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**EUROPEAN COMMISSION FOR DEMOCRACY THROUGH LAW**  
**(VENICE COMMISSION)**

**COMMISSION EUROPEENNE POUR LA DEMOCRATIE PAR LE DROIT**  
**(COMMISSION DE VENISE)**

**DRAFT ANNUAL REPORT OF ACTIVITIES 2017**

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## I. WORKING FOR DEMOCRACY THROUGH LAW - AN OVERVIEW OF VENICE COMMISSION ACTIVITIES IN 2017

### 1. KEY FIGURES

The Venice Commission adopted 34 texts in 2017, including six opinions on constitutional reforms and constitutional amendments concerning Armenia, Georgia, Kazakhstan, Republic of Moldova, Turkey and Venezuela, two *amicus curiae* briefs, 23 opinions on legislation texts and other legal issues as well as three texts of a general nature. It (co)organised 57 meetings and participated in other 91 events, including in 5 election observation missions. It published three Bulletins on Constitutional Case Law and collected comparative law elements for constitutional courts and equivalent bodies in 30 cases. In 2017, nine courts<sup>1</sup> joined the World Conference on Constitutional Justice (WCCJ), bringing the total number of members to 112 in December 2017. The number of judgments available in the constitutional law database CODICES approached 9500 in 2017.

### 2. MAIN ACTIVITIES

#### Democratic institutions and fundamental rights

##### *Constitutional reforms*

In 2017, the Commission adopted an opinion on the major constitutional reform in **Turkey**, which introduced a super-presidential regime, and two opinions on the constitutional reform in **Georgia**, which transforms its political system into a parliamentary system. The transformation was already started by a previous reform in 2010, also carried out in close cooperation with the Venice Commission.

It also examined a proposal for a referendum to amend the Constitution of the Republic of **Moldova**, where the President sought to expand his power to dissolve Parliament, and the constitutional reform in **Kazakhstan**, where some of the powers of the President were distributed between Parliament and the Government.

Finally, the Commission prepared an opinion on the Constituent Assembly of **Venezuela**, convoked in 2017 by President Maduro to adopt a new constitution.

#### *Democratic development of public institutions and respect for human rights*

##### *Democratic institutions*

In 2017, the Commission examined amendments to the Rules of Procedure of the Verkhovna Rada of **Ukraine**.

The Commission also examined the replacement by an emergency decree law of mayors in **Turkey** by unelected mayors, enabling the central authorities to exercise discretionary control over the concerned municipalities.

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<sup>1</sup> In alphabetical order: the Constitutional Court of the Central African Republic, the Constitutional Council of Djibouti, the Council of Constitutional Inquiry of Ethiopia, the Supreme Court of Ireland, the Supreme Court of Kenya, the Constitutional Court of Luxembourg, the Federal Court of Malaysia, the Supreme Court of Panama and the Supreme Court of Swaziland.

At the request of the European Court of Human Rights, in 2017 the Venice Commission prepared an *amicus curiae* brief for the case of **Berlusconi v. Italy**. The case concerned the revocation of the mandate of a member of Parliament and the minimum procedural guarantees that a State must provide within the framework of the disqualification procedure.

### *Fundamental Rights*

In 2017, the Commission adopted an opinion on the **Hungarian** draft law aimed at increasing transparency of the foreign funding of NGOs.

In the area of freedom of expression and media freedom, the Commission examined the liquidations of a considerable number of media outlets decided in **Turkey** through emergency decree laws, in the aftermath of the 2016 failed coup.

The Commission was also asked to provide its legal assessment of the use, in the **Republic of Moldova**, of special investigation measures outside criminal proceedings, under the authority of a “security mandate” granted by a judge. A second opinion on the Republic of Moldova concerned a legislative amendment likely to affect the financial independence of the Moldovan Ombudsman institution (the People’s Advocate).

In its opinion on the law on education of **Ukraine**, the Commission acknowledged the legitimate aim of promoting and consolidating the state language and its command by all citizens while at the same time stressing that a careful balance is required between this legitimate aim and the protection of the linguistic rights of Ukraine’s national minorities.

Another 2017 opinion concerned the - more restrictive - requirements introduced by the 2011 Law on National Higher Education of **Hungary** for the licensing and operation of foreign universities.

### *Judicial reforms*

Following the recent constitutional reform, assessed by the Commission in 2016, the authorities of **Armenia** developed a Draft Judicial Code, examined by the Commission in an opinion of 2017, addressing, in particular, issues related to the composition of the Supreme Judicial Council, as well as the appointment, evaluation and disciplinary procedures.

The 2017 opinion on the judicial reform in **Bulgaria**, which followed the 2015 constitutional reform, focused and made recommendations in relation to three core issues: the powerful position of the Prosecutor General within the system of judicial governance; the composition of the Judicial Chamber of the Judicial Council, and the question of inspections and appraisals of judges.

The reform of the judicial system of **Poland** was examined by the Commission in 2017 in relation to three acts: the Act on Ordinary Courts of July 2017, and two Draft Acts - on the National Council of the Judiciary (NCJ) and on the Supreme Court (SC). Another 2017 opinion on Poland concerned the reform of the prosecution service, and in particular the merger of the function of the Public Prosecutor General and that of the Minister of Justice.

On 18 July 2017, Mr Gianni Buquicchio, President of the Venice Commission, issued a statement on the situation of the Judiciary of Poland, expressing concern over the Polish Parliament’s intent to adopt a number of laws on the judicial system affecting, *inter alia*, the National Council of the Judiciary and the Supreme Court. The statement underlined that the independence of the Judiciary was a basic element of the rule of law, guaranteed by the European Convention on Human Rights and the case-law of the European Court of Human Rights. The fact that judges may not be dismissed before the end of their term of office, except on the basis of proper disciplinary proceedings, was a fundamental guarantee of their independence. Any legislation arbitrarily ending the term of office of judges can only be regarded as a flagrant violation of the European constitutional heritage.

In 2017 the Commission also adopted a follow-up opinion on the proposed amendments to the legislation of “**the former Yugoslav Republic of Macedonia**” on judges; in this opinion the Commission welcomed the abolition of the Council for the Establishment of Facts and transferal of its functions to the Judicial Council, but stressed that it was important to maintain the balance of judicial and lay members in the composition of the Judicial Council which decides on disciplinary matters.

The Commission also assessed, in 2017, the competences and functioning of the criminal peace judgeships in **Turkey** and the establishment of a specialised anti-corruption court in **Ukraine**.

The *amicus curiae* brief provided by the Commission for the Constitutional Court of the **Republic of Moldova** dealt with the question of whether a judge could incur criminal liability for rendering a decision that was subsequently overruled by a higher court.

### ***Transnational activities***

In 2017, the Commission organised two important international events in the sphere of democratic institutions and fundamental rights:

- Conference on “The interaction between the political majority and the opposition in a democracy” organised in co-operation with the Presidency of Romania (Bucharest, 6-7 April 2017), and
- Roundtable on foreign funding of non-governmental organisations (Venice, 4 October 2017).

## **Constitutional justice**

### ***Strengthening constitutional justice***

This year saw a number of situations in which undue pressure was exerted on constitutional courts in the member states of the Venice Commission. The latter had to intervene on several occasions in the form of statements in an attempt to raise awareness on this issue and offer support to the courts concerned.

The Venice Commission **supported constitutional courts** in the following matters:

- (Poland) On 16 January 2017, Mr Gianni Buquicchio, President of the Venice Commission, issued a statement on the situation of the Constitutional Tribunal of Poland. The statement expressed concern over steps taken aimed at ensuring that the Tribunal act in accordance with the will of the political majority.
- (Republic of Moldova) On 13 October 2017, Mr Gianni Buquicchio, President of the Venice Commission, issued a statement regarding the serious criticism made by the President of the Republic of Moldova casting doubt on the judgments of the Constitutional Court and the impartiality of its judges. The statement underlined that in a democratic state, governed by the rule of law, criticisms of constitutional court decisions are permissible as long as they are respectful. While freedom of expression is a fundamental value in a democratic state, the holders of public office must show restraint in their criticism. Disrespectful criticism and in particular threatening statements against judges, aimed at influencing the Court’s decisions, are inadmissible.

Other activities carried out by the Venice Commission in the field of constitutional justice in 2017 included:

- **Opinions:** the Commission adopted two *amicus curiae* briefs – one for the European Court of Human Rights and one for the Constitutional Court of the Republic of Moldova -, and two



opinions on the laws concerning functioning of the constitutional courts of Spain and Armenia.

- **The CODICES database:** it 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), make it possible to access around 9500 constitutional judgments for mutual inspiration and which also serve as a common basis for dialogue among judges in Europe and beyond.
- **The Commission's Venice Forum:** the Forum dealt with 28 comparative law research requests from constitutional courts and equivalent bodies covering questions which ranged from court fees, sexual harassment and the violation of human dignity to religious tattoos and asylum seekers.
- **Conferences and seminars:** the Commission co-organised or participated in several events in 2017 ( cf. Chapter III).

### ***World Conference on Constitutional Justice (WCCJ)***

On 11 March 2017, the 11<sup>th</sup> meeting of the Bureau of the WCCJ took place in Venice, Italy. Decisions made during that meeting included that future WCCJ congress hosts must ensure there are no problems for any of the delegations from member Courts of the WCCJ to enter into the country to attend the event.

On 11-14 September 2017, the 4<sup>th</sup> Congress of the WCCJ was hosted by the Constitutional Court of Lithuania in Vilnius. Delegations from 91 Constitutional Courts and equivalent bodies participated in this Congress, which had a total of 422 participants (see below).

On 11 September 2017, the Bureau of the WCCJ held its 12<sup>th</sup> meeting in Vilnius, Lithuania. During this meeting, it accepted the offer of the Constitutional Council of Algeria to host the 5<sup>th</sup> Congress in Algiers in 2020 and discussed the Conference of Constitutional Jurisdictions of Africa's (CCJA) statement in support of the Supreme Court of Kenya, which the President of the Venice Commission supported in turn in his opening statement at the 4<sup>th</sup> Congress.

### ***Elections, référendums et partis politiques***

En 2017, la Commission a poursuivi ses activités en matière électorale et de partis politiques. Elle a adopté un rapport sur la délimitation des circonscriptions et la répartition des sièges. Elle a également adopté cinq avis dans le domaine des élections et des partis politiques, relatifs à **l'Arménie**, à **la Bulgarie**, à **la République de Moldova**, ainsi qu'à un document du Congrès relatif à l'utilisation abusive des ressources administratives. Le Conseil des élections démocratiques a adopté ces avis et rapports avant qu'ils ne soient soumis à la Commission plénière.

Même si des améliorations de la législation électorale restent souhaitables, voire nécessaires, dans plusieurs Etats, les problèmes à régler portent de plus en plus sur l'application de la législation et non sur sa teneur. En 2017, la Commission a donc continué à aider les Etats membres du Conseil de l'Europe à appliquer les normes internationales dans le domaine électoral tout en poursuivant sa coopération avec les pays non européens, notamment dans le Bassin méditerranéen et en Asie centrale.

### ***Législation et pratiques électorales***

La Commission a adopté des avis sur la législation électorale ou en matière de référendums de **l'Arménie**, de **la Bulgarie** et de **la République de Moldova**

La Commission a organisé des activités d'assistance électorale et des séminaires en matière électorale en Arménie, en Géorgie, au Kirghizistan, en République de Moldova, dans « l'ex-République yougoslave de Macédoine », en Tunisie et en Ukraine.

Elle a aussi organisé, en coopération avec la Commission électorale centrale de la Fédération de Russie et l'Assemblée interparlementaire de la Communauté des Etats indépendants, la 14e Conférence européenne des administrations électorales à Saint-Petersbourg, de même que, en coopération avec l'Assemblée parlementaire, une conférence à Londres sur "L'abus des ressources administratives pendant les processus électoraux : un défi majeur pour des élections démocratiques".

La Commission a apporté une assistance juridique à cinq missions d'observation électorale de l'Assemblée parlementaire, y compris, dans le voisinage, au Kirghizistan.

La base de données VOTA sur la législation électorale, qui continue d'être gérée conjointement par la Commission et le Tribunal électoral du pouvoir judiciaire de la Fédération mexicaine, a été mise à jour.

### ***Partis politiques***

La Commission a adopté un avis sur la législation de la République de Moldova en matière de financement des partis politiques et des campagnes électorales. La Commission a coopéré avec l'OSCE/BIDDH à la révision des lignes directrices conjointes sur la réglementation des partis politiques.

### **Sharing European Experience with non-European countries**

#### ***Mediterranean Basin***

In 2017, the Venice Commission continued its successful co-operation with the countries of the Southern Mediterranean. The need to reform the State institutions in accordance with international standards was confirmed by the implementation of several projects in Jordan, Morocco and Tunisia. Authorities of Algeria, Egypt and Palestine<sup>2</sup> showed a growing interest in co-operation with the Venice Commission.

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

2017 was clearly marked by an increase in regional activities organised or supported by the Commission, including such important projects as the UNIDEM seminars for the countries of the MENA region and participation in the meetings and exchanges of views with the Organisation of Electoral Management Bodies of Arab countries. These multilateral activities saw an increased participation of various representatives of the national authorities and academia from Algeria, Jordan, Lebanon, Libya, Morocco, Palestine<sup>2</sup> and Tunisia. Algeria, Lebanon and Palestine<sup>2</sup> indicated their desire to engage more actively in multilateral activities of the Venice Commission in 2018.

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<sup>2</sup> 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.

### **Central Asia**

Since 2007, the Venice Commission has established good co-operation with the national institutions of Kazakhstan, Kyrgyzstan, Tajikistan and Uzbekistan, notably in the framework of several projects with funding provided by the European Union as well as some member states. Since February 2017, the Venice Commission started the implementation of a new project in the electoral field in Kyrgyzstan. The project is aimed at helping the country's authorities to elaborate a comprehensive strategy and to reform the electoral legislation and practice in accordance with international standards by making tools and expertise available to national institutions involved in the electoral reform.

In the absence of joint projects aimed at the Central Asian region in 2017, the Venice Commission continued bilateral co-operation with higher judicial bodies of the five countries of the region which show continuous interest in the Venice Commission's assistance. In 2017 the Commission adopted opinions on the constitutional reform and on the draft legislation on administrative reform of Kazakhstan prepared as part of a comprehensive legal reform launched by the President of the country.

### **Latin America**

In 2017 the Venice Commission continued to develop its co-operation with countries of Latin America on the basis of requests from Argentina, Mexico and Organisation of American States (OAS) as well as through its Sub-Commission on Latin America.

A growing number of countries in the region are interested in the Venice Commission's standard-setting documents and in its experience in such fields as constitutional assistance, constitutional justice and reform of the electoral legislation and practice. In 2017 experts of the Commission were invited to participate in events concerning financing of political parties and electoral campaigns in Argentina and Mexico. 2017 was marked by a fruitful co-operation with OAS on the issue of constitutional referendum in Venezuela.

### **Scientific Council**

The Scientific Council prepared and updated five thematic compilations of Venice Commission opinions and studies: on constitutional justice, on election dispute resolution, on prosecutors, on the protection of national minorities, and on referendums. 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.

### **3. VOLUNTARY CONTRIBUTIONS**

In 2017 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 Finland for co-operation with countries of Central Asia, from Japan for a Conference on the foreign funding of NGOs and from Norway for co-operation with the countries of the Southern Mediterranean as well as contributions from the Action Plan for activities in Ukraine. Certain activities, in particular in Kyrgyzstan, the Western Balkans and countries of the Eastern Partnership, were financed by the European Union in the framework of Joint Projects and Programmes.

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

### 1. COUNTRY SPECIFIC ACTIVITIES

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

##### ***Albania***

###### *Vetting of the judiciary – follow-up (CDL-AD(2016)009)*

In 2016 the Venice Commission adopted a generally positive opinion on a comprehensive constitutional reform of the judiciary in Albania (CDL-AD(2016)009), which provided *inter alia* for the vetting of all sitting judges and prosecutors. On 21 June 2016 the Albanian Parliament unanimously adopted the constitutional amendments. The next phase of the reform was the adoption of the implementing legislation.

In September 2016 Parliament adopted a law on vetting of judges and prosecutors. This law was challenged before the Constitutional Court – first in 2016 and then in 2017. At the request of the Constitutional Court, the Venice Commission adopted an *amicus curiae* brief (CDL-AD(2016)036). On 22 December 2016 and 30 October 2017 the Constitutional Court decided in favour of the vetting law, so the vetting may now continue.

##### ***Georgia***

###### *Two opinions on the constitutional reform in Georgia*

In 2010 Georgia started the transition towards a parliamentary system. The new reform launched in 2017 completed this transition. It was assessed by the Commission in two opinions, requested by the Georgian authorities: Opinion on the draft revised Constitution of Georgia (CDL-AD(2017)013) and Opinion on the draft revised Constitution of Georgia as adopted in the second reading on 23 June 2017 (CDL-AD(2017)023). The opinions generally welcomed the reforms.

The passage from a partly majoritarian system to a fully proportional electoral system deserved an overall positive assessment. However, in the first opinion adopted in June 2017 the Commission criticised the combination of the relatively high electoral threshold of 5 per cent for obtaining seats in Parliament, the allocation of the wasted seats to the winning party and the prohibition of party blocks during parliamentary elections. Those measures would limit the effects of the proportional system to the detriment of smaller parties. The Venice Commission also expressed regret about the postponement of the establishment of the second chamber to when territorial integrity is re-established in Georgia and the absence of the entrenchment of the National Security Council in the Constitution.

The introduction of an indirect election system for the President was as such in line with European standards and the Commission welcomed that the new system will not be applicable at the 2018 presidential election but only from 2023. The Opinion also recommended that the role of the Parliament regarding the budget be strengthened.

Concerning the judiciary, the Opinion recommended in particular that the life tenure for judges be extended to Supreme Court judges and that their election by parliament should be replaced by their appointment by the High Council of Justice or by the President upon the proposal of the High Council. It recommended to provide for a qualified majority requirement for the election of those judges of the Constitutional Court and members of the High Council of justice which are elected by Parliament, as well as for the election of the Prosecutor General.

Following the adoption of the first Opinion, the Georgian parliament approved an amended version of the draft Constitution at second reading on 23 June 2017. In the second Opinion the Commission

regretted the postponement of the entry into force of the proportional election system to October 2024, and noted that the draft maintained the 5% threshold and disallowed party blocks as from 2024. While recognising that a number of amendments made to the previous draft Constitution followed its previous recommendations, the Venice Commission also made a number of additional recommendations pertaining to the fundamental rights catalogue and the judiciary. The Commission also reiterated that any major constitutional reform must reach the widest possible consensus. It welcomed the commitment of the authorities to introduce some additional amendments to comply with the recommendations.

On 26 September 2017, the Parliament of Georgia adopted the draft revised Constitution at its third hearing. On 10 October 2017, the President of the Republic vetoed the constitutional bill and asked for the introduction of a fully proportional election system in 2020, the abolition of the bonus system and allowing election blocs. On 13 October 2017, Parliament overrode the presidential veto by 117 votes and adopted the constitutional amendments. The revised constitution should enter into force in 2018.

### ***Kazakhstan***

#### *Draft amendments to the Constitution*

At the request of the Presidential Administration of the Republic of Kazakhstan, the Commission adopted the opinion on the draft amendments to the Constitution of the Republic of Kazakhstan (CDL-AD(2017)010). For further details see Section V below (Co-operation in the Council of Europe neighbourhood and outside Europe).

### ***Republic of Moldova***

#### *Powers of the President to dissolve Parliament*

The Opinion on the Proposal by the President of the Republic to expand the President's powers to dissolve Parliament in the Republic of Moldova (CDL-AD(2017)014) was prepared at the request of the President of the Republic of Moldova. The President's proposal was to supplement the Constitution to enlarge his powers to dissolve Parliament, and add five new grounds for dissolution, some of which would give him a nearly discretionary dissolution power.

The Commission noted that, while in 2016 Moldova returned to the direct election of the President, it remained a parliamentary regime with a President who is not the head of the executive. Comparative research shows that, in such regimes, the role of the President is that of a figure detached from party politics; the President's dissolution powers are in the majority of cases "semi-automatic" (i.e. applied in cases specified in the Constitution) and only used in times of crisis in order to overcome political blockages through an appeal to the people. The opinion examined all five new grounds for dissolution and, with one exception, recommended not to add them, and to maintain the very limited discretion of the President in dissolution matters. The Commission also noted that the constitutional and legislative framework for such "consultative constitutional referendum" as initiated by the President was unclear. Later in 2017 the Constitutional Court of Moldova decided that the "consultative constitutional referendum" initiated by the President was contrary to the Constitution, both in form and in substance, so the referendum did not take place.

### ***Spain***

On 30 May 2017 the President of the Commission received a letter from Mr Carles Puigdemont, the then President of the Government of Catalonia (Spain), and a copy of Resolution 122/XI adopted by the Catalan Parliament on 18 May of 2017, concerning the question of a possible referendum on self-determination of Catalonia. In his reply of 2 June 2017, the Commission's President, Gianni Buquicchio, stressed that not only the referendum as such, but also co-operation with the Commission would have to be carried out in agreement with the Spanish authorities. He further underlined that the Venice Commission had consistently emphasised in its work the need

for any referendum to be carried out in full compliance with the Constitution and the applicable legislation of the country concerned.

## **Turkey**

### *Transformation of the political regime into a super-presidential republic*

Following the failed coup of 2016, and in the context of the state of emergency, the Turkish Parliament passed constitutional amendments which transformed Turkey into a presidential regime. These amendments were later approved by referendum.

At the request of the PACE Monitoring Committee, the Venice Commission adopted an “Opinion on the amendments to the Constitution adopted by the Grand National Assembly on 21 January 2017 and to be submitted to a National Referendum on 16 April 2017” (CDL-AD(2017)005).

Under the amendments, the President would cease to be a neutral figure but would become a party leader, who would appoint and dismiss, at will, ministers, vice-presidents, and other top officials. The President would have the power to dissolve Parliament on any ground; which would trigger his early re-election, but, as a result, the system would lose an essential check on the President’s powers, since the newly elected Parliament and President would be of the same political colour. The President is enabled to issue presidential decrees in all areas relating to executive powers, except in the areas constitutionally reserved to legislation, and to veto laws. The Parliament would only be able to overcome the veto with an absolute majority. The President would also be empowered to declare the state of emergency, during which his power to issue presidential decrees would be unrestricted. Such a strong President would normally require an extremely strong and independent judiciary to check his powers, nevertheless, the President’s powers vis-à-vis the judiciary are also increased: thus, he will appoint almost half of the members of the high judicial council. Control of the High Judicial Council would mean control over nominations, transfers, disciplinary sanctions and dismissals of judges and prosecutors.

The Opinion concluded that the proposed presidential system concentrated excessive power in the hands of the President, weakened the control of Parliament over such power and weakened even further the judiciary.

### *Local self-government in the context of the state of emergency*

In its 2016 Opinion on the Emergency Decree Laws, the Commission had concluded that the Government had interpreted its extraordinary powers too extensively and had taken measures going beyond what is allowed by the Turkish Constitution and by international law.

Similar concerns were raised by the provisions pertaining to the exercise of local democracy in Decree Law N° 674, both in terms of compliance with the procedural and substantive rules on the state of emergency and with Turkey’s obligations under the European Charter of Local Self-Government. The Opinion (CDL-AD(2017)021), requested by the Congress of Local and Regional Authorities of the Council of Europe, reiterated that only extraordinary measures should be taken which are required to deal with the threat which made it necessary to declare the state of emergency, and only for the duration of the state of emergency.

Through the Decree Law, the Law on Municipalities had been amended to enable the central authorities to appoint unelected mayors, deputy-mayors and members of local councils, and exercise, without judicial control, discretionary control over the functioning of the concerned municipalities. This was problematic both in terms of necessity and proportionality. It was particularly worrying that, through emergency legislation not limited to the duration of the emergency regime, the very nature of the system of local government in place in Turkey, based on the election of local authorities by the local population, had been altered.

The Commission recommended: that the provisions enabling the appointment of trustees to the positions of local elected officials, not strictly necessitated by the state of emergency, be repealed; that the new rules be limited to the duration of the state of emergency, and that permanent measures affecting local democracy only be taken, after proper parliamentary debate, through ordinary laws and procedures; that adequate judicial review be provided concerning the measures taken by governors in municipalities where special powers are instituted in this respect, as well as a proper framework for the reinstatement of suspended/dismissed local elected officials and staff.

## **Ukraine**

### *Opinion on the Draft Law on amendments to the Rules of Procedure and Internal Organisation of the Verkhovna Rada of Ukraine (CDL-AD(2017)026)*

On 28 February 2017, Mr Andriy Parubiy, Speaker of the Ukrainian parliament, requested an opinion on the draft Law on amendments to the Rules of Procedure and Internal Organisation of the Verkhovna Rada. The submitted text aimed to bring the existing Rules of Procedure into line with the current Constitution of Ukraine and to improve the efficiency of the Verkhovna Rada. The draft law had been assessed on the basis of existing European standards and best practices in other member states.

The opinion concentrated on four main issues: the respect of the principle of separation of powers; the nature of the act regulating parliamentary procedures; the role of the coalition in parliamentary proceedings and the issue of imperative mandate vs. free mandate. While acknowledging that the draft law reflected the constitutional provisions, the opinion recommended that the rules of procedure should be adopted as an internal act of parliament, could provide for specific procedures aimed at minimising the negative effect of Article 81 of the Constitution (allowing for a revocation of an MP's mandate by a political party), and to review the rules on the formation of coalitions. Some provisions of the examined text on the appointment of officials and on the powers of the Speaker could also be reconsidered.

The Commission adopted the opinion at its October plenary session. It praised the excellent quality of dialogue between its rapporteurs and the representatives of the Rada and expressed the hope that co-operation between the Venice Commission and Ukraine on the reform of the parliament would continue in 2018.

