ANNUAL REPORT OF ACTIVITIES 2022

European Commission for Democracy through Law | Council of Europe, 2023 | Venice Commission

VENICE COMMISSION COMMISSION DE VENISE

COUNCIL OF EUROPE CONSEIL DE L'EUROPE

EUROPEAN COMMISSION FOR DEMOCRACY THROUGH LAW

VENICE COMMISSION OF THE COUNCIL OF EUROPE

ANNUAL REPORT OF ACTIVITIES 2022

Council of Europe, 2023

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 2022 it had 61 full members[2] and 10 other states and entities[3] 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.[4] This assistance mainly 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, principles of the rule of law, 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 such as EU or OSCE/ODIHR.

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 2022, due to the consequences of the pandemic, some of the country visits continued to be 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.

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 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.

3 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.

4 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.

2. Reports on subjects of general interest

While most of its work concerns specific countries, the Venice Commission also draws up reports on subjects of general interest. Thus, it adopted reports on the rights of minorities, on "kin minorities", on the independence of the judiciary and the prosecution service, on individual access to constitutional justice, 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, on emergency situations and specifically in 2022 on domestic procedures of ratification and denunciation of international treaties.

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 (revised in 2022), 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

The Venice Commission sees co-operation with constitutional courts as essential in promoting constitutionalism, understood as the idea that all action by the state should be confined by the limits set by the constitution. 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 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.[5] The Commission provides secretarial assistance to the World Conference on Constitutional Justice (WCCJ) and regularly organises global Congresses of the World Conference (in 2009 in the South Africa, in 2011 in Brazil, 2014 in South Korea, 2017 in Lithuania, 2022 in Indonesia). The Constitutional Court of Equatorial Guinea and the Supreme Court of The Gambia joined the WCCJ last year[6] bringing the total number of members to 119 in December 2022. The 5th Congress of the WCCJ on the topic hosted by the Constitutional Court of Indonesia in Bali on 4-7 October 2022, addressed "Constitutional Justice and Peace".

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[7] database, which contains more than 11,600 decisions rendered by over 100 participating courts. These publications play 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 the only tripartite body of the Council of Europe, 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.

5 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.

6 In October 2022, the Constitutional Court of the Russian Federation terminated its membership of the WCCJ.

7 www.codices.coe.int

The Council for Democratic Elections developed regular co-operation with election authorities in Europe and on other continents. It organises the European Conference of Electoral Management Bodies and is also in very close contact with other international organisations or bodies which work in the election field.[8]

The Council for Democratic Elections created the VOTA[9] 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 seventy 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 15 years. The national institutions of Kazakhstan, the Kyrgyz Republic, 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, which gives 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, Libya and Palestine[10]. In 2015 the Commission launched the UniDem-Med programme and assisted in the establishment of the Conference of Arab Election Management Bodies. From 2019 to 2021 the Commission was actively involved in the projects of assistance to Tunisia focusing on independent bodies and the reform of the judiciary.

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, democratic institutions 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 opinions on the question of confidence upon request from the Peruvian authorities, draft constitutional reform requested by the Senate of Chile, draft constitutional reform focusing on institutions in charge of the electoral process as well as an Opinion on the constituent assembly of Venezuela, at the request of the OAS.

8 Such as 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.

9 www.venice.coe.int\VOTA

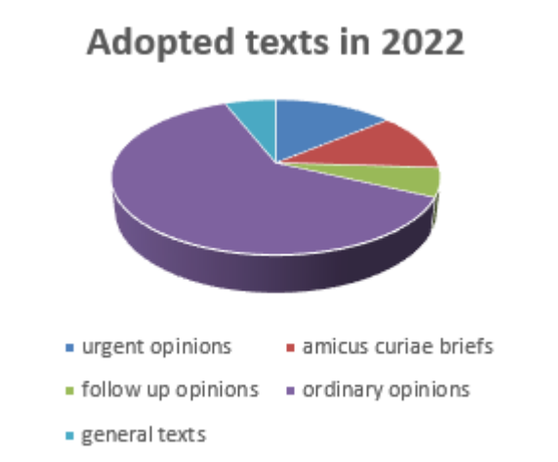
10 This designation shall not be construed as recognition of a State of Palestine and is without prejudice to the individual positions of Council of Europe member States on this issue.

II. 2022 HIGHLIGHTS

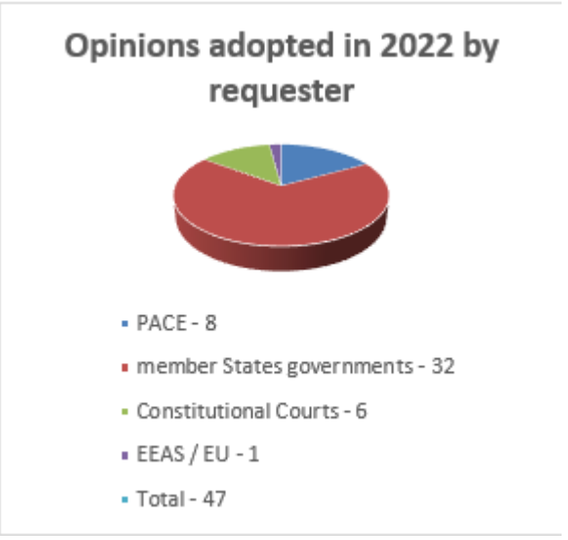
1. 2022 in figures: the output of the Commission and novelties

The Commission was correct in its assessment that recourse to its assistance was increasing and that the **rise in the number of Opinion requests** registered since 2020 had become structural. Indeed, in 2022 the number of Opinion requests continued to remain very high, and as many as **50 texts (47 Opinions and 3 reports) were adopted**; this is the same figure as in 2021, and significantly higher than in 2020 and in previous years (32 in 2020, 26 in 2019, 30 in 2018, and 21 in 2017).

The 2022 Opinions and briefs concerned **20 countries** (Andorra, Armenia, Azerbaijan, Belarus, Bulgaria, Chile, Croatia, Georgia, Kazakhstan, Kosovo, Lebanon, Mexico, Republic of Moldova, Mongolia, Montenegro, Romania, Serbia, Tunisia, Türkiye, Ukraine). Six Opinions thus concerned non-European countries.



32 requests were lodged by state authorities, 9 by the Parliamentary Assembly of the Council of Europe (concerning Azerbaijan, Belarus, Georgia, Romania, Serbia and Türkiye), 1 by the European Parliament (on the key principles of democracy in Union governance), 1 by the External European Action Service of the European Commission (on Tunisia), and 6 by Constitutional Courts. Several Opinions concerned texts which were part and parcel of ongoing reforms or which were revised versions of texts previously assessed by the Commission, in prior Opinions. This testifies of the relation of trust and constructive cooperation between the Commission and several countries which are conducting major reforms which necessitate continued efforts and commitment.

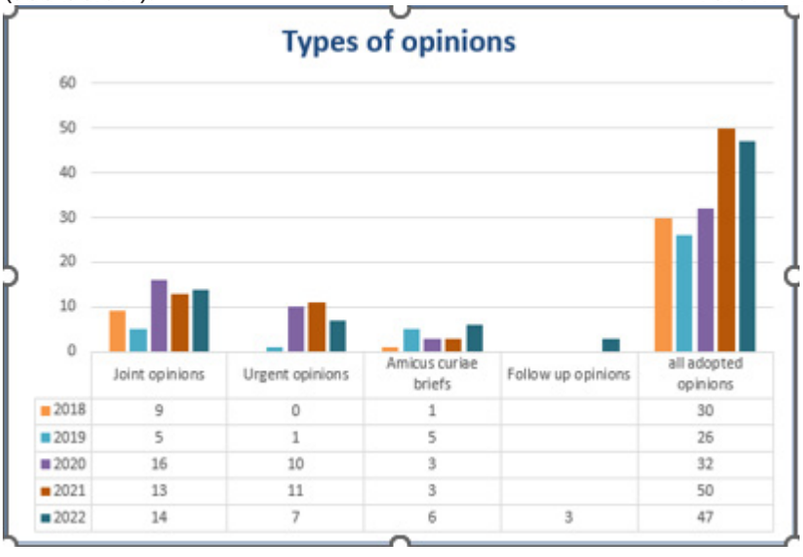


In order to focus on the core issues and on its previous recommendations, the Commission created at the end of 2022 a new type of Opinion – the **"follow up Opinion"** – which examines revised draft constitutions and laws or subsequent, additional sets of amendments in a global manner, in the light of the Commission's recommendations on previous versions of such draft texts or of previous reforms. These follow-up Opinions are also designed to streamline the work of the Commission against the background of the still limited resources and to render more visible the impact which the Commission's recommendations actually produce. The latter aim responds to the wish of the Committee of Ministers and of the international community in general to be better informed on the follow-up given to the Commission's Opinions. While the extent of implementation of the Commission's recommendations remains a complex assessment, the follow-up Opinions contribute to make this matter more accessible from the outside. Three follow-up Opinions (Serbia, the Republic of Moldova and Kosovo) were thus adopted in December 2022. The creation of this new form of "follow-up Opinions" may also be seen as a response to **Recommendation 10 of the Evaluation report.**

The number of **urgent Opinions** issued in 2022 (seven) was lower than in 2021 (they were eleven), on account not of a decrease in the number of urgent requests, but of the Commission's policy to assess the "urgency" in a stricter manner. Indeed, while the Commission is mindful of the constraints of domestic agendas and is willing to be flexible to cater for these constraints to the extent possible, urgent Opinions offer a more limited possibility of a thorough examination of all the relevant issues by the rapporteurs and of a collective discussion and adoption of the Opinion

by the Commission. They also limit the possibility for the authorities to present their arguments to the Commission, as the urgent Opinion is not adopted in their presence at a plenary session in Venice. For these reasons, recourse to the urgent procedure should only be had in exceptional cases, where time constraints weigh more than all other considerations.

Seven **Opinions were prepared jointly** either with the Directorate General of Human Rights and Rule of Law, which usually co-authors the Opinions in the field of the judiciary, and six Opinions in the field of elections and referendums were prepared jointly with OSCE/ODIHR. The preparation of an increased number of joint Opinions is a response to **Recommendation 4(b) of the Evaluation Report** (see below).



	Joint opinions	Urgent opinions	Amicus curiae briefs	Follow up opinions	all adopted opinions
2018	9	0	1		30
2019	5	1	5		26
2020	16	10	3		32
2021	13	11	3		50
2022	14	7	6	3	47

The Commission also adopted **three reports** (Report on the Domestic Procedures of Ratification and Denunciation of International Treaties, Explanatory memorandum of the Revised Code of Good Practice on Referendums and Comments on Recommendation 2235 (2022) of the PACE: elements for the reply by the CM) and **2 compilations** of Venice Commission's Opinions and reports (on Legal certainty and on Vetting of judges and prosecutors). Further, 6 important compilations (on constitutional justice, on the protection of national minorities, on freedom of association, on ombudsman institutions, on High Judicial Councils and on Prosecution Service) were restructured and updated. The continued focus on the production and update of compilations is a response to **Recommendation 2 of the Evaluation report** (see below).

In 2022, the four plenary sessions were all held in presence. For the preparation of the Opinions, country visits were resumed to the extent possible, and only when necessary were replaced by on-line meetings.

2. Main topics dealt with in 2022

In 2022 the Commission assessed **constitutional reforms** in Chile, Mexico, Tunisia and Belarus. The Opinion on constitutional reform in Chile analysed the results of a very inclusive and innovative process and focused on the characteristics of bicameralism. In Mexico, the reform concerned the structure and powers of the electoral management body (INE). The Opinion on the constitutional situation in Tunisia criticised the concentration of executive, legislative and even judicial powers in the hands of the President, pending a constitutional reform the preparation of which appeared to be in breach of democratic standards and even of the Constitution of Tunisia. Two Opinions on the constitutional reform of Belarus criticised the over-concentration of powers in the hands of the President of the Republic.

Two Opinions addressed issues of **functioning of democratic institutions** (Montenegro, Serbia).

Numerous Opinions addressed **Rule of law issues**, notably the independence of the judiciary. Seven Opinions or *amicus curiae* briefs concerned the **composition of High Judicial or Prosecutorial Councils** (Bulgaria, Kosovo, Lebanon, Montenegro, Serbia, Ukraine), endeavoring to strike the right balance between the dangers of corporatism and corruption, and of lack of accountability. Two Opinions concerned the reform of the Supreme Court in the Republic of Moldova.

An increasingly complex problem appears to be the identification of appropriate **anti-deadlock mechanisms** for those cases in which the constitution provides a vote by a qualified majority, in particular, as concerns the election of members of state institutions (Constitutional courts, lay members of judicial or prosecutorial councils, ombudsman institutions). The right balance needs to be struck between the preservation of the balanced composition and non-politicisation of these institutions and the risk of blockage, for example for lack of quorum. The Commission has noted that qualified majority has increasingly failed to serve the purpose of guaranteeing the choice of moderate, compromise candidates; the Commission has thus tried to assist states in identifying effective and innovative solutions.

Following two conferences co-organised in 2022 on the composition of high judicial councils (Rome, March 2022)

Participants of the International Roundtable on "Shaping judicial councils to meet contemporary challenges", Rome, March 2022

and on the independence of prosecution services (Palermo, May 2022), the Commission will update its 2010 reports on the independence of judges and prosecutors.

The European Conference of Prosecutors in Palermo, May 2022: Ms Claire Bazy-Malaurie, Ms Simona Granata-Menghini, Ms Marta Cartabia, Ms Hanna Suchocka, Mr James Hamilton, Mr Jan Kleijssen

The Commission examined legislation on the **verification of the integrity of judges and prosecutors** in Croatia, Ukraine and the Republic of Moldova and reiterated that such verification can only be a one-off measure of last resort.

Three Opinions and briefs concerned the **confiscation of illicitly acquired assets** (Armenia, Republic of Moldova, Kosovo).

The focus of Opinion requests on rule of law issues is undoubtedly prompted by the difficulty of achieving and maintaining an independent judiciary system. This is an issue which is common to many Venice Commission member states.

Two Opinion requests on the judiciary in 2022 were explicitly prompted by the encouragement of the European Commissioner for the Rule of Law (Croatia and Bulgaria). The Venice Commission and the European Commission have maintained their synergies in 2022. The European Commission's 2022 Rule of Law report[11] contained 19 references to Venice Commission's general reports and past Opinions on rule of law issues.

Mr. Didier Reynders, European Commissioner for Justice, participated in the 131st plenary session in March 2022 and Ms. Věra Jourová, Vice-President of the European Commission and Commissioner for Values and Transparency, participated in the 133rd plenary session in December 2022.

President of the Venice Commission, Ms Claire Bazy-Malaurie, and the EU Commissioner for Justice, Mr Didier Reynders, Paris, February 2022

The advantages and modalities of international participation in the selection of constitutional courts and ordinary judges with a view to ensuring independence and public confidence was the object of two Opinions relating to Ukraine.

The Venice Commission provided Opinions on the electoral legislation of Georgia, Mexico, the Republic of Moldova, Tunisia and Türkiye, on legislation on local referendums in Ukraine and an Opinion on legislation on political parties in Mongolia. It adopted the revised Code of Good Practice on Referendums.

Two Opinions concerned Ombudsman institutions (Andorra and Kazakhstan) and were based on the Commission's Principles on the Protection and Promotion of the Ombudsman Institution ("Venice Principles").

On 15 December 2022, the General Assembly of the United Nations, adopted another Resolution A/77/248 on "The role of Ombudsman and mediator institutions in the promotion and protection of human rights" which acknowledges the Venice Principles as international standards and encourages UN members States to establish Ombudsman institutions in line with the Venice Principles.

11 https://commission.europa.eu/publications/2022-rule-law-report-communication-and-country-chapters_en.

3. Budget and staff

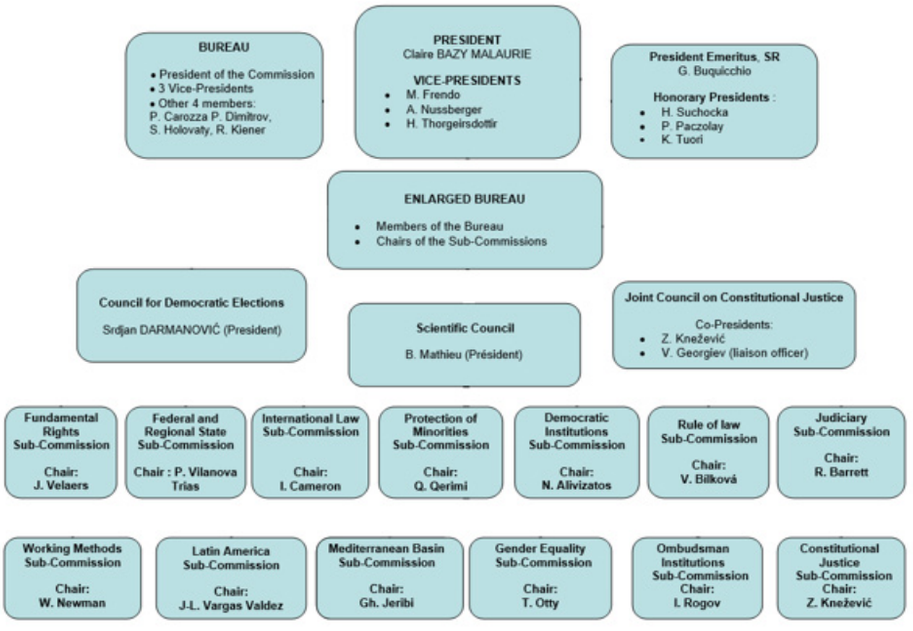
The Commission's budget in 2022 was 4296.400 Euros. The Commission also benefited from several voluntary contributions, of which a prominent part is devoted to non-European countries (including non-member States).

Signature of an agreement for a voluntary contribution from France, Strasbourg, May 2022

In 2022 the Committee of Ministers decided to **increase the Commission's 2023 adjusted budget**, adding two posts as of 1 May 2023; the agents on the ordinary budget will therefore increase from 23 in 2022 to 25 in 2023. This increase takes into account **Recommendation 5 of the Evaluation Report** (see below).

4. Structure of the Venice Commission

Only a few changes in the structure of the Venice Commission in 2022 were made in 2022, through the replacement of members who had left the Commission. The current composition is as follows:



5. Evaluation of the Venice Commission

The Report on the Evaluation[12] of the Venice Commission commissioned by the Directorate of Internal Oversight (DIO) of the Council of Europe was published on 14 February 2022. In sum, its conclusions were: that the Venice Commission is a highly regarded institution that plays an important role in the international field through its activities to promote democratic values and the rule of law; that the important role of the Venice Commission as an independent consultative body is widely recognised, in Europe and, increasingly, further afield; and that while its modus operandi is fundamentally sound, there are ways in which the Venice Commission's efficiency and effectiveness could be enhanced. The report contains ten recommendations, which were submitted to the Council of Europe for its management response and action plan. The Commission has started to consider the follow up to these recommendations; some follow-up measures were taken in 2022 and further action will be taken in 2023, in particular as concerns the strengthening of independence and technical knowledge of members (Recommendation 7).

12 https://rm.coe.int/dio-2022-35-venicecommission-final-report-en/1680a6555f

VENICE COMMISSION OF THE COUNCIL OF EUROPE
KEY FACTS

ESTABLISHMENT

10 MAY 1990

by 18 Council of Europe member States

TO DATE

61 MEMBER STATES INCLUDING 15 NON Council of Europe MEMBERS + 4 observer countries and 1 associate member (suspended in 2022)

+ 2 beneficiaries with special cooperation authorisation

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

ADOPTION OF
some
1110
COUNTRY-SPECIFIC OPINIONS + GENERAL REPORTS

ORGANISATION
of over
100
INTERNATIONAL CONFERENCES

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

WORLD CONFERENCE ON CONSTITUTIONAL JUSTICE*
*SINCE 2009

COURTS 121 MEMBERS

NUMBER OF JUDGMENTS IN **CODICES DATABASE** OVER 11,600

EUROPEAN COURT OF HUMAN RIGHTS
references to Venice Commission in over
290 JUDGMENTS AND DECISIONS*
** Since 2001*

requests for
7 ***amicus curiae*** BRIEFS**
***Since 2005*

IN 2022

OPINIONS
*The Venice Commission **adopted*** 50 DOCUMENTS for 20 countries
7 according to the urgent procedure

- 8 OPINIONS on **constitutional texts and isues** concerning: Belarus, Chile, Kosovo, Mexico, Montenegro, Tunisia
- 33 OPINIONS on (draft) **legislative texts and other legal issues**
- 3 TEXTS of general nature
- 6 *AMICUS CURIAE* BRIEFS

EVENTS / LEGAL ADVICE
It (co)organised
29 EVENTS

to
3 ELECTION OBSERVATION MISSIONS OF THE PARLIAMENTARY ASSEMBLY

CONSTITUTIONAL CASE LAW
published
3 BULLETINS on Constitutional Case-Law

responded to
28 REQUESTS FOR COMPARATIVE INFORMATION by constitutional courts on the **VENICE FORUM**

NUMBER OF JUDGMENTS ADDED TO **CODICES DATABASE**
513
WWW.CODICES.COE.INT

www.venice.coe.int

III. OPINIONS AND REPORTS

This Chapter provides summaries of the key findings of opinions and reports adopted by the Venice Commission in 2022. These summaries are grouped around several main topics which were frequently addressed. Since the opinions often deal with more than one topic, the same opinion may be referred to more than once, in different sub-sections of this Chapter.

Plenary meeting of the Venice Commission, October 2022

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

Operation of the law: level of regulations, retroactivity, legal pluralism, 'ad hominem' legislation

Opinions adopted in 2022 repeatedly referred to the structural questions of operation of the law. As in previous years, the Venice Commission focused on the appropriate level of regulations: certain matters need to be set up at the constitutional level whereas other may be decided by the legislature or even be developed in the by-laws.

Thus, for example, in the Report on the Domestic Procedures of Ratification and Denunciation of International Treaties CDL-AD(2022)001 the Venice Commission noted that conclusion and denunciation of international treaties are normally regulated in the state constitution itself, although in some states, the relevant rules are found only in statutory law. In Opinion CDL-AD(2022)018 on the **Republic of Moldova** the Commission noted that the frequent institutional reforms changing the composition of the Superior Council of Prosecutors which in 2021 led to the early termination of the mandate of some of its members clearly demonstrated the need to regulate the most essential elements related to the composition of the Council and the duration of its members' mandates at the constitutional level. In Opinion CDL-AD(2022)022 on **Bulgaria** the Commission recommended describing in the law at least some basic principles of ethical behaviour of judges, while more detailed regulations may be made at the sub-legislative level in the Code of Ethical Conduct. A similar recommendation was made in three Opinions on **Serbia** adopted in 2022 following the constitutional reform CDL-AD(2022)030, CDL-AD(2022)042 and CDL-AD(2022)043: the Venice Commission stressed that certain basic rules pertaining to the judicial governance and the status of judges and prosecutors should be described in the legislation while the bodies of judicial and prosecutorial governance may enact more detailed regulations within this legislative framework. In Opinion CDL-AD(2022)020 on **Lebanon** the Venice Commission invited the authorities to consider possible constitutional entrenchment of some basic features of this system, and, in particular, the powers and the composition of the Superior Council of Magistracy.

