

25 YEARS

**VENICE
COMMISSION**
Annual report
of activities 2014



European Commission
for Democracy through Law

Council of Europe, 2015



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**European Commission
for Democracy through Law —**

The Venice Commission of the Council of Europe

Annual report of activities 2014

Council of Europe, 2015

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**I. Working for democracy through law –
An overview of Venice Commission activities in 2014**

I. Working for democracy through law – An overview of Venice Commission activities in 2014

1. Member States

Accession of new member States

On 12 September 2014, Kosovo¹ became the 60th Member of the Venice Commission.

Voluntary contributions

In 2014, the Commission received voluntary contributions from the government of Azerbaijan, from the Italian government (*Regione Veneto*) for the organisation of the plenary sessions and from Norway for co-operation with the countries of the Southern Mediterranean.

2. Main activities

Key figures

The Commission adopted 4 opinions on constitutional reforms and issues and 31 opinions on legislative texts or specific legal issues. It adopted 4 reports of a general nature and 2 sets of guidelines, published 4 Bulletins of Constitutional Case Law, (co)organised 28 seminars and conferences, provided pre-electoral assistance to 6 countries and legal support to 9 election observation missions as well as comparative law elements to constitutional courts in 34 cases. In 2014, 11 courts joined the World Conference on Constitutional Justice, bringing the total number of members to 94.

1. At its 1202nd meeting the Committee of Ministers admitted Kosovo to the European Commission for Democracy through Law (Venice Commission) and decided that the current practice of using a footnote for references to Kosovo should stop with immediate effect within the Venice Commission.

Scientific Council

Three thematic compilations of Venice Commission opinions and studies were up-dated during 2014, on freedom of association, on freedom of religion and belief and on freedom of assembly. The Scientific Council prepared two conferences co-organised by the Commission: on Transparency and the rule of law as pre-conditions of equitable and sustainable development” (Rome, 9 October 2014) and on “The impact of constitutional processes in post-communist transformation” (Yerevan, November 2014).

In 2014, the Venice Commission formalized the existence of the Scientific Council by adopting a new article in its Rules of Procedure (Article 17a).

Democratic institutions and fundamental rights

Constitutional reforms

In 2014, the Commission was involved in the constitutional reform processes in **Armenia, Bosnia and Herzegovina, Georgia, Romania, “the former Yugoslav Republic of Macedonia”**, and in **Ukraine**. Some of those reforms were very ambitious, such as in Armenia where the proposed model shifts the state towards a parliamentary republic. The authorities of “the former Yugoslav Republic of Macedonia” introduced a package of seven constitutional amendments touching upon various constitutional matters without, however, changing the core principles of the functioning of the state.

In its Opinion on the concept paper on the constitutional reform in **Armenia** the Commission praised the general

direction taken by the reform and called for further elaboration of constitutional provisions.

In the opinion on the amendments to the **Romanian Constitution** the Commission observed that certain improvements had been made to an earlier draft, but the competencies and powers of different branches of government vis-à-vis each other, as well as checks and balances, were not properly and consistently delimited.

The Commission continued to work with the authorities of **Ukraine** where, after the fall of the previous regime, there was a pressing need for a comprehensive reform of the State structures. The Commission issued an opinion criticising the “independence referendum” in Crimea as anti-constitutional and conducted in defiance of the rules of democratic procedure. In parallel, the Commission assessed the (later withdrawn) **Russian** draft law on admission of new subjects to the Russian Federation and concluded that this draft law was in clear violation of international law; the draft was abandoned by the State Duma.

The Commission further assessed the draft amendments to the **Ukrainian Constitution** submitted by President Poroshenko. The Commission welcomed the move towards the decentralisation of the state but expressed concern about the growing powers of the president. The Venice Commission also urged the Ukrainian authorities to make the process of constitutional reform more inclusive and transparent.

Functioning of democratic institutions

At sub-constitutional level the Commission worked in three distinct spheres; it analysed legislation concerning the functioning of democratic institutions, the protection of fundamental rights and freedoms, and the strengthening of an independent, professional and efficient judiciary.

Three opinions of the Commission concerned State institutions. The municipal reform in **Azerbaijan** raised the concerns of the Commission since some of the proposed amendments put the independence of the bodies of local self-government at risk.

An Opinion on the draft legislation on the intelligence and security service of the **Republic of Moldova** was prepared jointly with the Directorate of Human Rights (DHR) of the Directorate General of Human Rights and Rule of Law (DGI) of the Council of Europe. The opinion focused, *inter alia*, on the powers of the security forces to conduct secret surveillance and the procedural guarantees attached thereto.

The Commission also examined the new **Ukrainian** law on lustration. The Commission’s conclusions (which were adopted as an interim opinion) were very critical: without disapproving the idea of lustration as such, the Commission stressed that the law was formulated in overly broad terms which created a risk of abuse and political prosecution.

Protection of fundamental rights

The Commission also adopted a considerable number of opinions on fundamental rights issues.

The issue of the internal autonomy of non-governmental organisations was raised in an opinion which concerned the amended law on NGOs of **Azerbaijan**. The Commission criticised it as excessively restrictive and burdensome for non-governmental organisations, especially for those NGOs which receive foreign funding.

In an opinion concerning **Georgia** the Commission welcomed the attempt of the domestic authorities to amend procedural codes in order to refine the admissibility criteria for cassation appeals. However, the Commission warned that much would depend on the future judicial

practice of the application of the admissibility criteria, which should not be too restrictive or discriminatory.

The Commission assessed draft legislation on religious associations in **Kosovo** and concluded that the distinction between traditional confessions and new religious communities insofar as access to legal personality is concerned might be discriminatory. The Commission also warned the authorities of Kosovo against excessive interference in the internal structure and management of the religious communities.

The question of foreign-funded organisations was at the focus of the Commission's opinion on the **Russian** law on "foreign agents". The Commission was strongly against stigmatising foreign-funded NGOs by labelling them as "foreign agents"; it further criticised cumbersome reporting obligations introduced for such NGOs and the vagueness of the concept of "political activities" associated with this status.

Finally, the Commission served as *amicus curiae* for the **Constitutional Court of Georgia** in relation to two pending cases. The first case concerned the right of public broadcasters to bring constitutional complaints concerning the alleged interference with their independence. The second case concerned the question of whether an attack on the reputation of a deceased person might give rise to a defamation claim.

Judicial reform

In 2014, the Commission prepared over a dozen opinions relating to ordinary judiciary (for constitutional courts see Chapter III below). The main issues raised in those opinions related to the appointment and discipline of judges, the composition and mandate of judicial councils, the powers of the prosecutors, etc.

In an opinion concerning **Albania**, the Commission examined draft amendments to the Civil and Criminal

Procedure Codes which were expected to decrease the backlog of cases pending before the Supreme Court and to reduce the length of the proceedings. The Commission expressed doubts as to the efficiency of the measures proposed.

An opinion on the evaluation system for judges in **Armenia** expressed concern about the practice of informal instructions sought by the lower judges from the higher courts.

Three opinions touched upon judicial reform in **Georgia**. The first (see above) concerned access to the court of cassation. The second, prepared together with DGI, concerned draft amendments to the organic law on courts of general jurisdiction and the process of selection of candidates to judicial positions. The third opinion on the Georgian judiciary, also prepared with DGI, concerned the draft law on disciplinary liability and disciplinary proceedings against judges, and the Commission's assessment was largely positive.

An opinion on the draft amendments to the legal framework on the disciplinary responsibility of judges in the **Kyrgyz Republic** recommended defining in explicit and clear provisions the grounds for bringing judges to disciplinary responsibility.

The opinion on seven amendments to the Constitution of "**the former Yugoslav Republic of Macedonia**" concerned, in particular, the composition of the Judicial Council. The Commission expressed concern with respect to the over-representation of judges in the new composition of the Council which created the risk of corporatism.

The general problem of corruption in the judiciary was at the centre of an *amicus curiae* brief for the Constitutional Court of the **Republic of Moldova** on judicial immunity. The Commission came to the conclusion that, while such

immunity exists in a number of countries, there is no common European standard requiring it.

In 2014, the Commission issued an opinion on the draft legislation on the judicial and prosecutorial council and the rights and duties of judges in **Montenegro**. Two other opinions on Montenegro concerned the draft law on the offices of the State Prosecutor and of the Special State Prosecutor – a special body set up to combat corruption. The draft laws under examination deserved an overall positive assessment, but certain recommendations as to further improvements were made.

Two opinions were adopted in respect of **Serbia**: one on the draft amendments to the Law on the High Judicial Council of Serbia, and another on the draft amendments to the Law on the State Prosecutorial Council of Serbia. The issues raised in the two opinions were very similar and the Commission's main criticism was directed against the new dismissal procedure which included a vote of confidence.

Transnational activities

In 2014, the Commission adopted a “Report on the **Protection of Children's Rights: International Standards and Domestic Institutions**”. The report contained an overview of international standards and identified domestic good practices in the constitutional protection of children's rights and of their enforcement.

In 2014, the Commission completed work on the Joint Guidelines on **Freedom of Association**, started in 2013. These guidelines were prepared together with the OSCE/ODIHR and will serve as a reference text not only for the Commission itself, but also for other international organisations, governments and NGOs. In addition, the Commission issued another benchmark document, together with the OSCE/ODIHR: Guidelines on the **legal personality of religious or belief communities**.

These new guidelines were intended to supplement and update the more general 2004 Guidelines for review of legislation pertaining to religion or belief.

The Commission endorsed a “Comparative study on national legislation on **freedom of peaceful assembly**”, which was prepared at its request by the Max Plank Institute (Germany).

In addition, the Commission adopted a report on the **lifting of parliamentary immunities** in co-operation with an expert from the Group of States against Corruption (GRECO). It also adopted an *amicus curiae* brief for the European Court of Human Rights on specific questions concerning **parliamentary committees of inquiry** (case of *Rywin v. Poland*).

It also adopted a report on the **implementation of human rights treaties in domestic law and the role of courts**.

Finally, members of the Commission actively participated in a number of international conferences organised or co-organised by the Commission: a conference on constitutional transformation in post-Soviet countries (Armenia), a workshop on transparency and the rule of law (Italy), an international conference on the judiciary (Malta), amongst others.

Constitutional justice

Strengthening constitutional justice

In 2014, the President of the Commission made a statement to defend the independence of the **Constitutional Court of Turkey** against serious pressure exerted on the Court.

The Commission adopted opinions in the field of constitutional justice for **Kyrgyzstan, Montenegro, the**

Slovak Republic, Tajikistan and “the former Yugoslav Republic of Macedonia”.

The Commission provided *amicus curiae* briefs for the Constitutional Courts of **Georgia** (two briefs) and the **Republic of Moldova** as well as for the European Court of Human Rights.

The Venice Commission’s **Joint Council on Constitutional Justice** steered the work of the Commission in the field of constitutional justice. The Centre on Constitutional Justice published three regular issues of the **Bulletin on Constitutional Case Law** together with a special issue on the Descriptions of the Constitutional Courts. A working document on relations between the Courts was prepared for the Conference of European Constitutional Courts to be published as a special Bulletin.

The **CODICES database** is the focal point for the work not only of the Joint Council but also the World Conference on Constitutional Justice, making available some 8650 constitutional judgements for mutual inspiration as a common basis for the dialogue of judges in Europe and beyond.

The Commission’s **Venice Forum** dealt effectively with 30 comparative law research requests from constitutional courts and equivalent bodies covering questions ranging from children’s rights, access to information and privacy, parliamentary immunity, ethical standards and the integrity of judges to assisted suicide.

The Commission co-organised or participated in **conferences and seminars** in Algeria, Armenia, Austria, Belarus, Bosnia and Herzegovina, Georgia, Japan, Jordan, Kyrgyzstan, the Republic of Moldova, Montenegro, Russia, “the former Yugoslav Republic of Macedonia” Turkey and Uzbekistan.

World Conference on Constitutional Justice

2014 was a key year for the World Conference. The **3rd Congress**, held in Seoul, Republic of Korea, was the first to be held under the Statute adopted in 2011. As a consequence the World Conference held its first General Assembly in Seoul.

The participants of the 3rd Congress adopted the Seoul Communiqué, which *inter alia* calls upon constitutional judges to be independent and to uphold the constitution, reminds member Courts of the availability of the good offices of the Bureau of the World Conference for Courts which come under pressure. The Communiqué also encouraged participating Asian Courts to establish an Asian human rights court.

During 2014, the number of Constitutional Courts, Constitutional Councils and Supreme Courts, members of the World Conference increased to 94.

The CODICES database and the on-line Venice Forum provide a permanent link between the member Courts. The increase in membership of the World Conference led to a further increase in contributions, notably to the CODICES database of the Venice Commission.

Elections, referendums and political parties

In 2014, the Commission continued its work on electoral matters and political parties. The Commission adopted five opinions in the field of elections and political parties. At the same time the Commission, through the **Council for Democratic Elections**, continued the drafting of other documents of a general nature; a *corpus* of important **guidelines and comparative studies** in the field is being further enriched.

Regarding electoral legislation, even if improvements are desirable, even necessary in several States, the problems to be solved concern more and more the implementation

rather than the content of the legislation. During 2014 the Commission therefore continued to assist the Council of Europe member States in the implementation of international standards in the electoral field, while developing further its co-operation with non-European countries, especially in the Mediterranean basin and Central Asia.

Electoral legislation and practice

The Commission adopted **opinions on draft electoral laws** in Bulgaria, Kyrgyzstan and the Republic of Moldova. These opinions on electoral matters were drawn up together with the OSCE Office for Democratic Institutions and Human Rights (OSCE/ODIHR).

In addition, the Commission organised **long-term assistance to the Central Electoral Commissions** of Georgia and the Republic of Moldova.

The Venice Commission organised the **11th Conference of European Electoral Management Bodies** in Helsinki jointly with the Ministry of Justice, the Parliament and the National Audit Office of Finland. It also organised seminars and training activities on electoral issues in the Republic of Moldova, Tunisia and Ukraine.

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

The **VOTA database** of electoral legislation is now jointly managed by the Commission and the Electoral Tribunal of Mexico.

Political parties

The Commission adopted an opinion on the draft law on political parties of **Malta** and an opinion on the draft law amending the Law on the Financing of Political Activities of **Serbia**. These opinions were drafted jointly with the OSCE/ODIHR.

Sharing European experience with non-European countries

Mediterranean Basin

Successful co-operation with the States in the Mediterranean Basin continued throughout 2014. The need to reform the State institutions in accordance with international standards was confirmed by the implementation of several projects in **Morocco**, **Tunisia** and **Jordan**. The Venice Commission and the Italian Ministry of Foreign Affairs organised the **Fourth Intercultural Workshop on Democracy** in Rome on 9 October 2014 on the topic: “Transparency and the Rule of Law as Pre-conditions of Equitable and Sustainable Development”. This event, funded by the Italian authorities, enabled representatives of the authorities and of the civil society of Tunisia, Morocco, Jordan, Lebanon and other Arab countries to debate on this important topic with representatives of the Venice Commission as well as Italian and international experts. The workshop and other multilateral activities organised for the region in 2014 confirmed the growing interest of Algeria, Egypt, Lebanon and Libya in co-operating with the Venice Commission on a regular basis.

To close two years of intense and of fruitful co-operation with the constituent **National Assembly of Tunisia**, the Commission was invited to participate in the formal adoption of the Constitution by the National Assembly, on 27 January, 2014, and in the official ceremony which took place on the 7 February 2014 in Tunis.

With regard to the Kingdom of Morocco, at the request of the Minister of Justice, the Commission in co-operation with the European Commission for the Efficiency of the Justice (CEPEJ) and the Consultative Council of European Judges (CCJE), provided two informal opinions on two important draft organic laws on the “Status of the Judges” and on “the High Council of the judiciary”.

Central Asia

Since 2009, the Venice Commission has established very good co-operation with the national institutions of **Kazakhstan, Kyrgyzstan, Tajikistan** and **Uzbekistan**, notably in the framework of the projects funded by the European Union. Special emphasis was made on regional activities that would enable exchanges of good practices and networking. 2014 was marked by the further involvement of **Turkmenistan** in co-operation with the Venice Commission. Both Kyrgyzstan and Tajikistan requested several formal opinions from the Venice Commission on their draft legislation. In 2014, the Venice Commission in co-operation with the UNDP enhanced their assistance to the Constitutional Chamber of the Supreme Court of Kyrgyzstan. The Commission organised several seminars and workshops on constitutional justice and provided the possibility for the Constitutional Chamber's judges

to establish direct contacts with several Constitutional Courts in Europe.

Latin America

In 2014, the Venice Commission continued its fruitful co-operation with Latin America through the **Sub-Commission on Latin America**, which met twice in 2014: in Ouro Preto in May and in Rome in October. The Venice Commission organised in co-operation with its partners in Brazil a conference on "*The constitutional protection of economic and social rights in times of economic crisis. What role for the judges?*" Representatives from over 20 countries from Latin America, the Southern Mediterranean countries and Europe took part in this important event. In 2014, the Commission developed its institutional contacts with the Organisation of American States (OAS) and the Inter-American Court of Human Rights.

II. Democratic institutions and fundamental rights

1. Country specific activities

Constitutional assistance

Armenia

Opinion on the draft concept paper on the constitutional reforms of the Republic of Armenia (CDL-AD(2014)027)

In 2013, the President of the Constitutional Court of Armenia, in his quality of coordinator of the Commission for Constitutional Reforms, and on behalf of the President of the Republic of Armenia, requested the assistance of the Venice Commission in the process of revision of the Constitution of Armenia. In 2014, experts of the Commission took part in the discussions on the reform of the Constitution. Meetings with the Commission for Constitutional Reforms were held in Yerevan and in Venice throughout 2014. The last meeting involved representatives of the Georgian commission on constitutional reforms which enabled experiences of on-going constitutional reforms in those two countries to be shared.

In September 2014, a draft concept paper on the constitutional reform was submitted to the Commission for opinion. This draft concept paper was a first step in the constitutional reform process. Its aim was to bring the country closer to fully implementing the basic values of the Council of Europe. As stressed in the opinion, the legal choices expressed in the draft were in line with the Venice Commission's traditional positions and earlier exchanges between the Commission for Constitutional

Reforms and the delegates of the Venice Commission. The draft concept paper thus deserved strong support.

The opinion on the draft concept paper was adopted in October 2014. After that the final version of the concept paper was approved at the domestic level. This last version took into account comments made in the opinion and was subsequently submitted to the President of Armenia who had to decide on how to proceed with the reform.

Azerbaijan

Joint opinion of the Venice Commission and the Directorate General of Democracy (DGII) on the revised draft law making amendment to the Law "on the Status of Municipalities" of the Republic of Azerbaijan (CDL-AD(2014)022)

At the request of the Presidential Administration of the Republic of Azerbaijan, the Venice Commission and the Directorate General of Democracy (DGII) prepared a joint opinion on draft amendments to the Law on the Status of Municipalities of Azerbaijan. The opinion was adopted in June 2014. The draft law under consideration was a revised version of a previous draft which had already been examined by the Commission in 2009. In 2009, the Commission had also expressed concerns with regard to the constitutional provisions pertaining to local self-government in its Opinion on the amendments to the Constitution of Azerbaijan.

While the aim of strengthening the accountability of local elected councils and their members was welcomed, the proposed amendments, allowing pre-term dismissal of local elected bodies based on an expediency

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

assessment, as well as the dismissal and temporary suspension of local councillors in case of repeated absence, raised serious issues of compatibility with the European Charter of Local Self-Government.

It was of particular concern that, despite previous criticism, and notwithstanding recent recommendations of the Congress of Local and Regional Authorities of Europe, regulations potentially affecting the very existence of certain local elected bodies had been proposed. To address these concerns in line with the applicable standards, the authorities of Azerbaijan were invited to: review the procedure for dismissing local councillors in case of repeated absence and withdraw the amendment allowing their temporary suspension; make the reporting procedure more precise; and review the supervision system allowing pre-term dismissal of local authorities if their activity report is assessed as inadequate.

Bosnia and Herzegovina

Follow-up to the Amicus Curiae Brief in the cases of Sejdić and Finci v. Bosnia and Herzegovina (CDL-AD(2008)0027)

In 2008, the Venice Commission adopted an *amicus curiae* brief for the European Court of Human Rights in the case of *Sejdić and Finci v. Bosnia and Herzegovina*. In 2009, the European Court found, in line with the Commission's opinion, that the exclusion of Roma and Jewish candidates from running for the parliamentary and presidential elections in BiH was discriminatory. In 2013-2014, the Secretariat of the Commission, together with the EU Commissioner for Enlargement, participated in several rounds of talks with the authorities of Bosnia and Herzegovina concerning the implementation of that judgment. European partners urged the authorities to pass constitutional and legislative amendments aimed at eliminating discrimination in the electoral field based

on ethnic affiliation. However, BiH politicians failed to reach a compromise and adopt such amendments.

Georgia

Meetings on constitutional reform

In January 2014, the President of the Commission participated in several working meetings in Tbilisi with the Constitutional Commission of the Parliament of Georgia, the Speaker of the Parliament, the Minister of Justice and other State officials. He discussed the ongoing constitutional reform in the country and the second phase of the reform of the judiciary.

Romania

Opinion on the draft law on the review of the Constitution of Romania (CDL-AD(2014)010)

In 2012, the Commission had already adopted an opinion on constitutional reforms in which it had recommended *inter alia* clarification and improvement of a number of institutional and other arrangements provided by the Constitution. The 2014 opinion requested by the Romanian Prime Minister and adopted by the Venice Commission in March 2014, welcomed the steps taken to improve a preliminary draft already discussed with its experts in 2013. However, issues of key importance were still to be addressed. A clear option for one particular form of government was still missing and the definition of the respective roles and inter-relations of the main state institutions lacked clarity. Recommendations aimed at strengthening the independence of the judiciary, in particular of the Superior Council of Magistracy, and the status of prosecutors had not been adequately taken up. The need to streamline the legislative procedure and limit to a minimum the use of government ordinances, as well as the recommendation to transform the procedure on the suspension of the President, if maintained, into a clearly legal responsibility, initiated by Parliament but

settled by a court, remained unaddressed. Further work was therefore needed both as regards the substance, the formulation and the consistency of the constitutional provisions. The draft opinion further recommended a more transparent and inclusive approach in the forthcoming stages of the revision of the Constitution.

Russian Federation

Opinion on “Whether draft federal constitutional law No. 46271-6 of the Russian Federation on the procedure of admission to the Russian Federation and creation of a new subject within the Russian Federation is compatible with international law” (CDL-AD(2014)004)

This opinion was drawn up at the request by the Secretary General. The opinion analysed, through the prism of international law, the draft constitutional law concerning the procedure of admission to the Russian Federation of new territories which used to be part of another State. Such admission, pursuant to the draft, was possible following a referendum held in accordance with the procedure of that other state or at the request of the local authorities of that territorial entity, without the need for an international treaty with the original territorial state.

The opinion examined in detail the relevant principles of international law, notably the customary principle of territorial integrity, from which derived that any cession or acquisition of a territory required the valid consent of both States. In the Commission’s opinion, the absence of such consent, the acquisition of a territory amounted to its annexation, contrary to international law. If this was done through military means or by threatening to use military means, an additional breach of the prohibition of the use of force would occur. Self-determination applied to peoples and not to national minorities, and did not entail a right to secession except as a last resort measure in exceptional circumstances (such as massive and persistent violations of human rights and failure of all other alternative

means), and on the condition that the secession would be pursued in forms and procedures satisfying international law. Although unilateral declarations of independence by non-state actors were not in breach of international law, a State taking advantage of such declarations and incorporating the relevant territory would violate several principles of international law, notably the non-intervention in domestic affairs and possibly the prohibition of the use of force. Minority protection was the duty of the territorial state, and kin-States did not have any duty or any right to encourage secession.

In conclusion, the draft law appeared to be in clear violation of several principles of international law. Since in the meantime the draft law was withdrawn from the Russian parliament’s agenda, in March 2014 the Commission decided to endorse the opinion, without its formal adoption.

“The former Yugoslav Republic of Macedonia”

Opinion on the seven amendments to the Constitution of “the former Yugoslav Republic of Macedonia”, concerning, in particular, the Judicial Council, the competence of the Constitutional Court and special financial zones (CDL-AD(2014)026)

The Venice Commission’s opinion on draft amendments XXXIII-XXXIX to the Constitution of “the former Yugoslav Republic of Macedonia” was requested in August 2014 by the Minister of Justice of the Republic. It was adopted in October 2014.

Constitutional amendment XXXIII concerned the definition of marriage. The Commission noted that while the definition of “marriage” remains largely within the discretion of the member-States, recent case law of the European Court of Human Rights shows that if the States decide to give some legal recognition to different-sex partnerships falling short of marriage, they should also give legal recognition to same-sex partnerships.

Particular concern was raised in connection with the status of “international financial zones” introduced by Amendment XXXIV. Such zones, conceived as self-governing territories run by private-public partnerships, risk turning into “States within the State”. In the Commission’s opinion, that amendment was going too far; it was raising the question of democratic legitimacy and was inconsistent with certain constitutional principles and international obligations of the Republic.

As to Amendment XXXVII introducing a rule limiting budget deficit and public debt, it was unclear which body would ensure compliance by the Parliament with that rule.

The amendment concerning the Judicial Council (XXXVIII) reflected some of the proposals made by the Venice Commission in its 2005 opinion on the same matter. However, in the current setup members of the judiciary formed the overwhelming majority of the members of the Judicial Council which created the risk of corporatism.

