

ANNUAL REPORT OF ACTIVITIES 2021



European Commission
for Democracy through Law

Council of Europe, 2022

Venice Commission



**EUROPEAN COMMISSION
FOR DEMOCRACY THROUGH LAW**

VENICE COMMISSION
OF THE COUNCIL OF EUROPE

ANNUAL REPORT OF ACTIVITIES 2021

The European Commission
for Democracy through Law
(Venice Commission)

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I. 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. Its members are independent experts.

Set up in 1990 under a partial agreement between 18 Council of Europe member states, it subsequently played a decisive role in the adoption and implementation of constitutions in keeping with Europe's constitutional heritage.¹

The Commission holds four plenary sessions a year in Venice. In 2002, once all Council of Europe member states had joined, the Commission became an enlarged agreement, opening its doors to non-European states, which could then become full members. In 2021 it had **62 full members** and **15 other entities** formally associated with its work. The Commission is financed by its member states on a proportional basis, which guarantees the Commission's independence *vis-à-vis* those states which request its assistance.

1. Constitutional and legislative assistance to specific countries

The Commission's prime function is to provide constitutional assistance to member States.² This assistance comes in the form of Opinions. These Opinions relate to draft constitutions or constitutional amendments, or to other draft or existing legislation. The Venice Commission Opinions on specific countries cover a wide range of topics: the system **of checks and balances**, and the relations amongst different branches of power, the **territorial organisation** of the States, **fundamental rights and freedoms**, organisation of the bodies of the **constitutional justice**, the governance of the **judiciary** and of the **prosecution service**, status and powers of **ombudspersons**, reforms of the **electoral system**, regulations on the **political parties** and **referendums**, etc. At the request of a constitutional court or the European Court of

Human Rights, the Commission may also provide **amicus curiae briefs** on comparative constitutional and international law issues related to a case under consideration.

The aim of the assistance given by the Venice Commission is to provide a complete, precise, and objective analysis of the compatibility of laws and constitutional provisions with European and international standards, but also of the practicality and viability of the solutions envisaged by the states concerned.

As concerns the working methods, the Commission's Opinions are prepared either at the request of States or at the request of organs of the Council of Europe, more specifically the Parliamentary Assembly, the Committee of Ministers, the Congress of Local and Regional Authorities and the Secretary General, as well as of other international organisations or bodies which participate in its activities.

Draft opinions are prepared by a working group composed of members of the Commission, sometimes with the assistance of external experts. It is common practice for the working group to travel to the country concerned in order to hold meetings and discussions on the issue(s) concerned with the national authorities, other stakeholders, and the civil society. In 2021, due to the pandemic, a number of country visits were replaced with online meetings, but the Commission gradually returns to the practice of the country visits. Draft opinions are discussed and adopted by the Commission at one of its plenary sessions, usually in the presence of representatives of the country concerned. Following their adoption by the Plenary, the Opinions are published.

The Commission's approach to advising states is based on **dialogue** with the authorities: the Commission does not attempt to impose solutions or abstract models; it prefers to acquire an understanding of the aims pursued by the legal text in question, the surrounding political and legal **context** and the issues involved.

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**. Thus, it adopted reports on a possible convention on the rights of minorities, on "kin minorities", on the independence of the judiciary and the prosecution service, on individual access to constitutional

¹ 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.

² 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.

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, etc. Most importantly, the Commission elaborated a comprehensive **Rule of Law Checklist** as a tool for assessing the degree of respect for this major standard in any country. Another example of a general report are the **Parameters on the relationship between the parliamentary majority and the opposition**. The Committee of Ministers endorsed these documents and called on member States to use and widely disseminate them. In the electoral field the Venice Commission and the Council for Democratic Elections drafted the **Code of Good Practice in Electoral Matters**, the **Code of Good Practice for Referendums**, and, in the field of political parties, the **Code of Good Practice in the field of Political parties**, and joint guidelines on political party regulation with the OSCE/ODIHR.

3. Constitutional justice

Besides assisting States in adopting democratic constitutions and conducting legal reforms of the constitutional importance, the Commission assists the countries with the implementation of the constitutional and legislative framework.

This is why **constitutional justice** is one of the main fields of activity of the Commission. The Commission's activities in this field are supervised by the **Joint Council on Constitutional Justice**. This body is made up of members of the Commission and liaison officers appointed by participating courts in the Commission's member, associate and observer states, by the European Court of Human Rights, the Court of Justice of the European Union and the Inter-American Court of Human Rights.

Since 1996, the Commission has established co-operation with a number of regional or language-based groups of constitutional courts.³ The Commission provides secretarial assistance to the World Conference on Constitutional Justice (WCCJ) and regularly organises global Congresses of the

³ In particular, the Conference of European Constitutional Courts, the Association of Francophone Constitutional Courts, the Southern African Chief Justices' Forum, the Eurasian Association of Constitutional Review Bodies, 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.

World Conference (in 2009 in the South Africa, in 2011 in Brazil; 2014 in South Korea, 2017 in Lithuania). The Supreme Court of Sweden joined the WCCJ last year, bringing the total number of members to 118 in December 2021. The 5th Congress of the WCCJ on the topic "Constitutional Justice and Peace" will be hosted by the Constitutional Court of Indonesia in Bali on 4-7 October 2022.

Since 1993, the Commission publishes the **Bulletin on Constitutional Case-Law** (now in electronic format) with the summaries in French and English of the most significant decisions of constitutional courts over a four-month period. It also has a counterpart, the **CODICES database**, which contains more than 10,000 decisions rendered by over 100 participating courts. These publications had played a vital "cross-fertilisation" role in constitutional case-law.

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 been the most active Council of Europe body, leaving aside election observation operations. The Council for Democratic Elections was set up at the Parliamentary Assembly's request in 2002. 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, and an observer from the OSCE/ODIHR.

The Council for Democratic Elections developed regular co-operation with election authorities in Europe and on other continents. It organises annually the European Conference of Electoral Management Bodies (due to the Covid pandemic, the last EMB Conference was an online public event organised in November 2020 in Strasbourg) and is also in very close contact with other international organisations or bodies which work in the election field.⁴

⁴ 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 regular co-operation.

The Council for Democratic Elections created the VOTA 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. The Commission has adopted more than sixty studies or guidelines of a general nature in the field of elections, referendums and political parties.

5. Neighbourhood policy

The Commission is a unique international body **which facilitates dialogue between countries on different continents**. Since 2002 several non-European countries became full members of the Commission. The new statute and the financial support provided by the EU and several Council of Europe member states made it possible to develop full-scale co-operation programmes with Central Asia, Southern Mediterranean, and Latin America.

The Venice Commission has been working in Central Asia for over 10 years. The national institutions of Kazakhstan, Kyrgyzstan, Tajikistan, and Uzbekistan were assisted to carry out their legal reforms in line with European and international standards in the areas of constitutional justice, reform of the electoral legislation and practice, and access to justice. In 2020 the Commission started the implementation of a new regional project in the region, which will give an opportunity to intensify co-operation in several areas with its partners in Central Asia.

The Commission actively co-operates with countries of the Southern Mediterranean region. 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 Algeria, Egypt, Jordan, Lebanon, and Libya. In 2015 the Commission launched the UniDem-Med programme and assisted in the establishment of the Conference of Arab Election Management Bodies. Since 2019 the Commission is actively involved in the projects of assistance to Tunisia focusing on independent bodies and the reform of the judiciary. The authorities of Algeria, Egypt, Lebanon, and Palestine⁵ participated in different multilateral activities organised by the Venice Commission.

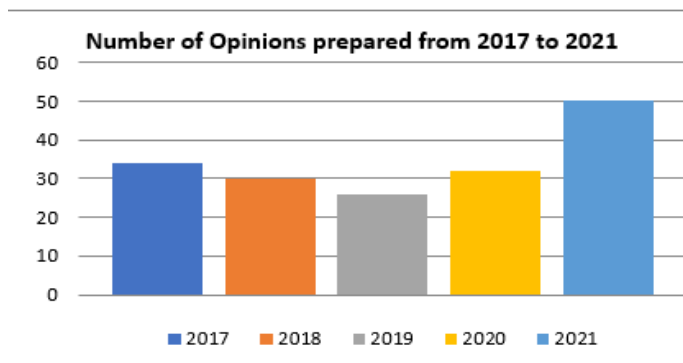
⁵ This designation shall not be construed as recognition of a State of Palestine and is without prejudice to the individual positions of Council of Europe member States on this issue.

Latin American countries have always been interested in sharing experiences and best practices with Europe, in such fields as democratic transition, constitution-building, constitutional justice and electoral legislation and practice. Supported by the EU, the Commission successfully completed a project on the implementation of the new constitution in Bolivia. The Commission enjoys fruitful co-operation with the Electoral Tribunal of the Judicial Power of the Mexican Federation and the Mexican National Electoral Institute. Since 2017 the Venice Commission has been co-operating with the Organization of American States (OAS). In the past years the Commission co-organised activities in the electoral field in Argentina and Mexico and prepared an Opinion on the question of confidence upon request from the Peruvian authorities, as well as an Opinion on the constituent assembly of Venezuela, at the request of the OAS.

II. 2021 HIGHLIGHTS

1. 2021 in figures: the output of the Commission and new working methods

Since the beginning of the pandemic in 2020, the number of requests for legal Opinions of the Venice Commission has steadily increased, and this trend became quite remarkable in 2021, when 50 Opinions were prepared, compared to 32 Opinions prepared in 2020, 26 Opinions in 2019, 30 in 2018, and 21 in 2017.



Of the 47 Opinions and 3 *amicus curiae* briefs prepared in 2021, which concerned 23 countries (**Albania, Armenia, Belarus⁶, Bosnia and Herzegovina, Cyprus, Georgia, Hungary, Kazakhstan, Kosovo, Kyrgyzstan, Malta, Republic of Moldova, Montenegro, Netherlands, North Macedonia, Romania, Russian Federation⁷, Serbia, Slovakia, Spain, Turkey⁸, Ukraine, United Kingdom**), 36 were requested by the national authorities or institutions. In several cases the requests concerned subsequent versions of the same legal texts, revised in light of the Venice Commission's recommendations and sent back for final advice (constitutional amendments in **Serbia**, electoral reform in **Serbia**, reform of the prosecution service in **Montenegro**, reform of the law on common courts in **Georgia**, reform of the election code in **Georgia**).

Two Opinion requests were made by the OSCE/ODIHR, with which the Venice Commission has established a mechanism of automatic joint preparation of Opinions

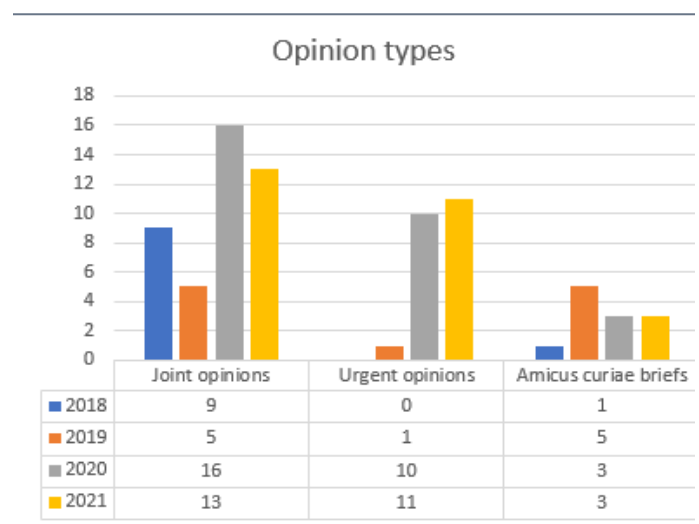
⁶ On 23 March 2022, the Committee of Ministers of the Council of Europe decided to suspend the participation of Belarus as associate member in the work of the Venice Commission.

⁷ On 16 March 2022, the Committee of Ministers of the Council of Europe decided, in the context of the procedure launched under Article 8 of the Statute of the Council of Europe, that the Russian Federation ceases to be a member of the Council of Europe. On 23 March 2022, the Committee of Ministers decided that the Russian Federation ceases to be a member of the Venice Commission.

⁸ On 3 June 2022, the country officially changed its name to the "Republic of Türkiye".

in the field of electoral law and referendums when a request is received by either organisation (in the absence of objections by the requesting authority).

Twelve Opinions were prepared at the request of the Parliamentary Assembly of the Council of Europe (PACE). This represents a lower proportion in respect of the total number of requests, but not a lower number of requests compared to previous years. The requests made by PACE concerned sensitive and important issues, including constitutional reforms in the **Russian Federation, Serbia and Hungary**, the citizens' security law in **Spain**, prohibition of discrimination in **Hungary**, freedom of assembly in **Belarus**, freedom of association in the **Russian Federation** and **Turkey**.



Eleven Opinions were prepared jointly either with other CoE services (notably the Directorate General of Human Rights and Rule of Law, which usually co-authors the Opinions in the field of the judiciary) or with other international organisations (OSCE/ODIHR in the field of elections and referendums).

Since the start of the pandemic, the Secretariat had organised the work in a manner which enabled to respond to all the Opinion requests received but the Covid-19 restrictions have impacted the procedures: missions have been replaced with virtual meetings, but in parallel written exchanges with the authorities but also civil society and other interlocutors have been organised. Whenever possible, in-country missions were resumed.

In 2021, 11 Opinions were issued through the urgent procedure. This procedure was formalised by the Venice Commission in 2018 with a view to enabling the Commission to respond to urgent

Opinion requests when the authorities argued that the domestic procedure could not be interrupted until the following plenary session. Requests for urgent Opinions have increased since then, but the Commission requires an explanation of the urgency and accepts only those which are genuinely undelayable and only when the available time is sufficient to a meaningful analysis, resorting otherwise to the ordinary procedure. Urgent Opinions are issued and made public outside plenary sessions and are subsequently merely endorsed by the Commission. The Commission's readiness to respond to urgent Opinion requests testifies of its flexibility and constructiveness; it is perhaps the first reason for the recent increase in Opinion requests. There are, nonetheless, two major limits to conceding the urgency: first, the Commission's working methods require an extensive in-country consultation of representatives of the authorities, the opposition, the stakeholders, independent state institutions, civil society; missions to the country concerned (or on-line) require preparation and time and can only rarely be waived. Second, the resources of the Commission Secretariat are very limited and already very stretched. In addition, urgent Opinions are not discussed at plenary sessions in the presence of all members (even if they are adopted through a quite extensive written procedure) and the authorities have a more limited opportunity of submitting their comments. The Commission is, therefore, rather reluctant to accept urgent requests.

The first plenary session of 2021 was held exclusively online, the three others were held in a hybrid form. Several international events were held online, and Commission members participated in several hearings of the Parliamentary Assembly and in online events.

All Opinions adopted in 2021 were the object of debates in parliament and of national and international media coverage. Several of them were referred to and upheld by the Parliamentary Assembly, the Committee of Ministers, the Secretary General, the Congress of Regional and Local Authorities and the EU (including in the Yearly Rule of Law report of the European Commission). Several Opinions were totally or partly reflected in the adopted legislation. Detailed information is available on the Venice Commission's website - www.venice.coe.int.

2. Main topics dealt with in 2021

In 2021, the Venice Commission examined constitutional systems of checks and balances (constitutional amendments in the Russian Federation and in Kyrgyzstan), interrelation between the national and the international law (Ukraine), operational autonomy of the Parliament vis-à-vis the Constitutional Court (Republic of Moldova), distribution of powers during the emergency regime (North Macedonia), and the principles of transitional justice on the occupied territories (Ukraine). The Commission also repeatedly examined the quality of the law-making procedure which led to the adoption of the legislation under consideration. It raised concerns that some countries modified their legislation or even conducted constitutional reforms in an expedite procedure and/or with little or no public consultation (Kyrgyzstan, Republic of Moldova, Hungary, Montenegro, Malta, the Russian Federation, Turkey, and Ukraine). In general, respect for the basic principles of the rule of law and democracy is a recurrent theme in the Venice Commission's Opinions, even those which are otherwise focused on more specific topics (such as the organisation of judiciary or the human rights, for example).

The Venice Commission assisted Albania, Bosnia and Herzegovina, Cyprus, Hungary, Kosovo, Kyrgyzstan, Republic of Moldova, Montenegro, Serbia, Romania, Ukraine with Opinions on reform of their judicial systems. Recognising the dangers of corporatism, corruption, and of the lack of accountability, the Commission insisted on judicial independence. A common feature was the re-organisation of judicial or prosecutorial councils. Other issues were appropriate anti-deadlock mechanisms, more transparent case allocation systems, judges' probationary periods, functional immunity, and secondment rules. As concerns the vetting of judges and prosecutors, the Commission insisted on the principles of integrity and independence and endorsed a temporary vetting body with international participation in an Opinion for Ukraine. The Commission assisted five countries (Bosnia and Herzegovina, Serbia, Kosovo, Montenegro, and Moldova) with Opinions on the reform of their prosecution service. The Commission clarified that its position on the composition of the prosecutorial council and on the presence and powers of *ex officio* members depends on the concrete assessment of several factors specific to each particular country.

Five Opinions concerned Ombudsman institutions (Armenia, Kazakhstan, Hungary, Republic of Moldova, and the United Kingdom) and were based on the Commission's Principles on the Protection and Promotion of the Ombudsman Institution ("Venice Principles"), which, after being endorsed by the Committee of Ministers and by the Parliamentary Assembly of the Council of Europe, were endorsed in December 2020 by United Nations General Assembly in its Resolution A/RES/75/186 on "The role of Ombudsman and mediator institutions in the promotion and protection of human rights, good governance and the rule of law".

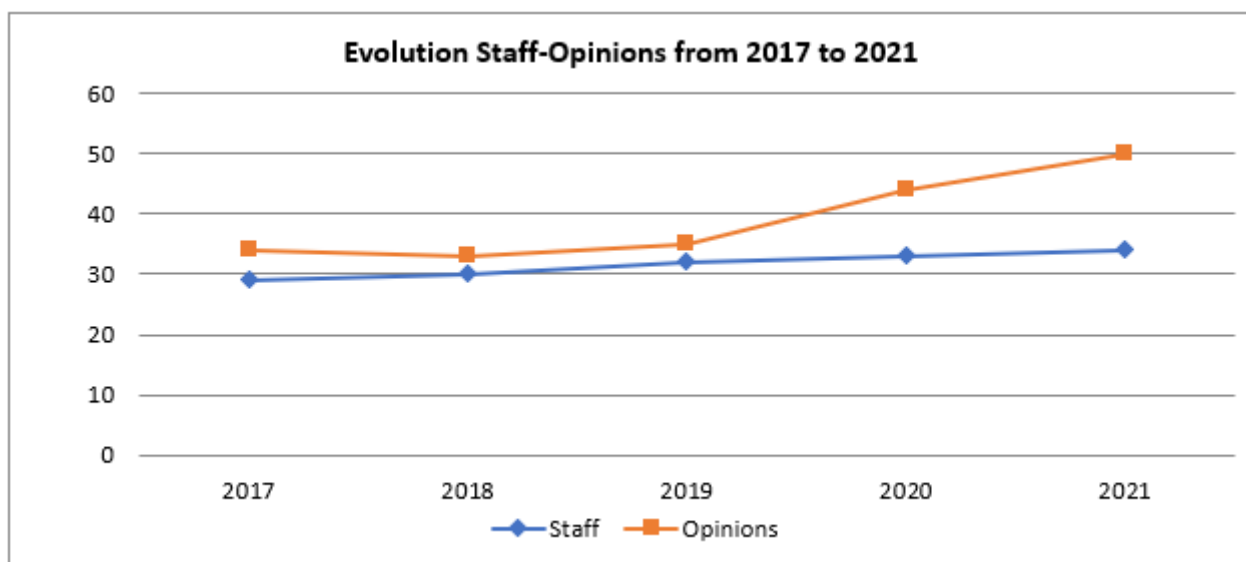
In 2021 the Commission continued to work on the legislation affecting fundamental rights and freedoms. Several Opinions concerned limitations (constitutional or legislative) on the freedom of expression (and, in particular, on the freedom of political speech), and the freedom of association or peaceful assembly (Belarus, the Russian Federation, Kyrgyzstan, Spain, Turkey). Equality, non-discrimination, and the rights of the minorities were discussed in the Opinions on North Macedonia, the Russian Federation, Hungary and the Republic of Moldova.

