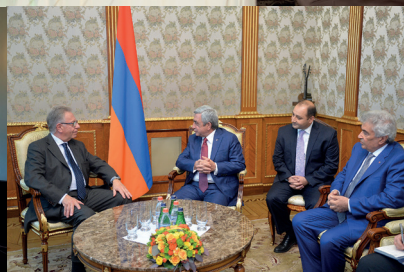
# VENICE COMMISSION

## Annual report of activities 2015



European Commission
for Democracy through Law

Council of Europe, 2016

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# European Commission for Democracy through Law —

Venice Commission of the Council of Europe

# Annual report of activities 2015

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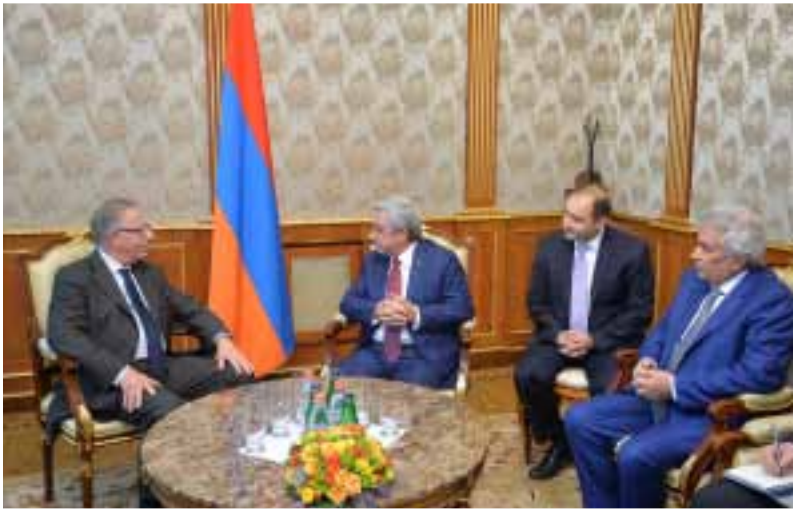

# I. Working for democracy through law - an overview of Venice Commission activities in 2015

# 1. Member States

## Voluntary contributions

In 2015, the Commission received voluntary contributions from the governments of Azerbaijan and Luxembourg, from the Italian government (*Regione Veneto*) for the organisation of the plenary sessions, from Norway for co-operation with the countries of the Southern Mediterranean and from Turkey for co-operation with the countries of Central Asia as well as contributions from the Action Plan for activities in Ukraine. Certain activities were financed by the European Union in the framework of Joint Projects and Programmes.

# 2. Main activities

## Key figures

The Commission adopted 11 opinions on constitutional reforms and other issues in Albania, Armenia, Bulgaria, Kyrgyzstan and Ukraine and 23 opinions on legislative texts or specific legal issues. It adopted 8 reports of a general nature, published two Bulletins of Constitutional Case Law and one Special Bulletin, (co)organised around 50 seminars and conferences and participated in many more, provided pre-electoral assistance to 5 countries and legal support to 5 election observation missions as well as comparative law elements to constitutional courts in 35 cases. In 2015, four courts joined the World Conference on Constitutional Justice (WCCJ), bringing the total number of members to 98.

## Scientific Council

The Scientific Council prepared and updated five thematic compilations of Venice Commission opinions and studies: on the provisions for amending Constitutions,[1] on courts and judges,[2] on prosecutors,[3] on constitutional justice[4] and on the thresholds which bar parties from access to parliament.[5] These compilations, which contain extracts from the Commission's opinions and studies structured thematically around key words, are intended to serve as a reference to country representatives, researchers as well as experts who wish to familiarise themselves with the Venice Commission's "doctrine". They are available on the Commission's website and are regularly up-dated.

## Democratic institutions and fundamental rights

### Constitutional reforms

In **2015**, the Commission was involved in constitutional reform processes in, **Albania** (in the field of the judiciary), **Armenia, Bulgaria** (in the field of the judiciary), **Kyrgyzstan** and **Ukraine.**

- The Commission analysed a first version of the draft amendments to the Constitution of **Albania** aimed at reforming the bodies of judicial governance and vetting all sitting judges and prosecutors with the aim of removing corrupt and unprofessional ones. While being supportive of the reform in general, the

1. Cf. CDL-PI(2015)023
2. Cf. CDL-PI(2015)001
3. Cf. CDL-PI(2015)009
4. Cf. CDL-PI(2015)002
5. Cf.CDL-PI(2015)022

Commission made certain recommendations concerning the method of election of members of the newly created bodies and the principles of the vetting process.

- In its opinions on draft amendments to the Constitution of **Armenia**, the Commission welcomed the work carried out by the Constitutional Commission of Armenia and its genuine commitment to improving the draft constitutional amendments upon the rapporteurs' recommendations, and praised the high-quality of the final text, which was very well drafted and in line with international standards. The Commission stressed the importance of an open and continued dialogue with all the political forces and with the civil society as a pre-condition for a successful constitutional process.
- The Commission gave an overall positive assessment of the draft constitutional amendments aimed at reforming the Supreme Judicial Council of **Bulgaria**, and welcomed the proposals to strengthen the Inspectorate to the Supreme Judicial Council and its role in addressing problems of integrity and conflict of interest within the judiciary, and to introduce an indirect constitutional complaint for citizens. The Commission however considered that further improvements and clarifications were needed with regard to certain important aspects of the organisation and the operation of the Supreme Judicial Council.
- The Venice Commission provided a critical opinion, jointly prepared with the OSCE/ODIHR, on very problematic amendment proposals to the Constitution of **Kyrgyzstan**. This criticism contributed to preventing a serious step backwards for the country, since the proposed amendments were subsequently abandoned. The Commission pursued further and intensified its co-operation with **Ukraine** on the constitutional processes launched after the fall of the previous regime. This co-operation focused, in 2015, on the decentralisation efforts, a crucial dimension of the constitutional reform, on draft constitutional amendments concerning the immunity of members of parliament and judges, as well as on key aspects of the judicial reforms. The Commission generally welcomed the amendment proposals submitted for its assessment, and their subsequent improvement; as a result of the constructive dialogue it held with the Ukrainian authorities, the revised amendments followed most of the recommendations expressed in its preliminary opinions.

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

In the sphere of fundamental rights, the Commission adopted, in 2015, two opinions on legislative provisions or proposals - in **Hungary** and in **Montenegro** - having an impact on the free and unhindered exercise of journalism.

The Commission also examined the legal framework pertaining to the operation of the Ombudsman Institution (the People's Advocate) in the **Republic of Moldova**, and provided assistance in the amendment process of the Law on the Ombudsman for Human Rights of **Bosnia and Herzegovina**, aimed at unifying this institution and strengthening its independence and effectiveness.

The Commission was also asked to assess draft amendments to the legislation on the protection of national minorities in **Montenegro**, intended to improve the legal and institutional framework for state financial support to cultural projects of national minorities.

In 2015, the Commission also continued its co-operation with **Ukraine** in relation to important - and sensitive - issues for the democratic transformation of the

Ukrainian society, such as the judiciary, lustration and integrity checking of persons authorised to perform functions of state or local government. In this context, the Commission also examined, jointly with the OSCE/ODIHR, the Law of Ukraine on the condemnation of the communist and Nazi totalitarian regimes.

### Judicial reforms

In 2015, in addition to the opinions adopted in relation to constitutional reforms dealing with the judiciary, the Commission adopted opinions on the legislation regulating the disciplinary liability of judges of **"the former Yugoslav Republic of Macedonia"** and on draft legislation concerning the judicial system, the status of judges and the judicial council of **Ukraine**.

The Commission also examined draft legislation introducing reforms of the public prosecution service in **Georgia**, **Montenegro** and **the Republic of Moldova**.

In its opinions, the Commission addressed, in particular, issues concerning the powers of the prosecutors and the legal framework for the organisation and operation of the public prosecutor's service, the nomination and powers of the Prosecutor General, the organisation and powers of prosecutorial councils, as well as, more recently, of specialised anti-corruption prosecution bodies.

### Transnational activities

In 2015 the Commission adopted, at the request of the Inter-American Court of Human Rights, a comparative report on restrictions on freedom of expression, freedom of association, the right to peaceful assembly and the political rights of judges.

The Commission also finalised its work on the update of the 2007 Report on the Democratic Oversight of the Security Services, in the light of the most recent developments and challenges in the field. This process was completed with the adoption of two separate reports: one on the Democratic oversight of the security services and another on Signals intelligence – SIGINT.

At the same time, the Commission pursued its work aimed at developing and updating the checklist on the Rule of Law - appended to the Report on the Rule of Law adopted in March 2011, which is expected to become a useful tool in the examination, from the perspective of the rule of law, of the situation prevailing in a particular country.

Finally, the members of the Commission actively participated in a number of international events organised or co-organised by the Commission: a conference on lustration and related standards (Prague), conferences on the launching of the joint guidelines on freedom of association (Geneva) and on freedom of religion (European parliament, Brussels), a Council of Europe conference on freedom of expression (Strasbourg), the World Forum for Democracy (Strasbourg).

## Constitutional justice

### Strengthening constitutional justice

In 2015, the President of the Venice Commission made a statement supporting the protection of the judges of the Constitutional Court of Georgia and their families against harassment following manifestations and pickets in front of their private homes as a result of public criticism of this court's judgments. The President was also asked by the Commission to follow closely the situation of the constitutional courts of Bosnia and Herzegovina, Croatia and Poland, including by making, where appropriate, public statements in consultation with the Bureau in view of the importance of constitutional justice in a democratic state and the Venice Commission's special role in promoting constitutional justice in Europe and worldwide.

The Commission adopted opinions in the field of constitutional justice for the Kyrgyz Republic and Tunisia as well as an *amicus curiae* brief for the Constitutional Court of Georgia.

The Commission endorsed the compilations of the Venice Commission's opinions and reports on Constitutional Justice (CDL-PI(2015)002).

The Venice Commission's Joint Council on Constitutional Justice steers the work of the Commission in the field of constitutional justice. The Venice Commission published two regular issues of the Bulletin on Constitutional Case-Law together with a special issue on "Co-operation between Constitutional Courts", requested by the Conference of European Constitutional Courts (CECC).

The CODICES database is the focal point for the work of the Joint Council as well as the World Conference on Constitutional Justice (WCCJ), making it possible to access nearly 9000 constitutional judgments for mutual inspiration, as a common basis for dialogue among judges in Europe and beyond.

The Commission's Venice Forum dealt with 34 comparative law research requests from constitutional courts and equivalent bodies covering questions that ranged from limits to the reimbursement of legal costs to the adoption of children by same-sex partners.

The Commission co-organised or participated in conferences and seminars in Armenia, Azerbaijan, Belgium, France, Gabon, Georgia, Kosovo, Kuwait, Republic of Moldova, Montenegro, Morocco, Peru, Romania, Russian Federation, Switzerland, Tajikistan, Tunisia and the United Kingdom.



### World Conference on Constitutional Justice (WCCJ)

In 2015, the 9th meeting of the Bureau of the World Conference on Constitutional Justice (WCCJ) was held in Venice, Italy, during which the offer of the Constitutional Court of Lithuania to host the 4th Congress of the WCCJ in 2017 was accepted. The Bureau also decided that the Secretariat should set up a book exchange system via the online Venice Forum and that the WCCJ should have the possibility of providing its good offices upon request by one of its member courts.

During the course of the year, the number of constitutional courts, constitutional councils and supreme courts, members of the WCCJ, increased to 98. With the accession of the High Court of Australia, the WCCJ is now represented on all five continents.

The CODICES database and the online Venice Forum provide a permanent link between the member courts. The increase in membership of the WCCJ led to a further increase in case-law contributions, notably to the CODICES database of the Venice Commission.

## Elections, referendums and political parties

In 2015, the Commission continued its work on electoral matters and political parties. The Commission adopted important reports on: Proportional Electoral Systems: the Allocation of Seats inside the Lists (open/closed lists); on the method of nomination of candidates within political parties; on exclusion of offenders from Parliament; as well as a summary report on voters residing de facto abroad. It also continued its work on preventing and responding to the misuse of administrative resources during electoral processes. The Commission adopted two opinions in the field of elections and political parties. The Council for Democratic Elections adopted these opinions and studies before their submission to the Commission.

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

implementation rather than the content of the legislation. During 2015 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 an opinion on the Citizen's Initiative Bill aimed at extending direct and participatory democracy in the Province of Trento (Italy).

The Commission organised electoral assistance activities in Albania, Georgia, the Republic of Moldova and in Ukraine. In the neighbourhood region the Commission was active in Kyrgyzstan and Tunisia.

The Commission organised the 12th Conference of European Electoral Management Bodies in Brussels jointly with the Belgian Ministry of the Interior.

The Commission provided legal assistance to five 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 draft amendments to some legislative acts of Ukraine concerning the fight against political corruption and its prevention, specifically affecting political parties and electoral campaigns. This opinion was drafted jointly with the OSCE/ODIHR.

## Sharing European experience with non-European countries

### Mediterranean Basin

In 2015, the Venice Commission continued its successful co-operation with the States in the Mediterranean Basin. The need to reform the State institutions in accordance with international standards was confirmed by the implementation of several projects in Morocco and Tunisia.

The Venice Commission co-operated successfully with Tunisia in developing legislation on independent institutions such as the new Constitutional Court, the Truth and Dignity Body of Tunisia and the Independent Electoral Institution (ISIE) in line with the new constitution adopted in January 2014. Representatives of the Commission were involved in discussions on the draft organic law on the Supreme judicial Council of Tunisia, the legislation on the new constitutional court and on transitional justice.

The dialogue with the Moroccan authorities continued in such fields as 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 and provided support to the Independent Election Commission in creating the Organisation of the Electoral Management Bodies of Arab countries. 2015 was clearly marked by an increase in regional activities organised or supported by the Commission, including such important projects as the UNIDEM seminars for the countries of the MENA region and meetings of the Organisation of the Electoral Management Bodies of Arab countries. These multilateral activities saw an increased participation of various representatives of the authorities and academia from Algeria, Egypt, Lebanon, Libya and the Palestinian National Authority.

### Central Asia

In 2015, 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.

On 28 and 29 October 2015 the Venice Commission organised in Strasbourg a Conference of Central Asian constitutional control bodies. This Conference brought together around 20 participants from Kazakhstan, Kyrgyzstan, Tajikistan and Uzbekistan. The President and judges of the Constitutional control bodies met to discuss issues of common interest, such as how the separation of powers affects constitutional control bodies and constitutional interpretation techniques. This was the first time that Chairpersons of bodies of constitutional justice of the 4 countries could meet together in the framework of a regional event.

The year was marked by an enhanced co-operation between the Venice Commission and the Constitutional Chamber of the Supreme Court of Kyrgyzstan. Upon requests from the Chamber the Commission organised several workshops and seminars aimed at reinforcing the independence of constitutional justice and improving its efficiency. The Commission adopted two opinions on draft legislation of Kyrgyzstan – the first one on the introduction of changes and amendments to the Constitution of the Kyrgyz Republic and the second one on the Rules of procedure of the Constitutional Chamber of the Kyrgyz Republic.

### Latin America

In 2015 the Venice Commission continued to develop its co-operation with countries of Latin America through its Sub-Commission on Latin America.

The Venice Commission, in co-operation with the Constitutional Court of Chile, organised a Conference on "The constitutional protection of vulnerable groups: a judicial dialogue", which was held in Santiago de Chile on 4-5 December 2015. The event brought together experts from the European Court of Human Rights and judges from the Inter-American Court of Human Rights, as well as several members and experts of the Venice Commission. The conference participants also included judges from 11 countries in Latin America, more specifically Brazil, Chile, Colombia, Costa Rica, Ecuador, El Salvador, Mexico, Nicaragua, Paraguay, Peru and Uruguay.

The meeting of the Sub-Commission on Latin America that followed the conference focused on the follow-up to be given to the previous opinions of the Venice Commission, the preparation of a road-map for possible activities in Latin America in 2016 and on the creation of several working groups composed of experts from both Europe and Latin America.

In 2015, the Commission continued its contacts with other regional organisations in the Americas, notably the Organisation of American States and the Carter Center.

Following an invitation from the Organisation of American States (OAS) and the Electoral Tribunal of Brazil a representative of the Venice Commission participated in the 10th annual conference of electoral management bodies of countries of Latin America. The conference focussed on three main subjects: electoral reforms and regional tendencies; elections and social networks; financing of political campaigns.




## II. Democratic development of public institutions and respect for human rights

# 1. Country specific activities

## Constitutional assistance

### Albania

Throughout 2015, the Venice Commission was involved in the preparation of the reform of the Albanian judiciary, through periodic consultations with local experts. In December 2015 the Venice Commission adopted, at the request of the Albanian authorities, an interim opinion on the draft constitutional amendments (CDL-AD(2015)045). It was agreed that the final opinion, on a revised text of the draft amendments, would be prepared in 2016.

The draft constitutional amendments covered several areas, including in particular European integration matters, the reform of the Constitutional Court, the creation of the High Administrative Court, the reform of the High Judicial Council and the High Prosecutorial Council and the creation of several new disciplinary bodies for judges and prosecutors. The most important part of the reform concerned the process of vetting all sitting judges and prosecutors, aimed at enabling the removal of corrupt and incompetent judges by Independent Qualification Commissions, under the supervision of "international observers".

The interim opinion acknowledged the need for a profound reform of the Albanian judiciary, which had been facing a deep crisis. The draft amendments proposed a number of institutional solutions, which were, for the most part, sound; however, the opinion noted the great complexity of the proposed amendments and suggested that some of the issues be regulated in the implementing legislation. The opinion expressed concerns over certain specific proposals (i.e., the prominent role to be played by the Minister of Justice in the disciplinary bodies). The existence of two separate councils (one for the judges and another for the prosecutors) was an acceptable model. The idea of a temporary mechanism for vetting all sitting judges, was also found acceptable in view of the magnitude of the problems affecting the Albanian judiciary; however, the status of international observers needed to be clarified and the independence of the Qualification Commissions as well as the due process guarantees for the judges and prosecutors undergoing vetting which also needed to be strengthened.

Following the adoption of the interim opinion, the draft amendments were revised and submitted to the attention of the Venice Commission. The Commission adopted the final opinion at its March 2016 plenary meeting.

### Armenia

On 1st November 2013, the President of the Constitutional Court of Armenia, Mr Gagik Harutyunyan, in his capacity of co-ordinator of the Professional Commission for Constitutional Reforms (hereinafter "the Commission"), 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.

Following the adoption of the opinion on the draft concept paper on the constitutional reforms in October 2014, the group of rapporteurs met with the Armenian

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

Professional Commission for Constitutional reforms in May 2015 (Paris), July 2015 (Vienna) and in August 2015 (Yerevan) to discuss concrete draft provisions of the Constitution. In Yerevan, the Venice Commission delegation also met with representatives of the civil society and of political parties.

The Preliminary Opinion on the draft Amendments to the Constitution (Chapters 1 to 7 and 10) of the Republic of Armenia (CDL-AD(2015)037) and the Second Preliminary Opinion on the draft Amendments to the Constitution (in particular to Chapters 8, 9 and 11 to 16) of the Republic of Armenia (CDL-AD(2015)038) were sent to the Armenian authorities as preliminary opinions and made public respectively in July and September 2015. They were subsequently endorsed by the Commission at its October 2015 session.

In these opinions, the Venice Commission welcomed the draft submitted and the atmosphere of genuine dialogue and fruitful exchanges which enabled the Constitutional Commission to produce a text in line with international standards. The Venice Commission welcomed in particular the following points in the draft: the fact that the legal effects of fundamental rights are defined; the requirement for a three-fifths majority for the election of the judges of the Court of Cassation and of the Constitutional Court and the competence of a non-politicised Supreme judicial Council for the dismissal of the judges; the fact that a specific chapter is now devoted to the Human Rights Defender and guarantees for its independence are provided, notably a longer term than the parliament's; constitutional guarantees of independence are provided also for the other constitutional institutions, such as the Central Electoral Commission.

The second opinion took note of the improvements made upon recommendation of the rapporteurs in relation to certain important issues: electoral rights, right to form new factions during the legislature. The opinion made further recommendations concerning, among others, the provisions on the question of the no-confidence vote, the prosecution office and the removal from office of the Human Rights Defender (in exceptional cases). Finally, the Venice Commission stressed the importance of an open and continued dialogue with all the political forces and with the civil society of Armenia in order for these constitutional amendments to be adopted by parliament and, subsequently, by referendum, which would represent a further important step forward in the transition of Armenia towards democracy.

After the two preliminary opinions had been issued and subsequently endorsed by the Commission at its October 2015 session, further changes were made to the draft constitutional amendments, which were then adopted by parliament and submitted to a constitutional referendum on 6 December 2015. The constitutional amendments were adopted (63.5% of voters had voted in favour, with a turnout of 50.51%). Opposition groups, NGOs and the media alleged serious irregularities. A PACE delegation had observed the referendum and found that the relatively low turnout was due to the political interests alleged to be the real motive for the reform. The reform process was considered not to be sufficiently inclusive. The PACE delegation mentioned several problems, notably the inaccuracy of the electoral lists, which had been identified by the Venice Commission and the OSCE/ODIHR in previous reports.

### Bulgaria

At the request of the President of the National Assembly of the Republic of Bulgaria, the Venice Commission adopted, at its October 2015 session, an Opinion on the draft act to amend and supplement the Constitution of the Republic of Bulgaria (CDL-AD(2015)022).

The draft amendments covered several issues in the field of the judiciary: 1/ structural and organisational

changes to the Supreme Judicial Council (SJC) involving the division of the SJC into two Chambers (one for judges and one for prosecutors and investigators), with separate and independent career and disciplinary functions, and the diminution of the functions of the Minister of Justice with respect to the SJC; 2/ the strengthening of the Inspectorate with the SJC through new functions, aimed at ensuring the accountability and the integrity of the judiciary; 3/ introducing access of the Supreme Bar Council to the Constitutional Court as a way of providing increased safeguards for citizens' rights and freedoms.

The Venice Commission welcomed the proposed amendments as a new step in the process of constitutional reform of the Bulgarian judiciary. Some of them reflected recommendations contained in its previous opinions on the latter.

At the same time, the Commission recommended inter alia: to introduce a qualified majority requirement and anti-deadlock mechanisms for the election of the SJC lay members by the National Assembly; to provide conditions for proportional representation, in the SJC Chambers, of all levels of courts and the prosecution service; to reconsider the division of competencies between the SJC Plenum and the two Chambers in the light of the principle of independence of the different professions of the judiciary from each other; to provide for the adoption by open vote of decisions of the SJC and its Chambers. The Opinion further recommended reconsidering the role of the Minister of Justice in relation to the SJC, as a way to avoid any undue interference with the independence of judges and prosecutors, and providing wider citizens' access to the Constitutional Court (by judges at all levels and, possibly, by introducing direct individual complaints).

On 16 December 2015, the Bulgarian Parliament adopted the draft constitutional amendments. It is positive in particular that the adopted text provides for a qualified majority requirement for the election, by the National Assembly of Bulgaria, of a part of the members of the Supreme Judicial Council. However, the changes operated to the proposal initially made by the government concerning the numbers of judges/prosecutors and lay members to be elected to the SJC chambers drew criticism that they would both weaken the independence of the courts and strengthen the role of the Prosecutor General. The Commission has already expressed its readiness to pursue its co-operation with the Bulgarian authorities in relation to the implementing legislation, in particular in the context of the amendment of the Bulgarian law on the judiciary.

### Kyrgyz Republic

The Joint Opinion by the Venice Commission and the OSCE/ODIHR, adopted by the Commission at its June 2015 session, at the request of the Chairperson of the Committee on human rights, constitutional legislation and state structure of the Jogorku Kenesh (Parliament) of the Kyrgyz Republic, raised key issues and provided indications of areas of concern.

While recognising the desire of the drafters to clarify certain parts of the 2010 Constitution, the OSCE/ODIHR and the Venice Commission noted that the majority of the proposed amendments to the Constitution would appear problematic in the light of key democratic principles, in particular the separation of powers and the independence of the judiciary. For this reason, the OSCE/ODIHR and the Venice Commission made the following key recommendations:

- The immunity for members of Parliament should be retained as it is in the current Constitution or replaced with a system whereby – upon request by a parliamentary minority – the Constitutional Chamber would decide on whether immunity can be lifted.

- Political parties and/or factions should not have the power to decide on the termination of the mandate of a Member of Parliament.
- Article 97 of the Constitution on the Constitutional Chamber, as well as other provisions making reference to its contents, should be retained in order to keep the Chamber as a judicial power ensuring effective constitutional oversight in the Kyrgyz Republic.
- In order to guarantee the internal independence of judges, the proposed provisions on «judicial oversight» and on "mandatory explanations" by the Supreme Court should be removed (draft Article 96 paragraphs 2 and 3).
- The terms of office of chairpersons, their deputies and judges of local courts, the judges of the Supreme Court and the judges of the Constitutional Chamber should not be affected by amendments to the Constitution (transitional provision).

In any case, the constitutional procedure for amendments should be followed, as set out in Article 114 of the Constitution. The initiative for a referendum does not only require adoption by a two-thirds majority, but should arguably also only take place following at least three readings with a two month interval between them. The Commission was of the opinion that in case of doubt, the Constitutional Chamber would have to decide on the procedure to be followed.



Ukraine

*Constitutional amendments related to decentralisation*

At the request of the Speaker of the Verkhovna Rada of Ukraine and Chair of the Constitutional Commission, the Venice Commission examined a "**decentralisation**" package of amendments to the constitution of Ukraine, relating to the territorial structure and local administration. In its Preliminary Opinion of June 2015 (CDL-AD(2015)028) the Venice Commission welcomed the decentralisation package as being generally in line with European standards. It praised the new system where executive state administration functions and local self-government will be clearly separated. It also welcomed provisions guaranteeing adequate funding of local self-government, describing in detail the powers of the territorial units, and abolishing the supervisory powers of the Prosecutor General.

The Commission, however, made several recommendations. It recommended in the first place that the power of the President should be limited to suspending (as opposed to dismissing) heads of local administrations who overstepped the limits of their competencies, and that the Constitutional Court should be able to quickly review such decisions of the President. The power to dismiss the prefects should be given to the President upon recommendation of the Cabinet of Ministers. The prefect should not have general powers vis-à-vis local self-government bodies, but may have special powers in cases of emergency and martial law. The Venice Commission finally expressed concern that the amendments would not leave any space for providing for special arrangements for certain administrative territorial units, which was unfortunate and did not provide a constitutional basis for proposals aimed at settling the present conflict in Ukraine in line with the Minsk agreements.

