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Scuola Grande di San Giovanni Evangelista

10-11 March 2023

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SESSION REPORT

RAPPORT DE SESSION

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1. Adoption of the Agenda

The agenda was adopted without amendments (CDL-PL-OJ(2023)001ann).

2. Communication from the President

The President called for a minute of silence in commemoration of the victims of the earthquake in Türkiye and Syria.

She subsequently welcomed the new and reappointed members, special guests and delegations. The President's activities are summarised in document CDL(2023)009.

3. Communication from the Enlarged Bureau

Ms Bazy Malaurie informed the Commission that the Enlarged Bureau had discussed the request for postponement of the adoption of the Ukrainian draft interim Opinion on the law on the prevention of threats to national security, associated with excessive influence of persons having significant economic or political weight in public life (oligarchs). This issue would be discussed under item 10 of the agenda.

The President further informed the Commission that the Speaker of the Georgian Parliament had made a request for an opinion on two draft laws concerning "foreign agents" but he had withdrawn the request on the ground that the draft law on foreign agents had been the object of massive demonstrations in the country and the authorities had announced that they would withdraw it from the parliamentary procedure. The decision on the opinion request would be taken in the light of the effective withdrawal.

The Commission was further informed that the President of the Parliamentary Assembly had made a request for an opinion on the draft law on the amendment of the German Federal Election Act and its compliance with Council of Europe standards; the opinion would be prepared for the June Plenary Session.

Finally, the Enlarged Bureau had also discussed the draft revised Rules of Procedure and the Principles of Conduct of, which would be dealt with under item 18 of the agenda.

4. Communication by the Secretariat

Ms Granata-Menghini informed the Commission practical questions of the organisation of the session.

5. Co-operation with the Committee of Ministers

Mr Erik Laursen, Ambassador Extraordinary and Plenipotentiary, Permanent Representative of Denmark to the Council of Europe, noted that Denmark - its Government and Parliament - was a very strong supporter of the Venice Commission. The Commission's inherent capacity for dialogue with individual Member States could be useful in the context of the idea of creating a register of war crimes committed in Ukraine. The aggression of the Russian Federation against a Council of Europe Member State had created a new geopolitical situation and the role of the Council of Europe in this context would be reassessed at the upcoming Council of Europe Summit in Reykjavik in May 2023.

As the Chair of the Committee of Ministers' Working Group on Programme, Budget and Administration (GR-PBA), Ambassador Larsen informed the Commission of the decision of the to create two additional posts from May 2023 in response to the increasing workload of the Venice Commission, which would be monitored to determine whether it was structural or temporary in nature. Further reassessment would take place throughout the year, including at the Summit. In

order to ensure and secure the legitimacy of the Commission, its functioning should ideally be financed through the regular budget.

Ms Granata-Menghini underlined that the increase of the budget had been supported by the results of the Commission's evaluation report and expressed gratitude for the support demonstrated by the Committee of Ministers the work of the Commission at a difficult financial moment for the whole Council of Europe.

Ms Nina Nordström, Ambassador, Extraordinary and Plenipotentiary, Permanent Representative of Finland to the Council of Europe, informed the Commission that the Committee of Ministers Working Group on Human Rights (GR-H) over the past year addressed such important issues as the effectiveness of the ECHR system and the implementation of the Framework Convention for the Protection of National Minorities. It also adopted recommendations on combating hate speech, human trafficking and labour exploitation, media issues and environmental protection. Currently, the GR-H was working, *inter alia,* on the Optional Protocol to the Convention on Human Rights and Biomedicine on Mental Health and on the Recommendation on Combating Hate Crime. Regular consultations have been held with civil society and international actors, such as with the UN Human Rights Council on accountability for human rights violations committed in the context of the brutal Russian aggression against Ukraine.

As President of the Statutory Committee of the Council of Europe's Group of States against Corruption (GRECO), Ms Nordström expressed her appreciation for the excellent cooperation between the Venice Commission and GRECO: although the two bodies have different mandates, they share common objectives and work in a mutually reinforcing way, achieving greater legitimacy and ownership of reforms in the Member States.

The Ambassador further stated that Finland faced the challenges of the aftermath of the Covid-19 pandemic, the war in Ukraine and the rise of well-organised, internationally linked populist groups. The Finnish Government sought to bring the emergency powers act fully into line with the Constitution, to join NATO and to address the under-resourcing of the judiciary; a recently established working group on the rule of law and the judiciary was due to make its recommendations in two years' time. The Venice Commission's Opinion CDL-AD(2008)010 on the Constitution of Finland was still relevant, in particular with regard to the question raised by the Venice Commission on the relationship between the prior review of legislation by the Parliamentary Committee on the Constitution and the review by the courts. The 2016 Rule of Law Checklist has been translated into Finnish and has been widely distributed and appreciated; the Venice Commission enjoys exceptional respect in Finland.

6. Co-operation with the Parliamentary Assembly

Mr Constantinos Efstathiou, Member of the Committee on Legal Affairs and Human Rights (hereafter LAHR) of the Parliamentary Assembly (PACE), briefed the Commission on the recent work of the Monitoring Committee and of the Legal Affairs Committee. The report on the ongoing full monitoring procedure on the Republic of Moldova referred to the five opinions of the Venice Commission on the judiciary and two *amicus curiae* briefs (see resolution 2484), as well as to the conclusions of two forthcoming opinions on the Republic of Moldova, which will also be taken into account when they are published. The information note on the Committee's fact-finding visit to Turkey (12-13 January 2023) was declassified at the January 2023 session of PACE. The Monitoring Committee would hold a hearing on 21 March 2023 on the de-oligarchisation legislation of Georgia, the Republic of Moldova and Ukraine, where the relevant opinions of the Venice Commission would be presented.

The Legal Affairs Committee published an urgent report on "Legal and human rights aspects of the aggression of the Russian Federation against Ukraine" in January 2023. Based on this report, the PACE, in its Resolution 2482 of 26 January 2023, called upon its member and observer states to establish a comprehensive system of accountability for violations of international law committed by the Russian armed forces and associated groups. The creation of a special international criminal court and the establishment of an international reparations mechanism,

including, as a first step, an international register of damages, should be part of such a system. PACE also adopted reports on lethal autonomous weapons systems and on the prosecution of DAESH fighters for genocide and other international crimes. In addition, meetings were held with the national delegations of Ukraine, Türkiye and Hungary, as well as two fact-finding missions to Azerbaijan and Romania, as part of the preparation of a report on the implementation of ECtHR judgments to be adopted by the LAHR Committee on 22 March.

The joint opinion of the Venice Commission and the OSCE/ODIHR on the Law on Political Parties of Azerbaijan (item 15) was requested by the Parliamentary Assembly.

7. Co-operation with the Congress of Regional and Local Authorities of the Council of Europe

Ms Gudrun Mosler-Törnström, Chair of the Congress's Monitoring Committee, informed the Commission that, following the recent earthquake in Turkey, the Current Affairs Committee of the Congress planned to prepare a report on local and regional responses to, inter alia, major natural disasters. The Monitoring Committee adopted its draft recommendations on the cantonal elections in Bosnia and Herzegovina in October 2022 and on the local elections in Slovenia in November 2022. The observation of the latter elections led to the conclusion that the repetition of consecutive terms of office for mayors resulted in an accumulation of power, lack of transparency and disillusionment of the younger generation of politicians. Such situations have been observed in many Member States. The observation mission to the repeat local elections in Berlin on 12 February 2023 welcomed an orderly election day but called for a clarification of the division of responsibilities between the main actors in local and regional elections and mentioned, inter alia, the need to develop a practical guide for election observers. The next local election observation mission with the OSCE/ODIHR will take place in Albania on 14 May 2023.