The quality of the law – its clarity, accessibility, and foreseeability of its application – has been discussed in many Opinions. The vagueness of the provisions of the national legislation has been criticised, for example, in Opinion CDL-AD(2022)020 on **Lebanon** where the Commission recommended more precise definition of disciplinary breaches, and in particular, of the notion of "incompetency". Similarly, in the Opinion CDL-AD(2022)022 on **Bulgaria** the Commission considered that, in order to be in line with the principle of foreseeability, the Judicial System Act should describe at least some of the main substantive principles of ethical behaviour of judges, prosecutors and investigators. In Urgent Opinion CDL-AD(2022)034 on **Türkiye**, the Commission observed that the offence of disseminating "false or misleading information" had to be clarified as to the scope of its application through the use of clearly defined terms. That being said, the Venice Commission acknowledged that certain norms are necessarily couched in vague terms and the use of catch-all formulas may be in some contexts inevitable (see the three Opinions on **Serbia** CDL-AD(2022)030, CDL-AD(2022)042 and CDL-AD(2022)043, also with reference to the definition of disciplinary offences).

Excessive regulation of certain matters should also be avoided. For example, in Opinion CDL-AD(2022)009 on the Media Law of **Azerbaijan** the Venice Commission expressed regret that the Law

left no room for any self-regulation and thus limited the potential for responsible journalism to exist in its own right.

The question of the retroactive application of the law has been examined by the Commission in a number of Opinions and briefs. Thus, in *amicus curiae* brief CDL-AD(2022)029 for the Constitutional Court of the **Republic of Moldova** concerning the offence of illicit enrichment, the Commission reiterated that retroactivity should be prohibited in the area of criminal law. In Opinion CDL-AD(2022)002 on the vetting of judges of **Armenia** the Venice Commission criticised a provision which would permit to dismiss judges in relation to the decisions which had been rendered up to fifteen years before the adoption of the draft amendments. Retroactive application of the law is strictly precluded in criminal law matters. In other legal fields (e.g. civil law), retroactive application of the law may be permissible, but the principle of legal certainty should be carefully considered. With reference to the Court's case-law (in particular, the case of *Xhoxhaj v. Albania*) the Venice Commission acknowledged that evaluation of personal assets of judges in order to assess his or her integrity may have a retroactive effect and yet be compatible with the Convention. However, the Venice Commission considered that introducing the new ground for dismissal with reference to the decisions taken up to fifteen years before it has appeared in the legislation was not justified by the compelling grounds of the general interest and did not meet the requirement of foreseeability.

Later, in the *amicus curiae* brief CDL-AD(2022)048 for the Constitutional Court of **Armenia** concerning the Law on the Confiscation of Illicit Assets, the Commission accepted that the fight against corruption made it necessary to act not only *pro futuro*, but also with a view to the illicit acquisition of property in the past. Retroactive application of that law could be considered proportionate and compatible with the Armenian Constitution, the latter extending protection only to lawfully acquired property. That being said, the duty to give explanations about the origin of the property should remain reasonable, and the timeframe for the forfeiture of property should be applied equally to all cases, and not left to the discretion of the authorities.

Opinion CDL-AD(2022)004 on the new Constitution of **Chile** examined a proposal to introduce elements of legal pluralism in the Constitution, by providing elements of indigenous justice (a justice system applicable to certain ethnic communities). Legal pluralism is a legitimate constitutional strategy aimed at guaranteeing the right to self-determination of the indigenous people notwithstanding the unity and integrity of the country. However, the indigenous justice system should respect the human rights recognised by the Chilean State in its constitution and in the international treaties to which it is a party. Establishing a special indigenous jurisdiction should also comply with the principle of the rule of law, which requires some degree of unity and coherence between indigenous and state jurisdiction.

A recurrent topic in the Venice Commission's opinions concerned the effects of the structural changes (at the legislative or even constitutional level) on the mandate of the officeholders elected under the previously existing rules. The Commission repeatedly warned against adopting *ad hominem* legislation, designed to replace the officials rather than to improve the system. A general approach was formulated in Opinion CDL-AD(2022)004 on the new Constitution of **Chile** where the Commission proposed to distinguish the question of the guarantee of the mandate of elected bodies from that of security of tenure of judges or of members of state institutions such as an Ombudsman or a High Judicial Council. Since the President and the Parliament were directly elected to perform the duties set out in the current constitution, it is reasonable to expect the electorate to be given the possibility to choose who is to perform the new tasks, i.e. their mandate can be terminated.

Opinion CDL-AD(2022)053 on the Law on the President of **Montenegro** examined the interrelation between the constitutional text and the Law on the President. The Commission concluded that the law currently in force is only technical and does not alter the balance of powers in the constitution. By contrast, the proposed amendments go beyond matters which the constitution leaves to the legislature to regulate and are in some respects at odds with the constitutional role of the President.

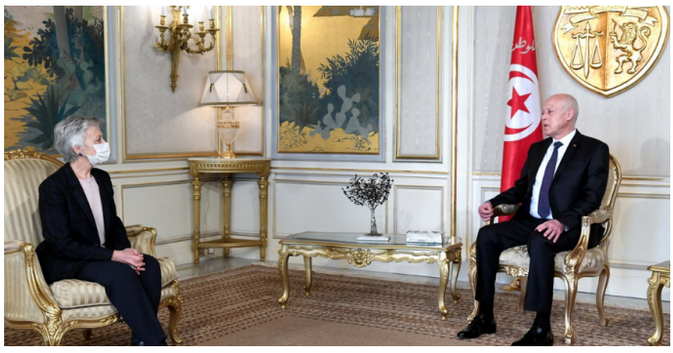
The process of constitutional and legislative reforms

The Venice Commission always advocated for the inclusive, informed, and transparent process of the law-making. These principles are particularly important when fundamental amendments – including constitutional amendments – are made. In Opinion CDL-AD(2022)004 on the new Constitution of **Chile** the Commission stressed that the adoption of a new and good constitution should be based on the widest consensus possible within the society; a wide and substantive debate involving the various political forces, NGOs and citizens associations, academia, and the media is an important prerequisite for adopting a sustainable text. However, consultation and inclusiveness do not necessarily lead to absolute consensus. The procedure for adoption of constitutional amendments or, possibly, new constitutions must abide by the provisions of the constitution in force. The Venice Commission welcomed that that the constitutional assembly, in addition to traditional mechanisms of legislative procedure, had introduced forms of participatory democracy.

In two Opinions CDL-AD(2022)008 and CDL-AD(2022)035 on the constitutional reform of **Belarus** the Commission reiterated that the main arena for the procedures of constitutional amendment should be the national parliament. It is quite rare that a constitutional amendment may be adopted by a referendum without prior parliamentary approval. This is, however, the case in Belarus, which creates a danger that such referendum is turned into plebiscites on the leadership of the country.

The process of constitutional amendment in Belarus was also affected by the specific political situation in which the referendum was held in the aftermath of the highly contested presidential elections and in the context of the Russian invasion of Ukraine. Democratic referendums are not possible without respect for human rights, in particular, rights of political participation, which had been seriously curtailed in Belarus as a result of the crack-down of opposition political forces and civil society, and the lack of pluralistic media.

In Urgent Opinion CDL-AD(2022)017 on **Tunisia** the Commission examined the decree-law amending the Law on the electoral management body, issued by the President of Tunisia following the declaration of the state of emergency. The President suspended the functions of the Government, and later of the Parliament "until further notice". He gave himself legislative powers and issued a decree-law regulating the exercise of emergency measures, and also suspended parts of the constitution. He subsequently dissolved parliament, changed the composition and functioning of the electoral management body and subjected it to presidential control. A new commission was set up to write a new constitution, but the rules governing the process of the preparation of the new constitution were unclear and kept changing. The constitutional referendum was held on 25 July 2022. The Venice Commission noted that the timeframe was excessively short and that referendums should not be used to circumvent the parliamentary amendment procedure. Irrespective of the question whether it is legitimate to amend the constitution outside the procedure foreseen by the constitution which is still, at least partially, in force, it is not realistic to plan to hold a constitutional referendum in a credible and legitimate way, in the absence – two months before the planned date of the consultation – of clear rules, established well in advance, on the modalities and consequences of the holding of this referendum, and especially in the absence of the text of the draft new constitution.



President of the Venice Commission, Ms Claire Bazy-Malaurie, and the President of Tunisia, H.E. Kaïs Saïed, Tunis, April 2022

Insofar as the legislative process is concerned, the Venice Commission repeatedly criticised national authorities for not allocating sufficient time for the parliamentary debate. In Joint Opinion CDL-AD(2022)016 of the Venice Commission and the OSCE/ODIHR on the amendments to the electoral legislation of **Türkiye** the Commission noted that a pattern of amending the electoral legislation prior to each electoral cycle, without due procedural safeguards, could undermine the credibility of the electoral process and the stability of the legal framework. Opinion CDL-AD(2022)010 on the amendments to the Organic Law on Common

Courts of **Georgia** was adopted by Parliament in the last days of 2021 through an accelerated legislative procedure, which was also criticised by the Venice Commission.

By contrast, in Joint Opinion CDL-AD(2022)046 on the constitutional and legal framework governing the functioning of democratic institutions of **Serbia** the Commission noted that while the amendments to the electoral legislation have been made two months ahead of elections, the law-making process had been inclusive and consensual, and improved the legal framework, which made such late amendments "exceptionally acceptable". Joint Opinion CDL-AD(2022)025 of the Venice Commission and ODIHR on the draft electoral code of the **Republic of Moldova** noted that the drafting process of the new electoral legislation had been transparent and open to the various stakeholders who could propose amendments.

Joint delegation of the Venice Commission and the OSCE/ODIHR visiting the Republic of Moldova in the framework of the preparation of the Opinion on the draft Election Code, Chișinău, September 2022

Checks and balances between the executive and the legislative powers

Several Opinions adopted in 2022 examined comprehensive constitutional reforms which would affect the balance amongst the main branches of power. Thus, Opinion CDL-AD(2022)004 on the new Constitution of **Chile** addressed several questions formulated by the Chilean Senate in the context of the preparation of the new constitution. One of the questions related to the power of the constituent assembly (tasked with developing the constitutional amendments) to develop its own rules of procedure. As noted by the Commission, such rules should nevertheless be compatible with the basic precepts of the constitution on the law-making procedure.

Another question concerned a possible transformation of the national parliament into a unicameral body. There is no general rule in favour or against bicameralism, and quite a few democratic countries have only one chamber. However, bicameralism institutes a principle of checks and balances within the legislative branch, where the upper chamber may play a role of moderating the lower chamber, or functions as the territorial or federal chamber thus favouring some decentralisation. Unicameralism has often been linked to radical democratic moments, and more often found in smaller countries. In Europe the return to bicameralism was a common tendency in the 1990s, after a period of authoritarian rule.

On the question of the choice of the form of government, the Commission stressed that it has no preference for a parliamentarian system or for a presidential one. Tradition and prior practical experience are relevant in the choice. However, in presidential or semi-presidential systems it is recommended to introduce constitutional limitations on the number of (successive) terms of a presidential mandate, to avoid an unlimited re-election. As to the term limits for the MPs, considerations are different and term limits for MPs may have both positive effects (in terms of avoiding concentrating power in the hands of a few professional politicians) but also negative effects (weaken the legislature's power vis-à-vis the executive branch, increase the influence of party leaderships, as well as of lobby groups and legislative staff).

In two Opinions CDL-AD(2022)008 and CDL-AD(2022)035 on the constitutional reform of **Belarus**, the Commission observed that the constitutional order of the country had already been characterised by excessive powers of the President without adequate checks and balances, and that the 2022 constitutional reform only exacerbated these problems. The President appointed the Prime Minister (though with the prior consent of the House of Representatives) and the Government, could dismiss the Government, and could revoke acts of the Government. The Parliament remained a weak institution that could be dismissed by the President on broad grounds. The limitation of the President's terms to two mandates would not be applicable immediately to the sitting President. A very broad immunity would be enjoyed by the President even after the expiry of the President's term.

The position of the national Parliament, already weak, would further be deteriorated by the creation of a new representative body – the All-Belarusian People's Assembly (the ABPA). The competency of the ABPA is defined very broadly and vaguely at the same time: it includes a mixture of executive and legislative functions, appointment of top judges and other officeholders, certifying the results of the elections, deployment of military forces abroad, etc. The amendments do not say anything about the manner of electing the members of the ABPA, leaving open a substantial risk of abuse. Given that the ABPA may have up to 1200 members, the role of the Presidium of the ABPA would become decisive at the operational level, while its composition, jurisdiction and powers have neither been specified. The President of the Republic, who it is only logical to assume would become the Chairman of the ABPA, would certainly play the key role in this body. Thus, the Presidium of the ABPA would constitute a sort of a "parallel government". The Commission concluded that the constitutional amendments would aggravate the strong unbalance of powers which already exists under the current constitution.

This Opinion also examined the text of the alternative draft new constitution prepared by the Belarusian opposition in exile. This alternative draft represented a more balanced view: preference was given to a parliamentary regime, with the President, however, still retaining some relevant powers. Thus, the Parliament would have the ultimate right to appoint the Prime Minister in case of disagreement with the President, and the Government would be accountable to the Parliament, through "constructive no confidence" procedure. The President's powers would be quite extensive but subject to important checks and balances. The alternative draft introduced a judicial council with appropriate powers of appointment and dismissal of judges, and a constitutional court whose powers and composition would be in line with the Venice Commission's recommendations. In sum, the overall assessment of the alternative draft constitution was favourable.

The Urgent Opinion CDL-AD(2022)053 on the Law on the President of **Montenegro** dealt with a stand-off between the President of the Republic and the Parliament. The Commission stressed that while normally such issues would be for the Constitutional Court to decide, in Montenegro the constitutional court was paralysed by the inability of the Parliament to reach an agreement on filling the vacancies of the constitutional court's judges. Montenegro, which is a parliamentary system with a directly elected president, was experiencing for the first time a form of cohabitation, with the President being the leader of the main opposition party. The divergence between some political factions had prevented the formation of a government. According to President Djukanovic, since the parliamentary factions failed to give him a name of the candidate to the Prime Minister's position within the time-limit set in the constitution, he proposed the Parliament to dissolve itself. The parliamentary majority coalition parties argued that the President failed to involve all political factions in the consultations and that their proposal of a Prime Minister-designate had been rejected on formalistic grounds. They responded by amending the Law on the President in order to define in clearer terms the President's obligations in respect of the formation of the government.

The Commission recalled that the President's discretion in the matter of dissolution of Parliament was intended to prevent a deadlock and was not something that should be tackled in an arithmetical way, but in line with the spirit and wording of the constitution. The Commission urged the Montenegrin authorities and political parties to be guided by the principle of loyal co-operation between state organs in the relations between the President of the Republic and the Parliament, but also between different political forces within the Parliament. The provisions of the Constitution of Montenegro on the formation of the Government were rather scarce. The Commission considered that the wording of the current constitution granted the President as a *pouvoir neutre* a margin of discretion in deciding which parties to consult in the process of designation of the Prime Minsiter, which was mitigated by the need for a vote of confidence in the Prime Minister. The attempt of the legislator to bypass the President by stipulating that a candidate who received the support of the majority of the MPs would be automatically proposed, seemed to be at odds with the constitution. The Venice Commission also found that the new obligation of the President to follow the proposal of the Government and the competent parliamentary committee in the matter of appointment of ambassadors restricted the discretion of the President in an unconstitutional way. The Commission concluded that the Law on amendments to the Law on the President did not only clarify the constitution, but substantially supplemented it and even, at times, contradicted it.

Two Opinions on **Tunisia**, on the constitutional and legislative framework on the referendum and elections announcements CDL-AD(2022)017, and on the draft State Property Code CDL-AD(2022)021 were adopted in the context of the state of emergency, declared by the President of the country who also suspended the functions of the Government, and later of Parliament "until further notice", and gave himself legislative power. The Venice Commission expressly reserved its position on the compatibility of the presidential decrees and decree-laws adopted since 26 July 2021 with international standards and with the Tunisian Constitution.

Application of international law (general questions)

The Report on the Domestic Procedures of Ratification and Denunciation of International Treaties CDL-AD(2022)001 was prepared at the request of the Parliamentary Assembly of the Council of Europe in the context of the withdrawal of Türkiye from the Istanbul Convention. The Commission noted that all member states require at least passive parliamentary approval for the conclusion of international treaties, and most of the Council of Europe member states in addition require a parliamentary approval also for denunciation. There is a trend towards more parliamentary engagement in such matters. The degree of involvement of parliaments varies – sometimes parliaments are simply informed *ex post* about the denunciation, while in other countries parliaments would have a veto power. Parliamentary approval is mostly limited to "important" treaties (for example those modifying domestic statutory law, defence treaties, those related to state borders, trade agreements, etc.) and does not pertain to all international treaties across the board. Parliament must approve treaties but cannot force the executive to sign them. Forms of parliamentary approval vary – from a constitutional law in some cases/countries to indirect of implicit approval following consultations. It is an open question whether the international law allows for a withdrawal from human rights treaties in the absence of a denunciation clause. The comparative study has revealed a clear trend towards parliamentary involvement in the denunciation of treaties, more specifically those treaties which were ratified with the engagement of Parliament. However, the Venice Commission admitted that this practice does not in itself create a new rule of international or regional customary law. The Venice Commission examined argument both in favour and against the parliamentary involvement and concluded that the arguments in favour of the symmetrical model (where the Parliament is involved in both instances) are more persuasive, but the choice of a model of parliamentary approval remains within the sphere of domestic political preference.

Freedom, democracy, and security

In Opinion CDL-AD(2022)036 the Venice Commission provided comments on Recommendation 2235 (2022) of the PACE on "Recent challenges to security in Europe: What role for the Council of Europe?" in view of the reply to the Committee of Ministers. In those comments the Commission explored a relationship between the values of the Council of Europe (democracy, human rights, and the rule of law) and security. The Commission emphasised that security is not to be opposed to the three pillars of the Council of Europe but, on the contrary, to be seen as an element of their implementation. The proper functioning of parliamentary mechanisms has to be ensured, and judicial independence is also fundamental. The Commission also stressed the importance of the democratic civilian control over the armed forces and the security sector (police, security, and intelligence agencies). The Venice Commission explored different mechanisms of assessment of compliance with the European standards. It would be important to apply a holistic approach – assessing the totality of a state's mechanisms of controls and remedies, and examining not simply the law on the books, but also how controls and remedies work in practice. The Commission warned against excessive reliance on the reports by NGOs or the political opposition: a variety of different sources should be used, including independent academics in each Council of Europe state but it would be necessary to ensure that these academics are representatives of different doctrinal and ideological trends.

Ombudsman and other independent institutions

In a number of Opinions, the Venice Commission examined the principles of organisation and functioning of independent institutions, i.e., those which have public functions and powers while not directly belonging to the executive, legislative or judicial branches.

Two Opinions adopted in 2022 concerned the composition and functioning of the ombudsman institution (and similar bodies). Thus, Opinion CDL-AD(2022)028 on the draft Constitutional Law on the Commissioner for Human Rights of **Kazakhstan** followed a previous Opinion on the same matter CDL-AD(2021)049. The new text presented a number of improvements compared to the ordinary law in force. The mere fact that the new law was a constitutional one reflected the wish of the authorities to upgrade the status of the Commissioner for Human Rights. However, many recommendations formulated in the 2021 Opinion remained unaddressed. The Commission recommended clarifying the jurisdiction of the Commissioner over private entities (including private entities which deliver public services) and stressed that the Commissioner's activities should not jeopardise the operation of the judiciary. There should be additional guarantees for transparency of the process of election of the Commissioner and his/her dismissal: the election should be accompanied by a public and transparent selection procedure comprising public call, testing, and shortlisting. The Commission recommended election by a qualified majority by Parliament, a longer and preferably a non-renewable mandate. Articles on the immunity of the Commissioner and the staff of the institution should be further developed. The functional immunity to the staff of the institution should continue after leaving the institution, providing for the lifting of the immunity by qualified majority in Parliament. This Opinion recommended establishing a public and transparent procedure of dismissal, as well as a qualified majority vote in the Parliament.

In Opinion CDL-AD(2022)033 on **Andorra** the Venice Commission examined the Andorran legislation on the Ombudsman and its compliance with international standards, including the Venice Principles. The Venice Commission welcomed the efforts to strengthen the Ombudsman institution, in particular prior to the commencement of a legislative reform. While recognising the difficulty of a constitutional amendment in Andorra, the Commission observed at the outset that the establishment of the Ombudsman institution, among others, should be provided in the constitution.

Concerned by the shortage of the Ombudsman's human and financial resources, the Venice Commission recommended that guarantees

Delegation of the Venice Commission meeting with the Ombudsman of Andorra, Mr Marc Vila, in the framework of the preparation of the Opinion on "the law on the Ombudsman", Andorra la Vella, September 2022

providing the Ombudsman with an appropriately high rank, sufficient resources, and the possibility to propose his/her own budget be added in the law. Procedures for appointment and the removal of the Ombudsman should be better regulated in the law, including by providing higher qualified majorities for his/her appointment and removal. Lastly, the Venice Commission encouraged the domestic authorities to foster awareness and visibility of the Ombudsman institution and its mandate and role, including by increasing co-operation with civil society.

In Joint Opinion CDL-AD(2022)009 on the media law of **Azerbaijan** the Venice Commission examined the composition of the Media Council and concluded that this Council cannot be considered to be an independent regulatory body: it lacked the necessary financial independence, decision-making autonomy and independently selected and nominated members.

In Opinion CDL-AD(2022)054 on **Ukraine** concerning the competitive selection of candidates for the position of judge of the Constitutional Court of Ukraine the Venice Commission analysed the composition of an independent body, the Advisory Group of Experts, which would have an international component, and be involved in the process of pre-selection of candidates to the positions of judges of the constitutional court. Amongst other recommendations the Venice Commission suggested introducing a sunset clause, providing for a time limit to international participation in the process of selection of judges of the Constitutional Court of Ukraine, providing for a definite term of office for the international members who should be appointed through an official act of a Ukrainian authority. This Opinion further

recommended to simplify the procedure of selection of the Advisory Group member by Parliament to avoid paralysing the institution, to provide for the substitute members and for a solution in cases where the Advisory Group cannot reach a decision. The Venice Commission also suggested to include civil society in the process of selection of the candidate judges with the task of providing information and feedback on the judicial candidates and monitoring the process.

Finally, several Opinions adopted in 2022 dealt with the composition of the electoral bodies and the bodies of governance of the judiciary and the prosecution service. These Opinions will be described in sub-sections 3 and 4 of the present chapter respectively (on the free elections and on the judiciary and the prosecution service).

Constitutional justice

The Venice Commission has consistently supported constitutional review, which can take different institutional forms.

In Opinion CDL-AD(2022)004 on the new Constitution of **Chile** the Venice Commission expressed preference for the establishment of a separate and specialised constitutional court, especially in newer democracies, as opposed to giving the Supreme Court the functions of the constitutional review. The Venice Commission proposed several arguments in favour of this model, especially regarding the profile and the method of appointment of the constitutional court judges. The Commission also called for caution in giving the constitutional court the power of *ex ante* review of the legislation.

