliamentary Assembly delegations observing early parliamentary elections in **Armenia**, general elections in **Bosnia and Herzegovina**, early presidential and parliamentary elections in **Turkey** and the presidential elections in **Azerbaijan, Georgia** and **Montenegro** as well as the consultative referendum related to the possible bilateral agreement with Greece in “the former Yugoslav Republic of Macedonia”³¹.

Congress of Local and Regional Authorities of the Council of Europe

Following Congress resolution 420 and the request from the Secretary General of the Congress of 7 November 2017, in 2018 the Commission started the preparation of the study on the compatibility of local recall referendum aimed at cutting short the term of office of a local elected representative, with international standards and best practice (“Recall of mayors”). This study will be adopted in 2019.

On 23 March 2018, the Venice Commission took part in the debate on “Regional referendum, a tool for democracy: challenges and risks” at the Chamber of Regions of the Congress of Local and Regional Authorities of the Council of Europe.

On 28 March 2018, the Deputy Secretary of the Commission addressed the 34th Session of the Congress – Chamber of Regions on the topic of the “Regional referendum, a tool for democracy: challenges and risks”.

The Congress also continued to participate in the Council for Democratic Elections (CDE). The relevant Congress members of the Council in 2018 were as follows:

Members

- ▶ Mr Stewart DICKSON, Chamber of Regions

31. As of 12 February 2019, the official name of the country changed to North Macedonia.

- ▶ Mr Jos WIENEN, Chamber of Local Authorities

Substitute Members

- ▶ Ms Dusica DAVIDOVIC, Serbia, Chamber of Regions
- ▶ Mr Luc MARTENS, Belgium, Chamber of Local Authorities

Mr Leen VERBEEK, Chair of the Congress Monitoring Committee and Ms Tania GROPPi, Congress’ Advisor on Constitutional Matters, participated in the plenary sessions of the Commission in 2018.

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 2018 the European Court of Human Rights referred to the Venice Commission’s documents in more than 20 judgments.



The Deputy Secretary General Ms Simona Granata-Menghini addressing the 34th session of the Congress of the Council of Europe, Strasbourg, March 2018

The Report on the Relationship between freedom of expression and freedom of religion: the Issue of regulation and prosecution of blasphemy, religious insult and incitement to religious hatred³² was mentioned in four of the Court's decisions/judgements:

- ▶ *Sekmadienis Ltd. v. Lithuania* (30 January 2018)
- ▶ *Ibrahim Ibragimov and others v. Russia* (28 August 2018)
- ▶ *E.S. v. Austria* (25 October 2018)
- ▶ *Mariya Alekhina and others v. Russia* (3 December 2018)

In *Bektashi community and others v. "the former Yugoslav Republic of Macedonia"* (12 April 2018) the Court mentions the draft opinion on the draft law on the legal status of a church, religious community and a religious group of "the former Yugoslav Republic of Macedonia".³³

The judgment *Dinçer v. Turkey* (16 January 2018) contains references to the Compilation of Venice Commission Opinions concerning **Freedom of Assembly**³⁴ and the Joint OSCE/ODIHR – Venice Commission Guidelines on the same subject.³⁵ The Joint OSCE/ODIHR and Venice Commission Guidelines on **Freedom of Association**³⁶ were referred to in *Navalnyy v. Russia* (15 November 2018). The Opinion on the compatibility with human rights standards of the legislation on non-governmental organisations of the Republic of Azerbaijan³⁷ was cited in *Mammadli v. Azerbaijan* (19 April 2018). The Opinion on the Federal Law on **Combating Extremist Activity** in the Russian Federation³⁸ in two judgments *Ibragim Ibragimov and others v. Russia* (28 August 2018) and *Mariya Alekhina and others v. Russia* (3 December 2018).

The Opinion on the International Legal Obligations of Council of Europe Member States in Respect of **Secret Detention Facilities and Inter-State Transport of Prisoners**³⁹ was cited by the Court in *Al Nashiri v. Romania* (31 May 2018) and *Abu Zubaydah v. Lithuania* (31 May 2018). The Report on the **Democratic Oversight** of Signals Intelligence Agencies⁴⁰ was cited in *Centrum För Rättvisa v. Sweden* (19 June 2018) and in *Big brother watch and others v. the United Kingdom* (13 September 2018). The Court referred to the Opinion on "Video surveillance by private operators in the public and private spheres and by public authorities in the private sphere and

human rights protection"⁴¹ in *López Ribalda and others v. Spain* (9 January 2018).

In *G.I.E.M. S.R.L. and others v. Italy* (28 June 2018) it referred to the Opinion on the Implementation of the Judgments of the European Court of Human Rights.⁴² In *Ramos Nunes De Carvalho e Sá v. Portugal* (6 November 2018) the Court cited the Report on **judicial appointments**⁴³ and the Opinion on the Laws on the Disciplinary Liability and Evaluation of Judges of "the former Yugoslav Republic of Macedonia"⁴⁴ (see footnote 25). In *Thiam v. France* (18 October 2018) the Compilation of Venice Commission Opinions and Reports concerning Courts and Judges⁴⁵ and in *Denisov v. Ukraine* (25 September 2018) - the Report on the Independence of the Judicial System, Part I: The Independence of Judges⁴⁶ were mentioned. In *J.B. and others v. Hungary* the Court referred to Opinions CDL-AD(2011)016 and CDL-AD(2012)020 on measures concerning the Hungarian judiciary.

In *Berlusconi v. Italy* [GC] (27 November 2018) the Court referred to the Report on **exclusion of offenders from Parliament**.⁴⁷ The judgment *Cernea v. Romania* (27 May 2018) referred to the **Code of Good Practice in Electoral Matters** (CDL-AD(2002)23rev). Two Commission's opinions on Turkey were mentioned in the judgment *Selahattin Demirtaş v. Turkey* (No. 2) (20 November 2018):

- ▶ Opinion on the Suspension of the Second Paragraph of Article 83 of the Constitution (Parliamentary Inviolability),⁴⁸
- ▶ Opinion 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 2017.⁴⁹

Reference to the Opinion on the draft amendments of February 2009 to the **Criminal Code** of Armenia (CDL-AD(2009)009) can be found in *Mushegh Saghatelyan v. Armenia* (20 September 2018). The Opinion on Articles 216, 299, 301 and 314 of the Penal Code of Turkey (CDL-AD(2016)002) was cited in *İmret v. Turkey* (No. 2) (10 July 2018) and in *Bakir and others v. Turkey* (10 July 2018).

Commissioner for Human Rights

The work of the two institutions is complementary: based on the expertise of its members, the Venice

32. CDL-AD(2008)026.

33. CDL(2007)005.

34. CDL-PI(2014)003

35. CDL-AD(2010)020

36. CDL-AD(2014)046

37. CDL-AD(2011)035

38. CDL-AD(2012)016

39. CDL-AD(2006)009

40. CDL-AD(2015)011

41. CDL-AD(2007)027

42. CDL-AD (2002)034

43. CDL-AD(2007)028

44. As of 12 February 2019, the official name of the country changed to North Macedonia

45. CDL-PI(2015)001

46. CDL-AD(2010)004

47. CDL-AD(2015)036cor

48. CDL-AD(2016)027

49. CDL-AD(2017)005

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 2018, during her visit to **Romania** from 12 to 16 November regarding the reform of the judicial system in Romania, Commissioner Dunja Mijatović underlined 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 and to carry out the reform in compliance with Romania's international human rights obligations.

On 14 December 2018, the Commissioner issued a statement calling on the President of **Hungary** to return to Parliament the legislative package on administrative courts to enable its fully informed review. She expressed concern at the strong powers the reform of the judiciary conferred on the Minister of Justice in the future administrative court system, stressing that this raised issues about the independence of the judiciary. The Commissioner also noted that it was regrettable that the Hungarian government and the Parliament had not waited for the Venice Commission to issue its Opinion on the legislation in question.

The opinion on the duties, competences and functioning of the **criminal peace judgeships** of Turkey⁵⁰ was referred to by the Commissioner in the third party intervention under Article 36, paragraph 3, of the European Convention on Human Rights. Application No. 43564/17 – *María del Mar Caamaño Valle v. Spain*⁵¹: with regard to the system of horizontal appeals among judges of the peace, was criticised by her predecessor and by the Venice Commission in the above-mentioned opinion.

In addition, as part of the preparation of the **Venice Principles** on the Ombudsman Institution, the Commission consulted with the office of the Council of Europe Commissioner for Human Rights. Her representatives submitted their comments on the Venice Principles and participated in the meeting of international stakeholders, held in Paris on 31 October 2018.

Other Council of Europe organs

Gender Equality Commission

The Commission was represented at the meeting on the Council of Europe Gender Mainstreaming Team (GMT) held on 15 October 2018 in Strasbourg, with a view to informing the members of the team of recent and on-going gender equality and gender mainstreaming activities of the Venice Commission

50. CDL-AD(2017)004

51. Cf. CommDH(2019)16

and to contributing to the Council of Europe Gender Equality Strategy 2018-2023. The participants were informed about a mini-conference on gender equality and discrimination held on the occasion of the Venice Commission's Joint Council for Constitutional Justice meeting, organised in Lausanne on 14 June 2018. Also, the Venice Commission adopted a template for joint opinions which includes gender equality aspects. The Commission's study on gender equality in constitutions has been put on hold due to the budgetary situation.

On 3 and 4 May 2018 in Copenhagen the 1st Vice President of the Venice Commission, Ms Herdis Kjerulf Thorgeirsdottir, participated in a conference organised on the occasion of the launch of the Council of Europe's Gender Equality Strategy 2018-2023. On 15 October 2018, the Chair and Vice-Chair of the Venice Commission's Sub Commission on Gender Equality participated by videoconference in a training session on gender mainstreaming, organised by the gender equality division of the Council of Europe.

Children's Rights Division

On 3 July 2018 the Commission, as the author of the 2014 Report on the Protection of Children's Rights,⁵² was represented at a meeting of the Council of Europe inter-secretariat task force on the rights of the child.