The existing procedures for the direct election of mayors in the Member States were also discussed by the Monitoring Committee. The Chamber of Local Authorities of the Congress will hold a debate on this issue in March 2023. On 22 March 2023, the Monitoring Committee will also hold a debate on the role of the second chambers of parliaments with the participation of Mr Bustos Gisbert, the Spanish member of the Venice Commission. The Congress will also adopt its contribution to the 4th Summit of Heads of State and Government of the Council of Europe, which will focus on the crucial role of sub-national governments in facing modern challenges in Europe. On the initiative of Ms Mosler-Törnström, a new human rights strategy of the Congress will be drawn up in order to make local authorities aware of their obligation to respect human rights and the principles of the rule of law. Another part of the Congress's strategy would be to strengthen cooperation with DGI's Unit for the Enforcement of Judgments of the ECtHR with regard to the implementation of the Court's judgments involving local authorities.

8. Exchange of views with the Regione del Veneto

Ms Annalisa Bisson, Director for International Relations and European Affairs of the Regione del Veneto, considered that the Region was privileged to host the Venice Commission. Historically and geographically, the city of Venice has always been a symbol of intercultural exchange and cooperation, a place where peaceful solutions to disputes and conflicts have been sought and found. Venice is a natural place for the Commission, which helps to build bridges between different constitutional and legal systems by engaging in open, constructive and inspiring debates, even in these trying times of war in the heart of Europe, to preserve respect for democracy, human rights and the rule of law.

President Bazy Malaurie thanked Ms Bisson for the Regione Veneto's continued support for the Venice Commission.

9. Follow-up to earlier Venice Commission opinions

President Bazy Malaurie recalled the distinction between information provided by the Secretariat on the follow-up to the Commission's recommendations as it appeared after the final adoption of

a legal text, which as such did not require discussion (see below), and the new type of follow-up opinions, which assessed draft legislation which had been revised in the light of the Commission's recommendations in previous opinions (see item 11).

The Commission took note of the follow-up, presented in document CDL(2023)010, to the following Venice Commission's opinions:

- Georgia – Joint opinion of the Venice Commission and the OSCE/ODIHR on draft amendments to the Election Code and the Law on Political Associations of Citizens (CDL-AD(2022)047); the follow-up information is available at CDL-PI(2023)003.
- Kosovo – Follow-up opinion to the opinion on the draft law N°08/L-121 on the State Bureau for verification and compensation of unjustified assets (CDL-AD(2022)052); the follow-up information is available at CDL-PI(2023)008.
- Luxembourg – Opinion on the proposed revision of the Constitution (CDL-AD(2019)003); the follow-up information is available at CDL-PI(2023)006.
- Mexico – Opinion on the draft constitutional amendments concerning the electoral system of Mexico (CDL-AD(2022)031); the follow-up information is available at CDL-PI(2023)007.
- Montenegro – Urgent opinion on the Law on amendments to the Law on the President of Montenegro (CDL-AD(2022)053); the follow-up information is available at CDL-PI(2023)004; the follow-up information is available at CDL-PI(2023)005.
- Serbia – Opinion on three draft laws implementing the constitutional amendments on Judiciary (CDL-AD(2022)030); the follow-up information is available at CDL-PI(2023)005.
- Serbia – Opinion on two draft laws implementing the constitutional amendments on the prosecution service (CDL-AD(2022)042); the follow-up information is available at CDL-PI(2023)005.
- Serbia – Follow-up Opinion on three revised draft Laws implementing the constitutional amendments on the Judiciary of Serbia (CDL-AD(2022)043); the follow-up information is available at CDL-PI(2023)005.
- Comments on Recommendation 2235 (2022) of the Parliamentary Assembly of the Council of Europe on challenges to security in Europe: What role for the Council of Europe? In view of the reply of the Committee of Ministers (CDL-AD(2022)036).

10. Ukraine / Georgia / Republic of Moldova – Interim opinions on (draft) laws on so-called "de-oligarchisation"

1. Ukraine - draft interim Opinion on the law on the prevention of threats to national security, associated with excessive influence of persons having significant economic or political weight in public life (oligarchs)

President Bazy Malaurie explained that thee three draft opinions on legislation on 'oligarchs' for Ukraine, Georgia and the Republic of Moldova were linked. Ukraine was the first country to adopt such legislation. The Georgian draft law had been closely modelled on the Ukrainian law and the Moldovan draft law had also been inspired by the Ukrainian law, but it differed more substantively from it. The three opinions had been prepared as interim opinions for two reasons. First, "de-oligarchisation" was a very complex and novel topic, that the Venice Commission had not dealt with before. This issue potentially concerned a wider range of countries. The Commission therefore needed to continue its reflection on this topic, taking into account experience from other countries, which had developed relevant tools in various sectors of public policy. Second, the Commission had been informed that the countries concerned intended to make amendments on the basis of the draft interim opinions. Therefore, the (draft) laws examined in the Commission's draft opinions would change. Even if the Ukrainian law had already been enacted, it had not yet been implemented due to the war.

Ms Bazy Malaurie had received a letter from the Speaker of the Ukrainian Parliament, Mr Stefanchuk, requesting that the adoption of the opinion on Ukraine be postponed because of the martial law regime currently in force in Ukraine and the risk of destabilisation of the country. This request had extensively been discussed in the Enlarged Bureau, which proposed postponing the Ukrainian opinion to the June session, when it would be adopted at the same time as the final

opinions for Georgia and the Republic of Moldova. The Enlarged Bureau based its proposal on the intention of the Commission to continue to work on its final position on this matter, on the need to afford the Ukrainian authorities sufficient time for responding to the Commission's arguments and on the willingness of the Ukrainian authorities to amend the Law. The adoption of other opinions concerning Ukraine, notably the *amicus curiae* Brief, which was on the agenda of the current session (item 17), would not be affected.

The Venice Commission decided to postpone the examination of the draft opinion on the law of Ukraine on the prevention of threats to national security, associated with excessive influence of persons having significant economic or political weight in public life (oligarchs) at its 135th Plenary Session in June 2023.

2. Georgia – draft interim Opinion on the draft law on de-oligarchisation

Ms Nussberger introduced the general approach of the draft interim opinions, noting that the non-transparent influence of the so-called "oligarchs" represent a significant threat to democracy. This phenomenon is linked to the transition period following the break-up of the Soviet Union. Depending on the situation in the countries concerned, "oligarchs" can back governments which execute the oligarchs' wishes or they can support the opposition and fight against the governments. They exercise their influence in a grey zone between legality and illegality, which is why the phenomenon is so difficult to grasp. The EU had requested legislation on "de-oligarchisation" from the (pre-)candidate states. While the problem could be identified relatively clearly, the remedy was not so clear. Ms Nussberger explained that the draft interim opinions identified two possible, distinct approaches to this issue: the "personal" and "systemic" approaches. The personal approach would target specific individuals identified as "oligarchs" and would subsequently curb their political rights, whereas through the systemic approach – which was the one which the rapporteurs supported- specific areas of law, such as legislation on competition, on media concentration or anti-corruption legislation, would be strengthened in order to prevent the possibility of exercising such non transparent influence. While the "personal approach" was generally problematic in terms of standards, some elements related to sanctioning illegal or criminal acts could be acceptable, provided that adequate guarantees be provided. Ms Nussberger underlined that the personal approach carried a strong risk of human rights violations but also of arbitrary application of such legislation against political opponents.

Mr Pinelli presented the Georgian draft interim opinion highlighting problems in the draft law, which had adopted a clear personal approach: the criteria for recognising someone as an "oligarch" were not sufficiently clear, the persons identified as "oligarchs" were stigmatised. There were serious interferences with Articles 8, 10 and 11 ECHR, which were hardly compatible with the ECHR in view of the vagueness of the criteria used, the broad discretion of the Government, the lack of independence/impartiality and the lack of due process and effective remedies. The draft interim opinion contained the general recommendation to revert to a systemic approach, and specific recommendations such as to clarify the criteria for qualifying as "oligarch", to provide for clear procedures respecting the right to private life, to provide full procedural safeguards and remedies and to remove some of the consequences of being designated as "oligarch", such as a total exclusion from participation in public life or a declaration of contacts with "oligarchs" or their representatives for public officials. The interim opinion insisted that systemic measures should be taken in fields such as the independence of the judiciary, competition law, anti-corruption legislation, media ownership, tax legislation, financing of political parties or rules on beneficial ownership.