In Final Opinion CDL-AD(2022)035 on the constitutional reform of **Belarus** the Venice Commission expressed certain reservations about a combination of *a priori* and *a posteriori* constitutional control, in the Belarusian context. Often, a pre-existing unconstitutionality becomes visible only in the practice of the application of the law. Most importantly, the Commission deplored the lack of independence of the constitutional court in the new constitutional design: all judges would be elected and dismissed by the All-Belarusian People's Assembly (ABPA) based on the proposal of the President preliminarily agreed with the Presidium of the ABPA. In the light of the misgivings about the composition and the legitimacy of the ABPA (see above in the sub-section on the checks and balances), this method of election does not ensure the independence of the constitutional court's judges.

In this Opinion the Venice Commission also examined the powers of the constitutional court. In general, the competencies of the constitutional court have been extended and modernised, but several critical remarks were made. In particular, while involvement of a constitutional court in the procedure of impeachment of the President was quite common in modern constitutions, in the Belarusian case it would be of limited relevance because the constitutional court would participate in this process exclusively on the proposal of the Presidium of the ABPA, which would be likely to remain under the effective control of the President of the Republic. The Venice Commission also noted that a normative constitutional complaint initiated by private citizens (introduced in the new constitution) was less effective as a remedy if the unconstitutionality resided in the application of the norm, but not in the norm itself.

Joint Opinion CDL-AD(2022)002 on the vetting of judges of **Armenia** analysed a legislative proposal for a comprehensive vetting of the Armenian judges, including the constitutional court judges. This proposal was driven by the generalised distrust in the judiciary in the Armenian society after the 2018 "velvet revolution". The draft legislation introduced a new incompatibility requirement for sitting judges related to a "deliberate violation by a judge of a fundamental human right" established by a competent international body in the past fifteen years. The Venice Commission noted that this new "incompatibility requirement" was in effect a disciplinary measure in disguise. The ECtHR findings most often reveal a malfunctioning of the whole system which cannot be reduced to the fault of a specific judge. In relation to the liability of the constitutional court's judges, the Commission noted that decisions in the constitutional court were adopted collectively and, in principle, all judges who voted for a decision would have to withdraw from any case where the question of the liability of one or all of them would be raised. That would create an impasse.

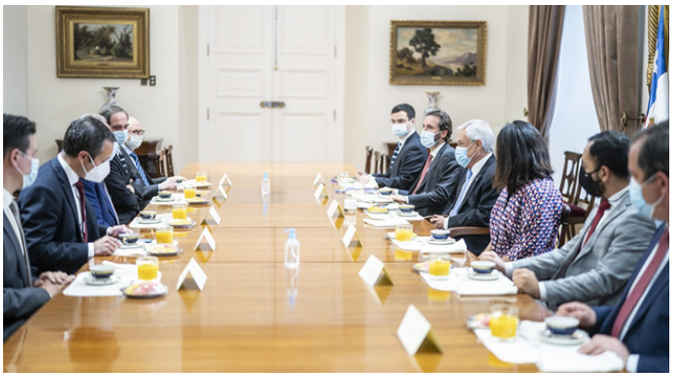
In *amicus curiae* brief CDL-AD(2022)012 for the Constitutional Court of **Ukraine** the Commission examined limits of a subsequent (*a posteriori*) review of constitutional amendments by this court. The Commission noted that there was no rigid standard on whether such control should

be *a priori* or *a posteriori*, or whether it should be formal (with the focus on the procedure) or substantive (with the focus on the essence of the amendments) although there should be reasonable limits to the intervention of the judiciary in order not to infringe on the popular sovereignty. That being said, the Commission strongly supported systems that allow for supervision of the procedure of the constitutional amendment. As to the substantive control (because material limits have been violated or in the light of the unamendable or "eternal" clauses in the constitution), it should be exercised with great caution, on the basis of a clearly established doctrine and allowing a margin of appreciation to the constitutional legislator.

The Venice Commission noted that some constitutional norms in Ukraine have a higher stance than others, which would open door to a substantive review. At the same time, the constitution was silent on the possibility of reviewing laws amending the constitution, providing only for the *a priori* control of the draft constitutional amendments. The Venice Commission examined the case-law of the constitutional court on this matter. It developed a series of arguments both for and against recognising such a power of *a posteriori* review. It noted, in particular, that if the procedure of *a priori* opinion on the constitutionality of the draft constitutional amendments (provided by the constitution) had been skipped by the legislator, *a posteriori* review (not provided by the constitution) would remain the only option giving effect to the constitutional provision requiring *a priori* review. This power, however, did not imply meta-constitutional nor constituent powers to amend pre-existing constitutional provisions, and should not deprive of effects the powers or acts of the constituent legislator. Moreover, the legal effect of the *ex-post* invalidation of the constitutional amendment should be measured in the light of the principle of proportionality. The reasonable effect would be to allow the Parliament to reinstate the procedure, so the act of the constituent power is not completely annulled.

Another Opinion on **Ukraine** concerned the competitive selection of candidates for the position of judge of the Constitutional Court of Ukraine (CCU) CDL-AD(2022)054. Draft amendments in this regard were initiated following the European Commission's recommendation that granting the EU membership candidate status to Ukraine was subject to, *inter alia*, credible, and transparent selection procedure for appointment of judges to the CCU. The draft amendments introduced an independent body, the Advisory Group of Experts (AGE), to assess the moral qualities and legal competence of the CCU candidate judges. The AGE is to be composed of six members, including three members to be appointed by the Venice Commission and other international organisations. The Venice Commission made a number of key recommendations such as providing time-limit to international participation, establishing an anti-deadlock mechanism to avoid tie votes (possibly by increasing the number of AGE members to seven), and including civil society in the process of selection of the CCU candidate judges. Other recommendations aimed to provide necessary guarantees for the independence, impartiality, and efficiency of the AGE, notably to provide for the election or appointment of substitute members (at least for international members), to provide that the criteria for electing or appointing the CCU judges should take into account gender equality.

Urgent Opinion CDL-AD(2022)053 on the Law on the President of **Montenegro** dealt *inter alia* with the situation with the Constitutional Court of Montenegro which was paralysed due to the lack of quorum, resulting from the Parliament's inability to fill in the vacant position (the election of the judges needed a two-thirds majority, or a three-fifth majority in a second round vote). This institutional stalemate was not analysed by the Commission in detail in this Opinion which was focused on the status of the President of the Republic (see above in the sub-section on the checks and balances); however, the Venice Commission reiterated that it is a sign of democratic maturity that political parties may agree on mutually accepted candidates to serve on "safeguard institutions".



Exchange of views with the authorities of Chile, Santiago, February 2022

2. Fundamental rights and freedoms

Operation of the human rights norms – general questions

In Opinion CDL-AD(2022)004 on the new Constitution of **Chile** the Venice Commission examined the principle of "non-regression" of the constitutional provisions on fundamental rights. Within the limits set by the international law, there may be a need for adjusting or even reducing the legal reach of some constitutional rights; either because they must be balanced against other conflicting rights, or because they have in some cases been judged as going too far, thereby unduly restricting the legitimate democratic powers of parliament and the government to legislate for the common good.

For example, if the provisions are formulated in very broad and general terms, it might become necessary to introduce restrictions by way of a constitutional amendment if they are interpreted broadly by domestic courts. Very detailed constitutional provisions inevitably may require amendments both for decreasing and for increasing the level or protection when the specifications of the right in the text no longer correspond to societal needs. So, some "regression" in the level of protection of certain fundamental rights may be justified, but the level of protection of any constitutionally protected right may not be less than the international guarantee. The political authorities should in general have the power to make their own choices of economic, social, fiscal, family, educational, etc. policies through simple majorities, lest elections lose their meaning.

Right to life

In Final Opinion CDL-AD(2022)035 on the constitutional reform of **Belarus**, the Venice Commission reiterated the importance of abolishing the death penalty, referring to numerous recommendations by both the Venice Commission and the Council of Europe bodies. The Commission regretted that the constitutional reform which took place in Belarus missed the opportunity of abolishing the death penalty.

Fair trial and the rights of the victims

In several Opinions dealing with the civil confiscation of illicit assets the Commission considered whether the persons affected by the confiscation were offered adequate procedural safeguards ensuring their right to a fair trial.

Thus, in Opinions CDL-AD(2022)014 and CDL-AD(2022)052 on **Kosovo** and in *amicus curiae* brief CDL-AD(2022)048 for the Constitutional Court of **Armenia**, the Venice Commission accepted that in the civil forfeiture proceedings it would be sufficient if the competent authority proved the illicit origin of the assets based on the standard of proof defined as a "balance of probabilities", which is lower than the standards applied in the criminal matters. However, such proceedings should be accompanied by procedural guarantees offering the owners of the property a real chance of effective defence. In that context, the Commission pointed out the importance of timely and proper notification about the initiation of the procedure; ensuring that the statements made by the party could not be used against him or her in the criminal proceedings; specific protection in cases where the party has no access to evidence showing the legitimate origin of the property; and guarantees for the *bona fide* owners.

In Joint Opinion CDL-AD(2022)044 on **Armenia** the Commission noted that an appeal against a disciplinary sanction imposed by the judicial council should ideally be examined by an external judicial body. However, as long as this option required constitutional amendment, the Commission considered it adequate to create a second-instance panel within the judicial council itself which would examine appeals against the decisions of the first-instance panel, also composed of the members of the council.

In Opinion CDL-AD(2022)032 on **Bulgaria** the Venice Commission welcomed giving more procedural rights to the interested party (and not necessarily only to the identifiable immediate victim of the crime), in particular the right to challenge the decision not to open an investigation in a certain category of criminal cases. This right should be accompanied by the possibility to have adequate access to the materials of the preliminary inquiry which led to the contested decision, for the effective exercise of the procedural rights.

Privacy

Urgent Opinion CDL-AD(2022)037 on **Georgia** concerned the use of covert measures by investigating and security agencies. The Commission stressed that freedom of communications and privacy were fundamental values in any liberal society. Covert measures (whatever legitimate aims they serve), however, could result in serious intrusions into private life, so the relevant legislation authorising such interference should be cautiously worded and narrowly interpreted by state agencies and the courts. There should have been a convincing justification for the adoption of a law extending the powers for using covert measures by the authorities, notably justifying the extension of the list of crimes eligible for the investigation by means of covert measures, the prolongation of the overall duration of covert measures and the relaxation of the rules regarding the duty to notify the persons concerned by the covert measures. The Commission reiterated that the basic forms of State accountability in that area were parliamentary oversight, judicial and expert accountability, as well as complaints mechanism. The Commission suggested putting in place a model incorporating both a judicial authorisation mechanism and a follow-up supervisory control exercised by an expert body.

The question of privacy has been raised in the Opinions regarding security checks and vetting procedure regarding state officials and in particular judges and prosecutors. Thus, in Opinion CDL-AD(2022)005 on **Croatia**, the Commission reiterated that vetting involved an interference with the right to private life. The Commission pointed out that the collection and storage of personal information by a government agency, as well as the transfer of data records between agencies, as well as the dismissal, transfer etc. from public employment fall within the ambit of Article 8 of the ECHR. National security is one of the legitimate aims listed in Article 8 § 2, so vetting on national security grounds is in principle possible. However, it was questionable whether such a far-reaching measure as periodic security vetting of all judges by the security services had been necessary in view of the available judicial accountability mechanisms. The Commission was concerned that such a measure risked contributing to citizens' lack of trust in the judiciary and in its independence. Consequently, the Commission recommended that the Croatian authorities reconsider their approach to prescribe periodic security vetting of all judges and that they develop an alternative strategy to ensure judges' integrity, based on other existing mechanisms.

Freedom of expression

General constitutional limitations on public debate with reference to the protection of the "historical truth" may have far-reaching negative impacts on freedom of expression. In Final Opinion CDL-AD(2022)035 on the constitutional reform in **Belarus**, the Venice Commission expressed concerns that the constitutional amendments generally reduced the principle of respect for the diversity of political opinions, placing it within the framework of the "ideology of the Belarusian state" and moreover imposed a mandatory historical policy on certain issues. These amendments could be used as a tool for limiting democratic freedoms. The question was, of course, what that ideology covered, and, above all, which body was entitled to define its content. This formula may lead the constitutional court and other authorities to interpret the constitutional provisions with reference to the "ideology" which was not clearly defined in the constitution.

In Joint Opinion CDL-AD(2022)009 on **Azerbaijan**, the Venice Commission examined the Law on Media and concluded that in the context of an extremely confined space for independent journalism and media in Azerbaijan, the law would have a further "chilling effect" on the freedom of expression. In order to ensure media pluralism, it was important to repeal the excessive restrictions on the establishment of media entities, including those relating foreign ownership and foreign funding. Furthermore, the Media Register had to be abolished or substantively modified to remove excessively restrictive conditions for journalists and media entities required to be included in the Media Register. The law had to specify the right of journalists not to disclose their sources of information with clear provisions that a court can only order disclosure if all reasonable alternative measures have been exhausted and the legitimate interest in disclosure was of a sufficiently vital and serious nature. Apart from that, freedom of expression should not be excessively limited by a categorical prohibition on the use of secret audio and video recordings and photographs without the consent of the person concerned or a court order. That provision would need to be replaced by a provision that allowed for such use in cases

in which there was a clear public interest in the publication of such material, provided the rights of third parties were protected. The sanction of suspension or termination of licences for media had to be limited to exceptional situations and be applied progressively. The matter should be in the hands of an independent authority securing a transparent and fair procedure in which the license holder should be heard and should be able to have the decision on suspension/termination reviewed.

The Commission further addressed the issues of state regulation of media licences in Opinion CDL-AD(2022)026 on the **Republic of Moldova** regarding amendments to the legislation on the audio-visual media services. The Commission admitted that the authorities should be able to exercise control of the media content by way of imposing conditions as to the geographical origin of audio-visual programmes and by prohibiting the media from broadcasting certain types of audio-visual television and radio programmes. This was especially true where the country was heavily exposed to external sources of information and was a constant target of disinformation activities from external sources. Such regulations, however, should have clear and foreseeable legal criteria, and the sanctions for non-compliance should be applied in a proportionate manner.

Limitation of freedom of expression in the judiciary was discussed by the Venice Commission in Opinion CDL-AD(2022)010 on **Georgia** concerning amendments to the Law on Common Courts. While it was legitimate to impose on judges a duty of discretion, they should equally enjoy the protection of their freedom of expression. Therefore, disciplinary liability for public expressions by judges should be narrowly construed. The disciplinary sanction for "expression of opinion by a judge in violation of the principle of political neutrality" had to be reconsidered. If the wording "political neutrality" was to be maintained, the amendments should qualify the grounds for disciplinary sanctions to only manifest violations of the duty of neutrality or by excluding participation in the public discussion on certain types of issues, such as reforms of the court system and legislative issues.

Apart from licence regulation, the states are entitled to take other legislative measures to suppress incitement to violence, hate speech, fake news, or disinformation. In *amicus curiae* brief CDL-AD(2022)027 for the Constitutional Court of the **Republic of Moldova** regarding legislative bans on the dissemination of symbols associated with and used in military aggression, the Commission stressed that the states were not prevented from enacting legislation banning, or even criminalising, the use of such symbols. In the context of the war in Ukraine, there was an increase in cases of use on the territory of the Republic of Moldova of the symbols used in this war that support, justify and glorify aggression which leads to the emergence of social tensions and creates premises for the spread of inter-ethnic hatred. The Venice Commission considered that in that specific context, it was plausible to argue that the display of the symbols used by the Russian armed forces in that war could produce an actual and immediate danger of disorder and a threat to the national security and the rights of others, including those of Ukrainian war refugees, and that there was a pressing social need to impose a ban on such use.

In contrast, in Opinion CDL-AD(2022)034 on **Türkiye** concerning the new criminal offence of spreading "false or misleading information", the Commission accepted that while the offence pursued a legitimate purpose, such a provision had to be drafted in clear and restrictive language. Moreover, in light of the other existing legislation targeting the most dangerous aspects of "false or misleading information", the Venice Commission was not convinced that there had been a pressing social need to introduce the offence punishable by imprisonment, while, on the other hand, it was necessary to protect the right to anonymity on the internet, protect personal data and regulate the creation and use of profiles.

In Opinion CDL-AD(2022)030 on **Serbia** adopted in 2022 following the constitutional reform of the judiciary (see also the Follow-up Opinion CDL-AD(2022)043), the Venice Commission examined the notion of "undue influence" on judges, and noted that this provision should be interpreted narrowly, and should not cover the legitimate exercise of the freedom of speech, including public criticism of judicial decisions.

Meeting between the Ombudsman of Spain, Mr Ángel Gabilondo, and the President of the Venice Commission, Ms Claire Bazy-Malaurie, Madrid, July 2022

Equality, non-discrimination, and minorities

In Opinion CDL-AD(2022)004 on the new Constitution of **Chile** the Venice Commission examined two proposals related to the establishment of an affirmative action in favour of women and national minorities. The Commission agreed that the introduction of a "gender perspective" in adjudication was certainly a legitimate political and social choice, which permitted to take into account specific situations that disadvantage women. However, in no case should such perspective entail a privileged position or predetermine an outcome to a case: it would be wrong to sacrifice judicial impartiality to other social goals. The Venice Commission also welcomed the requirement of gender parity in the judicial structure but warned that an inflexible legal provision setting a quota along ethnic and gender lines over those of professional competence may undermine the effective functioning of the system.

As to the affirmative action in favour of the indigenous people, the Commission noted that these communities had historically been discriminated against and suffered the consequences of social and structural inequalities. Thus, instituting various forms of affirmative action can serve as an adequate mechanism to involve them in the decision-making process in democratically elected political organs. Therefore, the Venice Commission welcomed contemplating, at the constitutional level, reserved seats in parliament for indigenous people in order to promote their right to political participation. Forms of such participation may be different: this may be done through political parties, independent candidacies, as well as candidacies determined by the indigenous communities' traditional authorities.

The Commission discussed two issues connected with ensuring equality in the voting systems. In Joint Opinion CDL-AD(2022)046 on **Serbia** regarding the framework of functioning of the democratic institutions, the Commission pointed out the trend for promoting the political rights of foreign residents in local elections. It recommended therefore considering the extension of the right to vote and to be elected in local elections to long-term foreign residents.

In Joint Opinion CDL-AD(2022)047 on **Georgia** the Commission stressed that to comply with international standards, states should aim to adapt all polling stations to ensure unimpeded accessibility to voters with mobility difficulties. While the temporary provision that allows wheelchair users to transfer to an adapted polling station within their electoral district may be a reasonable approach to be used until all polling premises are made accessible, it cannot be regarded as an appropriate permanent solution. Consideration should also be given to extending the temporary measures to all voters with mobility difficulties, not only wheelchair users.

Protection of property

Several opinions adopted in 2022 examined the non-conviction based confiscation of illicit assets and its compatibility with the right to the peaceful enjoyment of possessions.

In *amicus curiae* brief CDL-AD(2022)048 for the Constitutional Court of **Armenia**, the Commission reiterated that the forfeiture of assets obtained through illegal activities or paid for with the proceeds of crime was a necessary and effective means of combating criminal or other illegal activities. Civil forfeiture mechanisms are often based on a presumption of illicit origin of assets. This is not contrary to the European standards in so far as such a presumption applies within reasonable limits and its operation is accompanied by effective procedural

guarantees. In relation to the protection of property rights, the Commission noted that civil confiscation was directed not only against the suspected persons, but also against affiliated persons who might possess or manage the ill-gotten property. This inevitably broadened impact of the legislation which should offer guarantees for *bona fide* owners.

Two Opinions on **Kosovo** examined the draft law on the State Bureau for verification and compensation of unjustified assets (see CDL-AD(2022)014, examining the original draft law, and CDL-AD(2022)052, examining the revised version). The Commission recalled that, despite their justified purpose, non-conviction based civil confiscation proceedings must be designed and implemented in compliance with the national constitution, which includes the direct application of the ECHR and taking into account the European rule of law standards.

Exchange of views with the authorities of Kosovo in the framework of the Opinion on "verification and confiscation of unjustified assets", Pristina, May 2022

The draft law examined presented a certain number of shortcomings; its implementation might result in infringements of fundamental rights guaranteed by the Constitution of Kosovo and the ECHR. The Commission mentioned the need to formulate the public interests, the aim and purpose of the new law; to make clear that the burden of proof shifts to the defendant only after the competent authority presented a reasoned proposal and evidence showing that there was at least a probability of illegal acquisition of assets, on the basis of the standard proof of the "balance of probabilities"; to introduce an adequate evidentiary threshold for interim measures and make it clear that such measures could be taken under the civil procedure even if criminal investigations had been initiated.

The Commission noted with satisfaction in its Follow-up Opinion that most of the recommendations of its June 2022 Opinion had been taken into account. However, the Commission proposed to provide for an anti-deadlock mechanism for the election of the Director General of the Bureau for the verification of assets, to establish an evidentiary standard to justify the opening of a case, and to provide for a possibility to drop the case.

In Opinion CDL-AD(2022)021 on **Tunisia** the Venice Commission assessed the draft code on state property and noted that the code pursued several objectives: the simplification of the law; modernisation of procedures; strengthening the protection of public property and the fight against corruption. The objectives thus invoked seemed to be legitimate. Nevertheless, the draft code had essential defects which had a direct impact on the overall regulation of property rights: the incompatibility with the principle of legality and foreseeability as well as the intelligibility of the norms of internal law, the ineffective protection of the procedural rights of the persons concerned, and the failure to respect the principle of proportionality with regard to the level of sanctions. The Commission recommended clarifying notions used in the code, in particular through a better definition of private and public goods; avoiding overly open formulations; considerably reducing exceptions and derogations from the common regime; framing the necessary exceptions with clearly established procedural safeguards; introducing clear procedural rules; revising the level of sanctions; introducing mitigating circumstances, in particular good faith.

Social rights

In Opinion CDL-AD(2022)035 on **Belarus** the Commission warned that unclear constitutional provisions on health care may carry hidden limitations on health protection standards. It had regard to the new constitutional provision stating that the citizens should take care of the preservation of their own health. The legal significance of that amendment was unclear, but it could not be excluded that the negligence of that obligation could affect the scope of offered health services.

3. Free elections and political parties

In 2022 the Venice Commission adopted the revised Code of Good Practice on Referendums (addressed in more detail below in this section) and a number of opinions on specific countries. The recurrent issues examined in those opinions concerned the composition and independence of the electoral bodies, delimitation of electoral districts, electoral thresholds, criteria of voter and candidate eligibility, campaign financing, timing of electoral reforms, etc.

Elections and electoral bodies

Joint Opinion of the Venice Commission and the OSCE/ODIHR CDL-AD(2022)016 on the amendments to the electoral legislation of **Türkiye** addressed legislation already in force. The lowering of the threshold, one of the highest worldwide, was a step in the right direction, but the Opinion encouraged lowering it further. The allocation of seats to members of an alliance would not need two stages anymore, which did not go against international standards. The Opinion was more concerned about the suppression of the possibility for political parties to run in elections if they had a political group in the Grand National Assembly, leaving as the sole condition (stricter than before) to have held two congresses. There was a need to clarify that this did not apply to new parties because it could impede their participation in elections. The Opinion also recommended reconsidering the modifications in the system for composing district and provincial electoral boards, replacing seniority by lot, a change which had been considered by opposition parties and NGOs as the most problematic one.

