

# ANNUAL REPORT OF ACTIVITIES 2019

European Commission  
for Democracy through Law

Council of Europe, 2020

Venice Commission



# **European Commission for Democracy through Law**

Venice Commission  
of the Council of Europe

**Annual report of activities 2019**

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# Table of contents

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<b>I. WORKING FOR DEMOCRACY THROUGH LAW – AN OVERVIEW OF VENICE COMMISSION ACTIVITIES IN 2019</b>	<b>5</b>
Key figures	5
Voluntary contributions	5
Main activities 2019	5
<b>II. CONSTITUTIONAL REFORMS, STATE INSTITUTIONS, HUMAN RIGHTS AND THE JUDICIARY</b>	<b>13</b>
Country specific activities	13
Transnational activities	29
<b>III. CONSTITUTIONAL JUSTICE</b>	<b>35</b>
Opinions, reports and conferences / Meetings	35
Joint Council on Constitutional Justice (JCCJ)	37
e-Bulletin on Constitutional Case-Law and the CODICES database	38
Venice Forum	38
Regional co-operation	39
World Conference on Constitutional Justice (WCCJ)	40
<b>IV. ELECTIONS, REFERENDUMS AND POLITICAL PARTIES</b>	<b>43</b>
Country specific activities	43
Transnational activities	47
VOTA, the commission's electoral database	48
Other conferences and meetings	48
<b>V. CO-OPERATION IN THE COUNCIL OF EUROPE NEIGHBOURHOOD AND BEYOND</b>	<b>51</b>
Mediterranean Basin	51
Central Asia	54
Latin America	56
Other conferences and meetings	58
<b>VI. CO-OPERATION BETWEEN THE COMMISSION AND ORGANS AND BODIES OF THE COUNCIL OF EUROPE, THE EUROPEAN UNION AND OTHER INTERNATIONAL ORGANISATIONS</b>	<b>61</b>
Council of Europe	61
European Union	67
OSCE	72
United Nations	74
Co-operation with other international organisations	74
<b>APPENDIX I – THE VENICE COMMISSION: AN INTRODUCTION</b>	<b>77</b>
<b>APPENDIX II – MEMBER COUNTRIES</b>	<b>83</b>
<b>APPENDIX III – INDIVIDUAL MEMBERS</b>	<b>85</b>
<b>APPENDIX IV – OFFICES AND SUB-COMMISSIONS 2019</b>	<b>93</b>
<b>APPENDIX V – PUBLICATIONS</b>	<b>95</b>
<b>APPENDIX VI – DOCUMENTS ADOPTED IN 2019</b>	<b>99</b>

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*EU Commissioner for Budget and Administration Mr Johannes Hahn, Secretary General of the Council of Europe Ms Marija Pejčinović Burić and President of the Venice Commission Mr Gianni Buquicchio at the Plenary Session of the Venice Commission, Venice, October 2019*

# I. WORKING FOR DEMOCRACY THROUGH LAW - AN OVERVIEW OF VENICE COMMISSION ACTIVITIES IN 2019

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## Key figures

In 2019 the Venice Commission adopted **5** opinions on constitutional reforms and **16** on legislative texts or specific legal issues as well as **9** texts of transnational interest. It adopted **5** *amicus curiae* Briefs, two for the Constitutional Court of Ukraine, two for the Constitutional Court of the Republic of Moldova and one for the European Court of Human Rights in the Case of *Mugemangango v. Belgium*. It (co)organised **17** seminars and conferences and provided legal support to **5** election observation missions of the Parliamentary Assembly of the Council of Europe.

The Commission published **3** e-Bulletins on Constitutional Case Law and provided comparative law elements to constitutional courts and equivalent bodies in 27 cases. The Constitutional Court of Zimbabwe and the Supreme Court of India joined the World Conference on Constitutional Justice (WCCJ), bringing the total number of members to 116 in December 2019.<sup>1</sup> The number of *precis* in the CODICES database on constitutional case-law exceeded **10,000** cases.

Canada, an observer State since 1991, became the **62<sup>nd</sup>** full member of the Venice Commission in 2019.

## Voluntary contributions

In 2019 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;
- ▶ **Germany** for a number of specific activities in the electoral field;
- ▶ **Norway** for co-operation with the countries of the Southern Mediterranean;
- ▶ Unearmarked contributions from **Montenegro** and **Spain**.

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1. Somalia became the 117<sup>th</sup> member on 3 January 2020.

During 2019, the Commission continued to carry out activities thanks to contributions previously received from **Armenia, Italy, Malta** and **Ukraine**.

An important contribution for future activities was received from Belgium.

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

Certain activities, in particular in Central Asia, Latin America, Tunisia, the Western Balkans and the countries of the Eastern Partnership and Horizontal Facility, were financed by the European Union in the framework of Joint Projects and Programmes (cf. Chapter VI).

## Main activities 2019

### Democratic institutions and fundamental rights

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#### Constitutional reforms, democratic institutions and issues of international law

In 2019, the Venice Commission provided opinions on constitutional reforms in several countries; it also analysed legislative changes which affected the organisation of the constitutional institutions of the State and the system of checks and balances.

The constitutional reform in **Luxembourg** received a generally positive assessment by the Venice Commission. The main thrust of the reform – to circumscribe the powers of the Grand-Duc in accordance with the new political realities – is worth praise. Other positive amendments concern the extension of the powers of the Constitutional Court, and the constitutional entrenchment of the Ombudsperson. The opinion, however, suggested clarifying certain provisions (on the hierarchy of legal norms, on the place of international law in the domestic legal order, etc.), and regulating certain matters at the constitutional level (for example, concerning the composition of the Supreme Judicial Council).



President of the Commission Mr Gianni Buquicchio and Prime Minister of the Republic of Moldova Mr Ion Chicu, Council of Europe, Chisinau, December 2019

In 2019 the Commission examined the constitutional crisis in the **Republic of Moldova**, with particular focus on the possibility and conditions for dissolving Parliament. The Commission criticised the position taken by the Constitutional Court of Moldova during the constitutional crisis, its failure to respect its own procedures, and its interpretation of the rules on the dissolution of Parliament. On 15 June 2019, the Constitutional Court reversed some of its own controversial decisions, the crisis has been resolved, and sometime later, the judges of the Constitutional Court resigned in block.

The opinion on **Peru** concerned the power of the President to link a question of confidence to constitutional amendments. The Commission noted that this linkage may create a risk of being used to alter a proper balance between constitutional powers. A constitution is normally designed to be difficult to amend, in order to ensure its relative stability, foreseeability, and continuity, and amendment procedures tend to be lengthy. This is in contrast to motions of confidence, which have to be voted upon quickly. However, the text of the Constitution does not exclude such linkage. The Commission called on the President and the Congress of Peru to find a compromise and adequate constitutional solutions which will bring institutional stability.

In respect of **Ukraine**, at the request of the Constitutional Court, the Commission examined constitutional amendments providing three grounds for the loss of MPs' mandates. Each of the three grounds was found problematic by the Commission (non-affiliation to a party, absenteeism, and non-personal voting); such behaviour may warrant sanctions but requires an individualised examination and the principle of proportionality should be respected.

The Venice Commission examined the draft law on legal acts of **Kosovo**, and developed basic principles of legal drafting (legality, constitutionality and legal certainty); while the idea of having a law on legal acts is welcome, some clarifications are desirable, in particular concerning the terminology, the authority competent for issuing each type of legal act and the hierarchy of norms.

In 2019 the Venice Commission adopted several important studies and reports on constitutional matters and issues of international law. Thus, it examined whether the inclusion of an **annexed (and thus not internationally recognised) territory** in a State's nationwide constituency affects the legitimacy of the parliamentary elections. The request for this report was made by PACE against the background of the verification of the Russian delegation's credentials. The Commission noted that there existed a tension between the clear illegality under international law of any annexation and the interests of the persons living in the annexed territory. While international organisations have the obligation not to recognise an annexation even implicitly, they may nonetheless decide not to reject the credentials of the delegation of the annexing State if the impact on the election results as concerns the nationwide constituency has been minimal.

The Venice Commission adopted the Principles on the protection and promotion of the Ombudsman institution ("**the Venice Principles**"). These Principles identify minimal standards as to the role, functions, guarantees for independence and institutional structure of those institutions. This text was endorsed by all three statutory bodies of the Council of Europe in 2019.

In 2019, the Venice Commission completed its work on the **Parameters on the relationship between the parliamentary majority and the opposition in a democracy**. Due to the lack of hard international standards in this area and the great diversity of systems of parliamentarism, this document was formulated as a "checklist": a list of questions with a commentary based on the Venice Commission's previous opinions, recommendations of other international bodies, best practices from some selected jurisdictions etc. The Checklist was based on the philosophy of respect for political pluralism and of checks and balances; the majority should not use its dominant position to cement its position so as to exclude political alternation. The Checklist was endorsed by the Committee of Ministers later in the year.

## Fundamental rights

In 2019 the Commission examined the draft law on the finalisation of the transitional ownership processes in **Albania**. It was necessary to resolve problems in the area of property law that had accumulated over decades, but the new legislation still lacked clarity and precision.

Constitutional implications of the ratification of the Council of Europe Convention on preventing and combating violence against women and domestic violence (Istanbul Convention) were at the focus of an opinion on **Armenia**. The opinion concluded that none of its provisions could be said to contradict the Constitution of Armenia.



Director, Secretary of the Venice Commission Mr Thomas Markert, leading a meeting in Kyiv, November 2019

The opinion on the right to freedom of assembly in **Bosnia and Herzegovina** concerned twelve separate laws governing the freedom of assembly in Bosnia and Herzegovina, plus some draft legislation. For the Commission the adoption of a law at the Federation level is the most effective way of harmonising the various laws.

In 2019 the Venice Commission resumed its work on a draft law on freedom of religion of **Montenegro**, started in 2015. The new draft law governed *inter alia* the change in the title of religious property, which, in the Commission's opinion, should not automatically affect the pre-existing right to use such property, and procedural safeguards should be in place.

The question of **minority languages** was at the heart of two opinions – on North Macedonia and Ukraine. As regards **North Macedonia**, the new law considerably extends the use of the Albanian language and goes beyond the European standards, which may create unrealistic legal obligations, in particular in the judicial sphere. An opinion on the language law of **Ukraine** focused on finding an appropriate balance in the language policy in order to avoid the language issue becoming a source of inter-ethnic tensions. The Commission criticised, in particular, provisions providing for a differential treatment between different categories of languages (languages of indigenous peoples, EU languages and non-EU-languages).

Two thematic reports on fundamental rights issues were adopted by the Commission in 2019. In the **Report on Funding of Associations** the Commission observed that there are three main reasons that are advanced by States in order to justify the restrictions on foreign funding of associations: ensuring openness and transparency, prevention of terrorism and money laundering, and the protection of the State and its citizens from disguised political interference by foreign countries. Ensuring transparency would not by itself appear to be a legitimate aim but may be a means to achieve one of the legitimate aims. In the Report, the Venice Commission distinguished between “reporting obligations” and “public disclosure obligations” imposed on associations concerning their

financial resources. A “reporting obligation” consists in reporting the amount and the origin of the funding to the relevant authorities. A “public disclosure obligation” consists in informing the general public about the source of the funding and, potentially, about the identity of donors. The reporting obligations may be useful to prevent terrorism financing and money laundering, but public disclosure obligations are not suitable for this purpose. Public disclosure obligations may reveal the influence exerted by lobbying groups and can be imposed on associations with public utility status, but those obligations should be limited to information on the public funds obtained by the association.

The Venice Commission prepared the third edition of the **Joint Guidelines on Freedom of Peaceful Assembly**.<sup>2</sup> The first edition of the Guidelines had been jointly prepared by the OSCE/ODIHR and the Venice Commission in 2010. It was widely used by legislators, policy makers and practitioners, in addition to the ECtHR and other international organisations. The new edition of the Guidelines on Freedom of Peaceful Assembly was prepared in co-operation with the OSCE/ODIHR. The Guidelines covered many important aspects of this right under Article 11 of the European Convention on Human Rights, such as assemblies and new technologies, core State obligations, notification and good administration of public assemblies, restrictions on and policing of assemblies, roles and rights of third parties during assemblies, arrest and detention of assembly participants, penalties imposed after an assembly, accountability of state authorities and legal remedies.

## Judicial reforms

In 2019 the Venice Commission examined the Judicial Reform Package developed by the Armenian authorities. The overall assessment of the Package was clearly positive, but the Commission expressed reserves about the early retirement of judges of the Constitutional Court.

2. CDL-AD(2019)017





President of the Commission Mr Gianni Buquicchio and President of Italy Mr Sergio Mattarella, Rome, April 2019

On **Bulgaria**, the Commission scrutinised draft amendments concerning criminal investigations against top magistrates. The Venice Commission concluded that the legal mechanism proposed in the draft might not achieve the stated goal and proposed alternative ways on how to ensure the independence of investigation in such situations.

Two opinions were adopted in respect of **Georgia**. First, the Commission analysed the concept of the legislative amendments to the Criminal Procedure Code concerning the relationship between the prosecution and the investigators, warning the authorities about the risks associated with the “forced emancipation” of investigators. The second opinion concerned the selection and appointment of Supreme Court judges, and the situation around the High Council of Justice in Georgia: the main recommendation was not to appoint all judges at once.

The Commission examined the establishment of a separate system of administrative justice in **Hungary**. This was a legitimate choice, but the laws attributed too extensive powers to the Minister of Justice.

The reform of the Supreme Court and of the Prosecutor’s Office was at the heart of two opinions on the **Republic of Moldova**. In the first the Commission recommended in particular that the Superior Council of Magistracy should be entrusted with the power to take decisions in the process of evaluation of judges. In an *amicus curiae* Brief for the Constitutional Court the Commission examined whether the proposed redistribution of the decision-making powers substantially affects the mandate of the Supreme Council of Prosecutors.

On 27 November 2019, the President of the Venice Commission published a statement urging the state institutions of the **Republic of Moldova** to co-operate loyally and productively with each other to find a long-term solution for the independence and integrity of the judiciary and prosecution service in compliance with the Constitution and with the international principles of democracy and the rule of law.

In an opinion on **North Macedonia** the Venice Commission examined the draft Law on the Judicial

Council. In general, co-operation with the authorities of North Macedonia was constructive, and the latest version was a significant improvement.

In 2019 the Venice Commission continued to work on the on-going judicial reform in **Romania**. For the Commission, the method of amending the legislation by emergency decrees was problematic, in addition to the questionable institutional reorganisation within the prosecution service.

On **Ukraine**, the Venice commission adopted two opinions. In the first it examined the legal framework governing the Supreme Court and judicial governance bodies of Ukraine. The reduction of the number of judges of the Supreme Court was problematic. In an *amicus curiae* Brief for the Constitutional Court, the Commission strongly recommended the establishment of a separate appeal against detention orders.

## Constitutional justice

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### Country specific activities

On 29 October 2019, the President of the Venice Commission published a statement urging the Government, Parliament and the Constitutional Court of **Armenia** to exercise restraint, mutual respect and constructive institutional co-operation in order to de-escalate the conflict between these important state institutions and to re-establish the normal operation of the Constitution of Armenia.

In the *amicus curiae* Brief for the Constitutional Court of the **Republic of Moldova** on the criminal liability of constitutional court judges the Commission found that constitutional court judges should be protected by functional and not general immunity.

### CODICES database

The Venice Commission’s other activities in the field of constitutional justice in 2019 included:

The **CODICES** database, (hereinafter, “CODICES”), 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).

CODICES presents to the public the leading constitutional case-law of constitutional courts and courts with equivalent jurisdiction. CODICES 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 2019, the constitutional courts contributed actively to CODICES, which was updated regularly. More than **345** cases were added to CODICES, 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 CODICES increased significantly. The constitutional courts reported numerous references to international case-law in their judgments, notably to the European Court of Human Rights.

In 2019, progress was made in the upgrading of CODICES, notably with the introduction of the CODICES Alert Management System, which will provide the possibility for users to receive email alerts on cases on specific topics or on cases from specific countries – and it is ready in part. The CODICES Précis Entry Mask will allow liaison officers to make their case-law contributions directly into the Mask and not by separate email; this also ready in part. Belgium has made a generous contribution to the Council of Europe for Rule of Law purposes and an important part of this contribution is expected to be made available to the Venice Commission for the development of a new CODICES database (CODICES II). The CODICES Alert Management System and the CODICES Précis Entry Mask will then be linked directly to the new CODICES II database.

The Commission's **Venice Forum** dealt with **27** comparative law research requests from constitutional courts and equivalent bodies covering questions which ranged from the prohibition of medical consultations in optical shops and the right to strike, to the legal protection against search results of online search engines and transgender rights.

On 7 February 2019, the Constitutional Court of the Dominican Republic hosted the 1st Training Session on the use of and contributing précis to CODICES and the restricted Venice Forum for the liaison officers of members of the WCCJ, in Santo Domingo, Dominican Republic.

### World Conference on Constitutional Justice

The training session was followed, on 8 February 2019, by the meeting of the Bureau of the World Conference on Constitutional Justice (WCCJ), also in Santo Domingo, in which it *inter alia* approved the concept paper and the questionnaire for the 5th Congress of the WCCJ (see below III.6).

The Constitutional Court of Zimbabwe and the Supreme Court of India joined the World Conference on Constitutional Justice (WCCJ), bringing the total number of members to **116** in December 2019.<sup>3</sup>

3. Somalia became the 117<sup>th</sup> member on 3 January 2020.



Deputy Secretary of the Venice Commission Ms Simona Granata-Menghini with a high-level delegation of the Philippines, Strasbourg, October 2019

### Elections, referendums and political parties

In 2019, the Commission continued its work on electoral matters and political parties. The Commission adopted a Report on the Recall of Mayors and Local Elected Representatives and a report on Digital Technologies and Elections. In addition, the Commission adopted an *amicus curiae* Brief for the European Court of Human Rights in the case of *Mugemangango v. Belgium* on procedural safeguards which a State must ensure in procedures challenging the result of an election or the distribution of seats and an opinion on the powers of the President to set the dates of elections in Albania

The Council for Democratic Elections adopted these opinions and reports before their submission to the plenary session.

Although improvements to electoral legislation remain desirable or even necessary in several States, the problems to be solved concern more and more the implementation rather than the content of the legislation. During 2019 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.



Deputy Secretary of the Commission Ms Simona Granata-Menghini at the 3rd Plenary Assembly of the Global Network of Electoral Justice, Los Cabos, Mexico, November 2019

## Electoral legislation and practice

The Commission organised **electoral assistance activities** and seminars in Georgia, Kyrgyzstan, Uzbekistan, Tunisia and Ukraine.

In addition, the Commission organised the 16<sup>th</sup> Conference of European Electoral Management Bodies in Bratislava, in co-operation with the Section for Public Administration, Ministry of Interior of the Slovak Republic and the State Commission for the Elections and Control of Political Parties Funding in the Slovak Republic.

The Commission provided legal assistance to five **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 advised the authorities of Montenegro on the code of ethics for political parties during election campaigns. In addition, the Commission co-operated with the OSCE/ODIHR on the revision of the joint guidelines on political party regulation.

## Sharing European experience with non-European countries

### Mediterranean Basin

In 2019, the Venice Commission further developed its co-operation with the countries of the Southern Mediterranean. Several successful projects were developed in Jordan, Morocco and Tunisia on both the national and the regional level.

The Venice Commission continued its dialogue with the **Tunisian** authorities on the legal framework on the operation of independent bodies in line with the 2014 Constitution. At the request of the authorities, an opinion on the draft law on the new independent constitutional body on sustainable development and rights of future generations was adopted at the June plenary session. The Commission also co-operated with Tunisia on issues related to the operation of the independent institutions in the framework of the joint Council of Europe-European Union Project to support the independent institutions of Tunisia (PAII-T, 2019-2021). The dialogue with the Moroccan authorities continued in the field of the reform of the judiciary and through activities with the ombudsman institution.

In 2019 the Commission continued to organise regional activities, including such important projects as the **UniDem seminars** for the countries of the MENA region and participation in meetings and exchanges of views with the Organisation of Electoral Management Bodies of Arab countries. These multilateral activities saw an increased participation of various representatives of the national authorities and academia from Algeria, Egypt, Jordan, Lebanon, Libya, Morocco, Palestine<sup>4</sup> and Tunisia.



President of the Commission Mr Gianni Buquicchio and Prime Minister of Georgia Mr Mamuka Bakhtadze, Strasbourg, April 2019

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.



Deputy Secretary of the Commission Ms Simona Granata-Menghini and Head of the Constitutional Justice Division Mr Schnutz Dürr with a delegation from the Ministry of Reunification of the Republic of Korea, Strasbourg, July 2019

## Central Asia

In 2019 the Venice Commission continued to co-operate with the different national institutions of Kazakhstan, Kyrgyzstan and Uzbekistan, notably in the framework of several projects with funding provided by the European Union as well as some member states.

In the first half of the year 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 was 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 the electoral reform. The project concluded in July 2019.

## Latin America

In 2019 the Venice Commission continued to develop its co-operation with the countries of Latin America, notably with Argentina, Mexico, Peru and with the Organisation of American States (OAS), *inter alia* 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 2019 experts of the Commission were invited to participate in different events in Argentina, Mexico, Panama and other countries of the region. In 2019 the Venice Commission continued its fruitful co-operation with the OAS on the issue of individual right to re-election.

## Scientific Council

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

- ▶ electoral systems,<sup>5</sup>
- ▶ electoral systems and national minorities,<sup>6</sup>
- ▶ electoral systems and gender representation,<sup>7</sup>
- ▶ electoral campaigns.<sup>8</sup>

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. For more information on the compilations adopted in 2019 please refer to Chapter IV.2.2.

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5. Cf. CDL-PI(2019)001. Given the breadth of the topic of the electoral systems, the Scientific Council decided that the possible effects of different electoral systems on the representation of national minorities and of gender would be dealt with in specific compilations.
  6. CDL-PI(2019)005
  7. CDL-PI(2019)004
  8. sCDL-PI(2019)006.



*A delegation of the Commission exchanging views with Hungarian authorities, Budapest, February 2019*

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

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### Country specific activities

#### Constitutional reforms, state institutions, check and balances

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##### Albania

*Opinion on the scope of the power of the President to set the date of elections (CDL-AD(2019)019)*

Please see Chapter III below

*Follow-up to the Opinion on draft constitutional amendments enabling the vetting of politicians (CDL-AD(2018)034)*

In its opinion adopted in December 2018 the Commission acknowledged the legitimate aim of the draft amendments but questioned their added value. There is a legal basis for excluding convicted offenders from accessing positions in public institutions; going beyond this would have provided a constitutional basis for preventing persons who “have contacts with persons involved in organised crime” from being candidates for parliament and other elective positions and from senior positions in the public administration. The draft amendments did not provide for sufficient safeguards to protect the rights of the persons concerned. In an extraordinary plenary session in January 2019 the Albanian parliament, taking into account the Venice Commission’s opinion, rejected the proposed amendments. Opponents referred to the comments made by the Venice Commission in its opinion.

##### Kosovo

*Opinion on the draft law on legal acts (CDL-AD(2019)025)*

This opinion, adopted in October 2019, underlines that in Europe there is a very wide spectrum of law-making systems. Common standards may be found, in particular in the Rule of Law checklist drafted by the Venice Commission. Basic principles of legal drafting

include legality, constitutionality and legal certainty comprising accessibility of legislation. In conclusion, the initiative of the authorities of Kosovo to draft a law on legal acts is welcome. Some additional clarifications are however desirable, in particular concerning the terminology, the authority competent for issuing each type of legal act and the hierarchy of norms.

##### Luxembourg

*Proposed revision introducing a new Constitution of Luxembourg (CDL-AD(2019)003)*

The Commission’s opinion, adopted in March 2019, concerns a draft for a total revision of the Constitution. The main purpose of the constitutional revision was to adapt a 150-year-old text to the natural evolution of the political system, the institutions and legal concepts. The draft revision maintained the structure of the 1868 text without fundamentally changing it. It seemed to change the balance of powers in a major way; in fact, however, its main aim was to bring the law into line with reality, in particular as regards the powers of the Grand Duke. The opinion considered that the text complies in general with the fundamental values of the Council of Europe; it takes into account a large number of the recommendations made in the Venice Commission’s 2009 opinion.

Among the positive points, can be noted the introduction of an appeal to the Constitutional Court in matters of election of deputies and the constitutionalisation of the mediator. However, consistency and precision should be further improved. For example, the chapter on fundamental rights deserves to be reviewed with a clear distinction between the different categories of rights and freedoms, as well as objectives with constitutional value; by adapting the text to international law - for example by guaranteeing the principle of equality in general and not only to citizens - and by updating the terminology. There should also be a general provision on the hierarchy of norms, or at least indicate explicitly the rank of international law. Certain points should be dealt with at the constitutional level, such as: municipal autonomy;



*A delegation of the Commission's rapporteurs and Luxembourgian authorities, Luxembourg, February 2019*

the composition of the electoral body in referendum matters; the conditions and effects of the referendum as well as the appointment and composition of the Council of State and the National Council of Justice; the length of the mediator's mandate.

### Malta

***Follow-up to the Opinion on constitutional arrangements and separation of powers and the independence of the judiciary and law enforcement (CDL-AD(2018)028)***

The adoption of the Opinion on constitutional reform in December 2018 triggered an intense discussion in Malta. The Prime Minister publicly stated that the Opinion would be fully implemented. A committee on constitutional reform which is to examine the recommendations made in the Opinion was established under the Chairmanship of the President of Malta. Even though the opposition called for a stay of new judicial appointments until the system was reformed, several appointments had nonetheless been made since the adoption of the Opinion. As a measure to implement the Commission's recommendation to concentrate the powers of prosecution (currently shared between the Police and the Attorney General - AG) in an independent Director of Public Prosecutions and to separate the functions of prosecution and legal advisor of the AG, the Minister of Justice presented a bill that would shift the AG's advisory powers to a new State Advocate. The opposition and civil society complained that this bill would not give sufficient independence to the prosecution as had been recommended by the Opinion. An important point in this discussion is what the Venice Commission's Opinion exactly recommended.

### Republic of Moldova

***The constitutional situation in the Republic of Moldova, with particular reference to the possibility of dissolving parliament (CDL-AD(2019)012) and follow-up to this Opinion***

The opinion was requested by the Secretary General of the Council of Europe and adopted at the June 2019 plenary session. The Constitutional Court of Moldova had considered that Parliament needed to be dissolved because a government had not been formed within a deadline of 90 days (not of three calendar months), but the President had not done so as a new government had in fact been formed. With a succession of several judgments delivered over one weekend, the Court had annulled all the acts performed and to be performed by the newly elected Parliament and had temporarily suspended the President, appointed the outgoing Prime Minister as acting President and instructed him to dissolve Parliament and call early elections.

The opinion pointed to three issues. First, the proceedings before the Constitutional Court had violated the Court's own rules of procedure and had violated the right of Parliament and the President to participate in an adversarial procedure. Second, the Court's position that the President ought to have dissolved Parliament irrespective of the fact that a new government had been created could not be supported: the Constitution provides that the President, following consultation with parliamentary factions, "may" dissolve Parliament after three months if a government has not been



Meeting of the Commission's rapporteurs with the Constitutional Court of Ukraine, Kyiv, November 2019

formed. This is not and cannot be an obligation: the President is given leeway to exercise his own judgment and discretion taking into account the situation in the interest of the country as a whole. The right to dissolution is an *ultima ratio* means to solve a constitutional crisis: if there are other means, notably if a government has been formed, the President should not exercise this right. Finally, the three-months' time-limit to form a new government had in an unprecedented manner been shortened to 90 days. The Commission stressed that the Constitutional Courts should always enjoy institutional respect, but they should maintain equal distance from all branches of power.

On 15 June 2019, the Constitutional Court reversed some of its own controversial decisions. On 20 June, the President of the Court resigned and on 26 June all the 6 judges resigned in block. Procedures for nominating new judges were therefore launched, but those procedures were also tainted with irregularities. The six new constitutional justices finally took the oath on 16 August 2019.

## Peru



At the Council of Ministers of Peru, Lima, September 2019

### ***Linking constitutional amendments to the question of confidence (CDL-AD(2019)022)***

Please see Chapter V.

## Tunisia

### ***Draft Organic Law on the Authority for Sustainable Development and the Rights of Future Generations (CDL-AD (2019)013)***

Please see Chapter V.

## Ukraine

### ***Amicus curiae brief for the Constitutional Court of Ukraine on the early termination of the mandate of Members of Parliament (CDL-AD(2019)029)***

The *amicus curiae* brief concerned constitutional amendments providing three grounds for the loss of the mandate of MPs in Ukraine. Each of the three cases was problematic with reference to earlier consistent and long-standing Venice Commission reports. The automatic loss in case of non-affiliation to a party ran counter to the principle that members of parliament represent the population as a whole and not a specific party. Absenteeism could lead to sanctions, but the latter needed to be proportionate. Non-personal voting may also warrant sanctions, but requires an individualised examination.

### ***Follow up to the Final Opinion on the Law on Government Cleansing (Lustration Law) (CDL-AD(2015)012)***

In June 2015 the Commission adopted its Final Opinion on the Lustration law of Ukraine which followed an interim Opinion adopted in December 2014. The law targeted two different periods: the Soviet communist regime and the "power usurpation by President Yanukovich". The Commission criticised the insufficient individualisation of the lustration measures in respect of both periods. On 17 October 2019, the European Court of Human Rights issued a judgment in the case of *Polyakh and others v. Ukraine* which concerned the compatibility with Article 8 of the ECHR of the lustration procedure of five career civil servants. The Court largely relied on both the interim and the final opinions of the Venice Commission, while pointing out that the respective roles are different, in that the Court's examination is carried out with respect



to the specific circumstances of the case and not *in abstracto*. The Court expressed the doubt that the lustration law may pursue “the politicisation of the civil service”. It found that the “very restrictive and broad in scope” measures lacked proportionality on account of their application regardless of the specific functions performed by the applicants and without any individual assessment of their conduct. As regards the application of lustration measures in respect of the involvement in the communist regime, the Court noted that their imposition more than twenty-three years after, in the absence of suggestion of specific wrongdoing, requires a strong justification which the Ukrainian authorities have failed to give.

## **Constitutional workshops**

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Constitutional changes, initiated by the Verkhovna Rada of the 9th convocation, can result in a powerful positive transformation of the Ukrainian political system.

Since 2015 the Venice Commission with its partners in Ukraine including the USAID RADA Program, the Center for Political and Legal Reforms, International Institute for Democracy and Electoral Assistance has been organising constitutional workshops, aimed at discussing legislative initiatives in the context of the constitutional procedure.

On 23 September 2019, the first Constitutional Seminar for newly elected MPs took place in the Rada. Representatives of parliamentary factions and parliamentary groups of the Rada. attended the event. Venice Commission representatives presented the recommendations of the Venice Commission concerning the process of constitutional changes. The purpose of this seminar was to provide MPs with up-to-date information on such issues as the constitutional procedure and process; the right of legislative initiative; drafting and adopting constitutional laws and international practice in such fields as veto power, electronic petitions, etc.

The Commission contributed to the organisation of the forum “The Status and Perspectives of Constitutionalism in Ukraine”. Politicians, judges, international and national academics discussed the latest amendments to the Constitution of Ukraine proposed by the President. The authorities had launched another constitutional reform in August 2019. Unfortunately, the new constitutional initiatives of the President were not shared with the expert community and the civil society. The December event was essentially the first attempt to start the dialogue between the authorities and the public about the recent constitutional changes, where each side had the opportunity to express their opinions and views.