During the discussion, the vagueness of the term "oligarch" was highlighted. In criminal law, the situation of politicians who abused their position for personal enrichment and businesspersons who influenced the politicians had to be defined very clearly to prevent corruption.

A parallel with lobbying legislation was identified, given that in many democratic countries there is legislation on the registration of lobbyists.

The risk that the government may use the notion of "oligarch" to interfere with the normal process

of democracy was raised. The possibility that other figures, such as philanthropists, may qualify as oligarchs was raised.to the extent that they have an influence on political life. Influential opponents could easily be labelled as an "oligarch". Rich persons could create political parties to infiltrate politics and change the political landscape. Clear standards were needed.

Numerous members insisted that the systemic approach should be favoured.

Several members supported the idea of organising a conference on the subject of money and politics, which should deepen the discussion on these topics on the basis of these opinions.

The Commission adopted the Interim opinion on the draft law on de-oligarchisation of Georgia (CDL-AD(2023)009), previously examined at the Joint Meeting of the Sub-Commissions on Democratic Institutions, Fundamental Rights and the Rule of Law (9 March 2023).

The opinion was prepared under the Quick Response Mechanism (QRM) in the framework of the EU/CoE joint programme Partnership for Good Governance, co-funded by the Council of Europe and the European Union and implemented by the Council of Europe.

3. Republic of Moldova - Draft interim opinion on the draft law on limiting excessive influence in the economic and public life (de-oligarchisation)

Confirming the preference for a systemic approach vis-à-vis a personal approach, Ms Grainne McMorrow highlighted the difficulties of devising appropriate legislation to counter the improper exercise of power influence and control without a political mandate. This had to be done within the legal apparatus and the tools of each country. Gathering evidence was complex. Turning to the specifics of the Moldovan draft law, Ms McMorrow commended the Ministry of Justice which had been constructive and open to amending the draft law where necessary. Ms McMorrow noted that the draft interim opinion questioned the limitation of the designation of potential oligarchs to Moldovan nationals. She then turned to the two-stage decision-making process provided for in the Moldovan draft law, involving first the National De-Oligarchisation Committee and then Parliament, both of which take decisions by qualified majority. Ms McMorrow noted that, while ideally one would advocate a fully independent body taking such a decision, the Moldovan scenario provided additional safeguards as compared to a decision taken exclusively by the executive. Ms McMorrow concluded by recalling that this was an interim opinion and that the Venice Commission reserved its position on the amendments proposed by the Ministry of Justice, notably also as to the proposal of defining the consequences of being designated "oligarch" in the related specific legislation. The whole legislation needed to be assessed in its entirety.

The Minister of Justice of the Republic of Moldova, Veronica Mihailov-Moraru, thanked the Venice Commission for the draft interim opinion. She stated that her Ministry was ready to accept several of the Venice Commission's recommendations, such as the elimination of the nationality criteria, including some independent members in the National De-Oligarchisation Committee, further clarification of the criteria of 'media control holder', the provision of further guarantees in the procedure for designating a person an "oligarch". Concerning other issues, such as the appeal procedure and the consequences stemming from the designation as an oligarch, the Minister of Justice will examine whether other, more appropriate, legal avenues could be pursued. As regards some other aspects, the Ministry of Justice upheld its initial positions. In particular, insofar as caps to financing electoral campaigns are concerned, the Minister of Justice explained that "financing electoral campaigns" in Moldova covers also volunteering and it would be therefore impossible to set limits; moreover, setting limits would only bring oligarchs to indirectly finance electoral process through proxies. As regards the requirement to clarify the criteria of "excessive pressure", the Minister of Justice argued that excessively detailed definitions present further risks and she proposed expanding on the criteria instead in the information note. As regards the obligation to submit annual asset declarations, the Ministry of Justice argued that it would narrow the circle of persons who are subject to such an obligation, but she maintained that tax returns of persons designated as "oligarchs" are of particular interest to society. This interest adequately outweighs the interference with the "oligarchs'" right to respect for their private life. Lastly, the

Minister of Justice informed the Commission that the Ministry would remove the consequences of being designated as an “oligarch” from the draft law and include them in the related sectorial legislation.

During the discussion, the question of whether Parliament should have the power to decide on the designation of an individual as “oligarch” was raised, and whether such decision should rather be an executive act, subject to due judicial control.

Ms Nussberger reiterated that the comparative preference for Parliament had been indicated because, when comparing the different approaches taken, the Moldovan one seemed the least problematic. However, Ms Nussberger acknowledged the constitutional issues at stake. This point would be further elaborated in the final opinion.

The Venice Commission adopted the Interim Opinion on the draft law on limiting excessive economic and political influence in public life (de-oligarchisation) of the Republic of Moldova (CDL-AD(2023)010), previously examined at the Joint Meeting of the Sub-Commissions on Democratic Institutions, Fundamental Rights and the Rule of Law (9 March 2023)

11. Georgia

Draft follow-up Opinion on four opinions on the amendments to the Organic Law on Common Courts

Mr Holmøyvik informed the Commission that this Opinion had been requested by Mr Shalva Papuashvili, Speaker of the Parliament of Georgia. As the Venice Commission had already issued four opinions on previous sets of amendments to this law between 2019 and 2022, the follow-up format had been used for the preparation of the present opinion. The rapporteurs assessed the amendments in the light of these previous opinions, and thus examined the extent to which the authorities had complied with the Commission's previous recommendations. The rapporteurs concluded that the authorities had followed only a few of the Venice Commission's recommendations. In particular, the Law had implemented the recommendations concerning the disclosure of the votes and the identity of the members of the High Council of Justice (HCJ), as well as their reasons, which allowed unsuccessful candidates in the judicial appointment procedure to lodge an effective appeal. The law had also introduced a suspension rule in the appointment procedure in the event of a pending case before the Supreme Court. The draft amendments also proposed a new rule changing the composition of the HCJ to prevent biased members from participating in subsequent decisions.

However, several other key recommendations remained unaddressed. These included: ensuring that the decisions and instructions of the Supreme Court are binding on the HCJ; reducing the term of office of the President of the Supreme Court; resolving quorum issues that would arise in the event of the recusal of several members of the HCJ; introducing an anti-deadlock mechanism in the appointment of lay members of the HCJ by Parliament; and tightening the eligibility requirements for judges of the Supreme Court. In addition, none of the recommendations made by the Venice Commission in its Opinion CDL-AD(2022)010 had been implemented, including those concerning the secondment of judges to judicial posts, the secondment of judges without their consent, the suspension of judges, the grounds for disciplinary liability and the initiation of disciplinary proceedings. These recommendations concerned the powers of the HCJ and affected the internal independence of judges in Georgia. In addition, the Venice Commission had raised concerns about the functioning of the HCJ in its 2022 Opinion (referred to above) on the issues of judicial corporatism and self-interest. It appeared inappropriate that the HCJ had functioned for a long time without the lay members because the Parliament had failed to appoint them by a qualified majority and there was no anti-deadlock mechanism to resolve this issue.

Mr Holmøyvik mentioned that the draft amendments had been prepared by the Georgian authorities as a part of the legislative measures required by the EU Commission in response to Georgia's application for EU membership. In their opinion of 17 June 2022, the EU Commission considered that the priority tasks required Georgia to implement a transparent and effective judicial reform strategy; ensure a judiciary that was fully and truly independent; undertake a thorough reform of the High Council of Justice and appoint the High Council's remaining members. However, the draft amendments did not provide for a holistic reform of the judiciary, including the HCJ. During the meetings, the rapporteurs had been informed that these amendments were only the first step in a comprehensive strategy for judicial reform in the country which the authorities yet planned to undertake.

The Commission adopted the Follow-up Opinion to four previous opinions concerning the organic law on common courts of Georgia (CDL-AD(2023)006).

The opinion was prepared under the Quick Response Mechanism (QRM) in the framework of the EU/CoE joint programme Partnership for Good Governance, co-funded by the Council of Europe and the European Union and implemented by the Council of Europe.

