



Strasbourg, 30 April 2024

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Or. Engl.

**EUROPEAN COMMISSION FOR DEMOCRACY THROUGH LAW**

**(VENICE COMMISSION)**

**ANNUAL REPORT OF ACTIVITIES 2023**

**Adopted by the Venice Commission  
at its 138th Plenary Session  
(Venice, 15-16 March 2024)**

## TABLE OF CONTENTS

<b>I.</b>	<b>VENICE COMMISSION: AN INTRODUCTION .....</b>	<b>3</b>
1.	Constitutional and legislative assistance to specific countries .....	3
2.	Reports on subjects of general interest.....	4
3.	Constitutional justice .....	4
4.	Elections and referendums .....	5
5.	Co-operation in Central Asian, South Mediterranean and Latin American regions .....	5
6.	Co-operation with Ombudsman institutions .....	6
<b>II.</b>	<b>2023 HIGHLIGHTS .....</b>	<b>7</b>
1.	2023 in figures: the output of the Commission.....	7
2.	Main topics dealt with in 2023 .....	8
3.	The impact of the Commission's Opinions.....	9
4.	Strengthening the independence of the Venice Commission .....	10
5.	Budget and staff .....	10
6.	Positions on the Venice Commission.....	12
<b>III.</b>	<b>OPINIONS AND AMICUS CURIAE BRIEFS .....</b>	<b>14</b>
1.	Rule of law, checks and balances, democratic institutions .....	14
2.	Fundamental rights and freedoms .....	23
3.	Free elections and political parties .....	31
4.	Judiciary and the prosecution service .....	34
5.	Follow-up activities .....	41
<b>IV.</b>	<b>ELECTIONS.....</b>	<b>42</b>
1.	Council for Democratic Elections .....	42
2.	Election observation .....	42
3.	VOTA database.....	43
4.	Other co-operation activities .....	43
<b>V.</b>	<b>CONSTITUTIONAL JUSTICE .....</b>	<b>44</b>
1.	Joint Council on Constitutional Justice (JCCJ) .....	44
2.	World Conference on Constitutional Justice (WCCJ) .....	44
3.	CODICES database .....	45
4.	E-Bulletin on Constitutional Case-law .....	45
5.	Venice Forum .....	46
<b>VI.</b>	<b>CO-OPERATION PROGRAMMES .....</b>	<b>47</b>
1.	Central Asia.....	47
2.	Southern Mediterranean .....	48
3.	Latin America .....	49
4.	Ombudsman institutions.....	50
<b>VII.</b>	<b>CO-OPERATION WITHIN THE COUNCIL OF EUROPE, THE EUROPEAN UNION AND WITH OTHER INTERNATIONAL ORGANISATIONS .....</b>	<b>52</b>
1.	Council of Europe.....	52
2.	European Union .....	56
3.	OSCE/ODIHR.....	59
4.	United Nations.....	59
5.	Other national and international organisations/bodies/NGOs.....	60
<b>VIII.</b>	<b>LIST OF ADOPTED TEXTS WITH KEYWORDS .....</b>	<b>62</b>

## **I. VENICE COMMISSION: AN INTRODUCTION**

The European Commission for Democracy through Law - better known as the Venice Commission - is the Council of Europe's advisory body on constitutional matters. It is an enlarged agreement, counting 61 members: the 46 Council of Europe member states, plus 15 others. The Commission assembles, develops and disseminates the constitutional and legal experience of its member states, contributing to a common constitutional heritage. The Commission's solid reputation of independence and objectiveness, coupled with its unique working methods based on inclusive dialogue with the authorities and all the stakeholders in the country, puts it in a privileged position to facilitate dialogue, including in contexts of democratic transition and in emergency situations or conflicts.

In 2023 the Heads of State and Government, through the Reykjavik Declaration, undertook to strengthen the Venice Commission and raise its profile.

### **1. Constitutional and legislative assistance to specific countries**

The Venice Commission is a highly valued instrument in the Council of Europe's toolbox, as is illustrated by the considerable increased number of requests for Opinions in recent years. Around 50 Opinions were adopted per year in the last three years.

The role of the Venice Commission is to provide legal advice to its member states upon their request or the request of one of the bodies of the Council of Europe<sup>1</sup> and to assist them in bringing their legal and institutional structures in line with European standards and international experience in the fields of democracy, human rights and the rule of law. The aim of such assistance 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. The Venice Commission is not a monitoring body and does not monitor the implementation of its own recommendations. Nevertheless, in line with its role as advisor, it remains at the disposal of the authorities to facilitate the implementation of these recommendations in the framework of a process, involving a dialogue spread over several stages.

In order to focus on the core issues and on its previous recommendations, the Commission created in 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 render more visible, especially to interested stakeholders and observers, the impact which the Commission's recommendations have produced.

In this context, in the Reykjavik declaration, the Heads of States and Governments committed to “ensure the diligent respect for the rule of law, benefitting every citizen and building a European legal community of shared values and dialogue between the jurisdictions of its member States, including by raising the profile of, and strengthening, the Venice Commission, for example by exploring ways the Organisation can better support the implementation of its recommendations”.

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<sup>1</sup> According to Article 3 of the Statute “The Commission may supply, within its mandate, opinions upon request submitted by the Committee of Ministers, the Parliamentary Assembly, the Congress of Local and Regional Authorities of Europe, the Secretary General, or by a state or international organisation or body participating in the work of the Commission”.

## 2. Reports on subjects of general interest

In order to assess constitutional and legislative texts, the Commission relies on standards. Such standards are constantly being developed by the European Court of Human Rights, the Committee of Ministers, the Council of Europe monitoring and advisory bodies, and especially by the Venice Commission. The Commission relies on its experience, its exchanges and the comparative material of which it disposes. The Commission, therefore, prepares general reports and guidelines, and participates in scientific discussions as well as in discussions with stakeholders. In 2023, the Venice Commission started its work on the report on bicameralism, on reports on the appointment of judges and on the councils of the judiciary, on stability of electoral law, which will be adopted in 2024. The Commission has previously adopted general reports on various issues including 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.

Most importantly, the Commission elaborated reference documents such as the “Venice Principles” on the protection and promotion of the Ombudsman Institutions or the “Rule of Law Checklist” that have been endorsed by the Committee of Ministers, by the Parliamentary Assembly and by the Congress of Regional and Local Authorities, which called on member States to use and widely disseminate them. In 2023 the Heads of State and Government, through the Reykjavik Declaration, undertook to give more visibility and status to the “Rule of Law Checklist”. In the electoral field, work has been launched regarding the “Code of Good Practice in Electoral Matters” with the ongoing preparation of interpretative declarations regarding stability of electoral legislation and artificial intelligence.

## 3. Constitutional justice

The Venice Commission views co-operation with constitutional courts as essential for 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 cooperation between the constitutional courts and the Venice Commission is steered by the Joint Council on Constitutional Justice (JCCJ). The JCCJ is made up of members of the Commission and liaison officers appointed by the 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.

The WCCJ, that brings together 120 constitutional courts and councils and supreme courts in Africa, the Americas, Asia and Europe, promotes constitutional justice. It facilitates judicial dialogue between constitutional court judges on a global scale through the organisation of regular congresses (the 6<sup>th</sup> Congress of the WCCJ will be hosted by the Constitutional Court of Spain in 2025), by participating in regional conferences and seminars, and by promoting the exchange of experiences and case-law. Since 1996, the Commission has established co-operation with several regional or language-based groups of constitutional courts. The Commission provides secretarial assistance to the World Conference on Constitutional Justice (WCCJ).

The practical tools for the exchange of information between constitutional courts and equivalent bodies are the electronic Bulletins on Constitutional Case-Law<sup>2</sup> and the [CODICES](#) database which contains about 12 000 decisions rendered by over 100 participating courts.

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<sup>2</sup> with the summaries in French and English of the most significant decisions of constitutional courts over a four-month period.

The Database has been upgraded in 2023. 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.

Since its creation in 1990, the Venice Commission has been active in the electoral field, through the adoption of Opinions on draft electoral legislation most of the time jointly with the OSCE/ODIHR (170 by the end of 2023), as well Codes of good practice, guidelines and documents of a general character (70 by the end of 2023), organisation of conferences of Electoral Management Bodies, Scientific Electoral Expert Debates and pre- or post-election seminars. The Commission also provides legal advice to members of the Parliamentary Assembly who carry out observation missions.

The Council for Democratic Elections – which is a 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 – develops regular co-operation with election authorities in Europe and on other continents.

The Council for Democratic Elections created the [VOTA](#) database containing, *inter alia*, member States' electoral legislation.

#### **5. Co-operation in Central Asian, South Mediterranean and Latin American regions**

The Commission is a unique international body which facilitates dialogue between countries on different continents.

The Venice Commission has been working in Central Asia for over 15 years. The national institutions of Kazakhstan, Kyrgyzstan, Tajikistan, and Uzbekistan were assisted to carry out their legal reforms in line with European and international standards in the areas of constitutional justice, reform of the electoral legislation and practice, and access to justice. Most of the work is carried out in the framework of joint programmes and projects with funding provided by the European Union as well as voluntary contributions from member states.

The Commission actively co-operates with the 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<sup>3</sup>. The co-operation activities of the Venice Commission in the Southern Mediterranean region have taken place in the framework of the successive regional joint EU/ Council of Europe South Programmes. Co-operation activities with Tunisia have also been implemented in the framework of bilateral joint EU/Council of Europe programmes.

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. Until 2022 Venice Commission's co-operation in the region was implemented in the framework of

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<sup>3</sup> 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.

EU-Council of Europe joint programmes<sup>4</sup>, encompassing preparation of opinions as well as joint events. Co-operation continued in 2023 financed by the voluntary contributions from member states. A new Joint EU/CoE Programme “*Support to democratic reforms, human right mechanisms and rule of law principles in Latin America, Central Asia and Mongolia*” was signed at the end of 2023.

## **6. Co-operation with Ombudsman institutions**

The work of Venice Commission has also extended to issues related to the legal framework pertaining to the operation of Ombudsman institutions. The “Venice Principles” (Principles for the Promotion and Protection of the Institution of Ombudsman), drafted by the Venice Commission and endorsed by the Committee of Ministers in 2019, have become international standards of universal value, thanks to the adoption of two United Nations General Assembly Resolutions (in 2020 and in 2022) to this effect. This reference text guides and supports the proper establishment and functioning of Ombudsman institutions, the stability of democracies and the protection and promotion of fundamental rights. The Commission has constantly and consistently promoted the creation of Ombudsman institutions, and their strengthening notably by giving them a firm constitutional basis, by endowing them with full independence and by vesting in them broad competences.

The Venice Commission continues supporting both national and international efforts to ensure that the “Venice Principles” have the greatest possible impact, through legal opinions, events or awareness and networking activities.

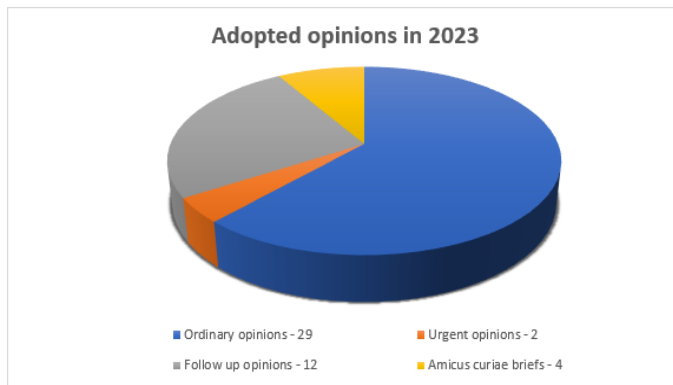
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<sup>4</sup> Joint CoE/EU programme “*Support to reforms of electoral legislation and practice and regional Human Rights instruments and mechanisms in countries of Latin America, Central Asia and Mongolia*” (2019 to 2022); Joint CoE/EU programme “*Assistance to the Bolivian authorities to implement the constitutional reform of the State*” ); (2010-2012)

## II. 2023 HIGHLIGHTS

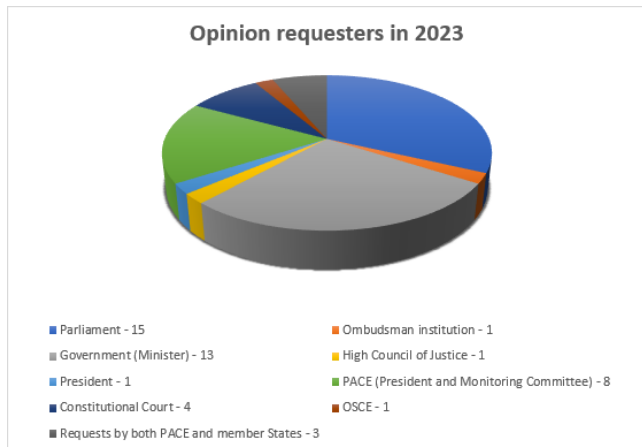
### 1. 2023 in figures: the output of the Commission

In 2023 the number of Opinion requests remained very high: as many as **47 Opinions and amicus curiae briefs were adopted** (27 ordinary Opinions, 12 follow-up Opinions, 2 urgent opinions, 4 *amicus curiae* briefs), concerning **15 countries** (Armenia, Azerbaijan, Bosnia and Herzegovina, Bulgaria, Chile, France, Georgia, Germany, Kyrgyzstan, Kosovo, Republic of Moldova, Montenegro, the Netherlands, Poland, Ukraine), of which two are non-European countries and five are also EU member states.



A large number of Opinions concerned three countries – Georgia (7), Republic of Moldova (11) and Ukraine (10), as they were requested within the framework of the process of candidate status to the European Union.

Of the thirty-six requests lodged by the states, eighteen were requested by parliament, thirteen by government, one by the President, four requests were lodged by constitutional courts for *amicus curiae* briefs; one request was lodged by the Ombudsman and one by the High Council of the Judiciary: they concerned draft legislation directly relating to their institutions.



Eleven Opinion requests were lodged by the Parliamentary Assembly of the Council of Europe (PACE) (concerning Azerbaijan, France, Georgia, Germany, the Netherlands, Poland, Ukraine). The three requests on France and the Netherlands were made in the context of the regular periodic reviews carried out by the PACE Monitoring Committee.

Three requests were made by both the national authorities and the PACE Monitoring Committee (two on Ukraine and one on Georgia).

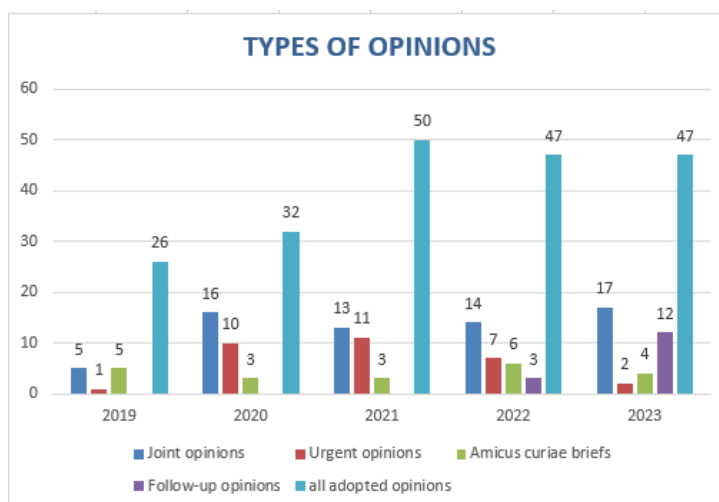
The proportion of state requests compared to PACE requests (3:1) was thus lower than in 2022 (4:1).