The Venice Commission provided Opinions and *amicus curiae* briefs on electoral legislation, including issues of referendums and political parties for Albania, Armenia, Georgia, Hungary, Serbia and Ukraine. Issues discussed were appeals against the results of local elections, the need to clearly define various types of referendums, signature authentication, the competence to control referendum questions, and the need to provide objective information to voters.

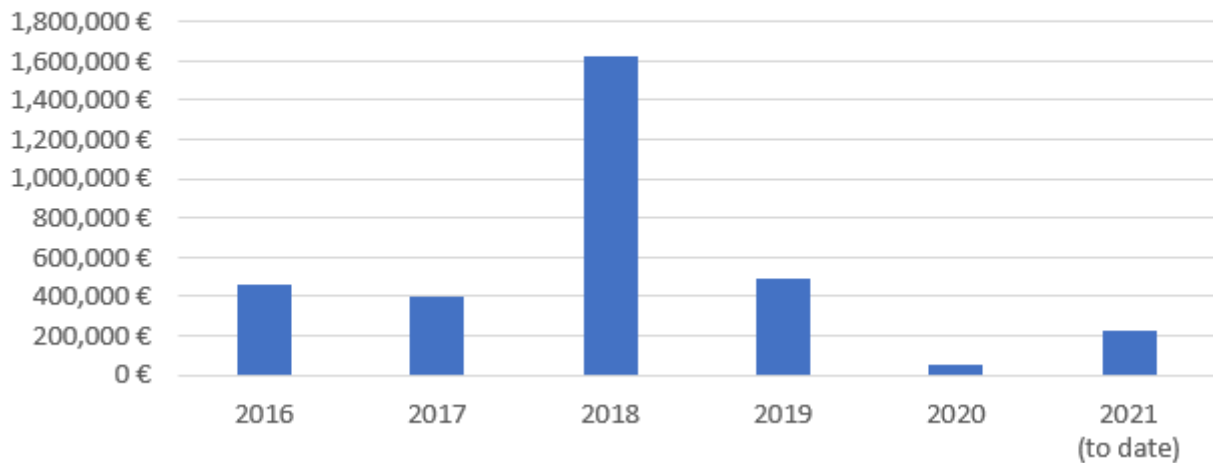
The Conference of Electoral Management Bodies discussed *inter alia* the holding of elections during emergency situations.

Re-establishment of the constitutional courts or the re-definition of their competencies was at the heart of Opinions for Cyprus, Kazakhstan, Kyrgyzstan and Ukraine. In the framework of the World Conference on Constitutional Justice, uniting 118 Constitutional Courts and equivalent bodies worldwide, the Commission cooperated with regional and language-based groups of courts, such as the European, African, Asian, Eurasian and French Speaking groups. Supporting this co-operation, the Commission's Joint Council on Constitutional Justice also worked on the publication of the e-Bulletin on Constitutional Case-Law and the CODICES database.

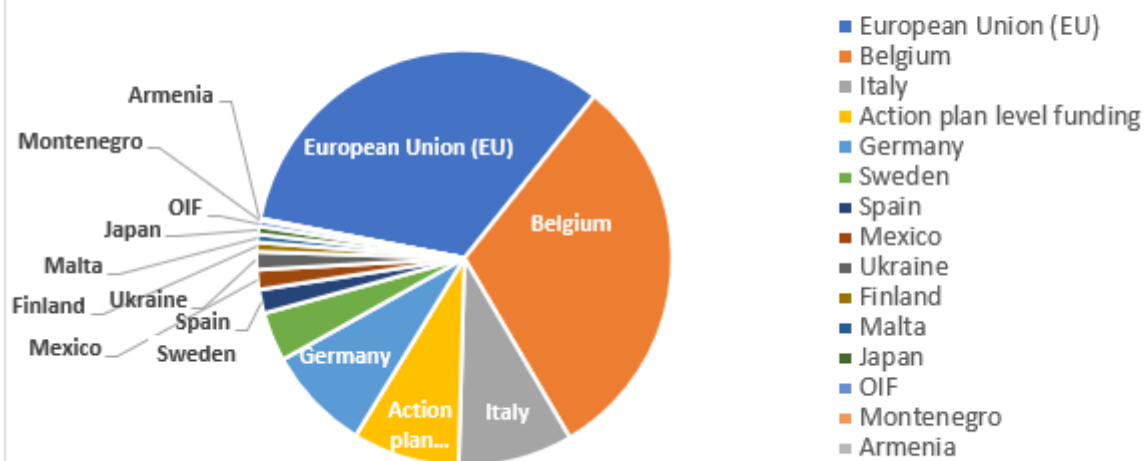
A number of Opinions adopted in 2021 concerned electoral systems and regulations on political parties (Opinion on Georgia focusing on the impartiality of electoral administration; an urgent Opinion on Armenia examining stability of electoral law; Opinion on Hungary concentrated on the manner of adoption of electoral legislation and the sudden and dramatic increase of the number of single-member constituencies; Opinion on Ukraine on the elections and referendums in occupied territories; *amicus curiae* brief for the Constitutional Court of Albania on the validity of the local elections; two urgent Opinions on the legislation on referendums and on the people's initiative of Serbia). Several Opinions dealt with the regulations on political parties and their participation in the political life (two Opinions on Georgia examining sanctions against parties not taking part in the work of the



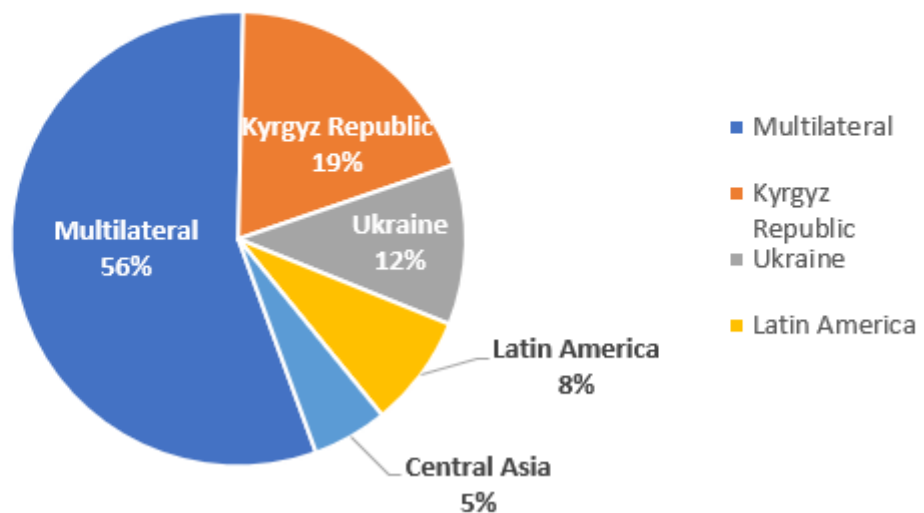
Voluntary contribution payments to Venice Commission projects 2016-2021



Voluntary contribution payments to the Venice Commission 2016-2021 per donor



Geographical distribution of funding for the work of the Venice Commission 2016-2021



Parliament and the revocation of party registration; Opinion on Ukraine, prepared jointly with OSCE/ODIHR, regarding the process of registration and functioning of political parties).

In 2021, in the light of the spike of Opinion requests, priority had to be given to the preparation of Opinions, and general reports were, thus, put on hold. The preparation of the study on the ratification and denunciation of international treaties was, nevertheless, launched, one comparative research published, with a view to the adoption of guidelines at the beginning of 2022. One important compilation on law-making procedures and the quality of the law was adopted, and more compilations (including on election dispute resolution, political parties, gender equality and on ombudsman institutions) were updated.

The Venice Commission continued its successful co-operation with its non-European partners. It organised UniDem Med Campus seminars on good governance, notably in the context of the Covid-19 pandemic. The Commission worked on ombudsman institutions in the framework of its co-operation with Latin American countries. In Central Asia, the Commission worked on judicial reform and the ombudsman institution.

3. Budget and staff

The Commission's budget in 2021 was € 4279.3 K (with an increase of +1.3% over 2020, to compensate inflation on member states' contributions).

The Commission also benefited from several voluntary contributions, of which a prominent part is devoted to non-European countries (including non-member States).

The Venice Commission staff in 2021 was 34 agents, 24 on the ordinary budget and the other financed through extrabudgetary contributions. Ms Simona Granata-Menghini was appointed as Director, Secretary of the Venice Commission on 1 February 2021, and Mr Schnutz Dürr was appointed as Deputy Secretary of the Commission on 1 August 2021.

4. Structure of the Venice Commission

Elections were held in December 2021 to the official positions on the Venice Commission. The Commission elected **Ms Claire Bazy Malaurie** (member in respect of France) as **President** for a term of two years.

The Commission further elected for a two-year term:

Vice - Presidents	M. Frendo (Malta), A. Nussberger (Germany), H. Thorgeirsdottir (Iceland)
Bureau members	P. Carozza (USA), P. Dimitrov (Bulgaria), S. Holovaty (Ukraine), R. Kiener (Switzerland)

Chairs and Vice-Chairs of the Sub Commissions:

Fundamental Rights	Chair - J. Velaers (Belgium); Vice-Chair - V. Petrov (Serbia)
Federal State and Regional State	Chair – T. Khabrieva (the Russian Federation), Vice-Chair – P. Vilanova Trias (Andorra)
International Law	Chair - I. Cameron (Sweden), Vice-Chair – F. Maiani (San Marino)
Protection of National Minorities	Chair - Q. Qerimi (Kosovo); Vice-Chair – Mr A. Lavinš (Latvia)
Judiciary	Chair - R. Barrett (Ireland); Vice-Chair – A. Gaspar (Portugal)
Democratic Institutions	Chair – N. Alivizatos (Greece); Vice-Chair - D. Meridor (Israel)
Working methods	Chair – W. Newman (Canada); Vice-Chair - S.T. Lee (South Korea)

Latin America	Chair – J-L. Vargas Valdez (Mexico); Vice-Chair – A. Ferrero Costa (Peru)
Mediterranean Basin	Chair – M. Nicolatos (Cyprus); Vice-Chair – G. Jeribi (Tunisia)
Rule of law	Chair – V. Bílková (Czech Republic); Vice-Chair – J. Omejec (Croatia)
Gender Equality	Chair – T. Otty (UK); Vice-Chair – N. Bernoussi (Morocco)
Ombudsman institutions	Chair – J. Helgesen (Norway); Vice-Chair: Igor I. Rogov (Kazakhstan)
Constitutional Justice	Chair – Z. Knezević (BiH); Vice-Chair - A. Varga (Hungary)
Co-President of the Joint Council on Constitutional Justice	Z. Knezević (Bosnia and Herzegovina)
Chair of the Scientific Council	B. Mathieu (Monaco); Vice-Chair – P. Bussjäger (Liechtenstein)

The Commission nominated Gianni Buquicchio, who had presided over the Commission since 2009, as its **Special Representative**.

5. Evaluation of the Venice Commission

In 2021, the Venice Commission was the object of an evaluation commissioned by the Directorate of Internal Oversight (DIO) of the Council of Europe and carried out by the Centre for Strategy & Evaluation Services (CSES). The purpose of the evaluation was to assess the extent to which the Venice Commission has and continues to achieve its objectives. The more specific aims were to evaluate:

- The extent to which the work of the Venice Commission is relevant to its various stakeholders;

- How effective the Venice Commission has been in achieving the objectives and expected results as outlined in the Programme and Budget documents 2016-2021;

- How efficient the Venice Commission has been in implementing its programme of activity;

- The impacts that the Venice Commission has contributed to respectively at the Council of Europe and member state level since it was founded 30 years ago.

The report, which will contain a set of specific conclusions and recommendations will be published in 2022 together with the management response and action plan in respect of the recommendations.

VENICE COMMISSION OF THE COUNCIL OF EUROPE KEY FACTS



ESTABLISHMENT



10 MAY 1990

by

18



Council of Europe member States

TO DATE

62 MEMBER STATES

INCLUDING
15 NON
Council of Europe
MEMBERS



4 observer
countries and
1 associate member

+ 2 countries with special
cooperation authorisation

+ 9 countries beneficiaries of
cooperation programmes



CLOSE COOPERATION WITH
EU, OSCE/ODIHR and OAS
3 INTERNATIONAL ORGANISATIONS
PARTICIPATING IN THE WORK OF THE COMMISSION

ADOPTION

of



1070

COUNTRY-SPECIFIC
OPINIONS + GENERAL
REPORTS

ORGANISATION

of over



100

INTERNATIONAL
CONFERENCES

TRAINING



- human rights
- rule of law
- good governance
- electoral administration and justice

WORLD CONFERENCE ON CONSTITUTIONAL JUSTICE*



*SINCE 2009

COURTS

118

MEMBERS

NUMBER OF JUDGMENTS
IN CODICES DATABASE
OVER

11,250

EUROPEAN COURT OF HUMAN RIGHTS

references to Venice Commission
in over

250 JUDGMENTS
AND DECISIONS*

* Since 2001



requests for

7 **amicus curiae**
BRIEFS**

**Since 2005

IN 2021

The Venice
Commission **adopted** 50 **DOCUMENTS**
for 23 countries
11 according to the urgent procedure

6 **OPINIONS** on constitutional
texts and issues concerning

- Hungary
- Kyrgyzstan
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- Serbia

41 **OPINIONS** on (draft)
legislative texts and
other legal issues

3 **AMICUS CURIAE**
BRIEFS

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It (co)organised

26 EVENTS



to

9 ELECTION OBSERVATION
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PARLIAMENTARY ASSEMBLY



CONSTITUTIONAL CASE LAW

published

3 BULLETINS
on
Constitutional
Case-Law

responded to

19 REQUESTS FOR
COMPARATIVE
INFORMATION
by constitutional
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III. OPINIONS AND REPORTS

1. Rule of law, checks and balances, democratic institutions

The process of the legislative and constitutional reforms

In a number of Opinions, the Venice Commission examined the quality of the law-making procedure which led to the adoption of the legislation under consideration.

Thus, in an Opinion on **Turkey** [CDL-AD\(2021\)023cor](#) the Commission noted with regret that the legislative amendments were fast tracked, which limited the possibility of civil society and other interested stakeholders to provide meaningful input. In Opinion [CDL-AD\(2021\)047](#) on the **Republic of Moldova** the Venice Commission expressed regret that an important legislative reform affecting the organisation of the prosecution service was adopted during the holiday period. In an Opinion on **Hungary** [CDL-AD\(2021\)029](#) the Commission noted with concern that the constitutional amendments were adopted during a state of emergency, without any public consultation, and that the explanatory memorandum consisted of only three pages. In an Opinion on the **Montenegro** [CDL-AD\(2021\)012](#) the Venice Commission encouraged the authorities to submit draft amendments modifying the institutional design of a prosecution service to a meaningful public discussion, involving all major stakeholders and experts. A similar recommendation was made in an Opinion on **Malta** [CDL-AD\(2021\)021](#). In Opinion [CDL-AD\(2021\)038](#) on **Ukraine** the Venice Commission noted with regret that certain categories of persons directly concerned by the draft law, mainly those living in the eastern provinces of Ukraine and in the Autonomous Republic of Crimea and the city of Sevastopol, might have had a rather limited possibility to take part in the discussion about the draft law.

As stressed in the Opinion on the draft constitution of **Kyrgyzstan** [CDL-AD\(2021\)007](#), adoption of a new constitution should always be accompanied by meaningful and inclusive public consultations and debate in parliament, facilitating the consensus of all key stakeholders. A similar position was expressed in the Opinion on constitutional amendments to the **Russian** Constitution [CDL-AD\(2021\)005](#). In a nutshell, the process of constitutional amendment should be even more deliberative than the process of adoption of ordinary laws.

In the same Opinion on the constitutional amendments in the **Russian Federation** [CDL-AD\(2021\)005](#) the Venice Commission discussed the question of the involvement of the constitutional assembly in the process of amendment of the Constitution. While the proposed changes did not affect formally the chapters of the Constitution which required such assembly to be convened, these amendments affected those chapters in substance. The Opinion also criticised the adoption of the amendments to the Constitution by an *ad hoc* procedure which involved a plebiscite and a decision of the Constitutional Court: the constitutional status of those procedures was unclear, and the normal procedure of constitutional amendment was not followed.

A recurrent concern in the Opinions of the Venice Commission was the danger of institutional reforms which pursue the goal of replacing (or maintaining) certain individuals in key positions, rather than improving the institutional models of legal mechanisms in general: the danger of *ad hominem* reforms was stressed in an Opinion on **Montenegro** [CDL-AD\(2021\)012](#) and on **Russian Federation** [CDL-AD\(2021\)005](#).

In an *amicus curiae* brief for the Constitutional Court of the **Republic of Moldova** [CDL-AD\(2021\)016](#) the Venice Commission examined the question of the autonomy of Parliament in establishing its internal procedural rules and the powers of the Constitutional Court to review the law-making procedures in Parliament. The Commission concluded that, as a rule, a Constitutional Court should not rely in its analysis on norms that are not constitutional, but of a lower (legislative) level, unless the Constitution itself or an entrenched legislation explicitly gives the Court this competency. A Constitutional Court may, at the same time, give a *de facto* effect to certain rules contained in the Rules of Procedure of the Parliament if it decides that these rules are dictated by the Constitution. However, it should not try to enforce each and every rule contained in the Rules of Procedure, because the Constitution may sometimes only set a minimal standard and let the legislator choose amongst different possible ways of putting this standard into practice.

Checks and balances between the executive and the legislative powers

Several Opinions adopted in 2021 dealt with the constitutional amendments affecting the balance of powers in the constitutional design. In an interim Opinion on the amendments to the **Russian** Constitution [CDL-AD\(2021\)005](#) the Venice Commission concluded that the amendments had disproportionately strengthened the position of the President of the **Russian Federation** and had done away with some of the checks and balances originally foreseen in the Constitution. The Venice Commission noted the *ad hominem* exclusion from the term limits of the current and previous Presidents, and the unusually wide scope of immunity, which, taken together with rules of impeachment, would put an excessive limit on the accountability of the President. The Venice Commission was also critical of the shift of powers from the Chairman of the Government to the President of the country, and of the strengthening of the President's influence within the Federation Council related to the increase in the number of Senators appointed by the President. That would undermine the monitoring functions entrusted to the Council by the Constitution. The Commission also objected against the President's power to initiate the dismissal of apex court presidents on the basis of a very vague ground.

The Opinion on the draft constitution of **Kyrgyzstan** [CDL-AD\(2021\)007](#) examined the proposal to establish a presidential model of governance and move away from the parliamentary model to which the **Kyrgyz Republic** has been progressing from 2010 to date. While there is no single best model of democratic governance, the Venice Commission deplored a weakened role of the Parliament and potential encroachments on judicial independence under the draft constitution. The Commission recommended completely reconsidering the powers of the President to single-handedly appoint and dismiss almost the entire administration of the state and/or key office-holders (including Cabinet of Ministers, Prosecutor General, Ombudsman for Children's rights, etc.) as well as his/her role in the selection and dismissal of judges of the courts; also removing the President's power to dissolve local councils and requiring the President to consult the Constitutional Court beforehand powers, and restricting the President's power to initiate laws and referendums.

The Commission advocated for stronger oversight capacities of the Parliament in the budgetary sphere, recommended the constitutional entrenchment of the main features of the electoral system and warned against the system of "recall" of the MPs. The Opinion also contained recommendations regarding the organisation of the judiciary.

Interrelation between the national and the international law

A number of Opinions adopted by the Venice Commission in 2021 examined tensions which may exist between the national legal orders and the international law.