The opinion welcomed the extension of the competence of the Constitutional Court in the area of individual constitutional complaints (Amendment XXXIX), but suggested that giving new powers to the Court should not be immediate, and that the law on the Constitutional Court should be adopted which would regulate the procedure of constitutional complaint.

Finally, the opinion urged all political forces to enter into a constructive dialogue in the process of constitutional amendments.

Ukraine

Opinion on “Whether the decision taken by the Supreme Council of the Autonomous Republic of Crimea in Ukraine to organise a referendum on becoming a

constituent territory of the Russian Federation or restoring Crimea’s 1992 Constitution is compatible with constitutional principles” (CDL-AD(2014)002)

On March 2014, the parliament of the Autonomous Republic of Crimea decided to hold a referendum on the future status of the peninsula. On 7 March 2014 the Secretary General asked the Venice Commission to give an opinion on that matter. In the opinion, adopted in March 2014, the Commission addressed the constitutionality of the referendum only, leaving matters pertaining to international law aside (this matter was covered by the opinion on the Russian draft law – see above).

In the Commission’s view, the very idea of this referendum was contrary to the Constitution of Ukraine. In the referendum of March 2014 only two options were provided: Crimea becoming part of the Russian Federation or a return to the 1992 Constitution of Crimea. It was not possible to vote for the status quo. The option of Crimea becoming a part of the Russian Federation was against the principle of the indivisibility of the country proclaimed in the Ukrainian Constitution, which also explicitly described the Autonomous Republic of Crimea as an inseparable part of Ukraine. The option of a return to the 1992 Constitution could also not be part of a binding referendum without an approval by the Verkhovna Rada of Ukraine. The opinion also pointed to numerous violations of European democratic standards with respect to the conditions in which the referendum took place.

Opinion on the draft law amending the Constitution of Ukraine submitted by the President of Ukraine on 2 July 2014 (CDL-AD(2014)037)

In April and May 2014, Venice Commission delegations held several working meetings with the Constitutional Commission of the Verkhovna Rada of Ukraine concerning the upcoming constitutional reform. Discussions were focused, in particular, on the possible

decentralisation of the power in the country. However, the Constitutional Commission had not been able to agree on a single text but had prepared a text with many variants and alternatives.

The newly elected President of Ukraine was of the opinion that the Venice Commission should only be asked to give an opinion on a single text. Following the President's wishes, the Speaker of the Verkhovna Rada withdrew the initial request for an opinion. At the same time, at the June 2014 session the Ukrainian authorities reiterated that they would seek the Commission's opinion on the draft amendments to the Constitution. Two weeks thereafter the President of the Venice Commission met with President Poroshenko in Strasbourg where they discussed the constitutional and legislative reform process in the country.

A set of constitutional amendments prepared by the newly elected President Poroshenko was submitted to the Verkhovna Rada in July 2014. At the same time, the President requested the Venice Commission to prepare an opinion on these draft amendments.

The opinion concerned mostly the issue of redesigning the distribution of powers between the President and the Rada, the revision of the powers of the prosecutor's office and the issue of decentralisation.

The Commission welcomed the draft amendments to the extent that they followed some of the previous recommendations of the Venice Commission; it praised the envisaged abolition of the imperative mandate and of the general supervisory powers of the Public Prosecutor's Office.

The shift towards decentralisation was also commended by the opinion. The opinion noted that the territorial structure of Ukraine would no longer be based on "the combination of centralisation and decentralisation" as is now the case, but only on "decentralisation in the

exercise of state power". Regional and district councils would elect independently their own executive bodies, chaired by their president and accountable to them. State administrations at the regional and district level would be removed. Thanks to the new definition of "community", the territory of Ukraine should be totally divided into communities. The principle of subsidiarity was duly introduced. These were positive elements, welcomed by the Commission. This reform might enable the establishment of a modern municipal government in accordance with the principles and the spirit of the European Charter of Local Self-Government.

Nevertheless certain amendments and improvements were still necessary. The draft constitutional amendments brought about a shift of power from the parliament towards the President. The latter was notably granted the competence to appoint and dismiss certain key high state officials without the involvement of any other State organs. Regrettably, the Constitution did not lay down the grounds for dismissal, nor did it defer to the law on that point (this was also true as regards Constitutional Court judges). The President would have the right to appoint representatives in regions and districts with the task of supervising local government and co-ordinating the state administration. The President's powers were therefore, overall, considerably strengthened in the draft amendments.

Finally, the draft amendments under consideration did not address the judiciary. The Venice Commission had repeatedly urged the Ukrainian authorities to amend the constitutional provisions on the judiciary. The Commission noted with regret that this long-awaited and extremely urgent reform had not yet taken place. The Venice Commission also deplored the fact that the Ukrainian civil society had neither been informed nor consulted on the amendments under consideration. The Commission urged the authorities to submit the draft

amendments under consideration to public discussion in the course of the subsequent procedure and before their final adoption.

The opinion was discussed and endorsed in October 2014.

Legislative assistance

Functioning of democratic institutions

Republic of Moldova

Joint opinion of the Venice Commission and the Directorate of Human Rights (DHR) of the Directorate General of Human Rights and Rule of Law (DGI) of the Council of Europe on the draft law amending and supplementing certain legislative acts, promoted by the intelligence and security service of the Republic of Moldova (CDL-AD(2014)009)

At the request of the Minister of Justice of the Republic of Moldova, the Commission adopted, in March 2014, a Joint opinion on the draft law amending and supplementing certain legislative acts, promoted by the intelligence and security service of the Republic of Moldova, prepared by the Venice Commission in collaboration with the Directorate General of Human Rights and Rule of Law (DGI) of the Council of Europe.

The main purpose of the draft law was to distinguish between the investigation within a criminal case of a crime already committed (as is the main task of the law enforcement authorities) and the prevention and countering of certain acts that may harm state security and which, most frequently, is not and will not be part of a criminal case (as is the main task of the Intelligence Service). In this connexion, the draft law suggested establishing a special procedure for granting to the Intelligence Service the authority to use the special investigative measures indicated in Article I.1 of the Draft

Law outside a criminal case, under a “security mandate” which was to be granted by specially appointed judges.

The opinion noted that it was legitimate that the authorities wished to establish a new mechanism for security investigations to enable the Intelligence Service to perform special investigative measures outside the framework of a criminal investigation. However, the following issues should be addressed by the authorities in order for the Draft Law to meet international standards:

Firstly, according to the existing Law on the Intelligence Service, the Service had a mandate allowing the use of special investigative measures, which included protection against actions which “infringe constitutional rights and freedoms of citizens and endanger the State” and “assaults on high ranking officials”. The opinion considered that these provisions should be interpreted narrowly in order to limit the scope of the mandate to concrete acts which have reached a certain level of seriousness to be considered a real threat to the democratic order.

Secondly, Article I.2.(2) of the draft law which authorised the Service to access financial information outside a criminal case without obtaining a security mandate subject to judicial control, was problematic with regard to the proportionality requirements under Article 8 of the European Convention on Human Rights.

The opinion also suggested that the appointment of the Director and Deputy Directors of the Service, who are empowered to request the special judge to issue a security mandate, should be based on clear and apolitical criteria. Furthermore, the opinion recommended the reconsideration of the provision that provides for the possibility never to inform the target person about the special measures taken in his or her respect, if this “affects national security”.

Amicus Curiae brief on certain provisions of the Law on professional integrity testing (anti-corruption law) of the Republic of Moldova (CDL-AD(2014)039)

See Chapter III on constitutional justice below.

Ukraine

Interim opinion on the Law on Government Cleansing (“Lustration Law”) of Ukraine (CDL-AD(2014)044)

The opinion on the lustration law was requested in October 2014 by the Chairperson of the Monitoring Committee of the Parliamentary Assembly. It was adopted in December 2014.

The opinion underlined that a lustration procedure can be compatible with a democratic state governed by the rule of law, despite its political nature, if it is devised and carried out only by legal means, in compliance with the Constitution and taking into account European standards concerning the rule of law and respect for human rights. The Ukrainian Lustration law, however, presented serious shortcomings, notably: it applied to the Soviet period many years after the end of the communist regime and the enactment of a democratic constitution in Ukraine, without providing cogent reasons justifying the specific threat for democracy which former communists pose nowadays; it applied to the recent period during which Mr Yanukovich was President of Ukraine, which would ultimately amount to questioning the actual functioning of the constitutional and legal framework of Ukraine as a democratic state governed by the rule of law; it did not solely concern positions which may genuinely pose a significant danger to human rights or democracy; it presumed guilty on the basis of the mere belonging to a category of public offices; it gave responsibility for carrying out the lustration process to the Ministry of Justice instead of to a specifically created independent commission, with the active involvement

of the civil society; it failed to respect the guarantees of fair trial and to provide for the suspension of the administrative decision on lustration until the final judgment; it overlapped with another, recently adopted law on the lustration of judges; it failed to provide that information on the persons subject to lustration measures should only be made public after a final judgment by a court.

The Commission decided to adopt the opinion as an interim one, in the light of the government’s assurances that the lustration law would be reviewed. It was decided that a final opinion on the amended law would be submitted to the Plenary in March 2015.

Protection of fundamental rights

Armenia

Follow-up to the Opinion on the draft law on making changes and additions to the Civil Code (introducing compensation for non-pecuniary damage) of the Republic of Armenia (CDL-AD(2013)037)

In 2012, the European Court of Human Rights had found that Armenia had infringed Article 13 of the European Convention on Human Rights on account of the impossibility under domestic law to claim compensation for non-pecuniary damages in relation to Article 3 of Protocol No. 3 and Article 5 § 5 ECHR. The Armenian authorities subsequently drafted amendments to the Civil Code in order to execute these judgments and sought the Venice Commission’s assistance. In its opinion of December 2013, the Venice Commission found that the draft amendments were in line with the applicable standards. It also found that they would benefit from additional clarity and made two specific recommendations: to extend the right to seek non pecuniary compensation to spouses and close relatives of the deceased and to add the criterion of “equitableness” to the criteria

for assessing non-pecuniary damage. The amendments to the Civil Code of Armenia were adopted on 19 May 2014. Both these recommendations were followed.

Azerbaijan

Opinion on the Law on Non-Governmental Organisations (Public Associations and Funds) of Azerbaijan (CDL-AD(2014)043)

The opinion, adopted in December 2014, was requested by the Secretary General of the Council of Europe. Although the opinion primarily focused on the Law on Non-Governmental Organisations, as amended, it also took into account other legal acts which are linked to the Law on Non-Governmental Organisations, when it was deemed necessary to include them to get a better understanding of the legal context within which the NGOs operate.

Contrary to its usual practice the Commission had had to prepare the opinion without a visit to the country: despite the rapporteurs' willingness to hold exchanges with representatives of the authorities and the civil society of Azerbaijan, it had regrettably not been possible to visit Baku.

This opinion was not the first on that topic concerning Azerbaijan. Despite some positive changes introduced by the recent amendments to the Law on NGOs (i.e. the introduction of a specific period of 30 days within which the NGOs are to rectify their alleged violations brought to their attention by the authorities; the explicit recognition of the right of NGOs to appeal to administrative bodies or to a court with respect of any measure of liability), the Commission noted with regret that the amendments introduced to the Law on Non-Governmental Organisations in 2013 and 2014 had failed to address many of the recommendations made by the Venice Commission in 2011. On the contrary, they raised barriers to the establishment of

NGOs; introduced additional administrative requirements and increased checks as well as more problematic registration procedures; raised barriers to activities and operations and restricted access to resources. Branches and representations of foreign NGOs had been put into a more disadvantaged position with respect to other NGOs. The Commission concluded that the cumulative effect of stringent requirements, in addition to the wide discretion given to the authorities regarding the registration, operation and funding of NGOs was likely to have a chilling effect on the civil society. The opinion recommended the simplification and decentralisation of the registration process of NGOs; taking specific measures to prevent *contra legem* practices of the State authorities (for example the breach of deadlines for registrations or repeated unnecessary demands for the rectification of registration documents); the elimination of blanket restrictions on the registration and operation of branches and representations of foreign NGOs; the revision of the amendments in order to authorise foreign funding of NGOs; and the removal of provisions allowing unwarranted interference into the internal autonomy of NGOs (in particular reporting obligations and state supervision in the internal organisation of NGOs).

Georgia

Amicus curiae brief for the Constitutional Court of Georgia on individual application by public broadcasters (CDL-AD(2014)014)

See Chapter III on constitutional justice below.

Amicus curiae brief for the Constitutional Court of Georgia on the question of the defamation of the deceased (CDL-AD(2014)040)

See Chapter III on constitutional justice below.

Kosovo

Opinion on the draft law amending the law on freedom of religion in Kosovo
(CDL-AD(2014)012)

The opinion, adopted in March 2014, had been requested by the European Union Special Representative in Kosovo. The 2007 basic law on freedom of religion of Kosovo proclaimed the freedom of conscience and religion, but did not provide for any legal mechanism allowing religious groups to register and obtain legal personality. This had become an increasing problem for the religious communities, faced with practical difficulties such as owning and registering property and vehicles, opening bank accounts and paying taxes on employees' salaries.

The opinion examined the proposed registration scheme based on a two-tier registration system. While five "historical" religious communities (the Islamic Community of Kosovo, the Serbian Orthodox Church, the Catholic Church, the Jewish Community and the Evangelical Protestant Church) would be automatically registered, other more recent religious communities could obtain legal status through a registration procedure, provided that they met a number of conditions set forth by the draft law.

The opinion welcomed the draft law but recommended a number of improvements. In particular, it recommended that in order to avoid discrimination, in addition to the five religious communities directly named in the draft law all the other established religious groups which form part of the historical, cultural and social heritage of Kosovo be included in the list of automatically registered communities.

Certain critical remarks concerned conditions for registration, including: the requirements for religious communities to be organised on a clear, hierarchical basis and to have "their statute/regulation", as preconditions for being registered; the too vague requirement for the

purpose or practices of the religious community "not to be in contradiction with the inter-religious tolerance and the Constitution", and the requirement for religious communities to inform the authorities of their participation in organisations or conferences abroad. The opinion stressed that registration should not be compulsory and that its legal consequences, including with regard to financial aspects, should be clearly specified by the law.

Russian Federation

Opinion on Federal Law No. 121-FZ on Non-commercial Organisations ("Law on Foreign Agents", on Federal laws No. 18-FZ and 147-FZ and on Federal Law No. 190-FZ on making amendments to the Criminal Code ("Law on Treason") (CDL-AD(2014)025)

The opinion had been requested by the Chairperson of the Committee on Legal Affairs and Human Rights of the Parliamentary Assembly of the Council of Europe in February 2013. In the summer of 2013 the Human Rights Commissioner of the Russian Federation lodged an appeal against some provisions of the NGO Law before the Constitutional Court; as a result, the adoption of the opinion was postponed to 2014, pending the examination of that law by the Russian Constitutional Court.

In April 2014, the Constitutional Court rendered a decision which was largely favourable to the law. The rapporteurs resumed their work and the opinion was finally adopted in June 2014.

The Commission's opinion focused solely on the most problematic provisions of the examined laws. These included: the introduction of the legal status of a "foreign agent" which is attributed to NGOs receiving foreign funding; the definition of "political activities"; the practical implementation of the Law after the introduction of additional reporting requirements, additional inspections and oversight by the authorities, a specific system of sanctions and penalties in case of a breach of legislation.

The legal status of a “foreign agent” presupposed not only that an NGO received foreign funding but also that it participated in “political activities” – a term which was criticised by the opinion for its over broadness. The opinion recommended abandoning the term “foreign agent” since it stigmatised those NGOs falling under such a definition, tarnishing their reputation. The legitimate aim of ensuring transparency of NGOs receiving funding from abroad could not justify measures which hampered their activities in the field of human rights, democracy and the rule of law. If the above-mentioned legal regime was maintained, the power of the authorities to register an NGO as a “foreign agent” without its consent had to be removed, in the Commission’s opinion. Moreover, the obligations linked with the special status were considered to be cumbersome and disproportionate. The opinion considered that the sanctions foreseen were severe and questioned whether they could be regarded as proportional to the gravity of the presumed offence.

With regard to the Law on Treason, which had amended the Criminal Code with a new article prosecuting illegal access to information considered as a state secret as well as existing articles on state treason, espionage and disclosure of state secrets, the opinion considered that the new provisions were overly broad and vague and could confer unfettered discretion for limiting freedom of expression on those charged with its execution.

Judicial reform

Albania

Opinion on the draft amendments to the Civil and Criminal Procedure Codes of Albania
(CDL-AD(2014)016)

The Venice Commission opinion on the draft amendments to the two procedural codes was requested by the

Minister of Justice of Albania. The opinion was adopted in June 2014.

The amendments covered two issues. Firstly, concerning the punishment of lawyers and prosecutors if they deliberately delayed court proceedings, the opinion noted that, in principle, States are free to introduce such punishment as long as the guarantees to a fair trial were met. The second issue concerned the limitation of access to the Supreme Court, which was seriously overburdened with 12,000 pending cases. The draft amendments excluded access to the Supreme Court in certain cases. The exclusion of certain types of appeals to the Supreme Court was deemed to be acceptable, provided that the amendments ensured the right to a double degree of jurisdiction under Article 2 of Protocol 7 of the ECHR. The changes were minor and the opinion expressed concern that they might prove to be insufficient as a remedy for reducing the workload of the Supreme Court. The opinion regretted that the draft amendments did not address the proposal to transform the Court into a cassation court that would only deal with points of law.

Armenia

Joint opinion by the Venice Commission and the Human Rights Directorate of the Directorate General of Human Rights and Rule of Law (DGI) of the Council of Europe on the draft law on making amendments and supplements to the judicial code (evaluation system for judges) of Armenia (CDL-AD(2014)007)

The Minister for Justice of Armenia requested an opinion on the draft Law amending and supplementing the Judicial Code. The opinion was prepared together with the Human Rights Directorate of the Directorate General of Human Rights and Rule of Law – DGI and was adopted in March 2014. It was predominantly a technical opinion that dealt with the introduction of a system for the evaluation of judges. The opinion’s criticisms related

more to international best practices than to international standards. However, the Venice Commission delegation which travelled to Yerevan for this opinion discovered that there was a surprising practice that had developed in Armenia whereby lower court judges sought instruction from upper court judges before rendering their judgments. The opinion therefore emphasised the importance of the independence of the judiciary including the independence of individual judges from other judges.

The Venice Commission was informed that the Ministry of Justice had introduced a project for the reform of the judiciary in 2012 in order to increase the independence of judges.

Opinion on the draft law on making amendments and supplements to the Judicial Code of the Republic of Armenia (term of office of court presidents)
(CDL-AD(2014)021)

This opinion, adopted in June 2014, was requested by the Speaker of the National Assembly of the Republic of Armenia.

The proposed amendments limited the term of office of court presidents of first instance courts and the courts of appeal to four years. The chairpersons were allowed to run for the second term, but the draft law provided a limitation: a judge may not be appointed to the position of chairperson for more than two consecutive terms. According to the proposed transitional rules, the office of the sitting chairpersons of the courts of first instance and the courts of appeal would be terminated on 1 January 2015.

The opinion addressed the specific questions posed by the Speaker and examined the draft amendments in the light of the principles of judicial independence and of legal certainty. The opinion concluded that the limitation of the term of office of court presidents as such was not

incompatible with the European standards on the judiciary and might even be useful in order to strengthen the internal independence of judges. However, it found that the proposed dismissal of sitting court presidents already on 1 January 2015 was too radical and gave too short a notice threatening the principle of legal certainty, the independence of the judiciary and the effective administration of justice. The Commission recommended that an amendment to the Constitution on fixed terms of office of court presidents could be considered.

Bosnia and Herzegovina

Follow-up of the opinion on the draft law on the courts of Bosnia and Herzegovina
(CDL-AD(2013)015)

In June 2013, the Commission adopted an opinion on the draft law on the courts of Bosnia and Herzegovina (BiH). That draft law dealt with the courts at the state level of BiH (except for the Constitutional Court) in a single law and introduced a new High Court of BiH which would serve as a second instance court at the state level and receive cases on appeal from the State Court and adjudicate on other matters set out in that draft Law. The provisions on the composition and number of judges (Article 4) and on criminal jurisdiction in that draft Law (Article 15) raised a number of issues that needed to be addressed by the authorities.

In January 2014, the Ministry of Justice of BiH submitted a new draft law on the courts of BiH to the Council of Ministers. The EU, with whom the Venice Commission had been working closely in the context of the EU-BiH Structured Dialogue since 2011, had requested the Secretariat to provide brief informal comments on this new draft. These comments stated that although the text was an improvement on the old version, a number of issues pertaining to the composition and number of

judges (Article 4) and to the criminal jurisdiction in that draft Law (Article 15) remained problematic.

Georgia

Joint opinion of the Venice Commission and the Directorate of Human Rights (DHR) of the Directorate General of Human Rights and Rule of Law (DGI) of the Council of Europe on the draft laws amending the administrative, civil and criminal procedure codes of Georgia (CDL-AD(2014)030)

At the request of the Minister for Justice of Georgia, the Venice Commission prepared an opinion on the draft law on amendments to the administrative procedure code, the draft law on amendments to the criminal procedure code and the draft law on amendments to the civil code of Georgia. The opinion, prepared jointly with the Directorate of Human Rights (DHR) of the Directorate General of Human Rights and Rule of Law (DGI) of the Council of Europe, was adopted in October 2014.

The amendments proposed for the three respective procedural codes dealt with a system of appeal in relation to appeals for cassation and, according to the authorities, aimed at broadening and refining the admissibility criteria of cassation appeals in order to increase the quality of the judiciary and create more guarantees for the protection of human rights.

The opinion welcomed the efforts made by the Georgian authorities to improve the system of cassation appeals by broadening and refining the admissibility criteria for cassation appeals. It considered that if applied in an equal and well-reasoned manner, the admissibility criteria for cassation appeals set out in the draft amendments *in abstracto* meet the requirements of proportionality and non-discrimination.

The most significant development in terms of broadening the admissibility criteria of cassation appeals had been the

introduction of the possibility of cassation appeal where the decision of the appeal court contradicts the relevant decision(s) of the ECtHR [(the European Court of Human Rights)] in case(s) in which Georgia was a party.

However, in view of the vague wording of the admissibility criteria and the ambiguity of some notions therein, it was essential that in its future case law the Supreme Court address that ambiguity by giving clarifications based on a consistent and non-discriminatory judicial interpretation. The Commission also considered that the admissibility criterion concerning the decisions of the ECtHR “in which Georgia was a party” should be reformulated to cover the entire case law of the ECtHR, including cases against other contracting states.

Joint opinion by the Venice Commission and the Directorate of Human Rights (DHR) of the Directorate General of Human Rights and Rule of Law (DGI) of the Council of Europe on the draft law on amendments to the organic law on general courts of Georgia (CDL-AD(2014)031)

Following a request from the Minister for Justice of Georgia, the Venice Commission, together with the Directorate of Human Rights (DHR) of the Directorate General of Human Rights and Rule of Law (DGI) of the Council of Europe, prepared a joint opinion on the draft law on amendments to the Organic Law on General Courts of Georgia. The opinion was adopted in October 2014.

The purpose of the draft law was to introduce increased guarantees for more independence and impartiality of the judiciary as well as for improving some imperfections existing in the current legislation. The Joint opinion noted, in particular, that the draft provisions providing for the election of court chairpersons by the judges of the same court, and the increased guarantees introduced in respect of judicial assignments, as well as increased transparency of the work of the High Council of Justice were positive developments.

However, the opinion made certain recommendations to further improve the draft law. In particular, it advised that the appointment and promotion criteria for judges should be clearly indicated in the draft law and probationary periods for judges, which were previously criticised by the Commission, should be removed both from the Organic Law on General Courts and the Constitution. The opinion also recommended that competition be the rule for all appointments and the criteria for the assignment of a judge to another court or seconding a judge to another court be clearly indicated.

The opinion further noted that the investigative powers of the special unit of the High Council of Justice, which go beyond the search for information on professional skills of the candidates, created the risk of infringing the right to privacy of the candidates.

The opinion further criticised the draft provision concerning the dismissal of a member of the High Council of Justice by the Parliament or the President and considered it essential that dismissal due to offences committed by the post holder be investigated by an independent body and not by a political organ. Finally, the opinion also criticised the draft provisions which provided for the termination of certain judicial mandates with the enactment of the Draft amendment law and stressed that the judiciary should be protected against arbitrary dismissal and interference in the exercise of the function.

Joint opinion by the Venice Commission and the Directorate of Human Rights (DHR) of the Directorate General of Human Rights and Rule of Law (DGI) on the draft law making changes to the Law on Disciplinary Liability and Disciplinary Proceedings of Judges of General Courts of Georgia (CDL-AD(2014)032)

At the request of the Minister for Justice of Georgia, the Venice Commission, together with the Directorate of Human Rights (DHR) of the Directorate General of

Human Rights and Rule of Law (DGI), prepared a joint opinion on the draft law on making changes to the Law on Disciplinary Liability and Disciplinary Proceedings of Judges of General Courts of Georgia. The opinion was adopted in October 2014.

According to the authorities, the aim of the draft law was to improve the conduct of disciplinary proceedings, to ensure a higher degree of protection for the independence of judges, to eliminate defects in the current Law and to improve the existing disciplinary procedures.

The opinion underlined many positive aspects of the draft law. In particular, the opinion considered as a positive step in terms of ensuring the independence of judges the fact that the High Council of Justice would become the unique body enabled to initiate disciplinary proceedings against judges.