Council of Europe Development Bank

The Governor of the Bank Mr Rolf Wenzel attended the December 2018 plenary session of the Commission. On that occasion he informed the Commission of the Bank's activities during 2018, concerning migration and the refugee crisis over the past years. The Governor stressed that in this respect, the Venice Commission's work was key, as it helped to establish transparent and independent judiciaries which were indispensable in dealing with the crisis in a democratic manner.



Ms Herdis Kjerulf Thorgeirsdottir, 1st Vice-President of the Venice Commission, at the conference on the occasion of the launch of the Council of Europe Gender Equality Strategy 2018-2023; Copenhagen, May 2018

52. CDL-AD(2014)005



Consultation meeting on the impact on young people and their organisations of the shrinking of the open space for civil society, Strasbourg, European Youth Center, November 2018

European Commission for the Efficiency of Justice (CEPEJ)

Co-operation with CEPEJ continued in the framework of the organic laws on the organisation of the judiciary of Morocco. The Commission contributed, in co-operation with the European Commission for the Efficiency of Justice (CEPEJ) to the organisation of a meeting with the High Judicial Council of Morocco (HJC) on the theme “The functioning of High Judicial Councils, methods and strategic working tools” which took place in Rabat on 12 December 2018.

Consultative Council of European Judges (CCJE)

The Venice Commission, together with GRECO and the Consultative Council of European Judges (CCJE) co-organised a Council of Europe panel entitled “Transparency and how to demystify the work of courts” on the occasion of the Launch of the UN Global Judicial Integrity Network organised on 6 April 2018 in Vienna.

Group of States against Corruption (GRECO)

The Venice Commission and GRECO, both being based on enlarged agreements and giving advice to member states on core issues of the Council of Europe, in 2018 exemplified the synergies between both bodies in mutual references to relevant Commission’s opinions and GRECO evaluation reports. In addition, the Venice Commission, together with GRECO and the Consultative Council of European Judges (CCJE) co-organised a Council of Europe panel entitled “Transparency and how to demystify the work of courts” on the occasion of the Launch of the UN Global Judicial Integrity Network organised on 6 April 2018 in Vienna.

North South Centre

On 5 April 2018 the Deputy Secretary of the Commission participated in the 1st meeting of the working group of the pole of experts of the North South Centre on the protection and promotion of women’s rights.

Steering Committee for Human Rights

On 25 April 2018 the Deputy Secretary of the Commission participated in the meeting of the Drafting Group on freedom of expression and links to other human rights (CDDH-EXP). This group is working on the draft Guide to good practices on reconciling freedom of expression with other rights and freedoms, in particular in culturally diverse societies.

The CDDH was actively involved in the elaboration of the so-called Venice Principles on the Ombudsman Institution, by *inter alia* submitting written comments and participating in the international stakeholders meeting in Paris on 31 October 2018. Commission representatives exchanged views on the Venice Principles with the CDDH-INST on 15 March 2018 and with the CDDH on 20 June 2018 in Strasbourg.

Youth Department – Directorate of Democratic Participation, DG Democracy

One of the Vice Presidents of the Commission participated in a consultative meeting, organised by the Youth Department in co-operation with the Council of Europe Conference of INGO’s and the European Youth Forum to explore the “Shrinking space for civil society: its impact on young people and their organisations”, held on 6-7 November 2018 at the European Youth Centre in Strasbourg.

European Union

In 2018, the co-operation between the Venice Commission and the European Union further consolidated.

The European Union continued to invite its member and candidate states to follow the Venice Commission’s recommendations. The European Commission Services relied on the 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 Commission’s opinions concerning the judiciary in Poland were referred to in the process of the opening of the procedure according to Article 7 of the Treaty of the European Union to suspend certain rights from a member state in respect of Poland.

As is customary the Venice Commission provided input to the on-going EU efforts to support reforms in enlargement countries, channelling them within well designed technical boundaries while still respecting domestic ownership at all stages. The Venice

Commission was involved in consultations with the EU bodies on topics concerning EU policies and its relations with countries - members of the EU, candidate States and neighbourhood States.

The Secretary of the Commission, Mr Thomas Markert, attended a COSCE working party of the EU Council on 19 January 2018 in Brussels where he presented the ongoing and forthcoming opinions of the Commission on non-EU member states. On the margins of this event, he held working meetings with the representatives of EEAS and DG NEAR on Venice Commission activities in the Eastern Partnership countries (Ukraine, Moldova and Georgia), Russia, the Balkans and Turkey; with DG-JUST, DG-HOME and the Legal Service on the recent developments in Poland, Hungary, Bulgaria and Romania; and with the Managing Director of the EEAS on the recent activities in Central Asia.

On 26 November 2018 in Brussels the President and the Secretary of the Venice Commission participated in the **EU annual Colloquium on Fundamental Rights**. Mr Buquicchio intervened in Plenary Session A: "Resilient and Inclusive Democracies in Europe". On the side-lines of the colloquium, the President and the Secretary had a brief exchange of views with the 1st Vice President of the European Commission Mr Frans Timmermans. On the same occasion, President Buquicchio met with the EU Commissioner for European Neighbourhood Policy and Enlargement Negotiations, Mr Johannes Hahn. They reiterated their mutual commitment for the same values and vision for a stronger Europe and stressed that both institutions were natural partners in promoting the rule of law and legal reforms across European neighbourhood.

Representatives of the Legal Service and DG Justice, the European External Action Service as well as the Committee of the Regions participated in the plenary sessions of the Venice Commission in 2018.

European Parliament

The European Parliament has referred to the importance of the work of Venice Commission and/or its documents on more than 150 occasions. In the last ten years more than 80 resolutions of the European Parliament credit the Venice Commission's advisory competencies and call for close co-operation with it on various issues (elections, democratic institutions etc.) In 2018, the European Parliament continued referring to the Venice Commission's work and consultations with its representatives on important issues.⁵³ Below are some examples:

53. For more references to the work of the Commission by the EU please refer to the Venice Commission's website page "References"



The President, the Secretary and the Deputy Secretary of the Venice Commission at the meeting of the Constitutional Affairs Committee of the European Parliament (AFCO), Strasbourg, April 2018

On general issues:

- ▶ Resolution of 14 November 2018 on the need for a comprehensive EU mechanism for the protection of democracy, the rule of law and fundamental rights;⁵⁴
- ▶ Resolution of 3 May 2018 on media pluralism and media freedom in the European Union;⁵⁵
- ▶ Resolution of 19 April 2018 on the need to establish a European Values Instrument to support civil society organisations which promote fundamental values within the European Union at local and national level;⁵⁶
- ▶ Report on the proposal for a regulation of the European Parliament and of the Council on the protection of the Union's budget in case of generalised deficiencies as regards the rule of law in the Member States (COM(2018)0324 – C8-0178/2018 – 2018/0136(COD));
- ▶ Report on the situation of fundamental rights in the European Union in 2017 (2018/2103(INI));
- ▶ Report on the 2017 EU Justice Scoreboard (2018/2009(INI)).

On specific countries:

- ▶ Report on 2018 Commission Report on Bosnia and Herzegovina (2018/2148(INI));
- ▶ Resolution of 12 September 2018 on a proposal calling on the Council to determine, pursuant to Article 7(1) of the Treaty on European Union, the existence of a clear risk of a serious breach by Hungary of the values on which the Union is founded (2017/2131(INL));
- ▶ Resolution of 5 July 2018 on the political crisis in Moldova following the invalidation of the mayoral elections in Chişinău;⁵⁷
- ▶ Resolution of 29 November 2018 on the 2018 Commission Report on Montenegro (2018/2144(INI));

54. (2018/2886(RSP)

55. (2017/2209(INI)

56. (2018/2619(RSP)

57. 2018/2783(RSP)

- ▶ Resolution of 13 November 2018 on the Rule of law in Romania;⁵⁸
- ▶ Resolution of 29 November 2018 on the 2018 Commission Report on Serbia;⁵⁹
- ▶ Resolution of 29 November 2018 on the 2018 Commission Report on “the former Yugoslav Republic of Macedonia”;⁶⁰
- ▶ Resolution of 8 February 2018 on the current human rights situation in Turkey;⁶¹
- ▶ Report on the implementation of the EU Association Agreement with Ukraine (2017/2283(INI));⁶²
- ▶ Resolution of 19 April 2018 on Belarus;⁶³
- ▶ Resolution of 29 November 2018 on the 2018 Commission Report on Kosovo;⁶⁴
- ▶ EP Recommendation of 30 May 2018 to the Council, the Commission and the Vice-President of the Commission / High Representative of the Union for Foreign Affairs and Security Policy on Libya.⁶⁵

On 10 October 2018 in Brussels the Venice Commission participated in a high level conference on “The future of international election observation”. This event was organised by the European Parliament’s Democracy Support and Election Co-ordination Group (DEG) and the European External Action Service of the European Commission. The conference discussed new challenges that observer organisations had to take into account in their observation processes, including the use of digital technologies and social networks, but also violence during electoral processes.

Exchanges of view

On 16 April 2018 in Strasbourg the President and the Deputy Secretary of the Venice Commission exchanged views with the Constitutional Affairs Committee (AFCO) of the European Parliament, on the role, activities and working methods of the Venice Commission.

On 20 November 2018 a representative of the Venice Commission presented the latest opinions on Poland and the rule of law checklist at a hearing on the “Situation of the rule of law in Poland” organised by the EP Civil Liberties, Justice and Home Affairs Committee (LIBE).