In August 2015 the constitutional amendments were revised in the light of the Venice Commission's recommendations and were subsequently submitted to the Constitutional Court for approval and finally adopted by the Verkhovna Rada in first reading. The revised amendments followed most of the recommendations expressed in the Preliminary Opinion. The detailed analysis of the compliance of the constitutional amendments as adopted with the Commission's recommendations is contained in the Secretariat Memorandum CDL-AD(2015)029.

This Opinion and the Memorandum were endorsed by the Commission at the October 2015 session.

*Constitutional reform - Transitional provisions*

At the request of the Speaker of the Verkhovna Rada of Ukraine and the Chair of the Constitutional Commission, the Venice Commission examined the question of the **temporal validity of draft transitional Provision 18 of the Constitution of Ukraine**. An opinion was adopted at the October 2015 plenary session (CDL-AD(2015)030).

Transitional Provision no. 18 related to the implementation of the 2015 Minsk Agreement which aimed at the termination of hostilities in the Eastern Ukraine. It provided for specific arrangements for self-government in some parts of this region, to be set forth in a separate law. The central question for the Commission was whether this provision, as it was formulated, was temporary or permanent in character. The Venice Commission concluded that this provision, despite being labelled as "transitional", is not limited in time and will remain in force until abrogated.

*Constitutional amendments relating to the judiciary*

At the request of the Speaker of the Verkhovna Rada and Chair of the Constitutional Commission of Ukraine, the Venice Commission examined the draft amendments to the Constitution of Ukraine regarding the judiciary proposed by the Working Group of the Constitutional Commission in July 2015 and, subsequently, the revised version of the proposed amendments, as approved by the Constitutional Commission on 4 September 2015.

In its preliminary opinion (CDL-AD(2015)026), subsequently endorsed by the Commission at its October 2015 session, the Commission concluded that, overall, the proposed changes deserved to be supported and that their adoption would be an important step forward towards the establishment of a truly independent judicial system in Ukraine. The Commission welcomed in particular the removal of the power of the Verkhovna Rada to appoint judges; the abolition of probationary periods for junior judges, the abolition of the "breach of oath" as a ground for dismissal of the judges; the proposed guarantees for the independence of the Public Prosecutor's Office (notably the removal of its non-prosecutorial supervisory powers and the removal of the power of the Verkhovna Rada to express no confidence in the Prosecutor General). At the same time, the Commission recommended, as a way to address remaining shortcomings, likely to create a new danger of politicisation of the judiciary and perpetuate the problems of the current system, that the President's power to dismiss the judges be removed and that the Verkhovna Rada, not only the president, should also have a role in the election/appointment of a limited number of members of the High judicial Council.

In its Opinion adopted at its October 2015 session (CDL-AD(2015)027), the Commission welcomed the revised version of the proposed amendments as being very positive and considered that it deserved to be fully supported. It particularly welcomed that, following its recommendations in the Preliminary Opinion, the power of the President to dismiss the judges had been removed and that the Verkhovna Rada's power to participate in deciding on the composition of the High Council of Justice had been recognised. The Commission also welcomed the possibility given to "no less than forty-five People's Deputies" to seek an opinion of the Constitutional Court on the constitutionality of questions to be put to an all-Ukrainian referendum.

However, the Commission strongly recommended specifying in the Constitution that the High Council of Justice has the power not only to decide on the dismissal of judges, but also on the judges' transfers and promotion.

The Commission found that, in the Ukrainian context, for a limited period of time, as a transitional measure (with a view to safeguarding national security), the President could play a role in the transfer and promotion of judges. It further recommended to provide in the Constitution that only serious disciplinary offences may entail dismissal of the judges of the Constitutional Court and suggested explicitly mentioning that the violation, by a judge, of the obligation to produce an asset declaration justifying the origin of the judge's property may be a ground for dismissal.

Concerning the transitional provision setting out the possibility to carry out an assessment procedure of all the ordinary judges of Ukraine with respect to their professionalism, ethics and honesty, the Commission stressed that such a procedure can only be an extraordinary measure which requires the utmost care, and pointed out that the parallel enforcement of different procedures carried out by different organs was unlikely to ensure respect of the most stringent safeguards for those judges who do meet these criteria.

Based on the Commission's opinion, the draft constitutional amendments were further revised by the Constitutional Commission. A Secretariat Memorandum presented to the Commission in December 2015 (CDL-AD(2015)043) concluded that all the Venice Commission's recommendations had been followed, with the exception of the requirement of a qualified majority for the election by the Verkhovna Rada of the 2 members of the High Council for the Judiciary and the 6 judges of the Constitutional Court.

*Immunity of MPs and judges*

At its June 2015 session, the Commission also adopted, at the request of the Speaker of the Ukrainian Parliament, an opinion on draft constitutional amendments with respect to the immunity of members of parliament and judges in Ukraine (CDL-AD(2015)013). The Commission positively noted that the draft followed the distinction between substantial non-liability and procedural inviolability, as set out in the Commission's Report on the Scope and Lifting of Parliamentary Immunities and welcomed that the draft amendments to the Constitution of Ukraine shift the power to lift judges' immunity from Parliament to the High Council of Justice. Also, while acknowledging that inviolability can be an obstacle to the fight against corruption, the Commission was of the view that the state of the rule of law in Ukraine did not yet warrant a complete removal of inviolability of Members of Parliament. Therefore, the Commission recommended establishing other mechanisms, which can prevent interference in the activity of Parliament while facilitating the fight against corruption.

## Legislative assistance

*Fundamental rights and democratic institutions*

Bosnia and Herzegovina

Opinion on the draft law on the Ombudsman for Human Rights in Bosnia and Herzegovina (CDL-AD(2015)034)

At its October 2015 session, the Venice Commission adopted, at the request of the Minister of Human Rights and Refugees of Bosnia and Herzegovina, an Opinion on the draft law on the ombudsman for human rights in Bosnia and Herzegovina (CDL-AD(2015)034).

The draft law, substantially amending the law in force, was aimed at addressing domestic and international concerns over the lack of independence and neutrality of the institution and its failure to act as a genuinely unified institution. The Opinion also noted that, pending the election of three new Ombudspersons, the term of the three Ombudspersons appointed in 2008 (from the ranks of the three Constituent Peoples) had been

extended. Conciliating the two parallel processes was an additional challenge for the authorities.

In substance, the draft law proposed significant improvements, in particular as regards the composition of the Institution and the appointment procedure. However, additional improvements were recommended: to consider a longer, non-renewable mandate of the Ombudsman and less restrictive eligibility criteria; to better clarify the prerogatives of the Ombudsman in relation to courts, in the light of the principle of independence of the judiciary; to provide increased guarantees for the Institution's financial independence. Moreover, it was recommended to make sure that the most important functions and organisation principles of the Ombudsman Institution be regulated and formulated in such a way as to enhance its unified nature (by referring systematically to "the Institution" and not "the Institution and the Ombudspersons").

### Hungary

*Opinion on media legislation*

At the request of the PACE, the Venice Commission adopted, at its June 2015 session, an Opinion concerning media legislation of Hungary (CDL-AD(2015)015). The opinion focused on two main areas: the content-based regulations and sanctions for illegal media content, and the powers and composition of the media regulatory bodies.

While admitting that it was possible for the State to introduce content regulations (prohibiting hate speech, defamation, attacks of constitutional order etc.), the Venice Commission stressed that such considerations should not affect freedom of expression and recommended that the principle of proportionality, as developed by the ECtHR, be incorporated in the Hungarian media legislation. The Commission pointed out that the heavy sanctions that the Media Council may apply for publication of illegal media content might have irreversible effects on the proper functioning of media outlets. It recommended providing for a possibility for quick judicial review of the sanction.

The Commission found that the provisions related to the duty of linear media to give "balanced" coverage were vague and opened the door to an overly broad interpretation. It recommended that the Media Council issue soft-law guidelines on the interpretation of existing content regulations, as a way to limit its discretion in interpreting those provisions, without however being binding on courts. The method of nomination of the Chairperson of the Media Council, who is at the same time the President of the Media Authority, also needed to be reconsidered. Also, in the light of the particular Hungarian context (where the governing coalition had more than two-thirds votes in the Parliament), it was recommended that the composition of the Media Council be revisited, to ensure pluralism and representation of the media community or civil society. Similar recommendations were made in respect of the Board of Trustees, which oversees public service media.

Finally, the opinion positively noted that the new tax on advertisement revenues, which had raised a lot of debate, had been significantly reduced.

### Republic of Moldova

*Opinion on the People's Advocate (Ombudsman) Law (CDL-AD(2015)017)*

At its June 2015 session, the Venice Commission adopted, at the request of the newly elected People's Advocate (Ombudsman), an Opinion on the Law no. 52 of 3 April 2014 on People's Advocate of the Republic of Moldova (CDL-AD(2015)017).

The 2014 Law was a step forward in the efforts made to reform and strengthen this institution and its provisions

were overall in accordance with the applicable standards, as in particular laid down in the Paris Principles. Important guarantees had been provided as regards the mandate of the People's Advocate, its competence, operating methods and independence. The Opinion pointed out however that, to make those guarantees more effective, the adoption of specific constitutional provisions on key aspects of the operation of the Ombudsman institution (its election, status, mandate and competences) was crucial.

Concerning the Law itself, the opinion recommended: stronger independence guarantees (a qualified majority requirement for the election of the People's Advocate by Parliament; clear grounds and a higher qualified majority for his/her early revocation, which should involve public hearings and a challenging procedure in court); wider immunity guarantees for the People's Advocate, his/her Deputies and staff; clearer legal guarantees for the provision, from the state budget, of adequate financial resources of his/her Office; a clearer definition of the position (and autonomous status) of the People's Advocate for the rights of the child.

The draft opinion further recommended that the competence of the institution in relation to the private sector and the courts be re-examined and clearly specified in the Law. It was especially recommended that jurisdiction over courts be excluded.



### Montenegro

*Opinion on draft amendments to the Law on media of Montenegro (CDL-AD(2015)004)*

The Opinion on draft amendments to the Law on media of Montenegro (CDL-AD(2015)004), adopted at its March 2015 session, was prepared at the request of the Speaker of the Montenegrin parliament. The main purpose of the draft law was to enable a temporary *ex-ante* ban on further publications or even a shutdown, by a court order, of a media outlet having published illegal media content repeatedly and in disregard of previous court judgments.

The Venice Commission expressed concern with the measure proposed by the draft law, as the restraint did not aim at some particular information or a publication on a specific topic, but affected the overall functioning of the media outlet. Even a short-term interruption of all publications or broadcasting may "kill" a media outlet as a whole. "Public morals" and "rights of others" - terms which are very vague and subject to extensive interpretation - should be defended by other, less drastic means. The Venice Commission recommended removing the general possibility of imposing a temporary ban, as well as to limit this measure to extreme cases such as incitement to hatred or threat of violent overthrow of the constitutional order.

The draft amendments were subsequently revised in the light of the Venice Commission's recommendations. They were, however, not submitted to parliament for adoption.

*Opinion on draft amendments to the Law on minority rights and freedoms of Montenegro (CDL-AD(2015)033)*

At its October 2015 session, the Venice Commission adopted, at the request of the Ministry of Human and Minority Rights of Montenegro, an Opinion on draft amendments to the Law on minority rights and freedoms of Montenegro (CDL-AD(2015)033).

The Commission welcomed this legislative initiative, reflecting the clear will of the Montenegrin authorities to address the shortcomings noted in the operation of the mechanism for state support to the activities of national minorities. This involved in particular making this mechanism more effective, more transparent and more objective, free from any undue influence or pressure.

The Commission recommended however: reconsidering the rules for the establishment of the minority councils so as to ensure that *ex officio* members are not involved in the election of the other councils' members; providing for representation, in the Management Board of the Minority Fund, of each of the minority councils representing national minorities and national minority communities; reconsidering the eligibility criteria/incompatibilities for the Management Board and the Director of the Minority Fund, and setting a reasonable percentage cap on the part of the Minority Fund's budget to be spent for its own operational expenses; entrusting the Management Board of the Fund with the power to prescribe the modalities to evaluate projects and the documentation required.

### Ukraine

*Lustration Law ("Law on Government Cleansing")*

In its Interim Opinion on the Law on Government Cleansing (the Lustration Law) adopted at its December 2014 session (CDL-AD(2014) 044), the Commission stressed that, in order to respect human rights, the rule of law and democracy, lustration must strike a fair balance between defending the democratic society on the one hand and protecting individual rights on the other. Lustration procedures, despite their political nature, must be 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 Interim opinion pointed out certain important shortcomings in the 2014 Law, relating to the personal scope of application of the Law, the time element, the administration of lustration and the procedural guarantees.

In the following months the Commission's rapporteurs engaged in a constructive dialogue with the authorities. Draft amendments to the Lustration Law had been submitted to the Verkhovna Rada in April 2015 and the Commission had been requested to asses them.

In its Final Opinion (CDL-AD(2015)012) adopted at its June 2015 session, the Venice Commission recognised that the Ukrainian law was not a classic lustration law, in that it aimed not only at protecting Ukraine from individuals who on grounds of their ideology may pose threats to democracy, but also to fight against large-scale corruption, which was not a task of ordinary lustration laws. While both aims are legitimate, the means to pursue them should be different, and for this reason the opinion found that the lustration law ought not to have dealt with corruption at all. If corruption were to be kept in the law, more individualisation would be necessary and sanctions would have to depend on the severity of the irregularity committed. Since there are other laws on lustration within the judiciary, this law ought not to have been applicable to judges. The opinion further expressed a strong preference for a centralised procedure of lustration. If this were not possible, at the very least the competence of the newly-created body needed to be strengthened so that it could receive individual complaints as a preliminary step prior to judicial review, which however remained essential. Finally, the Venice Commission stressed that lustration must never replace structural reforms aimed at strengthening the rule of law and combatting corruption, but may complement them as an extraordinary measure.

*Joint Interim Opinion on the Law of Ukraine on the condemnation of the Communist and National Socialist (Nazi) regimes and prohibition of propaganda of their symbols (CDL-AD(2015)041)*

At its December 2015 session, at the request of the Chair of the Parliamentary Assembly's Monitoring Committee, the Venice Commission adopted an Interim Opinion on the Law of Ukraine on the condemnation of the

Communist and National Socialist (Nazi) regimes and the prohibition of propaganda of their symbols, jointly prepared with the OSCE/ODIHR (CDL-AD(2015)041).

The Law on the condemnation of the Communist and National Socialist (Nazi) regimes and prohibition of propaganda of their symbols was adopted as part of a package of four so-called "decommunisation" laws. This particular Law was aimed specifically at criminalising communism and National Socialism, including propaganda for these regimes. The Venice Commission and the OSCE/ODIHR recognised the right of Ukraine to ban or even criminalise the use of certain symbols of and propaganda for totalitarian regimes, given that such legislation was not uncommon in Council of Europe and OSCE member states. However, although this Law might be considered as pursuing a legitimate aim, its scope was too broad and the sanctions it provided were disproportionate to the legitimate aim pursued. In addition, its provisions were not precise enough to enable individuals to regulate their conduct according to the law and to prevent arbitrary interference by public authorities. It therefore did not adhere to the three-fold test of legality, legitimacy and necessity in a democratic society.

## Judiciary

### Georgia



*Opinion on the draft amendments to the Law on the Prosecutor's Office (CDL-AD(2015)039)*

In May 2015 the Georgian Ministry of Justice requested an Opinion on the draft Amendments to the law on the Prosecutor's Office of Georgia. Due to the urgency of the matter, a preliminary opinion was prepared by the Rapporteurs in June 2015, jointly with the Consultative Council of European Prosecutors (CCPE) and the OSCE/ODIHR. The Opinion was sent to the Georgian authorities and publicly released in July 2015, and later endorsed by the Commission at its October 2015 session (CDL-AD(2015)039).

The opinion welcomed the reform undertaken by the Georgian authorities in order to depoliticize the office of the Prosecutor General. This reform provided *inter alia* for the creation of a Prosecutorial Council responsible for appointing the Prosecutor General and overseeing his/her activities. However, the opinion recommended selecting lay and prosecutorial members of the Council in a more transparent manner, and electing a certain number of lay members either with a qualified majority or through a quota system. The Georgian authorities subsequently amended the draft which was finally adopted and signed into law in September 2015. Most of the recommendations contained in the preliminary opinion had been followed, which was welcomed by the plenary in October 2015. The Commission nonetheless encouraged the Georgian authorities to take additional steps in order to further depoliticise the prosecution service.

### Republic of Moldova

*Opinion on the draft law on prosecution service (CDL-AD(2015)005)*

At its March 2016 session, at the request of the Ministry of Justice of the Republic of Moldova, the Venice Commission adopted an opinion on the draft law on the prosecution service of the Republic of Moldova (CDL-AD(2015)005), jointly prepared with the Directorate of Human Rights of the Council of Europe and the OSCE/ODIHR.

The Opinion welcomed the draft law as representing a substantial improvement of the existing legal framework for the operation of the Moldovan Prosecution Service and reflecting a genuine effort to modernise it, in line with relevant European standards and best practices.

Many of the proposed changes entailed the implementation of previous Venice Commission recommendations. It was however noted that some of the legislative amendments envisaged by the reform of the Prosecution Service might require an amendment of the Moldovan Constitution, which remained a very complex challenge in the political context of the country.

To further improve the draft law, the Joint opinion recommended: providing a narrower delineation of the prosecutors' powers outside criminal law and for judicial supervision of their actions in this area; providing clear and specific regulations for the dismissal of the Prosecutor General and more precise safeguards for the internal independence of prosecutors; and duly harmonising the provisions of the draft law with corresponding provisions of the Moldovan legislation, notably the Code of Criminal Procedure. The opinion also recommended reconsidering the proposals which were not consistent with the organic law on the Autonomous Territorial Unit of Gagauzia and stressed that, if done at all, any interference with the status of Gagauzia would require appropriate consultation with the competent bodies of Gagauzia.

The draft law was subsequently revised, mostly in line with the recommendations contained in the Joint Opinion, and adopted by the Moldovan Parliament. At the date of the preparation of this Annual report, its final examination and adoption were still pending.

### Montenegro

*Final Opinions on the revised draft laws on the Special Public Prosecutor's Office and on Public Prosecutor's Office*

At its March 2015 session, the Venice Commission adopted, at the request of the Speaker of the Parliament of Montenegro, final opinions on the revised draft law on the Special Public Prosecutor's Office (CDL-AD(2015)002) and on the revised draft law on Public Prosecutor's Office (CDL-AD(2015)003). At its December 2014 session, the Commission had already adopted two Interim Opinions on earlier versions of the two draft laws. The requests for opinion were related to the judicial reforms which were on-going following the amendment of the Constitution in 2013 and Montenegro's efforts towards its EU integration.

The Commission welcomed the fact that the Montenegrin authorities had taken into account some significant criticism in the Interim Opinions. However, the revised draft laws did not address or only partly addressed a number of important concerns raised by the Commission.

Concerning the draft law on the Special Public Prosecutor's Office, in charge of fighting high level corruption and organised crime, these concerns included in particular: the need for increased accountability guarantees (judicial review of prosecutorial measures, but also reporting to Parliament, as a way to minimize the risks of abuse and/or political pressure); the power of the special prosecutors, without judicial approval, to issue certain instructions and take certain steps in relation to other institutions; the relationship between the special prosecutor and the police; the need for increased and efficient data protection guarantees; the situation of pending cases regarding offences that fall under the jurisdiction of the Office at the date of the entry into force of the future Law.

As regards the draft law on the Public Prosecutor's Office, remaining concerns included: the multiplicity of prosecutorial structures with sometimes overlapping functions; the need for simplified procedures for election to the Prosecutorial Council and proportional representation of all levels of the Prosecution Service; the need for a qualified majority for the election of the Council's lay members; the need to eliminate the involvement of external bodies in the dismissal of Prosecutorial Council members; the need for clearer criteria for the appointment and

the secondment/transfer of prosecutors, and for appeal possibilities against compulsory transfers; the need for improved evaluation criteria and a more independent evaluation commission for prosecutors.

"The former Yugoslav Republic of Macedonia"

*Opinion on legislation on the disciplinary liability (CDL-AD(2015)042)*

At its December 2015 session, at the request of the Directorate of Neighbourhood and Enlargement Negotiations (DG NEAR) of the European Commission, the Venice Commission adopted an opinion (CDL-AD(2015)042) concerning three laws of "the former Yugoslav Republic of Macedonia": the Law on Courts, the Law on the judicial Council, and the Law on the Council for Determination of the Facts and Initiation of Disciplinary Procedure for Establishing Disciplinary Responsibility of a Judge, as well as the 2015 amendments to the first two laws. The Commission was asked to examine, in particular, provisions related to the disciplinary liability of judges.

The Opinion found the Macedonian legislation on the disciplinary liability of judges to be unnecessarily complex, incoherent and ambiguous in places. The laws put too much emphasis on the statistical performance of the judges and the rate of reversals of their decisions. Such an approach may create a chilling effect within the judiciary and endanger judicial independence. The opinion recommended amending the law to ensure that the judges would not be disciplined for delays or underperformance which might be reasonably explained by the malfunctioning of the judicial system as a whole. The opinion also called into question the expediency of the creation of a new body – "the Council for Determination of the Facts" – set up in 2015 to investigate disciplinary matters, and invited the Macedonian authorities to revise its composition.

Ukraine

*Opinion on the Law on the judicial system and the status of judges and amendments to the Law on the High Council of Justice*

*and*

*Preliminary Opinion on the draft law on the judicial system and the status of judges of Ukraine*

At its March 2015 session, the Venice Commission adopted, at the request of the Head of the Presidential Administration of Ukraine, a Joint Opinion on the Law on the judicial System and the Status of Judges and amendments to the Law on the High Council of Justice, jointly prepared with the Directorate of Human Rights of the Directorate General of Human Rights (CDL-AD(2015)007). The Law appeared to follow previous Venice Commission recommendations on many points. In particular, the emphasis put on the formal character of the role of the President in appointments of judges to probationary positions, the introduction of a list of grounds for liability for "breach of oath" in order to exclude too wide a discretion of disciplinary authorities, the introduction of a scale of sanctions for disciplinary liability (allowing the application of sanctions in a proportionate manner) and the detailed provisions for qualification examination of judges before lifetime appointments, were important improvements.

However, the opinion emphasised that the most serious problems concerning the independence of the judiciary in Ukraine lie in the constitutional provisions rather than in the Law on the judicial System and recommended that the Constitution be amended as a precondition for a genuine justice reform. Such amendment would involve excluding the role of the Verkhovna Rada in the appointment to permanent posts and in the dismissal of judges and in lifting the judges' immunities, to

modify the composition of the High Council of Justice so as to ensure that a substantial part or a majority of it are judges elected by their peers, as well as to remove the power of the President to establish and liquidate courts.

The opinion welcomed the information that a constitutional reform commission had been established and would start working on constitutional amendments.

At its March 2015 session, the Commission also took note of the Preliminary Opinion it had prepared on the draft law on the judicial system and the status of judges of Ukraine, at the request of the Minister of Justice of Ukraine (CDL-AD(2015)008). The Preliminary Opinion, while welcoming that many of its previous recommendations had been taken into account, recommended in particular that the President's role in the establishment of courts and in the appointment of judges to temporary positions should be a formal one and this should be clearly indicated in the draft law. Also, the provisions concerning the monitoring of the lifestyle of a judge had to be construed in a detailed manner and provide for adequate guarantees in the procedure for the judge concerned. A number of recommendations had also been made concerning the constitutional provisions: the role of the Verkhovna Rada should be excluded in the appointment to permanent posts and in the dismissal of judges; the composition of the High Council of Justice should be modified so as to ensure that a substantial part of it would be judges elected by their peers; the competence of the Verkhovna Rada in lifting judges' immunities should be excluded.

*Interim Opinion on the draft law on integrity checking of Ukraine*

At its October 2015 session, the Venice Commission adopted, at the request of the Permanent Representative of Ukraine to the Council of Europe, an Interim Opinion on the compatibility of the draft law on integrity checking of Ukraine with international standards (CDL-AD(2015)031). The draft law, prepared as part of Ukraine's anti-corruption legislation, aimed at introducing into the Ukrainian legal order the institution of integrity checks, to be carried out as a way and prevention and combat corruption of public officials.

The Venice Commission acknowledged that improving the system of preventing and combating corruption in accordance with international standards was a legitimate and laudable aim. In order for the draft law to meet fully international standards, the Commission recommended that the concepts of "rules of ethical behaviour" and "the failure to perform the duty of prevention of corruption", on the basis of which the integrity checking would be conducted, be defined more precisely. The Commission further recommended that the initiation of an integrity check should require prior reasonable grounds to suspect that the targeted person, or possibly the public institution, is involved in corruption. As to the person in charge of conducting the integrity checking, the Commission considered that he/she should not engage in active entrapment and that the discretionary power of the co-ordinator of the integrity checking as to the subject and the frequency of the check should be limited. The Commission also underlined the importance of the right of the public officials subjected to integrity checking to challenge the decision, as well as the course and the result of the integrity check, in courts.



## 2. Transnational activities

### Studies and Reports

#### Report on restrictions on freedom of expression and freedom of association of judges

At the request of the President of the Inter-American Court of Human Rights, the Venice Commission

adopted, at its June 2015 session, a report on restrictions on freedom of expression of judges (CDL-AD (2015)018). The Report contained a detailed analysis of the ECtHR case-law on the matter, as well as comparative material on selected countries.

The Report outlined the "contextual" approach for defining the permissible limits of the judge's freedom of expression, and stressed the need to take into account the historical and social background of the country and the given political situation, as well as whether the discussion includes a matter of public interest or is made in the context of an electoral campaign. It pointed out that, in its assessment of the proportionality of an interference with the freedom of expression of a judge with regard to his/her specific duties and responsibilities, the ECtHR considers the impugned statement in the light of all the concrete circumstances of the case. These include the office held by the applicant, the content of the impugned statement, the context in which the statement was made, and the nature and severity of the penalties imposed.

The Report concluded that, in comparative law, the level of restriction of the exercise of freedom of expression of judges differs from country to country according to their respective legal cultures.

### Report on the democratic oversight of the security services

In 2014 – 2015, the Commission, at the request of the PACE[7], continued its work on the update of the 2007 **Report on the Democratic Oversight of the Security Services**. The updated report was prepared and adopted at the March 2015 session (CDL-AD(2015)006). Not only did this new report update the previous study, it also supplemented it with the most significant developments since 2007, which are related to signals intelligence (SIGINT). Two separate reports were therefore issued: one on the Democratic oversight of the security services (updated since 2007, CDL-AD(2015)010), and another on Signals Intelligence - SIGINT (CDL-AD(2015)011).

The first report described the mandate of the security services and their internal organisation, internal controls of the security services within the governmental agencies, parliamentary accountability, judicial review and authorisation for surveillance measures, expert accountability and complaints mechanisms. The Venice Commission stressed that while the governments had considerable leeway in the area of national security, and although the security services must be equipped with extensive technological tools and enjoy exceptional powers, such services have inbred in them the potential to abuse State power. Therefore, it was essential that there be internal limits as well as external limits to their activities and a tighter democratic control.