Nine Opinions concerning mostly electoral legislation were prepared jointly with OSCE/ODIHR. Eight Opinions mostly relating to judicial reforms were prepared jointly with the Directorate General on Human Rights and the Rule of Law (DGI).

Twelve of the 2023 Opinions were follow-up ones, concerning 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 twelve Opinions concerned five countries: Republic of Moldova (4), Ukraine (4), Georgia (2), Kosovo (1) and Montenegro (1). Several of these follow-up Opinions followed

previous follow-up Opinions (Opinions on the external assessment of judges and prosecutors in the Republic of Moldova; on the procedure for the selection of candidates for the position of judge of the Constitutional Court of Ukraine on a competitive basis; on the common courts in Georgia), testifying how this new kind of Opinions has triggered a clear and visible process of co-operation and dialogue between member states and the Venice Commission on how to implement the Commission's recommendations.

Only two Opinions were adopted through the urgent procedure in 2023. This decrease may be explained, on the one side, by the strict attitude of the Commission on



the nature of the urgency and, on the other side, on the actual capacity to prepare Opinions swiftly, in time for upcoming plenary sessions. In 2023, the average time for preparing an Opinion was 80 days, with a minimum of 25 days and a maximum of 180 days. Plenary sessions are held every three months.

The Commission also **adopted one compilation** of Venice Commission's Opinions and reports (on bicameralism) and **updated five compilations** (on courts, on judges, on anti-deadlock mechanisms, on constitutional provisions on amending the constitution, on local self-government).

**Three bulletins on Constitutional Case-Law** were issued in English and French in March, June and November 2023 with ongoing COVID-19 special bulletin and another special bulletin on the forms and limits of judicial deference in relation to Constitutional Courts.

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 **seven election observation missions of the Parliamentary Assembly**. 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: presidential elections in Montenegro on 19 March 2023; early parliamentary elections in Bulgaria on 2 April 2023; presidential and parliamentary elections in Türkiye on 14 May 2023; 2<sup>nd</sup> round of presidential elections in Türkiye on 28 May 2023; early parliamentary elections in Montenegro on 11 June 2023; parliamentary elections in Poland on 13-16 October 2023; early parliamentary elections in Serbia on 17 December 2023.

## 2. Main topics dealt with in 2023

In 2023, the Commission assessed **a constitutional reform** in Bulgaria (reform of the judiciary, independent regulatory and controlling bodies, dual citizenship, formation of a caretaker government, constitutional court), **the preparation of a new constitution and several substantive matters** in Chile, **and constitutional matters** concerning France (power of the government to force the adoption of a law by one chamber of parliament) and Kyrgyzstan (the Ombudsman institution).

The majority of Opinions and follow-up Opinions dealt with **rule of law issues** in Armenia, Bosnia and Herzegovina, Georgia, France, Republic of Moldova, Montenegro, Ukraine, the Netherlands. In addition to institutional and structural matters, such as the composition of

Judicial and Prosecutorial Councils (Georgia, France, the Netherlands, Kosovo), the establishment and competences of an Ethical and disciplinary commission (Armenia), the jurisdiction of appellate courts (Bosnia and Herzegovina), the Commission also assessed a procedure of external assessment of judges and prosecutors (Republic of Moldova), the establishment and competences of anti-corruption bodies (Georgia, Republic of Moldova, Ukraine), questions of status, career, promotion of judges (Bosnia and Herzegovina, the Netherlands, Georgia, Armenia), the mechanism of selection of candidates for constitutional court judge (Ukraine).

Opinions on **electoral legislation** were adopted for Armenia, Georgia, and Germany.

The novel issue of the **political liability of individual members of political parties which have been suspended or declared unconstitutional** was assessed in several Opinions and *amicus curiae* briefs concerning the Republic of Moldova and Ukraine.

In 2023, the Commission was asked to assess legislation on the so-called **oligarchs** in Ukraine, Georgia and the Republic of Moldova. The Commission examined these laws in two steps, adopting first interim Opinions, “de-oligarchisation” being a very complex and novel topic, potentially concerning a wider range of countries. The Commission recognized the legitimate aim of preventing the disruptive effects on democracy, the rule of law and human rights brought about by the concentration of power in the hands of a few, but considered that this threat should be countered through a set of interconnected legislative, (inter-)institutional, administrative, economic and other measures (the “systemic” approach), rather than through a “personal approach”, seeking to identify persons as “oligarchs” through specific criteria, such as wealth, media ownership (etc.), and to subject them to a series of limitations (prohibiting them, for example, to finance political parties and election campaigns).

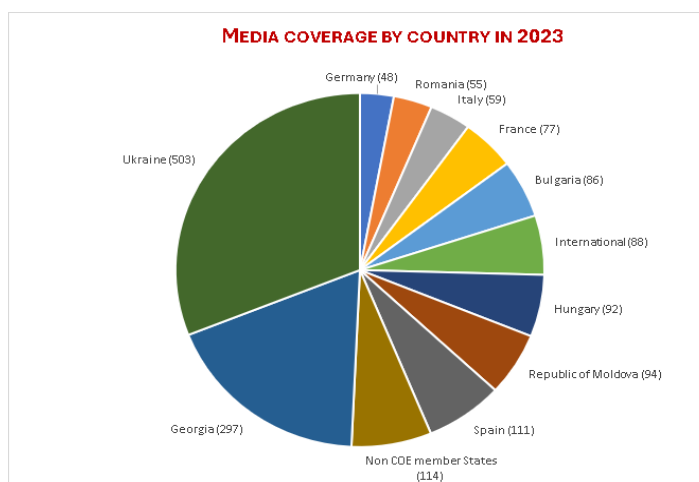
Further 2023 Opinions concerned legislation on the **government** (Montenegro) and on the **rules of procedure of parliament** (Kyrgyzstan), on **intelligence and security services** (Republic of Moldova, Georgia), on a commission to investigate **Russian influence on internal security** (Poland), registration requirements of **non-profit organisations** (Bosnia and Herzegovina), **national minorities** (Ukraine), **the media** (Kyrgyzstan).

### 3. The impact of the Commission’s Opinions

Twenty-four previously adopted Opinions were **reflected in national legislation** and reported on at the plenary sessions in 2023 (three on Bosnia and Herzegovina; one on Croatia, Cyprus, Georgia, Kosovo, Luxembourg, Mexico, North Macedonia; two on Montenegro; three on Serbia; one on Belarus; five on the Republic of Moldova; three on Ukraine). In addition, the twelve follow-up Opinions adopted in 2023 prove that the Commission’s recommendations were taken up in the revised version of the relevant texts, in a continued dialogue with the Venice Commission.

Twenty-nine Opinions, reports and studies of the Venice Commission were referred to in 21 (out of 27) country chapters of the **EU 2023 Rule of Law Report** (18 countries in 2022).

Practically all the Opinions adopted in 2023 were the object of **media coverage** both nationally and internationally. The Venice Commission was referred to in over 2 000 articles in the course of 2023 (this figure only covers press in English/French and in the other local languages which are monitored by the Directorate of Communication).



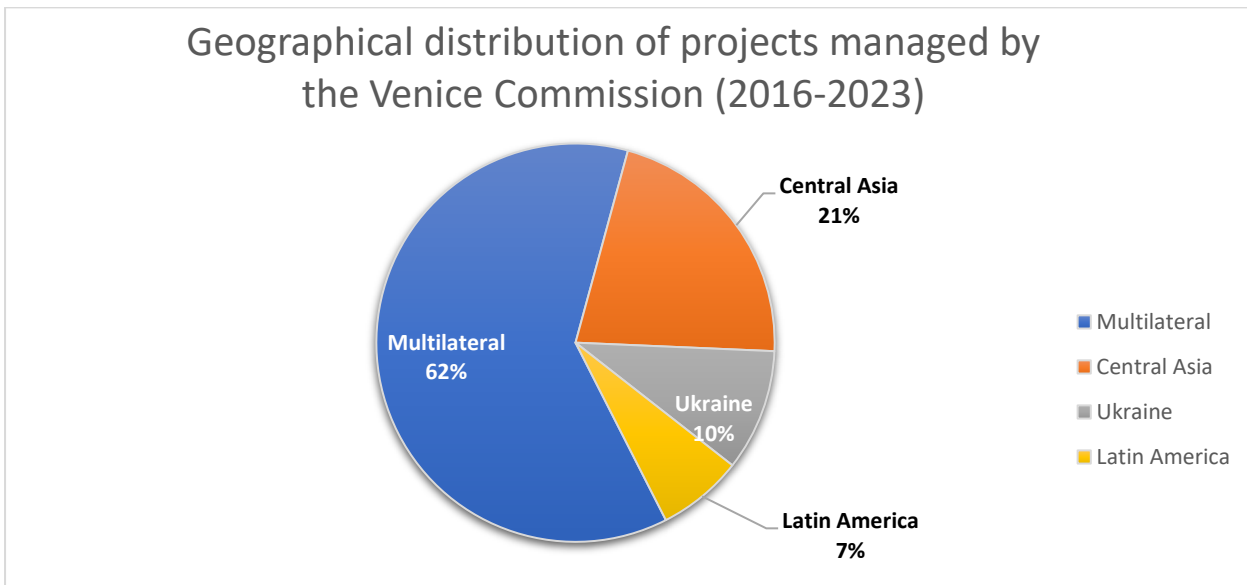
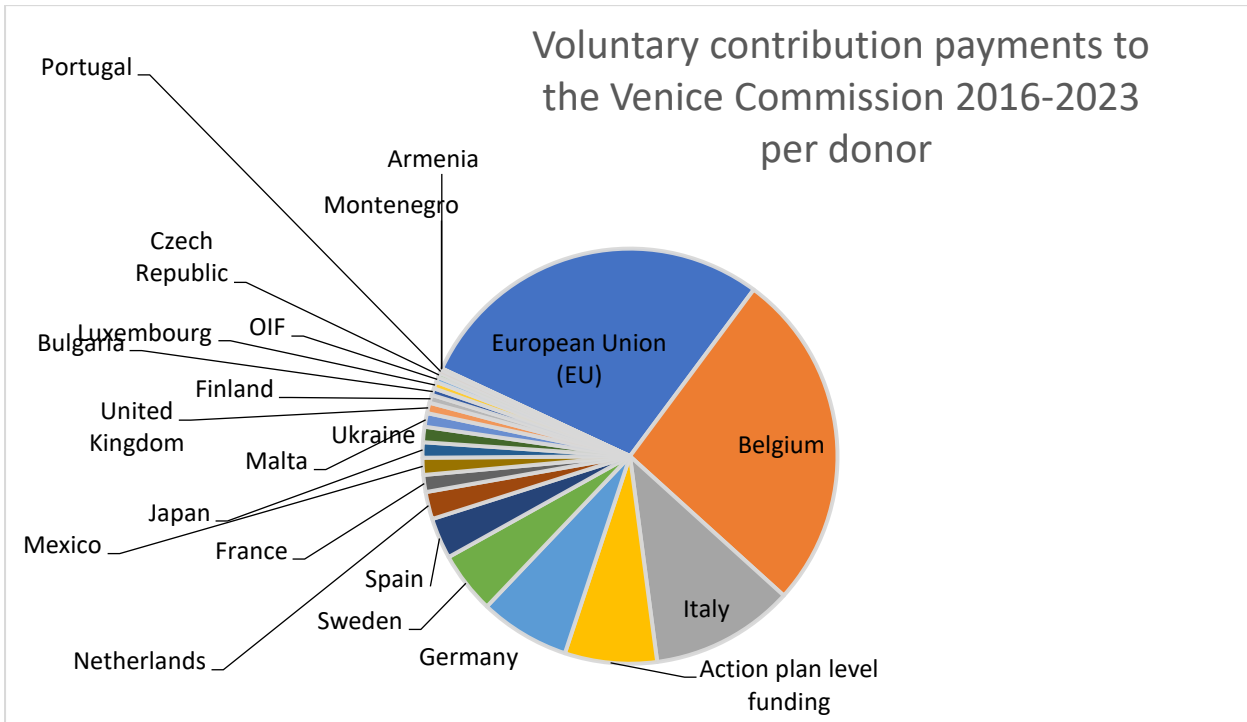
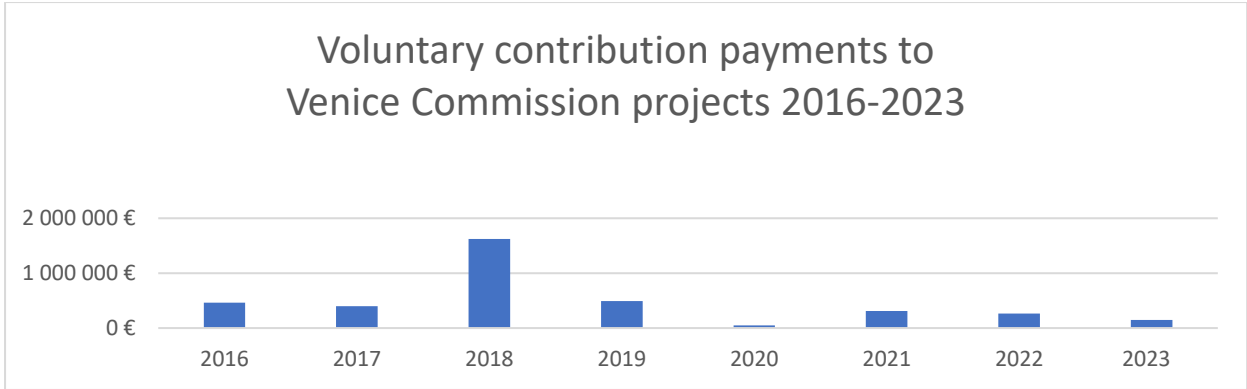
#### 4. Strengthening the independence of the Venice Commission

Within the framework of the implementation of the management response to the evaluation of the Venice Commission in 2022, in March 2023, the Venice Commission adopted the Principles of Conduct for members, substitute members and experts of the Venice Commission as well as amendments to its Rules of Procedure designed at strengthening the appearance of independence of Venice Commission's members and ensuring more transparency in the Commission's work.