58. 2018/2844(RSP)

59. 2018/2146(INI)

60. As of 12 February 2019, the official name of the country changed to North Macedonia.

61. 2018/2527(RSP)

62. A8-0369/2018

63. (2018/2661(RSP)

64. (2018/2149(INI)

65. (2018/2017(INI)

Seminars and conferences

On 26 April 2018 a representative of the Venice Commission participated in the “Event on democratic participation and electoral matters”, organised by the European Commission’s Directorate for Equality and Union Citizenship, where he shared the conclusions of the 15th conference of Electoral Management Bodies held in 2018 in Norway on “Security in elections”. Also, in the field of elections, a Venice Commission representative participated in the High-Level Conference, organised by the European Commission on 15 October 2018 in Brussels on “Election interference in the digital age. Building resilience to cyber-enabled threats”.

Senior European Union representatives addressed the two regional UniDem Med seminars and the 6th Intercultural Workshop for Democracy held in 2018.⁶⁶

Joint European Union – Council of Europe Projects

In 2018, 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” (segment of the South Programme III);
- ▶ Horizontal Facility for the Western Balkans and Turkey;
- ▶ Partnership for Good Governance (PGG);
- ▶ “Support to strengthening democracy through electoral reform in the Kyrgyz Republic”.

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

Launched in 2012, and re-conducted in 2015 and 2017, the South Programme is a strategic European Union-Council of Europe initiative to support democratic reforms in the southern Mediterranean in response to demand from the partners in the region. From legislative expertise to strengthening institutions’ capacities through peer-to-peer exchanges and networks, the South Programme aims *inter alia* to support the development of new constitutional and legislative frameworks and democratic governance bodies in countries in the region and to contribute to the establishment of a common legal area between Europe and the southern Mediterranean. For more information on this project please refer to Chapter V above.

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



President of the Venice Commission Mr Gianni Buquicchio and the European Commissioner for European Neighbourhood Policy and Enlargement Negotiations, Mr Johannes Hahn, Brussels, November 2018

“Horizontal Facility for the Western Balkans and Turkey”

The European Union/Council of Europe Horizontal Facility for the Western Balkans and Turkey (Horizontal Facility) is a co-operation initiative of the European Union and the Council of Europe for South East Europe. Launched in May 2016, the Horizontal Facility is a Joint Programme, which covers activities of the Council of Europe in Albania, Bosnia and Herzegovina, Montenegro, “the former Yugoslav Republic of Macedonia”,⁶⁷ Serbia as well as Kosovo. It includes the Council of Europe Expertise Co-ordination Mechanism (ECM), by which the Council of Europe in general and the Venice Commission in particular provide expertise to respond to requests for legislative analysis and policy advice from Horizontal Facility beneficiary countries. Thus, a vast majority of the Commission’s opinions on the legislation of the beneficiary countries was funded by this programme.

In 2018, the Venice Commission provided legal assistance to the State Election Commission of Albania and to the Ministries of Justice of Serbia and Montenegro.

For more information on these activities please see Chapters II (Constitutional reforms, state institutions, human rights and the judiciary) and IV (Elections, referendums and political parties) above.

67. As of 12 February 2019, the official name of the country changed to North Macedonia.

“Partnership for Good Governance”

In 2018, the Venice Commission continued to implement the Council of Europe’s part of the Programme “Partnership for Good Governance” (PGG) 2015-2018 in the six Eastern European countries (Armenia, Azerbaijan, Belarus, Georgia, Republic of Moldova and Ukraine) with funding provided by the European Union. Through its project in the constitutional field, the Venice Commission contributed to strengthening constitutional justice in the afore-mentioned countries by fostering regional co-operation among constitutional courts and building their capacities of impartial constitutional review bodies.

The Project supported the authorities of targeted countries in identifying unconstitutional provisions and legal gaps by preparing, upon request from the authorities, legal opinions on draft laws and monitoring the follow-up given to these opinions by the authorities. During the lifetime of the project, the Venice Commission adopted 18 opinions and *amicus curiae* briefs as regards Armenia, Azerbaijan, Georgia, the Republic of Moldova and Ukraine.

In order to increase the number of references to foreign and international law in constitutional courts’ judgments, the constitutional courts in the project area expressed a strong demand for international and regional experience-sharing. Constitutional court judges and registries took part in regional conferences to examine and take stock of the developments in the field of constitutional justice and to discuss challenges faced by the constitutional courts and ways to overcome them. These issues were discussed at length at 14 conferences in all six beneficiary countries. Before the start of the project, regional conferences were held annually in Armenia with occasional requests coming from the Constitutional Courts of Georgia and the Republic of Moldova.

The CODICES database, created in 1996, was in urgent need of technical updating. Thanks to PGG funding, a special feature was added to CODICES to enable specific searches to be carried out for the case-law of the Eastern Partnership (EaP) constitutional courts. A search with group keyword ‘EaP’ gave 797 judgments at the end of 2018. Moreover, a new CODICES Alert Management System (CODICES AMS) and the on-line CODICES data entry mask were developed to enable users to register requests for new alerts on constitutional case-law summaries fulfilling certain criteria as well as for liaison officers to submit on-line summaries for their contributions to the Bulletin on Constitutional Case-Law and the CODICES database.

The exchanges and existing tools facilitated constitutional courts’ access to information, thus helping them to deliver higher quality judgments backed up with appropriate references to international and foreign case-law.

“Support to strengthening democracy through electoral reform in the Kyrgyz Republic”

In 2018, the Venice Commission continued the implementation of the project “Support to strengthening democracy through electoral reform in the Kyrgyz Republic” which had been launched in 2017. The main areas of project activities are:

- ▶ Support the authorities of the Kyrgyz Republic in the elaboration of a comprehensive electoral reform strategy;
- ▶ Capacity building of the State Registration Service and the Central Election Commission, the main beneficiaries of the project;
- ▶ Support the authorities in improving the electoral dispute resolution system;
- ▶ Support relevant actors to enhance data protection mechanisms;
- ▶ Capacity building of electoral commissions, political parties, relevant actors and other participants in the electoral process.

In 2018 a number of activities were held in the framework of the aforementioned project.

By mutual agreement between the Venice Commission and the Delegation of the European Union in Kyrgyzstan the project has been extended until April 2019. For more information on this project please refer to Chapter V above.

EU Agency for Fundamental Rights and the European Ombudsman

The EU Agency for Fundamental Rights, the European Ombudsman of the EU participated in the elaboration of the Venice Principles on the Ombudsman Institution by submitting written comments and participating in the international stakeholders meeting, organised by the Venice Commission on 31 October 2018 in Paris.

OSCE

In 2018 the Commission continued its longstanding co-operation with the OSCE in the field of the protection of fundamental rights and elections and political parties in a fruitful manner.

On 12 September 2018 in Warsaw the Venice Commission participated in the 2018 OSCE **Human Dimension Implementation Meeting (HDIM)**. The Deputy Secretary of the Commission introduced the 4th Working Session “Rule of Law - I” devoted to the independence of the judiciary, the right to a fair trial, and democratic law-making.



OSCE Meeting of 2018 on the Implementation of the Human Dimension (HDIM); Warsaw, September 2018

Protection of fundamental rights

Joint opinions

In 2018, the Commission and the OSCE/ODIHR continued to prepare jointly the opinions in the field of the protection of fundamental rights:

- ▶ **Armenia** - Joint Opinion on the draft law amending the Law on Freedom of Conscience and on Religious Organisations;⁶⁸
- ▶ **Hungary** - Joint Opinion on Section 253 on the special immigration tax of Act XLI of 20 July 2018 amending certain tax laws and other related laws and on the immigration tax;⁶⁹
- ▶ **Hungary** - Joint Opinion on the provisions of the so-called “Stop Soros” draft legislative package which directly affect NGOs (in particular draft article 353A of the Criminal Code on Facilitating Illegal Migration);⁷⁰
- ▶ **Romania** - Joint Opinion on draft law No. 140/2017 on amending Governmental Ordinance No. 26/2000 on Associations and Foundations;⁷¹
- ▶ **Ukraine** - Joint Opinion on draft law No. 6674 “On introducing changes to some legislative acts to ensure public transparency of information on financial activity of public associations and of the use of international technical assistance” and on draft law No. 6675 “On introducing changes to the tax code of Ukraine to ensure public transparency of the financing of public associations and of the use of international technical assistance”;⁷²

The Secretary of the Commission participated in the 3rd Round Table on the **laws on the judiciary in Poland** on 9 July 2018 in Warsaw.

On 15 July 2018 in Udine the Commission was represented at the celebration of the 10th Anniversary of the launch of the **Bolzano/Bozen Recommendations**

68. CDL-AD(2018)002

69. CDL-AD(2018)035

70. CDL-AD(2018)013

71. CDL-AD(2018)004

72. CDL-AD(2018)006



Deputy Secretary to the Commission Ms Granata-Menghini at the celebration of the 10th anniversary of the launch of the Bolzano / Bozen recommendations on national minorities in interstate relations; Udine, July 2018

on National Minorities in Inter-State Relations. These recommendations were adopted by the OSCE High Commissioner on National Minorities in 2008, building on the Venice Commission's 2001 Report on preferential treatment of national minorities by the kin-state.

Representatives of the OSCE/ODIHR participated in the drafting of the **Venice Principles** on the Ombudsman Institution by submitting their written comments and participating in the international stakeholders meeting organised by the Commission on 31 October 2018 in Paris.

Joint Guidelines on the freedom of peaceful assembly

Both organisations continued the revision of the Joint Guidelines on the freedom of peaceful assembly.⁷³ To this end, the Venice Commission participated in a workshop organised by the OSCE/ODIHR Panel as part of the revision of the Joint Guidelines held on 22 February 2018 in Warsaw.

Elections, referendums and political parties

The OSCE / ODIHR representatives participated in the four 2018 meetings of the Council for Democratic Elections and the plenary sessions of the Commission.

Joint opinions

In 2018, the Commission and the OSCE/ODIHR prepared jointly the following opinions in the field of elections:

- ▶ **Albania** - Joint Opinion on the draft law on the legislative initiative of the citizens - CDL-AD(2018)026;
- ▶ **Republic of Moldova** - Joint Opinion on the law for amending and completing certain legislative acts (Electoral system for the election of Parliament) - CDL-AD(2018)008;

⁷³. CDL-AD(2010)020

- ▶ **Turkey** - Joint Opinion on amendments to the electoral legislation and related "harmonisation laws" adopted in March and April 2018 - CDL-AD(2018)031;
- ▶ **Uzbekistan** - Joint Opinion on the draft election code - CDL-AD(2018)027.