On 13 December 2019 the seminar “Prospects for Improving the Constitution of Ukraine” was held in co-operation with the Committees on the Legal Policy and on the Rules of Procedure of the Rada and the Centre for Rule of Law Studies of the National University of Kyiv-Mohyla Academy. Local and international experts shared their visions on possible ways of improving the Constitution in line with the best European practices.

### ***Strengthening the capacity of the Rada in reforming the internal structure -Implementation of the Rule of Law Checklist in the law-making process and legal practice***

On 30 January 2019 experts of the Commission participated in a workshop “Parliamentary service: operational principles” co-organised with the Committee on the Rules of procedure and internal operation of the Rada.

In April 2019, the project selected a pool of experts in order to prepare the handbook (methodological analysis) on “The Rule of Law Checklist implementation in law-making process and legal practice”. On 19 November 2019, the seminar “Rule of Law Checklist for Ukraine” was organised for staff members of the committees of the Rada. The event was organised in co-operation with the Committee of Legal Policy of the Rada and the Centre for Rule of Law Studies of the National University of Kyiv-Mohyla Academy. During the seminar theoretical principles and criteria of rule of law and different approaches to its implementation were discussed on the basis of Council of Europe documents. The newly developed methodology “Rule of Law Checklist for Ukraine” was presented during the event. This research is a comprehensive detailed tool for the practical evaluation of the state of compliance with rule of law standards in both the rulemaking and in law enforcement activities.

## **Fundamental rights**

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### **Albania**

#### ***Draft Law on the finalisation of transitional ownership processes in the Republic of Albania (CDL-AD(2019)023).***

The opinion on the draft Law was requested by the Speaker of the Albanian Parliament. It focused on articles 7 and 9 of the draft law. The topic of regularization of property titles in Albania is of extreme complexity. The Albanian legislator faces severe difficulties in resolving problems in the area of property law accumulated over decades. The opinion recommended providing for more clarity and precision regarding terminology and procedures. In particular the declaratory nature of the act of registration of titles, notably Land Ownership Acquiring Act (*Akti i Marrjes së Tokës në Pronësi* - AMTP) and Land Usage Acquiring Act (*Akti*



Meeting of the Commission's delegation with members of the Albanian Parliament, Tirana, September 2019

*i Marrjes së Tokës në Përdorim - AMTP*), needed to be stipulated in the law, Articles 7 and 9 and articles related to them had to be reconsidered, taking into account that agricultural titles in the form of AMTPs as well as continuous use of the land with the legitimate expectation to be provided with an AMTP constitute protected possessions under Article 1 of Protocol no. 1 to the ECHR. Further, the formal shortcomings preventing AMTPs from being validated needed to be indicated in the law and the areas open for regulation by decisions of the Council of Ministers had to be limited to the strict necessary. Precise deadlines for title holders and basic procedural steps in the draft law notably when related to transferring agricultural property titles had to be provided.

A representative of the Commission attended the TAIX Workshop on Property Rights on 6-7 June 2019 in Tirana.

## Armenia

### ***Constitutional implications of the ratification of the Council of Europe Convention on preventing and combating violence against women and domestic violence (Istanbul Convention) (CDL-AD(2019)018) and the follow-up***

This opinion was requested by the Minister of Justice of Armenia in July 2019 and adopted at the Venice Commission's October 2019 plenary session in the presence of the newly elected Secretary General, Ms Marija Pejčinović Burić.

The opinion makes it clear from the outset that the assessment of the compatibility of a treaty (i.e. the Istanbul Convention) with the Constitution of Armenia, before its ratification, is the task of the Constitutional Court of Armenia and that the views expressed in this opinion may serve this Court in this task. The opinion analysed the main allegations made against the Istanbul Convention and concluded that none of its provisions could be said to contradict the Constitution of Armenia. On the contrary, the main obligations, which are to prevent and combat any form of violence against women and domestic violence, already follows from the Constitution and human rights treaties to

which Armenia is a party. The Istanbul Convention's added value is that it is the first European instrument to deal with violence against women and domestic violence in a comprehensive manner: it introduces new provisions requiring a specific institutional setup and foresees concrete prevention measures, protection measures and – under substantive law – civil, administrative and criminal law measures, as well as procedural safeguards for victims. It also is the first European instrument to link these phenomena expressly to harmful gender stereotypes. Finally, it establishes a new international body (GREVIO) to monitor the implementation of such measures.

This Opinion received much attention as a result of which the Venice Commission was invited to present it at several events: the meeting of the Council of the European Union's Working Party on Fundamental Rights, Citizen's Rights and Free Movement of Persons, the meeting of the Gender Equality Commission of the Council of Europe (GEC), the joint hearing of the LIBE-FEMM committees of the European Parliament, etc.

In addition, the European Parliament officially requested an opinion from the Court of Justice of the European Union (CJEU) on the internal procedures on the division of competence between the member states of the EU and the EU itself. The CJEU's opinion is expected by the end of 2020 or beginning of 2021 and will have ramifications on future ratifications of important international conventions by the EU.

## Bosnia and Herzegovina

### ***The legal framework governing the right to freedom of assembly in Bosnia and Herzegovina (CDL-AD(2019)026)***

The opinion was prepared in co-operation with the OSCE/ODIHR following a request from the Monitoring Committee of the Parliamentary Assembly. The legislation on the right to freedom of assembly in Bosnia and Herzegovina has been enacted at a variety of different levels of governance. The Republika Srpska has a single act covering the entity, while in the Federation each of the ten Cantons has its own law. A further law regulates the freedom of peaceful assembly in the



Meeting of the Commission's rapporteurs with the President of the Parliament  
Mr Ivan Brajovic, Podgorica, May 2019

Brčko District. Therefore, there are twelve separate laws governing the freedom of assembly in Bosnia and Herzegovina which were examined in the draft joint opinion. The draft joint opinion also examined a draft law prepared by the Federation of Bosnia and Herzegovina in January 2018, which is still being developed by the authorities on the basis of international standards and consultations and a draft law of the Republika Srpska which was withdrawn from the agenda of Parliament of this entity in view of the negative public perception and the lack of public support for the draft resulting from consultations.

The Venice Commission and the OSCE/ODIHR reiterated their findings in the 2010 Joint Opinion on the Act on Public Assembly of the Sarajevo Canton that under the Constitution of the Federation, guaranteeing and enforcing human rights falls within the joint responsibility of the federal and cantonal authorities. The Commission concluded that ultimately it is the duty of the Constitutional Court of the Federation of Bosnia and Herzegovina, whose primary function is to resolve disputes between cantons and between them and the Federation, to decide on the distribution of legislative competences in this field. For the Commission, however, it is clear that the adoption of a law at the Federation level appears to be the most effective way of harmonising the various laws on the right to freedom of assembly in the Federation. This would also provide clarity and uniformity in the implementation.

The opinion reiterated the main recommendations in the 2010 Opinion on the Law on Public Assembly of the Sarajevo Canton, which are still valid in the assessment of the current legal framework, namely that the national legislation governing freedom of assembly should clearly articulate three main principles: the presumption in favour of holding assemblies, the state's duty to protect peaceful assembly and the principle of proportionality. Moreover, the laws and draft laws under consideration should provide a single definition of "public assemblies" which would cover all forms of gathering for "non-commercial

common expressive purposes". The regulation of income-generating "commercial" gatherings, which do not fall into the scope of the right to freedom of assembly, should be excluded and be addressed in a separate law. In addition, spontaneous assemblies, as a means of immediately responding to some incidents should be explicitly recognised in the laws and a clear exception should be provided for this type of assembly concerning the notification requirement. Concerning the notification procedures, the required information should be limited only to what is justified in order to enable the authorities to make arrangements to facilitate and protect public assemblies; and it should be sufficient for the organisers to notify one single authority.

The opinion also concluded that the responsibility of the organisers should be limited and the provisions which require the organisers and monitors to assume some form of law enforcement duties, such as ensuring the security, should be reconsidered. In particular, the organisers should not be held liable for damage caused by participants in an assembly.

Any content-related prohibition grounds which are not limited to actual incitement of unlawful conduct, violence or armed conflict and which interfere with the expressive purpose of assemblies should be excluded. Notably, the prohibition of an assembly that has been held without proper notification should be excluded. Lastly, the provisions which impose blanket restrictions on the location and time of assemblies should be removed.

## Montenegro

### *Draft Law on Freedom of Religion or Beliefs and Legal Status of Religious Communities (CDL-AD (2019)010)*

In August 2015, the Ministry of Human and Minority Rights of Montenegro sought the opinion of the Venice Commission on a draft Law on freedom of religion. However, following criticism expressed by the rapporteurs during the visit, the authorities abandoned the draft and expressed the wish to withdraw the request. The Commission accepted this request to withdraw.

In May 2019, the Minister of Human and Minority Rights requested an opinion on a new draft Law. This new draft has a rather liberal approach, notably concerning the issue of acquisition of legal personality by the religious communities, their registration and the exercise of this right.

Concerning religious teaching and religious schools, the draft law recognises the right of a religious community to establish schools at all levels of education, except for primary schools. The Opinion considered that according to Article 2 of the First Protocol to the European Convention on Human Rights, the state has to respect the rights of parents to ensure

such education and teaching that is in conformity with their religious and philosophical convictions. Therefore, there are good arguments that religious communities in principle should have the possibility to establish primary schools. Such schools may be regulated appropriately to ensure educational quality and consistency, including for example by requiring conformity with state-approved curricula, books and materials. The Opinion concluded that it is up to the authorities to justify the limitation contained in the draft law: Article 2 of the First Protocol to the Convention does not contain a restriction clause, but nevertheless allows for some kind of limitation that might be justified by the specific circumstances in Montenegro.

The property rights issue is the most complex issue dealt with in the draft law. Under the draft law, “[r]eligious buildings and land used by the religious communities in the territory of Montenegro which were built or obtained from public revenues of the state or were owned by the state until 1 December 1918, and for which there is no evidence of ownership by the religious communities, as cultural heritage of Montenegro, shall constitute state property”. The same provision indicates that “[r]eligious buildings constructed in the territory of Montenegro based on the joint investment of the citizens by 1 December 1918, for which there is no evidence of ownership, shall constitute state property”. These provisions only apply to cultural heritage property.

The religious community concerned can challenge the authorities’ claim that this property is state owned by providing evidence that the community owns the property and that the current registration at the cadastre is justified. The challenge can be brought first in the framework of administrative proceedings before the cadastre authority, with the possibility of an appeal to the administrative courts, the Supreme Court and possibly the Constitutional Court.

The Opinion made a number of recommendations to ensure more clarity. Other recommendations requested additional procedural safeguards, such as the standard of proof applied, the notification of the religious community in question of the request to the real estate cadastre or a guarantee that the change in the title of religious property will not automatically affect the pre-existing right to use such property. The procedure in the draft provisions concerning property rights should provide equivalent protection as the ordinary procedure both in terms of substantive rules and procedural safeguards.

Concerning particularly the process of preparation of the draft law, the Opinion recommended that the authorities carry out inclusive and efficient consultations with the public, including representatives of religious communities and that the Protector of Human Rights and Freedoms be consulted by the Government.

## North Macedonia

### *Law on the Use of Languages (CDL-AD(2019)033)*

Following a request from the Prime Minister, the Venice Commission examined the Law on the Use of Languages. In its opinion adopted in December 2019, the Commission called on the authorities to re-examine the Law through consultations with all parties concerned. In comparison with the previous legislation, the new Law on Languages considerably extends the use of the Albanian language and in many respects goes beyond European standards. While welcoming the willingness of the authorities to improve the linguistic situation of ethnic communities, the Commission found that in certain areas the new Law may go too far by imposing what proved to be unrealistic legal obligations on the public institutions, in particular concerning the use of Albanian in judicial proceedings, coupled with heavy sanctions in case of non-compliance and the possibility of reversing judicial decisions, if there is the lack of translation and interpretation during the proceedings. This approach could significantly slow down the functioning of the entire judiciary, risking serious breaches of the right to a fair trial. The Commission further noted that the Law on Languages lacks clarity in terms of which provisions apply only to Albanian and which ones also to other community languages.

The Commission made several recommendations to the authorities of North Macedonia, especially to abandon the provisions relating to bilingualism in judicial proceedings. It also recommended that the obligation to use the Albanian language in internal and inter-institutional communication between civil servants be limited to written official communications or its entry into force be postponed until proper implementation of that provision appears realistic. The enforcement of pecuniary sanctions should be postponed until the Law is amended in order to provide sufficient legal clarity, to reduce the amounts of the fines as well as to introduce the element of fault and the principle of proportionality.

### *Follow-up to the Opinion on the draft Law on Prevention and Protection against Discrimination (CDL-AD(2018)001)*

The draft Law was revised in the light of the recommendations of the March 2018 opinion and adopted in May 2019. The adopted text implements two main recommendations of the opinion. They both concern the Commission for Protection against Discrimination, which is one of the key actors of the implementation of the anti-discrimination law. The possibility for a person to complain to an administrative body within the Ministry of Justice against the Commission against Discrimination on the grounds that the Commission failed to examine his or her complaint within the legal

deadline was removed. The adopted text also provides for the possibility to ensure a pluralist representation of the social forces involved in the protection and promotion of equality in the composition of the Commission. The law implemented also a number of the Opinion's secondary recommendations which significantly improved the quality of the law especially its clarity.

However, a number of recommendations in the opinion aimed at providing additional safeguards for the Commission against Discrimination to accomplish its duties independently and efficiently remain outstanding. These recommendations include: requiring higher than a simple majority for the election and dismissal of members of the Commission against Discrimination, further clarifying the election procedure and dismissal grounds of its members, providing for a unique but longer mandate for its members, and providing sufficient safeguards against an arbitrary and disproportionate reduction of the budget of the Commission against Discrimination.

## Ukraine

### ***Opinion on the Law on Supporting the Functioning of the Ukrainian Language as the State Language (CDL-AD(2019)032)***

At its December 2019 plenary session, the Venice Commission adopted, at the request of the Monitoring Committee of the Parliamentary Assembly of the Council of Europe, an opinion on the Law on Supporting the Functioning of the Ukrainian Language as the State Language. The Commission drew the attention of the Ukrainian legislator to the crucial importance of achieving an appropriate balance in the language policy in order to avoid the language issue becoming a source of inter-ethnic tensions within Ukraine. The Commission acknowledged that the language policy is an extremely complex, sensitive and highly politicized issue in Ukraine, especially in the context of the on-going conflict with Russia. In view of the particular place of the Russian language in Ukraine, as well as the oppression of the Ukrainian language in the past, the need to promote the use of Ukrainian as the state language is fully understandable. It is therefore commendable that the State Language Law provides for positive measures to this end by obliging the state to provide each citizen of Ukraine with an opportunity to master the Ukrainian language. The Commission also welcomed that in several areas the State Language Law provides for the use of minority languages in parallel with the state language by referring to the anticipated Law on Minorities. However, the latter Law has not yet been prepared, even though it should have been drafted simultaneously with the State Language Law to secure the needed balance from the outset. The Commission called on Ukraine to prepare without any unnecessary delay the Law

on Minorities and to consider postponing until the adoption of this Law the implementation of the State Language Law provisions which are already in force.

The Commission recommended reconsidering the provisions of the Law providing for a differentiatonal treatment between the languages of indigenous peoples, the languages of national minorities which are official EU languages, and the languages of national minorities which are not the official languages of the EU. Any distinction between treatment of those languages should be based on an objective and reasonable justification, which is so far not the case. Moreover, it was also recommended that the legislator consider repealing the mechanism of complaints and sanctions set forth in the Law or at least limiting it strictly to the public sphere and to the most extreme cases. Should the mechanism be kept, the sanction provisions should not be enforced until the adoption of the Law on Minorities and the revision of the State Language Law.

The article establishing liability for deliberate distortion of the Ukrainian language in official documents and texts should also be removed. The Commission invited the legislator to reconsider in the light of the principle of proportionality, the quota requirements for the Ukrainian language content imposed by the State Language Law on television and radio broadcasters. In addition, the Commission noted that the possibility to distribute electoral campaign materials in languages other than Ukrainian should not be limited to areas of compact residence of minorities; the Law must provide for clear exceptions for the use of languages other than Ukrainian in emergency situations (e.g. in communication with rescue services such as police, firefighters, hospital staff, etc.); requirements requesting the print media in the minority language to be published simultaneously in Ukrainian on the same day should be repealed; and the provision on all geographical names and toponyms to be solely in Ukrainian as well as other provisions of the Law should be reconsidered.

### ***Follow-up to the Joint Opinion on Financial Report Requirements for NGOs (CDL-AD(2018)006)***

In its Opinion of March 2018 the Venice Commission had recommended cancelling the e-declaration requirements for anti-corruption activists introduced by law of 23 March 2017, as foreseen by draft law No. 6674, and at the same time removing the new financial reporting and disclosure requirements under draft laws No. 6674 and 6675 in their entirety or, at a minimum, narrowing them down substantially. The two draft laws were never adopted. Attempts in Parliament to modify the current law, as recommended, failed. As a consequence, anti-corruption activists were obliged to submit electronic asset declarations from January

1, 2018. However, on 6 June 2019 the relevant provisions of the Law on Prevention of Corruption were declared unconstitutional by the Constitutional Court of Ukraine. The Court referred, *inter alia*, to the Joint Opinion and to the Venice Commission's Report on the Rule of Law (2011). As a consequence, the law is now in compliance with the recommendations of the Venice Commission: the e-declaration requirements for anti-corruption activists have been cancelled and no new financial reporting and disclosure requirements have been introduced.

## Judiciary and the prosecution service

### Armenia

#### *Draft amendments to the Judicial Code of Armenia and some other laws (CDL-AD(2019)024) and follow-up*

The opinion was prepared jointly with DG I at the request of the Ministry of Justice of Armenia. It concerned the Judicial Reform Package developed by the Ministry. Following the "velvet revolution" of 2018 there was a strong popular demand for a radical cleansing of the judiciary. The original plan of comprehensive vetting had been abandoned in favour of more tailor-made solutions. The Package was developed following broad consultations within the country and with European counterparts, which was to be welcomed.

The overall assessment of the Package by the Venice Commission was clearly positive: in particular, introducing new duties of judges related to financial declarations was necessary to fight corruption, without disproportionate encroaching on judges' independence. However, it was recommended to revisit the method of election of members of the Commission for the Prevention of Corruption (the CPC), once the first composition of this body had been formed under the newly developed scheme of direct nominations. It was necessary to introduce a mechanism of appealing decisions of the Supreme Judicial Council (JSC) in disciplinary matters. The CPC should have access to the generalised financial information regarding judges, that the duty to explain past transactions (before the enactment of the law) should not impose an unreasonable burden on the judges concerned. The Judicial Code must clarify how the burden of proof is distributed between a judge and the CPC if questions arise concerning a given financial declaration.

The early retirement scheme proposed to the judges of the Constitutional Court appointed for life under the old Constitution raised issues. It was important to respect the stability of a judicial office. It is not normal if the composition of the Constitutional Court changes every time a new Government comes to power. The scheme in question was not mandatory (as those

criticised in the Commission's previous opinions) and did not concern many judges, so there were no standards that oppose it, provided that it remains strictly voluntary. The early retirement scheme for the judges of the CC should not be aimed at interfering with pending cases. In the discussion with the representatives of the Ministry of Justice, the President of the Commission, Mr Buquicchio called on the authorities to be prudent when criticising the judiciary and expressed the wish that those judges who did not accept the early retirement offer would not be reproved for this.

The Minister of Justice of Armenia informed the Commission that in November 2019 the draft had been re-worked and submitted for the Government's approval. Many of the recommendations of the Joint Opinion were reflected in the new draft: for example, the ethics and disciplinary commission would no longer give advisory opinions, and the mandate of the current president of the SCJ would not be terminated. Some of the elements of the reform remained unchanged. Thus, instead of a full appeal against decisions of the Supreme Judicial Council in disciplinary matters the new draft law provided for a sort of a reopening, which had been deemed insufficient in the Joint Opinion. As regards the Commission for the Prevention of Corruption, its next composition would be elected with the participation of a pre-selection body, the Competition Council, to which the opposition parties would have the right to nominate candidates. Certain amendments were made to the proposal concerning the early retirement scheme for Constitutional Court judges: if more than three judges of the Constitutional Court accepted the offer and resigned, the election for the vacant positions would be held within 15 days. This was supposed to address one of the concerns of the Joint Opinion (that the simultaneous retirement of so many judges may paralyze this institution). However, it remained to be seen whether the retirement would be truly voluntarily and would not be used for ulterior purposes, as stressed in the Joint Opinion.

### Bulgaria

#### *The draft amendments to the Criminal Procedure Code and the Judicial System Act on criminal investigation against top magistrates (CDL-AD(2019)031)*

The Opinion on draft amendments to the Criminal Procedure Code and the Judicial System Act on criminal investigation against top magistrates was requested by the Minister of Justice of Bulgaria. The draft amendments were intended to address an issue identified by the European Court of Human Rights in the case of *Kolevi v. Bulgaria* in 2009, namely the *de facto* impossibility to bring the Prosecutor General to criminal liability. This situation was partly due to the



Commission's delegation arriving at the Bulgarian Prime Minister's Office, Sofia, November 2019

hierarchical organisation of the prosecution service and to the composition of the Prosecutorial Chamber of the Supreme Council of Magistracy. In June 2019 the Bulgarian authorities proposed introducing a mechanism of suspension of the Prosecutor General pending criminal proceedings against him/her, in order to ensure the independence of such investigations.

It was positive that the proposal had been thoroughly discussed in Bulgarian society; however, this mechanism might not achieve the stated goal. All such investigations will necessarily start within the prosecution system, still largely dependent on the Prosecutor General. Moreover, a decision of the Supreme Council of Magistracy will be needed to order a suspension. Given that 11 members of the Supreme Council (out of 25) are either prosecutors and investigators elected by their peers, or have prosecutorial background, it will be difficult to reach the necessary qualified majority of 17 members. More generally, it is important to ensure that “lay members” of the Prosecutorial Chamber of the Supreme Council of Magistracy are really “lay”, i.e. represent other professions. Under the draft amendments, the proposed mechanism of suspension of the Prosecutor General is extended to two chief judges – the President of the Court of Cassation and the President of the Supreme Administrative Court. This was not required by the European Court and not dictated by the Bulgarian Constitution; moreover, the suspension of the chief judges by the Plenary Supreme Council of Magistracy, where judges elected by their peers are in a net minority, is contrary to European standards on judicial independence, so this proposal must be abandoned.

There are several ways how the proposed mechanism of suspension of the Prosecutor General may be made more efficient (for example, by lowering the majority needed to take this decision). Other solutions should also be explored. Thus, the Bulgarian authorities should consider introducing a judicial review of the decisions not to open a criminal investigation. Investigation into such cases may be entrusted to certain existing office holders, such as the Inspector or the Director of the National Investigative Service, provided

that their powers and the method of their election are changed in order to make them more independent from the Prosecutor General. Finally, a new figure of an “independent investigator” (or a reserve list of such investigators) may be introduced – but such investigator should not owe his/her appointment to the Prosecutor General, or to the Prosecutorial Chamber dominated by the prosecutors and investigators, should not receive instructions from the Prosecutor General and at the end of his/her mandate should not have to return to the prosecution system.

In December 2019 the Government approved a new draft bill, which responds to some of the points raised by the Venice Commission in its opinion. In particular, the draft excluded two chief judges from the scope of the new mechanism of investigation, as recommended by the Commission.

## Georgia

### *The Concept of the legislative amendments to the Criminal Procedure Code concerning the relationship between the prosecution and the investigators (CDL-AD(2019)006)*

The opinion on the Concept of the amendments to the Criminal Procedure Code of Georgia (the CPC) was requested by the Deputy Minister of Interior and adopted at the March 2019 Plenary session.

The Concept aimed at restoring a better balance between the investigators and the prosecutorial authorities by clearly distinguishing two separate phases of a criminal investigation and making the investigators solely responsible for the first phase. The role of prosecutors in criminal investigations varies considerably from one system to another, so, in the absence of specific international standards or a uniform European approach, the proposed reform was a perfectly legitimate choice for a legislator to make.

However, the proposed reform aimed at the “forced emancipation” of police investigators, and they were not well prepared for this new role. The Venice Commission recommended the authorities to invest in legal training of investigators, strengthen internal control mechanisms, and provide for other transitional mechanisms. The investigators should be able at least to consult the prosecutor in borderline cases. In addition, the prosecutors should keep the power (at least in certain categories of cases, and at the initial stages of the reform) to overrule the decision of the investigator not to open an investigation/terminate it, and to transfer it to another investigator/investigative authority for re-consideration. Instructions by the prosecutor to the investigative authorities should in principle be in writing. Likewise, decisions of the prosecutor overriding decisions of the investigator should contain reasoning.



Meeting at the Supreme Court of Georgia, Tbilisi, April 2019

***Selection and appointment of Supreme Court judges (CDL-AD(2019)009) and follow-up***

This urgent opinion was requested in March 2019 by the Chairperson of the Parliament of Georgia and endorsed by the Venice Commission at its June 2019 Plenary Session, pursuant to Article 14 of the Rules of Procedure.

The request for this urgent opinion came as a result of the incomplete composition of the Supreme Court of Georgia, which had eight judges but should be composed of 28 judges according to Georgia’s new Constitution (Article 61.2).

Georgia has followed several of the recommendations made in this opinion, including removing the requirement for non-judge candidates to pass the judicial qualification examination and the recommendation for the current Parliament to only appoint the number of Supreme Court judges absolutely necessary to render the work of the Supreme Court manageable. In this respect, the recommendation stated that the number of judges appointed by the current Parliament should not exceed half of the 18 to 20 vacant positions and that the number of judges needed to achieve this should be decided after consultation with the Supreme Court. The idea being that further appointments could then be made by the Parliament elected at the next general elections and that this staggered approach in the appointment of all Supreme Court judges would alleviate the burden on the Supreme Court while at the same time ensuring that it enjoys the public trust and respect it deserves in the long run.

Other recommendations were not heeded, including abolishing the secret ballot in the selection procedure of judge candidates by the High Council of Justice or introducing reasoned decisions for the ranking and nomination of judge candidates based on clear and established evaluation criteria or introducing an appeal for judge candidates against decisions of the High Council of Justice.

**Hungary**

***Laws on Administrative Courts and on the entry into force of the Law on Administrative Courts and certain transitional rules (CDL-AD(2019)004) and follow-up***

The opinion was requested by the Minister of Justice of Hungary; it concerned the establishment of a separate system of administrative justice. In principle, this was a valid choice by the legislator. However, the laws attributed powers to the Minister of Justice which were in certain areas even more extensive than those attributed to the President of the National Judicial Office for the general judiciary, which had been criticised in earlier Venice Commission opinions. The main criticism in the opinion was that the strong powers of the Minister and the President of the new Supreme Administrative Court were not sufficiently counterbalanced by the National Administrative Judicial Council (NAJC), notably also in the important transition period during which the courts would be established. The Personnel Council of the NAJC did not include a sufficient number of judges. However, together with his comments on the draft opinion, the Minister had transmitted draft amendments recently submitted to Parliament which *inter alia* added two judges to the latter Council.

When this opinion was adopted at the March session, the Minister of Justice indicated that several of the main recommendations of the Venice Commission would be addressed through amendments to the legislation. Amendments were indeed adopted, which substantially improved in particular the procedure for appointing judges to these courts by providing for the possibility of judicial review of the nomination decisions of the Minister of Justice. It was, however, not very clear in the text of the amended law whether these amendments were also applicable to the procedure of appointing judges during the transitional period, when a particularly high number of judges would be appointed. In an exchange of letters with the President of the Venice Commission, published on the





Working meeting at the Scuola Grande di San Giovanni Evangelista, Venice, March 2019

Commission's website, Minister Trocsanyi confirmed that, according to the interpretation of the Ministry, the amendments were also applicable during the transitional period. However, at the end of May 2019, the Hungarian authorities announced that the establishment of the administrative court system would be suspended for an indefinite period.

## Kazakhstan

### *Follow-up to the Opinion on the Concept Paper on the reform of the High Judicial Council (CDL-AD(2018)032)*

The Concept Paper aimed at reforming the process of recruitment of judges and giving more powers to the High Judicial Council. In February 2019 a new law, based on the Concept Paper, had been adopted. According to the information provided by the authorities of Kazakhstan, the law incorporated many of the elements of the Concept Paper which had been assessed positively by the Venice Commission. In particular, the institutional design of the HJC was clarified. The Law defines the grounds for early termination of the mandate of the members of the HJC. The use of a "lie detector" in recruitment interviews was somewhat reduced. Some of the Commission's recommendations had been implemented at the level of Regulations of the High Judicial Council: thus, the recruitment system was now based on a cumulative result of various tests, and the interview with the candidates had become a separate stage of the entry exam. The disciplinary

cases would henceforth be examined by the High Judicial Council, while professional evaluations would remain within the competence of the Supreme Court. The new law therefore seemed to introduce many improvements. However, the opinion's central recommendation remained unaddressed: there was still not enough independence of the High Judicial Council from the President of the Republic, primarily because the Constitution does not indicate the number of its members and the President has the ultimate word on the appointment of the members of the Council. This reform may require a constitutional amendment in the future.

## Republic of Moldova

### *Draft Law on the reform of the Supreme Court of Justice and the prosecutor's office (CDL-AD(2019)020) and the statement*

At the request by the Minister of Justice, the joint opinion examined only the provisions of the draft law regarding the extra-judiciary evaluation mechanism for key judges' positions and the amendments regarding the Superior Council of Magistracy.

The rationale of the draft law related, on the one hand, to the need to build up a genuinely independent judiciary complying with integrity and professionalism requirements, and on the other hand, to the reform of the Supreme Court of Justice which will be designed as a court of cassation with the main remit of ensuring the consistent interpretation and application of the law by courts and of achieving uniformity in the case-law. This limited scope of competence of the Supreme Court also justifies, according to the authorities, reducing the number of Supreme Court judges from 33 to 17. In order to identify the judges of the Supreme Court who will continue to hold office at the Supreme Court after reorganisation, the draft law established a special ad-hoc, extra-judiciary body (the Evaluation Committee) which shall conduct an evaluation and selection of the sitting judges of the Supreme Court of Justice. The evaluation would be conducted on the basis of the criteria of integrity and lifestyle and of professional activity and professional qualities of the candidates. The judges of the Supreme Court who pass the evaluation would continue their activity as judge of the Supreme Court of Justice. In case the judge concerned is not successful in the evaluation, the Superior Council of Magistracy would propose a transfer to the judge, with his/her consent, to any vacant positions of judge in other courts, without holding a competition. A judge who refuses the transfer would have the right to resign.

The joint opinion considered that critical situations in the field of the judiciary, such as an extremely high level of corruption, may justify in some contexts equally radical solutions such as a vetting process of the sitting judges and that it falls ultimately within the

competence of the Moldovan authorities to decide whether the prevailing situation in Moldova creates sufficient basis for an extra-ordinary re-evaluation process as provided by the draft law. However, the combination of two different purposes in the draft law, i.e. the vetting process and the reform of the Supreme Court of Justice aimed at replacing it with a new court having a different jurisdiction, obstructed the real justification for subjecting all the sitting Supreme Court judges to re-evaluation. The joint opinion recommended in particular that in order to comply with the Constitution, the Superior Council of Magistracy should be entrusted with the power to take decisions in the re-evaluation process on the basis of the recommendation contained in the report of the Evaluation Committee. The draft law should provide for an appeal before a judicial body against the decisions of the Superior Council and the judicial body should be designed outside of the cohort of the Supreme Court of Justice whose judges are subjected to the evaluation process. The evaluation criteria to be used in this process should be indicated clearly in the draft law and should be the same as those already in force concerning disciplinary liability and performance evaluation of judges. The judges who failed the integrity evaluation should not be offered any judicial office but should be subjected to disciplinary proceedings.