However, the opinion recommended further improving the draft. For instance, more precise provisions concerning the grounds for initiating disciplinary liability, as well as increased procedural guarantees, should be included in the draft. The opinion further stressed that the requirement of a two-thirds majority for all the decisions of the High Council of Justice in disciplinary proceedings was too high and risked impairing the efficiency of the disciplinary system.

Kyrgyzstan

Joint opinion of the Venice Commission and OSCE/ODIHR on the draft amendments to the legal framework on the disciplinary responsibility of judges in the Kyrgyz Republic (CDL-AD(2014)018)

See Chapter IV on co-operation with non-European partners.

Montenegro

Opinion on the draft laws on courts and on the rights and duties of judges and on the Judicial Council of Montenegro (CDL-AD(2014)038)

The Commission adopted in December 2014 an opinion on the draft laws on courts and on the rights and duties of judges and on the Judicial Council of Montenegro, which had been requested by the Ministry of Justice of Montenegro. The two draft laws were generally written in a clear manner, were of a high quality and aimed at following former Venice Commission recommendations. The drafts were part of the process aimed at the European integration of the country, to establish a modern legal and institutional framework for the operation of the judiciary, in line with the 2013 constitutional amendments and the applicable standards.

Nonetheless, the opinion pointed out that a number of issues could be improved; in particular, the internal independence of judges needed to be better guaranteed by: not submitting them to mandatory instructions of other judges or mandatory legal positions of principle; avoiding granting the Supreme Court the power to supervise the work of the general courts; avoiding authorising supervision of basic courts by higher courts; reviewing courts' presidents' powers to interfere in the cases assigned to the judges. Moreover, the interference of the government in the internal organisation of the courts and its supervisory powers needed to be limited in order to ensure full respect for the external independence of the judiciary and the principle of separation of powers. It was further recommended that the laws should be clearer concerning the rules on incompatibility, immunity and disciplinary proceedings against judges. Finally, the rules, grounds and procedures on the dismissal and temporary removal of the Judicial Council's members needed to be clarified with a view to ensuring the independence and autonomy of the Council.

Interim opinions on the draft law on the state prosecution office of Montenegro (CDL-AD(2014)042) and on the draft law on Special State Prosecutor's Office of Montenegro (CDL-AD(2014)041)

The Minister for Justice of Montenegro requested an opinion from the Venice Commission on two drafts laws prepared in the context of the on-going reform of the judiciary in Montenegro following the 2013 constitutional amendments: the draft law on the state prosecution service of Montenegro and the draft law on the Special State Prosecutor's Office of Montenegro. Two interim opinions on these draft laws were adopted in December 2014.

As to the first Draft Law, the opinion found that it was of a high technical quality, in conformity with the Constitution and the applicable standards, and provided a good legal basis for the effective work of the prosecution service. A number of issues were however identified in the first Draft Law (on the State Prosecution Service), and recommendations were made in particular to the effect that the scope of the activities of the prosecution service should be limited to the criminal field; the procedures for the proposal and election of the members of the Prosecutorial Council from among state prosecutors should be improved and simplified; the disciplinary plaintiff and the president of the disciplinary panel should be elected from lawyers outside the prosecution service. Furthermore, the proposed system of supervision by the Justice Ministry needed to be revised with a view to guaranteeing full and effective respect of the principles of independence of the State prosecution and functional immunity of individual state prosecutors.

As to the second Draft Law, the opinion welcomed the efforts made by Montenegro to establish a specialised Office for fighting organised crime and high-level

corruption, as part of the judicial reform and the country's commitments related to its European integration process. The Commission recommended maximum precision in determining its powers and mode of operation, in line with the principle of legal certainty and backed up by adequate safeguards against undue interference. In particular, its degree of autonomy and its institutional position within the Prosecution Service needed to be clearly specified; accountability guarantees needed to be introduced; its mandate and the range of offences falling under its jurisdiction needed to be spelled out more clearly; the procedure for the appointment of the Special State Prosecutor needed to be simplified; and more detailed regulations needed to be provided on the work of the special prosecutors.

Since the Draft Laws had already been revised by the Montenegrin Government and the revised texts were pending before the parliament in an urgent procedure, the Commission decided to adopt the opinions as interim, as requested by the Montenegrin authorities, and to examine the revised version of the two draft laws.

Follow-up to the opinion on two Sets of draft Amendments to the Constitutional Provisions relating to the Judiciary of Montenegro (CDL-AD(2012)024)

On 31 July 2013, Montenegro adopted constitutional amendments, including on the Prosecutor's Office. In October 2013 the Venice Commission acknowledged that these amendments were largely in line with its previous recommendations, but regretted that it had been decided that all prosecutors would be reappointed. Such reappointment would affect both prosecutors, who had a five-year mandate, and deputy prosecutors, who had life tenure.

Upon the initiative of the European Commission, a meeting was held in Brussels in 2014 with the Deputy Prime Minister and his team. As a result of the discussions, the Montenegrin counterparts agreed *inter alia* that State prosecutors would be entitled to complete their five-year mandate, and would, in addition, be entitled to participate in the elections for managers of prosecution. Deputy prosecutors would be entitled to participate in the elections for State prosecutors under privileged conditions, while internal control and disciplinary and dismissal proceedings would be dissociated from the election procedure.

Republic of Moldova

Joint opinion by the Venice Commission, the Human Rights Directorate of the Directorate General of Human Rights and Rule of Law and the OSCE/ODIHR on the draft law on disciplinary liability of judges of the Republic of Moldova (CDL-AD(2014)006)

The opinion on the draft Law on disciplinary liability of judges was requested by the Minister for Justice of the Republic of Moldova.

The opinion, adopted at the March 2014 session, stated that many of the provisions included in the draft Law were in line with European and OSCE standards. However, it made several recommendations *inter alia* to explicitly restrict the removal of a judge from his or her position to the most serious cases or cases of repetition or of incapacity, or behaviour that renders judges unfit to discharge their duties; to specify in the draft Law the criteria for selection of candidates of civil society members of the Disciplinary Board; to strengthen the role of the inspector-judges in the procedure and to add a clear provision that would prevent the same member of the Superior Council of Magistrates from engaging in all the consecutive steps of the disciplinary proceedings.

Follow-up to the Joint Opinion on the draft Law on disciplinary liability of judges of the Republic of Moldova (CDL-AD(2014)006)

The Commission was informed that, at the end of July 2014, the Moldovan Parliament had adopted the draft Law on disciplinary liability, as part of a package of draft laws for which the Government had assumed its responsibility. Under these circumstances, although initial proposals aimed at implementing the recommendations contained in the joint opinion had been made by the Government; none of these recommendations had been taken into account.

Follow-up to the amicus curiae brief on the Immunity of Judges for the Constitutional Court of the Republic of Moldova (CDL-AD(2013)008)

The Constitutional Court of the Republic of Moldova requested an *amicus curiae* brief relating to a number of provisions removing judges' immunity in case of passive corruption and traffic of influence. The *amicus curiae* brief stated that, while some states conferred criminal liability on judges as an additional guarantee, there were no internationally recognised norms to this effect. The Moldovan legislation therefore did not seem to contradict international standards.

The Constitutional Court rendered its judgment on 5 September 2014 and partly took the Venice Commission's recommendations into account, finding that judicial independence was not an obstacle to criminal and disciplinary liability established by law. The Court however found shortcomings in the criminal procedure law with respect to procedural actions, in particular the way in which they are carried out, and held that to detain, to bring by force, to arrest and/or search a judge by an investigator without the consent of the Prosecutor General or the Supreme Council of Magistracy, could affect the independence of the judiciary.

Serbia

Opinions on the draft amendments to the Law on the High Judicial Council of Serbia (CDL-AD(2014)028) and on the State Prosecutorial Council of Serbia (CDL-AD(2014)029)

The two opinions, adopted in October 2014, were requested by the Minister for Justice of Serbia. They followed a series of opinions that had been adopted by the Venice Commission on the judicial reform in Serbia in 2007, 2008, and 2011.

The main concern of the opinion on the High Judicial Council of Serbia was the proposed dismissal procedure of members of the High Judicial Council. The opinion recommended that the new procedure, including a vote of confidence, be reconsidered and that the vote of confidence be removed. The opinion also called for more clarity with regard to the different steps in the dismissal procedure, and stressed that dismissal should only be used as a last resort in a disciplinary procedure.

Another concern was related to the early termination of the mandate of the Presidency of the Judicial Council: both the President (*ex officio*, term not set in the Constitution) and the Deputy President (elected, term set in the Constitution) under the new provisions would be replaced within 30 days of the entry into force of the amendments through elections. The opinion recommended maintaining at least the Deputy President, who had already been elected, in his/her position.

The opinion on the draft amendments to the Law on the State Prosecutorial Council raised issues very similar to those discussed in the opinion on the draft amendments to the Law on the High Judicial Council. Firstly, a problematic new dismissal procedure which included a vote of confidence was introduced. The opinion recommended that the procedure be reconsidered and that the vote of confidence be removed. With respect to the Presidency

of the State Prosecutorial Council, it recommended that, since its Deputy President had been elected, s/he should be maintained in his or her position.

Also, since the future Law on the High Judicial Council and on the State Prosecutorial Council would need to be amended again once the Commission on revising the Constitution had completed its work, the two opinions considered that it might be useful to wait with the amendments to the current laws until the amendment of the Constitution.

Turkey

Assistance to the reform of the High Council of Judges and Prosecutors

In April, May and July 2014, the President of the Venice Commission participated in several working meetings with the Minister for European Affairs of Turkey and the Minister for Justice of Turkey, where they discussed the recent reform of the High Council of Judges and Prosecutors and the co-operation with the Venice Commission.

Ukraine

Assistance to the reform of the Prosecution in Ukraine

In April 2014, the President of the Commission met a delegation of the Ukrainian Prosecutor General and discussed the reform of the Prosecution Office in Ukraine.

2. Transnational activities

Studies and reports

Report on the protection of children's rights: international standards and domestic institutions (CDL-AD(2014)005)

The Committee on Social Affairs, Health and Sustainable Development of the Parliamentary Assembly requested

the Commission to analyse "How children's rights can be included in national constitutions with a view to thus promoting their effective implementation". Following that request, the Commission prepared a report which is also the Commission's contribution to the Council of Europe Strategy for the Rights of the Child (2012-2015). The report was adopted by the Commission in March 2014.

The UN Convention on the Rights of the Child served as a basis for the analysis. That Convention has given children international recognition as legal rights holders and drawn attention to the new threats to the wellbeing of children, which had emerged since its adoption. After a brief presentation of the guiding principles of the UN Convention on the Rights of the Child, the report presented the ins and outs of constitutional protection through international law, and an analysis of the national constitutional provisions of protection of children's rights. The examination of constitutions revealed that there is clearly no single way to express children's rights in national constitutions which, taken as a whole, often use multiple approaches to give children's rights the highest protection. The report identified significant examples of good practices in the constitutional protection of children's rights and in their enforcement. It also contained two sets of recommendations. First, it recommended, as an underlying approach to the protection of children's rights, that children be addressed as rights holders and not merely as actors who need protection and that the best interest of the child be a primary consideration in devising and implementing legislation. The second set of recommendations focused more on the enforcement of children's rights. The study concluded with a general statement on the positive obligations of States.

Report on the scope and lifting of parliamentary immunities (CDL-AD(2014)011)

Further to a request by the Secretary General of the Council of Europe, the Venice Commission adopted

in March 2014 a report on the lifting of parliamentary immunities in co-operation with an expert from the Group of States against Corruption (GRECO).

According to the report, national rules on parliamentary immunity should be seen as legitimate only in so far as they may be justified with reference to overriding public requirements. They should not extend beyond what is proportional and necessary in a democratic society.

The report made a clear distinction between non-liability (additional freedom of speech for parliamentarians) and inviolability (protection of parliamentarians against arrest and prosecution). It was favourable to non-liability, but quite critical of inviolability and insisted on the possibility of lifting it in order to prevent abuses, in particular if the parliamentarian was caught in flagrante delicto, in case of alleged offences of a particularly serious nature or when the request concerned a criminal conduct which was not strictly related to the performance of parliamentary functions. Member States were invited to assess their current regime of parliamentary immunities in order to ensure full conformity with the rule of law.

Report on the implementation of human rights treaties in domestic law and the role of courts (CDL-AD(2014)036)

The report on the implementation of human rights treaties in domestic law and the role of courts was requested by the Sub-Commission on Latin America in 2012 and adopted in October 2014. The purpose was to explore the different elements which influence the implementation of human rights within national legal orders and the role that national and international courts play in this context.

International human rights treaties imposed obligations upon States parties. This has important implications for all national authorities, not only the executive and the legislative bodies, but also the judiciary. The Venice Commission considered that courts were key actors

which exercise in a meaningful way the review of the compatibility of domestic legislation with international human rights treaties. The Latin American experience, which had not been taken into consideration so far in the reports of the Venice Commission, shed new light on the topic of the relationship and interaction between international and domestic human rights law. The European and the Inter-American systems of protection of human rights were similar enough to enable a useful comparison of their respective impact on national legal orders. In this comparative approach, the report pointed out that the implementation of international human rights treaties was a task for all national authorities; a special place had, however, to be reserved to domestic courts.

Joint Venice Commission-OSCE/ODIHR Guidelines on the legal personality of religious or belief communities (CDL-AD(2014)023)

The 2014, guidelines were prepared in collaboration with the OSCE/ODIHR; they were the result of extensive consultations with the civil society and government officials. The guidelines examine various forms of religious activities which are exercised in community with others, focus on the access of religious communities to legal personality and the registration of religious and belief communities, analyse privileges of the religious or belief communities, describe limits of their internal independence and operational autonomy, and provide examples of good practices from different states on those issues. The Joint Guidelines were adopted in June 2014.

Joint Venice Commission-OSCE/ODIHR Guidelines on freedom of association (CDL-AD(2014)046)

The Joint Guidelines, adopted in December 2014, were prepared together with the OSCE/ODIHR. They provide a description of the general framework of the right to freedom of association and the applicable international standards, outline the guiding principles of the right to

freedom of association, and contain interpretative notes that elaborate on and detail the guiding principles. The Guidelines were prepared following extensive consultations with other competent international organisations, such as the UN Special Rapporteur on Freedom of Association and the International Labour Organisation.

Comparative study on national legislation on freedom of peaceful assembly
(CDL-AD(2014)024)

The Comparative Study, endorsed by the Venice Commission in June 2014, had been drawn up by the Max Planck Institute as a part of its co-operation with the Venice Commission. The study had been prepared as an input to the on-going process of revision, by the Venice Commission and the OSCE/ODIHR, of their joint guidelines on freedom of peaceful assembly, in the light of the most recent developments in the field, including new issues such as the use of social media in the organisation of protests (flashmobs), the concept of the “organiser” of demonstrations, the “occupy” movements, and the organisation of assemblies on private property.

The study contained a comprehensive overview of the legislative situation in the investigated countries, followed by a comparison of the selected national legislations. The study also included interpretations by national courts and the European Court of Human Rights. Issues of implementation as well as instances of administrative, mostly police practice, were included in the study in order to provide for a topical and comprehensive overview of the situation in a given country.

Amicus curiae brief in the case of *Rywin v. Poland*, pending before the European Court of Human Rights
(CDL-AD(2014)013)

See Chapter VI below on the co-operation with other bodies of the Council of Europe.

Conferences and seminars

International conference on “The constitutional protection of economic and social rights in times of economic crisis. What role for the judges?” (Ouro Preto, 5-6 May 2014)

See Chapter V.

4th Intercultural Workshop on Democracy (Rome, 9 October 2014)

See Chapter V.

International conference on constitutional processes in post-communist countries (Yerevan, 3-4 November 2014)

On 3 and 4 November 2014, the Venice Commission, in co-operation with the Brusov State University, organised in Yerevan a conference on the “The impact of constitutional processes in post-communist transformation”. The conference brought together current and former members of the Commission, constitutional court judges and prominent legal scholars from such countries as Armenia, Bosnia and Herzegovina, Bulgaria, Finland, Georgia, Kyrgyzstan, Poland, Romania, Russia, Switzerland, Ukraine. The conference provided a framework for an exchange of views on constitutional developments in the respective countries, and on several more general topics such as the concept of the balance of powers, guarantees of the independence of justice or the process of constitutional amendments.

Other events

In January 2014, the Secretary of the Commission took part in a workshop on the enforcement of the rule of law, democracy and human rights in the EU “*From commitment to action: protecting fundamental values in the EU Member States*”. The event was organised by the Walter Hallstein Institute of Humboldt University and Democracy Reporting International.

In May 2014, a member of the Commission participated in an international symposium on the rule of law and justice in Istanbul, Turkey.

The Venice Commission was represented at the 17th International Judicial Conference (Valetta, 21-22 May 2014). In particular the Venice Commission representative participated in the debates on “Rule of law and constitutions” and on “Constitutions, legal systems and the judiciary”.

In October 2014, a Vice-President of the Commission participated in a conference in Baku which concerned the implementation of the ECHR at the domestic level. She gave a speech describing the role of the Venice Commission in the dialogue between the judges.

In November 2014, a Vice-President of the Commission participated in the Arctic Legal Forum organised by the Institute of Legislation and Comparative Law in Saint-Petersburg.

In July 2014, the Deputy Secretary of the Commission took part in a colloquium in Cologne “25 Years after the fall of the Wall. One law for East and West? - European Court of Human Rights and the Venice Commission in the search for unifying legal standards” organised by the Institute for Eastern European Law.

In September 2014, the Secretary of the Commission participated in a workshop at Heidelberg University on “The incorporation of Crimea by the Russian Federation in light of international law”.

In October 2014, a member of the Commission took part in a Round Table on “Reforming the judicial system in Albania” organised by the Ministry of Justice of Albania in Tirana.

In November 2014, a representative of the Commission participated in the Second Meeting of the network between the Ministry of Foreign Affairs and International Co-operation of Italy and the international organisations dealing with legal and juridical matters based in Italy.

In December 2014, a member of the Commission participated in the Fourth International Congress of Comparative Law “Space and time in international and national law”, organised by the Institute of Legislation and Comparative Law in Moscow.

In December 2014, a former member of the Commission participated in a Round table on the reform of the public assembly legislation in Ukraine in Kyiv.

III. Constitutional justice

1. Opinions and conferences/meetings⁴

European Court of Human Rights

For the *amicus curiae* brief for the European Court of Human Rights in the case *Rywin v. Poland* (CDL-AD(2014)013), see Chapter VI.1.

Algeria

The President of the Venice Commission participated in the seminar on “The Progress of Constitutionalism in Africa”, organised by the Constitutional Council of Algeria, in co-operation with the Conference of Constitutional Jurisdictions of Africa on the occasion of the 25th anniversary of the Council (Algiers, 24-25 November 2014). He called upon the participating African judges to work for democracy, the protection of human rights and the rule of law even in difficult circumstances, when they are under pressure from other state powers.

Armenia

Opinion on the draft concept paper on the constitutional reforms of the Republic of Armenia (CDL-AD(2014)027)

For information on this opinion, which also relates to the status of the Constitutional Court, see Chapter II, section 1.

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

4. Information on activities in the field of constitutional justice and ordinary justice concerning Bolivia, Chile and Peru can be found in Chapter V.

Conference on “The constitutional status of human dignity”

On 24 October 2014, the Venice Commission co-organised with the Constitutional Court of Armenia the XIX Yerevan International Conference on “the Constitutional Status of Human Dignity” co-organised by the Constitutional Court of Armenia and the Conference of Constitutional Control Organs of the Countries of New Democracy (CCCOCD). During the Conference, the doctrinal approaches of the concept of human dignity as well as the acknowledgment of the notion by the case law of several Constitutional courts were discussed.

Belarus

International conference on “Constitutional review: modern tendencies of development and improvement”

The Venice Commission participated in the international conference on “Constitutional review: modern tendencies of development and improvement”, which the Constitutional Court of Belarus organised on the occasion of its 20th anniversary (Minsk, 27-28 June 2014).

Discussions focused on the role of constitutional review in the protection of human dignity, human rights and freedoms and on the developments that have occurred in constitutional justice.

The different features of development of constitutional justice, doctrine and the formation of modern constitutionalism were discussed as well as new challenges faced in the modern world. Effective constitutional justice provides for a harmonious and sustainable development of states on a constitutional basis, the consistent democratic

development of our countries, notably by reaching a balance of the interests of individuals, society and the state.

Bosnia Herzegovina

International conference on the “Constitutional court - between negative legislator and positive activism”

On 27 and 28 March 2014, the Constitutional Court of Bosnia and Herzegovina (BiH) organised a ceremonial session in Sarajevo for the 50th anniversary of Constitutional Justice in BiH in which the Venice Commission participated.

Discussions revolved around the development of constitutional justice in BiH, notably the development undergone by the Constitutional Court of BiH. The first Constitutional Court of BiH was established under the 1963 and 1974 constitutions and was limited to abstract constitutional control. The current Constitutional Court was established in 1997 under the Dayton Constitution and provides much wider access for the individual.

This Court has developed an impressive body of case law in a number of important areas such as equality, fair trial and property rights. The fact that the European Convention on Human Rights is part of the Constitution enabled this Court to directly apply this Convention in its constitutional case law.

The Court also has to deal with a number of issues that are rooted in the peculiarities of the Constitution, including issues of national symbols of the entities, the discrimination in the use of names of municipalities and the position of the Office of the High Representative and of the former Human Rights Chamber in the constitutional system.

In 2005, the Venice Commission already said that the time had come to reconsider the constitutional arrangement in BiH and to introduce a constitutional reform.

BiH is heavily penalised by the possibility of the constituent peoples to mutually block each other. A reform is therefore indispensable for the country and has now become an absolute necessity. This urgency has not only come as a result of the decision of the European Court of Human Rights in the *Sedic and Finci v Bosnia and Herzegovina* case, but also because the current constitutional arrangements are “are neither efficient nor rational and lack democratic content.”

Georgia

Amicus curiae brief for the Constitutional Court of Georgia on individual application by public broadcasters (CDL-AD(2014)014)

At the request of the Deputy President of the Constitutional Court of Georgia, the Venice Commission adopted an *amicus curiae* brief concerning, in particular, the right of members of the Board of Trustees of the Georgian public broadcaster to lodge an application before the Constitutional Court claiming an unjustified interference with their right to freedom of expression.

Amendments to the Georgian Law on Broadcasting had been adopted by the Parliament in November 2013. The amendments relating to the status of the new members of the “Board of trustees” of the Georgian Public Broadcaster resulted in the premature termination of the tenure of the current members of the Board of Trustees, who were to be replaced by new members appointed according to the new selection provisions. Subsequently, some of the current members of the Board introduced an individual application before the Constitutional Court claiming that the premature termination of the office of all members of the Board of Trustees constituted an infringement of their right to freedom of expression.

In its *amicus curiae* brief, adopted in March 2014, the Commission took a restrictive approach: without analysing the concrete case pending before the Constitutional

Court. It limited the scope of the brief to an abstract analysis of the case law of the European Court of Human Rights concerning the admissibility of complaints by public broadcasters or by members of a board of such a broadcaster. This analysis of the international case law was supplemented in the brief from a comparative perspective, namely with reference to the German constitutional law.

In conclusion, the Venice Commission, without taking a stand on whether the circumstances of the case pending before the Constitutional Court amounted to a violation of the claimants' right to freedom of expression, concluded that the reply to whether or not a public broadcaster is entitled to lodge an application before the ECtHR depends on the concrete circumstances. In its case law the ECtHR does not set out abstract criteria in order to distinguish governmental and non-governmental organisations (Article 34 ECHR), but examines the concrete circumstances in order to give an assessment on the practical independence of the legal entity from the State authorities. The fact that a legal entity is characterised as a "public entity" under the domestic law is not decisive. Even if the applicant broadcaster is labelled as "public" at the domestic level, the Court, in order to decide whether the public broadcaster can be considered as a "non-governmental organisation" under Article 34 of the ECHR and entitled to lodge an individual application before it, has to examine its legal status, the powers that status gives, the nature of the activities it carries out, the context in which they are carried out, the degree of the broadcaster's independence from political authorities, etc. The Commission considered that the Constitutional Court, having the necessary legal and factual knowledge of the concrete circumstances of the case pending before it, could draw appropriate conclusions from the analysis of the ECtHR approach to such cases.

Amicus curiae brief for the Constitutional Court of Georgia on the question of the defamation of the deceased (CDL-AD(2014)040)

In October 2014, the Constitutional Court of Georgia requested the Venice Commission's assistance as *amicus curiae* in a pending case. The case concerned the impossibility, under the Georgian law, to protect in court the reputation of a deceased person.

The brief first approached this problem from the international law perspective. Under the case law of the European Court of Human Rights the notion of "private life" under Article 8 ECHR encompassed respect for the reputation of living persons. As to the reputation of the deceased, the case law was not conclusive: whereas States are permitted to give it legal protection, they are not necessarily required to do so (especially in cases of "freedom of speech").

The *amicus curiae* brief, adopted in December 2014, outlined three theories justifying defending the reputation of a dead person and presented a comparative outline of the legal situation in common law (which does not provide for such defamation claims) and in civil law countries (where such defamation claims are possible). It expressed the view that if it is decided that the "reputation interest" of the deceased is worth protecting, the legislator must define who would have the standing to bring defamation claims. The brief recommended defining a narrow circle of potential plaintiffs in order not to produce a "chilling effect" on freedom of the press, and taking the least intrusive measures. The brief described the legal interest related to the reputation of the deceased as a "weak right" in cases where the impugned speech concerned public figures and matters of public interest. The brief did not enter into the specific case before the Constitutional Court of Georgia; the latter would have to decide on this, applying the test developed in the Court's case law under Article 10 ECHR.