Guidelines on political party regulation

The revision of the joint guidelines on political party regulation, which had been drawn up by the OSCE/ODIHR and the Venice Commission in 2010 following a broad inclusive process, was launched in 2016 in order to incorporate new experiences, to improve the guidelines and to take into account new trends as well as the introduction of specific subjects. During 2017 and 2018 several members of the Commission contributed to the revision and will continue to do so with a view to the adoption of the new version by the Venice Commission.

Seminars and conferences

On 26 June 2018 in Tbilisi a regional international conference entitled "**Money in Politics**" took place. An expert spoke on behalf of the Venice Commission during the Session I: "Regulating money and politics, a regional overview". The event was co-organised by the OSCE/ODIHR along with the State Audit Office of Georgia, the Council of Europe, IFES, International IDEA, Transparency International TI-Georgia, and by the Eastern European Centre of Multiparty Democracy.

On 3 July 2018 in Tirana an expert of the Venice Commission took part in a workshop on **electoral administration** of the Parliamentary Ad Hoc Committee on Electoral Reform which was organised with the support of the OSCE/ODIHR. On 27 June 2018 in Tirana an expert of the Venice Commission took part in a workshop on **out-of-country voting** of the Parliamentary Ad Hoc Committee on Electoral Reform which was organised with the support of the OSCE Presence in Albania.

On 30 October 2018 the Venice Commission participated in a seminar entitled "**Election observation and election campaigns**" organised by the OSCE/ODIHR in Vienna.

United Nations

UN High Commissioner for Human Rights; Special Rapporteur on the situation of human rights defenders

In the framework of the preparation of the Venice Principles the Commission collaborated with the UN High Commissioner for Human Rights and the Special Rapporteur on the situation of human rights defenders. Representatives of these two UN bodies

submitted comments and participated in the meeting of international stakeholders on the drafting of the Venice Principles which took place in Paris on 31 October 2018.

United Nations Development Programme (UNDP)

In 2018 the Venice Commission continued its fruitful co-operation and exchanges of information with several UNDP projects, notably in the countries of the Southern Mediterranean and in Ukraine.

In the Southern Neighbourhood the Venice Commission continued its fruitful co-operation with the UNDP's Bureau for Policy and Programme Support (Regional Hub for Arab States) in supporting the Organisation of Arab Electoral Management Bodies (Arab EMBs) and preparing the third General Assembly meeting of the organisation. Initially, the activity was planned for November 2018, but following a request from the organisation's Executive Board, the event had to be postponed until February 2019.

The Venice Commission continued regular exchanges within the EU/UNDP project "Rada for Europe: driving reforms across Ukraine" in the framework of its co-operation with the Verkhovna Rada on reform of its Internal Rules of Procedure and enhancing its efficiency.

UN Global Judicial Integrity Network

The Deputy Secretary of the Commission participated in the Launch of the UN Global Judicial Integrity Network organised on 6 April 2018 in Vienna. The Venice Commission, together with the Group of States against Corruption (GRECO) and the Consultative Council of European Judges (CCJE) co-organised the Council of Europe panel entitled "Transparency and how to demystify the work of courts".

United Nations Support Mission in Libya (UNSMIL)

In 2018 upon request from the EU Delegation to Libya, a Venice Commission expert, Mr Peter Wardle, was involved in the working group in charge of the preparation of the draft laws on referendum, parliamentary and presidential elections put in place by UNSMIL.



The Commission's Working Group on the draft Principles on the Protection and Promotion of the Ombudsman Institution ("The Venice Principles") and representatives of international organisations and ombudsman associations; Paris, October 2018

Co-operation with other international organisations

Associations of Constitutional Courts

In 2018, the Venice Commission co-operated with the following international organisations active in the constitutional justice field

- ▶ Association of Asian Constitutional Courts and Equivalent Institutions (AACC);
- ▶ Association of Constitutional Courts using the French Language (ACCPUF);
- ▶ Conference of the Constitutional Control Organs of the Countries of New Democracy (CCCOCND);
- ▶ Conference of Constitutional Jurisdictions of Africa (CCJA);
- ▶ Conference of European Constitutional Courts (CECC);
- ▶ Conference of Constitutional Courts of Portuguese Speaking Countries (CJCPLP);
- ▶ Ibero-American Conference of Constitutional Justice (CIJC);
- ▶ 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 above.

Associations of ombudsman institutions

Association of Mediterranean Ombudsmen (AOM)

The Venice Commission, in co-operation with the Office of the Ombudsman Institution of the Kingdom of Morocco and with the Association of Mediterranean Ombudsmen (AOM), organised a training session for collaborators of members of the AOM on "The rights of detainees in the national territory and of those detained abroad: the role of the Ombudsman Institutions" in Rabat on 28-29 November 2018 as well as the



2nd Forum of Electoral Administrative Bodies of the Arab States; Cairo, November 2018

10th meeting of the Association of Mediterranean Ombudsmen on “the Ombudsman as a protector of the social, cultural and environmental rights” in Skopje on 29-31 May 2018.

Association of Ombudsmen and Mediators of the Francophonie (AOMF)

The Venice Commission participated in a seminar co-organised by the Association of Ombudsmen and Mediators of the Francophonie (AOMF) and the Advocate of the People of Romania entitled “The judge and the institutional mediator” on 3-4 April 2018 in Bucharest. The Commission presented the draft of its “Principles on the protection and promotion of the Ombudsman institution” (“The Venice Principles”).

Also, in 2018, in co-operation with the Association of Mediators and Ombudsmen of the Francophonie (AOMF), a seminar on “Managing newcomers” was organised by the Ombudsman Institution of Morocco and the Venice Commission on 9-11 October 2018 in Rabat. This workshop gathered together collaborators of Ombudsman Institutions for an exchange of experiences and best practices. This activity was funded by the programme “Ensuring Sustainable Democratic and Human Rights in the Southern Mediterranean” funded by the European Union and implemented by the Council of Europe.

In addition, the Venice Commission participated in the 10th Congress of the Association of Ombudsmen and Mediators of the Francophonie (AOMF) held on 6-9 November 2018 in Brussels and Namur (Belgium). This Congress entitled “20 years supporting ombudsmen and the rule of law” was also the occasion to celebrate the 20th anniversary of the AOMF.

Ibero-American Federation of Ombudsman (FIO)

In the framework of the preparation of the Venice Principles the Commission collaborated with the FIO. Representatives of this Federation submitted comments and participated in the meeting of international stakeholders on the drafting of the Venice Principles

which took place in Paris on 31 October 2018. In addition, the Commission participated in the FIO General Assembly on 22 November 2018 in order to present the draft “Venice Principles”.

Other international Ombudsman Institutions

In the framework of the preparation of the Venice Principles the Commission also collaborated with the International Ombudsman Institute (IOI) and the European Network of National Human Rights Institutions (ENNHRI).

Arab Union of Administrative Justice

On 8 January 2018 in Cairo the Venice Commission participated in an international conference on the “Role of administrative courts in electoral disputes”, organised by the Arab Union of Administrative Justice. Experts from Egypt, Tunisia, Iraq, Lebanon, Mauritania, Sudan, Bahrain and France addressed the issue of electoral disputes before the administrative judges from the Courts members of the Union.

Association of European Election Officials ACEEEO

The Commission participated in the 27th Annual Conference and General Assembly of the Association of European Election Official (ACEEEO) in Vilnius on 5-7 September 2018, on the theme “Guaranteeing voter privacy, security and integrity”; in particular, one workshop was devoted to cyber security. On the side-lines of this conference, representatives of the Commission participated in a meeting on the development of a European / Eurasian network of electoral jurisprudence.

International Foundation for Electoral Systems (IFES)

In 2018 the Venice Commission continued its co-operation with the International Foundation for Electoral Systems (IFES) in Ukraine and in Kyrgyzstan. In the framework of the “Electoral systems week” and in co-operation with IFES, USAID and other international partners the Venice Commission co-organised a Round Table on the electoral reform process in Ukraine in April 2018.⁷⁴ IFES was one of the co-organisers of the regional international conference entitled “Money in Politics” which took place on 26 June 2018 in Tbilisi.

International IDEA

Since 2015, this institution enjoys observer status with the Council for Democratic Elections – a

74. For more information please see Chapter V.

tripartite body comprised of representatives of the Venice Commission, PACE and the Congress of the Council of Europe. International IDEA was one of the co-organisers of the regional international conference entitled “Money in Politics” which took place on 26 June 2018 in Tbilisi.

League of Arab States

The Venice Commission participated in the 2nd Forum of Electoral Management Bodies in Arab States, organised by the League of Arab States and the UN in Cairo on 13-14 November 2018. The participation of the Venice Commission in the Forum was funded by the Joint Council of Europe-European Union Programme “Ensuring the sustainability of democratic governance and human rights in the Southern Mediterranean”, South Programme III.

Konrad Adenauer Stiftung

On 5 December 2018 in Strasbourg the Secretary of the Commission participated in a conference on the “Independence of judiciary under threat”, organised by the Konrad Adenauer Foundation.

OECD

The Venice Commission continued in 2018 its constructive collaboration with the OECD in the framework of different regional events organised in the southern Mediterranean. Experts from the OECD participated in the two UniDem Med seminars organised by the Commission in 2018.

Organisation of American States (OAS)

2018 was marked by a fruitful co-operation with the OAS. The Commission adopted, at the request of the OAS, the Part I of the Report on term limits (Presidents). The Commission started the preparation of the second

and third parts of the report on term limits of MPs, locally elected representatives, governors and mayors.