Opinion [CDL-AD\(2021\)038](#) on **Ukraine** examined a complex issue of the possibility for the national legislator to regulate matters which are the subject-matter of the international law. The draft law under consideration in that Opinion would establish a general legal framework during the transitional period in the regions of Ukraine which are not under *de facto* jurisdiction of **Ukraine** at present. The draft contained many general and vague provisions, which sounded more like policy guidance. It was therefore difficult to understand their scope and the legal effect. The Commission also noted that the transitional justice – which is at the heart of the draft law - is a holistic concept which must address the crimes and human rights violations perpetrated by all the parties to the conflict and aim for reconciliation. The Commission also noted that international law is an autonomous legal order, so individual States cannot unilaterally in their legislation give binding definitions of the concepts of international law – or, at least it should be made clear that the draft law reflects the Ukrainian understanding of international law. The Commission also recommended to reflect the special constitutional status of the Autonomous Republic of Crimea and the city of Sevastopol in the draft law. Over time, the Commission concluded, it may be necessary to adapt the law to changing circumstances in the territories concerned.

The question of election on the territories which are not under the *de facto* jurisdiction of **Ukraine** was also analysed in Opinion [CDL-AD\(2021\)045](#) on **Ukraine**, analysed below, in the sub-section on free elections.

In Opinion [CDL-AD\(2021\)043](#) on **Cyprus**, the Venice Commission analysed three bills reforming the judiciary. A specific feature of the Cypriot legal

order, which had to be addressed in the Opinion, was a gap between the *de jure* constitutional order of the country and the *de facto* situation which resulted from the partition of the island. The Venice Commission acknowledged a difficult balance which the legislator must find in conducting institutional reforms in a situation when certain constitutional mechanisms are not operating in practice.

Emergency regimes

Emergency regimes and exceptional powers of the executive remained in the focus of the Venice Commission's attention in 2021, largely due to the COVID-19 pandemic. In 2020 the Venice Commission started collecting information about the member States' responses to the emergency situations (see [CDL-AD\(2021\)038](#)) and issued two reports addressing the difficult question about the balance between the principles of democracy, rule of law and respect for fundamental rights, on one hand, and the need to efficiently combat the pandemic and reorganise the functioning of the state institutions and the society as a whole, on the other: [CDL-AD\(2020\)014](#), Report - Respect for democracy, human rights and the rule of law during states of emergency: reflections, and [CDL-AD\(2020\)018](#), Interim Report on the measures taken in the EU member States as a result of the Covid-19 crisis and their impact on democracy, the Rule of Law and Fundamental Rights.

In 2021 the Commission assessed specific provisions on the states of emergency on several occasions. In an Opinion on **Hungary** ([CDL-AD\(2021\)029](#)) the Commission warned against expedited adoption of constitutional amendments during a state of emergency. The Commission also noted that the articles amending the constitutional provisions relating to declarations of war, control of the Hungarian Defense Forces, and the "special legal order" that pertains to state of war, state of emergency and state of danger mainly leave the specification of most details to Cardinal Acts, which could eventually raise some serious questions regarding the scope of the powers of the State during states of exception. As concerns the abolition of the National Defense Council and the entrusting of its powers to the Government – which is less broadly representative – while it is not contrary as such to European standards it leads to a concentration of emergency powers in the hands of the executive.

In Opinion [CDL-AD\(2021\)007](#) on the draft constitution of Kyrgyzstan, the Commission discussed which rights could be defined as non-derogable in the emergency situation. In the Opinion on **North Macedonia** [CDL-AD\(2021\)040](#), the Commission again turned to the definition of non-derogable rights. It noted that certain rights – such as the prohibition of torture – are indeed absolute and cannot be curtailed even during the state of emergency. By contrast, manifestations of the religious beliefs – such as public ceremonies – may be legitimately curtailed during the pandemic.

In the same Opinion on **North Macedonia** [CDL-AD\(2021\)040](#) the Commission examined institutional arrangements during the state of emergency. It noted that there is always a risk that the Government's exceptional powers may be abused. This is why it is so important to adopt a framework law which would put limits to the Government's powers during the state of emergency and would guide the *ex post* oversight by the Parliament and the courts. Amongst other recommendations, the Commission stressed that the President could have the right to declare the state of emergency only if the Assembly is incapable of meeting for objective reasons, and that the power of the Government to adopt decree-laws has to be expressly limited in the law to issues directly related to the emergency situation, and such decree-laws should be subject to the control by the Parliament, and that the Constitutional Court should review the constitutionality of the decree-laws and their compliance with the framework law on the state of emergency (the draft law under consideration) but not the compliance of the decree-laws with the ordinary legislation.

Temporarily occupied territories

The Opinion on the draft law "On the Principles of State Policy of the Transition Period" of **Ukraine** [CDL-AD\(2021\)038](#) addressed a text intended to provide the general legal framework for measures to be taken in the temporarily occupied territories during the transitional period, both in the Donetsk and Luhansk oblasts and the Autonomous Republic of Crimea and the city of Sevastopol. The Opinion acknowledged that the draft law had been prepared through an inclusive process, but it recommended that the people directly concerned be more involved in the further stages. The Opinion also noted that the draft included definitions of terms which were not always congruent to the respective terms used in public international law. In particular, the definitions of the central terms of "transitional period"

and “transitional justice” were rather narrowly conceived and took a one-sided approach to the transitional period. According to international standards transitional justice was a holistic concept which must address the crimes and human rights violations perpetrated by all the parties to the conflict and aim for reconciliation. The Opinion included a number of specific recommendations which called for clearer and more precise regulations to ensure they comply with international standards. *Inter alia*, the provisions on liability for criminal offences committed in connection with the temporary occupation (which were potentially discriminatory), on disqualification/lustration (which needed to take into account the relevant case-law of the European Court of Human Rights and previous Opinions of the Venice Commission), on the right to truth and on con-validation of civil status acts and other official documents which were fulfilled in the temporarily occupied territories (which needed to include a human rights perspective) should be substantially amended.

Ombudsman institutions

Several Opinions dealt with the organisation and powers of the Ombudsman institutions in the member States.

Opinion [CDL-AD\(2021\)017](#) on the **Republic of Moldova** examined a draft law aimed at introducing an Ombudsman for the rights of entrepreneurs: the Commission reiterated the importance of defining very clearly the fields of competences of this new Advocate, and more precisely with regard to the private sector and recommended a constitutional amendment in order to require a qualified majority for the election of the Ombudsman.

In Opinion [CDL-AD\(2021\)035](#) on **Armenia**, the Commission examined the Ombudsman’s staff regulations and recalled the autonomy of the recruitment processes, staff members’ career evolution and position ranking should be guaranteed to secure the independence of the institution.

In Opinion [CDL-AD\(2021\)041](#) on the **United Kingdom**, the Commission analysed relevant parts of Health and Care Bill which provided for a possible exclusion of the Parliamentary ombudsman from “safe spaces” created by the Bill. The Commission concluded that this option would be at odd with the Venice Principles which guaranteed unrestricted access of the Ombudsman to any document or building.

The Opinion [CDL-AD\(2021\)049](#) dealt with a draft law on the Commissioner of Human Rights of **Kazakhstan**. The Commission recommended including private entities which deliver public services in the jurisdiction of the Commissioner, limiting the exemptions of jurisdiction, clarifying the jurisdiction over the judiciary, and adding the promotion of human rights in the mandate of the Commissioner. With regard to the election of the Commissioner, a public and transparent selection procedure comprising public call, testing and shortlisting, an election by qualified majority by Parliament, a longer term of office and preferably a non-renewable term of office was recommended. The dismissal of the Commissioner should also require a qualified majority by Parliament. The Commission further called for stronger investigations powers for the Commissioner and that the Commissioner proposes the budget of the institution for the coming year.

Opinion [CDL-AD\(2021\)034](#) on **Hungary** dealt with the functioning of the national human rights institution. The Commission observed with satisfaction that the Commissioner for Fundamental Rights was autonomous in the matters related to the staff and the budget of the institution. However, there were risks associated with the merger of the equality bodies with the national human rights institutions.

Finally, the Opinion on the draft constitution of **Kyrgyzstan** [CDL-AD\(2021\)007](#) recommended to provide guarantees of institutional independence of the Ombudsman.

Constitutional justice

As in previous years, in 2021 the Venice Commission dealt with the organisation of the constitutional courts and their role in the national legal orders.

Thus, it published a revised Report on individual access to constitutional justice [CDL-AD\(2021\)001](#), which examined the recent experiences of **Algeria, Hungary, Lithuania, Morocco, Tunisia, Turkey** and **Ukraine** in expanding individual access to constitutional courts. In this report the Venice Commission expressed support to the model of full constitutional complaints, while stressing the drawbacks of the mechanisms of a normative constitutional complaint or *actio popularis*. It also stressed that while indirect access to individual

justice is a very important tool for ensuring respect for individual human rights at the constitutional level, it should only be seen as a complementary process to direct access.

Opinion [CDL-AD\(2021\)006](#) on **Ukraine** was triggered by a constitutional crisis created by the decision of the Constitutional Court which had invalidated large parts of the anti-corruption legislation in force. The 2021 draft law changed the regulations of constitutional proceedings, publicity of constitutional proceedings, formation of senates and boards and distribution of cases, access to case materials, and the disciplinary responsibility of judges. The Commission made recommendations *inter alia* on the initiation of disciplinary proceedings and on the introduction of the ability of the Constitutional Court to review its own decisions in the event one of its judges involved in the decision was condemned by a final instance for bribery connected to that decision.

In the Opinion on the Concept paper for improving the legal framework of the Constitutional Council of **Kazakhstan** [CDL-AD\(2021\)010](#), the Commission welcomed the idea of introducing a more intensive review of the constitutionality of laws and other regulatory acts, which would provide for the right of parties to the proceedings to request ordinary courts to introduce a referral to the Constitutional Council. For the Commission, the benefit of doubt should be always for the referral of the question to the Constitutional Council. The Commission called for the simplification of the referral procedure and for the possibility for a chamber of the Council to issue inadmissibility decisions in a written procedure.

The *amicus curiae* for the Constitutional Court of the **Republic of Moldova** [CDL-AD\(2021\)016](#), described above, examined the extent of the powers of the Constitutional Court to review the law-making procedures in Parliament. In Opinion [CDL-AD\(2021\)021](#) on **Malta** the Venice Commission stressed that the Constitutional Court's decisions are final and binding and oblige Parliament to repeal/amend the provisions found unconstitutional and to follow the interpretation given by the Constitutional Court. Parliament has nonetheless the power to amend the Constitution to provide for a different interpretation from that provided by the Constitutional Court, provided that the procedure for constitutional amendment is duly followed. The qualified majority, required under the Maltese Constitution for constitutional amendment, entails that a broad consensus needs to be found between the parliamentary majority and the opposition,

giving the latter the power to participate, supervise and even block the decision on the amendment. Achieving the result of a constitutional amendment in a procedure which requires a simple majority would defeat the purpose of the supermajority requirement in the Constitution. To read the interpretative power of Parliament so widely as to enable it to be used as an alternative to having to use the amendment procedures would open the way for the government of the day easily to circumvent individual rights and other protections set out in the Constitution.

2. Fundamental rights and freedoms

Operation of the human rights norms – general questions

In 2021 the Venice Commission repeatedly turned to the general questions related to the operation of provisions on human rights in the national constitutions and legislation.

In Opinion [CDL-AD\(2021\)007](#) on **Kyrgyzstan**, the Commission examined the general limitation clause, common to all human rights provisions of the draft Constitution of the **Kyrgyz Republic**. The Opinion stressed that the proportionality principle should be placed in the context of “a democratic society”, and that the enjoyment of fundamental rights should not be conditioned upon the fulfilment of civic duties.

In Opinion [CDL-AD\(2021\)040](#) on **North Macedonia** the Commission examined rights which are defined in the Constitution of **North Macedonia** as “irrevocable” and noted that some of those rights – in particular, the freedom of religion – cannot be treated as absolute: absence of an explicit limitation clause may only stress the special place these freedoms have in the constitutional order.

A recurrent theme in the Opinions of the Venice Commission was the question of precision/vagueness of the domestic legal or constitutional norms affecting human rights. In the Opinion on **Serbia** [CDL-AD\(2021\)033](#), the Commission stressed that it is unavoidable that a legislator uses open-ended formulas to a certain degree, in order to ensure the necessary flexibility. In essence, the focus should be not on the vagueness of the respective provisions as such, but rather on the independence and the technical expertise of the body which would interpret and apply them. A similar conclusion was reached in Opinion [CDL-AD\(2021\)015](#) on **Bosnia and Herzegovina**. The question of clarity of legislative provisions was also raised in Opinion

[CDL-AD\(2021\)004](#) on the Citizens' Security Law of **Spain**, where the Commission stressed that clarity and foreseeability of the law was particularly important in the criminal law sphere, and that "quasi-criminal" offences and/or coercive powers of the police should be described in the Law with more precision. In an Opinion on **Hungary** [CDL-AD\(2021\)050](#), the Commission underlined that the question of the clarity of law should be decided not in abstracto, but with reference to the specific context: thus, in the criminal-law sphere the legislative provisions addressed to every individual should be more precise. More general provisions of the law may be developed in the by-laws or in the judicial or administrative practice, in order to make their application more predictable.

In the same Opinion on **Spain** [CDL-AD\(2021\)004](#) the Venice Commission argued that if a statutory norm was likely to lead to abuses in practice, this norm should be changed, circumscribed, or accompanied by additional safeguards, even if in theory it may be seen as constitutionally acceptable. The Venice Commission encouraged the legislator to carry out an in-depth assessment of the practical operation of the law and its impact on human rights and freedoms. Given the "repressive potential" of that law, such review should be conducted regularly.

Right to life, fair trial, and personal liberty

In 2021 the right to life and the prohibition of torture were invoked by the Venice Commission in two Opinions, both in the context of treatment of migrants: Opinion [CDL-AD\(2021\)007](#) on **Kyrgyzstan**, and Opinion [CDL-AD\(2021\)004](#) on **Spain** where the Venice Commission examined the practice of mass rejection of aliens at the Spanish border in the autonomous towns of Ceuta and Melilla.

A number of Opinions issued in 2021 touched upon various aspects of the right to a fair trial or right to personal liberty: Opinion [CDL-AD\(2021\)007](#) on **Kyrgyzstan** where the importance of the right of the continuous judicial control over the detention was stressed, and Opinion [CDL-AD\(2021\)036](#) on **Hungary** which dealt *inter alia* with the rules on allocation of cases, which should prevent the risk of manipulation or arbitrariness in the allocation of a case to a specific judge. In essence, in the latter Opinion the Commission opined that Article 6 enshrines "the right to a lawful judge".

In Opinion [CDL-AD\(2021\)004](#) on **Spain** the Venice Commission observed that some of the penalties related to the breach of public order could be characterised as "criminal". Therefore, the procedure in which they were imposed should satisfy some basic requirements of fair trial. The presumption of truthfulness of the reports of the police, the immediate enforceability of heavy fines and the lack of entitlement to legal aid counsel weakened the position of the defendants vis-à-vis the State.

The Opinion on **Georgia** [CDL-AD\(2021\)011](#) examined the question of immediate enforceability of decisions taken by a telecom and media regulatory authority. The concept of immediate effect of certain administrative decisions is common to a number of European jurisdictions, but the law gave to the regulatory authority overly broad and vaguely defined powers: the contested mechanism would be acceptable only if there was a meaningful and timely judicial review of the decisions of the regulatory authority.

Freedom of religion

Several Opinions adopted in 2021 dealt with the freedom of religion and belief and its compatibility with references to the traditional spiritual and moral values in the constitutional and legislative texts.

Thus, in Opinion [CDL-AD\(2021\)005](#) on the **Russian Federation** the Venice Commission noted that the reference to the faith in God in the Constitution must not be interpreted as entailing the obligation to have any religion. The Venice Commission maintained that the duty of the State to "foster patriotism and citizenship" through education should not unjustly encroach on the right of parents to provide moral and religious education to their children in accordance with their own convictions.

In two Opinions on Hungary [CDL-AD\(2021\)029](#) and [CDL-AD\(2021\)050](#) and in an Opinion [CDL-AD\(2021\)007](#) on **Kyrgyzstan** the Venice Commission discussed the interrelation between the duty of the State to promote certain constitutional values and the right of parents to educate their children in accordance with their own religious beliefs.

Privacy and the fight against corruption

In several Opinions issued in 2021 the Venice Commission examined the obligation of State officials to disclose information about their assets, and the powers of the state authorities to verify the accuracy of those declarations.

The Venice Commission acknowledged that the imperatives of the fight against corruption may require additional limitations on the privacy of certain office holders: the status of a civil servant implies more transparency in financial matters which is not required from ordinary citizens. In an Opinion on **Ukraine** [CDL-AD\(2021\)028](#), the Commission stressed that the duty of public officials to submit accurate asset declarations exists, in various forms, in many democratic legal orders. In order to be efficient, this legal mechanism has to be accompanied by appropriate sanctions.

In Opinion [CDL-AD\(2021\)015](#) on **Bosnia and Herzegovina** the Venice Commission recommended to require that an asset declaration of a judge or a prosecutor should cover not only spouses and children but also civil law partners and other persons with whom a judge or a prosecutor had a joint household. The Opinion also examined a situation where a relative of the judge or the prosecutor refused to submit information necessary for the inclusion in the declaration. In the next Opinion on **Bosnia and Herzegovina** [CDL-AD\(2021\)024](#) the Venice Commission went even further and recommended that the definition of connected persons should include not only close relatives (including siblings-in-law and alike) but also other persons connected to the public official concerned, and not only by economic or political ties but also by a long-time and intimate friendship.

In this context the Venice Commission did not oppose the use of certain presumptions of fact (like the “lifestyle checks” which made part of the process of verification of declarations in some countries), or the extension of certain obligations to the persons affiliated with the State official. In the Opinion on the **Republic of Moldova** [CDL-AD\(2021\)046](#) the Venice Commission did not cast doubt in the legitimacy of such “lifestyle checks” but asked the legislator to explain how much discrepancy between the “standard of living” and “expenses” made by the person concerned can be considered as a discrepancy which would prevent a person from being a candidate to the position in the High Judicial Council.

That being said, the process of verification of asset declarations should be respectful of the privacy and the family life of persons concerned by it. In an Opinion on the **Republic of Moldova** [CDL-AD\(2021\)046](#), cited above, the Venice Commission stressed that any information and documents produced in the individual integrity checking process must not be published and must only be used for the narrow purpose of the evaluation. It must be clear that such information or documents cannot be used directly in a criminal or administrative investigation, except in relation to the giving of false answers. The powers of the anti-corruption body to request and obtain documents and information should be used for the narrow purpose of the evaluation.

Finally, the composition of the body conducting integrity checks or verification of asset declarations was deemed important. In Opinion [CDL-AD\(2021\)015](#) on **Bosnia and Herzegovina** the Venice Commission recommended establishing more precise rules on the composition and operation of the Integrity Unit (tasked with the verification of the declarations), including ex ante integrity and background checks of its members. The need to have a properly composed Evaluation Committee checking the integrity of candidates to the positions of members of the High Judicial Council was also stressed in an Opinion on the Republic of Moldova [CDL-AD\(2021\)046](#).

Freedom of expression

Several Opinions of 2021 touched upon the freedom of expression, and, in particular, the political speech, and possible limitations to it. In Opinion [CDL-AD\(2021\)007](#) on **Kyrgyzstan**, the Venice Commission welcomed express decriminalisation of defamation or humiliation. It objected against the reference to “moral and ethical values” and “public conscience” as grounds for limiting the freedom of expression, since those terms were too vague. The term “information security” was, in the Opinion of the Venice Commission, controversial and unclear and should not be used in the Constitution.