On 27 November 2019, the President of the Venice Commission published a statement urging the state institutions of the Republic of Moldova to co-operate loyally and productively with each other to find a long-term solution for the independence and integrity of the judiciary and prosecution service in compliance with the Constitution and with the international principles of democracy and the rule of law.

On 19-20 December 2019, the President of the Venice Commission, accompanied by the Deputy Secretary of the Commission, travelled to Chisinau at the invitation of the Speaker of the Parliament of the Republic of Moldova. The delegation held meetings and exchanged views with the Speaker of the Parliament, the Chair and the members of the Legal Committee on Appointments and Immunities of the Parliament, the Prime Minister and the Minister of Justice as well as the Superior Council of Magistrates, judges of the Supreme Court of Justice and other judges.

***The amicus curiae Brief for the Constitutional Court of the Republic of Moldova on the amendments to the Law on the Prosecutor's Office (CDL-AD(2019)034)***

The brief was requested by the President of the Constitutional Court of Moldova for a pending case before the Court in which some MPs are challenging the constitutionality of recent amendments to the Law on the Prosecutor's Office. The Commission had

been asked whether the amendments to the Law on Prosecutors regarding the pre-selection, appointment and removal of the interim General Prosecutor or a new General Prosecutor are apt to affect the competence of the Superior Council of Prosecutors as a constitutional authority which guarantees the principle of the independence and impartiality of the prosecutors.

The brief stressed that international standards do not require a country to have a prosecutorial council and do not require the SCP to appoint the PG single-handedly without the involvement of other bodies. The mere involvement of the newly established Committee under the authority of the Ministry of Justice before the SCP does not necessarily bring an unacceptable element of politicisation.

From the national constitutional perspective, however, the Constitution of Moldova goes beyond what is required by international standards by prescribing the powers of the SCP in the process of appointment and removal of the PG. While this is a matter for the Constitutional Court and not for the Venice Commission, any redistribution of decision-making powers which substantially affects the constitutional mandate of a given body requires a constitutional amendment, to avoid compromising the purpose of creating such a body at the constitutional level.

The second question concerned the changes to the composition of the SCP by providing for a majority of non-prosecutors and making the Minister of Justice a member. From the national constitutional perspective, seven out of 15 members of the SCP are still prosecutors, and it seems difficult to dispute that this constitutes "a substantial part" of the SCP. The composition of the SCP remains sufficiently pluralistic and with a sufficient representation of prosecutors. From the viewpoint of international standards, it is crucial that sufficient autonomy must be ensured to shield prosecutorial authorities from undue political influence. The balance of power on the SCP after the amendments is in line with previous Venice Commission recommendations. Nor is there any standard against the direct involvement of the Minister as a member of the SCP. The presence of the Minister in the SCP therefore does not seem objectionable.

Finally, the Commission had been asked whether it is "compatible with European good practices" for a law to stop a pending selection process for the General Prosecutor organised by the Superior Council of Prosecutors and to organise a new selection process under the new rules established by the new law.

The brief pointed out that legislative interference in a constitutional appointments process for *ad hominem* reasons could impinge on the constitutional division of labour between the legislator and the SCP. On the other hand, legislative intervention in a pending

procedure which is grossly unfair, inefficient or discriminatory may be justified. It is for the Constitutional Court to decide whether the legislative intervention was justified by weighty considerations or public interest or pursued ulterior motives.

## North Macedonia

### *Draft Law on the Judicial Council of North Macedonia (CDL-AD(2019)008)*

The Opinion on the Draft Law on the Judicial Council was requested by the Prime Minister. This opinion followed several previous opinions on the judiciary of North Macedonia (the latest had been adopted in October 2018, CDL-AD(2018)022). The authorities of North Macedonia had carefully responded to the previous recommendations of the Venice Commission, and the last version achieved better consistency and was a significant improvement. In response to the draft opinion forwarded to Skopje two weeks earlier, the authorities prepared a revised version of the draft law. These latest amendments were reflected in the opinion. Thus, in particular, the President of the Judicial Council was now to be elected from the number of lay members; psychological tests in the recruitment exams were abandoned, the idea of individual reasoning of the appointment decisions (by each voting member of the Judicial Council) was replaced with collective reasoning, which is a better option. The filtering mechanism in the context of disciplinary proceedings was created, the Inquiry Commission being entrusted with this function. The failure to provide asset declaration by a member of the Judicial Council was now regarded as a ground for his/her dismissal. Some outstanding issues remained, however. In particular, the disciplinary procedure provided for elaborate rules on the exclusion of members from voting, which may result in blockages since the pool of members who may vote is very small, while the majorities are high. The practical application of these procedural rules needed to be kept under review. The previous rule that the finding of a violation by the European Court of Human Rights should automatically have negative consequences for the judge who adopted a decision in the case was dropped, and this was positive.

## 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)*

The 2017 opinion concerned the judicial reform initiated by the Government of Poland and criticised by the Venice Commission as putting at risk the independence of judges in the country. On 5 November 2019, the Court of Justice of the European Union (CJEU)

decided in infringement proceedings that the fixing of different retirement ages for male and female judges violated EU law. The legislation had been amended in the meantime (same retirement age for male and female judges) but the implementation for judges who had already retired and the calculation of their pension remained open issues. On 19 November 2019, the CJEU decided a preliminary request from the Labour and Social Security Chamber of the Polish Supreme Court requesting whether the participation of the newly composed National Council of the Judiciary (NCJ) in the appointment of the judges of the new Disciplinary Chamber of the Supreme Court (both of which had been criticized in the Venice Commission's Opinion) was in accordance with EU standards of judicial independence. The CJEU decided that, according to Article 47 of the EU Charter of Fundamental Rights, EU Law must not be applied by a court, the appointment of which gives rise to legitimate doubts as to the influence of the legislature and the executive. Based on this preliminary ruling, the Labour Chamber of the Supreme Court decided on 5 December 2019 that the Disciplinary Chamber was not sufficiently independent and that its decision was inapplicable. This decision gave rise to the amendments to the laws on justice, which was examined by the Venice Commission in the urgent opinion in January 2020 (CDL-PI(2020)001).

In addition, a representative of the Commission participated in the 4th Expert Roundtable on the laws on the judiciary in Poland organised by the OSCE/ODIHR in Warsaw on 25 March 2019.

## Romania

### *Emergency ordinances GEO no. 7 and GEO no. 12 amending the laws of justice of Romania (CDL-AD(2019)014)*

The opinion on the emergency ordinances had been requested by the PACE Monitoring Committee and was a follow-up to the October 2018 Opinion on the reform of the laws on justice of Romania. Five emergency ordinances had been adopted since October 2018, two of which (nos. 7 and 12) were the focus of the present opinion. The method of amending the legislation by emergency decrees (GEOs) was in itself problematic: the GEOs lacked clarity, were adopted sometimes without proper consultation and were not subject to the same control of constitutionality as the bills. In substance, the GEOs made virtually no improvements to the elements of the reform which had been deemed problematic in the October 2018 opinion (except for the postponement of the new rules on the early retirement of magistrates and on the extension of the training periods). The Minister of Justice kept the key role in the process of appointment of top prosecutors, with few external checks. There was a risk of retroactive application of eligibility criteria



*Meeting of the Commission's rapporteurs with the President of Romania Mr Klaus Iohannis, Bucharest, April 2019*

for the top prosecutorial positions. As regards the newly created Special Section for the investigation of offences committed by the magistrates, judges played a too important role in the process of selection of top prosecutors for this Section, which did not sit well with the constitutional design of the body (the Supreme Council of Magistracy). The transfer of many cases to the Section, and the possibility of appealing earlier decisions made by other prosecutors was a source of concern. The role of the Prosecutor General as a "hierarchically superior" prosecutor vis-à-vis the Section prosecutors was not clear. The routine use of GEOs perturbs the principle of separation of powers.

## Ukraine

### ***Amendments to the legal framework governing the Supreme Court and judicial governance bodies of Ukraine (CDL-AD(2019)027)***

This opinion was requested by the Chair of the Monitoring Committee of the Parliamentary Assembly. The request referred to draft law No. 1008, which had since been adopted as Law No. 193-IX and entered into force on 7 November 2019. The Law had been prepared hastily, without impact evaluation and without consulting relevant stakeholders. It had been enacted before the previous reform had been fully implemented. The main issues concerned the structure of the bodies of judicial governance and the reduction in size of the Supreme Court. Due to the co-existence of the High Council of Justice (HCJ), a constitutional body, and the High Qualification Commission of Judges (HQCJ), the structure of the bodies of judicial governance was already complicated. Law No. 193-IX introduced two more bodies, with a mixed national and international composition: the Selection Board for members of HQCJ and the Integrity and Ethics Board which mainly monitors the activity of members of the HJC and HQCJ. The role of these new bodies is problematic because the Constitution only acknowledges the existence of the HJC. With the entry into force of the Law, the previous HQJC was immediately dissolved, which is regrettable because it was in the middle of filling some 2000 vacancies at the first and second instance courts.

Law No. 193-IX also reduced the number of judges of the Supreme Court from a maximum of 200 (currently 193) judges to a maximum of 100 judges. All judges had already been vetted in a procedure approved by international organisations including the Venice Commission. 75 judges had been appointed only in May 2019. The reduction of the number of judges was later justified with the aim of ensuring the uniformity of the case-law of the Supreme Court and the transformation of the Supreme Court into a real cassation court which would deal only with precedents.

As such, these aims are commendable, but the order of proceeding was wrong: initially the first and second instance courts (where there are some 2000 vacancies) should be strengthened. The current draft law which introduces procedural filters should have been adopted first and only after these reforms had taken effect and the backlog been cleared, the required number of judges could be estimated. The Ukrainian authorities and the civil society had also expressed disappointment in the previous vetting process, not all judges would meet the criteria of integrity. However, according to the opinion, such cases cannot justify a new comprehensive vetting process of all judges of the Supreme Court. The selection of the 100 remaining judges would be in the hands of the new HQCJ but the Law contains only vague selection criteria and the procedure is to be decided by the HQCJ itself, instead of being regulated in the law. The judges who are not selected for the smaller Supreme Court, can be transferred to courts of appeal but they can also be dismissed. Reducing the number of judges in this way entails severe problems with the independence and irremovability of the judges. Upon request by the Supreme Court, the constitutionality of the Law is now examined by the Constitutional Court. The stability of the judiciary is a precondition for the independence of the judiciary. The impression has to be avoided that after each change of the parliamentary majority the structure of the judiciary is changed, and the composition of the courts is at the disposal of the new majority. This is detrimental to the independence of the judiciary and to the confidence of the population in the judiciary.



President of the Commission Mr Gianni Buquicchio and Speaker of the Verkhovna Rada of Ukraine Mr Dmytro Razumkov, Kyiv, October 2019

***Amicus curiae Brief on separate appeals against rulings on preventive measures (deprivation of liberty) of first instance courts of Ukraine (CDL-AD(2019)001) and follow-up***

This *amicus curiae* Brief was requested by the President of the Constitutional Court of Ukraine and adopted at the March 2019 plenary session. It concerned the question of whether the lack of a legal procedure in Ukraine's domestic law for an individual to challenge in an appeal a court ruling on the selection or extension of a preventive measure before the case is actually resolved on the merits complies with European standards in the field of human rights and the rule of law.

The examination of national legislations had shown that nearly all countries provided an appeal against decisions on detention which was separate from the appeal against the judgment on the merits. This was confirmed by information on Bosnia and Herzegovina and Denmark received after the preparation of the draft opinion. While Articles 6 and 13 of the ECHR provided for a fair trial and the right to a remedy in general, Article 5 of the ECHR was *lex specialis* in respect of detention. A recommendation by the Committee of Ministers of the Council of Europe called for the right to an appeal against detention. Several principles governed the system of detention: principle of exceptionality of detention, principle of habeas corpus, fair trial, the right to appeal, principle of regular review, principle of compensation. The opinion strongly recommended the establishment of a separate appeal

against detention, but the decision on whether the absence of such an appeal was unconstitutional was for the Constitutional Court of Ukraine to take.

The Constitutional Court of Ukraine had decided a case covered by the scope of the *amicus curiae* Brief. Referring to the brief, the Court noted that in its Recommendation Rec(2006)13 on the use of remand in custody, the conditions in which it takes place and the provision of safeguards, the Committee of Ministers had established standards that went even further than the case-law of the European Court of Human Rights. The Constitutional Court found that the lack of a procedure in the domestic law of Ukraine for an individual to appeal against first instance court rulings on preventive measures before the case is resolved on the merits, violated the Ukrainian Constitution.

***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. 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. 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 a person as a judge to the Court if 3 or more of the 6 experts designated by international organisations object to the candidate. The High Qualification Commission of Judges of Ukraine launched the vacancy notice for judges of the High Anti-Corruption Court on 2 August 2018. International experts were involved in the appointment procedure (and will continue to be involved for a total period of 6 years), through the Public Council of International Experts. During the appointment procedure of judges, the Public Council of International Experts vetoed 42 candidates due to doubts about their integrity and professional ethics. On 11 April 2019, the president of Ukraine swore in 38 judges of the High Anti-Corruption Court.

## Transnational activities

### Reports and studies

#### *Report on the inclusion of a not internationally recognised territory in a State's nationwide constituency for parliamentary elections (CDL-AD(2019)030)*

The request was made by the Rules Committee of the PACE against the background of the verification of the credentials of the Russian delegation. The question put to the Commission was nevertheless an abstract one. It related to members of parliament elected in a nation-wide territory and not to those elected directly in an annexed territory. It had to be analysed in respect of two sets of standards: electoral and international law ones. There existed a tension between the clear illegality under international law of any annexation and the interests of the persons living in the annexed territory. International law placed an indisputable obligation on both states and international organisations not to recognise an annexation either explicitly or implicitly. Further, international humanitarian law imposed on the occupying power not to make any permanent institutional changes. However, there existed no specific international rules on the organisation of elections. It was necessary to avoid that an act by a third State or by an international organisation could be seen as an implied recognition of the annexation. Some exceptions could be envisaged (the so-called "Namibia exception", which the European Court of Human Rights had also applied in its case-law). In this context, it needed to be stressed that an election must reflect the will of the people; annulling an election may only occur when irregularities, even if they are serious, may have affected the outcome.

Therefore, the obligation not to recognise an annexation implicitly is a clear one, but it allows for practical limitations; like states, international organisations have to decide how to meet this obligation in each concrete case. As concerns the ratification of the credentials of the annexing state, the effects on the voting rights of the population should be examined. In order for an election to be considered free and fair, it must respect certain preconditions, including the free exercise of political freedoms; it is difficult for an election organised in an occupied territory to meet these preconditions. However, the impact of the irregularities on the results of the election needs to be taken into account: if such effect was minimal, the elections stand. It must be stressed that this conclusion does not cure the illegality of the annexation.

In conclusion, international organisations have the obligation not to recognise an annexation implicitly, but they may nonetheless decide not to reject the credentials of the delegation of the annexing State if



Conference on "The role of «the Venice Principles» in strengthening the ombudsman institutions», Nicosia, December 2019

the impact on the election results as concerns a nationwide constituency has been minimal. This decision falls within the margin of manoeuvre of international organisations and does not entail a recognition, either explicit or implicit, of the annexation.

#### *Principles on the Protection and Promotion of the Ombudsman Institution ("The Venice Principles") CDL-AD(2019)005)*

The Principles on the Protection and Promotion of the Ombudsman Institution ("The Venice Principles"), were adopted at the March 2019 plenary session. This text identifies the essential legal principles which should be enshrined and respected and which should prevail during the creation or the reform of such an Institution.

Drawing in part on the diversity of models existing in the world, the 25 principles constitute the most complete list of principles ever proposed, on the conditions of election or removal, the main elements of the mediator's mandate, the scope and the means of his/her competence, the essential financial and material guarantees which will enable him/her to perform his/her functions as well as possible and to ensure firmly the independence of the institution.

"The Venice Principles" were endorsed by the Committee of Ministers at the 1345<sup>th</sup> meeting of the Ministers' Deputies on 2 May 2019, by the Parliamentary Assembly of the Council of Europe on 2 October 2019 and by the Congress of Local Authorities and Regional on 2019.

The Association of Mediators of the Mediterranean (AOM) in co-operation with the Commissioner for the Administration and Protection of Human Rights of Cyprus organised a conference on "«The Venice Principles» in the strengthening of Ombudsman institutions", on 10 December 2019, in Nicosia. Over thirty participants from sixteen countries participated in this event.



Country visit for the preparation of the opinion on the Law on the Use of Languages of North Macedonia, Skopje, September 2019

At the request of the Committee of Ministers the Commission adopted the Comments on PACE Recommendation 2163 (2019) on Ombudsman Institutions in Europe - the Need for a Set of Common Standards.<sup>9</sup> The Commission could encourage the Ombudsman institutions of its member states, also through the assistance of the different world and regional associations of Ombudsman Institutions with which the Commission maintains active co-operation, to seek the Commission's opinion on any law or constitutional and/or legislative amendments affecting them. It would assess these constitutional and legislative texts against the background of "the Venice Principles" and of the relevant Recommendations of the Committee of Ministers, notably CM/Rec(2019)6. The Commission could recommend that pending the possible establishment of a specific reporting mechanism as recommended by PACE, the Committee of Ministers should hold thematic debates, at regular intervals and/or whenever necessary, on the situation and activities of Ombudsman institutions, including on the state of implementation of "the Venice Principles", in particular in the light of such Commission's opinions.

**Report on Funding of Associations  
(CDL-AD(2019)002)**

The Report on Funding of Associations was requested by the Secretary General in November 2016. The Secretary General indicated that the findings of the Report would allow him to consider the need for new Committee of Ministers guidelines on the issue.

In the process of the preparation of this Report, a Round Table was organised in co-operation with the OSCE/ODIHR in Venice in October 2017 in order to review the regulations in force in different countries and to identify and develop international and common national standards concerning foreign funding of associations.

The Report reminded that in its opinions, the Commission had observed three main reasons that are advanced by states in order to justify the restrictions on foreign funding of associations. These are:

- ▶ a. Ensuring openness and transparency;
- ▶ b. The prevention of terrorism and money laundering; and
- ▶ c. protection of the state and its citizens from disguised political interference by foreign countries.

In its previous opinions, the Venice Commission considered that ensuring transparency would not by itself appear to be a legitimate aim but may be a means to achieve one of the legitimate aims under the second paragraph of Article 11 ECHR. In the Report, the Venice Commission distinguished between "reporting obligations" and "public disclosure obligations" imposed on associations concerning their financial resources. A "reporting obligation" consists in reporting the amount and the origin of the funding to the relevant authorities. A "public disclosure obligation" consists in making public the source of funding and potentially, the identity of donors. The goal of a public disclosure obligation is not to inform the authorities but to inform the public.

The Report concluded that reporting obligations may be considered to pursue the legitimate aim of preventing terrorism financing and money laundering by enhancing the transparency of funding of associations. However, disclosure obligations are not suitable for this purpose. The Report accepted nevertheless that "Public disclosure obligations" could be considered as pursuing the legitimate aim of prevention of disorder only as concerns formal remunerated lobbying activities carried out by associations. Public disclosure obligation may be seen in this context as pursuing the aim of ensuring the transparency of the political influence exerted by lobbying groups on the process of formation of political institutions and on the political decision-making process. Moreover, some "public disclosure obligations" can be imposed on associations with public utility status, but those obligations should be limited to information on how the public funds obtained by the association concerned are spent.

The Report also examined the necessity and proportionality of reporting/disclosure obligations concerning the financial sources of associations and of the sanctions imposed in case of violation of those

9. CDL-AD(2019)035

obligations, the discriminatory nature of restrictions on foreign funding of associations and the issue of the guarantee of effective legal protection.

***Joint Guidelines on Freedom of Peaceful Assembly (3rd Edition) (CDL-AD (2019)017)***

The first edition of the Guidelines on Freedom of Assembly which had been jointly prepared by the OSCE/ODIHR and the Venice Commission and which dated back to 2010 was widely used by legislators, policy makers and practitioners, in addition to the ECtHR and other international organisations.

The new edition of the Guidelines on Freedom of Peaceful Assembly was prepared in co-operation with the OSCE/ODIHR and they covered many important aspects of this right under Article 11 ECHR, such as assemblies and new technologies, core state obligations, notification and good administration of public assemblies, restrictions on and policing of assemblies, roles and rights of third parties during assemblies, arrest and detention of assembly participants, penalties imposed after an assembly, accountability of state authorities and legal remedies.

The right to freedom of peaceful assembly is not an absolute right and it is subject to limitations, in particular in order to protect the public order. Therefore, the main difficulty in that area is to protect the right to free expression by way of public gatherings taking into account the difficulties that the exercise of this right may create for the authorities, but also for the exercise of rights by other persons. The Guidelines take into account this required balance between free expression on the one hand and the requirement of protection of public order and rights and freedoms of other persons, on the other hand. The Guidelines consider not only the developments in the case-law of the ECtHR but also national legislations and case-law in different countries.

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

The preparation of the Checklist was prompted by a request from the Secretary General in 2016 and resulted from several years of work. An international conference on this topic, under the *aegis* of the President of Romania, was held in Bucharest. Although the request of the Secretary General invited the Venice Commission to formulate “guidelines”, in 2018 the rapporteurs decided to use the format of a Checklist which was less prescriptive than “guidelines”. This is mostly due to the lack of hard international standards in this area and the great diversity of systems of parliamentarism.

The drafting process had been inclusive, with over 10 members (in addition to the rapporteurs) having

submitted their comments to the later version of the text, in addition to oral discussions.

The structure of the Checklist reflects the Venice Commission’s practical experience. Commentary to the questions is based on previous opinions of the Commission, opinions and recommendations of other international bodies, best practices from some selected jurisdictions etc. Country examples are not exhaustive but mere illustrations. Some of the questions raised in the Checklist concerned not only the rights of the opposition as such, but the rights of Parliament and of all MPs in general, but this was inevitable: those issues were included in the Checklist because they were particularly important for the normal functioning of the opposition.

The Checklist was based on the philosophy of respect for political pluralism and of checks and balances; the majority should not use its dominant position to cement its position so as to exclude political alternation. The Checklist also mentioned the duties of the opposition, and the principles of shared responsibility before the general public and of political solidarity. The latter principle was distinct from the principle of loyal co-operation amongst state institutions. In some, the checklist is supposed to counter the worrying trend “the winner takes it all”; democracy cannot be reduced to a simple majoritarianism.

In February 2020 the Checklist was endorsed by the Committee of Ministers.

***Report on the recall of mayors and local elected representatives (CDL-AD(2019)011rev)***

Please see Chapter IV.

## **Seminars and conferences**

***UniDem Seminar on “The state of democracy thirty years after the fall of the iron curtain” (Lund, Sweden, 6-7 May 2019)***



The UniDem seminar on “The state of democracy thirty years after the fall of the iron curtain” was initiated by the Association of Former Members of the Venice Commission. It was co-organised by the Commission





*IXth International Congress of Comparative Law "Legal values in the focus of comparative law", Moscow, December 2019*

and the Law Faculty of Lund University in Lund on 6-7 May, at the invitation of the latter. This seminar followed up to the one organised in 2000 by the Venice Commission and the Law Faculty of Lund University, on "Democracy in a society in transition". Several members and former members of the Commission participated as speakers. The contribution of the Commission to the progress made towards democracy, in particular with regard to the countries of Central and Eastern Europe, was discussed. 18 years later, the participants in Lund took stock of the post-2000 developments in respect of democracy, the rule of law as well as Freedom of Association and Freedom of Assembly, through the positions taken by the Venice Commission. The proceedings of this UniDem seminar will be published by the Lund Law Faculty.

***IXth International Congress of Comparative Law, Legal Values in the Comparative Law Focus (Moscow, 2-3 December 2019)***

The IX<sup>th</sup> International Congress of Comparative Law was organised by the Institute of the Legislation and Comparative Law in Moscow on 2-3 December 2019. The title was "The Legal Values in the Comparative Law Focus". Over 400 participants from 15 states, the President of the Scientific Council and several other current and former members of the Venice Commission attended the event. This annual activity - very well organised by the Institute of the Legislation and Comparative Law - contributes to building bridges between the Venice Commission and the Russian legal community, especially young scholars. Publications of the Institute related to the Venice Commission are presented at each Congress.

**Other conferences and seminars**



***Global Conference on Media Freedom; Workshop on "Keeping journalists safe – What international organisations can do" (10-11 July 2019, London).***

Ms Kjerulf Thorgeirsdottir, 1st Vice President of the Commission participated in this high-level conference initiated by the Secretary of State for Foreign and Commonwealth Affairs. As a panelist in the PACE-sponsored workshop "Keeping journalists safe – What international organisations can do", she presented the Venice Commission's work on freedom of expression as a cornerstone of democracy.

***15th Anniversary of the Human Rights Defender's Institution (Yerevan, 26-27 November 2019)***

The First Vice President, Ms Herdis Kjerulf Thorgeirsdottir, represented the Commission at the international conference organised on the occasion of the 15<sup>th</sup> Anniversary of the Human Rights Defender's Institution of Armenia in Yerevan.

***50<sup>th</sup> anniversary of the René Cassin Foundation***

On the occasion of the 50<sup>th</sup> anniversary of the René Cassin Foundation - International Institute of Human Rights, the Commission participated in a conference on "The state of the Rule of Law in Europe" which took place in Strasbourg on 12 December 2019. During this event the Commission's Rule of Law Checklist was presented.

The Commission is regularly invited to present and explain its major reference documents. In 2019 the Commission raised awareness on its texts in the field of the rule of law, the independence of the judiciary, functioning of the ombudsman institution on the following occasions:

**Rule of law**

- ▶ Florence, 4 February 2019 – European Judicial Training Network, Conference on the Rule of Law
- ▶ Brussels, 21-22 February 2019 – CEPS Ideas Lab "Europe's Choice"
- ▶ Vienna, 1 March 2019 - European Bar Presidents conference on the rule of law

- ▶ Florence, 7 June 2019 – High Level Policy Dialogue, “Rule of Law in the European Union”, European University Institute
- ▶ London, 12 December 2019 - “The Rise of Authoritarianism: Lawyers Upholding the Rule of Law”.
- ▶ Strasbourg, 5 September 2019 - exchange of views with the Committee of Ministers on the theme “the respective contributions of national human rights institutions and ombudspersons”
- ▶ Brussels, 10 September 2019 – meetings at the European Commission on “the Venice Principles”

### Independence of the judiciary

- ▶ New York, Long Island, 10-11 February 2019 – expert meeting “Contemporary Challenges to the Independence of Judges and Lawyers from a Global Perspective”, UN Special Rapporteur on the Independence of Judges and Lawyers

### Ombudsman institutions

- ▶ Yerevan, 26 November 2019 – 15<sup>th</sup> anniversary of the Ombudsman institution
- ▶ Athens, 20 February 2019 – 20<sup>th</sup> anniversary of the Greek Ombudsman
- ▶ Madrid, 13 June 2019 – conference on “the Venice Principles” by the Centre for political and constitutional studies and the Public Defender of Spain
- ▶ Oslo, 3 July 2019 - hearing of the PACE Monitoring Committee on “the Venice Principles”

### Other meetings

- ▶ Tours, 31 January 2019 - “The Formation of Authoritarian Regimes: Comparative Analysis of Recent European Developments”, University of Tours
- ▶ Strasbourg, 4 February 2019 – 7<sup>th</sup> meeting of the head of the Monitoring bodies of the Council of Europe
- ▶ Delhi, 21 March 2019 – “Unconstitutional constitutional changes”, Jindal Global Law School
- ▶ St. Petersburg, 14 May 2019 - “Constitutional Identity and Universal Values: the Art of Balance” by the Constitutional Court of Russia
- ▶ Veliko Tärnov, 15 April 2019 - celebration of the 140<sup>th</sup> anniversary of the adoption of the first Constitution of Bulgaria in Veliko Tärnov, its former capital



*Participants of the conference on "Modern Constitutional Development: The Role of Constitutional Review in Constitutionalisation of Law"  
Minsk, May 2019*

## III. CONSTITUTIONAL JUSTICE<sup>10</sup>

### Opinions, reports and conferences / Meetings<sup>11</sup>

#### Angola

*5th Congress of the CCJA on “Constitutional Courts / Councils as Guarantors of the Constitution and Fundamental Rights and Freedoms” (Luanda, Angola 9-13 June 2019)*



The Venice Commission participated in the 5th Congress of the CCJA at which it was announced that seven Courts had joined the CCJA: the Supreme Court of Sierra Leon, the Supreme Court of Rwanda, the Constitutional Court of Morocco, the Supreme Court of Zimbabwe, the Supreme Court of Somalia, the Constitutional Court of Turkey and the Constitutional Court of Russia. A co-operation agreement was signed between three associations of constitutional courts: CCJA, the Union of the Arab Constitutional Courts and Councils and the Eurasian Association of Constitutional Review Bodies, respectively, and it elected a new Secretary General, Mr Manuel Aragão, President of the Constitutional Tribunal of Angola.

This event brought together 41 constitutional courts and councils and African supreme courts, the Constitutional Courts of Russia and Turkey as observer members of the CCJA, representatives of the African Union, the World Conference on Constitutional Justice and the regional groups active in the field of Constitutional Justice, i.e. a total of 124 participants.

#### Belarus

*International Conference on “Modern Constitutional Development: The Role of Constitutional Review in Constitutionalisation of Law” celebrating the 25th anniversary of the Constitutional Court of Belarus (Minsk, Belarus, 30-31 May 2019)*

The Venice Commission participated in this event, which gathered together some 50 participants including presidents and judges of the six member courts of the Eurasian Association of Constitutional Review Bodies from Azerbaijan, Armenia, Belarus, Kazakhstan, Kyrgyzstan and the Russian Federation. The presidents of the Constitutional Courts of Bulgaria and Latvia, judges from Georgia and Tajikistan and the President and a judge of the Eurasian Economic Court. Upon the request of the Venice Commission, the Director of the Belarusian Helsinki Committee took part in this event. No other representative of civil society or students were invited to the event.

Discussions touched on a variety of issues, including a lively discussion on the Venice Commission's [Report on Separate Opinions of Constitutional Court \(CDL-AD\(2018\)030\)](#), where the division became apparent between the older and the newer democracies. The newer democracies considered that the publication of separate opinions undermined legal certainty, while the older democracies considered that separate opinions contribute to the legitimacy of a court's decision and are a valuable source of law.

For Belarus in particular, it was noted that a number of reforms were on their way: streamlining the procedure in ordinary courts, economic courts and courts dealing with intellectual property and the abolition of juvenile courts.

10. The full text of all adopted opinions can be found on the web site [www.venice.coe.int](http://www.venice.coe.int).

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



1st training for liaison officers on CODICES database and the Venice Forum, Santo Domingo, February 2019

The Eurasian Association of Constitutional Review Bodies held its meeting on the side-lines of the Conference. For more information please see below.