12. Republic of Moldova

1. Draft opinion on the draft law on the Intelligence and Security Service, as well as on the draft law on counter-intelligence and external intelligence activity

Mr Barrett presented the opinion analysing the two draft laws regulating the work of the Intelligence and Security Service (SIS). The opinion acknowledged the difficulties related to the present Moldovan security context as well as the need for reforming the current security and intelligence system. The draft laws were not emergency laws, they introduced permanent changes impacting the population. The opinion, which had been initiated under the urgent procedure, had been eventually converted to an ordinary and could finally benefit from the added value of the discussion at the plenary session. The opinion reflected the contributions of many members of the Venice Commission as well as those of the Moldovan authorities who had showed their awareness of the major issues of concern and their openness to reconsider some of them. The draft laws intended to better respond to the new security threats, to strengthen the efficiency of the SIS, and to separate the intelligence tools from criminal investigations. The draft laws were incomplete, their relationships with other laws in the Moldovan system were not clear. The consultation process for the preparation of these draft laws had been inconsistent but this had now been addressed.

Mr Barrett then highlighted problematic issues of the draft laws, including the need to clearly define the broad powers granted to the SIS; the ambiguous language used to describe the overlapping concepts of duties, obligations, tasks and powers of the SIS; the broad powers delegated to the Director of the SIS to make internal regulations as well as to authorise very intrusive measures; the risk of politicisation; the need to find a balance between autonomy and control; the shortcomings of the internal and external accountability, in particular the gaps in the system of control by the parliament, the public prosecutor and especially the judicial control. Further issues with respect to fundamental rights and safeguards include the far-reaching power to collect information from commercial providers, the lack of exceptions for lawyers and journalists, and the derogation from the data protection regulation. Mr Vermeulen stressed that the rapporteurs were mindful of the precarious situation of the Republic of Moldova and had taken into account the specific geopolitical situation with the Russian interference. The opinion acknowledged the possibility of resorting to exceptional powers under exceptional circumstances, nevertheless the draft laws are meant as a stable framework outside the sphere of emergency laws.

Mr Alexandru Musteaţa, Director of the Intelligence Service of the Republic of Moldova, stated that his country faced an existential risk. An indirect, non-conventional war was ongoing against the Republic of Moldova, which led to the need for intelligence to fight it; the goal of the institution

was, in conformity with the Constitution, to protect the territorial integrity, democracy, the rule of law and freedoms. The law had to do this in a democratic and balanced way.

While the SIS had acted in the last 32 years as a law-enforcement institution (but had not carried out criminal investigations since 2005), it should reinforce its preventive role in a way similar to those existing in a number of European countries. It had broad powers, but it was the only body capable of doing such kind of activity. The law would reflect Articles 8.2 and 15 ECHR, and ensure judiciary, parliamentary and financial control of the SIS. The draft law clarified what intelligence and counter-intelligence was, by detailing the scope of the security mandate, the procedure, the timeframe etc. A revised draft would be prepared and presented to parliament immediately after the adoption of the opinion. It would provide for a special committee with representatives of the Prosecutor General and the Supreme Court of Justice, which would be in charge of making an audit on such issues as to how counter-intelligence is applied or the respect for the principle of proportionality. Concerning external control, the secrecy of information was crucial, including the protection of sources and of the SIS officers. Anyone with access to classified data would be vetted.

Mr Barrett welcomed the establishment of a special committee for *ex post* control.

The Commission adopted the opinion on the draft law on the Intelligence and Security Service, as well as on the draft law on counter-intelligence and intelligence activity of the Republic of Moldova (CDL-AD(2023)008).

The opinion was prepared under the Quick Response Mechanism (QRM) in the framework of the EU/CoE joint programme Partnership for Good Governance, co-funded by the Council of Europe and the European Union and implemented by the Council of Europe.

2. Draft joint Opinion on the draft Law on the external assessment of judges and prosecutors (vetting)

Mr Dimitrov presented the opinion, prepared jointly with DG I, which had been requested by the former Minister of Justice of the Republic of Moldova. This was the third opinion on the vetting of judges and prosecutors of the Republic of Moldova in the past years: the first was on the pre-vetting of candidates, the second was on the vetting of the sitting judges of the Supreme Court. The Constitution does not contain any provisions on the vetting of the magistrates. The scope and the impact of this new phase of the reform was much broader than the previous ones. A number of earlier recommendations had been accepted by the authorities. In particular, the power to dismiss would be vested only in the constitutional bodies, the Supreme Council of Magistracy (the SCM) and the Supreme Council of the Prosecutors (the SCP), and not to the evaluation (vetting) bodies. Secondly, it would be possible to appeal against the decision of the SCM and the SCP to the Supreme Court of Justice (the SCJ). As to the text under consideration, the opinion made several key recommendations: a member proposed by the opposition in the Parliament should be included in the vetting body. A prosecutorial or judicial background should not be an obstacle to membership of the vetting body. Panels which are tasked with examining files of judges and prosecutors should include both “nationals” and “internationals”, and a negative decision should require a special majority (support from representatives of both groups). Several recommendations related to the substantive grounds for the vetting. Rules which did not exist at the time of events should not be applied to the judge/prosecutor. Findings of the vetting bodies should not contradict *res judicata*. The standard of proof – which is defined as a “serious doubt” should be applied only to the work of the vetting body, but not to the decision-making of the constitutional bodies (the SCM and the SCP). The person concerned should be able to refute the accusations against him/her. The thresholds of the “unexplained wealth” should be reviewed in the light of the national economic and social context. The categories of information which may be requested by the vetting bodies should be more strictly defined, and the results of the vetting procedure should not be made public before the decision becomes final. The SCJ should not only be able to send a case back to the SCM/SCP but also to take its own decision. The ban on exercising a legal profession following a negative assessment needs to be revised.

The Minister of Justice of the Republic of Moldova, Ms Veronika Mikhailov-Moraru, thanked the Venice Commission for its readiness to prepare an opinion in such a short time-frame. She explained the importance of the cleansing of the judiciary and the prosecution service in the context of the negotiations related to the accession of the country to the EU. Unfortunately, it was impossible to rely on the existing bodies of judicial governance, which proved to be inefficient. There was wide public support of the vetting initiative, even though some judges were against it. The authorities had tried to take onboard all the previous recommendations of the Venice Commission. The "pre-vetting" bodies had already started working with the support of the international community. Some new issues raised in the current opinion had not been raised previously; however, the authorities agreed to revise the draft in line with the Commission's recommendations. The authorities preferred not to include judges/prosecutors as members of the evaluation commissions, given their proximity with the colleagues and the risk of bias. The practice of the pre-vetting showed that the parliamentary majority did not block the appointment of the members proposed by the opposition. However, the Parliament should be entitled to check whether the member proposed by the opposition satisfies the eligibility criteria. The opposition-nominated member cannot sit on every panel. The assessment criteria set out in Article 12 would not be identical to those used for the pre-vetting: they would be more detailed and specific. The standard of "serious doubts" should be applicable to both phases of the evaluation process, including the assessment by the SCM/SCP. Evidence obtained by the Assessment Committees would not automatically be used in criminal proceedings; therefore, there was no risk of self-incrimination. The SCM/SCP would have the power to reject the proposal of the vetting bodies only once, and in the second round they could take any decision: as constitutional bodies, the SCM/SCP would have the final say. The right of appeal to the SCJ was an important guarantee; the SCJ would be free to take any decision including the return of the case to the SCM/SCP. The ban on the legal profession would be reconsidered.

In reply to a proposal by Mr Mathieu to initiate a general debate on the grounds of disciplinary liability of judges, Ms Bazy Malaurie recalled that the Venice Commission was planning to update its report on the judicial independence in 2023, and it would *inter alia* focus on the questions of the discipline of judges.

The Venice Commission adopted the 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 the external assessment of Judges and Prosecutors of the Republic of Moldova (CDL-AD(2023)005).