## **Venezuela**

### *Legitimacy of the National Constituent Assembly*

At the request of the Secretary General of the Organisation of American States the Venice Commission prepared a Preliminary opinion, later endorsed by the Commission (CDL-AD(2017)024), on legal issues raised by the decree issued by President Maduro on 23 May 2017, calling for the election of a National Constituent Assembly in Venezuela. The opinion focused on two main issues: whether the Constitution gave the power to the President of Venezuela to call a Constituent Assembly; and whether he could establish the rules for the election of its members by decree.

On the first issue, the Opinion concluded that, in the light of the wording of the relevant constitutional provisions, against the background of the previous constitutional experience of Venezuela and in the absence of compelling arguments to the contrary, the decision on the convocation of a Constituent Assembly could only be taken by the people of Venezuela in a referendum.

On the second question, the Commission came to the conclusion that, in accordance with the principle of the rule of law and the Constitution of Venezuela, the power to establish the rules for the election of the National Constituent Assembly belonged to the National Assembly only, which had to adopt a specific piece of legislation.

The opinion also pointed out that the electoral rules established by the relevant presidential decree based on territorial representation violated the democratic principle of equal voting power, and the rules based on sectorial representation entailed a flagrant violation of the democratic principle of equal voting rights. Finally, also in the light of comparative experience, the number of members of the National Constituent Assembly appeared to be too large to enable the Assembly to hold meaningful debates, reach consensus and complete its work within a reasonable timeframe.

## **Fundamental rights**

### ***Armenia***

*Follow-up to the Opinion on the draft Constitutional Law on the Human Rights Defender of Armenia ([CDL-AD\(2016\)033](#))*

The Constitutional Law of the Republic of Armenia "On the Human Rights Defender" was adopted by the National Assembly on 16 December 2016.

At the March 2017 session, the Commission was informed that most of the recommendations made by the Venice Commission were taken into account, notably with respect to: making a distinction between the Defender's ombudsman functions and the Defender's functions as the National Preventive Mechanism under the Optional Protocol to the Convention against Torture; adding the possibility for the Defender to have a regional presence to provide effective accessibility to human rights protection across the country; adding clear provisions on the immunity of the means of communication used by the Defender and the staff and that on the termination of the Defender's mandate; the recommendation that a report on the activity of the Defender be presented to Parliament and published.

### ***Hungary***

#### *Foreign Funding of Non-Governmental Organizations*

*Opinion on the draft law on the transparency of organisations receiving support from abroad (CDL-AD(2017)015)*

In June 2017 the Commission adopted, at the request of the Parliamentary Assembly of the Council of Europe, an opinion on the **Hungarian** draft law aimed at increasing the transparency of the foreign funding of NGOs (CDL-AD(2017)015). A preliminary opinion on the draft law was prepared by the rapporteurs and sent to the Hungarian authorities on 2 June 2017. On 13 June 2017, the Hungarian Parliament adopted the Law with certain amendments.

The Venice Commission acknowledged that the aim of the Draft Law - ensuring transparency of civil society organisations in order to prevent undue foreign political influence – was legitimate. It also accepted that the Law may also contribute to the fight against money laundering and the financing of terrorism.

The Commission considered however that these legitimate aims cannot be used as a pretext to control NGOs or to restrict their ability to carry out their legitimate work. The Commission concluded in particular: that the period of three years during which a civil society organisation may not receive any foreign funding in order to be entitled to initiate a deregistration procedure was quite long and should be replaced by a one-year period; that, in order to ensure that no excessive obligation is imposed on organisations receiving foreign funding, the data included in the register and made public should be limited to the major sponsors; that the obligation for the relevant organisation to mention, on all its press products and publications, that it qualifies as an organisation receiving support from abroad, was excessive and had to be removed. The Commission also recommended that the law should expressly provide for the proportionality principle in relation to sanctions and consequently to delete the reference to the sanction of dissolution for failure to fulfil the obligations under the Draft. The Opinion furthermore stressed that



the exclusion of a number of associations from the scope of application of the Draft Law could be discriminatory and should therefore either be justified in clearer terms, or deleted.

Finally, the Venice Commission considered that while some of the amendments introduced into the Draft Law prior to its adoption on 13 June 2017 represented an important improvement, they did not suffice to alleviate the Venice Commission's concerns that the Law will cause a disproportionate and unnecessary interference with the freedoms of association and expression, the right to privacy, and the prohibition of discrimination.

#### *Right to education, academic freedom*

The Act XXV of 4 April 2017 amending the 2001 **Hungarian** National Tertiary Education Act introduced new, more restrictive requirements for the licensing and operation of foreign universities in Hungary. The new rules had a particular impact on the functioning and the actual existence of the Central European University (CEU), a widely-reputed university legally operating in Hungary for many years.

In its Opinion (CDL-AD(2017)022) prepared at the request of the Parliamentary Assembly, the Venice Commission acknowledged that, in the absence of unified European norms in the field, it belongs to each state to establish the most appropriate regulatory framework for foreign universities on its territory. Yet, introducing, without very strong reasons, more restrictive rules for already operating universities appeared problematic in the light of the rule of law and fundamental rights principles. The Opinion thus recommended: exempting operating universities from the requirement of a prior agreement with their home state and from the campus obligation, removing the name-related prohibition and the new restrictions on programme-cooperation, as well as a non-discriminatory and flexible application of the new work permit requirements. The Commission also recommended more flexible implementation deadlines, essential for the success of the negotiations that were underway and to allow the concerned universities to take the necessary steps to comply with the new regulations.

The Commission was subsequently informed that, on 17 October 2017, the Hungarian Parliament amended the 2017 Higher Education law to extend to 1 January 2019 the deadline for foreign universities operating in the country to meet the new requirement.

#### ***Republic of Moldova***

##### *Legal framework pertaining to the operation of the Ombudsman institution*

In 2015, the Venice Commission welcomed the adoption in April 2014 of a new legal framework for the People's Advocate (the Ombudsman) of the **Republic of Moldova**, as a step forward in reforming this institution. Since then, as recommended by the Venice Commission, the institution has also received constitutional protection, through a constitutional amendment, in April 2017, introducing into the Moldovan Constitution a special chapter on the statute and role of the People's Advocate, with important guarantees for the independence of the institution and, as required in the 2015 Opinion, a stronger (two thirds) majority requirement for the dismissal of the post holder.

In 2017, at the request of the People's Advocate of the **Republic of Moldova**, the Commission examined a proposed amendment to the Law on the People's Advocate removing the power of the Ombudsman to formulate the proposal for the budget of the institution; this power would now belong to the Minister of Finance.

The opinion (CDL-AD(2017)032) recalls that the budget of the Ombudsman institution must be sufficient to guarantee its independence and impartiality and that the decision regarding this budget should lie with the Parliament. Unless more general changes are needed due to economic constraints, the government should not intervene on the Ombudsman's budget proposals. Since the proposed amendment would enable the executive to interfere in the Ombudsman's work, the

Commission recommended that the Moldovan authorities reconsider the intention to proceed with this reform.

*Special investigation measures – the “security mandate”*

In 2017 the Commission examined amendments to certain legislative acts of **the Republic of Moldova** concerning the use of special investigation measures outside criminal proceedings, under the authority of a “security mandate” granted by a judge. The amendments had been prepared by the Moldovan authorities as part of their efforts to improve the legal framework for the protection of state security, and for combating extremism. The proposed mechanism had already been assessed in 2014 by the Venice Commission and DGI.

The 2017 opinion (CDL-AD(2017)009), jointly prepared with DGI, positively noted that some of the 2014 opinion’s recommendations had been taken into account (limitation of the initial maximum period of authorisation of special measures with a maximum of two years for authorisation renewal, access of the concerned prosecutor and judge to secret information). However, a number of key aspects still had to be addressed, including the general issue of the accountability of the Service. The opinion recommended *inter alia* providing more precise conditions for court authorisation of a security mandate; specifying the circumstances for emergency authorisation and providing a reasonable timeframe for subsequent review by the judge. In addition, more specific and narrow definitions for extremism offences were recommended, as well as increased human rights’ safeguards in relation to the measures for combating extremist activities carried out through electronic communication networks and systems.

Given the existence of parallel pending drafts dealing with intelligence and security matters, the opinion stressed the need to ensure the clarity and consistency of the future legislation, as regards both concepts and procedures and institutional aspects.

## **Turkey**

*Freedom of the media in the context of the state of emergency*

At the request of the Political Affairs Committee of PACE, the Commission prepared an opinion (CDL-AD(2017)007) on the measures taken in **Turkey** with respect to freedom of the media, in the aftermath of the 2016 failed coup.

These measures consisted primarily of mass liquidations of media outlets by decree laws. The liquidation of media outlets had been ordered without an individualised examination of each case, directly by the emergency decree laws and without having a basis in any pre-existing legislative provision. Media outlets were included in the liquidation lists on the basis of very vague criteria of “connections” to “terrorist organisations”. The opinion reiterated the conclusions of an earlier Venice Commission opinion on the state of emergency regime in Turkey, namely that permanent measures should be enacted in normal legislation, and that emergency measures should remain an exceptional tool connected to the reasons which justified the declaration of the state of emergency.

Another source of concern was the criminal prosecution of journalists, which was intensified during the emergency period. The pre-trial detention of journalists had been often ordered without sufficient reasons, with reference solely to the content of their publications. The Commission stressed that such cases should not be qualified under the heading of “membership” of a terrorist organisation. The creation, in January 2017, of a special inquiry commission tasked with re-examining certain measures taken under the emergency regime was a positive development, but the independence and efficiency of this commission was open to doubt.

## **Ukraine**

### *Educational rights of persons belonging to national minorities*

At the request of the Ministry of Foreign Affairs of Ukraine, the Venice Commission examined language-related provisions (Article 7) of the new Law on Education of **Ukraine**. The Opinion, adopted in December 2017 (CDL-AD(2017)030), stressed that the language question, which remains a highly sensitive issue in Ukraine, requires a careful balance between the legitimate aim of strengthening the Ukrainian language as the state language, and the protection of the linguistic rights of Ukraine's national minorities.

In the Commission's view, Article 7 of the Law results in a system focused on the mandatory use of the Ukrainian language as the language of education, allowing a substantial diminution of the scope of education in minority languages, notably at the secondary level. Furthermore, the less favourable treatment of minority languages which are not EU official languages, in particular the Russian language, raises issues of discrimination (under Article 7, these languages may only be used as languages of instruction at pre-school and primary school).

In the Commission's view, the appropriate solution would be to replace Article 7 with a more balanced provision, also addressing the issue of discriminatory treatment of non-EU minority languages. At the same time, as a framework provision, Article 7 offers possibilities for a more balanced interpretation and application, and the Ukrainian authorities committed to providing more balanced solutions through the forthcoming Law on General Secondary Education.

The Opinion thus recommended, with reference to the forthcoming Law on General Secondary Education: to ensure a sufficient proportion of education in minority languages at the primary and secondary levels, in addition to the teaching of the state language, while at the same time improving the quality of teaching of the state language; to provide more time for a gradual reform; to exempt private schools from the new language requirements; to enter, in the implementation of the new Education Law, into a new dialogue with minorities' representatives and all interested parties; to ensure that the implementation of the new rules does not endanger the preservation of minorities' cultural heritage and the continuity of minority language education in traditional schools.

## **Judiciary**

### **Armenia**

#### *Draft judicial code*

At the request of the Armenian Ministry of Justice, the Venice Commission adopted the Opinion on the Draft Judicial Code of Armenia (CDL-AD(2017)019). The Draft Judicial Code was prepared following the constitutional reform of 2015; the reform had received a generally positive assessment by the Venice Commission. In its opinion, the Commission examined the composition of the Supreme Judicial Council, which was more balanced. The Council of Courts' Presidents had been abolished and its powers given to the Supreme Judicial Council, while courts' presidents could not be members of the SJC, which was a positive step. The Venice Commission noted that the Judicial Department might remain an autonomous body with administrative functions vis-à-vis the courts, provided that it functions under the control of the Supreme Judicial Council. Some provisions of the Draft Code would benefit from clarification, especially as regards the criteria and methods for performance evaluation and the appointments procedures, the rules of conduct of judges etc. The Commission expressed regret that no right of appeal to a court of law was provided for judges against the decisions of the Supreme Judicial Council in disciplinary matters.

In the following months the Draft Code was revised, in the light of the Venice Commission recommendations, and submitted to Parliament. The Code adopted by Parliament took into account many of the Venice Commission's recommendations (with one notable exception relating to the appeal to a court of law in disciplinary matters).

## **Bulgaria**

### *Judicial System Act*

At the request of the PACE Monitoring Committee, the Commission adopted the Opinion on the Judicial System Act of Bulgaria (CDL-AD(2017)018). The 2015 constitutional reform of the Bulgarian judiciary had brought many positive changes (such, as, for example, the separation of the Supreme Judicial Council (SJC) into two chambers, one for judges and one for prosecutors). However, not all previous Venice Commission recommendations had been fully implemented, and further changes were needed.

The draft opinion focused on three core issues. The first was the powerful position of the Prosecutor General within the system of judicial governance. Prosecutors are subordinate to the Prosecutor General; they participate in the plenary sitting of the SJC together with the Prosecutor General and may even be represented in the Judicial Chamber. There are weak mechanisms of accountability of the Prosecutor General: it is virtually impossible to remove him/her for a criminal offence, and it is very difficult to use the “impeachment” procedure provided by the Constitution and the Act. The draft opinion suggested some possible solutions to remedy this situation. The composition of the Judicial Chamber was another point of concern, since the SJC Plenary (where judges represent a net minority) had retained some important functions vis-à-vis judges; furthermore, within the Judicial Chamber itself, judges elected by their peers were in a slight minority. The third key issue was the question of inspections and appraisals of judges. The Inspectorate was now endowed with vast powers, overlapping with the powers of the SJC. This needed to be revised, and the Inspectorate needed to have institutional links to the SJC.

## **Poland**

### *The on-going reform of the Polish judiciary: Act on Ordinary Courts and two Draft Acts, on the National Council for the Judiciary and on the Supreme Court*

At the request of the President of the PACE, the Venice Commission adopted an Opinion (CDL-AD(2017)031) 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. This opinion focused on the on-going reform of the Polish judiciary, initiated by the government in 2016. The stated goal of the reform was the “democratization” of the Polish judiciary. This reform follows the extensive overhaul of the Constitutional Tribunal, criticised by the Venice Commission in earlier opinions.

With reference to the Draft on the National Council of the Judiciary, the Opinion stressed the risk of politicisation of the National Council for the Judiciary (NCJ). The proposed election of NCJ judicial members by the Parliament is contrary to European standards, which favour their election by their peers. Lay members represent the “democratic” component of such councils. The procedure of nomination of judicial members, as provided by the Draft Act, does not prevent the politicisation of the NCJ.

The Draft Act on the Supreme Court (SC) provides for the early removal of a large number of SC judges due to the retroactive lowering of the retirement age. This is ill-advised: it affects their tenure and may result in the loss of independence by the judiciary as a whole, since new judges will be appointed by the newly composed (and thus politicized) NCJ. The creation of two special chambers within the SC which are somewhat superior to the other chambers is particularly problematic as it creates an internal hierarchy within the SC. The introduction of the “extraordinary review” chamber endangers legal certainty. Lay judges should not sit on the highest judicial instance and decide on complex issues of law. Candidates to the position of First President of the SC, submitted to the President of the Republic for approval, should all have significant support of their colleagues.

The Act on Ordinary Courts (adopted in July 2017) gives too much power to the Minister of Justice vis-à-vis court presidents, and, through them, vis-à-vis the judiciary as a whole, since in the Polish

system court presidents have vast powers, especially as regards case-management. This is particularly problematic given that the Minister of Justice is at the same time the Prosecutor General. The Minister should not have nearly unlimited appointment-dismissal powers vis-à-vis court presidents, and should not be able to apply, single-handedly, sanctions to them; the judiciary should be meaningfully involved in such decisions.

The Venice Commission concluded that the on-going reform poses a serious threat to judicial independence. Despite this criticism and without taking into account the Commission's recommendations, in December 2017 the two draft laws were adopted with some amendments by the Parliament and signed into law by the President of Poland.

#### *Opinion on the Act on the Public prosecutor's Office*

The merger of the function of the Public Prosecutor General and that of the Minister of Justice was the most important aspect of the new prosecution system established by the 2016 Act on the Public Prosecutor's office and represented a complete reversal of the model adopted in 2009 (split of the two functions). The Opinion (CDL-AD(2017)028), requested by the Chairman of the Monitoring Committee of the Parliamentary Assembly, assessed this merger against the background of the increased powers of the Public Prosecutor General/Minister of Justice vis-à-vis the entire prosecution service. Bypassing the prosecutorial hierarchy, the Minister could directly intervene in individual cases. The Minister could not only give orders to the top prosecutor but s/he could perform all prosecutorial acts him/herself in individual cases. The Prosecutor General/Minister could change or revoke any decision taken by a subordinate public prosecutor without consulting that prosecutor and could inspect all materials collected in the course of prosecution activities and pass on this information to any "other person" without control.

The Commission considered that the merger, coupled with the increased powers of the Minister of Justice/Public Prosecutor General in the Act, in addition to his/her new powers in the Act on the Organisation of Common Courts (see CDL-AD(2017)031) created a real risk for abuse and political manipulation of the prosecutorial service. The Venice Commission therefore recommended in particular that the offices of the Public Prosecutor General and that of the Minister of Justice be separated. In addition, it recommended that any instruction reversing the acts of a subordinate prosecutor should be reasoned, and that the Act should clearly establish that the parties to the case have access to the instructions given by a superior prosecutor. The subordinate prosecutor should have the possibility to contest the validity of an illegal instruction, or based on improper grounds, before a court or an independent body. The opinion concluded that, if the current system of merger of offices were maintained, the competence of the Public Prosecutor General (i.e. the Minister of Justice) to intervene in individual cases should be excluded and his/her competences should be limited to giving general regulations and guidelines to the subordinate prosecutors.

#### **Serbia**

At the request of the Ministry of Justice of Serbia, a former member of the Venice Commission took part at the end of 2017 as a legal adviser in a series of working meetings with the Serbian authorities. This assistance consisted in advising the Ministry of Justice with respect to the drafting of constitutional amendments in the area of judiciary.

#### ***"The former Yugoslav Republic of Macedonia"***

##### *Reorganisation of bodies examining disciplinary cases against judges*

The Opinion, requested by the Macedonian authorities, examined three draft laws: on the termination of the validity of the Law on the Council for the Establishment of Facts, on amendments to the Law on the Judicial Council and on amendments to the Law on Witness Protection (CDL-AD(2017)033). These draft laws were a follow-up to opinions adopted in 2015 and 2016 by Venice Commission on these matters (see CDL-AD(2015)042 and CDL-AD(2016)008).

The three draft laws went in the right direction; thus, the liquidation of the Council for the Establishment of Facts (CEF) and the transferal of its functions to the Judicial Council (JC) were at the heart of the recommendations of the 2015 Opinion. However, this reform could raise new problems. The question of judicial remedies available to the members/staff of the CEF needed to be clarified, in the light of the ECtHR case-law on the matter. It was important to maintain the balance of judicial and lay members in the composition of the JC which decides on disciplinary matters. The opinion made several recommendations in this respect. Ethnic quotas had to be respected as far as possible in the circumstances. Members of the JC who initiated disciplinary proceedings should not decide the disciplinary case on the merits. Voting in the JC on candidates to judicial positions should take into account their performance results and examination grades. In matters of witness protection, the Head of the Department of the Minister of Interior should not be able to discontinue the programme single-handedly, but external checks should exist. Finally, the opinion invited the Macedonian authorities to implement the other recommendations contained in the 2015 Opinion.

## **Ukraine**

*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](#))*

The opinion on two draft laws of Ukraine was requested by the Parliament of Ukraine and adopted by the Venice Commission at its October 2017 session.

The first draft law was aimed at establishing a High Anti-Corruption Court (HACC) for grand corruption cases as well as a separate Appeal Chamber at the Supreme Court and the second envisaged specialisation of judges at all courts which would be competent for all corruption cases. The measures foreseen by the second draft law appeared neither realistic nor necessary in order to address the main concern i.e. the ineffective handling of high-profile corruption cases by existing courts. The rapid establishment of a specialised anti-corruption court, with international involvement in the selection of its judges, appeared necessary in Ukraine, given the fact that high-profile corruption cases are particularly sensitive and complex. At the same time, such a move should not put into question the credibility of the on-going judicial reform process. The first draft law provided a good basis for the establishment of the HACC in line with Council of Europe and Venice Commission standards, but several recommendations needed to be taken into account, in particular regarding the conformity of the draft with the Constitution. It was advisable that the President of the Republic submit to Parliament his own draft law, which should be in line with the Commission's recommendations.

## **2. TRANSNATIONAL ACTIVITIES**

### **Reports and studies**

#### ***Implementation of judgments of the European Court of Human Rights***

The Commission adopted at its October 2017 plenary session the comments for the Committee of Ministers in view of its reply to Parliamentary Assembly Resolution 2110(2017) on "the implementation of the judgments of the European Court of Human Rights". The Commission mentioned a number of occasions where it had been requested to express its view on general measures adopted by the member States with the special purpose to execute judgments of the ECtHR.

It also expressed its readiness to play an active role in the execution of the ECtHR's judgments, by assisting the member States in bringing their existing legislation which generated violations of the ECHR into conformity with the latter and in ensuring compliance of their draft legislation with the ECHR, thus avoiding further violations. At the same time, the Commission's legal opinions can be useful for the Committee of Ministers in deciding whether general measures taken by member States

should be considered as sufficient to close the supervision of the execution of a judgment or a group of judgments.

The Venice Commission therefore encouraged the CoE and member States to take full advantage of its expertise for strengthening the execution of judgments of the ECtHR.

### **Conferences organised by the Commission**

*Conference on “The interaction between the political majority and the opposition in a democracy” organised in co-operation with the Presidency of Romania, Bucharest, 6-7 April 2017*

The Conference on “The interaction between the political majority and the opposition in a democracy”, (Bucharest, 6-7 April 2017), organised by the Venice Commission in co-operation with the Presidential Administration of Romania, was placed under the patronage the Secretary General of the Council of Europe and the President of Romania. The event was intended to contribute to the reflection initiated by the Secretary General, in view of worrying developments noted in this field in recent years, on the interaction between the political majority and the opposition, and ways to make this interaction more effective and constructive.

Over 100 participants, including high level representatives of the Council of Europe (the Deputy Secretary General, the President of the Parliamentary Assembly, the President of the Venice Commission) and the President of Romania, as well as members of parliaments of Council of Europe members States, constitutional judges and experts exchanged views on the role and responsibilities of the majority and on ways to protect the opposition and its rights, and shared lessons learnt from the national experience of various countries in this field.

*Roundtable on foreign funding of non-governmental organisations, Venice, 4 October 2017*

In co-operation with the OSCE/ODIHR, the Venice Commission organised a Round-table on “Foreign funding of non-governmental organisations” on 4 October 2017 in Venice. The aim of the Round-table was to review legal regulations in force in the field in different countries across the world, including Latin American, African and Asian practices, and to analyse the restrictions imposed on foreign funding in the light of the legitimate aims pursued. In particular, the aim was to contribute, through the exchanges held, to developing good practices conducive to an enabling environment for cross-border activities of NGOs, while addressing terrorist financing and money laundry concerns. The information gathered will be the basis for a review of the standards applying to foreign funding of NGOs in Council of Europe member states, which was requested by the Secretary General of the Council of Europe from the Venice Commission.

### **Other conferences and meetings**

In 2017 the Venice Commission participated in the following events in the field of democratic institutions and human rights:

- Conference on “The Council of Europe Conventional Framework”, Minsk, 13-14 December 2017
- VII International Congress of Comparative Law “the national and the universal in law: from traditions to postmodernism” (Moscow, 1-2 December 2017).

### III. CONSTITUTIONAL JUSTICE<sup>3</sup>

#### 1. OPINIONS AND CONFERENCES / MEETINGS<sup>4</sup> / AVIS ET CONFERENCES / REUNIONS

##### **Amicus curiae brief for the European Court of Human Rights in the Case of Berlusconi v. Italy (CDL-AD(2017)025)**

This *amicus curiae* brief was based on a comparative analysis of the rules applicable in 62 countries, the result of which showed that the procedures following the rendering of a judgment on criminal conviction vary. In the vast majority of countries, parliament has mandatory powers. This is not the case for Italy, where Parliament rarely acts without first having had a criminal-court judge intervene. The intervention of a judge has the important effect of individualising the sanction, thereby guaranteeing the principle of proportionality. Nevertheless, as the European Court of Human Rights has stated in its case-law on the deprivation of the right to vote, such an intervention is not necessary where the law contains sufficiently detailed application criteria to avoid a “*general, automatic and indiscriminate application*”.

In the Venice Commission’s opinion, there is no need for the procedure for the withdrawal of the mandate to offer all the guarantees of a criminal procedure, as the interference with the right to be elected follows from the criminal court’s conviction and not from the withdrawal of the mandate by Parliament implementing such a conviction. The required procedural guarantees may therefore only be limited and concern amongst others: the pluralistic composition of the parliamentary committee tasked with the preparation of the case; its nature as a standing committee; the right of the Member of Parliament to submit arguments, to appear before Parliament in person and to be assisted by an attorney and the holding of a public hearing. The decision should always be public. In particular, it does not seem to be necessary to allow for an appeal to the Constitutional Court, where no such possibility for a parliamentarian to do so exists ordinarily.

The hearing before the European Court on Human Rights in this Case took place on 22 November 2017.