## Dominican Republic

*1st Training Session for liaison officers of members of the World Conference on Constitutional Justice (WCCJ) on the use of and contributing to the CODICES database and the restricted Venice Forum*

The training session on CODICES / Venice Forum gathered together 43 liaison officers from 14 different Constitutional Courts or Courts with equivalent jurisdiction and was devoted to:

- ▶ Access to the restricted sites of the Venice Commission;
- ▶ Liaison with other Courts;
- ▶ précis-writing for the (electronic) Bulletin on Constitutional Case-Law and the CODICES database.

*14th meeting of the WCCJ Bureau (Santo-Domingo, 7-8 February 2019)*

See below under item 6.

## Canada

*Montreal, Canada – 8th Congress of ACCPUF on “Constitution and legal certainty” (30 April-3 May 2019)*



The President of the Venice Commission, Mr Gianni Buquicchio, attended this event and made an opening presentation. This event gathered together 37 Constitutional Courts and Courts with equivalent jurisdiction. (see below).

## European Court of Human Rights

*Amicus curiae brief for the European Court of Human Rights in the case of Mugemangango v. Belgium (CDL-AD(2019)021)*

Please see Chapter VI.

## Hungary

*Participation in the International Conference on “Constitutional EU Identity 2019 Unity in Diversity – Common and Particular Values” organised by the Constitutional Court of Hungary (Budapest, 8 March 2019)*

The Venice Commission participated in this event, which gathered together the President of Hungary, the Minister of Justice, the President and Judges of the Hungarian Constitutional Court, Hungarian academia, the President of the Court of Justice of the European Union, Presidents and judges of the Constitutional Courts of Austria, the Czech Republic, Germany, Latvia, Luxembourg, Slovenia; the President of the Supreme Court of the Netherlands; the Vice-Presidents of the Constitutional Court of Italy and the Federal Tribunal of Switzerland.

The aim of this event was to discuss problems between EU law and the affirmation of a Hungarian constitutional identity following the Constitutional Court’s 2016 judgment on the Hungarian constitutional identity and the 2018 constitutional amendment on this issue.

## Moldova, Republic of

*Amicus Curiae Brief for the Constitutional Court of the Republic of Moldova on the Amendments to the Law on the Prosecutor’s Office (CDL-AD(2019)034)*

Please see Chapter II.



Participants of the 8th meeting of the Joint Council on Constitutional Justice, Rome, May 2019

***Amicus curiae Brief for the Constitutional Court of the Republic of Moldova on the criminal liability of constitutional court judges (CDL-AD(2019)028)***

This *amicus curiae* Brief was requested by the President of the Constitutional Court of the Republic of Moldova, who raised three specific questions which were answered in this Brief, providing a comparative law analysis. It was adopted at the Venice Commission's December 2019 plenary session.

The brief found that constitutional court judges should be protected by functional and not general immunity. As constitutional court judges deal with fundamental constitutional questions and politically sensitive issues, failures performed intentionally by these judges in the exercise of their functions, with deliberate abuse, may give rise to disciplinary actions, but should only give rise to penalties, criminal responsibility or civil liability in exceptional cases of extreme deviation from principles and standards of the rule of law and constitutionality.

Although ordinary crimes should be dealt with by the relevant competent court, only the Constitutional Court should decide on the disciplinary liability of its judges in the exercise of their judicial functions. This functional immunity continues to apply to the activities carried out by a constitutional court judge during the exercise of his or her judicial functions in his or her term of office, after the judge's term of office has ended.

As Constitutional Court decisions or judgments are final, reviewing them should be an exception and carried out by the Constitutional Court itself. This task should not be given to any other public authority, as this would compromise the independence of the Constitutional Court. An internal re-examination (re-opening) procedure of the Constitutional Court would

be needed rather than a review procedure by other public authorities such as Parliament or the Supreme Court. When there is no such possibility, and if this is warranted in substance, a constitutional amendment may be necessary to overcome a Constitutional Court judgment that was adopted involving a criminal act of one of the Court's judges.

**Ukraine**

***Amicus curiae Brief on separate appeals against rulings on preventive measures (deprivation of liberty) of first instance courts of Ukraine (CDL-AD(2019)001)***

Please see Chapter II.

***Amicus curiae Brief for the Constitutional Court of Ukraine on the early termination of the mandate of Members of Parliament (CDL-AD(2019)029)***

Please see Chapter II.

**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 18<sup>th</sup> meeting of the Joint Council on Constitutional Justice took place in Rome on 23-24 May 2019, hosted by the Constitutional Court of Italy in the *Palazzo della Consulta*.

In its meeting the previous year in Lausanne, Switzerland, the Joint Council decided that its *Bulletin on Constitutional Case-Law* – which is published three



Meeting of the Bureau of the World Conference on Constitutional Justice, Venice, March 2019

times a year and contains the summaries of the latest constitutional case law sent by the liaison officers – should move from a paper version to an electronic version. During this year’s meeting, the Joint Council took stock of its experience in moving from a paper version to an “e-Bulletin” and, so far, has only received positive feedback from its recipients. This move has reduced the time of publication of the Bulletin from nine months to a little over four months per issue.

Regional groups and language-based groups participating in the World Conference on Constitutional Justice (WCCJ) presented their activities during the meeting in Rome and participants were informed about the Bureau of the World Conference’s meeting in Santo Domingo in February 2019, which devised a mechanism to support member Courts, the independence of which is threatened.

The Joint Council was also informed that a new CODICES database was going to be established, with a generous financial contribution from Belgium.

On the last day of the Joint Council meeting, a mini-conference was held on the topic of “*Independence of the Judiciary, the role of constitutional courts*”, at which liaison officers presented the case-law of their courts on this topic. There were ten speakers and the topic was an important and relevant one for all constitutional courts and courts with equivalent jurisdiction. The independence of the judiciary relates to the independence of judges, which is a prerequisite to ensuring that all individuals in a given country have access to justice, have the possibility of a fair trial and to obtain judgments based on a fair evaluation of the facts, which provide a reasoned application of the law. The constitutional courts’ role in ensuring the independence of the judiciary was the topic discussed during this mini-conference.

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](http://www.codices.coe.int) in the “Reports” section.

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

A major overhaul of the Bulletin on Constitutional Case-Law took place in 2018, which has become fully electronic and renamed the “e-Bulletin on Constitutional Case-Law”. No paper form of the Bulletin published in 2019, except for the thematic special Bulletins requested by the CECC, which will be published in 2020 (see below). The e-Bulletin continued to be published three times a year, containing summaries of the most important decisions provided by the constitutional courts or equivalent bodies of all 62 member states (116 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 cooperation and exchange of information as well as from the judgments of their counterparts in other countries.

In 2019, *précis* on **345** judgments were published in three regular issues of the e-Bulletin.

### Venice Forum

- ▶ The on-line Venice Forum is a restricted platform on which liaison officers, appointed by constitutional courts or courts with equivalent bodies, can exchange information. The Venice Forum contains several elements:
- ▶ The restricted *Newsgroup* enables courts to actively share information with each other, e.g.



President of the Commission Mr Gianni Buquicchio at a conference on "individual applications to the Constitutional Court in Turkey, Ankara, September 2019

to make on-line announcements on changes to their composition, on recent key judgments and to make various requests for general information. In 2019, 17 posts were made in the *Newsgroup*.

- ▶ The restricted *Classic Venice Forum* enables courts to ask other courts for specific information on case-law. In 2019, the *Classic Venice Forum* dealt with 27 comparative law research requests covering questions that ranged from the prohibition of medical consultations in optical shops, the right to strike to the legal protection against search results of online search engines and to transgender rights.
- ▶ 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 2019, 668 of these Constitutional Justice Media Observatory emails were sent to members and liaison officers.
- ▶ The *Interim Bulletin* enables the liaison officers to follow the progress of their contributions to the Bulletin on Constitutional Case-Law in real time, through all the stages of the production (proof-reading in the original language – English or French, control of headnotes and indexing according to the Systematic Thesaurus,

translation into the other language, and parallel proof-reading of the translation). Other liaison officers can also access the contributions of their peers at all these stages.

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

### Regional co-operation

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

### Association of Francophone Constitutional Courts (ACCF)<sup>12</sup>

The 8<sup>th</sup> congress of ACCF took place in Montreal, Canada on 30 April-3 May 2019 during which its name was changed from the "Association of Constitutional Courts Using the French Language" to "Association of Francophone Constitutional Courts" (*Association des Cours Constitutionnelles Francophones*) – abbreviated to ACCF. The ACCF will continue to contribute to CODICES, which it sees as a very useful asset and hence the agreement between the Venice Commission and ACCF will remain in force with only slight modifications.<sup>13</sup>

The 9<sup>th</sup> congress of ACCF will take place in Senegal in 2022.

The ACCF participated in the WCCJ's 14<sup>th</sup> Bureau meeting in Santo Domingo, Dominican Republic on 8 February 2019 (see below).

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

13. The ACCF Courts contribute to the CODICES database on the basis of the Vaduz Agreement between the Venice Commission and ACCPUF and its Djibouti Protocol.





Secretary of the Commission Thomas Markert and Head of the Constitutional Justice Division Schnutz Dürr with a delegation from the Ministry of Foreign Affairs of Myanmar, Strasbourg, May 2019

### Conference of European Constitutional Courts (CECC)<sup>14</sup>

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

The CECC also participated in the WCCJ's 14<sup>th</sup> Bureau meeting in Santo Domingo, Dominican Republic on 8 February 2019 (see below).

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

The 2019 session of the CCCOOND/EACRB took place in Minsk on 30-31 May, in which the Venice Commission participated; it was held on the side lines of an international conference organised by the Constitutional Court of Belarus (see above). At this session, a change of the name of the "Conference of the Constitutional Control Organs of the Countries of New Democracy (CCCOOND)" to "Eurasian Association of Constitutional Review Bodies (EACRB)" was accepted and a new logo adopted.

The Association participated in the WCCJ's 14<sup>th</sup> Bureau meeting in Santo Domingo, Dominican Republic on 8 February 2019.

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

### 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 116<sup>15</sup> constitutional courts and councils and supreme courts in Africa, the Americas, Asia and Europe. It promotes constitutional justice – understood as constitutional review including human rights case-law – as a key element for democracy, the protection of human rights and the rule of law (Article 1.2 of the Statute).

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

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

In 2019, two constitutional courts and equivalent bodies joined the WCCJ as full members. These are: the

15. As at 31 December 2019. Somalia became the 117<sup>th</sup> member on 3 January 2020.

Constitutional Court of Zimbabwe and the Supreme Court of India.

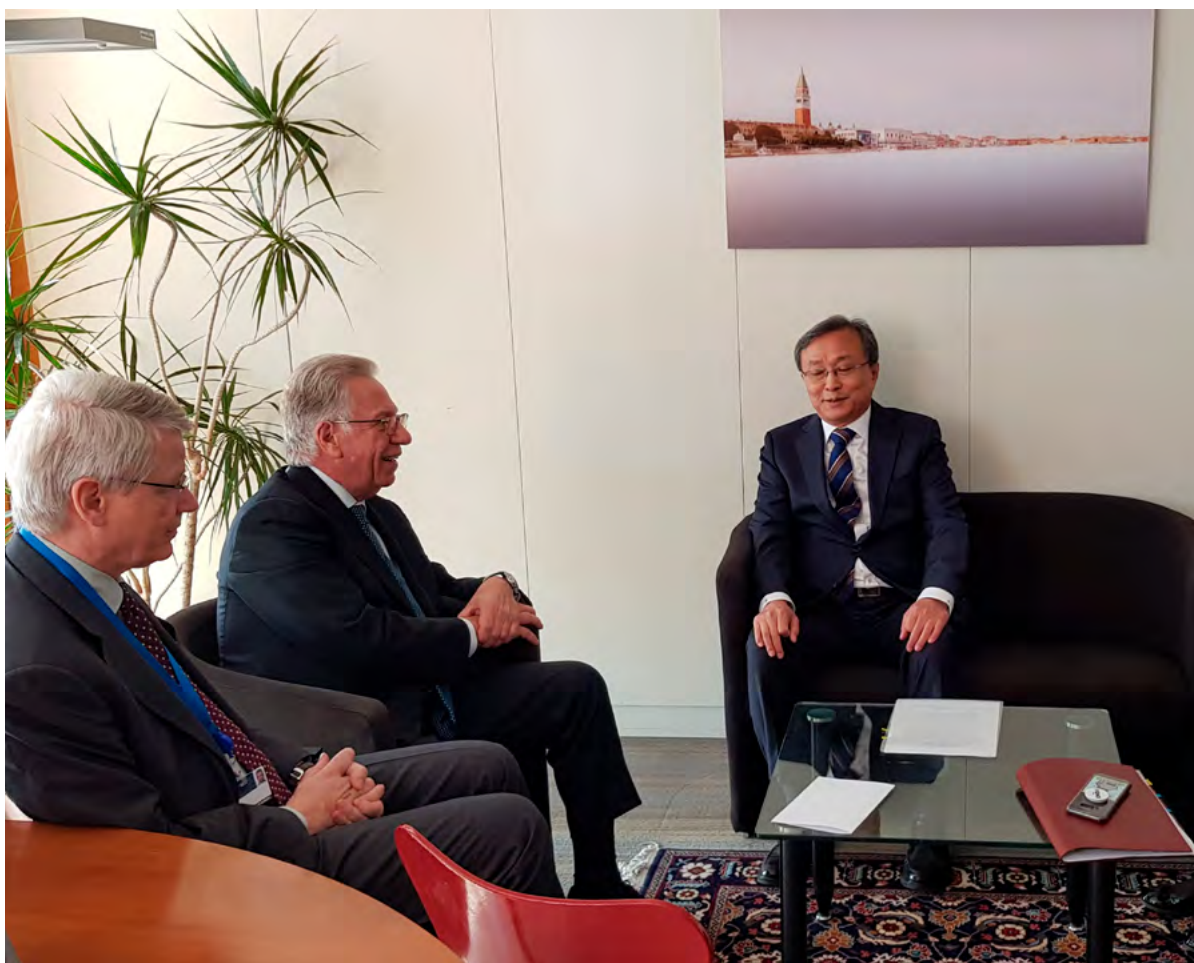
On 8 February 2019, the 14<sup>th</sup> meeting of the Bureau of the WCCJ took place in Santo Domingo, Dominican Republic. The following associations took part in the meeting:

- ▶ Association of Asian Constitutional Courts and Equivalent Institutions (AACC)
- ▶ Commonwealth
- ▶ Conference of European Constitutional Courts (CECC)
- ▶ Association of Francophone Constitutional Courts (ACCF)
- ▶ Conference of European Constitutional Courts (CECC)
- ▶ Eurasian Association of Constitutional Review Bodies (EACRB)
- ▶ Conference of Constitutional Courts of Portuguese Speaking Countries (CJCLP)

- ▶ Conference of Constitutional Jurisdictions of Africa (CCJA)
- ▶ Ibero-American Conference of Constitutional Justice (CIJC)
- ▶ Union of Arab Constitutional Courts and Councils (UACCC)

During this meeting, the Bureau, *inter alia*:

- approved the concept paper and the questionnaire and the deadline for replies by the Member Courts;
- agreed on the procedural aspects of the organisation of the 5<sup>th</sup> Congress of the WCCJ;
- discussed and agreed with the arrangements to allow the World Conference to support its Member Courts whose independence is endangered, according to the procedure set out in the Note of the Secretariat of 25 January 2019. Such statements should be widely disseminated, including through social media.



President and Secretary of the Commission meeting the President of the Constitutional Court of the Republic of Korea Mr Namseok Yoo, Strasbourg, October 2019



*Participants of the 16th European Conference of Electoral Management Bodies on the "Election dispute resolution", Bratislava, June 2019*

# IV. ELECTIONS, REFERENDUMS AND POLITICAL PARTIES

## Country specific activities

### Albania

#### *Opinion on the Scope of the Power of the President to set the Date of Elections (CDL-AD(2019)019)*

This opinion was requested by the Speaker of the Assembly of Albania in the context of a serious political crisis and impeachment proceedings against the President of Albania and adopted at the Venice Commission's October 2019 plenary session.

Opposition MPs had given up their parliamentary mandates and decided to boycott the local elections scheduled for 30 June 2019. In this situation, on 10 June 2019, the President cancelled the date of the elections and on 27 June 2019, he postponed them to 13 October 2019. As a consultative body, the Venice Commission could not act as a substitute for the Albanian Constitutional Court, which however had not been operational for over 18 months as a consequence of the vetting procedure.

The opinion found no legal basis for the President to cancel elections or to postpone them. While the President referred to an exceptional situation and the imminent danger that a demonstration of the opposition might be abused to burn the Assembly, the Constitution provided that a state of emergency had to be initiated by the Council of Ministers and approved by the Assembly. Emergency powers could thus not be a substitute for the lack of competence of the President and there had been no consensus of the parties to postpone the elections. However, there were several mitigating factors: the President had offered his assistance to the parties to overcome their conflict. In Albania, in the light of previous cases of postponement of both national and local elections, the President could reasonably hope that the parties might find an agreement to postpone these elections. The presidential decrees were never directly challenged in court and only declared void in incidental proceedings. Taken together, these factors could provide elements for the Assembly setting out that a lack of competence by the President might not entail such "serious violations of the Constitution" as to warrant an impeachment of the President. At any rate, the Assembly also had the discretion not to impeach the President for political reasons, even if a

serious violation of the Constitution were established by the Constitutional Court.

#### *Follow-up to the Joint opinion on the draft law on the legislative initiative of the citizens (CDL-AD(2018)026)*

The Law on the Legislative Initiative of Voters was adopted on 18 July 2019. It follows, totally or partially, most of the recommendations of the Joint Opinion. In particular:

- ▶ It no longer provides for the registration of the initiating organisations;
- ▶ It allows signature collection in private spaces; however, the places for signature collection have still to be approved;
- ▶ It shortens and simplifies the whole process; practice will show whether the process is easily accessible;
- ▶ It makes clear that the law does not apply to petitions;
- ▶ It no longer provides for a vote of Parliament on the motivation of the initiative's rejection;
- ▶ It improves the provisions on financing;
- ▶ It clarifies the competent appeal bodies.

#### *Conference on electoral systems (Tirana, 25 September 2019)*

The Venice Commission participated in a Conference entitled "Denied by the System: Establishing an All-inclusive System to Protect Democracy" organised by the OSCE presence in Albania and the Ad Hoc Committee on Electoral Reform of the Albanian Parliament as part of the process leading to a revision of the Electoral Code.

### Argentina

Please see Chapter V.

### Armenia

#### *Brainstorming workshop on "Reform of the legal framework governing elections" in Armenia (Tsakhkadzor, 8-9 June 2019)*

The Venice Commission participated in this workshop with Members of the Parliament of Armenia organised by the International Foundation for Electoral Systems (IFES) and the United States Agency for International



Observation of the counting procedures, early parliamentary elections in Belarus, Minsk, November 2019

Development (USAID) in order to present Council of Europe standards in the electoral field and previous recommendations of the Venice Commission regarding Armenia and to remain actively involved in the electoral reform process. As a result of the workshop, it was planned to rapidly set up a parliamentary *ad hoc* committee in order to prepare legal amendments both to the Electoral Code and the Constitution. According to the tentative roadmap, final drafts should be presented by Summer 2020 and adopted end of 2020/early 2021. Legal advice should be sought from the Venice Commission during this process.

## Belarus

### *Legal assistance to the Parliamentary Assembly delegation observing the parliamentary Elections (17 November 2019)*

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 parliamentary elections which took place on 17 November 2019 in Belarus. The PACE delegation observed the opening, voting and counting processes.

## Bosnia and Herzegovina

### *Second Meeting of the Regional Electoral Jurisprudence Working Group (Sarajevo, 7-8 October 2019)*

The Venice Commission participated in the Second Meeting of the Regional Electoral Jurisprudence Working Group, which discussed the following issues: the procedural challenges in election dispute resolution; the evidentiary issues in election cases, including recounts and audits; the annulment of election results; social media and the spread of disinformation in elections; vote buying, campaign finance violations and abuse of state resources.

## Georgia

### *Seminar on "Election dispute resolution: challenges and steps ahead" (Tbilisi, 29 November 2019)*

The Venice Commission co-organised a seminar dedicated to the settlement of electoral disputes. The aim of the seminar was to raise awareness about the need for a better settlement among the actors involved in electoral disputes in Georgia, in particular judges and the election administration, the two institutions responsible for dealing with such disputes in Georgia. In addition, a handbook for election practitioners will be published in Georgia on the subject. The Venice Commission contributed to this manual, in close cooperation with the Directorate General of Democracy of the Council of Europe.

### *Regional Parliamentary Conference on "Preventing and responding to the misuse of administrative resources during electoral processes: the role of national parliaments" (Tbilisi, 2-3 December 2019)*

The Parliamentary Assembly and the Venice Commission organised in co-operation with the Parliament of Georgia a regional conference for members of parliaments and electoral commissions of the Eastern Partnership countries: Armenia, Azerbaijan, Georgia, Republic of Moldova and Ukraine. The conference was organised in the framework of the Georgian Presidency of the Committee of Ministers of the Council of Europe. The conference dealt with the issue of the misuse of administrative resources during electoral processes and the laws and best practices aimed at eradicating this widespread phenomenon among the member states.

## Kyrgyzstan

Please see Chapter V.

## Mexico

Please see Chapter V.

## Republic of Moldova

*Follow-up to the Joint opinion on the law for amending and completing certain legislative acts (Electoral system for the election of parliament) (CDL-AD(2018)008) and the Joint Opinion on the draft laws on amending and*

*completing certain legislative acts (electoral system for the election of the Parliament) (CDL-AD(2017)012)*

Both opinions focused only on specific proposed amendments and did not analyse the whole electoral code. A revised version of the electoral code was adopted on 17 August 2019. It followed the main recommendation to be found in both opinions, by abolishing the mixed system for the election of Parliament; it also lowered the thresholds, in conformity with a long-standing recommendation of the Venice Commission and the OSCE/ODIHR. In line with previous recommendations in the field of financing of electoral campaigns, the possibility for Moldovan citizens abroad to provide financial resources had been introduced, the caps for individual donations had been drastically reduced and new provisions tending to avoid conflicts of interest had been adopted. As for gender representation, a minimum of four candidates for each ten seats for the underrepresented gender (and not only 40 % of all candidates on the list) had been introduced. Another positive development concerned access for media during prime time.

***Follow-up to the Joint Opinion on the legal framework governing the funding of political parties and electoral campaigns (CDL-AD(2017)027)***

In parallel to the amendments to the Electoral Code, the Law on Political Parties was also revised on 15 August 2019. These amendments follow two key recommendations of the Joint Opinion:

- ▶ Permit private contributions, within clearly defined limits, by citizens of Moldova from their revenues obtained outside of the country, subject to adequate requirements of transparency and close supervision;
- ▶ Further reduce annual ceilings for private donations to political parties and to electoral contestants: these ceilings were drastically reduced (for example, the caps for donations by physical persons were reduced from 200 to 6 monthly average salaries).

The two other key recommendations (significantly enhance the supervision and enforcement of the rules on party and campaign financing and strengthen the regime of sanctions available for infringements of party and campaign funding rules) still remain to be implemented.

***Legal assistance to the Parliamentary Assembly delegation observing the parliamentary elections (24 February 2019)***

A Venice Commission delegation provided advice on the legal framework to the *ad hoc* Committee of the Parliamentary Assembly observing the parliamentary elections which took place on 24 February 2019 in the Republic of Moldova. The PACE and Venice

Commission delegations observed the opening, voting and counting processes.

## Montenegro

***Expert assistance on the preparation of a code of ethics (18 September 2019)***

At the request of the Vice-President of Parliament of Montenegro, an expert of the Venice Commission took part in a series of meetings in Podgorica with the Parliamentary Committee on Further Reform of Electoral and Other Legislation in order to provide advice on a draft code of ethics for political parties' electoral campaigns.

## North Macedonia

***Legal assistance to the Parliamentary Assembly delegation observing the presidential elections (first round, 21 April 2019, second round, 5 May 2019)***

A Venice Commission delegation provided advice on the legal framework to the *ad hoc* Committee of the Parliamentary Assembly observing the presidential election which took place on 21 April 2019 (first round) and 5 May 2019 (second round) in North Macedonia. The PACE and Venice Commission delegations observed the opening, voting and counting processes.

## Uzbekistan

Please see Chapter V.

## Tunisia

Please see Chapter V.

## Ukraine

***Follow-up to the Opinion on the draft election code of Ukraine (CDL-AD(2010)047)***

In December 2010, the Commission adopted an Opinion on the draft Election Code of Ukraine, requested by Mr Lytvin, then Chairman of the Verkhovna Rada. This opinion welcomed the commitment of the Ukrainian authorities to reforming their electoral legislation and to adopting an election code that would unify numerous, and often contradictory, electoral laws. This draft however was not adopted by the Rada. The Commission and its international partners, as well as an important number of electoral experts in Ukraine, have since continued to underline the necessity to adopt a single election code in their recommendations to the Ukrainian authorities.

In 2015, a new draft code, largely inspired by the 2010 draft, was registered by a group of Ukrainian MPs, which included Mr Parubiy, Speaker of the Rada. The draft Code was adopted in first reading in Autumn



A training for national judges on election dispute resolution in Ukraine, Dnipro, March 2019

2017 and in second reading in July 2019. The text was then sent to the newly elected President of Ukraine, Mr Zelensky. On 13 September 2019, the President returned the Electoral Code to the Verkhovna Rada with his observations and proposals, for reconsideration of the text before the end of 2019. The Committee on the Organisation of State Power, Local Governance and Regional Development of the Rada informed the Council of Europe that it would like to hold an exchange of views with the experts of the Venice Commission and that the updated draft could then be submitted for its opinion.

***Support to the National School of Judges for organising regional trainings on electoral dispute resolution.***

During 2018 at the request of the *National School of Judges of Ukraine*, the Venice Commission had contributed to the preparation of training materials on electoral dispute resolution. In February-March 2019, a series of all-Ukrainian training sessions for national judges on election dispute resolution took place in Vinnitsa, Kyiv, Chernivtsy, Kramatorsk, Kharkov, Dnipro and Odessa.

During these training sessions, 117 judges from 30 Ukrainian administrative courts of appeal and regional administrative courts discussed the peculiarities of the application of the electoral legislation in the resolution of election disputes in view of the upcoming presidential elections in Ukraine.

Throughout these training sessions the judges examined the practical aspects of application of the national electoral legislation by courts, the international standards and principles of democratic elections, the key issues of national election law and the European Court of Human Rights' practices in election dispute resolution. The participants also discussed the practical cases of election dispute resolution, which had already taken place during this electoral campaign.

The training sessions were developed by experts from the National School of Judges with the support of the project developed by the Venice Commission in Ukraine.

***Assistance to the Central Election Commission in organising the election process***

In February-March 2019, Venice Commission experts in co-operation with other Council of Europe projects in Ukraine assisted the Central Election Commission in developing 2 practical manuals for members of district and precinct election commissions.

***Co-operation with the Rada on the Election Code of Ukraine***

In 2018-2019, in the framework of the Council of Europe's Action Plan for Ukraine, the Venice Commission provided expert assistance to the working group in charge of the preparation of the final version of the Election Code established by the Committee of the Verkhovna Rada on the Legal Policy and its subcommittee on elections and referenda. As a result of these exchanges most recommendations and suggestions provided by international and national experts were taken into account in the latest version of the Electoral Code.

On 11 July 2019 the Electoral Code was adopted by the Parliament in the second reading. President Zelenskiy vetoed the Code on September 14 and sent it back to the Rada. The working group on the Code of the subcommittee on Elections and Referenda of the Committee on the Legal Policy amended the text in October – November 2019.

On 19 December 2019, following a short debate in the plenary, the Verkhovna Rada of Ukraine adopted the Election Code. The new Election Code harmonised different procedures for presidential, parliamentary and local elections and introduced the proportional electoral system. It also took into account a number of technical recommendations given in legal opinions of the Venice Commission and the Office for Democratic Institutions and Human Rights (OSCE/ODIHR).

***Observation of the 1st round of Presidential elections***

Experts of the Venice Commission accompanied the Parliamentary Assembly of the Council of Europe (PACE) election observation delegation to advise on the legal framework of the Presidential elections held on 31 March 2019 in Ukraine.

### ***Expert support to the Working group on local elections***

In May 2019, a working group on problem analysis and the development of a new electoral law which would regulate the holding of the local elections in Ukraine was set up at the request of the Ministry of Regional Development. From May to September, national experts within the framework of the group conducted an analysis of the problems of holding local elections in Ukraine and developed the Concept of legislative changes in the field of local elections. This concept paper was officially presented at a roundtable organised on 28 October by the Verkhovna Rada's Committee on State Organisation and Local Self-Government and on 28-29 November the main provisions of this Concept were discussed at the IV « Local Self Government » (LSG) Forum in Kramatorsk "Efficient local government as a background of a state based on the rule of law".

## **Transnational activities**

### **Studies and reports**

#### ***Report on the Use of Digital technologies and Elections (CDL-AD(2019)016)***

This report, adopted in June 2019 after its approval by the Council for Democratic Elections, is based on the fact that the internet and social media have opened new opportunities for political participation and have become essential in the electoral process; electronic challenges to democracy, including cybercrime, are nonetheless high and extremely complex, due in particular to the borderless nature of the internet and the private ownership of information. A legal response to these challenges is needed. Some form of regulation is called for, but it has to respect fundamental freedoms, in particular, freedom of expression, the right to privacy and social rights. The key words are adaptability and international co-operation. Additional reflection by the Commission could lead to the identification of principles based on international standards which could guide such regulation and even self-regulation.

#### ***Report on the recall of mayors and local elected representatives (CDL-AD(2019)011rev)***

This report, adopted in June 2019 following its approval by the Council for Democratic Elections, was drafted at the request of the Congress, following the procedure for the recall of the mayor of Chişinău, in order to establish whether the recall was in conformity with international standards. Recall might exist at national, regional or local levels and concerns individual members of the legislature or the executive, or the whole body and be initiated, for example, at the request of the people, of the municipal council or of a national institution. In practice, it existed, in law

and in fact, above all in America (Ecuador, Peru, United States) as well as in Japan; in Europe, it was rather rarely applied. Recall was designed to strengthen the links between elected officials and the electorate but did imply risks. Since recall was a political process, it was not submitted to substantive conditions. In conclusion, recall was rarely used in practice, but it had to be subject to important safeguards and therefore be an exception, and the various aspects of the procedure should be clearly dealt with by the law.

#### ***Report on the inclusion of a not internationally recognised territory in a state's nationwide constituency for parliamentary elections***

Please see Chapter II.

## **Compilations of Venice Commission opinions and reports**

The Commission endorsed three new compilations prepared by the Scientific Council. They concerned:

- ▶ Electoral systems (in general) (CDL-PI(2019)001): This compilation gave an overview of the Commission's statements in this field, particularly regarding possible criteria for the choice of an electoral system and its possible effects.
- ▶ Electoral systems and national minorities (CDL-PI(2019)005), as well as electoral systems and gender representation (CDL-PI(2019)004): These two compilations included both extracts concerning possible effects of different electoral systems on gender and minority representation and extracts dealing with specific measures to ensure such representation, to provide a comprehensive overview.
- ▶ Electoral campaigns (CDL-PI(2019)006): While other compilations were already dedicated to political parties (including their funding) and media and elections, this compilation deals with other aspects of electoral campaigns, including the funding of campaigns as such. The compilation includes: the need to respect fundamental rights, and in particular freedom of expression and of the press, freedom of assembly and freedom of association for political purposes; equality of opportunity; the rules on campaign finance, which must be transparent, and submitted to reporting, auditing and control; expenditure limits as well as reimbursement by the state (public funding).