13. Bosnia and Herzegovina

1. Draft amicus curiae *brief on the question of the appellate review in the Court of Bosnia and Herzegovina*

Ms Cartabia presented the draft *amicus curiae* brief that had been requested by the President of the Constitutional Court of Bosnia and Herzegovina. The Constitutional Court was reviewing the compliance of Articles 9 (1), 10 (4) and 11(1) (b) of the Law on the Court of Bosnia and Herzegovina with the Constitution and Article 6 (1) of the ECHR. The contested provisions relate to the manner of organisation of the Appellate Division, which is one of the three divisions of the Court of Bosnia presided by the Court's President who is also vested with the power to assign judges to any division and allocate cases to them. The questions asked by the Constitutional Court were 1) whether the organisation of the Appellate Division violated the "principle of two instances" and the principle of independence and impartiality of the "tribunal" under Art. 6 § 1 of the ECHR and 2) whether the power of the Court's President to assign the judges to different divisions and panels of the same court violated the institutional and individual independence of judges guaranteed under Art. 6 § 1 ECHR. Ms Cartabia explained that the two questions were closely intertwined, therefore the draft opinion first examined the question about the violation of

the “principle of two instances” and then addressed the threats to independence and impartiality arising out of the powers of President of the Court.

On the principle of two instances, the ECtHR has consistently held that Article 6 § 1 of the ECHR does not compel the Contracting Parties to set up courts of appeal or of cassation, but where such courts exist, they have to comply with the Article 6 requirements. Article 6 § 1 ECHR establishes the minimum standards of fair trial without stipulating a right to appeal, whereas Article 2 of Protocol no. 7 to the ECHR increases the standard by requiring a right of appeal in the criminal field. In the view of the rapporteurs, the appellate review in the Court of BiH meets the minimum criteria of Article 6 as a higher tribunal within the Court of BiH.

Concerning the powers of the Court’s President, Ms Cartabia explained that the principle of the principle of “lawful” or “natural” judge meant that that judges or judicial panels should not be selected *ad hoc* and/or *ad personam*. Giving a broad discretion to the Court’s President may be seen as contradicting the principle of the “lawful judge” derived from Article 6 of the ECHR, however, the Decision on Determining the Guiding Criteria adopted by the President in July 2022 which had been integrated into the Rules of Procedure by the Plenum in September 2022 imposed constraints on the discretion of the President in this respect. The Guiding Criteria contain rules which arguably render the assignment of judges to the panels more predictable, objective, and permanent. Furthermore, the power of the President to assign cases to specific judges is circumscribed by the operation of the automatic system of allocation of cases. These factors limit the President’s discretion.

Regarding the issue of impartiality arising from the power of the President to reassign judges from the first instance divisions to the appellate divisions and vice versa, Ms Cartabia pointed out that the while there is a theoretical possibility that the President may assign judges to adjudicate the same case in first and second instance, this situation is sufficiently regulated by the provisions on recusal, withdrawal, and disqualification of judges in both criminal and civil procedure codes.

Finally, Ms Cartabia noted that while the rapporteurs concluded that the current appellate review in the Court of Bosnia and Herzegovina would not appear to be in conflict the Constitution and the ECHR, the draft opinion encouraged a further development of the rules on the assignment of judges to the divisions and on the allocation of cases, either in the Rules of Procedure or in the new law which the Ministry of Justice was currently preparing and which envisaged the establishment of two institutionally separate courts at the state level, one for the first instance and one for the appellate jurisdiction.

The Commission adopted the *amicus curiae* Brief on the appellate review in the Court of Bosnia and Herzegovina (CDL-AD(2023)002).

The opinion was prepared under the Expertise Co-ordination Mechanism in the framework of the joint European Union and Council of Europe programme “Horizontal Facility for the Western Balkans and Türkiye”.

2. Draft Opinion on the draft law on the courts

Mr Tuori explained that the draft opinion, requested by the former Minister of Justice of Bosnia and Herzegovina, was closely related to the *amicus curiae* brief (see above), and it was based on two previous opinions, namely the 2012 Opinion on Legal Certainty and the Independence of the Judiciary in Bosnia and Herzegovina and the 2013 Opinion on the draft Law on Court of Bosnia and Herzegovina. The current draft law provided for the creation of two separate instances at the State level – the Court and the High Court, instead of a currently existing system of one single Court comprising the first instance and the appellate division. The first question was the constitutional basis for the creation of the State-level courts: Bosnia and Herzegovina is composed of two entities and the Brčko district; the State has limited powers under the Constitution. While the Constitution is silent on the issue of the judiciary, the establishment of the State Court was necessary to ensure other powers granted to the State level on the basis of the

concept of "implied powers". The Venice Commission had previously found that the establishment of the State Court was constitutionally permissible.

Although the current system of two court instances within one State level court would not be unconstitutional per se, nevertheless, the absence of a separate appellate court may arguably raise questions about the impartiality of the appellate division. The Venice Commission had recommended the establishment of a high court, which would be competent mainly for appeals but also for exercising first instance jurisdiction in some cases. However, there were some outstanding issues, such as the location of the new Court, the jurisdiction of the Court of Bosnia and Herzegovina, and some vague provisions of the draft law, that needed to be addressed. Mr Tuori emphasised that the authorities of Bosnia and Herzegovina have shown great responsiveness to the recommendations, and they had announced that they accepted nearly all of the recommendations of the draft Opinion. This was very positive, and the rapporteurs agreed to reflect this in the conclusions of the Opinion.

The representative of the Ministry of Justice of Bosnia and Herzegovina, Ms Sanela Latić, emphasised that the state of the judiciary in Bosnia and Herzegovina is crucial for the country's post-war recovery, the fight against corruption and organised crime, and the establishment of the rule of law and democracy. The establishment of a separate court of appeal would make the judiciary more predictable and transparent, reduce the risk of arbitrariness and strengthen the capacity of the judiciary of Bosnia and Herzegovina. Although the current system was constitutional and not contrary to international standards, the draft Law on Courts would enhance the internal structure of the judiciary and harmonise the case-law. The draft law had been prepared with due regard to the Constitution and laws of Bosnia and Herzegovina, previous recommendations of the Venice Commission and the opinions of the relevant institutions in Bosnia and Herzegovina. The Ministry of Justice had submitted comments to the draft opinion and accepted most of the recommendations made.

During the discussion, it was welcomed that the State Court of Bosnia and Herzegovina which had started as an enactment by the High Representative, would now be established according to the local needs.

The Commission adopted the opinion on the draft Law on the Courts of Bosnia and Herzegovina (CDL-AD(2023)003).

This opinion was prepared under the Expertise Co-ordination Mechanism in the framework of the joint European Union and Council of Europe programme "Horizontal Facility for the Western Balkans and Türkiye".

14. Montenegro

Draft follow-up opinion on the opinion on the draft amendments to the law on the Judicial Councils and Judges of Montenegro

Ms Cartabia explained that following the adoption of the Opinion on draft amendments to the Law on the Judicial Council and Judges (CDL-AD(2022)050) in December 2022, the Minister of Justice of Montenegro had revised the draft amendments and requested a follow-up opinion on the revised draft law. The draft follow-up opinion would only examine to what extent the recommendations made in the December opinion had been followed; seven major points were identified. At the outset, the revised draft had not addressed the recommendation that work-related rights of judges such as retirement age and salary ought to be protected in the law. The revised draft amendments fully addressed the recommendation concerning the reduction of the cooling-off period from 10 to 5 years insofar as the "political" incompatibility is concerned, including by limiting such incompatibility to people who held positions of responsibility within a party. Third, the revised draft amendments had not addressed the recommendation to limit the election of an acting president of the Supreme Court to exceptional cases. On the contrary, the revised draft amendments had introduced a new provision providing for an election of an acting president of any court in case of expiry of the mandate. Fourth, the revised draft amendments

had improved the criteria for professional evaluation of judges. However, some further refinement was needed, for example, on the number of overturned decisions as a criterion for the evaluation of judges and on the evaluation of judges of the Supreme Court. This recommendation had been therefore only partly followed. Fifth, the revised draft amendments had introduced a clearer distinction between disciplinary and ethical levels. Sixth, the revised draft amendments had struck a fairer balance between offence committed and sanctions by modifying some provisions on disciplinary sanctions. Some concerns remained as concerns the dismissal from the Judicial Council following a disciplinary sanction, regardless of its seriousness. This recommendation had therefore been only partially followed. Lastly, the draft follow-up opinion noted that the revised draft amendments had not addressed the recommendation to give only to the Judicial Council the power to trigger disciplinary proceedings against a judge. Ms Cartabia concluded that the revised draft amendments had improved the quality of the draft law and that the Venice Commission confirmed its overall previous assessment of the law. However, some elements still needed to be tackled to ensure full compliance with Venice Commission's recommendations.