Delegation of the Venice Commission and OSCE/ODIHR visiting Türkiye in the framework of the preparation of the Opinion on amendments to the electoral legislation, Ankara, May 2022

The Joint Opinion of the Venice Commission and the OSCE/ODIHR CDL-AD(2022)025 on the draft electoral code of the **Republic of Moldova** noted that the draft was a comprehensive piece of legislation based on the current code, and an important part of the package or legislative amendments directed towards the European integration process. Amendments concerned in particular the composition of election commissions, voting arrangements and periods including voting abroad, as well as referenda. The draft brought a number of improvements. Positive developments included the introduction of a rule on stability of electoral law, adjusting the procedures for appointment and nomination to the CEC to enhance its impartiality, introducing some specific measures to increase voter list accuracy, prohibiting the organised transportation of voters by political parties on election days, defining and clarifying what constitutes campaign coverage in the broadcast media.

A number of problems continued or remained, leading the Opinion to recommend, *inter alia:* making clear reference as to what constitutes objective criteria for the provision of two-days of voting and ensuring the integrity of election materials overnight; removing vague grounds for the dismissal of CEC members, clarifying the procedure for their appointment; removing from the responsibility of the CEC the task of reviewing appeals on alleged false information in print and online media, unless other important criteria are introduced, and until its institutional capacity and expertise are ensured; reviewing the list of grounds for de-registration of candidates; specifying the exhaustive list of circumstances which could lead to the de-registration of political parties; elaborating on or at a minimum making reference to the election processes held in the Autonomous Territorial Unit of Gagauzia; reintroducing the possibility to produce ballot papers in national minority languages.

The revised electoral code was adopted by the Parliament on 8 December 2022. A number of key recommendations of the Joint Opinion were followed: making clear reference as to what constitutes objective criteria for the provision of two days of voting; removing vague grounds for the dismissal of members of the CEC; removing from the responsibilities of the CEC the task of reviewing appeals on alleged false information in print and online media. Concerning the recommendation to specify the exhaustive list of circumstances which could lead to the de-registration

of political parties, a reference has been made to the law on political parties. Other recommendations were followed, including through reference to the election processes held in Gagauzia. Some recommendations remain to be addressed, including the key recommendations: to ensure the integrity of elections materials in case of two-day voting; to clarify the procedure for the appointment of CEC members and limiting the tenure of chairpersons of district electoral commissions; to review the list of grounds for de-registration of candidates.

The Joint Opinion of the Venice Commission and the OSCE/ODIHR CDL-AD(2022)047 on the draft amendments to the Election Code of **Georgia** was connected to Georgia's recent application to join the EU.

Joint delegation of the Venice Commission and the OSCE/ODIHR visiting Georgia in the framework of the preparation of the Opinion on amendments to the Election Code, Tbilisi, November 2022

It followed a number of Joint Opinions in the field adopted as late as 2021. The current draft amendments addressed several previous Venice Commission and OSCE/ODIHR recommendations but failed to provide a comprehensive, systemic review of the Georgian electoral law. The legislative issues that remained unaddressed related to, among others, constituency delimitation, restrictive residence requirements for presidential and parliamentary candidates and other undue criteria on voter and candidate eligibility, additional aspects regarding the formation of election commissions, provisions on the misuse of official position for campaign purposes, high donation limits for election campaigns affecting the level playing field, further regulation and oversight of campaign finance, further elaborating media campaign regulations, strengthening the framework for electoral dispute resolution to ensure effective legal remedy, recounts and annulments, and measures to prevent voter intimidation.

The Opinion offered four key recommendations aimed at further strengthening the recruitment and selection process for the formation of election administration bodies, further reducing the residency requirement for mayoral and municipal council candidates, establishing a more detailed regulatory framework for the use of new voting technologies and establishing clear and comprehensive criteria for the conduct of recounts, as well as a number of additional recommendations.

The Joint Opinion of the Venice Commission and the OSCE/ODIHR CDL-AD(2022)046 on the constitutional and legal framework governing the functioning of democratic institutions of **Serbia** went beyond a normal electoral opinion by assessing not only legislation but also practice, at the request of the Parliamentary Assembly of the Council of Europe. The revised electoral legislation had been adopted in February 2022, two months ahead of elections. Since the process was inclusive and consensual, and improved the legal framework, such late amendments were exceptionally acceptable. The main recommendations addressed the following points: the composition and functioning of the electoral administration, implying strengthening the professional background and expertise of its members; ensuring an efficient monitoring of the media in a landscape dominated by the majority, in particular by ensuring the independence of the regulatory authority; ensuring the transparency of all election-related online communications and, at the same time, ensuring that the cost of these activities is taken into account for the purpose of enforcing political finance regulations; improving the oversight mechanism of campaign financing, lowering the ceilings for donations, addressing third-party funding; undertaking wide-scope measures to prevent misuse of office and state resources, including through the provision for proportionate and dissuasive sanctions; considering measures to promote internal political party democracy and to provide opportunities for participation that are not unduly limited by the party leadership; adjusting the various dispute resolution mechanisms and related deadlines.

Finally, Opinion CDL-AD(2022)035 on the constitutional reform of **Belarus** touched upon electoral matters: the Venice Commission criticised the blanket restriction on suffrage based on conviction, irrespective of the severity of the sentence. The Commission also discussed the

question of composition of the central electoral commission (the CEC). The Chairman and the members of the CEC would be elected and removed from office by the All-Belarusian People's Assembly (the ABPA). Given the peculiar nature of the ABPA (see the analysis above in the sub-section on checks and balances), this method of appointment would not guarantee the independence and impartiality for the CEC. In addition, it would be preferable to regulate the composition of the electoral authority, including quotas for the judiciary and the political parties, the guarantees against arbitrary dismissal, and the qualified majorities for taking decisions, at the constitutional, and not legislative level.

In Opinion CDL-AD(2022)031 on the draft constitutional amendments concerning the electoral system of **Mexico** the Venice Commission noted that Mexico is a unique country for its electoral management bodies. The 2014 electoral reform reinforced the National Electoral Institute (the INE) and the Electoral Tribunal which contributed largely to organisation of elections in an efficient and transparent manner. The constitutional reform started by the federal executive in 2021 envisaged the creation of a new national electoral authority whose members would be directly voted in by "the people".

The delegation of the Venice Commission meeting the Speaker of the Congress of Deputies, Mr Santiago Creel Miranda, in the framework of the preparation of the Opinion on the constitutional reform of the electoral system of Mexico, Mexico City, September 2022

Another proposal consisted of reconfiguring the Congress by cutting its size to 300 members and electing them by nation-wide lists from parties rather than districts. The Opinion noted that the impartiality of the electoral management body (INEC) and of the judges of the Electoral Tribunal was not sufficiently guaranteed in the proposed model. The procedure for direct election of the Councilors of the INEC and judges of the Electoral Tribunal should be reconsidered since it did not ensure a balanced representation of different political forces. The proposed centralisation of the electoral bodies could compromise the impartial and independent operation of the electoral administration at different levels of the Mexican Federation. Moreover, the elimination of the lower-level electoral management bodies and the creation of *ad hoc* structures with temporary staff would have a negative impact on the quality of elections at different levels. The concentration of the complaints and appeals process in the hands of a national Electoral Tribunal could also be problematic in the light of the federal structure of the Mexican State and could create a potentially very high burden since such national Electoral Tribunal will have to deal with all the electoral complaints and appeals in first instance.

Referendum

The Venice Commission adopted the Revised Code of Good Practice on Referendums CDL-AD(2022)015, adding in 2022 an updated explanatory memorandum to the revised Guidelines adopted in 2020. The explanatory memorandum addressed new developments introduced by the revised guidelines, such as transparency and limits of financing, or the involvement of an impartial authority in the wording of the question submitted to the vote. The wording of the question belonged to issues addressed in more detail, like secret suffrage; the organisation of referendums by impartial bodies; effects of referendums, especially for generally worded questions; and the date/timing of the referendum. The Code of Good Practice on Referendums was endorsed by the Committee of Ministers and the Congress of the Council of Europe in 2022. It should be endorsed by the Parliamentary Assembly in 2023.

An Urgent Joint Opinion of the Venice Commission and the OSCE/ODIHR CDL-AD(2022)038 assessed the draft Law on local referendum in **Ukraine**. This draft had taken into account some of the previous recommendations, notably the ones formulated in the 2020 Joint Opinion on draft law no. 3612 on democracy through all-Ukraine referendum. However, certain provisions could be improved. The main recommendations of the Opinion were to revise the provisions of the draft law allowing the

organisation of local referendums simultaneously with the early termination of powers of local elected officials, by excluding the recall of elected assemblies and clearly and restrictively specifying the grounds for an early recall of the head of executive bodies; to clarify the provisions concerning the "normative acts" of local authorities that can or cannot be submitted to local referendum, as well as the provisions on exclusion from the subject matter of the local referendum of "certain" powers of executive authorities granted to local self-government bodies; to clarify the rules on campaign limitation to avoid any arbitrary application; to make the procedures less burdensome; to remove the threshold for the validity of the local referendum.

In final Opinion CDL-AD(2022)035 on the constitutional reform of **Belarus** the Commission criticised the provisions which transform the referendum on the constitutional amendment into a regular, instead of an exceptional, tool for amending the Constitution. The practice of constitutional referendums bypassing Parliament is against European standards. The Commission also noted that a constitutional referendum shall be deemed to have taken place validly if more than half of the citizens on the voting lists have participated in it. This means that the amended text of the constitution required a turn-out quorum for a constitutional referendum. That was not in line with the recommendation of the Venice Commission which advised not to provide turn-out quorums for the validity of referendums (but accepted approval quorums or a specific majority requirement for referendums on matters of fundamental constitutional significance).

In urgent Opinion CDL-AD(2022)017 on **Tunisia** the Venice Commission examined the constitutional and legislative framework of the referendum and elections announcements by the President of the Republic, and in particular a decree-law amending and completing the organic law on the independent electoral authority. The Opinion criticised the procedure for the preparation of the new constitution (see above in this Chapter, in the sub-section on the process of constitutional and legislative reforms). A commission truly representative of all political forces and of the whole of Tunisian society should be established and entrusted with the preparation and adoption of the text to be submitted to the referendum. If the electoral law is to be amended before the parliamentary elections, a broad consultation of political forces and civil society should be conducted in order to reach a consensus on the new electoral rules. The Commission criticised the lack of impartiality of the electoral management body and urged the Tunisian authorities to repeal the decree law in order to ensure the legitimacy and credibility of any electoral or referendum process.

Political parties

The Constitutional Court of the **Republic of Moldova** asked for an *amicus curiae* brief on declaring a political party unconstitutional CDL-AD(2022)051. The brief related to a case concerning the constitutionality of the Şor party, further to a request made by the Prime Minister to the constitutional court, but, in line with the request, the Venice Commission replied to comparative questions, not related to the case at hand.

The first question related to the applicable European standards. These include hard and soft law, case-law of the ECtHR, as well as Opinions and reports of the Venice Commission. On the second question, as to actions which could lead to the declaration of a party unconstitutional, the focus was on Article 11 of the ECHR as interpreted by the ECtHR; while this provision did not prevent prohibition and dissolution of parties in principles, the limitation clause of Article 11.2 of the ECHR should be interpreted restrictively, in conformity with the principle of proportionality; specific behaviors should not automatically lead to prohibition. If political parties' leaders incited to violence, destruction of democracy and flouting of rights and freedoms, this could however lead to prohibition. The Commission insisted on the essential role of political parties in a pluralist democracy; the exceptional nature of prohibition as a means of last resort; the need to ensure the necessity and proportionality of the measure to a legitimate aim; independent court proceedings, and due process.

In final Opinion CDL-AD(2022)035 on the constitutional reform of **Belarus** the Venice Commission commented on the constitutional prohibition on the funding of election expenses by foreign states and organisations. While restrictions on foreign funding is in the interest of avoiding undue influence by foreign interests in domestic political affairs, that constitutional provision should

not prevent all forms of co-operation between political parties active at an international level, and the policy on foreign funding requires a nuanced approach.

In Joint Opinion of the Venice Commission and the OSCE/ODIHR CDL-AD(2022)013 on the draft law on political parties of **Mongolia**, the Venice Commission welcomed Mongolia's efforts to amend its legal framework relating to political parties, with a view to enhancing the role and importance of democratic political parties and stimulate their development. The Commission recommended simplifying the process for establishing and registering a political party and ensuring political parties' autonomy to decide on their internal organisation, structure, and decision-making rules. The Opinion recommended to remove the requirement of being "eligible to vote" as a pre-condition for establishing or joining a political party, and more generally to repeal or reconsider the existing restrictions relating to the eligibility to vote in Mongolia. The authorities were encouraged to reconsider the grounds for dissolution (related to the lack of political activity). The Opinion also recommended lowering the threshold of three percent of the total votes received at the elections which would open access to public funding; suspension of the public funding should be preceded by a warning, and sanctions should be proportionate to the breaches. Finally, the Supreme Court should have the power of full review and should not be bound by the decision of the General Election Commission on the dissolution of a political party.

4. Judiciary and the prosecution service

In 2022, almost half of the total number of Opinions adopted by the Venice Commission concerned issues related to the judiciary and the prosecution service. These Opinions covered four main issues, namely, the integrity of judges and prosecutors, bodies of governance of the judiciary and the prosecution service, appointments, careers and discipline of judges and prosecutors, as well as organisation and efficiency of the judicial system.

Integrity and vetting in the judiciary and the prosecution service

In 2022, the Commission issued five Opinions related to various types of ethical and financial integrity checks in respect of judges and prosecutors.

Two related Opinions CDL-AD(2022)024 and CDL-AD(2022)049 on the **Republic of Moldova** concerned the draft law on the Supreme Court of Justice (the SCJ) which *inter alia* envisaged an extraordinary evaluation of ethical and financial integrity of the judges of the SCJ. The Commission reiterated in its previous recommendation that for the draft law to be compliant with the Constitution, all decisions concerning the transfer, promotion, and removal from office of judges should be taken by the Superior Council of Magistracy. While a "pre-vetting" of candidates and integrity checks exercised through the evaluation of asset declarations were found to be quite common and uncontroversial in principle, the Commission observed that any type of extraordinary vetting of sitting judges might only be justified in case of exceptional circumstances. In the context of the Republic of Moldova, the Commission observed that a vetting exercise may create a dangerous precedent and may lead to an expectation that there would be a vetting after each change of the government, which would undermine the motivation of the judiciary and reduce its independence. The low level of confidence in the judiciary in the Republic of Moldova is a real issue to be addressed, but the vetting of sitting judges is a measure of last resort and in any event should be implemented within the framework of the constitutional guarantees.

The Commission also recommended that the consequence of a negative evaluation of a judge of the SJC should not automatically be his/her removal from the office. In the context of a negative evaluation, the Commission recommended granting some discretion to the Supreme Council of Magistracy to apply a range of less harsh measures. Any long-time ban (for 10 years) of negatively evaluated judges from re-joining other legal professions (lawyers, notaries, bailiffs, and other) was considered disproportionate.

Professional ethics and integrity checks for members of the judicial council were discussed in *amicus curiae* brief CDL-AD(2022)023 on **Ukraine** in relation to the election and discipline of the members of the High Council of Justice (HCJ) of Ukraine. The omission held that while the evaluation of candidates to the positions in the HCJ was in principle not a problem, vetting of the sitting members could be introduced only as a measure of last resort and only if ordinary means like disciplinary measures and general anti-corruption instruments had no sufficient effect. The Commission also noted that in line with the principle of proportionality, members should not be excluded

from the council for minor infringements. One of the main elements of Ukraine's law at issue was the establishment of the Ethics Council with a mixed composition of international and national experts tasked with the evaluation of candidates to the HCJ and with one-off evaluation of the sitting HCJ members. The Commission was of the opinion that the participation of an international component in the Ethics Council was a necessary guarantee for such an exceptional measure in Ukraine, which established a balance between the independence of the members of the HCJ and the necessity to ensure their integrity. Concerning the issues of the alleged preponderant vote of two international members which comes into play in cases of tied vote, the Commission found that this was an anti-blocking mechanism envisaged by the Ukrainian legislator to be activated only in the case when the votes are equally divided. International experts were included in the first composition of the Ethics Council in order to increase the trust in this body and the provision attaching more weight to the votes of international members follows in a coherent manner the same logic and does not appear to violate the principle of the independence of judges. The inclusion of the international experts in the Ethics Council might be difficult for the judges and members of the HCJ to accept but it was important to combat the scourge of corruption. The international component in the Ethics Council had not been seen as posing a threat to the sovereignty of Ukraine because the model had been a sovereign choice of Ukraine and, moreover, it was an extraordinary and temporary solution. It was foremost corruption that weakened the sovereignty of the state.

The President of the Venice Commission, Ms Claire Bazy-Malaurie, and the Prosecutor General of Ukraine, Mr Andriy Kostin, Paris, March 2022

In Opinion CDL-AD(2022)005 on **Croatia**, the Commission examined the procedure for the security vetting of judges. The proposed amendments envisaged, first, periodic renewal of security vetting (after every five years) and, second, put in place a requirement for all judges to submit to security vetting. "Security vetting" is the procedure whereby the competent security and intelligence agency ascertains the existence of security obstacles for holding certain positions. In the case of basic security vetting, security obstacles are facts which point towards misuse or risk of misuse of an official position or duty, i.e., the exercise of official rights and powers at the expense of the national security or the interests of Croatia. Application by court presidents for basic security vetting with the intelligence agency had to be made via the Ministry of Justice. The necessity of this reform in the Croatian context was not convincingly demonstrated in view of wide array of available mechanisms to ensure integrity of the judicial corpus (such as the annual asset declarations, annual assessments by the court presidents regarding the minimum output and the behaviour of the judge concerned, the possibility of disciplinary proceedings, the possibility of criminal liability, and the general possibilities for security vetting were already in place. Strengthening and improving the already existing mechanisms would be therefore a more reasonable approach. The Commission recommended removing from the law the Ministry's role as an intermediary in the security vetting process arguing that even a limited involvement of the Ministry might be seen by the public as an undue interference in the process and further decrease citizens' trust in the independence of the judiciary.

Bodies of governance of the judiciary and the prosecution service

An important number of Opinions adopted in 2022 focused on the internal organisation and powers of the bodies of governance of the judiciary and the prosecution system – judicial and prosecutorial councils or similar institutions. It must be stressed that some democratic legal orders do not have such councils. However, the Venice Commission was generally favourable to their establishment because properly composed councils may contribute to creating a system where decisions on judicial appointments and career are taken on non-political grounds, independently of the executive and legislative powers.

This basic principle was stressed in Opinion CDL-AD(2022)004 on the new Constitution of **Chile**. Where the Commission reiterated that a judicial council should have a pluralistic composition with a substantial part and at least half of its members being judges. Elections of lay (non-judicial) members from the parliamentary component should be by a two-thirds majority, with a mechanism against possible deadlocks or by some proportional method which ensures that the opposition has an influence on the composition of the council.

Three Opinions on **Serbia** adopted in 2022 were essentially focused on the organisation of the judicial and prosecutorial councils following the constitutional reform CDL-AD(2022)030, CDL-AD(2022)042, and CDL-AD(2022)043. The Venice Commission, while giving an overall positive assessment to the implementing legislation, also stressed a need for a change in the legal culture within the judiciary to supplement these positive changes.

As regards the new composition of the Prosecutorial Council, the Venice Commission expressed concerns about the presence of the two *ex officio* members in the Council – the Prosecutor General and the Minister of Justice, and in particular about the effect they may have on the balance of power between the prosecutorial and lay components of the Council, and the effective functioning of the Council. The Venice Commission stressed the need to ensure the broadest representation amongst lay members so to avoid a politically homogenous lay component affiliated to the political majority. It noted that the pre-selection of candidates to the position of lay members is in the hands of the Commission on the Judiciary of the National Assembly, dominated by the parliamentary majority coalition, which created a risk that the shortlist of candidate would be composed on the basis of their political affiliation with the majority. The Commission welcomed the proposal by the Serbian authorities to require a qualified majority in the Commission on the Judiciary but recommended to strengthen the ineligibility criteria, in order to create a "safety distance" between the candidates to the positions of lay members and party politics and provide for an appropriate anti-deadlock mechanism.

The Commission also noted that heightened majority in the Council itself for taking some important decisions may lead to blockages, but the risk of blockages is less if the legislator increases the independence of the prosecutorial members from the Prosecutor General and ensures that the lay members represent different political currents. A similar recommendation concerned the election of the lay component of the Judicial Council.

Reforms of the governing bodies of justice system were also addressed in Opinion CDL-AD(2022)010 on the amendments to the Organic Law on Common Courts of **Georgia** which have been the subject of several opinions over the past four years. The last amendments raised several issues regarding the independence of judges and the functioning of the High Council of Justice (HCJ). In particular, the amendments removed the restriction on serving on the HCJ for more than one term of four years. While there is no hard international standard on the reappointment of members of the judicial councils, the Commission reiterated that a fixed non-renewable mandate might enhance the appearance of independence. The Commission recommended a partial turnover of members of judicial councils in order to avoid situations where all elected members end their terms simultaneously.

In Opinion CDL-AD(2022)019 on the **Republic of Moldova** the Commission, *inter alia*, provided advice on several provisions touching upon the election of the lay members of the Supreme Council of Magistracy (SCM) and the security of tenure of the SCM members. The Commission commended the fact that the draft amendments elaborated an anti-deadlock mechanism for the decisions of the Parliament on the election of lay members but noted that decreasing the threshold for parliamentary approval of candidate from three fifths of elected MPs into a simple majority might dilute the purpose of reaching a compromise between the majority and the opposition. To increase the democratic legitimacy of lay members and help counterbalancing the lack of a larger consensus at earlier stages of appointing process, the Commission suggested a proportional method of voting, or involving external institutional actors in the later stages of appointment process as alternative ways of breaking deadlocks in the decision-making. On the issue of security of tenure of the SCM members, the Commission expressed strong reservations against the idea of "revocation" of the members of the SCM by the bodies which had elected them. The Commission reiterated the need for a constitutional entrenchment of the principle of security of tenure of the SCM members and, in

its absence, called for a more expressed statutory guarantees to ensure that members should only be removed on disciplinary grounds and not for the loss of confidence by the judges who participated in their election or any other body which elected them.

The frequent reforms of the Superior Prosecutorial Council (SPC) were at the heart of another Opinion on the **Republic of Moldova** CDL-AD(2022)018. In 2021, the Commission had already reviewed the draft amendments adopted by the newly elected Parliament aimed at the reorganisation of the SPC by decreasing the number of members from 15 to 12, reducing the retirement age and introducing a new mechanisms of *ad hoc* performance evaluations of the Prosecutor General (PG) together with a mechanism of dismissal of the PG for a disciplinary violation. The Commission argued that if at the time of the reform the duration of the member's mandates had been clearly stipulated in the constitution, that would prevent the legislator from interrupting the tenures by a legislative change reducing the retirement age. To contribute to the stability of the SPC and insulate it from frequent institutional changes, the Commission recommended a constitutional amendment introducing key elements of the institutional design of the SPC.

