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(VENICE COMMISSION)

UPDATED COMPILATION

OF VENICE COMMISSION OPINIONS AND REPORTS

**CONCERNING CONSTITUTIONAL PROVISIONS
FOR AMENDING THE CONSTITUTION¹**

¹ *This document will be updated regularly. This version contains all opinions and reports adopted up to and including the Venice Commission's 134th Plenary Session, 10-11 March 2023)*

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I. Introduction

The present document is a compilation of extracts taken from opinions and reports/studies adopted by the Venice Commission on issues concerning constitutional and legal provisions for amending the constitution. The scope of this compilation is to give an overview of the doctrine of the Venice Commission in this field.

The compilation is intended to serve as a source of reference for drafters of constitutions, researchers, as well as for the Venice Commission's members, who are requested to prepare opinions and reports on mechanisms of constitutional amendment. When referring to elements contained in this compilation, please cite the original document but not the compilation as such.

This compilation is structured in a thematic manner in order to facilitate access to the topics dealt with by the Venice Commission over the years in this area. It should not, however, prevent members of the Venice Commission from introducing new points of view or diverge from earlier ones, if there is a good reason for doing so. The compilation should be considered as merely a frame of reference.

Each opinion referred to in the present document relates to a specific country and any recommendation made has to be seen in the specific constitutional context of that country. This is not to say that such recommendation cannot be of relevance for other systems as well.

The Venice Commission's reports and studies quoted in this compilation seek to present general standards for all member and observer states of the Venice Commission. Recommendations made in the reports and studies will therefore be of a more general application, although the specificity of national/local situations is an important factor and should be taken into account adequately.

Both the brief extracts from opinions and reports/studies presented here must be seen in the context of the original text adopted by the Venice Commission from which it has been taken. Each citation therefore has a reference that sets out its exact position in the opinion or report/study (paragraph number, page number for older opinions), which allows the reader to find it in the corresponding opinion or report/study.

The Venice Commission's position on a given topic may change or develop over time as new opinions are prepared and new experiences acquired. Therefore, in order to have a full understanding of the Venice Commission's position, it would be important to read the entire compilation under a particular theme. Please kindly inform the Venice Commission's Secretariat if you think that a quote is missing, superfluous or filed under an incorrect heading (venice@coe.int).

II. General Remarks

A. No unique model for constitutional amendments

“6. As the Venice Commission observed in its 2010 Report on Constitutional Amendment [...], there is no single “best model” for the process of constitutional amendments. However, certain general principles may be derived from the previous opinions and reports by the Venice Commission, based on the pan-European constitutional heritage.”

[CDL-AD\(2016\)029](#), Azerbaijan - Opinion on the draft modifications to the Constitution submitted to the Referendum of 26 September 2016

“7. Even within Europe there is great variety – ranging from states in which constitutional amendment is quite easy to states where in practice it is almost impossible. There is no common European “best model” for constitutional amendment, much less any common binding legal requirements. Neither has there been any attempt so far at articulating any common European standards.”

“61. Within this common general tradition, there is however great variance in detail – with almost as many amendment formulas as there are states.”

“107. It is neither possible nor desirable to try to formulate in abstracto a best model for constitutional amendment. The point of balance between rigidity and flexibility may be different from state to state, depending on the political and social context, the constitutional culture, the age, detail and characteristics of the constitution, and a number of other factors. Also, this balance is not static, but may shift over time, reflecting political, economic and social transformations.

108. It is, however, possible to identify factors that may be relevant for the assessment of a given constitutional system, and which may be of use in analysing how strict a given amendment formula actually is, and whether it should be reformed or compensated by other means. Some of these factors may also be relevant when assessing whether a given proposal for constitutional change is legitimate or not.”

“239. There are good reasons why constitutions should be both relatively rigid and flexible enough to be changed if necessary. The challenge is to balance these requirements in a way which allows necessary reforms to be passed without undermining the constitutional stability, predictability and protection. The final balance can only be found within each constitutional system, depending on its specific characteristics. But the balancing act can be more or less successful, depending on a general understanding of the mechanisms and principals involved.”

[CDL-AD\(2010\)001](#), Report on Constitutional Amendment

“31. The Venice Commission has devoted an extensive study to the process of revising the Constitution (CDL-AD(2010)001). It stressed that there is no “magic formula”. The challenge is to balance the requirements of rigidity and flexibility. The report states, however, that “if there is not a “best model”, then there is at least a fairly wide-spread model – which typically requires a certain qualified majority in parliament (most often 2/3), and then one or more additional obstacles – either multiple decisions in parliament (with a time delay), or additional decision by other actors (multiple players), most often in the form of ratification through referendum.”

“34. It is neither possible nor desirable to try to formulate in the abstract a constitutional amendment optimal model. The point of balance between rigidity and flexibility may be different from one state to another, depending on the social and political context, constitutional culture, age, level of detail and the characteristics of the constitution, and number of other

factors, especially as this balance is not static and can move over time according to social, economic and political transformations."

[CDL-AD\(2013\)029](#), Opinion on three draft Constitutional Laws amending two constitutional Laws amending the Constitution of Georgia

B. Purpose of constitutional amendments / constitutional stability

"106. When faced with the question of constitutional amendment procedures, the Venice Commission has several times expressed its concern over excessively rigid procedures and warned against the difficulty of constitutional reform. In other cases, the Commission has been confronted with the opposite challenge, that too frequent amendments of (or attempts to amend) the constitution negatively affect constitutional and political stability. It has thus stressed that the constitution cannot "be amended in conjunction with every change in the political situation in the country or after a formation of a new parliamentary majority".

[CDL-AD\(2010\)001](#), Report on Constitutional Amendment

"105. [...] Constitutional stability is an important element for the stability of the country as a whole and one should not adopt a new Constitution as a "quick fix" to solve current political problems."

[CDL-AD\(2008\)015](#), Ukraine - Opinion on the Draft Constitution

"70. The Commission reiterates its position that even a good Constitutional text cannot ensure stability and democratic development of society without there also being the relevant political will of different political forces, further legislation in line with democratic standards and a sound system of checks and balances that sets the basis for its implementation."

[CDL-AD\(2010\)015](#), Kyrgyzstan - Opinion on the draft Constitution

"It may be regretted that the Constitution was revised twice in a very short space of time, with the result that full advantage could not be taken of the possibilities that the House of Counties could have offered after the first revision of the Constitution, in terms of the representation of new local and regional authorities but also of new self-governing bodies for minorities that are in the process of creation under the new law on the rights of minorities. It may also be noted that the House of Counties was abolished just before the organisation of local elections and at a time when the constitutional law of minorities had not yet been adopted. Although there is no element in the European constitutional heritage that requires the existence of an upper house of the legislature, it would be regrettable if the unicameralism instituted by the March 2001 amendments were to make future constitutional revision too easy and weaken constitutional stability".

[CDL-INF\(2001\)01](#), Croatia - Opinion on the Amendments of 9 November 2000 and 28 March 2001 to the Constitution

"47. As for the substantial side of the envisaged constitutional reform process, the Venice Commission reiterates its recommendation that a constitutional reform should result in an "effective strengthening of the stability, independence and efficiency of state institutions through a clear division of competencies and effective checks and balances" and "should also introduce additional mechanisms and procedures of parliamentary control over the actions and intentions of the executive". In addition, it "should also include changes in the provisions on the judiciary aiming at "laying down a solid foundation for a modern and efficient judiciary in full compliance with European standards".

[CDL-AD\(2011\)002](#), Ukraine - Opinion on the concept paper on the Establishment and Functioning of the Constitutional Assembly of Ukraine

“31. In its Report on Constitutional Amendment, the Venice Commission expressed its concern with regard to excessively rigid procedures and warned against the difficulty of engaging in constitutional reform in such cases. In other cases, the Commission has been confronted with the opposite challenge, where amendments, or attempted amendments, to the constitution happen on a too frequent basis, which may also negatively affect constitutional and political stability. The Commission has thus stressed that a constitution cannot “be amended in conjunction with every change in the political situation in the country or after a formation of a new parliamentary majority”.

[CDL-AD\(2015\)014](#), Kyrgyzstan - Joint Opinion on the Draft Law “On Introduction of changes and Amendments to the Constitution” of the Kyrgyz Republic

C. Consensus, transparency and legitimacy

“23. The stability and ‘neutrality’ of the constitution and avoidance of a ‘contingent’ constitution require legitimacy and collective sense of ownership, which in turn require a transparent, open, and inclusive constitutional process, allowing for a pluralism of views and proper debate of controversial issues. As the Venice Commission has consistently emphasized, the adoption of a new and good Constitution should be based on the widest consensus possible within society; a wide and substantive debate involving the various political forces, non-government organisations and citizens associations, academia, and the media is an important prerequisite for adopting a sustainable text, acceptable for the whole of the society and in line with democratic standards.”

[CDL-AD\(2022\)004](#), Chile - Opinion on the drafting and adoption of a new Constitution; See also [CDL-AD\(2020\)001](#), Moldova, Republic of - Joint opinion of the Venice Commission and the Directorate General of Human Rights and Rule of Law (DGI) of the Council of Europe on the draft law on amending and supplementing the constitution with respect to the Superior Council of Magistracy §§202-205, [CDL-AD\(2011\)001](#), Opinion on three legal questions arising in the process of drafting the New Constitution of Hungary §§18-19, [CDL-AD\(2013\)010](#), Opinion on the Draft New Constitution of Iceland §17 and [CDL-AD\(2019\)015](#), Parameters on the Relationship between the Parliamentary Majority and the Opposition in a Democracy §§66-67, 85, 113-114.

“20. Secondly, the drafting process did not meet the criterion of transparency which the legitimacy of constitutional amendment requires. It appears that the Constitutional Commission or the Working Group did not conduct their activities with sufficient openness, offering external inputs by all political forces, civil society or private citizens. A certain level of public participation was possible, but only after the draft amendments were published on 27 December 2021.”

[CDL-AD\(2022\)035](#), Belarus - Final Opinion on the Constitutional Reform

“31. The rules of procedure of the Convention [Constitutional Convention of the Republic of Chile] and of the rules of popular participation have added some participatory mechanisms during the Convention work: hearings with the civil society and experts, and people’s initiative for proposals to the Convention (with at least 15.000 signatures from 4 regions) (“iniciativa popular de normas”). Seventy-eight initiatives obtained the necessary minimum number of signatures before 1 February 2022 when the process closed, and currently they are being discussed in a Commission and are being voted on for their discussion and approval at the Plenary, applying the same rules as a proposal from one constituent member. [...]”

[CDL-AD\(2022\)004](#), Chile - Opinion on the drafting and adoption of a new Constitution

“11. [...] The Commission considered the process of public consultations for the draft amendments as being sufficiently inclusive and transparent; it stressed nonetheless that in

the context of the current Serbian political landscape it is important for the Serbian authorities to actively seek the participation and involvement of the opposition [...].

12. The Commission reiterates the importance of inclusive consultations of the opposition, the stakeholders and civil society, and of the transparency of the process, notably in view of the constitutional referendum which will need to be organised and which should be preceded by an objective campaign of information to the public and of appropriate public and private media coverage: the Commission refers in this context to its recent urgent opinion on the revised draft law on the referendum and the people's initiative (CDL-PI(2021)018)."

[CDL-AD\(2021\)048, Serbia](#) - Urgent opinion on the revised draft constitutional amendments on the judiciary; See also [CDL-AD\(2021\)032, Serbia](#) - Opinion on the draft Constitutional Amendments on the Judiciary and draft Constitutional Law for the Implementation of the Constitutional Amendments §§ 16 and 17 .

"32. [...] Notably, the Constitution itself, in its Article 52, specifically states that citizens shall have the right to "participate in the discussion and adoption of laws of republican and local significance". Transparency, openness and inclusiveness, as well as adequate timeframes and conditions allowing for a variety of views and proper wide and substantive debates of controversial issues are key requirements of a democratic constitution-making process and help ensuring that the text is adopted by society as a whole and reflects the will of the people and support of the public. These consultations should involve political institutions, non-governmental organisations and civil society, academia, the media and the wider public, offer equal opportunities for women and men to participate, and should involve proactively reaching out to persons or groups that would otherwise be marginalised, such as national minorities. Therefore, it is essential to ensure that the constitutional reform process allows for informed and meaningful discussions with the participation of all relevant stakeholders, including non-parliamentary political parties, civil society, and the wider public; there should be time for proper discussions, at all levels, of the proposed amendments."

[CDL-AD\(2021\)007, Kyrgyzstan](#) - Joint Opinion of the OSCE/ODIHR and the Venice Commission on the Draft Constitution of the Kyrgyz Republic; See also the document of the *Moscow Meeting of the Conference on the Human Dimension* of the CSCE (1991) §. 18.1, CDL-AD(2011)001 § 18 and 19, [CDL-PI\(2015\)023](#), Compilation of Venice Commission Opinions concerning Constitutional provisions for amending the Constitution section C and OSCE High Commissioner on National Minorities (HCNM), *Ljubljana Guidelines on Integration of Diverse Societies* (2012), Principle 2 on page 9 and Principle 23 on page 32

"15. The rule of law requires that the general public should have access to draft legislation and have a meaningful opportunity to provide input. These requirements apply all the more strictly when it comes to revising a Constitution. The Venice Commission previously stressed that constitutional amendments should not be rushed, and "should only be made after extensive, open and free public discussions", involving "various political forces, nongovernment organisations and citizens associations, the academia and the media" and providing for "adequate timeframe"."

"99. The Venice Commission notes at the outset that the Draft has been prepared within the parliamentary majority, seemingly without any external input. It appears that this initiative was not preceded by any serious public debate, formal or informal. The reasons for certain amendments were not well-explained; in particular, the explanatory note is rather succinct. The process of constitutional reform is still on-going, so, while regretting that the launching of the constitutional reform was not preceded by an appropriate public debate, the Venice Commission recommends the Bulgarian authorities to elaborate on the reasons behind each proposal and to ensure meaningful participation of the public, experts and all political forces in this process."

[CDL-AD\(2020\)035](#), Bulgaria - Urgent Interim Opinion on the draft new Constitution

“19. The Venice Commission has previously stressed that “properly conducted amendment procedures, allowing time for public and institutional debate, may contribute significantly to the legitimacy and sense of ownership of the constitution and to the development and consolidation of democratic constitutional traditions over time. In contrast, if the rules and procedures on constitutional change are open to interpretation and controversy, or if they are applied too hastily or without democratic discourse, then this may undermine political stability and, ultimately, the legitimacy of the constitution itself. In this sense, the Commission has repeatedly stressed that a duly, open, informed and timely involvement of all political forces and civil society in the process of reform can strongly contribute to achieving consensus and securing the success of the constitutional revision even if this inevitably takes time and effort. For this to happen, states’ positive obligations to ensure 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 are equally relevant.”.”