#### 5. Budget and staff

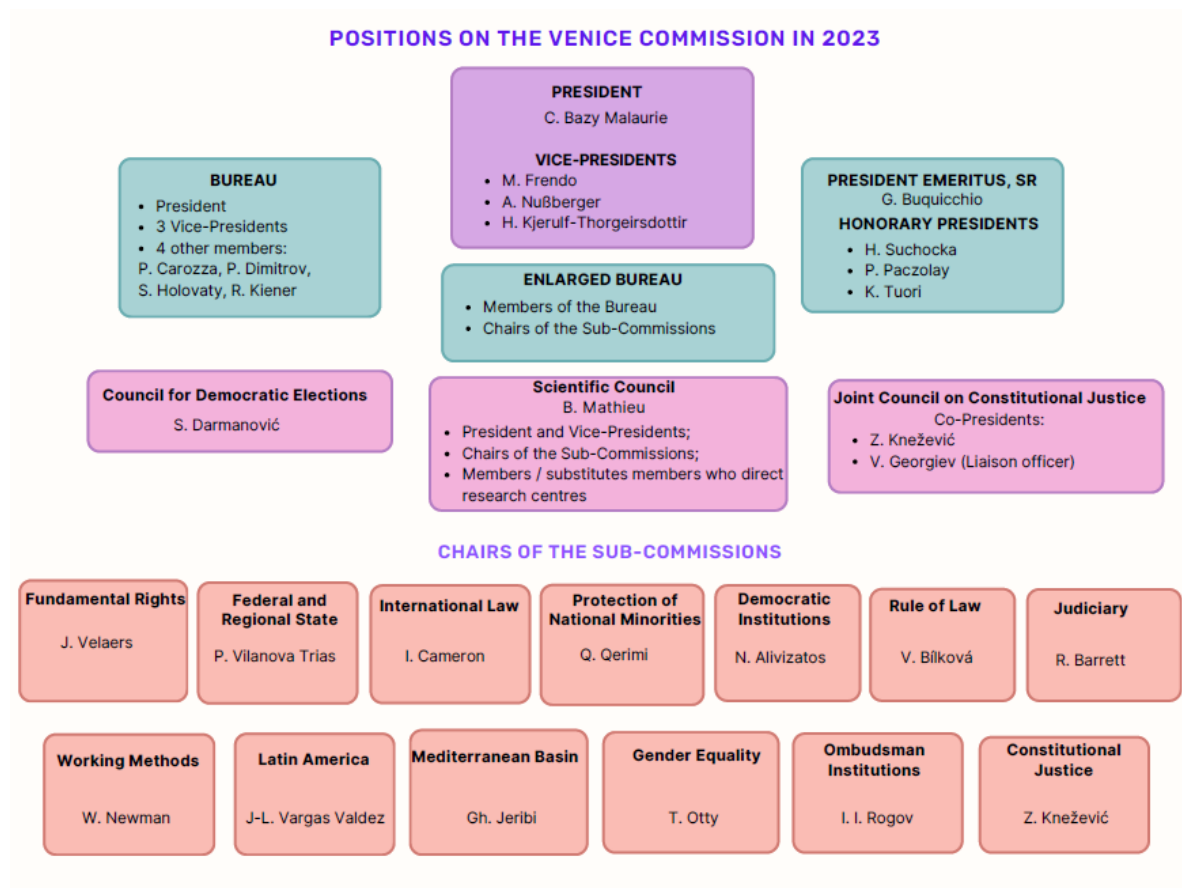
The Commission's budget in 2023 was 4 557 400 Euros. The Commission also benefited from several voluntary contributions, of which a prominent part is devoted to non-European countries (including non-member states).

In 2023, the Committee of Ministers decided to **increase the Commission's budget 2024-2027**, adding three jobs at the Secretariat of the Commission; the total number of jobs on the ordinary budget therefore increased from 25 to 28 in 2023.





## 6. Positions on the Venice Commission

The positions in 2023 were as follows (elections were held in December 2023).




# VENICE COMMISSION OF THE COUNCIL OF EUROPE

## KEY FACTS


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ESTABLISHMENT



10 MAY 1990

by 18



Council of Europe member States

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TO DATE

61

MEMBER STATES


INCLUDING 15 NON Council of Europe MEMBERS

+

4

observer countries

+ 2 beneficiaries with special cooperation authorisation



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

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ADOPTION OF  
some

1150

COUNTRY-SPECIFIC + GENERAL  
OPINIONS + REPORTS

ORGANISATION  
of over

110

INTERNATIONAL  
CONFERENCES


IMPLEMENTATION  
of over

18

COOPERATION PROGRAMMES IN  
CENTRAL ASIA, LATIN AMERICA AND SOUTH  
MEDITERRANEAN REGIONS

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WORLD CONFERENCE  
ON CONSTITUTIONAL JUSTICE\*



\*SINCE 2009

COURTS

121

MEMBERS

NUMBER OF JUDGMENTS  
IN CODICES DATABASE  
OVER

12,000


EUROPEAN COURT OF HUMAN RIGHTS

references to Venice Commission  
in over

320

JUDGMENTS  
AND DECISIONS\*

\* Since 2001



requests for  
7 amicus curiae  
BRIEFS\*\*

\*\* Since 2005

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IN 2023

The Venice Commission adopted

50

DOCUMENTS

for 15 countries

47

OPINIONS on

- constitutional issues (3)
- judges and prosecutors (16)
- elections and political parties (10)
- other legal issues (18)

3

TEXTS of general nature


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EVENTS

it (co)organised

12

CONFERENCES




LEGAL ADVICE

to

7

ELECTION OBSERVATION  
MISSIONS OF THE  
PARLIAMENTARY ASSEMBLY



CONSTITUTIONAL CASE LAW

total number of  
published

132

BULLETINS  
on  
Constitutional  
Case-Law

responded to

23

REQUESTS FOR  
COMPARATIVE  
INFORMATION  
by 12 constitutional  
courts  
on the VENICE FORUM

NUMBER OF JUDGMENTS  
ADDED TO CODICES DATABASE

581

WWW.CODICES.COE.INT

www.venice.coe.int

### III. OPINIONS AND *AMICUS CURIAE* BRIEFS

In 2023 the Venice Commission adopted 47 Opinions and *amicus curiae* briefs<sup>5</sup>. Thus, it continued to provide legal advice to its member states helping them bring their legal and institutional structures into line with European standards in the fields of democracy, human rights and the rule of law. In order to focus on the core issues and on its previous outstanding recommendations, the Commission had created since the end of 2022 a new type of Opinions – the “Follow-up Opinions”- which examine 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 render more visible the impact which the Commission’s recommendations actually produce. In 2023 the Commission adopted twelve Follow-up Opinions, which indicates that this new tool is considered useful by member states in their efforts concerning important constitutional and legislative reforms.

This chapter provides summaries of the key findings of Opinions and *amicus curiae* briefs adopted by the Venice Commission in 2023. 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 sections of this chapter.

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

Issues pertaining to the operation of law, rule of law, including the fundamental democratic principle of the separation of powers, constitutional and legislative reforms, strengthening Ombudsman institutions and constitutional justice continued to be tackled in 2023 by several Opinions and *amicus curiae* briefs. Thus, the Commission further enhanced the consolidation of a common constitutional heritage in its member states.

##### ***Operation of the law: non-retroactivity, quality of the law, level of regulation***

In the Joint Opinions [CDL-AD\(2023\)005](#) and [CDL-AD\(2023\)035](#) concerning assessment of judges and prosecutors in the **Republic of Moldova**, the Venice Commission emphasised

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<sup>5</sup> Two opinions on the 2023 Process of Constitutional Reform in Chile [CDL-AD\(2023\)034](#) and on the draft law about the media [CDL-AD\(2023\)040](#) were prepared in the framework of the project “*Venice Commission action to promote the development of democratic institutions based on respect for the rule of law and human rights*” (2019-2023) with voluntary contributions provided by member states (The voluntary contributions were received between 2019 and 2023 from Belgium, Bulgaria, Czech Republic, France, Italy, Luxembourg, Malta, Montenegro, Netherlands, Portugal, Spain, Sweden, United Kingdom).

In 2023, the Venice Commission prepared and adopted 12 Opinions under the Quick Response Mechanism (QRM), in the framework of the Partnership for Good Governance (PGGII and PGGIII): Armenia [CDL-AD\(2023\)030](#), [CDL-AD\(2023\)045](#); Georgia [CDL-AD\(2023\)006](#), [CDL-AD\(2023\)009](#), [CDL-AD\(2023\)047](#), [CDL-AD\(2023\)044](#), [CDL-AD\(2023\)046](#); the Republic of Moldova [CDL-AD\(2023\)041](#), [CDL-AD\(2023\)031](#), [CDL-AD\(2023\)032](#), [CDL-AD\(2023\)048](#), [CDL-AD\(2023\)049](#).

In 2023, the Venice Commission has prepared and adopted 4 Opinions and 1 *Amicus curiae* brief under the Expertise Coordination Mechanism (ECM), in the framework of the Horizontal Facility for the Western Balkans and Türkiye (HFIII): Bosnia and Herzegovina [CDL-AD\(2023\)002](#) and [CDL-AD\(2023\)003](#); Kosovo [CDL-AD\(2023\)043](#); and Montenegro [CDL-AD\(2023\)011](#), [CDL-AD\(2023\)036](#).

Two Opinions were adopted in respect of Kyrgyzstan - on the amendments to the law on the Rules of Procedure of the Parliament of Kyrgyzstan [CDL-AD\(2023\)001](#) and on the draft constitutional law on the *Akyikatchy* (Ombudsman) [CDL-AD\(2023\)038](#) - in the framework of the project “*Promote efficient functioning of state institutions and public administration*”, which is part of the Joint European Union and Council of Europe Central Asia Rule of Law Programme (2020-2024).

Eight Opinions and two *Amicus Curiae* briefs were prepared in respect of Ukraine in the framework of the Council of Europe Action Plan for Ukraine “Resilience, Recovery and Reconstruction” (2023-2026): [CDL-AD\(2023\)050](#), [CDL-AD\(2023\)042](#), [CDL-AD\(2023\)028](#), [CDL-AD\(2023\)027](#), [CDL-AD\(2023\)026](#), [CDL-AD\(2023\)025](#), [CDL-AD\(2023\)018](#), [CDL-AD\(2023\)021](#), [CDL-AD\(2023\)022](#), [CDL-AD\(2023\)004](#).

that the vetting<sup>6</sup> proceedings in respect of judges and prosecutors should necessarily respect the principle of non-retroactivity. The law should clearly provide this principle and ensure that judges and prosecutors be not penalised for failing to respect the rules which had not existed at the time of the facts imputed to them. This concerned, in particular, the rules on incompatibilities, conflicts of interest, and the declaration of donations.

The quality of the law – its clarity, accessibility, and foreseeability of its application – was discussed in several Opinions. For example, Opinion [CDL-AD\(2023\)008](#) on the Intelligence and Security Service in the **Republic of Moldova**, criticised the vagueness, unclarity and breadth of a number of provisions of the two draft laws on the Intelligence and Security Service and on counterintelligence activities, potentially allowing for ambiguous interpretations and extending the mandate of the Security and Intelligence Service beyond the notion of national security. It was therefore welcomed that in the adopted versions of these laws, substantial improvements had been made in this respect, as outlined in the Follow-up Opinion ([CDL-AD\(2023\)041](#)).

In the aforementioned Opinion [CDL-AD\(2023\)008](#) on the **Republic of Moldova**, the Venice Commission also highlighted that it is imperative that the role, functions, powers and duties of security agencies be clearly defined and delimited by the legislation setting them up, or by the Constitution. It was in this context especially critical of the regulations of intelligence activities in departmental acts without a detailed and clear basis in a formal law and the unfettered powers to be granted to the Director of the Intelligence and Security Service to directly approve a broad range of very intrusive measures without control. In its Follow-up Opinion [CDL-AD\(2023\)041](#) the Venice Commission welcomed that its recommendations on this point had been followed.

In the Joint Opinion [CDL-AD\(2023\)029](#) concerning the independence of the judiciary from the executive power in the **Netherlands**, the Commission and DGI welcomed that the possibility for the members of the State Council to sit in both divisions (Advisory and Administrative Jurisdiction) is *de facto* phasing out. On a general note, the Commission and DGI acknowledged that informal norms are crucial in sustaining the rule of law and that the existence of such norms accepted by all institutions is evidence of a strong culture for the rule of law in the Netherlands, where the judicial system is built upon a combination of formal safeguards set out in the constitution and laws, and informal safeguards entrenched in the political culture and practice. However, the Commission and DGI clearly stated that informal norms should not substitute formal safeguards altogether, and provided the Dutch authorities with advice concerning rule of law safeguards which should be integrated in the legislation mostly as a preventive measure to protect against possible political threats to the independence of the institutions examined in the Opinion, which may arise in the future if the political, societal and legal culture happened to change.

### ***The process of constitutional and legislative reforms***

In its Opinion [CDL-AD\(2023\)034](#) on the 2023 Constitutional reform process in **Chile**, the Venice Commission welcomed the strong formal democratic element of the constitutional reform process. On the one side, the combination between the expertise and technical approach of an expert body with the democratic legitimacy of a specific elected, deliberative and representative body, competent for the political discussion and approval of the new constitution. On the other side, the involvement of the judiciary and of civil society, in addition to the provision of a final binding referendum. However, the Venice Commission also reiterated

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<sup>6</sup> See *Integrity and vetting in the judiciary and the prosecution service* section below: The Venice Commission and DG I have acknowledged that extremely high levels of corruption may justify equally radical solutions, such as an examination of the sitting judges, but it should only be used as a measure of last resort. Even assuming that the full vetting is justified and will not be repeated in the future, it carries with it risks for the independence and efficiency of the judicial and prosecution systems. These risks can be mitigated if certain safeguards are in place.

that a constitution must be based on the widest consensus possible within society. In that regard, noting that in Chile there continued to exist deep cleavages on the content and interpretation of some rights and even of the proper functions of the state, the Venice Commission stressed that maximalist solutions jeopardise constitutional stability, hence social, economic and political stability, and increase the risk, for the future adoption of eventually necessary reforms, of long-lasting political conflicts and undue pressure and costs for society. The Commission also warned against excessively detailed constitutions, which deprive the legislators, and ultimately the people of their rightful power to regulate social, political and economic issues as the society changes.

In the same Opinion, the Venice Commission also issued its considerations on the rules on constitutional amendment. Providing different majorities for amending different sets of constitutional provisions is common in comparative constitutional law. The reasons for providing more rigidity to some provisions depends, amongst others, on the nature of the provisions and their relationship to the distinctive features of the political community that the constitution is meant to govern, on the level of detail of the constitution, and on the general rules on constitutional amendment. As to the qualified majority required for a constitutional amendment, the Venice Commission noted that the challenge is to balance the need for rigidity with the possibilities for amendment, in a way that allows necessary reforms to be passed, without undermining the overall stability, predictability and protection offered by the constitution. The Commission also dealt with the special procedure for the adoption of an entirely new constitution and noted that there is no requirement under democratic standards to provide for a special procedure; what matters is that any new constitution should be adopted following the prescribed amendment procedures in force, to ensure the stability, legality and legitimacy of the new system.

In the Joint Opinion [CDL-AD\(2023\)016](#) the Commission and OSCE/ODIHR examined the draft law of Republika Srpska, **Bosnia and Herzegovina**, on the Special Registry and Publicity of the Work of Non-Profit Organisations (NPOs). The draft law and its explanatory note were published on the website of the Ministry of Justice, indicating that since the proposed draft was considered to be of interest to the public, it is subject to public consultations and that suggestions may be sent within eight days of publication on the website. At the same time, there was no clarity as to the exact date of publication on the website nor as to whom comments and suggestions on the draft law should be sent. The Ministry of Justice informed that comments could be sent until the finalisation of the draft law, but the timeline remained unclear. The Commission and OSCE/ODIHR noted that eight days for submitting feedback on the draft law appeared extremely short and generally not in line with recommendations issued by international or regional bodies and good practices within the OSCE and the Council of Europe area. It was added that it was crucial that the authorities take measures to introduce the draft amendments to the public through the media and call for feedback as it is not enough to simply publish the draft law on an official website. Also, it was noted, in particular, that the draft law was not based on consultations with associations and others potentially affected by the adoption of this new legislation. The Commission called upon the authorities of the Republika Srpska to reconsider the adoption of the draft law entirely and to engage in further consultations with all stakeholders with a view to guaranteeing freedom of association.