*11th International Conference on "Cybersecurity and Electoral Justice", Madrid, September 2019*

## **Conferences co-organised by the Commission**

### ***16<sup>th</sup> European Conference of Electoral Management Bodies on "Election dispute resolution" (Bratislava, 27-28 June 2019)***

The Conference was organised by the Venice Commission, the Section for Public Administration of the Ministry of Interior of the Slovak Republic and the State Commission for the Elections and Control of Political Parties Funding of the Slovak Republic. It recalled the importance of international texts and standards as well as international and domestic case-law. The Conference also covered the main aspects of the settlement of electoral disputes, starting with the recurrent problems observed in member states, but also: competent bodies, standing, time-limits, grounds for complaints and decisions open to challenge. The Conference finally discussed how to make election dispute resolution more accessible and effective and drew up a few recommendations, among others: the necessity to provide clear and consistent procedures for complaints and appeals so as to avoid excessive complexity; the recommendation that the states should have the obligation to prevent and sanction irregularities and violations of electoral legislation; or the need to clarify the legislation with regard to the cases of partial or full cancellation of election results.

Around 100 participants from 37 countries attended the Conference, representing national electoral management bodies and other bodies involved in electoral processes, as well as judges, academics and representatives of non-governmental organisations. Several international institutions were also represented at the conference.

### ***11 International Congress on Cyber Security and Electoral Justice - "Exponential progress of technology and misinformation and its impact on electoral campaigns in social networks" (Los Cabos, 5 November 2019)***

A delegation of the Commission participated in this international event co-organised by the Electoral Tribunal of the Judicial Power of the Federation of Mexico, the Chair of Military Law UCM-Ministry of Defence, the Center for Political and Constitutional Studies and the Research Group on new technologies and Democracy of the Complutense University of Madrid. The mechanisms to guarantee the security of electoral processes and the impact of the use of social networks in electoral campaigns were discussed. The members of the delegation presented the Commission's report on "Digital Technologies and Elections".

### ***Third Plenary Assembly of the World Network of Electoral Justice, (Los Cabos, 6-7 November 2019)***

Please see Chapter V.

### ***Octopus Conference on Cybercrime (Strasbourg, 20-22 November 2019)***

The Venice Commission participated in the Octopus Conference 2019: "Co-operation against Cybercrime", organised by the Council of Europe Cybercrime Division. The Commission co-organised on 22 November 2019 Workshop No. 5 of the Octopus Conference, which was dedicated to cybercrime, "fake news" and election interference, where several representatives intervened on behalf of the Commission. The workshop was attended by around 250 participants from all continents.



14th Inter-American Meeting of Electoral Management Bodies, Panama City, November 2019

## VOTA, the commission's electoral database

The VOTA database was set up in 2004 as part of the joint Venice Commission and European Commission programme “Democracy through free and fair elections”. It contains the electoral legislation of the Venice Commission’s member states and other states involved in the Commission’s work and it proposes a search tool as well as a systematic thesaurus. The texts of relevant laws from about 50 states, as well as Venice Commission opinions in the field of elections, are available in the database, in English, French, as well as in Spanish (<https://vota.te.gob.mx/>). This database is now jointly managed with the Electoral Tribunal of the judicial Power of the Mexican Federation (*Tribunal electoral del poder judicial de la Federación, TEPJF*), which has given support to the database technically, adding new features, as well as indexing and adding new documents.

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

## Other conferences and meetings

### Legal Assistance to PACE delegations observing elections

- ▶ Belarus – Parliamentary Elections – 17 November 2019
- ▶ North Macedonia – Presidential Elections – 21 April and 5 May 2019
- ▶ Republic of Moldova – Parliamentary Elections – 24 February 2019
- ▶ Ukraine – Presidential Elections (1st round) 31 March 2019

### European Union

- ▶ Meeting organised by the European Data Protection Supervisor (EDPS) on the fight against online manipulation and abuse of personal data in political campaigning (Brussels, 11 February 2019).

### OSCE/ODIHR

- ▶ Annual Meeting of the Core Group of Experts on Political Parties (Warsaw, 12 January 2019);
- ▶ OSCE/ODIHR Seminar on Election dispute resolution (Vienna, 1 October 2019);
- ▶ 14<sup>th</sup> Annual implementation meeting for endorser of the Declaration of principles for international election observation (Warsaw, 20-21 November 2019);

### Association of European Election Officials (ACEEEO)

- ▶ 28<sup>th</sup> Annual Conference of the Association of European Election Official (ACEEEO), on the theme “Judicial protection of electoral rights and the transparency of elections” (Ljubljana, 25-26 September 2019). For more information please see Chapter VI.

### Organisation of American States (OAS)

- ▶ 14<sup>th</sup> Inter-American Meeting of Electoral Management Bodies (13-14 November 2019, Panama City).

For more information please see Chapter VI.

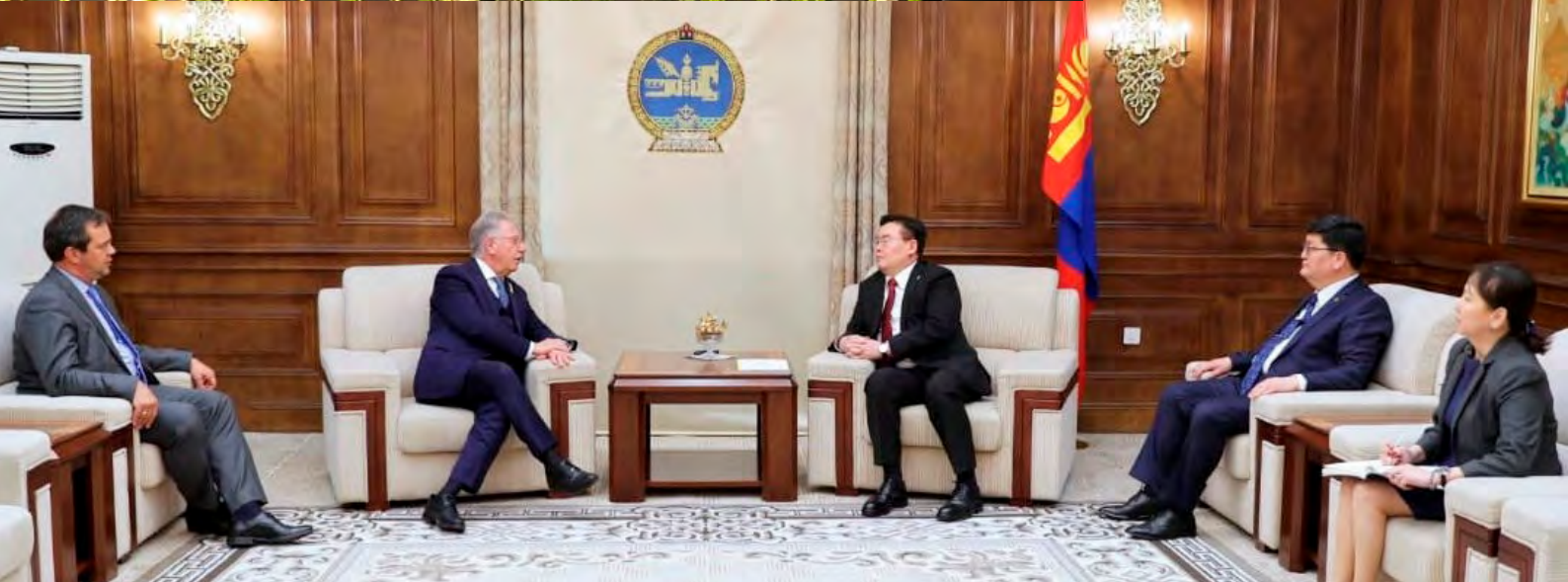
### Organisation of Arab Electoral Management Bodies

Please see Chapter V.



President of the Commission Mr Gianni Buquicchio at the Third Plenary Assembly of the World Network of Electoral Justice, Los Cabos, November 2019

President of the Commission Mr Gianni Buquicchio meeting Speaker of the Mongolian Parliament Mr Gombojavyn Zandanshatar, Ulaanbataar, June 2019



4th Coordination Meeting of the UniDem Campus project for the Southern Mediterranean, Rabat, March 2019

## V. CO-OPERATION IN THE COUNCIL OF EUROPE NEIGHBOURHOOD AND BEYOND<sup>16</sup>

### Mediterranean Basin

#### Country-specific activities

##### Morocco

###### *Ombudsman Institution*

From 8-11 July 2019, two study visits were organised for officials from the Ombudsman Institution of the Kingdom of Morocco, within the Ombudsman Institution of Wallonia and the Wallonia-Brussels Federation as well as within the Spanish Defender of the People.

On 23-24 October 2019, the Commission organised in Rabat, in co-operation with the Ombudsman Institution of the Kingdom of Morocco and with the Association of Mediators and Ombudsman of the Francophonie (AOMF), the Parliamentary Assembly of the Francophonie and the International Organisation of the Francophonie (OIF), a conference on “Children’s rights, a priority for parliamentarians and ombudsman of the Francophonie”. This conference brought together more than 70 people.

On 26-27 November 2019, the Commission organised in Rabat, in co-operation with the Association of Mediterranean Ombudsmen (AOM), a training session for Ombudsmen collaborators on the topic “Own initiative”. This training session gathered together participants from Albania, Algeria, Croatia, Greece, Jordan, North Macedonia, Morocco, Portugal, Slovenia and Turkey.

##### Tunisia

###### *Opinion on the Draft Organic Law on the Authority for Sustainable Development and the Rights of Future Generations (CDL-AD (2019(013)).*

Following a joint request from the Minister assigned to the Head of Government with responsibility for

relations with independent institutions and civil society and human rights, Mr Mohamed Fadhel Mahfoudh, and the Chairperson of the parliamentary committee on industry, energy, natural resources, infrastructure and the environment, Mr Amayeur Laarayedh, the Commission analysed the institutional questions of this body, essentially basing itself on the Paris Principles and “the Venice Principles”, in the light of the national legal framework, and also taking due account of best practices and trends observed by existing similar bodies. The opinion provides not only a detailed legal analysis but also numerous alternative recommendations in order to ensure the best possible functioning of such an institution.

###### *Supporting independent bodies of Tunisia (project PAII-T)*



In 2019 the Venice Commission provided specific support to the strengthening of the independent bodies of Tunisia (PAII-T project) funded by the Council of Europe and the European Union and implemented by the Council of Europe. This bilateral project (2019-2021) was launched in June 2019. The Venice

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



Meeting between the independent constitutional bodies and civil society on the “Legislative framework for the independent public bodies in Tunisia”, Tunis, August 2019

Commission’s expertise was sought with regard to the finalisation of the regulatory framework of all Tunisian independent bodies some of which has been created by the 2014 Constitution. Seminars and workshops organised by the Venice Commission in 2019 aimed at supporting the process of institution building so that the independent institutions of Tunisia can exercise their powers in an effective, efficient and accountable manner.

***Round table on legal framework for independent bodies in Tunisia (Tunis, 8 August 2019)***

At the proposal of the Tunisian authorities the Council of Europe office in Tunisia and the Venice Commission co-organised a meeting between the independent constitutional bodies and civil society focused on the latest legislative initiatives concerning the independent bodies in Tunisia.

The Venice Commission is involved in the evaluation of the legal framework for the functioning of the independent bodies of Tunisia. This activity is part of the joint EU - Council of Europe programme entitled ‘Project of assistance to independent institutions in Tunisia’ (PAII-T).

This event was followed by a meeting of a technical group composed of representatives of different institutions on 9 August 2019.

***Tunisian independent bodies: the keys to a successful communication policy: seminar (Tunis, 3 October 2019)***

On 3 October 2019 a meeting took place in Tunis to discuss the issues of strategic communication and ways to improve the visibility of the institutions and structure their communication in their day-to-day relations with civil society, other state bodies, the authorities, the private sector, and the media. The participants in the seminar also reflected on horizontal communication issues and the ways to improve co-ordination between the various independent bodies in the field of communication and make it more coherent. Recommendations were formulated at the end of the seminar with the aim of guiding future activities in

terms of strategic communication of Tunisian independent bodies.

***Presentation of a report on the legal framework for independent bodies (Tunis, 5 November 2019)***

The Venice Commission organised on 5 November 2019 a meeting in Tunis to present the report on the state of independent institutions. This meeting was an opportunity to discuss with representatives of independent bodies some issues related to the finalisation of their normative framework as well as to their establishment and operation by analysing the achievements and the lessons learned and providing some recommendations. The question of independence and more specifically the budgetary issues were discussed in the light of the new texts related to independent bodies. Finally, the question of control whether it is its nature, its reference system and its impact on the instances was approached as an indispensable axis in the establishment of the “diagnosis”.

***Seminar on “the budget and financial autonomy of the Tunisian independent bodies” (Tunis, 17 December 2019)***

On 17 December 2019 a seminar in Tunis enabled budgetary issues and the financial autonomy of the Tunisian independent institutions to be discussed in the light of the new legislative texts. Participants discussed certain aspects relating to the financial and administrative autonomy of the institutions and in particular budgetary questions, in the light of new legislative texts such as the Organic Law on the Budget adopted in 2019. The questions of the establishment and adoption of the budget of (constitutional and other) bodies were also examined, as well as the nature of the budgetary control exercised over these bodies. International experience was also presented, and recommendations were formulated to guide the Tunisian independent bodies towards an improved accountability and efficiency.



9th UniDem Campus Med Regional Seminar, Marrakesh, June 2019

## Regional co-operation

### *Campus UniDem Med*

In 2019 the Venice Commission extended co-operation activities with its Southern Mediterranean partners aimed at supporting the modernisation of the civil service in the region. Two regional UniDem Med seminars were organised in 2019 respectively in Marrakech, Morocco "Towards a public service closer to the citizens: models and good practices" (12-14 June 2019) and in Amman, Jordan "Leading Innovation in the Civil Service: from Rule of Law Standards to Leadership", (4-6 November 2019). The seminars saw the participation of more than 120 senior civil servants from five southern Mediterranean countries namely Algeria, Jordan, Morocco, Palestine and Tunisia. They exchanged on a peer-to-peer basis best practices in the field of innovation of the civil service against the backdrop of respect of the principles of rule of law and democracy with European experts (Estonia, France, Germany, Greece, Italy, Portugal, Switzerland and the United Kingdom). The two seminars were funded by the financial contribution of Norway and the joint Council of Europe – European Union "Ensuring Sustainable Democratic Governance and Human Rights in the Southern Mediterranean", South Programme III. The needs and the priorities of the southern Mediterranean partners were discussed during the annual co-ordination meeting in Rabat, Morocco on 5 March 2019, which also served to determine the topics of the 2019 UniDem Med seminars.

### *7<sup>th</sup> Intercultural workshop on democracy (Strasbourg, 28-29 October 2019)*

The Venice Commission, in co-operation with the Consultative Council of European Judges (CCJE) and the European Commission for the efficiency of Justice (CEPEJ) organised the 7<sup>th</sup> Intercultural Workshop on Democracy entitled: "The High Councils for the Judiciary and the independence of the judiciary". The workshop, held in Strasbourg from 28 to 29 October 2019, brought together Presidents of High Councils for the Judiciary, judges and leading experts from European and Southern Mediterranean countries (Algeria, Egypt, Jordan, Lebanon, Morocco and Tunisia). This regional event was organised under the auspices

of the French Presidency of the Committee of Ministers of the Council of Europe. Various topics were discussed during the meeting, namely the constitutional and legislative framework governing the High Councils for the Judiciary and similar bodies (HCJs), the procedure for appointing/electing members of the HCJs, the powers of the HCJs and the interaction between the HCJs and the executive and legislative powers.

### *3<sup>rd</sup> General Assembly of the Arab Electoral Management Bodies and Conference on the electoral dispute resolution (Sweimeh, 3-5 February 2019)*

The Venice Commission, the United Nations Development Programme (UNDP) and the Independent High Electoral Commission of Jordan contributed to the organisation of the 3<sup>rd</sup> General Assembly of Arab Electoral Management Bodies (Arab EMB). The Assembly which took place in Sweimeh, Jordan from 3 to 5 February 2019 was followed by an international conference on electoral dispute resolution. The conference gave an opportunity to the Electoral Management Bodies from Arab states to exchange views about the international principles and standards in the field of electoral complaints and to identify the key challenges facing the Arab EMBs and the judiciary in charge of electoral dispute resolution.

### *International symposium on "Administrative Justice and Electoral Disputes" (Gammarth, Tunis, 12-13 December 2019)*

This Symposium was organised in Tunis on 12-13 December 2019 by the Administrative Tribunal of Tunisia, the Venice Commission and the German IRZ Foundation with the support of the European Union and the Council of Europe in the framework of the joint Council of Europe-European Union project "Improving the functioning, performance and access to justice in Tunisia (AP- JUST)" and the Arab Union of Administrative Justice. Speakers from several European (Germany, France and Italy) and Arab (Egypt, Jordan, Lebanon and Tunisia) countries were able to share their experience in the field of electoral litigation and engage in discussions on ways to improve the work of the competent courts in Tunisia and other countries in the region.

The President of the Venice Commission, Mr Gianni Buquicchio, underlined the excellent co-operation in this field with the Administrative Tribunal of Tunisia, ISIE and other authorities and institutions with similar mandates in the region. He also drew the participants' attention to international standards relating to electoral disputes, in particular those developed by the Venice Commission.

The conclusions of this symposium highlight the progress made by Tunisia in its quest to guarantee sincerity in elections since the 2011 revolution. They contain a catalogue of recommendations aimed at further promoting transparency and supporting democratic transformation in Tunisia. These recommendations are addressed to the legislator, the executive and judicial authorities, including the High Council of the Judiciary, the High Authority for Audiovisual Communication (HAICA), ISIE, political parties and election candidates.

## Central Asia

### Country-specific activities

In 2019, the Venice Commission pursued its co-operation with the different national institutions of Kazakhstan, Kyrgyzstan and Uzbekistan. Apart from the participation of the Commission's representatives in different multilateral meetings, the action was focused on assistance to the Kyrgyz authorities in the electoral field.

#### Kyrgyzstan

##### *Publication of the comprehensive analysis of judicial practice in the field of electoral complaints*

In the framework of the project of co-operation with Kyrgyzstan a Venice Commission expert in co-operation with the Supreme Court prepared a review of judicial practice in the field of electoral complaints during the period of preparation and conduct of the Parliamentary elections in 2015, as well as Presidential elections in 2011 and 2017. The review included procedural legal and substantive aspects of the system for electoral dispute resolution, as well as conclusions and proposals for further normative activities. The review was presented and discussed by the members of the Supreme Court of the Kyrgyz Republic and published in print and online on the Venice Commission's website.

##### *Preparation of the experts' recommendations on the draft laws in the framework of the implementation of the "Strategy on development of the electoral legislation in the Kyrgyz Republic 2018-2020"*

In February 2019 experts of the Venice Commission prepared individual comments and recommendations on three packages of amendments related to the electoral legislation in the Kyrgyz Republic. These texts were shared with the Central Electoral Commission (hereafter CEC), members of the Working Group on electoral reform and MPs. The first package was adopted by the Parliament in June 2019 and signed by the President of the Kyrgyz Republic on 13 August 2019. It was planned to finalise the texts of the second and third package and to send the amended texts to the Jogorku Kenesh in Autumn 2019. However, only the text of the second package was finalised and sent to the Parliament by the end of 2019. The Kyrgyz Parliament made an official request for a joint OSCE and Venice Commission opinion on the second package in December 2019. The joint opinion is to be adopted at the plenary session in March 2020.

##### *Exchanges of views on improving the mechanisms to prevent and sanction violations related to the electoral legislation in the Kyrgyz Republic (Bishkek, 29 March 2019)*

Experts of the Venice Commission contributed to the discussions of the amendments of the Criminal Code, the Code of Misconduct, the Code of Violations (Offences) and the Administrative Procedural Code of the Kyrgyz Republic related to sanctioning electoral violations. The Venice Commission organised an expert meeting on 29 March 2019 in Bishkek with the purpose of discussing the experts' recommendations and supporting the CEC with obtaining expertise on this package of amendments, to finalise it and submit it to the Parliament. Participants considered that the recommendations provided useful suggestions for the follow up and improving the draft laws. It was agreed that the Presidential Working groups on improvement of the electoral legislation and on the monitoring of the judicial reform would follow up on the recommendations and jointly elaborate pre-final draft laws.

On 12 July 2019 a second discussion of the amendments to the sanctions package was organised. The discussion took place in Strasbourg with the participation of the Venice Commission experts and representatives of the Working Groups on improvement of the electoral legislation and on the monitoring of the judicial reform. Participants had a fruitful exchange on the well-established standards and fundamental principles pertaining to legal sanctions for electoral infringements and stemming from the European Convention on Human Rights and the case law of the European Court of Human Rights. The experience of different Council of Europe countries in imposing legal sanctions for vote buying was presented to the participants. The discussion also focused on powers and practical experience of relevant national authorities in establishing the fact of vote buying and bringing the authors of violation to liability. The

exchange contributed to the preparation of amendments to the draft law on sanctions for violations of electoral legislation.

***Seminars “The Impact of the Social Media and the Internet on Election Processes in the Kyrgyz Republic” (Bishkek, 25 April 2019; Koi-Tash, 15-16 June 2019)***

The first seminar was organised in co-operation with the Centre for Media Development (Kyrgyzstan) on 25 April 2019 in Bishkek. The aim of the seminar was to share experiences and prepare recommendations on effective ways to implement new digital media tools within the context of societies in transition. 42 participants attended the seminar representing media, the Central Electoral Commission (CEC), NGOs, legal professionals, media complaints commission, gender organisations, international experts and international organisations. The participants discussed how to find a balance between state or private interests and freedom of speech and between freedom of speech and protection of privacy. International experts provided an overview of possible useful instruments, rules and practices used in different countries to legitimise social media activities during the electoral process.

Following the success of the seminar organised in April 2019, the Centre for Media Development asked the Venice Commission to organise a similar activity for media representatives from the regions of the Kyrgyz Republic. 35 participants from 5 regions (media organisations, NGOs, legal professionals, members of the Central Electoral Commission and international organisations) took part in the second seminar which was organised on 15-16 June 2019 in Koi-Tash. One of the topics of the seminar was the use of internet tools and social networks by the CEC, regulation of the campaign in networks, analysis of the prerequisites for the use of modern media by participants in the electoral process, as well as an analysis of opportunities and limitations, the risks and benefits of social networks and the internet compared to traditional media.

***Study visit “Council of Europe and its standards” (Strasbourg, 10-12 July 2019)***

Twenty participants, representing the Kyrgyz national authorities and NGOs, took part in the study visit to Strasbourg on 10-12 July 2019. The participants got acquainted with the work of the Council of Europe and attended the Grand Chamber public hearing at the European Court of Human Rights (*case Centrum för rättvisa v. Sweden* (no. 35252/08)).

A workshop on gender equality issues in the electoral process was organised in the framework of the study visit. The participants were informed, amongst other issues, about the experience of Bosnia and Herzegovina and the Netherlands on the participation of women in the electoral process and the representation of women in politics. The UNDP and UN Women's

Publication “Inclusive Electoral Processes: A guide for Electoral Management Bodies on Promoting Gender Equality and Women Participation” was presented to the participants as a useful resource on how electoral management bodies can get the necessary capacity and resources to ensure that a gender equality perspective was mainstreamed at every stage of the process. The participants were also informed about the opinions of the Venice Commission, Committee of Ministers' Recommendations and relevant cases of the ECHR on gender equality.

***Expert visit on the results of the project (13 - 14 June 2019 to Bishkek)***

In order to evaluate the project “Support to Strengthening Democracy through Electoral Reform in the Kyrgyz Republic”, an expert visit was conducted on 13 - 14 June 2019 to Bishkek. Four Venice Commission experts held meetings with the main partners of the project: the State Registration Service, the CEC, IFES, the OSCE, UNDP, NDI, IRI, the NGO consortium, the Office of the President of the Kyrgyz Republic, the Jogorku Kenesh and the Supreme Court. Following the visit, the experts drafted contributions which were used during the preparation of the Public Policy Eligibility and Performance indicator report for the EU Delegation in Bishkek and to finalise the final report of the project.

These events were organised by the project “Support to Strengthening Democracy through Electoral Reform in the Kyrgyz Republic” implemented by the Venice Commission with funding provided by the European Union and the Council of Europe.

## **Uzbekistan**



*Tashkent Law Spring Forum, Tashkent, April 2019*

At the request of UNDP and the Uzbek authorities the Venice Commission contributed to the organisation of three training activities for members of the Central Electoral Commission, territorial commissions and judges of ordinary courts on international standards concerning the electoral complaints and appeals



procedures. These events took place in Tashkent from 22 to 23 November 2019. These training sessions focused on such issues as appeals procedures in different jurisdictions, the problem of “reasonable time” in electoral disputes, procedural aspects of complaints and execution of courts decisions.

***Follow-up to the Joint Opinion on the draft Election Code of Uzbekistan (CDL-AD(2018)027)***

Following a request from the Central Election Commission of Uzbekistan, the Venice Commission and the OSCE/ODIHR issued a joint opinion on the draft Election Code of Uzbekistan in October 2018.

The Election Code was adopted by the Legislative Chamber and approved by the Senate in March 2019 and entered into force in June 2019. Translations were different as well as the numbering of a number of provisions. Despite these differences, the adopted Election Code did not seem different from the draft Code submitted for review.

The 2018 opinion had underlined several positive developments in the electoral legal framework of Uzbekistan, including: the codification of separate electoral laws, the removal of provisions for reserved seats, more transparency in the work of election commissions, support signature requirements, the establishment of a single electronic voter register, and a better equality of opportunities and conditions for contestants, during the campaign period.

However, the adopted Election Code failed to address long-standing recommendations raised in the 2018 opinion, in particular:

- ▶ To review the overall campaign finance 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, which should be assessed during the next elections;
- ▶ To ensure transparency of tabulation and publication of election results.

## Mongolia

***Conference on the “Separation of powers and the Constitutional Court” (Ulaanbaatar, 6-7 June 2019)***



The Constitutional Court of Mongolia and the Venice Commission organised a conference on “Separation of powers and the Constitutional Court” in Ulaanbaatar, 6-7 June 2019. Representatives of constitutional courts and international experts focused on such issues as relations of Constitutional courts with executive, legislative powers and the judiciary. The discussion enabled exchanges on possible ways of ensuring the independence of constitutional justice. The President of the Venice Commission, Mr Gianni Buquicchio, participated in the event. On the side-lines of the conference organised with the Constitutional Court, Mr Buquicchio met with the Speaker of Parliament, Mr Gombojavyn Zandanshatar and the President of Mongolia, Mr Khaltmaagiyn Battulga and discussed the proposed reforms in the field of the judiciary and elections.

## Latin America

### Argentina

***International seminar on good practices in electoral matters (Buenos Aires, 30 May 2019)***

This seminar was organised by the Commission in co-operation with the National Electoral Chamber and the Ministry of Interior of Argentina. A Venice Commission delegation, led by its President Mr Buquicchio, participated in the event. The Commission’s documents such as the Code of Good Practice in Electoral matters were in the centre of the discussions. The Commission members delivered reports on transparency in electoral financing and the French experience in conducting presidential debates. The Venice Commission delegation was also invited to attend the ceremony of signature by representatives of political parties, social networks and internet intermediaries of an Act of Good Conduct aimed at preserving the democratic debate during 2019 elections.

In addition, on 21 September 2019 in Strasbourg, President Buquicchio and Mr Alberto Dalla Via, Vice President of the Electoral Tribunal of Argentina exchanged views on the situation in the country and co-operation with the Venice Commission.

## Mexico

In 2019 the Venice Commission and the **National Electoral Institute** of Mexico signed a Memorandum of Understanding that will enable more active exchanges between the two organisations. The two institutions have been co-operating since 2005 and successfully promote international standards and best practices in the field of elections.

### *IX Forum of Latin American democracy “Challenges of politics and democracy in the digital age” (Mexico, 4 – 5 April 2019)*



The President of the Venice Commission, Mr Gianni Buquicchio, co-opened the IX edition of the prestigious Forum of Latin American Democracy. This year the topic was “Challenges for politics and democracy in the digital age”.

The Forum was organised by the National Electoral Institute of Mexico. Many international organisations such as OAS, International IDEA, IFES, IIDH as well as prominent representatives of Latin American countries were also involved in the Forum.

### *Third Plenary Assembly of the World Network of Electoral Justice (Los Cabos, 6-7 November 2019)*

A delegation of the Venice Commission participated in the 3<sup>rd</sup> Plenary Assembly of the Global Network of Electoral Justice on 6-8 November 2019 in Los Cabos, Mexico, debating on mechanisms of representation, equal access to electoral justice and democracy and corruption. The event was attended by 105 experts, representing 39 electoral authorities from 33 countries, as well as 12 international organizations, 8 academic institutes, 7 private actors, 7 independent experts and 1 observer. This conference aimed to strengthen the synergies within the Network, update the global agenda on electoral justice in accordance with the current challenges to democracy, and identify new and shared strategies.

The conference participants shared their experiences and best practices on the themes of mechanisms of representation, equal access to electoral justice, democracy and corruption, and the use of social media. Each plenary session was divided into 3 working groups that focused on the subtopics related to the main themes of the event. These working groups were led by panels with a balanced representation of national authorities, international organisations, continents and genders. The President of the Venice Commission delivered a speech during the opening ceremony and the Deputy Secretary made a presentation at the first plenary session on “The Electoral Processes in Europe in the period December 2018-November 2019” reporting on the achievements and challenges of the relevant election processes with particular reference to access to electoral justice.

## Peru

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

By letter dated 16 August 2019, Mr Pedro Oleachea Álvarez-Calderón, Speaker of the Congress of the Republic of Peru requested an opinion of the Venice Commission on the issue of linking constitutional reform to a question of confidence.

The request by the Speaker referred to a letter sent by Ms Rosa María Bartra Barriga, Chair of the Committee on Constitution and on Rules of Procedure of the Congress on 24 June 2019, informing the Venice Commission about the conflict between the President and his government on one side and the majority in the Congress on the other.

On 31 July 2019, the President of the Republic and the President of the Cabinet (Consejo de Ministros) sent to the Congress an “urgent” proposal for constitutional amendment to bring forward the next general congressional and presidential elections from 2021 to 2020 and to forbid anyone who has held presidential office to run for immediate re-election. The proposal was sent to the Congress and, if approved, would be submitted to a national referendum.

The opinion was prepared on the basis of comments provided by the rapporteurs who all worked on the texts in Spanish provided by the authorities of Peru. On 23-24 September 2019, a Venice Commission delegation travelled to Lima to meet with the President of the Congress, the Bureau of the Congress and the President of the Committee of the Constitution as well as the different political groups in the Congress, the President of the Cabinet, the Vice-President of Peru, the Minister of Justice, the Deputy Minister of Foreign Affairs, the Constitutional Court, the Ombudsman and a group of national experts in the field of constitutional

law. The delegation also attended a special meeting of the Committee of the Constitution.

The draft opinion prepared after the visit concluded that the Peruvian Constitution did not set forth any explicit limitations with respect to the issues which may be linked to a question of confidence. The Constitutional Tribunal of Peru was to decide whether proposals for constitutional amendments might be linked to a question of confidence. In comparative law, linking constitutional amendments to a question of confidence is unusual.