The Commission adopted the follow-up opinion to the opinion on the draft amendments to the Law on the Judicial Council and Judges of Montenegro (CDL-AD(2023)011).

The opinion was prepared under the Expertise Co-ordination Mechanism in the framework of the joint European Union and Council of Europe programme "Horizontal Facility for the Western Balkans and Türkiye".

15. Azerbaijan

Draft joint opinion on the Law on Political Parties in Azerbaijan

Ms Deskoska informed the Commission that the Secretariat of the Venice Commission had contacted the authorities of Azerbaijan in order to organise a visit and open a dialogue for the preparation of the opinion, but the latter had declined, which was regrettable. Meetings had been organised with NGOs and some political parties.

The revision of the law had not been adopted through an open, transparent, broad, inclusive and participatory process, as underlined in the Venice Commission-ODIHR Joint Guidelines on Freedom of Association. On the substance, while there were already obstacles to political competition in the previous law, this problem had become even more acute with the new law. In particular, the increase in the number of members necessary to create a political party, which would also apply to existing parties, would have a significant adverse impact. Among other problems, the Ministry of Justice would have access to the registers of political parties twice a year, while it was not an independent body as previously recommended, and it could exercise a very strict monitoring on party activities, e.g. by the control of the conformity of party behaviour with their own charter or of the obligations for political parties to inform about agreements with international partners; other rules were so prescriptive that they went against internal organisational autonomy of the parties, e.g. concerning the name of the parties. Due to the plurality electoral system applied, the percentage of seats of many parties was much lower than their percentage of votes; the draft opinion therefore advised to allocate funds on the basis of the number of votes rather than on the number of seats. The rule according to which the membership fee could amount to the highest allowed donation could lead to unfair financing due to the lack of transparency of the fees – while the law provided for donations to be transparent; the draft opinion underlined that data protection rules should be respected. The draft opinion also recommended reconsidering the provisions on the need for members of parties to be citizens; on the prohibition of multiple membership; on the exclusion of holders of religious "positions" (a vague concept); and to better ensure gender representation and inclusion of people with disabilities.

Ms Anne-Lise Chatelain, Head of the ODIHR Legislative Support Unit, and Mr Holmøyvik insisted that the opinion had to criticise the too vague wording of restrictive provisions, even if similar texts might exist in other European countries. The absence of sufficient control of the conformity with the European Convention of Human Rights by domestic courts had been confirmed by the ECtHR and should be taken account of. On the rights of foreigners and stateless persons, Ms

Bílková pointed out that the opinion did not choose a specific option but simply noted the trend to give more rights to foreigners while considering the possible restrictions admitted under the ECHR as well as the provision of certain rights by the Constitution of Azerbaijan.

On the issue of whether extremism should be violent to enable the prohibition of a party, Ms Aslaoui considered that "violent extremism" was nearly a pleonasm. Parties created on a religious or gender basis would fall under this definition. Ms Granata-Menghini recalled that the main problem were very vague definitions of extremism. That had been the case in texts examined previously by the Commission.

Mr Efstathiou informed the Commission that the rapporteurs of the Parliamentary Assembly would visit Azerbaijan and that the legislation on political parties was part of the scope of the visit.

The Commission adopted the Joint Opinion of the Venice Commission and the OSCE/ODIHR on the Law on Political Parties of Azerbaijan (CDL-AD(2023)007), previously approved by the Council for Democratic Elections.

16. Kyrgyzstan

Draft opinion on the amendments to the Law on the Rules of procedure of the parliament of the Republic of Kyrgyzstan The Chair of the session informed the Commission that the member in respect of Kyrgyzstan, Mr Baetov, who as Minister of Justice had requested the opinion, would not take part in the discussions and in the voting.

Ms Bilková presented the opinion. The request contained five questions. Two questions concerned the *ex-ante* review of the compatibility of the Kyrgyz Constitution with international treaties to be ratified by the country. The other three questions concerned the separation of powers and the nature and effects of the two legal acts under review. On the basis of the provisions of the Constitutional Law, the draft law amending Art. 65.2.4 of the Law on the Rules of Procedure of Jogorku Kenesh settled the problem of an overburdening of the Constitutional Court and determined the non-compulsory nature of the control of the constitutionality of a non-ratified treaty by specifying that such control only takes place when the executive power considers it necessary. However, if the draft law were interpreted to impose a restriction of the right of the opposition (parliamentary factions, deputy groups) to seek an opinion of the Constitutional Court on the compatibility with the Constitution of an international treaty, this would be problematic and could raise questions of constitutionality. As the draft law neither imposes new obligations on any individual or state body, the temporal application of the draft opinion did not result in a breach of the principle of non-retroactivity.

Mr Baetov, thanked the rapporteurs and the Secretariat for their work and informed the Plenary about the inter-institutional dispute on this issue between Parliament, the Constitutional Court and Government. Referring to the issues addressed in the draft opinion, the control of the constitutionality of international treaties before their ratification, and the hierarchy of norms, Mr Baetov pointed out that the opinion would be important to harmonise parliamentary procedures with the Constitution and constitutional laws to avoid negative implications for the rule of law and constitutionalism. The relevant institutions had agreed to wait for the adoption of the opinion and to explore it.

The Commission adopted the Opinion on the amendments to the Law on the Rules of procedure of the parliament of the Republic of Kyrgyzstan (CDL-AD(2023)001).

17. Ukraine

Draft amicus curiae *brief on certain questions related to the procedure for appointing to office and dismissing the Director of the National Anti-Corruption Bureau of Ukraine and the Director of the State Bureau of Investigation*

Mr Ojanen informed the Commission that the draft *amicus curiae* brief had been requested by the Acting President of the Constitutional Court of Ukraine. The five questions put by the Constitutional Court related to the procedure of appointment of the Directors of the National Anti-Corruption Bureau of Ukraine (NABU) and the Director of the State Bureau of Investigation (SBI). These questions can be divided into two groups: procedural questions (regarding the possibility of the Constitutional Court to adopt an opinion during the martial law) and substantive questions (regarding the compatibility of the draft constitutional amendments with certain provisions of the Constitution).

On the procedural questions, the brief offered two possible interpretations of Article 157.2 of the Constitution. On the one hand, it is possible to argue that this Article excludes a possibility for the Constitutional Court to adopt an opinion as it is an integral part of the process of constitutional amendment, which is prohibited during the martial law. An alternative interpretation would be to consider that Article 157.2 prohibits the adoption of the constitutional amendment, but not the preliminary steps in this process (such as obtaining an opinion of the Constitutional Court). The draft opinion expressed a slight preference in favour of the second, less strict interpretation of Article 157.2 of the Constitution. As to the legal consequences of the opinion of the Constitutional Court, the brief took the view that after the martial law is lifted, the opinion issued by the Constitutional Court retains its validity and binding nature.

Ms Nussberger informed the Commission that the substantive questions of the request concerned the compliance of the draft amendments with the principle of separation of powers and with the requirements of checks and balances, and their possible impact on democracy, the respect of the rule of law and the protection of human rights and freedoms. Articles 157 and 159 of the Constitution establish that the Constitution cannot be amended if this would result in the abolition or restriction of human rights or liquidation of the independence or violation of the territorial indivisibility of Ukraine. These provisions do not refer to the wider principles mentioned in the question of the Constitutional Court. While a literal interpretation of Article 159 would not allow the Constitutional Court to verify the compatibility of the amendments with the principles of the separation of powers, checks and balances, and the rule of law, a broader interpretation of the remit of the constitutional review exercised by the Constitutional Court of Ukraine is also possible, but requires special caution.