In its Opinion [CDL-AD\(2023\)039](#), the Commission analysed the draft amendments to the Constitution of **Bulgaria**. It stressed that the rule of law requires that the general public should have access to draft legislation and have a meaningful opportunity to provide input. These requirements apply all the more strictly when it comes to revising a constitution. In particular, constitutional amendments should not be rushed, and should only be made after extensive, open and free public discussions involving various political forces, non-government organisations and citizens' associations, the academia and the media and providing for an adequate timeframe. Also, constitutional amendments should be based on a large consensus among political forces and within civil society. The Venice Commission also recommended

providing explanatory memorandums to draft legislation. Changing or adopting a constitution is not the same as changing a law, but any proposal for change must explicitly state the reasons underlying the proposed change. The Commission regretted that the launching of the constitutional reform was not preceded by an appropriate public debate, and that the reasons for all the amendments were not explained sufficiently. The Commission recommended that the Bulgarian authorities elaborate on the reasons behind each proposal and ensure meaningful participation of the public, experts, representatives of the institutions concerned and of all political forces in this process. This should also lead to the drafting of a complete explanatory note explaining the general purposes of the amendments as well as the rationale of each of them in detail.

In the Follow-up Opinion [CDL-AD\(2023\)006](#) concerning the Organic Law on Common Courts in **Georgia**, the Venice Commission reiterated that the adoption of Acts of Parliament regulating important aspects of the legal order without genuine consultations with the opposition, experts, or civil society representatives falls short of the standards of democratic law-making. As long as the work on certain legislative changes was postponed because of the pending proceedings before the constitutional court where the relevant provisions of the law were challenged, the Venice Commission observed that such constitutional proceedings could in principle stand in the way of adopting related legislation; however, any such delay should not be more than entirely necessary.

In the Opinion [CDL-AD\(2023\)044](#) concerning the Special Investigation Service (SIS) and the Personal Data Protection Service (PDPS) in **Georgia**, as regards the accelerated law-making procedures, the Venice Commission underlined that the adoption of laws of such significance within a brief timeframe, lacking substantial discussions and pluralistic participation in the debate, may lower public trust towards state institutions in general, and the SIS and PDPS in particular. Moreover, it contradicts international standards related to effective and transparent law-making practices, including those regarding protection of rights of the opposition. The Venice Commission, thus, recommended following the principles of transparency, accountability, inclusiveness and democratic debate systematically and rigorously in the law-making and, where necessary, making amendments to legislation, parliamentary procedures or rules to incorporate these standards.

In the Joint Opinion [CDL-AD\(2023\)032](#) concerning the draft law on the anti-corruption judicial system in the **Republic of Moldova**, the Venice Commission recommended that the authorities, before proceeding further to the creation of new anti-corruption instances, carry out an impact assessment of the draft law. This assessment could usefully analyse and examine with particular scrutiny notably the root causes of the problems that the draft law aims to resolve, as well the existence of other possible alternative measures which would attach more emphasis to the finalisation of the judges' vetting process, the allocation of corruption-related cases to vetted judges, reinforcement of prosecuting services and of a court in the capital which was reported to handle currently the vast majority of corruption cases, and better enforcement of the existing legislation. The Commission also recalled the Council of Europe [Committee of Ministers Recommendation \(2004\)5](#) on the verification of the compatibility of draft laws, existing laws and administrative practice with the standards laid down in the ECHR and proposed that the authorities carry out systematically an ECHR compatibility verification before the adoption of each draft law and make public the relevant verification.

The *amicus curiae* brief [CDL-AD\(2023\)004](#) for the Constitutional Court of **Ukraine** dealt with the question whether the above court could give a preliminary opinion on the draft constitutional amendments (which was a condition for their further adoption in Parliament) during the regime of martial law. For the Venice Commission, one possible line of argument was that the Constitution of Ukraine excluded any possibility for the constitutional court to produce an opinion on constitutional amendments during martial law, since such an opinion was an integral part of the process of constitutional amendment which could not take place

during the martial law. An alternative reading was based on the understanding that the constitution only prohibited the final adoption of the constitutional amendments, not the preparatory or intermediary steps in this process (such as obtaining a preliminary opinion of the constitutional court). Having regard to similar provisions in some other constitutions, as well as to the purpose of introducing such a limitation (which was to exclude rushed adoption of permanent changes under the pressure of the moment and without a proper and open political discussion), the Commission had a slight preference for the second line of reasoning, accepting the possibility for the constitutional court to issue its preliminary opinion on the draft constitutional amendment during martial law.

In the Joint Follow-up Opinion [CDL-AD\(2023\)027](#) concerning the judiciary and the status of judges in **Ukraine**, the Venice Commission stressed that when making substantial changes to the framework governing the judiciary, the authorities must take a comprehensive and coherent approach with due regard to the considerations of stability of the judicial system. It was essential to respect the sequence of changes in the judicial reforms and give priority to the effective enforcement of the existing ordinary tools of judicial accountability.

### ***Checks and balances between the executive and the legislative and the judicial powers***

Opinion [CDL-AD\(2023\)036](#) on the draft law on the Government of **Montenegro** discussed issues related *inter alia* to the powers of caretaker governments as well as relations of the government with other constitutional bodies (e.g. President, Parliament, State Auditor and Protector of Human Rights). In the view of the Commission, states have a wide margin of appreciation on how to organise their executive branch of power as there are few international standards relevant to this matter. For this reason, the Opinion analysed the draft law from the perspective of three key principles outlined in the Rule of Law Checklist, namely, the principle of transparency of the legislative process, the principle of legality and the principle of the separation of powers. In the light of the systemic impact of the draft law over other constitutional bodies, the Commission recommended to revise several parts of the draft law dealing with the prohibition of dual nationality for any member of government, the limits on the number of ministries, the restrictions of powers of an outgoing government to ensure that the supremacy of the constitution was upheld, and the principles of legality and separation of powers were fully respected.

The need for checks by the legislature and judiciary on the activities of the Intelligence and Security Service formed an important part of Opinion [CDL-AD\(2023\)008](#) on the **Republic of Moldova**. The Venice Commission emphasised the need for a more substantive form of parliamentary control over the Intelligence and Security Service and judicial control of intelligence activities, and additionally recommended to supplement or replace the system of parliamentary oversight with some form of independent expert oversight body. In its Follow-up Opinion [CDL-AD\(2023\)041](#), the improvements made to parliamentary oversight and judicial control (both *a priori* – with almost all counterintelligence measures now being subject to a judicial warrant - and *ex post*) were highlighted, even if the recommendation to set up an independent expert oversight body for intelligence activities had not yet been followed.

In the *amicus curiae* brief [CDL-AD\(2023\)004](#) for the Constitutional Court of **Ukraine**, the Venice Commission dealt with draft constitutional amendments providing that the Director of the National Anti-Corruption Bureau of Ukraine and the Director of the State Bureau of Investigation would be appointed to office and dismissed by the President of Ukraine upon the consent of Parliament. The constitutional court raised the question whether that procedure for appointment would be compatible with the principle of the separation of powers, checks and balances, democracy, and the respect for the rule of law. The Venice Commission considered that the proposed amendments fulfilled a minimum requirement of parliamentary influence and control over the executive and did not overstep the boundaries of areas reserved for

legislative, executive or presidential powers. The Commission noted that other models of appointment of the two directors could also be possible (for example, the approval by Parliament with a qualified majority and with an appropriate anti-deadlock mechanism). Moreover, from the rule of law perspective, the draft constitutional amendments appeared to be formulated in an intelligible manner. It was understood that the constitutional amendments, if adopted, would be developed further in the implementing legislation on the two institutions concerned.

Lastly, in the Interim Opinion [CDL-AD\(2023\)024](#) on **France**, the Commission looked into the procedure under Article 49.3 of the Constitution whereby the government may pass a bill through the National Assembly without its vote, unless the latter adopts a resolution of no confidence in the government. Before reaching its conclusions on this matter, the Commission resolved to carry out a comparative analysis of the manner in which motions of no confidence and other means by which the Executive may intervene in the legislative powers of parliaments are regulated in the constitutions and legislations of its member states.

### ***Appointment of a caretaker government***

In the Opinion [CDL-AD\(2023\)039](#) on the draft amendments to the Constitution of **Bulgaria** the Commission examined the appointment of a caretaker government in the event of failure by the National Assembly to agree on the formation of a government. While the proposed amendments provided for limited time for the caretaker government's powers, other limits could be added as to the scope of its activity in order to avoid that in a transitional period important and sensitive political decisions could be taken by a technical government that is not supported by a democratic mandate. If the institution of a Caretaker Prime Minister was retained, it was advisable to restrict the discretion of the President to choose between several persons, in order to prevent undue political considerations, for example by defining an order of choice and by defining in advance which independent person would be appointed. The Commission expressed doubts about the suitability of the President of the National Assembly or the President of the Constitutional Court to act as a caretaker prime minister for different reasons. The Commission also had doubts as concerns the election of a caretaker prime minister by the National Assembly which has been unable to agree on a prime minister in the first place. The authorities were thus encouraged to make amendments corresponding to these comments.

In the Opinion [CDL-AD\(2023\)036](#) on the draft law on the Government of **Montenegro**, the Commission noted that due to the lack of full democratic legitimacy, a caretaker government is expected to exercise restraint and should not initiate new policy initiatives or take decisions on significant matters which do not require urgent decisions. However, the Commission found the restriction of not incurring any new financial obligation as problematic from the perspective of the principle of continuity of government, as it makes government operations very difficult, particularly when dealing with unexpected challenges (e.g., *force majeure*). To address these situations, the Commission suggested that the drafters revisit this limitation to achieve the policy objective of imposing restrictions on unjustified spending while paying due regard to the principle of continuity of government. This could be done by specifying that a government whose mandate has ended should not undertake new financial obligations except those needed to guarantee the continuity of state services and institutions and the regular functioning of public services.

### ***Application of international law (general questions)***

In the Opinion [CDL-AD\(2023\)034](#) on the 2023 Constitutional reform in **Chile**, the Venice Commission dealt with the question on the status of international treaties within a legal system. The Venice Commission noted that in comparative law, there are different possibilities as to the hierarchy and effects of treaties, including international human rights treaties in relation

with domestic law, particularly with the constitution. These include a *supra*-constitutional status of international treaties, a position equivalent to constitutional provisions, or an *infra*-constitutional status (either at the level of ordinary legislation or at a level that is intermediate between the constitution and ordinary legislation). Commenting on a draft provision that rather than establishing a specific hierarchy within the Chilean legal order, provided for a specific interpretative rule, the Venice Commission noted that respect for Articles 26 and 27 of the Vienna Convention of the Law of Treaties remains the benchmark to assess compliance with international standards.

In its Opinion [CDL-AD\(2023\)001](#) on **Kyrgyzstan**, the Venice Commission was asked to address specific questions concerning the Law on the Rules of Procedure of Parliament and the latest amendments to that law concerning the ratification of international treaties and the interaction between different state institutions in this process. Overall, the Commission welcomed the efforts of the Kyrgyz authorities to establish a clear rule concerning the constitutional control of international treaties. The draft law specified that the control of the constitutionality of a non-ratified treaty is non-compulsory as it only takes place upon request and when the executive considers it necessary. However, insofar as it would restrict the right of the opposition to seek an opinion of the constitutional court on the compatibility with the constitution of an international treaty, it could raise questions of constitutionality. The law cannot limit the list of subjects that can seek opinion of the constitutional court; it should be harmonised with the relevant provisions of the constitutional law on the entities which can appeal to the constitutional court. The draft law neither imposed new obligations on an individual/state body, nor aggravated liability in any way but sought to remedy the deficiencies of the law by making its text consistent with other domestic legal acts. Therefore, the Venice Commission could not conclude that the draft law would entail a breach of the principle of non-retroactivity. Finally, the Venice Commission recommended that Parliament harmonise the relevant provisions of the domestic legislation.

### ***Freedom, democracy, and security***

In the Opinion [CDL-AD\(2023\)044](#) concerning the Special Investigation Service (SIS) and the Personal Data Protection Service (PDPS) in **Georgia**, the Commission found that the judicial authorisation to carry out covert investigative measures, where such authorisation is of a purely formal nature, is not sufficient as a safeguard to ensure the accountability of the authorities in charge and that a follow-up supervisory control exerted by an expert body would play an important role. In the specific context of Georgia, a combined control by the Personal Data Protection Service and the Special Investigation Service would be more efficient to provide effective safeguards against abuse in the context of covert investigative measures.

In the Opinion [CDL-AD\(2023\)008](#) on the Intelligence and Security Service in the **Republic of Moldova**, the Venice Commission highlighted the inevitable interference of actions of the security services with individual rights, including the right to respect for private and family life. Additional safeguards would need to be included in the law, requiring *inter alia* that a form of supervisory control by a judge or an independent body always be provided at least prior to the action (authorisation), during the action (continuous oversight) or after completion of the action (*ex post* control), that specific exceptions to the implementation of intelligence measures be foreseen for lawyers and journalists, that when a measure becomes known to a targeted person it should be possible to impugn this measure before a competent independent appeals authority and that legislation on data protection should apply also to counterintelligence activities with narrowly defined exceptions. In its Follow-up Opinion [CDL-AD\(2023\)041](#), the Venice Commission expressed its appreciation that most of these recommendations had been implemented with the adoption of the Laws on the Intelligence and Security Service and on counterintelligence activities.

***Ombudsman and other independent institutions (including regulatory and controlling bodies)***

In the Opinion [CDL-AD\(2023\)039](#) concerning the draft amendments to the Constitution of **Bulgaria** the Commission noted that there existed in Bulgaria nine controlling and regulatory bodies, including the Audit Office, the Bulgarian National Bank, the Electronic Media Council and the Central Bank. Most of them were partly elected by the National Assembly and partly appointed by other external bodies, by the President or by the Government, as regulated by the applicable laws. However, not all of these bodies had a constitutional basis, and the Constitution of Bulgaria did not contain any definition of what such a body was. The Venice Commission was of the view that the independent regulatory and controlling bodies should have a constitutional basis, which should cover the guarantees for their independence, such as the procedure of appointment (by qualified majority in parliament, with appropriate anti-deadlock mechanisms) and security of tenure of their members, as well as the duration of their mandate. In the light of the diversity of these institutions, it would seem more appropriate, instead of having only one general provision, to introduce specific provisions for each institution. While this could be somewhat cumbersome, it would avoid the problem of a possible misuse of the provision by treating it as an open mandate to establish new independent bodies.