##### **Albania**

*Follow-up to the amicus curiae brief on the Law on the transitional re-evaluation of judges and prosecutors of Albania (Vetting Law) ([CDL-AD\(2016\)036](#))*

In its 2016 *amicus curiae* brief, the Venice Commission had examined the compatibility with international standards of the Law “*On the transitional re-evaluation of judges and prosecutors in the Republic of Albania*” (the Vetting Law) adopted by the Albanian Parliament in August 2016, which set out, as a way to re-establish trust in the judiciary, specific rules for the transitional re-evaluation of judges and prosecutors. The Venice Commission noted that the final decision on the vetting process rested with the independent vetting bodies that have a judicial character, which created sufficient guarantees against any interference by the government in the functioning of the judiciary.

At its March 2017 session the Commission was informed that on 22 December 2016, the Constitutional Court, referring to the *amicus curiae* brief, decided (by six votes to two) that the Vetting Law was constitutional. Consequently, the suspension of the Law decided by the Constitutional Court was now lifted and the process of electing the members of the vetting bodies

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<sup>3</sup> The full text of all adopted opinions can be found on the web site [www.venice.coe.int](http://www.venice.coe.int).

<sup>4</sup> Information on activities in the field of constitutional justice and ordinary justice concerning Peru can be found in Chapter V.



was underway. The enforcement of the Vetting Law is one of the key conditions for the European Union within the framework of the negotiations for Albania's EU membership.

*Tirana, 19-20 October 2017 – International Conference on “Europeanisation of Constitutional Law and Constitutionalisation of European Law – Challenges for the Future,” organised by the Constitutional Court of Albania in celebration of its 25th anniversary*

The event gathered together around 40 participants, including representatives of constitutional courts from 16 countries and the Court of Justice of the EU as well as academics.

The aim of the Venice Commission's attendance in this event was a follow-up to previous Venice Commission opinions notably the *amicus curiae* brief on judges' vetting as well as to explore areas of cooperation with the Albanian authorities.

### **Armenia**

*Opinion on the Law on the Constitutional Court of Armenia ([CDL-AD\(2017\)011](#))*

This Opinion was requested by Ms Arpine Hovhannisyan, Minister of Justice of Armenia, and adopted by the Venice Commission at its June 2017 plenary session. The draft Law had been prepared as a result of amendments made to the Constitution of Armenia, adopted in December 2015. These amendments concerned, *inter alia*, the immunity of judges, which had been reduced to functional immunity only, and the grounds for criminal and disciplinary liability, which were introduced into the draft Law.

This Opinion recommended, among others, that the appointment of judges be referred to in the draft Law and that the very strong position of the Chairperson of the Constitutional Court be revisited, notably with respect to the issuing of normative acts and giving orders to judges. It also recommended that the requirement for judgments to be signed by all the judges who participated in rendering them be reconsidered, as it may occur that either a judge does so wilfully or is ill.

The Law on the Constitutional Court was adopted by the National Assembly on 17 January 2018 and has not yet entered into force.

*Yerevan, 19-21 October 2017 – XXIIInd Yerevan International Conference on “The Role of the Constitutional Courts in Overcoming Constitutional Conflicts”*

The theme of this Conference was “*The Role of the Constitutional Courts in overcoming Constitutional Conflicts*” and the event was co-organised by the Constitutional Court of Armenia, the Venice Commission and the Conference of the Constitutional Control Organs of the Countries of New Democracy (CCCOCND).

The event gathered together presidents and judges of constitutional courts and courts with equivalent jurisdiction and academics from 15 countries to share views on the role of their respective courts in solving constitutional conflicts, notably in the relationship between the branches of power. The Vice-President of the Venice Commission, Ms Herdis Kjerulf Thorgeirsdottir, underlined the current dangers that constitutional justice was facing and the role of the Venice Commission in defending constitutional courts that come under undue pressure. She also reminded the participants about the Venice Commission's Rule of Law Checklist and its importance as a practical tool recognised by the statutory bodies of the Council of Europe.

Mr Igor Rogov, former President of the Constitutional Council of Kazakhstan, took over the Presidency of the CCCOCND as Mr Gagik Harutyunyan, who was the founder as well as the CCCOCND's President since its establishment, will be retiring from the Constitutional Court of Armenia in March 2018.

This event was financed by the Partnership for Good Governance Programme<sup>5</sup> (PGG) in co-operation with the Venice Commission, funded by the European Union (Beneficiary countries: Armenia, Azerbaijan, Belarus, Georgia, Republic of Moldova and Ukraine), and with the support of the Armenian Office of the GIZ.

### **Belarus**

*Minsk, 27-28 April 2017 – International Conference on “The Role of Constitutional Review Bodies in Ensuring the Rule of Law in Rule-Making and Law-Enforcement”*

Around 40 participants took part in this event. The conference was opened by Mr Petr Miklashevich, Chairman of the Constitutional Court Belarus and by Ms Herdis Kjerulf-Thorgeirsdottir, Vice-President of the Venice Commission.

The presentations raised a number of problems faced by states resulting from what was referred to as “*constitutional turbulence*,” which occurs when major amendments are made to an existing constitution or when an entirely new constitution is adopted. These moments are crucial for any given state, and need to be overcome quickly to create stability, which is one of the main components of a state under the rule of law. Another issue raised was the importance of increasing social responsibility (also collective responsibility), but also have duties, with the aim of creating an “*enabling environment*” for the rule of law.

This event was organised by the Constitutional Court of Belarus and funded by the Venice Commission under the Joint Programme between the Council of Europe and the European Union “Partnership for Good Governance Programme for Armenia, Azerbaijan, Georgia, Republic of Moldova, Ukraine and Belarus – Strengthening constitutional justice”.

### **Bosnia and Herzegovina**

*Follow-up to the amicus curiae brief for the Constitutional Court of Bosnia and Herzegovina on the mode of elections in the House of Peoples of the Parliament of the Federation of Bosnia and Herzegovina ([CDL-AD\(2016\)024](#)).*

The request concerned a case before the Constitutional Court of Bosnia and Herzegovina on whether the mode of election of delegates to the House of Peoples of the Federation of Bosnia and Herzegovina’s Parliament – having regard to the specificities of the constitutional situation and the decision of the Constitutional Court on constituent peoples – was compatible with the principles underlying Europe’s electoral heritage.

At its March 2017 session the Commission was informed that the Constitutional Court rendered its decision on 1 December 2016, referring to the Venice Commission’s *amicus curiae* brief and followed some of the recommendations.

It held that certain provisions of the Electoral Law were not in conformity with the Constitution of Bosnia and Herzegovina – because they imply that the right to participate in democratic decision-making exercised through legitimate political representation will not be based on the democratic election of delegates to the House of Peoples of the Federation of Bosnia and Herzegovina by the constituent people who is represented and whose interests are represented by those delegates.

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<sup>5</sup> Programmatic Co-operation Framework for Armenia, Azerbaijan, Georgia, Republic of Moldova, Ukraine and Belarus until April 2017.

The Constitutional Court therefore held that these provisions were in breach of the principle of constituent status of peoples, i.e. the principle of equality of all constituent peoples.

### **France**

*Strasbourg, France, 9-11 October 2017 – Official visit of a Delegation from the Constitutional Court of Jordan*

A delegation from the Constitutional Court of Jordan came to Strasbourg for a study visit and met with the Deputy Secretary General of the Council of Europe and the Directors of several Council of Europe Directorates and the Venice Commission, judges of the European Court of Human Rights as well as a delegation of MPs from Jordan attending a session of PACE and the PACE rapporteur on the “*Evaluation of the partnership for democracy in respect of the Parliament of Jordan.*”

This event was organised by the Venice Commission and funded by the European Union under the programme “Towards Strengthened Democratic Governance in the Southern Mediterranean”.

### **Georgia**

*Follow-up to the Opinion on the Amendments to the Organic Law on the Constitutional Court of Georgia and to the Law on Constitutional Legal Proceedings of Georgia*  
[\(CDL-AD\(2016\)017\)](#)

In May 2016, the Venice Commission prepared a preliminary opinion on the amendments to the legislation on the Constitutional Court of Georgia, which had been adopted by Parliament and were pending enactment by the President of Georgia. The President only had ten days to decide whether or not to veto these amendments.

The Commission welcomed a number of improvements. However, it also criticised several provisions that would have prevented the Constitutional Court from exercising its constitutional tasks effectively, notably: the limitation of the powers of the judges during the last three months of their mandate; the provisions on the quorum in the plenary and the number of judges required for rendering decisions in the plenary and the possibility for one judge to refer a case from a chamber to the plenary together with rules that prevent the plenary from easily refusing such a request.

The President of Georgia vetoed the amendments on the basis of the preliminary opinion, and proposed changes that were accepted by Parliament. After the enactment of the modified amendments, a group of MPs and an NGO challenged the remaining provisions before the Constitutional Court.

At its June 2017 session, the Commission was informed that the Constitutional Court rendered its decision on 29 December 2016, referring to the Venice Commission’s opinion, and found several of these provisions unconstitutional, notably: the requirement of a favourable vote by a minimum of six out of nine judges to render decisions in the plenary (but finding that the quorum of seven judges in electoral cases was constitutional); the strict limitation of the term of the judges that could lead to seats remaining vacant in the absence of a timely nomination of new judges; the rule that a judge could refer a case to the plenary was found constitutional, but the requirement of a qualified majority to reject such a request was removed; and the rule that, even in chamber cases, only the plenary could adopt interlocutory measures was also annulled.

**Moldova, Republic of***Amicus curiae brief for the Constitutional Court of the Republic of Moldova on the criminal liability of judges ([CDL-AD\(2017\)002](#))*

This *amicus curiae* brief was requested by Mr Alexandru Tănase, President of the Constitutional Court of the Republic of Moldova, and adopted by the Commission at its March 2017 plenary session.

The Supreme Court of the Republic of Moldova had requested the Constitutional Court to review the constitutionality of Article 307 of the Criminal Code (on the issuance by a judge of a sentence, decision, ruling or judgment that is contrary to the law). In this context, the Constitutional Court had referred several questions to the Venice Commission that revolved around the issue of whether or not a judge could incur criminal liability for rendering a decision that was then overruled by a higher court.

The *amicus curiae* brief concluded that a balance needed to be struck between a judge's immunity as a means to protect him or her against undue pressure and abuse from other state powers or individuals (functional immunity) and the fact that a judge is not above the law (accountability). Disciplinary actions, penalties, criminal responsibility or civil liability should only arise where a judge's failures were performed intentionally, with deliberate abuse or, arguably, with repeated, serious or gross negligence. It therefore resulted that in order to hold a judge personally liable for his or her decision, it was not sufficient to refer to the fact that the decision had been overruled by a higher court.

The Venice Commission was informed that the Constitutional Court of the Republic of Moldova had rendered a judgment on 28 March 2017 regarding Article 307 of the Criminal Code. It took most of the recommendations made by the Venice Commission into account and found Article 307 constitutional to the extent that judges of the courts of law, Courts of Appeal and of the Supreme Court of Justice may incur criminal liability only for *wilfully* rendering a judgment, a sentence, a decision or a ruling *in breach of the law*.

*Chisinau, 2-3 March 2017 – International Conference on “Evolution of constitutional control in Europe: Lessons learned and challenges”*

Delegations from constitutional courts and courts with equivalent jurisdiction from 22 countries attended this event.

Discussions covered, inter alia, the expansion of constitutional control in Europe; the evolution of constitutional court jurisdiction (new tendencies); relations between constitutional control institutions and European and international courts.

The event was organised by the Constitutional Court of the Republic of Moldova together with the Venice Commission under the Joint Programme between the Council of Europe and the European Union “Partnership for Good Governance Programme for Armenia, Azerbaijan, Georgia, Republic of Moldova, Ukraine and Belarus – Strengthening constitutional justice”.

**Poland***Follow-up to the Opinion on the Act on the Constitutional Tribunal of Poland ([CDL-AD\(2016\)026](#))*

The EU Commission had adopted a complementary Rule of Law Recommendation, which inter alia requested Poland to ensure that any reform of the Law on the Constitutional Tribunal respects the judgments of the Constitutional Tribunal, takes the Venice Commission's opinions fully into account and ensures that the effectiveness of the Tribunal as a guarantor of the Constitution is not undermined.

However, the constitutional crisis remained unresolved. New legislation that entered into force on the day after the end of the mandate of the President of the Tribunal, no longer focused on the Tribunal's procedure but on its presidency. It provided that the Tribunal's General Assembly for the election of candidates for a new Tribunal President should be chaired not by the Vice-President, who has a constitutional mandate, but by an acting President, who would be the judge with the longest experience in the judiciary in general. This person happened to be a recently appointed judge.

The new legislation enabled the election of the candidates for the President of the Tribunal by a minority of the judges, contrary to the case-law of the Tribunal. Indeed, the acting President who was appointed on 20 December 2016 as the permanent President of the Tribunal by the President of Poland had been nominated only by a minority of the judges. She included into the Tribunal the so-called 'December' judges who had been elected on a legal basis that had been found unconstitutional by the Tribunal. The new President had also sent the Vice-President on a forced vacation, with immediate effect, thus affecting the Tribunal's voting majority.

Furthermore, acting as the Prosecutor General, the Minister of Justice had challenged the election of three judges who had been appointed in 2010 already. On 16 January 2017, the President of the Venice Commission expressed his concern about the worsening situation at the Tribunal (<http://www.venice.coe.int/webforms/events/?id=2352>).

In parallel, the Prosecutor General also challenged the election of the President of the Supreme Court who had supported the Constitutional Tribunal and who had spoken out against a judicial reform that would severely restrict the independence of the ordinary judiciary.

### **Romania**

*Bucharest, 24-25 May 2017 – International Conference on “A quarter of a century of constitutionalism”, organised by the Constitutional Court of Romania in celebration of its 25th anniversary*

Delegations from constitutional courts and courts with equivalent jurisdiction from 23 countries attended this event. Discussions revolved around what should be considered judicial interference, constitutional case-law reversal and evolution of the technique for the interpretation of norms.

### **Russian Federation**

*Follow up to the Final Opinion on the amendments to the Federal Law on the Constitutional Court of the Russian Federation ([CDL-AD\(2016\)016](#))*

This Opinion was adopted at the Venice Commission's June 2016 plenary session, after the first judgment was rendered by the Russian Constitutional Court (in the case of *Anchugov and Gladkov v. Russia*) under the amendments. The Constitutional Court had shown a welcome constructive attitude in interpreting the law as not preventing the application of execution measures, even if the judgment was deemed “non executable”. However, the recommendation by the Constitutional Court was not binding on the federal legislator or government. The Venice Commission had made several recommendations for amending the Law on the Constitutional Court, notably that this Court should not be given the task of dealing with the whole question of the execution of an international judgment, but only to assess the constitutionality of a specific execution measure. The Commission explained that since just satisfaction did not raise constitutional issues as such, it should not be submitted to the Constitutional Court. The provision that no execution measures may be taken if the Constitutional Court finds that the execution of a judgment would be unconstitutional, needed to be removed.

The Constitutional Court was subsequently seized in respect of just satisfaction in the case of Yukos, in which the European Court of Human Rights had found that there was an incorrect recovery of fines and compensation sums from the Yukos Company due to the retroactive application of the law.

In its judgment of 19 January 2017, the Russian Constitutional Court found that, given that the Yukos Company had been a malicious, unscrupulous tax evader, which had been recognised by the European Court of Human Rights, paying an unprecedented sum of money from the budgetary system to the shareholders of the Company, as ordered by the European Court of Human Rights, while the State budget had not received the huge tax-payments necessary for the enforcement of the public obligations before the citizens of Russia, contradicted the constitutional principles of equality and justice. The Court therefore declared the Yukos judgment to be incompatible with the Russian Constitution.

*Moscow, 3-4 February 2017 – Moot Court Competition on Constitutional Justice (Crystal Themis)*

The Institute for Law and Public Policy, under the auspices of the Association of Lawyers of Russia and with the support of the Venice Commission, completed the Sixth All-Russian Moot Court Competition for the Russian law school students' teams called "Crystal Goddess of Justice (Crystal Themis)". The case brought before the court this year was called "Small Business at Any Cost, or the Case of Paradise Gardens". 16 teams took part in the moot court competition. Unlike in the previous moot court competitions, this year eight teams (not four) of students were allowed to reach the quarter final. The students from the Urals State Law University won the main Crystal Themis prize.

*St. Petersburg, 16 May 2017 – International Conference on "Constitutional Justice: Doctrine and Practice" hosted by the Constitutional Court of the Russian Federation, marking the opening of the VIIth St. Petersburg International Legal Forum*

Delegations from constitutional courts and courts with equivalent jurisdiction from 36 countries attended this event.

### **Slovakia**

*Opinion on questions relating to the appointment of judges of the Constitutional Court of Slovakia ([CDL-AD\(2017\)001](#))*

This Opinion was requested by the President of Slovakia and adopted by the Venice Commission at its March 2017 plenary session.

The President of Slovakia refused to appoint seven out of the eight judge candidates for the Constitutional Court because he considered that they did not fulfil the professional requirements. Only one out of four vacancies had been filled, as a result of which the Court only had ten out of 13 judges, leading to an increase in the length of proceedings.

In his request for an opinion, the Slovak President had asked whether "*Interpretation no. 4/2012 of the Constitutional Court relating to the appointment of the Prosecutor General*" would also apply to the appointment of the judges of the Constitutional Court.

This Opinion had been particularly difficult because the Venice Commission had been called upon to decide on questions of fact and of national procedure. Replying to these questions would have turned the Commission into a fourth instance. The Opinion refused to assume this role and, *inter alia*, refrained from deciding whether there was a difference between the oral pronouncement and the written reasoning of a relevant decision of the Constitutional Court.

The Opinion recommended that the Court's judgments be pronounced only once the written judgment was available. The Senates (chambers) of the Court should be able to refer issues of major constitutional importance to the plenary. In order to avoid a second candidate selection procedure, the Opinion also recommended that the President or his or her representatives should participate actively in the parliamentary hearings of candidates. The Opinion also proposed that, in electing candidate judges, the National Assembly decide by qualified majority. A constitutional amendment to this effect should include appropriate anti-deadlock mechanisms.

On 6 December 2017, the First Senate held (I. ÚS 575/2016) that the President had violated the fundamental right of the applicants to access elected office. The decision found that the President was obliged to reconsider the case and decide anew by appointing three judges of the Constitutional Court of the Slovak Republic from among the sufficient number of candidates proposed to him by the National Council of the Slovak Republic.

In December 2017, the President appointed three judges. Other recommendations of the Opinion included amending the Constitution by providing for a qualified majority (including anti-deadlock mechanisms) for the election of constitutional court judges; having the President actively participate in the selection procedure in Parliament so as to avoid future rejections; providing for a possibility for a Senate to relinquish jurisdiction to the Plenary of the Constitutional Court and for the Court to announce its judgments only when the written judgment was available. The recent judgment of the First Senate had followed this recommendation.

## **Spain**

### *Opinion on Amendments to the Institutional Law on the Constitutional Court of Spain ([CDL-AD\(2017\)003](#))*

This Opinion was requested by the Chair of the PACE Monitoring Committee, Mr Stefan Schennach, and was adopted by the Commission at its March 2017 plenary session.

The Opinion was postponed several times, first because of repeated elections in Spain, then because cases against the amendments were pending before the Constitutional Court. The purpose of the amendments, according to the Spanish Government, was to ensure the execution of the Constitutional Court's judgments.

The amendments increased the role of the Court in ensuring the execution of its own judgments, *inter alia*, by annulling any act contradicting its decisions and by imposing repetitive coercive penalty payments that had been increased tenfold, up to a maximum of 30 000 Euros. The Opinion stated that such payments could be considered criminal charges under Article 6 ECHR as far as individuals were concerned. The Court could also suspend any public authority or civil servant, who refused to implement the Court's judgments.

The amendments remained unclear as to whether elected officials could be suspended and the Opinion recommended to provide further details on the personal scope of these provisions. The Opinion recognised that decisions of the Constitutional Court must be implemented and that measures to ensure this were legitimate, but recommended not to attribute such powers to the Constitutional Court itself, because this could undermine its reputation as a neutral arbiter of the laws. There were, however, no European standards on this issue, and the amendments could therefore not be considered to contradict any standards.

In 2017, the Constitutional Court of Spain had used its powers of execution twice during the events in Catalonia. It had imposed coercive penalty payments against the deputy head of the economic department of the Catalan Government and against the members of the electoral commission. These measures were effective, because the Catalan Government dismissed the electoral commission and appointed new members to supervise the referendum.

## **Ukraine**

*Follow up to the Opinion on the draft Law on the Constitutional Court of Ukraine  
([CDL-AD\(2016\)034](#))*

The Venice Commission adopted an opinion on the draft Law on the Constitutional Court as part of the implementation of constitutional amendments in the field of the Judiciary. It found the draft Law to be a clear step forward, in line with European legal standards on constitutional justice. It notably welcomed: the competitive selection of judges; the acceptance of the oath before the Court itself; time limits for the appointment and election of judges; the dismissal of judges only by the Court itself; the removal of the dismissal for a "breach of oath"; the automatic case allocation to chambers (boards) and the introduction of a (normative) constitutional complaint. Nonetheless, the opinion made several main recommendations: that the Law should provide for a maximum number of members of the three screening committees for the judges and the law should clearly set out whether these committees are permanent or established *ad hoc*.

On 13 July 2017, the President of Ukraine enacted the Law on the Constitutional Court. However, the adopted law left the decision on the composition of the screening committees to the President and the *Rada* (in its Rules of Procedure). As concerns the judicial quota, the selection is to be made by the Council of Judges, followed by an open vote by the Congress of Judges. The second main recommendation concerned the procedure to follow when a senate (chamber) wishes to deviate from previous case-law. While the Opinion had recommended that the senate be obliged to relinquish jurisdiction in favour of the grand chamber, the adopted Law only provides that the senate may relinquish jurisdiction. Finally, the draft law had excluded persons who had participated in any political activities during the last two years before their candidacy, from being candidate for the position of judge of the Constitutional Court. The Opinion had recommended that this limitation be removed. This recommendation was followed in the adopted Law.

*Kharkiv, Ukraine, 31 May - 4 June 2017 – Second Congress of the Association of Constitutional Justice of the Countries of the Baltic and Black Sea Regions*

The Venice Commission participated in this event on the topic the "*Role of constitutional courts in developing the provisions of national constitutions in the context of the generally recognised principles and norms of international law and EU law, judgments of international courts*" organised by the Constitutional Court of Ukraine.

At this event, the General Assembly of the BBCJ adopted a Resolution in the context of the theme of this event, *inter alia*, to strengthen the rule of law and the supremacy of the constitution in the activities of the bodies' constitutional jurisdiction and to promote respect for international law and EU law as the systems of law based on generally recognised democratic human values – recognising the presumption of compatibility of international law and EU law with national constitutions based on the principle of subsidiarity.

## **2. JOINT COUNCIL ON CONSTITUTIONAL JUSTICE**

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 16<sup>th</sup> meeting of the JCCJ was hosted by the Federal Constitutional Court of Germany in Karlsruhe on 18-19 May 2017.

In this meeting, the JCCJ:

- was informed that Mr Rik Ryckeboer, liaison officer for the Constitutional Court of Belgium, was retiring and that Ms Krisztina Kovács, liaison officer for the Constitutional Court of Hungary and the former Co-President of the JCCJ, was leaving the Court;



- was also informed that one of the former liaison officers of the JCCJ from the Constitutional Court of Turkey, Justice Bekir Sözen, had been detained on 16 July 2016, following the failed *coup d'état* in Turkey and that, according to the information received by the Secretariat, he was currently in solitary confinement. The JCCJ decided that a letter signed by its Co-Presidents be sent to the Turkish authorities, expressing the hope and expectation that the former member of the JCCJ be given a fair process in full respect for his rights of defence<sup>6</sup>;
- held exchanges of views with representatives of the regional and linguistic groups co-operating with the Venice Commission and was informed about this co-operation;
- invited the liaison officers to contribute to the Venice Forum;
- was informed about the Constitutional Justice Observatory;
- was informed about the Superior Courts Network (SCN), established by the European Court of Human Rights;
- was informed about activities of and opinions adopted by the Venice Commission in the field of constitutional justice;
- was informed about the participation in and co-organisation of conferences and seminars in co-operation with Constitutional Courts and equivalent bodies (CoCoSems);
- was informed that the working document of the XVII<sup>th</sup> Congress of the CECC on "*The role of constitutional courts in the maintenance and application of constitutional principles*" will be published at the end of 2017 in a special issue of the Bulletin on Constitutional Case-Law;
- was informed about the progress made in the organisation of the 4<sup>th</sup> Congress of the World Conference on Constitutional Justice (WCCJ) in Vilnius, Lithuania;
- was informed that the 17<sup>th</sup> meeting of the JCCJ will be hosted by the Federal Court of Switzerland in Lausanne in 2018; that the 18<sup>th</sup> meeting will be hosted by the Constitutional Court of Italy in Rome in 2019 and that the 19<sup>th</sup> meeting will be hosted by the Constitutional Court of Croatia in Zagreb in 2020.

The 16<sup>th</sup> meeting of the JCCJ was followed by a mini-conference on the topic "*Courageous courts: security, xenophobia and fundamental rights*". The discussions were very lively, with nine presentations ranging from the "instrumentalisation" of democratic institutions, also referred to as "decorative constitutionalism," and ways this could be countered by the Courts, to the relationship between parliaments and constitutional courts and between constitutional courts and international courts.

All the presentations made during this mini-conference were published in a brochure, which is available at: [www.codices.coe.int](http://www.codices.coe.int) in the "Reports" section.3. Bulletin on Constitutional Case-Law and the CODICES database.

### 3. BULLETIN ON CONSTITUTIONAL CASE-LAW AND THE CODICES DATABASE

The Bulletin on Constitutional Case-Law, first published in January 1993, contains summaries of the most important decisions provided by the constitutional courts or equivalent bodies of all 61 member states (102 courts counting those from non-member states), associate member states and observer states as well as the European Court of Human Rights, the Court of Justice of the European Union and the Inter-American Court of Human Rights. The contributions to the Bulletin are supplied by liaison officers appointed by the courts themselves.