In the meantime the law at issue in the case pending before the Court had been changed, and the impugned provision was no longer in force, which did not, however, preclude the Constitutional Court from deciding the case on its merits.

4th Black Sea Regional conference on “Emerging challenges to the right to privacy” (Batumi, 4-6 July 2014)

From 4 to 6 July 2014, the Constitutional Court of Georgia, the German GIZ and the Venice Commission organised this conference to explore *Challenges to the Right to Privacy notably on the Internet*. The key issues discussed were current developments in privacy law, including reform of the data protection laws, privacy and the media, social control and surveillance, privacy and the internet, privacy and the courts.

In her presentation, the Commission’s Vice-President analysed the dangers for the freedom of expression following the ‘right to be forgotten’ judgement of the European Court of Justice.

13th meeting of the Joint Council on Constitutional Justice and a mini-conference on “The role of Constitutional Courts in economic crises”

Please see Chapter III.2 below.

Japan

International symposium on institutional design for conflict resolution (Nagoya, 1-2 February 2014)

The Venice Commission participated in a symposium on “Institutional design for conflict resolution and negotiation: theory and practice” organised by the Graduate School of Law at Nagoya University. A representative of the Secretariat presented a paper on “Individual Access to Constitutional Courts as an Effective Remedy against Human Rights Violations in Europe – The Contribution of the Venice Commission”.

Jordan

Conference on constitutional courts and the judiciary: protecting human rights together (Amman, 24 April 2014)

On 24 April 2014, the Venice Commission organised, in Amman, in co-operation with the Constitutional Court of Jordan, a conference on constitutional courts and the judiciary: protecting human rights together. For information on this conference, see Chapter V.1.

Workshop on the organisation of a constitutional court (Amman, 10 December 2014)

On 10 December 2014, the Venice Commission organised, in Amman, in co-operation with the Constitutional Court of Jordan a Workshop on the organisation of a constitutional court. For information on this workshop, see Chapter V.1.

Republic of Korea

Study visit of the Constitutional Court representative to the Council of Europe (Strasbourg, 15 December 2014)

As a follow-up to the proposal by the Constitutional Court of the Republic of Korea to establish an Asian Court of Human Rights (see below), a study visit was organised by the Venice Commission for the Deputy Director in charge of international relations of the Constitutional Court of Korea. During the visit, which took place on 15 December, the Deputy Director had meetings with Mr Michael O’Boyle, Deputy Registrar of the European Court of Human Rights, Mr Jorg Polakiewicz, Director of the Directorate of Legal Advice and Public and International Law, Mr Philippe Boillat, Director General of the Directorate Human Rights and Rule of Law and Mr Alfonso de Salas, Head of the Division Human Rights Intergovernmental Co-operation.

Kosovo

Conference on “Multilateral diplomacy: opportunities and challenges for Kosovo’s membership in international organisations” (Vienna, 24-25 November 2014)

On 24 and 25 November 2014, a member of the Secretariat informed the participants of this conference, which was organised in Vienna by the Diplomatic Academies of Austria and Kosovo, about the accession of the Constitutional Court of Kosovo to the World Conference on Constitutional Justice and presented previous opinions of the Commission on Kosovo.

Kyrgyzstan

Opinion on the constitutional law on introducing amendments and additions to the constitutional law on the Constitutional Chamber of the Supreme Court of the Kyrgyz Republic (CDL-AD(2014)020)

For information on this opinion, see Chapter V, section 2.

Conference on the implementation of constitutional court decisions as a guarantee for the efficiency of constitutional justice (Bishkek, 21-23 May 2014)

For information on this conference, see Chapter V, section 2.

Study visit of the Constitutional Chamber of the Kyrgyz Republic (Madrid, 24-25 November 2014)

For information on this visit, see Chapter V, section 2.

Mexico

International workshop on Constitutional Courts and the rule of law (Mexico City, 2 October 2014)

See Chapter V.

Republic of Moldova

Amicus curiae brief on certain provisions of the Law on Professional Integrity Testing (anti-corruption law) of the Republic of Moldova (CDL-AD(2014)039)

On 18 September 2014, the President of the Constitutional Court of the Republic of Moldova requested an *amicus curiae* brief relating to certain provisions of the Law on professional integrity testing (anti-corruption law) concerning, in particular, Constitutional Court and ordinary court judges.

Advice was sought in respect of whether the control and evaluation of the integrity of ordinary court and constitutional court judges attributed to a body that is controlled by the executive was in line with the principles of the separation of powers and the rule of law; and whether an integrity test applied to judges by a body of the executive was in line with the right to respect for private and family life (Article 8 ECHR).

The *amicus curiae* brief stated that efforts made by states to fight corruption should be welcomed, but they should not jeopardise the stability of democratic institutions nor weaken the independence and impartiality of the judiciary.

Setting up a truly independent anti-corruption agency was generally encouraged for the purpose of effectively fighting corruption, however, the National Anti-Corruption Center (NAC) and the Information and Security Service’s (ISS) status needed to be more clearly defined so as not to raise any doubt whatsoever with respect to their autonomy. This Law therefore had the potential of negatively interfering with the principle of judicial independence, the separation of powers and the rule of law.

The Law in question provided that testers systematically act as *agents provocateurs*. Dismissal was mandatory on

the basis of the tester's reports that a bribe had been accepted. In order not to disclose the identity of the tester, the dismissed person could not examine him or her as a witness in the appeal against the dismissal.

Although protection against the disproportionate application of surveillance measures is guaranteed by Article 8 ECHR, the Law made audio/video recording of testing mandatory. This could constitute an intrusion into the private life of a judge. The use of such means by the NAC (or ISS), without any counterbalancing checks, could pose a threat to judicial independence and may be wrongly used as an instrument to discipline judges (the Venice Commission was not aware of information regarding the existence of such counterbalancing checks). The state was under the obligation to provide the necessary safeguards in order to avoid abuse of such measures.

The *amicus curiae* brief took into account the need to address corruption in the Republic of Moldova and the information received from the Moldovan authorities, notably from the NAC. It had addressed the latter's claim that the Law was not applicable to judges. However, since the request made a clear reference to this Law's application to judges and due to the fact that the constitutional complaint presupposed this Law's application to judges, the *amicus curiae* brief took these positions as a starting point.

Follow-up to the Amicus curiae brief on the immunity of judges for the Constitutional Court of the Republic of Moldova (CDL-AD(2013)008)

On 15 November 2014, the President of the Constitutional Court of the Republic of Moldova requested an *amicus curiae* brief relating to a number of provisions removing judges' immunity in case of passive corruption and traffic of influence.

The *amicus curiae* brief stated that, while some states conferred criminal liability on judges as an additional guarantee, there were no internationally recognised norms to this effect. The Moldovan legislation therefore did not seem to contradict international standards.

The Constitutional Court rendered its judgment on 5 September 2014, and held that judicial independence was not an obstacle to criminal and disciplinary liability established by law. However, it found shortcomings in the criminal procedure law with respect to procedural actions, the way in which they are carried out and held that to detain a judge, brought by force, arrested and searched by an investigator without the consent of the Prosecutor General or the Supreme Council of Magistracy could affect the independence of the judiciary.

International conference on the "Role of constitutional justice in protecting the values of the rule of law" (Chisinau, 8-9 September 2014)

In co-operation with the Venice Commission, the Constitutional Court of the Republic of Moldova organised an international conference on the "Role of constitutional justice in protecting the values of the rule of law" on 8-9 September 2014 in Chisinau to mark the 20th Anniversary of the Constitution of the Republic of Moldova.

At the conference, the key role of the Constitutional Court in providing constitutional stability in the Republic of Moldova was highlighted.

One of the issues discussed was the attempt by the Moldovan Parliament in 2013 to subject the Constitutional Court's judges to the need to be "trusted" by Parliament. This would have impeded the Constitutional Court's independence since one of its roles is precisely to control the work of Parliament. However, this attempt had been abandoned.

Montenegro

Opinion on the draft law on the Constitutional Court of Montenegro (CDL-AD(2014)033)

The draft law on the Constitutional Court was part of a larger package of judicial legislation, which had been drafted in order to prepare for Montenegro's accession to the EU. At the same time, it was required by the implementation of the 2013 constitutional reform on which the Venice Commission had given an opinion. The draft law provided a good basis for the work of the Constitutional Court.

The opinion, adopted in October 2014, recommended *inter alia* extending the mandate of a judge until the successor takes up office, to remove the possibility for Parliament to be consulted before proceedings are initiated, to limit the possibilities of initiating cases by the Court itself; taking into account the rights of third parties in the re-opening of cases following the annulment of acts; and to set out clearly the parties and other participants for each type of proceedings. In order to ensure that the constitutional complaint remained an effective remedy under the ECHR, the second alternative for Article 67 (mere declaration of unconstitutionality rather than the repeal of judicial acts) should be avoided.

Conference on "Constitutional protection of human rights and fundamental freedoms" (Budva, 27-28 November 2014)

In co-operation with the Constitutional Court of Montenegro, the Venice Commission participated in a conference on "Constitutional protection of human rights and fundamental freedoms". The Commission's delegation presented the opinion on the draft law on the Constitutional Court of Montenegro (see above) underlining the need to ensure that the individual complaint would be recognised as an effective remedy by the ECtHR and that the Court needed sufficient resources.

Most speakers presented the system of individual access to the Constitutional Court in their countries. Without being able to provide a definitive reply, speakers addressed the issue of how to ensure that the Constitutional Court did not become a simple 4th instance, given that any legal issue could be seen from a constitutional angle.

Russian Federation

Moot court competition on constitutional law (St Petersburg, 20 November 2014)

In co-operation with the Institute for Public Law and Policy and under the auspices of the Constitutional Court of the Russian Federation, the Venice Commission organised the final round of the national moot-court competition on constitutional law amongst law school students. The competition is held every year and is supported by the Venice Commission. A delegation of the Venice Commission participated in the Jury.

Slovak Republic

Opinion on the procedure for appointing judges of the Constitutional Court in times of presidential transition in the Slovak Republic (CDL-AD(2014)015)

By a letter of 16 May 2014, the Minister for Justice of the Slovak Republic requested an opinion on the procedure for appointing judges of the Constitutional Court.

The Minister had put four questions to the Venice Commission regarding the power of the incumbent President to appoint three new constitutional judges before the end of his term, the possibility for the newly elected President to refuse to accept the submission of the oath by the judges appointed by the outgoing President, the possibility for the newly elected President to reject all of the proposed candidates and

require the National Council to submit a new list and the possibility for the newly elected President to recall the President of the Constitutional Court or the Vice-President from their new office and appoint a new President or Vice-President.

The opinion, adopted in June 2014, stated that the incumbent President of the Republic had the power to appoint three new constitutional judges before the expiry of his term of office but that he did not have to do so and instead had the discretion to leave such appointment to his successor. If the incumbent President nevertheless chose to proceed with the appointment, the incoming President did not have the power either to refuse to administer the oath, or to appoint three different judges, or to reject all the candidates and require the National Council to submit a new list of candidates. Moreover, it concluded that the incoming President could not recall from office the President and Vice-President of the Constitutional Court without objective reasons. Finally, the opinion reiterated that the co-ordination between the outgoing and the incoming Presidents needed to be guided by the principle of loyal co-operation among State institutions.

At the October 2014 session, the Commission was informed that the former President had not appointed the judges. Once in office, the new President appointed one out of the six candidates but refused to fill the two other vacancies because, in his view, the candidates were not qualified for the post of Constitutional Court Judge. The rejected candidates had appealed to the Constitutional Court against their non-appointment. The case was pending before the Constitutional Court.

Tajikistan

Opinion on the draft constitutional law on the Constitutional Court of Tajikistan
(CDL-AD(2014)017)

See Chapter V.

“The former Yugoslav Republic of Macedonia”

Opinion on the seven amendments to the Constitution of “the former Yugoslav Republic of Macedonia”, concerning, in particular, the Judicial Council, the competence of the Constitutional Court and special financial zones (CDL-AD(2014)026)

One of the proposed amendments concerned the extension of the competence of the Constitutional Court in the area of individual constitutional complaints (Amendment XXXIX). The opinion welcomed this development but suggested that giving new powers to the Court should not be immediate, and that the law on the Constitutional Court should be adopted which would regulate the procedure of constitutional complaint. The opinion also recommended formulating the competence *ratione materiae* of the Constitutional Court with reference to the basic rights listed in the Constitution, instead of creating a separate list of rights which are worded differently.

For other elements on this opinion see Chapter II above.

Conference “Contemporary challenges of constitutional judiciary” (Skopje, 19-20 September 2014)

The Venice Commission participated in the international conference “Contemporary challenges of constitutional judiciary” held on the occasion of the 50th Anniversary of the Constitutional Court of “the Former Yugoslav Republic of Macedonia” in Skopje, on 19-20 September 2014.

During the conference the following two main issues were discussed: the principle of separation of powers and its protection by the Constitutional Court and the Constitutional review of by-laws.

Turkey

Statement by the President of the Venice Commission on attacks against the Constitutional Court of Turkey

On 30 April 2014, the President of the Venice Commission issued a statement strongly criticising statements attacking the Constitutional Court of Turkey. The statement insisted on the crucial role of the Constitutional Court for upholding the rule of law, democracy and human rights in Turkey. Mr Buquicchio welcomed recent decisions of the Court, which made an important contribution to strengthening the independence of the judiciary and freedom of expression in Turkey and which had triggered these attacks.

Conference of the best practices of individual complaint to the constitutional courts in Europe (Strasbourg, 7 July 2014)

The Directorate of Human Rights of the Council of Europe and the Venice Commission organised this conference, which was to take stock of the current situation of individual complaint procedures in Turkey and the other participating countries. Recent judgements notably those upholding the freedom of expression on the Internet were discussed and welcomed at the conference.

Judge Angelika Nussberger of the European Court of Human Rights presented the Venice Commission's Report on "Individual access to constitutional justice", on which she was one of the rapporteurs during her membership in the Venice Commission, at the conference.

Conference on the 2nd anniversary of the individual application procedure before the Constitutional Court of Turkey (Antalya, 27-28 November 2014)

On 27 and 28 November 2014, the Venice Commission participated in a conference in Antalya, organised by the Constitutional Court of Turkey and the Council of

Europe, to celebrate the 2nd anniversary of the individual application procedure.

This conference was a follow-up to the 2011 Opinion on the law on the establishment and rules of procedure of the Constitutional Court of Turkey (CDL-AD(2011)040). Already in 2004, the Venice Commission had supported the introduction of an individual complaint with its Opinion on the Draft Constitutional Amendments with regard to the Constitutional Court of Turkey (CDL-AD(2004)024).

Following a thorough preparation, the introduction of this procedure had proved very successful. The European Court of Human Rights found, in the *Hasan Uzun v. Turkey* case (30 April 2013) that the individual complaints procedure before the Constitutional Court of Turkey afforded, in principle, an appropriate mechanism for the protection of human rights and fundamental freedoms and was an effective remedy.

At the conference, President Buquicchio confirmed the Commission's support for the Constitutional Court of Turkey (see above).

Uzbekistan

International round table on the "Relationship between the Constitutional Court, ordinary courts and national human rights institutions (ombudsman): the experience of Uzbekistan and European countries"

For information on this round table see Chapter V, section 1.

2. Joint Council on Constitutional Justice

At the invitation of the Constitutional Court of Georgia, the Joint Council on Constitutional Justice held its

13th meeting in Batumi (26-27 June 2014). The meeting was opened and chaired by the President of the Constitutional Court of Georgia.

The Joint Council:

- elected Ms Kovacs (Constitutional Court of Hungary) as its co-president in respect of the liaison officers;
- held exchanges of views with representatives of the regional and linguistic groups co-operating with the Venice Commission and was informed about this co-operation;
- was informed about the progress of the preparation of the 3rd Congress of the World Conference on Constitutional Justice;
- invited the liaison officers to contribute to the exchanges in the Venice Forum;
- was informed about the Constitutional Justice Observatory;
- was informed about activities and adopted opinions of the Venice Commission in the field of constitutional and ordinary judiciary;
- was informed about participation in and co-organisation of conferences and seminars in co-operation with Constitutional Courts and equivalent bodies (CoCoSem);
- adopted version 22 of the Systemic Thesaurus used in the CODICES database.

The meeting was followed by a mini-conference on the topic “The role of Constitutional Courts in economic crises”. The liaison officers from the Constitutional Courts of Croatia, Hungary, Portugal and Slovenia, as well as from the Councils of State of Greece and the Netherlands presented the relevant case law of their courts.

3. Bulletin on Constitutional Case Law and the CODICES database

The Bulletin on Constitutional Case Law, first published in January 1993, contains summaries of the most important decisions sent in by the constitutional courts or equivalent bodies from over 60 countries, the European Court of Human Rights, the Court of Justice of the European Union and the Inter-American Court of Human Rights. The contributions to the Bulletin are supplied by liaison officers appointed by the courts themselves.

The regular issues of the Bulletin are supplemented by a series of special bulletins on specific topics or containing descriptions of the courts and basic material, such as extracts from constitutions and legislation on the courts, thus enabling readers to put the different courts’ case law into context. The Bulletin’s main purpose is to encourage an exchange of information between courts and to help judges settle sensitive legal issues, which often arise simultaneously in several countries. It is also a useful tool for academics and all those with an interest in this field. The newly established constitutional courts in Central and Eastern Europe benefit from such co-operation and exchanges of information as well as from the judgments of their counterparts in other countries.

In 2014, the Special Bulletin on “Descriptions of Constitutional Courts” was published along with three regular issues of the Bulletin.

4. Venice Forum

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

- The restricted Newsgroup enables the Courts to actively share information with the other courts, e.g. to make on-line announcements on changes in their composition, on key judgments handed down and to make various requests to other Courts.
- The classic Venice Forum enables specific requests for information on case law from one Court to all other Courts. In 2014, the classic Venice Forum dealt effectively with 30 comparative law research requests covering questions ranging from children's rights, access to information and privacy, parliamentary immunity, ethical standards and the integrity of judges to assisted suicide.
- The Constitutional Justice Observatory reports on the reflection of the work of the Courts in the on-line media. In 2014, 478 items were added to the Observatory.

The Interim Bulletin enables the liaison officers to follow in real time the progress of their contributions to the Bulletin on Constitutional Case Law through all stages of the production (proof-reading in the original language – English or French, control of headnotes and indexing according to the Systematic Thesaurus, translation to the other language, and parallel proof-reading of the translation). Other liaison officers can also access the contributions of their peers during all these stages.

The Venice Forum, the Newsgroup and the Constitutional Justice Observatory are also open to courts working with the Venice Commission within the framework of regional agreements (see Section 5 below).

5. Regional co-operation

The Venice Commission co-operates closely with constitutional courts and equivalent bodies in its member, associate member and observer states. These courts meet with the Commission within the framework of the Joint

Council on Constitutional Justice. The publication of case law in English and in French in the printed Bulletin on Constitutional Case Law, access to the classic Venice Forum (quick on-line requests to other constitutional courts on cases relevant for pending cases) are reserved to courts represented in the Joint Council (member, associate member and observer States and States with special Status with the Venice Commission).

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

Conference of European Constitutional Courts (CECC)⁵

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

Upon request by the Constitutional Court of Austria, holding the Presidency of the Conference of European Constitutional Courts, the Venice Commission prepared a working document on the topic of the XVIth Congress of the CECC on “Co-operation of Constitutional Courts in Europe – current situation and perspectives, with three sub-topics: 1) Constitutional Courts between constitutional law and European law, 2) Interaction between Constitutional Courts and 3) Interaction between European Courts”. This topic is at the very core of the Joint Council's work to promote co-operation between the courts.

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

A delegation of the Venice Commission, headed by its President, participated in the XVIth Congress. The discussions during the Congress revealed an intense, albeit sometimes indirect, dialogue between the national Constitutional Courts and the European Courts. The principle of subsidiarity (margin of appreciation) was at the core of the discussions.

The Commission's working document was warmly welcomed during this event. The Venice Commission was invited to further reinforce its platform for the Constitutional Courts.

Association of Constitutional Courts using the French Language (ACCPUF)⁶

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

A delegation of the Venice Commission participated in the conference of heads of institutions of ACCPUF in Ottawa, Canada, on 27-30 April 2014.

The conference dealt with the topic "Constitutional courts and the media" from various angles. While some French speaking Courts have a rather closed attitude towards the media, others engage actively with journalists in order to explain judgements and thus to ensure a faithful presentation of the Court's decision in the media.

Until 23 September 2014, the Association of Constitutional Courts using the French Language held the Presidency of the Bureau of the World Conference on Constitutional Justice.

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

Southern African Chief Justices Forum (SACJF)

The basis of the co-operation with the Southern African Chief Justices Forum is the co-operation agreement signed in Maseru (Lesotho) in 2007.

On behalf of the Southern African Chief Justices Forum, the Chief Justice of the Supreme Court of Namibia participated in the 13th meeting of the Joint Council on Constitutional Justice (Batumi, Georgia, 26-27 June 2014), where he presented the SACJF's co-operation with the Venice Commission and the World Conference on Constitutional Justice.

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

On the basis of the co-operation agreement with the Conference of the Constitutional Control Organs of the Countries of New Democracy, signed in Yerevan in October 2003, the Venice Commission co-organised with the Constitutional Court of Armenia and the European Court of Human Rights, the XIXth Yerevan international conference on "the Constitutional Status of Human Dignity" (Yerevan, 24 October 2014).

During the conference, the doctrinal approaches of the concept of human dignity as well as the acknowledgment of this notion by the case law of several Constitutional courts were discussed.

Since 24 September 2014, the Conference of the Constitutional Control Organs of the Countries of New Democracy holds the Presidency of the Bureau of the World Conference on Constitutional Justice for one year.

Association of Asian Constitutional Courts and Equivalent Institutions (AACC)

The President of the Venice Commission participated in the 2nd Congress of the Association of Asian Constitutional Courts and Equivalent Institutions which was held in Istanbul, Turkey, on 28-30 April 2014, to mark the 52nd anniversary of the Constitutional Court of Turkey.

During this Congress, Azerbaijan was admitted as a new member of the Association and the President of the Constitutional Court of Indonesia was elected new Term President.

The topic of the event was the “Role of constitutional and supreme courts in the protection of the constitutional order”, which led to discussions on the protection of social rights (by constitutional courts), the protection of human rights through an individual application procedure, the relations between constitutional, supreme courts and parliament and the existing methods of interpretation in constitutional justice.

At the end of the event, the members of the Association signed the Istanbul Declaration (see: <http://www.anayasa.gov.tr/en/News/Detail/9/>), referring to the four sub-topics of the event. They declared, *inter alia*, that: constitutional adjudication and review systems, keeping the supremacy of the Constitution and constitutional values alive, had become indispensable tools for the protection of fundamental rights and freedoms as well as the constitutional state order; that protection of the rights of individuals, socially disadvantaged and vulnerable groups should be given priority and that state organs using public power should refrain from trespassing the limits of fundamental rights and freedoms.

Ibero-American Conference of Constitutional Justice (CIJC)

Co-operation with the CIJC is based on a co-operation agreement signed in June 2008.

The Ibero-American Conference of Constitutional Justice participated in the meeting of the Bureau of the World Conference on Constitutional Justice in Seoul on 28 September 2014 (see below).

Union of Arab Constitutional Courts and Councils (UACCC)

Co-operation with the UACCC is based on a co-operation agreement signed in June 2008.

A delegation of the Venice Commission, headed by its President, participated in the conference on “Evaluation constitutional control experiments in the Arab States”, organised by the Constitutional Council of Lebanon in co-operation with the Konrad Adenauer Foundation and the Union of Arab Constitutional Courts and Councils.

The conference dealt with four sub-topics, the influence of constitutional justice on the legislature, the influence of constitutional justice on the judiciary, the influence of constitutional justice on the regulation of constitutional institutions and the development of a constitutional justice strategy in the Arab States.

For information on this event, see also below in Chapter V, section 2.

Conference of Constitutional Courts of Portuguese Speaking Countries (CJCPLP)

A Co-operation Agreement between the Conference of Constitutional Courts of Portuguese Speaking Countries and the Venice Commission was signed in May 2012 in Maputo. Shortly after its establishment, the CJCPLP

became one of the founding regional groups of the World Conference on Constitutional Justice (WCCJ).

On 2 and 3 June 2014, the 3rd General Assembly of the Conference of Constitutional Courts of Portuguese Speaking Countries was organised by the Constitutional Tribunal of the Republic of Angola in Benguela.

The topic of the event was “Constitutional Courts and the protection of fundamental rights”. The participants agreed that it was clear that, on the domestic level, the protection of fundamental rights will also depend on the system of constitutional justice the country has chosen. In some, the individual has direct access to the court, usually after having exhausted all other internal legal remedies. In others, concrete norm control is used to obtain a preliminary ruling on a question of constitutionality that may arise from ordinary courts when they have to apply legislation that is deemed unconstitutional.

Constitutional courts are the custodians of these fundamental rights. It is therefore crucial that these courts be independent, endowed with a wide jurisdiction and be accessible to individuals so as to be able to provide an effective remedy against human rights violations.