In its Opinion [CDL-AD\(2023\)034](#) on the 2023 Constitutional reform in **Chile**, the Venice Commission responded to the question whether it is preferable, for the effective protection of the legal interests of the citizens, to have separate specialised bodies rather than a unitary one with a broader mandate. Referring the Venice Principles, the Commission recalled that it is within the discretion of the state to decide whether to establish a single Ombudsman institution, having general competence, or several specialised ones, or a single institution with internal specialised divisions for the most sensitive issues. What is important is that, in all cases, the constitution should contain appropriate guarantees of independence of these institutions from the other branches of government, as set out in the Venice Principles.

In the Opinion [CDL-AD\(2023\)044](#) on **Georgia**, regarding the immunity of the staff of the Special Investigation Service (SIS) and Personal Data Protection Service (PDPS), the Venice Commission found that not granting immunity to the staff of the above services would greatly weaken the fundamental purpose of immunity. Even though the conditions for the staff's immunity and its revocation may vary or be more restricted as compared to those governing the immunity of the head and he/she may have the power to lift the immunity of staff members in certain circumstances, it is crucial to expand protection, such as immunity, to the deputies and the staff of the SIS and the PDPS. Consequently, the Venice Commission recommended that not only the Head of the SIS and the PDPS but also the deputies and the core staff, especially the inspectors as regards the PDPS, enjoy functional immunity. In addition, the Commission found that the judicial authorisation to carry out covert investigative measures, where such authorisation is of a purely formal nature, is not sufficient as a safeguard to ensure the accountability of the authorities in charge and that a follow-up supervisory control exerted by an expert body would play an important role. In the specific context of Georgia, a combined control by the Personal Data Protection Service and the Special Investigation Service would be more efficient to provide effective safeguards against abuse in the context of covert investigative measures.

Certain institutions may require, due to the nature of their work, special legal and institutional arrangements for their independence and/or structural and operational autonomy, in order to prevent political or other influence over such institutions. These are indeed key requirements for specialised anti-corruption bodies. In its Opinion on **Georgia** ([CDL-AD\(2023\)046](#)), the Venice Commission considered these requirements and found that the institutional design of the Anti-Corruption Bureau did not provide for a sufficient degree of independence, whereby it concluded that it was particularly problematic that the appointment and dismissal of the head

of this Bureau was to a large extent in the hands of the Prime Minister. To increase the independence and perception of political neutrality of this Bureau, the Venice Commission recommended that the Law on the Fight against Corruption be amended to require cross-party support for the appointment of the head of the Anti-Corruption Bureau, to have any decisions on the early termination of his/her term in office to be made by Parliament, instead of the Prime Minister, and to further amend the grounds for his/her dismissal, thus restricting the discretion of the decision-making body.

In its Opinion [CDL-AD\(2023\)038](#) on **Kyrgyzstan**, the Venice Commission examined the draft constitutional Law on *Akyikatchy* (Ombudsman) and its compliance with international standards, in particular, the “Venice Principles”. Welcoming the constitutional status conferred upon the Ombudsman, the Commission paid particular attention to the constitutional guarantees, mandate, election and termination of powers, immunity and institutional independence of the Ombudsman Institution. In particular, the Commission recommended establishing the existence, the basic mandate and the basic procedure for the election and dismissal of the Ombudsman in the constitution and clarifying the modalities of its interaction with other national human rights mechanisms; extending the Ombudsman’s mandate to public administration at all levels, private entities delivering public services and complainants (whistleblowers) on the one hand and confining the mandate to procedural efficiency and administrative functioning of the judiciary, on the other hand. The Commission also considered important ensuring that the Ombudsman Institution is not part of the state's foreign policy, that combatting all forms of discrimination and co-operation with international NGOs is also included in the mandate. Furthermore, the Venice Commission recommended adding “high moral character and integrity” to the eligibility criteria providing an overview of the best international practices in this regard. Transparent selection procedure, a qualified majority for the election and dismissal together with an anti-deadlock mechanism and a judicial remedy were considered by the Venice Commission as important safeguards for the independence of the Ombudsman. Finally, the Venice Commission made a number of recommendations to improve institutional independence of the Ombudsman. Among others, it was recommended equalling the functional immunity of the staff to that of the Ombudsman, clarifying the legal status and mandate of the regional institutions, enabling the Ombudsman to recruit his/her staff and improving budgetary independence.

### ***Constitutional justice***

In its Opinion [CDL-AD\(2023\)039](#) concerning the draft amendments to the Constitution of **Bulgaria**, the Commission noted that the amended constitution introduced a majority of two thirds of its members for the election of the four judges elected to the constitutional court by the National Assembly. The Commission has noted in previous Opinions that it is necessary to ensure both the independence of the judges of the constitutional court and to involve different state organs and political forces into the appointment process so that the judges are seen as being more than the instrument of one or the other political force. It also recalled the importance of providing for anti-deadlock mechanisms in order to ensure the functioning of the state institutions. As regards access to the constitutional court, the amendments introduced a direct individual constitutional complaint, ensuring civil control over the activities of the Parliament, so that the adopted laws do not violate the constitutional rights of citizens. In addition, the draft created the possibility for lower instance courts to refer directly to the constitutional court on the constitutionality of a law applicable to a specific case. The Commission welcomed the introduction of the right of individual complaint, as it strengthens individual rights. However, the formulation used in the draft amendments would benefit from further clarification. It was indeed important to make it clear that they do not provide for an *actio popularis*.

In the Opinion [CDL-AD\(2023\)034](#) on the 2023 Constitutional reform in **Chile**, the Venice Commission assessed the proposed *ex-ante* control of constitutionality by the Constitutional

Tribunal. The Commission welcomed the reintroduction of a substantive *ex-ante* control of the international treaties' constitutionality, the prevention of the incompatibility between the Constitution and international treaties being one of the main aims of the *ex-ante* review. The Venice Commission further noted that the *ex-ante* review provided for in the draft constitution sufficiently addressed possible risks of politicisation of the work of the Constitutional Tribunal by, *inter alia*, providing that the *ex-ante* review only takes place after the final approval of the law and/or the sending of the communication informing of the approval of the treaty by the National Congress.

In the same opinion, the Venice Commission also dealt with the composition and the manner of election of the members of the Constitutional Tribunal. The Venice Commission welcomed the proposed odd number of judges as it allows the President of the Tribunal to concentrate on his/her administrative tasks and prevents the problem of a tie and a controversial casting vote by the President. As to the manner of appointment of judges, the Venice Commission noted that a "distributive" system, which distributes elective or appointment powers among the three main branches of power, would in principle ensure more democratic legitimacy than a "successive" one. In fact, while in a "successive" system such as the one devised in the draft Constitution in Chile all three branches are formally involved in the selection of constitutional judges, substantive powers are concentrated in the hands of one branch (the President), heightening the risk that the appointment of judges could be seen as a strong expression of political will.

It is to be noted that in 2023 the Venice Commission finalised its work concerning the draft amendments on competitive selection of candidates for the position of judge of the Constitutional Court of **Ukraine**. An analysis [CDL-PI\(2023\)002](#) carried out by the rapporteurs and endorsed by the Venice Commission's Bureau concluded that two core recommendations of the December 2022 Opinion concerning the role of the Advisory Group of Experts (AGE) in the above selection process were not followed by the law adopted in December 2022. In its Follow-up Opinion [CDL-AD\(2023\)022](#), the Venice Commission, regretting that its recommendation to add a seventh member to AGE had not been followed, welcomed, however, the significant improvements proposed in response to its key recommendations. The Commission recommended, nonetheless, removing from the draft law the provision on the order of voting for the election by the Congress of Judges and clarifying that the names of the AGE members who voted in favour of each candidate in the ranking phase be also published and specifying that the decisions of the AGE may only be challenged on formal grounds and not on the merits. The process was finalised with the Urgent Follow-Up Opinion [CDL-AD\(2023\)042](#), where the Commission concluded with satisfaction that its key recommendations had been followed in the law adopted on 27 July 2023 and, consequently, instructed its Bureau to convey to the Ukrainian authorities without delay the names of a candidate member and a candidate substitute member of the AGE.

## **2. Fundamental rights and freedoms**

The Venice Commission adopted a number of Opinions and *amicus curiae* briefs providing its member states with recommendations for further enhancing the protection of fundamental rights and freedoms, including in particular, effective investigations into violations of the right to life and freedom from torture, the right to a fair trial, freedom of expression, assembly and association and the prohibition of discrimination. In this context, the Commission drew on and at the same time contributed to the dissemination and embeddedness at national level of the case-law of the European Court of Human Rights.

### **Operation of the human rights norms – general questions**

In the Opinion [CDL-AD\(2023\)034](#) on the 2023 Constitutional reform in **Chile**, the Venice Commission assessed the compatibility of the draft constitution's aim of establishing a social

and democratic state based on the rule of law with the principle of subsidiarity. The Venice Commission noted that while the former is primarily an affirmation of the outcomes sought, subsidiarity is primarily an expression of the means to be employed and, as such, no incompatibility arises. Subsidiarity can be a legitimate and effective tool for realizing the broader social goals while still respecting the rights, liberties, and duties referred to in the text. As to the reference to the state's obligation to "remove obstacles" that impede or make more difficult the realisation of the liberty, rights, and equality of persons, the Venice Commission noted, although not being a mandatory specification of state responsibilities, that it can certainly express a legitimate political choice by a constituent power, also having regard to comparative constitutional law.

The Joint Opinion [CDL-AD\(2023\)032](#) concerned the draft law on the anti-corruption judicial system in the **Republic of Moldova**. The Commission and DGI recalled the Council of Europe Committee of Ministers Recommendation (2004)5 on the verification of the compatibility of draft laws, existing laws and administrative practice with the standards laid down in ECHR and proposed that the authorities carry out systematically an ECHR-compatibility verification before the adoption of each draft law and make public the relevant verification.

### ***Effective investigations into alleged violations of the right to life or freedom from torture***

In its Opinion [CDL-AD\(2023\)039](#) concerning the draft amendments to the Constitution of **Bulgaria** the Commission noted that one of the amendments stipulated that in the presence of allegations of a crime committed by a Prosecutor General, the investigation is carried out by a special prosecutor, who had occupied the position of a senior judge according to a procedure determined in law. This meant to provide a solution for the issue of the accountability of the Prosecutor General, raised by, *inter alia*, the ECtHR in *Kolevi v. Bulgaria*. The Commission considered that the proposed constitutional amendments would allow for the creation of a specific mechanism of independent prosecution, overcoming the limits of the changes provided by a lower-level legislation. This provision would need to be complemented by legislative arrangements on appointment, accountability, and review of the decisions of the special prosecutor which are different from the arrangements for the ordinary prosecutors. The Commission considered that the constitution should identify the appointing body.

In the Opinion [CDL-AD\(2023\)044](#) on the Law on the Special Investigation Service (SIS) in **Georgia** the Commission recalled that the ECtHR had found several violations of the ECHR committed by Georgia in relation to ineffective investigations into allegations of violations of the right to life and freedom from torture. The Commission noted that the prosecutor's wide powers to decide on the jurisdiction of the SIS, combined with the exclusion of prosecutors in general from SIS's remit in respect of certain serious crimes, and the Chief Prosecutor from all crimes, jeopardised the independence and effectiveness of the SIS, and tend to undermine the primary functions of the SIS. The Commission recommended revising Article 19 of the amended SIS law as well as other laws where necessary, to grant the SIS prosecutorial power, the authority to transfer cases to its jurisdiction, as well as the power to initiate and terminate investigations. Also it was recommended to extend the jurisdiction of the SIS to encompass crimes related to serious human rights violations allegedly committed by high-ranking officials, and to specify in law that the offenses mentioned in Article 19(1)(d) of the amended SIS law will be investigated by the SIS solely if perpetrated by representatives of law enforcement bodies, in order to not divert the focus of the SIS from its primary remit which is to effectively investigate crimes involving law enforcement agents.

### ***Right to a fair trial***

In the *amicus curiae* brief [CDL-AD\(2023\)002](#) and the Opinion [CDL-AD\(2023\)003](#), the Commission discussed the institutional design of the Court of **Bosnia and Herzegovina** and

its impact on the independence of judges. The *amicus curiae* brief discussed whether the design of the Appellate Division as an internal division of the Court of Bosnia and Herzegovina and not as a separate court violated the “principle of two instances”. It also examined the question whether the seemingly broad powers of the President of the court to assign judges to first instance and appellate divisions and allocate cases to them violated the institutional and individual independence of judges guaranteed under Art. 6 § 1 of the European Convention on Human Rights. The Commission concluded that neither Article 6 § 1 nor Article 2 of Protocol no. 7 to the European Convention requires that appeals be heard by an entirely separate court and that the Article 6 case-law of the European Court does not specify the institutional forms of exercising an appeal to a “higher tribunal”. Therefore, the Commission found that international standards do not constrain the discretion of Bosnia and Herzegovina to maintain a system whereby appeals are considered by a separate division within the same court if it has all attributes of a judicial body. On the issue of the potentially broad powers of the President of the court to assign judges to various divisions and allocate cases to them, the Venice Commission concluded that the Decision on Determining the Guiding Criteria adopted by the President in July 2022 - if implemented correctly - may be considered to have imposed constraints on the discretion of the President.

In the Follow-up Opinions [CDL-AD\(2023\)006](#) and [CDL-AD\(2023\)033](#) concerning common courts on **Georgia**, the Venice Commission stressed the importance of securing the effective right of appeal in the judicial nomination procedures. The instructions by the Supreme Court following the examination of such appeals must be mandatory for the High Council of Justice; the binding nature of the decisions and instructions of the supreme court should be expressly indicated in the law. Where the provision of the law stated that the High Council of Justice would “take into consideration” the supreme court decisions, this was considered insufficient because “taking into consideration” did not necessarily mean respecting and following the supreme court decisions.

In the Joint Opinions [CDL-AD\(2023\)005](#), [CDL-AD\(2023\)023](#) and [CDL-AD\(2023\)035](#) on the **Republic of Moldova**, the Venice Commission and DGI acknowledged that extremely high levels of corruption may justify equally radical solutions, such as an examination of the sitting judges, but it should only be used as a measure of last resort. Even assuming that the full vetting is justified and will not be repeated in the future, it carries with it risks for the independence and efficiency of the judicial and prosecution systems. These risks can be mitigated if certain safeguards are in place. They considered it important to specify a series of procedural guarantees applicable to the judiciary vetting proceedings, including the right to effective participation in the proceedings, the right to request a private hearing, right to a reasoned decision. Moreover, in such cases judges and prosecutors concerned should have a real chance to refute the presumptions related to the unexplained wealth and must be able to put forward the “inaccessible evidence” or *bona fide* ownership defence. It was essential that the decisions on dismissal of judges and prosecutors would be appealable to the Supreme Court of Justice which would be empowered to finally resolve the dispute.

In its Urgent Opinion [CDL-AD\(2023\)037](#) concerning **Poland** the Commission examined the Law “On the State Commission to Investigate Russian Influence on the Internal Security of the Republic of Poland in the period of 2007-2022”. The Commission noted that several of the guarantees of a fair trial according to Article 6 ECHR were not respected in the procedure foreseen by the law. *Inter alia*, persons under consideration by the State Commission could not refuse to testify or provide evidence, which contradicted the privilege against self-incrimination. These persons, moreover, did not enjoy the guarantees of the right of defence, such as the right to have an advocate or the right to legal aid. Also notarial, advocacy, legal counsel, medical or journalistic confidentiality could be lifted by the State Commission if this was necessary to protect important interests of the Republic of Poland or to protect internal security, and it would be excessively difficult to establish the circumstances on the basis of other evidence. It was up to the State Commission to determine whether these conditions are

met. The Venice Commission noted that the law failed to recognise the special importance of these forms of professional confidentiality and thus was at odds with international standards.