The regular issues of the Bulletin are supplemented by a series of special bulletins on specific topics or contain descriptions of the courts and basic material, such as extracts of constitutions and

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<sup>6</sup> The Turkish authorities replied that Justice Sözen would receive a fair trial.

entire laws on the courts, which enable readers to put the different courts' case-law into context. The Bulletin's main purpose is to encourage an exchange of information between courts and to help judges settle sensitive legal issues, which often arise in several countries simultaneously. It is also a useful tool for academics and all those with an interest in this field. The newly established constitutional courts in Central and Eastern Europe benefit from such co-operation and exchange of information as well as from the judgments of their counterparts in other countries.

In 2017, *précis* on 323 judgments were published in three regular issues of the Bulletin. The publication of the Special Bulletin for the XVII<sup>th</sup> Congress of the CECC on "*The role of constitutional courts in the maintenance and application of constitutional principles*" had to be postponed due to budgetary difficulties (Russian contribution).

#### 4. VENICE FORUM

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

- The restricted *Newsgroup* enables courts to actively share information with each other, e.g. to make on-line announcements on changes to their composition, on recent key judgments and to make various requests for general information.
- The restricted *Classic Venice Forum* enables courts to ask other courts for specific information on case-law. In 2017, the *Classic Venice Forum* dealt with 28 comparative law research requests covering questions that ranged from court fees, sexual harassment and the violation of human dignity, to religious tattoos and asylum seekers.
- 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 2017, 688 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).

#### 5. REGIONAL CO-OPERATION

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

### **Association of Constitutional Courts using the French Language (ACCPUF)<sup>7</sup>**

On the basis of the Vaduz Agreement and its Djibouti Protocol with ACCPUF, the Venice Commission continued to include the case-law of ACCPUF Courts in the CODICES database in 2017.

A delegation of the Venice Commission participated in ACCPUF's seminar-conference on the topic "*Drafting of decisions*" in celebration of its 20<sup>th</sup> anniversary, which took place on 16-17 November 2017 in Paris, France. The proceedings are published on ACCPUF's website: <https://www.accpuf.org/index.php/actualites-de-l-association/51-uncategorised/347-20e-anniversaire-de-l-accpuf-16-et-17-novembre-2017>.

ACCPUF also participated in the WCCJ's 11th Bureau meeting in Venice, Italy on 11 March 2017 and 12th meeting in Vilnius, Lithuania on 11 September 2017 (see above).

### **Conference of European Constitutional Courts (CECC)<sup>8</sup>**

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

A working document for the XVII<sup>th</sup> Congress of the CECC on the topic "*The role of constitutional courts in the maintenance and application of constitutional principles*" was prepared as a special edition of the *Bulletin on Constitutional Case-Law*. Due to the budgetary difficulties (Russian contribution), the publication of the Bulletin had to be delayed until 2018.

A delegation of the Venice Commission participated in the XVII<sup>th</sup> Congress of the CECC held in Batumi, Georgia on 28 June – 1 July 2017. The proceedings are available at: <http://www.confeuconstco.org/en/common/home.html>

The CECC also participated in the WCCJ's 11<sup>th</sup> Bureau meeting in Venice, Italy on 11 March 2017 and 12<sup>th</sup> meeting in Vilnius, Lithuania on 11 September 2017 (see above).

### **Southern African Chief Justices Forum (SACJF)**

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

The SACJF participated in the WCCJ's 12<sup>th</sup> meeting in Vilnius, Lithuania on 11 September 2017 (see above).

### **Conference of the Constitutional Control Organs of the Countries of New Democracy (CCCOEND)**

On the basis of the co-operation agreement with the CCCOEND, signed in Yerevan in October 2003, the Venice Commission co-organised together with the Constitutional Court of Armenia, the XXII<sup>nd</sup> Yerevan International Conference. This event took place in Yerevan, Armenia on 19-21 October 2017 on "*The Role of the Constitutional Courts in Overcoming Constitutional Conflicts*" (see above).

<sup>7</sup> See the co-operation page: <http://www.venice.coe.int/ACCPUF/>.

<sup>8</sup> See the co-operation page: <http://www.venice.coe.int/CECC/>.

The CCCOCND participated in the WCCJ's 11<sup>th</sup> Bureau meeting in Venice, Italy on 11 March 2017 and 12<sup>th</sup> meeting in Vilnius, Lithuania on 11 September 2017 (see above).

### **Association of Asian Constitutional Courts and Equivalent Institutions (AACC)**

On 9-10 August 2017, the Venice Commission participated in the AACC's symposium on "*The Constitutional Court as the Guardian of the Constitution, Ideology and Democracy in a Plural Society*" in Solo, Indonesia. The aim of the Venice Commission's attendance was to broaden its contacts with constitutional courts of the AACC, to invite AACC members to join the WCCJ and to encourage them to contribute to the CODICES database.

On 30 October- 2 November 2017, the Venice Commission participated in the inaugural conference of the AACC Research and Development Secretariat, which took place in Seoul, Republic of Korea together with an international symposium on "*Constitutionalism in Asia: Past, Present and Future*". The aim of the Venice Commission's attendance was to establish contact and cooperation with the new AACC Secretariat for Research and Development.

The AACC participated in the WCCJ's 11<sup>th</sup> Bureau meeting in Venice, Italy on 11 March 2017 and 12<sup>th</sup> meeting in Vilnius, Lithuania on 11 September 2017 (see above).

### **Ibero-American Conference of Constitutional Justice (CIJC)**

Co-operation between the Venice Commission and the CIJC is based on a co-operation agreement signed in Vilnius, Lithuania, in June 2008.

The CIJC participated in the WCCJ's 11<sup>th</sup> Bureau meeting in Venice, Italy on 11 March 2017 and 12<sup>th</sup> meeting in Vilnius, Lithuania on 11 September 2017 (see above).

### **Union of Arab Constitutional Courts and Councils (UACCC)**

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

The UACCC participated in the WCCJ's 11<sup>th</sup> Bureau meeting in Venice, Italy on 11 March 2017 and 12<sup>th</sup> meeting in Vilnius, Lithuania on 11 September 2017 (see above).

### **Conference of Constitutional Courts of Portuguese Speaking Countries (CJCPLP)**

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

The CJCPLP participated in the WCCJ's 11<sup>th</sup> Bureau meeting in Venice, Italy on 11 March 2017 and 12<sup>th</sup> meeting in Vilnius, Lithuania on 11 September 2017 (see above).

### **Conference of Constitutional Jurisdictions of Africa (CCJA)**

Cooperation between the CCJA and the Venice Commission is based on a cooperation agreement signed in Cotonou, Benin, in May 2013.

On 23-26 April 2017, the Venice Commission in the 4<sup>th</sup> Congress of the CCJA on "*Promoting the Independence of the Judiciary and the Rule of Law*" in Cape Town, South Africa, at which Chief Justice Mogoeng Mogoeng of South Africa was elected President CCJA. Representatives of 35 African countries took part in this event.

On 25-26 November 2017, the Venice Commission participated in the 2<sup>nd</sup> International Seminar of the CCJA on “*Individual Access to Constitutional Justice*” in Algiers, Algeria. The aim of the Venice Commission’s participation was to promote individual access to constitutional justice; the preparation of the 5<sup>th</sup> Congress of the World Conference on Constitutional Justice (WCCJ); to call for contributions to the CODICES database and to enlarge the WCCJ’s membership.

The CCJA participated in the WCCJ’s 11<sup>th</sup> Bureau meeting in Venice, Italy on 11 March 2017 and 12<sup>th</sup> meeting in Vilnius, Lithuania on 11 September 2017 (see above).

## **6. WORLD CONFERENCE ON CONSTITUTIONAL JUSTICE (WCCJ)**

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

The WCCJ 112 unites 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 2017, nine constitutional courts and equivalent bodies joined the WCCJ as full members. In alphabetical order, these are: the Constitutional Court of the Central African Republic, the Constitutional Council of Djibouti, the Council of Constitutional Inquiry of Ethiopia, the Supreme Court of Ireland, the Supreme Court of Kenya, the Constitutional Court of Luxembourg, the Federal Court of Malaysia, the Supreme Court of Panama and the Supreme Court of Swaziland.

On 11-14 September 2017, the 4<sup>th</sup> Congress of the WCCJ was hosted by the Constitutional Court of Lithuania in Vilnius. Delegations from 91 Constitutional Courts and equivalent bodies participated in this Congress, which had a total of 422 participants.

The topic was on the “*Rule of Law and Constitutional Justice in the Modern World*”. The Congress divided this topic into four sub-topics: 1. *the different concepts of the rule of law*; 2. *new challenges to the rule of law*; 3. *the law and the state* and 4. *the law and the individual*.

In the *Vilnius Communiqué*, adopted at the 4<sup>th</sup> Congress of the WCCJ, the conclusions emphasised that, despite being interpreted in a specific manner by each state, the principle of the rule of law nonetheless constituted the cornerstone of every legal system in the modern world, where it was integrally linked to democracy and the protection of human rights. The rule of law was a generally recognised principle, inseparable from the constitution itself. As a fundamental constitutional principle, it required that the law be based on certain universal values, thus it was essentially inherent to every constitutional issue. Within the framework of their constitutional competence, constitutional courts ensured the respect for and the implementation of national constitutions and exerted a strong influence on shaping the content of the principle of the rule of law. The different aspects of this principle were revealed in the case-law on constitutional justice.

The impact of constitutional justice on the strengthening of the state under the rule of law and on ensuring the protection of individual rights was as essential as was the interest to explore it.

As had become the practice of WCCJ congresses, the 4<sup>th</sup> Congress included a stocktaking exercise on the independence of constitutional courts, members of the WCCJ. A number of courts had come under undue pressure from the executive and the legislative powers of their respective countries, but also from the media. This generally occurred when courts rendered decisions that displeased other state powers or political actors. Several courts had been subjected to fierce and unfair criticism. The WCCJ reiterated that it was ready to offer its good offices through its Bureau to courts that come under undue pressure, should they so wish and underlined that it deplored any unconstitutional attempt to undermine the rule of law in any country.

## **7. OTHER CONFERENCES AND MEETINGS**

The Venice Commission participated in the following activities in 2017:

### **Germany**

*Hannover, 5 December 2017 – Workshop on “The Digital Turn in Comparative Constitutionalism” in the framework of the International Conference of the International Political Science Association (IPSA) on “Political science in the Digital Age), Herrenhausen Palace.*

The aim of the Venice Commission’s attendance in this event was to explore the Venice Commission’s CODICES Systematic Thesaurus as a possible input for proposed common constitutional ontology in order to achieve a higher visibility and searchability of the CODICES database.

### **Italy**

*Venice, 27-28 March 2017 – Conference organised by the Alliance of Liberals and Democrats for Europe (ALDE-EIUC) on the topic “In Defence of Democracy, Human Rights and Rule of Law”.*

The conference aimed at emphasising the common threat that both the EU and other international organisations system are facing currently. Discussions mainly focused on the EU’s external action.

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

### 1. COUNTRY SPECIFIC ACTIVITIES / ACTIVITES PAR PAYS

#### Albanie

*Assistance juridique à une mission d'observation de l'Assemblée parlementaire (élections législatives, 25 juin 2017)*

Une délégation de la Commission de Venise a accompagné la mission d'observation de l'Assemblée parlementaire du Conseil de l'Europe (APCE) afin de la conseiller sur le cadre juridique des élections législatives du 25 juin 2017. La délégation de l'Assemblée parlementaire a observé l'ouverture du scrutin, son déroulement et les opérations de dépouillement.

#### *Conférence post-électorale*

Le 2 novembre 2017, la Commission de Venise a participé à une conférence post-électorale intitulée « Les élections de 2017 en Albanie - **Leçons apprises et mesures à venir : législation, administration, formation** ».

#### Argentine

Voir le chapitre V.

#### Arménie

*Avis conjoint sur le projet de loi sur le référendum ([CDL-AD\(2017\)029](#))*

Suite à la demande de M. Davit Harutyunyan, ministre de la Justice de l'Arménie, le Conseil des élections démocratiques et la Commission de Venise ont adopté un avis conjoint de la Commission de Venise et de l'OSCE/BIDDH sur le projet de loi sur le référendum de l'Arménie en décembre 2017.

L'avis souligne ce qui suit. Le projet de loi doit donner effet aux nouvelles dispositions de la Constitution concernant divers types de référendums nationaux, par une loi constitutionnelle nécessitant l'approbation des 3/5 des parlementaires. La Constitution prévoit divers cas de référendums : constitutionnel obligatoire, constitutionnel facultatif, facultatif sur des projets de lois issus d'initiatives populaires et obligatoire sur l'appartenance à des organisations supranationales. L'avis se félicite que les autorités arméniennes aient cherché dans leur projet à mettre la législation relative au référendum en conformité avec la Constitution et les normes internationales. Il traite de dispositions spécifiques au référendum telles que la collecte des signatures, ainsi que d'autres qui ne leur sont pas spécifiques comme le vote, le décompte et la récapitulation des résultats.

Toutefois, la préparation du texte n'a pas jusqu'à présent donné lieu à des débats inclusifs ni à d'authentiques consultations avec toutes les parties prenantes, qui sont essentiels au succès de la réforme, et un certain nombre de recommandations clés doivent encore être suivies. Elles concernent la nécessité de traiter clairement l'unité de la matière du projet soumis à référendum et l'exigence que la question soumise au référendum soit claire et n'induisse pas en erreur ; la nécessité de clarifier et de renforcer les dispositions relatives aux recours ; que les autorités fournissent une information objective sur les questions soumises au référendum ; de prévoir la soumission d'un projet d'initiative populaire au contrôle de la Cour constitutionnelle avant la récolte de signatures additionnelles ; de permettre à la Cour constitutionnelle de prendre une décision nuancée sur la constitutionnalité de chaque modification proposée, et de permettre que les dispositions valables d'une initiative populaire soient soumises au vote du peuple sans nouvelle

collecte des signatures ; de réglementer clairement la récolte et la vérification des signatures en soutien d'une initiative populaire. D'autres recommandations touchent à la nécessité de mentionner expressément le devoir de neutralité des autorités administratives, pour prévenir l'abus des ressources administratives ; de donner suite aux recommandations d'avis antérieurs sur le Code électoral ; d'adopter une législation sur les référendums locaux. En bref, le projet est une avancée dans le règlement de la question, et la coopération avec les autorités arméniennes a été excellente.

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

The constitutional law on political parties of Armenia was adopted on 16 December 2016, following the constitutional mandate. The law has liberalised the formation and registration of political parties in Armenia, reducing the number of founding members, as well as the minimum number of members required to register the party, and the requirements for territorial representation of parties.

The joint opinion contained four key recommendations:

- to avoid over-regulation in the intra-party organisation - the law has now introduced more freedom, as unanimity is required only for establishing the party and more internal freedoms are guaranteed;
- to improve the rules concerning the financing of political parties - this has been reflected in the new law by detailing the maximum caps for donations, including rules on credits, loans and debts;
- the draft did not include any rule to promote and encourage intra-party gender equality - the adopted law makes a reference to the prohibition of discrimination based on gender;
- finally, the joint opinion recommended clarifying the rules on suspension of political parties and the meaning of "gross violation of the law" - these rules still need further clarification.

*Assistance juridique à la Commission électorale centrale (Erevan, 27 février - 3 avril 2017)*

A la demande de la Commission électorale centrale, la Commission de Venise a envoyé un expert qui a assisté la Commission électorale centrale dans la préparation des élections législatives, en lui fournissant des conseils juridiques et techniques, notamment en matière de contentieux électoral.

*Training sessions on election dispute resolution (Yerevan, 3 – 10 March 2017)*

The Commission organised in co-operation with the Central Election Commission and the Justice Academy of Armenia a series of training sessions on election dispute resolution.

The four sessions were for members of election commissions, administrative judges, proxies of political parties and civil society.

*Assistance juridique à une mission d'observation de l'Assemblée parlementaire (élections législatives, 2 avril 2017)*

La Commission a apporté une assistance juridique à la délégation de l'Assemblée parlementaire du Conseil de l'Europe qui a observé les élections législatives organisées le 2 avril 2017 en Arménie. La délégation de l'Assemblée parlementaire a observé l'ouverture du scrutin, son déroulement et les opérations de dépouillement.



## Bulgarie

### *Avis conjoint sur des amendements au code électoral ([CDL-AD\(2017\)016](#))*

A la demande de la Commission de suivi de l'Assemblée parlementaire, le Conseil des élections démocratiques et la Commission de Venise ont adopté en juin 2017 un avis conjoint de la Commission de Venise et de l'OSCE/BIDDH sur des amendements au code électoral.

L'avis contient les recommandations principales suivantes : assurer une large consultation tout en réformant des dispositions importantes afin d'encourager la confiance du public dans la législation et les processus électoraux ; prévoir une réforme électorale bien avant les élections, notamment en ce qui concerne les éléments fondamentaux de la législation électorale ; assurer l'établissement de bureaux de vote à l'étranger conformément au principe du suffrage égal pour tous les citoyens bulgares ; et prévoir un système efficace de recours contre toutes les décisions liées aux élections.

### *Assistance juridique à une mission d'observation de l'Assemblée parlementaire (élections législatives anticipées, 26 mars 2017)*

Une délégation de la Commission de Venise a accompagné la mission d'observation de l'Assemblée parlementaire du Conseil de l'Europe (APCE) afin de la conseiller sur le cadre juridique des élections législatives anticipées qui se déroulaient le 26 mars 2017 en Bulgarie. La délégation de l'APCE a observé l'ouverture du scrutin, son déroulement et les opérations de dépouillement.

## Géorgie

### *7e réunion annuelle des administrations électorales (Borjomi, 27-28 février 2017)*

La Commission a participé à la 7e réunion annuelle des administrations électorales. Le sujet de la réunion de 2017 portait sur le thème suivant : « Services innovants et opérations électorales efficaces ». L'événement était co-organisé par la Commission électorale centrale de Géorgie et la Fondation internationale pour les systèmes électoraux (IFES) en coopération et avec le soutien financier du Centre international d'études parlementaires (ICPS).

### *Conférence « Elections législatives de 2016: enseignements et étapes à venir » (Tbilissi, 13 mars 2017)*

La Commission de Venise a participé à la conférence sur « Les élections législatives de 2016 : leçons à tirer et les étapes à venir ».

### *Séminaire de formation sur le contentieux électoral (Batoumi, 22-24 septembre 2017)*

La Commission de Venise, la Fondation internationale pour les systèmes électoraux (IFES) et la Commission électorale centrale de Géorgie en coopération avec la Cour suprême de Géorgie ont organisé un atelier de formation sur le traitement du contentieux électoral pour environ 90 juges des cours d'appel de la Géorgie.

## Kirghizistan

Voir le chapitre V.

## Norvège

### *Réunion préparatoire avec la Commission de la réforme électorale de Norvège (Oslo, 6 décembre 2017)*

La Commission de Venise a rencontré des responsables de la Commission de la réforme électorale chargée de proposer au parlement norvégien des axes de réformes de la législation électorale. Des échanges de vue ont eu lieu sur les normes et standards électoraux et les recommandations de la Commission de Venise visant à améliorer la législation électorale de la Norvège.

### **République de Moldova**

*Avis conjoint sur les projets de loi modifiant et complétant certains textes législatifs (système électoral pour l'élection du Parlement) ([CDL-AD\(2017\)012](#))*

Suite à la demande de M. Andrian Candu, Président du Parlement de la République de Moldova, le Conseil des élections démocratiques et la Commission de Venise ont adopté à la session de juin 2017 un avis conjoint de la Commission de Venise et de l'OSCE/BIDDH sur les projets de loi modifiant et complétant certains textes législatifs (système électoral pour l'élection du Parlement).

Deux projets de loi ont été soumis au Parlement, l'un introduisant un système majoritaire à un tour et l'autre un système mixte (au lieu du système proportionnel actuel). L'avis se concentre sur un projet consolidé, largement semblable au deuxième projet (introduction d'un système mixte avec des bulletins séparés). Un système mixte semblable avait été proposé en 2013 et examiné dans un avis conjoint de la Commission de Venise et de l'OSCE/BIDDH en 2014. L'avis de 2017 est dès lors une sorte de suite du précédent et aboutit aux mêmes conclusions. D'ailleurs, des problèmes similaires se sont produits en Ukraine. Le choix du système électoral est un choix souverain, et la Commission de Venise et l'OSCE/BIDDH n'expriment pas de préférence *in abstracto*. Toutefois, le choix doit être considéré dans son contexte spécifique, puisque un système peut avoir des effets différents dans des Etats différents.

Le système proposé suscite des préoccupations majeures dans le contexte spécifique, car des candidats majoritaires indépendants pourraient développer des liens avec des hommes d'affaires ou d'autres acteurs servant leurs propres intérêts. Bon nombre de personnes intéressées dans le pays ont fait part de telles préoccupations. Alors que le changement nécessite l'adoption de la législation à la faveur d'un large consensus, obtenu à la suite de vastes consultations publiques avec l'ensemble des parties prenantes concernées, le projet, bien que voté par une forte majorité, n'a pas fait l'objet d'un véritable consensus, car il y a une forte polarisation, et beaucoup de forces politiques s'y opposent. En outre, la procédure d'adoption du projet en première lecture a été très rapide, sans possibilité de tenir un débat parlementaire significatif et inclusif. Un tel changement fondamental n'est pas recommandé actuellement.

*Follow-up to the Joint Opinion on the draft laws of the Republic of Moldova on amending and completing certain legislative acts (electoral system for the election of the Parliament) ([CDL-AD\(2017\)012](#))*

The Commission was informed that contrary to the recommendation in its previous opinion, the law replacing a purely proportional with a mixed electoral system had been adopted by the Parliament of the Republic of Moldova on 20 July 2017. The Law however implemented at least partially two recommendations concerning the way of establishing constituencies and the diminution of the thresholds for parliamentary representation in the proportional component.

On 14 September 2017, the Monitoring Committee of the Parliamentary Assembly requested the Venice Commission's opinion *inter alia* on the recent amendments to the electoral legislation of the Republic of Moldova.

*Avis conjoint sur le cadre juridique régissant le financement des partis politiques et des campagnes électorales ([CDL-AD\(2017\)027](#))*

L'avis conjoint de la Commission de Venise et de l'OSCE/BIDDH sur le cadre juridique régissant le financement des partis politiques et des campagnes électorales a été préparé suite à la demande de l'Assemblée parlementaire et adopté par la Commission de Venise en décembre 2017.

Cet avis donne suite à d'autres avis conjoints adoptés dans le passé. Plusieurs recommandations de la Commission de Venise et de l'OSCE/BIDDH, et aussi du GRECO, ont été mises en œuvre et la législation pertinente a été amendée au cours des dernières années. Cela dit, un certain nombre de préoccupations persistent, avant tout, l'interdiction absolue de financer les partis politiques et campagnes électorales par des revenus de citoyens moldaves perçus à l'extérieur du pays, laquelle a des conséquences considérables dans la pratique, étant donné le grand nombre de citoyens ayant des revenus (souvent importants) de sources étrangères. Il est aussi recommandé, entre autres, de réduire les plafonds des dons privés permis, d'augmenter l'efficacité et la capacité administrative de la Commission électorale centrale de Moldova de contrôler le respect des règles pertinentes, et de renforcer le régime des sanctions.

*Chisinau, 19-20 October 2017 - Training seminar on Electoral Dispute Resolution for national practitioners*

The seminar was organised in cooperation with the CEC / Center for Continuous Electoral Training and the National Institute of Justice, with the financial support of the EU (Partnership for Good Governance). It was mainly focused on relevant European standards and ECtHR case law. In the current context, namely the 2017 electoral reform and forthcoming parliamentary elections (planned for 2018), the training appeared to be particularly relevant and necessary. The seminar was more precisely aimed at judges and members of the Central Electoral Commission (CEC), CEC staff and lawyers of political parties.

## **Serbie**

*Assistance juridique à une mission d'observation de l'Assemblée parlementaire (élection présidentielle, 2 avril 2017)*

Une délégation de la Commission de Venise a accompagné la mission d'observation de l'Assemblée parlementaire du Conseil de l'Europe (APCE) afin de la conseiller sur le cadre juridique de l'élection présidentielle qui s'est déroulée le 2 avril 2017 en Serbie. La délégation de l'Assemblée parlementaire a observé l'ouverture du scrutin, son déroulement et les opérations de dépouillement.

## **«The former Yugoslav Republic of Macedonia »**

*Legal assistance to the State Election Commission*

At the request of the State Election Commission, the Venice Commission provided legal assistance to the State Election Commission in view of the local elections first scheduled for May 2017 and then postponed to 15 and 29 October 2017. Following a needs assessment mission, the Venice Commission provided support by seconding an election expert who assisted the Commission on legal matters from mid-March to mid-June and from 28 August to 24 November 2017. The assistance was focused mainly on improving the implementation of methods for the review of complaints, finalising the detailing of Commission's procedures and improving the internal organisation of the Commission's support staff. It included participation in a workshop on electoral dispute resolution which took place in Skopje on 30 May–1 June 2017.

## **Tunisie**

Voir le chapitre V.

## Ukraine

### *Séminaire relatif au traitement du contentieux électoral (Kiev, 28 novembre 2017)*

La Commission de Venise a co-organisé avec l'Ecole nationale de la magistrature d'Ukraine, en partenariat avec le Bureau du Conseil de l'Europe en Ukraine, un séminaire à l'intention des juges administratifs nationaux sur le « Traitement du contentieux des élections : normes internationales, jurisprudence de la CEDH et pratique des tribunaux nationaux en Ukraine ». Environ 40 juges de différentes régions d'Ukraine représentant toutes les cours administratives d'appel régionales ont participé à ce séminaire.