In Opinion [CDL-AD\(2021\)005](#) on the **Russian Federation** the Venice Commission commented on the introduction in the Constitution of the duty of the State to “honour the memory of the defenders of the Motherland” and to “defend historical truth”, and the prohibition of “belittling the significance of the heroic feat of the people in defending the Motherland”. The Venice Commission stressed that this provision should

not aim at restricting historical research and should be given a narrow interpretation.

In Opinion [CDL-AD\(2021\)033](#) on Serbia the Venice Commission stressed that the media coverage of a trial should not be seen as an instance of “improper influence” interfering with the judge’s independence.

Opinion on **Belarus** [CDL-AD\(2021\)002](#) dealt with *inter alia* the calls for “violently overthrowing the constitutional order”: the Venice Commission recommended revising the relevant provision of the Criminal Code and for rendering it more precise because political debate (“calls for radical constitutional change”) carries a very strong presumption in favour of the freedom of expression.

In an Opinion on **Hungary** [CDL-AD\(2021\)050](#), the Venice Commission analysed the regulations on dissemination of information about sexuality and gender to children. The Venice Commission acknowledged that there is no hard law confirming that there is a right of children to receive information on subjects dealing with sexual orientation and gender identity. However, where such information is provided, it should be done in an objective, critical and pluralistic manner, respecting the parents’ religious and philosophical convictions, and, in particular, that it must be non-discriminatory towards individuals and the promotion of constitutional values may not lead to disregarding and disrespecting the diversity of religious Opinions and sexual identities. Referring to the Convention on the Rights of the Child, the Venice Commission stressed that the State must ensure children’s access to information and materials from a diversity of national and international sources, subject to the appropriate direction or guidance of parents and to the evolving capacities of the child.

The Opinion on **Georgia** [CDL-AD\(2021\)011](#) dealt with the power of the Georgian media and telecommunications regulatory authority (the GNCC) to appoint a “special manager” to a telecommunication company, with exceptional executive powers, if that company failed to implement decisions of the regulatory authority. In essence, under the amendment the GNCC could take control of a telecom provider, because other means of enforcing a decision were either too mild to be effective or too harsh to be proportionate. The Commission noted that the control of mergers and acquisitions cannot be exercised by the appointment of the external managers. A tailored *ex ante* regulatory interventions by the GNCC could have better served this objective.

From the standpoint of Article 10 of the Convention, limitations imposed on a provider of telecom services might have an effect on the media freedom and pluralism. The mandate of the special manager was virtually unlimited, enabling such manager to take all managerial decisions from top to bottom without being subject to the previous checks and balances as prescribed by corporate law, such as control by the board of directors. That could potentially affect the editorial policy of the broadcasting stations. Thus, the State could interfere with providing these services, which normally should be provided on a neutral basis and under neutral conditions to various digital content providers on the internet.

Freedom of assembly and association

Three Opinions adopted in 2021 dealt with the laws regulating freedom of assembly:

Opinion [CDL-AD\(2021\)027](#) on the **Russian Federation** was entirely focused on the special category of NGOs created by the Russian legislation since 2012, so-called “foreign agents”, receiving funding from abroad. In 2020 the definition of a “foreign agent” was expanded, it would, henceforth, also cover individuals, and the reporting/disclosure obligations and the sanctions have been significantly increased. The Commission noted that the law used vague and overly broad terminology, and secondly, the measures it introduced – in particular, reporting obligations and sanctions – failed to have a reasonable relation to the aims allegedly pursued. Most importantly, the Commission recommended to abandon the notions of “political activities” and “foreign support” which the law used to identify who was a “foreign agent”.

Opinion [CDL-AD\(2021\)004](#) on **Spain** dealt with a law which gave to the authorities very broad powers in policing mass gatherings. The Commission criticized the law for leaving the authorities too much of a discretion to decide which behaviour is punishable and what powers the police had within its mandate to protect public order. More specifically, the Commission recommended that the Law should link body searches to the purpose of discovery and prevention of offences of a certain gravity and provide that, as a rule, they should be conducted on the basis of an individualised suspicion. For the Venice Commission, the authorities should tolerate demonstrations unless there is an ascertainable risk of “substantial disorder”. Organisers and promoters of demonstrations should not be held liable for deviations which could not be reasonably

foreseen or averted by them. The Commission criticized the very high amounts of penalties, which might have a chilling effect on the exercise of the freedom of assembly.

Opinion on **Belarus** [CDL-AD\(2021\)002](#) dealt with the criminal law provisions applied to the organisers and participants of demonstrations which contested the official results of the presidential elections in **Belarus**. The Commission reiterated its position that the use of violence by a small number of participants in an assembly (including the use of language inciting hatred, violence, or discrimination) did not automatically turn an otherwise peaceful assembly into a non-peaceful assembly. The Commission also objected to the criminalisation of non-violent demonstrations which caused disturbance to the normal city life, or those demonstrations which were spontaneous and thus were not notified in advance to the authorities. The Opinion also noted the excessive severity (and the lack of clarity) of the sentences enshrined in the Criminal Code.

Finally, Opinion [CDL-AD\(2021\)007](#) on **Kyrgyzstan** examined articles on the freedom of assembly and association in the draft Constitution. The Commission stressed that the requirement of prior notification of peaceful public gatherings was not against international standards, but it should not be interpreted as a requirement of prior authorisation.

The freedom of association was at the heart of several opinions. Opinion [CDL-AD\(2021\)007](#) on **Kyrgyzstan** stressed that parties representing national minorities should be permitted, but that States may prohibit the establishment or registration of a political party based exclusively on ethnic affiliation and advocating the promotion of that particular ethnic majority. A blanket ban on the establishment of political parties with religious or ethnic attributes was disproportionate, but limitations could be imposed if a “militant religious character” of the party posed a “serious and immediate danger to the constitutional order”. The Commission also recommended to exclude a provision which prevented religious organisations from pursuing political goals. “Enhancing transparency” of civil society organisations should not by itself be a legitimate aim.

Opinion [CDL-AD\(2021\)023cor](#) on **Turkey** dealt with the limitations imposed on some NGOs in order to prevent the proliferation of weapons of mass destruction. The Commission noted that limitations based on the FATF standards were to apply to

all associations, irrespective of their goals and records of activities, which might have far-reaching consequences for basic human rights. Governmental control over online fundraising attempts in the absence of clear and objective criteria of permit applications, along with the authorities’ wide scope to apply sanctions, may have a negative impact on legitimate fund-raising activities of NGOs. The power of the authorities to remove the board members without judicial review and to replace them with trustees constituted a serious infringement of the right of associations to conduct their own affairs. Dissolution of an association should be only a measure of last resort. The duty of foreign associations to seek permission for any co-operation activity in Turkey was disproportionate.

Equality, non-discrimination, and minorities

In Opinion [CDL-AD\(2021\)040](#) on **North Macedonia** the Venice Commission dealt with a general prohibition of discrimination and underlined the difference between “discrimination” and “differentiation”, i.e. a legitimate distinction between different categories of people based on one of the criteria mentioned in the law. For example, during the COVID-19 crisis many countries introduced differential treatment for different age groups. Elderly people were entitled to a priority vaccination; young children were dispensed from the obligation to wear masks, etc. It would be useful to specify in the draft law that objectively justified differential treatment does not qualify as discrimination.

Two more specific topics in the 2021 Opinions related to equality and non-discrimination were the questions of gender and sexual orientation.

In Opinion [CDL-AD\(2021\)005](#) on the **Russian Federation** (on the constitutional amendments) the Commission recognised that the same-sex marriage is a hotly discussed topic in many European countries, and that the ECtHR left to the member States some margin of appreciation in regulating those matters. The Commission also observed a trend in some parts of Europe to enable same-sex marriage, whereas it is by way of constitutional amendment that same-sex marriage is excluded in other countries.

In two Opinions on **Hungary** [CDL-AD\(2021\)029](#) on the constitutional amendments, and [CDL-AD\(2021\)050](#) on the protection of children, the Venice Commission analysed, from the standpoint of Article 8 of the

Convention, the need of legal recognition of the gender identity of transgender people who had undergone gender reassignment surgery. Lack of such legal recognition may affect the private life of the persons concerned; these Opinions are described in more detail below, in the section on equality and non-discrimination.

Opinion [CDL-AD\(2021\)029](#) on the constitutional amendments warned against the danger that the constitutional amendments will further strengthen an attitude according to which non-heterosexual lifestyles are seen as inferior and fuel a hostile and stigmatising atmosphere against LGBTQI people. The Venice Commission reiterated, as in the Opinion concerning **Russian Federation**, that Article 12 of the ECHR did not impose an obligation on the States to grant a same-sex couple access to marriage. It also noted that same-sex couples in Hungary enjoyed, since 2009, a possibility to register a partnership. The Commission stressed, however, that differential treatment based solely on considerations of sexual orientation was found by the Court to be unacceptable under the Convention. The Venice Commission recommended the Hungarian legislator to establish clear non-discriminatory criteria in the statutory law to be applied in deciding on adoption by single persons.

This Opinion also discussed the amendment rendered legal gender recognition of trans and intersex people unconstitutional and therefore impossible. The Venice Commission invited the Hungarian authorities to interpret the amendment in such a way that it should not have the effect of denying the rights of transgender people to legal recognition of their acquired gender identity.

Finally, one of the amendments allowed or even obliged the State to interfere with the educational rights of parents in order to enforce an upbringing in conformity with the values of the constitutional identity and Christian culture. The Commission recalled that the State must ensure an objective and pluralist curriculum and avoid indoctrination in public education.

In a following Opinion on **Hungary** [CDL-AD\(2021\)050](#), the Venice Commission analysed legislation adopted further to the constitutional amendments. These legislative amendments – as was evident from the title of the law – seemingly started from the underlying premise that homosexuality and diverse gender identity were something that corrupt youth, undermine society and the State and should therefore

be resisted. The Venice Commission reiterated that to draw parallels between homosexuality and paedophilia was unacceptable. The Venice Commission also reiterated that Article 8 of the ECHR required some form of the legal recognition of the gender identity of transgender people. Public authorities cannot deem gender reassignment and homosexuality to be contrary to “morals”, in the sense of Article 10 § 2 of the ECHR, as the right to sexual and gender identity and the right to sexual orientation are fundamental human rights under Article 8 of the ECHR, according to the Court’s well-established case-law. While the legislator may put age-based restrictions on the presentation of content concerning sexuality, such restrictions should not distinguish between heterosexual and homosexual content. Finally, in the Opinion of the Commission, the legislation under consideration deprived young individuals of access to adequate sex education and objective information about different forms of sexual orientation, gender identity, gender expression and sex characteristics.

Amicus curiae brief [CDL-AD\(2021\)044](#) for the Constitutional Court of the **Republic of Moldova** dealt with the possible ratification of the Istanbul Convention. The main point of controversy was the definition of “gender” contained in the Istanbul Convention. The Commission noted that the violence against women does not only originate from biological differences between men and women, i.e. sex, but also from socially constructed roles which contribute to the subordinate status of women in society, i.e. gender. The Istanbul Convention, in the Opinion of the Commission, did not conflict with the concept of “family” as defined and protected in Article 48 of the Constitution of the **Republic of Moldova**, even if this “family” was understood as a union between a man and a woman. In the brief the Venice Commission also analysed the requirement to adapt the formal school curricula to include the questions of equality between women and men and non-stereotyped gender roles, and the phenomenon of “honour crimes” which must always be categorised as serious crimes.

In the Opinion [CDL-AD\(2021\)005](#) on the **Russian Federation** on the constitutional amendments the Commission noted that the reference “state-forming” people in the Constitution does not violate the principle of equality of peoples. Provisions on state languages also exist in many multilingual countries.

3. Free elections and political parties

Elections

The Venice Commission adopted the following Opinions in the field of elections and political parties:

Joint Opinion [CDL-AD\(2021\)008](#) on **Georgia** addressed the sanctions against parties not taking part in the work of the Parliament. Participating in parliamentary activities was an important cornerstone of the work of political parties in the Parliament. While parliamentary boycotts were a legitimate means of expressing disagreement in political discourse, lengthy boycotts could hinder meaningful parliamentary dialogue. However, any party must have the space to function properly and engage in dialogue with other political forces in order to avoid tensions that would erode the proper functioning of parliament. Depriving a political party of all public funding was therefore an excessively invasive and disproportionate measure. The total deduction of the salary of a MP who failed to attend all sittings without good reason also appeared to be a disproportionate sanction. The Opinion also raised concerns about the denial of free airtime to parties that did not receive public funding, which appeared disproportionate and unfounded and would further reduce access to the information the public needed in order to make an informed choice in elections.

Another Opinion on **Georgia** [CDL-AD\(2021\)009](#) dealt with the revocation of party registration. The Commission considered that the restrictions on aliens to participate in domestic political life could apply to the establishment of political parties, but not to their membership. The proposed sanction of deregistering a party list due to the foreign nationality of a person acting as its political leader was disproportionate, which would unduly restrain the right to be elected for candidates of the party's list targeted and limit the right of voters to choose. It also highlighted concerns about the lack of clear and objective criteria of the notion of "political leader", which may lead to an overly subjective and ambiguous interpretation of this term.

Two further Opinions on the electoral legislation of **Georgia** [CDL-AD\(2021\)022](#) and [CDL-AD\(2021\)026](#) mainly focused on the impartiality of electoral administration and more particularly on the composition of the electoral commissions. Key

recommendations were aimed at introducing a qualified parliamentary majority vote for the election of the chairperson and non-partisan members of the Central Election Commission (CEC), removing the specific restrictions of the right for a party to appoint a member to the CEC (i.e. the conditions that the party is entitled to state funding and that at least one of the party members actually "carries out activities of the member of the Parliament"), clearly setting out in the law on what grounds the removal of party-nominated election commission members may be based. In particular, the significant increase in non-partisan members of lower-level election commissions should be reconsidered. Another recommendation was not to limit the right to submit complaints to election commissions to persons registered in an electronic registry of persons authorised for election disputes. The Opinion also put the emphasis on the need for ensuring stability of electoral law.

An urgent opinion on **Armenia** [CDL-AD\(2021\)025](#) also focused on stability of electoral law by stating that legislative changes taking place just a few months before elections should be in principle avoided as it leads to uncertainty. The change did not, however, go against international principles in the very specific context of **Armenia**: the simplification of the proportional electoral system appeared to enjoy a broad support by most of the political forces and the civil society; the changes had been discussed and prepared for a long time following an inclusive and transparent political process; in addition, although the next parliamentary elections would take place in less than three months, in purely technical terms the new system did not seem to have a major impact either on the capacity of the electoral administration to organise such elections, or on the understanding of the procedures by the voters. The Opinion recommended reconsidering the increase of electoral thresholds for coalitions; clarifying the notion of "false information"; extending legal standing to allow for voters to submit challenges against election results; clarifying the meaning of "gross violation" as a ground of early termination of powers of a member of a constituency and precinct electoral commission.

Opinion [CDL-AD\(2021\)039](#) on the 2020 amendments to the electoral legislation of **Hungary** mainly concentrated on two issues: the need to adopt electoral legislation by broad consensus after extensive public consultations with all relevant stakeholders, and the sudden and dramatic increase

of the number of single-member constituencies in which parties need to nominate candidates if they want to participate in the proportional part of the elections. This amendment was introduced late in the legislative process. The governmental majority stated that the amendments were designed to exclude fake parties, but their main effect was to favour big parties and, in particular, the incumbent, forcing all opposition to unite if it wants to obtain a significant number of majoritarian seats. The Opinion, therefore, recommended significantly reducing the number of single-member constituencies in which parties need to nominate candidates in order to be able to run a national list of candidates.

Opinion [CDL-AD\(2021\)045](#) on **Ukraine** dealt with the procedure for establishing the impossibility of elections and referendums in certain territories. The Commission underlined that the state has the power to decide the temporary suspension of elections for security reasons. However, the protracted suspension or cancellation of elections or voting in certain territories would risk unduly infringing the right to vote and to be elected, in particular in the absence of a formal derogation from international human rights guarantees concerning the right to free elections. In any case, the law should establish a comprehensive, coherent and inclusive legal mechanism which preserves the independence and objectivity of key election-related decisions and provide for more precise procedural rules. The Opinion called for the inclusivity, transparency and accountability for any decisions not to hold elections/voting in certain territories. Any measures restricting the right to vote and to be elected must be proportional and temporary, and the alternative measures to facilitate voting/elections must be fully explored. Parliament should determine criteria for suspending elections after consultation of both the Central Electoral Commission (CEC) and the National Security and Defence Council, as well as civil society. Electoral stakeholders should have access to an effective system of judicial appeal against decisions on not holding elections/referendums in certain territories.

Amicus curiae brief [CDL-AD\(2021\)037](#) for the Constitutional Court of **Albania** on three questions concerning the competence of the Constitutional Court regarding the validity of the local elections held on 30 June 2019 addressed the key issue of fundamental principles potentially challenged, in particular the periodicity of elections, the

political pluralism and free suffrage. The first point of controversy was to define whether municipal councillors and mayors are “functionaries of bodies foreseen in the Constitution” in the sense of the constitutional provision giving competence to the Constitutional Court on electoral disputes. If the Venice Commission concluded that municipal councillors and mayors can be considered as “functionaries of bodies foreseen in the Constitution”, the competence of the Constitutional Court does, however, not include the examination of the validity of local elections. The Commission also noted that this does not prevent the Constitutional Court from exercising its control over electoral legislation. The second point to clarify was about the potential conflict between the principles of periodicity of elections and of political pluralism. The Commission concluded that such principles are unlikely to conflict with each other since they are expressed in very different types of rules. Pluralism may be a legitimate aim for interfering with periodicity, but for that aim to prevail, the interference should have a legal basis and be proportionate. Parliament has a wide margin of appreciation to decide on providing a legal basis for postponing elections; in the absence of such a basis, the Constitutional Court could consider the postponement as unconstitutional. Finally, the Commission was asked whether the actions of public authorities and political parties violated the voters’ right to have meaningful choice and whether they had ensured voters’ highest interest. The Commission underlined that political uncertainty had deeply and recurrently affected the Albanian political scene. While “public authorities and political parties” did not ensure “voter’s highest interest”, the reason does not merely come from their “actions” but from the continuous controversies among themselves that go to the point of eroding the very legitimacy of democracy before the electorate. The Commission added that it, therefore, remains the co-responsibility of the public authorities and the whole political spectrum to restore trust in the Albanian institutions and in the electoral process. This includes the responsibility of all stakeholders to promote political dialogue among political forces as well as among national institutions, such as the Central Election Commission. This also implies restoring a meaningful choice for voters. All these elements are vital but non-exclusive preconditions to democratic elections.

Referendums

Two urgent opinions [CDL-AD\(2021\)033](#) and [CDL-AD\(2021\)052](#) dealt with two successive versions of the draft law on the referendum and the people's initiative of **Serbia**. While the initiative of the Serbian authorities to adopt a new Law on the Referendum and the People's Initiative in order to bring the legislation in line with international standards was to be welcomed, the Venice Commission regretted that the revision of the law on referendums – which should have been done by the end of 2008 in conformity with the revised Constitution - started only when a constitutional referendum was imminent. The first draft included a number of positive elements, such as the suppression of the quorum, the regulation of the possibility for the Assembly to take a position on the issue submitted to referendum and the obligation to provide citizens with objective information on the referendum issue. On its turn, the second draft followed, totally or partially, most of the substantive recommendations of the previous urgent opinion, aimed at ensuring its conformity with international standards. In particular, the different types of referendums had been defined more clearly; the minimum deadline between the decision of calling a referendum and the vote had been extended; the composition of the electoral administration had been reconsidered but just for the coming referendum on the amendment of the Constitution; the deadline for providing objective information to voters had been extended; the power to check the question submitted to voters had been given to the electoral commissions; the private media were not any more submitted to a requirement of neutrality, and all media were obliged to ensure equal advertising conditions to parties that advocate different answers to the question. However, some issues remained to be addressed, and in particular: to abolish, or at least significantly lower the fees for signature authentication – the fees were abolished in the adopted version of the law; to extend the right to appeal to all voters; to consider a broader and long-term reform of the composition of the electoral administration to be applicable after the next constitutional referendum and elections; to give to the electoral commissions the power to check signatures, and to provide objective information to voters.