In the Joint Follow-up Opinion [CDL-AD\(2023\)027](#) on **Ukraine**, the Venice Commission and DGI advised against the use of lie detectors in proceedings concerning judicial career, including the disciplinary or vetting proceedings. It observed that core procedural safeguards should be secured for the use of such technique and there should be available an effective remedy against the application of lie detectors and the decisions based on its use.

***Right to respect for private and family life, and freedoms of expression, assembly and association***

The Joint Opinion of the Venice Commission and OSCE/ODIHR [CDL-AD\(2023\)007](#) on the Law on political parties of **Azerbaijan** addressed legislation already in force. The law was adopted by Parliament on 16 December 2022 and replaced the previous law of 3 June 1992 which had been assessed by the Venice Commission. The new law partly addressed some previous recommendations, for example in the area of party financing and its control. However, several other previous recommendations had not been taken into account, and most importantly, the new law introduced a number of new provisions which risk having further chilling effects on pluralism in the country, in particular: the increase of the minimum number of members of the party from 1,000 to 5,000; the need for the already registered political parties to undergo a re-registration; the lengthy terms and cumbersome procedure foreseen for the establishment and registration of political parties; the prohibition to operate a political party without state registration; the overregulation of internal party structures and operations; the excessive control exercised by the Ministry of Justice over party activities and over the registers of members of political parties; the possibility to suspend the activities of a political party or even dissolve a party in cases not involving serious violations of the legal acts by such a party.

In the Joint Opinion [CDL-AD\(2023\)016](#) the Commission and OSCE/ODIHR examined the draft law of Republika Srpska, **Bosnia and Herzegovina**, on the Special Registry and Publicity of the Work of Non-Profit Organisations (NPOs). The draft law aimed to regulate the scope of authorized activities of NPOs, by notably prohibiting them to carry out “political activities” and requiring them to register in a special Registry and all their materials to include the mark “NPO”. It was noted that the draft law was not based on consultations with associations and others potentially affected by the adoption of this new piece of legislation. The absence of consultations was contrary to the ODIHR and Venice Commission standards. It was also considered that the rationale for developing the draft law was unclear and not based on any risk assessment or consultation with associations and others potentially affected. The draft law was crafted in overly vague and ambiguous terms. These terms were likely to fall afoul of the requirement that any restriction on the right to freedom of association must be prescribed by law, which entails being foreseeable. There was, furthermore, a strong risk that the provisions regarding the ban of the work of NPOs due to acts contrary to its provisions, irrespective of their seriousness, could be applied without regard to the principle of proportionality. The draft law also lacked provisions guaranteeing access to effective remedies in order to challenge or seek review of decisions taken in the context of its implementation that may infringe freedom of association. As a consequence, the authorities of Republika Srpska were called on to reconsider its adoption entirely and to engage in further consultations with all stakeholders with a view to guaranteeing freedom of association.

In the Opinion [CDL-AD\(2023\)034](#) on the 2023 Constitutional reform in **Chile**, the Venice Commission noted that draft provisions providing that a senator or a deputy who resigns from his or her political party or is sanctioned with the expulsion of the party that has presented his or her candidature, ceases to hold office, were not in line with the standards of a constitutional and democratic state governed by the rule of law.

In the Opinion [CDL-AD\(2023\)044](#) on the Laws concerning the Special Investigation Service and personal data protection in **Georgia**, the Commission recalled that covert investigative measures are extremely intrusive instruments carrying serious threats to various human rights and fundamental freedoms, including the right to respect for one's private life. The Commission found that the judicial authorisation to carry out covert investigative measures, where it is of a purely formal nature, is not sufficient as a safeguard to ensure the accountability of the authorities in charge and that a follow-up supervisory control exerted by an expert body would play an important role. In the specific context of Georgia, a combined control by the Personal Data Protection Service and the Special Investigation Service would be more efficient to provide effective safeguards against abuse in the context of covert investigative measures.

In the Follow-up Opinions [CDL-AD\(2023\)006](#) and [CDL-AD\(2023\)033](#) on **Georgia**, the Venice Commission dealt with the grounds for disciplinary liability of judges based on the violation of the principle of political neutrality. In view of the importance of the freedom of expression in a democratic society, the Commission recommended restricting these grounds of disciplinary liability to the manifest violations of the principle of political neutrality, while leaving space for comments by judges on issues related to reforms of the judicial system. The Commission then observed that the principles of democracy, separation of powers and pluralism called for the freedom of judges to participate in debates of public interest while respecting the principles of independence and impartiality.

The right to respect for private life was also tackled in the Opinion [CDL-AD\(2023\)046](#) on the Anti-Corruption Bureau of **Georgia**. First of all, the law prescribed a mandatory drug test for certain high-level public officials, with the results of this drug test to be published on the website of the Anti-Corruption Bureau. The Venice Commission considered that there may indeed be compelling and legitimate reasons for this interference with Article 8 ECHR. However, the aim pursued (considering that the law was silent on this) and the proportionality of this measure (in particular considering that the results would be published) raised questions. The Commission recommended to either further clarify or remove the provision on drug testing from the law. Secondly, in respect of the publication of detailed asset and interest declarations, the Commission recommended that precise and explicit references to the relevant provisions in data protection legislation be included in the law.

In the Opinion [CDL-AD\(2023\)040](#) on the draft law of **Kyrgyzstan** about the media, the Venice Commission underlined that, as a state party to the ICCPR, Kyrgyzstan must align the legislative and administrative frameworks concerning media regulation with Article 19 of the ICCPR. When a state party imposes restrictions on the exercise of freedom of expression, these may not put in jeopardy the right itself. Therefore, the Venice Commission highlighted that the relation between right and restriction and between norm and exception must not be reversed. The Commission noted that if the examined version of the draft law were adopted, it could lead to violations of the rights to freedom of expression and have grave consequences for the media as the public watchdog in the country. Thus, the Venice Commission recommended a comprehensive revision of the draft law, encompassing the recommendations provided in this Opinion.

In the Joint Opinion [CDL-AD\(2023\)005](#) on the external assessment of judges and prosecutors in the **Republic of Moldova**, the Venice Commission and DGI observed that the vetting exercise was broad in its scope as it could touch upon the behaviour, assets, wealth, and expenses of the judges/prosecutors and their affiliated persons. Given the impact of such broad exercise on the private life of the judges and prosecutors, the law must set out limits as to what sort of information can be requested and obtained by the vetting bodies. In particular, the law should contain no exceptions regarding potentially self-incriminating information,

privileged information (covered by the lawyer-client privilege), medical or other information of the private nature.

In the Opinion [CDL-AD\(2023\)008](#) on the Intelligence and Security Service in the **Republic of Moldova**, the Venice Commission highlighted the inevitable interference of actions of the security services with individual rights, including the right to respect for private and family life. Additional safeguards would need to be included in the law, requiring *inter alia* that a form of supervisory control by a judge or an independent body always be provided at least prior to the action (authorisation), during the action (continuous oversight) or after completion of the action (*ex post* control), that specific exceptions to the implementation of intelligence measures be foreseen for lawyers and journalists, that when a measure becomes known to a targeted person it should be possible to impugn this measure before a competent independent appeals authority and that legislation on data protection should apply also to counterintelligence activities with narrowly defined exceptions. In its Follow-up Opinion [CDL-AD\(2023\)041](#), the Venice Commission expressed its appreciation that most of these recommendations had been implemented with the adoption of the Laws on the Intelligence and Security Service and on counterintelligence activities.

The Joint Opinion [CDL-AD\(2023\)032](#) concerned the draft “law on the anti-corruption judicial system and on amending some normative acts” of the **Republic of Moldova**. The Commission and DGI examined *inter alia* a draft provision providing for two major measures concerning anti-corruption judges: a) full annual verification of all declarations of assets and personal interest; b) monitoring the lifestyle of judges including their family members. As regards a) it was recalled that under the ECtHR’s case-law when a system of dissemination of data of tax-payers is established, the competent domestic authorities should perform a proper balancing exercise between the competing interests and factors such as the public interest in dissemination of the information in question and the repercussions on and risk of harm to the enjoyment of private life of the persons concerned. As regards b), it was underlined that such an interference with the right to respect for judges’ private or family life will be in breach of Article 8 ECHR unless it can be justified under paragraph 2 of Article 8 as being “in accordance with the law”, pursuing one or more of the legitimate aims listed therein, and being “necessary in a democratic society” in order to achieve the aim or aims concerned.

In Urgent Opinion [CDL-AD\(2023\)037](#) concerning **Poland** the Commission examined the Law “On the State Commission to Investigate Russian Influence on the Internal Security of the Republic of Poland in the period of 2007-2022”. The Commission noted with concern that given the scope of the mandate of the State Commission, the functioning of this new body could interfere with the enjoyment of several rights guaranteed by the ECHR. The most obvious of these are the right to respect for private and family life (Article 8 ECHR) – for example, the reputational damage resulting from the finding that a person acted “under Russian influence”, the right to freedom of expression (Article 10 ECHR) – as regards the State Commission’s work in respect of the media and the spreading of “fake news”, the right to freedom of assembly and association (Article 11 ECHR) – as regards the work of the State Commission in respect of “associations or foundations”, “trade unions, employer’s unions or organisations” and “political parties”, as well as the prohibition of discrimination (Article 14 ECHR) as the work of the State Commission could discriminate on the ground of political opinion, national origin or association with a national minority, because of the extensive powers and lack of control and accountability of the State Commission. The Commission stressed that interferences with rights guaranteed by Articles 8, 10 and 11 ECHR may be justified only insofar as they meet the requirements provided in the second paragraphs of these articles (pursue a legitimate aim, are provided for by law, proportionate to the legitimate aim pursued and necessary in a democratic society).

In the Joint Follow-up Opinion [CDL-AD\(2023\)027](#) on the judiciary and the status of judges in **Ukraine**, the Venice Commission and DGI expressed concern that the proposed new type of

“court monitoring” (which amounted to an assessment of integrity of judges and their compliance with disciplinary standards) would provide the authorities with broad discretionary power which carried serious risks of violating the right to respect for private and family life. Moreover, the draft law contained no provisions as to the storage of the information obtained as a result of monitoring. Storage, however, could be necessary only for a limited period, when the monitoring and the relevant proceedings were pending. In addition, the draft law, did not deal with such questions as who may access the information and whether there was any avenue to request the deletion of certain information.

Interferences with the right to respect for private and family life, and freedoms of expression, assembly and association were discussed in several Opinions on the draft law on de-oligarchisation of **Georgia** (Interim Opinion [CDL-AD\(2023\)009](#) and Final Opinion [CDL-AD\(2023\)017](#)), the draft law on limiting excessive economic and political influence in public life (de-oligarchisation) of the **Republic of Moldova** (Interim Opinion [CDL-AD\(2023\)010](#) and Final Opinion [CDL-AD\(2023\)019](#)), and the Law on the Prevention of Threats to National Security Related to the Excessive Influence of Persons with Significant Economic and Political Weight in Public Life (Oligarchs) of **Ukraine** ([CDL-AD\(2023\)018](#)). In these Opinions, the Venice Commission identified two approaches, a “systemic approach”, requiring the adoption and strengthening of legal tools and institutions in various fields (media, anti-monopoly, anti-corruption, political parties, elections, taxation, anti-money laundering etc.) in a comprehensive and co-ordinated manner, and a “personal approach”, whereby persons were designated as “oligarchs” through the application of specific criteria, leading to specific, rather punitive consequences for the persons concerned, infringing on several human rights. The Ukrainian law, and the Georgian and Moldovan draft laws inspired by it, pursued this “personal approach”, a novelty, without a known equivalent in other Venice Commission member states. While in its Opinion on Ukraine ([CDL-AD\(2023\)018](#)), Interim Opinion ([CDL-AD\(2023\)009](#)) and Final Opinion ([CDL-AD\(2023\)017](#)) on Georgia and Interim Opinion on Moldova ([CDL-AD\(2023\)010](#)), the Venice Commission considered that the law of Ukraine and the draft laws of Georgia and the Republic of Moldova pursued a legitimate aim in seeking to fight oligarchisation, the vagueness of the criteria used to designate a person as an “oligarch”, the broad discretion of the decision-making body in interpreting and applying these criteria and the lack of proportionality and consideration for other less-intrusive measures (as well as more specifically for Georgian and Ukraine, the lack of independence/impartiality of the decision-making body and the absence of due process guarantees and effective remedies afforded to persons designated as “oligarchs”) made it difficult to justify these infringements on several human rights. The Venice Commission consequently found that the measures proposed by the law of Ukraine, and the draft law of Georgia (and initially the draft law of the Republic of Moldova) were difficult to reconcile with Articles 8, 10 and 11 ECHR. It therefore recommended in its Opinions that, instead of this “personal approach”, the “systemic approach” be pursued. In its final Opinion on the Republic of Moldova ([CDL-AD\(2023\)019](#)) the Venice Commission welcomed the decision of the Moldovan authorities to abandon the draft law and to shift the focus to this “systemic approach”.

In this context, it is noted that on 7-8 December 2023 in Cologne the Venice Commission and the Academy for European Human Rights Protection held an international Conference<sup>7</sup> entitled “*Money and democracy – an uneasy relationship*”. The event brought together Venice Commission members, politicians, academics, representatives of international organisations and journalists from various countries. The conference explored ways in which undue influence of big money on democratic decision-making may be exposed, monitored, contained or even prevented. As agreed at the 137<sup>th</sup> plenary session of the Venice Commission, the conference in Cologne will lead to the development of a checklist of the influence of money on democracy, as requested by the Parliamentary Assembly’s President.

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<sup>7</sup> <https://www.coe.int/en/web/portal/international-conference-money-and-democracy>

### ***Equality, non-discrimination, and national minorities***

In Opinion [CDL-AD\(2023\)003](#) on the draft law on Court of **Bosnia and Herzegovina**, the Venice Commission recommended refraining from organising courts strictly along ethnic lines but providing that the composition of the state level judiciary should reflect the diversity of the society of Bosnia and Herzegovina and the judiciary shall be generally representative of the peoples of Bosnia and Herzegovina, as required by the Constitution of Bosnia and Herzegovina.

The Opinion on the Law on National Minorities (Communities) of **Ukraine** [CDL-AD\(2023\)021](#) recommended: to extend the right to organise events in minority languages to all persons; to remove the obligation in Article 10(3) to provide for interpretation into Ukrainian of information on public events at the request of visitors (spectators), or at least to reconsider it in the light of the principle of proportionality; to reconsider the obligations related to publishing books and to bookshops, in the light of the principle of proportionality; to ensure more legal certainty regarding the possibility to have official inscriptions (Article 10(7)) and general information (Article 10(8)) translated in a minority language; to provide in the law itself criteria for the adoption of the methodology, in order to ensure the use of minority languages in contact with administrative authorities in conformity with Article 10 FCNM and with the undertakings ratified by Ukraine under Article 10(2) and 10(4) ECRM. It also reiterated its recommendations on other laws it had already assessed: to use the minority language and differential treatment of the minority languages, in the light of the previous Opinions of the Venice Commission (if appropriate after the end of martial law); to ensure the right to access to mass media in minority languages; to further postpone and reconsider the gradual transformation of the minority language school-system.