Conference of Constitutional Jurisdictions of Africa (CCJA)

Co-operation between the Conference of Constitutional Jurisdictions of Africa and the Venice Commission is based on the agreement signed in Cotonou, Benin, in May 2013.

The Secretary General of the Conference of Constitutional Jurisdictions of Africa (Constitutional Council of Senegal) informed the 13th meeting of the Joint Council on Constitutional Justice (Batumi, Georgia, 26-27 June 2014) about the work of the CCJA.

On 24 and 25 November 2014, the President of the Venice Commission participated in Algiers in a seminar on “The Progress of Constitutionalism in Africa”, organised by the Constitutional Council of Algeria, in co-operation with the Conference of Constitutional Jurisdictions of Africa on the occasion of the 25th anniversary of the Council. He called upon the participating African judges to work for democracy, the protection of human rights and the rule of law even in difficult circumstances, when they are under pressure from other state powers.

6. World Conference on Constitutional Justice (WCCJ)

According to the Statute of the World Conference on Constitutional Justice, the Venice Commission acts as the Secretariat of the World Conference.

The World Conference unites 94 Constitutional Courts and Councils and Supreme Courts in Africa, the Americas, Asia and Europe. It promotes constitutional justice – understood as constitutional review including human rights case law – as a key element for democracy, the protection of human rights and the rule of law (Article 1.2 of the Statute).

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

The main purpose of the World Conference is to facilitate judicial dialogue between constitutional judges on a global scale. Due to the obligation of judicial restraint, constitutional judges sometimes have little opportunity to conduct a constructive dialogue on constitutional principles in their countries. The exchanges that take

place between judges in the World Conference further reflect on arguments which promote the basic goals inherent in national constitutions. Even if these texts often differ substantially, discussion on the underlying constitutional concepts unites constitutional judges from various parts of the world who are committed to promoting constitutionalism in their own country.

From 28 September to 1 October, the World Conference on Constitutional Justice held its 3rd Congress in Seoul, at the invitation of the Constitutional Court of the Republic of Korea.

In addition to delegations from 73 Constitutional Court members, 21 Constitutional Courts eligible for membership as well as 3 international and regional Courts, participated in the 3rd Congress, making a total of 306 participants.

The topic of the 3rd Congress, proposed by the host Court and approved by the Bureau of the World Conference, was “Constitutional justice and social integration”. The 3rd Congress dealt with this theme in four sub-topics:

1. challenges of social integration in a globalised world;
2. international standards for social integration;
3. constitutional instruments enhancing/dealing with/for social integration ;
4. the role of constitutional justice in social integration.

On the basis of the replies to a questionnaire, each sub-topic was introduced by a key-note speaker and then discussed by the participants. At the final concluding session, the key-note presentations and the discussions of each session were summarised by rapporteurs.

On the basis of the debates at the 2nd Congress of the World Conference (Rio de Janeiro, 16-18 January 2011), which had dealt with the independence of Constitutional Courts as the main topic, the Bureau of the World Conference on Constitutional Justice had

decided that each Congress should, in addition to the main topic, also include a stocktaking on the independence of the Constitutional Courts, members of the World Conference.

The 3rd Congress included such a stocktaking exercise. The replies to the questionnaire on this point and the discussions at the 3rd Congress showed that some courts and some judges had indeed come under serious pressure from the executive and the legislative powers, from vested interests, but also from the media, which sometimes misunderstand judgments or distort the image of courts. Several courts had been subjected to fierce and disrespectful criticism, even seeing their judgments not executed and in some cases, their budgets cut and their powers reduced and some courts had even been dissolved.

In the Seoul Communiqué, adopted at the 3rd Congress, the participants called upon the member Courts of the World Conference to resist undue pressure from other State powers and from vested interests and to take their decisions only on the basis of the Constitutions and the principles enshrined in them.

The Seoul Communiqué pointed out that the World Conference, through its Bureau, stands ready to offer its good offices to Courts which come under pressure.

Furthermore, the participants were informed about the initiative of the Constitutional Court of the Republic of Korea to promote discussions on human rights co-operation, including the possibility of establishing an Asian human rights court based on international human rights norms, in order to enhance human rights protection in the region. The participants encouraged participating Asian Courts to promote such discussions.

In addition to the representatives of the 10 regional and linguistic groups represented in the Bureau of the World Conference on Constitutional Justice, the first

General Assembly of the World Conference elected the Constitutional Courts of Austria, Lithuania and Turkey as members of the Bureau until the next regular General Assembly takes place in 2017.

The 8th meeting of the Bureau of the World Conference (Seoul, 28 September 2014) approved the financial report

presented by the Venice Commission of the Council of Europe, which acts as the Secretariat of the World Conference and approved guidelines for accepting financial contributions (Article 4.b.7 of the Statute).

By the end of 2014, 94 Constitutional Courts and equivalent bodies had joined the World Conference as full members.

IV. Elections, referendums and political parties

1. Country specific activities

Bosnia and Herzegovina

*Legal assistance to an electoral observation mission
(12 October 2014)*

On the occasion of the General Elections, which took place simultaneously on 12 October 2014 (Presidential Elections of Bosnia and Herzegovina, House of Representatives of Bosnia and Herzegovina, House of Representatives of the Federation of Bosnia and Herzegovina, President and Vice-Presidents of the Republika Srpska, National Assembly of the Republika Srpska and Cantonal Assemblies), the Venice Commission gave advice to the Parliamentary Assembly of the Council of Europe on potentially problematic legal issues by preparing a legal memorandum.

The Venice Commission in particular pointed out problems relating to the unequal distribution of mandates awarded to each constituency, the deadlines for constituting electoral bodies and for appointing members of polling station committees and the need to introduce transparent ballot boxes.

Bulgaria

*Joint opinion on the draft Election Code of Bulgaria
(CDL-AD(2014)001)*

Following a request from the Deputy Speaker of the National Assembly of Bulgaria, the Council for Democratic Elections and the Venice Commission adopted, in March 2014, an opinion on the draft Election Code of Bulgaria, drawn up jointly with the OSCE/ODIHR.

The opinion pointed out several positive changes in the new draft, in particular a more balanced appointment procedure within electoral Commissions; the reduction of the amount of electoral deposits; clarification of deadlines for appealing denials of candidate registration or the reduction of the residency requirement for voters in hospitals and detention centres to six months in order to vote in local elections.

However, the opinion indicated that the draft code did not address several recommendations made by the Venice Commission in its 2011 opinion, in particular, improving voter registration and the compilation of voter lists; reducing restrictions on suffrage rights for citizens serving prison sentences, regardless of the severity of the crime committed; providing for an effective system of appeal; harmonising the various deadlines of the electoral process; reviewing the draft Code to ensure the right to vote of Bulgarian citizens holding a dual citizenship or allowing the use of minority languages in an electoral campaign.

Follow-up to the Joint Opinion on the draft Election Code of Bulgaria (CDL-AD(2014)001)

The National Assembly of Bulgaria adopted the new Electoral Code of Bulgaria on 4 March 2014. The Venice Commission examined the adopted text at its June 2014 session, in the light of the opinion previously adopted at the March 2014 session.

The Venice Commission pointed out that the adopted text could be considered as a step forward and that a number of recommendations of the 2011 joint opinion had been followed by the Bulgarian authorities.

The Commission noted, for example, that there was an improvement in the composition of election commissions as well as a clarification of the deadlines for nomination, the possibility to appeal decisions of the Central Electoral Commission to the Supreme Administrative Court and an improvement in the financial support from the State for independent candidates.

The Venice Commission noted that a number of recommendations remained, however, unaddressed, concerning: specific improvements in the method of allocation of seats for legislative elections; improvement of the voter registration procedure and more generally reinforcing the accuracy of voter lists; the reduction of restrictions on voting for persons with dual citizenship; the improvement of the procedure of complaints and appeals and the effectiveness of this mechanism; the strengthening of the authority of the National Audit Office to check the accuracy of campaign funding and the effective use of minority languages in the electoral campaign.

Legal assistance to an election observation mission (Sofia, 3-6 October 2014)

At the invitation of the Parliamentary Assembly of the Council of Europe, Venice Commission representatives assisted the Parliamentary Assembly delegation observing the early legislative elections on 5 October 2014. The Venice Commission delegation presented a legal memorandum and pointed out the elements to be observed on polling day, in particular the count.

Following the elections the Venice Commission representatives particularly noted the unusually high number of invalid ballots for this election, mainly owing to a misunderstanding in the voting process by part of the electorate, because of the new preference vote system. They also noted the complexity of the count, in particular to complete the results protocols.

Georgia

Post electoral conference: “The 2013 presidential election; lessons learned and steps ahead” (Tbilisi, 19 February 2014)

The Venice Commission was invited to take part in a conference aimed at drawing conclusions and lessons from the holding of the 2013 Presidential elections.

Around 50 participants gathered together, with speeches from all political sides, in particular the Minister for Justice, Ms Tea Tsulukiani, on behalf of the coalition government and former presidential candidates from other political sides. The civil society and the media were also present and contributed. The Venice Commission expert presented the main joint recommendations of the Venice Commission and the OSCE/ODIHR on the Electoral Code as well as possible improvements to the text.

Assistance to the Central Electoral Commission of Georgia (Tbilisi, 21 April-18 May 2014)

At the request of the Central Electoral Commission of Georgia and within the framework of the preparation of the local elections on 15 June 2014, a Venice Commission electoral expert assisted the Central Electoral Commission of Georgia on legal aspects of the electoral process, as well as by training staff from District Electoral Commissions. In particular, she assisted the legal department and the training centre of the Commission.

Regarding legal assistance the expert mainly advised the Commission on the implementation of the revised Electoral Code. Regarding the training of electoral staff, she particularly highlighted the recent changes to the electoral code, the procedures which are applicable to the territorial and district electoral commissions for resolving electoral disputes or even the legal provisions

concerning the misuse of administrative resources during the electoral process.

Post electoral conference: “The 2014 local elections; lessons learned and steps ahead” (Tbilisi, 16 September 2014)

The Council of Europe and the International Foundation for Electoral Systems (IFES) jointly organised a conference aimed at a follow-up to the 2014 local elections, with the support of the Swiss Confederation and the United States Agency for International Development (USAID).

The aim of this conference was to draw conclusions from the organisation and the conduct of the 2014 local elections in terms of their compliance with European and international standards and with a view to improving the electoral process in Georgia. This conference was the last in a series of Conferences held during the electoral cycle 2012-14 and was, as such, an opportunity to assess the whole electoral cycle as well as the Council of Europe’s assistance programme for Georgia.

The conference participants included members of the Government and local authorities, representatives of the Central Electoral Commission, the international community, the media and the civil society.

The discussions centred on four subjects: the 2014 local elections; the environment of the local elections; the opinion of NGOs and experts; and opportunities and challenges for the next elections.

A Venice Commission electoral expert, who had been detached to the Central Electoral Commission of Georgian within the framework of the 2013 and 2014 elections, presented the Venice Commission’s recommendations aimed at improving the legislation and the administration of elections in view of the next elections and in particular the problems linked to the electoral system and to the drawing of constituency boundaries or even the issue of dealing with electoral complaints.

Hungary

Follow-up to the Joint Opinion on the Act on the elections of members of parliament of Hungary (CDL-AD(2012)012)

The Election Act of Hungary came into force in January 2012 and was further revised on 3 March 2014. Improvements were introduced thanks to this revision, in particular concerning the conditions for nominating candidates. However, several recommendations made in the 2012 opinion were still to be addressed concerning in particular: the need for a clearer definition of the method of seat allocation to constituencies; the right of voters from national minorities to choose on election day between minority lists and classical party lists; the necessity to vote in polling booths in order to secure the secrecy of the vote and the necessity to detail further the voting procedures abroad.

Kyrgyzstan

Opinion on the draft law on elections in the Kyrgyz Republic (CDL-AD(2014)019)

See Chapter V.

Mexico

Follow-up to the Opinion on the Electoral Code (CDL-AD(2013)021)

See Chapter V.

Montenegro

Follow-up to the Joint Opinion on the draft law on amendments to the Law on Election of Councillors and Members of Parliament of Montenegro (CDL-AD(2011)011)

The Election Law of Montenegro had been amended in July 2006 and then further revised on 21 March 2014.

New provisions were introduced concerning the inspection of all election materials, including ballots, polling station minutes and the voters' list. Moreover, the revised Law provided for the possibility to appoint, as members of municipal election commissions, elected councillors supported by groups of voters and, as previously recommended, clarified the issue of ballot coupons during mobile voting.

Some recommendations made in the 2011 opinion, however, remained unaddressed in the 2014 revised Election Law mainly including: the need to draw up detailed provisions on the issue of political parties' coalitions, their dissolution and its effects; the need to reduce or remove the length of residency requirement for candidates in local, regional and national elections; the need to improve the representation of the opposition parties in the electoral administration; the recommendation to extend the mandate of the State Election Commission to guarantee that it co-ordinates and supervises municipal as well as national elections and the need to clarify the voting procedures in prison.

Romania

Workshop on the participation of women in politics (Braşov, 7-8 March 2014)

At the invitation of the Permanent Electoral Commission of Romania, the Venice Commission took part in a workshop on the participation of women in politics and ways of improving the involvement of women in politics. A Venice Commission electoral expert intervened during the workshop. The expert enumerated the existing international instruments concerning the participation of women in elections and then analysed the evolution of the number of women elected to parliament in several European countries. She highlighted the obstacles preventing women from becoming deputies and the existing measures to promote their entry into parliament,

including the issue of quotas or the choice of electoral system.

Serbia

Joint Opinion on the draft law amending the Law on the Financing of Political Activities of Serbia (CDL-AD(2014)034)

Following a request from the Minister of Finance of Serbia the Venice Commission adopted, in October 2014, an opinion on the draft Law amending the Law on the financing of political activities of Serbia. This opinion was drawn up jointly with the OSCE/ODIHR.

The opinion first of all praised the draft amendments which largely improved the quality of the Law. However, the draft amendments could benefit from certain revisions and additions. To this end, the opinion made a series of recommendations including four key recommendations: to include provisions and guidelines in the Law on the autonomous mandate of the Anti-Corruption Agency, in particular on its competences to apply a range of measures against illegal behaviour, while adding provisions which ensure proportionate sanctions; to reconsider the level of public funding; to consider introducing an overall campaign expenditure limit and a party financing limit and to lower the limits on private funding for both private individuals and companies.

"The former Yugoslav Republic of Macedonia"

Follow-up to the Opinion on the Electoral Code of "the former Yugoslav Republic of Macedonia" (CDL-AD(2013)020)

Following the entry into force of the Electoral Code in February 2012 and amendments to the Code adopted in January 2014, the Venice Commission was informed on the follow-up to its 2013 Joint Opinion at the October 2014 session.

The changes adopted in 2014 took into consideration some of the recommendations made in the 2013 Joint Opinion, such as the need for a more balanced gender representation in election administration bodies.

However, a number of recommendations remained unaddressed, concerning in particular: the additional safeguards recommended regarding the separation of state and political parties; the need to strengthen the provisions on campaign financing, notably the threshold for campaign contributions by individuals and legal entities; the need to address the electoral dispute resolution mechanism, the uneven distribution of voters in constituencies and the difference between the numbers of voters in in-country and out-of-country districts.

Legal assistance to two electoral observation missions (Skopje, 11-14 April 2014; 25-28 April 2014)

At the invitation of the Parliamentary Assembly of the Council of Europe, Venice Commission representatives assisted the Parliamentary Assembly delegation in observing two rounds of the Presidential election on 13 and 27 April 2014, as well as the early parliamentary elections on 27 April 2014. During these two missions, the Venice Commission delegation presented a legal memorandum and advised the head of delegation on potentially problematic legal issues. The Venice Commission in particular raised the recurring problem of the unreliability of electoral lists and the biased media coverage of election campaigns.

Ukraine

Round table on electoral disputes (Kyiv, 7 October 2014)

The Venice Commission organised a Round table on electoral dispute resolution in co-operation with the Administrative Court of Ukraine. This Round table was a follow-up to the regional training seminars organised

by the OSCE in Ukraine on electoral dispute resolution. Around 30 judges from the Administrative Court of Ukraine and from regional courts took part in this Round table.

The Round table was organised around the following subjects: Recommendations of the Venice Commission and the OSCE/ODIHR on the electoral legislation of Ukraine; the case law of the European Court of Human Rights on election disputes; and Case law concerning election dispute resolution by courts of Ukraine. This event enabled the participants to discuss and exchange views on different questions concerning electoral disputes. It also contributed to raising awareness both of the European norms and standards in the electoral field as well as of the relevant case law of the European Court of Human Rights.

2. Transnational activities

Studies and reports

Criteria for standing in local and regional elections

The Venice Commission, through the Council for Democratic Elections, took part in the preparation of a document of the Congress of Local and Regional Authorities of the Council of Europe on the criteria for standing in local and regional elections. The final version of this text should be adopted in 2015.

5th Council of Europe Review Meeting to examine developments in e-voting (Lochau/Bregenz, 28 October 2014)

The Venice Commission participated in the 5th Council of Europe Review Meeting to examine developments in e-voting since the adoption of Recommendation Rec(2004)11 on legal, operational and technical standards for e-voting.

Interim Report on proportional electoral systems: the allocation of seats inside the lists (open / closed lists) (CDL(2014)051)

At the end of 2012, the Council for Democratic Elections agreed on the need to publish a comparative report on proportional electoral systems, more specifically on the issue of the allocation of seats inside the lists (open/closed lists systems). A draft report on this issue was discussed at the December 2014 meeting of the Council for Democratic Elections.

The report is divided into two parts. The first part describes the electoral systems in Europe and beyond used within the member States of the Venice Commission. This part also introduces single-member-constituency (plurality or majority) and closed-list systems. The second part of the report details open-list systems and considers the level of choice of the voters and its effects in each electoral system.

The Council discussed this issue at its December 2014 meeting and endorsed an interim version. The Council agreed to develop certain aspects of the report, to re-examine it at the March 2015 and to submit it to the March 2015 plenary session of the Venice Commission for adoption.

European Conference of Electoral Management Bodies

11th European Conference of Electoral Management Bodies "Combating the misuse of administrative resources during electoral processes" (Helsinki, 26-27 June 2014)

The Commission organised, in co-operation with the Ministry of Justice, the Parliament and the National Audit Office of Finland, the 11th European Conference of Electoral Management Bodies in Helsinki, Finland, on 26-27 June 2014.

Ms Anna-Maja Henriksson, Minister of Justice of Finland, opened the conference, followed by Ms Tuija Brax, Member of the Parliament of Finland, Chairperson of the Parliament Audit Committee and Mr Oliver Kask, Judge, member of the Venice Commission and Vice-President of the Council for Democratic Elections. The two Finnish representatives highlighted in particular the importance of the financial control of electoral campaigns and political parties as well as the legislative developments and practice which Finland has experienced. Mr Kask pointed out that the Venice Commission published a report on this issue in 2013. He also explained that the misuse of administrative resources had been highlighted on numerous occasions along with the recurrent problem of the confusion between the functioning of the public sector and the private sector. He then proposed to identify this phenomenon by offering a definition of administrative resources. Finally, he underlined the importance of the role of electoral administrations in combating the misuse of administrative resources.

More than 90 participants attended the conference from 24 countries, in particular delegations from countries beneficiaries of the Eastern Partnership Programme of the European Union. International Organisations were also represented, in particular the Organisation for Security and Co-operation in Europe/Office for Democratic Institutions and Human Rights (OSCE/ODIHR), the Organization of American States (OAS), the International Institute for Democracy and Electoral Assistance (International IDEA), the Association of European Election Officials (ACEEEO), the Association of World Electoral Bodies (A-WEB). Different Council of Europe bodies were also present, in particular representatives of the Group of States against Corruption (GRECO), the Venice Commission, the Congress of Local and Regional Authorities.

The main themes discussed were: legal environment, means of self-regulation and financing political parties and campaigns; recurring cases of misuses of administrative resources during electoral processes – assessing the damages; and preventing and combating the misuse of administrative resources, a key issue to reinforce confidence in democratic electoral processes.

In their conclusions the participants in particular:

- invited the Council for Democratic Elections, in co-operation with other relevant institutions, to consider developing guidelines aimed at preventing the misuse of administrative resources during electoral processes;
- recommended strengthening measures to combat such misuse;
- recommended the development of internal guidelines for public administration aimed at promoting ethical and non-partisan conduct;
- recommended promoting charters of ethics or agreements agreed upon by political parties and
- underlined the importance of monitoring and auditing bodies supervising the use of administrative resources during electoral processes.

3. VOTA, the Venice Commission's electoral database

The VOTA database was set up in 2004 as part of the joint Venice Commission and European Commission programme “Democracy through Free and Fair Elections”. It contains the electoral legislation of the Venice

Commission's member States and other states involved in the Commission's work. Over 100 laws and statutes from about 50 States, as well as Venice Commission opinions in the field of elections, are already available in the database, in English, French, as well as in Spanish (<http://www.venice.coe.int/VOTA>). This database is now jointly managed with the Electoral Tribunal of the Judicial Power of the Mexican Federation (*Tribunal electoral del poder judicial de la Federación, TEPJF*), which has given support to the database technically, adding new features, as well as indexing and adding documents.

In October 2013, an agreement was concluded with the Electoral Tribunal of the Federal Judiciary of Mexico in Mexico City. This agreement was aimed at modernising and designing the “VOTA” database in order to facilitate the access and the efficiency of the system. Among other improvements, the database would include electoral legislation of Latin American countries in English and Spanish. Throughout 2014, different meetings were held to assist the management of the database. A bridge to the CODICES database, in order to be able to search case law in the electoral field, was added to VOTA, a research which was not previously possible.

4. International co-operation in the field of elections and political parties

Co-operation with the European Union, OSCE and other intergovernmental organisations is dealt with in Chapter VI.

Activities outside Europe are discussed in Chapter V.

V. Cooperation in the Council of Europe neighbourhood and beyond

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1. Mediterranean Basin

Co-operation with the states in the Mediterranean Basin continued throughout 2014. The need to reform state institutions in accordance with international standards was confirmed by the implementation of projects in Morocco, Tunisia and Jordan. The Venice Commission co-operated successfully with Tunisia in bringing its legislation and institutional design in line with the new constitution adopted in January 2014. Co-operation with the Moroccan authorities focused in particular on legislation in the human rights field, the reform of the judiciary, support to the new institutions and the consolidation of the rule of law. In Jordan the Commission continued its fruitful co-operation with the Constitutional court. Several multilateral activities organised by the Commission in 2014 saw an increased participation of various representatives of the authorities and academia from Algeria, Egypt, Lebanon, Libya and Palestine.

Jordan

In 2014, the co-operation with the Constitutional Court of Jordan further developed in the framework of the Joint programme with the European Union “Support to the Jordanian authorities in improving the quality and the efficiency of the Jordanian justice system”.

On 24 April 2014, the Venice Commission and the Constitutional Court of Jordan organised a conference on “Constitutional courts and the judiciary: protecting human rights together” in Amman.

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

On 26 and 27 June 2014, the liaison officer of the Constitutional court of Jordan participated in the 13th meeting of the Joint Council on Constitutional Justice which was held in Batumi (Georgia).

Furthermore, a delegation from the Constitutional court of Jordan participated in the 3rd Congress of the World Conference on Constitutional Justice which was held in Seoul (Republic of Korea) on 28 September-1 October 2014.

Finally, on 10 December 2014, the Venice Commission organised, in Amman, in co-operation with the Constitutional Court of Jordan, a workshop on the internal organisation of a constitutional court.

Lebanon

On 13 and 14 November 2014, at the invitation of the Constitutional Council of Lebanon, the President of the Venice Commission participated in a conference entitled “Evaluation of the constitutional control in the Arab states”. This event was organised by the Constitutional Council of Lebanon in co-operation with the Konrad Adenauer Foundation and the Union of Arab Constitutional Courts and Councils.

Libya

On 7 and 8 January 2014, the President of the Venice Commission and two members of the Venice Commission visited Tripoli following the invitation of the General National Congress of Libya. The delegation exchanged views with the authorities on the Libyan constitutional process and discussed possible co-operation on the drafting of the new Constitution.

During the visit the delegation of the Venice Commission met with Mr. Abu Ali Nuri Sahmain, Chairman of the General National Congress, members of the Committee on Constitutional Affairs and laws of the Congress; Mr Salah Al-Bashir Marghani, Minister of Justice; Mr Kamal Dhan Bashir, President of the Supreme Court; members of the Amazigh Council and European ambassadors and representatives of international organisations.

The visit of the delegation of the Venice Commission was organised with the support of the EU Delegation in Tripoli. Unfortunately, due to the degradation of the security situation in the country bilateral contacts with Libya had to be temporarily suspended; however, representatives of Libya participated in some of the multilateral activities organised by the Commission.

Morocco

Co-operation with the Moroccan authorities in 2014 mainly developed in two directions: assistance in the preparation of organic laws and the strengthening of dialogue with the institutions.

Assistance in the preparation of organic laws

Following a request from the Minister of Justice, the Venice Commission, in co-operation with the European Commission for the Efficiency of Justice (CEPEJ) and the Consultative Council of European Judges (CCJE), provided two informal opinions on draft organic laws on “the status of judges” and on “the High Judicial Council”.

The two informal opinions were a follow up to the exchanges of views in Rabat on 9 January 2014 at the invitation of the Moroccan authorities (in which the Minister of Justice and Freedoms of Morocco personally participated) and then in Paris on 6-7 February 2014 at the invitation of the Council of Europe.

The informal opinions were sent to the authorities in April 2014.