Political parties

In their joint Opinion on the draft Law on Political Parties of **Ukraine** [CDL-AD\(2021\)003](#), the Venice Commission and OSCE/ODIHR acknowledged the drafters' attempts to strengthen the transparency of key aspects related to the registration and functioning of political parties, to facilitate the process of registering political parties, to establish more effective funding and financial reporting requirements, to further delineate the powers of oversight bodies in terms of party finance monitoring and to ensure gender equality in the sphere of political parties. It was noteworthy that this initiative was aimed at enhancing the role, status and importance of political parties and at stimulating the development of democratic political parties as an important tool of democratic governance. At the same time, the draft Law, in seeking to resolve issues of the current Law, appeared to have adopted a top-down approach in order to ensure bottom-up democracy within political parties. The draft Law thereby overregulated matters that normally lied within the discretion of political parties themselves, which in turn raised concerns with regard to the internal autonomy of the parties, as protected by their freedom of association. This was compounded by a punitive approach to minor transgressions of political party funding regulations, some of which could better be addressed with enhanced communication and awareness-raising measures. The Opinion therefore made key recommendations mostly aimed at abolishing excessive restrictions to the establishment and functioning of political parties, such as the requirements to form and register regional organisations in at least five electoral regions, to confirm registered parties within one year after their establishment and to register their members in a Unified Register of Members of Political Parties; remove the provisions which impinge too far on the autonomy of political parties; to revise disproportionate limitations on individuals' right to donate to political parties, and at the same time to lower the donation ceilings for individuals and for legal entities.

4. Social rights

The Venice Commission touched upon the social rights questions in two Opinions. In an Opinion on the amendments to the **Russian Federation** Constitution [CDL-AD\(2021\)005](#), the Venice Commission welcomed the increased protection of certain social rights. More detailed was Opinion [CDL-AD\(2021\)031](#) on **the Netherlands**, which concerned several shortcomings in individual rights protection that had been uncovered with respect to the Child Allowance Case. A complex childcare allowance system had been established under which parents could buy specific preschool and out-of-school childcare services on a regulated market from a registered childcare centre (e.g. a kindergarten) or a child-minder. Under this scheme, the parents were reimbursed for part of the cost, depending on their income, as an allowance. The childcare allowance was a “means-tested allowance” made dependent on proof that one’s income was below a certain level and which was paid only upon request. In the context of the revelation that a large-scale fraud criminal scheme had been put in place to systematically defraud the Dutch state of social aid payments for years, a system was put in place to prevent this. Unfortunately, it took an “all or nothing approach”, which meant that even if a parent had acted in good faith but neither the parent nor the child-minder could provide proof of hours used or parental contribution etc., the parent had to repay the full amount for the whole year – which led to massive claims for reimbursement from parents. The reports of the Ombudsman, and other state bodies showed that the shortcomings in the Childcare Allowance Case were taken seriously by the government, but this reaction had been delayed and serious damage was caused to the families involved. The Commission suggested changing the Rules of Procedure of Parliament to facilitate scrutiny of the executive, improving access by individuals to relevant information, and establishing channels for the judiciary to draw the other branches of power’s attention to legislation which in practice gives rise to systemic problems.

5. Judiciary, prosecution service and lawyers

In 2021 Opinions of the Venice Commission regarding the judiciary and prosecution service focused on two main issues: reforms of the bodies of judicial governance and legal mechanisms ensuring integrity of judges and prosecutors.

Integrity of judges and prosecutors

As in the previous years, in 2021 the judicial integrity remained in the focus of attention of the Venice Commission.

Several Opinions adopted in 2021 dealt with the obligation of judges to submit asset declarations – see in particular, Opinion on Ukraine [CDL-AD\(2021\)028](#) and Opinion [CDL-AD\(2021\)015](#) on **Bosnia and Herzegovina** described above, in the sub-section on the fights against corruption and the right to privacy.

Other Opinions were more focused on the composition and powers of bodies which monitor the integrity of judges or prosecute corruption crimes. Thus, Opinion [CDL-AD\(2021\)015](#) on **Bosnia and Herzegovina** examined the status of the Integrity Unit, checking the declarations of judges and prosecutors. The Commission called for more precise rules on the functional independence, composition and operation of the Unit. The role of the experts engaged in monitoring should be the law itself and not in sub-legal acts. The capacities of the external experts should include at least the ability to access all asset declarations and supporting documents, to make individual recommendations on how to handle/assess the declarations, to allow follow-up actions if recommendations are not taken into account by the Integrity Unit without due justification, and to publicly report on the overall functioning and enforcement of an asset-declaration system.

Opinion [CDL-AD\(2021\)053](#) on **Albania** examined the extension of the term of office of the transitional vetting bodies in charge of the re-evaluation of judges and prosecutors. The Commission stressed that such extension is not objectionable from the standpoint of the European standards since it was based on objective reasons, had a legislative basis, and since it was to be adopted with a qualified parliamentary majority (the extension would be made through a constitutional amendment). The Commission also emphasised the need to increase the resources of the vetting bodies and achieve rationalisation of their procedures.

Opinion [CDL-AD\(2021\)018](#) on **Ukraine** examined the procedure for electing (appointing) members of the High Council of Justice (HCJ) and the activities of disciplinary inspectors of the HCJ. It followed a series of Opinions prepared by the Commission on the process of reforming the judiciary in Ukraine since 1997. The aim of draft law under examination was to

establish an Ethics Council for a period of six years to “vet” candidates for the positions of members of the HCJ and the current members of the HCJ by checking their professional ethics and integrity. The Opinion welcomed the rationale behind draft law and welcomed that the composition of this Ethics Council builds on the Venice Commission’s earlier Opinions, especially as concerns the participation of international experts. In its list of recommendations, the Venice Commission stressed that the sequencing of the reforms was very important.

Opinion [CDL-AD\(2021\)019](#) on **Romania** analysed the proposal to dismantle the Section for the Investigation of Offences committed within the judiciary. This Section created in 2018 was at the time entrusted all cases of alleged corruption and organised crimes involving judges. The Commission had not been in favour of the establishment of this Section (see notably [CDL-AD\(2018\)017](#)), so it welcomed the Romanian authorities’ intention to reform the judiciary and to restore the competence of the specialised prosecutors’ offices such as the DNA and DIICOT, which dealt with such cases prior to the establishment of the Section. It made several key recommendations, which included the recommendation to remove the new type of inviolability introduced for judges and prosecutors within the framework of a highly sensitive field (criminal prosecution) which goes far beyond functional immunity. For the Commission, the Superior Council of Magistracy should not obtain the new exclusive competence to decide on actions in criminal matters against judges and prosecutors and vexatious complaints (often criminal complaints) by private individuals against judges and prosecutors should be dealt with by the prosecution service.

Opinion [CDL-AD\(2021\)046](#) on the **Republic of Moldova** examined the draft law aimed at pre-vetting of the candidates to the positions in the bodies of judicial and prosecutorial governance: the Superior Council of Magistracy (SCM), the Superior Council of Prosecutors (SCP) and their specialized bodies. Contrary to the vetting exercised in respect of the sitting judges, the proposed integrity checks were targeted at the candidates to the positions in the SCM and the SCP. Such checks may be seen as contributing to the confidence in the judiciary. However, the composition of the “pre-vetting” bodies should be clarified further in the draft law: thus, while it is positive that those bodies had international members delegated by the “development partners”, it was unclear how those

partners were identified, and the criterion of not having been a judge or prosecutor in the past three years should be reconsidered. The Opinion also called for clearer indications as to the assessment criteria; minor breaches of professional conduct disqualify a candidate. It was important to protect the right to private and family life of judges, prosecutors and third persons involved in the pre-vetting procedure, and the candidates should have the right to appear before the Evaluation Committee and to participate in the procedure before it, if they so wish.

Bodies of governance of the judiciary and the prosecution service

Opinion [CDL-AD\(2021\)015](#) on **Bosnia and Herzegovina** focused *inter alia* on the reform of the High Judicial and Prosecutorial Council (the HJPC). The Commission admitted that some emergency fixes in the legal framework were needed but stressed that they were not meant to replace or preclude the adoption of a comprehensive legal act on the HJPC. The Opinion recommended clarifying certain provisions of the law, revising the list of disciplinary offences for judges and prosecutors in light of the previous recommendations of the Commission and to specify disciplinary offences for which members of the HJPC could be held liable. Most importantly, all substantive decisions adopted by the HJPC should be reasoned and subject to judicial review.

In two Opinions on **Montenegro** [CDL-AD\(2021\)012](#) and [CDL-AD\(2021\)030](#) the Venice Commission examined a comprehensive reform of the prosecution service. The Commission expressed concerns about the proposed replacement of an anti-corruption prosecutor following the change in the name of the office he run. It stressed that the security of tenure of the current officeholder should be respected. The Commission did not object against the new composition of the Prosecutorial Council, which would have a slight majority of lay members, but stressed that lay members may be elected either by a qualified majority (with an effective anti-deadlock mechanism), or on the basis of a proportional system, so that they represent different political forces. Alternatively, the law might provide for the nomination or even direct appointment of some lay members by external nongovernmental actors (such as universities, the Bar, the Judiciary etc.). The Commission also objected against the immediate

replacement of all currently sitting members of the Prosecutorial Council, although it recognised that a significant improvement of the system may provide a justification for an early termination of mandate of the members of the Council.

In a follow-up Opinion [CDL-AD\(2021\)030](#) the Venice Commission examined a revised draft which provided for a new system of appointment of one of the lay members – now following a nomination by the NGOs, as well as for the new incompatibility criteria which created a safe distance between lay members and political forces. The Commission welcomed both proposals while noting that the process of delegation of one lay member by the NGOs is quite complex and does not guarantee the representative character of this process. The Commission reiterated that the risk of politicisation of the councils may be addressed primarily by the election of lay members by a qualified majority or following a proportionate system.

The Opinion on the draft constitution of **Kyrgyzstan** [CDL-AD\(2021\)007](#) recommended to reinforce the independence of the judiciary by specifying in the Draft Constitution that judge members of the Judicial Council are chosen by the judiciary and should ensure the representation of the judiciary at all levels; explicitly stipulating the principles of irremovability and security of tenure; reconsidering entirely the probationary period of five years for judges; reconsidering the provisions on transfer of judges and strengthening the decision-making powers of the Judicial Council regarding the appointment, promotion, transfer and disciplinary procedure for all judges, except for the Constitutional Court judges, and to clarify the place of the Prosecutor General in the proposed constitutional order, also spelling out his or her competences, while removing the power of “supervision of exact and uniform implementation of laws”.

Opinion [CDL-AD\(2021\)020](#) on **Georgia** followed a series of Opinions adopted for **Georgia** on the law on the common courts in the previous years, notably Opinions [CDL-AD\(2019\)009](#) and [CDL-AD\(2020\)021](#). The 2021 Opinion concerned yet further amendments made to this Law that focus on the task of appointing Supreme Court judges. These amendments had already been adopted by the time the request for this Opinion was made – but were, nevertheless, subject to an analysis of compatibility with the recommendations made in the Venice Commission’s previous Opinions. The Venice Commission concluded that although some of its recommendations had been

taken into account, others should also be followed, notably: modifying the composition of the High Council of Justice for subsequent decisions; staying the appointment procedure until a decision is rendered by the Qualification Chamber of the Supreme Court and restarting the selection procedure so as to ensure that there is an equality of treatment of candidates.

Opinion [CDL-AD\(2021\)048](#) on the revised draft constitutional amendments on the judiciary of **Serbia** followed Opinion [CDL-AD\(2021\)032](#), which concerned the first version of the constitutional amendments. Most of the key recommendations from the first Opinion were heeded, i.e., those related to the composition of the High Judicial Council (HJC). However, the revised draft did not follow the recommendation related to the anti-deadlock mechanism for the election of the lay members of the HJC, and the recommendation related to the composition of the HPC had only partly been followed. The Commission insisted once again on the need to reduce the risks of politicisation of the two Councils. It also stressed that the legislative changes necessary for the full implementation of the constitutional amendments should be prepared on an urgent basis, through a holistic reform of the relevant organic laws.

Composition of the Superior Council of Prosecutors (the SCP) was at the heart of Opinion [CDL-AD\(2021\)047](#) on the **Republic of Moldova**. The Venice Commission noted that in the past years the composition of the SCP had been changed twice. Such frequent changes may give the impression that each respective parliamentary majority tried to change the balance of power in the SCP in its favour. Legislative changes should not be ad hominem, i.e. should not aim at the replacement of specific office-holders under the pretext of an institutional reform. The Venice Commission recommended to consider a constitutional amendment which would introduce a requirement of a qualified majority of votes in the Parliament for the change in the composition of the SCP.

The key element of the reform was the new balance between prosecutorial and lay members in the SCP, where prosecutors lost their majority. This was not as such contrary to the standards and the previous recommendations of the Venice Commission, because the lay component of the SCP remained pluralistic enough.

However, the Commission stressed that the mandate of the currently sitting members of the SCP should not be terminated early “without very serious reasons”. The Venice Commission also criticised

the procedure of “performance evaluation” of the Prosecutor General which had not been described in the law. It also stressed that the Evaluation Commission (EC) – a fact-finding body attached to the SCP – should not be able to function without prosecutorial members and that the law should clearly stipulate that the EC’s recommendations do not bind the SCP.

As in the **Republic of Moldova**, the recent reform of the Kosovo Prosecutorial Council [CDL-AD\(2021\)051](#) focused on the reduction of the number of prosecutorial members of the KPC. For the Venice Commission, while prosecutors elected by their peers still represent a substantive part of this body (three members out of seven), this reform is not against European standards. However, this reform should not lead to the subordination of the KPC to the ruling majority. The draft amendments propose to elect all lay members by a simple majority in the Assembly. This proposal increases the risk of undue political influence over the KPC and should be reconsidered: election by simple majority should be replaced by a proportional system of election, or the appointment of some lay members by external independent institutions or civil society. Other key recommendations of the Commission concerned the role of the Prosecutor as an *ex officio* member of the KPC, the complex procedure of pre-selection of lay members by a parliamentary commission, and the transitional provisions providing for the early termination of mandates of all the current members of the KPC and allowing the renewed KPC to function only with the lay members in its composition. For the Commission, those transitional arrangements were dangerous for the prosecutorial independence and must be reviewed.

Organisation and efficiency of the judicial system

In Opinion [CDL-AD\(2021\)043](#) on **Cyprus** on three bills reforming the judiciary the Venice Commission pointed at the problem of backlog of cases pending before the courts and the problem of the length of proceedings, which resulted from the increased number of appeals, the increased complexity of the cases, the unrestricted right of appeal, the fairly limited use of legal officers supporting the judges, and the fact that the administration of justice was primarily paper-based. The Venice Commission welcomed the proposals of introducing institutional measures affecting the court system (i.e. the establishment of an Administrative Court, the

establishment of a new Court of Appeal, and the proposal to re-establish the Supreme Constitutional Court) as well as measures affecting judicial practice (i.e. the digitalisation of the courts).

Opinion [CDL-AD\(2021\)021](#) on **Malta** dealt with the complex question of interrelation between the powers of administrative bodies and the judicial review exercised by the courts. The Venice Commission stressed that the proceedings which are characterised in the national law as administrative but lead to the imposition of a sanction which qualifies as “criminal” in nature, may only take place before a court composed exclusively of judges or magistrates. The international standards on combatting corruption and money-laundering required that the national regulatory bodies in this field have powers to impose a range of effective, proportionate, and dissuasive sanctions, whether criminal, civil or administrative.

Regulators which have sanctioning powers in addition to advisory and investigative ones should offer guarantees of independence and impartiality. There should be judicial review (on both issues of facts and law) of the decision by a court or tribunal set up by law.

The Maltese authorities faced a complex choice: affording full fair trial guarantees while ensuring effective regulatory action. For the Venice Commission, resources must be made available, judicial efficiency must be improved, and the problem of a lack of judicial expertise must be dealt with, as must the coordination problems which follow from having a “dual track” system for certain categories of cases.

Opinion [CDL-AD\(2021\)036](#) on **Hungary** examined the organisation and administration of the courts and the legal status and remuneration of judges. Most importantly, the Commission deplored a very extensive powers of the President of the National Judicial Office without an effective supervision. It would be advisable to determine in the law itself what are the criteria for increasing the number of judges sitting in the panel for certain types of cases. The Opinion of the relevant college on the allocation of cases should be made public and binding.

The Commission advised to abolish the possibility to adopt the authoritative type of “uniformity decisions” that still persisted (uniformity decisions on questions of principle with the aim to further develop the interpretation of the law). It recommended to increase

the number of judges, at least in the practice if not in the law, sitting on the uniformity complaint chamber and to remove the prerogative of the President of the Curia to mandate temporary presiding judge. As to the secondment of judges to other bodies, the Venice Commission recommended setting up clear, transparent and foreseeable conditions for the seconded judges to be assigned to a higher position after the period of secondment.

Legal profession

Opinion [CDL-AD\(2021\)042](#) on the **Slovak Republic** addressed two questions regarding the organisation of the legal profession formulated by the Minister of Justice. The first concerned the possibility to create multiple Bars instead of a single Slovak Bar Associations (SBA). The second question concerned the role of the Supreme Administrative Court (SAC) in the disciplinary proceedings against lawyers. The Commission acknowledged that in respect of both questions the Ministry's proposal remained within the range of acceptable solutions. It is compatible with international standards and good practice to have multiple Bars in a given country, and to entrust the examination of disciplinary cases to a mixed panel composed of judges and lawyers. However, the rationale for this reform was not entirely clear. Furthermore, the biggest risk related to the creation of multiple Bars open to voluntary membership would be the possible politicization of the legal profession arising from competition amongst Bars for members and the lowering of professional standards.

For the Commission, the creation of several specialist Bars or regional Bars would be a more acceptable solution, under condition that the law would provide for a central umbrella organisation representative of all lawyers and all Bars, with regulatory and supervisory functions, which would develop common rules and oversee their implementation.

As to the powers of the administrative courts in disciplinary proceedings against lawyers, the Commission welcomed the idea that the panel would be composed of judges and lawyers. Nevertheless, this proposal would reduce the extent of self-governance of the legal profession, and it is not entirely clear what advantages this would have.

IV. ELECTIONS

In addition to providing legal assistance to the election observation missions of the Parliamentary Assembly of the Council of Europe (PACE), the Venice Commission undertook a number of activities in the field of elections.

1. Election observation

In accordance with the co-operation agreement signed between PACE and the Commission on 4 October 2004, representatives of the Venice Commission participated as legal experts in the various election observation missions of the Parliamentary Assembly. In this context, they observed the opening, voting and counting processes of the elections. The Venice Commission drafted a legal memorandum before each observation mission and was involved in discussions with the heads of delegations. These missions concerned the following States:

Albania - parliamentary elections of 25 April 2021

The Assembly's election observation delegation concluded that the parliamentary elections were characterised by a lively and inclusive campaign, thanks to a legal framework that helped ensure respect of fundamental freedoms. At the same time the campaign saw authorities taking advantage of public office. It noted that the recent changes to the legal framework provided additional safeguards and were based on a broad political consensus; while a number of recommendations of the Venice Commission and the OSCE/ODIHR were into account in the reform process, several recommendations remained outstanding.

Armenia - early parliamentary elections on 20 June 2021

The PACE delegation, as well as the other delegations of the international election observation mission, made a positive assessment of Election Day. The intense political polarisation and harsh rhetoric of the campaign had not affected the smooth running of the election. In its memorandum to the Parliamentary Assembly, the Venice Commission referred, in particular, to its urgent opinion of April 2021 ([CDL-AD\(2021\)025](#)), which had been followed by the adoption of amendments abolishing the former district (territorial) lists.