While most recommendations made in the previous Opinion had been followed – for example, those related to the definitions; the centres of national minorities, and the criteria for the methodology for the use of minority languages – the Follow-up Opinion [CDL-AD\(2023\)028](#) reiterated the key outstanding recommendations concerning: (1) the absence of measures that guarantee freedom of expression and the right of minorities to enjoy their own culture and to use their own language in the realm of mass media; (2) the obligation to provide election campaign materials in both Ukrainian and minority languages; (3) apart from the issue of textbooks, the recommendations on education.

### ***Right to an effective remedy***

In its Opinion [CDL-AD\(2023\)039](#) concerning the draft amendments to the Constitution of **Bulgaria** the Commission noted that the powers related to appointments, promotion, transfer, dismissal and discipline of judges and prosecutors are concentrated within the judicial and prosecutorial councils, which is positive. As regards judicial review, the Commission noted that there should be a possibility of an appeal to an independent court against decisions of disciplinary bodies, in conformity with the case-law of the ECtHR. However, regarding the scope of such appellate review, the Venice Commission stressed that the appellate body should act with deference to the judicial council. This is *a fortiori* true if the disciplinary council itself is an independent body, and if the procedure before it offers guarantees of fair trial – in this case the need to have a review by an independent court becomes less relevant.

In the Joint Opinion [CDL-AD\(2023\)032](#) on the draft law on the anti-corruption judicial system of the **Republic of Moldova** the Commission and DGI noted that it was not clear if the appointment decisions concerning anti-corruption judges may be subject to review. It was recalled that under the Council of Europe Committee of Ministers Recommendation CM/Rec(2010)12, “an unsuccessful candidate [judge] should have the right to challenge the decision, or at least the procedure under which the decision was made”. The same position has been taken by CCJE in its Opinion No. 21(2018) Preventing Corruption among Judges,

noting that the right to challenge appointment decisions aims to “ensure objectivity and transparency in the process”. Thus, the Commission and DGI recommended that the draft law contain a cross-reference to the applicable legislation (Administrative Code) which, according to the authorities’ written remarks, provides for review of the SCM decisions.

In the Joint Opinion [CDL-AD\(2023\)029](#) on the legal safeguards of the independence of the judiciary from the executive power in the **Netherlands** the Commission and DGI noted that the disciplinary system does not provide for a right of appeal to challenge the disciplinary decision of the Supreme Court and subsequent sanction concerning councillors of the Administrative Jurisdiction Division. Given that the Venice Commission and the European Court have consistently recommended a right to appeal against decisions on disciplinary sanctions, this safeguard should be fulfilled when the decision in the first instance is taken by the supreme court as the highest tribunal.

### 3. Free elections and political parties

In 2023 the Commission remained active in the electoral field, providing states with advice, through Opinions and *amicus curiae* briefs, on various important issues concerning notably reforms of electoral codes, rules of procedures in Parliaments, restrictions to the right to free elections and the functioning of political parties which play a fundamental role in democratic life.

In the Joint Opinion [CDL-AD\(2023\)030](#) on the draft amendments to the Electoral Code and related legislation of **Armenia** the Venice Commission and the OSCE/ODIHR noted that the draft amendments included technical improvements but failed to address several previous recommendations. The Opinion formulated new recommendations, *inter alia*, concerning: the regulation of elections in emergency situation; the publication of voter lists; the dual institutional structure of political finance oversight, which had failed to prove its effectiveness; the issue of de-registration of candidates and party lists. Moreover, while Armenia’s consistent efforts to reform its constitutional and electoral system were welcome, too frequent amendments to electoral legislation could make the law less predictable and create legal uncertainty.

In the Opinion [CDL-AD\(2023\)039](#) concerning the draft amendments to the Constitution of **Bulgaria** the Commission tackled the issue of the right to stand for election for persons with double nationality. It noted that the Code of Good Practice in Electoral Matters refers to the European Convention on Nationality, which provides in Article 17 that “Nationals of a State Party in possession of another nationality shall have, in the territory of that State party in which they reside, the same rights and duties as other nationals of that State Party”. Bulgaria made a reservation to Article 17 upon the ratification of the Convention. Yet, the evolving jurisprudence of the European Court of Human Rights suggests that the deprivation of the right to be eligible for election for persons with dual citizenship might be contrary to Article 3 Protocol 1 of the European Convention on Human Rights. According to the same case-law, general restrictions on electoral rights, such as a blanket restriction for persons with dual citizenship, have to be assessed in the context of a state’s specific historical and political situation and may be more difficult to justify with the passage of time. Based on the above, the changes to Articles 65 and 110 of the Constitution were welcomed in so far as they addressed the Commission’s previous recommendations.

In Opinion [CDL-AD\(2023\)034](#) on the 2023 Constitutional reform in **Chile**, the Venice Commission dealt with a series of questions that related to the electoral system and, *inter alia*, its constitutional entrenchment. The Venice Commission noted that the fundamental features of the electoral system (including in principle the proportional system) may be included in the constitution, while the other issues and the development of such constitutional principles (including, in principle, electoral thresholds) can be better regulated through legislation. With regard to gender equality in elected bodies, the Venice Commission found that a distinction

should be made between gender parity among candidates and redistribution of parliamentary seats. While provisions which require a certain gender parity among candidates nominated by the parties are perfectly acceptable, a more restrictive approach should be adopted in respect of redistributing parliamentary seats, as its effect could be the alteration of the will of the electoral body and then of the democratic principle.

The Joint Opinion of the Venice Commission and OSCE/ODIHR [CDL-AD\(2023\)047](#) on the draft amendments to the Election Code and to the Rules of Procedure of the Parliament of **Georgia** noted that, even if some of the recommendations of the previous Opinions had been followed, a more holistic approach of the electoral reform was needed. The draft submitted to the Commission was limited to election commissions. The main recommendations included changing the draft amendments to ensure that consensus on the appointment/election of the non-partisan members and Chairperson of the CEC be sought; this might imply requiring a 2/3 parliamentary majority in the first place and, in any case, an anti-deadlock mechanism which favoured qualified majorities; transferring the nomination authority for the non-partisan members and Chairperson of the CEC back from the Speaker of Parliament to the President of Georgia; removing from the draft the abolishment of the deputy chairperson elected from among the opposition party-appointed CEC members. The Opinion reiterated previous recommendations relating to the composition of election commissions, such as ensuring the transparent formation of the Selection Commission and its diverse, impartial and reputable membership and a transparent, merit-based nomination process for CEC non-partisan members and Chairperson.

The Joint Opinion of the Venice Commission and OSCE/ODIHR on the amendments of the Federal Election Act of **Germany** [CDL-AD\(2023\)020](#) noted that the amendments to this Act included two main changes to the electoral system: the first implied the primacy of the vote for proportional lists, involving the suppression of the overhang mandates as well as the possibility for some constituencies not to be represented; the second one abolished the exception to the 5% threshold for parties having obtained three direct mandates. The Venice Commission and ODIHR reiterated that any electoral system may be chosen as long as it does not go against electoral international standards. They considered that the amendments under consideration were largely in conformity with these standards, both in substance and regarding the way and timing of their adoption procedure. However, the Venice Commission and OSCE/ODIHR took note of the lack of cross-party support. Building broad consensus on the choice and fundamental aspects of an electoral system contributed to the acceptance, the legitimacy and the stability of the governing system. Consideration could be given to improving the representation of women in candidatures.

The Joint Opinion of the Venice Commission and OSCE/ODIHR on the Law amending the Electoral Code of the **Republic of Moldova** [CDL-AD\(2023\)031](#) recommended that, if they wish to prevent members of parties declared unconstitutional from holding certain elected offices, the Moldovan authorities: (1) introduce adequate criteria and an effective individual assessment that would limit restrictions on the right to be elected only to those members and/or elected officials of the party whose activities have endangered the Constitution and the integrity of the democratic State, and/or actively pursued the (illegal) goals of the unconstitutional parties; (2) afford to these persons the full range of procedural safeguards in the assessment process, including a sufficiently reasoned decision and the possibility to challenge the limitation of rights by providing an opportunity to seek a judicial review of the decision. On 3 October 2023, the constitutional court had declared the provisions at issue unconstitutional, and on 4 October 2023, the Parliament had adopted a revised version of the law, while the electoral process at local level was ongoing. The Opinion did not cover these last amendments, but referred to those which had been declared unconstitutional, which indeed, in the Commission's opinion, were against Article 3 of Protocol 1 to the ECHR as well as Article 25 ICCPR, in that they failed to respect the principle of proportionality, since they did not provide for an individual assessment and access to court.

The Joint Follow-up Opinion [CDL-AD\(2023\)048](#) of the Venice Commission and OSCE/ODIHR as well as the relevant joint *amicus curiae* brief [CDL-AD\(2023\)049](#) for the Constitutional Court of the **Republic of Moldova** dealt with the same issue. The reform, adopted in one day – the day after the constitutional court had declared the law assessed by the [CDL-AD\(2023\)031](#) mentioned above - did not comply with the principle of broad consensus and public debate. While the new rules served a legitimate purpose, they were not always predictable and did not always comply with the principle of proportionality. If the authorities wanted to maintain cases of ineligibility, they had to define the criteria for restricting the right to stand for election more precisely and more narrowly, in accordance with the principles of legal certainty and proportionality, limiting restrictions on this right to people whose activities have endangered the constitution and the integrity of the democratic state; the authorities had to demonstrate, by providing sufficient and relevant evidence, that a person met the conditions laid down by law; individuals had to be given a real chance before the electoral bodies, with a reasonable burden of proof enabling them to rebut the presumption of their individual involvement in the party's activities that led to its declaration of unconstitutionality. The ineligibility provided for by the amendments was preventive rather than punitive in nature and could therefore not be equated with a criminal charge within the meaning of Article 6 of the ECHR. The presumption of innocence was relevant if the procedure for deciding on the ineligibility took place in parallel with criminal proceedings.

The Joint Opinion [CDL-AD\(2023\)025](#) of the Venice Commission and OSCE/ODIHR focused on the draft law amending certain legislative acts of **Ukraine** which restrict the participation in the state power of persons associated with political parties whose activities are prohibited by law. It recommended that if the Ukrainian authorities wished to disqualify certain members of prohibited parties, they should: (1) introduce adequate criteria and an effective individual assessment that would limit restrictions on the right to be elected only to those elected officials of the party whose activities have endangered the national security and the integrity of the democratic state, and/or actively pursued the illegal goals of the prohibited parties, and whose election would therefore pose a threat to the democratic order and national security of Ukraine; (2) once the martial law has been lifted, limit the effect of the restriction to the shortest possible period of time, ensuring that the longest period of ineligibility is maintained only for individuals presenting the most serious threat and subject to decision of the relevant courts on their individual liability; (3) afford to these persons the full range of procedural safeguards in the assessment process.

In Opinion [CDL-AD\(2023\)026](#) on amendments to the Rules of Procedure of the Verkhovna Rada of **Ukraine**, the Venice Commission assessed a draft law that would have allowed the Verkhovna Rada to deprive an MP who is (or was) a member of a parliamentary faction whose activities have been suspended of their parliamentary rights (such as participation rights in plenaries and committees). The Venice Commission found that this would amount to a *de facto* stripping of their mandate and, as such, interfere with the MPs' right to sit as an elected parliamentarian, a corollary of the right to free and fair elections enshrined in Article 3 of Protocol No. 1 to the ECHR. Despite pursuing, in principle, the legitimate aim of protecting, *inter alia*, the State's independence, the democratic order and national security, the Venice Commission found that the severity of the sanctions, coupled with the lack of a real individual assessment, the unlimited application *ratione temporis* and the lack of due process guarantees carried the risk of its arbitrary and disproportionate implementation. It therefore recommended not to adopt the draft law.

In the Urgent Opinion [CDL-AD\(2023\)037](#) on the Law on the State Commission to Investigate Russian Influence on Internal Security in the Republic of **Poland** between 2007 and 2022 and on the draft law amending that law, the Venice Commission found that the legislative process was controversial and fast-tracked. The Commission was also particularly concerned about the adoption of the law just a few months before the parliamentary elections (October 2023),

representing risks for a candidate running for election of being stigmatised by the proceedings/the decision of the State Commission. For the Venice Commission, the necessity of introducing such a new – extraordinary, intrusive, retroactive and non-judicial in nature – mechanism had not been established. It remained unclear why the existing legal framework (criminal law, anti-corruption policies, disciplinary liability, etc.) would not suffice to identify the unwarranted practices the law aimed to discourage. The Venice Commission considered the law fundamentally flawed in that sense. The Commission also expressed particular concern about the overly broad scope of application of the law and excessive vagueness of its core notions, allowing the State Commission – which, due to the appointment procedure of its members and its *modus operandi*, resembled a body of a political nature – enjoying a virtually unlimited discretion when applying the law. Due to these shortcomings, the Venice Commission found that the law was lacking any guarantees against political misuse, and it might have an influence on the electoral process. It might lead to the violation of numerous procedural and substantive human rights and was also at odds with the principles of legal certainty, the separation of powers and checks and balances. Therefore, the Venice Commission urged the authorities to repeal the law in its entirety.

The *amicus curiae* brief [CDL-AD\(2023\)050](#) for the Constitutional Court of **Ukraine** relating to additional sanctions for committing an administrative offence related to the dismissal of a mayor for a conflict of interests – his campaign had been funded by a person who had obtained an advantage. He had received an administrative fine and then been dismissed. One of the questions put to the Commission was whether the right to elect and to be elected as a mayor of a city included the right to sit as an elected person. The answer was positive. The constitutional court had also asked whether a dismissal was in conformity with international standards and which rights it could violate. Article 3 of Protocol 1 to the ECHR did not apply, contrary to Article 25 ICCPR enshrining the right to be elected. Concerning the requirement for the restriction to be prescribed by law, there might be doubts about the foreseeability of the relevant provision. For what concerned the legitimate aim, preventing conflicts of interest in the election process was in the interest of democracy and therefore based on objective and reasonable criteria. Concerning the proportionality of the measure, a balance had to be established between the aim of the protection of the democratic order and the right to stand for elections while considering the specific circumstances of the case. It belonged to the constitutional court to assess whether an offence which had led to a rather light administrative fine could nevertheless be considered as serious enough to justify the additional sanction of disqualification. In this assessment the nature of the offence (an election-related conflict of interests) and the specific context in Ukraine should be taken into account.

#### **4. Judiciary and the prosecution service**

In 2023, a large number of Opinions issued by the Commission continued to tackle fundamental issues related to the judiciary and the prosecution service in the context of constitutional or statutory reforms. They covered notably the organisation and efficiency of judicial and prosecutorial systems, the independence of judges as well as their appointments, careers and discipline, and bodies of governance of the judiciary and of the prosecution service.