The second report described what signals intelligence was (with focus on the metadata collection), described how it may impact on human rights, how it could and should be regulated, touched on the question of jurisdiction and cross-border collection of data, referred to best practices in this field, and explained why these could be regarded as best practices. The report, in particular, pointed out that, if insufficiently regulated and controlled, signals intelligence has a very large potential for infringing privacy and certain other human rights. Signals intelligence could be regulated in a lax fashion, meaning that a large number of people are caught up in a net of surveillance, or relatively tightly, meaning that the actual infringement of individuals' privacy and other human rights is more limited. With reference to the case-law of the European Court of Human Rights the Venice Commission concluded that Council of Europe member States have to regulate the main elements of signals intelligence in statute form. Only strong independent control and oversight mechanisms can assuage public concern that signals intelligence is being abused.

7. See also Chapter VI below

### Checklist on the Rule of Law

A checklist of five essential elements of the Rule of Law had been appended to the Report on the Rule of Law adopted at its March 2011 session, and had attracted considerable attention, including from the European Commission. During the whole year 2015, a working group was in the process of developing and updating the checklist and the Sub-Commission on the Rule of Law examined a draft in December 2015. The intention was to provide a tool for an in-depth analysis of the situation with respect to the Rule of Law in a given country. The Checklist was adopted in early 2016.

## Conferences and seminars

### International Conference on "Past and present day lustration: similarities, differences, applicable standards" (Prague, 7 September 2015)

The conference on "Past and present day lustration: similarities, differences, applicable standards" was co-organised by the Venice Commission and the Institute of International Relations, hosted by the Ministry of Foreign Affairs of the Czech Republic and funded by a voluntary contribution from Azerbaijan. The participants reached the following conclusions: there was no uniform understanding or settled meaning of lustration; there was no single or ideal model of lustration; international standards developed in the 1990s are not necessarily adequate to cover modern lustration; this matter deserved further study. Consequently, at its October 2015 session the Commission decided to carry out a study on the international standards applicable to lustration.

### Events related to Reports and Guidelines adopted by the Commission

On 3 February 2015, the Commission was represented during an audience organised by the Italian Senate on the regulation of lobbying activities. In this context, the Commission's report on the role of extra-institutional actors was presented.

On 4 February 2015, the Commission participated in a launching conference of the Joint Guidelines on the Freedom of Religion which took place in the European Parliament, in Brussels.

On 5 March 2015, the President and the Vice-President of the Commission participated in the launching Conference of the Joint Guidelines on the Freedom of Association held in Geneva.

In April 2015, the Commission was represented by one of its Vice-Presidents in the OSCE Annual Supplementary Human Dimension Meeting (SHDM), devoted to the freedom of peaceful assembly and freedom of association, held in Vienna.

The Chair of the Sub-commission on the Judiciary participated in the 2015 General Assembly of the European Networks of Councils for the Judiciary (ENCJ) held on 3-5 June 2015 in The Hague.

Venice Commission representatives participated, on 25-26 June 2015 in Louvain-la-Neuve, in an expert meeting co-organised with the OSCE/ODIHR, *l'Université Catholique de Louvain* and the International Center for Law and Religion Studies (BYU - USA), on the Joint guidelines on the legal personality of religious or belief communities, adopted by the Venice Commission in June 2014. The meeting was devoted to discussing the substantial and procedural specificities of the Venice Commission/OSCE-ODIHR legislative support, its influence on national legislations on freedom of religion and belief, as well as on international law and on the case law of the European Court of Human Rights.

A representative of the Commission participated in the Council of Europe's conference "Freedom of

expression: still a precondition for democracy?" which took place in Strasbourg on 13-14 October 2015. The Venice Commission's Report on democratic oversight of the security services was presented in the framework of the session on "Decrypting the implications and assessing the costs of mass surveillance on freedom of expression?"

Representatives of the Venice Commission participated in a conference on "Challenges of Implementation of the Judgments of the European Court of Human Rights: Dialogues about Prisoner's Voting", co-organised by: the Council of Europe; Moscow State University; PluriCourts/University of Oslo, University of Durham; Higher School on Economics and University of Surrey, in Moscow, on 30 October 2015.

On 3 November 2015, the President of the Venice Commission participated in the Congress organised on the occasion of the 90th anniversary of the foundation of the University of Ankara's Faculty of Law and made a presentation on the independence of the judiciary.

One of the Commission's Vice-Presidents participated in a workshop on "Protecting civic space in intergovernmental settings" organised in the framework of the World Forum for Democracy, held 18-20 November 2015 in Strasbourg.

Throughout 2015 a member of the Commission participated in the work of the drafting group within the European Committee on Legal Co-operation (CDCJ) responsible for developing a draft recommendation on legal regulation of lobbying activities.


## III. Constitutional justice

## 1. Opinions and conferences / Meetings[9]

### Armenia

*XXth Yerevan International Conference on "The Role of Constitutional Courts in strengthening the independence of the judicial power: doctrinal approaches and contemporary challenges" (Yerevan, 8 - 10 October 2015)*

On 8-10 October 2015, the Venice Commission co-organised together with the Constitutional Court of Armenia and the Conference of Constitutional Control Organs of the Countries of New Democracy (CCCOCND), the XXth Yerevan International Conference on "*The role of Constitutional Courts in strengthening the independence of the judicial power*", in Yerevan, Armenia.

During this Conference, the participants provided an overview of the case-law of their courts on issues that affect the independence of the judiciary (e.g. the budget of the judiciary, judges' remuneration, inviolability of judges and their irremovability) and identified the challenges that lie ahead (e.g. cases on judges' freedom of expression, the extent of their immunities, their right to choose their place of work and impartiality).

This Conference was financed by the Programmatic Co-operation Framework for Armenia, Azerbaijan Georgia Republic of Moldova, Ukraine and Belarus.

8. The full text of all adopted opinions can be found on the web site www.venice.coe.int.
9. Information on activities in the field of constitutional justice and ordinary justice concerning Bolivia, Chile and Peru can be found in Chapter V.

### Azerbaijan

*Conference on the "Protection of constitutional rights and freedoms by means of individual complaint" (Baku, 2 October 2015)*

On 2 October 2015, the Venice Commission co-organised together with the Constitutional Court of Azerbaijan, a multilateral conference on the "*Protection of constitutional rights and freedoms by means of individual complaint*". The aim of this event was to raise awareness of the importance of constitutional complaints before the Constitutional Court as a means of improving human rights.

Discussions dealt with how individual access to constitutional courts could be improved. The Azerbaijani authorities referred to the high level of social rights in Azerbaijan, but were nevertheless invited to remedy the human rights violations identified in the judgments of the European Court of Human Rights against their country as well as to follow the recommendations made by the Venice Commission in opinions addressed to them.

This Conference was financed by the Programmatic Co-operation Framework for Armenia, Azerbaijan Georgia Republic of Moldova, Ukraine and Belarus.



### Belgium

*"30th anniversary of the first case before the Constitutional Court of Belgium " (Brussels, 1 April 2015)*

On 1 April 2015, the Venice Commission attended the Constitutional Court of Belgium's ceremonial session in Brussels, at the *Palais des Académies*, celebrating the 30th anniversary of the first case to be dealt with by this court.

Presentations were made covering, among others, the evolution in this court's case law from 1985 to 2015; the Constitutional Court from the perspective of the legal profession; the constitutional court's relationship with the legislature and the European Court of Human Rights from the perspective of the constitutional court.

### Bosnia and Herzegovina

*Follow-up to the amicus curiae brief on the compatibility with the non-discrimination principle of the selection of the Republic Day of the Republika Srpska (CDL-AD(2013)027)*

In its 2013 *amicus curiae* brief, requested by the Constitutional Court of Bosnia and Herzegovina (BiH) and adopted by the Venice Commission at its October 2013 session, the Commission expressed the view that, in the specific circumstances of BiH, the selection of 9 January as the Republic Day of the Republika Srpska (RS) was likely to give rise to discrimination against the members of the Bosniak and Croat people and others who live in the RS.

In its decision of 26 November 2015, the Constitutional Court of BiH concluded, largely in line with the Venice Commission's position, that the choice of the Republic Day of the RS was unconstitutional and instructed the National Assembly of the RS to harmonise the concerned provision with the Constitution of BiH. The decision raised strong criticism among political leaders of the RS, who called on the Court to repeal the decision and on the BiH Parliament to adopt a new Law on the Constitutional Court (*inter alia* to remove the "foreign" judges), failing which they would call a referendum on the matter and consider withdrawing from the common institutions of the BiH state. At its December 2015 session, the Commission invited its President to monitor the situation and to make a public statement if needed.

### France

*French-speaking Courts (ACCPUF) – Constitutional Justice Correspondents (Strasbourg, 26-27 March 2015)*

For further information, please see Chapter III. 5 below.

### Gabon

*3rd Congress of the CCJA on the topic «Constitutional Court and regulatory function (Libreville, Gabon, 7-10 May 2015)*

For more information, please see Chapter III. 5 below.

### Georgia

*Amicus Curiae Brief on the non ultra petita rule in criminal cases for the Constitutional Court of Georgia (CDL-AD(2015)016)and follow-up*

This *amicus curiae* brief, requested by the President of the Constitutional Court of Georgia was adopted by the Commission at its June 2015 session. The issue before the Constitutional Court of Georgia was whether a strict application of the *non ultra petita* principle and the adversarial principle prevented courts of appeal from taking into account other constitutional principles in criminal cases, when no argument in this sense was made on behalf of the accused.

The *non ultra petita* rule limits appellate courts to examine only matters which have been raised by the parties.

The *amicus curiae* brief did not address the specific cases nor did it assess the constitutionality of the matter, which was the task of the Constitutional Court. An extensive comparative research on the constitutional and criminal law provisions of numerous Member States of the Venice Commission had been carried out for this *amicus curiae* brief, which notes that the competence of the appellate courts is often explicitly limited by the *non ultra petita*

rule. This rule flows from the principle of party disposition and also aims to ensure the efficiency of justice, by reducing unnecessary loss of time and costs for the litigants and the judicial system.

The *non ultra petita* rule is applied in the case-law of the European Court of Human Rights and other international courts. However, in some States this rule does not exist. Where it does exist, there always are explicit or implicit exceptions (introduced through case-law) linked to very serious cases of human rights violations. For most states, a court of law is allowed to uphold, *sua sponte*, the fundamental principles of the presumption of innocence (and *in dubio pro reo*), the protection against double jeopardy (*ne bis in idem*) and *nullum crimen sine lege* and *lex mitior* and, for some states, it is even an obligation for courts to do so, but only in cases where a serious infringement of fundamental rights would otherwise occur. In sum, under the *non ultra petita* rule the appellate court should not address errors of fact or law allegedly made by a lower court, unless these infringe on fundamental rights.

Based on the *amicus curiae* brief, the Venice Commission was informed in October 2015 that the Constitutional Court held that the adversarial principle and the principle of *non-ultra petita* do not prevent a court from taking up *sua sponte* the principles of the prevention of double jeopardy, *in dubio pro reo, nullum crimen sine lege* and *lex mitior*.

*Round Table Discussion on independence of the judiciary, full individual access to the constitutional court and prosecution service – constitutional setting (Gudauri, 21-22 May 2015)*

On 22-23 May 2015, at the invitation of the Constitutional Reform Commission of Georgia (CRC), a delegation of the Venice Commission led by former Member, Ms Slavica Banic, Judge at the Constitutional Court of Croatia, discussed judicial independence and the introduction of a full constitutional complaint to the Constitutional Court with the CRC.

*5th Black Sea International Conference (Batumi, 25-26 June 2015)*

On 25-26 June 2015, the Venice Commission co-organised together with the Constitutional Court of Georgia, the GIZ and Human Dynamics Consortium, the 5th Black Sea International Conference on "*Liberty and security: increasing the effectiveness of the constitutional complaint*", in Batumi, Georgia.

The aim of this Conference was to discuss Article 5 (Right to liberty and security) of the European Convention on Human Rights and the equivalent provisions in the constitutions of the states of the speakers and their implementation – as well as the restrictions to this right.

Discussions revolved around the difficulties in safeguarding this right. Reference was made to the fight against terrorism and the extraordinary rendition judgments by the European Court of Human Rights, the problems in differentiating between a criminal activity and political opposition.

The importance of a full constitutional complaint was also extensively discussed; notably the need to introduce appropriate filters, as discussed in the Commission's Study on individual access to constitutional justice.

This Conference was financed by the Programmatic Co-operation Framework for Armenia, Azerbaijan Georgia Republic of Moldova, Ukraine and Belarus.

*Preparatory meeting of the Circle of Presidents for the XVIIth Congress of the Conference of European Constitutional Courts (CECC) (Batumi, 9 September 2015)*

For further information, please see Chapter III.5 below.

*International Conference on the "application of international treaties by Constitutional Courts and equivalent bodies: challenges to the dialogue" (Batumi, 9-10 September 2015)*

On 9-10 September 2015, the Venice Commission participated in the International Conference on the "*Application of international treaties by Constitutional Courts and equivalent bodies: challenges to the dialogue*", held in Batumi, Georgia.

### Indonesia

*International Symposium on the "Constitutional complaint as an instrument for protecting fundamental rights of citizen" (Jakarta, 15-16 August 2015)*

For further information, please see Chapter III. 5 below.

### Kosovo

*Opening of the Kosovo judicial year by the President of the Venice Commission (Pristina, 16 October 2015)*

The President of the Venice Commission participated in the Opening of the judicial year in Kosovo (which became a member of the Venice Commission on 12 September 2014), with the aim of establishing a working relationship with the Kosovo authorities.

### Kyrgyz Republic

*Joint Opinion on the draft law «On introduction of changes and amendments to the Constitution» of the Kyrgyz Republic (CDL-AD(2015)014)*

For information on this opinion, please consult Chapter II.1.

*Opinion on the Rules of Procedure of the Constitutional Chamber of the Supreme Court of the Kyrgyz Republic (CDL-AD(2015)023)*

This opinion was requested by the Chairperson of the Constitutional Chamber of the Supreme Court of the Kyrgyz Republic and adopted by the Venice Commission at its October 2015 session. The Constitutional Chamber made this request in order to receive guidance on future amendments it intended to make to its Rules of Procedure. The Venice Commission's task was therefore to assess whether or not the currently applicable Rules of Procedure were in line with international standards.

The opinion recommended that these Rules be revised to avoid any potential duplication and contradiction with the *Constitutional Law on the Constitutional Chamber*. Amendments to this Law were pending and the Rules should be aligned with these amendments, once adopted.

The main concerns with these Rules included a lack of solutions on a number of issues that commonly relate to the activities of a constitutional court, for instance there were no provisions on the access of journalists to the chamber's sessions or on establishing the agenda for the sessions. In addition, the status of the chairperson of the chamber *vis-à-vis* the other judges of the chamber needed to be modified and the role of the judge rapporteur should also be revised. The Rules also lacked provisions on the necessary procedural aspects that would contribute to legal certainty in their implementation. For instance, there were provisions on the submission of an act for the approval of the Chamber, but there were no procedural solutions when the approval was declined.

The Chamber was encouraged to turn to the Venice Commission once it had drafted the amended version of its Rules of Procedure.

### Kuwait

*Symposium – Union of Arab Constitutional Courts and Councils (Kuwait, 22 March 2015)*

For further information, please see Chapter III.5 below.

### Moldova, Republic of

*Follow-up to the Amicus Curiae Brief for the Constitutional Court of Moldova on certain provisions of the law on professional integrity testing (CDL-AD(2014)039)*

This *amicus curiae* brief was requested by the President of the Constitutional Court of Moldova and adopted by the Venice Commission at its December 2014 session. At the June 2015 session, the Commission was informed on follow-up to this opinion.

In its judgment of 16 April 2015, the Constitutional Court of Moldova had extensively referred to this *amicus curiae* brief and had found the Law on professional integrity testing constitutional, with the exception, however, of some important provisions. Integrity testing could thus be applied to all professional categories of public officials, if certain procedural safeguards were in place. The Court had found unconstitutional notably: the unlimited discretion in choosing the persons to be tested, the automatic dismissal of officials who accepted even minor bribes; the assessment of functional behaviour in addition to corruptibility; the absence of a judicial warrant for audio and video recording and the insufficient independence of the testing agency. The Ministry of Justice is preparing a new draft, which should remedy these issues.

*Conference on the "Relations of the Constitutional Court with other public authorities" (Chisinau, 24-25 September 2015)*

On 24-25 September 2015, the Venice Commission co-organised together with the Constitutional Court of the Republic Moldova, a Conference on the "*Relations of the Constitutional Court with other public authorities*", in Chisinau, Republic of Moldova.

The aim of this Conference, financed by the Programmatic Co-operation Framework for Armenia, Azerbaijan Georgia Republic of Moldova, Ukraine and Belarus, was to promote the introduction of individual access to the constitutional court, to examine how constitutional courts in the Eastern Partnership countries interact with the legislative and executive powers (nomination of judges, budget) and how the courts' decisions are implemented.

### Montenegro

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

The Permanent Representative of Montenegro to the Council of Europe requested this opinion, which was adopted by the Commission at its October 2014 session, welcoming the draft law as providing a firm basis for the work of the Constitutional Court – nevertheless pointing to a number of provisions that needed to be improved.

At the December 2015 session, the Commission was informed on follow-up to this opinion. The Law was adopted on 4 March 2015, taking most of the Venice Commission's recommendations into account. However, some recommendations were not followed, including a need to clearly determine the judge's behaviour that can lead to serious sanctions. No legal aid is foreseen for constitutional complaints and the possibility for the Constitutional Court to initiate proceedings *proprio motu* had not been excluded. This could potentially bring the Constitutional Court into the political arena, which should be avoided.

The other recommendations by the Venice Commission were taken on board – including the possibility for judges to remain at the Court after the expiration of their term

of office until their successor takes office and the possibility for the Constitutional Court to quash Supreme Court judgments.

*Conference entitled "Towards independent and modern judicial systems in the enlargement countries" (Budva, 18-19 June 2015)*

On 18-19 June 2015, the Venice Commission participated in a Conference entitled "*Towards independent and modern judicial systems in the enlargement countries*". This event was organised in Budva, Montenegro by the European Parliament. The participants included members of the European Parliament and members of the parliaments of Albania, Bosnia and Herzegovina, Croatia, Kosovo, Montenegro, Serbia and "the former Yugoslav Republic of Macedonia".

The aim of this Conference was to address the subject of fundamental criteria for accession to the European Union (EU) by the enlargement countries in the area of judicial systems. The participants agreed that the hurdles for the judiciary in their respective countries with respect to the accession process mainly concerned the implementation of laws and the interference of political elites in the decisions by the judiciary, undermining its independence.

### Morocco

*Conference on individual access to Constitutional Courts (Rabat, 13 May 2015)*

On 13 May 2015 a Conference on exception of constitutionality, co-organised by the Venice Commission and the Ministry of Justice of Morocco in the framework of South Programme II - "Towards strengthening democratic governance in the Southern Mediterranean" took place in Rabat, Morocco. For further information on this event see Chapter V, section 1.

### Romania

*14th meeting of the Joint Council on Constitutional Justice and a mini-conference on "Blasphemy and other limitations to the freedom of expression" (Bucharest, 11-12 June 2015)*

For more information, please see Section 2 below.

### Russian Federation

*Fifth Russian Moot Court Competition "Crystal Goddess of Justice – 2015" (St. Petersburg, 19-20 November 2015)*

On 19-20 November 2015, the Institute for Law and Public Policy, under the auspices of the Association of Lawyers of Russia and with the support of the Venice Commission, completed the Fifth All-Russian Moot Court Competition for the Russian law school students' teams called "Crystal Goddess of Justice".

The case brought before the court this year was called "Planet of Apes or Case of privilege of witness". 27 teams had been registered for this Moot Court competition, but only 13 were allowed to prepare procedural documents for expert evaluation. Four were finally chosen.

The main prize – «Crystal Goddess», was won by the representatives of Ural State Law University.

### Slovak Republic

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

In this opinion, requested by the Minister of Justice of the Slovak Republic and adopted by the Commission at its June 2014 session, the Commission came to the conclusion that the out-going President of the Republic may – up to the last day of his term of office (15 June 2014) – appoint three judges to the Constitutional Court from

among the six candidates proposed by the Parliament and this, therefore, even after the election of the new President in March 2014. The opinion also stated that the new President did not have the power to reject the candidates proposed by the Parliament.

At the June 2015 session, the Commission was informed on follow-up to this opinion. In fact, the former President had not appointed three judges to fill the vacant positions at the Constitutional Court; the new President appointed one out of the six candidates selected by the Parliament and refused to fill the two other vacancies because, in his view, the candidates were not qualified for the post.

The five rejected candidates appealed to the Constitutional Court claiming an infringement of their fundamental right to access to public offices filled by election or other (Article 30 paragraph 4 of the Constitution taken in conjunction with Article 2 § 2 of the Constitution). The five applications were grouped into two appeals.

On 17 March 2015, the Constitutional Court gave its decision on one of the two appeals and concluded that the President's decision to reject three applications violated their right to access to public office filled by election of other and that it was therefore null and void; the case was sent back to the President for a new decision; the President's office was ordered to pay the expenses of the three claimants.

The other two applicants withdrew their request. The President has not taken a new decision following the judgment of the Constitutional Court.

### Switzerland

*Association of Constitutional Courts using the French Language's (ACCPUF) 7th Congress on the "Supremacy of the Constitution" (Lausanne, 3-7June 2015)*

For further information on this activity, please see Chapter III. 5, below.

### Taiwan

*Visit to the judicial Yuan of Taiwan (Taipei, 10-12 November 2015)*

A member of the Venice Commission Secretariat visited the Judiciary of Taiwan for discussions on the work of the Council of Europe and the World Conference on Constitutional Justice (WCCJ).

Representatives of the Constitutional Court of Taiwan and the High Administrative Court of Taichung were keen to learn about the Council of Europe, the Venice Commission and the WCCJ and expressed their wish to establish closer contacts.

### Tajikistan

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

The Chairman of the Constitutional Court of Tajikistan requested this Opinion, which was adopted by the Venice Commission at its June 2014 session.

At the March 2015 session, the Commission was informed on follow-up to this opinion. The Tajik Parliament had adopted the Law on the Constitutional Court of Tajikistan shortly after the adoption of the opinion. The Law was enacted on 26 July 2014.

A number of recommendations made in the opinion were followed, but in a somewhat paradoxical manner. The Commission had recommended removing, from the general prohibition for Constitutional Court judges to represent others in legal proceedings, the exception to represent family members. However, not only had the exception been removed, but the entire prohibition to represent others had also been removed. Similarly, the Commission had recommended leaving the choice to the

court rather than provide an automatic continuation of proceedings in all human rights related cases when the act under review was no longer in force. The adopted Law removed this rule altogether. The recommendation to remove the power of Parliament to award judges' certificates resulted in this power being attributed instead to the Head of State. In following one of the main recommendations, individual complaints could be made by individuals in general, not just by citizens.

Tunisia

*Meeting with the Committee of the Ministry of Justice responsible for drafting the law on the Constitutional Court*

On 28 May 2015 in Tunis - in the context of the preparation of the law that is the subject of the opinion presented below - constitutional court judges from Austria, Croatia and Italy held an exchange of views with members of the Committee of the Ministry of Justice responsible for drafting the law on the Constitutional court. This meeting was organised in the framework of the South Programme II - «Towards strengthening democratic governance in the Southern Mediterranean».

*Opinion on the draft organic law on the Constitutional Court of Tunisia (CDL-AD(2015)024) and follow-up*

This opinion requested by the Ministry of Foreign Affairs of Tunisia and adopted by the Venice Commission at its October 2015 session, welcomed the draft organic law on the Constitutional Court of Tunisia which should help ensure that the Court functions effectively.

This law was adopted by the Assembly of Representatives of the People on 20 November 2015. Most of the Commission's recommendations were however not retained, in particular the recommendations advising the Court not to depend on the government for the appointment of its Secretary General, for the rules governing the organisation of the Secretariat and for the appointment of a public auditor and recommending that the main effects of a decision must be defined in the law - and should not be left totally to the discretion of the Constitutional Court itself. Other elements had been added to the adopted law, in particular, candidates for membership of the Constitutional Court cannot have held a position of responsibility in a partisan political party (central, regional or local) or already been candidate of a party or a coalition for the presidential, legislative or local elections during the past 10 years - to ensure that future members of the Court are not politicised. Immunity against criminal prosecution for members of the Court during their term of office can be waived by absolute majority of members if they are caught in the act – the member concerned will not participate in either the vote or the ballot.

## 2. Joint Council on Constitutional Justice

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

At the invitation of the Constitutional Court of Romania, the Joint Council on Constitutional Justice held its 14th meeting in Bucharest, Romania (11-12 June 2015). The meeting was opened by Mr Augustin Zegrean, President of the Constitutional Court of Romania, and Mr Il-Wong Kang and Ms Krisztina Kovacs presided over the meeting.

The Joint Council:

- was informed that the User's Guide to the Venice Forum (CDL-JU(2015)003) was updated;
- held exchanges of views with representatives of the regional and linguistic groups co-operating with the Venice Commission and was informed about this co-operation;

- invited the liaison officers to contribute to the Venice Forum;
- was informed about the Constitutional Justice Observatory;
- was informed about activities of and opinions adopted by the Venice Commission in the field of constitutional justice;
- was informed about the participation in and co-organisation of conferences and seminars in co-operation with Constitutional Courts and equivalent bodies (CoCoSems);
- approved the revised Guidelines for contributions to the Bulletin on Constitutional Case-Law and CODICES;
- approved the preparation of a working document and special Bulletin in 2016 for the XVII$^{th}$ Congress of the Conference of European Constitutional Courts;
- was informed about the development of the new CODICES database.

The meeting was followed by a mini-conference on the topic "*Blasphemy and other limitations to the freedom of expression*". The liaison officers from the constitutional courts or equivalent bodies of Chile, Hungary, Ireland, the Republic of Korea, the Netherlands, Romania, Slovenia and the European Court of Human Rights presented the relevant case law of their respective 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 of over 60 member States, associate member states and observer states as well as the European Court of Human Rights, the Court of Justice of the European Union and the Inter-American Court of Human Rights. The contributions to the Bulletin are supplied by liaison officers appointed by the courts themselves.

The regular issues of the Bulletin are supplemented by a series of special bulletins on specific topics or 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. Constitutional courts benefit from such co-operation and exchanges of information as well as from the judgments of their counterparts in other countries.

In 2015, the Special Bulletin on "Co-operation between Constitutional Courts", prepared at the request of the Austrian Presidency of the CECC, was published along with two regular issues of the Bulletin.