Bulgaria - parliamentary elections of 4 April 2021; early parliamentary elections of 11 July 2021; early parliamentary and presidential elections of 14 November 2021

PACE delegation observers noted that voting day was generally smooth, although they noted some confusion during the counting process at some polling stations, at least in April. PACE delegations raised persistent problems with allegations of vote buying, “controlled” voting and voter intimidation after the polls, based in part on reports from long-term observers, particularly in economically and socially vulnerable communities.

The PACE delegation regretted that the long-standing recommendations of the Venice Commission and ODIHR to bring the electoral code closer to international standards and good practices were not followed up. These recommendations mainly concern voting by prisoners, nomination of candidates, registration of voters on election day, publication of campaign accounts, conduct of the campaign, conditions and criteria for the establishment of polling stations abroad, measures to promote the participation of women and minorities, sanctions for violations of electoral rules, and contesting election results. Significant changes made in a hurry and only shortly before the elections made the use of voting machines mandatory, limited the time available for voters to be informed about new technologies and undermined legal certainty.

Kyrgyzstan - parliamentary elections of 28 November 2021

The PACE *ad hoc* committee concluded that these parliamentary elections should be seen against the backdrop of the October 2020 failed elections, during which many people protested against corruption and the system that had failed to react against the multiple electoral abuses. Instead, Kyrgyz people were drawn into a spiral of repeated postponement of the rerun of the parliamentary elections, and a complete constitutional overhaul which gave the new President sweeping powers and which changed the structure and drastically diminished the powers of the parliament. Moreover, the *ad hoc* committee was concerned about the substantial changes to the electoral system and the electoral legislation, adopted by the caretaker parliament whose mandate had expired and which were signed into law by the president just days before the election campaign started, which did not

grant voters or election officials an opportunity to familiarise themselves with the new system.

The *ad hoc* Committee regretted that a large number of the Venice Commission’s and previous PACE recommendations remain unaddressed, in particular as regards certain limitations on the rights to freedom of expression and association; lack of effective provisions for transparency and accountability in campaign finance; lack of effective provisions to ensure equitable media access and coverage. In addition, disproportionate restrictions to the suffrage rights of those serving prison sentences, irrespective of the gravity of the crime committed, and restrictions based on disabilities should be lifted.

Morocco - legislative elections of 8 September 2021

The PACE *Ad Hoc* Committee to observe the elections to the House of Representatives of Morocco concluded that these elections were well organised, despite numerous challenges, including the COVID-19 pandemic and allegations of vote buying as well as interference by political and religious authorities. It underlined the professionalism of the public authorities in organising the elections with integrity and transparency, while reiterating its long-standing belief that the establishment of an independent central election commission should be considered.

The *ad hoc* Committee invited the Moroccan authorities to carry out an in-depth analysis of the organisation of these elections. It was convinced that this work should be carried out in close co-operation with the Council of Europe’s Venice Commission, of which Morocco is a member, with a view to improving the country’s electoral legislation as well as certain practical aspects of the organisation of the ballot and, more generally, the entire electoral process prior to the next elections.

Russian Federation - parliamentary elections of 17 September 2021

PACE sent an election assessment mission on this occasion, which was not in a position to conduct an election observation but rather visited several polling stations. Building upon the information collected within the framework of the remote pre-electoral meetings, the findings of the Venice

Commission, as well as in situ meetings with political stakeholders, the Central Election Commission, and domestic observers and civil society organisations, the aim of the Election Assessment Mission was to assess the general atmosphere around the elections.

Republic of Moldova - early parliamentary elections of 11 July 2021

The observers from the PACE delegation noted that Election Day went very well, and the process was found to be overwhelmingly positive by the mission members. The OSCE/ODIHR observers also assessed positively the different phases of election day (opening, voting and counting). However, the Head of the PACE delegation noted the deep political polarisation and negative campaigning that preceded election day. Republic of Moldova's electoral law has been the subject of numerous opinions by the Venice Commission, the last of which (CDL-AD(2020)027) was largely positive.

2. Other co-operation activities

Other co-operation activities in the electoral field included two major events: the 18th European Conference of Electoral Management Bodies and the 3rd Scientific Discussions of Electoral Experts. The VOTA database on electoral legislation, which continues to be managed jointly by the Commission and the Mexican Electoral Tribunal of the Federal Judiciary (TEPJF), is updated regularly.

18th European Conference of Electoral Management Bodies – Lessons learned from the impact of the COVID-19 health crisis on electoral processes

The eighteenth European Conference of Electoral Management Bodies (EMBs) which took place online on 29 October 2021 was co-organised by the Venice Commission and the National Electoral Committee of Estonia, within the framework of the Hungarian Chairmanship of the Council of Europe's Committee of Ministers. It gathered around 100 participants, representing national EMBs and other profiles such as academics, practitioners, experts and civil society representatives.

The following questions were addressed by the Conference:

- regulatory and practical solutions found by the electoral administrations to ensure the

security of electoral processes during an emergency period;

- the role played by the electoral administrations in ensuring a good voter turnout, especially of women and vulnerable groups;
- the role played by the electoral administrations in ensuring the transparency of the electoral processes during emergency periods and based on the allocated resources.

In their conclusions, the participants acknowledged that the COVID-19 outbreak continued to influence the elections in 2021, causing considerable challenges relating to the health crisis and requiring legal solutions in a largely unexplored area. Such circumstances led to inevitable limitations to electoral rights and fundamental freedoms, including the issues of periodic elections and stability of law. Based on the lessons learned from 2020 and 2021, countries are expected to anticipate such limitations, be proactive and take proportionate measures with the aim to ensure the respect of fundamental freedoms, including when the postponement of elections could be considered. Such measures should be foreseen in law, be necessary and proportionate.

The proper organisation of elections during a pandemic means ensuring a sustainable and adequate funding as well as an appropriate level of security, which implies solid and adapted logistics by electoral management bodies, such as modifying the existing voting procedures *inter alia* to shorten the stay in polling stations. It also implies ensuring the safety of election staff. Moreover, while the pandemic lowered voter participation in elections, the participants insisted on extra efforts needed to ensure that all eligible voters be able to vote, especially for the most vulnerable citizens, as far as possible by gradually introducing alternative voting methods, accompanied by adequate safeguards. National and international election observation remains crucial in periods of crises and countries must take appropriate measures to maintain this practice.

The participants underlined the importance of maintaining a proper conduct of electoral campaigns despite reduced in-person events and of responding efficiently against disinformation and inflammatory speech, which are more widespread during emergency periods. They also insisted on the duty of neutrality of authorities as well as on the obligation of broadcasters to cover election campaigns in a fair, balanced, and impartial manner.

3rd Scientific Discussions of Electoral Experts - Accessibility of the electoral process

The 3rd Scientific Electoral Experts Debates, organised on 16 February 2021 by the Permanent Electoral Authority of Romania, in co-operation with the Venice Commission, addressed accessibility of the electoral process, which is essential for the implementation of the universal suffrage - one of the main principles of electoral law. The online event approached accessibility from a conceptual point of view and not only as a practical issue, and therefore went beyond physical accessibility, addressing issues such as voter and candidate registration, restrictions on the right to vote, and the understandability of the electoral process (clarity, stability of electoral law, linguistic issues, voter training), without neglecting the issue of accessibility in a period of emergency.

Organisations participating in the Declaration of Principles for International Election Observation (DoP)

The Secretariat of the Venice Commission participated in the preparation by DoP organisations of “Guidelines to observe and assess online election campaigns” and “General principles and guidelines related to ICT and elections”. Both documents were approved by the DoP Convening Committee and were scheduled for official endorsement by DoP in 2022.

Association of European Election Officials (ACEEEO)

On 28 September 2021, the Venice Commission participated in the Leaders Forum with the participation of leaders of the prominent international organisations in the field of elections, organised at the occasion of the 30th anniversary of the ACEEEO. This Forum was aimed to discuss how the global electoral community functions now, and how its operations could be improved in the future. To this end, three themes were debated, related to the aspects or trends in the past 30 years in terms of promoting free and fair elections globally and in the ACEEEO region; the role of international organisation in light of the experiences of the past 30 years, the possibilities for deepening co-operation and the examples for best and not so best practices; the future of elections, and in particular youth participation.

V. CONSTITUTIONAL JUSTICE

1. Joint Council on Constitutional Justice (JCCJ)

The Venice Commission has established close co-operation with constitutional courts and equivalent bodies in its member, associate member and observer states. These courts meet with the Venice Commission once a year within the framework of the Joint Council on Constitutional Justice (JCCJ). In 2021, the 19th meeting of the JCCJ took place online on 23 September, at which a new president for the Co-Presidency of the JCCJ was elected: Mr Valentin Georgiev, liaison officer for the Constitutional Court of Bulgaria. The previous meeting of the JCCJ was scheduled to take place on 2-4 July 2020 in Zagreb, hosted by the Constitutional Court of Croatia, however, due to an earthquake as well as the COVID-19 pandemic, the event had to be cancelled.

2. World Conference on Constitutional Justice (WCCJ)

The WCCJ brings together 118 constitutional courts and councils and supreme courts in Africa, the Americas, Asia and Europe. It promotes constitutional justice – understood as constitutional review including human rights case-law – as a key element for democracy, the protection of human rights and the rule of law (Article 1.2 of the Statute). The Venice Commission acts as the Secretariat of the WCCJ.

The main purpose of the WCCJ is to facilitate judicial dialogue between constitutional court judges on a global scale 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).

In 2021, the Bureau of the WCCJ, which steers the WCCJ’s activities, held its 16th meeting online on 20 March. At this meeting, it discussed the organisational aspect for the 5th Congress of the WCCJ, which will be hosted by the Constitutional Court of Indonesia in Bali on 4-7 October 2022 on the topic “Constitutional Court and Peace”. The Supreme Court of Sweden joined the WCCJ this year, bringing the total number of members to 118 in December 2021.

3. CODICES database

The CODICES database (presents to the public the leading constitutional case-law of constitutional courts and equivalent bodies. CODICES contains over 10 000 court decisions (summaries, called *précis*, in English and French as well as full texts of the decisions in 43 languages) together with constitutions, laws on the courts and court descriptions explaining their functioning. The contributions, presented in CODICES, are prepared by liaison officers appointed by the courts themselves. This is an essential guarantee for the quality of the information presented in the database.

In 2021, constitutional courts and equivalent bodies actively contributed to CODICES, which was regularly updated. 475 cases were added to CODICES, which helps constitutional courts and equivalent bodies refer to the experience and the case-law of courts in other countries and participating European and international courts. Constitutional courts and equivalent bodies reported numerous references to international case-law in their judgments, notably to the European Court of Human Rights.

In early 2021, the CODICES/VenSite specifications were subject to public tender launched in March 2021. The contract was awarded in December 2021.

4. E-Bulletin on Constitutional Case-law

In 2021, the fully electronic “e-Bulletin on Constitutional Case-Law” continued to be published three times a year, containing summaries of the most important decisions provided by the constitutional courts or equivalent bodies of all 62 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 e-Bulletin are supplied by liaison officers appointed by the courts themselves.

The e-Bulletin’s main purpose is to encourage an exchange of information between courts and to help judges settle sensitive legal issues, which often arise in several countries simultaneously. It is also a useful tool for academics and all those with an interest in constitutional justice.

5. Venice Forum

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

- The restricted Newsgroup enables courts to actively share information with each other, e.g., to make on-line announcements on changes to their composition, on recent key judgments and to make various requests for general information. In 2021, 22 posts were made in the Newsgroup.
- The restricted Classic Venice Forum enables courts to ask other courts for specific information on case-law. In 2021, the Classic Venice Forum dealt with 19 comparative law research requests covering questions that ranged from remand in custody proceedings by videoconference to “ricochet” damages.
- The Constitutional Justice Media Observatory provides an overview of the work of courts as reported in online media. As in previous years, the Venice Commission offered all members and liaison officers the possibility of subscribing to the Constitutional Justice Media Observatory. The Observatory is sent in the form of an e-mail and presents information on news agency dispatches and press articles relating to constitutional courts and equivalent bodies. The information presented is the result of an Internet search in English and in French and does not purport to provide a complete picture of any decision or development of constitutional justice in general. Although the Venice Commission cannot vouch for the accuracy of the information sent, it can add any information provided by the court concerned or remove an alert, upon request. In 2021, 1063 of these Constitutional Justice Media Observatory emails were sent to members and liaison officers.
- The Interim Bulletin enables the liaison officers to follow the progress of their contributions to the Bulletin on Constitutional Case-Law in real time, through all the stages of the production (proof-reading in the original language – English or French, control of headnotes and indexing according to the Systematic Thesaurus, translation into the other language, and parallel proof-reading of the translation). Other liaison officers can also access the contributions of their peers at all these stages.

The *Newsgroup*, the *Constitutional Justice Observatory* and the *Venice Forum* are also open to courts working with the Venice Commission within the framework of regional agreements.

6. Co-operation with other international organisations in the field of constitutional justice

On the basis of various co-operation agreements, constitutional courts brought together in regional or language-based groups may contribute to the CODICES database and to the Venice Forum.

Association of the Asian Constitutional Courts (AACC)

In 2021, the Constitutional Council of Kazakhstan (Acting President of the AACC) had overseen two meetings of the Secretaries General and four Board of Members meetings. During these events, the statute was amended, the Supreme Court of Bangladesh and the Constitutional Court of Jordan became members of the AACC and the Memorandums of Understanding between the AACC and the Eurasian Association of Constitutional Review Bodies (EACRB) and between the AACC and the Conference of European Constitutional Courts (CECC), were signed.

In addition, in August 2021, the International Symposium of the AACC on “The Internet Era: The Rule of Law, the Values of Person, the State Independence” was held online. The Constitutional Court of Mongolia took over the presidency of the AACC at that event.

An International Symposium took place in November 2021 on the theme “Constitutional Rights and AACC Members” which followed the theme of the AACC Secretariat for Research and Development’s 2021 research project – and to which the President of the Venice Commission, Mr Gianni Buquicchio, had been invited to make an opening presentation.

Association of Francophone Constitutional Courts (ACCF)

In 2021, a Bureau meeting took place online using Zoom under the chairmanship of Mr Richard Wagner, Chief Justice of Canada and President of the Association of Francophone Constitutional Courts (ACCF).

In April 2021, a Co-operation Agreement was signed between the ACCF and the Conference of Constitutional Jurisdictions of Africa (CCJA), which allowed for the joint organisation of scientific events and concerted regional and international debates on constitutional justice.

In May 2021, the 9th Conference of the Head of Institutions on the topic of “Collegiality” took place online, in which over 100 participants took part.

Co-operation with the Conference of Constitutional Jurisdictions of Africa (CCJA)

On 14-16 October 2021, the 3rd International Symposium of the Conference of Constitutional Jurisdictions of Africa (CCJA) on “**Electoral process: Transparency, inclusion and integrity**” took place in hybrid form (organised in Mozambique).

Conference of European Constitutional Courts (CECC)

Since 1999, the Joint Council on Constitutional Justice (JCCJ) of the Venice Commission produces working documents upon request of the presidencies of the Conference of European Constitutional Courts (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 *e-Bulletin on Constitutional Case-Law*.

The Special Edition of the e-Bulletin was prepared for the XVIIIth Congress of the CECC on the topic “*Human Rights and Fundamental Freedoms: The Relationship of International, Transnational and National Catalogues in the 21st Century*”, which took place online under the presidency of the Constitutional Court of the Czech Republic on 24-25 February 2021. The event marked the end of the (nearly) four-year presidency of the Constitutional Court of the Czech Republic. The CECC brings together forty-one European constitutional courts and equivalent institutions. The Special Issue of the e-Bulletin is available online.

VI. NEIGHBOURHOOD CO-OPERATION

In 2021 the Venice Commission continued to develop several bilateral and regional projects in Central Asia, Southern Mediterranean region and Latin American countries in such fields as constitutional assistance, constitutional justice, reform of the judiciary and electoral legislation and practice. The projects were funded by the European Union and the Council of Europe as well as voluntary contributions from its member States.

1. Central Asia

In 2021, the Venice Commission continued to implement the project "*Promote efficient functioning of state institutions and public administration*". The project aims to promote efficient functioning of state institutions and public administration in accordance with European and other international standards in the Central Asian countries (Kazakhstan, Kyrgyzstan, Tajikistan, Turkmenistan and Uzbekistan). The project is part of the larger Joint EU-Council of Europe Central Asia Rule of Law Programme 2020-2023.

The Venice Commission provided demand-driven technical assistance and legal advice as regards the constitutional and legal reforms and the modernisation of the public administration in Central Asia. Significant progress was achieved in **Kazakhstan** where the Venice Commission provided targeted support to the Constitutional Council, the Supreme Court, the High Judicial Council as well as the Ombudsman institution and the Senate (International round table on the "*Referral of the decisions to the Constitutional Council by ordinary courts*" (Nur-Sultan, 21 February 2021); International online Seminar "*Execution of the decisions of the Constitutional Courts and equivalent bodies – theory and practice*" (Nur-Sultan, 25 June 2021); International round table on "*Reforms of the Judiciary in Kazakhstan: addressing new challenges using the best international practices*" (27-28 October 2021); International hybrid round table on "*The role and place of judicial councils in the judiciary and their current models*" (Nur-Sultan, 24 November 2021).

In 2021, **Kazakhstan** requested two Opinions of the Venice Commission – on the concept paper concerning the reform of the Constitutional Council [CDL-AD\(2021\)010](#) and on the draft law on ombudsman [CDL-AD\(2021\)049](#).

Kyrgyzstan requested a joint Opinion of the Venice Commission and OSCE/ODIHR on the Draft Constitution of the Kyrgyz Republic [CDL-AD\(2021\)007](#). Following its adoption at the 126th Plenary Session of the Venice Commission, the Venice Commission experts participated in the Donors' Partners Co-ordination Council Working Group for Rule of Law and Human Rights for the Kyrgyz Republic on 6 April 2021.

National authorities of **Uzbekistan** engaged in a constructive dialogue with the Commission on the on-going reform process in the country, notably in the field of the judiciary and national human rights mechanisms (International Legal Forum "*Tashkent Law Spring: Law 4.0. The vision of law in the age of fourth industrial revolution*" (Tashkent, 22 – 23 April 2021); International conference "*Uzbekistan: five years of reforms*" (Tashkent, 5 October 2021). Representatives of the Uzbek authorities participated in different regional activities organised by the Venice Commission in Central Asia.

2. Southern Mediterranean

The Commission actively co-operated with the countries of Southern Mediterranean region, notably with **Morocco** and **Tunisia**. A high-level dialogue continued with other countries of the region such as **Algeria, Egypt, Jordan, Lebanon, and Palestine**⁹.

The 2021 co-operation activities of the Venice Commission in this region took place under several joint programmes co-financed by the European Union and the Council of Europe as well as the Norwegian grants.

Through the South Programme IV entitled "*Regional support to reinforced Human rights, rule of Law and democracy in the southern Mediterranean*", the Venice Commission mainly supported its regional partners (**Algeria, Egypt, Jordan, Lebanon, Morocco, Palestine**¹⁰ and **Tunisia**) in the reform of their public administration by building bridges and exchanging good practices between senior officials from the region and beyond. Based on the partners' priorities, the 13th UniDem Med seminar (University for Democracy for the Southern Mediterranean) which was co-organised with the General Personnel Council of Palestine¹¹ on 5-6 October 2021 initiated very fruitful exchanges on "*Public administration facing COVID-19 Pandemic*:"

⁹ This designation shall not be construed as recognition of a State of Palestine and is without prejudice to the individual positions of Council of Europe member States on this issue.

¹⁰ See above footnote.

¹¹ See above footnote.

modernisation and digital innovations”. The 14th UniDem Med Seminar, co-organised with Morocco on 1-2 December 2021, addressed the issues of “*Good governance and quality of Public Administration*” and *defined a series of recommendations on the subject*.”