[CDL-AD\(2017\)005](#), Türkiye - 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; See also [CDL-AD\(2010\)001](#), Report on Constitutional Amendment, §§204 and 205

27. Finally, the process of amending the Constitution should be marked by the highest levels of transparency and inclusiveness – in particular in cases where draft amendments, such as the current ones, propose extensive changes to key aspects of the Constitution, such as the roles of the highest court and the Constitutional Chamber, the functioning of the state institutions and the independence of the judiciary. In this context, it should be borne in mind that the Constitution itself, in its Article 52, specifically states that citizens shall have the right to “participate in the discussion and adoption of laws of republican and local significance”. Transparency, openness and inclusiveness, as well as adequate timeframes and conditions allowing for a variety of views and proper wide and substantive debates of controversial issues are key requirements of a democratic constitution-making process and help ensure that the text is adopted by society as a whole, and reflects the will of the people. Notably, these should involve political institutions, non-governmental organisations and citizens’ associations, academia, the media and the wider public; this includes proactively reaching out to persons or groups that would otherwise be marginalized, such as national minorities. It is thus recommended **to ensure, in this and further attempts to amend the Constitution, that all relevant stakeholders, including non-parliamentary political parties, civil society, and the wider public, are aware of the proposed changes, and are included in various platforms of discussion on this topic; there should also be time for proper discussions, at all levels, on the proposed amendments.** This will ensure that, once draft amendments are presented to the *Jogorku Kenesh* for adoption, they enjoy the widest support of the public.

[CDL-AD\(2016\)025](#), Kyrgyzstan - Joint Opinion on the draft law "on Introduction of amendments and changes to the Constitution"

“245. Constitutional reform is a process which requires free and open public debate, and sufficient time for public opinion to consider the issues and influence the outcome.”

[CDL-AD\(2010\)001](#), Report on Constitutional Amendment

“17. [...] the adoption of a new and good Constitution should be based on the widest consensus possible within society and [...]“*a wide and substantive debate involving the various political forces, non-government organisations and citizens associations, the academia and the media is an important prerequisite for adopting a sustainable text, acceptable for the whole of the society and in line with democratic standards. Too rigid time constraints should be avoided and the calendar of the adoption of the new Constitution should follow the progress made in its debate.*”

[CDL-AD\(2013\)010](#), Opinion on the draft New Constitution of Iceland

“28. In its previously mentioned opinion of 13 December 2003 (CDL-AD(2003) 019), the Venice Commission stressed the need to secure the legitimacy of any constitutional reform in Ukraine. It notes the complicated and hurried way in which a variety of constitutional amendments have been proposed, introduced, amended and voted on with each proposal being subjected to process of further amendments in the process. It wishes to stress that constitutional amendments should only be made after extensive, open and free public discussions and in an atmosphere favouring such discussions. Amendments should, as a rule, be based on a large consensus among the political forces and within the civil society.”

[CDL-AD\(2004\)030](#), Ukraine - Opinion on the Procedure of Amending the Constitution

“26. According to the information available, it appears that [...], no public debate has been held at the initiative of the authorities with regard to the preliminary draft. Moreover, no meetings of the Constitutional Committee have been held, before early February 2014, to discuss on the substance the preliminary draft - and available comments - in view of its revision.

27. The Commission finds all the more unfortunate that such a complex process, requiring thorough assessment of long-term political choices for the Romanian society, could not benefit from a genuine exchange between the majority and the opposition, as well as from the input of important institutional actors (such as the Superior Council of Magistracy), professional associations and other interested stakeholders having expressed their wish to contribute to the process.”

“30. Informed public debate of the main changes and novelties that might be introduced and their impact for the Romanian society is of key importance, in terms of legitimacy and sense of ownership of the future constitution, for a successful revision process. This is all the more important in Romania in the light of the constitutional requirement that any amendment to the Constitution needs popular approval by referendum”.

[CDL-AD\(2014\)010](#), Romania - Opinion on the Draft Law on the Review of the Constitution

“42. The Venice Commission commends the proposal to mandate the constitutional assembly in Ukraine to prepare the constitutional reform package and to secure the participation in the drafting process of all relevant actors of society, while guaranteeing the respect for the regular constitutional procedure for the adoption of constitutional amendments.”

[CDL-AD\(2011\)002](#), Opinion on the concept paper on the Establishment and Functioning of the Constitutional Assembly of Ukraine

“18. The Commission would like to recall that transparency, openness and inclusiveness, adequate timeframe and conditions allowing pluralism of views and proper debate of controversial issues, are key requirements of a democratic Constitution-making process.

19. In its opinion, a wide and substantive debate involving the various political forces, nongovernment organisations and citizens associations, the academia and the media is an important prerequisite for adopting a sustainable text, acceptable for the whole of the society and in line with democratic standards. Too rigid time constraints should be avoided and the calendar of the adoption of the new Constitution should follow the progress made in its debate.”

[CDL-AD\(2011\)001](#), Hungary - Opinion on Three Legal Questions Arising in the Process of Drafting the New Constitution

“14. The wide range of - sometimes innovative - consultation mechanisms which have been used throughout the drafting process launched in 2010 - organization of a national forum, selection among the population of the members of the Constitutional Council to prepare the draft new Constitution, extensive informal consultation and involvement of the public by way of modern technology means, consultative referendum in the fall of 2012 - have given this process a broad participatory dimension and have been widely praised at the international level.

15. During its dialogue with the various stakeholders involved, the Venice Commission also witnessed diverging views, including on the question whether it is appropriate to offer Iceland today an entirely new Constitution. The alternative would be, in a perspective of giving greater importance to continuity, to adopt only limited constitutional amendments, indispensable to the country at this moment, in relation to matters that could more easily meet a sufficiently broad consensus.”

[CDL-AD\(2013\)010](#), Iceland - Opinion on the draft New Constitution

“32. As for the process of amending the Constitution, it is noted that this process should be marked by the highest levels of transparency and inclusiveness – in particular in cases where draft amendments, such as the current ones, propose extensive changes to key aspects of the Constitution, such as the roles of the highest court and its constitutional chamber, the immunity and loss of mandate of deputies, and the process of appointing/dismissing heads of local administration. In this context, it should be borne in mind that the Constitution itself, in its Article 52, specifically states that citizens shall have the right to participate in the discussion and adoption of laws of republican and local significance, which surely applies in the current case.

33. It is thus recommended to ensure, in this and further attempts to amend the Constitution, that all relevant stakeholders, including civil society, and the wider public, are aware of the proposed changes, and are included in various platforms of discussion on this topic, so that, once draft amendments are presented to the *Jogorku Kenesh* for adoption, they are also representative of the will of the people.”

[CDL-AD\(2015\)014](#), Kyrgyzstan - Joint Opinion on the draft Law “On Introduction of changes and amendments to the Constitution” of the Kyrgyz Republic

“86. The Venice Commission notes that, on the basis of its opinion, the Draft concept paper will be revised and submitted to the President of the Republic of Armenia. Thereafter, the Draft will have to be transformed into a concrete set of constitutional amendments. The Venice Commission encourages the Armenian authorities and the constitutional reform commission to pursue their efforts to involve the public and all stakeholders, in particular political parties.”

[CDL-AD\(2014\)027](#), Armenia - Opinion on the Draft Concept Paper on the Constitutional Reforms

“135. Already in its Opinion on three legal questions arising in the process of drafting the New Constitution of Hungary, the Venice Commission expressed its concern regarding the constitution-making process in Hungary. During the various visits of its delegation, the Commission learned about the lack of transparency of the process of the adoption of the new Constitution and the inadequate involvement of the Hungarian society. The Commission criticised the absence of sincere consultation and noted with regret that the consensus among political forces and within society generally required for the legitimacy of a constitution was absent.”

“137. [...] The Commission never denied the sovereign right of Parliament to adopt the constitution or to amend it, but it criticized the procedure and methods of doing so in Hungary. The Constitution of a country should provide a sense of constitutionalism in society, a sense that it truly is a fundamental document and not simply an incidental political declaration.

Hence, both the manner in which it is adopted and the way in which it is implemented must create in the society the conviction that, by its very nature, the constitution is a stable act, not subject to easy change at the whim of the majority of the day. A constitution's permanence may not be based solely on arithmetical considerations stemming from the relationship between the numerical strength of the ruling and opposition parties in parliament. Constitutional and ordinary politics need to be clearly separated because the constitution is not part of the 'political game', but sets the rules for this game. Therefore, a constitution should set neutral and generally accepted rules for the political process. For its adoption and amendment, a wide consensus needs to be sought."

[CDL-AD\(2013\)012](#), Hungary - Opinion on the Fourth Amendment to the Fundamental Law

"54. The procedure has been criticised as non-transparent. Indeed, it has apparently not been made fully clear to the public on 7th May 2010 that the opening of Article 195 for amendment would allow for the possibility to create an amendment procedure which would give up the traditional step 2 of constitutional amendment, even if some indications were given about possible amendments to the Constitution going beyond the list adopted by the preconstituante."

"56. [...] the principle of transparency does not require that parliament announces legal steps which are factually unforeseeable. In the past, numerous declarations for constitutional amendment in Belgium have not resulted in any constitutional amendment at all after the renewal of both Houses of Parliament. The uncertainty about the exact content and scope of future amendments is inbuilt in the protracted amendment process over two legislative periods and does not seem to violate the principle of transparency."

[CDL-AD\(2012\)010](#), Belgium - Opinion on the Revision of the Constitution

"42. The next main challenge will be to organise an appropriate referendum campaign leading to the adoption of the new Constitution for Armenia. The Commission encourages the Armenian authorities to do their utmost to ensure the success of the constitutional reform in November 2005. The reform must be presented in due time and form to the Armenian people. To this end, it is crucial that the referendum campaign be fairly, adequately and extensively broadcast by the media."

[CDL-AD\(2005\)025](#), Armenia - Final Opinion on Constitutional Reform

D. Scope: constitutional amendments / adoption of a new constitution

"26. [...] While the current Constitution only refers to amendments to the Constitution and not to the adoption of a new Constitution, it is generally acknowledged that in light of the principle of "constitutional continuity", and even if not contemplated by an existing Constitution, new constitutions should be adopted following the prescribed amendment procedures in force, to ensure the stability, legality and legitimacy of the new system."

"151. Article 116 of the Draft Constitution provides for the procedure of adoption or revision of the constitution, which significantly differs from the procedure currently in force. In particular, it appears to define the ways in which not only amendments can be done, but how an entirely new constitution may be adopted. According to para 1 of Article 116 (1), the Constitution may be adopted by referendum on the initiative of at least 300 000 voters, the President or two-thirds of the total number of deputies of the Jogorku Kenesh [unicameral Parliament of the Kyrgyz Republic]. In such case, the referendum should be called by the President. *Prima facie*, this provision provides for a procedure for adoption of an entirely new constitution, however, para 7 of the same article appears to introduce a qualification to this principle, by stating that a new version of the constitution may be adopted through "amendments and

additions” and thus seems to stipulate that a new constitution may in fact only be adopted as amendments to the old, rather than an entirely new document. Thus, the procedure of adoption leaves room for interpretations, which could be problematic. **Any constitution adopted should be clear on the procedure of its amendment or, in fact, replacement.”**

[CDL-AD\(2021\)007](#), Kyrgyzstan – Joint Opinion of the OSCE/ODIHR and the Venice Commission on the Draft Constitution of the Kyrgyz Republic, See also [CDL-AD\(2010\)001](#) Report on the Constitutional Amendment §§ 56, 68 and 124

“155. [...] A number of constitutions, however, expressly provide for a special, reinforced procedure for a total revision of the constitution (Austria, Spain, Switzerland (both chambers are dissolved if the people demand the adoption of a new constitution) or for the adoption of a new constitution (e.g. Bulgaria, Montenegro, Slovakia, Spain and Russia).

156. In general, in order to ensure “constitutional continuity”, it is considered good practice for a constitution to provide for a procedure for adopting an entirely new constitution – thus strengthening the stability, legality and legitimacy of the new system.”

“56. In most constitutions the amendment procedure is the same regardless of whether the amendment only relates to a single provision, or to large parts, or even the whole. A number of constitutions; however, expressly provide for a special, reinforced procedure for a total revision of the constitution or for the adoption of a new constitution. With regard to the latter term, it is to be stressed that it is not intended to mean a break in the constitutional continuity.”

[CDL-AD\(2010\)001](#), Report on Constitutional Amendment

“12. As a result of the economic crisis, Iceland has also been facing, in recent years, a crisis of trust of the population vis-à-vis the political class and, by extension, the institutions. The need for more active involvement and more direct participation of citizens in the country's governance and the management of its resources seems to meet a wide consensus today in Iceland.

13. It is in this context that emerged the idea of the drafting of a new Constitution, a unifying project designed to restore confidence and to lay, in a modern and comprehensive way, new foundations for a more just and more democratic Icelandic society.”

[CDL-AD\(2013\)010](#), Iceland - Opinion on the draft New Constitution

“105. The draft examined is the draft of an entirely new Constitution. In view of this it is surprising that the draft is a fairly conservative text which is clearly based on the text of the current Constitution. While there are many amendments to the present text, a radical departure from existing solutions is generally avoided. Under these circumstances, it is not at all clear why the approach of adopting an entirely new Constitution was chosen. The changes could have been done through amendments to the current Constitution. This approach would have the advantage of symbolic continuity and would enhance constitutional stability. Constitutional stability is an important element for the stability of the country as a whole and one should not adopt a new Constitution as a “quick fix” to solve current political problems.”

[CDL-AD\(2008\) 015](#), Ukraine - Opinions on the Draft Constitution

“18. The Commission would like to recall that transparency, openness and inclusiveness, adequate timeframe and conditions allowing pluralism of views and proper debate of controversial issues, are key requirements of a democratic Constitution-making process.

19. In its opinion, a wide and substantive debate involving the various political forces, nongovernment organisations and citizens associations, the academia and the media is an important prerequisite for adopting a sustainable text, acceptable for the whole of the society and in line with democratic standards. Too rigid time constraints should be avoided and the

calendar of the adoption of the new Constitution should follow the progress made in its debate.”

[CDL-AD\(2011\)001](#), Hungary - Opinion on Three Legal Questions Arising in the Process of Drafting the New Constitution

E. Duration of the process

“26. [...] Third, the entire process of discussion and adoption of the Draft Constitution by the Jogorku Kenesh [unicameral Parliament of the Kyrgyz Republic] may not take place or be done in only a few days/weeks. This timeline does not allow for thorough consideration of the proposed draft and for public comments and would result in a hastily finalised Draft Constitution. Further, if such a procedure is followed, this will mean that the proposed constitutional amendments will not be subject to three readings by the Jogorku Kenesh at two months’ intervals in between before being put to referendum, which is not in line with Article 114(3) of the current Constitution. [...]”

[CDL-AD\(2021\)007](#), Kyrgyzstan - Joint Opinion of the OSCE/ODIHR and the Venice Commission on the Draft Constitution of the Kyrgyz Republic

“180. As to the procedure of the adoption of the amendments, the Venice Commission concludes that the speed of the preparation of the preparing such wide-ranging amendments was clearly inappropriate for the depth of the amendments considering the (societal) impact of the amendments. This speed resulted in a lack of time for a proper period of consultation with civil society prior to the adoption of the amendments by parliament. In view of the subject matters which were covered, a Constitutional Assembly should have been convened under Article 135. As a Constitutional Assembly was not convened, the Amendments were adopted under the procedure of Article 136 of the Constitution. Once the two steps of this procedure were exhausted (adoption by Parliament and the constituent entities of the Federation) the Amendments had to enter into force. A possible negative outcome of the additional steps which were introduced by ordinary law, (the control by the Constitutional Court and the all-Russian vote), could not prevent the entry into force of the Amendments under the procedure foreseen in the Constitution.”