### *Réunion du Groupe d'experts de l'Ecole nationale de la magistrature relative au traitement du contentieux électoral (Kiev, 29 novembre 2017)*

La Commission de Venise a co-organisé, en coopération avec l'Ecole nationale de la magistrature d'Ukraine et en partenariat avec le Bureau du Conseil de l'Europe en Ukraine, une réunion du Groupe d'experts créé et formé par l'Ecole de la magistrature pour développer un cours de formation permanent pour les juges sur « le droit électoral et le traitement du contentieux des élections ».

### *International conference "Political parties financing in Ukraine: current legislation, recent developments and perspectives"(Kiev, 15 March 2017).*

The Venice Commission contributed to the conference "Political parties financing in Ukraine: current legislation, recent developments and perspectives" organised by the Council of Europe in co-operation with the Parliament of Ukraine and the National Agency on Corruption Prevention. More than 100 participants took part in the discussions, among them representatives of the Parliament, the Central Election Commission, the Accounting Chamber, representatives of the judiciary and governmental institutions, international and national experts in political parties financing, NGOs and media community.

### *Roundtable "International Standards and Ukrainian Practices in Election Dispute Resolution" (Kiev, 16 March 2017)*

The Venice Commission and the International Foundation for Electoral Systems (IFES) organised a Roundtable "**International Standards and Ukrainian Practices in Election Dispute Resolution**". The roundtable discussion aimed to present and discuss international standards for establishing effective election dispute programmes and Ukrainian key practices in this sphere, based on the contributions from domestic and international experts. The event brought together more than 20 national and international experts, NGOs, representatives of the Central Election Commission of Ukraine, Supreme Administrative Court of Ukraine and other state authorities.

### *International conference "The Use of New Information Technologies in the Electoral Process: Challenges, Risks and Prospects"(Kiev, 27 – 28 March 2017)*

The Venice Commission, in co-operation with the International Foundation for Electoral Systems (IFES), the Organization for Security and Co-operation in Europe (OSCE), various competent services of the Council of Europe, and Ukraine's Central Election Commission organised a conference on the use of informational technologies (IT) in the electoral processes.

The conference provided a platform for discussing the advantages and disadvantages of various electoral IT systems, as well as the security implications of different results management systems in Ukraine and around the globe. This event gathered more than 100 representatives of civil society organisations, media, IT companies, Election Management Bodies of Ukraine, Latvia and the Republic of Moldova, political parties along with students and international experts in this sphere.

*Roundtable on the voting rights of IDPs (Kiev, 25 May 2017)*

The Venice Commission contributed to the roundtable “Features of Implementation of Internally Displaced Persons’ (IDPs’) Electoral Rights and the Legal Framework.” organised by the Office of the Council of Europe in Ukraine in co-operation with the Legislation Institute of the Verkhovna Rada of Ukraine and the International Foundation for electoral systems (IFES). Participants discussed existing gaps in legislative provision of IDPs’ voting rights, as well as possible ways to ensure the electoral participation of IDPs based on international standards and good practices. The roundtable brought together representatives of legislative and executive authorities of Ukraine, academia, civil society, and media along with national and international experts in this sphere. Participants developed recommendations for legislators on ensuring the electoral rights of IDPs and other mobile groups, including internal labor migrants.

*Regional workshops “Problematic issues of organization, preparation and holding of the first elections in the united territorial communities: a regional view on the prospects for electoral reform in Ukraine” (November – December 2017).*

In the framework of its project of assistance in reforming the electoral legislation and practice in Ukraine the Venice Commission organised regional workshops in Cherkassy, Chernigov, Vinnitsa and Odessa. Representatives of local authorities, national experts and other stakeholders discussed the problems and prospects for improving the electoral legislation for local elections, as well as possible recommendations for the Electoral Code, which had been adopted in the first reading by the Verkhovna Rada on 7 November 2017. About 200 participants attended these regional discussions. Based on the results of these exchanges of views, some of the recommendations made by regional stakeholders were registered in the Verkhovna Rada of Ukraine as amendments to be examined during the second reading of the Electoral Code of Ukraine. Similar events in other major cities are planned in the first months of 2018.

## **2. TRANSNATIONAL ACTIVITIES / ACTIVITES TRANSNATIONALES**

### **Studies and reports**

*Délimitation des circonscriptions et répartition des sièges ([CDL-AD\(2017\)034](#))*

Le Conseil des élections démocratiques et la Commission de Venise ont adopté un rapport sur la délimitation des circonscriptions et la répartition des sièges en décembre 2017. Ce rapport est consacré aux élections nationales et ne comprend pas de lignes directrices. Le rapport insiste sur l'importance d'une délimitation des circonscriptions et d'une attribution des sièges appropriées afin de garantir le suffrage égal. L'égalité de la force électorale (le principe une personne – une voix) peut être garantie par l'attribution des sièges sur la base de la population, du nombre de résidents ressortissants, du nombre d'électeurs inscrits ou du nombre de votants. Le rapport traite de la question de la géométrie électorale, c'est-à-dire d'un découpage des circonscriptions ou d'une attribution des sièges allant à l'encontre du principe d'égalité, que ce soit du fait d'une géométrie électorale active ou passive ou du découpage abusif des circonscriptions (*gerrymandering*).

L'égalité de la force électorale implique des garanties substantielles (représentativité, représentation des minorités, égalité des chances) ainsi que des garanties procédurales (transparence, délimitation par une autorité indépendante et impartiale). Le rapport traite aussi des types de circonscriptions :

- nationales, parfois combinées avec des circonscriptions plus petites (y compris des circonscriptions uninominales) ;
- plurinominales, correspondant en général à des entités infranationales ou à des circonscriptions administratives ;
- uninominales ;
- spéciales, pour des minorités ou des citoyens à l'étranger, par exemple.

Après avoir énuméré les principales sources internationales en la matière, il traite des possibilités d'exceptions et de restrictions à l'égalité de la force électorale : les exceptions concernent les élections auxquelles le principe de l'égalité de la force électorale ne s'applique pas, relatives par exemple à la plupart des deuxièmes chambres ; les restrictions peuvent résulter de l'impossibilité mathématique de garantir une proportionnalité parfaite, mais aussi de l'attribution d'un nombre minimum de sièges à chaque circonscription, ou encore de la géométrie électorale, qui les rend excessives. La législation électorale définit les écarts possibles par rapport à la norme, qui ne devraient en principe pas dépasser 10 % d'après le Code de bonne conduite en matière électorale (le Code).

Le *gerrymandering* (partisan ou bipartisan), quant à lui, va à l'encontre de l'égalité des chances. Une nouvelle répartition ou un redécoupage sont nécessaires pour éviter la géométrie électorale (passive). Alors que la plupart des pays prévoit une nouvelle répartition et qu'elle est encouragée par le Code, le redécoupage est la seule solution en présence de circonscriptions uninominales. L'organe compétent pour la nouvelle répartition ou le redécoupage peut être par exemple une Commission électorale centrale ou une autre administration électorale, le Parlement, le chef de l'Etat, mais, outre l'intervention d'une commission indépendante et impartiale en cas de redécoupage, un recours auprès d'un organe judiciaire devrait être possible dans tous les cas. Le rapport souligne que la géométrie électorale (y compris le *gerrymandering*) est un défi pour le suffrage égal, et donc pour la démocratie.

*Avis conjoint sur le projet de liste de critères en vue de l'évaluation du respect des normes et bonnes pratiques internationales en matière de prévention de l'utilisation abusive de ressources administratives dans le cadre des processus électoraux au niveau local et régional du Congrès des pouvoirs locaux et régionaux du Conseil de l'Europe ([CDL-AD\(2017\)006](#))*

Suite à une demande du Secrétaire général du Congrès des pouvoirs locaux et régionaux du Conseil de l'Europe, le Conseil des élections démocratiques et la Commission de Venise ont adopté en mars 2017 un avis conjoint avec l'OSCE/BIDDH sur le projet de liste de critères en vue de l'évaluation du respect des normes et bonnes pratiques internationales en matière de prévention de l'utilisation abusive de ressources administratives dans le cadre des processus électoraux au niveau local et régional.

L'avis a conclu que la liste de critères du Congrès est conforme aux normes internationales en matière électorale telles qu'établies notamment par les documents de la Commission de Venise et de l'OSCE/BIDDH portant sur la question de l'utilisation abusive de ressources administratives pendant les processus électoraux. L'avis souligne toutefois qu'il conviendrait d'en remanier la structure afin de la rendre plus cohérente et facile d'utilisation, en particulier pour les observateurs et les experts électoraux. L'avis indique également que la liste de critères bénéficierait grandement d'une révision et d'une harmonisation de certaines questions, qui sont parfois répétitives et dispersées dans tout le document.

*Suites données à l'avis conjoint sur le projet de liste de critères en vue de l'évaluation du respect des normes et bonnes pratiques internationales en matière de prévention de l'utilisation abusive de ressources administratives dans le cadre des processus électoraux au niveau local et régional du Congrès des pouvoirs locaux et régionaux du Conseil de l'Europe ([CDL-AD\(2017\)006](#))*

Le Congrès des pouvoirs locaux et régionaux du Conseil de l'Europe a adopté la liste de critères le 20 mars 2017 ([CG32\(2017\)12](#)). Le projet soumis à l'examen de la Commission a été adopté sans modification.

*Compilation of Venice Commission Opinions and Reports concerning referendums ([CDL-PI\(2017\)001](#))*

The Venice Commission endorsed the Compilation of Venice Commission Opinions and Reports concerning referendums in March 2017. This compilation is a first step towards a study on referendums which will address *inter alia* the risk of abusing them, which would build on previous works of the Venice Commission, notably the guidelines on referendums, and move from the premise that referendums should not be seen as an alternative to representative democracy, but as a complement to it.

*Compilation des rapports et avis de la Commission de Venise sur le traitement du contentieux des élections ([CDL-PI\(2017\)007](#))*

La Commission de Venise a entériné la compilation des rapports et avis de la Commission de Venise sur le traitement du contentieux des élections en octobre 2017. Cette compilation est une première étape en vue de la réalisation d'une étude sur ce thème. Elle regroupe des documents de référence, avis et études de la Commission sur ce thème et couvre notamment les organes compétents pour traiter du contentieux des élections, les délais pour déposer les recours et de traitement des affaires ou encore les pouvoirs du juge électoral.

### **Conférences co-organisées par la Commission**

*14<sup>e</sup> Conférence européenne des administrations électorales (Saint-Pétersbourg, 15-16 mai 2017)*

La 14<sup>e</sup> Conférence européenne des administrations électorales portait sur le thème suivant : « Des administrations électorales opérationnelles pour des élections démocratiques ». La conférence s'est tenue à Saint-Pétersbourg, en Fédération de Russie, les 15 et 16 mai 2017 ([CDL-EL\(2017\)001syn](#)), en coopération avec la Commission électorale centrale de la Fédération de Russie et l'Assemblée interparlementaire de la Communauté des Etats indépendants.

Les participants ont débattu plus précisément de trois questions principales : « Des administrations électorales fonctionnelles » ; « Des administrations électorales professionnelles » ; et « Vers des élections **authentiquement** démocratiques ».

Environ 130 participants ont assisté à la Conférence, représentant des administrations électorales et d'autres institutions impliquées dans le domaine électoral, provenant de 23 pays européens et de 5 pays non-européens.

Après des débats fructueux, les participants ont adopté des conclusions. Entre autres questions, les participants ont rappelé les principes et normes existant en matière électorale, qui sont contenus dans différents documents internationaux. Ils ont également reconnu le rôle réglementaire des administrations électorales et leur responsabilité dans la mise en œuvre de la législation électorale. Ils ont aussi souligné l'importance de l'impartialité des administrations électorales ainsi que de leur professionnalisme et la nécessité de structures internes solides afin de réaliser de bons cycles électoraux.

*Conférence régionale interparlementaire sur « l'utilisation abusive des ressources administratives pendant les processus électoraux : un défi majeur pour les élections démocratiques » (Londres, 9-10 novembre 2017)*

L'Assemblée parlementaire du Conseil de l'Europe et la Commission de Venise, en coopération avec le Congrès des pouvoirs locaux et régionaux du Conseil de l'Europe, ont organisé une conférence régionale qui portait sur « l'utilisation abusive des ressources administratives pendant les processus électoraux : un défi majeur pour la tenue d'élections démocratiques ». Des parlementaires et des représentants des commissions électorales centrales des pays bénéficiaires

du Partenariat pour la bonne gouvernance ont participé à cette conférence, de même qu'un panel d'experts internationaux spécialistes de la matière.

### **3. VOTA, BASE DE DONNÉES ÉLECTORALE DE LA COMMISSION**

La base de données VOTA a été créée en 2004 dans le cadre du programme conjoint de la Commission de Venise et de la Commission européenne sur « La démocratie par des élections libres et équitables ». Elle contient la législation électorale des États membres de la Commission de Venise et d'autres États participant aux travaux de cette dernière et elle propose une fonction de recherche ainsi qu'un thésaurus systématique. On y trouve les textes de loi pertinents d'une cinquantaine de pays ainsi que les avis de la Commission de Venise en matière électorale en anglais, en français et en espagnol (<http://vota.te.gob.mx>). Cette base de données est gérée avec le Tribunal électoral du pouvoir judiciaire de la Fédération du Mexique (*Tribunal electoral del poder judicial de la Federación, TEPJF*), qui a offert un appui technique en incluant de nouvelles fonctions et en indexant et ajoutant des documents.

La base de données a été modernisée et est constamment actualisée. En 2017, elle a été complètement révisée, grâce au soutien financier de l'Union européenne.

### **4. COOPERATION INTERNATIONALE**

Voir le chapitre VI.3.

### **5. AUTRES CONFÉRENCES ET RÉUNIONS**

#### **2e conférence internationale conjointe sur le vote électronique - Conférence E-VOTE-ID (Bregenz, Autriche, 26-27 Octobre 2017)**

La Commission de Venise a été invitée à participer à la deuxième Conférence internationale conjointe sur le vote électronique. Cette conférence a été l'un des principaux événements internationaux pour les experts en matière de vote électronique.

L'un des principaux objectifs de la conférence était de fournir un forum de discussion interdisciplinaire ouvert sur toutes les questions liées au vote électronique. En 2016, les deux conférences, EVOTE et VoteID, précédemment organisées tous les deux ans, ont été fusionnées dans la conférence annuelle E-VOTE-ID.

La Commission de Venise a également participé aux conférences et aux réunions suivantes :

#### **Argentine**

- Buenos Aires, 29-30 mai 2017 - Séminaire international sur les meilleures pratiques dans le domaine électoral, organisé par la Chambre électorale nationale et le Conseil des relations internationales de l'Argentine en coopération avec le PNUD.

#### **Mexique**

- Mexico, 5-6 décembre 2017 – Séminaire international – « Politique et argent : démocratie et corruption »

#### **Republic of Moldova**

- Chisinau, 14-15 December 2017 – Conference on Financing of political parties in Moldova: lessons learned in the Eastern Partnership, organised by the Council of Europe in co-operation with the Central Election Commission of the Republic of Moldova.



### **Conseil de l'Europe**

- Strasbourg, 29-30 mars 2017 – 3<sup>e</sup> réunion du Comité d'experts sur le pluralisme des médias et la transparence de leur propriété (MSI-MED) ;

### **Assistance juridique aux missions d'observation de l'APCE**

- **Bulgarie** – Elections législatives – 26 mars 2017
- **Arménie** – Elections législatives – 2 avril 2017
- **Serbie** – Elections présidentielles – 2 avril 2017
- **Albanie** – Elections législatives – 25 juin 2017
- **Kirghizistan** - Elections présidentielles – 15 octobre 2017

### **Union européenne**

- Strasbourg, 16 février 2017 : rencontre avec le Groupe de Support à la Démocratie et de Coordination des Élections du Parlement européen

### **Autres organisations internationales**

- Copenhague, 5-7 juillet 2017 - Conférence ICON-S sur "Tribunaux, pouvoir, droit public" : intervention dans le panel 84 consacré aux "Nouvelles tendances en matière électorale : le rôle des tribunaux et de la Commission de Venise";
- Varsovie, 8 septembre 2017 : inauguration du projet « Soutien au suivi des recommandations électorales dans les Balkans occidentaux », organisée par l'OSCE/BIDDH ;
- Varsovie, 2-3 novembre 2017 – Réunion annuelle du Groupe d'experts sur les partis politiques, organisée par l'OSCE/BIDDH
- Sofia, 9-10 novembre 2017 – 26<sup>e</sup> Conférence annuelle de l'Association des administrateurs européens d'élections (ACEEEO), « Des électeurs conscients à l'âge numérique ».

## V. CO-OPERATION IN THE COUNCIL OF EUROPE NEIGHBOURHOOD AND OUTSIDE EUROPE<sup>9</sup>

### 1. MEDITERRANEAN BASIN

#### Country-specific activities

##### *Algérie*

###### *Séminaire sur la question préjudicielle de la constitutionnalité*

La Commission a organisé en coopération avec le Conseil constitutionnel un séminaire scientifique de la Conférence des juridictions constitutionnelles africaines, sur le thème « L'accès des particuliers à la justice constitutionnelle », du 25 au 27 novembre à Alger.

###### *Séminaire UniDem Med « La femme et le marché de l'emploi »*

Le Conseil constitutionnel a également organisé en coopération avec la Direction générale de la fonction publique et la réforme administrative algérienne, le 6ème séminaire régional UniDem Med qui s'est tenu à Alger le 7 et le 8 novembre sur le thème « La femme et le marché de l'emploi ». Cette activité fut la première organisée par la Commission de Venise en Algérie. A cette occasion, les autorités ont exprimé leur souhait de développer davantage la coopération dans le domaine de la justice constitutionnelle et sur les questions relatives à la mise en pratique du principe d'égalité.

##### *Egypte*

A l'invitation de l'Institut Suédois d'Alexandrie, la Commission a participé à une Conférence « Participation de la Jeunesse et Engagement civique », les 3 et 4 Mai 2017, à Alexandrie.

Ce fut l'occasion de présenter les Lignes directrices en matière de Partis Politiques et d'avoir un dialogue constructif avec une audience composée de jeunes membres d'ONG ou de partis politiques du pays et de la région.

##### *Jordanie*

Dans le cadre des activités de coopération bilatérale de la Commission de Venise, une délégation de la Cour constitutionnelle de la Jordanie s'est rendue à Strasbourg entre le 8 et le 11 octobre 2017. La délégation a pu rencontrer de hauts responsables de différentes instances du Conseil de l'Europe et assister à la 4<sup>ème</sup> session plénière de l'Assemblée parlementaire.

##### *Maroc*

###### *Projet de loi relatif à l'organisation judiciaire du Royaume du Maroc*

Après avoir apporté les années précédentes ses analyses juridiques sur les projets de lois organiques relatives au Conseil supérieur de la justice et au Statut des Magistrats, la Commission de Venise en coopération avec la CEPEJ a donné, en octobre 2017, un avis informel sur le projet de loi n° 38-15, relatif à l'organisation judiciaire.

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<sup>9</sup> Some activities in the field of constitutional justice are dealt with in Chapter III.

### *Ministère de la Justice et des Libertés*

La Commission a maintenu un dialogue constant en vue de la mise en œuvre de la loi organique sur la Question Préjudicielle de Constitutionnalité dans la perspective notamment, de mettre en œuvre un programme de formation des juges.

#### *Institution du Médiateur*

La Commission a organisé, les 4 et 5 Mai 2017 à Rabat, en coopération avec l'Association des Ombudsmans et Médiateurs de la Francophonie (AOMF), un séminaire sur le thème « Vers un Guide de principes déontologiques pour les Médiateurs et leurs collaborateurs ». Ce séminaire a réuni 23 médiateurs du réseau AOMF.

Le bureau du Médiateur du Royaume du Maroc et l'Association des Médiateurs de la Méditerranée (l'AOM) ont organisé à Casablanca les 18 et 19 octobre une session de formation pour les collaborateurs des ombudsmans membres de l'Association des Médiateurs de la Méditerranée. Le thème de la session était « La déontologie des forces de sécurité et les droits des migrants au cours de leur parcours migratoire : le rôle de l'Institution de Médiateurs ».

Plus de 20 collaborateurs de différentes institutions de Médiateurs ont discuté et échangé des meilleures pratiques quant au rôle du médiateur quand il traite des droits des migrants au cours de leur parcours migratoire et de la déontologie des forces de sécurité.

La Commission a également organisé une visite d'études, du 24 au 26 octobre 2017, à l'Institution du Médiateur du Portugal au bénéfice de cinq membres du personnel de l'Institution du Médiateur du Royaume du Maroc.

### *Ministère de la Réforme de l'Administration et de la Fonction Publique*

A l'invitation du Ministère, la Commission a participé au 13<sup>e</sup> forum sur la Modernisation de l'Administration Publique et des Institutions de l'Etat, le 6 juillet 2017 à Rabat. Ce Forum était organisé à l'issue des travaux de la 55<sup>e</sup> session du Conseil d'Administration du Centre Africain de formation et de recherche administratives pour le développement (CAFRAD).

La présentation de la Liste des Critères de l'Etat de droit a suscité un vif intérêt de la part des membres du CAFRAD.

Le 7 octobre 2017, au cours de la session plénière de la Commission, le Ministre de la Réforme de l'Administration et de la Fonction Publique a signé un Mémoire d'Entente avec la Commission.

## **Tunisie**

### *Coopération avec l'Institution du Médiateur*

La Commission a organisé en coopération avec l'Institution du Médiateur et a participé à la 1<sup>ère</sup> Conférence commune organisée par l'Assemblée parlementaire de la Francophonie et l'AOMF sur le thème « Les parlementaires et les médiateurs, acteurs de la bonne gouvernance », les 23-24 novembre 2017, à Tunis. Plus de cinquante participants ont échangé sur les relations entre les Parlements et les Médiateurs ainsi que sur le renforcement de leur coopération.

### *Coopération avec l'Instance Supérieure Indépendante pour les Elections de Tunisie (ISIE)*

La Commission de Venise, en coopération avec l'Instance Supérieure Indépendante pour les Elections de Tunisie et le PNUD, a organisé une conférence internationale sur « Le financement de la vie politique en période électorale » à Tunis le 28 mars 2017. La conférence a été suivie d'un

atelier intitulé « Regards croisés internationaux sur les techniques du contrôle du financement des campagnes électorales » qui a eu lieu le 29 mars 2017 également à Tunis.

## **Coopération régionale**

### ***Campus UniDem Med***

Trois séminaires UniDem Med ont été organisés en 2017 réunissant près de 200 hauts fonctionnaires du Sud de la Méditerranée. Le 4<sup>ème</sup> séminaire UniDem Med s'est tenu en Tunisie du 27 au 30 mars 2017 sur le thème « Performance, mérite et égalité dans le service public » en coopération avec la Présidence du Gouvernement de la Tunisie. La 5<sup>ème</sup> édition a été organisée à Skhirat, Maroc du 25 au 28 septembre 2017 sur le thème « Prévention de la corruption et promotion de l'intégrité au sein du service public : expériences partagées » en partenariat avec le Ministère de la réforme de l'administration et de la fonction publique. Sur demande du Conseil constitutionnel de l'Algérie et en coopération avec la Direction générale de la fonction publique et la réforme administrative algérienne, le 6<sup>ème</sup> séminaire UniDem Med s'est tenu à Alger les 7 et 8 novembre 2017 sur le thème « La femme et le marché de l'emploi ».

A la 112<sup>e</sup> session plénière de la Commission de Venise, un Mémoire d'Entente entre la Commission et le Maroc a été signé en présence de M. Mohammed Benabdelkader, Ministre délégué auprès du Chef du gouvernement, chargé de la réforme administrative et de la fonction publique du Maroc concernant notamment l'organisation du Campus UniDem Med pour les hauts fonctionnaires de la région MENA.

### ***5th Intercultural workshop on democracy, Nicosia, 3 – 4 April 2017***

Within the framework of the EU funded South Programme II, the Venice Commission organised the 5th Intercultural Workshop on Democracy on 3-4 April 2017 in Nicosia (Cyprus). The workshop entitled "Interaction between Constitutional Courts and similar jurisdictions and ordinary courts" was organised in co-operation with the Ministry of Foreign Affairs of Cyprus in the framework of the Cyprus presidency of the Committee of Ministers of the Council of Europe.

This event brought together presidents of Constitutional courts, members of ordinary courts, judges and academics from Algeria, Egypt, Jordan, Lebanon, Morocco, Tunisia and Palestine<sup>10</sup> and their European counterparts and Council of Europe experts for an exchange of experience and good practices. The workshop discussed the relationship between constitutional courts and other jurisdictions, different models of constitutional justice and the impact of the constitutional control on national legal framework. The problem of the independence of the constitutional justice was also at the centre of the debates.

### ***2nd Congress of the Organisation of the Electoral Management Bodies of Arab countries, Tunis, 7 – 9 February 2017***

The Venice Commission in co-operation with the United Nations Development Programme's Regional Electoral Support Project and the Independent High Electoral Commission of Tunisia assisted the Organisation of electoral management bodies of Arab countries in organising its Second General Assembly and a workshop on the independence of electoral administrations (EMBs). The workshop gave an opportunity for the EMBs from the Arab States to share knowledge and raise awareness about the principle of EMB independence, to bring together international experience and comparative models from around the world. Among other issues participants had an exchange of views about the international principles and indicators that govern the

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<sup>10</sup> 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.

independence of EMBs and identified the key independence challenges facing the Arab Electoral Management Bodies.

## 2. LATIN AMERICA

### Co-operation with the Organization of American States (OAS)

On 22 March 2017, the President of the Venice Commission, Mr Gianni Buquicchio, addressed the Permanent Council of the Organisation of American States, which was held in Washington. Exchanges held between the President of the Commission and Mr Luis Almagro, Secretary General of the OAS opened new possibilities for co-operation between the two organisations.