## 4. Venice Forum

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

- The Newsgroup enables courts to actively share information with each other, e.g. to make on-line announcements on changes to their composition, on recent key judgments and to make various requests for general information.
- The restricted classic Venice Forum enables courts to ask other courts for specific information on

case-law. In 2015, the classic Venice Forum dealt with 34 comparative law research requests covering questions that ranged from limits to the reimbursement of legal costs to the adoption of children by same-sex partners

- The Constitutional Justice Media Observatory provides an overview of the work of courts as reported in on-line media. In 2015, the Venice Commission offered all members and liaison officers the possibility of subscribing to the Constitutional Justice Media Observatory. The Observatory is sent in the form of an e-mail and presents information on news agency dispatches and press articles relating to constitutional courts and equivalent bodies. The information presented is the result of an Internet search in English and in French and does not purport to provide a complete picture of any decision or development of constitutional justice in general. Although the Venice Commission cannot vouch for the accuracy of the information sent, it can add any information provided by the court concerned or remove an alert, upon request.

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

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

# 5. Regional co-operation

On the basis of various co-operation agreements, constitutional courts united in regional or language based groups contribute to the CODICES database and to the Venice Forum (see above Section 3).

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

The Venice Commission co-operates with the AACC on the basis of the co-operation agreement with the AACC, signed in Seoul in May 2012. The Constitutional Court of Indonesia currently holds the presidency of the AACC.

A delegation of the AACC, headed by the President of the Constitutional Court of Indonesia, participated in the 9th meeting of the Bureau of the World Conference on Constitutional Justice, in Venice on 21 March 2015.

The board meeting of the AACC took place in Jakarta, Indonesia on 15 August 2015 to discuss the 3rd congress of the AACC and the accession of the Constitutional Chamber of Kyrgyzstan. On 15-16 August 2015, the President of the Venice Commission participated in the International Symposium on the "Constitutional Complaint as an Instrument for Protecting Fundamental Rights of Citizen", in Celebration of the 12th Anniversary of the Constitutional Court of Indonesia. The proceedings of the Symposium are available on the site of the Constitutional Court of Indonesia.

## Association of Constitutional Courts using the French Language (ACCPUF)[10]

On the basis of the Vaduz Agreement and its Djibouti Protocol with ACCPUF, the Venice Commission

10. See the co-operation page: http://www.venice.coe.int/ACCPUF/.

continued to include the case-law of ACCPUF Courts in the CODICES database.

On 26-27 March 2015, the Venice Commission organised together with the ACCPUF a training seminar in Strasbourg, France, for the ACCPUF correspondents on how to use the CODICES database and the Venice Forum. The participants, who were active and found this event very useful, were from the constitutional courts or councils of Benin, Bulgaria, Burkina Faso, Cameroon, Comoros, Congo, Ivory Coast, Djibouti, France, Guinea-Bissau, Madagascar, Morocco, Moldova (Republic of), Monaco, Mozambique, Niger, Chad and Togo.

The President of the Federal Tribunal of Switzerland participated, on behalf of ACCPUF, in the 9th meeting of the Bureau of the World Conference on Constitutional Justice, in Venice on 21 March 2015.

A delegation of the Venice Commission participated in ACCPUF's 7th Congress, which took place on 3-7 June 2015 in Lausanne, Switzerland on the topic "*Supremacy of the Constitution*". The proceedings are published on ACCPUF's website: http://www.accpuf.org/publications/61-publications/304-7eme-congres-triennal

## 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 together with the Constitutional Court of Armenia and the European Court of Human Rights, the XXth Yerevan International Conference. This event took place in Yerevan on 8-10 October 2015 in celebration of the 20th anniversary of the adoption of the Constitution and the establishment of the Constitutional Court. Its theme was "*The role of Constitutional Courts in strengthening the independence of the judicial power: doctrinal approaches and contemporary challenges*".

The President of the Constitutional Court Armenia participated, on behalf of the CCCONCD, in the 9th meeting of the Bureau of the World Conference on Constitutional Justice, in Venice on 21 March 2015.

## 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, Mozambique.

In 2015, there were no joint events with the CJCPLP

## Conference of Constitutional Jurisdictions of Africa (CCJA)

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

A delegation of the CCJA, headed by the President of the Constitutional Court of Benin, participated in the 9th meeting of the Bureau of the World Conference on Constitutional Justice, in Venice on 21 March 2015.

On 7-10 May 2015, the President of the Venice Commission participated in the 3rd Congress of the CCJA on the topic «*Constitutional Court and regulatory function*», held in Libreville, Gabon.

On 11-12 June 2015, the Deputy Secretary General of the CCJA, participated in the 14th meeting of the Joint Council on Constitutional Justice in Bucharest, Romania.

### Conference of European Constitutional Courts (CECC)[11]

Since 1999, the Joint Council produces working documents upon request of the presidencies of the CECC on the topics of their congresses. These working documents consist of extracts from the CODICES database complemented by additional information provided by the liaison officers. Following the congresses, the working documents are published as special editions of the *Bulletin on Constitutional Case-Law*. In 2015, the Special Bulletin on "Co-operation between Constitutional Courts", prepared at the request of the Austrian Presidency of the CECC, was published.

On 9 September 2015, the Constitutional Court of Georgia hosted the Preparatory meeting of the Circle of Presidents for the XVIIth Congress of the CECC. The Circle decided that the topic of the congress should be: "the Role of the Constitutional Courts in Upholding and Applying the Constitutional Principles". At its meeting on 12 June 2015, in Bucharest, the Joint Council on Constitutional Justice had already accepted the request by the Georgian Presidency of the CECC to prepare a working document for the XVIIth Congress of the CECC and to publish it as a special edition of the *Bulletin on Constitutional Case-Law* in 2017.

The President of the Constitutional Court of Georgia participated, on behalf of the CECC, in the 9th meeting of the Bureau of the World Conference on Constitutional Justice, in Venice on 21 March 2015.

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

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

A delegation of the CIJC, headed by the President of the Constitutional Court of Peru, participated in the 9th meeting of the Bureau of the World Conference on Constitutional Justice, in Venice on 21 March 2015.

### Southern African Chief Justices Forum (SACJF)

The co-operation agreement signed in Maseru in 2007 forms the basis of the co-operation with the Southern African Chief Justices Forum.

In 2015, there were no joint activities with the SACJF.

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

On the basis of a co-operation agreement between the Venice Commission and the Union of Arab Constitutional Courts and Councils (UACCC), signed on 24 June 2008 in Cairo, the Venice Commission includes the case-law of UACCC Courts and Councils in the CODICES database.

The UACCC held its bi-annual symposium in Kuwait on 22 March 2015. The President of the Constitutional Court of Kosovo represented the Venice Commission at the meeting.

## 6. World Conference on Constitutional Justice (WCCJ)

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

The WCCJ unites 98 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).

11. See the co-operation page: http://www.venice.coe.int/CECC/.

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

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

The WCCJ held the 9th meeting of its Bureau in Venice on 21 March 2015. The Bureau of the WCCJ accepted the offer made by the Constitutional Court of Lithuania to host the 4th Congress in Vilnius on 10-13 September 2017.

On the basis of the debates at the 2nd Congress of the WCCJ (Rio de Janeiro, 16-18 January 2011), which dealt with the independence of constitutional courts as the main topic, the Bureau of the WCCJ 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 WCCJ.

The Bureau also discussed possible changes to the WCCJ Statute and activities between the congresses.

By the end of 2015, 98 constitutional courts and equivalent bodies had joined the WCCJ as full members. With the accession of the High Court of Australia, the World Conference is represented on all five continents.

## IV. Elections, referendums and political parties

## 1. Country specific activities

### Albania

*Workshop on the Rules of Procedure of the Central Electoral Commission*

On 1 April 2015 the Venice Commission participated in a technical workshop organised by the Central Electoral Commission of Albania on the CEC's draft Rules of Procedure. This activity was a success as the Rules of Procedure which had been pending for more than a year were adopted on 8 April.

*Post Electoral Conference (Tirana, 29 September 2015)*

The Venice Commission participated in the Post Electoral conference "Lessons learned and next steps – Legislation, education and participation" on the theme "Election legislation and its implementation – What needs to be improved".

### Azerbaijan

*Legal assistance to the Parliamentary Assembly in the framework of the observation of legislative elections (1 November 2015)*

At the invitation of the Parliamentary Assembly of the Council of Europe, Venice Commission representatives gave legal assistance to the PACE delegation observing the legislative elections on 1 November 2015. The Venice Commission delegation submitted a legal memorandum and pointed out the problems to be observed on voting day, including the counting as well as problems which occurred during the pre-electoral period. The delegation also pointed out serious problems arising from the legal framework and practice as outlined in joint opinions by the Venice Commission and the OSCE/ODIHR, as well as in the case-law of the European Court of Human Rights which found a number of violations linked to arbitrary enforcement.

### Georgia

*Meeting with the Committee for gender equality of the Central Electoral Commission of Georgia (Tbilisi, 8 September 2015)*

The Committee for gender equality of the Central Electoral Commission of Georgia and representatives of the Venice Commission met to discuss good practices in the field of gender equality. The experts discussed on the basis of a roadmap prepared by the Committee for gender equality aimed at the implementation of a strategic 5 year plan in favour of gender equality by the Central Electoral Commission of Georgia.

*Regional Conference on gender equality in electoral processes (Tbilisi, 25-26 November 2015)*

In co-operation with the Central Electoral Commission of Georgia the Venice Commission organised a regional Conference on Gender Equality in electoral processes. Amongst the speakers, one of the Vice-Presidents of the Venice Commission made a presentation on international standards in the field of elections.

This activity was organised as part of the Programmatic Co-operation Framework and involved the Central Electoral Commissions of Armenia, Azerbaijan, Georgia, the Republic of Moldova and Ukraine.

The participants emphasised the importance of implementing existing international obligations and standards, including soft-law, aimed at enhancing women's participation in electoral processes. They also emphasised the importance of attaining gender parity in electoral processes for achieving democratic sustainability. Agreeing on the necessity to enhance legislative and infra-legislative measures aimed at achieving this objective, the participants at the Conference suggested amongst others that States promote temporary special measures in accordance with international standards; by using public funding and promoting financial incentives for better representation of women within political parties as well as for promoting female candidates; by promoting the role of electoral management bodies in monitoring and evaluating the participation of women in electoral processes.

*Follow-up to the joint opinion on the draft election code of Georgia (CDL-AD(2011)043)*

At the June 2015 session, the Commission was informed on follow-up to this opinion.

The most important problem raised in the opinion was the very considerable inequalities between electoral constituencies. This issue was addressed by the Constitutional Court of Georgia in a decision issued on 28 May 2015 (*Citizens of Georgia – Ucha Nanuashvili and Mikheil Sharashidze v. the Parliament of Georgia*). The Court ruled that the provisions on the delimitation of constituencies were contrary to the right to equality before the law and the right to universal suffrage, both enshrined in the Constitution, and underlined the necessity to change the current electoral system without imposing the manner and/or the time-frame for doing so. The authorities were under an obligation to execute the decision of the Constitutional Court, but there were disagreements on how this should be done: for the next elections the majority would have liked to keep the present mixed system and redraw the constituencies, while the opposition was in favour of a regionalised proportional system. Since constitutional reform was blocked by the issue of the electoral system, there was some hope that the reform process could resume once the electoral system issue would be settled.

Italy

*Opinion on the Citizen's Initiative Bill on Public Participation, Citizens' Initiative, Referendum and Popular Initiative and Amendments to the Provincial Electoral Law of the Province of Trento (CDL-AD(2015)009)*

At the request of the Provincial Council of the Trento Province, forwarded by the Permanent Representation of Italy to the Council of Europe, the Venice Commission adopted an Opinion on the Citizen's Initiative Bill on Public Participation, Citizens' Initiative, Referendum and Popular Initiative and Amendments to the Provincial Electoral Law of the Province of Trento.

The bill proposed a broad extension of direct and participatory democracy. This corresponded to a general trend in Europe but the bill went very far. Among the issues raised, the following deserved particular attention:

- The scrutiny of the conformity with higher law was incomplete, whereas international standards would impose a complete scrutiny;
- The bill abolished any turnout quorum for referendums; this was in line with the Code of Good Practice on Referendums: a turnout quorum encouraged abstention – but a low turnout could delegitimise the vote;
- A group of voters had the possibility to introduce a motion of no confidence in an elected official: even if this was not the intention of its authors, the bill could be interpreted as allowing automatic termination of the relevant mandate (direct recall); this should be clarified.

The opinion recommended carefully considering the impact that the proposed important extension of direct and participatory democracy could have on the smooth functioning of the provincial institutions and for the form of government of the Province.

The Council for Democratic Elections and the Venice Commission adopted this opinion at the June 2015 session.

### Kyrgyzstan

See Chapter V.

### Republic of Moldova

*Post-electoral Conference (Chişinau, 23-24 March 2015)*

The Venice Commission participated in a post-electoral conference in Moldova, which discussed the challenges ahead and lessons learned after the parliamentary elections held on 30 November 2014. The Venice Commission provided legal assistance to the PACE, analysing the legal context in Moldova and possible sources of challenges and problematic areas. The elections were placed largely in the geopolitical context of the "pro-European" political parties and the "pro-Russian" political parties, even though the European Union had been stressing that Moldova should not choose between East and West and that the association agreement was compatible with close co-operation with Russia. However, the decision to exclude from the elections in the last days of the campaign one of the most radical pro-Russian political parties, Patria, raised concerns. This decision was taken only at the very end of the electoral campaign, and just before the elections, which was perceived as politically motivated, even though the law was respected to the letter. No other political party financing was investigated, even though information on funding had not been properly disclosed by all contestants. This issue, the questions regarding financing of political parties and other challenges were discussed at this event.

*Training sessions of proxies on electoral dispute resolution (Chişinău, 26-29 May 2015)*

In co-operation with the Centre for continuous training of the Central Electoral Commission of Moldova, the Venice Commission organised a training session on electoral dispute resolution for proxies taking part in local elections. For each training session, three working sessions were devoted to the following themes:

- Best Practices on Electoral Dispute Resolution, case studies on campaigning and electoral advertising;
- Best practices on Electoral Dispute Resolution, case studies on election day and election results;
- Electoral Dispute Resolution, case studies on: Republic of Moldova vs European Union.

### Romania

*International workshop on codification of electoral laws (Bucharest, 19-20 October 2015)*

The Permanent Electoral Authority of Romania organised in co-operation with the Venice Commission an international workshop on the codification of electoral laws. The aim of this workshop was to raise the Romanian authorities' awareness of the benefits of codifying the electoral legal framework in order to strive for greater efficiency in the organisation of elections and the holding of elections. The four speakers representing the Venice Commission dealt with: the principle of the stability of electoral law; the five key principles of Europe's electoral heritage and their effective implementation in electoral processes; harmonisation of electoral laws, strengths and advantages of a unified electoral code; and unifying electoral legislation: a way to avoid inconsistencies and malfeasances.

### Tunisia

The Venice Commission contributed to the Conference "The Financing of electoral campaigns: a challenge for the electoral processes in the countries of the Southern Mediterranean", which took place in Tunis 27-28 April 2015. The aim of this conference was to examine and develop the conclusions of the 2014 Lisbon Forum and to formulate concrete proposals which respond to the requirements of a democratic, transparent and equal electoral process.

For more information please see Chapter V.

### Turkey

*Legal assistance to the PACE ad hoc Committee on the observation of the parliamentary elections of 7 June 2015*

The Venice Commission assisted the PACE ad hoc delegation for the first time in an election in Turkey. In March and August 2014, local and presidential elections had taken place respectively and the AKP candidate, Recep Tayyip Erdogan, was elected President of Turkey, voters choosing a Head of State in a direct election for the first time. The parliamentary elections of June 2015 were considered as the last ones of the whole electoral cycle which started in 2014. No other election of any type was planned before 2019.

The main legal problematic issues were:

- the minimum representation thresholds for parties to enter parliament of 10% of the valid votes nationwide;
- certain restrictions on active and passive suffrage rights;
- insufficient regulations for campaign finance;
- the lack of possibility to challenge Supreme Board of Elections decisions, and
- the absence of provisions for international and citizen election observation.

*Legal assistance to the PACE ad hoc Committee on the observation of the early parliamentary elections of 1 November 2015*

After the June 2015 parliamentary elections, negotiations on forming a coalition alliance failed. An interim government (so-called "election government") was led by the Prime Minister, Ahmet Davutoğlu. Both the CHP and MHP declared that they would not take part in the interim government. Two ministers representing the pro-Kurdish Party (HDP) in the interim government resigned on 22 September 2015. The early election of 1 November 2015 was expected to solve this situation. The Venice Commission once again provided legal assistance to the PACE ad hoc delegation, for the second time in Turkey.

### Ukraine

*Exchange of views on the local electoral reform in Ukraine (Strasbourg, 27-28 January 2015)*

In January 2015, a meeting launching the discussion on the electoral reform in Ukraine was organised in Strasbourg. Representatives of the Rada, of the Central Electoral Commission, of the national NGOs specialised in the electoral field, of IFES as well as independent experts took part in this exchange of views. The goal of this meeting was two-fold: on the one hand, to discuss all relevant key recommendations pending in the field of electoral reforms (including legislation on parliamentary and local elections, as well as on political parties), issued by the Venice Commission and the OSCE/ODIHR(mainly CDL-AD(2013)017 and CDL-AD(2013)026); and on the other hand, to establish a network of national experts working in the electoral field who could have regular exchanges with the Venice Commission. The frank and open dialogue facilitated by

the Venice Commission during this first meeting helped to reach a consensus among national experts not only on some essential elements of the possible reform but also on the possible best strategy to adopt during the preparation of the reform package in the electoral field.

*Conference on "Reform of the law on local elections: problems and solutions" (Kyiv, 27 February 2015)*

Mr Markert, Secretary of the Venice Commission, participated in a conference on the different challenges ahead in the reform of the local elections legislation and in the electoral field in general.

*Follow up to the Joint Opinion on draft amendments to legislation on the election of people's deputies of Ukraine (CDL-AD (2013)026)*

At the March 2015 session, the Commission was informed on follow-up to this opinion.

Following the Venice Commission's 2013 opinion, the legislation on the election of People's Deputies was amended in 2013 and in April 2014. These amendments introduced some improvements following previous PACE recommendations, the OSCE/ODIHR's parliamentary reports and several Venice Commission opinions; however, they did not address the main shortcomings, notably, the choice of the mixed system, a lack of comprehensive electoral reform, certain limitations on candidacy rights and the lack of meaningful campaign finance regulations.

The *Verkhovna Rada* was to establish a specific group on the electoral reform focusing on both the laws on parliamentary and on local elections. This would have enabled, among other things, one of the Commission's important recommendations - harmonisation of the legislation in the electoral field – to be met. Unfortunately, no important developments had taken place in 2015.

*Political party expert workshop (14-15 July 2015)*

The Venice Commission participated in a political party expert workshop organised by the OSCE/ODIHR, the International Foundation for Electoral Systems (IFES) and the Agency for Legislative Initiatives, in co-operation with the National University of Kyiv-Mohyla Academy. Two main themes were dealt with by the participants: International trends and challenges in political party regulation; and the Key aspects of political party legislation reform in Ukraine.

*Legal assistance to the ad hoc committee of observers from the Congress on Local and Regional Authorities and PACE delegation during the observation of the local elections of 25 October 2015*

The Venice Commission provided legal assistance to the ad hoc committee of observers from the Congress of Local and Regional Authorities and to the PACE delegation before and during the observation of the elections of October 2015. The views of the Venice Commission appeared in the preliminary report, prepared jointly with the OSCE/ODIHR (available at http://www.osce.org/odihr/elections/ukraine/194406), as well as in the Congress' report on local elections in Ukraine.

*Exchanges of views with the national group of experts on the local electoral reform (Kyiv, April, June and October 2015)*

Early in 2015 the Venice Commission had contributed to the establishment of a network of experts aimed at facilitating exchanges of views on the main challenges of the local elections in Ukraine. This group included representatives of the Central Electoral Commission, the expert group created by the President of the *Verkhovna Rada* to work on the local elections reform, the parliamentary committee of the *Verkhovna Rada* in charge of electoral reform, and national experts. The Venice Commission participated in three meetings which took

place before the new legislation on local elections was adopted in July 2015 (two in April and one in June 2015). The new law was adopted only three months before the local elections were held on 25 October 2015.

The reform introduced three different electoral systems – a combination which had never been used before in local elections. The work of the electoral experts' group created under the auspices of the Chairman of the *Rada* was not taken into account in the text of the adopted law. The electoral system introduced as such and its complexity, as well as the lack of general consensus amongst major electoral stakeholders, was problematic; the implementation of the reform was also difficult, resulting in a number of inconsistencies in its application.

Members of the working group met with representatives of the Venice Commission on 22 October 2015, before the 25 October 2015 local elections, in order to discuss specific problems of implementation of the new law on local elections and share different experiences related to the pre-electoral period.

*Joint opinion on the draft amendments to some legislative acts concerning prevention and fight against political corruption in Ukraine (CDL-AD(2015)025)*

At the request of the Chairperson of the Committee on Corruption Prevention and Counteraction of the *Verkhovna Rada*, the Commission drafted a Joint Opinion, together with the Directorate of Human Rights (DGI) and the OSCE/ODIHR, on the draft amendments to some legislative acts concerning the prevention of and fight against political corruption in Ukraine.

A number of issues raised in previous opinions and mission reports of the Venice Commission and the OSCE/ODIHR had been taken into account in the draft, which had introduced public funding of political parties, more stringent requirements on party and campaign finance reporting, internal and external audit, as well as higher sanctions for violations of financing regulations. The main recommendations of the opinion focused on five issues: the lack of clarity of the provisions concerning public funding; the need to re-establish expenditure limits for parliamentary elections and to extend them to presidential elections; the need to clarify the role of the various oversight bodies and to ensure their autonomy; the need to include loans, credits and debts in the overall reporting obligations and contribution limits and to ensure proportionate administrative and criminal sanctions for violations of the law. The opinion also suggested introducing a ban on paid broadcast advertising.

The Council for Democratic Elections and the Venice Commission adopted this opinion at the October 2015 session.

*Exchanges of views with the national group of experts on the implementation of the local electoral reforms after the elections (Kyiv, 5 November 2015)*

After the 25 October 2015 local elections, the Venice Commission organised a meeting with the network of national experts working on electoral reform. During the fruitful exchange of views the participants agreed that the electoral system introduced by the 2015 law on local elections had a number of shortcomings which could undermine the confidence of the voters in the fairness of the process. These were not limited to the overall complexity of the voting, but also concerned the operation of the electoral commissions, the registration of candidates, the organisation of second rounds of elections in certain areas and the complaints and appeals process. On the basis of this fruitful exchange of views, the group decided to pursue its efforts in elaborating and promoting concrete proposals for the reform of electoral legislation taking into account the national expertise available and integrating recommendations of the Venice

Commission, the OSCE/ODIHR and other international organisations. The participants also agreed on a preliminary co-operation agenda for the first quarter of 2016.

*Post-electoral conference (Kyiv, 16-17 December 2015)*

The Venice Commission participated in a post-electoral conference in Kyiv in December 2015, in which the implementation of the legal framework on local elections and the challenges ahead were discussed.

United Kingdom

*Follow-up to the Opinion on the Electoral Law of the United Kingdom (CDL-AD(2007)046)*

Further to a request from the Monitoring Committee of the Parliamentary Assembly, the Venice Commission adopted in December 2007 an Opinion on the Electoral Law of the United Kingdom. This opinion focused on three issues: the voters' registration system; postal voting; and the differences in legislation between Great Britain and Northern Ireland, which the Venice Commission considered as justified and fair, given the special circumstances, and which mainly referred to registration of voters and postal voting.

The Commission was informed on follow-up to this opinion at its October 2015 session.

The United Kingdom Parliament adopted the Electoral Registration and Administration Act in 2013. This Act introduced individual electoral registration in Great Britain, instead of the traditional household registration. It addressed the first issue raised in the 2007 opinion (the voters' registration system) and reduced the difference between the legislation applicable to Northern Ireland and the legislation applicable to Great Britain. It was aimed at implementing the Government's commitment to reducing electoral fraud by speeding up the implementation of individual voter registration. The Act was applied to the 2015 general election.

# 2. Transnational Activities

## Studies and Reports

*Report on proportional electoral systems: the allocation of seats inside the lists (open/closed lists) (CDL-AD(2015)001)*

At the end of 2012, the Council for Democratic Elections agreed upon the necessity to issue a comparative report on proportional electoral systems and more specifically the issue of the seat allocation inside the party lists (the open- or closed-list systems).

The Council for Democratic Elections and the Venice Commission adopted the report at the March 2015 session.

The report is divided into two parts: the first part describes the electoral systems in force in the member States of the Venice Commission, in Europe and beyond. This part introduces not only proportional systems with open lists, but also 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.

There was a great variety in the 61 observed countries, which could be divided into two categories: (1) those with closed lists systems: the voter voted only for a party, which had decided the allocation of seats beforehand; (2) those with open lists systems, which could in turn be divided into a variety of categories (including cumulative vote, deletion of names – strikethrough -, cross-voting – *panachage* -, single transferable vote; the number of preferences could be fixed or variable). There were also types of intermediate systems, where closed lists were used in some cases and open lists in others. In some countries, there was the possibility to vote for a candidates' list or one or several candidates, in others only for one

or several candidates. In the last part of the report, the effects of the thresholds and quotas for gender balance were discussed.

The issue of the allocation of seats inside the lists was closely linked to that of the internal democracy of political parties. If lists were closed, democracy within the party was of special importance.

*Report on the method of nomination of candidates within political parties (CDL-AD(2015)020)*

In the Council for Democratic Elections meeting of December 2012, a decision was taken to launch a study on the method of nomination of candidates within political parties. The report, adopted by the Council for Democratic Elections and by the Commission at the June 2015 session, focused on the internal rules of political parties for nominating candidates and the requirements needed to improve democratic decision-making and inclusiveness within each party. It assessed three different issues:

- the legal framework governing political parties and the different approaches as to the rules that influence the internal functioning of parties and the choice of their candidates;
- the legal requirements regarding the methods of nominating candidates within political parties;
- the different factors used for measuring internal democracy within political parties, relating in particular to gender balance, the representation of minorities, ethnic and vulnerable groups, including indigenous populations, as well as other possible factors, which may have an impact on the internal functioning of political parties.

Two main principles were central to the internal functioning of political parties. The first one was the principle of party autonomy, under which political parties were granted associational autonomy in their internal and external functioning. The second one was the principle of internal democracy, the argument being that because political parties are essential for political participation, they should respect democratic requirements within their internal organisation.