[CDL-AD\(2021\)005](#), Russian Federation - Interim opinion on constitutional amendments and the procedure for their adoption

“32. The procedure for the adoption of the amendments to the Constitution was extremely hasty. While the Venice Commission and ODIHR will not analyse the conformity of the revision process with internal law, they cannot but remark that the formal procedure in the Parliament was extraordinarily short (about one week), and the whole process from the presentation of the initiative to its adoption lasted only one month. There are no international standards on how long the procedure in the Parliament has to last, but it has to guarantee a public discussion of the amendments in substance.”

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

“241. A good amendment procedure will normally contain (i) a qualified majority in parliament, which should not be too strict, and(ii) a certain time delay, which ensures a period of debate and reflection.”

245. Constitutional reform is a process which requires free and open public debate, and sufficient time for public opinion to consider the issues and influence the outcome

[CDL-AD\(2010\)001](#), Report on Constitutional Amendment

“55. If we look at the time-table of the adoption of the amendment, it becomes evident that the procedure was rather quick. This may look strange as the possible amending of Article 195 has been an issue for long time both in the political and the scientific community. The very rigid way of the amendment procedure was more and more considered an obstacle to the efficiency of the constitutional system.”

“57. The shortness of the formal debate does not mean that the issue was not properly considered. In fact, the substantive issues were discussed during the lengthy elaboration of the “institutional agreement”. Given the long time this had already taken its implementation without delay was rational, if not indispensable.”

[CDL-AD\(2012\)010](#), Belgium - Opinion on the Revision of the Constitution

F. Clarity of constitutional provisions

“157. [...] The Draft Constitution should provide for meaningful parliamentary debates and for the adoption of the constitutional revision (whether partially or entirely replacing the existing constitutional norms), through a clearly defined timeframe and procedure of a qualified vote, by the Jogorku Kenesh [unicameral Parliament of the Kyrgyz Republic]. Apart from that, it is necessary to ensure that the Draft Constitution is interpreted in a way that would not allow executive authorities to circumvent parliamentary amendment procedures by having recourse to a referendum.”

[CDL-AD\(2021\)007](#) Kyrgyzstan - Joint Opinion of the OSCE/ODIHR and the Venice Commission on the Draft Constitution of the Kyrgyz Republic.

III. Procedure of constitutional amendment

“5. The question of constitutional amendment lies at the heart of constitutional theory and practice. Constitutionalism implies that the fundamental rules for the effective exercise of state power and the protection of individual human rights should be stable and predictable, and not subject to easy change. This is crucial to the legitimacy of the constitutional system. At the same time, even quite fundamental constitutional change is sometimes necessary in order to improve democratic governance or adjust to political, economic and social transformations. To the extent that a society is formed by its written constitution, the procedure for changing this document becomes in itself an issue of great importance. The amending power is not a legal technicality but a norm-set the details of which may heavily influence or determine fundamental political processes.”

[CDL-AD\(2010\)001](#), Report on Constitutional Amendment

30. The procedure for amending the constitution is one of the most sensitive issues of any constitution. It is also a highly political issue that can only be determined in light of the history of the country and its political and legal culture.

[CDL-AD\(2013\)029](#), Georgia - Opinion on three draft Constitutional Laws, amending two Constitutional Laws amending the Constitution

A. Respect for constitutional provisions on constitutional amendment.

“58. During the discussions with the rapporteurs, one interlocutor explained the need to introduce a new order in Tunisia through a constitutional break, given the impossibility of following the constitutional revision procedure provided for in the constitution, which would create the risk that the future constitutional court would annul the new text on the basis of the irregularity of its adoption, as in Ukraine in 2010.”

[CDL-AD\(2022\)017](#), Tunisia - Urgent Opinion on the constitutional and legislative framework on the referendum and elections announcements by the president of the Republic, and in particular on the decree-law n°22 of 21 April 2022 amending and completing the organic law on the independent high authority for elections (ISIE); See also [CDL-AD\(2010\)044](#) - Opinion on the Constitutional Situation in Ukraine.

“31. The Venice Commission notes that the *ad hoc* nationwide vote was subject to much less elaborate and detailed rules than a referendum would have been. This resulted in a substantial reduction of procedural guarantees, which are *inter alia* designed to ensure a degree of balance in how the issues are presented, and thus increase the legitimacy of the result of the referendum. [...]”

[CDL-AD\(2021\)005](#), Russian Federation - Interim opinion on constitutional amendments and the procedure for their adoption; See also §§ 27- 30 (procedure)

“71. A procedure that violates democratic standards in the process of enactment of the Constitutional Law itself suspending the elections, gives rise to fears that constitutional reform will be carried out in the same way. One may have an impression that suspension of election motivated by a need of a constitutional reform is a purely instrumental perception of the Constitution and cannot be considered to be in line with democratic standards.”

[CDL-AD\(2020\)040](#), Kyrgyzstan - Urgent amicus curiae brief relating to the postponement of elections motivated by constitutional reform

“42. As regards the procedure of the “consultative constitutional referendum” initiated by the President of the Republic of Moldova, the Venice Commission notes that, first, the legal basis for such kind of referendum is unclear, and second, the manner in which this particular initiative for constitutional amendment is conducted may be unconstitutional.”

“45. The Constitution of the Republic of Moldova gives the President the right of legislative initiative (Article 73). However, the President does not have the power to initiate amendments to the Constitution – this power was specifically removed in 2000.”

[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

“20. The parliamentary procedure of adoption of the constitutional amendments has presented some peculiarities and suffered from certain problems which raise concern.

21. First, the debates took place in the absence of a significant number of deputies from the opposition. Indeed, following a constitutional amendment enacted on 20 May 2016 [...], the parliamentary immunity of several MPs was lifted. On 4 November 2016, the President of the second-largest opposition party HDP (Selahattin Demirtas) and 8 other HDP MPs were taken into detention on remand. [...].

22. Second, under Article 175 of the Constitution and Article 94 of the National Assembly's Rules of Procedure, the voting had to take place by secret ballot [article 175 of the Constitution and article 148 of the Grand National Assembly of Turkey]. [...].

23. This rule was not fully respected during the parliamentary vote on the constitutional amendments in question. During the vote, several deputies voting for the amendments cast their votes openly, showing the white ballot paper before placing it into the box. The whole procedure was tele-recorded and shown on public media. It was made possible to see the stamp in some deputies' hand. Moreover, unused ballot papers were recollected after the vote

and allegedly used to identify those who, especially among the AKP and MHP members, did not vote for the amendments.”

[CDL-AD\(2017\)005](#), Türkiye - 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

“185. (...) the use of referendums should comply with the national constitutional system as a whole. As a main rule, a referendum on constitutional amendment should not be held unless the constitution explicitly provides for this. In some countries this is a well-established and integral part of the amendment procedure. But in constitutional systems with no mention of referendum, parliament is the legitimate constitutional legislator, and should be respected as such. Representative democracy is certainly as legitimate as direct democracy on issues such as these and may often be the more suitable procedure for in-depth discussion and evaluation.”

[CDL-AD\(2010\)001](#), Report on Constitutional Amendment

“26. Even if “the national parliament is the most appropriate arena for constitutional amendment, in line with a modern idea of democracy” [...] “it is to be stressed that the use of referendums should comply with the national constitutional system as a whole. As a main rule, a referendum on constitutional amendment should not be held unless the constitution explicitly provides for this.”

[CDL-AD\(2015\)014](#), Kyrgyzstan - Joint Opinion on the Draft Law “On Introduction of changes and Amendments to the Constitution” of the Kyrgyz Republic

B. Bodies and institutions involved. Initiative for constitutional amendment

“19. [...] The Venice Commission criticised the constitutional reform procedure, firstly, because the national parliament as an institution was not involved in the amendment process. As noted previously by the Venice Commission, national parliament is best placed to debate and consider such issues. [...]”

“84. Compared to the earlier text of the Constitution, the list of subjects authorised to initiate the constitutional amendment procedure has been expanded. Previously, only the President of the Republic and no fewer than 150,000 citizens were authorised to initiate the amendment procedure. In almost every modern constitutional state, however, the Parliament, as the highest representative organ of the people, may initiate the amending procedure. Now it is the case in Belarus, where no less than one-third of the total membership of each chamber of Parliament have the right of initiating a constitutional amendment (Article 138). That change is welcome as it brings Parliament in line with its typical role in procedure for constitutional amendment. Nevertheless, in the absence of free and fair elections administered by an independent central electoral authority that role of Parliament may remain purely technical.”

[CDL-AD\(2022\)035](#), Belarus - Final Opinion on the Constitutional Reform

“26. [...] Second, as mentioned above, during the period of *prorogatio*, the Jogorku Kenesh [unicameral Parliament of the Kyrgyz Republic] should only be allowed to carry out some ordinary functions, and not to approve extraordinary measures, including constitutional reforms. [...]”

“158. The role assigned to the President by the Draft Constitution, allowing the office holder to initiate revisions to all sections of the Constitution (including those that regulate the powers of the President and other public authorities), as well as granting exclusive competence to call a referendum, is clearly problematic in terms of separation of powers and needs to be reconsidered. **It is therefore recommended to revise the Draft Constitution accordingly.**”

[CDL-AD\(2021\)007](#), Kyrgyzstan - Joint Opinion of the OSCE/ODIHR and the Venice Commission on the Draft Constitution of the Kyrgyz Republic

"11. Article 206 of the Constitution of Peru lays down the procedure for constitutional amendments. Constitutional changes must be adopted by the Congress through an absolute majority of the legal number of its members and ratified by a referendum. The referendum is not required when more than two-thirds of the legal number of Congress members approve the reform in two successive regular sessions of the legislature. The right to initiate a constitutional reform belongs to, inter alia, the President of the Republic with the approval of the Cabinet. Thus, initiating constitutional reforms lies in the remit of the Cabinet – although only in the form of consenting to the President’s initiative – and the adoption of such reforms lies in the remit of the Congress – although, as rule, ratification in a referendum is still required. The President may not veto constitutional amendments adopted by Congress."

[CDL-AD\(2019\)022](#), Peru – Opinion on linking constitutional amendments to the question of confidence

"41. In its Report on Constitutional Amendment, the Venice Commission stated as follows: *"[...] [The] main arena for procedures of constitutional amendment should be the national parliament, as the institution best placed to debate and consider such issues. [...] Recourse to a popular referendum to decide on constitutional amendment should be confined to those political systems in which this is required by the constitution, applied in accordance with the established procedure, and should not be used as an instrument in order to circumvent parliamentary procedures [...]"*

"45. [...] Now the amendment procedure may be initiated either by the Government, or by 1/3 of all MPs, or by a popular request supported by 200,000 voters (Article 141). Under Article 141 § 2, "draft constitutional laws shall be submitted to Parliament only alongside with the advisory opinion of the Constitutional Court adopted by a vote of at least 4 judges". Amendments require a 2/3 majority of Parliament (Article 143)."

[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; See also [CDL- AD\(2010\)001](#), Report on Constitutional Amendment §§240 and 242.

"13. Furthermore, Chapter XI of the current Constitution does not provide for any formal involvement of Parliament in the process of constitutional change, if the initiative is taken by the President. This is highly problematic, as it means that, in essence, the President may circumvent Parliament completely, and will only need to obtain a preliminary "conclusion" of the Constitutional Court which, under Article 154, does not have the power to assess the content of the proposed changes.

14. Chapter XI allows the President to put to referendum nearly any proposals, even those which may significantly affect the balance of powers. Indeed, Article 155 of the Constitution sets some reservations, which prevent changing some introductory Articles of the Constitution (those which give definition to the political regime of Azerbaijan). However, it would not prevent reforms re-distributing some important competencies in favour of the executive, and that may be done without any formal involvement of the legislature."

"83. As regards the procedure, it is regrettable, although permitted by the current procedure for modifying the Constitution, that the Draft was put to referendum directly, without any involvement of Parliament. The time given to the population and experts to understand and discuss the Draft was certainly insufficient, especially given the complexity of the proposed reform and the absence of proper deliberations in Parliament. This undermines the legitimacy of the reform. In addition, if the Draft were adopted, the institutional reform would come into

force immediately, and the balance of powers would be shifted in favour of the President already in the current electoral cycle.”

[CDL-AD\(2016\)029](#), Azerbaijan - Opinion on the draft modifications to the Constitution submitted to the Referendum of 26 September 2016; See also CDL-AD(2013)032, §221 and CDL-PI(2016)009, §25

“30. In all state constitutions examined, **Parliament** has a right to initiate the amendment procedure. A number of constitutions give the competence to introduce a proposal for constitutional change to the individual members⁸ of Parliament. Others require that a specific percentage of the members support the initiative. Usually the requirement is for a qualified minority – such as one-sixth, one-fifth, one fourth, or one-third. But some constitutions require an ordinary majority, or even a qualified majority of two-thirds of the members for initiating an amendment procedure. In other countries the requirement is for a certain number (but not a percentage) of the parliamentarians.

31. A higher number of members of parliament may be required if the amendment proposal relates to the most important constitutional provisions. Thus, for example, the Constitution of Ukraine requires a two-third majority of the deputies for initiating amendments to the provisions on general principles, elections, referendum and the amendment procedure itself. In Switzerland, a total revision of the Federal Constitution may be proposed by the People or by one of the Chambers or may be decreed by the Federal Parliament.

32. Some constitutions also give the right to initiate the amendment procedure to the **Government**, to the **Head of State**, and to **local authorities**.

33. Several constitutions provide for a possibility for **citizens** entitled to vote to introduce the proposal for constitutional amendment.”

“45. In the great majority of countries, the executive will not have a direct role in the parliamentary constitutional amendment process, though of course representatives from the government may participate in the debate according to ordinary procedures. In a few countries, however, the head of state had been given a formal role, with the competence to make proposals on the draft amendments.⁴⁵ In the Netherlands, the government generally plays a primary role in the legislative process; thus, in general, it is the government that introduces the proposal to change the Constitution.”

“180. In almost all European states the fundamental arena for constitutional amendment is *parliament*. In some countries it is the *only* institution involved in constitutional change.

181. The *executive* may be involved in the constitutional amendment procedure in one way or the other. First, the executive will often share a right of initiative with parliament. Second, it may have the competence to decide between different procedures for amendment (France), or a constitutional amendment has to be sanctioned by the head of state before being enacted.”

“203. In many countries the competence to formally propose constitutional amendments, and to initiate the procedures, is given to several actors – for example both to Parliament (a single member of a qualified minority) and to the executive. This can lead to situations in which there are a number of competing proposals, which may complicate the process. In such situations it is particularly important to have structured and balanced procedures, involving all the political actors as well as civil society, as the Venice Commission has observed on several occasions.”

[CDL-AD\(2010\)001](#), Report on Constitutional Amendment

“12. Under Article 154 of the Bulgarian Constitution (Constitution of the Republic of Bulgaria, hereinafter CRB), the process of amending the Constitution may be initiated by one quarter of the members of the National Assembly (NA) or the President of Bulgaria.

13. As stipulated by Article 155 CRB,

“(1) A constitutional amendment shall require a majority of three quarters of the votes of all Members of the National Assembly in three ballots on three different days.

(2) A bill which has received less than three quarters but more than two-thirds of the votes of all Members shall be eligible for reintroduction after not fewer than two months and not more than five months. To be passed at this new reading, the bill shall require a majority of two-thirds of the votes of all Members.”