By letter of 26 June 2017, the Secretary General of the OAS requested the Venice Commission to prepare an opinion on the legal issues raised by the Decree of the President of Venezuela No. 2878 of 23 May 2017 on calling elections to the Constituent Assembly. The Committee of Ministers of the Council of Europe authorized the Venice Commission to proceed on the basis of this request.

In its opinion, adopted at its October plenary session, the Venice Commission stressed the absolute necessity of "*substantive debate involving the various political forces, non-government organizations and citizens associations, academia and media,*" in order to adopt a "*sustainable text, acceptable for the whole of the society and in line with democratic standards.*" It called for an "unhindered exercise of freedom of peaceful assembly, freedom of expression, as well as a fair, adequate and extensive broadcasting of the arguments by the media." The Venice Commission's opinion received extensive press coverage.

Mr Luis Almagro attended the plenary session of the Venice Commission on 6 October 2017. Following the successful co-operation on Venezuela he requested the Commission to prepare a study on the individual right to re-election in November 2017.

### Meeting of the Sub-Commission on Latin America, Venice, 5 October 2017

In 2017 the Sub-Commission on Latin America met in Venice in October during the 112<sup>th</sup> plenary session of the Venice Commission. The Sub-Commission was informed about the opinion on legal issues raised by the decree issued by President Maduro on 23 May 2017 calling for the election of National Constituent Assembly in Venezuela and held an exchange of views with the representatives of the Organization of American States. The participants were also informed about the proposals for co-operation with Mexico in the electoral field in 2018.

Members of the Sub-Commission also had an opportunity to meet with Mr Luis Almagro, Secretary General, Organisation of American States and to have an exchange on the work of the OAS and its co-operation with the Venice Commission.

In 2017, the Commission continued its contacts with other regional organisations in the Americas, notably the UNDP and IFES.

## 3. CENTRAL ASIA

Since 2007, the Venice Commission has established good co-operation with the national institutions of Kazakhstan, Kyrgyzstan, Tajikistan and Uzbekistan, notably in the framework of several projects with funding provided by the European Union, as well as some member states. In 2017 **Kazakhstan** and **Kyrgyzstan**, being members of the Venice Commission, benefited from fully-fledged co-operation such as participation in multilateral activities, preparation of opinions and organisation of bilateral meetings. Co-operation with Uzbekistan and Tajikistan was limited to the participation of Uzbek and Tajik authorities in the 4th Congress of the World Conference on Constitutional Justice (WCCJ) which took place in Vilnius, Lithuania on 11-14 September 2017.

Moreover, the Venice Commission prepared a proposal on co-operation with the Kyrgyz authorities in the electoral field. A joint project financed by the European Union and the Council of Europe was signed at the end of 2016 and the implementation of the project started in January 2017.

## **Country-specific activities**

### ***Kazakhstan***

In 2017 the Venice Commission adopted two opinions on constitutional reform and on administrative procedures.

*Opinion on the draft constitutional amendments to the Constitution of the Republic of Kazakhstan ([CDL-AD\(2017\)010](#)).*

At the request of Mr Jaxybekov, Head of the Presidential Administration of the Republic of Kazakhstan the Commission prepared an opinion on the draft constitutional amendments to the Constitution of the Republic of Kazakhstan. The Commission was informed that the President of Kazakhstan had submitted the revised text of the draft constitutional amendments to Parliament on 1 March 2017 and that the text had been adopted on 6 March 2017. The text of the opinion made reference to this important development.

The text submitted for opinion mainly concentrated on the changes in the distribution of powers between the President and other branches of state power. The draft law increased the role of the Majlis (the lower chamber of the Parliament) and redistributed some of the powers of the President of the Republic of Kazakhstan between the Government and the Parliament. In the Rapporteurs' opinion the changes proposed in the draft amendment concerning the executive branch reduced some of the executive presidential powers and provided more weight to the Government. The limited decrease in the powers of the President also led to the strengthening of the parliament. The Commission also took note of the changes concerning the powers of the Constitutional Council. The fact that the Constitutional Council would examine draft constitutional amendments and questions to be submitted to a referendum before they were adopted could be regarded as an important step in the protection of the constitution and constitutional rights and freedoms.

The drafters proposed to limit the constitutional provision on the Prosecutor's office to a general reference to the institution and to move provisions on its main powers to the relevant legislation. This was a positive step paving the way for further reform of the prosecution in the Kazakh legal system.

After the adoption of the opinion at the March 2017 plenary session the authorities informed the Commission about their intention to continue co-operation and to request its opinion on different pieces of legislation on the implementation of the new provisions of the Constitution.

*Opinion on the draft law of the Republic of Kazakhstan on administrative procedures ([CDL-AD\(2017\)008](#)).*

At its March 2017 session the Commission adopted an opinion on the draft law of the Republic of Kazakhstan on administrative procedures. The proposed law on administrative procedures aimed at revising legislation adopted in 2000. The Commission noted the very high quality and pointed out that if adopted it would become an important tool for modernising different administrative procedures in Kazakhstan. The examined text followed a number of recommendations of different international documents, including those of the Council of Europe. However, there were some provisions in the examined text that could be reconsidered or further improved. These included the terminology used in different parts of the text, the proposed timeframes for different procedures and the need to include additional references to the procedures concerning appeals to courts.

After the adoption of the opinion the Kazakh authorities invited the Commission to continue this fruitful co-operation in the field of administrative reform in Kazakhstan in 2018.

## **Kyrgyzstan**

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

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

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

In 2017 a number of activities were held in the framework of the aforementioned project. Notably, a multifaceted study visit to the Council of Europe headquarters for the main beneficiaries of the project, organisation of the first two meetings of the Working Group under the President’s Office tasked with developing a comprehensive electoral reform strategy, working meetings and expert comments to revise the regulation on Electoral Dispute Resolution, a number of training sessions and seminars to enhance the capacities of political parties, judges and electoral bodies, amongst others.

The project helped the Kyrgyz authorities to endorse their responsibilities in undertaking electoral reform in line with the EU Agreement “Strengthening democracy through electoral reform – sector reform contract” as well as the national strategy for sustainable development for the period 2013-2017. The project contributed to building national capacity to deliver the electoral reform through electoral bodies that work in line with international standards and enjoy public trust and confidence in the electoral processes in the country. The project supported the national counterparts through the provision of advice on further legislative reform and its effective implementation. This, in turn, shall ensure a higher degree of credibility, inclusiveness and transparency of electoral processes contributing to an increased legitimacy of elected bodies and public confidence in democratic institutions.

The project is foreseen for two years and will end on 31 December 2018.

#### **4. OTHER CONFERENCES AND MEETINGS**

The Commission participated in the following other activities in 2017:

##### **Argentina**

- Buenos Aires, 29 - 31 May 2017 - representatives of the Venice Commission participated in an international seminar on best practices in the electoral field organised by the National Electoral Chamber and Council for International Relations of Argentina in co-operation with UNDP.

##### **Mexico**

- Mexico City, 5-6 December 2017 - Representatives of the Venice Commission participated in an international seminar focused on “Financing of political life and electoral campaign” organised by the National Electoral Institute of Mexico.

**Kazakhstan**

- Astana, 29-30 August 2017 - Conference on “Constitution and modernisation of Society and State”, organised by the Constitutional Council of Kazakhstan.

**USA**

- Washington, 13–14 December 2017 - At the invitation of the Organization of American States, a Venice Commission delegation participated in the 12<sup>th</sup> Implementation Meeting of the Declaration of Principles for International Election Observation.



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

### **1. COUNCIL OF EUROPE**

#### **Committee of Ministers**

Representatives of the Committee of Ministers participated in all four plenary sessions in 2017. The following Ambassadors, Permanent Representatives to the Council of Europe, attended the sessions (in order of attendance):

- Ambassador Laima JUREVIČIENĖ, Lithuania;
- Ambassador Stelios PERRAKIS, Greece;
- Ambassador Katya TODOROVA, Bulgaria;
- Ambassador Christopher YVON, United Kingdom;
- Ambassador Paruyr HOVHANNISYAN, Armenia;
- Ambassador Predrag GRGIĆ, Bosnia and Herzegovina;
- Ambassadeur Jean-Baptiste MATTEI, France;
- Ambassadeur Marco MARSILLI, Italy;
- Ambassador Emil RUFFER, Czech Republic;
- Ambassador Dmytro KULEBA, Ukraine;
- Ambassador Keith McBEAN, Ireland.

In the framework of the Cypriot Chairmanship of the Committee of Ministers of the Council of Europe, Mr Gianni Buquicchio, President of the Venice Commission opened the 5th intercultural Workshop on Democracy on “Interaction between Constitutional Courts and equivalent Jurisdictions and ordinary Courts”. The event was organised by the Venice Commission in co-operation with the Ministry of Foreign Affairs and the Supreme Court of Cyprus on 3-4 April 2017 in Nicosia.

On 21 June 2017 President Buquicchio presented the Venice Commission’s 2016 Annual Report of Activities to the Committee of Ministers and held a fruitful exchange of views with the Ministers’ Deputies.

The Committee of Ministers authorised the Venice Commission to act upon the request of the Organisation of American states (OAS) to provide an opinion on the Decree of the President of Venezuela calling elections to a constituent assembly. For more information on the opinion please refer to Chapter II.

At its October 2017 session the Commission adopted the elements for the Committee of Ministers’ reply to Parliamentary Assembly Recommendation 2110(2017) on “The implementation of judgments of the European Court of Human Rights”.<sup>11</sup>

#### **Parliamentary Assembly**

Ms Anne BRASSEUR, Former President of the Parliamentary Assembly and Mr Philippe MAHOUX, Member of the Committee on Legal Affairs and Human Rights regularly represented the PACE at the plenary sessions of the Commission in 2017.

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<sup>11</sup> Document [CDL-AD\(2017\)017](#)

### ***Opinions requested by the Assembly***

In 2017, at the request of the Parliamentary Assembly, the Venice Commission adopted the following opinions on:

- the **Bulgarian** Law on Judicial Power as amended by the two packages of amendments passed in March and July 2016;
- the amendments to the Electoral Code of **Bulgaria** as adopted by the Bulgarian Parliament in 2016;
- the Law on the changes to the powers of the Constitutional Court of **Spain**
- “the duties, competences and functioning” of the “criminal courts of peace” established by the Law 5235 of **Turkey** (institution of criminal peace judgeships);
- the measures provided in the recent emergency decree laws of **Turkey** with respect to the freedom of the media;
- the amendments to the Constitution of **Turkey** submitted to a national referendum on 16 April 2017;
- the draft law of **Hungary** on the transparency of organisations receiving support from abroad;
- the amendments to the National Tertiary Education Act of **Hungary**;
- the Legal framework governing the funding of political parties of the Republic of **Moldova**;
- electoral campaigns of the Republic of **Moldova**;

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

- amendments to the electoral legislation of the Republic of Moldova;
- draft law revising the ordinance on associations and foundations of Romania;
- two Ukrainian draft laws: “On Introducing Changes to the Tax Code of **Ukraine** to Ensure Public Transparency of the Financing of Public Associations and the Use of International Technical Assistance” (Law no.6674) and “On Introducing Changes to Some Legislative Acts to Ensure Public Transparency of Information on Finance Activity of Public Associations and on the Use of International Technical Assistance” (Law no. 6675).

These opinions are to be adopted in 2018.

On 27 April 2017 in Strasbourg one of the Commission’s rapporteurs took part in the PACE hearing on the situation in Poland.

### ***Promoting European standards together***

On 26 January 2017 the Committee on Legal Affairs and Human Rights of the Parliamentary Assembly held an exchange of views on the Commission’s **Rule of Law Checklist** with two of its authors in Strasbourg, at the Council of Europe. Later in the year, on 11 November 2017, the Assembly adopted two reports entitled “The Rule of Law Checklist” of the Venice Commission” and “New threats against the rule of law in the member states of the Council of Europe - selected examples”. In this context the President of the Venice Commission, Mr Gianni Buquicchio, explained the practical usefulness of the Rule of Law Checklist to the Assembly.

The Parliamentary Assembly, after a debate with the participation of President Buquicchio, endorsed the Rule of Law checklist and decided to use it systematically in its work, particularly in the preparation of reports of the Committee on Legal Affairs and Human Rights and the Committee on the Honouring of Obligations and Commitments by Member States of the Council of Europe. Both reports on the Checklist and on “New threats to the rule of law in Council of Europe member States: selected examples”, make concrete application of the Checklist in their analysis of threats to the rule of law.

President Buquicchio presented the relevant reference texts of the Venice Commission in **the field of electoral systems** at the hearing by the Committee on Political Affairs and Democracy of the Parliamentary Assembly on the issues to be addressed in the Committee's report on "Setting minimal standards for electoral systems in order to offer the basis for free and fair elections". The event was held on 26 January 2017 in Strasbourg, on the side-lines of the Assembly's session.

The Assembly and the Venice Commission, in co-operation with the Congress of Local and Regional Authorities of the Council of Europe, organised a regional conference entitled "**Misuse of administrative resources during electoral processes: a major challenge for democratic elections**" in London on 9-10 November 2017. Members of Parliaments and representatives of the Central electoral administrations of the countries beneficiaries of the EU Partnership for Good Governance participated in this conference as well as a panel of international experts, specialists in the topic of the conference.

The Commission participated in the conference entitled "**Promoting transparency and accountability measures for members of parliament**", organised by the Parliamentary Assembly of the Council of Europe and hosted by the Italian parliament in Rome, Italy, on 26-27 October 2017. This event was aimed at members of the parliaments of Albania and of Bosnia and Herzegovina.

The Venice Commission participated in the seminar organised by the PACE Monitoring Committee on the 20th anniversary of its establishment in Helsinki on 16 May 2017. The topic of the event was "The international legal order in a changing world: challenges for the monitoring procedure of the Parliamentary Assembly".

In 2017 in the framework of the Action Plan for Ukraine the Venice Commission actively co-operated with the Assembly on issues related to **the reform of the Verkhovna Rada**. Among other activities, representatives of the Commission contributed to the workshops on law drafting and trainings for the secretariat of the Rada organised by the PACE.

### ***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 2017 were as follows:

#### Members

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

#### Substitute Members

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

### ***Legal assistance to election observation***

In accordance with the co-operation agreement concluded between the Venice Commission and the Parliamentary Assembly, representatives of the Venice Commission ensured legal assistance to the Parliamentary Assembly of the Council of Europe delegations observing parliamentary elections in Albania, Armenia, Bulgaria and the presidential elections in Kyrgyzstan and Serbia.

### Congress of Local and Regional Authorities

The Congress also continued to participate in the Council for Democratic Elections (CDE). In 2017, a member of the Congress, Mr Jos Wiene, chaired the Council for Democratic Elections. The relevant members of this Council in 2017 were as follows:

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

At the request of the Secretary General of the Congress of Local and Regional Authorities of the Council of Europe of 25 January 2017 the Venice Commission adopted at its March 2017 session, an Opinion on the Congress' "Checklist for compliance with international standards and best practices preventing misuse of administrative resources during electoral processes at local and regional level". This Checklist aimed to complement the "Guidelines for preventing misuse of administrative resources during electoral processes" prepared jointly by the OSCE/ODIHR and the Venice Commission in 2016. A member of the Venice Commission spoke at the 32nd session of the Congress of Local and Regional Authorities of the Council of Europe to present this opinion<sup>12</sup> (cf. Chapter III).

The Venice Commission gave, at the request of the Congress, an opinion on the provisions of an emergency decree-law having an impact on the exercise of local democracy in Turkey<sup>13</sup> (see under Chapter I).

On 7 November 2017 the Secretary General of the Congress submitted a request for the Venice Commission's opinion on the compatibility of local recall referendum aimed at cutting short the term of office of a local elected representative with the international standards and best practice. The Commission will adopt this opinion in 2018.

### European Court of Human Rights

In order to interpret the exact scope of the rights and freedoms guaranteed by the European Convention on Human Rights and to support its reasoning, the European Court of Human Rights (ECtHR) makes use, *inter alia*, of the work of the Venice Commission,<sup>14</sup> by referring to its documents. In 2017 the European Court of Human Rights referred to the Venice Commission's documents in more than ten judgments and decisions.<sup>15</sup>

The Venice Commission's work on ministerial criminal responsibility was referred to, albeit indirectly, through PACE Resolution 1950(2013), in the case of *Haarde v. Iceland* (§ 45), which concerned *inter alia* the composition and the fairness of the proceedings before the Court of Impeachment of Iceland, which examined accusations against the applicant - a cabinet member.

In the case of "*Orthodox Ohrid Archdiocese (Greek-Orthodox Ohrid Archdiocese of the Peć Patriarchy)*" v. "*the former Yugoslav Republic of Macedonia*" the ECtHR, while examining the Macedonian authorities' refusal to register a religious group, cited the Venice Commission's Opinion CDL-AD(2007)005 on the Draft Law on the legal status of churches, religious communities and religious groups of "the former Yugoslav Republic of Macedonia". In the case of *Karajanov v. "the former Yugoslav Republic of Macedonia"*, the Venice Commission's *amicus curiae* brief on the "Lustration Law" (CDL-AD(2012)028) was cited with approval (§ 75).

<sup>12</sup> Cf. document [CDL-AD\(2017\)006](#)

<sup>13</sup> Cf. document [CDL-AD\(2017\)021](#)

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

<sup>15</sup> And in a number of communication reports, not cited here

In the case of *Işıkırık v. Turkey*, the ECtHR examined criminal conviction of the applicant for participation in a demonstration, under “anti-terrorist” articles of the Turkish Criminal Code – Article 314 § 2 and Article 220 § 6. This judgement contained a long citation from the Opinion on Articles 216, 299, 301 and 314 of the Penal Code of Turkey (CDL-AD(2016)002); conclusions of the Venice Commission were also relied on in the Court’s reasoning.

In the case of *Adyan and Others v. Armenia*, which concerned the availability of alternative civil service for conscientious objectors, the Armenian Government referred to the changes of legislation on alternative service which resulted, inter alia, from the opinions of the Venice Commission (§ 59).

The case of *Bayev and Others v. Russia* concerned statutory prohibition of “gay propaganda” in Russia. The ECtHR in its judgment quoted, with approval, the Venice Commission’s Opinion On the Issue of the Prohibition of so-called “Propaganda of Homosexuality” in the Light of Recent Legislation in Some Member States of the Council of Europe (CDL-AD(2013)022), in particular as regards the vagueness of the terminology used in the Russian legislation under examination.

The Code of Good Practice in Electoral Matters (Guidelines and Explanatory Report) (CDL-AD(2002)023rev), was cited in the case of *Davydov and Others v. Russia*, which concerned the irregularities in the process of counting of votes, and the case of *Orlovskaya Iskra v. Russia*, which concerned sanctions imposed on a newspaper for a critical publication made during the electoral period. In this opinion the Court also quoted CDL-AD(2012)002, Opinion on the Federal Law on the election of the Deputies of the State Duma of the Russian Federation.

The Venice Commission’s Code of Good Practice in Referendums (CDL-AD(2007)008) was referred to in an inadmissibility decision in the case of *Moohan and Gillon v. the United Kingdom*, concerning the impossibility for a prisoner to vote at the Scottish independence referendum.

Another inadmissibility decision, in the case of *Cumhuriyet Halk Partisi v. Turkey*, refers to the Opinion of 13 March 2017 on the amendments to the Constitution adopted by the Grand National Assembly on 21 January 2017 and to be submitted to the national referendum on 16 April 2017 (CDL-AD(2017)005).

In the case of *Lashmankin and Others v. Russia*, the ECtHR was called upon to examine the Russian legislation on freedom of assembly and its application in practice. The judgement of the Court contains long citations from the 2010 Guidelines on Freedom of Peaceful Assembly (CDL-AD(2010)020), prepared by the OSCE/ODIHR jointly with the Venice Commission. This judgment also quotes from the 2014 “Compilation of Venice Commission Opinions Concerning Freedom of Assembly” (CDL-PI(2014)0003) and refers to the Opinion on the Federal Law no. 54-FZ of 19 June 2004 on assemblies, meetings, demonstrations, marches and picketing of the Russian Federation (CDL-AD(2012)007).

Judges of the ECtHR also referred to the documents of the Venice Commission in their separate (concurring or dissenting) opinions in 2017. Thus, the Report on the relationship between political and criminal ministerial responsibility was quoted by Judges Judkivska, Tsotsoria and Vehabović in the Grand Chamber case of *Merabishvili v. Georgia*.

*Amicus curiae brief for the European Court of Human Rights in the case of Berlusconi v. Italy* - [CDL-AD\(2017\)025](#)

By letter of 24 July 2017, the Registrar of the European Court of Human Rights (hereinafter “ECtHR” or “the Court”) informed the Venice Commission that on 19 July 2017 the President of the Court had decided to invite the Commission to present written observations in the case of *Berlusconi v. Italy*, on the following issue:

*What are the minimum procedural guarantees which a State must provide in the framework of a procedure of disqualification from holding an elective office?*

For further information on this *amicus curiae* brief see Chapter III above.

### **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 side, the Commissioner analyses the broader context and reacts in a quick and flexible manner to emerging threats.

In 2017, Mr Nils Muižnieks, Commissioner for Human Rights of the Council of Europe, referred to the Venice Commission's work on several occasions. The Commissioner regretted the adoption by the Sejm of two laws changing the composition and functioning of **Poland's** Supreme Court and the National Council for the Judiciary; he urged the Polish authorities to follow the recommendations of the relevant Venice Commission's opinions (cf. Chapter II). He also strongly encouraged the **Kosovo** authorities to seek advice from the Venice Commission in light of many planned reforms of the justice system.

On 10 November 2017, the Commissioner published his written observations submitted to the European Court of Human Rights regarding a group of twelve applications concerning the freedom of expression and the right to liberty and security of parliamentarians in **Turkey**. In his observations on freedom of expression and the right to liberty and security of parliamentarians in Turkey, the Commissioner referred in particular to the lifting of the parliamentary immunity of 154 MPs in Turkey, which was considered as a misuse of the constitutional amendment procedure by the Venice Commission (cf. Chapter II).

### **Other Council of Europe institutions**

#### ***Commission européenne pour l'efficacité de la justice (CEPEJ)***

La coopération avec la CEPEJ s'est poursuivie dans le cadre des lois organiques relatives à l'organisation judiciaire au Maroc.

Après avoir apporté les années précédentes ses analyses juridiques sur les projets de lois organiques relatives au Conseil supérieur de la justice et au Statut des Magistrats, la Commission de Venise en coopération avec la CEPEJ a donné, en octobre 2017, un avis informel sur le projet de loi n° 38-15, relatif à l'organisation judiciaire.

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

The Committee of Experts on Media Pluralism and Transparency of Ownership (MSI-MED) continued preparing feasibility studies on gender equality in the context of media coverage of elections, as well as on the use of Internet in elections. The Venice Commission participated in the Third and Fourth meetings of the Committee of Experts on Media Pluralism and Transparency of Ownership (MSI-MED) held in Strasbourg, France on 29-30 March and 20-21 September 2017, respectively. The Venice Commission's Guidelines on Political Party Regulation<sup>16</sup> were widely quoted as well as several other standard-setting documents.

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<sup>16</sup>Cf. document [CDL-AD\(2010\)024](#)

### ***Gender Equality Commission***

The secretariat of the Venice Commission participated in the inter-secretarial meetings of the Gender Mainstreaming Team (GMT) 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 Council of Europe Gender Equality Strategy 2018-2023.

### ***Group of States against Corruption (GRECO)***

The President of GRECO Mr Marin Mrčela participated in the Commission's December plenary session. In his address to the plenary he referred to recent examples of co-operation with the Commission, such as the involvement of GRECO experts in the preparation of opinions on Moldova and Ukraine. He stressed the similarities between the Commission and GRECO, which are both based on enlarged agreements and give advice to member states on core issues of the Council of Europe. He also mentioned the synergies between both bodies as exemplified in numerous mutual references to relevant opinions and evaluation reports.

### ***World Forum for Democracy, Strasbourg 8-10 November 2017***

Representatives of the Venice Commission took part in one of the sessions of the World Democracy Forum in Strasbourg which was dedicated to citizens' participant assemblies and deliberative democracy (Strasbourg, 9 November 2017). This session was designed as a "moot assembly" where issues related to the new methods of public involvement in policy-making were debated. The Irish experience was particularly useful in this field.

## **2. EUROPEAN UNION**

In 2017, the co-operation between the Venice Commission and the European Union further consolidated.

It has become customary for the European Union to invite its member and candidate states to follow the Venice Commission's recommendations. The European Commission Services commended the consistent and constructive contribution of the Venice Commission to the assessment of complex reform processes in member countries as well as in candidate and potential candidate countries. The Venice Commission provided input to the on-going EU efforts to support reforms in enlargement countries, channelling them within well designed technical boundaries while still respecting domestic ownership at all stages. The Venice Commission was involved in consultations with the EU bodies on topics concerning EU policies and its relations with the countries - members of the EU, candidate States and neighbourhood States - such as Hungary, Poland, Albania, the Balkan states, Central Asian states, states of the MENA region and Ukraine. In addition, during 2017 Venice Commission representatives held working meetings with the European Commission (DG-NEAR, DG-JUST, EEAS and DEVCO).

The EU repeatedly referred to the work of the Venice Commission concerning the judiciary reforms in **Poland**.

The Secretary of the Commission presented its recent activities to the European Union Committee for relations with the CoE and OSCE, COSCE, meeting participants on 17 March 2017 in Brussels. On 12 May in Strasbourg President Buquicchio exchanged views with the COSCE on the activities of the Venice Commission in non-EU member states.

A representative of the Venice Commission participated at the 42nd consultation meeting between the European Union's Troika of the Article 36 Committee (CATS) and the Council of Europe in Brussels on 11 May 2017 where he informed the participants of the recent opinions on Hungary, Poland and Turkey.