The report pointed out the trend towards regulating the functioning of political parties through legislation, although laws on political parties are often quite flexible, leaving it to the statutes or the constitutions of political parties to set out, in detail, the procedures to follow and the bodies entitled to select candidates.

Legal measures to foster respect for democratic principles in the selection of candidates were consistent with the international standards and principles stated by the Venice Commission. However, legal intervention in the selection of candidates was not always required or suitable. On the one hand, long-established democracies with deep-rooted political parties favoured associational freedom, since internal democracy was guaranteed by the political parties themselves. On the other hand, state interference in the selection of candidates in new or transitional democracies might jeopardise political pluralism. It was therefore for each country to choose between a liberal view, which favoured the freedom of political parties and the absence of legislation concerning their internal affairs (including the nomination of their candidates), and the view which sought to strengthen internal democracy in the selection of candidates through legislation. Many states had elements of both models.

*Reports on exclusion of offenders from parliament (CDL-AD(2015)019 and CDL-AD(2015)036)*

Following the agreement between the ruling majority and the opposition in Albania, ending the boycott of Parliament, the President of the "Special Parliamentary Committee to address the issue in the Resolution for

agreement between the ruling majority and the opposition in the Assembly of Albania" asked for the Venice Commission's co-operation on the issue of "people with criminal records, who hold a public office or seek to be elected or appointed to one". In this framework, the rapporteurs prepared a report on the exclusion of offenders from Parliament, which took into account the situation in more than 30 States as well as contributions from members of the Commission on this issue.

The Council for Democratic Elections and the Venice Commission adopted an interim version of the report at the June 2015 session and the final one at the October 2015 session.

The final report stated that the standards were not obvious since national practice was very diverse. It concluded that ineligibility of offenders was admissible in order to ensure respect for the Rule of Law. If the simple functioning of the electoral mechanisms enabled the exclusion of offenders, restrictions were not absolutely necessary. This was possible only if (1) the majority of voters were in favour of such exclusion; (2) voters were effectively in a position to exclude these people, which implied (2a) internal democracy of political parties or open lists and (2b) that there were no obstacles to free suffrage. Restrictions – which could be included in constitutional or legislative provisions - had to comply with the proportionality principle: this implied taking into account such elements as the nature of the offence, its severity and/or the length of the sentence. Lifetime restrictions were admissible only for extremely serious offences. Sentences for crimes committed abroad had in principle to lead to the same consequences on the right to stand for elections as sentences pronounced in-country if they complied with the rules on fair trial. The loss of a mandate following a conviction was acceptable from the point of view of the voter in particular if the conviction had taken place after the elections.

*Summary Report on voters residing de facto abroad (CDL-AD(2015)040)*

In June 2013, the Council for Democratic Elections had examined for the first time the issue of voters residing *de facto* abroad while still registered as resident in-country and a series of documents and comments had been prepared in the field. The summary report outlined the problems linked to voters who are *de facto* abroad and the solutions found to prevent fraud.

Although the report stated that there was no international standard that provided for the right to vote of citizens residing abroad, the international trend was favourable to out-of-country voting. States enjoyed a wide margin of discretion with respect to the establishment of residence criteria, even though, according to the European Court of Human Rights, it should not be unlimited. Citizens abroad on Election Day could be divided into three categories: those permanently abroad, who may have double nationality; those who are staying abroad temporarily (for example for academic or employment purposes); and those who are travelling abroad on Election Day (for business or personal reasons). While, according to the report, active electoral registration was the rule for citizens abroad, many national systems provided for passive registration for residents.

In order to prevent impersonation, identity controls at the polling station, provided that they did not undermine the secrecy of the vote, could be made more efficient through the issuance of specific voters' ID documents; other measures would be: the use of biometric measures to identify duplication in records; the adoption of anti-counterfeiting measures for identity documents; the on-line verification of the identity of voters; controlled destruction of identification documents which remain unclaimed by citizens.

This report, adopted by the Council for Democratic Elections and the Venice Commission at the December

2015 plenary session, was also the result of close co-operation with the Congress, which had produced several reports on the issue.

## Activities/Conferences

*12th European Conference of Electoral Management Bodies "Ensuring neutrality and transparency in elections: the role of Electoral Management Bodies" (Brussels, 30-31 March 2015)*

The Venice Commission organised the 12th European conference of Election Management Bodies in co-operation with the Belgian Interior Ministry.

Mr Jan Van Coillie, Advisor to the Office of Mr Jan Jambon, Vice-Prime Minister and Minister of Interior of Belgium, opened the Conference on behalf of the Vice-Prime Minister, followed by Ambassador Ms Astrid Emilie Helle, Permanent Representative of Norway to the Council of Europe, Chair of the Rapporteurs Group on Democracy of the Committee of Ministers of the Council of Europe, and Mr Gianni Buquicchio, President of the Venice Commission.

More than 160 participants attended the Conference, representing 60 countries and several international institutions. The European Parliament and the European External Action Service of the European Union as well as the OSCE/ODIHR, the Organization of American States (OAS), the International Foundation for Electoral Systems (IFES), the Association of European Election Officials (ACEEEO) and International IDEA were also represented at the Conference.

The main themes dealt with were the essential elements for neutral, impartial and transparent elections; functioning of electoral management bodies: good practice; and electoral disputes, election observation and media coverage.

In their conclusions the participants particularly:

- Recommended that domestic legislation provide measures for reinforcing the legal status of members of electoral commissions;
- Underlined the importance for the electoral management bodies to ensure, when competent, the equality of opportunities between candidates;
- Underlined the importance of guaranteeing transparency and efficiency in the functioning and working methods of electoral management bodies;
- Recommended considering using media monitoring as a useful tool to identify and correct shortcomings during electoral processes;
- Stressed that, when EMBs have a role in dealing with complaints, they should do so in a transparent, impartial, neutral, open, uniform and timely way;
- Underlined the importance of election observation, which is a key factor to reinforce transparency and impartiality in elections.

*International Parliamentary Conference on implementation of the right to free elections (Paris, 4-5 June 2015)*

The Venice Commission organised in co-operation with the Parliamentary Assembly of the Council of Europe and the French National Assembly, a Conference on implementation of the right to free elections. The theme was: the principle of free elections: the challenge of applying election legislation and compliance with Council of Europe standards. The challenge of applying election legislation and compliance with Council of Europe standards were the central issues of the Conference.

This event was the first parliamentary Conference of this type dealing with electoral issues. The Conference was organised in the framework of the Programmatic Co-operation Framework with Eastern Partnership countries. Members of Parliaments of six countries,

beneficiaries from the Eastern Partnership, and members of the Parliamentary Assembly of other Council of Europe member States met representatives from Electoral Management Bodies, NGOs involved in election observation as well as Venice Commission experts, other Council of Europe relevant bodies and representatives from other international organisations.

Five working sessions took place on the following themes:

- Council of Europe standards in the field of elections;
- How to improve legal frameworks and overcome difficulties in their implementation by national authorities ?
- Election campaigns: the use and misuse of administrative resources, what are the legal and practical solutions?
- Inaccuracies in voter lists and difficulties related to the vote of citizens residing abroad, what are the legal and practical solutions?
- Functioning of electoral administrations: the challenge of neutrality and impartiality, what are the legal and practical solutions?

*Annual Conference of Latin American Electoral Management Bodies*

See Chapter V.

*Organisation of Arab Electoral Management Bodies*

See Chapter V.

## 3. VOTA, the Commission's electoral database

The VOTA database was set up in 2004 as part of the joint Venice Commission and European Commission programme "Democracy through free and fair elections". It contains the electoral legislation of the Venice Commission's member states and other states involved in the Commission's work. Over 100 laws and statutes from about 50 states, as well as Venice Commission opinions in the field of elections, are available in the database, in English, French, as well as in Spanish (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 new documents.

The database has been modernised and is constantly updated with electoral legislation. The Venice Commission will prepare and sign a memorandum of understanding with International IDEA concerning the VOTA database to strengthen further the co-operation in this field.

## 4. International co-operation

Please see Chapter VI.3.


# V. Co-operation in the Council of Europe neighbourhood and outside Europe

# V. Co-operation in the Council of Europe neighbourhood and outside Europe[12]

## 1. Mediterranean Basin

Co-operation with the states in the Mediterranean Basin continued throughout 2015. 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 developing legislation on independent institutions such as the new Constitutional court and other independent institutions in line with the new constitution adopted in January 2014.

The dialogue with the Moroccan authorities continued in such fields as 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 and provided support to the Independent Election Commission in creating the Organisation of the Electoral Management Bodies of Arab countries. 2015 was clearly marked by an increase in regional activities organised or supported by the Commission, including such important projects as UNIDEM seminars for the countries of the MENA region and meetings of the Organisation of the Electoral Management Bodies of Arab countries. These multilateral activities saw an increased participation of various representatives of the authorities and academia from Algeria, Egypt, Lebanon, Libya and the Palestinian National Authority.

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

### Morocco

*Supporting constitutional justice reform*

After a first seminar in 2014, a follow up seminar was organised by the Venice Commission with the Ministry of Justice and Liberties of the Kingdom of Morocco, with a view to the adoption of an organic law on individual requests to the Constitutional Court (Rabat, 13 May 2015). This seminar was an opportunity to present the experiences of several constitutional courts which dealt with direct individual requests and to discuss about the conditions and modalities of such requests. Although the drafting process of the law faced delays and legal difficulties, the input of the Venice Commission proved to be highly appreciated by the national authorities.

*The establishment and efficient functioning of new governance bodies*

In recent years the authorities of Morocco supported several regional initiatives of the Venice Commission. Following a fruitful exchange of views on possible capacity-building activities for public officials from Morocco and other MENA countries the Venice Commission organised a need assessment mission in order to define the content and frame of the UniDem Campus seminars for the Southern Mediterranean countries aimed at providing legal capacity building sessions for senior public officials in areas related to good governance, the rule of law and fundamental rights.

Moreover, the Venice Commission continued its efforts to promote institution building activities. In 2015 it contributed to strengthening the capacities of the staff of the Ombudsman Institution of the Kingdom of Morocco,

through the organisation of two training sessions in Rabat on 5-7 May 2015 and on 28-30 October 2015.

The first training session dealt with "the simplification of administrative procedures and access to public services; the second training session was more specifically dedicated to "Information technologies". These training sessions offered an opportunity to compare different experiences from various Ombudsman institutions, whether from the European continent or the Mediterranean Region. The training sessions were organised in co-operation with the "Association of Mediterranean Ombudsman" and the "Association of Mediators and Ombudsman of the Francophonie". These networks enabled the participation of relevant peers from a large number of Ombudsman institutions and a "cross-fertilisation" process of Morocco's neighbourhood Institutions. In addition, the staff of regional offices of the Ombudsman Institution of the Kingdom of Morocco benefited on a regular basis from specific training sessions. Each training session was followed by 20 to 25 people, who were informed about the best practices of other countries.

*Conference on individual access to Constitutional Courts (Rabat, 13 May 2015)*

On 13 May 2015 a Conference on exception of constitutionality, co-organised by the Venice Commission and the Ministry of Justice of Morocco in the framework of South Programme II - "towards strengthening democratic governance in the Southern Mediterranean" took place in Rabat, Morocco. During this Conference the experiences of the Constitutional Courts of Belgium, Spain, Jordan and Lithuania were presented to the Moroccan authorities, to enable them to make a clear choice when drafting the organic law on the exception of constitutionality, law foreseen under article 133 of the Constitution.

Tunisia

The Venice Commission has been involved in active exchanges of views with the authorities on several legislative reforms pertaining to the implementation of the new constitution. Unfortunately, in 2015 the political instability and security situation in Tunisia seriously affected the initial work plan. Some events had to be postponed because of the changing priorities of the authorities.

In March 2015, the President of the Venice Commission met representatives of the institutions set up under the new constitution following the parliamentary and the autumn 2014 presidential elections, including the President of the Republic, the Speaker of Parliament, the President of the Supreme Court, the Prosecutor General, the Minister of Justice and other high authorities of Tunisia. Hence, the first issue on which the Commission was invited to work was the preparation of the law on the High Council of Justice.

On 31 March 2015, the General Legislative Committee of the Tunisian Parliament held a hearing on the draft organic law on the Supreme judicial Council with a delegation of the Venice Commission. The hearing was very fruitful and gave an opportunity for exchanges and a rich overview of the lay members of judicial councils and comparative material on the issues at stake.

At the invitation of the authorities, the President of the Venice Commission participated in the "Republican Walking", and expressed the Commission's full support for the implementation of the new constitution, and its commitment to assist the Tunisian authorities, even more so after the deadly attack at the Bardo museum on 18 March 2015.

*Co-operation in the field of constitutional justice*

The preparation of the law on the Constitutional Court was also an important and urgent matter in 2015.

In May 2015, the Venice Commission provided support to the working group of the Ministry of Justice as regards the preparation of the draft organic law on the Constitutional Court. An exchange of views of between members of European constitutional courts and the Ministry enabled a better understanding of different options to be chosen. This meeting was organised in the framework of the South Programme "Towards a Strengthened Democratic Governance in the Southern Mediterranean", funded by the European Union and implemented by the Council of Europe.

Legislation on the new constitutional court was one of the priorities announced by the authorities after the adoption of the new constitution. In 2015 some important developments took place and the Commission established a dialogue with the officials involved in preparing the law. A Tunisian delegation attended the 103rd plenary session of the Venice Commission (19-20 June 2015). It enabled members of the Venice Commission to hold an exchange of views on the law amending the draft law on the Constitutional Court.

At its October 2015 session the Venice Commission adopted the Opinion on the draft institutional law on the Constitutional Court of Tunisia (CDL-AD (2015)024). The opinion stated that in general, the draft Institutional Law on the Constitutional Court of Tunisia complied with the rules and principles of the Constitution and with international standards. The law should help ensure an effective functioning of the Court. Nevertheless, the Commission underlined that the draft law, the internal regulations and the procedural rules should specify in greater detail the organisational and functional structure and the specific procedures corresponding to the competences of the Court.

The draft organic law on the constitutional court was adopted by parliament on 20 November 2015 providing for a Constitutional Court with a much wider jurisdiction than its predecessor. However, the setting up of the constitutional court depends on the adoption of the organic law on the Supreme judicial Council, which is still pending.

*Co-operation on institutional aspects of legislation on the new anti-corruption authority*

Another important field of intervention concerned the institutional aspects of legislation on the new anti-corruption authority. The contribution, initiated in 2014, to the drafting of the organic law on the Law on the new anti-corruption constitutional authority – the IBOGOLUCC – led to a thorough analysis of the final draft prepared by the Working Group, in November 2015. It was agreed that the final draft would need further amendment, in order specifically to avoid a conflict of jurisdiction with other institutions, courts or the executive power. The status, the mandate and powers of the institution will therefore be reviewed.

*Co-operation in the field of transitional justice*

The Truth and Dignity Body of Tunisia requested an opinion of the Venice Commission on the draft organic law related to specific proceedings regarding reconciliation in economic and financial areas in July 2015. At its October 2015 session the Commission held an exchange of views with Ms Sihem Bensedrine, President of the Truth and Dignity Authority of Tunisia and with Ms Raoudha Mechichi, Legal Adviser to the President of the Republic of Tunisia, and adopted the interim opinion on the institutional aspects of the draft law on special procedures concerning reconciliation in the economic and financial fields of Tunisia (CDL-AD(2015)032).

*Co-operation in the electoral field*

In 2015 the Commission continued to hold regular exchanges with the Independent Electoral Institution

(ISIE). The Chairman and some of the members of the ISIE attended a meeting on the possible creation of the Organisation of the electoral management bodies of Arab countries which took place in April 2015.

The Venice Commission contributed to the Conference "The Financing of electoral campaigns: a challenge for the electoral processes in the countries of the Southern Mediterranean in Tunis, on 27–28 April 2015. The aim of this meeting was to examine and develop the conclusions of the 2014 Lisbon Forum and to formulate concrete proposals which respond to the requirements of a democratic, transparent and equal electoral process.

## Regional co-operation

The Venice Commission also succeeded in co-operating with Arabic-speaking countries in the framework of several regional activities.

*UniDem-Med Campus seminars*

In September 2015 the Venice Commission launched the UniDem-Med Campus Seminars aimed at providing legal capacity-building sessions for senior public officials in areas related to good governance, the rule of law and fundamental rights. With the focus on good governance and human rights, the plan is to hold two week-long seminars a year for senior officials in countries in the MENA region.

The first UniDem-Med Campus Seminar on "Human rights and public service" took place in Rabat on 14-17 September 2015. This activity was attended by a number of high level participants from the MENA region, including several Moroccan Ministers who participated in the opening ceremony of the event. Such interest from the targeted countries confirmed the validity of the chosen approach and represented an excellent opportunity for future co-operation between the Commission and different countries of the region.

The first meeting of the national coordinators of the UniDem Campus for the Southern Mediterranean Countries took place in Paris on 12 November 2015.

At this meeting, the national coordinators discussed the results of the first UniDem seminar, on "Human rights and public service", which had been held in Morocco in September 2015. They discussed UniDem's contribution to the first module of training of the PATHS programme (Programme on Advanced Training in the field of Human rights, the rule of law and democracy for Southern Mediterranean), for which they were in the process of selecting participants.

The Venice Commission, and in particular, the UniDem Campus for the Southern Mediterranean Countries, contributed to the first module of training in the framework of the PATHS programme (Programme on Advanced Training in the field of Human rights, the rule of law and democracy for Southern Mediterranean). PATHS Programme — Module 1, entitled "Constitutional justice, transitional justice and the legislative process", was held in Venice, Italy, from 30 November to 3 December 2015.

UniDem's contribution covered the topics relating to constitutional justice and the legislative process, (the first two days of the seminar). In particular, UniDem's contribution covered: the importance of the constitutional court; guaranteeing the independence of the constitutional court; constitutional complaints; and the legislative process.

*Co-operation with the Organisation of Electoral Management Bodies for countries in Southern Mediterranean*

In 2014 the Venice Commission was approached by the Central Electoral Commission of Jordan requesting assistance in establishing an Organisation of Electoral Management bodies for countries in Southern Mediterranean.

The Venice Commission invited the members of the initiative group of the future organisations to attend the European Conference of Electoral Management Bodies (EMBs) which took place in Brussels on 30–31 March 2015. In the afternoon of 31 March an expert meeting between the representatives of Algeria, Egypt, Jordan, Tunisia, members of several European EMBs and experts was organised with a view of sharing experiences of regional networking and discussing different issues of common interest for national electoral administrations.

The Venice Commission representatives were invited to participate in the official launching of the Regional Organisation of the Arab Electoral Management Bodies (hereinafter, Arab EMBs), which took place in Beirut, Lebanon on 8– 9June 2015.

The main topics of the event were the establishment of the Organisation and strategies for regional co-operation in the field of elections in the Arab world. In parallel to the event the Venice Commission's representatives had a meeting with the Executive body of the new organisation and discussed perspectives of co-operation between the Organisation of Arab EMBs and the Venice Commission.

During the October plenary session, the Venice Commission and the Organisation of Arab EMBs signed a Memorandum of understanding providing a basis for future co-operation. A number of assistance activities to the new organisation are planned for 2016.

*Publications for South-Mediterranean partners*

The leaflet presenting the Venice Commission of the Council of Europe and a brochure on the main reference documents of the Commission were issued in Arabic.

A compilation of the joint OSCE/ODHIR - Venice Commission Guidelines on Fundamental Rights was published in Arabic, French and English. This compilation brought together the Guidelines on Freedom of peaceful assembly, on the Legal personality of religious or belief communities and on Freedom of association. The Guidelines are primarily, but not exclusively, intended for use by legislators tasked with drafting laws that regulate or affect associations. They are also to serve public authorities, the judiciary, legal practitioners, academics and others concerned with the exercise of these rights.

## 2. Central Asia

### General introduction

In 2015, 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.

The regional project "Supporting Constitutional Justice, access to justice and electoral reform in the countries of Central Asia" that was due to end in February 2015 was finally extended until 31 August 2015. This additional time helped the project, among other things, to complete its work on the publication on "judicial systems of Central Asia: a comparative overview". This publication aims to be a short guide for lawyers and academics wishing to learn about the main features of the judiciary of Kazakhstan, Kyrgyzstan, Tajikistan, Turkmenistan and Uzbekistan.

The research part of the work was carried out in Spring-Summer 2015. In the first phase the working group prepared the questionnaire and sent it out to the state authorities of the five countries of the Central Asia region. A

list of additional questions was compiled on the basis of the replies received and these were discussed during the experts' visits to the respective countries in June-August 2015 and at meetings with the authorities. In addition, the experts held consultations with local independent specialists with a view to refining the data received in official replies. In July-August 2015 the experts presented reports on individual countries, which were than edited and completed with introductory sections.

The project also prepared another publication on electoral law. This publication represents a collection of the fundamental documents of the Venice Commission regarding the general conduct of elections and referenda, as well as the participation of political parties in elections.

## Regional co-operation

On 28 and 29 October 2015 the Venice Commission organised in Strasbourg a Conference of Central Asian constitutional control bodies. It brought together around 20 participants from Kazakhstan, Kyrgyzstan, Tajikistan and Uzbekistan. The President and judges of the Constitutional control bodies met to discuss issues of common interest, such as how the separation of powers affects constitutional control bodies and constitutional interpretation techniques. The Conference participants were able to exchange information and experience on the protection of human rights, access to justice and the rule of law as well as present their good practices in implementing internationally-agreed standards. The President of the Venice Commission had a chance to organise individual meetings with the Courts' Presidents and discuss further co-operation as well as issues of particular concern to each court.

The Conference was organised with funding provided by the Ministry of Foreign Affairs of Turkey and by the European Union within the framework of the project "Support to the Kyrgyz authorities in improving the quality and efficiency of the Kyrgyz constitutional justice system", implemented by the Venice Commission.

This Conference was called historical by the participants as for the first time Presidents of the bodies of Constitutional control of 4 countries of Central Asia got together to discuss common problems and share their experience.

### Kazakhstan

Kazakhstan has been a full member of the Venice Commission since 2012.

Co-operation with Kazakhstan in the framework of the regional project this year was mainly aimed at continuing assistance to the authorities in reforming their judicial system. To this end the project contributed to the organisation of the following activities:

*International Round Table on «Modernisation of the criminal justice – the guarantee of ensuring the effectiveness of law enforcing system and realisation of the human rights protection potential of the Constitution of the Republic of Kazakhstan" (12-13 March 2015, Akbulak, Kazakhstan)*

The Round Table on the constitutional aspects of the implementation of the new Criminal procedure Code and other legislation in the field of criminal procedure took place in Akbulak, Kazakhstan on 12-13 March 2015. The aim of the meeting was to ensure wide discussion and exchange of opinions on the issue of the implementation of the new legislation on criminal procedure that came into force on 1 January 2015 and its possible impact on constitutional rights. The Prosecutor provided first statistical data related to plea bargaining (including criminal cases and other offences (corruption)) where imprisonment can be substituted by a fine; implementation of new procedures during the investigation and new powers of the defence lawyers. Other topics included new

powers of judges in issuing warrants; norms facilitating pre-trial procedures for the prosecution (no additional pre-investigation control needed); new rules in cases of pre-trial deals between the prosecution and the suspect; obligation to inform the detainee about his/her rights in case of detention; special investigation procedures and their impact on constitutional rights; release on bail.

The event was organised by the Constitutional Council, Supreme Court and General Prosecutor's office jointly with the Venice Commission, the OSCE centre in Astana and the German Foundation for International Legal Cooperation (IRZ).

*Conference on "Constitution: unity, stability, prosperity", (Astana, 28-29 August 2015)*

A Vice President of the Venice Commission took part in the "August readings", an annual event organised by the Constitutional Council of Kazakhstan. In 2015 the topic of the meeting was "Constitution: unity, stability, prosperity" devoted to the 20th anniversary of the referendum on the Constitution of Kazakhstan. The Conference was a forum for exchanges of experience between constitutional lawyers from Kazakhstan, CIS countries and their colleagues from Western Europe.

At the Conference the Venice Commission delegation was informed of the authorities' plans to reform the constitutional legislation in the country following the proposals announced in the "100 Concrete Steps to Implement Five Institutional Reforms" by President Nazarbayev in spring 2015.

### Kyrgyzstan

In 2015 the Venice Commission continued co-operating with the authorities of the Kyrgyz Republic in the framework of a project "Support to the Kyrgyz authorities in improving the quality and efficiency of the Kyrgyz Constitutional justice system" that started in 2013.

The project paid special attention to the co-operation and co-ordination of its activities with the UNDP office in the Kyrgyz Republic. Each organisation focused on its specific area of expertise but at the same time this co-operation had resulted in producing tangible results and proved to be effective and advantageous to the project beneficiary. The UNDP provided for follow-up of the activities carried out by the Venice Commission in the country. Moreover, the Venice Commission relied in its work on the information provided by UNDP on the evolving situation of the beneficiary's plans as well as logistical arrangements for the joint activities held in Bishkek.

The project had a positive impact on the decisions taken by the state's authorities on certain issues in the field of constitutional justice.

The project ended in October 2015. The results were presented at the Closing event organised by UNDP in November 2015. On this occasion, a leaflet on the co-operation between the Venice Commission and the Kyrgyz Republic in the field of Constitutional justice was prepared and distributed to the Conference participants.

Since January 2015, a number of activities were carried out in the framework of the project, some of which are listed below:

*Round Table on international experience on introducing constitutional amendments and on constitutional revision process (Bishkek, 28 April 2015)*

Following the information received from Kyrgyzstan that constitutional amendments that would de facto transform the constitutional Chamber into a constitutional council limited to a priori review and which would lead to the dismissal of sitting judges of the Chamber, the Venice Commission organised a Conference on "International experience on introducing Constitutional

amendments and on Constitutional revision" which took place on 28 April 2015 in Bishkek.

The delegation of the Venice Commission was composed of its members and substitute members from Georgia, Latvia, Liechtenstein, Republic of Korea and Turkey. The speakers presented the experience of their countries in the field of constitutional reforms. The President of the Venice Commission addressed the participants by a video message. This event provided a platform for the exchange of opinions between national and international experts in terms of constitutional revision. Topics discussed included whether and how the Constitution of the Kyrgyz Republic could be changed and various proposals for constitutional amendment in Kyrgyzstan.

The Conference on constitutional amendments was organised at short notice and was held on the day the draft amendments were published on the Parliament's website.

*Workshop for judges on reasoning of judgments (Bishkek, 11 May 2015)*

A workshop for judges and staff of the Constitutional Chamber of the Kyrgyz Republic on reasoning of judgments took place on 11 May 2015 in Bishkek.

The speakers presented the experience of individual countries and of the European Court of Human Rights as well as provided a comparative analysis of the purpose and functions of constitutional reasoning.

The workshop for judges was followed by a Conference on the "Role of constitutional control in providing rule of law" aimed at both legal professionals and the civil society in order to raise the wider public's awareness of constitutional justice issues. The Conference was held in Bishkek on 12 May 2015.