Co-operation with the Office of the Mediator

The Venice Commission also continued its support to the training sessions for collaborators of Ombudsmen organised by the Office of the Mediator in the framework of the Association of Mediators, members of the Association of Ombudsmen and Mediators of the Francophonie (AOMF) and the Association of Mediterranean Ombudsmen.

The 13th training session for collaborators of the Ombudsmen, members of the AOMF, was held on 27-29 May 2014 on the theme “Self-referral: terms and effects”.

Furthermore, the 5th training session for collaborators of the Ombudsmen, members of the AOMF, was held in Rabat on 23-25 September 2014 on the theme “The means of intervention of ombudsmen and mediators”.

Finally, the training cycle closed with the 14th training session for collaborators of the Ombudsmen, members of the AOMF, which was held in Rabat on 1-3 December 2014 on the theme “Strategic planning as a vector of performance for the ombudsman/mediator Institutions of the francophonie”.

Each training session brought together around 25 persons from the different Institutions, i.e. more than 70 people were able to benefit from the training.

Dialogue with Parliament

The Venice Commission contributed to the 5th plenary session of the Euro-Mediterranean Regional and Local Assembly (ARLEM), held in Tangiers on 23-24 February 2014.

The Venice Commission presented its report on “The role of the opposition” at the seminar on “the functioning of

the parliamentary system: the role of the opposition and the role of the majority” organised by the Parliamentary Assembly of the Council of Europe at the invitation of the Moroccan Parliament in Rabat on 19 June 2014.

Contribution to the 2nd World Forum on Human Rights (Marrakech, 27-30 November 2014)

The Venice Commission was invited to participate in the 2nd World Forum on Human Rights and to contribute to two special events. At the invitation of the Moroccan Parliament the Commission participated in a conference on “The interaction of Parliaments with UN mechanisms for human rights”. The Commission also participated in the regional meeting of Ombudsmen organised by the Ombudsman of the Kingdom.

These activities were funded by the joint programme financed by the European Union and implemented by the Council of Europe “Strengthening democratic reform in the countries of the Southern Mediterranean”.

Tunisia

During 2014, the Venice Commission’s co-operation focussed on electoral issues which were at the heart of the country’s political agenda.

Assistance in implementing the new Constitution adopted on 27 January 2014 was also initiated. In order to close two years of intense and fruitful co-operation with the National Constituent Assembly of Tunisia, the Venice Commission was invited to participate in the adoption of the Constitution on 27 January 2014, and in the official ceremony held on 7 February 2014 in Tunis.

Electoral questions

During 2014 the Venice Commission has contributed at different levels to the electoral agenda in Tunisia.

On 10 March 2014, a meeting was held at the Bardo Palace between members of the General Legislation Committee, international experts in electoral law as well as members of the Venice Commission. The meeting took the form of an exchange of views on the electoral law.

On 17 March 2014, the Venice Commission participated in a workshop on “The participation of women in politics: a key factor for dialogue and democratic consolidation”. This workshop was organised by the North-South Centre in partnership with the Centre of Arab women for training and research (CAWTAR) as well as with the co-operation of the Congress of Local and Regional Authorities and the Parliamentary Assembly of the Council of Europe.

The Venice Commission contributed to the “Study days on electoral disputes”, which took place in Tunis on 24 and 25 June 2014. This workshop addressed international standards and national experiences on electoral disputes. The workshop was organised by the International Foundation for Electoral systems (IFES), with the support of the technical assistance team of the European Union, the Venice Commission and the Swiss Embassy in Tunisia, in partnership with the Administrative Tribunal and the Ministry for Justice, Human Rights and Transitional Justice.

The Venice Commission contributed to a training seminar on electoral disputes in Tunis on 10-11 September 2014. This seminar dealt with candidate’s disputes and disputes on results. This workshop was organised by the technical assistance team of the European Union, the International Foundation for Electoral systems (IFES), the Venice Commission and the Swiss Embassy in Tunisia in partnership with the Administrative Tribunal.

The Venice Commission participated, as a legal adviser, in a mission observing the parliamentary elections on

26 October 2014 and in a mission observing the presidential elections on 23 November 2014.

These activities were funded by the contribution from the Norwegian government “support to the reform process in Tunisia and Morocco”.

Project for an international Constitutional Court

The Venice Commission participated in a conference organised in Carthage on 12 June 2014 to discuss the creation of an international Constitutional Court.

Statute of the instance of good governance and the struggle against corruption

At the request of Mr Samir Annabi, President of the National Instance for the Fight Against Corruption (INLUCC), the Venice Commission in co-operation with the Council of Europe’s Co-operation Unit against economic crime, organised a working seminar on 18-19 December 2014 to draw up an organic law on the Instance for good governance and the fight against corruption (IBOGOLUCC) as foreseen by the Constitution.

This activity was funded by the Joint Programme “Strengthening democratic reform in the Southern neighbourhood” financed by the European Union and implemented by the Council of Europe.

Regional co-operation

4th Intercultural Workshop on Democracy (Rome, 9 October 2014)

The Venice Commission and the Ministry of Foreign Affairs of Italy jointly organised the Fourth Intercultural Workshop on Democracy: “Transparency and the Rule of Law as Pre-conditions of Equitable and Sustainable Development”, on 9 October 2014, at the Ministry of Foreign Affairs in Rome, Italy.

The event was funded by a voluntary contribution from the Italian government aimed at encouraging more active co-operation with Arab countries. This fourth workshop brought together around 80 participants, including the Secretary General and the Under-Secretary of State of the Ministry of Foreign Affairs of Italy, representatives from Algeria, Egypt, Jordan, Lebanon, Morocco, the Palestinian National Authority, Tunisia, as well as representatives from Mexico, alongside the members of the Venice Commission.

The workshop centred around two main themes: transparency, followed by reflections on the rule of law and its equitable and sustainable development. Transparency was addressed, generally, in terms of democratic accountability and as a means of incorporating public scrutiny as an aspect of governmental regulation. It was especially interesting to compare the use of anti-corruption measures across different countries and to reflect on the economic aspects of corruption – as an instrument to distort competition, hamper economic development and endanger social justice.

The effectiveness of the protection of economic and social rights in Southern Mediterranean countries and the protection of civil and political rights on both sides of the Mediterranean concluded the exchange of views. The discussions also revealed the convergence of democratic principles and values, such as the importance of the cultural dimension when dealing with these issues.

2. Central Asia

In 2014, the Venice Commission continued its fruitful co-operation with several countries in Central Asia. Activities were carried out mostly in the framework of two projects: “**Supporting Constitutional Justice, access to justice and electoral reform in the countries of Central Asia**” with funding provided by the

European Union and the Ministry for Foreign Affairs of Finland and **“Support to the Kyrgyz authorities in improving the quality and efficiency of the Kyrgyz Constitutional justice system”** with funding provided by the European Union.

A number of positive developments took place during the year such as establishing good contact with the Constitutional Court of the Republic of Uzbekistan, continuing co-operation with Turkmenistan as well as preparing 6 legal opinions for Kyrgyzstan and Tajikistan.

Kazakhstan

Co-operation with Kazakhstan in the framework of the above-mentioned project is mainly aimed at assisting the authorities in reforming their judicial system.

Round Table on “The Code of Criminal Procedure of Kazakhstan” (Akbulak, 6-7 March 2014)

Following a request from the authorities of Kazakhstan, the Venice Commission contributed to the Round Table on the “The Code of Criminal Procedure of Kazakhstan”. This event was part of an on-going dialogue on the reform of the Code of Criminal Procedure of Kazakhstan between the authorities and different international organisations, including the OSCE, the UNDP and the EU which had started in March 2013 at the Round Table organised by the Constitutional Council of Kazakhstan and the Office of the Prosecutor General. The main objective of this activity was to discuss the draft Code of Criminal Procedure and to provide the drafters with recommendations based on European experience.

Round Table on “International standards and practice on the selection of judges” (Astana, 15 May 2014)

The participants (judges from courts of all levels, members of the Bar association, MPs, experts, representatives of the civil society and the media), looked at a number

of issues including international and European standards and practice on the selection of judges and notably the procedure for the appointment of judges, which is central to judicial independence. The speakers at the Round Table illustrated options for improving procedures for selecting, promoting and training judges in Kazakhstan. The Venice Commission experts presented an earlier Joint Opinion on the constitutional law on the judicial system and on the status of judges of Kazakhstan adopted by the Venice Commission at its June 2011 session.

The outcome of this event was a set of recommendations on the improvement of national legislation on the judiciary.

Training session and a Round table on “Combating corruption and observing judicial ethics in the judiciary” (Astana, 17-18 November 2014)

This activity was organised jointly by the Supreme Court of Kazakhstan, the OSCE office in Kazakhstan and the Venice Commission.

At the training session, aimed at 35 judges of district and equivalent courts, the participants looked at a number of issues such as independence, transparency and accountability in the judiciary, innovative approaches in combating corruption in the judiciary and last but not least, judicial ethics and discipline. The training session was followed by a Round table discussion with the participation of the judges of the Supreme Court of Kazakhstan. This format enabled lively discussions and informal exchanges between the participants and the lecturers.

Kyrgyzstan

In 2014, the Venice Commission continued its co-operation with the authorities of the Kyrgyz Republic in the framework of two EU funded complementary projects: “Support to the Kyrgyz authorities in improving the quality and efficiency of the Kyrgyz constitutional justice

system” and the current project on “Supporting constitutional justice, access to justice and electoral reform in the countries of Central Asia”.

Opinion on the draft law “on elections in the Kyrgyz Republic” (CDL-AD(2014)019)

In March 2014, the authorities of the Kyrgyz Republic asked the Organization for Security and Co-operation in Europe’s Office for Democratic Institutions and Human Rights (OSCE/ODIHR) to provide an opinion on the draft law “On elections in the Kyrgyz Republic”. The OSCE/ODIHR and the Venice Commission decided to provide a joint legal opinion on the draft code with the goal of assisting the authorities in the Kyrgyz Republic in their stated objective to improve the legal framework for elections, meet the OSCE’s commitments and other international standards, and develop good practices for the administration of democratic elections.

The draft did not represent the position of the parliamentary majority or of the government. Positive steps were that the whole electoral legislation had now been consolidated into one law and the creation of a permanent Central Electoral Commission (CEC). The most problematic issues related to the provisions which unreasonably restricted the right to vote and candidacy rights, in particular for presidential elections, as well in the case of conviction for a minor offence; the rules enabling unreasonable and excessive control of an elected deputy’s mandate, resulting in a de facto imperative mandate; the parliamentary electoral system, in particular the rules on the allocation of seats to candidates inside a list and the double threshold (5% nationally and 0.5% in each constituency), as well as provisions favouring certain candidates inside a list; limitations on the rights to freedom of expression and association that were contrary to international standards and OSCE commitments. Moreover, the provision limiting the share of a party in Parliament was unclear and

left too much room for implementation to the Central Electoral Commission; other issues could be reconsidered, such as the rotation of the positions of the chairperson and the vice-chairperson of the CEC; the reintroduction of the possibility to register at the polling station on the voting day; the rules on early voting, which should be limited in time and open to observation; exceptions to the need for IDs on polling day; the amount of the deposit for local elections; provisions on complaints and appeals.

This opinion was adopted by the Council for Democratic Elections and the Venice Commission in June 2014.

Co-operation with the Constitutional Chamber of the Kyrgyz Republic

In 2014, the Venice Commission continued co-operating with the authorities of the Kyrgyz Republic in the framework of a separate project “Support to the Kyrgyz authorities in improving the quality and efficiency of the Kyrgyz Constitutional justice system” that started in 2013. The Constitutional Chamber of Kyrgyzstan had been established by the 2011 Constitution but it was unable to start its work for procedural reasons until July 2013.

Since January 2014, in the framework of the new project aimed at the Constitutional Chamber of the Kyrgyz Republic the Venice Commission organised (in some cases jointly with the UNDP office in Bishkek) several activities with a view to improving the operation of this Chamber.

Workshop for judges of the Constitutional Chamber on constitutional review (Bishkek, 13 March 2014)

A workshop aimed at the judges of the newly established Constitutional Chamber of the Kyrgyz Republic took place on 13 March 2014. The objective of this seminar was to discuss the principles of constitutional review, its procedural questions, methods and practical implications as well as to present the experience of

different constitutional courts, the Republic of Moldova, Croatia and Romania, in particular in order to enhance the capacity of the Constitutional Chamber to take well-grounded decisions based on the rule of law.

This seminar was a quick response of the project to the difficulties the Chamber was experiencing in January-February 2014 due to an unpopular decision of the Chamber that had been highly criticised by society.

*Workshop for judges on drafting decisions
(Bishkek, 19 May 2014)*

A workshop for judges of the Constitutional Chamber of the Kyrgyz Republic on drafting decisions took place in Bishkek on 19 May 2014. The aim of this seminar was to share with judges the new techniques of drafting court decisions. The judges learnt about the experience of several European Constitutional Courts as well as about the practice of the European Court of Human Rights. On this occasion the participants of the workshop were also presented the CODICES InfoBase on Constitutional case law.

*International conference on the “Implementation of decisions of a Constitutional Court as a guarantee for the efficiency of constitutional justice”
(Bishkek, 21 May 2014)*

A conference on the “Implementation of decisions of a Constitutional Court as a guarantee for the efficiency of constitutional justice” took place on 21 May 2014 in Bishkek and on 22 May 2014 at Issyk-Kul Lake. The conference brought together delegations from the Constitutional Courts of several countries, representatives of governmental institutions of the Kyrgyz Republic, non-commercial organisations, academia and international agencies. This event became a platform for the exchange of experiences and various practices in participating countries in terms of implementing court decisions. The Commission intends to organise similar exchanges of views in 2015.

*Opinion on the draft amendments to the constitutional law on the status of judges of Kyrgyzstan
(CDL-AD(2014)018)*

By letter dated 28 April 2014, the Chairman of the Parliamentary Committee on Judiciary Issues and Legality of the Parliament of the Kyrgyz Republic, requested the Commission to provide an opinion on the draft amendments to the constitutional law on the status of judges. The Constitutional Law had been already amended in 2011, and the Venice Commission had issued an opinion on the draft amendments to this Constitutional Law at that time. Given the similar scope of the requests received from the Kyrgyz authorities, it was agreed that the Venice Commission and the OSCE/ODIHR would prepare a joint opinion on the draft amendments.

The key recommendations of the opinion focused on such issues as grounds for disciplinary proceedings, additional sanctions for breach of oath, cases of conflict of interest, guarantees for judges for clear and fair disciplinary procedures and appeals against decisions. Further recommendations concerned inter alia, the need to provide for clear procedures for bringing about gender equality, which is set out in the draft law only as a general principle. It was also recommended to improve the procedure for choosing civil society candidates for membership in the disciplinary commission.

This opinion was adopted in June 2014.

*Opinion on the draft amendments and additions to the constitutional law on the Constitutional Chamber of the Supreme Court of the Kyrgyz Republic
(CDL-AD(2014)020)*

By letter dated 28 April 2014, the Chairperson of the Constitutional Chamber of the Supreme Court of the Kyrgyz Republic requested an opinion on the draft constitutional law “On introducing amendments

and additions to the constitutional law on the Constitutional Chamber of the Supreme Court of the Kyrgyz Republic”.

The purpose of the draft amendments was to optimise the work of the Constitutional Chamber and fill gaps in the current constitutional law on the Constitutional Chamber. The Venice Commission was of the opinion that some of the proposed amendments such as, for example, the introduction of internal sessions or the possibility for a party to represent him- or herself in the proceedings before the Constitutional Chamber, would definitely contribute to this purpose. It was underlined that some of the Commission’s recommendations had long-term significance and would gain in importance with the increasing number of cases on which the Court will decide in the future.

The most important and at the same time the most problematic issue seemed to be the proposed procedure according to which the Constitutional Chamber could give an additional interpretation of its decisions after they were handed down. The Commission was of the opinion that this proposed competence should be avoided, because – particularly in the context of new democracies – it could be used to exert dangerous pressure on the Chamber to substantively change a previous judgment. This could seriously undermine the authority of the Chamber and harm the people’s trust in the independence of the Chamber.

This opinion was adopted in June 2014.

Training session on media awareness and speaking in public (Bishkek, 11-12 November 2014)

A workshop on media awareness and speaking in public took place in Bishkek on 11-12 November 2014. This workshop was a training session for judges and staff members of the Constitutional Chamber of the

Kyrgyz Republic with the objective of exploring new techniques for dealing with the media. The judges learnt how to get the key message across, how to attract the interest of journalists and how to avoid using jargon. The participants had the opportunity to practice a mock-up press conference, TV and radio interviews and received feedback on their performance from an experienced trainer.

Study visit to the Constitutional Court of Spain (Madrid, 24-25 November 2014)

A study visit for judges and staff of the Constitutional Chamber of the Kyrgyz Republic to the Constitutional court of Madrid took place on 24-25 November 2014.

The aim was to present the Spanish experience concerning fundamental rights and freedoms and their constitutional protection.

Three different types of meeting were organised for the delegation of the Constitutional Chamber of the Kyrgyz Republic:

A meeting on constitutional rights’ protection and on the work and composition of the Constitutional Court of Spain. A Magistrate and a counsel of the Constitutional Court of Spain chaired a seminar with the judges of the Constitutional Chamber of the Kyrgyz Republic. The study visit participants got an insight into the work of their Spanish colleagues and exchanged opinions on a number of issues identified by the Kyrgyz delegation beforehand.

A seminar at the Centre for Political and Constitutional Studies of Madrid. The Vice- Director of the Centre accompanied by two counsels of the Constitutional court greeted the Kyrgyz judges and exchanged questions and answers on practical issues concerning individual access to constitutional justice.

A meeting with the Supreme Court of Spain in which the organisation and composition of ordinary justice was explained.

The exchanges were lively and dealt with all the questions sent and prepared in advance by the Chamber.

*Study visit to the Council of Europe
(Strasbourg, 26-27 November 2014)*

A study visit for judges and staff of the Constitutional Chamber of the Kyrgyz Republic to the Council of Europe on “The Council of Europe standards on human rights and recent developments related to the case law of the European Court of Human Rights” took place on 26-27 November 2014.

The participants learned about the work of the Venice Commission, the Parliamentary Assembly, HELP programme, GRECO, CEPEJ and other bodies and Council of Europe Departments. The study visit participants also received information about the case law of the European Court of Human Rights on the topic of the study visit, met judges and lawyers of the Court and exchanged views with colleagues.

The study visit was highly appreciated by the participants and gave an additional impulse to further bilateral co-operation as well as to a better understanding of the work carried out by the Council of Europe.

*Workshop on “The application of the principle
of proportionality” (Strasbourg, 28 November 2014)*

A workshop aimed at judges of the Constitutional Chamber took place in Strasbourg on 28 November 2014. During the seminar the judges learnt about the experience of several European Constitutional Courts, notably Belgium, Poland and Lithuania, as well as about the practice of the European Court of Human Rights on the application of the principle of proportionality.

Tajikistan

Co-operation with Tajikistan was particularly intensive in the framework of the joint project in 2014. The authorities chose 2 main areas for co-operation – the draft law on mediation and the draft law on the Constitutional court of the Republic of Tajikistan.

The draft law on mediation

A follow-up meeting with the Working Group on the law on mediation to discuss a list of new questions pertaining to the draft law was organised on 7 May 2014 in Dushanbe, Tajikistan following a request made by the authorities of Tajikistan to provide expert comments on the draft law on mediation and the exchanges of an expert of the Venice Commission with the members of the Working group held in November 2013.

A study visit for the members of the Working Group on the draft law on mediation of the Republic of co-operation in this field.

The participants were able to learn about the Belgian and European experience in the field of mediation in criminal and civil matters. They also met with a representative of the European Forum for Restorative Justice and visited the Federal Commission for Mediation in family, civil, social and commercial matters at the Ministry of Justice, the Public Prosecutor’s Office and the court of the judicial district of Leuven. The study visit participants met mediators working with adult and juvenile offenders as well as representatives of a NGO offering victim-offender mediation for adult offenders in Flanders.

*Opinion on the draft constitutional law
on the Constitutional Court of Tajikistan
(CDL-AD(2014)017)*

By letter dated 12 February 2014, the Chairman of the Constitutional Court of Tajikistan requested an opinion

on the draft law on the Constitutional Court of Tajikistan. Following the request, a delegation from the Venice Commission visited Dushanbe on 5 and 6 May 2014 and held meetings with the Chairman and the Judges of the Constitutional Court, the Advisor to the President of Tajikistan on legal issues, the Chair of the Committee on Legislation and Protection of Human Rights of the Majlisi Namoyandagon of the Majlisi Oli (lower chamber of Parliament) and the Minister of Justice of Tajikistan, as well as with several NGOs.

One of the main recommendations made by the Venice Commission concerned the removal of the possibility of terminating the mandate of a judge by transferring him or her to another position. In addition, it was stressed that a decision of the Supreme Court or the Constitutional Court itself should be required before a judge of the Constitutional Court can be dismissed by the Parliament or the President of the Republic. Not only citizens but all persons should be able to appeal to the Constitutional Court. The draft opinion also recommended that lifting the immunity of judges should be examined by the Constitutional Court. The possibility for a written procedure should be introduced to avoid overburdening the Constitutional Court.

This opinion was adopted in June 2014.

A follow-up to the co-operation in this field was a study visit for judges and staff of the Constitutional court of the Republic of Tajikistan to the Constitutional court of Romania on 5-6 December 2014. The participants were able to exchange experiences with their Romanian colleagues. They also visited the Legislative Council, the Parliament and the University of Bucharest.

Turkmenistan

In 2014, the Commission continued its co-operation with the authorities of Turkmenistan.

Round Table on judicial ethics and discipline (Ashgabat, 27 February 2014)

A Round Table was organised jointly by the Venice Commission, the Ministry of Foreign Affairs of Finland and the authorities of Turkmenistan in Ashgabat on 27 February 2014. Participants at this meeting included representatives of the Ministry of Justice, judges from the Supreme Court as well as from lower courts. Discussions focused on the fundamental issues pertaining to the efficiency of the judiciary, in particular on judicial ethics and judicial discipline.

On the same occasion, official meetings were organised for a Venice Commission delegation at the Ministry of Justice and the Supreme Court with the participation of Mr Merettagan Taganov, Deputy Minister of Justice and Mr Begench Khodzhamgulyev, Deputy President of the Supreme Court. Both institutions presented their current work and engaged in fruitful discussions with the representatives of the Commission.

A possible co-operation programme with the Venice Commission was discussed during the meeting at the Ministry of Foreign Affairs of Turkmenistan headed by Mr Berdiniyaz Myatiev, Deputy Minister of Foreign Affairs. He informed the representatives of the Commission about the forthcoming Constitutional revision and possible co-operation between the Parliament of Turkmenistan and the Venice Commission in this field.

In May 2014, the President of Turkmenistan announced that the Turkmen authorities had undertaken a new commitment to revise the Constitution in their quest to align the main document with the rich common constitutional heritage and practice of other countries. The Venice Commission handed in letters addressed to Deputy Minister Myatiev as well as to Ms Akja Nurberdieva, Speaker of the Mejlis of Turkmenistan via the Ministry of Foreign Affairs of Finland. In these letters the President of the Venice Commission confirmed

that the Commission was ready to assist the authorities of Turkmenistan in the preparation of the revised version of the Constitution of Turkmenistan.

Uzbekistan

2014 was marked by establishing good contacts with the Constitutional Court of the Republic of Uzbekistan.

Conference on the “Relations of the Constitutional Court with ordinary courts and national human rights institutions” (Tashkent, 29 May 2014)

Following the accession of the Constitutional Court of the Republic of Uzbekistan to the World Conference on Constitutional Justice, the Venice Commission organised a conference on the “Relations of the Constitutional Court with ordinary courts and national human rights institutions” on 29 May 2014 in Tashkent, Uzbekistan. The aim of this meeting was to discuss the current situation in Uzbekistan with respect to the exchange of information between the Constitutional Court, ordinary courts and ombudspersons and access to the Constitutional Court, future reforms, and examples from European countries that could be followed.

Two important points were made during the conference on introducing direct access of the Ombudsman to the Constitutional Court as well as on introducing an individual complaints procedure to the constitutional justice system. However, this would require a constitutional amendment as well as an amendment to the Law on the Constitutional Court.

Conference on “Further judicial and legal reform – a priority for the development and democratisation of the society” (Tashkent, 23-24 June 2014)

Following an invitation from the National Centre for Human Rights of the Republic of Uzbekistan, Venice Commission experts took part in a conference entitled “Further judicial and legal reform – a priority for the

development and democratisation of the society”, together with representatives of State bodies (Ombudsman office, Ministry of Internal Affairs), international organisations and diplomatic missions (OSCE/ODIHR, EU mission, USAID), international NGOs and private foundations. Participants exchanged views on various topics, such as the organisation of the judiciary, freedom of speech, prevention of torture etc. This conference was convened to respond to the criticism by the UN HR bodies and international NGOs and to report to the UN GA that Uzbekistan was making progress in the field of human rights protection.

Conference on “Effective use of ICT in courts” (Tashkent, 20 November 2014)

A conference on the use of information and communication technologies in courts took place in Tashkent, Uzbekistan on 20 November 2014. This activity was organised jointly by the Supreme Court of Uzbekistan, the High Commercial Court of Uzbekistan and the Venice Commission.