## European Parliament

### *References to the Commission's work*

The European Parliament has referred to the importance of the work of Venice Commission and/or its documents on more than 150 occasions. In 2017, the European Parliament increased its references to the Venice Commission's work and consultations with its representatives on important issues.<sup>17</sup> In its documents the European Parliament credits the Venice Commission's advisory competencies and calls for close co-operation with it on various issues. In 2017 the following texts referred to the Commission's work:

On general issues:

- Report on the composition of the European Parliament ([2017/2054\(INL\)](#)), 26 January 2018
- Resolution of 15 November 2017 on Eastern Partnership: November 2017 Summit ([2017/2130\(INI\)](#))
- Report containing a motion for a non-legislative resolution on the draft Council decision on the conclusion, on behalf of the Union, of the Enhanced Partnership and Cooperation Agreement between the European Union and its Member States, of the one part, and the Republic of Kazakhstan, of the other part ([2017/2035\(INI\)](#)), 26 October 2017
- Report on a European Parliament recommendation to the Council, the Commission and the EEAS on the Eastern Partnership, in the run-up to the November 2017 Summit ([2017/2130\(INI\)](#)), 16 October 2017

Country specific documents :

#### Kazakhstan

- Resolution of 12 December 2017 on EU-Kazakhstan Enhanced Partnership and Cooperation Agreement (Resolution) ([12409/2016 – C8-0469/2016 – 2016/0166\(NLE\) – 2017/2035\(INI\)](#))

#### Moldova

- Resolution of 04 July 2017 on Macro-financial assistance to the Republic of Moldova ([COM\(2017\)0014 – C8-0016/2017 – 2017/0007\(COD\)](#))

#### Tunisia:

- Political transition in Tunisia ([Resolution 2166 \(2017\)](#))

#### Turkey

- Resolution of 07 July 2017 on 2016 Report on Turkey ([2016/2308\(INI\)](#))

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<sup>17</sup> For references to the work of the Commission by the EU please refer to the Venice Commission's website page "References": [http://www.venice.coe.int/WebForms/pages/?p=02\\_references&lang=EN](http://www.venice.coe.int/WebForms/pages/?p=02_references&lang=EN).



In particular, the European Parliament adopted, on 15 November 2017, a resolution on “The situation of the rule of law and democracy in **Poland**”, in which it referred to the opinions of the Venice Commission on Poland. In its Resolution the European Parliament:

“ – *having regard to the opinion of 14 October 2016 of the Venice Commission on the Act on the Constitutional Tribunal, and to the statement of 24 January 2017 by the president of the Venice Commission expressing his deep concern over the ‘worsening situation’ in Poland,*  
...

*7. Urges the Polish Parliament and Government to implement fully all recommendations of the Commission and the Venice Commission, and to refrain from conducting any reform which would put at risk respect for the rule of law, and in particular the independence of the judiciary; calls in this respect for postponement of the adoption of any laws until a proper assessment has been made by the Commission and the Venice Commission;”.*

### **Exchanges of view**

On 15 February 2017 in Strasbourg the President of the Venice Commission presented the Commission’s co-operation with Georgia at the 4<sup>th</sup> meeting of the EU-Georgian Parliamentary Association Committee during the European Parliament Session. During the same session, on 16 February 2017, the President exchanged views with the European Parliament Support Group for Democracy and Election Coordination (DEG) on the Venice Commission’s current and future activities. President Gianni Buquicchio also spoke before the European Parliament's Democracy Support and Election Co-ordination Group.

On 16 March 2017 in Strasbourg President Gianni Buquicchio and the Deputy Secretary of the Commission, Simona Granata-Menghini, exchanged views with the Foreign Affairs Committee of the European Parliament (AFET) on issues of common interest, notably on constitutional reform in Turkey.

### **Co-operation with other EU institutions**

In 2017, technical consultations were held on developments in Hungary and Poland as well as in the Balkans, Ukraine and in Central Asia and the countries of the MENA region. In addition, the Venice Commission co-operated in 2017 with the EU delegations in countries such as Libya, Kazakhstan, Kyrgyzstan, Jordan, Morocco, Tunisia and Ukraine. In addition, throughout the year Mr Thomas Markert, Secretary of the Venice Commission, held a number of bilateral meetings with the European Commission EEAS, DEVCO and DG-NEAR officials on Albania, Kosovo, Moldova, Turkey and “the former Yugoslav republic of Macedonia”.

Representatives of the Legal Service and DG Justice, the European External Action Service as well as from the Committee of the Regions participated in the plenary sessions of the Venice Commission in 2017.

### **Joint European Union – Council of Europe Projects**

In 2017, the Venice Commission continued its co-operation with several countries within the framework of the following joint projects:

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

In 2017 the Venice Commission started implementing a co-operation Agreement with the European Union for the implementation of a new project in the electoral field in Kyrgyzstan “Support to strengthening democracy through electoral reform in the Kyrgyz Republic”. For more information please refer to the Chapter V.

### ***Programmatic Co-operation Framework<sup>18</sup>***

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

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

### ***Horizontal Facility for the Western Balkans and Turkey***

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

In 2017, the Venice Commission provided under this programme legal assistance to the State Election Commission of «the former Yugoslav Republic of Macedonia » and to the Ministry of Justice of Serbia. For more information cf. Chapters II (Constitutional reforms, state institutions, human rights and the judiciary) and IV (Elections, referendums and political parties).

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

Launched in 2012, and stepped up for 2015-2017, the South Programme is a strategic European Union-Council of Europe initiative to support democratic reforms in the southern Mediterranean in response to demand from the partners in the region. From legislative expertise to strengthening institutions’ capacities through peer-to-peer exchanges and networks, the South Programme aims *inter alia* to support the development of new constitutional and legislative frameworks and democratic governance bodies in countries in the region and to contribute to the establishment of a common legal area between Europe and the southern Mediterranean.

The support provided by the Council of Europe within its areas of expertise, through tailored training programmes such as the PATHS Programme, further provides an opportunity to develop and strengthen the capacities of the target groups – public administrations, legal professions, civil society – and to foster a culture of respect for human rights, democracy and the rule of law in the southern Mediterranean countries (Algeria, Egypt, Jordan, Lebanon, Libya, Morocco, Palestine<sup>19</sup>, Tunisia), which is one of the goals of the South Programme.

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<sup>18</sup> Programme for Good Governance since April 2017.

<sup>19</sup> 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.

### 3. OSCE

In 2017, co-operation with the OSCE continued to be fruitful. The Venice Commission maintained regular and frequent high-level and working-level contacts with the organisation's representatives. The OSCE/ODIHR was represented at all four plenary sessions of the Venice Commission in 2017.

#### **Human Dimension events**

The Venice Commission presented its Rule of Law Checklist at a side-event of the OSCE Annual Supplementary Human Dimension Meeting held on 23 September 2017 in Warsaw.

#### **OSCE/ODIHR**

##### ***Protection of fundamental rights***

###### *Joint Guidelines on the Freedom of Peaceful Assembly*

The Venice Commission continued contributing to the update of the 2<sup>nd</sup> edition of the Joint Guidelines on the Freedom of Peaceful Assembly adopted in 2010. It participated in the Panel on freedom of peaceful assembly held by the OSCE/ODIHR in Warsaw, Poland on 15-16 May 2017. Participants discussed *inter alia* assembly "monitoring" (including the issue of the safety of journalists covering assemblies) and the role of municipalities in facilitating assemblies.

###### *Foreign funding of non-governmental organisations*

The Venice Commission, in co-operation with the OSCE/ODIHR and with the funding from the Japanese Government, organised a Round-table on "Foreign funding of non-governmental organisations" on 4 October 2017 in Venice, Italy. The round-table gathered together members of the Venice Commission, national and International experts as well as state and civil society representatives. The purpose of the round-table was to develop the international standards concerning foreign funding of associations in order to deepen the legal discussion in this field. Good practices in promoting an enabling environment for cross-border activities of NGOs while addressing terrorist financing and money laundry concerns were also on the agenda. The conclusions of this round-table will be also used in the preparation of the "review" in this field requested by the Secretary General of the Council of Europe.

##### ***Elections, referendums and political parties***

Mr Michael Georg Link, Director of the OSCE/ODIHR, while addressing the March 2017 plenary session of the Commission, noted that the joint opinions and guidelines in the field of elections were a core area of co-operation between the Venice Commission and the OSCE/ODIHR. This co-operation was an important added value, combining resources to address issues together and preventing states from "forum shopping" between international organisations. In the current political climate, it was important not to fall into the trap of placing security over democratic institutions; that on the contrary, security can only be achieved through democratic institutions i.e. one cannot be dissociated from the other. The Venice Commission and the OSCE/ODIHR are and should remain mutually compatible and their co-operation should continue.

In 2017, the Venice Commission continued its work in close co-operation with the OSCE/ODIHR in the field of elections and political parties. Joint opinions were prepared on Armenia, Bulgaria and the Republic of Moldova. The OSCE/ODIHR took part in all four meetings of the Council for Democratic Elections and the plenary sessions of the Commission.

*Joint Opinions in the field of elections and political parties*

In the field of elections and political parties the Venice Commission drafted jointly with the OSCE/ODIHR and adopted the following opinions during 2017:

- the draft checklist for compliance with international standards and best practices preventing misuse of administrative resources during electoral processes at local and regional level of the Congress of Local and Regional Authorities of the Council of Europe (CDL-AD(2017)006);
- the draft laws on amending and completing certain legislative acts (electoral system for the election of the Parliament) of the Republic of Moldova (CDL-AD(2017)012);
- amendments to the electoral code of Bulgaria (CDL-AD(2017)016);
- the legal framework governing the funding of political parties and electoral campaigns of the Republic of Moldova (CDL-AD(2017)027);
- the draft law on referendums in Armenia (CDL-AD(2017)029);

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

*Lignes directrices conjointes sur la réglementation des partis politiques*

La révision des lignes directrices conjointes sur la réglementation des partis politiques, élaborées par l'OSCE/BIDDH et la Commission de Venise en 2010 à la suite d'un vaste processus inclusif, avait été entamée en 2016, afin d'incorporer de nouvelles expériences, d'affiner les lignes directrices et de tenir compte des nouvelles tendances et de l'introduction de thèmes spécifiques. Plusieurs membres de la Commission ont contribué à cette révision en 2017 et la poursuivront en vue de l'adoption de la nouvelle version par la Commission de Venise en 2018. La Commission a été invitée à participer à la réunion annuelle du groupe restreint d'experts sur les partis politiques organisée par le l'OSCE/BIDDH les 2 et 3 novembre 2017 à Varsovie, qui était consacrée à ce sujet.

*Réunion sur la publication de nouveaux codes de conduite et lignes directrices*

La Commission de Venise a participé à des discussions sur des projets de deux nouvelles publications dans le domaine des élections : « Manuel sur l'observation et la promotion de la participation électorale des personnes handicapées » et « Lignes directrices sur le rôle des prestataires en matière de sécurité publique lors des élections ». L'événement était organisé par l'OSCE/BIDDH à Varsovie les 19-20 juin 2017. Parmi les participants à la réunion figuraient des experts internationaux ainsi que des représentants de la société civile et des organisations internationales.

*Follow-up of electoral recommendations in the Western Balkans*

The Venice Commission took part in the launch event of the project "Support to the Follow-up of Electoral Recommendations in the Western Balkans", organised by the OSCE in the form of a roundtable in Warsaw on 8 September 2017.

The round table highlighted the importance of follow-up of electoral recommendations and informed the participants of the next steps of the project. It began with an outline of the project and was followed by three working sessions on election management, voter registration and the conduct of the media during election campaigns. Participants in the event included international experts, central election commissions, as well as representatives from civil society and international organisations.

*Brainstorming on election observation with PACE, OSCE/ODIHR, and NATO*

Representatives of the Commission participated in a brainstorming on election observation with PACE, OSCE/ODIHR, and NATO, held in Strasbourg on 16 November 2017.

#### **4. UNITED NATIONS**

##### **United Nations Development Programme (UNDP)**

In 2017 the Venice Commission continued its fruitful co-operation and exchanges of information with several UNDP projects, notably in the countries of the Southern Mediterranean, Ukraine and Kyrgyzstan.

In the Southern Neighbourhood the Venice Commission continued its fruitful co-operation with the UNDP's Bureau for Policy and Programme Support (Regional Hub for Arab States) in supporting the Organisation of the Arab Electoral Management Bodies (Arab EMBs). The Venice Commission and UNDP co-organised a conference "Strengthening of the independence of electoral management bodies", which was hosted by the Independent High Electoral Commission of Tunisia in Tunis on 7–9 February 2017. The next Congress of Arab EMBs is planned for March 2018 in Jordan.

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

##### **United Nations Office on Drugs and Crime (UNODC)**

Also in 2017, the Venice Commission participated in the Regional Preparatory Meeting for the Launch of the **Global Judicial Integrity Network** (Vienna, Austria, 24-25 August 2017). The activity was organised by the United Nations Office on Drugs and Crime (UNODC). UNODC services the Implementation Review Mechanism for the United Nations Convention against Corruption (UNCAC), notably Article 11 which emphasises the crucial role of the judiciary in combating corruption and recognizes that in order to play this role effectively, the judiciary itself must be free of corruption and its members must act with integrity. The Bangalore Principles of Judicial Conduct and the Doha Declaration also serve as legal framework for this initiative. At the meeting, the Venice Commission's Deputy Secretary presented the Commission's experience in the area of networking among courts.

#### **5. CO-OPERATION WITH OTHER INTERNATIONAL ORGANISATIONS**

##### **5.1. Constitutional law, democracy and fundamental rights**

###### ***Inter-American Court of Human Rights***

Mr Eduardo Ferrer Mac-Gregor, Judge at the Inter-American Court of Human Rights, participated in the October plenary session of the Venice Commission. He informed the Commission about the latest important decisions taken by the Court. He stressed at the outset that the Inter-American Court had the difficult task of ensuring the protection of the fundamental rights of more than 500 million people. The main problem faced by the institution was the execution of its judgments. In Judge Ferrer's opinion this issue could be an important area of co-operation between European and Inter-American institutions.

###### ***International IDEA***

Since 2015, this institution enjoys observer status with the Council for Democratic Elections – a tripartite body comprised of representatives of the Venice Commission, PACE and the Congress of the Council of Europe.

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

2017 was marked by a fruitful co-operation with OAS on the issue of constitutional referendum in Venezuela<sup>20</sup>. Following the successful co-operation on Venezuela the Secretary General of the OAS requested the Commission to prepare a study on the individual right to re-election in November 2017, which will be adopted in 2018.

### ***OECD***

In 2017 a constructive tripartite collaboration between the Venice Commission, SIGMA and the Southern Mediterranean partners continued as part of the UniDem Med project. This collaboration is based on the expertise of the Venice Commission in the field of democracy, human rights and the rule of law.

The President of the Venice Commission, Mr Gianni Buquicchio addressed the SIGMA Ministerial conference on the occasion of the 25<sup>th</sup> anniversary of SIGMA, which took place from 13 to 14 December 2017 in Paris on the importance of the rule of law for citizens and businesses. Mr Thomas Markert, Secretary of the Venice Commission, also represented the Commission at the Paris meeting.

SIGMA is a project implemented by the OECD and co-financed by the European Union and the OECD. The project has worked on public administration reform (PAR) in more than 30 partner countries to help them to establish professional public administrations, effective financial management and economic development.

## **5.2. Constitutional Justice**

In 2017 the Venice Commission co-operated with the following international organisations active in the constitutional justice field:

- Association of Constitutional Courts using the French Language (ACCPUF)<sup>21</sup>
- Association of Asian Constitutional Courts and Equivalent Institutions (AACC)
- Conference of the Constitutional Control Organs of the Countries of New Democracy (CCCOCND)
- Conference of European Constitutional Courts (CECC)<sup>22</sup>
- Conference of Constitutional Courts of Portuguese Speaking Countries (CJCPLP)
- Conference of Constitutional Jurisdictions of Africa (CCJA)
- Ibero-American Conference of Constitutional Justice (CIJC)
- Southern African Chief Justices Forum (SACJF)
- Union of Arab Constitutional Courts and Councils (UACCC).

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

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<sup>20</sup> For more information please see Chapters II and V.

<sup>21</sup> See the co-operation page: <http://www.venice.coe.int/ACCPUF/>.

<sup>22</sup> See the co-operation page: <http://www.venice.coe.int/CECC/>.

### 5.3. Elections, referendums and political parties

#### ***Association des administrateurs européens d'élections (ACEEEO)***

La Commission a participé à la 26<sup>e</sup> conférence annuelle et à l'Assemblée générale de l'ACEEEO sur le thème « Des électeurs conscients à l'âge numérique » les 9 et 10 novembre 2017 à Sofia. Le représentant de la Commission de Venise est intervenu dans l'atelier intitulé : « *Est-ce que les campagnes électorales doivent être réglementées ? Aspects politiques et pratiques d'un espace politique limité* ».

#### ***International Foundation for Electoral Systems (IFES)***

The Venice Commission and the International Foundation for Electoral Systems (IFES) co-organised a Roundtable "International standards and Ukrainian practices in election dispute resolution" in Kiev, 16 March 2017, and the International conference "The use of new information technologies in the electoral process: challenges, risks and prospects" in Kiev, 27 – 28 March 2017. The Venice Commission contributed to the roundtable "Features of Implementation of Internally Displaced Persons' (IDPs') Electoral Rights and the Legal Framework" co-organised by IFES. For more information please see Chapter V.

Also in 2017 the Venice Commission participated in the two activities organized by the IFES in Georgia: in the 7th Annual Meeting of Electoral Administrations in Borjomi, 27-28 February 2017, and in the training seminar on electoral litigation in Batumi, 22-24 September 2017. For more information please see Chapter IV.

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

On 13-14 December 2017, at the invitation of the Organization of American States, a delegation from the Venice Commission participated in the 12th meeting of the Declaration of Principles of International Election Observation.

#### ***PNUD***

Les 29-30 mai 2017 à Buenos Aires, la Commission a participé à un séminaire international sur les meilleures pratiques dans le domaine électoral, organisé par la Chambre électorale nationale et le Conseil des relations internationales de l'Argentine en coopération avec le PNUD.

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

## APPENDIX I - THE VENICE COMMISSION: AN INTRODUCTION

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The European Commission for Democracy through Law, better known as the Venice Commission, is a Council of Europe independent consultative body on issues of constitutional law, including the functioning of democratic institutions and fundamental rights, electoral law and constitutional justice. Its members are independent experts. Set up in 1990 under a partial agreement between 18 Council of Europe member states, it has subsequently played a decisive role in the adoption and implementation of constitutions in keeping with Europe's constitutional heritage.<sup>23</sup> The Commission holds four plenary sessions a year in Venice, working mainly in three fields: constitutional assistance, constitutional justice and election and referendum issues. In 2002, once all Council of Europe member states had joined, the Commission became an enlarged agreement of which non-European states could become full members. In 2017, it had 61 full members and 13 other entities formally associated with its work. It is financed by its member states on a proportional basis which follows the same criteria as applied to the Council of Europe as a whole. This system guarantees the Commission's independence vis-à-vis those states which request its assistance.

### 1. *Constitutional assistance*

The Commission has the prime function of providing **constitutional assistance** to States, mainly (but not exclusively) those which participate in its activities.<sup>24</sup> Such assistance takes 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 thus made an often crucial contribution 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 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

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<sup>23</sup> 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.

<sup>24</sup> 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.



members of the Commission in similar situations. Draft opinions are discussed and adopted by the Commission at one of its plenary sessions, usually in the presence of representatives of the country concerned. Following their adoption, the opinions are transmitted to the state or the body which requested it, and come into the public domain.

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

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

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

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

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

### ***Studies and reports on subjects of general interest***

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

These studies may, when appropriate, lead to the preparation of guidelines and even proposals for international agreements. Previously, they took the form of scientific conferences under the

Universities for Democracy (**UniDem**) programme, the proceedings of which were subsequently published in the “**Science and technique of democracy**” series.<sup>25</sup>

## **2. Constitutional justice**

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

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

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

That Conference decided to establish an association, assisted by the Venice Commission and open to all participating courts, with the purpose of promoting co-operation within the groups, but also between them on a global scale. In co-operation with the Federal Supreme Court of Brazil, the Venice Commission organised a Second Congress of the World Conference (16-18 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 3<sup>rd</sup> Congress co-organised with the Constitutional Court of Republic of Korea in Seoul on 28 September – 1 October 2014, around 90 Courts discussed the challenges of social integration for constitutional justice. At the 4<sup>th</sup> Congress 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 around 91 Courts.

At the end of 2017, 112 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 contains summaries in French and English of

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<sup>25</sup> See Appendix V.

the most significant decisions over a four month period. It also has an electronic counterpart, the **CODICES database**, which contains some 9,000 decisions rendered by over 100 participating courts together with constitutions and descriptions of many courts and the laws governing them.<sup>26</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 these are subjected to pressure by other authorities of the State. The Commission has even, on several occasions, been able to help some courts threatened with dissolution to remain in existence. It should also be pointed out that, generally speaking, by facilitating the use of support from foreign case-law, if need be, the Bulletin and the CODICES database also help to strengthen judicial authority.

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

### **3. 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>27</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, and women’s representation in political systems, preventing the misuse of administrative resources during electoral campaigns. In the field of political parties, the Venice Commission has also drafted joint guidelines on political party regulation with the OSCE/ODIHR, and addressed the prohibition, dissolution and financing of political parties, as well the method of nomination of candidates in political parties. The Commission has adopted more than sixty studies or guidelines of a general nature in the field of elections, referendums and political parties.

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<sup>26</sup> CODICES is available on line (<http://www.CODICES.coe.int>).

<sup>27</sup> 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.

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

The Council for Democratic Elections has developed **regular co-operation with election authorities in Europe and on other continents**. It organises annually the European Conference of Electoral Management Bodies (the 14th edition took place in 2017 in St Petersburg), 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 exemplary co-operation.

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

The Council for Democratic Elections has created the VOTA<sup>28</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*).

#### **4. Neighbourhood policy**

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

The Venice Commission has been working in **Central Asia** for over 10 years. This co-operation was possible in the framework of several bilateral and regional projects with funding provided by the European Union. The national institutions of Kazakhstan, Kyrgyzstan, Tajikistan and Uzbekistan were assisted in order to build their capacity to carry out reforms of their legal systems in line with European and international human rights standards, including the European Convention on Human Rights and the case-law of the European Court of Human Rights. Within the projects, the Venice Commission organised a number of events providing opportunities for exchanging views with the authorities of Central Asian States on topics such as constitutional justice, electoral reform and access to justice. All the countries of the Central Asian region are engaged in a constructive dialogue and the impact of concrete actions undertaken by the Commission has been constantly increasing since 2007. In the absence of joint projects aimed at the Central Asian region in 2017, the Venice Commission continued bilateral co-operation with higher judicial bodies of the five countries of the region which show continuous interest in the assistance of the Venice Commission. At the end of 2016 the Commission signed a co-operation Agreement with the European Union for the implementation of a new project in the electoral field in Kyrgyzstan.

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<sup>28</sup> VOTA is accessible on line: <http://www.venice.coe.int/VOTA>.

The Commission actively co-operates with countries of the **Southern Mediterranean region**. It established contacts with Arab countries even before the Arab Awakening and this farsightedness proved very useful. After the Arab spring the Commission established a very good co-operation with Morocco and Tunisia. Successful projects in these countries helped to establish and to develop a dialogue with other countries of the region such as Egypt, Jordan and Libya. In this respect 2013 was a crucial year since it provided the basis for exploring new possibilities for the Venice Commission's assistance to countries of Maghreb and Middle East. In 2015 the Commission launched the UniDem-Med programme and assisted in the establishment of the Conference of Arab Election Management Bodies. In 2017 Authorities of Algeria, Egypt and Palestine<sup>29</sup> showed a growing interest in co-operation with the Venice Commission.

**Latin American countries** have always been interested in sharing experiences and best practices with Europe, in such fields as democratic transition, constitution-building, constitutional 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 cooperation with the Mexican National Electoral Institute and the Electoral Tribunal of the Judicial Power of the Mexican Federation (*Tribunal electoral del poder judicial de la Federación, TEPJF*).