14. According to 153 CRB, *“the National Assembly shall be free to amend all provisions of the constitution except those within the prerogatives of the Grand National Assembly”*. The five prerogatives of the Grand National Assembly are listed in an exhaustive manner in Article 158 CRB and they include also the power to decide on *“any changes in the form of State structure or form of government”*. In such cases, elections for the Grand National Assembly (composed of 400 elected members) need to be convened through a resolution of the National Assembly supported by two-thirds of the votes of all MPs, and the mandate of the National Assembly expires at the date when the elections are held (see Articles 153-163 CRB).”

[CDL-AD\(2015\)022](#), Bulgaria - Opinion on the Draft Act to Amend and Supplement the Constitution (in the field of judiciary)

“36. Section 2 of this Article provides that amendments to the Constitution may be adopted by a Constitutional Assembly without specifying in any way the composition of this Assembly. This cannot however be left to an ordinary law [...]”

[CDL-AD\(2003\)002](#), Opinion on the Draft Constitution of the Chechen Republic

“45. According to the new Article 96 § 2, the President would have an absolute veto power over amendments to Articles 7, 46 and 58 of the Constitution, which regulate the general division of powers as well as the respective powers of the Jogorku Kenesh and the President. This would further enhance the central position of the President within the constitutional structure. Furthermore, it remains unclear whether the provision in question would concern only cases when the Constitution is amended by Parliament (Art. 97) or even when it is amended through a referendum.”

[CDL-AD\(2002\)033](#), Kyrgyzstan - Opinion on the Draft Amendments to the Constitution

“47. As set forth above, a presidential veto against draft laws can be overruled only by a two-thirds majority. A presidential veto against constitutional amendments can be overruled only by a majority of three fourths of the total number of deputies. It is thus nearly impossible for the Jogorku Kenesh to adopt constitutional amendments reducing the powers of the President.”

[CDL-AD\(2007\)045](#), Kyrgyzstan - Opinion on the Constitutional Situation in the Kyrgyz Republic

“69. According to the Constitution currently in force, constitutional amendments introduced by the *qualified majority* of National Assembly shall be submitted to a popular referendum (Article 111 § 4, emphasis added). The proposed new paragraph of Article 111 of the Constitution allows for constitutional amendments to be adopted *by the majority* of the National Assembly, if the initiative originates from the President of the Republic. This difference, which strengthens the role of the President with regard to the National Assembly, does not seem to be justified.”

[CDL-AD\(2004\)044](#), Armenia - Interim Opinion on Constitutional Reforms

“7. The revision is adopted by a two-thirds majority vote in each house, the Chamber of Deputies and Senate (Article 147.1). This is a difficult majority to attain; even the coalition supporting the government of Mr Nastase (PSD, UDMR) cannot achieve this figure. For the revision of the Constitution to be adopted, it will have to receive the approval of the opposition parties, such as the Liberal Party. That should induce the parties supporting the Government’s action to open negotiations with the opposition in order to put forward a parliamentary proposal for revision if appropriate, as Article 146.1 permits. But at all events the initiative lies with the President. Nor is it certain that the Senate would agree to a reduction of its powers, at all events not by a two-thirds majority. The revision procedure is governed by Articles 146, 147 and 148 of the Constitution. The initiative lies with the President, at the proposal of the Government or at least a quarter of the Chamber of Deputies or Senate, or at least 500,000 citizens in possession of their electoral rights (Article 146.1). Obviously the first possibility applies, as the text forwarded to the Venice Commission is the Government’s proposal. The revision is adopted by a two-thirds majority vote in each house, the Chamber of Deputies and Senate (Article 147.1).”

[CDL-AD\(2002\)012](#), Romania - Opinion on the Draft Revision of the Constitution

“63. The abrogation of the President’s right to initiate a referendum on a modification of the Constitution (former Article 98 para. 2) is in line with the general changes of the constitutional system from a presidential to a parliamentary system.”

[CDL-AD\(2010\)015](#), Kyrgyzstan - Opinion on the draft Constitution

“27. The law on the revision of the Constitution shall be signed and promulgated by the President of Georgia in accordance with a procedure provided for by Article 68 of the Constitution. Like for ordinary Laws, the President may return the draft to the Parliament with reasoned remarks. The Parliament shall put to the vote the remarks of the President. Remarks of the President shall be rejected by no less than three fourths of the total number of the members of the Parliament.”

[CDL-AD\(2013\)029](#), Georgia - Opinion on the Three Draft Constitutional Laws amending two Constitutional Laws amending the Constitution

“208. Under the terms of Article 140, the President shares the right of initiative with the Assembly of People’s Representatives, in the latter case at the initiative of one third of its members. However, amendments initiated by the President shall take precedence (Article 140).”

[CDL-AD\(2013\)032](#), Tunisia - Opinion on the final draft constitution

“77. The revision of the Constitution also depends on the joint consent of the Prince and the National Council (Article 94). [...].

78. ‘In case of initiative on the part of the National Council, proceedings may be taken only by a two-thirds majority vote of the normal number of members elected at the assembly’ (Article 95). This provision, construed literally, means that an initiative on the Prince’s part would need only a relative majority and therefore the Prince could amend the Constitution by means of law. This is what appears to have happened in the case of Law No. 1249 of 2 April 2002.51 This imbalance is regrettable and ought to be rectified.”

[CDL-AD\(2013\)018](#), Principality of Monaco - Opinion on the balance of powers in the Constitution and the Legislation

C. Striking a balance between rigidity and flexibility

“60. The challenge of striking a good balance between constitutional rigidity and flexibility while also paying due attention to the requirements of constitutional legitimacy is common to all

democratic states. In most states, it has been achieved by provisions which make constitutional amendment more difficult - though not impossible - than changing ordinary legislation. Within this common general tradition, there is however great variance in detail – with almost as many amendment formulas as there are states.”

“62. A few states stand out from the rest as having particularly strict or flexible rules, but apart from this the great majority of European states are somewhere in the middle. If there is not a “best model”, then there is at least a fairly wide-spread model – which typically requires a certain qualified majority in parliament (most often 2/3), and then one or more additional obstacles – either multiple decisions in parliament (with a time delay), or additional decision by other actors (multiple players), most often in the form of ratification through referendum.”

“64. To the extent that it is possible to identify a common Continental (West European) tradition for constitutional amendment, then this is a balanced approach, which is by comparison more flexible than for example the rather strict amendment rules in article V of the US Constitution. This can be illustrated by the German and French procedures. In Germany the requirement is a 2/3 majority in each of the two chambers (the Bundestag and the Bundesrat), with no other external requirements and no time delays, but with the exemption that the principles embodied in some of the provisions are unamendable, subject to judicial review. In France there are two alternative procedures – either by simple majority decision in each chamber followed by a popular referendum (simple majority), or upon proposal by the president with a 3/5-majority requirement in parliament, but no referendum. The republican form of government cannot be changed, but this is not subject to judicial review. While quite different in character, both the German and the French amendment procedures are flexible enough to allow considerable opportunity for amendments given the necessary political consensus.”

“88. The Commission notes that there are good reasons both why constitutions should be relatively rigid and why there should be possibilities for amendment. The challenge is to balance these two sets of requirements, in a way that allows necessary reforms to be passed without undermining the stability, predictability and protection offered by the constitution by making the adoption of the constitutional amendment too difficult to achieve or practically impossible. The final balancing act can only be found within each constitutional system, depending on its specific characteristics. But the balancing act can be more or less successful, depending on a general understanding of the mechanisms and principals involved.”

“104. So far the present study has considered the reasons for constitutional commitment, the arguments against too strict rules, and the various legal mechanisms that may be used when designing amendment rules. This leads up to the fundamental challenge introduced earlier, of striking a proper balance between constitutional rigidity and flexibility, which also meets the requirement of constitutional legitimacy. Ideally, this balance will allow for necessary reforms, while still ensuring constitutional predictability and protection.

105. Whether or not a given constitutional system has managed to strike a good constitutional balance is something that can be evaluated on a case-to-case basis. Even in old and established constitutional democracies it is often far from certain that the balance is optimal, though such systems usually over time develop mechanisms to compensate for imbalances, one way or the other – either by repairing too strict amendment rules by flexible interpretation or by supplementing too flexible amendment rules with conservative political conventions. If this is not achieved, demands for radical constitutional change will sooner or later inevitably arise.”

“182. In some systems the competence of parliament to pass constitutional amendments is subject to the requirement of *multiple decisions*, taking place both before and after general parliamentary elections (see above, Section III). 124 In other words, two *different* parliaments should both adopt the amendment – in some states with ordinary majority in both rounds, in others with qualified majority either in one or both. The intervening election process means

that the electorate is invited to consider the proposed amendments, although it may of course vary a lot to what extent this is actually an issue of importance in the campaign.”

“202. The constitutional amendment procedures should be drafted in a clear and simple manner, and applied in an open, transparent and democratic way. This is perhaps just as important as the finer details and requirements of the rules themselves.”

“238. The Venice Commission is of the opinion that having stronger procedures for constitutional amendment than for ordinary legislation is an important principle of democratic constitutionalism, fostering political stability, legitimacy, efficiency and quality of decision making and the protection of non-majority rights and interests.

239. There are good reasons why constitutions should be both relatively rigid and flexible enough to be changed if necessary. The challenge is to balance these requirements in a way which allows necessary reforms to be passed without undermining the constitutional stability, predictability and protection. The final balance can only be found within each constitutional system, depending on its specific characteristics. But the balancing act can be more or less successful, depending on a general understanding of the mechanisms and principals involved.”

“244. Rules and procedures on constitutional amendment should be as clear and simple as possible, so as not to give rise to problems and disputes of their own.”

[CDL-AD\(2010\)001](#), Report on Constitutional Amendment

“99. It strikes the Venice Commission, first of all, that the procedure drafted is very complex, as it involves two or even three steps: first, the National Assembly has to adopt, by a two-thirds majority of all deputies, a proposal to amend the Constitution (Article 203.3), and then the same National Assembly has to adopt an act amending the Constitution by a two-thirds majority of all deputies (Article 203.6). Finally, Article 205 seems to require the adoption, again by a two-thirds majority, of a further constitutional law for the enforcement of the amendments to the Constitution. A number of questions arise as to the significance and use of this procedure. What is the legal effect of the adoption of the proposal to amend the Constitution? What is the relationship between the votes held by the National Assembly? What is the use of the complexity that results from this procedure? The Venice Commission draws attention to the drawbacks of an excessively rigid procedure for amending the Constitution, as was experienced in Armenia and in Serbia itself under the Constitution of 28 September 1990.”

[CDL-AD\(2007\)004](#), Serbia - Opinion on the Constitution

“The procedure for amending the Constitution looks very complex. This impression may be partly due to the fact that the wording of the relevant provisions is sometimes very clumsy.”

[CDL-INF \(1996\)006](#), Ukraine - Opinion on the Draft Constitution, Section XIII

“31. The Venice Commission has devoted an extensive study to the process of revising the Constitution (CDL-AD(2010)001). It stressed that there is no "magic formula". The challenge is to balance the requirements of rigidity and flexibility. The report states, however, that "if there is not a "best model", then there is at least a fairly wide-spread model – which typically requires a certain qualified majority in parliament (most often 2/3), and then one or more additional obstacles – either multiple decisions in parliament (with a time delay), or additional decision by other actors (multiple players), most often in the form of ratification through referendum.”

“34. It is neither possible nor desirable to try to formulate in the abstract a constitutional amendment optimal model. The point of balance between rigidity and flexibility may be different from one state to another, depending on the social and political context, constitutional culture, age, level of detail and the characteristics of the constitution, and number of other

factors, especially as this balance is not static and can move over time according to social, economic and political transformations."

"58. As concerns the procedure for revising the constitution, the reinstatement of the current procedure - one vote at 2/3 majority of the total number of MPs - cannot be considered satisfactory. When analysing the 2010 revision of this procedure, which introduced two votes at three months of interval at the same majority, the Venice Commission welcomed the reform and noted that it provided a limited protection of constitutional stability. The removal of the two subsequent votes without any measure to compensate but combined with a return to the 2/3 majority requirement can only be considered as a step back. An appropriate balance must be found between flexibility and constitutional stability. In this respect, the Venice Commission refers to its previous opinions on the draft constitution of Georgia as well as to its Report on constitutional amendment (CDL-AD(2010)001)."

[CDL-AD\(2013\)029](#), Georgia - Opinion on three draft Constitutional Laws amending two constitutional Laws amending the Constitution

"201. The current procedure for amending the Constitution requiring a qualified majority of the two Chambers followed by approval by popular referendum (see article 151 of the current Constitution), is a rigid procedure. Under the Romanian referendum law, in addition to the majority of 50 % plus one for approval, a participation quorum is required for the referendum to be considered valid."

[CDL-AD\(2014\)010](#), Romania - Opinion on the draft Law on the Review of the Constitution

"18. The current version of Article 195 figures, together with the procedure of article V of the United States Constitution of 17 September 1787 and Article 137 of the Dutch Constitution, among the most rigid amendment rules in the contemporary legal world.

19. This constitutional revision procedure is rigid in particular as it requires consent in two consecutive legislative periods. This feature is specifically Belgian to the extent that the other elements of Article 195 are owed to its ancestor, the Constitution of the Netherlands of 24 August 1815. Only this element had been added in the Belgian Constitution of 1831. Therefore, in view of the fact that the initiation of the constitutional amendment procedure by the declaration of the pre-constituante brings about dissolution of parliament and in consequence a new parliamentary election, it may be said that it strengthens the democratic legitimacy of the constitutional revision. However, it may in many situations turn out to be a severe impediment to sometimes urgent reforms and/or necessary fundamental reforms of the state."

"58. [...] Adoption of constitutional revisions through a heavier procedure, involving dissolution of Parliament, higher majorities and/or a referendum is not the rule and cannot be considered as a European standard."

"39. It has been asserted that spreading the revision of the Constitution over two legislatures is a democratic minimum. The supporters of the revision within a single legislature demonstrate an authoritarian tendency „[l]e fait d'étaler la révision de la Constitution sur deux législatures est un minimum démocratique. Les partisans de la révision au sein d'une seule et même législature font preuve d'une dérive autoritariste."

40. This assertion is not correct in the light of a comparative review of the European procedures of constitutional amendment. Only very few other Constitutions of the world possess such a requirement. It can thus not be held to constitute a democratic minimum."

[CDL-AD\(2012\)010](#), Belgium - Opinion on the Revision of the Constitution

“99. It strikes the Venice Commission, first of all, that the procedure drafted is very complex, as it involves two or even three steps: first, the National Assembly has to adopt, by a two-thirds majority of all deputies, a proposal to amend the Constitution (Article 203.3), and then the same National Assembly has to adopt an act amending the Constitution by a two-thirds majority of all deputies (Article 203.6). Finally, Article 205 seems to require the adoption, again by a two-thirds majority, of a further constitutional law for the enforcement of the amendments to the Constitution.”

[CDL-AD\(2007\)004](#), Serbia - Opinion on the Constitution

“172. The special procedure provided for amendments to **Chapter II** combines the constraints of the existing system, while introducing a referendum as an additional requirement. One may note however that this procedure is intended to apply to any revision of Chapter II, including the establishment of new rights or the extension or reinforcement of existing rights, and not only to revisions which have the effect of limiting the rights or restrict their scope. In the Venice Commission view, this would be a disproportionate and excessively rigid procedure.