This activity brought together representatives of national institutions as well as guests from Bulgaria, the Republic of Korea, Malta and Slovenia who exchanged the experiences of their countries on the application of information and communication technologies in the work of ordinary courts, including the management of cases as well as computer facilities used by judges and court clerks and communication/information exchange.

Regional co-operation

Study visit to the Council of Europe for judges and lawyers from Central Asia on “Council of Europe standards and recent developments related to the case law of the European Court of Human Rights on the independence of the judiciary” (Strasbourg, 17-20 June 2014)

The study visit brought together judges from Constitutional and Supreme courts as well as lawyers from five Central

Asian states. The aim of the study visit was to get to know the work of the different bodies and Council of Europe Departments and the Venice Commission, in particular, on the independence of the judiciary. The study visit participants also had an opportunity to learn more about the case law of the European Court of Human Rights on the topic of the study visit and to attend a Grand Chamber public hearing at the European Court of Human Rights.

In the framework of the visit the participants also visited the Constitutional Court and the Supreme Court of Germany.

The study visit was highly appreciated by the participants and gave an additional impulse to further bilateral co-operation in the framework of the project.

Multilateral co-operation

Two representatives from Kyrgyzstan and two representatives from Tajikistan attended the 99th plenary session of the Venice Commission in Venice on 13-14 June 2014, concerning the adoption of opinions with regard to these countries.

Representatives from Kazakhstan, Kyrgyzstan and Tajikistan attended the 11th European conference of electoral management bodies on “Combating the misuse of administrative resources during electoral processes” which took place 26-27 June 2014, Helsinki, Finland (see Chapter IV).

Representatives from Kazakhstan, Kyrgyzstan and Tajikistan took part in the 13th meeting of the Joint Council on Constitutional Justice of the European Commission for Democracy through Law, 26-27 June 2014, Batumi, Georgia (see Chapter III).

Five representatives from Kyrgyzstan, Tajikistan and Uzbekistan took part in the 3rd Congress of the World Conference on Constitutional Justice on “Constitutional

justice and social Integration”, 28 September-1 October 2014, Seoul, Republic of Korea (see Chapter III).

3. Latin America

Brazil

International conference on the “Constitutional protection of economic and social rights in times of economic crisis. What role for the judges?” (Ouro Preto, 5-6 May 2014)

The event in Ouro Preto was co-organised by the Supreme Court of Brazil and the Venice Commission. In addition to several members of the Venice Commission and experts from different regions, including Central, Southern and Eastern Europe and North Africa, the event brought together experts from the European Court of Human Rights, judges from the Inter-American Court of Human Rights, as well as representatives of the European Social Charter and the United Nations Committee on Economic, Social and Cultural Rights. The conference participants further included judges from 12 Latin-American countries, including Bolivia, Brazil, Chile, Colombia, Costa Rica, Ecuador, El Salvador, Mexico, Nicaragua, Peru, Uruguay and Venezuela.

The decision to organise such a seminar had been taken at the meeting of the Sub-Commission on Latin America, held in Mexico in October 2013. Among the issues addressed during the meeting in Ouro Preto, were the transversal effects of the economic crisis in different regions which emerged as a starting point for an in-depth analysis of the crisis’ impact on fundamental rights and, more precisely, on the protection of economic, social and cultural rights. Drawing on the foregoing considerations, and against the backdrop of an ever-increasing need to share scarce resources, the aim of the meeting was to provide an opportunity for shared reflection on the impact of the economic crisis on fundamental rights and the role of judges as guarantors of such rights.

Meeting of the Sub-Commission on Latin America (Ouro Preto, 6 May 2014)

The meeting of the Sub-Commission on Latin America was attended by representatives from Latin American countries not members of the Venice Commission. The agenda of the meeting included such issues as the follow-up given to the previous opinions of the Venice Commission, the road-map for the possible activities in Latin America in 2015-2016 and the creation of a network of experts, which could intervene when a country requested a study or an exchange of views on a specific topic. The President of the Sub-Commission, Mr Joaquim Gomes Barbosa, also announced that the Supreme Court of Brazil was ready to create a permanent secretariat of the Sub-Commission.

The meeting of the Sub-Commission on Latin America, as well as the international conference, proved that a growing number of Latin American countries were interested in regular contacts with the Venice Commission.

As Mr Joaquim Gomes Barbosa resigned from his position as member of the Venice Commission in 2014, the position of Chair of the Sub-Commission on Latin America became vacant. Mr Lewandowski (Brazil) was elected as the new Chair at the December 2014 session. At the same session, the Commission was informed that the permanent Secretariat of the Sub-Commission on Latin America had been created, under the supervision of Mr Fernando Cavalcanti.

The next meeting of the Sub-Commission will take place in November 2015 in Chile.

Mexico*Follow-up to the Opinion on the Electoral Code (CDL-AD(2013)021)*

At the request of the President of the Mexican Federal Electoral Institute (IFE) in February 2012, the Venice

Commission and the Council for Democratic Elections adopted, at the June 2013 session, an opinion on the Electoral Code of Mexico. A change in the Constitution of Mexico on electoral matters had been adopted in February 2014 and a legislative change on the same issue entered into force in May 2014. The reform resulted in major changes in the new National Electoral Institute of Mexico and established a Specialised Chamber of the Electoral Tribunal to deal with specific administrative issues, such as the distribution of radio and television times.

Many of the recommendations made by the Venice Commission in its opinion were followed. The following points were of particular interest: the legislation was made clearer and more concise, thus more understandable to all electoral stakeholders; the lifting of the ban on the re-election of parliamentarians (both members of the Congress and of the Senate can now be re-elected, for two and four consecutive periods respectively); the revision of the provisions on limits to the financing of political parties (including a clearer and more transparent system for reporting on expenditure and sanctions).

Meeting with the President of the Supreme Court of Mexico (Strasbourg, 24 September 2014)

The President of the Supreme Court of Mexico, Mr Juan Silva Meza, and a delegation from the Permanent Representation of Mexico to the Council of Europe, led by Ambassador Santiago Oñate Laborde, met with the President of the Venice Commission in Strasbourg and discussed further ways of expanding co-operation between the two institutions.

International workshop on Constitutional Courts and the rule of law (Mexico City, 2-3 October 2014)

A workshop was organised by the Federal Electoral Tribunal of Mexico on Constitutional Courts and rule

of law. The President of the Venice Commission was invited as a keynote speaker at this important event. Mr Buquicchio stressed the importance of international co-operation as a road to democracy and the co-operation developed with Mexico.

Meeting on the “VOTA” database and launching of a new database in the electoral field (Mexico City, 2 October 2014)

See Chapter IV, section 3.

In October 2014, a new meta database was launched by the Electoral Tribunal of Mexico. This has given further visibility to VOTA and the work of the Venice Commission in this field, enabling better access to electoral documents.

Peru

Meeting with the Ministry of Justice (Strasbourg, 14 October 2014)

A representative from the Ministry of Justice of Peru met with representatives of the Venice Commission during his visit to the Council of Europe in October 2014. The national programme on the implementation of human rights in Peru was paid particular attention. The modalities for sending requests for opinion to the Venice Commission by the Ministry of Justice were also discussed.

IXth Inter-American meeting of Electoral Management Bodies (Lima, 24-25 November 2014)

See Chapter VI, particularly the co-operation with the OAS.

**VI. Co-operation with other organs and bodies of the Council of Europe,
with the European Union and other international organisations**

VI. Co-operation with other organs and bodies of the Council of Europe, with the European Union and other international organisations

1. Council of Europe

Secretary General

During 2014, the Secretary General sought the Commission's opinion on several occasions. Two major requests concerned Russia and Ukraine; the questions were as follows:

- “Whether draft Federal Constitutional Law No. 46271-6 of the Russian Federation on the procedure of admission to the Russian Federation and creation of a new subject within the Russian Federation is compatible with international law, and
- “Whether the decision taken by the Supreme Council of the Autonomous Republic of Crimea in Ukraine to organise a referendum on becoming a constituent territory of the Russian Federation or restoring Crimea's 1992 Constitution is compatible with constitutional principles”.

Another request by the Secretary General concerned the law on NGOs of Azerbaijan. The Commission adopted its opinion on the Law on Non-Governmental Organisations (Public Associations and Funds) of Azerbaijan at its December session.

Committee of Ministers

Representatives of the Committee of Ministers participated in all four Commission's plenary sessions in 2014. The following Ambassadors, Permanent Representatives to the Council of Europe, attended the sessions (in order of attendance):

- Ambassador Theodora Constantinidou, Cyprus ;

- Ambassador Drahoslav Štefánek, Slovakia ;
- Ambassador Manuel Jacoangeli, Italy;
- Ambassador Rudolf Lennkh, Austria;
- Permanent Observer of Mexico to the Council of Europe Mr Santiago Oñate Laborde;
- Ambassador Emin Eyyubov, Azerbaijan;
- Ambassador Petar Pop-Arsov, “the former Yugoslav Republic of Macedonia”;
- Ambassador Joseph Filletti, Malta;
- Ambassador Astrid Emilie Helle, Norway.

In the framework of the Austrian Chairmanship of the Committee of Ministers the Secretary of the Venice Commission intervened in the Conference on European Democracy (EuDEM 2014) entitled “Multilevel Governance – from local communities to a True European community”. The event was organised in Strasbourg on 5-6 May 2014. He made a presentation in the 1st panel on “Governance: a Way to Increase Democratic Legitimacy of the Judiciary”.

The President and the Secretary of the Commission provide information, on a regular basis and at their request, to various Rapporteur Groups of the Committee of Ministers on the Commission's activities.

Parliamentary Assembly

During 2014, the following members of the Parliamentary Assembly attended the plenary sessions of the Venice Commission:

- Mr Arcadio Diaz Tejera, Member, Committee on Legal Affairs and Human Rights;

- Mr Andreas Gross, as President of the Council for Democratic Elections;
- Mr Christopher Chope, Member, Committee on Legal Affairs and Human Rights;
- Mr Jean-Claude Mignon, former President of the Parliamentary Assembly.

The situation in a number of member States, including Russia, Ukraine and Turkey, as well as co-operation with Tunisia, was discussed. The representatives of the Parliamentary Assembly expressed their full satisfaction with the co-operation between the Venice Commission and the Parliamentary Assembly.

In 2014, a number of texts were adopted at the request of the Parliamentary Assembly, including the opinions on:

- the compatibility of the draft Federal Constitutional Law of the Russian Federation on “amending the Federal Constitutional Law on the Procedure of Admission to the Russian Federation and creation of a new subject of the Russian Federation in its Composition” with international law;
- the Federal Law No. 121 on Non-commercial Organisations (“Law on Foreign Agents”) of the Russian Federation and on Federal Law no. 190-fz on making amendments to the Criminal Code (“Law on Treason”) of the Russian Federation;
- the Law on Government Cleansing (“Lustration Law”) of Ukraine.

At the request of the PACE the Commission pursued its work on an update of the Study on the democratic oversight of the security services.

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

During 2014, a member of the Parliamentary Assembly, Mr Andreas Gross chaired the Council for Democratic Elections (CDE), and several of its activities were launched at the initiative of the Parliamentary Assembly representatives. The relevant members of the CDE in 2014 were as follows:

Members

- Ms Josette Durrieu, Committee on Political Affairs and Democracy;
- Mr Michael McNamara, Committee on Legal Affairs and Human Rights;
- Mr Jordi Xuclà, Monitoring Committee;

Substitute Members

- Ms Tinatin Khidasheli, Committee on Political Affairs and Democracy;
- Mr José Maria Beneyto, Committee on Legal Affairs and Human Rights;
- Mr Tiny Kox, Monitoring Committee;

In accordance with the co-operation agreement concluded between the Venice Commission and the Parliamentary Assembly, representatives of the Commission participated in PACE election observation missions in Bulgaria, Republic of Moldova, Serbia, “the former Yugoslav Republic of Macedonia”, Tunisia and Ukraine.

The President, the Secretary and the Deputy Secretary of the Commission provide information, on a regular basis, to the various Assembly Committees concerning their requests to the Venice Commission.

Congress of Local and Regional Authorities

Mr Lars O. Molin, Chair of the Monitoring Committee of the Congress, represented the Congress at the plenary sessions of the Commission in 2014 and regularly

informed the Commission of the most important developments in the field of regional and local democracy in Europe and the work of the Congress.

The Congress also continued to participate in the Council for Democratic Elections (CDE). The relevant members of the CDE in 2014 were as follows:

Members

- Mr Jos Wielen, Chamber of Local Authorities;
- Ms Gudrun Mosler-Törnström, Chamber of Regional Authorities;

Substitute Member

Ms Pearl Pedergnana, Chamber of Local Authorities

Representatives of the Congress actively participated in the 11th European Conference of Electoral Management Bodies.⁸

The Secretary of the Commission participated in the Meeting of the Group of Independent Experts of the Congress on 26 September 2014 in Strasbourg.

At the October 2014 session in Rome, the Congress was represented by:

- Mr Herwig van Staa, President of the Congress;
- Mr Andreas Kiefer, Secretary General of the Congress; and
- Mr Alain Delcamp, Congress' adviser on constitutional matters.

European Court of Human Rights

Reference by the Court to the Commission's work

Positions expressed in the opinions and reports by the Venice Commission have been repeatedly referred to in the case law of the ECtHR.

8. For more information on the 11th EMBs conference see Chapter IV.

The European Court relied on Venice Commission documents in several cases concerning the electoral field (*Karimov v. Azerbaijan*, application No. 12535/06; *Oran v. Turkey*, application Nos. 28881/07 and 37920/07, and, albeit indirectly, in *Zornić v. Bosnia and Herzegovina*, application No. 3681/06).

In the case of *Baka v. Hungary* (application No. 20261/12, not final) the Court referred to previous Venice Commission opinions concerning the organisation of the judiciary in Hungary (CDL-AD(2011)016, CDL-AD(2012)001, CDL-AD(2012)020).

The Commission's report on the rule of law was cited in the Court's judgments in the case of *Borovská and Forrai v. Slovakia* (application No. 48554/10) and *Mráz and Others v. Slovakia* (application No. 44019/11) which both concerned the stability of the national courts' jurisprudence.

The judgement in the case of *Magyar Keresztény Mennonita Egyház and Others v. Hungary* (applications Nos. 70945/11 and others) contained extensive citations from the Venice Commission's opinion on Act CCVI of 2011 on the right to freedom of conscience and religion and the legal status of churches, denominations and religious communities of Hungary (CDL-AD(2012)004), and from the 2004 Guidelines for Review of Legislation Pertaining to Religion and Belief.

The Venice Commission guidelines on freedom of association, freedom of assembly, and freedom of religion or belief were mentioned in several separate opinions by the judges of the Court (*Firth and Others v. the United Kingdom*, applications Nos. 47784/09 and others, *Navalnyy and Yashin v. Russia*, application No. 76204/11, *Primov and Others v. Russia*, application No. 17391/06; *Krupko and Others v. Russia*, application No. 26587/07; *Taranenko v. Russia*, application No. 19554/05). Finally, the works of the Venice Commission were cited in an

amicus curiae brief submitted in the proceedings before the European Court of Human Rights by a third party intervener (*Fernández Martínez v. Spain*, Application No. 56030/07).

Amicus Curiae brief in the case of Rywin v. Poland
(Applications Nos 6091/06, 4047/07, 4070/07)
pending before the European Court of Human Rights (on Parliamentary Committees of inquiry)
(CDL-AD(2014)013)

At the request of the European Court of Human Rights, the Venice Commission adopted at its March 2014 session an *amicus curiae* brief on specific questions concerning parliamentary committees of inquiry (case of *Rywin v. Poland*). The applicant before the Court complained that Article 6 ECHR had been violated in a criminal procedure which led to his conviction and was held in parallel with a procedure before a parliamentary committee of investigation.

The Court put the following questions to the Commission:

1. *In case of the discovery – in the course of proceedings conducted by a parliamentary committee of inquiry – of elements which would suggest that a criminal offence has been committed, what would be the proper course of action?*
2. *In the hypothetical situation that the proceedings conducted by a parliamentary committee of inquiry should concern the activities of a person not performing any official duties as a part of public authority, to what extent and at what stage should those proceedings be open to the public?*

The opinion defined the Parliamentary committees of inquiry as an instrument of what is usually referred to as the “control”, “supervisory” or “oversight” function of parliament, the essence of which is to oversee and

scrutinise the work of the executive branch. Most member countries have such committees, which are essentially of a political nature. An on-going criminal prosecution does not prevent them from acting and their proceedings are public in general. Their main purpose is not and should not be to search for offences.

With reference to question 1, the opinion retained, amongst best practices, the need for co-operation and the exchange of evidence between the parliamentary committee of investigation and the public prosecutor; in particular, the committee had to inform the public prosecutor, and it had to hand over to the prosecuting authorities the relevant information and documentation, to the extent that it was allowed to do so under national law.

On question 2, the opinion underlined the importance of publicity, but considered it legitimate to hold *in camera* sessions, in particular to protect the fundamental right to private and family life. Persons entrusted with public authority should be prepared to accept a higher degree of openness and transparency than private individuals.

North-South Centre

The President and one of the Vice-Presidents of the Commission participated in the Lisbon Forum 2014 on “Electoral processes and democratic consolidation in the countries of the southern Mediterranean”, organised by the North-South Centre of the Council of Europe. This Forum took place on 15 and 16 September 2014 in Lisbon.

Other Council of Europe entities

Representatives of the Commission participated in the 1st meeting of the European Committee on Democracy and Governance (CDDG) on 3-4 April 2014 and in the 49th Meeting of the Advisory Committee of the

Framework Convention for the Protection of National Minorities on 10-12 February 2014. Both meetings were held in Strasbourg.

2. European Union

In 2014, the co-operation between the Venice Commission and the European Union further consolidated, especially with the Commissioner on Enlargement and European Neighbourhood Policy. The Venice Commission maintained regular and frequent high level and working level contacts with the European Union.

The European Union repeatedly invited its member States to follow the Venice Commission's recommendations. The European Commission Services commended the consistent and constructive contribution of the Venice Commission to the assessment of complex reform processes in both candidate and potential candidate countries. The Venice Commission provided input to the on-going EU efforts, which aimed to support complex reform plans in enlargement countries, channelling them within well designed technical boundaries while still respecting domestic ownership at all stages.

The President of the Commission was involved in regular consultations with the EU bodies on a broad range of topics concerning EU policies and its relations with the countries - members of the EU, candidate States and neighbourhood States. In 2014 the President had several working meetings with the EU Commissioner for Enlargement and European Neighbourhood Policy. He also met representatives of the European Parliament's Foreign Affairs Committee, the Cabinet of the Vice-President of the European Commission, the Human Rights and Democracy Department of the EU, and other EU bodies.

European Parliament

On 27 January 2014 in Brussels, the President of the Commission participated in a hearing by the European Parliament's Committee on Foreign Affairs (AFET) on the new Constitution of Tunisia, the constitutional process in Libya and the Turkish draft law on the High Council of Judges and Prosecutors. At the invitation of the President of the European Parliament, Martin Schultz, the President of the Commission informed the EP of the assessment by the Venice Commission of the new Tunisian constitution adopted by the National Constituent Assembly of Tunisia in January 2014. This exchange of views was held at the European Parliament in Strasbourg, on 5 February 2014.

Co-operation with other EU institutions

The President of the Venice Commission participated in exchanges of views with the European Commissioner for Enlargement and Neighbourhood Policy, Mr Stefan Füle, on Armenia, Albania, Bosnia-Herzegovina, Egypt, Georgia, the Republic of Moldova, Tunisia, Turkey and Ukraine, in Strasbourg, on 4 February, 15 July, 17 September and 22 October 2014.

The Secretary of the Commission informed on the Venice Commission's principal activities and exchanged views with Government representatives in the EU Committee for co-operation with the Council of Europe and the OSCE (COSCE) held on 21 November 2014 in Brussels.

In 2014, technical consultations were held on developments in the Balkans, Hungary, the Republic of Moldova, Russia, Turkey and Ukraine as well as in Central Asia and Egypt, other countries of the Middle East, North Africa and Latin America. In addition, the Venice Commission closely co-operated in 2014 with the EU delegations in countries such as Egypt, Kazakhstan, Kyrgyzstan, Jordan, Libya, Morocco,

Tunisia and Ukraine while implementing joint Council of Europe - European Union projects.

Representatives of the European Union (from the European Parliament, the Legal Service and the DG Enlargement of the Commission, the European External Action Service as well as the President of the Committee for citizenship, governance, institutional and external affairs of the Committee of the Regions) participated in the plenary sessions of the Venice Commission in 2014.

Following the adoption by the Commission of the opinion on the draft law on the High Judicial and Prosecutorial Council (HJPC) of Bosnia and Herzegovina, representatives of the Venice Commission participated in the thematic plenary on the reform of the HJPC organised on 29 April 2014 in the framework of the EU-BiH Structured Dialogue on Justice.

Throughout 2013 and at the beginning of the 2014, the Deputy Secretary of the Commission continued to participate as a legal adviser in the negotiations facilitated by the EU concerning the execution by Bosnia and Herzegovina of the Sejdić and Finci judgement by the European Court of Human Rights regarding the issue of the exclusion of Roma and Jewish candidates from running for the parliamentary and presidential elections.

The Opinion on the draft law on freedom of religion in Kosovo which was adopted at the March plenary session (CDL-AD(2014)012) had been requested by the EU Special Representative in Kosovo.

Joint European Union – Council of Europe Projects

Three joint projects were signed in 2013 and implemented in 2014:

- Support to the Jordanian authorities in improving the quality and efficiency of the Jordanian justice system;
- Supporting constitutional justice, access to justice and electoral reform in the countries of Central Asia;
- Support to the Kyrgyz authorities in improving the quality and efficiency of the Constitutional Justice system.

For further information on these joint projects, please refer to Chapter V above.

The Venice Commission also implemented a segment of a Joint EU/CoE programme « Strengthening democratic reform in the Southern Neighbourhood » (South Programme). The activities concerned mostly Morocco and Tunisia. For more information please see Chapter V.

3. OSCE

In 2014, the co-operation with the OSCE continued to be fruitful. The Venice Commission maintained regular and frequent high level and working level contacts with the European Union.

The President addressed the 1012th Meeting of the OSCE Permanent Council on 24 July 2014 in Vienna. The President informed on the main Venice Commission activities and exchanged views with Government representatives in the EU Committee for co-operation with the Council of Europe and the OSCE (COSCE) held on 21 November 2014 in Brussels.

Human Dimension events

The Deputy Secretary of the Commission participated in the 2014 Human Dimension Seminar on: “Improving

effectiveness by enhancing its co-operation with relevant regional and international organisations” in Warsaw, 12-14 May 2014. The Secretary introduced Venice Commission activities on Freedom of Association at the OSCE Human Dimension Committee on 17 June 2014 in Vienna.

OSCE/ODIHR

Protection of fundamental rights

In 2014, following several expert meetings, the Venice Commission adopted two reports jointly prepared with the OSCE/ODIHR: Joint Guidelines on the legal personality of religious or belief communities (CDL-AD(2014)23), and Joint Guidelines on freedom of association (CDL-AD(2014)046). For more information on Guidelines, please see Chapter II.

Elections, referendums and political parties

During 2014, the Venice Commission continued its close co-operation with the OSCE/ODIHR in the area of elections and political parties. Opinions on the electoral legislation of Bulgaria, Kyrgyzstan and the Republic of Moldova, as well as on the legislation on the (financing of) political parties of Malta and Serbia, were written jointly. The OSCE/ODIHR regularly attended meetings of the Council for Democratic Elections.

Political Party Expert Seminar (Warsaw, 1-2 July 2014)

The Venice Commission participated in this seminar at the invitation of the OSCE/ODIHR political party expert group. Around 50 participants took part in this seminar. During the meeting the participants discussed the role and functioning of political parties in parliaments as well as separation between the state and political parties. This activity was part of the regular exchanges of views in the framework of the OSCE/ODIHR Core Group of

Experts on Political Parties. The reports of the Venice Commission on the abuse of administrative resources during electoral processes (CDL-AD(2013)033) and on the scope and lifting of parliamentary immunities (CDL-AD(2014)011) were also presented at the seminar.

4. Other international bodies

Constitutional law, democracy and fundamental rights

International Association of Constitutional Law (IACL)

The President of the International Association of Constitutional Law and another member attended the plenary sessions of the Commission in 2014.

Community of Democracies

The Commission was represented at the workshop “Civil Society, Government and the Law: Best Practices and Lessons Learned from Ukraine, Tunisia and Burma/Myanmar” organised in Geneva, on 11 March 2014 by the Working Group on Enabling and Protecting Civil Society of the Community of Democracy.

Inter-American Court of Human Rights

On 20 and 21 October 2014, the Inter-American Court of Human Rights judges visited the Council of Europe and met a delegation of the Venice Commission, led by its President. The Inter-American Court expressed its interest in co-operating further with the Venice Commission, by attending a plenary session of the Commission, the meetings of the Sub-Commission on Latin America and holding exchanges on key fundamental rights issues which may arise from its case law. Six out of the seven judges of the Inter-American Court, including its President, Mr Humberto Sierra, as well as

Mr Pablo Saavedra, the Registrar, came to Strasbourg for this meeting.

Constitutional justice

The Venice Commission co-operates with a number of regional and linguistic groups uniting constitutional courts and equivalent bodies both bilaterally and in the framework of the World Conference on Constitutional Justice. For more information see Chapter III.