The new institutional design of the **Kosovo** Prosecutorial Council (the KPC) was discussed in Opinion CDL-AD(2022)006 where the Commission held that the new composition of the KPC (where prosecutors elected by their peers would represent three out seven members, two lay members being elected by the Assembly, one lay member being appointed by the Ombudsman, and the Prosecutor General (the PG) being a member *ex officio*) does not infringe the international standards. While commending the fact that the powers of the PG as an *ex officio* member in the disciplinary field are counter-balanced by the qualified majority requirement for the decision-making in disciplinary matters within the KPC, the Commission suggested further elaboration to limit any potential dominance of the KPC decisions by the PG. In this context, the Commission recommended that the amendments should clearly stipulate that the prosecutorial members of the KPC serve in their personal capacity and that the PG cannot not use his/her powers of their hierarchical superior, directly or indirectly, to influence their work in this body.

In Opinion CDL-AD(2022)050 on **Montenegro**, the Commission examined the rights of the judges, the work of the Judicial Council, the system of ethical and disciplinary liability of judges, the manner of appointment of judges and presidents of the courts, the assignment and transfer of judges, as well as the appraisal of judges. Concerning the specific issue of the "political" ineligibility criteria of the Judicial Council members, the Commission advised the authorities to reduce the cooling-off period for members of the Judicial Council "political" incompatibility from ten years to five years, to avoid excessive stigmatisation of the past political activity of potential members, in order to avoid that the pool of potential candidates is unduly restricted. While commending the authorities for the anti-deadlock mechanisms such as the election of the Acting President of the Supreme Court, the Commission noted that the interim presidency should be limited to exceptional events, such as the death, resignation, or dismissal of the incumbent President, in order to avoid transforming an exception into a rule. Finally, the Commission recommended that the law should provide that the members of the Judicial Council alone are responsible for initiating disciplinary proceedings against judges. The Venice Commission expressed reservations about the presence of the Minister of Justice as an *ex officio* member in the judicial council and his/her role in triggering disciplinary cases against judges.

A recurrent theme in the 2022 opinions on the bodies of judicial and prosecutorial governance was the decision-making majorities and quorums within such bodies. Opinion CDL-AD(2022)002 on the vetting of judges of **Armenia** stressed that members whose mandate was to be terminated on the basis of a new ground of incompatibility introduced by the draft legislation should not participate in the examination of their cases by the Supreme Judicial Council. However, in such cases, it was questionable whether the minimum quorum for holding a session would be reached.

Opinion CDL-AD(2022)020 on **Lebanon** examined the draft law on the independence of judicial courts. The Commission noted that the reform may potentially reinforce judicial independence in Lebanon in line with the European standards and best practices. The Commission found it positive that in the future Superior Council of Magistracy (SCM) seven judicial members will be elected by their peers. However, it would be necessary to

increase the representation of the lower courts' judges amongst the elected judicial members; in the current proposal the top courts were overrepresented in this body. The Commission invited the authorities to consider opening up the SCM to external members, not representing the judiciary or the executive, in order to introduce an element of democratic legitimacy and pluralism in the SCM. Members of the Judicial Inspection should not be appointed by the executive single-handedly, but rather with a binding opinion of the SCM. If this is implemented, the Minister of Justice might retain the power to trigger disciplinary proceedings, along with the Inspection. Similarly, members of the Evaluation Commission should be appointed on the basis of a binding opinion of the SCM.

In Opinion CDL-AD(2022)032 on **Bulgaria** the Venice Commission examined the draft amendments to the Criminal Procedure Code and the Judicial System Act, which represented another attempt of the Bulgarian authorities to address the issue identified by the ECtHR in the case of *Kolevi v. Bulgaria* (concerning the lack of the system of independent investigation into the crimes allegedly committed by the Prosecutor General). The Commission gave a generally positive assessment to the draft amendments, noting that they could enhance the accountability of the Prosecutor General. However, this could not be achieved only by changing the rules on criminal investigations. It would be necessary to circumscribe the functions of the prosecution service outside of the criminal law sphere, and to reduce the majority needed for taking a decision on the removal of the Prosecutor General by the Plenary Supreme Judicial Council. The model proposed by the draft amendments (based on the figure of an *ad hoc* prosecutor dealing with such cases) was an acceptable solution, but the eligibility criteria for the *ad hoc* prosecutor should be specified in more detail, and the draft law should regulate situations and procedural consequences where the *ad hoc* prosecutor may be suspended or removed. The scope of judicial review of the procedural activities of the *ad hoc* prosecutor should also be specified, and, most importantly, the draft amendments should determine the scope of hierarchical prosecutorial control over the *ad hoc* prosecutor and specify the necessary exceptions and procedural safeguards for the latter, in order to respect the limits, set out in the Bulgarian Constitution, as interpreted by the constitutional court.

Delegation of the Venice Commission visiting Bulgaria in the framework of the preparation of two Opinions on the organisation of the Bulgarian judiciary, Sofia, September 2022

Opinion CDL-AD(2022)022 on **Bulgaria** concerned the competencies and the manner of appointment of Judicial Inspectors. The Commission recommended the Bulgarian authorities to review the institutional model of the Inspectorate and to define more clearly the scope of its mandate, in order to delimit more clearly the powers of the Inspectorate and the Supreme Judicial Council itself. The judiciary, through the Supreme Judicial Council, should be involved in the process of election of Inspectors by nominating candidates, and also participate in deciding on the accountability of the inspectors. The Opinion also recommended describing at least some basic principles of ethical behavior of judges in the law itself and involve other bodies of judicial governance in amending the ethical codes.

Appointments, careers and discipline of judges and prosecutors

IIn Joint Opinion CDL-AD(2022)002 on the vetting of judges of **Armenia** the Commission examined the new grounds for dismissal of judges formulated as a "deliberate violation" of human rights' norms established by an international adjudicative body (like the ECtHR). The Commission concluded that a "deliberate" violation cannot necessarily be inferred from the ECtHR judgments, since its conclusions relate in general to the malfunctioning of the national system as a whole, which rarely may be reduced to a fault of an individual judge. Furthermore, it is easily possible for three levels of courts to have been involved in a case in which a violation of a fundamental human right has been determined by the ECtHR. The Commission also noted that the draft law lacked a threshold defining

the level of violation and, in addition, any form of graduated sanctions; the only sanction to a fundamental human rights violation seemed to be the termination of powers.

The Commission repeatedly stressed that disciplinary proceedings involving judges and prosecutors should be accompanied by adequate procedural guarantees. These guarantees should be in place even where the procedure is not defined in the national law as "disciplinary" but may lead to the dismissal of the judge.

In Opinion CDL-AD(2022)044 on the amendments to the Judicial Code of **Armenia**, the Commission reiterated that while the power of the Minister of Justice to initiate disciplinary proceedings is not as such in conflict with the European standards, it would be desirable to phase out this power as soon as other mechanisms – namely the Ethics and Disciplinary Commission – prove their efficiency in ensuring judicial accountability. The same draft law introduced a new system of appeal against the decisions of the Supreme Judicial Council in disciplinary matters, by a second-instance panel created within the Council itself. The Commission observed that while an appeal to an external judicial body could be a better option, given that a constitutional amendment to this effect seemed to be impossible at the moment, the creation of an appellate instance within the Supreme Judicial Council was an acceptable compromise addressing in essence the recommendation of the Committee of Ministers.

Opinion CDL-AD(2022)010 on **Georgia** examined the security of tenure of judges. The amendments broadened the powers of the High Council of Justice vis-à-vis the judges with regard to the non-consensual transfer: the Council would be able to select a judge to be seconded without drawing lots and without a geographical limitation. In addition, the time limit for secondment without consent had also been extended to up to a total of four years. The Commission noted that while the principle of irremovability was not absolute, as a general rule, the transfer of judges without their consent would only be permissible in exceptional cases, such as general reforms of the judicial system and as a result of disciplinary sanctions. The Commission recommended that for the secondment of judges against their will, the amendments should allow it only in exceptional cases, provide clear and narrow criteria; a justification with a legitimate objective accompanied by a random or objective procedure with a geographical limitation and establishing a shorter timeframe for the transfer.

In Urgent Opinion CDL-AD(2022)045 on **Romania**, the Commission examined three laws concerning the justice system. In relation to the judicial and prosecutorial careers, the new law created a new arrangement for appointing deputy managers in courts and prosecutors' offices without competition or examination, upon a proposal from the president of the court or the head of the prosecutor's office. The Commission criticised the law enabling the court presidents or chief prosecutors to select a deputy without any competitive process. As regards the high-ranking prosecutors who were appointed for a period of three years only, albeit renewable once, the Commission considered that they should be appointed for longer periods and without the possibility of renewal, to guarantee their functional independence.

In Opinion CDL-AD(2022)019 on the **Republic of Moldova** the Commission, *inter alia*, commended the Moldovan legislator for removing the probationary periods for the appointment of judges. Similarly, the provision envisaging the transfer of a judge to a court of the same level or to a lower court only with his/her consent was found to be a positive step. The Commission recommended that the voluntary transfer of a judge to a court of the same level or to a lower court could be made without involvement of the President of the Republic arguing that the added value of the involvement of the President in this process is unclear and may cause unjustified delays. While welcoming the provisions establishing that judges enjoy only functional immunity, the Commission recalled that the functional immunity should be understood as immunity from prosecution for certain acts performed in the exercise of their functions (apart from intentional crimes, e.g., taking bribes), but this immunity does not protect judges from criminal prosecution in general.

In Opinion CDL-AD(2022)004 on the new Constitution of **Chile** the Commission observed that the quality of a judge's performance cannot be measured by counting the number of cases processed regardless of their complexity, or the number of judgments upheld at the higher instance. Additionally, performance evaluations should not be seen as a tool for policing judges.

Judges' tenure should finish with retirement, and the retirement age for judges should be clearly set out in the legislation. Any doubt or ambiguity has to be avoided and a body taking decisions on retirement should not be able to exert discretion.

In three Opinions on **Serbia** adopted in 2022 following the constitutional reform CDL-AD(2022)030, CDL-AD(2022)042 and CDL-AD(2022)043 the Venice Commission noted that temporary assignments as a managerial decision to fill temporary vacancies created by a sudden and/or unforeseen personnel problem in a specific area of the organisation of the prosecution service may be entrusted to the prosecutorial hierarchy itself which possesses a more direct knowledge of the needs of the prosecution offices in the country and the possible candidates to meet those needs. These decisions should be issued in writing and be duly motivated and made available to the prosecutor concerned. An appeal against these decisions should be possible. On the other hand, the structural use of temporary assignments to other prosecution offices creates insecurity for the prosecutors and a risk of arbitrariness. The legislator should consider introducing additional mechanisms which would encourage the Council to fill in the vacancies which are occupied by the seconded personnel.

These Opinions also invited the legislator to better explain the interrelation between disciplinary proceedings and dismissal proceedings in order to avoid confusion as to the role played by the two councils (prosecutorial and judicial) in those proceedings. They noted that in the original draft laws the list of disciplinary offences was too broad, with a disproportionate focus on delays in court proceedings. The Commission recommended specifying that individual judges should not be held responsible for structural deficiencies within the judiciary.

Finally, the Venice Commission noted that the draft laws were not entirely clear about the distribution of competencies between the Ministry of Justice and the presidents of the courts in the matters of court administration. The powers of the higher court presidents *vis-à-vis* lower courts' presidents should also be described with more precision, in order to avoid an appearance of a hierarchical subordination of the lower courts to the higher courts' management. The Commission welcomed the inclusion in the draft laws of the provisions specifying that the powers of court administration should not encroach on the individual decision-making by the judges. A similar recommendation was made about the interrelation between the powers of the chief public prosecutors, the powers of the Ministry of Justice, and the powers of the High Prosecutorial Council and its bodies.

Exchange of views with the Minister of Justice of Lebanon, Mr Henry Khoury, in the framework of the preparation of the Opinion on the independence of judicial courts, Beirut, April 2022

Opinion CDL-AD(2022)020 on **Lebanon** recommended simplifying the procedure of appointment of the three top officeholders within the judicial system (the President of the Court of Cassation, the Prosecutor General and the President of the Judicial Inspection) by providing that each of them is selected by the Government from a list composed by the Superior Council of Magistracy (the SCM) following a transparent competition involving a sufficiently large pool of candidates.

In the case the Government fails to select one of them, the SCM might continue functioning in a reduced composition. The list of disciplinary breaches should be revised, and the definitions be made more precise, with an explicit reference to the principle of proportionality. The notion of "incompetency" would need to be explained better.

Organisation and efficiency of the judicial and prosecutorial systems

In Opinion CDL-AD(2022)032 on **Bulgaria** the Venice Commission recommended circumscribing the functions of the prosecution service outside of the criminal law sphere.

In Opinion CDL-AD(2022)003 on **Romania**, the Commission considered the organisational structure of bodies prosecuting offences committed by judges and prosecutors. It was positive that the authorities decided to dismantle

the existing prosecution department in charge of such cases. That department had been reproached for underperformance and putting pressure on magistrates. However, it was essential to take further organisational measures to ensure more effective investigation into offences committed by judges and prosecutors. In that regard the legislator's solution was not appropriate because that category of sensitive cases was entrusted to non-specialised prosecutors. The Commission recalled then that such offences had earlier been within the jurisdiction of the National Anti-Corruption Directorate and the Directorate for Investigation of Organised Crime and Terrorism. Having regard to the status, functional independence, specialisation, experience, and the technical means of those two agencies, the Venice Commission recommended restoring the competence of those institutions in respect of judges and prosecutors.

In Opinion CDL-AD(2022)042 on the prosecution service of **Serbia** adopted in 2022 following the constitutional reform, the Venice Commission explored the new mechanism of appeal against unfounded or illegal instructions of a higher prosecutor. Such a mechanism was necessary, but it would be important to describe the scope of the power of the commission of the HPC on mandatory instructions in reviewing substantive decisions made by the higher prosecutors.

In Opinion CDL-AD(2022)011 on vetting of judges in **Kosovo**, the Commission proposed to distinguish cases of professional incompetence, which can be addressed through training, from cases of deliberate malevolent acts, which can be addressed through integrity checks. The wider problems related to the inefficiency of the judicial system, notably the excessive length of proceedings, should be addressed through a combination of several approaches strengthening the management and increasing the efficiency of the court proceedings including thorough digitalisation and electronic communication between courts, external actors, the parties, and their legal representatives.

Exchange of views with the authorities of Kosovo in the framework of the preparation of the Opinion on the "Concept Paper on vetting of judges and prosecutors", Pristina, May 2022

In Urgent Opinion CDL-AD(2022)045 on **Romania**, among other issues, the Commission examined the role of the judicial police which in Romania carries out the activity of criminal investigation on behalf of the prosecutors. Contrary to the previous situation, the legislation did not exclude the hierarchical subordination of the judicial police to the Minister of Interior. The Commission observed that relevant provisions of the Law on the Judicial Organisation provided very clearly that the prosecutors lead and supervise the criminal investigation activity performed by the judiciary police and that the role of judicial police bodies was only to carry out the activity of criminal investigation directly under the command and supervision of the prosecutor. The Commission recommended providing in the law that the judicial police should not report on their activity to the Minister of Interior.

Finally, in Opinion CDL-AD(2022)035 on the constitutional reform of **Belarus** the Venice Commission noted that the prosecutorial service followed the Soviet prokuratura system with competences widely exceeding the core prosecutorial function. The Venice Commission also deplored the lack of the independence of the Prosecutor General who is appointed and dismissed by the President, and that there were no guarantees of independence of the prosecutors' offices, such as a qualified majority for the support of the Council of the Republic or a council of prosecutors, or professional requirements for the appointment, or clear and exhaustive grounds for dismissal.

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 has undertaken a number of activities in the election field.

1. Council for Democratic Elections

The Council for Democratic Elections is in charge of electoral issues dealt with by the Venice Commission. It is the only tripartite body of the Council of Europe, comprising members of the Venice Commission, the Parliamentary Assembly and the Congress of Local and Regional Authorities.

The aim of the Council for Democratic Elections is to unite in the same body the legal experience of the Venice Commission and the political experience of the Assembly and Congress. It thus promotes common European values, the principles of the European electoral heritage. The main task of the Council for Democratic Elections is to examine the Venice Commission's draft opinions and studies on elections and political parties before their submission to the plenary session.

The Council for Democratic Elections met in Venice in 2022 prior to the June, October and December plenary sessions. At the June meeting, Mr Srdjan Darmanović, member of the Venice Commission, was elected President of the Council, to complete the mandate of Mr Oliver Kask, also a member of the Commission. At the October session, the Council adopted its revised rules of procedure, the current version dating from 2004. The most important change is the introduction of a rotating presidency focusing on the co-operation between the three bodies participating in the Council, which will be represented by either a President or a Vice-President. The revised rules of procedure provide that "the same institution cannot hold the functions of the President for more than two consecutive mandates". The revised rules of procedure will enter into force on 1 October 2023.

2. Election Observation

In accordance with the co-operation agreement signed between the Parliamentary Assembly and the Commission on 4 October 2004, representatives of the Venice Commission participated as legal experts in the election observation missions of the Parliamentary Assembly. In this context, they observed the opening of the ballot, the voting procedure and the count. 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:

Bosnia and Herzegovina - General elections of 2 October 2022

The PACE delegation assessed the general elections in Bosnia and Herzegovina as generally well organised and competitive. However, unfortunately, the increasing segmentation along ethnic lines and the corresponding divergent views on the future of the country remained a concern for the functioning of democratic institutions. Universal and equal suffrage is still not guaranteed. Failed negotiations among political parties left the electoral legal framework without needed reforms, in particular to implement the caselaw of the European Court of Human Rights. Nevertheless, recently introduced amendments strengthened some aspects of the electoral process. Election preparations were managed in an overall efficient and transparent manner by upper-level election commissions. Nonetheless, the Parliamentary Assembly delegation identified a number of irregularities. It recommended to the authorities of Bosnia and Herzegovina to take concrete measures in order to improve the country's electoral legal framework, as well as certain electoral practices. This should be accomplished within the framework of the Assembly's monitoring procedure and in close co-operation with the Venice Commission.

Bulgaria - Early parliamentary elections of 2 October 2022

The PACE delegation noted that, technically speaking, elections lived up to the standards of free and democratic elections. Nevertheless, allegations of vote-buying and pressure on voters affected part of the process. The electoral commissions deserved to be recognised for the accomplishment of their huge task to manage four election processes in 18 months. The legal electoral framework provides

an adequate basis for the conduct of democratic elections, if it is applied in good faith. However, some improvements to the legal framework were still desirable, in line with the 2017 joint Opinion of the Venice Commission and ODIHR, in particular with regard to restrictions on political rights and the prohibition on campaigning in a language other than Bulgarian. Other legislative actions still needed to be regulated in order to reinforce public confidence in the machine voting. The delegation therefore called on the Bulgarian authorities to implement the Venice Commission's recommendations.

Serbia - Early Presidential and Parliamentary Elections of 3 April 2022

The PACE delegation felt that, while legally possible, the "culture" of early elections impacts the efficient autonomous functioning of the parliament according to the constitutional term of office, no matter which political forces are in power. The PACE delegation took note of the recent legislative changes resulting from an extensive dialogue between the ruling parties and some of the opposition as well as addressing some prior recommendations of the Venice Commission and the ODIHR. Nevertheless, the delegation stressed that some issues remained unaddressed, mainly concerning the access to media, campaign finance, measures to tackle pressure on voters, and the public scrutiny and audit of voter lists. Furthermore, the Assembly stressed that the election is not limited to election day and regretted that during the campaign period, some key challenges limited voters' ability to choose free from pressure or inducement. The transparency and effectiveness of campaign finance regulation was limited. The PACE delegation felt that the election day was smoothly conducted and peaceful overall but, despite solid preparations, was marked by a number of systematic procedural deficiencies related to polling station layout, overcrowding, breaches in secrecy of the vote and numerous instances of family voting, as well as cases of vote buying. Finally, the PACE delegation identified a number of irregularities and shortcomings during the whole process of the presidential election and the early parliamentary elections of 3 April. It stressed that key aspects of the electoral process required further reform and implementation and felt that concrete measures should be taken by Serbia in order to improve its electoral legal framework, as well as certain electoral practices. This should be accomplished within the framework of the Assembly's monitoring procedure and in close co-operation with the Venice Commission.

It should be noted that, following a request from the Parliamentary Assembly, the Venice Commission adopted in December 2022 a joint Opinion with the ODIHR on the constitutional and legal framework for the functioning of democratic institutions in Serbia - Electoral law and electoral administration.

3. Other co-operation activities

Other co-operation activities in the electoral field included a major event: the 19th European Conference of Management Bodies (EMBs). The VOTA database on electoral legislation, which continues to be managed jointly by the Commission and the Electoral Tribunal of the Federal Judiciary of Mexico (TEPJF), is updated regularly. In 2022, 35 new documents (national laws and constitutional excerpts, legal opinions and studies of the Venice Commission) were indexed according to the electoral thesaurus and included into the database.

19th European Conference of Electoral Administrations - Artificial Intelligence and Electoral Integrity

The Venice Commission organised the 19th European Conference of Electoral Management Bodies in Strasbourg and online on 14-15 November 2022. About 130 participants took part in the conference, including representatives of national electoral management bodies and international organisations, as well as other stakeholders such as academics, practitioners, experts and civil society representatives.

Participants of the 19th European Conference of Electoral Administrations, Strasbourg, November 2022

In their conclusions, the participants stressed that Artificial Intelligence (AI) systems require full compliance with the principles of democratic elections and referendums and put the emphasis on the ongoing work of the Council of Europe's Committee on Artificial Intelligence and its aim to develop a legally binding framework on the development, design and application of artificial intelligence.

Regarding AI and fairness in electoral processes, a drawback of AI tools may be the risk of misusing them with the purpose of manipulating ideas and messages, creating a selective exposure of voters to politically oriented information and consequently distorting information and reality. In this context, EMBs, which are on the front line in ensuring the fairness of an electoral process, must be aware of, and seek to prevent, the misuse of such tools during the electoral process in order to protect voters, in particular, women and vulnerable groups.

Regarding the impact of AI on voter participation and choice vs. data protection, AI should aim at increasing the number of better-informed voters, which would ensure a higher turnout and voter inclusion. AI could also help optimising the movement of voters or better understanding the mechanisms of voter behaviour.

Regarding AI vs. supervision and transparency of electoral processes, Tech Giants have a major responsibility to contribute to the proper conduct of electoral processes. A democratic society should, however, not leave this essential task solely to private actors and according to their individual set of rules. The public actors should first discuss and decide whether AI is going to be used in electoral processes. Secondly, they should specify the requirements AI should fulfil and define the mechanisms able to effectively control that AI fulfils such requirements. They should also supervise its use and have mechanisms in place to detect, contest and correct possible problems. Regarding AI and harmful content, AI is often used to spread online harmful content but also being increasingly as part of risk-management strategies, such as "electoral content moderation" to remove harmful content. However, it is advisable that the decisions be supervised by humans or at least appealable to the EMB or the relevant, possibly judicial body.