173. More generally, the current procedure for constitutional amendment seems to be both tightened and softened under the new mechanism proposed by the Bill for changes in the Constitution other than those relating to Chapter II. On the one hand, by abolishing the time-related guarantee of the division of the task between two successive parliaments, increased flexibility is introduced. On the other hand, the procedure becomes harder since any amendment to the Constitution shall, after having been adopted by the Althing, be submitted to a popular referendum.”

“175. In the view of the Venice Commission, amendment procedures under Article 113 of the Bill are overly cumbersome and would deserve further consideration. The introduction of a qualified majority requirement in the Althing, a solution followed by almost all European countries in which the constitutional revision does not require a referendum,³² should be taken into account, while limiting to some specific cases the referendum option or that of spreading the operations over time. Exceptionally, in the absence of such a requirement in the parliament, an approval quorum in referendum might be justified. In any case, if the approach chosen for the Bill were to be adopted, it is almost certain that it would be politically impossible to amend it, as voters will never be ready to give up to the new power that has been assigned to them.”

[CDL-AD\(2013\)010](#), Iceland - Opinion on the draft New Constitution

“30. (...) It is noted that already a two-thirds majority is a difficult hurdle that would appear to prevent frequent amendments to the Constitution. Raising the bar for such amendments further would lead to a situation where it may become very difficult to amend the Constitution in future. To retain the flexibility of the system, it is recommended to delete this amendment from the draft Law.

31. In its Report on Constitutional Amendment, the Venice Commission expressed its concern with regard to excessively rigid procedures and warned against the difficulty of engaging in constitutional reform in such cases. In other cases, the Commission has been confronted with the opposite challenge, where amendments, or attempted amendments, to the constitution happen on a too frequent basis, which may also negatively affect constitutional and political stability. The Commission has thus stressed that a constitution cannot “be amended in conjunction with every change in the political situation in the country or after a formation of a new parliamentary majority”.”

[CDL-AD\(2015\)014](#), Kyrgyzstan - Joint Opinion on the Draft Law “On Introduction of changes and Amendments to the Constitution” of the Kyrgyz Republic

D. Special majority in Parliament and / or popular referendum

“175. In the view of the Venice Commission, amendment procedures under Article 113 of the Bill are overly cumbersome and would deserve further consideration. The introduction of a qualified majority requirement in the Althing, a solution followed by almost all European countries in which the constitutional revision does not require a referendum, should be taken into account, while limiting to some specific cases the referendum option or that of spreading the operations over time. Exceptionally, in the absence of such a requirement in the parliament, an approval quorum in referendum might be justified. In any case, if the approach chosen for the Bill were to be adopted, it is almost certain that it would be politically impossible to amend it, as voters will never be ready to give up to the new power that has been assigned to them.”

[CDL-AD\(2013\)010](#), Iceland - Opinion on the draft New Constitution

“70. According to the proposed new Article 111.1, constitutional amendments may also be adopted through a qualified majority of the National Assembly (on the initiative by the President or by one-third of Deputies), without submitting them to a referendum. This proposal would make constitutional amendments more flexible, while at the same time maintaining the requirement of a referendum in issues of a fundamental nature, and is thus supported by the Commission.”

[CDL-AD\(2004\)044](#), Armenia - Interim Opinion on Constitutional Reforms in the Republic of Armenia

“221. In this context, it is recalled that the Venice Commission has previously taken the view, on the basis of several experiences in Europe over the last 20 years, that “there is a strong risk, in particular in new democracies, that referendums on constitutional amendment are turned into plebiscites on the leadership of the country and that such referendums are used as a means to provide legitimacy to authoritarian tendencies. As a result, Constitutional amendment procedures allowing for the adoption of constitutional amendments by referendum without prior approval by parliament appear in practice often to be problematic, at least in new democracies”. It should therefore be explicitly stipulated that the President of the Republic may not submit a constitutional law to referendum until it has been passed by the Assembly of People’s Representatives.”

[CDL-AD\(2013\)032](#), Opinion on the Final Draft Constitution of the Republic of Tunisia

1. Special majority in Parliament

“21. Article 114 par 1 of the current Constitution provides that “[t]he law on introducing changes to the present Constitution may be adopted by referendum called by the Jogorku Kenesh”. Article 114 par 2 further states that any changes to sections III to VIII of the Constitution (i.e., Articles 60 to 113 which detail the respective roles and powers of the executive, legislative and judicial branches, other state authorities and local self-government) may be adopted by the *Jogorku Kenesh* [unicameral Parliament of the Kyrgyz Republic] upon the proposal of the majority of all deputies, or of no less than 300,000 voters. Article 114 par 2 thus provides for a simplified method of amendment to the institutional sections of the Constitution by the *Jogorku Kenesh* alone, without a referendum. At the same time, pursuant to Article 4 of the Law on the Enactment of the Constitution of 2010, Article 114 par 2 will enter into force *only in 2020*. However, even if not yet in force, this paragraph is nonetheless important in order to understand the entire Article 114.

22. The Draft Amendments concern both, changes to sections III to VIII, as well as, to provisions in other sections. The procedure for constitutional amendments provided by Article

114 par 1 should thus in any case apply here, all the more since some of the Draft Amendments concern fundamental human rights and freedoms.

23. Article 114 par 3 of the Constitution stipulates the procedure for adopting constitutional amendments i.e., that the *Jogorku Kenesh* shall adopt the amending law within 6 months (first sentence), the amending law shall be passed by a two-thirds majority following at least three readings with two months' intervals in between (second sentence) and the amending law shall be submitted to a referendum by a two-thirds majority of the *Jogorku Kenesh* (third sentence). At the same time, it is not clear whether these procedures apply equally to amendments under Article 114 par 1 and to those submitted and adopted according to Article 114 par 2 (applicable as of 2020).

24. In the 2015 Joint Opinion, the OSCE/ODIHR and the Venice Commission concluded that *a priori*, the initiative for the referendum mentioned in Article 114 par 1 would be subject to the procedure of Article 114 par 3 (meaning that it should not only be adopted by a two-thirds majority but also following at least three readings with two months' intervals between each reading). At the same time, the Joint Opinion stressed that since this question remained somewhat unclear, the Constitutional Chamber may need to decide on this issue.

25. Such an interpretation would be in line with good practices and earlier comments made by the OSCE/ODIHR and the Venice Commission, which have warned against holding constitutional referenda without a prior qualified majority vote in Parliament. Indeed, the failure to hold a parliamentary debate prior to a referendum could expose this instrument of direct democracy to polemics, misleading information and abuse of democracy if not carefully managed in accordance with generally accepted democratic rules.[...].”

[CDL-AD\(2016\)025](#), Kyrgyzstan - Joint Opinion on the draft law "on Introduction of amendments and changes to the Constitution”

“10. The current Constitution of Azerbaijan establishes two distinct procedures for constitutional reforms: [...] “amendments” (regulated by Chapter XII) are to be introduced by a “constitutional law” which should be adopted by a supermajority in two consecutive votings in Parliament (Milli Majlis). The difference between “changes” and “amendments” is not entirely clear. It appears that “changes” may deviate from the existing constitutional regulations, whereas “amendments” are only adopted to develop constitutional provisions, without altering (“contradicting”) their meaning (see Section V of Article 156).

11. The question about the relationship between those two procedures has already been raised in the 2009 Venice Commission opinion on the previous constitutional reform of Azerbaijan. [...] It is not uncommon for a constitution to provide for different procedures for its amendment/change, generally reserving more stringent ones (increased majorities, multiple readings) for the most important modifications. However, the Constitution of Azerbaijan does not appear to be based on this *ratio*, as the “changes” - which are more important than mere “amendments” given that they can “contradict”, hence substantively amend the Constitution – are exempted from any formal parliamentary procedure and are directly submitted to the referendum, in a procedure which is significantly swifter than the procedure for “amendments”.

[CDL-AD\(2016\)029](#), Azerbaijan - Opinion on the draft modifications to the Constitution submitted to the Referendum of 26 September 2016

“13. The Venice Commission observes that a 2/3rds majority of Parliament is required to take some very important decisions – for example, to amend the Constitution (Article 177 p. 3) or to refer proposed amendments to ratification by referendum. A 2/3rds majority to amend a Constitution is a common threshold; [...]

[CDL-AD\(2016\)009](#), Albania - Final Opinion on the revised draft constitutional amendments on the Judiciary (15 January 2016)

“15. Generally speaking, in addition to guaranteeing constitutional and political stability, provisions on qualified procedures for amending the constitution, aim at securing broad consensus as well as the legitimacy of the constitution and, through it, the political system as a whole.”

“238. The Venice Commission is of the opinion that having stronger procedures for constitutional amendment than for ordinary legislation is an important principle of democratic constitutionalism, fostering political stability, legitimacy, efficiency and quality of decision-making and the protection of non-majority rights and interests.”

[CDL-AD\(2010\)001](#), Report on Constitutional Amendment

“70. According to the proposed new Article 111.1, constitutional amendments may also be adopted through a qualified majority of the National Assembly (on the initiative by the President or by one-third of Deputies), without submitting them to a referendum. This proposal would make constitutional amendments more flexible, while at the same time maintaining the requirement of a referendum in issues of a fundamental nature and is thus supported by the Commission.”

[CDL-AD\(2004\)044](#), Armenia - Interim Opinion on Constitutional Reforms

“23. Provisions outlining the power to amend the Constitution are not a legal technicality but they may heavily influence or determine fundamental political processes. In addition to guaranteeing constitutional and political stability, provisions on qualified procedures for amending the constitution aim at securing broad consensus; this strengthens the legitimacy of the constitution and, thereby, of the political system as a whole. It is of utmost importance that these amendments are introduced in a manner that is in strict accordance with the provisions contained in the Constitution itself. Equally important, a wide acceptance of these amendments needs to be ensured.”

“30. In this context, it is noted that already a two-thirds majority is a difficult hurdle that would appear to prevent frequent amendments to the Constitution. Raising the bar for such amendments further would lead to a situation where it may become very difficult to amend the Constitution in future. To retain the flexibility of the system, it is recommended to delete this amendment from the draft Law.”

[CDL-AD\(2015\)014](#), Kyrgyzstan - Joint Opinion on the draft Law “On Introduction of changes and amendments to the Constitution” of the Kyrgyz Republic

“69. According to the Constitution currently in force, constitutional amendments introduced by the *qualified majority* of National Assembly shall be submitted to a popular referendum (Article 111 § 4, emphasis added). The proposed new paragraph of Article 111 of the Constitution allows for constitutional amendments to be adopted *by the majority* of the National Assembly, if the initiative originates from the President of the Republic. This difference, which strengthens the role of the President with regard to the National Assembly, does not seem to be justified.”

[CDL-AD\(2004\)044](#), Armenia - Interim Opinion on Constitutional Reforms in the Republic of Armenia

“This Chapter makes it clear that the drafters want to have a rigid constitution difficult to amend. This should contribute to the stability of the constitutional system in Ukraine.

[...]

It seems excessive to require for the submission of a draft law introducing amendments to certain chapters of the Constitution the participation of two-thirds of the deputies. This is the majority required for the adoption of an amendment.”

[CDL-INF\(1997\)002](#), Ukraine - Opinion on the Constitution, Chapter XIII

2. Referendum

“19. [...] Adoption of constitutional amendments by Parliament may or may not be followed by a referendum; the latter strengthens the legitimacy of the amendments, provided that the use of referendum complies with the national constitutional system as a whole. However, it is quite rare – and objectionable – for a constitutional amendment to be adopted by a referendum without prior parliamentary approval, because *“there is a strong risk, in particular in new democracies, that referendums on constitutional amendment are turned into plebiscites on the leadership of the country and that such referendums are used as a means to provide legitimacy to authoritarian tendencies”*. Moreover, when a text is put to the vote at the request of a section of the electorate or an authority other than parliament, parliament must be able to give a non-binding opinion on the text put to the vote.”

“22. The constitutional referendum took place on 27 February 2022, as announced, just a few days after the full-scale military invasion of Ukraine by the Russian Federation which was conducted partly through the territory of Belarus and with the active support by the official Belarusian authorities (see paragraph 6 above). This context of military mobilization did not constitute an appropriate setting for a constitutional referendum on the ground of the obvious chilling effect which it had on the population of Belarus, which further undermined the legitimacy of the democratic process. [...].

“85. Chapters I (“The fundamentals of the constitutional order”), II (“Individual, society, State”), IV (“President, All-Belarusian People's Assembly, Parliament, Government, Courts”), VIII (“Procedure for amending and supplementing the Constitution”) of the Constitution may be amended exclusively by way of referendum (Article 140 § 3). Moreover, under the domestic interpretation of Article 140 any other constitutional provision, [...] may be adopted by referendum without the institutional involvement of Parliament. [...].”

[CDL-AD\(2022\)035](#), Belarus - Final Opinion on the Constitutional Reform; See also [CDL-AD\(2022\)015](#), Revised Code of Good Practice on Referendums, III.6; [CDL-AD\(2022\)008](#), Belarus - Urgent interim opinion on the Constitutional Reform § 65; [CDL-AD\(2020\)014](#), Rapport - Respect de la démocratie, des droits de l'Homme et de l'Etat de droit pendant l'état d'urgence § 120 and [CDL-AD\(2016\)029](#), Azerbaijan - Opinion on the draft modifications to the Constitution submitted to the Referendum of 26 September 2016 §§15 and 16.

“III/7.c. The requirement of a multiple majority (the majority of voters taking part in the referendum plus the majority in a specified number of entities) is acceptable in federal and regional states, in particular for constitutional revisions.”

[CDL-AD\(2022\)015](#), Revised Code of Good Practice on Referendums

“21. Referendums at the request of the majority of the Assembly or at the request of voters can address constitutional revisions which are not subject to a mandatory referendum (Article 44.2). It seems that referendums can concern questions of principles, generally worded proposals (previous vote, referendum on a preliminary statement) as well as concrete proposals (referendum for adoption of an act, its amendment or repeal). It also seems that referendums on confirmation of an adopted act (only at the request of the majority of the Assembly) (are the only ones to) have a suspensive effect (cf. Article 39.1). Should this be the case, the relevant provisions should be worded more precisely.”

“28. [...] The Venice Commission recommends extending the deadline between the decision of calling a referendum and the vote and restricting the discretionary possibility for the Assembly to reduce this deadline, in particular for constitutional referendums.”

[CDL-AD\(2021\)033](#), Serbia - Urgent opinion on the draft law on the referendum and the people's initiative

“28. In addition, the matters being decided by a referendum should never be too vague, and the draft legislation adopted in this manner should not leave important matters to future laws. In this context, it should be noted that it is normal for constitutions to leave some matters to constitutional (organic) laws, while others are worthy of securing at the constitutional level. This will be noted in the Opinion as appropriate.”

“152. Furthermore, para 2 allows for the revision of Sections I (“basics of the constitutional order”), 2 (human rights, freedoms and duties) and 5 (procedure of adoption and revision of the constitution) by a referendum at the initiative of “at least 300 000 voters or the President or two-thirds of the total number of deputies of the Jogorku Kenesh” [unicameral Parliament of the Kyrgyz Republic]. In this case, a referendum should also be called by the President. [...]”