The Commission underlined that any constitutional amendment process should preserve the principle of the separation of powers and the requirement of checks and balances between the President and the Congress. The power of the President to link a question of confidence to constitutional amendments may create a risk of being used to alter this balance. The threat of dissolution after a second vote on a question of confidence may make it difficult for Congress to resist attempts to alter it in favour of the President. In Peru some substantive limitations to constitutional amendments seem to exist, such as the principle of separation of powers or the republican form of government, which might provide a safeguard, but their scope is not clearly defined.

The final opinion was discussed at the joint meeting of the Sub-Commissions on Democratic Institutions and on Latin America (Venice, 10 October 2019) and was subsequently adopted by the Venice Commission at its October plenary session.

### Other conferences and meetings

The Commission participated in the following other events in 2019:

- ▶ On 24 – 25 January 2019 the President of the commission Mr Gianni Buquicchio and the Deputy Secretary of the Commission attended the ceremony of the 5th anniversary of the adoption of the Tunisian Constitution.
- ▶ Berlin, 2 April 2019 a representative of the Venice Commission presented the Venice Commission's



*President of the Commission Mr Gianni Buquicchio and President of Tunis Mr Beji Caid Essebsi, Tunis, April 2019*

work in the field of elections, referendums and political parties to a Delegation from the Electoral Reform Committee of Malaysia during their study visit to Germany 30 March - 4 April 2019.

- ▶ On 25 April 2019 the Vice-President of the Venice Commission, Mr M. Frenco took part in the Tashkent Law Spring Forum organised by the Ministry of Justice of Uzbekistan.
- ▶ 13 – 14 November 2019 the Venice Commission was invited to participate in the XIV<sup>th</sup> Inter-American Meeting of Electoral Management Bodies. The event was co-organised by the Electoral Tribunal of Panama and the Organisation of American States. Please see Chapter VI.





*Director General of the Directorate General of Rule of Law and Human Rights Mr Christos Giakoumopoulos, President of the Venice Commission Mr Gianni Buquicchio, former President of the Parliamentary Assembly Ms Liliane Maury Pasquier, Member of the Parliamentary Assembly Mr Mart van de Ven, and Mr Wojciech Sawicki, Secretary General, Parliamentary Assembly, Alliance of Liberals and Democrats for Europe. March Plenary Session of the Commission, Venice, March 2019*

# 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 of the Council of Europe regularly participate in the plenary sessions of the Venice Commission. In 2019 the following Ambassadors, Permanent Representatives to the Council of Europe, addressed the sessions (in alphabetical order of countries):

- ▶ Ambassador Albana Dautllari, Permanent Representative of Albania
- ▶ Ambassador Rolf Mafael, Permanent Representative of Germany
- ▶ Ambassador Roeland Böcker, Permanent Representative of the Netherlands
- ▶ Ambassador Aleksandra Djurović, Permanent Representative of Serbia
- ▶ Ambassador Manuel Montobbio, Permanent Representative of Spain
- ▶ Ambassador Meglena Kuneva, Head of the European Union Delegation to the Council of Europe

At the Commission's June plenary session, Ms Kara McDonald, Consul General, Deputy Permanent Observer of the United States of America to the Council of Europe underlined that Venice Commission opinions served as instrumental tools in diplomacy on a wide range of issues related to constitutional, electoral, and judicial reforms.

On 12 June 2019 the President of the Commission presented the 2018 Annual Report of Activities of the Venice Commission to the Committee of Ministers of the Council of Europe.

"The Venice Principles" on the Ombudsman institution were endorsed by the Committee of Ministers at the 1345<sup>th</sup> meeting of the Ministers' Deputies, on 2 May 2019. The Deputies invited governments, parliaments and other competent authorities of the member states to take into account these Principles and to disseminate them widely within the circles concerned and invited the Secretary General to transmit them to other international organisations for information. On 16 October 2019, the Committee of Ministers adopted Recommendation CM/Rec(2019)6 to member states on the development of the Ombudsman institution. The Chairman of the Scientific Council of the Venice Commission participated in an informal meeting of the Ministers' Deputies on the respective contribution of national human rights institutions and ombudsmen to human rights and the rule of law, on 5 September 2019.

At the request of the Committee of Ministers the Commission adopted "Comments on PACE Recommendation 2163 (2019) on Ombudsman Institutions in Europe - the Need for a Set of Common Standards"<sup>17</sup>.

Under the auspices of the French Presidency of the Committee of Ministers of the Council of Europe the Venice Commission, in co-operation with the Consultative Council of European Judges (CCJE) and the European Commission for the efficiency of Justice (CEPEJ) organised the 7th Intercultural Workshop on Democracy entitled: "The High Councils for the Judiciary and the independence of the judiciary" (Strasbourg, 28-29 October 2019). For more information please see Chapter V.

17. Cf.CDL-AD(2019)035

## Parliamentary Assembly

In 2019 the Commission and the Assembly continued their fruitful co-operation.

Ms Thorhildur Sunna Ævarsdóttir and Mr Sergiy Vlasenko, Chair and a member of the Committee on Legal Affairs and Human Rights of the Parliamentary Assembly respectively, participated in the 2019 sessions of the Venice Commission.

During the March plenary session in the presence of Ms Liliane Maury Pasquier, President of the Parliamentary Assembly, the Venice Commission's Enlarged Bureau and the Presidential Committee discussed the following four subjects:

- ▶ How the Assembly can ensure effective follow-up to the opinions of the Venice Commission;
- ▶ How the Assembly can strengthen the rule of law and in this respect, the importance of the Venice Commission's Rule of Law check-list;
- ▶ The issue of Referendums and the revision of the Code of Good Practice on Referendums which dates from 2007;
- ▶ The excellent co-operation between the Parliamentary Assembly and the Commission on electoral observation.

## Opinions requested by the Assembly

In 2019, at the request of the Parliamentary Assembly, the Venice Commission adopted the following texts:

- ▶ Bosnia and Herzegovina - Joint Opinion on the Legal Framework Governing the Freedom of Peaceful Assembly in Bosnia and Herzegovina, in its two entities and in Brčko District<sup>18</sup>
- ▶ Report on the compliance with Council of Europe and other international standards of the inclusion of a not internationally recognised territory into a nationwide constituency for Parliamentary elections<sup>19</sup>
- ▶ Romania – Opinion on Emergency Ordinances GEO No. 7 and GEO No. 12 amending the Laws of Justice<sup>20</sup>
- ▶ Ukraine - Opinion on amendments to the legal framework governing the Supreme Court and judicial governance bodies<sup>21</sup>
- ▶ Ukraine - Opinion on the Law on Supporting the Functioning of the Ukrainian Language as the State Language<sup>22</sup>

18. CDL-AD(2019)026

19. CDL-AD(2019)030

20. CDL-AD(2019)014

21. CDL-AD(2019)027

22. CDL-AD(2019)032

Also in 2019 the Legal Affairs Committee requested a Venice Commission opinion on the limits that can be placed on freedom of speech and assembly of politicians under Articles 10 and 11 of the ECHR. The Commission started preparing a report to clarify in which circumstances, if any, the European Convention of Human Rights allows the criminalisation of calls by politicians or representatives of civil society for radical constitutional changes by peaceful means. This request followed the discussion on a report entitled "Should politicians be prosecuted for statements made in the exercise of their mandate?" In his introductory memorandum on the subject, the rapporteur relied on the Venice Commission's opinions *inter alia* the opinion on the mass withdrawal of parliamentary immunity in Turkey.

## Promoting European standards together

### References to the Commission's texts

The Legal Affairs Committee extensively used the documents of the Venice Commission on such issues as the establishment of a EU mechanism on democracy, the rule of law and fundamental rights, the implementation of judgments of the European Court of Human Rights, on Ms Caruana Galizia's case<sup>23</sup>, and on "Ombudsman Institutions in Europe – the need for a set of common standards".

The PACE report on "Daphne Caruana Galizia's assassination and the rule of law, in **Malta** and beyond: ensuring that the whole truth emerges", largely relies on the Venice Commission's assessments on **the checks and balances** in the Maltese constitutional order. PACE called on the Maltese authorities to continue consulting the Venice Commission on the implementation of reforms. The post-monitoring dialogue with **Bulgaria** on specific subjects such as the **independence of the judiciary** was based *inter alia* on the opinions by the Venice Commission.

During its session held from 30 September to 4 October 2019, the Assembly celebrated the Council of Europe's 70<sup>th</sup> anniversary and adopted several resolutions relevant to the Venice Commission, including a resolution on "independence and common standards for **Ombudsman** institutions".<sup>24</sup> This resolution was drafted in close co-operation with the Venice Commission. Its objective was to raise awareness of "the Venice Principles" in political spheres and generate support for ombudsman institutions, which are under pressure in several Council of Europe member states.

### Participation in PACE activities

23. [PACE Resolution on Daphne Caruana Galizia's assassination and the rule of law in Malta and beyond: ensuring that the whole truth emerges](#)

24. [Resolution on Ombudsman Institutions in Europe – the need for a set of common standards](#)



President of the Commission Mr Gianni Buquicchio addressing the Parliamentary Assembly of the Council of Europe, January 2019

On 22 January 2019 President Buquicchio took part in the debate of the Parliamentary Assembly on guidelines to ensure **fair referendums** in Council of Europe member states (see below).

On 16-17 May 2019 in London at the meeting of the PACE Monitoring Committee, the Secretary and the British member of the Commission presented the opinions of the Commission on Poland and on Georgia. On that occasion the Committee reiterated its request of 2015 for opinion on the citizens' security law of Spain. Hitherto the Commission had not examined the draft law due to repeated elections in Spain and the fact that it is pending before the Constitutional Court.

On 29 May 2019 in Paris, the Commission was invited to exchange views with the PACE Committee on Legal Affairs and Human Rights, in the framework of the report "Ombudsman institutions in Europe – The need for a set of common standards" which proposes that the Parliamentary Assembly endorse "the Venice Principles" and invites the Committee of Ministers to create a mechanism to monitor the implementation of these principles.

On 13 November 2019 in Paris a delegation of the Commission exchanged views with the members of the PACE Monitoring Committee on the latest developments in **Albania, Armenia and Turkey** and presented the Commission's latest opinions on these countries. On 12 December 2019 representatives of the Commission presented to the Committee on the Rules and Procedures the Report on the compliance with Council of Europe and other international standards of the **inclusion of a not internationally recognised territory** into a nationwide constituency for Parliamentary elections.

## Co-operation in the field of elections

### *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 2019 were as follows:

### *Members*

- ▶ Lord Richard BALFE, Committee on Legal Affairs and Human Rights (Vice-Chair)
- ▶ Mr Corneliu Mugurel COZMANCIUC, Committee on Political Affairs and Democracy
- ▶ Mr Tiny KOX, Monitoring Committee

### *Substitute Members*

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

On 22 January 2019 the President of the Venice Commission, Mr Gianni Buquicchio, spoke to the plenary session of the Assembly which debated the report on "Updating guidelines to ensure **fair referendums** in Council of Europe member States", before adopting it. In this debate Mr Buquicchio spoke about the Commission's work in the field, in particular about the updating of the Code of Good Practice on Referendums.

### *Legal assistance to election observation*

In accordance with the co-operation agreement concluded between the Venice Commission and the Parliamentary Assembly, in 2019 representatives of the Venice Commission ensured legal assistance to the Parliamentary Assembly delegations observing parliamentary elections in **Belarus**, presidential elections in **North Macedonia**, parliamentary elections in the **Republic of Moldova** and presidential elections in **Ukraine**.





President of the Commission Mr Gianni Buquicchio addressing the Congress of Local and Regional Authorities of the Council of Europe, October 2019

## Congress of Local and Regional Authorities

In 2019 the co-operation with the Congress intensified. Mr Leen Verbeek, Chair of the Congress Monitoring Committee, and Mr Andreas Kiefer, Secretary General of the Congress regularly attended the plenary sessions of the Commission and informed the Commission on the Congress' activities.

The Venice Commission's Report on the **recall of mayors and local elected representatives**<sup>25</sup> in reply to the Congress' request is of the utmost importance for the Congress, considering the regular extensive references made by the latter to the Venice Commission's expertise on constitutions and the legislation of Council of Europe member states in its monitoring and electoral activities.

The Commission was invited to an exchange of views with the Congress' Commission for the honouring of obligations and commitments by the member states of the European Charter of Local Self-Government (Monitoring Committee), on 3 July 2019 in Oslo, with a view to the adoption of a draft resolution aimed at extending Congress support to **"the Venice Principles"** and to promote this document through the activities of the Monitoring Committee in Council of Europe member and partner states. At its 37<sup>th</sup> Session on 30 October 2019, the Congress endorsed "the Venice Principles" and called upon "its Committee on the Honouring of Obligations and Commitments by Member States of the European Charter of Local Self-Government (Monitoring Committee) to promote "the Venice Principles" among relevant interlocutors during its visits when monitoring the situation of local and regional democracy in member States of the Council of Europe".<sup>26</sup> On this occasion the President of the Commission addressed the Congress.

25. CDL-AD(2019)011rev.

26. Resolution 451(2019)

Following the Congress election observation report on municipal elections held in Turkey in 2018, the Congress requested an opinion from the Venice Commission on the constitutionality and compliance with general principles of the rule of law regarding the decisions to replace the elected mayors taken after the **31 March 2019 elections in the south-east of Turkey.**

## Council for Democratic Elections

The Congress also continued to participate in the Council for Democratic Elections (CDE). The relevant Congress members of the Council in 2019 were as follows:

### Members

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

### Substitute Members

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

## European Court of Human Rights

### References to the Commission's documents in the Court's case-law

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 2019 the European Court of Human Rights referred to the Venice Commission's documents in 12 judgments.

### Azerbaijan

In the judgment on the case of *Jafarov and others v. Azerbaijan* the Commission's Opinion on the compatibility with human rights standards of the legislation on non-governmental organisations of the Republic of Azerbaijan (2011)<sup>27</sup> and the Opinion on the Law on NGOs (2014)<sup>28</sup> are quoted. In the Grand chamber case of *Ilgar Mammadov v. Azerbaijan* the Court refers to the Joint Opinion on the draft Law on the Public Prosecutor's Office of Ukraine<sup>29</sup> and to the Opinion on proposals amending the draft law on the amendments to the Constitution to strengthen the independence of judges of Ukraine.<sup>30</sup>

27. CDL-AD(2011)035

28. CDL-AD(2014)043

29. CDL-AD(2013)025

30. CDL-AD(2013)034

## Turkey

In the case of *Parmak and Bakir v. Turkey* the Report on counter-terrorism measures and human rights<sup>31</sup> is referred to. The judgment *Ahmet Tunç and others v. Turkey* contains general references to the Commission's concerns regarding the erosion of judicial independence and the increasing interference by the executive in the judiciary in Turkey. The judgement in the case *Elçi v. Turkey* refers to the Opinion on the Legal Framework governing Curfews in Turkey.<sup>32</sup>

## Ukraine

In *Chernega and others v. Ukraine* the Court refers to the Guidelines on Freedom of Peaceful Assembly (second edition, 2010). The judgment in the case of *Polyakh and others v. Ukraine* quotes extensively the Opinion on the constitutional situation in Ukraine (2010) as well as the Interim (2014)<sup>33</sup> and Final (2015)<sup>34</sup> Opinions on the Law on Government Cleansing (Lustration Law) of Ukraine.

## Other countries

In the judgment on the case of *Baralija v. Bosnia and Herzegovina* – the Opinion on the Electoral Law of Bosnia and Herzegovina<sup>35</sup> is mentioned where the Venice Commission supports “*the proposition that power-sharing between the constituent peoples is an essential part of the Dayton settlement making peace possible in Bosnia and Herzegovina*”. The Court also refers to the “*relevant Venice Commission recommendations, ensuring transparency of political party financing, and holding municipal elections in Mostar*”.

The Opinion on the legislation on defamation of Italy<sup>36</sup> where the Commission assessed whether the Italian laws on defamation were in line with Article 10 of the European Convention on Human Rights is quoted in the case of *Sallusti v. Italy*. In the case of *Obote v. Russia* the Court refers to the Guidelines on Freedom of Peaceful Assembly (second edition, 2010). The Code of Good Conduct in Electoral Matters is referred to in *Zevnik and others v. Slovenia*. In the Grand Chamber case of *López Ribalda and others v. Spain* 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<sup>37</sup> is mentioned.

## *Amicus curiae* brief for the European Court of Human Rights in the case of *Mugemangango v. Belgium* (CDL-AD(2019)021)

By letter dated 5 July 2019 the European Court of Human Rights requested an opinion from the Venice Commission on the following questions raised by the pending case of *Mugemangango v. Belgium*:

*What adequate and sufficient procedural safeguards must a state ensure in procedures challenging the result of an election (in particular examining appeals concerning the result of an election)?*

This Brief, adopted in October 2019 following approval by the Council for Democratic Elections, concerned a case pending before the Grand Chamber, regarding procedural safeguards which a state must ensure in procedures challenging the result of an election or the distribution of seats, and in particular, the ratification of the powers of elected representatives. In Belgium, this power of ratification belongs to Parliament, at the federal level - according to the Constitution - as well as to the communities and regions, and no appeal is possible

The *amicus curiae* brief notes that the verification of credentials is also the verification of the results of elections; Parliament is therefore judge of its own election. As this system still exists in a number of European states, the Court's judgment will have an effect on other states that have the same system. However, most European states have introduced a judicial appeal against the results of elections. In accordance with the Code of Good Practice in Electoral Matters and the Commission's opinions, there must be an effective remedy in electoral matters, including on the results; the appeal body must be impartial and sufficiently independent of the legislative and executive branches. This precludes Parliament from being the sole judge of its own election. As regards procedural guarantees, the procedure must be simple and informal, the time limits for appealing and processing appeals must be short, the right to an adversarial hearing must be guaranteed, proceedings must be transparent and decisions must be reasoned and made public: guarantees similar to those in Article 6 ECHR apply. In Belgium, there does not seem to be a hearing before an independent and impartial body or a guarantee of an adversarial process.

## Commissioner for Human Rights

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

31. CDL-AD(2010)022

32. CDL-AD(2016)010

33. CLD-AD(2014)044

34. CDL-AD(2015)012

35. CDL-INF(2001)021

36. CDL-AD(2013)038

37. CDL-AD(2007)027

Commissioner Mijatović regularly refers to the Commission's documents to support her calls for action in the member states. In 2019 she noted the efforts taken by the Commission in recent years to protect the rule of law and judicial independence; the Commission's Rule of Law Checklist and its recommendations concerning Bulgaria, Hungary, Malta, Poland, Romania, Serbia and Turkey were recalled by the Commissioner. The Venice Commission and OSCE/ODIHR Joint Guidelines on freedom of peaceful assembly were mentioned in her statement "Shrinking space for freedom of peaceful assembly" of 9 December 2019.

## **Council of Europe Development Bank**

At the Commission's June plenary session, Mr Rolf Wenzel, Governor of the Council of Europe Development Bank, underlined the benefit of the work of the Venice Commission for the Bank's projects, the Commission participating in the reinforcement of transparent, independent institutions and procedures in its member states.

## **Directorate General of Human Rights and Rule of Law (DG-I)**

### **Joint opinions**

Two joint opinions were prepared in 2019 by the Commission and the Directorate of Human Rights (DHR):

- ▶ Armenia – Opinion on the amendments to the Judicial Code and some other laws (CDL-AD(2019)024)
- ▶ Moldova, Republic of - Joint Interim Opinion on the draft law on the reform of the Supreme Court of Justice and the Prosecutor's Office (CDL-AD(2019)020)

Jointly with the Directorate of Information Society and Action Against Crime the Commission prepared the Report on Digital Technologies and Elections (CDL-AD(2019)016). For more information please see Chapter IV.

### **Ad Hoc Committee on Artificial Intelligence (CAHAI)**

The Venice Commission participated in the first meeting of the Ad Hoc Committee on Artificial Intelligence held from 18 to 20 November 2019 in Strasbourg<sup>38</sup>.

### **Cybercrime Division**

Please see chapter IV.

### **Steering Committee for Human Rights (CDDH)**

The Commission participated in a meeting of the CDDH-INST, on 27 February 2019 in Strasbourg, on the revision of Recommendation No. 85 (13) on the

institution of the ombudsman. The revised version of Recommendation R(85)13 now refers to "the Venice Principles" and mainly deal with three issues: the fundamental characteristics of the Ombudsman institution, its main tasks and the need for co-operation and dialogue.

During the Commission's March plenary session, Ms Krista Oinonen, Chair of the CDDH Drafting Group on Civil Society and National Human Rights Institutions (CDDH-INST) underlined that the text of "the Venice principles" constitutes a legal bridge to the political message of the Recommendation

## **Other Council of Europe organs and departments**

### **Ad Hoc group on sports (T-DO HR)**

The Chair of the Scientific Council of the Commission Mr Jan Helgesen participated in the 1st and the 2nd meetings of the Ad Hoc Group of experts on "Ensuring effective access of athletes to justice and fair trial (T-DO HR)", which took place on 3 July and 19 November 2019 in Strasbourg.

### **Children's Rights Division DG-II**

The Commission, author of the 2014 report on the Protection of Children's Rights, was represented at the Inter-secretariat Task Force on Children's Rights, on 17 January and on 4 October 2019.

### **Gender Equality Commission**

The Commission was represented at the meeting of the Council of Europe Gender Mainstreaming Team (GMT) held on 31 January and 13 June 2019 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 and to contributing to the discussions<sup>38</sup>. For more information please [www.coe.int/cahai](http://www.coe.int/cahai) on a draft recommendation of the Committee of Ministers on preventing and combating sexism and a draft factsheet on the rights of migrant, refugee and asylum-seeking women and girls to be submitted to the Gender Equality Commission for its adoption. The participants were informed about the compilation of Venice Commission opinions and reports concerning electoral systems and gender representation and a study visit organised in July on judicial reform and electoral systems with some focus on gender equality issues.

### **Working Group on E-Democracy (GT-ED)**

The Venice Commission participated in the third meeting of the Working Group on E-Democracy (GT-ED) in Strasbourg on 12-13 September 2019.

38. For more information please [www.coe.int/cahai](http://www.coe.int/cahai)



European Commissioner for European Neighbourhood Policy and Enlargement Negotiations Mr Johannes Hahn addressing the October Plenary Session of the Commission, Venice, October 2019

## EUROPEAN UNION

In 2019, the co-operation between the Venice Commission and the European Union further developed. 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 and in Hungary were referred to in the process of the procedure according to Article 7 of the Treaty of the European Union. As is customary the Venice Commission provided input to the on-going EU efforts to support reforms in enlargement countries. 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.

### Council of the European Union / European Council

On 11 March 2019 in Strasbourg the President of the Commission exchanged views with the Members of the European Union Political and Security Committee on the synergies between EU foreign policy and the Venice Commission's activities.

In the Canada-EU Summit Joint Declaration of 17-18 July 2019 made in Montreal, both parties stated "*their commitment to multilateralism, democracy and the rule of law. In this context, Canada is joining the Council of Europe's European Commission for Democracy through Law (the Venice Commission), which will help Canada*

*and the EU collectively advance democratic principles, human rights and fundamental freedoms*".<sup>39</sup>

Regarding Turkey, the Council recalled in its Conclusions of 18 June 2019 on Enlargement and Stabilisation and Association Process the critical assessment by the Venice Commission of the latest amendments to the Turkish Constitution, which established the new presidential system.<sup>40</sup>

### European Commission

#### Exchanges of views

On 21 March 2019 in Strasbourg the Secretary of the Commission met with several members of a delegation from the European Commission's Directorate General for Neighbourhood and Enlargement Negotiations (DG NEAR) and briefed them on the opinions on Kosovo, Montenegro and Turkey. The delegation visited the Council of Europe in the framework of the preparation of its annual Enlargement Package.

On 7 May in Strasbourg a EU delegation led by Mr Eamon Gilmore, EU Special Representative for Human Rights, met with President Buquicchio and discussed issues of common interest as well as possible co-operation with the Venice Commission.

Mr Johannes Hahn, EU Commissioner for European Neighbourhood Policy and Enlargement Negotiations, addressing the October 2019 session of the Commission, expressed the view that the rule of law is a core element in the EU neighbourhood policy and praised the excellent co-operation with the Venice Commission in the Western Balkans, in the Eastern Partnership countries and in the South Mediterranean basin. He gave specific examples of

39. Canada-EU Summit Joint Declaration, July 2019

40. Enlargement and Stabilisation and Association Process – Council Conclusions, 18 June 2019



Joint LIBE / AFET European Parliament hearing on 'The Rule of Law in the Accession Process', Brussels, March 2019

this good co-operation in Albania, North Macedonia, Georgia, Armenia, Moldova, especially in the context of the opening of accession negotiations.

The Commissioner stressed that the EU and the Venice Commission are built on the same ideas and promote the same values. The EU is determined to continue investing in democracy, human rights and the rule of law. In this process the European Commission relies on the Venice Commission's expertise in the sphere of the rule of law. A follow-up mechanism is perhaps necessary to ensure that good laws are implemented in practice and do not remain dead letter.

Ambassador Meglena Kuneva, Head of the EU Delegation to the Council of Europe, also participated in the October 2019 plenary session of the Commission. She suggested that the Commission's Rule of Law Checklist may in future be developed into a handbook.

On 10 September 2019 in Brussels, the Deputy Secretary of the Commission, Ms Simona Granata-Menghini presented "the Venice Principles" to colleagues from DG-NEAR, DG-JUST, EEAS, and diplomats based in Brussels. The presentation was organised by the Council of Europe Office in Brussels. On the margins of this event, she held working meetings with the representatives of DG NEAR and the Legal Service of the European Commission, on Venice Commission opinions on Bulgaria, Hungary, Poland and Romania as well as its activities in the Eastern Partnership countries (Georgia, Moldova and Ukraine), the Balkans and Turkey.

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 2019.

### References to the Commission's work

Following the public debate and reflection launched in April 2019, the European Commission took action to strengthen the rule of law in the EU, stating that it "*is, and must remain, a key objective for all*". Consequently, in a Communication published on 17 July 2019, the Commission set out concrete actions to strengthen the Union's capacity to promote and uphold the

rule of law, through "*promotion of a common rule of law culture, prevention of rule of law problems and an effective response*". In particular, the Commission has established a Rule of Law Review Cycle.

In the Communication of 3 April 2019 from the Commission to the European Parliament, the European Council and the Council (COM(2019) 163 final) entitled "Further strengthening the Rule of Law within the Union. The state of play and possible next steps", the **Rule of Law Checklist** is referred to.

In December 2019 Vice-President Jourová and newly elected Commissioner Reynders urged **Malta** to quickly put in place a reform agenda to ensure the independence of its judicial system and to consult the Venice Commission on all draft legislation.

To put the judicial reform process back on track in **Romania** the Commission suggested to the authorities to revise the relevant legislation taking fully into account the recommendations issued by the Venice Commission<sup>41</sup>.

In its 2019 Report on **North Macedonia**, the Commission referred to the opinions of the Commission delivered recently such as the opinions on the Laws on the Judicial Council, on the Use of Languages and the Law on the Protection of Whistleblowers and others.<sup>42</sup>

In its Final Joint Staff Working Document "Association Implementation Report on **Moldova**" of 11 September 2019,<sup>43</sup> the Commission encouraged the authorities to follow the Venice Commission's recommendations on the electoral system and on the reform of the Supreme Court of Justice and the Prosecutor General. When visiting Moldova in 2019 to take stock of the implementation of the EU-Moldova Association Agreement, High Representative/Vice-President of the Commission, Mogherini, in the context of the elections scheduled in the country, recalled the "*importance of addressing all of the pending recommendations of the Council of Europe Venice Commission ...*"

41. [https://ec.europa.eu/commission/presscorner/detail/en/MEMO\\_18\\_6363](https://ec.europa.eu/commission/presscorner/detail/en/MEMO_18_6363)

42. SWD(2019) 218 final

43. SWD(2019) 325

In its statement of 19 August 2019 on the suspensions of elected mayors in south eastern **Turkey** the European Commission called on the Turkish authorities *“to repeal measures inhibiting the functioning of local democracy, in line with the recommendations of the Venice Commission and with Turkey’s commitment to the European Charter of Local Self-Government”*.

In the **Kosovo** 2019 report, the Commission recommends that *“the Venice Commission recommendations need to be reflected in any revised legislation”*<sup>44</sup>.

In the 2019 Opinion on **Bosnia and Herzegovina’s** application for membership of the European Union<sup>45</sup> the Commission states as the 1<sup>st</sup> condition for the opening of accession negotiations to the authorities to *“1. Ensure that elections are conducted in line with European standards by implementing OSCE/ODIHR and relevant Venice Commission recommendations, ensuring transparency of political party financing, and holding municipal elections in Mostar”*.

At the 7th meeting of the EU-Belarus Co-ordination Group in Minsk on 24-25 April 2019 the EU reiterated the need for **Belarus** to undertake a comprehensive reform of its electoral legislation, in line with the OSCE/ODIHR and Venice Commission recommendations.

## European Parliament

The co-operation between the Commissions and various Committees of the Parliament intensified in 2019.

On 18 March 2019 in Brussels President Buquicchio and Secretary Markert participated in the Joint public hearing on rule of law in the accession process organised by the Committee on Foreign Affairs and the Committee on Civil Liberties, Justice and Home Affairs of the European Parliament. On the side-lines of this event they met with the European Commission’s officials to discuss the latest developments in the EU member states as well as in the neighbouring countries.

On 2 December 2012 in Brussels a representative of the Commission participated in the Joint exchange of views between the EP FEMM and LIBE groups on the EU’s accession to the Istanbul Convention where he presented the Commission’s relevant opinion on implications of the ratification of the Council of Europe Convention on preventing and combating violence against women and domestic violence (Istanbul Convention),<sup>46</sup> adopted by the Commission earlier that year.

44. SWD(2019) 216 final

45. COM(2019) 261 final

46. CDL-AD(2019)018

## Reference to the Venice Commission texts

In the Resolution of 12 February 2019 on the implementation of the Treaty provisions related to EU citizenship the European Parliament called *“again on Member States to implement the Venice Commission’s Code of Good Practice in Electoral Matters, including the abolition of disenfranchisement of expatriates in elections to national parliaments;”*<sup>47</sup>.

In another Resolution adopted on 12 February 2019 on the implementation of the EU Charter of Fundamental Rights, the European Parliament recalled the importance of the Rule of Law Checklist of the Venice Commission.<sup>48</sup>

The Resolution of 16 January 2019 on the situation of fundamental rights in the European Union<sup>49</sup> contains a general reference to the work carried out by the Commission.