The Venice Commission paid special attention to supporting Ombudsman Institutions in the South Mediterranean region as they play a crucial role in strengthening democracy, the rule of law, good governance and the protection and promotion of human rights and fundamental freedoms. Therefore, on 7 April 2021, the Ombudsman of the **Kingdom of Morocco**, in co-operation with the Venice Commission, organised an international webinar on “*The UN Resolution of 16 December 2020 ‘The role of ombudsman institutions in the promotion and protection of human rights, good governance and the rule of law’, and the Council of Europe standards*”. The aim of the webinar was to present the UN Resolution that established the Venice Principles as the new global standard for ombudsmen, as well as to present the Council of Europe’s standards in this field.

In the framework of the project “*Strengthening the Rule of Law and Democracy in Morocco*” with funding provided by Norway, a conference was organised by the Ombudsman of Morocco and President of the AOMF and the Mediator of Monaco on 12-13 July 2021 in Monaco. It was held in a hybrid format due to the public health emergency. Under the theme “*Protecting the rights of future generations: what role for ombudsmen?*”, the conference was an opportunity for ombudsmen and mediators to discuss issues such as the representation of future generations in our democracies and transgenerational equity, the possibilities of action for the ombudsman in the defence of fundamental rights extended to future generations, as well as concrete examples of issues of protection of fundamental rights in times of pandemics. The participants from the South-Mediterranean region took part in the Conference.

In 2021, **Tunisia** remained one of the most active partners of the Venice Commission in the region. Co-operation focused on issues related to the reform of the judiciary. Following a request for assistance from the Ministry of Justice and the Centre for Legal and Judicial Studies of Tunisia, a first workshop on the quality of regulation and law-drafting was organised on 2 December 2021 in the framework of the *AP-JUST programme - a joint bilateral programme between the European Union and the Council of Europe in support of justice reform in Tunisia*.

In the framework of the *PALL-T programme (Support project to independent bodies in Tunisia)*, the Venice Commission contributed to the effective performance of the Independent High Commission for Elections’ statutory tasks in finalising or revising the electoral legal framework, which is now an indispensable element for the functioning of a democratic state that respects human rights. The Venice Commission organised a *first workshop on electoral constituencies* on 30 March 2021 and a *second one on referendum* on 15 July 2021.

The initial plan of activities, notably with independent institutions and the judiciary had to be revised following the declaration of the state of emergency by the President of Tunisia on 25 July 2021.

3. **Latin America**

In 2021, the Venice Commission continued its fruitful co-operation with its member States and partners in Latin America. 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. However, due to the on-going pandemic most of the activities with national authorities and regional organisations had to be conducted through videoconferences.

The work in this region was carried out in the framework of the joint EU-CoE project “*Support to Reforms of Electoral Legislation and Practice and Regional Human Rights Instruments and Mechanisms in Countries of Latin America, Central Asia and Mongolia*” (2019-2022). The project aims at supporting national authorities of Latin American and Central Asian countries in their endeavours to improve electoral systems and practice, to conduct legislative and constitutional reforms and to promote rule of law and human rights mechanisms in line with applicable European and international standards.

On 11-12 May 2021, the Venice Commission organised in co-operation with the Ibero-American Federation of Ombudsmen (FIO) an online Conference on “*The Venice Principles and Ombudsman Institutions in the protection of Human Rights in Latin America and Europe*” aimed at raising awareness of the “*Venice Principles*”. Representatives of the Commission and participants from FIO member institutions focused

on strengthening co-operation on issues of good governance in Latin America as well as on comparing the regional experience with the European one. The Conference provided a good opportunity to explore different ways of making the “Venice Principles” a living text that can be adapted to different legal and political contexts beyond the European model.

The Electoral Federal tribunal and the National Electoral Institute continued to be the most active partners of the Venice Commission in **Mexico**. On 24-25 November 2021 “*the Global Forum on Democracy on the role of electoral bodies in democratic governance*” organised by the National Electoral Institute of Mexico in Mexico City gathered high level participants to analyse and discuss some of the main problems and challenges that democracy had during the first decades of the twenty-first century. Among other issues related to the management of electoral processes, the discussions focused on such issues as impartiality of electoral management bodies, their specific characteristics, the separation from political formations and other power groups. The event was organised with the support and co-operation of the Kofi Annan Foundation, the International Foundation for Electoral Systems (IFES), the Inter-American Institute of Human Rights (IIDH), International Institute for Democracy and Electoral Assistance (International IDEA), the Venice Commission of the Council of Europe and the Organization of American States.

Online training days “*Elections and risks of misinformation: Good practices in digital campaigns and social networks*” were carried out along with **Argentina** on 11 – 13 May 2021.

4. Centre of political and legal studies of Spain (CEPC)

On 13 April 2021, the **Centro de Estudios Políticos y Constitucionales (Spain)** and the Venice Commission organised a seminar to highlight the interaction between Spain and the Commission since the Commission’s origins, in Europe and in Latin America. This activity was organised following the signature of the Memorandum of Understanding between the CEPC and the Venice Commission on 19 December 2020.

VII. CO-OPERATION WITHIN THE COUNCIL OF EUROPE, THE EUROPEAN UNION AND WITH OTHER INTERNATIONAL ORGANISATIONS

In 2021, the Venice Commission continued its co-operation with organs and bodies of the Council of Europe, as well as with its partners outside of the Council of Europe, namely the European Union, OSCE/ODIHR and the OSCE.

1. Committee of Ministers

The Committee of Minister actively referred to the work of the Venice Commission. This concerned notably the execution of the *Sejdić and Finci* group of ECtHR cases regarding Bosnia and Herzegovina, neighbourhood policy with Tunisia, the impact of the Covid-19 pandemic on human rights and the rule of law (reply to the Parliamentary Assembly), co-operation between the Council of Europe and the European Union, local and regional elections in major crisis situations, the strengthening of effective, pluralist and independent national human rights institutions and the profession of lawyer.¹²

2. Parliamentary Assembly

Apart from regularly taking part in plenary session of the Venice Commission and meetings of the Council for Democratic Elections, in 2021 the Parliamentary Assembly asked for twelve Opinions of the Venice Commission, which concerned **Hungary** [CDL-AD\(2021\)050](#); [CDL-AD\(2021\)036](#); [CDL-AD\(2021\)034](#); [CDL-AD\(2021\)039](#); [CDL-AD\(2021\)029](#), **Serbia** [CDL-AD\(2021\)032](#), **Russian Federation** [CDL-AD\(2021\)027](#); [CDL-AD\(2021\)005](#), **Turkey** [CDL-AD\(2021\)023cor](#), **Georgia** [CDL-AD\(2021\)011](#), **Spain** [CDL-AD\(2021\)004](#), and **Belarus** [CDL-AD\(2021\)002](#).

¹² See https://search.coe.int/cm/Pages/result_details.aspx?ObjectId=0900001680a43215. https://search.coe.int/cm/Pages/result_details.aspx?ObjectId=0900001680a246ea; https://search.coe.int/cm/Pages/result_details.aspx?ObjectId=0900001680a286b9; https://search.coe.int/cm/Pages/result_details.aspx?ObjectId=0900001680a2471a; https://search.coe.int/cm/Pages/result_details.aspx?ObjectId=0900001680a1f4da; https://search.coe.int/cm/Pages/result_details.aspx?ObjectId=0900001680a1a34b.

8. Co-operation with the Directorate General of Democracy (DGII) of the Council of Europe

In 2021, the Venice Commission co-operated closely with the European Committee on Democracy and Governance (CDDG) and more specifically its Working Group on Democracy and Technology (WG-DT), as well as the secretariat in charge of the Committee, attached to the Directorate General of Democracy (DGII) of the Council of Europe.

In particular, the Commission assisted the WG-DT by helping with the consultation of electoral administrations on the draft Committee of Ministers' Guidelines on the use of information and communication technology (ICT) in electoral processes in Council of Europe member States, which provided a better understanding of the use of e-voting in many member states.

The Commission also worked regularly with the Electoral Assistance Division of DGII on **Georgia** and the **Republic of Moldova**. In the case of Georgia, the Commission contributed to the production of a manual on combating the misuse of administrative resources during electoral processes by providing two co-authors to the book. As regards the Republic of Moldova, the Commission participated in several webinars on the issue of alternative voting methods and on the analysis of electoral recommendations and their follow-up.

9. European Union

European Parliament

The European Parliament (EP) called to use the **Rule of Law Checklist** as a tool of analysis of the rule of law situation in the member States in its Reports on the European Commission's 2020 Rule of Law¹⁵ and on the creation of guidelines for the application of the general regime of conditionality for the protection of the Union budget.¹⁶ Equally, in its Report on the Commission's 2020 Rule of Law the EP mentioned the Interim Report on the measures taken in the EU Member States as a result of the COVID-19 crisis and their impact on democracy, the rule of law and fundamental rights¹⁷ and called to involve *inter alia* the Venice Commission in "a panel of independent experts . . . , in order to help identify the main positive and negative

15 REPORT on the Commission's 2020 Rule of Law Report.

16 REPORT on the creation of guidelines for the application of the general regime of conditionality for the protection of the Union budget.

17 [www.venice.coe.int/webforms/documents/?pdf=CDL-AD\(2020\)018-e](http://www.venice.coe.int/webforms/documents/?pdf=CDL-AD(2020)018-e).

developments in each Member State".¹⁸ The Opinion on the 2020 Russian Federation constitutional amendments¹⁹ was referred to by the EP while addressing the EU-Russian Federation political relations.²⁰

European Commission

The European Commission referred to the Venice Commission's recommendations/Opinions in its so-called "Key Findings" reports on **Albania**,²¹ **Bosnia and Herzegovina**,²² **Kosovo**,²³ **North Macedonia**,²⁴ and **Turkey**.²⁵ **Georgia** was called by the EC²⁶ to implement the Venice Commission recommendations on the selection procedure of the Supreme Court judges.²⁷

The European Commissioner for Neighbourhood and Enlargement, Mr Olivér Várhelyi, attended via videoconference the 126th Plenary Session of the Venice Commission. On 16 September 2021, Mr Didier Reynders, EU Commissaire for Justice, met with the Secretary General of the Council of Europe Ms Marija Pejčinović Burić, and the Director, Secretary of the Venice Commission, Ms Simona Granata-Menghini, and expressed his gratitude for the significant and invaluable support in the preparation of the EC Rule of Law report.

Council of the EU

The Stabilisation and Association Council (SA Council) between **Albania** and the European Union called Albania to follow up on the Venice Commission recommendations as regards future elections in the country.²⁸ Similarly, the Association Council acknowledged the need to address by the **Republic of Moldova** the joint recommendations of the Venice Commission and the OSCE/ODIHR by

18 www.europarl.europa.eu/doceo/document/A-9-2021-0199_EN.html, para 46

19 [www.venice.coe.int/webforms/documents/?pdf=CDL-AD\(2020\)009-e](http://www.venice.coe.int/webforms/documents/?pdf=CDL-AD(2020)009-e).

20 REPORT on a European Parliament recommendation to the Council, the Commission and the Vice-President of the Commission / High Representative of the Union for Foreign Affairs and Security Policy on the direction of EU-Russia political relations.

21 Key findings of the 2021 Report on Albania.

22 Key findings of the 2021 Report on Bosnia and Herzegovina.

23 Key findings of the 2021 Report on Kosovo.

24 Key findings of the 2021 Report on North Macedonia.

25 Key findings of the 2021 Report on Turkey.

26 2021 Association Implementation Report on Georgia | EEAS Website (europa.eu)

27 Georgia - Urgent Opinion on the selection and appointment of Supreme Court judges, CDL-AD(2019)009

28 Joint press statement following the 11th meeting of the Stabilisation and Association Council between the EU and Albania, 1 March 2021.

reviewing the electoral legislation in an inclusive and participatory process. The EU members of the EU-Kyrgyz Republic Co-operation Council stressed the importance that the legislation implementing the new Constitution of **Kyrgyzstan** follows the 2021 Joint Opinion on the draft constitution.²⁹ At its 7th meeting of the Association Council (for Ukraine) the EU encouraged **Ukraine** to implement the recommendations of the Venice Commission regarding the State language law and adopt a national minorities' law.³⁰

Joint European Union and Council of Europe Programmes/Projects

In 2021, the Venice Commission continued its co-operation with several countries and regions within the framework of the joint projects with funding provided by the European Union and the Council of Europe and voluntary contributions from member States.

- Joint European Union and Council of Europe Programme "Horizontal Facility for the Western Balkans and Turkey 2019-2022" – [The Expertise Co-ordination Mechanism \(ECM\) - https://www.eeas.europa.eu/node/92853](https://www.eeas.europa.eu/node/92853) fr;
- Joint European Union and Council of Europe Programme "Partnership for Good Governance" 2019-2021 (<https://pjp-eu.coe.int/en/web/pgg2/home>) – [The Quick Response Mechanism \(QRM\)](#);
- Joint European Union and Council of Europe project "Support to Reforms of Electoral Legislation and Practice and Regional Human Rights Instruments and Mechanisms in Countries of Latin America, Central Asia and Mongolia" (2019-2022);
- Joint European Union and Council of Europe project "Promoting Efficient Functioning of State Institutions and Public Administration in Central Asia" (2020-2023);
- Joint European Union and Council of Europe Programme "Regional support to reinforced Human rights, rule of Law and democracy in the southern Mediterranean" (South Programme IV) (2020-2022);
- Joint European Union and Council of Europe Programme "Support project to independent bodies in Tunisia" (PAI-T programme) (2019-2022);

- Joint European Union and Council of Europe Programme "Support of justice reform in Tunisia (AP-JUST)" (2019-2022);
- Project "Strengthening the Rule of Law and Democracy in Morocco" (funded by Norway) (2019-2021).

10. Organisation for Economic Co-operation and Development (OECD)

Two experts from SIGMA (Support for Improvement in Governance and Management) – a joint initiative of the Organisation for Economic Co-operation and Development (OECD) and the European Union – participated in the 14th UniDem Med seminar on "Good Governance and Quality of Public Administration" which took place online on 1-2 December 2021.

11. OSCE/ODIHR

The long-standing co-operation between the Venice Commission and OSCE/ODIHR went on in 2021, in particular concerning elections and political parties. According to a two-decades long practice, most Opinions in this field were drafted jointly. Out of the eight joint Opinions in the electoral field, four concerned **Georgia** (amendments to the Election Code [CDL-AD\(2021\)026](#); the Law on Political Associations of Citizens and the Rules of Procedure of the Parliament [CDL-AD\(2021\)008](#); draft article 79¹ of the election code [CDL-AD\(2021\)009](#); draft and revised amendments to the election code [CDL-AD\(2021\)022](#), one concerned **Armenia** (draft amendments to the electoral code and related legislation [CDL-AD\(2021\)025](#); one concerned **Hungary** (amendments to the electoral legislation [CDL-AD\(2021\)039](#) and two concerned **Ukraine** (the draft law on improving the procedure for establishing the impossibility of holding national and local elections, all-Ukrainian and local referendums in certain territories and polling stations" [CDL-AD\(2021\)045](#); draft law on political parties of **Ukraine** [CDL-AD\(2021\)003](#)).

The Venice Commission and OSCE/ODIHR also wrote a joint Opinion on the draft Constitution of **Kyrgyzstan** [CDL-AD\(2021\)007](#). Joint Opinions enable sharing the practical experience of ODIHR with the experience of the Venice Commission in the constitutions field; by speaking with one voice, both organisations prevent forum-shopping.

²⁹ Informal meeting of the members of the EU-Kyrgyz Republic Co-operation Council, 4 June 2021.

³⁰ Joint press release following the 7th Association Council meeting between the EU and Ukraine, 11 February 2021.

12. United Nations

The Office of the UN High Representative for Human Rights referred to the Commission's Opinions concerning the situation of human rights in **Belarus**³¹ and **Ukraine**.³² The Codes of Good Practice in Electoral Matters and in Referendums, the Venice Principles, the Joint Guidelines on Political Party Regulation and other texts of general nature are included by the UN in its lists of international and regional standards on the rights to freedom of peaceful assembly and of association,³³ on independence of judges, lawyers and prosecutors,³⁴ on promoting and consolidating democracy.³⁵ The Rule of Law checklist is mentioned in the OHCHR Recommended Principles on Human Rights and Asset Recovery.³⁶

31 OHCHR | A/HRC/46/4: Situation of human rights in Belarus in the context of the 2020 presidential election Report of the United Nations High Commissioner for Human Rights.

32 In Dialogue with Ukraine, Human Rights Committee Asks about Situation of Human Rights in Ukraine and in the Occupied Territories of Ukraine | OHCHR.

33 International Standards on the Rights to freedom of peaceful assembly and of association.

34 OHCHR | International standards on independence of judges and lawyers.

35 OHCHR | Compilation of documents and texts adopted and used by various intergovernmental, international, regional and subregional organizations aimed at promoting and consolidating democracy.

36 OHCHR | OHCHR Recommended Principles on Human Rights and Asset Recovery (2022) (link to the final 2022 document)

VIII. LIST OF OPINIONS

CDL-AD(2021)053

Albania - Opinion on the Extension of the Term of Office of the Transitional Bodies in charge of the re-evaluation of Judges and Prosecutors, adopted by the Venice Commission at its 129th Plenary Session (Venice and online, 10-11 December 2021)

(Vetting system of judges and prosecutors, mandate of the transitional vetting bodies, extension of the mandate)

CDL-AD(2021)052

Serbia - Urgent opinion on the revised draft Law on the Referendum and the People's Initiative, endorsed by the Venice Commission at its 129th Plenary Session (Venice and online, 10-11 December 2021)

(Referendum, People's initiative, right to vote, right to participate, electoral administration, campaign, media and finances, parallelism of procedures, complaints and appeals)

CDL-AD(2021)051

Kosovo - Opinion on the draft amendments to the Law on the prosecutorial Council of Kosovo, adopted by the Venice Commission at its 129th Plenary Session (Venice and online, 10-11 October 2021)

(Prosecutorial Council, composition of the Council, election of members, dismissal of members, replacement of members)

CDL-AD(2021)050

Hungary - Opinion on the compatibility with international human rights standards of Act LXXIX amending certain Acts for the protection of children, adopted by the Venice Commission at its 129th Plenary Session (Venice and online, 10-11 December 2021)

(Non-recognition of gender identity, right to privacy, prohibition of discrimination, freedom of expression, the protection of health and morals, education and upbringing)

CDL-AD(2021)049

Kazakhstan - Opinion on the draft law "On the Commissioner for Human Rights", adopted by the Venice Commission at its 129th Plenary Session (Venice and online, 10-11 December 2021)

(Ombudsman, jurisdiction, mandate, immunity, election, termination of powers, incompatibilities, investigation initiative, complaints management, budget, institutional architecture)

CDL-AD(2021)048

Serbia - Urgent opinion on the revised draft constitutional amendments on the judiciary, issued pursuant to Article 14a of the Venice Commission's Rules of Procedure on 24 November 2021, endorsed by the Venice Commission at its 129th Plenary Session (Venice and online, 10-11 December 2021)

(Constitutional amendments, judicial reform, anti-deadlock mechanism, High Judicial Council, High Prosecutorial Council, budgetary autonomy, eligibility criteria for judicial office, judicial incompatibilities)

CDL-AD(2021)047

Republic of Moldova - Opinion on the amendments of 24 August 2021 to the law on the prosecution service, adopted by the Venice Commission at its 129th Plenary Session (Venice and online, 10-11 December 2021)

(Prosecution service, legislative procedure, Superior Council of Prosecutors, *ex officio* members, Prosecutor General performance evaluation, disciplinary liability, suspension from office, Prosecutor General *ad interim*)

CDL-AD(2021)046

Republic of Moldova - Joint Opinion of the Venice Commission and the Directorate General of Human Rights and Rule of Law (DGI) of the Council of Europe on some measures related to the selection of candidates for administrative positions in bodies of self-administration of judges and prosecutors and the amendment of some normative acts, adopted by the Venice Commission at its 129th Plenary Session (10-11 December 2021)