[CDL-AD\(2021\)007](#), Kyrgyzstan - Joint Opinion of the OSCE/ODIHR and the Venice Commission on the Draft Constitution of the Kyrgyz Republic

“36. [...] In the Court’s view, supplementing the designated procedure in this way by holding a nationwide vote cannot be considered as denying the Federal Assembly and the legislators of the Russian Federation’s constituent entities the prerogative that belongs to them and the corresponding constitutional obligation driven by it and, within the meaning of Articles 3, 108 and 136 of the Russian Federation Constitution, fulfils the principle of grassroots democracy, which is one of the most important fundamentals of the constitutional structure, and is constitutionally justified. The lack of provision for a turnout was a legitimate choice of the constituent legislator who deemed that the voluntary refusal of any portion of citizens to participate in the vote cannot prevent the constitutionally significant determination of the resulting - both positive and negative – expression of will of the participants in such a ballot.”

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

“72. [Shouldn’t the Parliament have the power to abandon the earlier appointed referendum which was suspended due to emergency situation caused by the pandemic?] The Venice Commission firstly observes that Article 202 of the Constitution mentions the texts that should be amended only through referendum and does not include Article 213. Therefore, it is a matter of choice whether or not to call a referendum. [...].

73. After those preliminary observations, the Venice Commission considers that it is a general principle of public law that general norms and decisions adopted by a competent public body can be annulled by a new decision of the same body following the same procedure. There are of course exceptions, such as when a decision raises legitimate expectations of the application of norms or the conferral of rights and duties in individual cases. No such exceptions apply here. In addition, the fact that the legality of calling a referendum on constitutional amendments not reviewed by the Constitutional Court can be questioned (cf. paras. 20, 21 and 60 et seq. above), is a circumstance that the Parliament may take into account when considering a possible revocation of the referendum.”

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

“34. The Constitution (Article 202.1) establishes that a new Constitution and amendments to specific provisions of the current Constitution may be enacted only through a referendum,

initiated by at least one third of Members of Parliament (MPs), the government, or 200,000 voters. The constitutional provisions subject to this procedure are reproduced in Article 4.1(2) of the draft law.”

“37. [...] If the Parliament does not adopt such amendments with a two-thirds majority, they may be put to referendum by a decision adopted by at least three-fifths of all MPs (Articles 202.2 and 202.3 of the Constitution). Article 9.2 of the draft law specifies that the deadline for Parliament to take a decision is one month. Here again, *it should be clarified what happens if the Parliament fails to adopt such a decision within the prescribed time and/or by the necessary majority.*”

[CDL-AD\(2017\)029](#), Armenia - Joint Opinion on the Draft Law on Referendum

“46. Certain amendments to the Constitution require approval by a referendum (Article 142 § 1). This referendum, as the Constitutional Court explained in its Judgment no. 16 of 29 March 2001, is post-legislative, i.e. it is organised *after* the relevant revision is approved by Parliament. In other cases, a referendum is optional, but still should be initiated by one of the actors enumerated in Article 141 of the Constitution. The President is not amongst them.”

“48. [...] The subjects of consultative referendums “are matters of national interest that are brought for consultations with the public that will require further, final decisions by competent public administration bodies” (§ 4). The Electoral Code therefore suggests that “consultative referendum” and “constitutional referendum” are two different procedures.

49. In a judgment of 3 November 1999, interpreting Article 75, Article 141 § 2 and Article 143 of the Constitution, the Constitutional Court addressed the possibility of initiating by the President of a “consultative constitutional referendum”. The Court held, in particular that “the constituent legislator provided for the possibility of the President to address the electorate only for major problems *that the nation may face at a given moment, but not on the approval or rejection of a law amending the Constitution*” (italics added). The Constitutional Court also held that the referendum on constitutional amendments should be held *after* the adoption of the draft amendments by Parliament and should be binding (p. 5 of the judgment).”

[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

“8. Constitutional reforms in other “new democracies” previously examined by the Venice Commission indicate that there is a strong risk that referendums on constitutional amendments “are turned into plebiscites on the leadership of the country and that such referendums are used as a means to provide legitimacy to authoritarian tendencies”. Constitutional amendments strengthening the position of the executive should thus be subject to special scrutiny. In addition, as follows from the Code of Good Practice on Referendums, the circumstances of the referendum must guarantee the freedom of voters to form an opinion. This requires *inter alia* that the question put to the referendum is formulated clearly, that sufficient information is given to the voters, and that enough time is left for public debate.”

[CDL-AD\(2016\)029](#), Azerbaijan - Opinion on the draft modifications to the Constitution submitted to the Referendum of 26 September 2016; See also [CDL-AD\(2010\)001](#), Report on Constitutional Amendment §191; 249 and [CDL-AD\(2007\)008rev](#), Code of good practice on Referendums adopted by the Council for Democratic Elections.

“10. The current Constitution of Azerbaijan establishes two distinct procedures for constitutional reforms: while “changes” to the Constitution (regulated by Chapter XI) are only possible through a referendum [...]. The difference between “changes” and “amendments” is not entirely clear. It appears that “changes” may deviate from the existing constitutional regulations, whereas “amendments” are only adopted to develop constitutional provisions, without altering (“contradicting”) their meaning (see Section V of Article 156).”

[CDL-AD\(2016\)029](#), Azerbaijan - Opinion on the draft modifications to the Constitution submitted to the Referendum of 26 September 2016

“47. The analysis of the constitutions of the selected countries shows that a referendum on amendments may be required:

- on a mandatory basis for any amendment passed by Parliament;
- on a mandatory basis as a reinforced procedure for amending particular provisions enjoying special protection;
- on a mandatory basis for “total revision” or adoption of a new constitution;
- on an optional basis, upon demand by parliament, by popular initiative, by local authorities or upon decision of the Head of State.”

“185. [...] the use of referendums should comply with the national constitutional system as a whole. As a main rule, a referendum on constitutional amendment should not be held unless the constitution explicitly provides for this.¹²⁷ In some countries this is a well-established and integral part of the amendment procedure. But in constitutional systems with no mention of referendum, parliament is the legitimate constitutional legislator, and should be respected as such. Representative democracy is certainly as legitimate as direct democracy on issues such as these and may often be the more suitable procedure for in-depth discussion and evaluation.”

“187. At the same time, the requirement that *all* constitutional amendments be submitted to referendum risks making the Constitution excessively rigid, and the expansion of direct democracy at the national level may create additional risks for political stability.”

“242. Recourse to a popular referendum to decide on constitutional amendment should be confined to those political systems in which this is required by the constitution, applied in accordance with the established procedure, and should not be used as an instrument in order to circumvent parliamentary procedures, or to undermine fundamental democratic principles and basic human rights.”

[CDL-AD\(2010\)001](#), Report on Constitutional Amendment

“102. Article 203.8 provides only two basic principles for the organisation of a referendum. As the principle of the rule of law applies to referendums, further regulation will have to be enacted. The Commission draws attention to its Guidelines on the holding of Referendums^[2] and especially to point II. 2. a, that states: “Apart from rules on technical matters and details (which may be included in regulations by the executive), rules of referendum law should have at least the rank of a statute.” In order to apply article 203, the Serbian legislator will have to adopt legislation on the organisation of the constitutional referendum which should be in compliance with the principles set out in the above-mentioned ‘Code of good practice on Referendums’.”

[CDL-AD\(2007\)004](#), Serbia - Opinion on the Constitution

“26. Even if “the national parliament is the most appropriate arena for constitutional amendment, in line with a modern idea of democracy” [...] “it is to be stressed that the use of referendums should comply with the national constitutional system as a whole. As a main rule, a referendum on constitutional amendment should not be held unless the constitution explicitly provides for this.”

[CDL-AD\(2015\)014](#), Kyrgyzstan - Joint Opinion on the Draft Law “On Introduction of changes and Amendments to the Constitution” of the Kyrgyz Republic

² European Commission for democracy through law (Venice Commission), Guidelines on the holding of Referendums, CDL-AD(2006)027rev.

“22. The nature of a referendum varies according to whether it is mandatory or optional and depends on the body competent to call it. To hold a referendum might be mandatory (on certain well-defined issues as constitutional amendments) or optional. A referendum is mandatory when certain texts are automatically submitted to referendum, before or after their adoption (e.g. by Parliament). It is generally related to constitutional revisions.”

[CDL-AD\(2008\)010](#), Finland - Opinion of the Constitution

“101. An important element in the procedure to amend the Constitution is the possibility (Article 203.6) and in some cases the obligation (Article 203.7) to have it endorsed by the citizens in a referendum. It strikes the Commission that the list of constitutional amendments subject to referendum is very broad, especially since "the system of authority" as such is mentioned. In the original language of the Constitution the same term is used for the heading of Part V. If this implies that the notion "the system of authority" in article 203.7 is to be read in connection with Part V, the result would be that every amendment of Articles 98 to 165 would have to be subject to a referendum. It would be wise to determine more precisely to which principles of the "system of authority" Article 203.7 of the Constitution applies.”

[CDL-AD\(2007\)004](#), Serbia - Opinion on the Constitution

“74. According to Article 201, a referendum would no longer be needed for all constitutional amendments but only for, in addition to a new constitution, certain chapters and provisions (see paragraph 34 above). That would make constitutional change more flexible and is to be welcomed.

75. The Draft proposes introducing a popular initiative for constitutional amendments, both for those requiring a referendum and those lying in the power of the National Assembly. The number of signatures needed is relatively high – 200 000 resp. 150 000 – and even in the case of a referendum a qualified majority in the National Assembly supporting the initiative is necessary. This reduces the risk of political instability which frequent popular initiatives might otherwise engender.”

[CDL-AD\(2015\)038](#), Second Opinion on the Draft Amendments to the Constitution (in particular chapters 8, 9, 11 to 16) of the Republic of Armenia

3. Turn-out and approval quorums

III. Specific rules

[...]

7. Quorum and special majorities

It is advisable not to provide for:

- i. a turn-out quorum (threshold, minimum percentage);
- ii. an approval quorum (approval by a minimum percentage of registered voters).
 - a. An approval quorum or a specific majority requirement is acceptable for referendums on matters of fundamental constitutional significance.
 - b. The requirement of a multiple majority (the majority of voters taking part in the referendum plus the majority in a specified number of entities) is acceptable in federal and regional states, in particular for constitutional revisions.

[...]

EXPLANATORY MEMORANDUM

[...]

7.Quorum and special majorities

62. Based on its experience in the area of referendums, and in line with the 2019 report of the Parliamentary Assembly the Venice Commission confirms its recommendation that no provision be made in principle for rules on quorums (thresholds).³

63. A turn-out quorum (minimum percentage) means that it is in the interests of a proposal's opponents to abstain rather than to vote against it. For example, if 48% of electors are in favour of a proposal, 5% are against it and 47% intend to abstain, the 5% of opponents need only desert the ballot box in order to impose their viewpoint, even though they are very much in the minority. In addition, their absence from the campaign is liable to increase the number of abstentions and thus the likelihood that the quorum will not be reached. Encouraging either abstention or the imposition of a minority viewpoint is not healthy for democracy (point III.7.a). Moreover, there is a great temptation to falsify the turn-out rate in the face of weak opposition.

64. An approval quorum (approval by a minimum percentage of registered voters) may also be inconclusive, as it may be so high as to make change excessively difficult. If a text is approved – especially by a substantial margin – by a majority of voters without the quorum being reached, the political situation becomes very problematic, as the majority will feel that they have been deprived of their victory without an adequate reason. This risk of the turn-out rate being falsified is the same as for a turn-out quorum.

65. An approval quorum is nevertheless acceptable for referendums on matters of fundamental constitutional significance. An alternative could be a qualified majority requirement. The existence of a matter of fundamental constitutional significance should be admitted only in exceptional circumstances, implying for example a fundamental change of the political system (e.g. federal v. centralised or strongly presidential v. parliamentary) or, when admitted by the Constitution, secession (point III.7.b). Moreover, the requirement of a multiple majority (the majority of voters taking part in the referendum plus the majority in a specified number of entities) is acceptable in federal and regional states, in particular for constitutional revisions (point III.7.c).

[CDL-AD\(2022\)015](#), Revised Code of Good Practice on Referendums

“29. According to Article 133 of the 2019 Reform, the Constitution establishes a 2/3 quorum for the adoption of the norms (and rules of procedure), and this quorum cannot be changed by the Convention [Constitutional Convention of the Republic of Chile]. [...] The Convention has understood in the Rules of procedure (Reglamento General de la Convención Constitucional) that such quorum applies to the approval of the “constitutional norms” by the Plenary session and to the new formulations and revisions by the Commission on Harmonization of the whole text (Article 96). It is clear to all relevant actors that that rule requires the approval by a 2/3 majority of each of the Constitutional norms. There was some debate regarding whether the 2/3 majority also extended to a last, final, approval of the whole text (rather than to only the approval of each norm). This debate seems to have been resolved in the Rules of the Convention, which approved the 2/3 requirement for each norm, but did not require a final vote on the whole text.”

[CDL-AD\(2022\)004](#), Chile - Opinion on the drafting and adoption of a new Constitution

³ Doc. 14791, 3.4.2.

“75. Article 35.2 of the draft law provides for an approval quorum of 25% of registered voters. Pursuant to the Code of Good Practice on Referendums “[i]t is advisable not to provide for b) an approval quorum [...] since it risks involving a difficult political situation if the draft is adopted by a simple majority lower than the necessary threshold”. This quorum which appears in Article 207 of the Constitution, is therefore not in line with the Code of Good Practice on Referendums.”

[CDL-AD\(2017\)029](#), Armenia - Joint Opinion on the Draft Law on Referendum

“49. Several constitutions spell out the majority needed for the amendment to be approved by referendum or entrust the determination of the majority to a special law. The required majority is generally more than one-half of the valid votes or of votes cast. In Armenia, the draft amendment shall be considered to have been approved if more than one-half of the participants to the vote but not less than one-fourth of the registered citizens have voted in favour of it. The constitution of *Montenegro* requires a majority of more than three-fifths of the votes cast. The Swedish Instrument of Government provides that the amendment proposal is rejected before being submitted to the second Parliament for approval if a majority of those taking part in the referendum vote against it, and if the number of those voting against exceeds half the number of those who registered a valid vote in the election.”

[CDL-AD\(2010\)001](#), Report on Constitutional Amendment

“50. A few constitutions demand a minimum participation of the electorate in the referendum. The requirement can be that at least half of the eligible voters participate. The *Danish* constitution demands a majority of the votes cast, but only if more than 40% of the electorate participated. The *Lithuanian* constitution requires a majority of more than three-fourths of the electorate if Article 1 of the Constitution is to be amended (“Lithuania is an independent democratic republic”).”

“193. In almost all constitutions with rules on popular referendum, the requirement is an ordinary majority of the votes cast. In some countries there is also the additional requirement that a certain percentage of the electorate has participated, or that a certain percentage of the electorate must have voted in favor. The first alternative is a questionable criterion, since it makes it possible for opponents of reform to influence the outcome simply by staying home. As for the latter, one should be aware that unless national traditions for voter turnout are very high, such a requirement may easily amount to an almost insurmountable obstacle to constitutional change in practice. This can be problematic when there is no an alternative competence for parliament to pass amendments.”