The Venice Commission participated in the 13th Inter-American Meeting of Electoral Authorities (RAE) organised by the Department of Electoral Cooperation and Observation of the Organization of American States (OAS) on 7- 9 November 2018 in Santo Domingo, Dominican Republic.

Organisation of Electoral Management Bodies of Arab countries

In 2018 the Venice Commission and UNDP continued exchanges with the Organisation of Electoral Management bodies of Arab countries on the preparation of the 3rd General Assembly and a Conference on electoral complaints and appeals mechanisms in the Arab region. Initially, the activity was planned for November 2018, but following a request from the organisation’s Executive Board, the event had to be postponed until February 2019.

International Organisation of La Francophonie (OIF)

In 2018, the Venice Commission and the OIF signed an agreement (*protocole d'accord*) under which the OIF provided a financial contribution for the translation from English into French of contributions made to the Bulletin on Constitutional Case-Law by constitutional courts and equivalent bodies in member, associate member and observer states of the OIF.

The Venice Commission recognised this support in the Bulletin on Constitutional Case-Law and the CODICES database.

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.⁷⁵ 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 2018, it had 61 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.

Constitutional assistance

The Commission's prime function is to provide **constitutional assistance** to States, mainly (but not exclusively) to those which participate in its activities.⁷⁶ 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 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.

75. 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.

76. 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.

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.

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 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. With its Report on the independence of the judicial system (Part I - Independence of judges (CDL-AD(2010)004 and Part II - Prosecution Service (CDL-AD(2010)040), the Commission produced a reference text, which it uses in its opinions on specific countries.

The Commission also co-operates with **ombudspersons**. The Commission promotes relations between ombudspersons and constitutional courts with the aim of furthering human rights protection in member countries.

Studies and reports on subjects of general interest

While most of its work concerns specific countries, the Venice Commission also draws up **studies and reports on subjects of general interest**. Just a few examples demonstrating the variety, complexity and importance of the matters dealt with by the Commission are its reports on a possible convention on the rights of minorities, on "kin minorities", on independence of the judiciary, on individual access to constitutional justice, on the status of detainees at Guantanamo Bay, on counter-terrorist measures and human rights, on democratic control of security services and armed forces, on the relationship between freedom of expression and freedom of religion as well as the adoption of codes of good practice in electoral matters, on referendums and in the field of political parties. 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. The Committee of Ministers has endorsed it

and has called on member States to use and widely disseminate this Checklist.

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.⁷⁷

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 member and observer countries, by the European Court of Human Rights, the Court of Justice of the European Communities and the Inter-American Court of Human Rights.

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

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

This Conference decided to establish an association, assisted by the Venice Commission and open to all participating courts, with the purpose of promoting

⁷⁷. See Appendix V.

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.

At the end of 2018, 114 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 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 some 10,000 decisions rendered by over 100 participating courts together with constitutions and descriptions of many courts and the laws governing them.⁷⁸ These publications have played a vital “cross-fertilisation” role in constitutional case-law.

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

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

Lastly, the Commission holds seminars and conferences in co-operation with constitutional and

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

equivalent courts, and makes available to them on the Internet a forum reserved for them, the “Venice Forum”, through which they can speedily exchange information relating to pending cases.

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),⁷⁹ **Guidelines on the international status of elections observers** (2009) and, in the field of political parties, the **Code of Good Practice in the field of Political parties** (2008). The other general documents concern such matters as recurrent challenges and problematic issues of electoral law and electoral administration, electoral law and national minorities, electoral systems, including thresholds, and women’s representation in political systems and preventing the misuse of administrative resources during electoral campaigns. In the field of political parties, the Venice Commission has also drafted joint guidelines on political party regulation with the OSCE/ODIHR, and addressed the prohibition, dissolution and financing of political parties, as well the method of nomination of candidates in political parties. The Commission has adopted more than sixty studies or guidelines of a general nature in the field of elections, referendums and political parties.

The Commission has drafted more than 130 opinions on **national laws and practices relating to elections**,

79. 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.

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 15th edition took place in 2018 in Oslo), and is also in very close contact with other international organisations or bodies which work in the electoral 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 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”. 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 VOTA⁸⁰ 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*). The database was fully updated in 2018.

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 full-scale co-operation programmes with Central Asia, Southern Mediterranean and Latin America.

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

The Venice Commission has been working in **Central Asia** for over 10 years. This co-operation was possible in the framework of several bilateral and regional projects with funding provided by the European Union. The national institutions of Kazakhstan, Kyrgyzstan, Tajikistan and Uzbekistan were assisted in order to build their capacity to carry out reforms of their legal systems in line with European and international human rights standards, including the European Convention on Human Rights and the case-law of the European Court of Human Rights. Within the projects, the Venice Commission organised a number of events providing opportunities for exchanging views with the authorities of Central Asian States on topics such as constitutional justice, 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 the absence of joint projects aimed at the Central Asian region in 2017. In 2018 the Venice Commission continued bilateral co-operation with higher judicial bodies of the five countries of the region which show continuous interest in the assistance of the Venice Commission. At the end of 2016 the Commission signed a co-operation Agreement with the European Union for the implementation of a new project in the electoral field in Kyrgyzstan. This project enabled a number of capacity-building activities in the electoral field to be organised during 2018.

The Commission actively co-operates with countries of the **Southern Mediterranean region**. It established contacts with Arab countries even before the Arab Awakening and this farsightedness proved very useful. After the Arab spring the Commission established a very good co-operation with Morocco and Tunisia. Successful projects in these countries helped to establish and to develop a dialogue with other countries of the region such as 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. In 2018 the Authorities of Algeria, Egypt, Lebanon and Palestine⁸¹ showed a growing interest in co-operation with 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

81. 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

justice and electoral legislation and practice. The Venice Commission became crucial for making such dialogue possible. In recent years the Commission with its partners in Argentina, Brazil, Chile, Mexico and Peru prepared and successfully carried out activities and projects in the above-mentioned fields. Supported by the EU the Commission also successfully completed a project focussed on the implementation of the new constitution in Bolivia in 2011 - 2012. The Commission created a specific Sub-Commission on Latin America which further

developed dialogue on a number of issues in particular concerning fundamental rights, constitutional law, constitutional justice and elections. The Commission enjoys particularly fruitful co-operation with the Mexican National Electoral Institute and the Electoral Tribunal of the Judicial Power of the Mexican Federation (Tribunal electoral del poder judicial de la Federación, TEPJF) and the Mexican National Electoral Institute (INE). Since 2017 the Venice Commission has been actively co-operating with the Organization of American States (OAS).

APPENDIX II

MEMBER STATES

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)
Chile (01.10.2005)
Costa Rica (06.07.2016)
Croatia (01.01.1997)
Cyprus (10.05.1990)
Czech Republic (01.11.1994)
Denmark (10.05.1990)
Estonia (03.04.1995)
Finland (10.05.1990)
France (10.05.1990)
Georgia (01.10.1999)
Germany (03.07.1990)
Greece (10.05.1990)
Hungary (28.11.1990)
Iceland (05.07.1993)
Ireland (10.05.1990)
Israel (01.05.2008)
Italy (10.05.1990)
Kazakhstan (13.03.2012)
Republic of Korea (01.06.2006)
Kosovo (12.09.2014)
Kyrgyzstan (01.01.2004)
Latvia (11.09.1995)
Liechtenstein (26.08.1991)
Lithuania (27.04.1994)
Luxembourg (10.05.1990)
Malta (10.05.1990)
Mexico (03.02.2010)
Moldova (25.06.1996)
Monaco (05.10.2004)
Montenegro (20.06.2006)
Morocco (01.06.2007)
Netherlands (01.08.1992)

Norway (10.05.1990)
Peru (11.02.2009)
Poland (30.04.1992)
Portugal (10.05.1990)
Romania (26.05.1994)
Russian Federation (01.01.2002)
San Marino (10.05.1990)
Serbia (03.04.2003)
Slovakia (08.07.1993)
Slovenia (02.03.1994)
Spain (10.05.1990)
Sweden (10.05.1990)
Switzerland (10.05.1990)
"The former Yugoslav Republic of
Macedonia"⁸² (19.02.1996)
Tunisia (01.04.2010)
Turkey (10.05.1990)
Ukraine (03.02.1997)
United Kingdom (01.06.1999)
United States of America (15.04.2013)

Associate member

Belarus (24.11.1994)

Observers

Argentina (20.04.1995)
Canada (23.05.1991)
Holy See (13.01.1992)
Japan (18.06.1993)
Uruguay (19.10.1995)

Participants

European Commission
OSCE/ODIHR

Special co-operation status

Palestine⁸³
South Africa

82. As of 12 February 2019, the official name of the country changed to North Macedonia.

83. 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 MEMBERS⁸⁴

Algeria

- ▶ Mr Mourad MEDELICI,⁸⁵ President, Constitutional Council
- ▶ Mr Mohamed HABCHI (Substitute member), Vice-President, Constitutional Council

Andorra

- ▶ Mr Pere VILANOVA TRIAS, Professor of Political Science and Public Policy, University of Barcelona

Armenia

- ▶ Mr Gagik G. HARUTYUNYAN, President, Constitutional Court
- ▶ Mr Vardan POGHOSYAN (Substitute member), Team Leader Armenia, GIZ Programme "Legal Approximation towards European Standards in the South Caucasus"

Austria

- ▶ Mr Christoph GRABENWARTER, Judge, Constitutional Court of Austria
- ▶ Ms Katharina PABEL (Substitute member), Professor, University of Linz
- ▶ Mr Andreas HAUER (Substitute member), Member, Constitutional Court

Azerbaijan

- ▶ Mr Rövşən İSMAYILOV, Judge, Constitutional Court

Belgium

- ▶ Mr Jan VELAERS, Professor, University of Antwerp
- ▶ M. Jean-Claude SCHOLSEM (Substitute member), Professor Emeritus, University of Liege

Bosnia and Herzegovina

- ▶ Mr Zlatko KNEŽEVIĆ, Vice President, Constitutional Court
- ▶ Mr Nedim ADEMOVIĆ (Substitute member), Lawyer
- ▶ Mr Marko BEVANDA (Substitute member), Assistant Professor, Faculty of Law, University of Mostar