As for the principle of separation of powers and the requirements of checks and balances, the proposed draft constitutional amendments expressly require the consent of the Verkhovna Rada and a selection of candidates on a competitive basis as a precondition for the appointment of the NABU and SBI directors by the President. This fulfils a minimum requirement of parliamentary influence and control over the executive and does not overstep the boundaries of areas reserved for legislative, executive, or presidential powers. As regards the compatibility of draft constitutional amendments with human rights provisions of the Constitution, after identifying the rights which could be potentially affected and analysing the potential implications caused by the appointment and dismissal process of the Directors of the NABU and the SBI, the draft *amicus curiae* brief concluded that no conflict with those provisions seemed to arise. In any case, the final decision whether the proposed amendments create a conflict with the human rights provisions of the Constitution remained with the Constitutional Court of Ukraine.

The Commission adopted the amicus curiae brief relating to the procedure for appointing to office and dismissing the Director of the National Anti-Corruption Bureau and the Director of the State Bureau of Investigation of Ukraine (CDL-AD(2023)004).

18. Report of the Meeting of the Sub-Commission on Working Methods (9 March 2023)

M. Newman rappelle que le rapport d'évaluation de la Commission comprend un certain nombre de recommandations visant notamment à améliorer l'efficacité de la Commission et à en renforcer l'apparence d'indépendance. Les conclusions de la réunion de la Sous-commission sur les méthodes de travail de décembre 2022, soumises à la Commission à la précédente session, ont été retenues dans les documents présentés à cette session.

La Sous-commission a préparé tout d'abord un projet de « principes de conduite pour les membres, les membres suppléants et les experts de la Commission européenne pour la démocratie par le droit (Commission de Venise) » qui est en effet un code de déontologie/d'éthique.

Le règlement intérieur de la Commission a été révisé en conséquence et mis à jour.

La Présidente Bazy Malaurie ajoute, en ce qui concerne les conflits d'intérêts, qu'il est important que les exigences que la Commission a envers les autres s'appliquent à ses propres membres. Elle attire l'attention de la Commission sur l'importance de la disponibilité des membres comme des suppléants pour le travail de la Commission (avis, missions, sessions plénières, conférences).

La Commission adopte :
- **Les Principes de conduite pour les membres, les membres suppléants et les experts de la Commission européenne pour la démocratie par le droit (Commission de Venise) (CDL-AD(2023)012) ; et**
- **le Règlement intérieur révisé de la Commission (CDL-AD(2023)013).**

19. Report of the Joint Meeting of the Sub-Commissions on Democratic Institutions, Fundamental Rights and the Rule of Law (9 March 2023)

All the points discussed during the Joint meeting were taken up during the plenary session.

20. Adoption of the Annual Report of Activities 2022

With a view to adoption of the draft 2022 Annual Report of Activities (CDL(2023)017), the Secretary of the Commission, Ms Granata Menghini, presented a global view of the activities conducted in 2022. Since 2020 the number of adopted opinions had been increasing structurally and by 2022 it practically doubled: in 2022 50 texts were adopted (47 opinions and 3 general texts). The 47 opinions concerned 20 member States including three non-European countries (Chile, Mexico and Tunisia, all three concerned constitutional reforms); 32 opinions were adopted upon requests by the countries themselves, 8 – upon request by PACE. This proportion 5:1 was stable and could be interpreted as the PACE's encouragement of the member States to seek Commission's advice; PACE itself requested opinions only if when the authorities would not do so themselves. Also, the number of *amicus curiae* briefs doubled: in 2022, 6 briefs were prepared and already 2 briefs were adopted during the March 2023 session, confirming the trend. The Commission was more and more associated with the ongoing reforms in Member States which prompted streamlining measures of its activities: e.g. the establishment of the new type of "follow-up opinions" gave more visibility to the follow-up given to the Commission's recommendations. The ECtHR continued to refer to the Commission's opinions and general texts, so did the EU: the European Commission's 2022 Rule of Law Report contained references to the Commission's texts regarding 19 EU member States.

The Annual Report contained a comprehensive analysis of the topics dealt with by the Commission in 2022: the rule of law, the composition of high judicial and prosecutorial councils, anti-deadlock mechanisms, integrity of judges, law making procedures as well as numerous fundamental rights issues (such as the right to life, right to a fair trial, right to private life, freedom of expression, non-discrimination, property and social rights), and free and fair elections. Six opinions were prepared jointly with the OSCE/ODIHR; the Code of Good Practice in Referendums had been revised and the Commission provided legal advice to three PACE election observation missions. Ms Granata-Menghini also outlined the major activities in the field of the constitutional justice, including the 5th congress of the World Conference on Constitutional Justice. As concerns activities conducted beyond Europe, they were mostly funded through joint EU-CoE projects. The Secretary expressed her gratitude to the EU for the funding and to the Committee of Ministers for their support (in particular, for the creation of two additional posts). She and President Bazy Malaurie saluted the Secretariat for their competences, efficiency, professionalism and dedication.

The President informed the Commission that the Committee of Ministers decided from 2023 onwards to exchange views with the Venice Commission twice a year.

The Commission adopted the Annual Report of Activities 2022 (CDL-AD(2023)014).

21. Information on Conferences and Seminars

M. Buquicchio informe la Commission de plusieurs réunions qu'il avait tenues à l'occasion de la conférence internationale organisée le 28 février 2023 à Rabat à l'occasion du 20ème anniversaire de l'Institution Médiatrice du Maroc. Il a notamment tenu une réunion avec M. Field, l'Ombudsman de l'Australie occidentale, qui préside l'Institut international de l'Ombudsman. Cette institution compte environ 200 médiateurs venant de quelque 100 pays. L'institut a activement participé à la rédaction des « Principes de Venise ». M. Field a informé M. Buquicchio que depuis le 15 décembre 2022, le Haut-Commissariat des Nations Unies aux droits de l'homme (HCDH) a été chargé d'assister les pays membres de l'ONU dans la mise en œuvre des Principes, faisant preuve de la reconnaissance mondiale du document. Cet avancement présente néanmoins un défi car l'HCDH pourrait être emmené à interpréter les principes sans garantie de convergence des interprétations. La pratique des avis conjoints avec l'OSCE/ODIHR pourrait servir d'exemple pour achever une telle convergence et aider à éviter le *forum shopping*. Le Secrétariat de la Commission participera aux consultations avec l'HCDH sur ce point le 22 mars 2023.

A la même occasion, au cours d'un autre échange de vues avec M. Marc Bertrand, Président de l'Association des Médiateurs de la Francophonie et médiateur de la Wallonie, M. Buquicchio avait appris que l'Association souhaitait développer les relations plus étroites avec son homologue ibéro-américain. Le renforcement de la coopération avec cette région du monde est particulièrement important pour de nombreux pays membres du Conseil de l'Europe, comme réitéré au sein du Committee de Ministres et de l'APCE. Cette dernière a récemment confié la préparation d'un rapport sur l'amélioration des relations entre le Conseil de l'Europe et le monde ibéro-américain à M. Antonio Gutiérrez Limones, membre de la Commission des affaires politiques et de la démocratie de l'APCE.

En outre, une nécessité récurrente de former le secrétariat des institutions de médiateurs a été vocalisée par l'ombudsman de la République centre-africaine.

L'ancien ministre de la Justice du Chili, M. Hernán Larraín Fernández, a informé M. Buquicchio que la réforme constitutionnelle sur laquelle avait travaillé la Commission de Venise en 2022 (cf. l'avis CDL-AD(2022)004), n'était pas approuvée par le référendum et que le nouveau processus a été lancé. Une nouvelle Convention constitutionnelle et un groupe d'experts ont été formés et M. Hernán Larraín Fernández présidait cette dernière. M. Buquicchio a fait savoir que la Commission était à disposition des autorités pour assister le processus de cette nouvelle réforme constitutionnelle au Chili.