[CDL-AD\(2010\)001](#), Report on Constitutional Amendment

“38. Pursuant to the revised Article 113, in order for the referendum on the constitutional reform to be considered valid, $\frac{1}{4}$ (instead of previously $\frac{1}{3}$) of registered voters must effectively express their vote. In the Commission’s view, this simplification is to be welcomed.”

“101. When the rules on referendum require not only a majority of the votes cast, but also the consent of a certain percentage of the electorate, then the result will depend on the turnout – which may in many countries make constitutional amendment almost impossible in practice. This is for example the case in Denmark, where the requirement for a referendum to amend the constitution is a majority of votes that must also reflect 40 % of the electorate. Even in a small and politically mature democracy like Denmark, with traditions for relatively high voter turnout in elections, this in effect creates a very high obstacle to constitutional reform.”

[CDL-AD\(2005\)025](#), Final Opinion on Constitutional Reform in the Republic of Armenia

“202. The Venice Commission has taken a general stand against both forms of quorums in referendum: a turn-out quorum tends to foster abstention, whereas in case of an approval quorum the majority might feel that they have been deprived of victory without an adequate

reason. The Commission however acknowledges that the system in place in Romania for Constitutional revision has been devised so in order to protect the new democratic order when the 1991 Constitution was adopted. In addition, the requirement of popular approval through referendum appears to be, like the direct election of Romania's President, firmly rooted in the national tradition.

203. The draft revision law proposes to amend the provision relating to the constitutional referendum to provide the same rule as applies, under the new article 90 (3), for the consultative referendum. According to that rule, the referendum is valid if at least 30 % of the number of persons registered in the electoral lists takes part in it. Since this proposal constitutionalizes a recent amendment to the referendum law diminishing the participation quorum required for the validity of referendums from 50% to 30% of the people on the register, it may be seen as a step in the direction of a less rigid procedure. It is however noted that the Constitutional court recommends its deletion, as of the provisions of the new article 90(3)."

[CDL-AD\(2014\)010](#), Romania - Opinion on the draft Law on the Review of the Constitution

E. Entry into force and application over time

"34. Secondly, the Constitutional Court noted that Article 1 of the draft amendments to the Constitution provides the entry into force of these amendments on the day of the official publication of the results of the "all-Russian vote", if the amendments to the Constitution are approved. In this regard, the Constitutional Court clarified that it does not assess the consistency of such a requirement with the provisions of the Federal Law of 4 March 1998 No. 33-FZ "On the Procedure for Adoption and Entry into Force of Amendments to the Constitution of the Russian Federation". Yet, it underlined that the provisions of the Law on the amendment to the Constitution that already entered into force – in relation to the regulation of the procedure for subsequent entry into force of other provisions of the Law – have priority over the said Federal Law as contained in a special and newer legal act having a greater legal force on account of the involvement of the legislative authorities of the Russian Federation's constituent entities in its adoption. Then, referring to its Ruling of 17 July 2014 No. 1567-O, the Constitutional Court recalled that a special mechanism for introducing amendments to the Constitution by means of a special amendment law allows – within its permissible limits – to fine-tune individual provisions of its Chapters 3-8 without altering the Constitution as a whole."

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

F. Constitutional amendment and state of emergency (terrorism, war and public health crisis)

"26. [...] Furthermore, a constitutional reform is pending, as a result of an extra-constitutional procedure, taken in the framework of a state of exception, the scope and content of which are unknown; a referendum is imminent, while the text which will be submitted to it is not available. The Venice Commission expressly reserves its position on the compatibility of this situation with the principles of democracy, rule of law and respect for human rights."

[CDL-AD\(2022\)017](#), Tunisia - Urgent Opinion on the constitutional and legislative framework on the referendum and elections announcements by the president of the Republic, and in particular on the decree-law n°22 of 21 April 2022 amending and completing the organic law on the independent high authority for elections (ISIE)

“30. A different scenario takes place when a state of emergency or war is formally declared in all the country: in those cases, many Constitutions envisage the possibility of a proper extension of the Parliament in office and to postpone the elections (this is not the case for the constitution of the Kyrgyz Republic). Several constitutions also limit the possibility of adopting constitutional amendments or legislation during states of emergency (this is the case for Kyrgyzstan: see Article 80 of the Constitution).

31. In Kyrgyzstan, an official state of emergency was only in force in part of the country between 25 March and 15 April due to Covid-19, and was imposed again only *after* the October elections, to be terminated on 15 October 2020.

32. [...] The Venice Commission recalls that it has previously underlined, in the context of states of emergency, that “[i]f the elections are postponed, the legitimacy of the parliament is to some extent limited. Thus, the parliament should abstain from adopting amendments to the constitution, organic laws or other important reforms under political debate which are not necessary to return to the normal situation.”

“68. Secondly, during the period of prorogatio, i.e. of diminished powers, the Parliament is only allowed to carry out some ordinary functions, whereas it is not allowed to approve extraordinary measures, including constitutional reforms. The Parliament in office instead has suspended a constitutional law and changed the rules of the democratic game. The process of initiating and producing constitutional reform requires extensive analysis and public discussion inside and outside the legislature. In many constitutional traditions the process of constitutional reform requires a specific mandate for a constitutional assembly or requires special elections before the adoption of the changes. That process is beyond the scope of a continuing caretaker authority. The constitutional procedure and timeframe for constitutional amendment must at any rate be respected.”

[CDL-AD\(2020\)040](#), Kyrgyzstan - Urgent amicus curiae brief relating to the postponement of elections motivated by constitutional reform

“13. Under the condition of temporariness, emergency measures may only be in place for the time the State experiences the exceptional situation. They must be terminated once the exceptional situation is over. They should therefore not have permanent effects. Emergency decrees or other emergency measures should not be (ab)used to introduce permanent changes in legislation or administration. In principle, amendments to the constitution should not be made during states of emergency.”

“119. If the elections are postponed, the legitimacy of the parliament is to some extent limited. Thus, the parliament should abstain from adopting amendments to the constitution, organic laws or other important reforms under political debate which are not necessary to return to the normal situation.

120. Due to the difficulties to guarantee free campaigning and public debate on reforms with a longer effect, referendums, especially constitutional referendums, should be postponed until the end of the state of emergency. Holding referendums would go against European standards enshrined in the Code of Good Practice on Referendums.”

[CDL-AD\(2020\)014](#), Report - Respect for democracy, human rights and the rule of law during states of emergency: reflections

“27. The procedure of parliamentary discussion and adoption of the constitutional amendments has taken place during the state of emergency. The referendum is planned for 16 April 2017, when the state of emergency will have been in force for almost nine months consecutively.”

“29. There is no formal rule in international law that prevents constitutional amendments during situations of emergency such as times of war, application of martial law, state of siege or

extraordinary measures. Yet, such a prohibition is contained in several constitutions (Albania, Estonia, Georgia, Lithuania, Moldova, Montenegro, Poland, Portugal, Romania, Serbia, Spain, Ukraine) [see article 226 § 6 of the Polish Constitution and article 147 of the Lithuanian Constitution] [...].

30. This prohibition reflects the importance of protecting the fundamentals of the political system, notably the Constitution and the electoral system. It stems from the consideration that a state of emergency may entail limitations to the normal functioning of parliament [...].”

“42. There are two possibilities which are in line with democratic standards: if a constitutional referendum must absolutely be held during a state of emergency, restrictions on political freedoms have to be lifted, or, if the restrictions may not be repealed, the constitutional referendum should be postponed until after the state of emergency or at least when the restrictions no longer apply.”

[CDL-AD\(2017\)005](#), Türkiye - 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; See also CDL-AD(2013)010, §17 and CDL-AD(2011)001, §18

IV. Limitations to constitutional amendments

A. Unamendable provisions

“10. [...] The Venice Commission also observes that the Moldovan Constitution contains an “eternity clause” (Article 142 para 2) and the question arises what legal effect an opinion of the CC might have if the proposed constitutional amendment is contrary to unamendable provisions of the Constitution.”

[CDL-AD\(2018\)007](#) Republic of Moldova - Opinion on the Draft Law on the modification of Article 42 of the Constitution of the Republic of Moldova regarding the Freedom of Association

“38. The precondition for allowing a Constitutional Court to check the constitutionality of constitutional amendments – especially concerning substantive review– is that the respective Constitution foresees an inner hierarchy of constitutional provisions. That is, some constitutional norms have a higher stance than others. This precondition is fulfilled in the case of Ukraine. It follows from Article 157 of the Constitution according to which the constituent power explicitly self-imposed a limitation by creating “unamendable provisions”. All constitutional norms that regulate or protect “*human and citizen’s rights and freedoms*” or the “*independence*” and “*territorial indivisibility of Ukraine*” must be considered the higher constitutional norms, since not even the constituent power can amend them.”

[CDL-AD\(2022\)012](#) Ukraine – Amicus Curia Brief on the limits of subsequent (*a posteriori*) review of constitutional amendments by the Constitutional Court

“64. To the extent that it is possible to identify a common Continental (West European) tradition for constitutional amendment, then this is a balanced approach, which is by comparison more flexible than for example the rather strict amendment rules in article V of the US Constitution. This can be illustrated by the German and French procedures. In Germany the requirement is a 2/3 majority in each of the two chambers (the Bundestag and the Bundesrat), with no other external requirements and no time delays, but with the exemption that the principles embodied in some of the provisions are unamendable, subject to judicial review. In France there are two alternative procedures – either by simple majority decision in each chamber followed by a popular referendum (simple majority), or upon proposal by the president with a 3/5-majority requirement in parliament, but no referendum. The republican

form of government cannot be changed, but this is not subject to judicial review. While quite different in character, both the German and the French amendment procedures are flexible enough to allow considerable opportunity for amendments given the necessary political consensus.”

“206. The most rigid and conserving mechanism for constitutional binding is to declare the constitution or certain parts of it unamendable (referred to sometimes as “absolute entrenchment”).”

“208. There are however constitutions that declare certain *parts* – certain provisions or principles – to be unamendable or unalterable. This is an old element of constitutionalism in some systems.¹⁴⁶ But it is by no means dominant. A large number of European constitutions do not have any rules on unamendability, and many of those who have confine this to a very small part of the constitution, or to principles which are so vague and general as not to impose in effect any actual limitation. Furthermore, unamendability is only judiciable in a few of those constitutional systems that have such rules (see section 8.2). In the other systems, such rules serve more as political declarations than as legal limitations on the constitutional legislator.”

“215. Among the special principles protected by unamendability is usually to be found one or several of the following: the fundamental democratic (or republican) form of government, the federal structure, sovereignty, territorial indivisibility, and certain fundamental rights and freedoms.

216. Some constitutions do not have absolutely unamendable provisions but provide for reinforced procedure for amending specific protected provisions that is so strict as to almost mean unamendability in practice.

217. The Commission does not hold any general view as to whether a given national system should include provisions on unamendability or not. On the one hand this is not a necessary element of constitutionalism, as illustrated by the fact that a number of constitutional systems function very well without it. On the other hand, in systems that do have such provisions, this can often be explained by legitimate historical reasons, and normally forms an integral part of the national constitutional system.

218. The Commission however considers that unamendability is a complex and potentially controversial constitutional instrument, which should be applied with care, and reserved only for the basic principles of the democratic order. A constitutional democracy should in principle allow for open discussion on reform of even its most basic principles and structures of government. Furthermore, as long as the constitution contains strict rules on amendment, then this will normally provide an adequate guarantee against abuse – and if the required majority following the prescribed procedures wants to adopt reform, then this is a democratic decision, which should in general not be limited.

219. All historical evidence indicate that for constitutions that function over any period of time, absolute entrenchment will never in practice be absolute. If circumstances change enough, or if the political pressure gets too strong, then even “unamendable” rules will be changed – one way or the other. In such situations, constitutional unamendability may even have the negative effect of unduly prolonging conflicts and thereby building up pressure and increasing the costs to society of eventually necessary reform.”

“222. Whether or not a constitutional provision on unamendability is in *itself* amendable will depend on national constitutional law. A few such articles explicitly include themselves in the list of provisions that may not be changed, but most do not, and this may then be a question of interpretation (and potential conflict). The Commission is of the opinion that the issue of unamendability should preferably itself be regulated by the national constitutional legislator.”

“224. A substantial number of constitutions have provisions limiting constitutional amendment in times of war, emergency or similar situations (see above, Section III, § 52-53). While this

represents a restriction on constitutional amendment, it is *temporal* by nature, and the rationale is very different from that of substantial unamendability. In this regard, the Commission wishes to emphasize that it should preferably be for the constitutional legislator itself to decide when such an extraordinary situation exists. It may be problematic if such rules result in providing the executive power with the possibility to block legitimately proposed reform by declaring a state of emergency. Thus, for example, the concept of “war” should be understood restrictively, such as not including national participation in international military conflicts.”

“250. “Unamendable” provisions and principles should be interpreted and applied narrowly.”

[CDL-AD\(2010\)001](#), Report on Constitutional Amendment

“66. An overview in comparative constitutional law shows that most Constitutions do not provide for unamendable provisions, and these are not required by international standards. Moreover, nearly all unamendable provisions are substantive, and therefore not related to the procedure for the revision of the Constitution. Some Constitutions do contain “unamendable” (or intangible) provisions, i.e. provisions that are legally precluded from revision. [...]”

[CDL-AD\(2012\)010](#), Belgium - Opinion on the Revision of the Constitution

B. Special limitations on constitutional amendment. Constitutional provisions on fundamental rights

“21. Thirdly, the Venice Commission reiterated that democratic referendums were not possible without respect for human rights, in particular freedom of expression and of the press, freedom of movement inside the country, freedom of assembly and freedom of association for political purposes. If in a functioning democracy sovereignty rests with the people, and it is open to them to decide to give themselves a basic law in whatever terms they wish, this proposition pre-supposes an informed choice by the people following full public debate during which all points of view may be freely expressed and there are no restrictions on the media.”

[CDL-AD\(2022\)035, Belarus](#) - Final Opinion on the Constitutional Reform; See also [CDL-AD\(2022\)015](#), Revised Code of Good Practice on Referendums, II.6. and [CDL-AD\(2004\)029](#), Opinion on the Referendum of 17 October 2004 in Belarus §14.

“51. The general requirements for amending the constitution are in most countries quite strict. In many constitutions there are however special limitations for some forms of amendment, which make it even more difficult. These are of two main types: substantive and temporal ones.

52. Some constitutions explicitly render a limited number of provisions or principles unamendable at any time and under any circumstances. This typically refers to issues such as territorial integrity, fundamental rights, the fundamental form of government, or federalism.

53. Other constitutions operate a distinction between different sets of constitutional provisions, making some harder to change than others, through special procedures. Such procedures may require an increased qualified majority in parliament, a referendum, the dissolution of parliament or the convening of a special body (assembly) to adopt the amendment. Depending on the strictness of the special procedures, this may in some cases in effect be almost equivalent to making the provisions unamendable.

54. The most common temporal limitations refer to situations of emergency such as times of war, application of martial law, state of siege or extraordinary measures.

55. A different kind of temporal limitation consists of a specific time period within which a constitution cannot be modified and mainly aims at avoiding that constitutions be changed too

often. A number of constitutions also specifically provide that a rejected proposal for a constitutional amendment may not be re-submitted within the same legislature or within a certain time period. This period varies between two and five months and one year.”