Elections, referendums and political parties

Association of European Election Officials (ACEEEO)

The Venice Commission participated in the 23rd Annual Conference of the Association of European Election Officials (ACEEEO) on “The participation of women in the electoral process and in public life” and “planning of a general election” (Bucharest, 4-6 September 2014). The Venice Commission has always been present on the occasion of the annual meetings of the ACEEEO with two objectives: make a contribution to the topic chosen for the conference in relation to the work of the Venice Commission in that field and further build a contact network with Electoral Management Bodies (EMBs) and other organisations working in the electoral field. Over 80 participants attended this event and delegations from electoral management bodies from all over the world were represented. International organisations such as

IFES, the OSCE/ODIHR and the European Commission also attended this event.

International Foundation for Electoral Systems (IFES)

The Commission actively co-operated with IFES in Tunisia. For more information see Chapter V.

Organisation of American States (OAS)

The Department of Co-operation and Election observation of the OAS notified its interest to participate in the meetings of the Council for Democratic Elections on a regular basis (once a year) and to inform the Council of the problems which affect democratic development in America. The aim of this participation was to inform the Council once a year about the recurrent issues in the electoral field in America, on the basis of election observation reports, in order to exchange good practices and learn from each other. An OAS delegation also took part in the European Conference of Electoral Management Bodies, held in Helsinki in June 2014.

At the invitation of the OAS, the Venice Commission contributed to the IXth Inter-American meeting of Electoral Management Bodies, held in Lima on 24-25 November 2014. Among other issues, the participants held an exchange of views on the government’s role in the electoral process, the quality of electoral processes and strategies for assessing the electoral administration’s performance.

Appendices

THE VENICE COMMISSION OF THE COUNCIL OF EUROPE : INTRODUCTION

The European Commission for Democracy through Law, better known as the Venice Commission, is a Council of Europe independent consultative body on issues of constitutional law, including the functioning of democratic institutions and fundamental rights, electoral law and constitutional justice. Its members are independent experts. Set up in 1990 under a partial agreement between 18 Council of Europe member states, it has subsequently played a decisive role in the adoption and implementation of constitutions in keeping with Europe's constitutional heritage.⁹ The Commission holds four plenary sessions a year in Venice, working mainly in three fields: constitutional assistance, constitutional justice and election and referendum issues. In 2002, once all Council of Europe member states had joined, the Commission became an enlarged agreement of which non-European states could become full members. In 2014, it had 60 full members and 11 other entities formally associated with its work. It is financed by its member states on a proportional basis which follows the same criteria as applied to the Council of Europe as a whole. This system guarantees the Commission's independence vis-à-vis those states which request its assistance.

9. On the concept of the constitutional heritage of Europe, see inter alia "*The Constitutional Heritage of Europe*", proceedings of the UniDem seminar organised jointly by the Commission and the Centre d'Etudes et de Recherches Comparatives Constitutionnelles et Politiques (CERCOP), Montpellier, 22 and 23 November 1996, "Science and technique of democracy", No.18.

1. Constitutional assistance and assistance in legislative reforms

The Commission has the prime function of providing **constitutional assistance** to States, mainly, but not exclusively, those which participate in its activities.¹⁰ Such assistance takes the form of opinions prepared by the Commission at the request not only of States, but also of organs of the Council of Europe, more specifically the Parliamentary Assembly, Committee of Ministers, Congress of Local and Regional Authorities and Secretary General, as well as of other international organisations or bodies which participate in its activities. These opinions relate to draft constitutions or constitutional amendments, or to other draft legislation in the field of constitutional law. The Commission has thus made an often crucial contribution to the development of constitutional law, mainly, although not exclusively, in the new democracies of central and eastern Europe.

The **aim of the assistance** given by the Venice Commission is to provide a complete, precise, detailed and objective analysis not only of compatibility with European and international standards, but also of the practicality and viability of the solutions envisaged by the States concerned. The Commission's recommendations and suggestions are largely based on common European experience in this sphere.

As concerns the **working methods**, the Commission's opinions are prepared by a working group composed of

10. Article 3, paragraph 3, of the Statute of the Commission specifies that any State which is not a member of the agreement may benefit from the activities of the Commission by making a request to the Committee of Ministers of the Council of Europe.

members of the Commission, at times assisted by external experts. It is ordinary practice for the working group to travel to the country concerned in order to meet and discuss with the national authorities, other relevant bodies and the civil society. The opinions contain an assessment of the conformity of the national legal text (preferably in its draft state) with European and international legal and democratic standards, and on proposals of improvement on the basis of the relevant specific experience gained by the members of the Commission in similar situations. Draft opinions are discussed and adopted by the Commission at one of its plenary sessions, usually in the presence of representatives of the country concerned. Following adoption, the opinions are transmitted to the State or the body which requested it, and comes into the public domain.

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

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

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

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

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

2. Studies and reports on subjects of general interest

While most of its work concerns specific countries, the Venice Commission also draws up **studies and reports**

on subjects of general interest. Just a few examples demonstrating the variety, complexity and importance of the matters dealt with by the Commission are its reports on a possible convention on the rights of minorities, on “kin minorities”, on independence of the judiciary, on individual access to constitutional justice, on the status of detainees at Guantanamo Bay, on counter-terrorist measures and human rights, on democratic control of security services and armed forces, on the relationship between freedom of expression and freedom of religion as well as the adoption of codes of good practice in electoral matters, on referendums and in the field of political parties.

These studies may, when appropriate, lead to the preparation of guidelines and even proposals for international agreements. Sometimes they take the form of scientific conferences under the Universities for Democracy (**UniDem**) programme, the proceedings of which are subsequently published in the “**Science and technique of democracy**” series.

3. Constitutional justice

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

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

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

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

That Conference decided to establish an association, assisted by the Venice Commission and open to all participating courts, with the purpose of promoting co-operation within the groups, but also between them on a global scale. In co-operation with the Federal Supreme Court of Brazil, the Venice Commission organised a Second Congress of the World Conference (16-18 January 2011, Rio de Janeiro) during which a Statute of the World Conference was discussed. This Statute was adopted by the Bureau, composed of representatives of the regional and language based groups in Bucharest on 23 May 2011 and entered into force on 24 September 2011. At the end of 2014, 94 constitutional courts and equivalent bodies had joined the World

Conference as full members. The Venice Commission acts as the secretariat for the World Conference.

Since 1993, the Commission's constitutional justice activities have also included the publication of the **Bulletin on Constitutional Case-Law**, which contains summaries in French and English of the most significant decisions over a four month period. It also has an electronic counterpart, the **CODICES database**, which contains some 7,000 decisions rendered by over 95 participating courts together with constitutions and descriptions of many courts and the laws governing them.¹¹ These publications have played a vital "cross-fertilisation" role in constitutional case-law.

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

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

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

11. CODICES is available on CD-ROM and on line (<http://www.CODICES.coe.int>).

4. Elections and referendums

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

The activities of the Venice Commission and the Council for Democratic Elections also relate to political parties, without which elections in keeping with Europe's electoral heritage are unthinkable.

In 2002, the **Council for Democratic Elections** was set up at the Parliamentary Assembly's request. This is a subordinate body of the Venice Commission comprising members of the Commission, the Parliamentary Assembly and the Congress of Local and Regional Authorities of the Council of Europe. The Council for Democratic Elections also includes an observer from the OSCE/ODIHR. The Council for Democratic Elections and the Venice Commission have done much to set European standards in the electoral sphere, adopting a good number of general documents, the most important of which are the **Code of Good Practice in Electoral Matters** (2002), which is the Council of Europe's reference document in this field, and the **Code of Good Practice for Referendums** (2007),¹² Guidelines on the international status of elections observers (2009) and, in the field of political parties, the **Code of Good Practice in the field of Political parties** (2008). The other general documents concern such matters as electoral law and national minorities, and restrictions on the right to vote or the cancellation of electoral results, as well as on the prohibition, dissolution and financing of politi-

12. These two texts were approved by the Parliamentary Assembly and the Congress of Local and Regional Authorities of the Council of Europe, and the subject of a solemn declaration by the Committee of Ministers encouraging their application.

cal parties. The Commission has adopted more than fifty studies or guidelines of a general nature in the field of elections, referendums and political parties.

The Commission has drafted nearly 120 opinions on **national laws and practices relating to elections, referendums and political parties**, and these have had a significant impact on electoral legislation in the States concerned. Among the States in which the Commission is regularly involved in the electoral sphere are Albania, Armenia, Bosnia and Herzegovina, Georgia, Moldova, Serbia, “the former Yugoslav Republic of Macedonia” and Ukraine.

The Council for Democratic Elections has developed **regular co-operation with election authorities in Europe and on other continents**. It organises annually the European Conference of Electoral Management Bodies, and is also in very close contact with other international organisations or bodies which work in the election field, such as ACEEEO (Association of European Election Officials), IFES (International Foundation for Electoral Systems) and, in particular, the OSCE (Organisation for Security and Co-operation in Europe). Thus, in principle, opinions on electoral matters are drafted jointly with the OSCE/ODIHR, with which there is exemplary co-operation.

The Commission also holds **seminars** on subjects such as the European electoral heritage, the preconditions for democratic elections or the supervision of the electoral process, as well as **training workshops** for those involved in the electoral process.

The Council for Democratic Elections created the VOTA¹³ database containing, inter alia, member States’ electoral legislation. It now manages this database jointly with the Electoral Tribunal of the Judicial Power of the

Mexican Federation (Tribunal electoral del poder judicial de la Federación, TEPJF).

5. Neighbourhood policy

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

In Central Asia the Venice Commission developed several important bilateral and regional projects in such important fields as constitutional assistance, constitutional justice, reform of the judiciary and electoral legislation and practice. The national authorities in Kazakhstan, Kyrgyzstan, Tajikistan and Uzbekistan have engaged in a constructive dialogue with the Commission and the number of concrete actions has been constantly increasing over the past ten years.

The Commission actively co-operates with countries of the **Southern Mediterranean region**. It established contacts with the Arab countries even before the Arab Awakening and this farsightedness proved very useful. After the Arab spring the Commission developed a very good co-operation with Morocco and Tunisia. Successful projects in these countries helped to establish and to promote a dialogue with other countries of the region such as Egypt, Jordan and Libya. In this respect 2014 was a crucial year since it provided the basis for exploring new possibilities for the Venice Commission’s assistance to countries of the Maghreb and the Middle East.

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

Latin American countries have been always interested in sharing experiences and best practices with Europe in fields such as democratic transition, constitution-building, constitutional justice and electoral legislation and practice. The Venice Commission has become crucial for making such dialogue possible. In recent years the Commission along with its partners in Brazil, Chile,

Mexico and Peru has prepared and successfully carried out activities and projects in the above-mentioned fields. Supported by the European Union the Commission also successfully completed a project focussed on the implementation of the new constitution in Bolivia in 2011-2012.

LIST OF MEMBER COUNTRIES

Members

Albania (14.10.1996)
 Algeria (01.12.2007)
 Andorra (01.02.2000)
 Armenia (27.03.2001)
 Austria (10.05.1990)
 Azerbaijan (01.03.2001)
 Belgium (10.05.1990)
 Bosnia and Herzegovina (24.04.2002)
 Brazil (01.04.2009)
 Bulgaria (29.05.1992)
 Chile (01.10.2005)
 Croatia (01.01.1997)
 Cyprus (10.05.1990)
 Czech Republic (01.11.1994)
 Denmark (10.05.1990)
 Estonia (03.04.1995)
 Finland (10.05.1990)
 France (10.05.1990)
 Georgia (01.10.1999)
 Germany (03.07.1990)
 Greece (10.05.1990)
 Hungary (28.11.1990)
 Iceland (05.07.1993)
 Ireland (10.05.1990)
 Israel (01.05.2008)
 Italy (10.05.1990)
 Kazakhstan (13.03.2012)
 Republic of Korea (01.06.2006)
 Kosovo (12.09.2014)
 Kyrgyzstan (01.01.2004)
 Latvia (11.09.1995)
 Liechtenstein (26.08.1991)
 Lithuania (27.04.1994)
 Luxembourg (10.05.1990)
 Malta (10.05.1990)
 Mexico (03.02.2010)
 Moldova (25.06.1996)
 Monaco (05.10.2004)
 Montenegro (20.06.2006)
 Morocco (01.06.2007)
 Netherlands (01.08.1992)
 Norway (10.05.1990)
 Peru (11.02.2009)
 Poland (30.04.1992)
 Portugal (10.05.1990)
 Romania (26.05.1994)
 Russian Federation (01.01.2002)
 San Marino (10.05.1990)
 Serbia (03.04.2003)
 Slovakia (08.07.1993)
 Slovenia (02.03.1994)
 Spain (10.05.1990)
 Sweden (10.05.1990)
 Switzerland (10.05.1990)

“the former Yugoslav Republic of
 Macedonia” (19.02.1996)
 Tunisia (01.04.2010)
 Turkey (10.05.1990)
 Ukraine (03.02.1997)
 United Kingdom (01.06.1999)
 United States of America (15.04.2013)

Associate member

Belarus (24.11.1994)

Observers

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

Participants

EU
 OSCE/ODIHR

Special co-operation status

Palestinian National Authority
 South Africa

LIST OF INDIVIDUAL MEMBERS¹⁴

Mr Gianni BUQUICCHIO (Italy), President, Former Director, Council of Europe
 (Substitutes: Mr Sergio BARTOLE, Former Professor, University of Trieste
 Mr Guido NEPPI MODONA, Professor, University of Turin)

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14. By order of seniority.

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(Substitute: Mr Volodymyr PYLYPENKO, Member of Parliament)

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Associate members

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Observers

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N.N. (Canada)

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Mr Takaaki SHINTAKU (Japan), Consul, Consulate General of Japan, Strasbourg

Mr Alvaro MOERZINGER (Uruguay), Ambassador, Embassy of Uruguay in The Hague

Special Status

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European Commission

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Mr Esa PAASIVIRTA, Legal Adviser

Committee of the Regions

Mr Luc VAN DEN BRANDE, President CIVEX

Palestinian National Authority

Mr Ali KHASHAN, Former Minister of Justice

South Africa

N. N.

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Ms Simona GRANATA-MENGHINI, Deputy Secretary of the Commission

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

Mr Rudolf DÜRR, Head of the Division on Constitutional Justice

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

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

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Ms Isabelle SUDRES

Ms Anna GORYACHEVA

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Vice-President: Mr Kask

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Chair: Mr Grabenwarter

Co-Chair (Liaison Officers): Ms Anne Rasson

¹⁵. From December 2013 to December 2015.

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Judiciary:

Chair: Mr Esanu; Vice-Chair: Mr Gstöhl; Members: Mr Bartole, Mr Bessaïh, Mr Canturri Montanya, Ms Err, Mr Habchi, Mr Hasani, Mr Hirschfeldt, Mr Hoffmann-Riem, Mr Kask, Ms Kiener, Mr Kivalov, Mr Neppi Modona, Mr Nicolatos, Mr Papuashvili, Mr Pazin, Mr Pylypenko, Ms Siljanovska-Davkova, Ms Simackova, Mr Toader, Mr Torfason, Mr Tuori, Mr Varga, Mr Velaers, Ms Wedam Lukic

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LIST OF PUBLICATIONS

Series “Science and Technique of Democracy”¹⁶

- No.1 Meeting with the presidents of constitutional courts and other equivalent bodies¹⁷ (1993)
- No.2 Models of constitutional jurisdiction* ¹⁸ (1993)
- No.3 Constitution making as an instrument of democratic transition (1993)
- No.4 Transition to a new model of economy and its constitutional reflections (1993)
- No.5 The relationship between international and domestic law (1993)
- No.6 The relationship between international and domestic law* (1993)
- No.7 Rule of law and transition to a market economy² (1994)
- No.8 Constitutional aspects of the transition to a market economy (1994)
- No.9 The Protection of Minorities (1994)
- No.10 The role of the constitutional court in the consolidation of the rule of law (1994)
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- No.12 Emergency powers* (1995)
- No.13 Implementation of constitutional provisions regarding mass media in a pluralist democracy² (1995)
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- No.15 The protection of fundamental rights by the Constitutional Court* (1996)
- No.16 Local self-government, territorial integrity and protection of minorities (1997)
- No.17 Human Rights and the functioning of the democratic institutions in emergency situations (1997)
- No.18 The constitutional heritage of Europe (1997)

16. Publications are also available in French unless otherwise indicated.

17. Speeches in the original language (English or French).

18. Publications marked with * are also available in Russian.

- No.19 Federal and Regional States* (1997)
- No.20 The composition of Constitutional Courts (1997)
- No.21 Citizenship and state succession (1998)
- No.22 The transformation of the Nation-State in Europe at the dawn of the 21st century (1998)
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19. Available in English only.

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Other publications

Collection "*Points of view - points of law*"

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Other titles

- Tackling blasphemy, insult and hatred in a democratic society (2008)
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- European Conferences of Electoral Management Bodies
- 2nd Conference (Strasbourg 2005)
- 3rd Conference (Moscow, 2006)

- 4th Conference (Strasbourg, 2007)
- 5th Conference (Brussels, 2008)
- 6th and 7th Conferences (The Hague, 2009 and London 2010²⁰)

Bulletin on Constitutional Case-Law

- 1993 - 2014 (three issues per year)

Special Bulletins

- Description of Courts (1999)*
- Basic texts - extracts from Constitutions and laws on Constitutional Courts - issues Nos 1-2 (1996), Nos 3-4 (1997), No.5 (1998), No.6 (2001), No.7 (2007), No.8 (2011)
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- Special Edition Leading cases 1 - Czech Republic, Denmark, Japan, Norway, Poland, Slovenia, Switzerland, Ukraine (2002)
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Annual Reports

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Brochures

- 10th anniversary of the Venice Commission (2001)
- Revised Statute of the European Commission for Democracy through Law (2002)
- UniDem Campus - Legal training for civil servants (2003)²¹

20. Available only in electronic form.

21. Also available in Italian.

- 20th anniversary - Publications (2010) Selected studies and reports (2010)
- Key Facts (2011)²²
- Services provided by the Venice Commission to Constitutional Courts and equivalent bodies (2011)
- Code of Good Practice in Electoral Matters (2011)²³
- Main reference texts (2013)
- The Venice Commission of the Council of Europe (2014)

22. Also available in Russian and Spanish.

23. Also available in Arabic, Russian and Spanish.

LIST OF DOCUMENTS ADOPTED IN 2014

98th plenary session (Venice, 21-22 March 2014)

CDL-AD(2014)001	Joint Opinion ²⁴ on the draft Election Code of Bulgaria
CDL-AD(2014)002	Opinion on “whether the decision taken by the Supreme Council of the Autonomous Republic of Crimea in Ukraine to organise a referendum on becoming a constituent territory of the Russian Federation or restoring Crimea’s 1992 constitution is compatible with constitutional principles”
CDL-AD(2014)003	Joint Opinion on the draft Law amending the electoral legislation of Moldova
CDL-AD(2014)004	Opinion on “Whether Draft Federal constitutional Law No. 462741-6 on amending the Federal constitutional Law of the Russian Federation on the procedure of admission to the Russian Federation and creation of a new subject within the Russian Federation is compatible with international law”
CDL-AD(2014)005	Report on the Protection of Children’s Rights: International Standards and Domestic Institutions
CDL-AD(2014)006	Joint Opinion on the draft Law on disciplinary liability of Judges of the Republic of Moldova
CDL-AD(2014)007	Joint Opinion of the Venice Commission and the Directorate of Human Rights (DHR) of the Directorate General of Human Rights and Rule of Law (DGI) of the Council of Europe on the Draft Law amending and supplementing the judicial code (evaluation system for judges) of Armenia
CDL-AD(2014)008	Opinion on the draft Law on the High Judicial and Prosecutorial Council of Bosnia and Herzegovina
CDL-AD(2014)009	Joint Opinion of the Venice Commission and the Directorate General of Human Rights (DHR) 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 certain legislative acts, promoted by the intelligence and security service of the Republic of Moldova
CDL-AD(2014)010	Opinion on the draft law on the Review of the Constitution of Romania
CDL-AD(2014)011	Report on the scope and lifting of parliamentary immunities
CDL-AD(2014)012	Opinion on the draft law on Amendment and Supplementation of Law No. 02/L-31 on Freedom of Religion in Kosovo

24. “Joint Opinion” refers to opinions drafted jointly by the Venice Commission and the OSCE/ODIHR unless specified otherwise.

- CDL-AD(2014)013 Amicus Curiae brief in the case of Rywin v. Poland (Applications Nos 6091/06, 4047/07, 4070/07) pending before the European Court of Human Rights (on Parliamentary Committees of inquiry)
- CDL-AD(2014)014 Amicus curiae brief for the Constitutional Court of Georgia on individual application by public broadcasters

99th plenary session (Venice, 13-14 June 2014)

- CDL-AD(2014)015 Opinion on the procedure for appointing judges of the Constitutional Court of the Slovak Republic
- CDL-AD(2014)016 Opinion on the draft amendments to the criminal procedure and civil procedure codes of Albania
- CDL-AD(2014)017 Opinion on the Draft Constitutional Law on the Constitutional Court of Tajikistan
- CDL-AD(2014)018 Joint opinion on the draft amendments to the legal framework on the disciplinary responsibility of judges in the Kyrgyz Republic
- CDL-AD(2014)019 Joint Opinion on the draft Election Law of the Kyrgyz Republic
- CDL-AD(2014)020 Opinion on the draft Constitutional Law on introducing amendments and additions to the constitutional law on the Constitutional Chamber of the Supreme Court of the Kyrgyz Republic
- CDL-AD(2014)021 Opinion on the draft law on introducing amendments and addenda to the judicial code of Armenia (term of Office of Court Presidents)
- CDL-AD(2014)022 Joint Opinion by the Venice Commission and the Directorate of Democratic Governance of the Directorate General of Democracy of the Council of Europe on the revised draft law making amendment to the law “on the status of municipalities” of the Republic of Azerbaijan
- CDL-AD(2014)023 Joint guidelines on the legal personality of religious or belief communities
- CDL-AD(2014)024 Comparative study on national legislation on freedom of peaceful assembly
- CDL-AD(2014)025 Opinion on Federal Law n. 121-fz on non-commercial organisations (“law on foreign agents”), on Federal Laws n. 18-fz and n. 147-fz and on Federal Law n. 190-fz on making amendments to the criminal code (“law on treason”) of the Russian Federation

100th plenary session (Rome, 10-11 October 2014)

- CDL-AD(2014)026 Opinion on the seven amendments to the Constitution of “the former Yugoslav Republic of Macedonia” concerning, in particular, the Judicial Council, the competence of the Constitutional Court and special financial zones
- CDL-AD(2014)027 Opinion on the Draft Concept Paper on the Constitutional Reforms of the Republic of Armenia
- CDL-AD(2014)028 Opinion on the Draft Amendments to the Law on the High Judicial Council of Serbia

CDL-AD(2014)029	Opinion on the Draft amendments to the Law on the State Prosecutorial Council of Serbia
CDL-AD(2014)030	Joint Opinion of the Venice Commission and the Directorate of Human Rights (DHR) of the Directorate of Human Rights and Rule of Law (DGI) of the Council of Europe, on the draft Laws amending the Administrative, Civil and Criminal Codes of Georgia
CDL-AD(2014)031	Joint Opinion of the Venice Commission and the Directorate of Human Rights (DHR) of the Directorate of Human Rights and the Rule of Law (DGI) of the Council of Europe, on the draft Law on Amendments to the Organic Law on General Courts of Georgia
CDL-AD(2014)032	Joint Opinion of the Venice Commission and the Directorate of Human Rights (DHR) of the Directorate of Human Rights and the Rule of Law (DGI) of the Council of Europe, on the draft Law on making changes to the Law on disciplinary Liability and disciplinary Proceedings of Judges of General Courts of Georgia
CDL-AD(2014)033	Opinion on the draft law on the Constitutional Court of Montenegro
CDL-AD(2014)034	Joint Opinion on Draft Amendments to the Law on the financing of political activities of Serbia
CDL-AD(2014)035	Joint Opinion on the Draft Act to regulate the formation, the inner structures, functioning and financing of political parties and their participation in elections of Malta
CDL-AD(2014)036	Report on the implementation of international human rights treaties in domestic law and the role of courts
CDL-AD(2014)037	Opinion on the Draft law amending the Constitution of Ukraine, submitted by the President of Ukraine on 2 July 2014

101st plenary session (Venice, 12-13 December 2014)

CDL-AD(2014)038	Opinion on the draft laws on courts and on rights and duties of judges and on the Judicial Council of Montenegro
CDL-AD(2014)039	Amicus Curiae Brief for the Constitutional Court of Moldova on certain provisions of the law on professional integrity testing
CDL-AD(2014)040	Amicus Curiae Brief for the Constitutional Court of Georgia on the question of the defamation of the deceased
CDL-AD(2014)041	Interim Opinion on the draft law on Special State Prosecutor's Office of Montenegro
CDL-AD(2014)042	Interim Opinion on the draft law on the State Prosecution Office of Montenegro
CDL-AD(2014)043	Opinion on the Law on non-governmental Organisations (Public Associations and Funds) as amended of the Republic of Azerbaijan
CDL-AD(2014)044	Interim Opinion on the Law on Government Cleansing (Lustration Law) of Ukraine
CDL-AD(2014)045	Revised rules of procedures
CDL-AD(2014)046	Joint Guidelines on Freedom of Association

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Belarus (1994)

Observers – 5

Argentina (1995), Canada (1991), Holy See (1992), Japan (1993), Uruguay (1995)

Participants – 2

European Union, OSCE/ODIHR

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Palestinian National Authority, South Africa

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