In 2019 the European Parliament adopted the following country specific resolutions where it referred to the Venice Commission’s work:

- ▶ Azerbaijan: Resolution of 17 January 2019 on Azerbaijan, notably the case of Mehman Huseynov (2019/2511(RSP))
- ▶ Bosnia and Herzegovina: Resolution of 13 February 2019 on the 2018 Commission Report on Bosnia and Herzegovina (2018/2148(INI))
- ▶ Kazakhstan: Resolution of 14 March 2019 on the human rights situation in Kazakhstan (2019/2610(RSP))
- ▶ Moldova: Resolution of 14 November 2018 on the implementation of the EU Association Agreement with Moldova (2017/2281(INI))
- ▶ Russia: Resolution of 18 July 2019 on Russia, notably the situation of environmental activists and Ukrainian political prisoners (2019/2734(RSP))
- ▶ Turkey:
  - Resolution of 19 September 2019 on situation in Turkey, notably the removal of elected mayors (2019/2821(RSP))
  - Resolution of 27 October 2016 on the situation of journalists in Turkey (2016/2935(RSP))

47. Resolution of 12 February 2019 on the implementation of the Treaty provisions related to EU citizenship (2017/2111(INI))

48. Resolution of 12 February 2019 on the implementation of the Charter of Fundamental Rights of the European Union in the EU institutional framework (2017/2089(INI))

49. Resolution of 16 January 2019 on the situation of fundamental rights in the European Union in 2017 (2018/2103(INI))

## Joint European Union – Council of Europe Projects

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In 2019, the Venice Commission continued its co-operation with several countries within the framework of the following joint projects:

- ▶ “Horizontal Facility for the Western Balkans and Turkey”;
- ▶ “Ensuring sustainable democratic governance and human rights in the Southern Mediterranean” (a segment of the South Programme III);
- ▶ “Partnership for Good Governance II”
- ▶ “Support to strengthening democracy through electoral reform in the Kyrgyz Republic”;
- ▶ “Support to reforms of electoral legislation and practice and regional human rights instruments and mechanisms in countries of Latin America, Central Asia and Mongolia”.

### “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, North Macedonia, 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, the Commission’s 2019 opinions on the legislation of Albania, North Macedonia, Bosnia and Herzegovina and Kosovo were funded by this programme.

In addition, this programme funded Venice Commission expert assistance to the members of the Parliamentary Committee of the Montenegrin parliament on the electoral reform and on the judicial reform.

#### *“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.

In 2019 the Venice Commission actively co-operated with the countries of the Southern Mediterranean on issues related to democratic governance and human rights. As in previous years the UniDem Med Campus seminars provided an opportunity for representatives of public administrations of Algeria, Jordan, Lebanon, Morocco, Palestine and Tunisia to exchange on issues of enhancing the capacity of national administrations to refer to and use the international standards.

Thanks to contacts established during UniDem Campus Med seminars, for the first time two countries (Jordan and Palestine) co-organised an event, which resulted in agreement to co-operate on a bilateral level on issues related to the reform of public administration.

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

#### *“Partnership for Good Governance II”*

Partnership for Good Governance (PGG) II is a regional programme for the Eastern Partnership (EaP) countries (Armenia, Azerbaijan, Georgia, the Republic of Moldova, Ukraine and Belarus) with an implementation period of 2019-2021.

The programme is organised around activities to support the alignment of the national legislation and practice with European standards according to the individual needs of the EaP countries, in the field of judiciary, fight against corruption and anti-discrimination, with an ambition to increase the region’s stability and resilience. Activities implemented under the current PGG represent the continuation of technical assistance provided to the EaP countries within the first phase of the programme (2015-2018).

PGG includes the Quick Response Mechanism (QRM), by which the Venice Commission provides ad-hoc legal advice to respond to requests for legislative analysis and related assistance from the concerned countries or the European Commission. Its scope of work includes all the issues falling within the area of competence of the Venice Commission. Thus, all of the Commission’s opinions adopted in 2019 on the legislation of Armenia, Georgia, and the Republic of Moldova as well as one opinion on Ukraine were funded by this programme.

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

The project “Support to Strengthening Democracy through Electoral Reform in the Kyrgyz Republic” was completed by the Commission in 2019 with funding provided by the European Union and the Council of Europe.

The overall objective of the project, which lasted from 1 January 2017 to 31 July 2019, was to support the Kyrgyz authorities in their endeavours to reform the electoral legislation and practice in line with applicable European and international standards. The Venice Commission adopted an inclusive approach and focused on co-operation with the national authorities such as the Central Election Commission (CEC), the State Registration Service (SRS), the Parliament, the Presidential Working Group on improvement of the electoral legislation, the Working group on the monitoring of the judicial reform, the Supreme Court and the Ministry of Foreign Affairs. The project was also engaged in a constructive dialogue with the civil society, NGOs and the media whose participation was crucial for the transparency and accountability of the national electoral processes.

The development of a comprehensive strategy on democratic and electoral reform was one of the priority areas of activity and an important indicator within the framework of the Venice Commission project and the EU Budget Support Agreement with the Kyrgyz Republic. The project assisted the national authorities in elaborating the Strategy and its action plan which were adopted in August 2018 as well as in identifying legal gaps by preparing experts’ comments and recommendations on the three packages of the draft laws on the electoral legislation.

In order to increase inclusiveness of the electoral process through the accuracy of the voter list, the project assisted the State Registration Service with developing annual reports that included analysis and statistical data related to the voter list. The project also contributed to strengthening the capacities of the CEC and the SRS by providing several training sessions on electoral legislation, analytical skills, and through organising 3 study visits to exchange experience with the relevant state agencies of other Council of Europe member states.

The Commission developed and published a review of judicial practice in the field of electoral dispute resolution in the Kyrgyz Republic in close cooperation with the Supreme Court. The project organised a series of awareness-raising activities for national authorities and NGOs on the importance of creation of an independent data protection supervisory authority and on the benefits of using the European standards in the field of data protection. Equally, the project ensured capacity-building of main electoral stakeholders. For more information please refer to Chapter V.

*“Support to reforms of electoral legislation and practice and regional human rights instruments and mechanisms in countries of Latin America, Central Asia and Mongolia”*

The project started in May 2019 with funding provided by the European Union and the Council of Europe. The overall objective of this project is to support the national authorities of Latin American and Central Asian countries in their endeavours to improve electoral system and practice, to conduct legislative and constitutional reforms and to promote rule of law and human rights mechanisms in line with applicable European and international standards.

The project has contributed to the development of co-operation with the Constitutional Court of **Mongolia**. During the exchange of views at the October 2019 Plenary Session of the Venice Commission the President of the Constitutional Court highly praised the level of exchanges between the Court and the Commission and expressed the interest of his country in intensifying this co-operation with a view to seeking full membership of the Venice Commission.

In 2019 the Commission adopted an opinion on the issue of linking constitutional reform to a question of confidence requested by the Speaker of the Congress of the Republic of **Peru** in August 2019. The opinion was well received by the Peruvian authorities, they expressed their intention to continue the discussion on this issue after the elections in January 2020, as well as to co-operate on the issues related to possible constitutional and legal amendments in the country.

Following the International Seminar on good practices in electoral matters held in Buenos Aires, **Argentina**, in May 2019, representatives of the National Electoral Chamber expressed their intention to co-operate with the Venice Commission on electoral matters after the general elections held in October 2019. Although Argentina has held observer status with the Venice Commission since 1995, the project will certainly serve to further develop cooperation with the Argentinian authorities on issues related to the rule of law, democracy and human rights.

As regards co-operation with **Mexico**, the Project enabled the participation of a representative of the Venice Commission in the Third Plenary Assembly of the Global Network of Electoral Justice in Mexico. The project further increased the role of the Venice Commission in electoral matters in Mexico generating a tangible impact in the reforms of electoral legislation and practice in the country.

The participation of a representative of the Venice Commission in the XIV InterAmerican Meeting of Electoral Management Bodies in **Panama** improved the participants’ knowledge of international electoral standards and principles as well as good practices in the electoral field. This activity paved the way for intensifying co-operation with the country’s authorities.



Publication in the Spanish language of the “Principles on the Protection and Promotion of the Ombudsman Institution (“The Venice Principles”); one of the standard-setting documents of the Commission, contributed to strengthening the institutional capacities on human rights protection mechanisms as well as to facilitating horizontal co-operation in the Ibero-American countries.

## **European Committee of the Regions**

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On 10 September 2019 in Strasbourg, a representative of the Venice Commission met Mr Franco Iacop (IT/PES), rapporteur on the Communication on Further strengthening the Rule of Law, appointed by the Commission for Citizenship, Governance, Institutional and External Affairs (CIVEX) of the European Committee of the Regions.

Representatives of the Committee participate regularly in the Commission’s plenary sessions.

## **Participation in EU events**

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In 2019 the Venice Commission participated in the following events organised by the EU structures:

- ▶ 11 February 2019, Brussels – Event on the fight against online manipulation and abuse of personal data in political campaigning, organised by the European Data Protection Supervisor (EDPS).
- ▶ 11 April 2019, Sarajevo - Workshop on “Judicial review of the High Judicial and Prosecutorial Council decisions on appointment and appraisal”, organised and funded by the EU TAIEX – Technical Assistance and Information Exchange Instrument of the European Commission in co-operation with the High Judicial and Prosecutorial Council of the country.
- ▶ 18 November 2019, Skopje – EU-Western Balkans Ministerial Conference on Justice and Home Affairs

The Commission participated in the following events related to the European Union:

- ▶ 22 February 2019, Brussels - Conference by the Centre for European Policy studies (CEPS) Ideas Lab “Europe’s choice”
- ▶ 5 July 2019, Brussels – Ms Veronika Bilkova, Vice President of the Venice Commission, represented the Commission at an international conference on “Democracy and the Rule of Law in the EU” organised by RECONNECT - a research project on ‘Reconciling Europe with its Citizens through Democracy and the Rule of Law’. Ms Bilkova participated in the Policy Roundtable “Rule of Law in the European Union”.

## **OSCE**

In 2019 the Commission continued its co-operation with the OSCE in the field of the protection of fundamental rights and elections and political parties.

As customary, representatives of the OSCE/ODIHR participate in the plenary sessions. The Commission was represented at the 2019 OSCE Human Dimension meeting on 15 July 2019 in Vienna.

## **OSCE/ODIHR**

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The Commission appreciates its long-standing co-operation and strategic alliance with the OSCE/ODIHR. Joint co-operation started in the electoral field in the early 1990s when ODIHR was established. This co-operation was and still is primarily motivated by the need to avoid forum shopping on the one hand and speaking with one voice on the other hand. Since then, the ODIHR and the Venice Commission have employed their shared expertise to prepare joint legal opinions - since 2002 joint elections-related legal reviews and from 2005 onwards in other areas, such as freedom of assembly and association and political party regulations and freedom of religion.

### **Exchange of views with the Director of the OSCE/ODIHR, June 2019, Venice**

Ms Ingibjörg Sólrún Gísladóttir, Director of the OSCE Office for Democratic Institutions and Human Rights, addressing June 2019 plenary session of the Commission, recalled that in the 1990 Copenhagen document, the OSCE participating states had recognised the “important expertise of the Council of Europe in the field of human rights and fundamental freedoms” and in Prague in 1992 they furthermore directed ODIHR to “work closely with other institutions active in the field of democratic institutions building and human rights, particularly the Council of Europe and the Venice Commission”. Ms Sólrún Gísladóttir underscored that in the difficult prevailing political climate, strategic co-operation and speaking with one voice were crucial for defending the rule of law, democratic elections and protecting space for vibrant civil society. In particular, the existence of good legislation, consistent with international human rights standards and OSCE commitments, is a precondition for the effective implementation of human rights at the national level.

## **Protection of fundamental rights**

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In 2019 an Opinion on the legal framework governing the right to freedom of assembly in Bosnia and Herzegovina<sup>50</sup> was prepared by both organisations jointly. For more information please see Chapter II.

50. CDL-AD(2019)026



14th Annual OSCE/ODIHR Implementation Meeting of the Declaration of Principles for International Election Observation, Warsaw, November 2019

### Joint Guidelines on Freedom of Peaceful Assembly (3rd Edition) - CDL-AD (2019)017

In 2019 the Commission and the OSCE/ODIHR finalised the update of the 2010 Joint Guidelines on Freedom of Peaceful Assembly. The 3<sup>rd</sup> Edition covers many important aspects of this right under Article 11 ECHR, such as assemblies and new technologies, core state obligations, notification and good administration of public assemblies, restrictions on and policing of assemblies, roles and rights of third parties during assemblies, arrest and detention of assembly participants, penalties imposed after an assembly, accountability of state authorities and legal remedies. For more information please see Chapter II.

#### Seminars and conferences:

A representative of the Commission participated in the 4<sup>th</sup> ODIHR Round Table on Judiciary held in Warsaw on 25 March 2019.

### Elections, referendums and political parties

By letter of 25 December 2019, Ms Aida Kasymaliev, Deputy Chairperson of the Jogorku Kenesh of the Kyrgyz Republic, requested an Opinion of the OSCE Office for Democratic Institutions and Human Rights (ODIHR) on the draft law on amendments to some legislative acts related to sanctions for violation of the electoral legislation. By letter of 30 January 2020, ODIHR and the Venice Commission confirmed the readiness to provide a joint legal opinion on the draft law. This opinion is to be prepared and adopted in 2020.

### Joint Guidelines on Political Parties Regulation

In 2019 the Commission and the OSCE/ODIHR continued their work on the revision of the joint guidelines. On 12 January 2019, representatives of the Commission participated in the annual meeting of the Core Group of Experts on Political Parties of ODIHR in Warsaw. The main topic discussed was the update of the ODIHR-Venice Commission Guidelines on Political Party Regulation. Significant progress was achieved throughout 2019. It is foreseen to finalise the revision process and adopt the new edition of the Guidelines in 2020.

#### Seminars and conferences:

The Commission participated in the following ODIHR electoral events:

- ▶ Conference on electoral systems (Tirana, 25 September 2019);
- ▶ OSCE/ODIHR seminar on election observation and electoral disputes (Vienna, 1 October 2019);
- ▶ 14th annual meeting on the implementation of the Declaration of Principles for the International Observation of Elections (Warsaw, 20-21 November 2019).

In addition, ODIHR participated in the 16th European Conference of Electoral Management Bodies on "Election dispute resolution" (Bratislava, 27-28 June 2019) organised by the Commission.

## UNITED NATIONS

### UN Special Rapporteur on the independence of judges and lawyers

The Secretary of the Commission Mr Thomas Markert attended a conference “Contemporary Challenges to the Independence of Judges and Lawyers from a Global Perspective” which took place on 09 – 11 February 2019 in New York City. The event was organised by the Konrad Adenauer Foundation, the UN Special Rapporteur on the independence of the judges and lawyers Mr Diego Garcia-Sayan, and the New York City Bar Association. The purpose of this meeting was to assess the challenges and threats vis-à-vis the existing United Nations Basic Principles on the Independence of the Judiciary, adopted in 1985.

The UN Special Rapporteur Garcia-Sayan referred to the Commission in his statement of April 2019 on the Hungarian legislation on administrative courts.<sup>51</sup>

The Venice Commission contributed to the thematic report to the Human Rights Council, devoted to the exercise of the right to freedom of expression, the right to freedom of association, the right to peaceful assembly and political rights by judges and prosecutors prepared by the UN Special Rapporteur on the independence of judges and lawyers.

### UN Office of the High Commissioner for Human Rights (OHCHR)

Following the established practice, the Commission regularly contributes to the reports on the human rights situation in the member states requested by the UN Office of the High Commissioner for Human Rights (OHCHR) in view of the regular sessions of the Universal Periodic Review (UPR). In 2019, information on the Commission’s opinions on Armenia, Bosnia and Herzegovina, Bulgaria, Italy, Spain and Turkey was provided for the 34-36 UPR sessions.

### United Nations Development Programme (UNDP)

In 2019 the Venice Commission and UNDP co-organised with the Independent Electoral Commission of Jordan the 3<sup>rd</sup> General Assembly and a conference on electoral complaints and appeals mechanisms in the Arab region. Initially, the activity had been planned for November 2018, but following a request from the organisation’s Executive Board, the event had to be postponed until February 2019.

51. [Hungary: more needs to be done to bring legislation on administrative courts in line with international standards, UN Expert says, April 2019](#)

## Implementation of the Sustainable Development Goal 16

A representative of the Commission presented the Commission’s Rule of Law Checklist to the United Nations Meeting on the state of implementation of SDG 16 (Peace, Justice, Rights, Institutions). The event was organised in partnership with the Department for Economic and Social Affairs (UNDESA) and the International Development Law Organization (IDLO) on 27-29 May 2019 in Rome. The Conference was a moment of reflection and deepening on the difficulties and opportunities for the achievement of the SDG 16, considered key for the connection between peace, rights and development and which touches with specific targets and indicators,<sup>52</sup> amongst others, respect for human rights, inclusive governance, access to justice and strengthening the rule of law, the fight against corruption and organised crime, the fight against violence in all its forms, transparency of the institutions. The results of the meeting were collected in a contribution that would be brought to the UN High Level Political Forum.

## Co-operation with other international organisations

### Associations of Constitutional Courts

In 2019, the Venice Commission co-operated with the following international organisations active in the constitutional justice field:

- ▶ Association of Asian Constitutional Courts and Equivalent Institutions (AACC);
- ▶ Association of Francophone Constitutional Courts (ACCF);
- ▶ Association of Constitutional Justice of the Countries of the Baltic and Black Sea Regions (BBCJ);
- ▶ Conference of the Constitutional Control Organs of the Countries of New Democracy (CCCOCND) / Eurasian Association of Constitutional Review Bodies (EACRB);
- ▶ Conference of Constitutional Jurisdictions of Africa (CCJA);
- ▶ Conference of European Constitutional Courts (CECC);
- ▶ Ibero-American Conference of Constitutional Justice (CIJC);
- ▶ Conference of Constitutional Courts of Portuguese Speaking Countries (CJCPLP);
- ▶ 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.

52. <https://sustainabledevelopment.un.org/sdg16>



3rd General Assembly of the Arab Electoral Management Bodies and international conference on electoral complaints and appeals, Sweimeh, February 2019

## **Arab Electoral Management Bodies (Arab EMBs)**

The Venice Commission, the United Nations Development Programme (UNDP) and the Independent High Electoral Commission of Jordan contributed to the organisation of the 3rd General Assembly of Arab Electoral Management Bodies (Arab EMBs). The Assembly which took place in Sweimeh, Jordan from 3 to 5 February 2019 was followed by an international conference on electoral dispute resolution. For more information please see Chapter V.

## **Association of European Election Officials (ACEEEO)**

The Venice Commission participated in the 28<sup>th</sup> Annual Conference of the Association of European Election Official (ACEEEO) in Ljubljana on 25-26 September 2019, on the theme "Judicial protection of electoral rights and the transparency of elections". The representative of the Commission intervened in the first plenary session on the theme "Election dispute resolution, comparative approach".

## **International Commission of Jurists (ICJ)**

In its Report on the situation of the judiciary in Moldova the ICJ referred to the Commission's documents on the subject.<sup>53</sup>

## **National Electoral Institute of Mexico (INE)**

The year 2019 was marked by the conclusion and signing of a co-operation agreement between the Venice Commission and the National Electoral Institute of Mexico. The two institutions have been co-operating since 2005 successfully promoting international standards and best practices in the field of electoral

legislation and practice. The President of INE Mr Lorenzo Cordova Vianello and President Buquicchio signed a Memorandum of Understanding at the Venice Commission's March 2019 plenary session stating their mutual agreement and readiness to foster further development of international fora aimed at promoting international standards in the field of elections.

## **Organisation of American States (OAS)**

In 2019 the Venice Commission continued its fruitful co-operation with the Organisation of American States. The Commission adopted the "Report on Term Limits; Part II, Members of Parliament, and Part III, Representatives elected at Sub National and local level and executive officials elected at sub national and local level"<sup>54</sup> requested by the Secretary General of the OAS in 2017. Apart from the participation of representatives of both organisations in their respective multilateral events, the two organisations prepared a Co-operation agreement with a view of clearly identifying the fields of their common action. The Agreement is due to be signed in early 2020.

In addition, the Venice Commission participated in the fourteenth Inter-American Meeting of Electoral Management Bodies organised by the Electoral Tribunal of Panama and the Department of Electoral Co-operation and Observation of the Organization of American States (OAS) on 13-14 November 2019 in Panama City. A representative of the Commission intervened on the best practices in electoral reform processes.

53. [Only an Empty Shell: The Undelivered Promise of an Independent Judiciary in Moldova, A Mission Report, March 2019](#)

54. CDL-AD(2019)007



*Working meeting at the Scuola Grande di San Giovanni Evangelista, March Plenary Session, Venice, March 2019*

## APPENDIX I

# THE VENICE COMMISSION: AN INTRODUCTION

**T**he 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.<sup>55</sup> 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 2019, it had 62 full members and 13 other entities formally associated with its work. The Commission is financed by its member states on a proportional basis, which follows the same criteria as applied to the Council of Europe as a whole. This system guarantees the Commission's independence *vis-à-vis* those states which request its assistance.

### Assistance to member-states in constitutional and legislative reforms

The Commission's prime function is to provide **constitutional assistance** to States, mainly (but not exclusively) to those which participate in its activities.<sup>56</sup> 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;

55. 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.

56. 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.

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.

Although the Commission's opinions are not binding, they are generally reflected in the law of the countries to which they relate, thanks to the approach taken and to the Commission's reputation of independence and objectivity. Furthermore, even after an opinion has been adopted, the Commission remains at the disposal of the state concerned, and often continues to provide its assistance until the constitution or law in question has been adopted.

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

The Venice Commission opinions on specific countries cover a wide range of topics. The Commission is often invited to examine the system of **checks and balances**, and the relations amongst different branches of power, and the territorial organisation of the States. In the past years it gave advice on comprehensive constitutional reforms in several countries, which changed the way how democratic institutions are formed and function. Some of its opinions touch upon matters of **public international law**. Another area where the advice of the Venice Commission is sought are constitutional and legal provisions on **fundamental rights and freedoms**, in particular the freedom of speech, the freedom of assembly and the freedom of religion. The Commission is often confronted with the legislation on national minorities and minority languages, on anti-discrimination, on the powers of law-enforcement and security services. In addition to examining substantive provisions governing fundamental rights issue, the Commission also deals with regulatory bodies in this field, their composition, powers and procedures. Organisation of the bodies of the **constitutional justice** and their functioning is at the heart of some of the opinions of the Commission. **Ordinary courts** have become a subject of growing importance for the Commission. The latter is increasingly asked to give an opinion on constitutional aspects of legislation relating to those courts. In this area, it frequently co-operates with other Council of Europe departments, to ensure that the constitutional law viewpoint is supplemented by

other aspects. The Commission also co-operates with **ombudspersons**. The Commission promotes relations between ombudspersons and constitutional courts with the aim of furthering human rights protection in member countries. In 2019 the Commission adopted the Principles on the protection and promotion of the ombudsman institutions – the so-called “the Venice Principles” which were endorsed by all three Statutory organs of the Council of Europe.

## Constitutional justice

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

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

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

This Conference decided to establish an association, assisted by the Venice Commission and open to all participating courts, with the purpose of promoting co-operation within the groups, but also between themselves on a global scale. In co-operation with the Federal Supreme Court of Brazil, the Venice Commission organised a Second Congress of the World Conference (16-18 January 2011, Rio de Janeiro)

during which a Statute of the World Conference was discussed.

This Statute was adopted by the Bureau, composed of representatives of the regional and language-based groups in Bucharest on 23 May 2011 and entered into force on 24 September 2011. The Venice Commission acts as the secretariat for the World Conference. At the Third Congress, which was co-organised with the Constitutional Court of Republic of Korea in Seoul on 28 September – 1 October 2014, around 90 Courts discussed the challenges of social integration for constitutional justice. At the Fourth Congress, which was co-organised with the Constitutional Court of Lithuania in Vilnius on 11-14 September 2017, the topic of “The Rule of Law and Constitutional Justice in the Modern World” was discussed by 91 Courts.

At the end of 2019, 116<sup>57</sup> constitutional courts and equivalent bodies had joined the World Conference as full members.

Since 1993, the Commission’s constitutional justice activities have also included the publication of the **Bulletin on Constitutional Case-Law**, which has now become electronic, the e-Bulletin, and contains summaries in French and English of the most significant decisions over a four-month period. It also has a counterpart, the **CODICES database**, which contains more than 10,000 decisions rendered by over 100 participating courts together with constitutions and descriptions of many courts and the laws governing them.<sup>58</sup> 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 they come under undue pressure by other State authorities. The Commission has, on several occasions, been able to help courts threatened with dissolution to remain in existence. It should also be pointed out that, in general, by facilitating access to foreign case-law, the e-Bulletin and the CODICES database also help strengthen judicial authority.

Lastly, the Commission holds seminars and conferences in co-operation with constitutional and equivalent courts, and makes an internet forum available exclusively to them – the “Classic Venice Forum”

– through which they can speedily exchange information relating to pending cases.

## Elections and referendums

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

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

In 2002, the Council for Democratic Elections was set up at the Parliamentary Assembly’s request. This is a subordinate body of the Venice Commission comprising members of the Commission, the Parliamentary Assembly and the Congress of Local and Regional Authorities of the Council of Europe. The Council for Democratic Elections also includes an observer from the OSCE/ODIHR. In order to give electoral laws certain stability and to further the construction of a European electoral heritage, the Venice Commission and the Council for Democratic Elections developed the principles of the European electoral heritage, in particular by drafting the **Code of Good Practice in Electoral Matters** (2002), which is the Council of Europe’s reference document in this field, and the **Code of Good Practice for Referendums** (2007),<sup>59</sup> **Guidelines on the international status of elections observers** (2009) and, in the field of political parties, the **Code of Good Practice in the field of Political parties** (2008). The other general documents concern such matters as recurrent challenges and problematic issues of electoral law and electoral administration, electoral law and national minorities, electoral systems, including thresholds, women’s representation in political systems, preventing the misuse of administrative resources during electoral campaigns as well as digital technologies and elections. In the field of political parties, the Venice Commission has also drafted joint guidelines on political party regulation with the OSCE/ODIHR, and addressed the prohibition, dissolution and financing of political parties, as well 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**,

57. As at 31 December 2019. Somalia became the 117<sup>th</sup> member on 3 January 2020.

58. CODICES is available online (<http://www.CODICES.coe.int>).

59. 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 16<sup>th</sup> edition took place in 2019 in Bratislava), and is also in very close contact with other international organisations or bodies which work in the election field, such as ACEEEO (Association of European Election Officials), IFES (International Foundation for Electoral Systems) and, in particular, the OSCE (Organisation for Security and Co-operation in Europe). Thus, in principle, opinions on electoral matters are drafted jointly with the OSCE/ODIHR, with which there is 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 VOTA<sup>60</sup> 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.

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

The Commission has also elaborated a comprehensive **Rule of Law Checklist** as a tool for assessing the degree of respect for this major standard in any country. Another example of a general report are the Parameters on the relationship between the parliamentary majority and the opposition. The Committee of Ministers has endorsed these documents and has called on member States to use and widely disseminate them.

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.<sup>61</sup>

### 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.

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. In the framework of these projects, the Venice Commission co-operated with the authorities of Central Asian States on topics such as constitutional justice, reform of the electoral legislation and practice and access to justice. All the countries of the Central Asian region are engaged in a constructive dialogue and the impact of concrete

60. VOTA is accessible online: <http://www.venice.coe.int/VOTA>.

61. See Appendix V.

actions undertaken by the Commission has been constantly increasing since 2007. In the absence of joint projects aimed at the Central Asian region in 2019, the Venice Commission continued its exchanges 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 provided an opportunity to organise exchanges on draft legislation in the electoral field in 2019. In 2020 the Commission will start the implementation of a new regional project in the region which will give an opportunity to intensify co-operation in several areas with its partners in Central Asia.

The Commission actively co-operates with countries of the *Southern Mediterranean region*. It established good contacts with Arab countries after it became an enlarged agreement and this farsightedness proved very useful. After the Arab spring the Commission established a 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.

Since 2019 the Commission is actively involved in the projects of assistance to Tunisia focusing on independent bodies and the reform of the judiciary. The Authorities of Algeria, Egypt, Lebanon and Palestine<sup>62</sup> actively participated in different multilateral activities organised by the Venice Commission.

*Latin American countries* have always been interested in sharing experiences and best practices with Europe, in such fields as democratic transition, constitution-building, constitutional justice and electoral legislation and practice. The Venice Commission became crucial for making such dialogue possible. 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 Electoral Tribunal of the Judicial Power of the Mexican Federation (*Tribunal electoral del poder judicial de la Federación, TEPJF*) and the Mexican National Electoral Institute (INE). Since 2017 the Venice Commission has been actively co-operating with the Organization of American States (OAS). In 2019 the Commission co-organised activities in the electoral field in Argentina and Mexico and prepared an opinion on the question of confidence upon request from the Peruvian authorities.

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

# VENICE COMMISSION OF THE COUNCIL OF EUROPE

## KEY FACTS



### ESTABLISHMENT



10 MAY 1990

by **18**   
Council of Europe member States

### TO DATE

**62** MEMBER STATES

INCLUDING  
**15 NON**  
Council of Europe  
MEMBERS

+ **4 observer**  
countries and  
**1 associate**  
member



CLOSE COOPERATION WITH  
**EU and OSCE/ODIHR**  
2 INTERNATIONAL ORGANISATIONS  
PARTICIPATING IN THE WORK OF THE COMMISSION

+ **2** with special  
cooperation status

+ **9** countries beneficiaries of  
cooperation programmes



OVER

**900**

OPINIONS AND REPORTS



OVER

**100**

MAJOR INTERNATIONAL  
CONFERENCES



TRAINING IN

- human rights
- rule of law
- good governance
- electoral administration and justice

### WORLD CONFERENCE ON CONSTITUTIONAL JUSTICE\*



\*SINCE 2009

COURTS

**116**  
MEMBERS

NUMBER OF JUDGMENTS  
IN CODICES DATABASE  
OVER

**10,000**

### EUROPEAN COURT OF HUMAN RIGHTS

references in

**200** JUDGEMENTS  
AND DECISIONS\*

\*Since 2001



requests for

**7** amicus curiae  
BRIEFS\*\*

\*\*Since 2005

### IN 2019

### OPINIONS/REPORTS

The Venice  
Commission adopted

**34**

TEXTS

• **6** TEXTS on constitutional issues  
concerning

- Albania
- Armenia
- Luxembourg
- Republic of Moldova
- Peru

• **9** TEXTS  
of a general nature

• **18** OPINIONS on (draft)  
legislative texts

including  
**5** AMICUS CURIAE  
BRIEFS

### EVENTS/MEETINGS

It (co)organised

**17** MEETINGS



and participated in more than

**100** OTHER  
EVENTS

[ including in 5 election  
observation missions ]

published

**3** BULLETINS  
on  
Constitutional  
Case-Law

responded to

**27** VENICE FORUM  
REQUESTS  
by constitutional  
courts  
on the **VENICE FORUM**

### CONSTITUTIONAL CASE LAW



NUMBER OF JUDGMENTS  
ADDED TO CODICES DATABASE

**345**

WWW.CODICES.COE.INT

www.venice.coe.int

## APPENDIX II

# MEMBER COUNTRIES

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### Members

Albania (14.10.1996)

**Algeria (01.12.2007)**

Andorra (01.02.2000)

Armenia (27.03.2001)

Austria (10.05.1990)

Azerbaijan (01.03.2001)

Belgium (10.05.1990)

Bosnia and Herzegovina (24.04.2002)

**Brazil (01.04.2009)**

Bulgaria (29.05.1992)

**Canada (12.06.2019)**

**Chile (01.10.2005)**

**Costa Rica (06.07.2016)**

Croatia (01.01.1997)

Cyprus (10.05.1990)

Czech Republic (01.11.1994)

Denmark (10.05.1990)

Estonia (03.04.1995)

Finland (10.05.1990)

France (10.05.1990)

Georgia (01.10.1999)

Germany (03.07.1990)

Greece (10.05.1990)

Hungary (28.11.1990)

Iceland (05.07.1993)

Ireland (10.05.1990)

**Israel (01.05.2008)**

Italy (10.05.1990)

**Kazakhstan (13.03.2012)**

**Republic of Korea (01.06.2006)**

**Kosovo (12.09.2014)**

**Kyrgyzstan (01.01.2004)**

Latvia (11.09.1995)

Liechtenstein (26.08.1991)

Lithuania (27.04.1994)

Luxembourg (10.05.1990)

Malta (10.05.1990)

**Mexico (03.02.2010)**

Moldova (25.06.1996)

Monaco (05.10.2004)

Montenegro (20.06.2006)

**Morocco (01.06.2007)**

Netherlands (01.08.1992)

North Macedonia (19.02.1996)

Norway (10.05.1990)

**Peru (11.02.2009)**

Poland (30.04.1992)

Portugal (10.05.1990)

Romania (26.05.1994)

Russian Federation (01.01.2002)

San Marino (10.05.1990)

Serbia (03.04.2003)

Slovakia (08.07.1993)

Slovenia (02.03.1994)

Spain (10.05.1990)

Sweden (10.05.1990)

Switzerland (10.05.1990)

**Tunisia (01.04.2010)**

Turkey (10.05.1990)

Ukraine (03.02.1997)

United Kingdom (01.06.1999)

**United States of America (15.04.2013)**

### Associate member

Belarus (24.11.1994)

### Observers

Argentina (20.04.1995)

Canada (23.05.1991)

Holy See (13.01.1992)

Japan (18.06.1993)

Uruguay (19.10.1995)

### Participants

European Commission

OSCE/ODIHR

### Special co-operation status

Palestine<sup>63</sup>

South Africa

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63. 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 MEMBERS<sup>64</sup>

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### Albania

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

### Algeria

- ▶ Mr M. Kamel FENICHE, President, Constitutional Council
- ▶ Mr Mohamed HABCHI (Substitute member), Vice-President, Constitutional Council
- ▶ Ms Salima MOUSERATI (Substitute member), Member, Constitutional Council

### Andorra

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

### Armenia

- ▶ Mr Gagik G. HARUTYUNYAN, Former President, Constitutional Court, Doctor of Law, Professor
- ▶ Mr Vardan POGHOSYAN (Substitute member), Team Leader Armenia, GIZ Programme “Legal Approximation towards European Standards in the South Caucasus”
- ▶ Mr Ara KHZMALYAN (Substitute member), Partner, ADWISE Business and Legal Consulting LLC

### Austria

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

### Azerbaijan

- ▶ Mr Rövşən İSMAYILOV, Judge, Constitutional Court

### Belgium

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

### Bosnia and Herzegovina

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

### Brazil

- ▶ Ms Carmen Lucia ANTUNES ROCHA, Former 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

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64. As at 31 December 2019.