Brazil

- ▶ Ms Carmen Lucia ANTUNES ROCHA, President, Federal Supreme Court
- ▶ Mr Gilmar Ferreira MENDES (Substitute member), Justice, Federal Supreme Court

Bulgaria

- ▶ Mr Philip DIMITROV, Judge, Constitutional Court
- ▶ Mr Plamen KIROV (Substitute member), former Judge, Constitutional Court

Chile

- ▶ Mr Domingo HERNANDEZ EMPARANZA, Judge, Constitutional Tribunal
- ▶ Mr José Ignacio VASQUEZ MARQUEZ (Substitute member), Judge, Constitutional Tribunal

Costa Rica

- ▶ Mr Fernando CRUZ CASTRO, President a.i., Constitutional Chamber of the Supreme Court
- ▶ Mr Fernando CASTILLO VIQUEZ (Substitute member), Judge, Supreme Court

84. As at 31 December 2018.

85. Deceased 28 January 2019.

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, President, Supreme Court
- ▶ Mr Stelios NATHANAEL (Substitute member), Judge, Supreme Court

Czech Republic

- ▶ Ms Veronika BÍLKOVÁ, Vice-President of the Venice Commission, Lecturer, Law Faculty, Charles University
- ▶ Ms Kateřina ŠIMÁČKOVÁ (Substitute member), Judge, Constitutional Court

Denmark

- ▶ Mr Jørgen Steen SØRENSEN, Parliamentary Ombudsman
- ▶ Mr Michael Hansen JENSEN (Substitute member), Professor, University of Aarhus

Estonia

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

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-MALAUURIE, Member, Constitutional Council, former Member of the Auditors' Board
- ▶ M. Jean-Jacques HUEST (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 Alexander BARAMIDZE (Substitute member), Practising Lawyer

Germany

- ▶ Mr Wolfgang HOFFMANN-RIEM, former Judge, Federal Constitutional Court
- ▶ Ms Monika HERMANN (Substitute member), Justice, Federal Constitutional Court

Greece

- ▶ Mr Dionysios FILIPPOU, Assistant Professor of Public Law, Democritus University of Thrace
- ▶ Mr Dimosthenis KASSAVETIS (Substitute member), Assistant Professor of Sociology of Law, Democritus University of Thrace

Hungary

- ▶ Mr Andras Zs. VARGA, Judge, Constitutional Court, Professor, Pázmány Péter Catholic University Faculty of Law and Political Sciences
- ▶ Mr András MÁZI (Substitute member), Head of Department of Constitutional Law, Ministry of Justice

Iceland

- ▶ Ms Herdis KJERULF THORGEIRSDOTTIR, First Vice-President of the Venice Commission, Attorney at Law
- ▶ Mr Thorgeir ÖRLYGSSON (Substitute member), President, Supreme Court
- ▶ Mr Hjortur TORFASON (Substitute member), former Judge, Supreme Court

Ireland

- ▶ Mr Richard BARRETT, 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 Deputy 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), Vice Chair, 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, Foundation of the First President of the Republic of Kazakhstan
- ▶ Ms Unzila SHAPAK (Substitute member), Member, Constitutional Council

Korea, Republic

- ▶ Mr Il-Won KANG, Justice, Constitutional Court
- ▶ Mr Ho Chul KIM (Substitute member), Chief Prosecutor of Gwangju High Prosecution Service

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), President, Constitutional Chamber of the Supreme Court

Latvia

- ▶ Mr Aivars ENDZIŅŠ, former President of the Constitutional Court, Head of the Department of Public Law, Turība School of Business Administration
- ▶ Mr Gunars KŪTRIS (Substitute member), former President, Constitutional Court, Member of Parliament

Liechtenstein

- ▶ Mr Peter BUSSJÄGER, Judge, Constitutional Court
- ▶ Mr Wilfried HOOP (Substitute member), Partner, Hoop & Hoop

Lithuania

- ▶ Mr Gediminas MESONIS, Judge, Constitutional Court
- ▶ Mr Dainius ZALIMAS (Substitute member) President, Constitutional Court

Luxembourg

- ▶ Mme Lydie ERR, former Ombudsman
- ▶ Ms Claudia MONTI (Substitute member), Ombudsman

Malta

- ▶ Mr Michael FRENDU, Vice-President of the Venice Commission, former Speaker, House of Representatives

Mexico

- ▶ Ms Janine M. OTÁLORA MALASSIS, President, Federal Electoral Tribunal

- ▶ Mr José Luis VARGAS VALDEZ (Substitute member), Judge, Federal Electoral Tribunal
- ▶ Mr Eduardo MEDINA MORA ICAZA (Substitute member) Judge, Supreme Court of Justice

Moldova, Republic of

- ▶ M. Alexandru TĂNASE, Minister of Justice, former President, Constitutional Court
- ▶ Mr Nicolae EȘANU (Substitute member), Secretary of State, Ministry of Justice

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 DARMANOVIC, Minister of Foreign Affairs, Professor of Comparative Politics, University of Montenegro
- ▶ Mr Zoran PAZIN (Substitute member), Deputy Prime Minister, Minister of Justice

Morocco

- ▶ Mr Khalid NACIRI, Professor of Constitutional Law, former Minister of Communication
- ▶ Mr Ahmed ESSALMI (Substitute member), Member, Constitutional Court

Netherlands

- ▶ Mr Ben VERMEULEN, Member of the Dutch Council of State, Judge in the Council of State, Professor of Education Law, Radboud University Nijmegen
- ▶ Mr Martin KUIJER (Substitute member), Senior Legal Adviser, Ministry of Security and Justice, Professor VU University Amsterdam

Norway

- ▶ Mr Jan Erik HELGESEN, Professor, University of Oslo
- ▶ Mr Eirik HOLMØYVIK (Substitute member), Professor of Law, University of Bergen

Peru

- ▶ Mr José Luis SARDON DE TABOADA, Judge, Constitutional Tribunal
- ▶ Mr Eloy ESPINOSA-SALDAÑA BARRERA (Substitute member), Vice-President, 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 Joao CORREIA, Lawyer
- ▶ Mr Paulo PIMENTA (Substitute member), Professor, Universidad Portucalense

Romania

- ▶ Mr Tudorel TOADER, Minister of Justice, former Judge, Constitutional Court
- ▶ Mr Bogdan Lucian AURESCU (Substitute member), Professor, Faculty of Law, University of Bucharest, Member of the UN International Law Commission, Presidential Advisor for Foreign Policy, Presidential Administration

Russia

- ▶ Ms Taliya KHABRIEVA, Academician, Russian Academy of Sciences, Director, Institute for Legislation and Comparative Law

- ▶ M. 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

Serbia

- ▶ Mr Ćedomir BACKOVIĆ, Assistant Minister of Justice
- ▶ Mr Vladan PETROV (Substitute member), Professor, Law Faculty, Belgrade University

Slovakia

- ▶ Ms Ivetta MACEJKOVÁ, President, Constitutional Court
- ▶ Ms Jana BARICOVÁ (Substitute member), Judge, Constitutional Court

Slovenia

- ▶ Mr Ciril RIBIČIČ, Professor of Constitutional Law, University of Ljubljana, former Justice and Vice President of the Constitutional Court
- ▶ Mr Aleš GALIČ (Substitute member), Professor, Faculty of Law, University of Ljubljana

Spain

- ▶ Mr Josep Maria CASTELLA ANDREU, Professor of Constitutional Law, University of Barcelona
- ▶ Mr Rafael RUBIO NUÑEZ (Substitute member), Deputy Director for Study and Research, Centre for Political and Constitutional Studies (CEPC), Ministry of the Presidency
- ▶ 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, Professor of Constitutional and Administrative Law, University of Zurich
- ▶ Mrs Monique JAMETTI GREINER (Substitute member), Judge, Federal Tribunal

“The former Yugoslav Republic of Macedonia”⁸⁶

- ▶ Ms Tanja KARAKAMISHEVA-JOVANOVSKA, Full Professor of Constitutional Law and Political System, “Iustinianus Primus” Faculty of Law, University “Sc. Cyril and Methodius”

Tunisia

- ▶ Mr Ghazi JERIBI, 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

⁸⁶. As of 12 February 2019, the official name of the country changed to North Macedonia.

United Kingdom

- ▶ Mr Richard CLAYTON QC, Barrister at Law
- ▶ Mr Paul CRAIG (Substitute member), Professor of Law, University of Oxford

United States of America

- ▶ Ms Sarah CLEVELAND, Professor, Columbia Law School
- ▶ Ms Evelyn M. ASWAD (Substitute member), Law Professor, University of Oklahoma, College of Law

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

Canada

- ▶ N. N.

Holy See

- ▶ Mr Vincenzo BUONOMO, Professor of International Law

Japan

- ▶ Mr Kosuke YUKI, Consul, Consulate General of Japan in Strasbourg, liaison officer, Supreme Court

Uruguay

- ▶ M. Alvaro MOERZINGER, Ambassador, Embassy of Uruguay in the Hague

Special status

European Union

European Commission

- ▶ Mr Lucio GUSSETTI, Director, Legal Department
- ▶ Mr, Carlo ZADRA, Legal Adviser

Committee of the Regions

- ▶ Mr Luc VAN DEN BRANDE, Member, former President of CIVEX

OSCE

Office for Democratic Institutions and Human Rights

- ▶ Mr Richard LAPPIN, Deputy Head of Election Department
- ▶ Mr Marcin WALECKI, Head of the Democratisation Department
- ▶ Ms Julia GEBHARD, Legislative Support Unit, Democratisation Department

Special co-operation status

Palestine⁸⁷

- ▶ Mr Ali ABU DIAK, Minister of Justice

South Africa

- ▶ N. N.