Each of five working sessions focused on a particular aspect of constitutional justice such as the role of constitutional courts in providing the rule of law and the separation of powers, access to constitutional justice, the form and structure of decisions of constitutional courts and their relevance for other institutions, society in general and individuals.

*Joint Opinion on the draft law «On introduction of changes and amendments to the Constitution of the Kyrgyz Republic" (CDL-AD(2015)014)*

Please see Chapter II.1.

*Follow-up meeting on the adoption of a joint opinion on the draft law «On introduction of changes and amendments to the Constitution» of the Kyrgyz Republic (Bishkek, 29 June 2015)*

One of rapporteurs of the joint opinion by the Venice Commission and the OSCE/ODIHR on the amendments to the Constitution of Kyrgyzstan visited Bishkek on 29 June 2015 and presented the recommendations made by the international experts to NGOs, the civil society as well as to MPs.

The follow-up meeting was held on the day when the Parliamentarians had to withdraw the proposal on constitutional reform, focusing among other issues on proposals concerning constitutional justice, following a statement made by the President. The presentation led to lively discussions which also included the problem of the requested dismissal of a Judge of the Constitutional Chamber examined at the Parliament's plenary session.

On 25 June 2015 the President of the Venice Commission Mr Buquicchio made a statement on the demand to dismiss Ms Sooronkulova, judge of the Constitutional Chamber on the grounds of her public complaint about pressure on her in the adjudication of a case. He called upon the Kyrgyz authorities to review this dismissal, while refraining from dismissing even more Judges of

the Chamber, as well as to introduce guarantees for the Judges of the Constitutional Chamber as regards their independence. He stressed that "the dismissal of Judge Sooronkulova is an indication that there are not sufficient guarantees for the independence of Constitutional Judges in the Kyrgyz Republic. Such guarantees could become part of the currently on-going constitutional reform process on which the Venice Commission has provided an opinion (CDL-AD (2015)014)."

*Study visit for NGOs, academia and media on amicus curiae briefs (Strasbourg, 8-10 July 2015)*

Representatives of NGOs, academia and journalists of the Kyrgyz Republic were invited to Strasbourg in July 2015 to participate in a seminar on strategic litigation. They learned about the experience of several European countries on strategic litigation as well as about the Venice Commission's practice of amicus curiae briefs. Strategic litigation was bringing carefully-selected public interest cases - often human rights cases - to a court on behalf of an individual, where the goal was to promote the interests of a wider group of individuals. This seminar was part of a study visit to the Council of Europe and the European Court of Human Rights on 8-10 July 2015, which enabled the participants to get acquainted with the work of the Venice Commission, the Parliamentary Assembly, judges and lawyers of the ECtHR and other parts of the Council of Europe.

*Seminar for judges of the Constitutional Chamber of the Supreme Court of Kyrgyzstan on electoral issues (Bishkek, 10 September 2015)*

At the request of the Constitutional Chamber of the Supreme Court of Kyrgyzstan, the Venice Commission in co-operation with UNDP Kyrgyzstan organised a seminar on the problems of registration of voters and the participation of political parties in the electoral process.

The first part of the seminar was devoted to international standards in the field of electoral lists. Amongst others, the participants discussed the advantages and disadvantages of passive registration and systems where voters have to play a more active role concerning inscription on the lists and their control. This discussion was very much appreciated by the judges with a view to the legislative elections and the problems linked to the reform introducing electronic registers in Kyrgyzstan.

The second issue discussed was applicable standards in the field of the participation of political parties in elections. The Venice Commission experts informed the judges of the Chamber about the key standards which are applied in this field by the Commission and the OSCE/ODIHR. Some national experiences were used as examples of the implementation of various recommendations.

*Legal assistance to the PACE observation mission observing the legislative elections (4 October 2015)*

At the invitation of the Parliamentary Assembly of the Council of Europe, Venice Commission representatives gave legal assistance to the delegation of the Parliamentary Assembly observing the legislative elections on 4 October 2015. The Venice Commission delegation submitted a legal memorandum and pointed out problems to be observed on election day, in particular during the counting, as well as in the pre-electoral period.

The Venice Commission also pointed out problems in the implementation of voting procedures, in particular the use for the first time of biometric identification for voters and the use of optical reader polls. The observers noted a problem of reliability in the electoral lists, owing to the fact that numerous voters were not registered on the electoral lists, although they had been registered previously during the biometric campaign. They also found polling stations with too many registered voters.

*Conference and workshop on constitutional control of international treaties (Bishkek, 8-9 October 2015)*

A Conference for lawyers, NGOs and academia on constitutional control of international treaties took place on 8 October 2015 in Bishkek. It was followed by a workshop for judges and staff of the Constitutional Chamber of the Kyrgyz Republic on 9 October where more technical issues on the same topic were discussed.

*Study visit to the Constitutional court of Russia (St Petersburg, 12-13 October 2015)*

The Venice Commission in co-operation with the Constitutional Court of the Russian Federation organised a study visit for judges of the Constitutional Chamber of the Kyrgyz Republic to the Russian Constitutional court on 12 and 13 October 2015. In the framework of their study visit Kyrgyz judges were invited to attend a public hearing in the Constitutional court which took place on 12 October. They then got an insight into the work of their Russian colleagues as well as had an opportunity to exchange opinions on a number of issues identified by the Kyrgyz delegation.

*Opinion on the Rules of Procedure of the Constitutional Chamber of the Kyrgyz Republic (CDL-AD(2015)023)*

For information on this opinion please refer to Chapter III.1.



## Co-operation with Tajikistan, Turkmenistan, Uzbekistan

Co-operation with these countries was limited to the participation of their representatives at regional and multilateral activities some of which are listed below:

One representative from Kyrgyzstan and Tajikistan attended the 12th European conference of Electoral Management Bodies on "Ensuring neutrality, impartiality and transparency in elections: the role of electoral management bodies", which took place on 30-31 March 2015, Brussels, Belgium (see Chapter IV).

One representative from Kyrgyzstan took part in the 14th meeting of the Joint Council on Constitutional Justice of the European Commission for Democracy through Law (11-12 June 2015, Bucharest, Romania) (see Chapter III).

*Tajikistan - International Conference on "Constitutional justice as a guarantee of the supremacy of the Constitution», 17-18 September 2015, Dushanbe, Tajikistan*

One of the Vice-Presidents of the Venice Commission participated in the International Conference on "Constitutional justice as a guarantee of the supremacy of the Constitution» on the occasion of the 20th anniversary of the Constitutional Court of Tajikistan.

*Uzbekistan - International Conference on the protection of human rights, 26-27 November 2015, Tashkent*

The Venice Commission participated in an International Conference on "Ensuring the reliable protection of the human rights and freedoms - the major direction of democratic renewal and modernization of the country: experience of Uzbekistan". The event was organised by the National Human Rights Centre of the Republic of Uzbekistan, the UNDP Office, the Ombudsman of Uzbekistan, the OSCE, the Konrad Adenauer Foundation and the Friedrich Ebert Foundation.

The experts of the Venice Commission made a presentation on the European experience to support the activities of NGOs: legislation and its application» as well as the right to protection and legal assistance in the judicial system of the EU countries.

## 3. Latin America

### Brazil

*Annual Conference of the Electoral Management Bodies of Latin America (19-20 November 2015)*

Following an invitation from the Organisation of American States (OAS) and The Electoral Tribunal of Brazil a representative of the Venice Commission participated in the 10th annual conference of electoral management bodies of countries of Latin America. The conference focussed on three main subjects: electoral reforms and regional tendencies; elections and social networks; financing of political campaigns.

The comparative report on electoral reform processes in different Venice Commission member countries, presented during the event, resulted in a very interesting debate on such issues as the timeframe for reforms, the impact of election observation (both by national and international observers) on reform processes and the role of the judiciary in launching the reform processes (decisions of constitutional jurisdictions and electoral justice). A number of participating delegations expressed their wish to have more regular exchanges of views on comparative experiences and discussions on different problems linked to the electoral reform processes.

Representatives of the OEA suggested that a specific comparative study on electoral reform processes and main recommendations of international organisations could be prepared in co-operation with the Venice Commission.

### Chile

*International conference on the protection of human rights entitled "The Constitutional protection of vulnerable groups: a judicial dialogue" (Santiago de Chile, 4-5 December 2015)*

The Venice Commission, in co-operation with the Constitutional Court of Chile, organised a Conference on "The constitutional protection of vulnerable groups: a judicial dialogue", which was held in Santiago de Chile. The event brought together experts from the European Court of Human Rights and judges from the Inter-American Court of Human Rights, as well as several members and experts of the Venice Commission. The conference participants also included judges from 11 countries in Latin America, more specifically Brazil, Chile, Colombia, Costa Rica, Ecuador, El Salvador, Mexico, Nicaragua, Paraguay, Peru and Uruguay.

The main objective of this Conference was to foster judicial dialogue on the topic of vulnerability, which was one of the issues proposed for the conference in the meeting held in 2014 in Ouro Preto, Brazil. Indeed, the complexity of the definition of "vulnerability", due to its many angles, and the need for a constructive transversal dialogue were essential to the discussions. The situations in both Europe and Latin America were a good basis for the comparative approach, as both regions have struggled with the protection of vulnerable groups and with the constitutional and international dimensions of their definition.

The conference sought to foster a double judicial dialogue: first, the case-law of the Inter-American Court was presented, and then the comparative approach of the European Court of Human Rights was examined. Speakers chose cases which showed the different solutions given by both courts when dealing with similar legal challenges. At a second stage, three different national examples were introduced for debate. The three

different national scenarios stressed the complexities of implementing the international case-law presented or, on the contrary, the way in which implementation had been successful. The debate was then opened for presentations by other constitutional courts on transversal problems and different interpretations of the protection of vulnerable persons and groups.

The conclusions emphasised the following problems: the difficulty in finding a definition of vulnerability and the categorisation of rights, which remains largely imperfect. The international human rights bodies constitute key tools, which have to be implemented through the use of the so-called "control of conventionality" in order to enhance the protection of internationally recognised fundamental rights in the domestic arena. Moreover, the principle of non-discrimination as a key transversal principle could become a powerful mechanism in the hands of constitutional judges when fighting inequalities. Finally, the exchange of experiences, the knowledge of foreign examples and the construction of a judicial dialogue in its widest sense, is essential for building further shared standards in the field of human rights.

*Meeting of the Sub-Commission on Latin America (Santiago de Chile, 5 December 2015)*

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 possible activities in Latin America in 2016 and the creation of several working groups composed of experts from both Europe and Latin America.

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. The Sub-Commission discussed several key issues. Firstly, from an institutional perspective, ambassadors from all Latin American countries not members of the Commission were invited to the Sub-Commission meeting and were invited to nominate a representative or a liaison officer from their State, which would ensure better communication on planned or on-going constitutional reforms in their respective countries. Secondly, it was decided to translate relevant Venice Commission opinions and reports into Spanish, in order for them to be disseminated in conferences and seminars. Finally, a working group on the issue of the implementation of International Human Rights decisions and the national margin of appreciation will be created, to include both European and the Inter-American experiences.

At the December 2015 plenary session, Mr Juan José Romero Guzmán (Chile) was elected President of the Sub-Commission on Latin America. The next meeting of the Sub-Commission will take place in November/December 2016, either in Colombia or in Peru.

### Mexico

*Legal assistance to the Electoral Management Body and the Electoral Federal Tribunal (August-September 2015)*

At the request of the Federal Electoral Court and the Electoral Management Body of Mexico (INE), the Venice Commission provided legal assistance on the supervision of the financial and technical support to domestic electoral observers in Mexico.

*Conference on money and politics (Mexico D.F., 3-5 September 2015)*

The Venice Commission participated in a conference organised in Mexico, D.F by the Electoral Tribunal of Mexico and International IDEA, on the relationship

between money and politics. The contribution of the Commission focused on the issue of public financing and different methods of encouraging a balanced participation in elections, as well as effective tools to design and implement effective sanctions.

### Peru

*Opinion on antidiscrimination legislation (request withdrawn)*

In February 2015, the Vice-Minister of Justice of Peru, Mr José Avila Herrera, sent a request for an opinion on the draft Criminal Code provisions on hate crimes and on the draft anti-discrimination legislation, within the framework of a national human rights implementation plan of Peru, where there is no specific legislation to fight discrimination. It was the first time such a request was sent to the Commission by the Peruvian authorities.

The rapporteurs had planned to travel to Lima on 24-25 August 2015 to discuss with the main stakeholders, including representatives of the government and of the Ministry of Justice, the main groups in the opposition, the ombudsperson and representatives of the civil society. However, after the reshuffling of the Ministry of Justice in August 2015, the request for an opinion was withdrawn by the authorities and the draft legislation was abandoned.

*International Conference on human rights and public policy (Lima, 20-21 August 2015)*

On 20-21 August, the Venice Commission participated in the International Conference on human rights and public policy, organised by the Ministry of Justice of Peru, presenting a paper on the rights of the LGBT community in the European constitutional framework. Discussions revolved around a draft law on civil unions, which had been pending in the Peruvian Parliament for several years as well as the general need to effectively investigate violence against women.

Representatives from the Ministry of Justice informed the participants about a recent substantial enlargement of the public defender's office, which is part of the Ministry and provides free legal advice to victims of crime and on family matters.


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

# 1. Council of Europe

## Committee of Ministers

Representatives of the Committee of Ministers participated in all four Commission's plenary sessions in 2015. The following Ambassadors, Permanent Representatives to the Council of Europe, attended the sessions (in order of attendance):

- Ambassador Konstantin KORKELIA, Permanent Representative of Georgia;
- Ambassador Almir ŠAHOVIC, Permanent Representative of Bosnia and Herzegovina, Committee of Ministers' Chair;
- Ambassador Dirk van EECKHOUT, Permanent Representative of Belgium;
- Ambassador Arnold de FINE SKIBSTED, Permanent Representative of Denmark;
- Ambassador Ardiana HOBDARI, Permanent Representative of Albania;
- Ambassador Markus BÖRLIN, Permanent Representative of Switzerland;
- Ambassador Luis Javier GIL CATALINA, Permanent Representative of Spain;
- Ambassador Eva TOMIČ, Permanent Representative of Slovenia and
- Ambassador Jari VILÉN, Head of the European Union Delegation to the Council of Europe.

## Parliamentary Assembly

In 2015, co-operation with the Assembly intensified.

At the request of the Parliamentary Assembly, the Commission adopted an Opinion on media legislation in Hungary (CDL-AD(2015)015), following PACE Resolution (2035)2015 on freedom of media in Europe, where it invited the Venice Commission to identify the provisions of the Hungarian media legislation which pose a danger to the right to freedom of expression and information through the media.

An update of the 2007 **Study on the democratic oversight of the security services**, requested by the PACE, was adopted at the March 2015 session (CDL-AD(2015)010 and 011, cf. Chapter II.2)

The PACE's Monitoring Committee and the Committee on Human Rights and Legal Affairs requested Commission's opinion on the following issues:

- the « Citizens' Security Law » of Spain,
- the Law on the changes to the powers of the Constitutional Court of Spain;
- the draft law of the Russian Federation which empowered the Constitutional Court to determine whether findings by the international bodies on protection of human rights and freedoms (including those of the European Court of Human Rights) are to be implemented;
- the compatibility with international standards and human rights and fundamental freedoms, of the Law of 19 May 2015 "on undesirable foreign and international organisations" of the Russian Federation (Federal Law No. 129-F3 on Amending Certain Legislative Acts of the Russian Federation).

These opinions are to be adopted in 2016.

The President of the Commission participated in a meeting of the Committee on Political Affairs and Democracy of the Parliamentary Assembly which took place in Rome on 5 June 2015.

The Commission organised in co-operation with the Parliamentary Assembly and the French National Assembly a Conference on the implementation of the **right to free elections**, held in Paris on 4–5 June 2015. The challenge of implementing electoral legislation and compliance with Council of Europe standards were the central issues of the conference. The event was organised under the Programmatic Cooperation Framework (PCF) 2015-2017 – a joint project with the European Union.

A member of the Commission presented its report on lobbying to PACE's Committee on Legal Affairs and Human Rights in the framework of the preparation by the Committee of a report on «the transparency and openness of the European institutions». The relevant meeting took place in Strasbourg, on 25 June 2015.

The Monitoring Committee of the Assembly met in Sarajevo on 3 and 4 September where the Secretary of the Commission participated in the hearing on "**The Dayton Constitution**: 20 years later and beyond".

At the request of the Committee on Equality and Non-Discrimination of the Parliamentary Assembly of the Council of Europe, the Venice Commission participated in a hearing in Paris on 10 September 2015. The report on the **method of nomination of candidates within political parties**, adopted by the Commission at its June 2015 session (CDL-AD(2015)020), was presented as part of the debate on the introduction of electoral quotas to ensure gender equality.

The Venice Commission took part in a conference on «Funding of political parties and electoral campaigns; legislation and control mechanisms» organised by the Parliamentary Project Support Division of the Assembly, as well as in a hearing on the issue of parliamentary immunities organised by the PACE Committee on Rules of Procedure, Immunities and Institutional Affairs. These events were held in Paris on 10-11 December 2015.

The Parliamentary Assembly continued to participate actively in the Council for Democratic Elections created in 2002 as a tripartite organ of the Venice Commission, the Parliamentary Assembly and the Congress of Local and Regional Authorities of the Council of Europe. The relevant members of the Council for Democratic Elections in 2015 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 as legal advisors in PACE election observation missions in Azerbaijan, Kyrgyzstan, Turkey and Ukraine.

## Congress of Local and Regional Authorities

The Congress also continued to participate in the Council for Democratic Elections (CDE). In 2015, a member of the Congress, Mr Jos Wienen, chaired the

Council for Democratic Elections. The relevant members of this Council in 2015 were as follows:

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

The Venice Commission provided legal assistance to the ad hoc committee of observers from the Congress on Local and Regional Authorities and PACE delegation before and during the observation of the elections of October 2015 in Ukraine.

## European Court of Human Rights

In 2015 the European Court of Human Rights continued to refer to the documents of the Venice Commission in its judgments.

In the case of *Karoly Nagy v. Hungary* (56665/09), the Court referred to Guidelines for Review of Legislation Pertaining to Religion or Belief adopted in 2004 by the OSCE/ODIHR and the Venice Commission.

In the case of *Pentikainen v. Finland* [GC](1182/10), the Court referred to the Joint Guidelines by the Venice Commission and the OSCE/ODIHR on freedom of peaceful assembly, in order to assess compatibility with the ECHR of the dispersal of an assembly by security forces.

In the cases of *Gafgaz Mammadov v. Azerbaijan* and *Emin Huseynov v. Azerbaijan* (59135/09) the Court referred to the Report of the Commissioner for Human Rights of the Council of Europe, following his visit to Azerbaijan from 22 to 24 May 2013, which cited two opinions by the Venice Commission in respect of Azerbaijan, concerning the Law on Freedom of Assembly (CDL-AD(2007)042 *and* CDL-AD(2006)034).

The Code of Good Practice in Electoral Matters (CDL-AD (2002) 23 rev) was referred to in the cases of *Gahramanli and Others v. Azerbaijan* (no. 36503/11), *Tahirov v. Azerbaijan* (31953/11) and *Ofensiva Tinerilor v. Romania* (16732/05) and Rıza and others v. Bulgaria (48555/10 et 48377/10).

The report on the independence of the judicial system (CDL-AD(2010)004) *was referred to in the cases of Psma, Spol, Sro v. Slovakia* (42533/11), *draft-OVA A.S v. Slovakia* (72493/10) and *Compcar, S.R.O. v. Slovakia* (25132/13).

## Other Council of Europe institutions

*Ad-hoc Committee of Experts on Legal, Operational and Technical Standards for E-Voting (CAHVE)*

On 28-29 October 2015, the Venice Commission took part in the first meeting of the Ad-hoc Committee of Experts on Legal, Operational and Technical Standards for E-Voting (CAHVE). Since 2002 the Venice Commission has been involved in the issue of the use of e-technologies in the electoral process, in particular by its participation in the drawing up of Recommendation Rec(2004)11 of the Committee of Ministers to member states on legal, operational and technical standards for e-voting which CAHVE is updating.

*European Committee on Legal Co-operation (CDCJ)*

Throughout 2015 a member of the Commission participated in the work of the drafting group within the European Committee on Legal Co-operation (CDCJ) which developed a draft recommendation on legal regulation of lobbying activities.

*Eurimages*

On 12 March 2015 in Lisbon, at the invitation of Eurimages, the President of the Commission participated in the 138th Meeting of board of management of

EURIMAGES and shared good practices with regard to the functioning of the Venice Commission as an enlarged agreement of the Council of Europe and its successful enlargement in recent years.

*Gender Equality Commission*

Two members of the Commission were nominated as gender equality rapporteurs for the Council of Europe's Gender Equality Commission**.** On 14-15 April 2015 in Strasbourg, a member of the Commission presented the Commission's work in the field of gender equality and explained how this was promoted through its activities, mainly in opinions and studies, as well as the Commission's recommendations in this field.

*World Forum for Democracy*

The Venice Commission participated in the World Forum for Democracy namely in the Lab on "Protecting civic space in intergovernmental settings", held in Strasbourg on 19 November 2015.

## 2. European Union

In 2015, the co-operation between the Venice Commission and the European Union further consolidated.

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 Commission was involved in consultations with the EU bodies on topics concerning EU policies and its relations with the countries - members of the EU, candidate States and neighbourhood States such as the Balkan states, Central Asian states, states of the MENA region and Ukraine. The Secretary of the Commission in particular met with the EU Special Representative for Central Asia. Also in 2015 Venice Commission representatives held working meetings with the European Commission (DG-NEAR, DG-JUST, EEAS and DEFCO). The Commission participated in various activities of the EP and other EU institutions.

### European Parliament

In 2015 the European Parliament continued to refer to the work of the Commission and consult its representatives on important issues.

The Commission participated in the Inter-parliamentary Committee meeting organised by the Committee on Civil Liberties, Justice and Home Affairs of the European Parliament on "the Democratic Oversight of Intelligence Services in the European Union" held at the premises of the European Parliament in Brussels, on 28 and 29 May 2015.

On 18-19 June 2015, the Venice Commission participated in a conference, organised by the EP, entitled "*Towards independent and modern judicial systems in the enlargement countries*". The participants included members of the European Parliament and MPs from Albania, Bosnia and Herzegovina, Croatia, Kosovo, Montenegro, Serbia and "the former Yugoslav Republic of Macedonia". The purpose of this conference was to address the subject of fundamental criteria for accession to the European Union by the enlargement countries in the area of judicial systems.

On 25 November 2015 during the EP session in Strasbourg the President of the Commission addressed the *EU*

– *Ukrainian Parliamentary Association Committee* **o**n ongoing reforms in Ukraine concerning decentralisation, judiciary, elections and the financing of political parties.

On 26 November 2015 also in Strasbourg President Buquicchio met with Ms Ulrike Lunacek, Vice-President of the European Parliament on co-operation with Kosovo.

The Deputy Secretary of the Commission participated in a hearing organised by the Civil Liberties', Justice and Home Affairs Committee of the European Parliament in Brussels on 10 December 2015. The mini-hearing was held in the framework of the preparatory process for a so-called 'own-initiative legislative report' according to the European Parliament resolution of 10 June 2015 *on the situation in Hungary* (P8_TA(2015)0227).

## Co-operation with other EU institutions

In 2015, technical consultations were held on developments in the Balkans and Ukraine as well as in Central Asia and the countries of the MENA region. In addition, the Venice Commission co-operated in 2015 with the EU delegations in countries such as Kazakhstan, Kyrgyzstan, Jordan, Morocco, Tunisia and Ukraine while implementing joint Council of Europe - European Union projects.

The President of the Commission presented the latest work of the Commission to the informal meeting of the delegates of the Working Party on the OSCE and the Council of Europe (COSCE) on 4 May in Strasbourg, organised by the EU Delegation to the Council of Europe.

On 2 October 2015 the Directorate of Neighbourhood and Enlargement Negotiations (DG NEAR) of the European Commission requested an opinion of the Venice Commission on the legislation of "the former Yugoslav Republic of Macedonia" related to the disciplining and dismissal of judges and their professional evaluation. The relevant opinion was adopted by the Commission at its December 2015 session (CDL-AD(2015)042). For more information on the opinion please refer to Chapter II.

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 from the Committee of the Regions) participated in the plenary sessions of the Venice Commission in 2015. In November 2015, the President of the Venice Commission exchanged views with the EU Delegation to the Council of Europe on the constitutional and legislative reforms in Ukraine. The Head of the EU Delegation to the Council of Europe participated in the Commission's December 2015 session.

## Joint European Union – Council of Europe projects

In 2015, the Venice Commission continued its fruitful co-operation with several countries in the framework of joint projects:

- Programmatic Cooperation Framework (PCF 2015-2017) – a joint programme for Armenia, Azerbaijan, Belarus, Georgia, Republic of Moldova and Ukraine - segments on elections and constitutional justice (see below);
- "Towards a Strengthened Democratic Governance in the Southern Mediterranean" (a segment in the South Programme II);
- "Supporting constitutional justice, access to justice and electoral reform in the countries of Central Asia" with funding provided by the EU and the Ministry for Foreign Affairs of Finland;
- "Support to the Kyrgyz authorities in improving the quality and efficiency of the Kyrgyz Constitutional justice system".

For further information on the last three projects, please refer to Chapter V above.

### Programmatic Cooperation Framework

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

In the electoral field the following activities were carried out (see Chapter IV):

- Participation of the Electoral Commissions from five Eastern Partnership countries in the 12th European Conference of Electoral Management Bodies (Brussels, 30-31 March 2015);
- Training sessions for proxies of the Republic of Moldova on electoral dispute resolution (Chişinau, 25-29 May 2015) ;
- International Parliamentary Conference on implementation of the right to free elections (Paris, 4-5 June 2015);
- Meeting with the Gender Equality of the Central Electoral Commission of Georgia (Tbilisi, 8 September 2015);
- Opinion on draft amendments to some legislative acts of Ukraine concerning the fight against political corruption and its prevention, specifically affecting political parties and electoral campaigns, adopted by the Council for Democratic Elections and the Venice Commission at the October 2015 session;
- Two exchanges of views on the law on local elections in Ukraine (23-24 June and 22 October 2015);
- Legal assistance to the PACE and the Congress observation mission observing the local elections in Ukraine (25 October 2015);
- Regional Conference on Gender Equality in electoral processes (Tbilisi, 25-26 November 2015).

For the part of the PCF concerning constitutional justice see Chapter III.

## 3. OSCE

In 2015 co-operation with the OSCE continued to be fruitful. The Venice Commission maintained regular and frequent high level and working level contacts with the organisation's representatives. The OSCE/ODIHR was represented at all four plenary sessions of the Commission in 2015.