La Présidente remercie M. Buquicchio pour son engagement continu pour la Commission de Venise.

The Commission was also informed of the following upcoming meetings:

- *the Joint Council on Constitutional Justice - Sofia, 23-24 April 2023)*

Mr Dürr recalled that the Joint Council on Constitutional Justice (JCCJ) is composed of two parts: The Sub-Commission on Constitutional Justice and the liaison officers appointed by the courts in member and observer countries of the Venice Commission. The co-chairs of the JCCJ are Mr Knežević and Mr Valentin Georgiev, the liaison officer of the Constitutional Court of Bulgaria, which will host the JCCJ meeting in Sofia in April. The 1st day of the JCCJ meetings is always devoted to a training on contributing to the Bulletin of Constitutional Case Law, CODICES and the Venice Forum, followed by the formal meeting of the JCCJ, which steers the cooperation.

The second day of the JCCJ is a "mini-conference". The theme in Sofia are the measures taken by the member states in response to the COVID-19 crisis and the relevant case-law.

- Conférence sur le patrimoine constitutionnel européen – Strasbourg, 4-5 mai 2023

La notion de « patrimoine constitutionnel européen » a été identifiée par la Commission de Venise il y a bientôt trois décennies. Cette notion est maintenant reconnue et reprise.

C'est ainsi que l'Université de Strasbourg et la Fondation Marangopoulos pour les droits de l'homme organisent un colloque international intitulé « Le patrimoine constitutionnel européen : entre progression et régression », qui vise à en examiner les composantes – sa composition -, avant sa déconstruction et sa reconstruction.

La conférence part du postulat de l'existence d'une certaine homogénéité entre les normes en vigueur dans l'ancien continent et révèle, dans une perspective plus large, le succès indéniable du projet d'intégration européenne. L'objectif du colloque est double. D'une part, constater, à travers la diversité des expériences nationales, l'existence d'un certain nombre de principes communs d'organisation politique et de fonctionnement qui sont regroupés dans la notion de patrimoine constitutionnel européen. D'autre part, réfléchir sur les projections et les perspectives d'avenir à l'aune d'une Europe tiraillée par des crises successives et certains leaders politiques qui aspirent à réécrire le récit européen et créer un nouvel imaginaire collectif.

La Commission sera représentée par quatre intervenants, à commencer par sa Présidente, qui traiteront non seulement du patrimoine constitutionnel européen en général, mais aussi de son aspect électoral et de son interaction avec le constitutionnalisme latino-américain.

- PACE Conference on Elections in Times of Crisis – Challenges and Opportunities – in Bern on 9 and 10 May 2023

This Conference was being organised by the Parliamentary Assembly in co-operation with the Swiss Parliament in the framework of the 60th anniversary of the accession of Switzerland to the Council of Europe. The organisers noted that in the last three years, the democracies of Europe had been hit by successive dramatic challenges to the functioning of their democratic institutions. Just as the world was emerging from the unprecedented global shocks of the Covid-19 outbreak, Europe's peace and stability were undermined by the Russian war of aggression in Ukraine and its far-reaching consequences.

One of the aims of this conference was to provide policy recommendations, including to the Council of Europe 4th Summit of Heads of State and Government on 16-17 May 2023 in Reykjavik, for developing guidelines on strengthening the resilience of democratic institutions to emergencies and their ability to deliver in uncertain times. The Venice Commission and the Congress would be represented by four participants, including its President.

- International Conference on Cybersecurity and Elections in Madrid from 10 to 12 May 2023.

This event was part of a series of activities of the Venice Commission in the field of new technologies and elections, which had already led to a report and guidelines, while artificial intelligence and electoral integrity, respectively security and elections had been the subject of two European conferences of electoral management bodies in the last five years.

The Conference would be organised around two topics: electoral processes, democracy and rights; disinformation, technology and media; while the main subtopics would be: the hybrid threat and its link to national security through democratic institutions and processes; the global electoral justice network; disinformation campaigns and their risks for democracy: creating a framework for their regulation? media: information, opinion and disinformation; guarantees of information

rights in electoral periods. The Venice Commission would be represented by six members and experts.

La Présidente Bazy Malaurie rappelle qu'elle est invitée au sommet des chefs d'Etat et de gouvernement à Reykjavik.

22. Report of the meeting of the Council for Democratic Elections (9 March 2023)

Mr Barrett recalled that the Joint Opinion of the Venice Commission and the OSCE/ODIHR on the Law on Political Parties of Azerbaijan had been dealt with under item 15. He informed the Commission about the re-election of Mr Srdjan Darmanović as Chair and of Mr Stewart Dickson as Vice-Chair of the Council for Democratic Elections, until the entry into force of the new rules of procedure in October 2023. The Council had held a discussion on co-operation in the field of election observation between the various international organisations and their bodies (Assembly and Congress for the Council of Europe, ODIHR and OSCE/PA for the OSCE, as well as the Venice Commission as a legal advisor to PACE).

23. World Conference on Constitutional Justice

Mr. Dürr informed the Commission that the Bureau of the World Conference on Constitutional Justice (WCCJ) would hold its 20th meeting in Venice on 11 March 2023 in the afternoon. He reminded the Commission that the WCCJ had 121 member courts in 117 countries on all five continents. According to the Statute of the WCCJ, the Venice Commission acted as the Secretariat of the WCCJ. The Bureau was composed of representatives of ten regional and linguistic groups of constitutional and supreme courts (European, Asian, Eurasian, African, Southern African, Ibero-American, Francophone, Arabic, Portuguese-speaking and Commonwealth), four individual courts elected in respect of Africa, the Americas, Asia and Europe, and the previous and next host of the WCCJ congresses. The 20th meeting of the Bureau would discuss a *post mortem* of the organisation of the 5th Congress (Bali, 4-7 October 2022), amendments to the Statute, the host of the 6th Congress (most likely the Constitutional Court of Spain), support for member courts (see statement on behalf of the WCCJ in support of the Constitutional Court of the Central African Republic) as well as more technical points.

24. Other business

Information on recent case-law of the Constitutional Tribunal of Peru and of the European Court of Justice

Mr Gustavo Gutiérrez Ticse, recently elected judge of the Constitutional Court of Peru, shared with the Commission the difficulties experienced by the various democratic institutions in Peru in recent years. Citizens and institutions turned to the judiciary to preserve the institutional balance of powers, but the judiciary had not been able to settle these issues. The election of the judges of the Constitutional Court and of the Ombudsman took nearly two years. As a result, both institutions had been paralysed. That was why the Constitutional Court had issued decision 74/2023 of 23 February 2023, which limited judicial control over the decisions of Congress. This decision ought to be studied by the Commission as it would constitute an important reference in preservation of the balance of powers. It was important for the judges of the Constitutional Court to have the support of the Commission.

Ratification par l'UE de la convention d'Istanbul - jurisprudence récente de la Cour de justice de l'Union européenne (CJUE)

M. André Bouquet, Conseiller juridique principal par intérim de la Commission européenne, Service juridique - Équipe PESC et relations extérieures, informe la Commission que la ratification de la Convention d'Istanbul avait été bloquée au sein de l'UE. Le Conseil européen avait considéré que la ratification de la Convention rééquerrerait l'unanimité des États membres de l'UE. Cette question avait été portée devant la CJUE par le Parlement européen et la Commission européenne avait convaincu la Cour que seule la majorité qualifiée était nécessaire.

Suite à cet avis, le Conseil de l'UE a enfin entamé la procédure de ratification qui est actuellement pendante devant le Parlement et la décision correspondante est attendue en juin. M. Bouquet estime que tant les avis de la Commission de Venise sur la Convention d'Istanbul que les efforts de la Commission européenne ont contribué à promouvoir la ratification de la Convention.

25. Dates of the next sessions

135th	plenary session	**9-10 June 2023** **(the dates have been changed due to the works at the Scuola)**
136th	plenary session	6-7 October 2023
137th	plenary session	15-16 December 2023

Sub-Commission meetings as well as the meeting of the Council for Democratic Elections will take place on the day before the Plenary Sessions.