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<sup>29</sup> 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 II – MEMBER COUNTRIES

### MEMBERS

Albania (14.10.1996)  
**Algeria (01.12.2007)**  
 Andorra (01.02.2000)  
 Armenia (27.03.2001)  
 Austria (10.05.1990)  
 Azerbaijan (01.03.2001)  
 Belgium (10.05.1990)  
 Bosnia and Herzegovina (24.04.2002)  
**Brazil (01.04.2009)**  
 Bulgaria (29.05.1992)  
**Chile (01.10.2005)**  
**Costa Rica (06.07.2016)**  
 Croatia (01.01.1997)  
 Cyprus (10.05.1990)  
 Czech Republic (01.11.1994)  
 Denmark (10.05.1990)  
 Estonia (03.04.1995)  
 Finland (10.05.1990)  
 France (10.05.1990)  
 Georgia (01.10.1999)  
 Germany (03.07.1990)  
 Greece (10.05.1990)  
 Hungary (28.11.1990)  
 Iceland (05.07.1993)  
 Ireland (10.05.1990)  
**Israel (01.05.2008)**  
 Italy (10.05.1990)  
**Kazakhstan (13.03.2012)**  
**Republic of Korea (01.06.2006)**  
**Kosovo (12.09.2014)**  
**Kyrgyzstan (01.01.2004)**  
 Latvia (11.09.1995)  
 Liechtenstein (26.08.1991)  
 Lithuania (27.04.1994)  
 Luxembourg (10.05.1990)  
 Malta (10.05.1990)  
**Mexico (03.02.2010)**  
 Moldova (25.06.1996)  
 Monaco (05.10.2004)  
 Montenegro (20.06.2006)  
**Morocco (01.06.2007)**  
 Netherlands (01.08.1992)  
 Norway (10.05.1990)  
**Peru (11.02.2009)**  
 Poland (30.04.1992)

Portugal (10.05.1990)  
 Romania (26.05.1994)  
 Russian Federation (01.01.2002)  
 San Marino (10.05.1990)  
 Serbia (03.04.2003)  
 Slovakia (08.07.1993)  
 Slovenia (02.03.1994)  
 Spain (10.05.1990)  
 Sweden (10.05.1990)  
 Switzerland (10.05.1990)  
 “The former Yugoslav Republic of  
 Macedonia” (19.02.1996)  
**Tunisia (01.04.2010)**  
 Turkey (10.05.1990)  
 Ukraine (03.02.1997)  
 United Kingdom (01.06.1999)  
**United States of America (15.04.2013)**

### ASSOCIATE MEMBER

Belarus (24.11.1994)

### OBSERVERS

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

### PARTICIPANTS

European Commission  
 OSCE/ODIHR

### SPECIAL CO-OPERATION STATUS

Palestine<sup>30</sup>  
 South Africa

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<sup>30</sup> 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>1</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 Mourad MEDELICI, President, Constitutional Council
- Mr Mohamed HABCHI (Substitute member), Vice-President, Constitutional Council

**Andorra**

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

**Armenia**

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

**Austria**

- Mr Christoph GRABENWARTER, Judge, Constitutional Court of Austria
- Ms Katharina PABEL (Substitute member), Professor, University of Linz
- Mr Johannes SCHNIZER (Substitute member), Judge, Constitutional Court

**Azerbaijan**

- Mr Rövşən İSMAYILOV, Judge, Constitutional Court

**Belgium**

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

**Bosnia and Herzegovina**

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

**Brazil**

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

**Bulgaria**

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

**Chile**

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

**Costa Rica**

- Mr Ernesto JINESTA LOBO, President, Constitutional Chamber of the Supreme Court
- Mr Fernando CASTILLO VIQUEZ (Substitute member), Judge, Supreme Court

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<sup>1</sup> By order of seniority as of 31 December 2015.

**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 George EROTOCRITOU (Substitute member), Judge, Supreme Court

**Czech Republic**

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

**Denmark**

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

**Estonia**

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

**Finland**

- Mr Kaarlo TUORI, Professor of Jurisprudence, Department of Public Law, University of Helsinki
- Ms Elina PIRJATANNIEMI (Substitute member), Professor, Åbo Akademi University

**France**

- Ms Claire BAZY-MALAUURIE, Member, Constitutional Council, Former member of the Auditors' Board
- M. Jean-Jacques HYEST (Substitute member), Member of the Constitutional Council

**Georgia**

- Mr Mindia UGREKHELIDZE, Former judge at the European Court of Human Rights, Professor, Head of the Department for Legal Studies, Caucasus International University
- Mr Alexander BARAMIDZE (Substitute member), First Deputy Minister of Justice

**Germany**

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

**Greece**

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

**Hungary**

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

**Iceland**

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

**Ireland**

- Mr Richard BARRETT, Deputy Director General, Office of the Attorney General
- Ms Grainne MCMORROW (Substitute member), Senior Counsel, Professor of Law NUI Galway (Adjunct)

**Israel**

- Mr Dan MERIDOR, Lawyer, Former Prime Minister and Minister of Justice
- Mr Barak MEDINA (Substitute member), Dean, Faculty of Law, The Hebrew University of Jerusalem



**Italy**

- Mr Gianni BUQUICCHIO, President of the Venice Commission
- Ms Marta CARTABIA (Substitute member), Vice Chair, Constitutional Court
- Mr Cesare PINELLI (Substitute member), Head of the Public Law Section, Legal Science Department, "La Sapienza" University

**Kazakhstan**

- Mr Igor Ivanovich ROGOV, Deputy Executive Director, Foundation of the First President of the Republic of Kazakhstan
- Ms Unzila SHAPAK (Substitute member), Member, Constitutional Council

**Korea, Republic**

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

**Kosovo**

- Mr Enver HASANI, Former President, Constitutional Court
- Ms Arta RAMA HAJRIZI (Substitute member), President, Constitutional Court

**Kyrgyzstan**

- Mr Omurbek TEKEBAYEV, Member of Parliament
- Mr Erkinbek MAMYROV (Substitute member), President, Constitutional Chamber of the Supreme Court

**Latvia**

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

**Liechtenstein**

N.N.<sup>2</sup>

- Mr Wilfried HOOP (Substitute member), Partner, Hoop & Hoop

**Lithuania**

- Mr Gediminas MESONIS, Judge, Constitutional Court
- Ms Vygante MILASIUTE (Substitute member), Head of International Agreement Law Division, Ministry of Justice

**Luxembourg**

- Mme Lydie ERR, Former Ombudsman
- Mr Marc FISCHBACH (Substitute member), Former Ombudsman

**Malta**

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

**Mexico**

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

**Moldova, Republic of**

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

**Monaco**

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

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<sup>2</sup> Member resigned on 19 October 2016. A new member has not yet been appointed.

**Montenegro**

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

**Morocco**

- Mr Khalid NACIRI, Professor of Constitutional law, former Minister of Communication
- Mr Ahmed ESSALMI (Substitute member), Member, Constitutional Court

**Netherlands**

- Mr Ben VERMEULEN, Member of the Dutch Council of State, Judge in the Council of State, Professor of Education Law, Radboud University Nijmegen
- Mr Martin KUIJER (Substitute member), Senior Legal Adviser, Ministry of Security and Justice, Professor VU University Amsterdam

**Norway**

- Mr Jan Erik HELGESEN, Professor, University of Oslo
- Mr Eirik HOLMØYVIK (Substitute member), Professor of Law, University of Bergen

**Peru**

- Mr José Luis SARDON DE TABOADA, Judge, Constitutional Tribunal
- Mr Eloy ESPINOSA-SALDAÑA BARRERA (Substitute member), Vice-President, Constitutional Tribunal
- Mr Carlos RAMOS NÚÑEZ (Substitute member), Judge, Constitutional Tribunal

**Poland**

- Mr Bogusław BANASZAK,<sup>3</sup> Member, Tribunal of the State
- Mr Mariusz MUSZYŃSKI (Substitute member), Vice-President, Constitutional Court

**Portugal**

- Mr Joao CORREIA, Lawyer
- Mr Paulo PIMENTA (Substitute member), Professor, Universidad Portucalense

**Romania**

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

**Russia**

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

**San Marino**

- Mr Francesco MAIANI, Professor of EU Law, Law Faculty, University of Lausanne

**Serbia**

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

**Slovakia**

- Ms Ivetta MACEJKOVÁ, President, Constitutional Court
- Ms Jana BARICOVÁ (Substitute member), Judge, Constitutional Court

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<sup>3</sup> Deceased 9 January 2018.

**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
- Ms Paloma BIGLINO CAMPOS (Substitute member), Full Professor of Constitutional Law, Valladolid University

**Sweden**

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

**Switzerland**

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

**“The former Yugoslav Republic of Macedonia”**

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

**Tunisia**

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

**Turkey**

- Mr Osman CAN, Professor, Marmara University Law School
- Ms Oyku Didem AYDIN (Substitute member), Associate Professor, Hacettepe University Law School

**Ukraine**

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

**United Kingdom**

- Mr Richard CLAYTON QC, Barrister at Law
- Mr Paul CRAIG (Substitute member), Professor of Law, University of Oxford

**United States of America**

- Ms Sarah CLEVELAND, Professor, Columbia Law School
- Ms Evelyn M. ASWAD (Substitute member), Law Professor, University of Oklahoma, College of Law

**ASSOCIATE MEMBERS****Belarus**

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

**OBSERVERS****Argentina**

- N. N.

**Canada**

- N. N.

**Holy See**

- Mr Vincenzo BUONOMO, Professor of International Law

**Japan**

- Mr Kosuke YUKI, Consul, Consulate General of Japan in Strasbourg, liaison officer, Supreme Court

**Uruguay**

- M. Alvaro MOERZINGER, Ambassador, Embassy of Uruguay in the Hague

**SPECIAL STATUS****European Union***European Commission*

Mr Lucio GUSSETTI, Director, Legal Department

Mr, Carlo ZADRA, Legal Adviser

*Committee of the Regions*

Mr Luc VAN DEN BRANDE, President 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****•Palestine<sup>4</sup>**

• Mr Ali ABU DIAK, Minister of Justice

**South Africa**

• N. N.

**SECRETARIAT**

Mr Thomas MARKERT, Director, Secretary of the Commission

Ms Simona GRANATA-MENGHINI, Deputy Secretary of the Commission

Mr Pierre GARRONE, Head of the Division on Elections and Referendums

Mr Rudolf DÜRR, Head of the Division on Constitutional Justice

Ms Artemiza-Tatiana CHISCA, Head of the Division on Democratic Institutions and Fundamental Rights

Mr Serguei KOUZNETSOV, Head of the Division on Neighbourhood Co-operation

Ms Caroline MARTIN, Legal Officer

Ms Tanja GERWIEN, Legal Officer

Mr Grigory DIKOV, Legal Officer

Mr Gaël MARTIN-MICALLEF, Legal Officer

Mr Ziya Caga TANYAR, Legal Officer

Mr Michael JANSSEN, Legal Officer

Ms Svetlana ANISIMOVA, Administrator

Mr Mesut BEDIRHANOGLU, Legal Officer

Ms Tatiana MYCHELOVA, Public Relations Officer

Ms Helen MONKS, Financial Officer

Mr Hristo HRISTOV, Project Manager

Ms Zaruhi GASPARYAN, Project Officer

Ms Brigitte AUBRY, Assistant to the Head of the Division on Democratic Institutions and Fundamental Rights

Ms Jayne APARICIO, Assistant to the Head of the Division on Constitutional Justice

Mrs Vicky LEE, Assistant to the Head of the Division on Elections and Referendums

Ms Emily WALKER, Assistant to the Secretary, the Deputy Secretary and the President of the Commission

Ms Ana GOREY, Bulletin on Constitutional Case Law and CODICES

Mrs Marie-Louise WIGISHOFF, Bulletin on Constitutional Case Law

Ms Alexandra DEPARVU, Project Assistant

Ms Rosy DI POL, Project Assistant

Ms Haifa ADDAD, Project Assistant

Ms Viktoria MESHAYKINA, Project Assistant

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<sup>4</sup> 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 AND SUB-COMMISSIONS<sup>1</sup>

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**President:** Mr Buquicchio (Italy)

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

**Bureau**

- First Vice-President: Ms Kjerulf Thorgeirsdottir
- Vice-Presidents: Ms Bílková, Mr Frendo
- Members: Ms Bazy-Malaurie, Mr Castella Andreu, Mr Kang, Ms Khabrieva

- **Scientific Council:**

Chair: Mr Helgesen: Vice-Chair Mr Can

Members: Mr Buquicchio, Ms Kjerulf Thorgeirsdottir, Ms Bílková, Mr Frendo, Mr Clayton, Ms Err, Mr Grabenwarter, Mr Hoffmann-Riem, 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 Endzins, Mr Kask, Ms Otálora Malassis  
(Substitutes: Mr Barrett, Ms Biglino Campos, Mr Craig, Mr Vermeulen)

Parliamentary Assembly - Members: Ms Josette Durrieu, Lord Richard Balfe, Mr Jordi Xucla  
(Substitutes: Mr Corneliu Mugurel Cozmanciuc, Ms Eka Beselia, Mr Tiny Kox)

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

- **Joint Council on Constitutional Justice:**

Chair: Mr Grabenwarter

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

Members: Ms Anastas, Mr Can, Mr Espinosa-Saldaña, Mr Harutyunian, Mr Holovaty, Mr Kang, Ms Karakamisheva-Jovanovska, Mr Kask, Ms Kjerulf Thorgeirsdottir, Mr Knežević, Ms Macejkova, Ms McMorrow, Mr Medelci, Ms Omejec, Mr Pazin, Mr Ramos, Mr Ribicic, Ms Šimáčková, Mr Varga as well as 90 liaison officers from 65 Constitutional Courts or Courts with equivalent jurisdiction

- **Federal State and Regional State:**

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

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

- **International Law:**

Chair: Mr Cameron: Vice-Chair: Mr Varga:

Members: Mr Aurescu, Ms Bílková, Ms Cleveland, Mr Hasani, Mr Maiani, Ms Milasiute

- **Protection of Minorities:**

Chair: Mr Velaers: Vice-Chair: Mr Endziņš:

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

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<sup>1</sup> From December 2015 to December 2017.

- **Fundamental Rights:**

Chair: Mr Vermeulen: Vice-Chair: Mr Dimitrov

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

- **Democratic Institutions:**

Chair: Mr Tuori: Vice-Chair: Mr Meridor:

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

- **Judiciary:**

Chair: Mr Barrett: Vice-Chair: Ms Omejec

Members: Mr Correia, Ms Err, Mr Esanu, Mr Habchi, Mr Hasani, Mr Hirschfeldt, Mr Hoffmann-Riem, Mr Holovaty, Mr Kang, Ms Karakamisheva-Jovanovska, Mr Kask, Ms Kiener, Mr Knežević, Mr Kuijer, Ms McMorrow, Mr Nicolatos, Mr Pazin, Ms Šimáčková, Mr Toader, Mr Tuori, Mr Ugrekhelidze, Mr Varga, Mr Velaers

- **Rule of Law:**

Chair: Mr Hoffmann-Riem: Vice-Chair: Mr Holovaty

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

- **Working Methods:**

Chair: Mr Clayton: Vice-Chair: Mr Vilanova Trias:

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

- **Latin America:**

Chair: Mr Sardon: Vice-Chair: Ms Otálora Malassis

Members: Ms Antunes Rocha, Ms Biglino, Ms Bílková, Mr Buquicchio, Mr Castella Andreu, Mr Castillo Viquez, Ms Cleveland, Mr Correia, Mr Darmanovic, Mr Espinosa-Saldaña, Mr Hernandez Emparanza, Mr Hirschfeldt, Mr Jinema Lobo, Ms Herdis Kjerulf Thorgeirsdottir, Mr Kuijer, Ms McMorrow, Mr Mendes, Mr Ramos, Mr Vargas Valdez, Mr Vasquez Marquez

- **Mediterranean Basin:**

Chair: Mr Jeribi: Vice-Chair: Mr Medelci

Members: Mr Frendo, Ms McMorrow,

- **Gender Equality**

Chair: Ms Err: Vice-Chair: Ms Anastas

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

## APPENDIX V - PUBLICATIONS

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### Series “Science and Technique of Democracy”<sup>36</sup>

- No.1 Meeting with the presidents of constitutional courts and other equivalent bodies <sup>2, 37</sup> (1993)
- No.2 Models of constitutional jurisdiction\*, <sup>38</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 \* (1993)
- No.7 Rule of law and transition to a market economy <sup>2</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 \* (1995)
- No.13 Implementation of constitutional provisions regarding mass media in a pluralist democracy <sup>2</sup> (1995)
- No.14 Constitutional justice and democracy by referendum (1996)
- No.15 The protection of fundamental rights by the Constitutional Court \* (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 \* (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>2</sup> (2000)
- No.30 European integration and constitutional law (2001)
- No.31 Constitutional implications of accession to the European Union<sup>2</sup> (2002)
- No.32 The protection of national minorities by their kin-State<sup>2</sup> (2002)
- No.33 Democracy, rule of law and foreign policy<sup>2</sup> (2003)
- No.34 Code of good practice in electoral matters \* (2003)
- No.35 The resolution of conflicts between the central state and entities with legislative power by the constitutional court<sup>2</sup> (2003)
- No.36 Constitutional courts and European integration <sup>4, 39</sup> (2004)
- No.37 European and U.S. constitutionalism<sup>4</sup> (2005)
- No.38 State consolidation and national identity<sup>4</sup> (2005)
- No.39 European standards of electoral law in contemporary constitutionalism <sup>4</sup> (2005)
- No.40 Evaluation of fifteen years of constitutional practice in Central and Eastern Europe \*, <sup>4</sup> (2005)
- No.41 Organisation of elections by an impartial body<sup>4</sup> (2006)
- No.42 The status of international treaties on human rights<sup>4</sup> (2006)
- No.43 The preconditions for a democratic election<sup>4</sup> (2006)
- No.44 Can excessive length of proceedings be remedied? <sup>4</sup> (2007)

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<sup>36</sup> Publications are also available in French unless otherwise indicated.

<sup>37</sup> Publications marked with “2” contain speeches in the original language (English or French).

<sup>38</sup> Publications marked with \* are also available in Russian.

<sup>39</sup> Publications marked with “4” are available in English only.

- No.45 The participation of minorities in public life<sup>4</sup> (2008)
- No.46 The cancellation of election results<sup>4</sup> (2010)
- No.47 Blasphemy, insult and hatred<sup>4</sup> (2010)
- No.48 Supervising electoral processes<sup>4</sup> (2010)
- No.49 Definition of and development of human rights and popular sovereignty in Europe<sup>4</sup> (2011)
- No.50 10 years of the Code of good practice in electoral matters<sup>4</sup> (2013)

#### **Other collections**

##### ***Collection “Points of view - points of law”***

- Guantanamo - violation of human rights and international law? (2007)
- The CIA above the laws? Secret detentions and illegal transfers of detainees in Europe (2008)
- Armed forces and security services: what democratic control? (2009)

##### ***Collection “Europeans and their rights “***

- The right to life (2005)
- Freedom of religion (2007)
- Child rights in Europe (2008)
- Freedom of expression (2009)

##### ***Bulletin on Constitutional Case-Law***

1993 - 2017 (three issues per year)

##### ***Special Bulletins on Constitutional Case-Law***

- Description of Courts (1999)\*
- Basic texts - extracts from Constitutions and laws on Constitutional Courts - issues No.1-2 (1996), No. 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)\*
- Freedom of religion and beliefs (1999)
- Leading cases 1 - Czech Republic, Denmark, Japan, Norway, Poland, Slovenia, Switzerland, Ukraine (2002)
- Leading cases 2 - Belgium, France, Hungary, Luxembourg, Romania, USA (2008)
- Inter-Court Relations (2003)
- Statute and functions of Secretary Generals of Constitutional courts (2006)
- 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>40</sup>
- Role of Constitutional Courts in upholding and applying constitutional principles (2017)

##### ***Annual Reports***

- 1993 – 2017

#### **Other titles**

- Mass surveillance: who is watching the watchers (2016)?
- Central Asia - judicial systems overview (2016)<sup>41</sup>

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<sup>40</sup> Requested by the Conference of European Constitutional Courts (CECC)



- Main documents of the Venice Commission in the field of electoral law and political parties (2016)<sup>42</sup>
- Electoral opinions on Ukraine and general reports in the electoral field<sup>43</sup>  
Part I, Part II (2016)
- Joint OSCE/ODIHR – Venice Commission Guidelines on Fundamental rights (2015)<sup>2, 5, 44</sup>
- Freedom of Association - joint OSCE/ODIHR – Venice Commission Guidelines (2015)<sup>2, 5</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>3, 45</sup>
  - 8th Conference on Elections in a changing world (Vienna, 2011)<sup>3</sup>

### Brochures

- 10th anniversary of the Venice Commission (2001)
- Revised Statute of the European Commission for Democracy through Law (2002)
- UniDem (Universities for Democracy) Campus - Legal training for civil servants (2003)<sup>4,46</sup>
- 20th Anniversary - Publications (2010)
- Selected studies and reports (2010)
- Key Facts (2011)<sup>47</sup>
- Services provided by the Venice Commission to Constitutional Courts and equivalent bodies (2011)
- Code of Good Practice in Electoral Matters (2016)<sup>\*, 48</sup>
- Main reference texts of the Venice Commission (2013)<sup>5</sup>
- The Venice Commission of the Council of Europe (2014)<sup>5</sup>
- UniDem (Universities for Democracy) Campus for the Southern Mediterranean countries (2015)<sup>5</sup>
- Rule of Law Checklist (2016)<sup>\*, 5</sup>
- Preventing and responding to the misuse of administrative recourses during electoral processes – Joint guidelines (2017)<sup>\*</sup>
- European Conference of Electoral Management Bodies (2017)<sup>\*</sup>
- Venice Commission: cooperation with Constitutional courts (2017)
- Reference texts in the field of judiciary (2017)

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<sup>41</sup> Available only in Russian; only “Introduction” is also in English.

<sup>42</sup> Available only in Russian.

<sup>43</sup> Available only in Ukrainian.

<sup>44</sup> Publications marked with “5” are available also in Arabic.

<sup>45</sup> Publications marked with “3” are available in electronic form only.

<sup>46</sup> Also available in Italian.

<sup>47</sup> Also available in Spanish.

<sup>48</sup> Also available in Spanish.

**APPENDIX VI -  
DOCUMENTS ADOPTED IN 2017**

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**110<sup>th</sup> plenary session (Venice, 10-11 March 2017)**

CDL-AD(2017)001	Slovak Republic - Opinion on questions relating to the appointment of Judges of the Constitutional Court
CDL-AD(2017)002	Republic of Moldova - Amicus Curiae Brief for the Constitutional Court on the Criminal liability of judges
CDL-AD(2017)003	Spain - Opinion on the law of 16 October 2015 amending the Organic Law No. 2/1979 on the Constitutional Court
CDL-AD(2017)004	Turkey - Opinion on the duties, competences and functioning of the criminal peace judgeships
CDL-AD(2017)005	Turkey - Opinion on the amendments to the Constitution adopted by the Grand National Assembly on 21 January 2017 and to be submitted to a National Referendum on 16 April 2017
CDL-AD(2017)006	Joint opinion <sup>49</sup> on the draft checklist for compliance with international standards and best practices preventing misuse of administrative resources during electoral processes at local and regional level of the Congress of Local and Regional Authorities of the Council of Europe
CDL-AD(2017)007	Turkey - Opinion on the Measures provided in the recent Emergency Decree Laws with respect to Freedom of the Media
CDL-AD(2017)008	Kazakhstan - Opinion on the draft law of the Republic of Kazakhstan on administrative procedures
CDL-AD(2017)009	Republic of Moldova - Joint Opinion of the Venice Commission, the Directorate of information society and action against crime and of 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 n° 281 amending and completing Moldovan Legislation on the so-called "Mandate of security"
CDL-AD(2017)010	Kazakhstan - Opinion on the amendments to the Constitution of Kazakhstan

**111<sup>th</sup> plenary session (Venice, 16-17 June 2017)**

CDL-AD(2017)011	Armenia – Opinion on the draft Constitutional Law on the Constitutional Court
CDL-AD(2017)012	Republic of Moldova - Joint opinion on the draft laws on amending and completing certain legislative acts (electoral system for the election of the Parliament)
CDL-AD(2017)013	Georgia - Opinion on the draft revised Constitution

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<sup>49</sup> “Joint Opinion” refers to opinions drafted jointly by the Venice Commission and the OSCE/ODIHR unless specified otherwise.

- CDL-AD(2017)014 Republic of Moldova - Opinion on the proposal by the President of the Republic to expand the President's powers to dissolve Parliament
- CDL-AD(2017)015 Hungary - Opinion on the Draft Law on the Transparency of Organisations receiving support from abroad
- CDL-AD(2017)016 Bulgaria - Joint opinion on amendments to the electoral code

**112<sup>th</sup> plenary session (Venice, 6-7 October 2017)**

- CDL-AD(2017)017 Comments on the Recommendation 2110(2017) of Parliamentary Assembly of the Council of Europe, on the implementation of judgments of the European Court of Human Rights in view of the reply of the Committee of Ministers
- CDL-AD(2017)018 Bulgaria - Opinion on the Judicial System Act
- CDL-AD(2017)019 Armenia - Opinion on the Draft Judicial Code
- CDL-AD(2017)020 Ukraine - Opinion on the Draft Law on Anticorruption 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)021 Turkey - Opinion on the Provisions of the Emergency Decree-Law N° 674 of 1 September 2016 which concern the exercise of Local Democracy
- CDL-AD(2017)022 Hungary - Opinion on Article XXV of 4 April 2017 on the Amendment of Act CCIV of 2011 on National Tertiary Education
- CDL-AD(2017)023 Georgia - Opinion on the draft revised Constitution as adopted by the Parliament of Georgia at the second reading on 23 June 2017
- CDL-AD(2017)024 Venezuela - Opinion on the legal issues raised by Decree 2878 of 23 May 2017 of the President of the Republic on calling elections to a national constituent Assembly
- CDL-AD(2017)025 *Amicus curiae* brief for the European Court of Human Rights in the case of Berlusconi v. Italy
- CDL-AD(2017)026 Ukraine - Opinion on the amendments to the Rules of Procedure of the Verkhovna Rada of Ukraine

**1113<sup>th</sup> plenary session (Venice, 8-9 December 2017)**

- CDL-AD(2017)027 Republic of Moldova - Joint Opinion on the legal framework governing the funding of political parties and electoral campaigns
- CDL-AD(2017)028 Poland - Opinion on the Act on the Public Prosecutor's office, as amended
- CDL-AD(2017)029 Armenia - Joint Opinion on the Draft Law on Referendum
- CDL-AD(2017)030 Ukraine - Opinion on the provisions of the Law on Education of 5 September 2017, which concern the use of the State Language and Minority and other Languages in Education
- CDL-AD(2017)031 Poland - 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)032 Republic of Moldova - Proposed New Article 37 of the Law on the People's Advocate Finance Provisions
- CDL-AD(2017)033 "The former Yugoslav Republic of Macedonia" - Opinion on the Draft Law on the termination of the validity of the Law on the Council for establishment of facts and initiation of proceedings for determination of accountability for Judges, on Draft Law amending the Law on the Judicial Council, and on the Draft Law amending the Law on Witness protection
- CDL-AD(2017)034 Report on Constituency Delineation and Seat Allocation