## Canada

- ▶ Mr Warren NEWMAN, Senior General Counsel, Constitutional, Administrative and International Law Section, Department of Justice

## 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

## 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, Supreme Court Judge
- ▶ Mr Michael Hansen JENSEN (Substitute member), Professor, University of Aarhus

## Estonia

- ▶ Mr Oliver KASK, Judge, Tallinn Court of Appeal
- ▶ Ms Ene ANDRESEN (Substitute member), Councillor, Supreme Court

## Finland

- ▶ Mr Kaarlo TUORI, Professor of Jurisprudence, Department of Public Law, University of Helsinki
- ▶ Ms Palvi HIRVELA (Substitute member) Justice, Supreme Court

## France

- ▶ Ms Claire BAZY-MALAUERIE, Member, Constitutional Council, Former member of the Auditors' Board
- ▶ Mr 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 Gocha LORDKIPANIDZE (Substitute member) Deputy Minister of Justice

## Germany

- ▶ Ms Angelika NUSSBERGER,<sup>65</sup> Former Vice-President, European Court of Human Rights, Professor, University of Cologne, Director, Institute for Eastern European Law
- ▶ Ms Monika HERMANN (Substitute member), Justice, Federal Constitutional Court

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65. Appointed from 1 January 2020. The substitute member acted as member from expiration of previous mandate to that date.

## Greece

- ▶ Mr Nicos C. ALIVIZATOS, Professor of Constitutional Law, Athens Law School
- ▶ Mr Ioannis KTISTAKIS (Substitute member), Associate Professor of public international Law, Democritus University of Thrace

## Hungary

- ▶ Mr 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 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 Suk-Tae LEE, Justice, Constitutional Court
- ▶ Mr Yonggu LEE (Substitute member), Deputy Minister for Legal Affairs, Ministry of Justice

## Kosovo

- ▶ Mr Qerim QERIMI, Professor, Law Faculty, University of Pristina
- ▶ Mr Visar MORINA (Substitute member) Lecturer, Law Faculty, University of Pristina

## Kyrgyzstan

- ▶ Mr Kanat KEREZBEKOV, Member of Parliament
- ▶ Mr Erkinbek MAMYROV (Substitute member), President, Constitutional Chamber of the Supreme Court

## Latvia

- ▶ Ms Ineta ZIEMELE, President, Constitutional Court
- ▶ Mr Aldis LAVIŅŠ (Substitute member), Judge, Constitutional Court

## 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

- ▶ Ms 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, Judge, 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

- ▶ Mr Alexandru TĂNASE, Former Minister of Justice, Former President, Constitutional Court
- ▶ Mr Nicolae EȘANU (Substitute member), Legal Advisor of the Prime Minister

## Monaco

- ▶ Mr Bertrand MATHIEU, Professor, Faculty of Law, Sorbonne-Université Paris I, Senior Member of the Council of State, Vice-President of IACL
- ▶ Mr Christophe SOSSO (Substitute member), Defence Lawyer, Court of Appeal

## Montenegro

- ▶ Mr Srdjan 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 and Judge, Dutch Council of State, Professor of Education Law, Radboud University Nijmegen
- ▶ Mr Martin KUIJER (Substitute member), Supreme Court Judge, Professor VU University Amsterdam

## North Macedonia

- ▶ Ms Tanja KARAKAMISHEVA-JOVANOVSKA, Full Professor of Constitutional Law and Political System, "Iustinianus Primus" Faculty of Law, University "Sc. Cyril and Methodius"

## 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), Judge, Constitutional Tribunal
- ▶ Mr Carlos RAMOS NÚÑEZ (Substitute member), Judge, Constitutional Tribunal

## Poland

- ▶ Mr Marcin WARCHOL, Undersecretary of State, Ministry of Justice
- ▶ Mr Mariusz MUSZYŃSKI (Substitute member), Vice-President, Constitutional Court

## Portugal

- ▶ Mr António Henriques GASPAR, Judge Counsellor, Supreme Court of Justice, Former President of the Supreme Court and of the High Judicial Council
- ▶ Mr Paulo PIMENTA (Substitute member), Professor, Universidad Portucalense

## Romania

- ▶ Mr Tudorel TOADER, Minister of Justice, Former Judge, Constitutional Court
- ▶ Mr Bogdan Lucian AURESCU (Substitute member), Minister of Foreign Affairs, Professor, Faculty of Law, University of Bucharest, Member of the UN International Law Commission

## Russia

- ▶ Ms Taliya KHABRIEVA, Academician, Russian Academy of Sciences, Director, Institute for Legislation and Comparative Law
- ▶ Mr Anatoli KOVLER (Substitute member), Head of the Center of Legal Problems of Integration and International Co-operation, Institute for Legislation and Comparative Law, Former judge at the European Court of Human Rights

## San Marino

- ▶ Mr Francesco MAIANI, Professor of EU Law, Law Faculty, University of Lausanne
- ▶ Ms Altea ROSSI (Substitute member), Research Intern, Geneva Academy of International Humanitarian Law and Human Rights, Geneva

## Serbia

- ▶ Mr Ćedomir BACKOVIĆ, Assistant Minister of Justice
- ▶ Mr Vladan PETROV (Substitute member), Professor, Law Faculty, Belgrade University

## Slovakia

- ▶ Ms Jana BARICOVÁ, Acting President, Constitutional Court
- ▶ Mr Peter MOLNAR (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), Professor of Constitutional Law, Complutense University of Madrid
- ▶ Ms Paloma BIGLINO CAMPOS (Substitute member), Full Professor of Constitutional Law, Valladolid University

## Sweden

- ▶ Mr Iain CAMERON, Professor, University of Uppsala
- ▶ Mr Johan HIRSCHFELDT (Substitute member), Former President, Svea Court of Appeal

## Switzerland

- ▶ Ms Regina KIENER, Professor of Constitutional and Administrative Law, University of Zurich
- ▶ Ms Monique JAMETTI GREINER (Substitute member), Judge, Federal Tribunal

## Tunisia

- ▶ Mr Ghazi JERIBI, Former Minister of Justice
- ▶ Ms Neila CHAABANE (Substitute member), Dean, Faculty of Legal, Political and Social Sciences of Tunis

## Turkey

- ▶ Mr Yavuz ATAR, Professor of Constitutional Law, Ibn Haldun University
- ▶ Ms Melek SARAL (Substitute member), Marie Curie Research Fellow, School of Law, SOAS University of London

## Ukraine

- ▶ Mr Serhiy HOLOVATY, Judge, Constitutional Court, Professor of Constitutional Law, Taras Shevchenko National University of Kyiv, President of the Ukrainian Legal Foundation

## United Kingdom

- ▶ Mr Timothy OTTY, Barrister at Law
- ▶ Mr Murray HUNT (Substitute member), Director, Bingham Centre for the Rule of Law

## United States of America

- ▶ Mr Paolo CAROZZA, Professor of Law and Political Science, University of Notre Dame Law School
- ▶ Mr James Patrick KELLY III (Substitute member), President, Solidarity Center for Law and Justice

## ASSOCIATE MEMBERS

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### Belarus

- ▶ Ms Natallia A. KARPOVICH, Deputy Chair, Constitutional Court

## OBSERVERS

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### Argentina

- ▶ Mr Alberto Ricardo DALLA VIA, President, National Electoral Chamber
- ▶ Mr José Adrian PEREZ (Substitute observer), Secretary of Political and Institutional Affairs, Ministry of the Interior, Public Works and Housing

### Holy See

- ▶ Mr Vincenzo BUONOMO, Professor of International Law

### Japan

- ▶ Ms Chihiro AKIBA-SAITO, Consul, Consulate General of Japan in Strasbourg, liaison officer, Supreme Court

### Uruguay

- ▶ Ms Laura DUPUY, Ambassador, Embassy of Uruguay in the Hague

## SPECIAL STATUS

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### European Union

#### *European Commission*

- ▶ Mr Lucio GUSSETTI, Director – Principal Legal Adviser, European Commission - Legal Service - CFSP and External relations Team
- ▶ Ms Mihaela CARPUS CARCEA, Legal Advisor, European Commission - Legal Service CFSP and External relations Team

### **Committee of the Regions**

- ▶ Mr Luc VAN DEN BRANDE, Member, Former President of CIVEX

### **OSCE**

#### **Office for Democratic Institutions and Human Rights**

- ▶ Mr 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**

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#### **Palestine<sup>66</sup>**

- ▶ Mr Ali ABU DIAK, Minister of Justice

#### **South Africa**

- ▶ N. N.

### **SECRETARIAT**

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- ▶ 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 Silvia GRUNDMANN, Head of the Division on Democratic Institutions and Fundamental Rights
- ▶ Mr Serguei KOUZNETSOV, Head of the Division on Neighbourhood Co-operation
- ▶ Ms Caroline MARTIN, Legal Officer
- ▶ Ms Tanja GERWIEN, Legal Officer
- ▶ Mr Grigory DIKOV, Legal Officer
- ▶ Mr Gaël MARTIN-MICALLEF, Legal Officer
- ▶ Mr Ziya Caga TANYAR, Legal Officer
- ▶ Mr Michael JANSSEN, Legal Officer
- ▶ Ms Svetlana ANISIMOVA, Administrator
- ▶ Mr Mesut BEDIRHANOGLU, Legal Officer
- ▶ Ms Bozidarka KRUNIC, Legal Officer
- ▶ Ms Tatiana MYCHELOVA, Public Relations Officer
- ▶ Ms Helen MONKS, Financial Support Officer
- ▶ Mr Hristo HRISTOV, Project Manager
- ▶ Mr Jorge PORTOCARRERO-QUISPE, Project Manager
- ▶ Ms Brigitte AUBRY, Assistant to the Head of the Division on Democratic Institutions and Fundamental Rights
- ▶ Ms Jayne APARICIO, Assistant to the Head of the Division on Constitutional Justice
- ▶ Mrs Vicky LEE, Assistant to the Head of the Division on Elections and Referendums
- ▶ Ms Emily WALKER, Assistant to the Secretary, the Deputy Secretary and the President of the Commission
- ▶ Ms Ana GOREY, Bulletin on Constitutional Case Law and CODICES
- ▶ 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
- ▶ Ms Stella CHIGNAC, Project Assistant

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66. 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

# OFFICES<sup>67</sup> AND SUB-COMMISSIONS 2019

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### President:

- ▶ Mr Buquicchio

### Honorary Presidents:

- ▶ Mr Peter Paczolay (Hungary)
- ▶ Ms Hanna 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: Mr Helgesen
- ▶ Members: Mr Buquicchio, Ms Kjerulf Thorgeirsdottir, Ms Bílková, Mr Frendo, Ms Err, Mr Grabenwarter, Mr Jeribi, Mr Kask, Ms Kiener, Mr Tuori, Mr Velaers, Mr Vermeulen, Ms Khabrieva

### Council for Democratic Elections:

- ▶ President: Mr Kask
- ▶ Vice-President:

### *Venice Commission*

- ▶ Members: Mr Darmanovic, Mr Kask, Ms Otálora Malassis  
(Substitutes: Mr Barrett, Ms Biglino Campos, Mr Vermeulen)

### *Parliamentary Assembly*

- ▶ Members: Mr Corneliu Mugurel Cozmanciuc, Lord Richard Balfe, Mr Tiny Kox  
(Substitutes: Ms Eka Beselia, Mr Aleksander Pocij)

### *Congress of local and regional authorities*

- ▶ Members: Mr Jos Wiene, Mr Stewart Dickson  
(Substitutes: Ms Dusica Davidovic, Mr Luc Martens)

### Joint Council on Constitutional Justice:

- ▶ Chair: Mr Grabenwarter
- ▶ Co-Chair (Liaison Officers): Ms Mirjana Stresec
- ▶ Members of the Sub-Commission on Constitutional Justice (see list below) as well as 90 liaison officers from 65 Constitutional Courts or Courts with equivalent jurisdiction

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## SUB-COMMISSIONS

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### Constitutional Justice:

- ▶ Chair: Mr Grabenwarter
- ▶ Members: Ms Anastas, Mr Carozza, Mr Espinosa-Saldaña, Mr Harutyunian, Mr Holovaty, Mr Kang, Ms Karakamisheva-Jovanovska, Mr Kask, Ms Kjerulf Thorgeirsdottir, Mr Knežević, Ms McMorrow, Ms Omejec, Mr Pazin, Mr Ramos, Mr Ribicic, Ms Saral, Ms Šimáčková, Mr Varga

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67. From December 2017 to December 2019.

## Federal State and Regional State:

- ▶ Chair: Ms Kiener; Vice-Chair: Ms Cleveland<sup>68</sup>
- ▶ Members: Mr Carozza, Mr Castella Andreu, Mr Maiani, Mr Scholsem, Mr Velaers, Mr Vilanova Trias

## International Law:

- ▶ Chair: Mr Cameron; Vice-Chair: Mr Varga
- ▶ Members: Mr Aurescu, Ms Bílková, Mr Maiani

## Protection of Minorities:

- ▶ Chair: Mr Velaers; Vice-Chair: Mr Endziņš<sup>69</sup>
- ▶ 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 Carozza, Ms Err, Mr Esanu, Mr Hirschfeldt, Mr Holovaty, Ms Karakamisheva-Jovanovska, Ms Karpovich, Mr Kask, Ms Khabrieva, Ms Kjerulf Thorgeirsdottir, Mr Knežević, Mr Kuijer, Mr Maiani, Ms McMorrow, Ms Omejec, Mr Pazin, Mr Qerimi, Mr Ramos, Mr Toader, Mr Tuori, Mr Velaers

## Democratic Institutions:

- ▶ Chair: Mr Tuori; Vice-Chair: Mr Meridor
- ▶ Members: Mr Cameron, Mr Carozza, Mr Darmanovic, Ms Err, Mr Esanu, Mr Frendo, Mr Hirschfeldt, Mr Jensen, Ms Karakamisheva-Jovanovska, Mr Kask, Ms Kiener, Mr Nicolatos, Mr Qerimi, Mr Ribicic, Mr Sardon, Mr Scholsem, Mr Toader, Mr Velaers, Mr Vilanova Trias

## Judiciary:

- ▶ Chair: Mr Barrett; Vice-Chair: Ms Omejec
- ▶ Members: Mr Carozza, Ms Err, Mr Esanu, Mr Habchi, Mr Hirschfeldt, Mr Holovaty, Mr Kang, Ms Karakamisheva-Jovanovska, Mr Kask, Ms Kiener, Mr Knežević, Mr Kuijer, Ms McMorrow, Mr Nicolatos, Mr Pazin, Mr Qerimi, Ms Šimáčková, Mr Toader, Mr Tuori, Mr Ugrekheldze, Mr Varga, Mr Velaers

## Rule of Law:

- ▶ Chair: Mr Hoffmann-Riem; Vice-Chair Mr Holovaty<sup>70</sup>
- ▶ Members: Ms Bílková, Mr Helgesen, Ms Karakamisheva-Jovanovska, Mr Kuijer, Mr Maiani, Ms McMorrow, Mr Nicolatos, Mr Qerimi, Mr Tuori, Mr Ugrekheldze, Mr Vilanova Trias

## Working Methods:

- ▶ Chair: Mr Clayton; Vice-Chair: Mr Vilanova Trias<sup>71</sup>
- ▶ Members: Mr Barrett, Mr Buquicchio, Mr Grabenwarter, Mr Helgesen, Ms Kiener, Ms Kjerulf Thorgeirsdottir, Mr Mathieu, Mr Otty

## 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, Mr Cruz Castro, Mr Darmanovic, Mr Espinosa-Saldaña, Mr Hernandez Emparanza, 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<sup>72</sup>
- ▶ Members: Mr Feniche, 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

68. Until the end of her mandate on 29 April 2019.

69. Until the end of his mandate on 10 September 2019.

70. Mr Hoffmann-Riem was Chair of the Sub-Commission until the end of his mandate on 22 April 2019. Mr Holovaty exercised the function of Chair from that date.

71. Mr Clayton was Chair of the Sub-Commission until the end of his mandate on 31 December 2018. Mr Vilanova Trias exercised the function of Chair from that date.

72. Deceased 29 January 2019.

## APPENDIX V

# PUBLICATIONS<sup>73 74</sup>

### Series “Science and Technique of Democracy”

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- ▶ No. 1 Meeting with the presidents of constitutional courts and other equivalent bodies<sup>1</sup> (1993)
- ▶ No. 2 Models of constitutional jurisdiction<sup>2</sup> (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 law<sup>2</sup> (1993)
- ▶ No. 7 Rule of law and transition to a market economy<sup>1</sup> (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 powers<sup>2</sup> (1995)
- ▶ No. 13 Implementation of constitutional provisions regarding mass media in a pluralist democracy<sup>1</sup> (1995)
- ▶ No. 14 Constitutional justice and democracy by referendum (1996)
- ▶ No. 15 The protection of fundamental rights by the Constitutional Court<sup>2</sup> (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 States<sup>2</sup> (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 resolution<sup>1</sup> (2000)
- ▶ No. 30 European integration and constitutional law (2001)

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

74. Publications marked with:

“1” contain speeches in the original language (English or French);

“2” are also available in Russian;

“3” are only available in English;

“4” are also available in Arabic;

“5” are only available in electronic form;

“6” are also available in Italian;

“7” are also available in Spanish

“8” are also available in Ukrainian



- ▶ No. 31 Constitutional implications of accession to the European Union<sup>1</sup> (2002)
- ▶ No. 32 The protection of national minorities by their kin-State<sup>1</sup> (2002)
- ▶ No. 33 Democracy, rule of law and foreign policy<sup>1</sup> (2003)
- ▶ No. 34 Code of good practice in electoral matters<sup>2</sup> (2003)
- ▶ No. 35 The resolution of conflicts between the central state and entities with legislative power by the constitutional court<sup>1</sup> (2003)
- ▶ No. 36 Constitutional courts and European integration<sup>3</sup> (2004)
- ▶ No. 37 European and U.S. constitutionalism<sup>3</sup> (2005)
- ▶ No. 38 State consolidation and national identity<sup>3</sup> (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 Europe<sup>3</sup> (2005)
- ▶ No. 41 Organisation of elections by an impartial body<sup>3</sup> (2006)
- ▶ No. 42 The status of international treaties on human rights<sup>3</sup> (2006)
- ▶ No. 43 The preconditions for a democratic election<sup>3</sup> (2006)
- ▶ No. 44 Can excessive length of proceedings be remedied?<sup>3</sup> (2007)
- ▶ No. 45 The participation of minorities in public life<sup>3</sup> (2008)
- ▶ No. 46 The cancellation of election results<sup>3</sup> (2010)
- ▶ No. 47 Blasphemy, insult and hatred<sup>3</sup> (2010)
- ▶ No. 48 Supervising electoral processes<sup>3</sup> (2010)
- ▶ No. 49 Definition of and development of human rights and popular sovereignty in Europe<sup>3</sup> (2011)
- ▶ No. 50 10 years of the Code of good practice in electoral matters<sup>3</sup> (2013)

## Other collections

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### 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

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- ▶ 1993-2019 (three issues per year)<sup>75</sup>

## Special Bulletins on Constitutional Case-Law

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- ▶ Description of Courts (1999)<sup>2</sup>
- ▶ Basic texts – extracts from Constitutions and laws on Constitutional Courts – issues No.1-2 (1996), Nos. 3-4 (1997), No.5 (1998), No.6 (2001), No.7 (2007), No.8 (2011)
- ▶ Leading cases of the European Court of Human Rights (1998)<sup>2</sup>
- ▶ Freedom of religion and beliefs (1999)
- ▶ Leading cases 1 – Czech Republic, Denmark, Japan, Norway, Poland, Slovenia, Switzerland, Ukraine (2002)
- ▶ Leading cases 2 – Belgium, France, Hungary, Luxembourg, Romania, USA (2008)

<sup>75</sup>. From the issue 2018/1 onwards, the Bulletin is available only in electronic form.

- ▶ Inter-Court Relations (2003)
- ▶ Statute and functions of Secretary Generals of Constitutional courts (2006)
- ▶ Criteria for Human Rights Limitations by the Constitutional Court (2006)
- ▶ Legislative omission (2008)
- ▶ State Powers (2012)
- ▶ Leading Cases of the European Court of Justice (2013)
- ▶ Descriptions of Courts (2014)
- ▶ Co-operation between Constitutional Courts in Europe (2015)<sup>76</sup>
- ▶ Role of Constitutional Courts in upholding and applying constitutional principles (2017)

#### Annual Reports

- ▶ 1993 – 2019

### Other titles

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- ▶ Mass surveillance: who is watching the watchers? (2016)
- ▶ Central Asia – judicial systems overview (2016)<sup>77</sup>
- ▶ Main documents of the Venice Commission in the field of electoral law and political parties (2016)<sup>78</sup>
- ▶ Electoral opinions on Ukraine and general reports in the electoral field – Part I, Part II (2016)<sup>79</sup>
- ▶ Joint OSCE/ODIHR – Venice Commission Guidelines on Fundamental rights (2015)<sup>4</sup>
- ▶ Freedom of Association – joint OSCE/ODIHR – Venice Commission Guidelines (2015)<sup>2,4</sup>
- ▶ Tackling blasphemy, insult and hatred in a democratic society (2008)
- ▶ Electoral Law (2008)
- ▶ European Conferences of Electoral Management Bodies:
  - 2nd Conference (Strasbourg 2005)
  - 3rd Conference (Moscow, 2006)
  - 4th Conference (Strasbourg, 2007)
  - 5th Conference (Brussels, 2008)
  - 6th and 7th Conference (The Hague, 2009 and London 2010)<sup>5</sup>
  - 8th Conference on Elections in a changing world (Vienna, 2011)<sup>5</sup>

### Brochures

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- ▶ 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)<sup>6</sup>
- ▶ 20th Anniversary – Publications (2010)
- ▶ Selected studies and reports (2010)
- ▶ Key Facts (2011) <sup>2,7</sup>
- ▶ Services provided by the Venice Commission to Constitutional Courts and equivalent bodies (2011)
- ▶ Code of Good Practice in Electoral Matters (2016)<sup>2,4,7</sup>
- ▶ Main reference texts of the Venice Commission (2013)<sup>4</sup>
- ▶ The Venice Commission of the Council of Europe (2014)<sup>4</sup>

UniDem (Universities for Democracy) Campus for the Southern Mediterranean countries (2015, 2017)<sup>4</sup>

Rule of Law Checklist (2016)<sup>2,4,7,8</sup>

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

77. Available only in Russian; “Introduction” also in English

78. Available only in Russian

79. Available only in Ukrainian

- ▶ Preventing and responding to the misuse of administrative recourses during electoral processes – Joint guidelines (2017)<sup>2</sup>
- ▶ European Conference of Electoral Management Bodies (2017)<sup>2</sup>
- ▶ Venice Commission: cooperation with Constitutional courts (2017)<sup>2,7</sup>
- ▶ Reference texts in the field of judiciary (2017)
- ▶ The Venice Commission of the Council of Europe – 2017
- ▶ Key facts (2018)
- ▶ UniDem Campus for the southern Mediterranean (2018)<sup>4</sup>
- ▶ “The Venice Principles” – Principles of protection and promotion of the ombudsman institutions (2019)<sup>2,4,7</sup>



## APPENDIX VI

# DOCUMENTS ADOPTED IN 2019

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### 118<sup>th</sup> plenary session (Venice, 15-16 March 2019)

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CDL-AD(2019)001	<b>Ukraine</b> - Amicus curiae Brief on separate appeals against rulings on preventive measures (deprivation of liberty) of first instance cases
CDL-AD(2019)002	<b>Report on funding of associations</b>
CDL-AD(2019)003	<b>Luxembourg</b> - Opinion on the proposed revision of the Constitution
CDL-AD(2019)004	<b>Hungary</b> - Opinion on the Law on Administrative Courts and the Law on the entry into force of the Law on Administrative Courts and certain transitional rules
CDL-AD(2019)005	Principles on <b>the Protection and Promotion of the Ombudsman Institution</b> (“ <b>The Venice Principles</b> ”)
CDL-AD(2019)006	<b>Georgia</b> - Opinion on the concept of the legislative amendments to the Criminal Procedure Code concerning the relationship between the prosecution and the investigators
CDL-AD(2019)007	Report on <b>Term Limits; Part II, Members of Parliament, and Part III, Representatives elected at sub national and local level and executive officials elected at sub national and local level</b>
CDL-AD(2019)008	<b>North Macedonia</b> - Opinion on the draft Law on the Judicial Council

### 119<sup>th</sup> plenary session (Venice, 21-22 June 2019)

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CDL-AD(2019)009	<b>Georgia</b> - Urgent Opinion on the selection and appointment of Supreme Court judges
CDL-AD(2019)010	<b>Montenegro</b> - Opinion on the draft Law on Freedom of Religion or Beliefs and Legal Status of Religious Communities
CDL-AD(2019)011rev	Report on <b>the Recall of Mayors and Local Elected Representatives</b>
CDL-AD(2019)012	<b>Republic of Moldova</b> - Opinion on the constitutional situation with particular reference to the possibility of dissolving parliament
CDL-AD(2019)013	<b>Tunisia</b> - Opinion on the draft Organic Law on the Authority for Sustainable Development and the Rights of Future Generations
CDL-AD(2019)014	<b>Romania</b> – Opinion on Emergency Ordinances GEO No. 7 and GEO No. 12 amending the Laws of Justice
CDL-AD(2019)015	Parameters on <b>the Relationship between the Parliamentary Majority and the Opposition in a Democracy: a Checklist</b>
CDL-AD(2019)016	Joint Report <sup>80</sup> on <b>Digital Technologies and Elections</b>
CDL-AD(2019)017	Joint Guidelines on <b>Freedom of Peaceful Assembly (3rd edition)</b>

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

## 120<sup>th</sup> plenary session (Venice, 11-12 October 2019)

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- CDL-AD(2019)018 **Armenia** - Opinion on the constitutional implications of the ratification of the Council of Europe Convention on preventing and combating violence against women and domestic violence (Istanbul Convention)
- CDL-AD(2019)019 **Albania** - Opinion on the powers of the President to set the dates of elections
- CDL-AD(2019)020 **Republic of Moldova** - Joint Interim Opinion of the Venice Commission and the Directorate of Human Rights (DHR) of the Directorate General of Human Rights and Rule of Law (DGI) of the Council of Europe on the draft Law on the reform of the Supreme Court of Justice and the Prosecutor's Office
- CDL-AD(2019)021 Amicus curiae brief for the **European Court of Human Rights** in the case of *Mugemangango v. Belgium* on procedural safeguards which a State must ensure in procedures challenging the result of an election or the distribution of seats
- CDL-AD(2019)022 **Peru** - Opinion on linking constitutional amendments to the question of confidence
- CDL-AD(2019)023 **Albania** - Opinion on the draft Law on the finalisation of transitional ownership processes
- CDL-AD(2019)024 **Armenia** - Joint opinion of the Venice Commission and the Directorate of Human Rights (DHR) of the Directorate General of Human Rights and Rule of Law (DGI) of the Council of Europe, on the amendments to the Judicial Code and some other laws
- CDL-AD(2019)025 **Kosovo** - Opinion on the draft Law on legal acts

## 121<sup>st</sup> plenary session (Venice, 6-7 December 2019)

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- CDL-AD(2019)026 **Bosnia and Herzegovina** - Joint Opinion on the Legal Framework of Peaceful Assembly in Bosnia and Herzegovina, in its two entities and in Brcko District
- CDL-AD(2019)027 **Ukraine** - Opinion on the Legal framework in Ukraine governing the Supreme Court and Judicial Self-Governing Bodies
- CDL-AD(2019)028 **Republic of Moldova** - Amicus curiae Brief on the Criminal Liability of Constitutional Court judges
- CDL-AD(2019)029 **Ukraine** - Amicus curiae Brief for the Constitutional Court of Ukraine on draft Law 10257 on the early termination of a Deputy's mandate
- CDL-AD(2019)030 Report on **the compliance with Council of Europe and other international standards of the inclusion of a not internationally recognised territory into a nationwide constituency for Parliamentary elections**
- CDL-AD(2019)031 **Bulgaria** - Opinion on draft Amendments to the Criminal Procedure Code and the Judicial System Act, concerning Criminal Investigations against Top Magistrates
- CDL-AD(2019)032 **Ukraine** - Opinion on the Law on Supporting the Functioning of the Ukrainian Language as the State Language
- CDL-AD(2019)033 **North Macedonia** - Opinion on the Law on the Use of Languages
- CDL-AD(2019)034 **Republic of Moldova** - Amicus curiae Brief for the Constitutional Court of the Republic of Moldova on the Amendments to the Law on the Prosecutor's Office
- CDL-AD(2019)035 Secretariat Memorandum - **Comments on PACE Recommendation 2163(2019) on Ombudsman Institutions in Europe - the need for a set of common standards**



**www.coe.int**

## **VENICE COMMISSION**

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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.