Pre- and post-electoral seminars

The Commission organised with the electoral management bodies of Hungary and Serbia, pre-electoral and post-electoral seminars. During pre-electoral seminars, such topics as holding elections during the pandemic, non-partisan civil election observation and the importance of providing an effective remedy for electoral disputes were discussed. The post-electoral seminar in Hungary addressed the topics of effective legal remedies and on decision-making and overall effectiveness of the election administration, while the one in Serbia took place as a roundtable where the problems which arose during the elections and the means to solve them were discussed.

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 usually meet with the Venice Commission once a year within the framework of the Joint Council on Constitutional Justice (JCCJ). The 20th meeting of the JCCJ (including a working session on the preparation of précis for the e-Bulletin on constitutional case-law and a mini-conference on "Measures taken by States in response to the COVID-19 crisis and their impact on constitutional justice – constitutional case-law on emergency situations") was accordingly scheduled to take place on 17-18 November 2022, in Sofia, hosted by the Constitutional Court of Bulgaria. However, due to the preparations for the 5th Congress of the World Conference on Constitutional Justice in October 2022 (see below), this meeting was postponed to 24-25 April 2023.

2. World Conference on Constitutional Justice (WCCJ)

The WCCJ brings together 121 constitutional courts and councils and supreme courts in Africa, the Americas, Asia and Europe.[13] 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 1.1 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). On 19 March 2022, the Bureau of the WCCJ, which steers the WCCJ's activities, held its 17th meeting in Venice and online. At this meeting, it discussed the preparations for the 5th Congress of the WCCJ, hosted by the Constitutional Court of Indonesia in October 2022, and the request for suspension of the membership of the Constitutional Courts of the Russian Federation and Belarus. However, due to a lack of time to gather information from regional and linguistic groups and other Bureau members, the Bureau postponed the vote on this issue. The Bureau continued its discussions on-line at an extraordinary 18th meeting on 7 June 2022 (online) and, on the proposal of the Constitutional Court of Italy, adopted a resolution stressing the importance of respect for the fundamental principles of democracy, the rule of law and human rights in order to comply with the obligations resulting from the WCCJ's membership.

5th Congress of the World Conference on Constitutional Justice (WCCJ) on "Constitutional Justice and Peace", Bali, October 2022

On 4 October 2022, the WCCJ Bureau held its 19th meeting (in Bali and on-line), during which it discussed a proposal by the Constitutional Court of Lithuania to the WCCJ General Assembly for an amendment of the Statute of the WCCJ, which would add the possibility for the WCCJ to terminate (and not only suspend) the membership of a Member Court and for the General Assembly to take a decision on this, even without a proposal by the Bureau.

From 4 to 7 October 2022, the 5th Congress of the WCCJ on the theme "Constitutional Justice and Peace" was held in Bali, hosted by the Constitutional Court of Indonesia and opened by the President of the Republic of Indonesia, Mr Joko Widodo. A total of 94 delegations from constitutional courts and equivalent institutions participated in the congress.

Discussions at the congress focused on the role of constitutional courts (and limits to this role) in maintaining social peace within the state and the peaceful resolution of internal conflicts (rather than peace as a concept of public international law, which relates to inter-state conflicts, as such conflicts are typically outside the remit of constitutional courts). It also devoted a session to stocktaking of the independence of member courts of the WCCJ. The congress ended with the adoption of a

13 The WCCJ had 119 members at the end of 2022. The Federal Supreme Court of Iraq became the 120th member on 9 January 2023. The Supreme Court of Malawi became the 121st members on 10 February 2023.

communiqué.[14] The General Assembly of the WCCJ also elected four new members of the WCCJ Bureau (the Constitutional Courts of Algeria, the Dominican Republic, Latvia and Türkiye) and requested the Bureau to discuss the aforementioned proposed amendment of the WCCJ Statute at the forthcoming meeting in March 2023.

During the Congress, on 5th October 2022, the Constitutional Court of the Russian Federation terminated its WCCJ membership. Earlier that year, on 20 June 2022, the Constitutional Court of Equatorial Guinea had acceded to the WCCJ. On 28 December 2022, the Supreme Court of The Gambia joined the WCCJ, becoming the 119th member of the WCCJ.

At the meeting of the World Conference on Constitutional Justice, Bali, October 2022

On 3 November 2022, Mr Gianni Buquicchio, President Emeritus, Special Representative of the Venice Commission, made a statement on behalf of the WCCJ in support of the Constitutional Court of the Central African Republic, which had come under undue pressure of the government.

3. CODICES database

The CODICES database[15] presents to the public the leading constitutional case-law of constitutional courts and equivalent bodies. CODICES contains over 11,600 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 2022, constitutional courts and equivalent bodies actively contributed to CODICES, which was regularly updated and 513 cases were added. CODICES 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.

Following a public tender and the attribution of the contract to the company CGI to replace the existing CODICES database with a new version on a sustainable server structure, various functional workshops and meetings of the CODICES project committee (comprising CGI, the Council of Europe's Department for Information Technology and the Venice Commission Secretariat) took place throughout 2022 to determine the final programming specifications for the new database. At the end of 2022, the implementation of the approved specifications started. The new database, which will allow liaison officers to upload their contributions directly to CODICES rather than by sending précis and full texts by e-mail is expected to become operational in 2023.

4. E-Bulletin on Constitutional Case-law

IIn 2022, the fully electronic "e-Bulletin on Constitutional Case-Law"[16] 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 61 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.

In addition to the regular e-Bulletin, a Special Bulletin on COVID-19[17] is also available, which is regularly updated.

14 Bali Communiqué, https://www.venice.coe.int/files/2022_10_06_WCCJ5_Bali_Communique-E.PDF

15 CODICES database, http://www.codices.coe.int/NXT/gateway.dll?f=templates&fn=default.htm

16 E-Bulletin on Constitutional Case-Law, https://www.venice.coe.int/WebForms/pages/?p=02_02_Bulletins

17 https://venice.coe.int/files/Bulletin/COVID-19-e.htm

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 2022, 15 posts were made in the Newsgroup.

- The restricted Classic Venice Forum enables courts to ask other courts for specific information on case-law. In 2022, the Classic Venice Forum dealt with 28 comparative law research requests from 17 different courts covering questions that ranged from the reopening of criminal proceedings, strategic litigation against public participation (SLAPP), limits to damages for personal injury cases, to the status of judges of the constitutional court.

- 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 2022, links to 520 articles of the Constitutional Justice Media Observatory 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.

On the basis of various co-operation agreements,[18] constitutional courts brought together in regional or language-based groups[19] may contribute to the CODICES database and to the Venice Forum, with the Newsgroup and the Constitutional Justice Observatory also being made available to these constitutional courts. For the co-operation with these groups, see under Chapter VII.

At the Conference on "Sustainability as a Constitutional Value: Future Challenges", Riga, September 2022:
Ms Herdis Kjerulf Thorgeirsdottir, Vice-President of the Venice Commission, Mr Serhiy Holovaty (member Ukraine), Mr Martin Kuijer (substitute member the Netherlands)

18 https://www.venice.coe.int/WebForms/pages/?p=02_Regional&lang=EN

19 Conference of European Constitutional Courts (CECC), Association of Francophone Constitutional Courts (ACCF), Southern African Chief Justices Forum (SACJF), Eurasian Association of Constitutional Review Bodies (EACRB), Union of the Arab Constitutional Councils and Courts (UACCC), Conference of Constitutional Jurisdictions of the Portuguese-Speaking Countries (CJCPLP), Ibero-American Conference of Constitutional Justice (CIJC), Conference of Constitutional Jurisdictions of Africa (CCJA), Association of Asian Constitutional Courts and Equivalent Institutions (AACC), Commonwealth Courts.

VI. NEIGHBOURHOOD CO-OPERATION

In 2022, 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 2022, the Venice Commission organised both bilateral and regional activities mainly in the framework of the project "*Promote efficient functioning of state institutions and public administration*". The project is part of the larger joint European Union and Council of Europe Central Asia Rule of Law Programme (2020-2023) and covers Kazakhstan, the Kyrgyz Republic, Tajikistan, Turkmenistan, and Uzbekistan. The Venice Commission provided targeted technical assistance and legal advice on demand of the authorities of countries of Central Asia as regards the constitutional and legal reforms and the modernisation of public administration.

International Conference on "Adversarial trial and equality of arms in criminal proceedings", Astana, December 2022

The Venice Commission continued its fruitful dialogue with the authorities of Kazakhstan aimed at implementing the provisions of the new Constitution, notably by organising two international conferences with the Constitutional Court, namely on the "*Constitutional and international aspects of the upholding of the rule of law*" and on the "*Evolution of constitutional control in the context of societal and state transformation*". Another important event co-organised with the Supreme Court focused on "*Adversarial trial and equality of arms in criminal proceedings*".

In August 2022, the Commissioner for Human Rights of Kazakhstan requested an Opinion on the draft constitutional law on the Commissioner for Human Rights, aimed at enhancing the role of the Commissioner in protecting human rights and freedoms. The Opinion CDL-AD(2022)028 was adopted at the 132nd plenary session of the Venice Commission (21-22 October 2022).

The Venice Commission and the Supreme Court of the Kyrgyz Republic organised in September 2022 an international conference on "*Judicial independence in the context of constitutional reforms*", notably the different aspects of judicial independence, the limits to the interaction of the judiciary with the other branches of public authorities as well as the various mechanisms for implementing the principle of independence of the judiciary. Representatives of other countries of Central Asia contributed to the event.

On 10 May 2022, the Venice Commission organised with the Constitutional Court of Tajikistan an international roundtable. Representatives from the Constitutional Courts and Councils of Kazakhstan, the Kyrgyz Republic, Tajikistan, and Uzbekistan discussed the rule of law as a fundamental constitutional principle, the impact of constitutional justice on the strengthening of the state under the rule of law, the role of the constitutional courts in shaping the rule of law principle and ensuring the protection of individual rights.

The Venice Commission continued to support public administration reform in Central Asia. An international conference on "*Modernisation of the public administration in Central Asia and respect of the rule of law principles*" which took place in Uzbekistan in May 2022 brought together more than 80 senior civil servants from Kazakhstan, the Kyrgyz Republic, Tajikistan, Turkmenistan, and Uzbekistan as well as Venice Commission experts who discussed the rule of law principles and constitutional and legal challenges as regards public administration reforms, innovation and digitalisation in the public administration, professional development, retraining and performance management in the civil service.

2. Southern Mediterranean

The Venice Commission actively co-operated with the countries of the Southern Mediterranean region notably Morocco and Tunisia. High-level representatives and experts of other partners such as Algeria, Egypt, Jordan, Lebanon and Palestine*[20] were also involved in the regional events organised in 2022.

The co-operation activities of the Venice Commission in this region took place in the framework of several joint programmes co-financed by the European Union and the Council of Europe. One of them had a regional scope: the South Programme IV entitled "R*egional support to reinforce human rights, rule of law and democracy in the Southern Mediterranean*" which was followed by its phase V from 1 September 2022 on "*Protecting human rights, the rule of law and democracy through shared standards in the Southern Mediterranean*". Co-operation activities with Tunisia were mainly financed by two specific joint programmes between the European Union and the Council of Europe on "*Improving the functioning, performance and access to justice in Tunisia*" (AP-JUST) and the "*Project to support independent bodies in Tunisia*" (PAII-T).

Fifth General Assembly meeting of the Arab Organization of Electoral Administrations and international conference on "Youth participation in political life in the Arab region", Amman, August 2022

Since 2015, the Venice Commission has accompanied its regional partners (Algeria, Egypt, Jordan, Lebanon, Morocco, Palestine* and Tunisia) in the reform of their public administration by "building bridges" and exchanging best practices between senior officials from the region and beyond, in the framework of the UniDem Med seminars (University for Democracy for the Southern Mediterranean). Following the annual meeting of co-ordinators on 27 January 2022, and based on their common priorities, two regional seminars were organised: the 15th seminar on "*Public service policies: paradigms for changes*" in Ramallah (Palestine*) and the 16th seminar on the "*Digital transformation of public administration*" in Rabat (Morocco). A total of 370 senior officials and experts participated in these two seminars. For each one, the general rapporteurs identified a set of recommendations to be implemented in the public administrations of the region. These seminars were also an opportunity to exchange on the follow-up of the reforms on the themes tackled during the previous UniDem Med seminars.

16th UniDem Med Regional seminar for high level civil servants on "The digital transformation of public administration", Rabat, November 2022

The Venice Commission supported, in the framework of its long-standing partnership with the Association of Francophone Ombudsmen and Mediators (AOMF), the conference held on the occasion of its 11st Annual Congress entitled "*Digital transformation and access to rights, a common challenge in the Francophone area: What role for mediators and ombudsmen?*". At the end of the Congress, AOMF members adopted the Marrakech Charter on the Protection of the Rights of Users of Public Services in Digital Matters.

Representatives of the Venice Commission also participated in the 5th General Assembly and the subsequent conference on "*Youth participation in political life in the Arab region*" organised in Amman by the Organisation of Electoral Management Bodies of Arab countries (Arab EMBs), assisted by the UN Development Programme's Regional Electoral Support Project (UNDP).

In the framework of the reinforcement of a common legal space in Southern Mediterranean, the Minister of Justice of Palestine*, Mr Mohammed Al Shalaldeh was invited to present an overview of the constitutional developments in Palestine* at the 133rd plenary session of the Venice Commission which took place on 16-17 December 2022.

In 2022, three opinions concerning countries in the region were adopted or endorsed: the Opinion

20 *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 and European Union member States on this issue.

CDL-AD(2022)020 on the draft law on the Judiciary in Lebanon; the urgent Opinion CDL-PI(2022)026 on the constitutional and legislative framework on the referendum and elections, notably on the independent High Authority for Elections (ISIE) in Tunisia and the Opinion CDL-AD(2022)021 on the draft state property code in Tunisia.

Participants of the training for trainers' activity for the members and staff of the High Independent Instance for Elections of Tunisia (ISIE), Tunis, March 2022

Finally, two training activities took place in Tunisia for the members and staff of the Independent High Authority for Elections (ISIE) from 16 to 23 March 2022 and for judges of the Centre for Legal and Judicial Studies (CEJJ) and the Ministry of Justice on 24-28 March 2022.

3. Latin America

In 2022, the Venice Commission continued its fruitful co-operation with its member states and partners in Latin America. Such fields as constitution-building, constitutional justice and electoral legislation and practice remain the main areas of co-operation between the Commission and the region. In 2022, two countries requested opinions from the Venice Commission: Opinion CDL-AD(2022)004 on the drafting and adoption of a new Constitution requested by Chile and Opinion CDL-AD(2022)031 on the draft constitutional amendments concerning the electoral system by Mexico.

In the first quarter of 2022, the work in this region was carried out in the framework of the joint European Union and Council of Europe programme "*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 Electoral Tribunal of the Judicial Power of the Federation (TEPJF) and the National Electoral Institute continued to be the most active partners of the Venice Commission in Mexico.

On 12-13 May 2022, representatives of the Venice Commission participated in the international conference entitled "I*nternational Standards of the Venice Commission: a comparative analysis of the Mexican electoral justice system*" organised by the TEPJF. The event brought together members of the Venice Commission from Bulgaria, Brazil, Canada, Chile, Mexico, Peru, Spain, members of TEPJF, national academia as well as international experts in the field of electoral justice from Argentina, France, Italy, Spain and USA who focused on such issues as judicial independence, access to electoral justice and evaluation of its efficiency in the light of the Venice Commission's opinions and recommendations.

Upon invitation from the National Electoral Institute of Mexico, representatives of the Commission contributed to the Global Summit for Electoral Democracy which took place from 20 to 22 September in Mexico City. The final declaration emphasised the relevance of defending the autonomy of electoral management bodies from the attempts to transgress it.

At the international conference entitled "International Standards of the Venice Commission: a comparative analysis of the Mexican electoral justice system", Mexico City, May 2022

4. Mongolia

In 2022, the Venice Commission organised with the Constitutional Court of Mongolia a training seminar entitled "Transnational constitutional activity in the modern international relations". The Constitutional Court of Mongolia is holding the Presidency of the Association of Asian Constitutional Courts and Equivalent Institutions (AACC) until 2023 and participates in the meetings of the Bureau of the World Conference on Constitutional Justice.

On 1 July 2022, the President of the Venice Commission, Ms Claire Bazy-Malaurie, delivered a welcome address (online) at the ceremony on the occasion of the 30th anniversary of the Constitutional Court of Mongolia.

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

In 2022, the Venice Commission continued its co-operation with organs and bodies of the Council of Europe, as well as with its partners outside the Council of Europe, namely the European Union, the OSCE, the UN and other international bodies.

The newly elected President of the Venice Commission, Ms Claire Bazy Malaurie, paid a working visit to the Council of Europe to meet the Secretary General, Ms Marija Pejčinović Burić, Strasbourg, January 2022

1. Council of Europe

Committee of Ministers

On 7 September 2022, on the occasion of the presentation of the 2021 Annual Report of activities of the Commission by its President, the Committee of Ministers endorsed the Revised Code of Good Practice on Referendums CDL-AD(2022)015 and encouraged member State authorities to respect the guidelines contained in the Code. On 5 October 2022 the Committee of Ministers took note of the Evaluation Report on the Commission,[21] together with the proposed follow up.

The Committee of Ministers referred to the work of the Commission in their decisions on the implementation of the ECtHR decisions concerned notably the following cases:

- *Sejdić and Finci group v. Bosnia and Herzegovina*,
- *Luli and Others group v. Albania*,
- *S.Z. group / Kolevi v. Bulgaria, Bekir-Ousta and Others group v. Greece*,
- *Apap Bologna group (Application No. 46931/12), Ghigo group (Application No. 31122/05), Amato Gauci group (Application No. 47045/06) v. Malta*,
- *Navalnyy and Ofitserov group v. Russian Federation*,
- *Merabishvili v. Georgia*.

On 6 July 2022 the Committee of Ministers decided to communicate to the Venice Commission the Parliamentary Assembly Recommendation 2235(2022) entitled "*Recent challenges to security in Europe: what role for the Council of Europe?*" for comments, which were adopted by the Commission[22] at the October 2022 plenary session. The Committee referred to the work of the Commission while dealing with such topics as democratic security in Europe, protecting youth civil society and young people and supporting their participation in democratic processes; democratic accountability of elected representatives and elected bodies at local and regional level.

In 2022, under the auspices of the Italian Presidency of the Committee of Ministers, the Commission organised an international conference on "Shaping judicial councils to meet contemporary challenges" (21-23 March 2022, Rome) and a round table on "Civil society: empowerment and accountability" under the auspices of the Irish Presidency (13 September 2022, Strasbourg). Several Permanent Representatives participated in the plenary sessions throughout the year.

The President of the Venice Commission, Ms Claire Bazy Malaurie, presented the 2021 Annual Report of Activities of the Commission to the Committee of Ministers of the Council of Europe, Strasbourg, September 2022

Parliamentary Assembly

In 2022, upon request by the Parliamentary Assembly, the Commission adopted the Report on the Domestic Procedures of Ratification and Denunciation of International Treaties CDL-AD(2022)001 and nine opinions on Azerbaijan CDL-AD(2022)009, Belarus

21 https://rm.coe.int/dio-2022-35-venicecommission-final-report-en/1680a6555f

22 CDL-AD(2022)036

CDL-AD(2022)008, CDL-AD(2022)035, Georgia CDL-AD(2022)010, Romania CDL-AD(2022)045, CDL-AD(2022)003, Serbia CDL-AD(2021)048 and Türkiye CDL-AD(2022)016, CDL-AD(2022)034.

Representatives of the Commission assisted the PACE election observation missions during general elections in Bosnia and Herzegovina, parliamentary elections in Bulgaria, presidential and early parliamentary elections in Serbia.

Members of the Assembly regularly took part in plenary sessions of the Venice Commission and meetings of the Council for Democratic Elections. Following the December 2022 plenary session, the Enlarged Bureau of the Venice Commission held an exchange of views with the Presidential Committee of the Parliamentary Assembly.

The Enlarged Bureau of the Venice Commission and the Presidential Committee of the Parliamentary Assembly of the Council of Europe at the Commission's plenary session, Venice, December 2022

The Director, Secretary of the Commission, participated in the meeting of the Committee on Legal Affairs and Human Rights on Monday 5 September 2022, and addressed the topic of the European Convention on Human Rights and national constitutions.

Congress of Local and Regional Authorities

In 2022, the Congress went on regularly taking part in the meetings of the Council for Democratic Elections. Mr Stewart Dickson (Chamber of Regions) acted as Vice-President of the Council.

The Congress endorsed the Commission's Revised Code of Good Practice on Referendums CDL-AD(2022)015.

On 23 March 2022 in Bern, Switzerland, a representative of the Commission participated in the 42nd session of the Congress Chamber of Regions and addressed the topic of "T*he relationship between majority and opposition at national level*". A member of the Commission participated in an exchange of views with members and participants of the meeting of the Bureau of the Chamber of Regions of the Congress on the subject "*Are regional interests sufficiently represented through the second chamber of parliaments?*" on 23 September 2022 in Lelystad, the Netherlands.

Mr Rafael Bustos (member Spain) and the Secretary General of the Venice Commission, Ms Simona Granata-Menghini, at the Bureau of the Chamber of Regions of the Congress of Local and Regional Authorities, Lelystad, September 2022

European Court of Human Rights

By the end of 2022 the ECtHR referred to the Venice Commission's documents in more than in **240 judgments** and **50 decisions** relating to **42 countries**: Albania, Armenia, Austria, Azerbaijan, Belgium, Bosnia and Herzegovina, Bulgaria, Croatia, Czech Republic, Denmark, Estonia, Finland, France, Georgia, Germany, Greece, Hungary, Ireland, Iceland, Italy, Latvia, Lithuania, Luxemburg, Malta, Republic of Moldova, Montenegro, Netherlands, North Macedonia, Norway, Poland, Portugal, Romania, United Kingdom, Russia, Serbia, Slovakia, Slovenia, Spain, Sweden, Switzerland, Türkiye, Ukraine.[23] In 2022, 23 judgments and 3 decisions contained references to the Commission's work.[24] In these cases, the Court referred both to general reports of the Venice Commission and country related opinions.

23 For all cases available in English containing references to the Venice Commission, see here: HUDOC - European Court of Human Rights (coe.int)

24 For the 2022 ECtHR case law in English: HUDOC - European Court of Human Rights (coe.int).

The President of the Venice Commission, Ms Claire Bazy-Malaurie, and the President of the European Court of Human Rights, Mr Robert Spano, Venice, June 2022

Commissioner for Human Rights

The Commissioner for Human Rights of the Council of Europe, Ms Dunja Mijatović, continued to refer to the work of the Venice Commission. She did so, notably, in relation to the freedom of assembly and the financing of NGOs, the Venice Principles for ombudsman institutions and in relation to Georgia[25], Kosovo[26] and Spain[27].

The Commissioner also participated in the round table on "*Civil society: empowerment and accountability*" organised by the Venice Commission and the OSCE/ODIHR on 13 September 2022 at the Council of Europe.