The President of the Commission presented the latest work of the Commission to the informal meeting of the delegates of the Working Party on the OSCE and the Council of Europe (COSCE) on 4 May in Strasbourg, organised by the EU Delegation to the Council of Europe.

### Human Dimension events

On 16-17 April in Vienna, one of the Vice Presidents of the Commission participated in the 2015 Annual Supplementary Human Dimension Meeting (SHDM), devoted to the freedoms of peaceful assembly and association, with emphasis on the latter.

A delegation of the Commission participated in the Meeting of the Human Dimension Committee on judicial reform, held in Vienna, on 19 May 2015.

### Exchange of views with the OSCE High Commissioner on National Minorities

At its December 2015 session, the Venice Commission held an exchange of views with the OSCE High Commissioner on Minority Rights. In this context, the high value of the co-operation between the two

institutions on important topics, such as noncitizens and minority rights, dual voting rights and the treatment of national minorities abroad, was pointed out, as well as the need to pursue further and strengthen this co-operation.

## Protection of fundamental rights

### Joint Opinions

In 2015 the Commission adopted jointly with the OSCE/ODIHR opinions on the following (draft) legislation:

- draft law on the prosecution service of the Republic of Moldova (CDL-AD(2015)005);
- draft law «On introduction of changes and amendments to the Constitution» of the Kyrgyz Republic (CDL-AD(2015)014);
- draft amendments to some legislative acts concerning the prevention of and the fight against political corruption of Ukraine (CDL-AD(2015)025);
- draft amendments to the Law on the Prosecutor's Office of Georgia (CDL-AD(2015)039), and
- Law of Ukraine on the condemnation of the communist and national socialist (Nazi) regimes and prohibition of propaganda of their symbols (CDL-AD(2015)041).

For more information on these opinions, please see Chapter II.

### Conferences and seminars

On 4 February 2015, the Commission participated in a conference for the launching of the Joint Venice Commission – OSCE/ODIHR Guidelines on Freedom of Religion which took place at the European Parliament, in Brussels.

On 5 March 2015, the President and a Vice-President of the Commission participated in the Conference for the launching of the Joint Guidelines on the Freedom of Association held in Geneva.

Venice Commission representatives participated, on 25-26 June 2015 in Louvain-la-Neuve, in an expert meeting co-organised by the OSCE/ODIHR, *l'Université Catholique de Louvain* and the International Center for Law and Religion Studies (BYU - USA). This event was related to the Joint guidelines on the legal personality of religious or belief communities, adopted at the June 2014 session. For more information please see Chapter II.

The Venice Commission was represented at the launching event of the Joint Guidelines on Legal Personality of Religious or Belief Communities in Turkish co-organised by the OSCE/ODIHR in Istanbul on 19 November 2015.

## Elections, referendums and political parties

During 2015, the Venice Commission continued its close co-operation with the OSCE/ODIHR in the area of elections and political parties. An opinion was prepared jointly on draft amendments to some legislative acts of Ukraine concerning the fight against political corruption and its prevention. The OSCE/ODIHR regularly attended meetings of the Council for Democratic Elections.

*Round Table on electoral dispute resolution (Warsaw, 9-10 March 2015)*

At the invitation of the OSCE Office of Democratic Institutions and Human Rights (OSCE/ODIHR), a Venice Commission representative intervened in a Round Table on electoral dispute resolution. This event was organised for beneficiary countries of the European Union Eastern Partnership Programme. Judges, civil society representatives and the media took part in this event. The Venice Commission representative spoke on the concept of European electoral heritage and on the five principles underlying the holding of free elections.

He also pointed out the procedural guarantees for the implementation of these principles, in particular the requirements for an effective appeal system.

*Electoral Seminar organised by the Serbian Chairmanship of the OSCE (Vienna, 20 July 2015)*

The Venice Commission participated in an Electoral Seminar at the invitation of the Serbian Chairmanship of the OSCE and the OSCE Office of Democratic Institutions and Human Rights (OSCE/ODIHR). The Venice Commission representatives spoke in particular on the issue of the misuse of administrative resources during elections.

*Annual meeting of the OSCE/ODIHR core group of experts on political parties (Warsaw, 19-20 October 2015)*

The Venice Commission was invited to participate in the annual meeting of the core group of experts on political parties organised by the OSCE/ODIHR, held in Warsaw in October 2015. The aim of this meeting was to review the Joint Guidelines on Political Party Regulation, drawn up by the OSCE/ODIHR and the Venice Commission in 2011, following a broad and inclusive process.

The Joint Guidelines are a living document, which needs to be continuously adapted to new developments related to political party regulation. The incorporation of new experiences, the need to make the guidelines more accurate and to reflect new trends, as well as the introduction of specific topics, such as ensuring that both women and men are able to access political party structures and decision-making on an equal footing, were some of the key topics debated. The revised guidelines should be adopted by the end of 2016.



## 4. United Nations

The Venice Commission successfully co-operates with the UNDP in Central Asia and in the Middle East. In 2015 this co-operation focused on issues of constitutional justice and reform of the electoral legislation and practice.

### Central Asia

The Venice Commission has been co-operating with the UNDP Office in Kyrgyzstan for a number of years. In 2015 this work was carried out in the framework of the joint projects aimed at assisting the Constitutional Chamber of the Kyrgyz Republic. The project implemented by the Venice Commission was complementary to the Action run by the UNDP project in Bishkek. The projects paid special attention to the co-operation and co-ordination of its activities with the UNDP office in the Kyrgyz Republic. The UNDP provided for follow-up of the activities carried out by the Venice Commission in the country. Moreover, the Venice Commission relied in its work on the information provided by UNDP on the evolving situation of the beneficiary's plans as well as logistical arrangements for the joint activities held in Bishkek. Both organisations regularly exchanged plans and news on the project implementation and ensured quarterly video/phone conferencing for co-ordination.

The Commission provided experts for a conference on human rights protection in Uzbekistan organised by the UNDP in Tashkent in November 2015.

### Arab States

In 2015 the Venice Commission established a fruitful co-operation with the UNDP Regional Hub for Arab States by assisting the electoral management bodies of Jordan, Lebanon, Libya and the Palestinian National Authority in establishing a regional organisation. After preliminary contacts with the electoral administrations of Egypt, Jordan and the Palestinian National Authority and consultations with the UNDP Regional Hub, Venice Commission representatives attended

the launching event of the Organisation of the Arab Electoral management bodies (Arab EMBs) which took place in Beirut on 8–9 June 2015. The next conference of Arab EMBs is planned for spring 2016. The Venice Commission will assist in the organisation of this event in close co-operation with the UNDP and other international partners.

## 5. Co-operation with other international organisations

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

#### International Association of Constitutional Law (IACL)

On 28 May 2015 in Johannesburg, the president of the Commission, Mr Buquicchio exchanged views with the Executive Committee of the IACL on the organisation of a joint Round Table in Venice in October 2016. He also attended the conference on "the "New" separation of powers: can the doctrine evolve to meet the C21 context?" organised by IACL and Johannesburg University on 29 May 2015 in Johannesburg, South Africa. A representative of IACL attended one of the plenary sessions of the Commission in 2015.

#### Inter-American Court of Human Rights

At the request of the President of the Inter-American Court of Human Rights the Commission adopted the report on restrictions on freedom of expression of judges (CDL-AD(2015)018) at its June 2015 session[13]. The Court had a pending case in this field in 2015 (*Lopez Lone et al. v. Honduras*) and the comparative report by the Venice Commission had been very useful. The Court gave the report serious consideration and adopted its final decision in the case concerned on 5 October 2015.

Mr Roberto Caldas, Vice-President of the Inter-American Court of Human Rights and President of the Court since 1 January 2016, participated in the December 2015 plenary session. It was the first intervention by the Court at a plenary session in Venice, and Mr Caldas stressed the need for international co-operation in the present context of democratic crisis and attacks on the independence of the judiciary. He also insisted on the need to encourage the application of international human rights standards at the national level.

The Inter-American Court of Human Rights affirmed its strong commitment to working with the Commission, through the continuation of the exchange of case-law and comparative reports, as well as through the participation in the different seminars and conferences which had largely contributed to the dissemination of the Inter-American Court case-law in the region.

#### International IDEA

The Secretary of the Commission acted as a keynote speaker at the Conference "Dealing with territorial cleavages in constitutional transitions" organised by International IDEA in Brussels on 29-30 September 2015.

#### International Ombudsman Institute

At the December 2015 plenary session, the Chairman of the European Chapter of the International Ombudsman Institute (IOI), informed the Commission about the threats which a number of European national ombudsman institutions had been facing in recent years (budget cuts, removal of powers, reduction of personnel, etc.). The Venice Commission was invited to take part in the on-going reflection on these threats and challenges.

13. For more information on the report please see Chapter II.2.

## 5.2. Constitutional Justice

In 2015 the Commission co-operated with the following international organisations active in the constitutional justice field:

- Association of Asian Constitutional Courts and Equivalent Institutions (AACC);
- Association of Constitutional Courts using the French Language (ACCPUF)[14] ;
- Conference of the Constitutional Control Organs of the Countries of New Democracy (CCCOCND);
- Conference of Constitutional Jurisdictions of Africa (CCJA);
- Conference of European Constitutional Courts (CECC)[15];
- Ibero-American Conference of Constitutional Justice (CIJC);
- Union of Arab Constitutional Courts and Councils (UACCC).

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

## 5.3. Elections, referendums and political parties

### Association of European Election Officials (ACEEEO)

At the invitation of the Secretary General of ACEEEO a Venice Commission representative participated in the 24th Annual Conference of the Association of European Election Officials (ACEEEO) which took place in Chişinău on 9-11 September 2015. The representative took part in a panel of experts on equal suffrage, a subject of one of the Round Tables of the conference. He spoke on the various subjects that were discussed at the initiative of the organisers, mainly on: electoral systems and their effects; electoral boundaries; the voting rights of voters residing abroad and voters belonging to minorities or vulnerable groups (women, disabled, dual citizens).

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

### Association of World Electoral Management Bodies (A-WEB)

On 17-18 August 2015, the Venice Commission took part in the 2nd Assembly of the Association of World Electoral Management Bodies (A-WEB), which took place in Punta Cana, Dominican Republic.

### Carter Center

Representatives from the Venice Commission were invited to participate in the Conference on "Human rights and election standards" organised by the Carter Center on 11-12 February 2015 in Atlanta, USA.

The conference provided an opportunity for a fruitful exchange of experiences of the different international organisations involved in electoral assistance and in election observation.

The session on the Survey of Global Human Rights Mechanisms and Election Standards concentrated on presenting the experience of international courts and treaty monitoring bodies, as well as that of special mandate holders, in addressing election related issues. The discussants presented different ideas on how the existing "case-law" of international bodies on electoral issues could be better used by the different institutions observing elections and drafting recommendations for national authorities on ways to improve the electoral legislation and practice. Special emphasis was put on the more effective ways of exchanging information between international organisations on their operation and on standards used.

During the session on Co-operation and Co-ordination between Election Observers and Human Rights Mechanisms, election observers and representatives of

human rights mechanisms reflected on their experiences collaborating with one another and sharing information, and considered ways to strengthen this relationship at the international level. Representatives of the OSCE/ODIHR and the Venice Commission informed the participants about the way our joint opinions on electoral legislation were used by PACE and OSCE-PA election-observation missions. The ways the Venice Commission monitored legal developments in countries which had received opinions on their legislation its co-operation with PACE election observation missions (both through specific briefings prepared before the mission and legal assistance during election observation in targeted countries) were presented.

Representatives of the EU and several other organisations (notably OAS) informed the meeting that they referred to some Venice Commission documents in the electoral field, notably the Code of good practice in electoral matters and the Guidelines on political parties.

In 2015 the Venice Commission held other exchanges with representatives of the Carter Center, notably in the framework of its assistance to the Organisation of Arab Electoral Management Bodies. The Commission looks forward to continuing this fruitful co-operation in 2016.

### International Centre for Political Studies (ICPS)

*Electoral Award*

On 14 November 2015, the Venice Commission received the International Institutional Engagement Award at the International Centre for Political Studies (ICPS) Electoral Awards Ceremony held in Puerto Vallarta (Mexico). It had also been shortlisted in the two other award categories it had applied for: Gender Equality and Minority Participation.

*International Electoral Affairs Symposium*

On 26-27 May 2015, an expert of the Venice Commission took part in the 10th International Electoral Affairs Symposium, organised by the ICPS) Montego Bay, Jamaica.

### International IDEA (Institute for Democracy and Electoral Assistance)

At its June 2015 meeting the Council for Democratic Elections granted the status of observer to International IDEA and established a co-operation framework with this organisation. From now on, International IDEA is invited to attend the meetings of the Council for Democratic Elections.

The Venice Commission participated in a conference on «Money and Politics», co-organised by the Federal Electoral Tribunal of Mexico and International IDEA from 3 to 5 September 2015 in Mexico, D.F. (See Chapter V.2).

### Organisation of American States

*Annual conference of the Electoral Management Bodies of Latin America*

See Chapter V.

*Organisation of Arab Electoral Management Bodies*

Venice Commission representatives were invited to participate in the official launching of the Regional Organisation of the Arab Electoral Management Bodies (hereinafter, Arab EMBs), which took place in Beirut, Lebanon on 8 – 9 June 2015.

For more detailed information see Chapter V on co-operation with Southern Mediterranean.

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


25
YEARS
VENICE
COMMISSION
Annual report
of activities 2014


THE VENICE COMMISSION
OF THE COUNCIL OF EUROPE

## Appendices

# THE VENICE COMMISSION: AN 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.[16] 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 2015, it had 60 full members and 13 other entities formally associated with its work. It is financed by its member states on a proportional basis which follows the same criteria as applied to the Council of Europe as a whole. This system guarantees the Commission's independence vis-à-vis those states which request its assistance.

16. 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

The Commission has the prime function of providing **constitutional assistance** to States, mainly, but not exclusively, those which participate in its activities.[17] 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 members of the Commission, at times assisted by

17. 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.

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 for improvement on the basis of the relevant specific experience gained by the members of the Commission in similar situations. Draft opinions are discussed and adopted by the Commission at one of its plenary sessions, usually in the presence of representatives of the country concerned. Following adoption, the opinions are transmitted to the State or the body which requested it, and come into the public domain.

The Commission's approach to advising states is based on dialogue with the authorities: the Commission does not attempt to impose solutions or abstract models; it 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. Previously, they took the form of scientific conferences under the Universities for Democracy (**UniDem**) programme, the proceedings of which were subsequently published in the **"Science and technique of democracy"** series.[18]

## 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.

18. See Appendix V.

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 2015, 98 constitutional courts and equivalent bodies had joined the World Conference as full members. The Venice Commission acts as the secretariat for the World Conference. At the Congress co-organised with the Constitutional Court of Republic of Korea, around 90 Courts discussed the challenges of social integration for constitutional justice.

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 9,000 decisions rendered by over 100 participating courts together with constitutions and descriptions of many courts and the laws governing them.[19] 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.



## 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 also relate to political parties, without which elections in keeping with Europe's electoral heritage are unthinkable.

In 2002, the Council for Democratic Elections was set up at the Parliamentary Assembly's request. This is a subordinate body of the Venice Commission comprising members of the Commission, the Parliamentary Assembly and the Congress of Local and Regional Authorities of the Council of Europe. The Council for Democratic Elections also includes an observer from the OSCE/ODIHR. In order to give electoral laws certain stability and to further the construction of a European electoral heritage, the Venice Commission and the Council of Democratic Elections developed the principles of the European electoral heritage, in particular by drafting the **Code of Good Practice in Electoral Matters** (2002), which is the Council of Europe's reference document in this field, and the **Code of Good Practice for Referendums** (2007),[20] **Guidelines on the international status of elections observers** (2009) and, in the field of political parties, the **Code of Good Practice in the field of Political parties** (2008). The other general documents concern such matters as recurrent challenges and problematic issues of electoral law and electoral administration, electoral law and national minorities, electoral systems, including thresholds, and women's representation in political systems. In the field of political parties, the Venice Commission has also drafted joint guidelines on political party regulation with OSCE/ODIHR, and addressed the prohibition, dissolution and financing of political parties,

19. CODICES is available on line (http://www.CODICES.coe.int).

20. 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.

as well the method of nomination of candidates in political parties. The Commission has adopted more than sixty studies or guidelines of a general nature in the field of elections, referendums and political parties.

The Commission has drafted more than 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 which regularly co-operate with the Commission in the electoral sphere are Albania, Armenia, Georgia, Republic of Moldova and Ukraine.

The Council for Democratic Elections has developed **regular co-operation with election authorities in Europe and on other continents**. It organises annually the European Conference of Electoral Management Bodies (the 12th edition took place in 2015 in Brussels), and is also in very close contact with other international organisations or bodies which work in the election field, such as ACEEEO (Association of European Election Officials), IFES (International Foundation for Electoral Systems) and, in particular, the OSCE (Organisation for Security and Co-operation in Europe). Thus, in principle, opinions on electoral matters are drafted jointly with the OSCE/ODIHR, with which there is exemplary co-operation.

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

The Council for Democratic Elections has created the VOTA[21] 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*).

21. VOTA is accessible on line: http://www.venice.coe.int/VOTA.

## 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, Southern Mediterranean and Latin America.

The Venice Commission has been working in **Central Asia** for over 10 years. This co-operation was possible in the framework of several bilateral and regional projects with funding provided by the European Union. The national institutions of Kazakhstan, Kyrgyzstan, Tajikistan and Uzbekistan were assisted in order to build their capacity to carry out reforms of their legal systems in line with European and international human rights standards, including the European Convention on Human Rights and the case-law of the European Court of Human Rights. Within the projects, the Venice Commission organised a number of events providing opportunities for exchanging views with the authorities of Central Asian States on topics such as constitutional justice, electoral reform and access to justice. All the countries of the Central Asian region are engaged in a constructive dialogue and the impact of concrete actions undertaken by the Commission has been constantly increasing.

The Commission actively co-operates with countries of ***Southern Mediterranean region***. It established contacts

with Arab countries even before the Arab Awakening and this farsightedness proved very useful. After the Arab spring the Commission established a very good co-operation with Morocco and Tunisia. Successful projects in these countries helped to establish and to develop a dialogue with other countries of the region such as Egypt, Jordan and Libya. In this respect 2013 was a crucial year since it provided the basis for exploring new possibilities for the Venice Commission's assistance to countries of Maghreb and Middle East. In 2015 the Commission launched the UniDem-Med programme.

***Latin American countries*** have always been interested in sharing experiences and best practices in such fields as democratic transition, constitution-building, constitutional justice and electoral legislation and practice with Europe. The Venice Commission became crucial for making such dialogue possible. In recent years the Commission with its partners in Brazil, Chile, Mexico and Peru prepared and successfully carried out activities and projects in the above-mentioned fields. Supported by the EU the Commission also successfully completed a project focussed on implementation of the new constitution in Bolivia in 2011 - 2012. The Commission created a specific Sub-Commission on Latin America which further developed dialogue on a number of issues in particular concerning fundamental rights, constitutional law, constitutional justice and elections.

## MEMBER COUNTRIES[22]

### 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

European Union
OSCE/ODIHR

### Special co-operation status

Palestinian National Authority
South Africa

22. As on 31.12.2015

## INDIVIDUAL MEMBERS[23]

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)

***

Ms Hanna SUCHOCKA (Poland), First Vice-President, Chair of Constitutional Law, Law Faculty, Adam Mickiewicz University
(Substitute: Mr Krzysztof DRZEWICKI, Associate Professor, University of Gdansk)

Ms Herdis KJERULF THORGEIRSDOTTIR (Iceland), Vice-President, Professor, President European Women Lawyers' Association, Faculty of Law, Bifrost University
(Substitute: Mr Thorgeir ORLYGSSON, Supreme Court Judge)

Mr Christoph GRABENWARTER (Austria), Vice-President, Judge, Constitutional Court
(Substitutes: Ms Katharina PABEL, Head of Department for Administrative Law and Administrative Studies, University of Linz
Mr Johannes SCHNIZER, Judge, Constitutional Court)

***

Mr Jan HELGESEN (Norway), Professor, University of Oslo
(Substitute: Mr Fredrik SEJERSTED, Professor, University of Oslo)

Mr Aivars ENDZINS (Latvia), Head of Department of Public Law, Turiba School of Business Administration, Former President, Constitutional Court
(Substitute: Mr Gunars KUTRIS, Former President, Constitutional Court)



Mr Kaarlo TUORI (Finland), Professor of Jurisprudence, University of Helsinki
(Substitute: Ms Elina PIRJATANNIEMI, Professor, Åbo Akademi University)

Mr Gaguik HARUTUNIAN (Armenia), President, Constitutional Court
(Substitute: Mr Grigor MURADYAN, First Deputy Minister of Justice)

Ms Lydie ERR (Luxembourg), Ombudsman
(Substitute: Mr Marc FISCHBACH, Former Ombudsman)

23. By order of seniority as of 31 December 2015.

Mr Lätif HÜSEYNOV (Azerbaijan), Professor of Public International Law, Baku State University

Mr Dominique CHAGNOLLAUD (Monaco), Member of the Supreme Court, Professor, University of Law, Economics and Social Science Paris II
(Substitute: Mr Christophe SOSSO, Defence Lawyer, Court of Appeal)

Mr Nicolae ESANU (Moldova), Deputy Minister of Justice
(Substitute: Mr Vladimir GROSU, Former Minister of Justice)

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

Mr Jan VELAERS (Belgium), Professor, University of Antwerp
(Substitute: Mr Jean-Claude SCHOLSEM (Belgium), Professor Emeritus, University of Liège)

Mr Srdjan DARMANOVIC (Montenegro), Ambassador of Montenegro to the United States of America
(Substitute: Mr Zoran PAZIN, Minister of Justice)

Mr Harry GSTÖHL (Liechtenstein), Former President of the Constitutional Court, Princely Justice Counsellor, Attorney at Law
(Substitute: Mr Wilfried HOOP, Partner, Hoop and Hoop)

Mr Jorgen Steen SORENSEN (Denmark), Parliamentary Ombudsman
(Substitute: Mr Michael Hansen JENSEN, Professor, University of Aarhus)

Ms Ivetta MACEJKOVA (Slovakia), President, Constitutional Court
(Substitute: Ms Jana BARICOVA, Judge, Supreme Court)

Mr Wolfgang HOFFMANN-RIEM (Germany), Former Judge, Federal Constitutional Court
(Substitute: Ms Monika HERMANNS, Justice, Federal Constitutional Court)

Mr Viktor GUMI (Albania), Lawyer, Lecturer at Magistrates School
(Substitute: Ms Edlira JORGAQI, General Director of Codification, Ministry of Justice)

Ms Gordana SILJANOVSKA-DAVKOVA («the former Yugoslav Republic of Macedonia»), Professor of law, University «Ss Cyril and Methodius»
(Substitutes: Mr Abdula ALIU, Professor, South East European University

Mr Adnan JASHARI, Professor, Member of Assembly)

Mr Evgeni TANCHEV (Bulgaria), Former President, Constitutional Court
(Substitute: Mr Plamen KIROV, Former Judge, Constitutional Court)

Mr Dan MERIDOR (Israel), Member of Parliament, Lawyer
(Substitute: Mr Barak MEDINA, Dean, Faculty of Law, the Hebrew University of Jerusalem)

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

M. Boualem BESSAÏH (Algeria), Former President, Constitutional Council
(Substitutes: M. Mohamed HABCHI, Former Member, Constitutional Council

Mr Hachemi ADALA, Member, Constitutional Council)

Ms Jasna OMEJEC (Croatia), President, Constitutional Court
Substitute: Mr Toma GALLI, Director, Directorate of International Law, Ministry of Foreign and European Affairs)

Ms Veronika BILKOVA (Czech Republic), Lecturer, Law Faculty, Charles University
(Substitute: Ms Katerina SIMACKOVA, Judge, Constitutional Court)

Mr Francesco MAIANI (San Marino), Assistant Professor, Swiss Graduate School of Public Administration
(Substitute: Ms Barbara REFFI, State Attorney)

Mr Richard CLAYTON QC, (United Kingdom), Barrister at Law
(Substitute: Mr Paul CRAIG, Professor of Law, University of Oxford)

Mr Ciril RIBICIC (Slovenia), Professor of Constitutional Law, University of Ljubljana, Former Justice and Vice President of the Constitutional Court
(Substitute: Ms Dragica WEDAM LUKIC, Professor, Faculty of Law, University of Ljubljana, Former Justice and President of the Constitutional Court)

Mr Ben VERMEULEN (The Netherlands), Professor of Constitutional, administrative and education law, University of Amsterdam
(Substitute: Mr Martin KUIJER, Senior Legal Adviser, Ministry of Security and Justice)

Mr Igor Ivanovich ROGOV (Kazakhstan), Chairman, Constitutional Council
(Substitute: Mr Talgat DONAKOV, Minister of Public Service)

Mr Sergii KIVALOV (Ukraine), Chairman, Committee on Justice, Verkhovna Rada of Ukraine
(Substitute: Mr Volodymyr PYLYPENKO, Member of Parliament)



Mr Oscar URVIOLA HANI (Peru), Former President, Constitutional Tribunal
(Substitute: Mr Carlos MESIA RAMIREZ, Member, Constitutional Tribunal)

Mr Milenko KRECA, (Serbia), Professor, Law Faculty, Belgrade University
(Substitute: Mr Vladan PETROV, Professor, Law Faculty, Belgrade University)

Mr Il-Won KANG, (Republic of Korea), Justice, Constitutional Court
(Substitute: Mr Joon Gyu KIM, Attorney)

Ms Sarah CLEVELAND (United States of America), Professor, Columbia Law School
(Substitute: Ms Evelyn M. ASWAD, Law Professor, University of Oklahoma, College of Law)

Ms Taliya KHABRIEVA (Russia), Director, Institute for Legislation and Comparative Law
(Substitute: Mr Vladimir LAFITSKY, Deputy Director, Institute for Legislation and Comparative Law)

Mr Michael FRENDO (Malta), Former Speaker, House of Representatives

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

Mr Zlatko KNEŽEVIĆ (Bosnia and Herzegovina), Vice-President, Constitutional Court
(Substitutes: Mr Nedim ADEMOVIC, Lawyer

Mr Marko BEVANDA, Assistant Professor, Faculty of law, University of Mostar)

Mr Andras Zs. VARGA (Hungary), Judge, Constitutional Court, Professor, Pázmány Péter Catholic University, Faculty of Law and Political Sciences
(Substitute: Mr Laszlo SZEKELY, Commissioner for Fundamental Rights)

Mr Juan José ROMERO GUZMAN (Chile), Judge, Constitutional Tribunal
(Substitute: Mr Domingo HERNANDEZ EMPARANZA, Judge, Constitutional Tribunal)

Mr Nikos ALIVIZATOS (Greece), Professor of Constitutional Law, Athens Law School
(Substitute: Ms Fani DASKALOPOULOU-LIVADA, International Law expert)

Mr José Alejandro LUNA RAMOS (Mexico), Chief Justice, Federal Electoral Tribunal[24]
(Substitutes: Ms Maria del Carmen ALANIS FIGUEROA, Justice, Federal Electoral Tribunal
Mr Manuel GONZALEZ OROPEZA, Justice, Federal Electoral Tribunal)

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

Mr Myron NICOLATOS (Cyprus), President, Supreme Court
(Substitute: Mr George EROTOCRITOU, Supreme Court Judge)

Mr Richard BARRETT (Ireland), Deputy Director General, Office of the Attorney General
(Substitute: Ms Grainne McMORROW, Senior Counsel)

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

Mr Josep Maria CASTELLA ANDREU (Spain), Professor of Constitutional Law, University of Barcelona
(Substitute: Ms Paloma BIGLINO CAMPOS, Full Professor of Constitutional Law, Valladolid University)

Mr Tudorel TOADER (Romania), Judge, Constitutional Court
(Substitute: Mr Bogdan AURESCU, Presidential Advisor for Foreign Policy)

24. Resigned on 25 November 2015. A new member has not yet been appointed.

Mr Omurbek TEKEBAYEV (Kyrgyzstan), Member of Parliament
(Substitute: Mr Daniyar NARYMBAYEV, Head of Presidential Administration)

Mr Ghazi JERIBI (Tunisia), Minister of national defence
(Substitute: Ms Neila CHAABANE, Secretary of State for Women and the Family)

Mr Enver HASANI (Kosovo), Former President, Constitutional Court
(Substitute: Ms Arta RAMA HAJRIZI, President, Constitutional Court)

Mr Enrique Ricardo LEWANDOWSKI (Brazil), President, Federal Supreme Court
(Substitute: Ms Carmen Lucia ANTUNES ROCHA, Judge, Federal Supreme Court)

Mr Joao CORREIA (Portugal), Lawyer
(Substitute: Mr Paulo PIMENTA, Professor, Universidad Portucalense)

Mr Khalid NACIRI (Morocco), Professor of Constitutional law, former Minister of Communication
(Substitute: Mr Ahmed ESSALMI, Professor of Constitutional Law, Law Faculty, Hassan II University Casablanca)

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

Mr Mindia UGREKHELIDZE (Georgia), Member of the State Constitutional Commission
(Substitute: Mr Alexander BARAMIDZE, First Deputy Minister of Justice)

Mr Pere VILANOVA TRIAS (Andorra), Professor of Political Science and Public Policy, University of Barcelona

## Associate members

Ms Olga G. SERGEEVA, (Belarus), Deputy Chair, Constitutional Court

## Observers

N.N. (Argentina)

N.N. (Canada)

Mr Vincenzo BUONOMO (Holy See), Professor of International Law, Latran University

Mr Shun KITAGAWA (Japan), Consul, Consulate General of Japan, Strasbourg

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

## Participants

European Union

*European Commission*

Mr Lucio GUSSETTI, Director, Legal Department

Mr Esa PAASIVIRTA, Legal Adviser

*Committee of the Regions*
Mr Luc VAN DEN BRANDE, President CIVEX

OSCE/ODIHR

Ms Beata MARTIN-ROZUMILOWICZ, Head of the Elections Department

Mr Marcin WALECKI, Head of the Democratisation Department

Ms Alice THOMAS, Head of Legislative Support Unit, Democratisation Department

## Special cooperation status

*Palestinian National Authority*
Mr Ali KHASHAN, Former Minister of Justice

*South Africa*
N. N.