Secretariat

- ▶ Mr Thomas MARKERT, Director, Secretary of the Commission
- ▶ Ms Simona GRANATA-MENGHINI, Deputy Secretary of the Commission
- ▶ Mr Pierre GARRONE, Head of the Division on Elections and Referendums
- ▶ Mr Rudolf DÜRR, Head of the Division on Constitutional Justice
- ▶ Ms Artemiza-Tatiana CHISCA, Head of the Division on Democratic Institutions and Fundamental Rights
- ▶ Mr Serguei KOUZNETSOV, Head of the Division on Neighbourhood Co-operation
- ▶ Ms 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
- ▶ Mr Mesut BEDIRHANOGLU, Legal Officer
- ▶ Ms Tatiana MYCHELOVA, Public Relations Officer
- ▶ Ms Helen MONKS, Financial Support Officer
- ▶ Mr Hristo HRISTOV, Project Manager
- ▶ Ms Zaruhi GASPARYAN, Project Officer
- ▶ Ms Valeria REVA, Project Officer
- ▶ 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
- ▶ Mrs Marie-Louise WIGISHOFF, Bulletin on Constitutional Case Law
- ▶ Ms Alexandra DEPARVU, Project Assistant
- ▶ Ms Rosy DI POL, Project Assistant
- ▶ Ms Haifa ADDAD, Project Assistant
- ▶ Ms Viktoria MESHAYKINA, Project Assistant

87. 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 IV

OFFICES⁸⁸

AND SUB-COMMISSIONS 2018

President:

- ▶ Mr Buquicchio

Honorary Presidents:

- ▶ Mr Paczolay (Hungary)
- ▶ Ms Suchocka (Poland)

Bureau:

- ▶ First Vice-President: Ms Kjerulf Thorgeirsdottir
- ▶ Vice-Presidents: Ms Bílková, Mr Frendo
- ▶ Members: Ms Bazy-Malaurie, Mr Castella Andreu, Mr Kang, Ms Khabrieva

Scientific Council:

- ▶ Chair: M. Helgesen
- ▶ Members: Mr Buquicchio, Ms Kjerulf Thorgeirsdottir, Ms Bílková, Mr Frendo, Mr Clayton, Ms Err, Mr Grabenwarter, Mr Hoffmann- iem, Mr Jeribi, Mr Kask, Ms Kiener, Mr Tuori, Mr Velaers, Mr Vermeulen, Ms Khabrieva

Council for Democratic Elections:

- ▶ President: Mr Kask
- ▶ Vice-President: Lord Balfe

Venice Commission

- ▶ Members: Mr Darmanovic, Mr Endziņš, Mr Kask, Ms Otálora Malassis
(Substitutes: Mr Barrett, Ms Biglino Campos, Mr Craig, Mr Vermeulen)

Parliamentary Assembly

- ▶ Members: Mr Mugurel Cozmanciuc, Lord Balfe, Mr Kox
(Substitutes: Ms Beselia, Mr Pocij)

Congress of local and regional authorities

- ▶ Members: Mr Wiene, Mr Dickson
(Substitutes: Ms Davidovic, Mr Martens)

Joint Council on Constitutional Justice:

- ▶ Chair: Mr Grabenwarter
- ▶ Co-Chair (Liaison Officers): Ms 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 Grabenwarter
- ▶ Members: Ms Anastas, Mr Espinosa-Saldaña, Mr Harutyunian, Mr Holovaty, Mr Kang, Ms Karakamisheva-Jovanovska, Mr Kask, Ms Kjerulf Thorgeirsdottir, Mr Knežević, Ms Macejkova, Ms McMorrow, Mr Medelci, Ms Omejec, Mr Pazin, Mr Ramos, Mr Ribicic, Ms Saral, Ms Šimáčková, Mr Varga

88. From December 2017 to December 2019.

Federal State and Regional State:

- ▶ Chair: Ms Kiener; Vice-Chair: Ms Cleveland
- ▶ Members: Mr Castella Andreu, Mr Hoffmann- iem, Mr Maiani, Mr Scholsem, Mr Velaers, Mr Vilanova Trias

International Law:

- ▶ Chair: Mr Cameron; Vice-Chair: Mr Varga
- ▶ Members: Mr Aurescu, Ms Bílková, Ms Cleveland, Mr Maiani

Protection of Minorities:

- ▶ Chair: Mr Velaers; Vice-Chair: Mr Endziņš
- ▶ Members: Mr Aurescu, Mr Habchi, Ms Karakamisheva-Jovanovska, Mr Knežević, Ms McMorrow, Mr Scholsem, Mr Tuori

Fundamental Rights:

- ▶ Chair: Mr Vermeulen; Vice-Chair: Mr Dimitrov
- ▶ Members: Mr Aurescu, Mr Barrett, Mr Cameron, Mr Clayton, Ms Cleveland, Ms Err, Mr Esanu, Mr Hirschfeldt, Mr Hoffmann- iem, Mr Holovaty, Ms Karakamisheva-Jovanovska, Ms Karpovich, Mr Kask, Ms Khabrieva, Ms Kjerulf Thorgeirsdottir, Mr Knežević, Mr Kuijer, Mr Maiani, Ms McMorrow, Mr Medelci, Ms Omejec, Mr Pazin, Mr Ramos, Mr Toader, Mr Tuori, Mr Velaers

Democratic Institutions:

- ▶ Chair: Mr Tuori; Vice-Chair: Mr Meridor
- ▶ Members: Mr Cameron, Mr Darmanovic, Ms Err, Mr Esanu, Mr Frendo, Mr Hirschfeldt, Mr Hoffmann- iem, Mr Jensen, Ms Karakamisheva-Jovanovska, Mr Kask, Ms Kiener, Mr Nicolatos, Mr Ribicic, Mr Sardon, Mr Scholsem, Mr Toader, Mr Velaers, Mr Vilanova Trias

Judiciary:

- ▶ Chair: Mr Barrett; Vice-Chair: Ms Omejec
- ▶ Members: Mr Correia, Ms Err, Mr Esanu, Mr Habchi, Mr Hirschfeldt, Mr Hoffmann- iem, Mr Holovaty, Mr Kang, Ms Karakamisheva-Jovanovska, Mr Kask, Ms Kiener, Mr Knežević, Mr Kuijer, Ms McMorrow, Mr Nicolatos, Mr Pazin, Ms Šimáčková, Mr Toader, Mr Tuori, Mr Ugrekhelidze, Mr Varga, Mr Velaers

Rule of Law:

- ▶ Chair: Mr Hoffmann- iem; Vice-Chair: Mr Holovaty
- ▶ Members: Ms Bílková, Ms Cleveland, Mr Craig, Mr Helgesen, Ms Karakamisheva-Jovanovska, Mr Kuijer, Mr Maiani, Ms McMorrow, Mr Nicolatos, Mr Tuori, Mr Ugrekhelidze, Mr Vilanova Trias

Working Methods:

- ▶ Chair: Mr Clayton; Vice-Chair: Mr Vilanova Trias
- ▶ Members: Mr Barrett, Mr Buquicchio, Mr Grabenwarter, Mr Helgesen, Mr Hoffmann- iem, Ms Kiener, Ms Kjerulf Thorgeirsdottir

Latin America:

- ▶ Chair: Mr Sardon; Vice-Chair: Ms Otálora Malassis
- ▶ Members: Ms Antunes Rocha, Ms Biglino, Ms Bílková, Mr Buquicchio, Mr Castella Andreu, Mr Castillo Viquez, Ms Cleveland, Mr Correia, Mr Cruz Castro, Mr Darmanovic, Mr Espinosa-Saldaña, Mr Hernandez Empananza, Mr Hirschfeldt, Ms Kjerulf Thorgeirsdottir, Mr Kuijer, Ms McMorrow, Mr Mendes, Mr Ramos, Mr Vargas Valdez, Mr Vasquez Marquez

Mediterranean Basin:

- ▶ Chair: Mr Jeribi; Vice-Chair: Mr Medelci
- ▶ Members: Mr Frendo, Ms McMorrow

Gender Equality:

- ▶ Chair: Ms Err; Vice-Chair: Ms Anastas
- ▶ Members: Ms Chaabane, Mr Esanu, Ms Karakamisheva-Jovanovska, Ms McMorrow, Ms Omejec

APPENDIX V

PUBLICATIONS⁸⁹

SERIES "SCIENCE AND TECHNIQUE OF DEMOCRACY"⁹⁰

- ▶ 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)
- ▶ No. 31 Constitutional implications of accession to the European Union¹ (2002)
- ▶ No. 32 The protection of national minorities by their kin-State¹ (2002)

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

90. 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. 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

- ▶ 1993-2018 (three issues per year)⁹¹

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 (1999), No.6 (2001), No.7 (2007), No.8 (2011)
- ▶ Leading cases of the European Court of Human Rights (1999)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 (2003)
- ▶ Inter-court relations (2003)
- ▶ Statute and functions of Secretary Generals of Constitutional courts (2006)

91. 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)
- ▶ Relations with other state powers (2012)
- ▶ Leading Cases of the European Court of Justice (2013)
- ▶ Descriptions of courts (2014)
- ▶ Co-operation between Constitutional Courts in Europe (2015)⁹²
- ▶ Role of Constitutional Courts in upholding and applying constitutional principles (2018)

Annual Reports

- ▶ 1993 – 2018

Other titles

- ▶ Mass surveillance: who is watching the watchers? (2016)
- ▶ Central Asia – judicial systems overview (2016)⁹³
- ▶ Main documents of the Venice Commission in the field of electoral law and political parties (2016)⁹⁴
- ▶ Electoral opinions on Ukraine and general reports in the electoral field – art I, Part II (2016)⁹⁵
- ▶ Joint OSCE/ODIHR – Venice Commission Guidelines on Fundamental rights (2015)⁴
- ▶ Freedom of Association – joint OSCE/ODIHR – Venice Commission Guidelines (2015)^{2,4}
- ▶ Tackling blasphemy, insult and hatred in a democratic society (2008)
- ▶ Electoral Law (2008)
- ▶ European Conferences of Electoral Management Bodies: 2e Conférence (Strasbourg 2005)
 - 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