(Bodies of self-administration of Judges and Prosecutors, extraordinary integrity assessments, the Evaluation Committee, access to information, hearings, evaluation outcomes)

CDL-AD(2021)045

Ukraine- Joint Opinion of the Venice Commission and the OSCE/ODIHR on the draft law "On improving the procedure for establishing the impossibility of holding national and local elections, all-Ukrainian and local referendums in certain territories and polling stations", adopted by the Venice Commission at its 129th Plenary Session (Venice and online, 10-11 December 2021)

(National and local elections, local referendums, right to vote, right to be elected, justified exceptions, effective judicial review, legal certainty, inclusivity, transparency, and accountability in decision making, democratic election process)

CDL-AD(2021)044

Republic of Moldova - Amicus curiae Brief for the Constitutional Court on the constitutional Implications of the ratification of the Council of Europe Convention on preventing and combating violence against women and domestic violence (Istanbul Convention), adopted by the Venice Commission at its 129th Plenary Session (Venice online, 10-11 December 2021)

(Istanbul Convention, violence against women, domestic violence, gender-based-violations, ratification, constitutional implications, gender, gender equality, equality and non-discrimination, concept of family, education, the best interest of the child, freedom of expression, reporting by professionals, principle of professional confidentiality, honour crimes)

CDL-AD(2021)043

Cyprus - Opinion on three Bills reforming the Judiciary, adopted by the Venice Commission at its 129th Plenary session (10-11 December 2021, Venice and online)

(Judicial reform, new Court of Appeal, Supreme Constitutional Court, jurisdiction, constitutional review, constitutional amendment, appointment of judges)

CDL-AD(2021)042

Slovak Republic - Opinion on two questions regarding the organisation of the legal profession in the Slovak Republic and the role of the Supreme Administrative Court in the disciplinary proceedings against barristers, adopted by the Venice Commission at its 128th Plenary Session (Venice and online, 15-16 October 2021)

(Legal profession, judicial reform, Supreme Administrative Court, administrative justice, disciplinary proceedings, self-governance structures, voluntary membership Bars, specialist Bars, regional Bars)

CDL-AD(2021)041

United Kingdom - Opinion on the possible exclusion of the Parliamentary Commissioner for administration and Health Service Commissioner from the "safe space" provided for by the Health and Care Bill, adopted by the Venice Commission at its 128th Plenary Session (Venice and online, 15-16 October 2021)

(Parliamentary health Service Ombudsman, national health service, "safe space" investigations, investigatory powers, infringement of the mandate, access to information, credibility of the institution, the interest of citizens)

CDL-AD(2021)040

North Macedonia - Opinion on the Draft Law on the state of emergency, adopted by the Venice Commission at its 128th Plenary Session (Venice and online, 15-16 October 2021)

(State of emergency, fundamental rights, constitutional limitations, national legal order, declaration of the state of emergency, procedure, material conditions, parliamentary oversight, judicial oversight, predictability, proportionality, decree-laws, human rights implications, balance of powers, emergency headquarters)

CDL-AD(2021)039

Hungary - Joint Opinion of the Venice Commission and the OSCE/ODIHR on the 2020 amendments to electoral legislation, approved by the Council for Democratic Elections at its 72nd meeting (Venice and online, 14 October 2021) and adopted by the Venice Commission at its 128th Plenary Session (Venice and online, 15-16 October 2021)

(Electoral legislation, legislative procedure, electoral system, cardinal laws, qualified majority, election administration, delimitation of constituencies, the right to vote, voter and candidate registration, dispute resolution, self-government, referendums)

CDL-AD(2021)038

Ukraine - Opinion on the draft law "On the Principles of State Policy of the Transition Period" adopted by the Venice Commission at its 128th Plenary Session (Venice and online, 15-16 October 2021)

(Transition period, transitional justice, conflict period, post-conflict period, reconciliation, sustainable peacebuilding, act of armed aggression, occupation, occupied territories, effective control, de-occupied territories, international law, access to justice, reparation, criminal liability, lustration, right to truth, state registration procedures, elections, referendums, local government authorities, state measures)

CDL-AD(2021)037

Albania - Amicus Curiae Brief on the competence of the Constitutional Court regarding the validity of the local elections held on 30 June 2019, approved by the Council for Democratic Elections at its 72nd meeting (hybrid, 14 October 2021) and adopted by the Venice Commission at its 128th Plenary Session (Hybrid (15-16 October 2021)

(Local elections, procedure of registration, Constitutional Court jurisdiction, right to be elected, periodicity of elections, political pluralism, meaningful choice, voters' highest interest, legal uncertainty)

CDL-AD(2021)036

Hungary - Opinion on the amendments to the Act on the organisation and administration of the Courts and the Act on the legal status and remuneration of judges adopted by the Hungarian parliament in December 2020, adopted by the Venice Commission at its 128th Plenary Session (Venice and online, 15-16 October 2021)

(Independence of judiciary, Constitutional Court, legislative procedure, allocation of cases, uniformity procedure, internal independence, complaint procedure, ranking of judges, secondment of judges)

CDL-AD(2021)035

Armenia - Opinion on the legislation related to the Ombudsman's staff, adopted by the Venice Commission at its 128th Plenary Session (Venice and online, 15-16 October 2021)

(Ombudsman, staff independence, budget, status and ranking, public administration reform)

CDL-AD(2021)034

Hungary - Opinion on the amendments to the Act on Equal Treatment and Promotion of Equal Opportunities and to the Act on the Commissioner for Fundamental Rights as adopted by the Hungarian parliament in December 2020, adopted by the Venice Commission at its 128th Plenary Session (Venice and online, 15-16 October 2021)

(Ombudsman, equal treatment, equal opportunities, legislative procedure, national equality bodies, national human rights institutions, mandate, operational consequences, collision of competences)

CDL-AD(2021)033

Serbia - Urgent opinion on the draft law on the referendum and the people's initiative, Issued pursuant to Article 14a of the Venice Commission's Rules of Procedure, on 24 September 2021, Endorsed by the Venice Commission at its 128th Plenary Session (Venice and online, 15-16 October 2021)

(Referendums, People's initiative, legislative process, right to vote, right to participate, quorum, electoral administration, campaign, media and finances, parallelism of procedure, complaints and appeal)

CDL-AD(2021)032

Serbia - Opinion on the draft Constitutional Amendments on the Judiciary and draft Constitutional Law for the Implementation of the Constitutional Amendments, adopted by the Venice Commission at its 128th Plenary Session (Venice and online, 15-16 October 2021)

(Judiciary, constitutional amendments, independence of judges, election of judges, permanent tenure of judicial office, non-transferability, immunity and incompatibilities, High Judicial Council, Public Prosecution service, High Prosecutorial Council, Constitutional Court, Judiciary Academy,

CDL-AD(2021)031

Netherlands - Opinion on the Legal Protection of Citizens, adopted Venice Commission at its 128th Plenary Session (Venice and online, 15-16 October 2021)

(Access to information, ombudsman, legislative procedure, impact studies, functioning of government, administrative complaint procedures, data protection, artificial intelligence, proportionality, hardship clauses)

CDL-AD(2021)030

Montenegro - Urgent opinion on the revised draft amendments to the Law on the State Prosecution Service, issued pursuant to Article 14a of the Venice Commission's Rules of Procedure on 10 May 2021, endorsed by the Venice Commission at its 127th Plenary Session (Venice and online, 2-3 July 2021)

(State Prosecution Service, Prosecutorial Council, lay members, interim Prosecutor General, reporting to Parliament)

CDL-AD(2021)029

Hungary - Opinion on the constitutional amendments adopted by the Hungarian parliament in December 2020, adopted by the Venice Commission at its 127th Plenary Session (Venice and online, 2-3 July 2021)

(Constitutional amendments, legislative procedure, exceptional situations, marriage and family, legal gender recognition, gender identity, education and upbringing, public funds)

CDL-AD(2021)028

Ukraine - Joint Urgent opinion of the Venice Commission and the Directorate General of Human Rights and Rule of Law of the Council of Europe, on the draft Law amending provisions of the Code of Administrative offences and the Criminal Code regarding the liability of public officials for inaccurate asset declaration (No. 4651 of 27 January 2021), issued pursuant to Article 14a of the Venice Commission's Rules of Procedure on 6 May 2020, endorsed by the Venice Commission at its 127th Plenary Session (Venice and online, 2-3 July 2021)

(Asset declaration, liability of public officials, appropriate sanctions, corruption, administrative and criminal liability, declaration-related offences)

CDL-AD(2021)027

[Russian Federation - Opinion on the Compatibility with international human rights standards of a series of Bills introduced to the Russian State Duma between 10 and 23 November 2020, to amend laws affecting “foreign agents”, adopted by the Venice Commission at its 127th Plenary session \(Venice and online, 2-3 July 2021\)](#)

(International human rights standards, civil society, human rights defenders, “foreign agents”, freedom of association, funding of associations, freedom of expression, right to privacy, restrictions, legal certainty, registration, reporting and auditing, public disclosure, sanctions)

CDL-AD(2021)026

[Georgia - urgent joint opinion of the Venice Commission and the OSCE/ODIHR on the revised amendments to the Election Code of Georgia, issued pursuant to Article 14a of the Venice Commission’s Rules of Procedure on 18 June 2021, endorsed by the Venice Commission at its 127th Plenary Session \(Venice and online, 2-3 July 2021\)](#)

(Electoral legislation, legislative procedure, election administration, Central Elections Commission, District Election Commissions, Precinct Election Commission, election dispute resolution)

CDL-AD(2021)025

[Armenia - urgent joint opinion on Draft Amendments to the Electoral Code and Related Legislation, issued pursuant to Article 14a of the Venice Commission’s Rules of Procedure on 21 April 2021, endorsed by the Venice Commission at its 127th Plenary Session \(Venice and online, 2-3 July 2021\)](#)

(Electoral legislation, emergency situations, local self-government bodies, electoral system, thresholds, election administration, electoral campaigns, false information and slander, voter list and voter registration, candidate and list registration procedure, funding, abuse of administrative resources, complaints and appeals procedure, elections observers)

CDL-AD(2021)024

[Bosnia and Herzegovina – Opinion on the draft Law on preventing of conflict of interests, adopted by the Venice Commission at its 127th Plenary Session \(Venice and online, 2-3 July 2021\)](#)

(Conflict of interest, fragmentation, appointed and elected officials, conflict of interests, incompatibilities, gifts, and asset declarations, Conflict of Interest Commission, sanctions)

CDL-AD(2021)023cor

[Turkey - Opinion on the compatibility with international human rights standards of Law no. 7262 on the Prevention of Financing of the Proliferation of Weapons of Mass Destruction recently passed by Turkey’s National Assembly, amending, *inter alia*, the Law on Associations \(No. 2860\), adopted by the Venice Commission at its 127th Plenary Session \(hybrid, 2-3 July 2021\)](#)

(Combating Terrorism, weapons of mass destruction, the Financial Action Task Force, legislative procedure, freedom of association, aid collection activities, national security and public safety, human rights limitations, audits and risk-assessment, foreign associations)

CDL-AD(2021)022

[Georgia - urgent joint opinion on Draft Amendments to the Election Code, issued pursuant to Article 14a of the Venice Commission’s Rules of Procedure on 30 April 2021, endorsed by the Venice Commission at its 127th Plenary Session \(Venice and online, 2-3 July 2021\)](#)

(Electoral legislation, election administration, misuse of administrative recourses, the right to vote free from pressure and intimidation, a fair and honest count of the votes, complaints and appeal, local election system, electronic voting and counting)

CDL-AD(2021)021

[Malta - urgent opinion on the reform of fair trial requirements related to substantial administrative penalties, issued pursuant to Article 14a of the Venice Commission’s Rules of Procedure on 1 June 2021, endorsed by the Venice Commission at its 127th Plenary Session \(Venice and online, 2-3 July 2021\)](#)

(Constitutional reform, fair trial requirements, legislative procedure, powers of administrative authorities)

CDL-AD(2021)020

[Georgia - urgent opinion on the amendments to the organic law on common courts, issued pursuant to Article 14a of the Venice Commission’s Rules of Procedure on 28 April 2021, endorsed by the Venice Commission at its 127th Plenary Session \(Venice and online, 2-3 July 2021\)](#)

(Judiciary reform, appointment of judges, Supreme Court of Georgia, shortlisting and voting stage, appeal mechanism)

CDL-AD(2021)019

Romania - Opinion on the draft Law for dismantling the Section for the Investigation of Offences committed within the Judiciary, adopted by the Venice Commission at its 127th Plenary Session (Venice and online, 2-3 July 2021)

(Judiciary reform, offences committed with the judiciary, investigation, efficiency of the legal system, inviolability standards for judges and prosecutors)

CDL-AD(2021)018

Ukraine - urgent joint opinion of the Venice Commission and the Directorate General of Human Rights and the Rule of Law (DGI) of the Council of Europe on the draft law on amendments to certain legislative acts concerning the procedure for electing (appointing) members of the High Council of Justice (HCJ) and the activities of disciplinary inspectors of the HCJ (Draft law no. 5068), issued pursuant to Article 14a of the Venice Commission's Rules of Procedure on 5 May 2021, endorsed by the Venice Commission at its 127th Plenary Session (Venice and online, 2-3 July 2021)

(Judiciary reform, High Council of Justice, Ethics Councils, Disciplinary Inspectorate Service of the High Council of Justice, disciplinary inspectors of the High Council of Justice)

CDL-AD(2021)017

Republic of Moldova - Opinion on the draft Law amending some normative acts relating to the People's Advocate, adopted by the Venice Commission at its 126th Plenary Session (online, 19-20 March 2021)

(Ombudsman, The People's Advocate for the Protection of Entrepreneurs' Rights, election procedure, the term of office, introduction to the People's Advocate Office, internal operational consequences, external consequences)

CDL-AD(2021)016

Republic of Moldova - Amicus curiae Brief on three legal questions concerning the constitutional review of the law-making procedures in Parliament adopted by the Venice Commission at its 126th Plenary Session (online, 19-20 March 2021)

(Constitutional Court, Constitutional revision, legislative procedure, parliamentary autonomy, procedural review of legislation)

CDL-AD(2021)015

Bosnia and Herzegovina - Opinion on the draft Law on amendments to the Law on the High Judicial and Prosecutorial Council, Adopted by the Venice Commission at its 126th Plenary Session (online, 19-20 March 2021)

(Judiciary reform, High Judicial Council, High Prosecutorial Council, conflict of interest and transparency, disciplinary procedures for judges and prosecutors, judicial review)

CDL-AD(2021)014

Memorandum prepared by the Secretariat on Parliamentary Assembly Recommendation 2192 (2020) "Rights and obligations of NGOs assisting refugees and migrants in Europe", in view of the preparation of the Committee of Ministers' reply to this Recommendation, endorsed by the Venice Commission at its 126th Plenary Session (online, 19-20 March 2021)

(Refugees and migrants, freedom of association, access to recourses, foreign support of NGOs)

CDL-AD(2021)012

Montenegro - Opinion on the draft amendments to the Law on the State Prosecution Service and the draft law on the Prosecutor's Office for organised crime and corruption, adopted by the Venice Commission at its 126 plenary session (online, 19-20 March 2021)

(State Prosecution Service, Prosecutor's Office for organised crime and corruption, Prosecutorial Council, new Prosecutor General, disciplinary liability)

CDL-AD(2021)011

Georgia - 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 recent amendments to the Law on electronic communications and the Law on broadcasting, adopted by the Venice Commission at its 126th plenary session (online, 19-20 March 2021)

(Electronic communications, the rights to property, public interest, legitimate aim, proportionality, freedom of expression and the media, right to a fair trial, special manager)

CDL-AD(2021)010

[Kazakhstan - Opinion on the Concept paper for improving the legal framework of the Constitutional Council of the Republic of Kazakhstan adopted by the Venice Commission at its 126th Plenary Session \(online, 19-20 March 2021\)](#)

(Constitutional Council, constitutional review, scope of Constitutional Council, execution of the Constitutional Council decisions)

CDL-AD(2021)009

[Georgia - Joint Opinion of the Venice Commission and the OSCE/ODIHR on draft article 79 1 of the election code approved by the Council for Democratic Elections at its 71st meeting \(online, 18 March 2021\) and adopted by the Venice Commission at its 126th Plenary Session \(online, 19-20 March 2021\)](#)

(Electoral legislation, right to vote, political party liability, democratic elections, political activities of aliens)

CDL-AD(2021)008

[Georgia - Joint Opinion of the Venice Commission and the OSCE/ODIHR on amendments to the Election Code, the Law on Political Associations of Citizens and the Rules of Procedure of the Parliament approved by the Council for Democratic Elections at its 71st meeting \(online, 18 March 2021\) and adopted by the Venice Commission at its 126th Plenary Session \(online, 19-20 March 2021\)](#)

(Electoral legislation, right to association, freedom of expression, funding of political parties, distribution of public funding, boycott of parliamentary activities, loss of state funding, allocation of free air-time, access to information)

CDL-AD(2021)007

[Kyrgyzstan - Joint Opinion of the OSCE/ODIHR and the Venice Commission on the Draft Constitution of the Kyrgyz Republic adopted by the Venice Commission at its 126th Plenary Session \(online, 19-20 March 2021\)](#)

(Constitutional reform, legislative procedure, constitutional order, hierarchy of norms, separation of powers, institutional arrangements, right to liberty and security, right to a fair trial, freedom of assembly and association, freedom of expression, access to information)

CDL-AD(2021)006

[Ukraine - Opinion on the draft law on Constitutional Procedure \(draft law no. 4533\) and alternative draft law on the procedure for consideration of cases and execution of judgements of the Constitutional Court \(draft law no. 4533 -1\) adopted by the Venice Commission at its 126th Plenary Session \(online, 19-20 March 2021\)](#)

(Constitutional Court reform, constitutional proceedings, appointment of judges, case allocation, composition of senates and boards, access to constitutional justice, recusal, disciplinary proceedings, reopening of cases, constitutional doctrine, reasoning of court decisions)

CDL-AD(2021)005

[Russian Federation - Interim Opinion on constitutional amendments and the procedure for their adoption, adopted by the Venice Commission at its 126th Plenary Session \(online, 19-20 March 2021\)](#)

(Constitutional amendment, legislative procedures, separation of powers, state bodies, their competences and mutual relationships, social rights, state succession, equality, religions, freedom of expression, minorities, non-interference, judiciary)

CDL-AD(2021)004

[Spain - Opinion on the Citizens' Security Law, adopted by the Venice Commission at its 126th Plenary Session \(online, 19-20 March 2021\)](#)

(Citizens' security, powers of the police, definition of offences, legal certainty, clarity and precision, proportionality, personal checks and external body searches, spontaneous demonstration, liability of organisers, penalties, effective judicial review)

CDL-AD(2021)003

[Ukraine - Joint Opinion of the OSCE/ODIHR and the Venice Commission on the draft law on political parties, approved by the Council of Democratic Elections at its 71th meeting \(online, 18 March 2021\) and adopted by the Venice Commission at its 126th Plenary Session \(online, 19 -20 March 2021\)](#)

(Electoral legislation, political party regulations, establishment and registration of political parties, membership, funding, private funding, public funding, reporting requirements, oversight bodies, sanctions, dissolution of political parties)

CDL-AD(2021)002

Belarus - Opinion on the compatibility with European standards of certain criminal law provisions used to prosecute peaceful demonstrators and members of the "Coordination Council", adopted by the Venice Commission at its 126th Plenary Session (online, 19-20 March 2021)

(Freedom of assembly and freedom of expression, restrictions, use of force, responsibility of the organisers, criminalisation of non-violent demonstrations, sentencing, proportionality of penalties, prior authorisation)

CDL-AD(2021)001

Report - revised Report on individual Access to Constitutional Justice, adopted by the Venice Commission at its 125th Plenary Session (online, 11-12 December 2020)

(Constitutional justice, types of individual access to constitutional review, restrictions on access, remit of constitutional justice, decisions, the European Court of Human Rights)