## Secretariat

Mr Thomas MARKERT, Director, Secretary of the Commission
Ms Simona GRANATA-MENGHINI, Deputy Secretary of the Commission
Mr Pierre GARRONE, Head of the Division on Elections and Referendums
Mr Rudolf DÜRR, Head of the Division on Constitutional Justice
Ms Artemiza-Tatiana CHISCA, Head of the Division on Democratic Institutions and Fundamental Rights
Mr Serguei KOUZNETSOV, Head of the Division on Neighbourhood Co-operation
Ms Charlotte de BROUTELLES, Legal Officer
Ms Caroline MARTIN, Legal Officer
Ms Tanja GERWIEN, Legal Officer
Mr Grigory DIKOV, Legal Officer
Mr Gaël MARTIN-MICALLEF, Legal Officer
Ms Amaya UBEDA DE TORRES, Legal Officer
Mr Ziya Caga TANYAR, Legal Officer
Ms Tatiana MYCHELOVA, Public Relations Officer
Ms Svetlana ANISIMOVA, Project Manager
Ms Sandra MATRUNDOLA, Project Manager
Ms Helen MONKS, Financial Officer
Ms Brigitte AUBRY
Ms Ana GOREY
Mrs Caroline GODARD

Ms Jayne APARICIO
Mrs Marie-Louise WIGISHOFF
Ms Sorana OTETEA
Ms Rosy DI POL
Ms Isabelle SUDRES
Ms Ana GORYACHEVA
Ms Haifa ADDAD
Ms Isabelle JUNG

## Offices and sub-commissions[25]

**President:** Mr Buquicchio (Italy)

**Honorary President:** Mr Paczolay (Hungary)

**Bureau:**

- First Vice-President: Ms Suchocka
- Vice-Presidents: Mr Grabenwarter, Ms Kjerulf Thorgeirsdottir
- Members: Mr Endzins, Mr Harutyunian, Mr Kang, Ms Khabrieva
- **Scientific Council**: Chair: Mr Helgesen; Vice-Chair Mr Can;
- Members: Mr Buquicchio, Ms Suchocka; Mr Grabenwarter, Ms Kjerulf Thorgeirsdottir, Ms Bilkova, Mr Clayton, Ms Err, Mr Esanu, Mr Frendo, Mr Jeribi, Mr Kask, Ms Kiener, Mr Romero Guzman, Mr Tanchev, Mr Tuori, Mr Velaers, Mr Vermeulen, Ms Khabrieva.

### Council for Democratic Elections:

President: Mr Wienen (Congress of Local and Regional Authorities)

Vice-President: Mr Kask

Venice Commission - Members: Ms Alanis Figueroa, Mr Darmanovic, Mr Endzins, Mr Kask

(Substitutes: Mr Barrett, Ms Biglino Campos, Mr Craig, Mr Vermeulen)

Parliamentary Assembly - Members: Ms Durrieu, Lord Balfe, Mr Xucla

(Substitutes: Mr Frecon, Ms Beselia, Mr Kox)

Congress of local and regional authorities - Members: Mr Wienen, Mr Dickson)

25. From December 2015 to December 2017.

### Joint Council on Constitutional Justice:

Co-Chair: Mr Tanchev

Co-Chair (Liaison Officers): Ms Anne Rasson;

Members of the Sub-Commission on Constitutional Justice (see list of members below) as well as 90 liaison officers from 65 Constitutional Courts or Courts with equivalent jurisdiction.

## SUB-COMMISSIONS

### Constitutional Justice:

Co-Chair: Mr Tanchev;

Members: Ms Alanis Figueroa, Mr Can, Mr Gonzalez Oropeza, Mr Grabenwarter, Mr Gumi, Mr Harutyunian, Mr Huysenov, Mr Kang, Mr Kask, Ms Kjerulf Thorgeirsdottir, Ms Macejkova, Ms McMorrow, Mr Neppi Modona, Ms Omejec, Mr Pazin, Mr Ribicic, Ms Siljanovska-Davkova, Ms Simackova, Mr Varga as well as 90 liaison officers from 65 Constitutional Courts or Courts with equivalent jurisdiction.

### Federal State and Regional State:

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

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

### International Law:

Chair: Ms Bilkova; Vice-Chair: Mr Cameron;

Members: Mr Aurescu, Ms Cleveland, Mr Drzewicki, Mr Hasani, Mr Hüseynov, Mr Kreca, Mr Maiani, Ms Milasiute, Mr Pylypenko.



### Protection of Minorities:

Chair: Mr Velaers; Vice-Chair: Mr Knežević;

Members: Mr Aurescu, Mr Bartole, Mr Bessaïh, Mr Drzewicki, Mr Habchi, Mr Hasani, Mr Kreca, Ms McMorrow, Mr Scholsem, Ms Siljanovska-Davkova, Mr Tuori.

### Fundamental Rights:

Chair: Mr Vermeulen; Vice-Chair: Mr Alivizatos;

Members: Ms Alanis Figueroa, Mr Aurescu, Mr Barrett, Mr Cameron, Mr Can, Mr Clayton, Ms Cleveland, Mr Correia, Mr Drzewicki , Ms Err, Mr Esanu, Mr Gonzalez Oropeza, Mr Gstöhl, Mr Hasani, Mr Hirschfeldt, Mr Hoffmann-Riem, Mr Huseynov, Mr Kask, Ms Khabrieva, Ms Kjerulf Thorgeirsdottir, Mr Knežević, Mr Kuijer, Mr Maiani, Ms McMorrow, Mr Mesia Ramirez, Ms Milasiute, Ms Omejec, Mr Pazin, Mr Pylypenko, Mr Toader, Mr Tuori, Mr Velaers, Ms Wedam Lukic.

## Democratic Institutions:

Chair: Mr Frendo; Vice-Chair: Mr Meridor;

Members: Mr Bartole, Mr Cameron, Mr Darmanovic, Ms Err, Mr Esanu, Mr Gstöhl, Mr Hasani, Mr Hirschfeldt, Mr Hoffmann-Riem, Mr Jensen, Mr Kask, Ms Kiener, Mr Nicolatos, Mr Pylypenko, Mr Ribicic, Mr Scholsem, Ms Siljanovska-Davkova, Ms Suchocka, Mr Toader, Mr Tuori, Mr Velaers, Mr Vilanova Trias, Ms Wedam Lukic.

## Judiciary:

Chair: Mr Esanu; Vice-Chair: Mr Gstöhl;

Members: Mr Bartole, Mr Bessaih, Mr Correia, Ms Err, Mr Habchi, Mr Hasani, Mr Hirschfeldt, Mr Hoffmann-Riem, Mr Kang, Mr Kask, Ms Kiener, Mr Knežević, Mr Kreca, Mr Kuijer, Ms McMorrow, Mr Neppi Modona, Mr Nicolatos, Mr Pazin, Mr Pylypenko, Ms Siljanovska-Davkova, Ms Simackova, Mr Toader, Mr Tuori, Mr Ugrekhelidze, Mr Varga, Mr Velaers, Ms Wedam Lukic.

## Rule of Law:

Chair: Mr Tuori; Vice-Chair: Mr Hoffmann-Riem;

Members: Mr Bartole, Ms Bilkova, Ms Cleveland, Mr Craig, Mr Helgesen, Mr Holovaty, Mr Kivalov, Mr Kuijer, Mr Maiani, Ms McMorrow, Ms Milasiute, Mr Nicolatos, Mr Ugrekhelidze, Mr Vilanova Trias.

## Working Methods:

Chair: Mr Clayton; Vice-Chair: Mr Barrett;

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

## Latin America:

Chair: Mr Romero Guzman; Vice-Chair: Mr Lewandowski;

Members: Ms Alanis Figueroa, Ms Bilkova, Mr Buquicchio, Ms Cleveland, Mr Correia, Mr Darmanovic, Mr Gonzalez Oropeza, Mr Hirschfeldt, Ms Kjerulf Thorgeirsdottir, Mr Kuijer, Ms McMorrow, Mr Mesia Ramirez, Ms Siljanovska-Davkova.

## Mediterranean Basin:

Chair: Mr Jeribi; Vice-Chair: Mr Chagnollaud;

Members: Mr Frendo, Ms McMorrow.

## Gender Equality:

Chair: Ms Err; Vice-Chair: Ms Omejec;

Members: Ms Alanis Figueroa, Ms Chaabane, Mr Esanu, Ms McMorrow, Ms Milasiute.

# Publications

## *Series "Science and Technique of Democracy"*[26]

No.1 Meeting with the presidents of constitutional courts and other equivalent bodies[2, 27] (1993)

No.2 Models of constitutional jurisdiction* [28] (1993)

No.3 Constitution making as an instrument of democratic transition (1993)

No.4 Transition to a new model of economy and its constitutional reflections (1993)

No.5 The relationship between international and domestic law (1993)

No.6 The relationship between international and domestic law* (1993)

No.7 Rule of law and transition to a market economy[2] (1994)

No.8 Constitutional aspects of the transition to a market economy (1994)

No.9 The protection of minorities (1994)

No.10 The role of the constitutional court in the consolidation of the rule of law (1994)

No.11 The modern concept of confederation (1995)

No.12 Emergency powers* (1995)

No.13 Implementation of constitutional provisions regarding mass media in a pluralist democracy[2] (1995)

No.14 Constitutional justice and democracy by referendum (1996)

No.15 The protection of fundamental rights by the Constitutional Court* (1996)

No.16 Local self-government, territorial integrity and protection of minorities (1997)

No.17 Human Rights and the functioning of the democratic institutions in emergency situations (1997)

No.18 The constitutional heritage of Europe (1997)

26. Publications are also available in French unless otherwise indicated.
27. Publications marked with "2" contain speeches in the original language ( English or French).
28. 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)

No.23 Consequences of state succession for nationality (1998)

No.24 Law and foreign policy (1998)

No.25 New trends in electoral law in a pan-European context (1999)

No.26 The principle of respect for human dignity in European case-law (1999)

No.27 Federal and regional states in the perspective of European integration (1999)

No.28 The right to a fair trial (2000)

No.29 Societies in conflict: the contribution of law and democracy to conflict resolution[2] (2000)

No.30 European integration and constitutional law (2001)

No.31 Constitutional implications of accession to the European Union[2] (2002)

No.32 The protection of national minorities by their kin-State[2] (2002)

No.33 Democracy, rule of law and foreign policy[2] (2003)

No.34 Code of good practice in electoral matters* (2003)

No.35 The resolution of conflicts between the central state and entities with legislative power by the constitutional court[2] (2003)

No.36 Constitutional courts and European integration[4, 29] (2004)

No.37 European and U.S. constitutionalism[4] (2005)

No.38 State consolidation and national identity[4] (2005)

No.39 European standards of electoral law in contemporary constitutionalism[4] (2005)

No.40 Evaluation of fifteen years of constitutional practice in Central and Eastern Europe[4] * (2005)

No.41 Organisation of elections by an impartial body[4] (2006)

No.42 The status of international treaties on human rights[4] (2006)

29. Publications marked with "4" are available in English only.

No.43 The preconditions for a democratic election[4] (2006)

No.44 Can excessive length of proceedings be remedied? [4] (2007)

No.45 The participation of minorities in public life[4] (2008)

No.46 The cancellation of election results[4] (2010)

No.47 Blasphemy, insult and hatred[4] (2010)

No.48 Supervising electoral processes[4] (2010)

No.49 Definition of and development of human rights and popular sovereignty in Europe[4] (2011)

No.50 10 years of the Code of good practice in electoral matters[4] (2013)

## Other publications

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

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

Collection *"Europeans and their rights "*

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

Bulletin on Constitutional Case-Law

1993 - 2015 (three issues per year)

Special Bulletins

- Description of Courts (1999)*
- Basic texts - extracts from Constitutions and laws on Constitutional Courts - issues No.1-2 (1996), No. 3-4 (1997), No.5 (1998), No.6 (2001), No.7 (2007), No.8 (2011)
- Leading cases of the European Court of Human Rights (1998)*

- Freedom of religion and beliefs (1999)
- Leading cases 1 - Czech Republic, Denmark, Japan, Norway, Poland, Slovenia, Switzerland, Ukraine (2002)
- Leading cases 2 - Belgium, France, Hungary, Luxembourg, Romania, USA (2008)
- Inter-Court Relations (2003)
- Statute and functions of Secretary Generals of Constitutional courts (2006)
- Criteria for Human Rights Limitations by the Constitutional Court (2006)
- Legislative Omission (2008)
- State Powers (2012)
- Leading Cases ECJ (2013)
- Descriptions of Courts (2014)
- Co-operation between Constitutional Courts (2015)[1]

### Other titles

- Tackling blasphemy, insult and hatred in a democratic society (2008)
- Electoral Law (2008)
- Compilation of joint OSCE/ODIHR – Venice Commission Guidelines on Fundamental rights (2015)[2]
- Freedom of Association - joint OSCE/ODIHR – Venice Commission Guidelines (2015)
- European Conferences of Electoral Management Bodies:
    - 2nd Conference (Strasbourg 2005)
    - 3rd Conference (Moscow, 2006)
    - 4th Conference (Strasbourg, 2007)
    - 5th Conference (Brussels, 2008)
    - 6th and 7th Conference (The Hague, 2009 and London 2010)[3, 30]
    - 8th Conference on Elections in a changing world (Vienna, 2011)[3]



### Annual Reports

- 1993 – 2015

### Brochures

- 10th anniversary of the Venice Commission (2001)
- Revised Statute of the European Commission for Democracy through Law (2002)

30. Publications marked with "3" are available in electronic form only.

- UniDem (Universities for Democracy) Campus - Legal training for civil servants (2003)[4]
- 20th Anniversary - Publications (2010)
- Selected studies and reports (2010)
- Key Facts (2011)[*]
- Services provided by the Venice Commission to Constitutional Courts and equivalent bodies (2011)
- Code of Good Practice in Electoral Matters (2011)[*, 5, 31]
- Main reference texts of the Venice Commission (2013)[5]
- The Venice Commission of the Council of Europe (2014)[5]
- UniDem (Universities for Democracy) Campus for the Southern Mediterranean countries (2015)[5]
- Compilation of the Joint Guidelines on Fundamental Rights (2015)[5]



31. Publications marked with "5" are available also in Arabic.

# Documents adopted in 2015

## 102nd plenary session (Venice, 20-21 March 2015)

| | |
|---|---|
| CDL-AD(2015)001 | Report on Proportional Electoral Systems: the Allocation of Seats inside the Lists (open/closed lists) |
| CDL-AD(2015)002 | Final Opinion on the revised draft law on Special Public Prosecutor's office of Montenegro |
| CDL-AD(2015)003 | Final Opinion on the revised draft law on the Public Prosecution Office of Montenegro |
| CDL-AD(2015)004 | Opinion on the draft amendments to the media law of Montenegro |
| CDL-AD(2015)005 | Joint Opinion by the Venice Commission, the Directorate of Human Rights and the OSCE/ODIHR on the draft law on the prosecution service of the Republic of Moldova |
| CDL-AD(2015)006 | Update of the 2007 Report on the democratic oversight of the security services and report on democratic oversight of signals intelligence agencies |
| CDL-AD(2015)007 | Joint opinion by the Venice Commission and the Directorate of Human Rights of the Directorate General of Human Rights and the Rule of Law on the Law on the Judiciary and the Status of Judges and amendments to the Law on the High Council of Justice of Ukraine |
| CDL-AD(2015)008 | Preliminary Opinion on the draft law on the judicial system and the status of judges of Ukraine |
| CDL-AD(2015)009 | Opinion on the Citizens' bill on the regulation of public participation, citizens' bills, referendums and popular initiatives and amendments to the Provincial Electoral Law of the Autonomous Province of Trento (Italy) |
| CDL-AD(2015)010 | Report on the democratic oversight of the security services |
| CDL-AD(2015)011 | Report on the democratic oversight of signals intelligence agencies |



## 103rd plenary session (Venice, 19-20 June 2015)

| | |
|---|---|
| CDL-AD(2015)012 | Final Opinion on the Law on Government Cleansing (Lustration Law) of Ukraine as would result from the amendments submitted to the Verkhovna Rada on 21 April 2015 |
| CDL-AD(2015)013 | Opinion on draft constitutional amendments on the immunity of members of parliament and judges of Ukraine |

| | |
|---|---|
| CDL-AD(2015)014 | Joint Opinion[32] on the draft law «On introduction of changes and amendments to the Constitution» of the Kyrgyz Republic |
| CDL-AD(2015)015 | Opinion on media legislation (ACT CLXXXV on Media Services and on the Mass Media, Act CIV on the Freedom of the Press, and the Legislation on Taxation of Advertisement Revenues of Mass Media) of Hungary |
| CDL-AD(2015)016 | Amicus Curiae Brief for the Constitutional Court of Georgia on the *non ultra petita* rule in criminal cases |
| CDL-AD(2015)017 | Opinion on the Law on the People's Advocate (Ombudsman) of the Republic of Moldova |
| CDL-AD(2015)018 | Report on the freedom of expression of judges |
| CDL-AD(2015)019 | Preliminary Report on exclusion of offenders from parliament |
| CDL-AD(2015)020 | Report on the method of nomination of candidates within political parties |

## 104th plenary session (Venice, 23-24 October 2015)[33]

| | |
|---|---|
| CDL-AD(2015)022 | Opinion on the draft act to amend and supplement the Constitution (in the field of the judiciary) of the Republic of Bulgaria |
| CDL-AD(2015)023 | Opinion on the Rules of Procedure of the Constitutional Chamber of the Supreme Court of the Kyrgyz Republic |
| CDL-AD(2015)024 | Opinion on the draft institutional law on the Constitutional Court of Tunisia |
| CDL-AD(2015)025 | Joint Opinion on the draft amendments to some legislative acts concerning prevention and fight against political corruption of Ukraine |
| CDL-AD(2015)026 | Opinion on the amendments to the Constitution of Ukraine regarding the judiciary as proposed by the Working Group of the Constitutional Commission in July 2015 |
| CDL-AD(2015)027 | Opinion on the proposed amendments to the Constitution of Ukraine regarding the judiciary as approved by the Constitutional Commission on 4 September 2015 |
| CDL-AD(2015)028 | Opinion on the amendments to the Constitution of Ukraine regarding the territorial structure and local administration as proposed by the Working Group of the Constitutional Commission in June 2015 |
| CDL-AD(2015)029 | Secretariat Memorandum on the compatibility of the draft law on amending the constitution of Ukraine as to decentralization of power as submitted by the Verkhovna Rada to the Constitutional Court of Ukraine on 16 July 2015 (CDL-REF(2015)035) with the Opinion on the amendments to the Constitution of Ukraine regarding the territorial structure and local |

32. "Joint Opinion" refers to opinions drafted jointly by the Venice Commission and the OSCE/ODIHR unless specified otherwise.
33. For technical reasons, no document was issued under CDL-AD(2016)021.

| | |
|---|---|
| | administration as proposed by the Working Group of the Constitutional Commission in June 2015 (CDL-AD(2015)028) |
| CDL-AD(2015)030 | Opinion on the temporal validity of draft transitional provision 18 of the Constitution of Ukraine |
| CDL-AD(2015)031 | Interim Opinion on the draft law on integrity checking of Ukraine |
| CDL-AD(2015)032 | Interim Opinion on the institutional aspects of the draft law on special procedures concerning reconciliation in the economic and financial fields of Tunisia |
| CDL-AD(2015)033 | Opinion on the draft amendments to the Law on minority rights and freedom of Montenegro |
| CDL-AD(2015)034 | Opinion on the draft law on ombudsman for human rights of Bosnia and Herzegovina |
| CDL-AD(2015)035 | Joint Opinion of the Venice Commission and the Directorate General of Human Rights and Rule of Law (DGI) of the Council of Europe on the draft amendments to the law on the human rights defender of the Republic of Armenia |
| CDL-AD(2015)036 | Report on exclusion of offenders from parliament |
| CDL-AD(2015)037 | First Opinion on the draft amendments to the Constitution (Chapters 1 to 7 and 10) of the Republic of Armenia |
| CDL-AD(2015)038 | Second Opinion on the draft amendments to the Constitution (in particular to Chapters 8, 9, 11 to 16) of the Republic of Armenia |
| CDL-AD(2015)039 | Joint Opinion of the Venice Commission, the Consultative Council of European Prosecutors (CCPE) and the OSCE Office for Democratic Institutions and Human Rights (OSCE/ODIHR), on the draft amendments to the Law on the prosecutor's office of Georgia |

## 105th plenary session (Venice, 18-19 December 2015)

| | |
|---|---|
| CDL-AD(2015)040 | Summary report on voters residing de facto abroad |
| CDL-AD(2015)041 | Joint Interim Opinion on the Law of Ukraine on the Condemnation of the Communist and National Socialist (Nazi) Regimes and Prohibition of Propaganda of their Symbols |
| CDL-AD(2015)042 | Opinion on the Laws on the Disciplinary Liability and on Evaluation of Judges of «the former Yugoslav Republic of Macedonia» |
| CDL-AD(2015)043 | Secretariat Memorandum on the compatibility of the draft law of Ukraine on amending the Constitution of Ukraine as to justice as submitted by the President to the Verkhovna Rada on 25 November 2015 (CDL-REF(2015)047) with the Venice Commission's Opinion on the proposed amendments to the Constitution of Ukraine regarding the judiciary as approved by the Constitutional Commission on 4 September 2015 (CDL-AD(2015)027) |
| CDL-AD(2015)044 | Revised Rules of procedure |
| CDL-AD(2015)045 | Interim Opinion on the draft constitutional amendments on the judiciary of Albania |

## Members – 61

Albania (1996), Algeria (2007), Andorra (2000), Armenia (2001), Austria (1990), Azerbaijan (2001), Belgium (1990), Bosnia and Herzegovina (2002), Brazil (2009), Bulgaria (1992), Chile (2005), Costa Rica (2016), Croatia (1997), Cyprus (1990), Czech Republic (1994), Denmark (1990), Estonia (1995), Finland (1990), France (1990), Georgia (1999), Germany (1990), Greece (1990), Hungary (1990), Iceland (1993), Ireland (1990), Israel (2008), Italy (1990), Kazakhstan (2011), Republic of Korea (2006), Kosovo (2014), Kyrgyzstan (2004), Latvia (1995), Liechtenstein (1991), Lithuania (1994), Luxembourg (1990), Malta (1990), Mexico (2010), Republic of Moldova (1996), Monaco (2004), Montenegro (2006), Morocco (2007), Netherlands (1992), Norway (1990), Peru (2009), Poland (1992), Portugal (1990), Romania (1994), Russian Federation (2002), San Marino (1990), Serbia (2003), Slovakia (1993), Slovenia (1994), Spain (1990), Sweden (1990), Switzerland (1990), "the former Yugoslav Republic of Macedonia" (1996), Tunisia (2010), Turkey (1990), Ukraine (1997), United Kingdom (1999), United States (2013)

## Associate member

Belarus (1994)

## Observers – 5

Argentina (1995), Canada (1991), Holy See (1992), Japan (1993), Uruguay (1995)

## Participants – 2

European Union, OSCE/ODIHR

## Special co-operation status – 2

Palestinian National Authority, South Africa

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