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)
- ▶ Code of Good Practice in Electoral Matters (2016)^{2,4,7}
- ▶ 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)^{2,4,8}
- ▶ Preventing and responding to the misuse of administrative recourses during electoral processes – Joint guidelines (2017)²

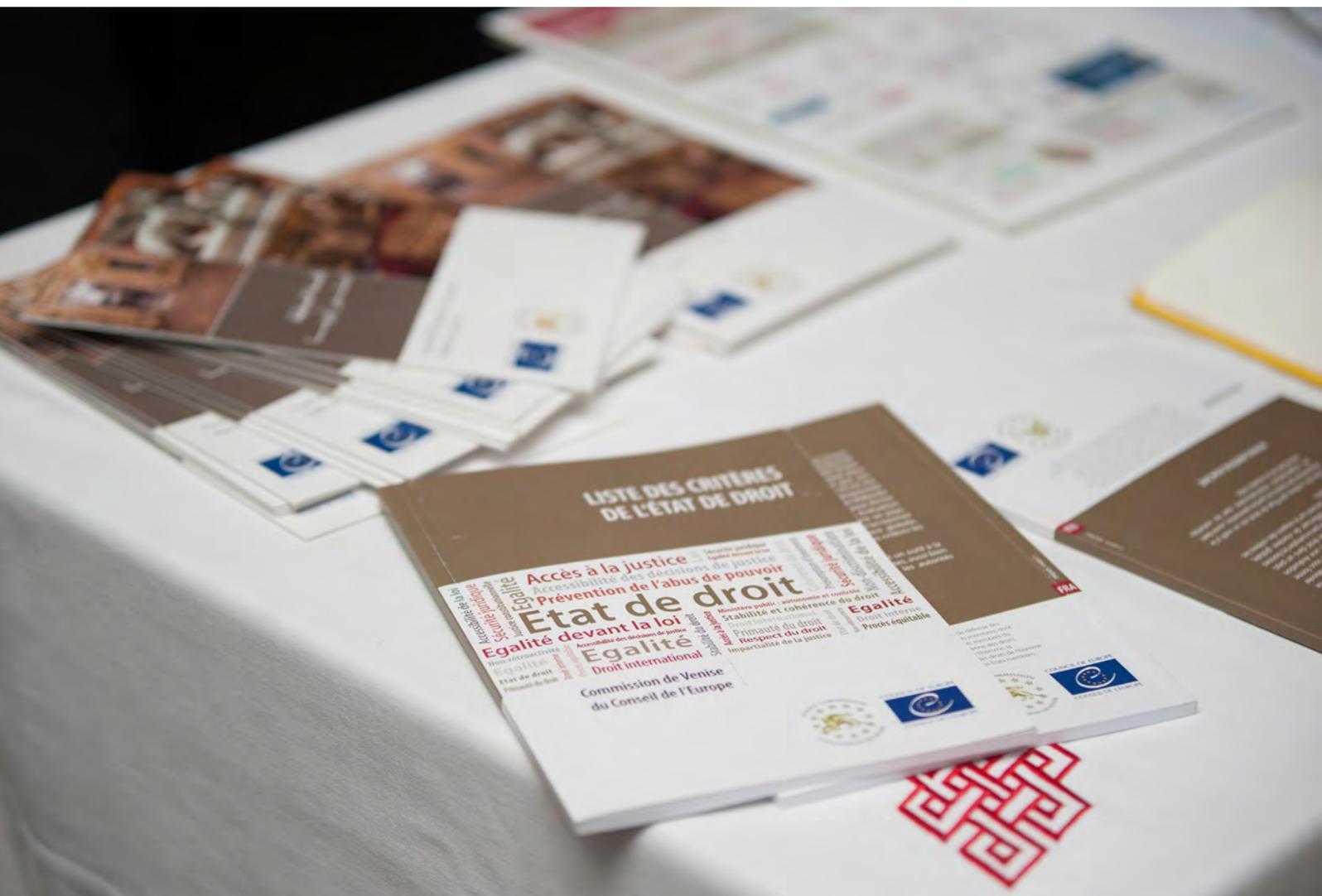
92. Requested by the Conference of European Constitutional Courts (CECC)

93. Available only in Russian; "Introduction" also in English

94. Available only in Russian

95. Available only in Ukrainian

- ▶ European Conference of Electoral Management Bodies (2017)²
- ▶ 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 – 2017 Key facts



APPENDIX VI

DOCUMENTS ADOPTED IN 2018

114th plenary session (Venice, 16-17 March 2018)

- CDL-AD(2018)001 **“The former Yugoslav Republic of Macedonia”⁹⁶** - Opinion on the draft law on prevention and protection against discrimination
- CDL-AD(2018)002 **Armenia** - Joint Opinion⁹⁷ on the draft law amending the Law on Freedom of Conscience and on Religious Organisations
- CDL-AD(2018)003 **Republic of Moldova** - Opinion on the Law on amending and supplementing the Constitution (Judiciary)
- CDL-AD(2018)004 **Romania** - Joint Opinion on draft law No. 140/2017 on amending Governmental Ordinance No. 26/2000 on Associations and Foundations
- CDL-AD(2018)005 **Georgia** - Constitutional amendments as adopted at the second and third hearings in December 2017
- CDL-AD(2018)006 **Ukraine** - Joint Opinion on draft law No. 6674 “On introducing changes to some legislative acts to ensure public transparency of Information on financial activity of public associations and of the use of International technical assistance” and on draft law No. 6675 “on introducing changes to the Tax Code of Ukraine to ensure public transparency of the financing of public associations and of the use of International technical assistance”
- CDL-AD(2018)007 **Republic of Moldova** - Opinion on the draft law on the modification of Article 42 of the Constitution of the Republic of Moldova regarding freedom of association
- CDL-AD(2018)008 **Republic of Moldova** - Joint Opinion on the Law for Amending and Completing Certain Legislative Acts (electoral system for the election of parliament)
- CDL-AD(2018)009 Report on **the identification of electoral irregularities by statistical methods**
- CDL-AD(2018)010 Report on **term limits - Part I - Presidents**

115th plenary session (Venice, 22-23 June 2018)

- CDL-AD(2018)011 **Serbia** - Opinion on the draft amendments to the constitutional provisions on the judiciary
- CDL-AD(2018)012 **Georgia** - *Amicus curiae* brief for the Constitutional Court of Georgia on the effects of Constitutional Court decisions on final judgments in civil and administrative cases
- CDL-AD(2018)013 **Hungary** - Joint Opinion on the provisions of the so-called “Stop Soros” draft legislative package which directly affect NGOs (in particular draft article 353A of the Criminal Code on facilitating illegal migration)
- CDL-AD(2018)014 **Malta** - Opinion on the draft act amending the Constitution, on the draft act on the human rights and equality commission, and on the draft act on equality
- CDL-AD(2018)015 **Montenegro** - Opinion on the draft law on amendments to the Law on the Judicial Council and Judges
- CDL-AD(2018)016 **Kosovo** - Opinion on the “draft law on amending and supplementing the Law no. 03/I-174 on the Financing of Political Entities (amended and supplemented by the Law no. 04/I-058 and the Law no. 04/I-122) and the Law no. 003/I-073 on General Elections (amended and supplemented by the Law no. 03/I-256)”

96. As of 12 February 2019, the official name of the country changed to North Macedonia.

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

116th plenary session (Venice, 19-20 October 2018)

- CDL-AD(2018)017 **Romania** - 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)018 **Rules of procedure**
- CDL-AD(2018)019 Protocol on the **preparation of urgent opinions**
- CDL-AD(2018)020 **Kazakhstan** - Opinion on the Administrative Procedure and Justice Code
- CDL-AD(2018)021 **Romania** - Opinion on draft amendments to the Criminal Code and the Criminal Procedure Code
- CDL-AD(2018)022 **“The former Yugoslav Republic of Macedonia”⁹⁸** - Opinion on the Law Amending the Law on the Judicial Council and on the Law Amending the Law on Courts
- CDL-AD(2018)023 **Serbia** - Secretariat memorandum - Compatibility of the draft amendments to the constitutional provisions on the judiciary of Serbia
- CDL-AD(2018)024 **Republic of Moldova** - Opinion on the Law on Preventing and Combating Terrorism
- CDL-AD(2018)025 **Tunisia** - Opinion on the draft institutional law on the organisation of political parties and their funding
- CDL-AD(2018)026 **Albania** - Joint Opinion on the draft law on the legislative initiative of the citizens
- CDL-AD(2018)027 **Uzbekistan** - Joint Opinion on the draft election code

117th plenary session (Venice, 14-15 December 2018)

- CDL-AD(2018)028 **Malta** - Opinion on constitutional arrangements and separation of powers
- CDL-AD(2018)029 **Georgia** - Opinion on the provisions on the Prosecutorial Council in the draft organic law on the prosecutor’s office and on the provisions on the High Council of Justice in the existing Organic Law on General Courts
- CDL-AD(2018)030rev Report on **separate opinions of constitutional courts**
- CDL-AD(2018)031 **Turkey** - Joint Opinion on amendments to the electoral legislation and related “harmonisation laws” adopted in March and April 2018
- CDL-AD(2018)032 **Kazakhstan** - Opinion on the Concept Paper on the reform of the High Judicial Council
- CDL-AD(2018)033 **“The former Yugoslav Republic of Macedonia”¹⁰³** - Opinion on the draft amendments to the Law on Courts
- CDL-AD(2018)034 **Albania** - Opinion on draft constitutional amendments enabling the vetting of politicians
- CDL-AD(2018)035 **Hungary** - Joint Opinion on Section 253 on the special immigration tax of Act XLI of 20 July 2018 amending certain tax laws and other related laws and on the immigration tax

98. As of 12 February 2019, the official name of the country changed to North Macedonia.

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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..