“146. The legal and political context for amending constitutional provisions on fundamental rights differs from that of changing institutional rules in several ways. First, the normative basis and content of human rights is different. Second, the relationship to international and European law is different. And thirdly, the courts play a much more important role in developing fundamental rights than they do with institutional rules.

147. In some countries, all provisions of the constitution may in principle be open to amendment. In other countries, certain rights are considered so fundamental (such as the right to human dignity in Germany or the dignity and equality in South Africa) that the constitution provides that their core substance is not open to amendment.”

“177. Venice Commission holds that constitutional provisions, fundamental human rights should as a matter of principle be open to debate and amendment, whether in order to extend, confirm or even in some cases restrict their reach and contents. This however has to be done in a careful way, and subject to strict requirements so as not to weaken the function that such provisions have in protecting individual and minority interests against the will and whims of the majority. Furthermore, such national amendment processes have to take into account international legal obligations as well as the legitimate role of national and international courts in developing and protecting human rights.”

[CDL-AD\(2010\)001](#), Report on Constitutional Amendment

“112. Article 14 contains a provision which would restrict amendments to the Constitution. The provision would add to Article 103 of the existing Constitution a new paragraph 2 which would provide that no changes and amendments are to be permitted in the Constitution that restrict fundamental Constitutional human rights and freedoms, rule of law principles and a revision of the Georgian statehood. A reference to international human rights treaties to which Georgia is a party should also be included here. There are some concerns about this provision if it had the effect of freezing everything which is contained in the proposed new Charter of rights particularly when the provisions in the Charter are so detailed. However, a provision which would prevent abolition of the most fundamental rights could be desirable, but it would seem important to clarify the precise ambit of the provision. Presumably the question of whether or not a proposed amendment to the Constitution comes within the terms of this new provision is to be determined by the Supreme Court but there do not seem to be any provisions which deal with the question expressly.”

[CDL-AD\(2005\)003](#), Georgia - Joint Opinion on a Proposal for a Constitutional Law on Changes and Amendments to the Constitutional

V. Review of constitutional amendments. Involvement of the Constitutional Court

“68. The Venice Commission observes that the question of the competence of the CCU to exercise a *posteriori review* of constitutional amendments is not clearly and explicitly answered in the text of the Constitution.

69. The Venice Commission is of the opinion, that two opposite interpretations of the Constitution seem to be possible - that the Constitution does not exclude a *posteriori review* of constitutional amendments and that the Constitution excludes a *posteriori review* of constitutional amendments. It is up to the CCU to make a final interpretation. However, if the CCU finds it difficult to interpret the Constitution for or against a *posteriori* constitutional review, the Commission believes that there are strong arguments to use for justifying the recognition of this power, at least when this is necessary to ensure the review of amendments that were not properly submitted to a priori review. However, such power could only be exercised within

the explicit limits and for the purposes of Articles 5, 157, 158 and 159 of the Constitution and should not deprive of effects the powers or acts of the constituent legislator.”

[CDL-AD\(2022\)012](#), Ukraine - Amicus Curiae brief on the limits of subsequent (*a posteriori*) review of constitutional amendments by the Constitutional Court

“26. The entire process raises several concerns and presents serious shortcomings. First, the legitimacy of the Constitutional Council, a body not contemplated in the current Constitution and established by the executive, may be questioned, all the more in light of Article 114 of the current Constitution, which assigns to the Jogorku Kenesh [unicameral Parliament of the Kyrgyz Republic] a leading role when revising the Constitution. [...]”

“159. As regards the involvement of the Constitutional Court in the amendment process, while it is envisaged in the constitutions of several states, it should be subject to certain conditions. **The Constitution should clearly define the scope of such involvement (whether the court is reviewing procedural or substantive aspects of the reform), define the authorities responsible to request such a review, as well as the timeframe for it, and the consequences in case the Constitutional Court’s vote is negative or lacking.**”

[CDL-AD\(2021\)007](#), Kyrgyzstan - Joint Opinion of the OSCE/ODIHR and the Venice Commission on the Draft Constitution of the Kyrgyz Republic

“33. [...] It then clarified that Article 136 of the Constitution does not directly indicate the participation of the Constitutional Court in the procedure for amending the Constitution. At the same time, it considered that judicial constitutional control of such amendments, within the meaning of Articles 10, 15, 16, 125 and 136 of the Constitution, may serve as “an appropriate guarantee of the legal force of the provisions on the foundations of the constitutional order of Russia and on fundamental human and citizen’s rights and freedoms in the system of constitutional norms, a guarantee of consistency of the text of the Constitution”.”

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

“10. The Venice Commission notes that, pursuant to Article 141 of the Moldovan Constitution, the revision of the Constitution may be initiated by the Government (para 1 (c)) and should be accompanied by an opinion of the CC [Constitutional Court] (para 2). The status of such “opinions” of the CC is not entirely clear. In particular, it is not clear whether a negative opinion of the CC may block further process of constitutional amendments, and whether the CC may, as in the present case, give a positive opinion but propose an alternative formula of the new constitutional provision. [...]”

[CDL-AD\(2018\)007](#), Republic of Moldova - Opinion on the Draft Law on the modification of Article 42 of the Constitution of the Republic of Moldova regarding the Freedom of Association

“34. [...] Amendments to the Constitution under Article 4.1(2) of the draft law are submitted to the Constitutional Court for its ruling on the constitutionality of the proposal (Article 8.2). As constitutional amendments, by definition, exceed the scope of the current Constitution, *the scope of review of the Constitutional Court in such instances could be made clearer.*

35. The Constitutional Court also appears to have only the option to validate or invalidate the entire proposal (Articles 8.3 and 8.4 of the draft law). In case of multiple amendments, there is a risk that a limited unconstitutionality leads to the invalidation of the whole text. It is true that a new initiative for constitutional revision may be introduced by one third of the MPs.

Nonetheless the Venice Commission and OSCE/ODIHR recommend that the Court be entitled to provide a nuanced ruling on the constitutionality of each proposed amendment, indicating also where the draft could be changed to ensure its constitutionality.

36. The draft law further provides that after the Constitutional Court's positive ruling, the Parliament shall adopt a decision on putting the draft to a referendum within 15 days by at least two-thirds vote (Article 8.3). [...].”

[CDL-AD\(2017\)029](#), Armenia – Joint Opinion on the Draft Law on Referendum

“52. That being said, it belongs to the Constitutional Court of the Republic of Moldova to settle this controversy and decide whether the President has the right to initiate the “consultative constitutional referendum”. The Venice Commission encourages the Constitutional Court to do so before the referendum is held; otherwise, the examination of this question would be a purely theoretical exercise, while problems of legitimacy of the referendum may arise.”

[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

“57. In a few countries, the Constitutional Court has been given a formal role in the constitutional amendment procedures. In Moldova for example, a proposal for constitutional amendment may be submitted to Parliament only if it has obtained the support of at least four judges of the Constitutional court. In Ukraine, the opinion of the Constitutional Court on the conformity of the proposed constitutional amendment with the relevant constitutional provisions is the pre-condition for the consideration of an amendment proposal by Parliament.

58. The intervention of the constitutional court in the amendment procedure may be subject to certain conditions.”

“228. Even in constitutions with unamendable provisions or principles it is not often explicitly stated whether this is subject to judicial review or not, and if so, on what terms. This will then be for the national constitutional system to interpret and sort out. In some countries this has not yet been put to the test, and the legal situation is unclear. In other countries, judicial review has been rejected, on the argument that the courts cannot place themselves above the constitutional legislator. In other countries, judicial review of constitutional amendments is in theory possible, but has never been applied in practice. And even in those countries which do from time to time conduct judicial review of constitutional amendments, these are very rarely if at all set aside as breaching unamendable principles or provisions.”

“231. When assessing constitutional amendments, it appears that even in systems with established judicial review the courts will usually respect a certain margin of discretion for the constitutional legislator. In the German system, the majority of the Federal Constitutional Court stressed in the 1970 eavesdropping case that although article 79 (3) states that the principles laid down in articles 1 and 20 may not be affected by constitutional revision, this does not mean that the actual way of applying them may not be *modified* by the legislator in a manner consistent with the constitution.”

[CDL-AD 2010\)001](#), Report on Constitutional Amendment

“49. In its “Report on constitutional Amendments”, the Venice Commission however emphasised that only “in a few countries the Constitutional Court has been given a formal role in the constitutional amendment procedures”. The Commission stated that an a priori review is a “fairly rare procedural mechanism”. And although the Commission declared that a posteriori review by the Constitutional Court is “much more widespread”, it cannot be seen as a general rule. Such control cannot therefore be considered as a requirement of the rule of law. Belgium stands in the tradition of countries such as France which firmly reject judicial review of constitutional amendment. The Conseil Constitutionnel argued “that because the constitutional legislator is sovereign, therefore constitutional amendments cannot be subject

to review by other bodies (themselves created by the Constitution.)”²⁴ Although in Austria and Germany there exists the possibility of review, these cases do not stand for a common European standard.

50. Most constitutional systems operate on the assumption that all constitutional provisions have a similar normative rank, and that the authority which revises the Constitution has the authority to thereby modify pre-existing, other constitutional provisions. The result is that, in general, one constitutional provision cannot be “played out” against another one. The absence of a judicial scrutiny of constitutional revisions is owed to the idea that the constitutional revision is legitimised by the people itself and is an expression of popular sovereignty. The people is represented by parliament which acts as a *constituante*. The authority of the decision to amend the Constitution is increased by the specific requirements for constitutional amendment (qualified majority).

51. It is a matter of balancing the partly antagonist constitutional values of popular sovereignty and the rule of law whether to allow for rule-of-law induced barriers against constitutional revision, or for judicial scrutiny. Most Constitutions have placed a prime on popular sovereignty in this context. The Belgian proceedings are well within the corridor of diverse European approaches to this balancing exercise and do not overstep the limits of legitimate legal solutions.”

[CDL-AD\(2012\)010](#), Belgium – Opinion on the Revision of the Constitution

“100. Article 12.3 of the Fourth Amendment amends Article 24.5 of the Fundamental Law, which reads: *“The Constitutional Court may only review the Fundamental Law and the amendment thereof for conformity with the procedural requirements laid down in the Fundamental Law with respect to its adoption and promulgation. ...”*

101. The Hungarian Government argues that this provision broadens the jurisdiction of the Constitutional Court, because prior to the Fourth Amendment the Court had no competence to review constitutional amendments at all, i.e. not even from a procedural point of view. In this respect, the Government refers to case-law of the Constitutional Court excluding judicial review of constitutional provisions.”

“103. The idea that a Constitutional Court should not be able to review the content of provisions of Fundamental Law is common ground as a general rule in many member States of the Council of Europe. In its Opinion on the Revision of the Constitution of Belgium, the Commission stated:

“49. [...] Belgium stands in the tradition of countries such as France which firmly reject judicial review of constitutional amendment. The Conseil Constitutionnel argued ‘that because the constitutional legislator is sovereign, therefore constitutional amendments cannot be subject to review by other bodies (themselves created by the Constitution.)’ Although in Austria and Germany there exists the possibility of review, these cases do not stand for a common European standard.

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51. It is a matter of balancing the partly antagonist constitutional values of popular sovereignty and the rule of law whether to allow for rule-of-law induced barriers against constitutional revision, or for judicial scrutiny. Most Constitutions have placed a prime on popular sovereignty in this context. The Belgian proceedings are well within the corridor of diverse European approaches to this balancing exercise and do not overstep the limits of legitimate legal solutions.”

104. As pointed out in that Opinion, in some states constitutional courts are able to review constitutional amendments under certain circumstances, as for instance in Austria, Bulgaria, Germany or Türkiye. Article 288 of the Constitution of Portugal provides substantial limits for constitutional amendments and their conformity with these limits can be controlled by the Constitutional Court. In 2009, the Constitutional Court of the Czech Republic annulled a constitutional amendment shortening the term of office of the Chamber of Deputies. A special case is the adoption of the Constitution of South Africa, which was certified by the Constitutional Court as being in conformity with constitutional principles agreed beforehand.

105. In Austria, the Constitutional Court is able to examine constitutional provisions as to whether they are in compliance with the fundamental principles of the Constitution. For instance, in 2001, the Austrian Constitutional Court declared void a constitutional law provision as it prevented the Constitutional Court from controlling the constitutionality of that provision. In Bulgaria, constitutional amendments can be reviewed as to whether they change the “*form of state structure or form of government*”. The Fundamental Law of Germany contains unamendable provisions, and the Constitutional Court can review whether these provisions have been infringed. 87 In Türkiye too, the Constitution contains unamendable provisions. Article 148 of the Turkish Constitution provides that the Constitutional Court is limited to control the procedure of adoption of constitutional amendments, but it seems that the Court has a wider interpretation of its power to review constitutional amendment. In all these cases, the constitution has an inner hierarchy (unamendable provisions or basic principles) and ‘ordinary constitutional law’ is reviewed against these higher provisions or principles.

106. Such an inner hierarchy is not a European standard, although it is a feature that arises more and more in States where Constitutional Courts are competent to annul unconstitutional laws. [...]”

[CDL-AD\(2013\)012](#), Hungary - Opinion on the Fourth Amendment to the Fundamental Law

“216. The Constitutional Court is involved in the revision process in two ways: first, in order to ascertain that the proposal does not affect any matters whose amendment is prohibited (Article 142, 1st paragraph), and second, to verify that the formal procedures for amending the Constitution have been complied with (Article 117, 1st paragraph, 3rd bullet point). In such cases the initiative for referring the matter to the Constitutional Court falls exclusively to the Speaker of the Assembly of People’s Representatives. For laws and treaties, it is the President of the Republic who is competent (Article 117, 1st paragraph, 1st and 4th bullet points) (See Chapter V). This difference in treatment should be justified.

217. Moreover, it is essential to enable a given number of members of the Assembly (i.e. the opposition) to refer a matter of constitutional revision to the Constitutional Court, as the Speaker of the Assembly, who in virtually all situations will belong to the same party as the heads of the executive, will rarely be inclined to bring the amending law before the Court.

218. The procedure provided for in Article 142 is, however, difficult to understand. First of all, the Constitutional Court must ascertain whether the amendment relates to matters which cannot be amended. This decision can be taken only on the basis of the finalised “constitutional draft law”. Next, the Assembly of People’s Representatives must approve “the principle of the amendment” by an absolute majority and subsequently pass the amendment by a majority of two thirds “without prejudice to Article 141” (the non-amendable clauses). The

sequence of these three steps does not seem logical: the decision in principle by the Assembly should take place first of all, before the constitutional draft law has been finalised; it is difficult to understand otherwise why the Assembly would vote on the bill first of all, requiring an absolute majority and then a second time, with a two-thirds majority. The judicial review should take place after the decision in principle and before it is passed by the Assembly. Moreover, it should be stipulated that if the bill is substantively modified by the Assembly in the debates prior to its being passed, it should be submitted once more for review by the Constitutional Court, since if such is not the case, the authority of the Court could be circumvented.

219. The Venice Commission has previously expressed reservations regarding judicial review of the merits of constitutional amendments on the basis of “non-amendability”; the Commission believes that “non-amendable” provisions and principles should be interpreted and applied narrowly, and that judicial review should be conducted with prudence and moderation, leaving a margin of appreciation to the authors of the Constitution.”

[CDL-AD\(2013\)032](#), Tunisia - Opinion on the final draft constitution

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