Co-operation within the Directorate General of Human Rights and Rule of Law (DGI)

The Venice Commission further strengthened synergies within the Directorate General of Human Rights and the Rule of Law (DGI) by preparing seven joint opinions in respect of the **Armenia** CDL-AD(2022)002, CDL-AD(2022)044, **Azerbaijan** CDL-AD(2022)009, **Republic of Moldova** CDL-AD(2022)024, CDL-AD(2022)049, **Türkiye** CDL-AD(2022)034, and **Ukraine** CDL-AD(2022)023. This approach enabled increasing the Council of Europe's influence and facilitating sharing expertise, as well as increasing the impact of the recommendations made and consolidating the organisation's efforts in providing a multidimensional approach to different problems.

In addition, the Commission regularly participated in the work of the Committee on Artificial Intelligence (CAI), which is preparing an international convention in the field. The Commission took this opportunity to share its work on digital technologies and elections. Reciprocally, the President of the Council of Europe's Committee on Artificial Intelligence took part in the 19th conference of the EMBs on "*Artificial intelligence and electoral integrity*" (14-15 November 2022, Strasbourg).

The President and the Secretary General of the Venice Commission at the 97th meeting of the Steering Committee for Human Rights of the Council of Europe (CDDH), Strasbourg, December 2022

The President of the Commission participated in the 97th meeting of the Steering Committee for Human Rights of the Council of Europe (CDDH) (8 December 2022, Strasbourg).

Co-operation with the Directorate General of Democracy (DGII)

The Commission co-operated with the European Committee on Democracy and Governance (CDDG) and more specifically its Working Group on Democracy and Technology (GT-DT) and its Working Group on Deliberative and Participatory Democracy (GT-DD).

In addition, the Commission co-operated with DGII in the elaboration of the website on the Council of Europe work in the field of elections.[28]

An expert of the DGII presented a report at the round table on "*Civil society: empowerment and accountability*" (13 September 2022, Strasbourg).

25 https://search.coe.int/commissioner/Pages/result_details.aspx?ObjectId=0900001680a740bf

26 https://search.coe.int/commissioner/Pages/result_details.aspx?ObjectId=0900001680a88e42

27 https://rm.coe.int/CoERMPublicCommonSearchServices/DisplayDCTMContent?documentId=0900001680a57abe

28 Council of Europe work in the field of Elections - Portal.

2. European Union

In 2022 the co-operation with the EU institutions intensified. They continued to refer to the Venice Commission's opinions and reports in their texts, invited the Venice Commission members to participate in their meetings and activities and triggered requests for opinions of the Commission.

European Parliament

Request for opinion

In its Resolution of 19 May 2022[29], apart from calling on the EU member States, when they seek to adapt the functioning of the councils of the judiciary, to "systematically ask the opinion of the Venice Commission", the EP requested an Opinion of the Venice Commission on the "*Key principles of democracy in Union governance, in particular the separation of powers, accountability and checks and balances*". On 12 October 2022 the EP President Ms Roberta Metsola forwarded the request to the Venice Commission, it is currently in preparation.

References to the Venice Commission's work

In 2022 many EP Committees referred to Venice Commission texts[30] concerning Albania, Bosnia and Herzegovina, Georgia, Hungary, Kosovo, Malta, Moldova, Montenegro, North Macedonia, Poland, Serbia, Türkiye.

The Joint statement of 24 February 2022[31] by the Co-Chairs of the EU-Armenia Parliamentary Partnership Committee MEP Marina Kaljurand and MP Arman Yeghoyan on the 2nd meeting of the EU-Armenia Parliamentary Partnership Committee contains recommendation to seek and follow advice of the Venice Commission on all constitutional matters. On 13 December 2022 (after the Montenegrin parliament adopted a law curbing the President's powers and failed to elect judges for the country's constitutional court) the Chair of the EP Delegation for Montenegro Vladimír Bilčík and Standing EP Rapporteur for Montenegro Tonino Picula issued a statement[32] wherein they expressed their regret that the Commission's Urgent Opinion on the issue CDL-AD(2022)053 was not taken into account. Subsequently, the 21st EU-Montenegro SAPC meeting planned in Strasbourg on 13 December 2022 was cancelled.[33]

In 2022 the EP referred to the Commission's documents in its work on the common foreign and security policy[34], on the new EU strategy for enlargement[35]; on the proposal regarding elections of the MEPs by direct universal suffrage[36]; on the Commission's Rule of Law 2021 report[37]; on civil society in Europe[38] in general and on a statute for European cross-border associations and non-profit organisations[39] in particular; on the application of Union law in relation to the use of Pegasus[40] and equivalent surveillance spyware, on foreign interference in all democratic processes in the EU[41], including disinformation; and on the EU Action plan for social economy[42] and common European action on care[43].

The President of the Venice Commission, Ms Claire Bazy-Malaurie at the Interparliamentary Committee Meeting of the European Parliament on "the situation of the rule of law in the EU", Brussels, December 2022

29 www.europarl.europa.eu/doceo/document/TA-9-2022-0212_EN.html

30 All results of the Search "Venice Commission" in the EP Committees' documents: Search | Documents | Committees | European Parliament (europa.eu); Plenary documents: Texts adopted | Plenary | European Parliament (europa.eu)

31 https://eeas.europa.eu/headquarters/headquarters-homepage/111546/joint-statement-co-chairs-eu-armenia-parliamentary-partnership-committee-mep-marina-kaljurand_en

32 www.europarl.europa.eu/delegations/en/d-me/documents/communiques

33 Statement by EU-Montenegro SAPC Co-Chair Vladimír Bilčík on the cancellation of the 21st EU-Montenegro SAPC meeting in Strasbourg, 13 December 2022.

34 www.europarl.europa.eu/doceo/document/TA-9-2023-0009_EN.html

35 www.europarl.europa.eu/doceo/document/TA-9-2022-0406_EN.html

36 www.europarl.europa.eu/doceo/document/TA-9-2022-0129_EN.html

37 www.europarl.europa.eu/doceo/document/TA-9-2022-0212_EN.html

38 www.europarl.europa.eu/doceo/document/TA-9-2022-0056_EN.html

39 www.europarl.europa.eu/doceo/document/TA-9-2022-0044_EN.html

40 www.europarl.europa.eu/doceo/document/PEGA-PR-738492_EN.pdf

41 www.europarl.europa.eu/doceo/document/TA-9-2022-0064_EN.html

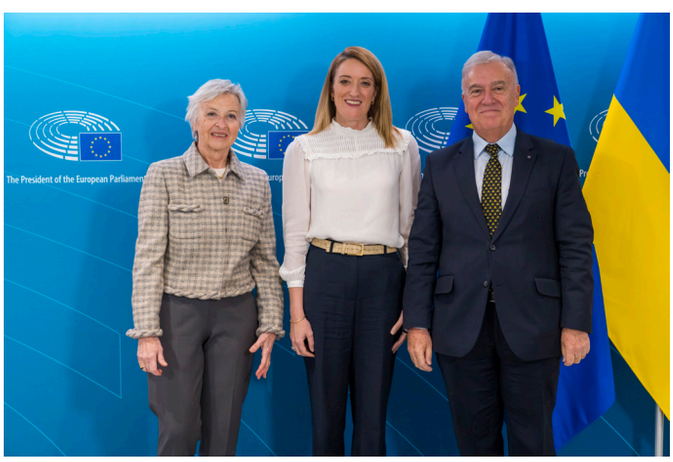
42 www.europarl.europa.eu/doceo/document/A-9-2022-0192_EN.html

43 www.europarl.europa.eu/doceo/document/TA-9-2022-0278_EN.html

Exchanges of views / Participation in activities

On 16 June 2022 a representative of the Commission presented to the participants of the Meeting of the LIBE Democracy, Rule of Law and Fundamental Rights Monitoring Group (DRFMG/LIBE) the Commission's Urgent Opinion on Tunisia CDL-AD(2022)017. On 20 June 2022 the LIBE Committee and the Committee on Constitutional Affairs (AFCO) held a joint public hearing on the "*Rule of law mechanisms in the EU*"; a representative of the Commission co-opened the event (online). Upon invitation by Ms Sophie in 't Veld, Chair of the DRFMG/LIBE, the Commission contributed to the discussions on the situation of the Rule of Law in Spain (in camera) on 8 September 2022. Ms Frances Fitzgerald, MEP, Ireland, acted as a Moderator at the International round table on "*Civil society: empowerment and accountability*" held in Strasbourg on 13 September 2022.

The President of the Commission, Ms Claire Bazy Malaurie, participated in "The resilience of democratic institutions" session of the LIBE committee meeting on "*The situation of the rule of law in the EU*" (1 December 2022, Brussels). On 5 December 2022 the Commission's President together with Vice-President Michael Frendo and the Director, Secretary of the Commission, Simona Granata-Menghini, met the European Parliament President Roberta Metsola and discussed ways to strengthen the synergy between the two institutions.



The President of the Venice Commission, Ms Claire Bazy Malaurie, and Vice-President, Mr Michael Frendo, met with the President of the European Parliament, Ms Roberta Metsola

Photo European Parliament

European Commission

Request for opinion

On 27 April 2022, the European External Action Service (EEAS) through the European Union Delegation in Tunisia requested an urgent Opinion from the Venice Commission "on the constitutional and legislative framework concerning the referendum and elections announced by the President of the Republic Kaïs Saïed, and in particular on Decree-Law No. 2022-22 amending and supplementing Organic Law No. 23 on the Independent High Authority for Elections (ISIE), enacted by the President on 21 April 2022". The Commission issued its urgent Opinion CDL-AD(2022)017 on 27 May 2022 and endorsed it at its June 2022 plenary session.

References

The 2022 Rule of Law Report[44] of the European Commission of 13 July 2022 contains concrete recommendations to Croatia, Cyprus, Malta and Romania to follow up on the Venice Commission's opinions. In addition, country reports on the rule of law situation in Austria, Bulgaria, Czechia, Germany, Greece, Hungary, Ireland, Lithuania, Luxemburg, the Netherlands, Poland, Portugal, Slovakia, Spain and Sweden also refer to the work of the Venice Commission. The European Commission's 2022 Country Reports and other documents on Albania, Bosnia and Herzegovina, Georgia, Kosovo, North Macedonia, Moldova, Romania, Serbia, Türkiye and Ukraine also contain references to the Commission's recommendations/Opinions.

The DG NEAR Guidelines for EU support to civil society in the enlargement region 2021- 2027 refer to the OSCE/ODIHR-Venice Commission Guidelines on Freedom of Association CDL-AD(2014)046.

The European Commission's President, Ms Ursula von der Leyen, in her statement on the Commission's opinions on the EU membership applications by Ukraine, Moldova and Georgia[45] and in her address to the Ukrainian Parliament following the European Council decision granting Ukraine

44 https://ec.europa.eu/info/publications/2022-rule-law-report-communication-and-country-chapters_en

45 Statement by President on the EU membership - https://ec.europa.eu/commission/presscorner/detail/en/statement_22_3822#:~:text=Statement17%20June,Moldova%20and%20Georgia.

candidate status[46] referred to the opinions of the Venice Commission. The High Representative/Vice-President Josep Borrell in his statement on the constitutional referendum in Belarus[47] referred to the Interim Urgent opinion of the Commission on the issue CDL-AD(2022)008.

Exchanges of views

In 2022, the President of the Venice Commission, Ms Claire Bazy Malaurie, met EU Commissioners Mr Didier Reynders and Ms Věra Jourová; both Commissioners participated in plenary sessions of the Venice Commission (June and December 2022 respectively).

European Council / Council of the EU

In the Joint press statement following the meeting of the EU-Serbia Stabilisation and Association Council of 25 January 2022, the EU representatives Mr Josep Borrell Fontelles and Mr Olivér Várhelyi, noted that the revision of a number of implementing laws, which is an integral part of the constitutional reform, had to be prepared in line with the Venice Commission opinions. In the Political agreement on principles for ensuring a functional Bosnia and Herzegovina that advances on the European path of 12 June 2022, the Council called for full compliance with the Venice Commission recommendations regarding electoral and constitutional reforms. In its Conclusions on enlargement and stabilisation and association process (13 December 2022), the Council called on Albania, North Macedonia and Kosovo to address the (outstanding) recommendations of the Venice Commission.

On 23 June 2022, the European Council decided to grant the status of candidate country to Ukraine and to the Republic of Moldova.[48] Certain conditions on the EU membership applications refer to the opinions of the Venice Commission.

The EU High Representative Josep Borrell in his declaration of 27 July 2022 on Tunisian Declaration on the constitutional referendum referred to the repeated EU and Venice Commission's calls for dialogue as an important condition for establishing a legislative framework for the parliamentary elections of December 2022.

Joint European Union and Council of Europe Programmes/Projects

IIn 2022, 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 as well as the voluntary contributions from member States:

- Joint European Union and Council of Europe Programme "*Horizontal Facility for the Western Balkans and Türkiye 2019-2022*" – The Expertise Co-ordination Mechanism (ECM);
- Joint European Union and Council of Europe Programme "*Partnership for Good Governance*" 2019-2023 – 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 Reinforce Human rights, Rule of Law and Democracy in the southern Mediterranean*" (South Programme IV) (2020-2022);
- Joint European Union and Council of Europe Programme "*Protecting human rights, rule of law and democracy through shared standards in the Southern Mediterranean*" (South Programme V) (2022-2025);
- Joint European Union and Council of Europe Programme "*Project to support independent bodies in Tunisia*" (PAII-T programme) (2019-2022);
- Joint European Union and Council of Europe Programme "*Improving the functioning, performance and access to justice in Tunisia*" (AP-JUST) (2019-2022).

46 Address by President to the Ukrainian Parliament following the European Council decision granting Ukraine candidate status - https://ec.europa.eu/commission/presscorner/detail/en/speech_22_4253

47 https://eeas.europa.eu/headquarters/headquarters-homepage/111797/belarus-statement-high-representativevice-president-josep-borrell-constitutional-referendum_en

48 European Council conclusions, 23-24 June 2022 - www.consilium.europa.eu/en/press/press-releases/2022/06/24/european-council-conclusions-23-24-june-2022/

3. OSCE/ODIHR

The long-standing co-operation between the Venice Commission and OSCE/ODIHR went on in 2022, in particular concerning elections and referendums. According to a two-decades long practice, six opinions in this field concerning European countries were drafted jointly. These opinions concerned **Georgia** (draft amendments to the Election Code and the Law on Political Associations of Citizens CDL-AD(2022)047); the **Republic of Moldova** (the draft electoral code CDL-AD(2022)025 and the offence of illicit enrichment CDL-AD(2022)029); **Serbia** (the constitutional and legal framework governing the functioning of democratic institutions - Electoral law and electoral administration CDL-AD(2022)046); **Türkiye** (amendments to the electoral legislation by Law No. 7393 of 31 March 2022 CDL-AD(2022)016), and **Ukraine** (the draft law on local referendum CDL-AD(2022)038).

Joint opinions enable sharing the practical experience of ODIHR with the experience of the Venice Commission in the constitutional field; by speaking with one voice, both organisations prevent forum-shopping.

The Commission, in co-operation with the OSCE/ODIHR, organised a round table on "*Civil society: empowerment and accountability*" under the auspices of the Irish Presidency (13 September 2022, Strasbourg).

4. United Nations

In 2022, the Office of the UN High Representative for Human Rights (OHCHR), The Human Rights Council and other UN Institutions referred to the Commission's opinions in its reports and statements concerning **Belarus**,[49] **Hungary**,[50] **Kosovo**,[51] **Kyrgyzstan**,[52] **Luxembourg**,[53] **Republic of Moldova**,[54] Poland,[55] **Russia**[56] and **Ukraine**[57] on issues relating to constitutional reforms, human rights, judiciary and separation of powers in the respective countries. In the sixty-second report on the implementation of the Peace Agreement for Bosnia and Herzegovina, covering the period from 16 April to 15 October 2022, the UN High Representative for Bosnia and Herzegovina, Mr. Christian Schmidt, recalled the commitment of the political parties of Bosnia and Herzegovina "to *carry out electoral reforms and "the limited constitutional reforms necessary to ensure full compliance" with the decisions of the European Court of Human Rights and the Constitutional Court of Bosnia and Herzegovina as well as the recommendations of the European Commission for Democracy through Law (Venice Commission), …*". The SR equally mentions the request for opinion by the Bosnian authorities of September 2022 regarding the draft law on the Courts of Bosnia and Herzegovina. The draft opinion will be adopted by the Commission during its March 2023 Plenary session.

The Code of Good Practice in Electoral Matters, Joint Guidelines on Political Party Regulation, Report on Judicial Appointments, and other texts of general nature are included in the UN lists of regional standards on democracy,[58] on the rights to freedom of peaceful assembly and of association,[59] on independence of judges and lawyers.[60] In addition, the Rule of Law checklist, Joint Guidelines on Freedom of Association and various opinions and reports of the Commission are referred to in the UN Report of the Special Rapporteur on the rights to freedom of peaceful assembly and of association, Mr Clément Nyaletsossi Voule, regarding access to resources,[61] protection of human rights in the context of peaceful protests during crisis

49 HRC | A/HRC/RES/50/20 - Human Rights Council statement on HR situation in BLR; HRC | A/HRC/50/L.18 – idem; HRC | A/HRC/50/58 - Report of the Special Rapporteur on the situation of human rights in Belarus, Anaïs Marin; HRC | A/HRC/49/71 - Situation of human rights in Belarus in the run-up to the 2020 presidential election and in its aftermath, Report of the UN High Commissioner for Human Rights.

50 HRC | A/HRC/50/29/Add.1 - Report of the Special Rapporteur on the promotion and protection of the right to freedom of opinion and expression, Irene Khan.

51 UNSC https://daccess-ods.un.org/access.nsf/get?open&DS=S/2022/739&Lang=E

52 UNSC https://daccess-ods.un.org/access.nsf/get?open&DS=S/2022/739&Lang=E

53 CESCR | E/C.12/2022/SR.48 - Consideration of reports by members of the Committee.

54 HRC | A/HRC/50/13 - Report of the Working Group on the Universal Periodic Review* Republic of Moldova.

55 HRC | A/HRC/WG.6/41/POL/3 - Summary of stakeholders' submissions on Poland* Report of the Office of the United Nations High Commissioner for Human Rights.

56 HRC | A/HRC/50/NGO/40 - Joint written statement* submitted by Lawyers' Rights Watch Canada, International Bar Association, International Service for Human Rights, non-governmental honours in special consultative status.

57 CCPR | CCPR/C/UKR/CO/8 - Human Rights Committee: Concluding observations on the eighth periodic report of Ukraine*; HRC | A/HRC/50/65 - Situation of human rights in the temporarily occupied Autonomous Republic of Crimea and the city of Sevastopol, Ukraine.

58 OHCHR | International standards on democracy.

59 OHCHR | International standards on freedom of peaceful assembly and of association.

60 OHCHR | International standards on the independence of judges and lawyers.

61 HRC | A/HRC/50/23: Access to resources—Report.

situations[62] and OHCHR publications such as the "*OHCHR Recommended Principles on Human Rights and Asset Recovery*",[63] "*Protecting Minority Rights: A Practical Guide to Developing Comprehensive Anti-Discrimination Legislation*",[64] and the "*United Nations Human Rights Report 2021*".[65]

5. International co-operation in the field of constitutional justice

Since 1996, the Venice Commission has established co-operation with a number of regional or language-based groups of constitutional courts, with the aim of supporting courts who are members of these groups in their task of safeguarding the supremacy of their countries' constitutions.

The following regional or language-based groups, as members of the Bureau of the World Conference on Constitutional Justice (WCCJ), participated in meetings of the Bureau of the WCCJ on 19 March, 7 June and 4 October 2022 and in the 5th Congress of the WCCJ (4 to 7 October 2022, Bali):

- Association of Asian Constitutional Courts and Equivalent Institutions (AACC),
- Association of Francophone Constitutional Courts (ACCF),
- Conference of Constitutional Jurisdictions of Africa (CCJA),
- Conference of European Constitutional Courts (CECC),
- Ibero-American Conference of Constitutional Justice (CIJC),
- Conference of Constitutional Jurisdictions of the Portuguese-Speaking Countries (CJCPLP),
- Eurasian Association of Constitutional Review Bodies (EACRB),
- Southern African Chief Justices Forum (SACJF),
- Union of the Arab Constitutional Courts and Councils (UACCC) and
- Commonwealth Courts.

In addition, the Venice Commission regularly participates in events of these groups, which in 2022 included the following:

- On 15-18 May 2022, the CIJC held its XIV Congress in Punta Cana, on the topic "*Constitutional court: citizenship and freedom*";
- On 25 May 2022, the Member Courts of the CECC met on-line for a preparatory meeting of the Circle of Presidents of the XIX Congress of the CECC in 2024, which will be dedicated to the topic "*The forms and limits of judicial deference: The case of constitutional courts*";
- From 31 May to 2 June 2022, the 9th Congress of the ACCF on the topic "*The constitutional judge and human rights*" took place in Dakar;
- From 30 June to 1 July 2022, the V Assembly of the CJCPLP took place in Lisbon on the topic "*Guaranteeing the projection of fundamental rights in times of a pandemic*".
- On 4 October 2022, the AACC held a joint conference with CCJA on "*Promoting Asian-African Co-operation for the Protection of People's Fundamental Rights*" in Bali;
- On 22-23 November 2022, the CCJA held its 6th Congress in Rabat on "*African Constitutional Courts and International Law*";
- The UACCC held its 16th Scientific Committee and 11th Scientific Symposium in Cairo on 13-15 December 2022.

Meeting of the Union of the Arab Constitutional Courts and Councils, Cairo, December 2022

62 HRC | A/HRC/50/42: Protection of human rights in the context of peaceful protests during crisis situations—Report.

63 OHCHR Recommended Principles on Human Rights and Asset Recovery.

64 Protecting Minority Rights: A Practical Guide to Developing Comprehensive Anti-Discrimination Legislation

65 OHCHR | United Nations Human Rights Report 2021 (published in 2022).

6. Other international bodies / International NGOs

Centre of political and legal studies of Spain (CEPC)

On 4 and 7 July 2022, the Centre for political and constitutional studies in Madrid and the Venice Commission held an international seminar entitled "*Bicameralism: Models, evolution and current challenges of a "controversial institution"*. Members of the Venice Commission and eminent Spanish academia participated in this important event focused on the national practices and challenges faced by bicameral parliaments in Europe and the Americas.

An international seminar entitled Bicameralism: Models, evolution and current challenges of a "controversial institution", at the Centre for Political and Constitutional Studies, Madrid, July 2022

In September 2022 the Center for Political and Constitutional Studies published a book "R*ule of law, democracy and globalisation. An approach to the Venice Commission on its XXX Anniversary*". The preparation of this volume was a joint initiative of the Venice Commission, the Permanent Representation of Spain to the Council of Europe and the Centre for Political and Constitutional Studies to promote in the Spanish speaking world the knowledge of the Venice Commission and its approach to the challenges of the rule of law, democracy and globalisation. A presentation of the book took place on 24 October 2022 in Madrid and in Strasbourg.

Network of the Francophone Judicial Councils

The Commission participated in an international conference on the "*Rule of law and the judiciary*", organised by the Network in Gatineau (Canada) on 27 – 28 October 2022.

Global Network on Electoral Justice (GNEJ)

The Special Representative, President Emeritus, Mr Gianni Buquicchio, on behalf of the Venice Commission, received the Award for "*Specific progress towards the main objectives of the GNEJ*" of the Global Network on Electoral Justice (GNEJ) on 9 October 2022 in Bali, Indonesia.

Mr Gianni Buquicchio receiving the Award from Mr Rahmat Bagja, President of the General Election Supervisory Agency (Bawaslu), Bali, October 2022

VIII. LIST OF ADOPTED TEXTS WITH KEY WORDS

CDL-AD(2022)054
Ukraine – Opinion on the draft law "On Amendments to Certain Legislative Acts of Ukraine on improving the procedure for the selection of candidates for the position of judge of the Constitutional Court of Ukraine on a Competitive Basis", adopted by the Venice Commission at its 133rd Plenary session (Venice, 16-17 December 2022).
(Selection procedure for appointment of judges to the Constitutional Court, balanced composition of the constitutional courts, Advisory Group of Experts, composition, mandate, term of office, decisions, qualified majority, legislative technique)

CDL-AD(2022)053
Montenegro - Urgent Opinion on the Law on amendments to the Law on the President of Montenegro, endorsed by the Venice Commission at its 133rd Plenary Session (Venice, 16-17 December 2022)
(Constitutionality of legislative amendments, principle of the supremacy of the constitution, balance of powers, principle of loyal co-operation between institutions, constitutional provisions on the formation of the government)

CDL-AD(2022)052
Kosovo - Follow-up opinion to the opinion on the draft law No. 08/L-121 on the State Bureau for verification and compensation of unjustified assets, adopted by the Venice Commission at its 133rd Plenary Session (Venice, 16-17 December 2022)
(State Bureau for Verification and Confiscation of Unjustified Assets, independence and efficiency of the institution, Oversight Committee of the Bureau, definition of the general and public interests, combating organised crime and corruption, verification procedure, the burden of proof, an adequate evidentiary threshold for interim security measures)

CDL-AD(2022)051
Republic of Moldova - *Amicus curiae* brief on declaring a political party unconstitutional, adopted by the Venice Commission at its 133rd Plenary Session (Venice, 16-17 December 2022)
(Verification of the constitutionality of a political party by constitutional courts, international standards on declaring a political party unconstitutional, dissolution and prohibition of political parties, freedom of association and assembly, political pluralism, rule of law, sovereignty, independence and territorial integrity)

CDL-AD(2022)050
Montenegro - Opinion on the draft amendments to the Law on the Judicial Council and Judges, adopted by the Venice Commission at its 133rd Plenary Session (Venice, 16-17 December 2022)
(Judicial reform, Judicial Council, composition, functioning and organisation, Minister of Justice as an *ex-officio* member of the Judicial Council, lay members, anti-deadlock mechanism, incompatibilities, appointment and transfer of judges, evaluation of judges, disciplinary sanctions and proceedings)

CDL-AD(2022)049
Republic of Moldova- Joint follow up opinion of the Venice Commission and the Directorate General of Human Rights and Rule of Law of the Council of Europe to the opinion on the Draft Law on the Supreme Court of Justice, adopted by the Venice Commission at its 133rd Plenary Session (Venice, 16-17 December 2022)
(Supreme Court of Justice, composition and organisation, independence of judges, transfer, promotion and removal from office, extraordinary evaluation of judges)

CDL-AD(2022)048
Armenia - *Amicus curiae* Brief for the Constitutional Court of Armenia on certain questions relating to the Law on the Forfeiture of Assets of Illicit Origin, adopted by the Venice Commission at its 133rd Plenary Session (Venice, 16-17 December 2022)
(Fight against corruption, presumption of the illicit origin of the assets, civil forfeiture of assets of illegal origin, international human rights, the European Court of Human Rights, right to property, the standard of proof in the forfeiture proceedings, retroactivity of the law)

CDL-AD(2022)047
Georgia - Joint opinion of the Venice Commission and the OSCE/ODIHR on draft amendments to the Election Code and the Law on Political Associations of Citizens, approved by the Council for Democratic Elections at its 75th meeting (Venice, 15 December 2022) and adopted by the Venice Commission at its 133rd Plenary Session (Venice, 16-17 December 2022)
(Electoral legislation, stability of electoral law, election administration, candidate eligibility and nomination, electronic means of voting, voting by wheelchair users, recounts, election observers, election disputes and offences)

CDL-AD(2022)046
Serbia - Joint Opinion of the Venice Commission and the OSCE/ODIHR on the constitutional and legal framework governing the functioning of democratic institutions in Serbia - Electoral law and electoral administration, approved by the Council for Democratic Elections at its 75th meeting (Venice, 15 December 2022) and adopted by the Venice Commission at its 133rd Plenary Session (Venice, 16-17 December 2022)
(Electoral legislation, functioning of democratic institutions, right to free elections, legislative process, legislative technique, right to vote, right to be elected, election administration, electoral campaign, election dispute resolution, referendum and the people's initiative)

CDL-AD(2022)045
Romania - Urgent Opinion on three Laws concerning the justice system, issued on 18 November 2022, pursuant to Article 14a of the Venice Commission's Rules of Procedure. Endorsed by the Venice Commission at its 133rd Plenary Session (Venice, 16-17 December 2022)
(Justice system, legislative process, civil and disciplinary liability of magistrates, competitions for admissions in the judiciary, appointment and removal of specialised and high-ranking prosecutors, judicial police, fight against corruption in the judiciary)

CDL-AD(2022)044
Armenia - Joint Opinion of the Venice Commission and the Directorate General of Human Rights and Rule of Law (DGI) of the Council of Europe on the draft amendments to the Judicial Code, adopted by the Venice Commission at its 133rd Plenary Session (Venice, 16-17 December 2022)
(Judicial reform, power of the Minister of Justice to initiate disciplinary proceedings, appeal mechanism against the decisions in disciplinary matters, the first and the second instance panels of the Supreme Judicial Council examining disciplinary matters)

CDL-AD(2022)043
Serbia - Follow-up Opinion on three revised draft Laws implementing the constitutional amendments on the Judiciary of Serbia, adopted by the Venice Commission at its 133rd Plenary Session (Venice, 16-17 December 2022)
(Judicial reform, constitutional amendments, tasks related to judicial administration,powers of court presidents, prohibition of "undue influence" of judges, disciplinary offences, ethical behaviour and the Code of Ethics, disciplinary proceedings and dismissal proceedings, performance evaluations of judges, incompatibilities, High Judicial Council, composition, quorum and majorities for the decision-making)

CDL-AD(2022)042
Serbia - Opinion on two draft Laws implementing the constitutional amendments on the prosecution service, adopted by the Venice Commission at its 133rd Plenary Session (Venice, 16-17 December 2022)
(Judicial reform, constitutional amendments, reform of the prosecution service, High Prosecutorial Council, composition, mandate and decision-making procedure, budgetary autonomy, public prosecution service, functions and powers, autonomy, Prosecutor General, mandate of individual prosecutors)

CDL-AD(2022)038
Ukraine - Urgent joint opinion of the Venice Commission and the OSCE/ODIHR on the draft law on local referendum, issued on 10 February 2022 pursuant to Article 14a of the Venice Commission's Rules of Procedure and endorsed by the Venice Commission at its 132nd Plenary Session (Venice, 21-22 October 2022)
(Local referendum, legislative process, subjects and types of local referendums, restrictions on the conduct of local referendums, questions submitted to the local referendum, registration of popular initiative groups, right to vote, automated information system, freedom of the media and campaigning, funding of referendum campaign, international observers, voting, counting and determining the results of the local referendum)

CDL-AD(2022)037
Georgia - Urgent opinion on the draft Law on the amendments to the criminal procedure Code, adopted by the Parliament of Georgia, on 7 June 2022, issued on 26 August 2022 pursuant to Article 14a of the Venice Commission's Rules of Procedure. Endorsed by the Venice Commission at its 132nd plenary session (Venice, 21-22 October 2022)
(System of secret surveillance, legislative process, freedom of communications and privacy, covert investigative measures, reform of the data protection authority, Personal Data Protection Service, Special Investigation Service, judicial control and institutional oversight)

CDL-AD(2022)036
Comments on Recommendation 2235 (2022) of the Parliamentary Assembly of the Council of Europe on challenges to security in Europe: What role for the Council of Europe? in view of the reply of the Committee of Ministers, adopted by the Venice Commission at its 132nd Plenary Session, Venice, 21-22 October 2022
(Concepts of security, democracy and freedom in security, proper functioning of parliamentary mechanisms, judicial independence, rule of law)

CDL-AD(2022)035
Belarus - Final Opinion on the Constitutional Reform, adopted by the Venice Commission at its 132nd Plenary Session (Venice, 21-22 October 2022)
(Constitutional reform, fundamental rights, electoral system, President, All-Belarusian People's Assembly, Parliament, ordinary courts, Constitutional Court, Prosecutor's Office)

CDL-AD(2022)034
Türkiye - Urgent joint opinion of the Venice Commission and the Directorate General of Human Rights and Rule of Law (DGI) of the Council of Europe on the draft amendments to the Penal Code regarding the provision on "false or misleading information", issued pursuant to Article 14a of the Venice Commission's Rule of Procedure, endorsed by the Venice Commission at its 132nd Plenary Session, (Venice, 21-22 October 2022)
(Dissemination of "false or misleading information", safeguards of and an interference with the freedom of expression, case-law of the European Court of Human Rights, risk of self-censorship and the right to anonymity on the internet, freedom of expression in times of elections)

CDL-AD(2022)033
Andorra - Opinion on the Law on the creation and functioning of the Ombudsman, adopted by the Venice Commission at its 132nd Plenary Session (Venice, 21-22 October 2022)
(Ombudsman, constitutional amendments, mandate, independence and immunity, status, budget, eligibility and incompatibility, powers of investigation, access to information, time limits and procedure for complaints)

CDL-AD(2022)032
Bulgaria - Opinion on the draft amendments to the Criminal Procedure Code and the Judicial System Act, adopted by the Venice Commission at its 132nd Plenary Session (Venice, 21-22 October 2022)
(Accountability of the Prosecutor General, powers of the prosecution service outside the criminal sphere, Supreme Judicial Council, prosecutorial chamber, disciplinary proceedings, *de jure* prosecutor, judicial review, prosecutors' autonomy, secret surveillance, reopening of a criminal investigation)

CDL-AD(2022)031
Mexico - Opinion on the draft constitutional amendments concerning the electoral system of Mexico, approved by the Council for Democratic Elections at its 74th meeting (20 October 2022) and adopted by the Venice Commission at its 132nd Plenary Session (Venice, 21-22 October 2022)
(Constitutional amendments, electoral system, reform of the electoral administration, electoral management body, National Institute for Elections and Referendums, Electoral Tribunal, composition and internal structure, political parties)

CDL-AD(2022)030
Serbia - Opinion on three draft laws implementing the constitutional amendments on Judiciary, adopted by the Venice Commission at its 132nd Plenary session (Venice, 21-22 October 2022)
(Judicial reform, constitutional amendments, organisation of the courts, judicial administration, powers of court presidents, prohibition of "undue influence" of judges, judicial appointments, incompatibilities, disciplinary offences, disciplinary proceedings and dismissal proceedings, performance evaluations of judges, High Judicial Council, composition, termination of office, the decision-making, quorum and majorities)

CDL-AD(2022)029
Republic of Moldova - Joint *amicus curiae* Brief of the Venice Commission and the OSCE/ODIHR relating to the offence of illicit enrichment, adopted by the Venice Commission at its 132nd Plenary session (Venice, 21-22 October 2022)
(Illicit enrichment, presumption of innocence, legality of the offence, *ne bis in idem*, standard of proof, *ultima ratio* principle, fight against corruption)

CDL-AD(2022)028
Kazakhstan - Opinion on the draft constitutional law "On the Commissioner for Human Rights", adopted by the Venice Commission at its 132nd Plenary session (Venice, 21-22 October 2022)
(Ombudsman, national human rights institutions, jurisdiction, immunity, election, termination of powers, National Preventive Mechanism, complaints, investigative powers, staff and budget)

CDL-AD(2022)027
Republic of Moldova - *Amicus curiae* Brief on the clarity of provisions on combating extremist activities, adopted by the Venice Commission at its 132nd Plenary Session (Venice, 21-22 October 2022)
(Countering extremist activity, use of political symbols, freedom of expression, freedom of religion, the European Court of Human Rights)

CDL-AD(2022)026
Republic of Moldova - Opinion on amendments to the Audiovisual Media Services Code and to some Normative Acts including the ban on symbols associated with and used in military aggression actions, adopted by the Venice Commission at its 132nd Plenary Session (Venice, 21-22 October 2022)
(Symbols associated with military aggression, freedom of expression, interference with the right to freedom of expression, sanctions, information security, the European Court of Human Rights)

CDL-AD(2022)025
Republic of Moldova - Joint opinion on the draft electoral code approved by the Council for Democratic Elections at its 74th meeting (Venice, 20 October 2022) and adopted by the Venice Commission at its 132nd Plenary Session (Venice, 21-22 October 2022)
(Electoral legislation, legislative process, stability of electoral law, election administration, suffrage rights, nomination and registration of candidates, conduct of election campaigns, complaints and appeals, voting, counting and determination of results, referendums)

CDL-AD(2022)024
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 the draft law on the Supreme Court of Justice, adopted by the Venice Commission at its 132nd Plenary Session (Venice, 21-22 October 2022)
(Judiciary, independence of judges, Supreme Court of Justice, composition and organisation, extraordinary evaluation of judges)

CDL-AD(2022)023
Ukraine - Joint *amicus curiae* brief on certain questions related to the election and discipline of the members of the High Council of Justice, adopted by the Venice Commission at its 132nd Plenary Session (Venice, 21-22 October 2022)
(Judicial reform, High Council of Justice, rule of law, independence of judges, evaluation of judges, Ethics Council, removal from office, termination of powers)

CDL-AD(2022)022
Bulgaria - Opinion on the draft amendments to the Judicial System Act concerning the Inspectorate to the Supreme Judicial Council, adopted by the Venice Commission at its 132nd Plenary Session (Venice, 21-22 October 2022)
(Judicial reform, Inspectorate to the Supreme Judicial Council, powers and competences, Inspector General and Inspectors, election and accountability, Code of Ethical Conduct, trainings on anti-corruption, integrity, independence and conflict of interest)

CDL-AD(2022)021
Tunisia - Opinion on the draft State Property Code, adopted by the Venice Commission at its 131st Plenary Session (Venice, 17-18 June 2022)
(Right to protection of property, fight against corruption, legality of interference by public authority, foreseeability of law, effective procedural safeguards and judicial protections, proportionality and criminal sanctions)

CDL-AD(2022)020
Lebanon - Opinion on the draft law on the independence of judicial courts, adopted by the Venice Commission at its 131st Plenary Session (Venice, 17-18 June 2022)
(Independence of judiciary, organisation of judicial governance, appointment of judges, bodies of judicial governance, prosecution service, Superior Council of Magistracy, Judicial Inspection, Disciplinary Councils, Judicial Evaluation Commission, performance evaluations, system of promotions and transfers, disciplinary proceedings and dismissal)

CDL-AD(2022)019
Republic of Moldova - Opinion on the draft law on amending some normative acts (Judiciary), adopted by the Venice Commission at its 131st Plenary Session (Venice, 17-18 June 2022)
(Judicial reform, constitutional amendments, probationary period, appointments and transfers, functional immunity, Superior Council of Magistracy, election of the lay members, security of tenure, budget, quorum and deciding majorities)

CDL-AD(2022)018
Republic of Moldova - Opinion on draft amendments to Law No. 3/2016 on the Public Prosecution Service, adopted by the Venice Commission at its 131st Plenary Session (Venice, 17-18 June 2022)
(Public prosecution service, legislative process, Superior Council of Prosecutors, composition, Prosecutor General as an *ex officio* member, accountability of the Prosecutor General, performance evaluations)

CDL-AD(2022)017
Tunisia - Urgent Opinion on the constitutional and legislative framework on the referendum and elections announcements by the president of the Republic, and in particular on the decree-law No. 22 of 21 April 2022 amending and completing the organic law on the independent high authority for elections (ISIE), issued on 27 May 2022 pursuant to Article 14a of the Venice Commission's Rules of Procedure, endorsed by the Venice Commission at its 131st Plenary Session (Venice, 17- 18 June 2022)
(Electoral legislation, referendum, Council of the Independent High Authority for Elections, proper administration of elections, stability of electoral law)

CDL-AD(2022)016
Türkiye - Joint opinion of the Venice Commission and the OSCE/ODIHR on the amendments to the electoral legislation by Law No. 7393 of 31 March 2022, approved by the Council for Democratic Elections at its 73rd meeting (Venice, 16 June 2022) and adopted by the Venice Commission at its 131st Plenary Session (Venice, 17-18 June 2022)
(Electoral legislation, legislative process, parliamentary elections, election threshold, allocation of parliamentary mandates, eligibility and candidate registration, formation of electoral administration bodies, electoral boards, voter registration, misuse of office in election campaigns)

CDL-AD(2022)015
Revised Code of Good Practice on Referendums, approved by the Council for Democratic Elections at its 73rd meeting (Venice, 16 June 2022) and adopted by the Venice Commission at its 131st Plenary Session (Venice, 17-18 June 2022)
(Principles of Europe's electoral heritage, conditions for implementation, specific rules)

CDL-AD(2022)014
Kosovo - Opinion on the Draft Law No. 08/L-121 on The State Bureau for verification and confiscation of unjustified assets, adopted by the Venice Commission at its 131st Plenary Session (Venice, 17-18 June 2022)
(Verification and confiscation of unjustified assets, non-conviction based civil confiscation, fight against organised crime and corruption, data protection, State Bureau for Verification and Confiscation of Unjustified Assets, its Director General and Oversight Committee, court proceedings, confiscation and execution)

CDL-AD(2022)013

Mongolia - Joint Opinion of the Venice Commission and the OSCE/ODIHR on the Draft Law on Political Parties, approved by the Council for Democratic Elections at its 73rd meeting (16 June 2022) and adopted by the Venice Commission at its 131st Plenary Session (Venice 17-18 June 2022)

(Electoral legislation, freedom of association, freedom of expression, political parties, establishment, registration and membership, internal organisation, decision-making process and activities of political parties, dissolution of political parties, funding, right to an effective remedy)

CDL-AD(2022)012

Ukraine - *Amicus Curiae* brief on the limits of subsequent (*a posteriori*) review of constitutional amendments by the Constitutional Court, adopted by the Venice Commission at its 131st Plenary Session (Venice, 17-18 June 2022)

(Co-operation review, formal review of constitutional amendments, substantive review of amendments, eternal clauses, hierarchy of constitutional provisions, Constitutional Court)

CDL-AD(2022)011

Kosovo - Opinion on the Concept Paper on the Vetting of Judges and Prosecutors and draft amendments to the Constitution, adopted by the Venice Commission at its 131st Plenary Session (Venice, 17-18 June 2022)

(Judicial reform, judicial independence, constitutional amendments, vetting of judges and prosecutors, right to private life, reform of the Prosecutorial Council)

CDL-AD(2022)010

Georgia - Opinion on the December 2021 amendments to the organic Law on Common Courts, adopted by the Venice Commission at its 131st Plenary Session (Venice, 17-18 June 2022)

(Judicial reform, legislative process, High Council of Justice, appointment of judges, secondment or transfer of judges, recusal, disciplinary liability of judges, disciplinary penalties)

CDL-AD(2022)009

Azerbaijan - 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 Law on Media, adopted by the Venice Commission at its 131st Plenary Session (Venice, 17-18 June 2022)

(Media legislation, freedom of expression, freedom of information, freedom of thought and speech, restrictions and interference with the rights, use of secret and hidden recordings, disclosure of confidential sources, Audiovisual Council, licensing of audiovisual media, accreditation of journalists, media register)

CDL-AD(2022)008

Belarus - Urgent interim opinion on the Constitutional Reform, issued on 21 February 2022 pursuant to Article 14a of the Venice Commission's Rules of Procedure, endorsed by the Venice Commission at its 130th Plenary Session (Venice and online, 18-19 March 2022)

(Constitutional reform, legislative process, distribution of powers, institutional changes)

CDL-AD(2022)006

Kosovo - Opinion on the revised draft amendments to the Law on the Prosecutorial Council, adopted by the Venice Commission at its 130th Plenary Session (Venice and online, 18-19 March 2022)

(Prosecutorial Council, composition, election of prosecutorial members and lay members, transitional mode of functioning of the Prosecutorial Council)

CDL-AD(2022)005

Croatia - Opinion on the introduction of the procedure of renewal of security vetting through amendments to the Courts Act, adopted by the Venice Commission at its 130th Plenary Session (Venice and online, 18-19 March 2022

(Judicial reform, judicial independence, integrity checks and vetting procedures, right to private life)

CDL-AD(2022)004

Chile - Opinion on the drafting and adoption of a new Constitution, adopted by the Venice Commission at its 130th Plenary Session (Venice and online, 18-19 March 2022)

(Constitutional reform, constitutional neutrality and stability, organisational structure of the legislature, bicameralism, comparative constitutional law, the form of government, constitutional review, *ex post* review, *ex ante* review, evaluation system of judges, formation and selection of judges, gender parity, legal pluralism, free trade agreements, right of property, non-abolition of fundamental rights)

CDL-AD(2022)003

Romania - Opinion on the draft law on the dismantling of the section for investigating criminal offences within the judiciary, adopted by the Venice Commission at its 130th Plenary Session (Venice and online, 18-19 March 2022)

(Judicial reform, criminal justice system, anti-corruption work, section for investigating criminal offences within the judiciary)

CDL-AD(2022)002

Armenia - Joint opinion of the Venice Commission and the Directorate General of Human Rights and Rule of Law (DGI) of the Council of Europe on the draft laws on making amendments to the Constitutional Law in the Judicial Code and to the Constitutional Law on Constitutional Court, adopted by the Venice Commission at its 130th Plenary Session (Venice and online, 18-19 March 2022)

(Judiciary reform, judicial independence, incompatibility requirements, disciplinary liability of judges, procedural safeguards, retroactive application of legislation)

CDL-AD(2022)001

Report on the Domestic Procedures of Ratification and Denunciation of International Treaties, adopted by the Venice Commission at its 130th Plenary Session (Venice and online, 18-19 March 2022)

(Ratification and denunciation of treaties, groups and types of treaties, form and level of regulation, degrees and modalities of parliamentary involvement)

CDL-PI(2022)004

Compilation of Venice Commission Opinions and Reports concerning Legal Certainty

(Legal certainty, accessibility of the law, foreseeability of the law, consistency of the case-law and practice, non-retroactivity, *nullum crimen sine lege*, *nulla poena sine lege*, *res judicata*)

CDL-PI(2022)051

Compilation of Venice Commission Opinions and Reports concerning vetting of judges and prosecutors

(Vetting, appointment of judges and prosecutors, independence of judges, separation of powers, vetting bodies, vetting types, time limits, procedural guarantees, right to appeal, sanctions)