##### ***Organisation and efficiency of judicial and prosecutorial systems***

In Opinion [CDL-AD\(2023\)003](#) on the draft law on courts of **Bosnia and Herzegovina**, the Venice Commission recommended that the composition of the panels in the courts and the method of allocation of cases to individual judges be based to the maximum extent possible on objective and transparent criteria established in advance by the or by special regulations based on law (like the courts' internal rules). It was commendable that the authorities of Bosnia and Herzegovina committed to making the necessary changes to comply with this recommendation. Also, the Venice Commission recommended that the place of the court seats

should be defined on the basis of an evidence-based analysis of the impact of the seat location on the prosecution services, detention facilities and penitentiary institutions, legal aid services and the efficiency of justice in general, as well as the security issues related to parties.

In Opinion [CDL-AD\(2023\)039](#) concerning the draft amendments to the Constitution of **Bulgaria** the Commission noted that, as regards the organisation of the prosecution service, sufficient autonomy must be ensured to shield prosecutorial authorities from undue political influence. Autonomy must also be ensured inside the prosecution service. Prosecutors must not be submitted to strict hierarchical instructions without any discretion and should be in a position not to apply instructions contradicting the law. The Venice Commission had recommended that the functions and powers of the prosecution service outside of the criminal law sphere should be significantly curtailed at the statutory level. Thus, the draft met the long-standing recommendations of the Commission. As regards the needed issuance of methodological guidance regarding the work of prosecutors, the Commission noted that the Prosecutor General seems to be the appropriate person as the head of the prosecution service to issue such guidance. The absence of methodological guidance would create a situation where prosecutors behave inconsistently with one another and where different prosecutors argue for opposing interpretations of the law.

In Opinion [CDL-AD\(2023\)044](#) on the Law on the Special Investigation Service (SIS) and on the provisions of the Law on Personal Data Protection concerning the Personal Data Protection Service of **Georgia**, aiming to provide full independence of investigations conducted by the Special Investigation Service, the Venice Commission recommended to revise the amended SIS law and other laws if necessary to grant the SIS prosecutorial power, the authority to transfer cases to its jurisdiction, as well as the power to initiate and terminate investigations.

The issue of the powers of the Ministry of Justice with respect to the appointment of and disciplinary procedure against prosecutors appeared both in the Joint with DGI Opinion [CDL-AD\(2023\)015](#) concerning the judiciary in **France** and in the Joint with DGI Opinion [CDL-AD\(2023\)029](#) concerning the independence of the judiciary from the executive power in the **Netherlands**. In the French system, characterised by the unity of the body of magistracy, the Venice Commission and DGI found that both disciplinary and appointments' procedures of prosecutors should be aligned to those of judges, shifting relevant powers from the Minister of Justice to the CSM. In the Opinion on the Netherlands, the Venice Commission and DGI dealt, among others, with the role of the Minister of Justice and Security with regards to the Council for the Judiciary and the court management boards, in terms of appointments of and disciplinary powers against the respective members, as well as to the Public Prosecution Service. It recommended removing the minister's power to give instructions not to prosecute in specific cases, at least if not limited to clearly defined exceptional circumstances. The Commission and DGI addressed also the issue of the role of Parliament in the appointment of the judges of the Supreme Court and assessed that the transparency of the process by which the House of Representatives designates supreme court judges, as well as the process by which the Minister of Justice nominates members of the Council for the Judiciary should be reconsidered.

In the Joint Follow-up Opinion [CDL-AD\(2023\)027](#) concerning the judiciary and the status of judges in **Ukraine**, the Venice Commission stressed that when making substantial changes to the framework governing the judiciary, the authorities must take a comprehensive and coherent approach with due regard to the considerations of stability of the judicial system. It was essential to respect the sequence of changes in the judicial reforms and give priority to the effective enforcement of the existing ordinary tools of judicial accountability.

### ***Institutional and individual independence of judges***

In the *amicus curiae* brief [CDL-AD\(2023\)002](#) and Opinion [CDL-AD\(2023\)003](#) the Commission discussed the institutional design of the Court of **Bosnia and Herzegovina** and its impact on the independence of judges. The Commission found that international standards do not constrain the discretion of Bosnia and Herzegovina to maintain a system whereby appeals are considered by a separate division within the same court if it has all attributes of a judicial body. On the issue of the potentially broad powers of the President of the court to assign judges to various divisions and allocate cases to them, the Venice Commission concluded that the Decision on Determining the Guiding Criteria adopted by the President in July 2022 - if implemented correctly - may be considered to have imposed constraints on the discretion of the President.

In Joint Opinion [CDL-AD\(2023\)029](#) on the legal safeguards of the independence of the judiciary from the executive power in the **Netherlands**, the Commission and DGI welcomed the pending legislative proposal providing for the incompatibility between the position of judge and of Member of Parliament, national as well as European, and recommended introducing the obligation for judges who become Members of the national or the European Parliament to take special leave for the duration of their term.

### ***Appointments, careers and discipline of judges***

In Joint Opinion [CDL-AD\(2023\)045](#) on judicial ethics and disciplinary proceedings in **Armenia**, the Venice Commission and DGI stressed that the function of the Minister of Justice to initiate and investigate disciplinary cases against judges was inappropriate because it endangered judicial independence. That function had to be phased out as soon as the Ethics and Disciplinary Commission (EDC) proved its efficiency. The authorities were invited to pursue the reform of the disciplinary legislation, increasing the efficiency of the EDC.

In Opinion [CDL-AD\(2023\)003](#) on the draft law on courts of **Bosnia and Herzegovina**, the Venice Commission recommended that the criteria of evaluation of judges should be defined in the Law on the HJPC and the possibility for the court presidents to evaluate the performance of the judges/lower presidents should at least be circumscribed by involving the High Judicial and Prosecutorial Council in this process.

In the Opinion [CDL-AD\(2023\)039](#) concerning the draft amendments to the Constitution of **Bulgaria** the Commission noted its reservations about the very idea of probationary periods for judges, as such status undermines their independence. It recommended removing such probationary periods or surrounding them with all necessary guarantees. This should not be interpreted as excluding all possibilities for establishing temporary judges. If probationary appointments are considered indispensable, permanent appointment after the probationary period should be the rule and a 'refusal to confirm the judge in office should be made according to objective criteria and with the same procedural safeguards as apply where a judge is to be removed from office'. Objective criteria for refusal of appointment to the position of tenure, with the same procedural safeguards as for removal of judges with tenure, should also be specified in the law if not in the constitution. As regards appointment of court presidents, the Commission recommended keeping the existing system of seven-year appointments in place without the option of a renewal. Also, the Commission expressed concern about the manner of appointment of the Inspector General and the Inspectors by Parliament. To neutralise risks of political interference, the Venice Commission recommended to give the Chambers of the SJC the power to nominate a certain number of candidates for election by Parliament.

In the Opinion [CDL-AD\(2023\)015](#) on the Superior Council of Magistracy and the status of the judiciary in **France**, where the President of the Republic has the power to appoint judges upon the proposal of the Ministry of Justice the Commission recommended attributing to the SCM,

at least, the power to modify the proposal of appointments made by the Minister of Justice. In line with the principle of prosecutorial autonomy and European practice, and especially in the French system, characterised by the unity of the body of magistracy, the Venice Commission found that the appointments' procedure of prosecutors should be aligned to that of judges, while currently the SCM can only advise, in a non-binding manner, the Minister of Justice. The same principle of alignment between the two categories should apply also to disciplinary proceedings, on which matter the SCM should also be given the power to initiate the disciplinary proceedings *ex-officio*. The Venice Commission also underlined the increased sensitivity regarding the issue of disciplinary offences and their impact on the independence of the judiciary, recommending defining in a complete and concrete manner the notions in the disciplinary provisions, referring explicitly to the principle of proportionality of sanctions, and reinforcing the right of defence of the magistrates.

In the Follow-up Opinions [CDL-AD\(2023\)006](#) and [CDL-AD\(2023\)033](#) on common courts in **Georgia**, the Venice Commission suggested that fixed non-renewable terms for the HCoJ members were to be preferred to ensure the appearance of independence of the HCoJ. Moreover, it was appropriate to review the manner of election of the judicial members of the HCoJ. The choice of how this recommendation could be implemented depended on the organisation of an inclusive national consultative process. However, the Commission pointed to the temporary option of using mixed national/international advisory boards in facilitating the procedure for evaluating the integrity of candidates to various positions in the judiciary, including the judicial council. In the same Opinions the Venice Commission recommended circumscribing the wide powers of the HCoJ when transferring (seconding) judges without their consent. The Commission advised adding narrower criteria for such transfers, introducing time and location limitations, providing for a random system of decisions. The Venice Commission further advised revising the procedure for suspension of judges from office by defining more precisely the grounds for suspension, allowing for more time for appealing against such decisions and maintaining the salary during the suspension period.

In the Joint Opinion [CDL-AD\(2023\)032](#) on the draft law on the anti-corruption judicial system of the **Republic of Moldova** the Commission and DGI noted that it was not clear if the appointment decisions concerning anti-corruption judges may be subject to review. It was recalled that under the Council of Europe Committee of Ministers Recommendation CM/Rec(2010)12, "an unsuccessful candidate [judge] should have the right to challenge the decision, or at least the procedure under which the decision was made". The same position has been taken by CCJE in its Opinion No. 21(2018), noting that the right to challenge appointment decisions aims to "ensure objectivity and transparency in the process". Thus, the Commission and DGI recommended that the draft law contain a cross-reference to the applicable legislation (Administrative Code) which, according to the authorities' written remarks, provides for review of the SCM decisions.

In the Follow-up Opinion [CDL-AD\(2023\)011](#) to the Opinion on the draft amendments to the Law on the Judicial Council and Judges of **Montenegro**, the Venice Commission assessed to what extent its previous recommendations (issued in the main Opinion adopted in December 2022 [CDL-AD\(2022\)050](#)) had been followed. The Commission confirmed the previous overall positive assessment of the draft law and welcomed the fact that several of the recommendations of the December 2022 Opinion, such as the reduction of the cooling-off period (related to the political incompatibility) for membership in the Judicial Council, had been followed or partly followed. However, in order to ensure full compliance with the December 2022 Opinion, the Commission reiterated some of its recommendations such as to provide that work-related rights of the judges be regulated by law and that appropriate and tailored evaluation for the judges of the Supreme Court be envisaged.

In the Joint Opinion [CDL-AD\(2023\)029](#) on the legal safeguards of the independence of the judiciary from the executive power in the **Netherlands**, the Commission and DGI addressed,

*inter alia*, the issue of the role of Parliament in the appointment of the judges of the supreme court and assessed that the transparency of the process by which the House of Representatives designates supreme court judges should be reconsidered. On disciplinary matters, the Commission highlighted the need to set concrete and precise definitions and references to the element of proofs, as well as to abolish differences in treatment between judicial and non-judicial members. The position of councillors of the Administrative Jurisdiction Division of the Council of State should also be aligned to the position of other judges in disciplinary matters, and a remedy to an independent instance should always be provided, including when the Vice-President issues a written warning against a councillor.

### ***Integrity and vetting in the judiciary and the prosecution service***

The Joint Opinions [CDL-AD\(2023\)005](#), [CDL-AD\(2023\)023](#) and [CDL-AD\(2023\)035](#) on the **Republic of Moldova** dealt with a special mechanism of vetting (extraordinary evaluation) of judges and prosecutors by assessment commissions composed of three national and three international members. The Venice Commission and DGI acknowledged that extremely high level of corruption may justify an extraordinary assessment of the sitting judges, but it should only be used as a measure of last resort. In view of the risks for the independence and efficiency of the judicial and prosecution systems, such an extraordinary mechanism must include strong safeguards. The fact that the ultimate decision to dismiss judges and prosecutors remained in the hands of the Supreme Judicial and Supreme Prosecutorial Councils deserved to be assessed positively. Moreover, the institutional features of the two assessment commissions – the main fact-finding bodies – sufficiently ensured their independence from the political majority of the day, in particular through the presence of three international members and one member nominated by the opposition in the Parliament. Also, the prosecutors and judges would be provided with numerous procedural guarantees during the vetting proceedings. It was also commendable that the decisions on dismissal of judges and prosecutors would be appealable to the Supreme Court of Justice having the power to finally determine the case. The Venice Commission and DGI further stressed *inter alia* that the substantive grounds for the vetting must be narrowly defined, the findings of the vetting bodies must not contradict final judgments, and judges and prosecutors concerned must have a real chance to refute the presumptions related to the unexplained wealth and must be able to put forward the “inaccessible evidence” or *bona fide* ownership defence.

Joint Opinion [CDL-AD\(2023\)032](#) concerned the draft law on the anti-corruption judicial system in the **Republic of Moldova**. The Commission and DGI were of the view that the objections raised by several stakeholders in the Republic of Moldova warranted a thorough impact assessment of the draft law. As regards the draft provisions the Commission and DGI recommended, in particular, the following: In order to respect the principle of the unity of the judiciary, an amendment of the title of the draft law as well as all the removal of references in the specific provisions to an “anticorruption judicial system”; a detailed data analysis in order to ensure that the envisaged numbers of judges, especially at the appeal court (ACCCA), will be adequate in practice in order to adjudicate on corruption-related cases in a reasonable time; the SCM, once its Selection and Evaluation Board is operational, be entrusted with the selection procedure, without introducing a preselection procedure to be carried out by an additional body; the regulations to be adopted by the SCM should provide for a minimum number of members who should take part and vote in the selection, the necessary quorum, as well as general and intermediary deadlines in the pre- and selection procedures in order to ensure legal clarity (foreseeability) and efficiency; monitoring of “the lifestyle of judges” by the SCM is not necessary and should be removed from the draft law since the asset and personal interests verification is in itself an adequate and sufficient means for monitoring judges’ integrity.

The Joint Follow-up Opinion [CDL-AD\(2023\)027](#) on **Ukraine** dealt with the draft law which sought to broaden the grounds for checking the integrity of judges and their compliance with

disciplinary standards by introducing a new type of “court monitoring” and by using lie-detector (polygraph) in various judicial employment contexts. The Venice Commission and DGI considered that the necessity of introducing these procedures had not been established. It remained unclear why the aggregate of existing mechanisms aiming to safeguard integrity within the judiciary had not been sufficient and why it had been essential to introduce extraordinary new mechanisms. Furthermore, the scope of application of the new tools was remarkably broad. In addition, the gathering powers of the monitoring authority lacked precision and could lead to abuse; there were no time-limits for the monitoring exercise; the legal remedies and procedural safeguards were not duly stipulated. The monitoring, therefore, carried serious risks of abuse and interfered excessively with the principle of judicial independence. The Venice Commission and DGI further expressed serious concerns regarding the proposed use of lie detectors. This technology remained largely controversial, and the draft law provided broad grounds for its application. The use of lie detector was not accompanied by effective remedies and procedural safeguards.

### ***Bodies of governance of the judiciary and the prosecution service***

The Joint Opinion [CDL-AD\(2023\)045](#) on **Armenia** dealt with the institutional improvement of the Ethics and Disciplinary Commission (EDC). The Venice Commission and DGI welcomed the proposal to increase the overall number of lay members in the EDC in view of the necessity to remove the risk of judicial corporatism in the disciplinary proceedings against judges. However, it was necessary to address the issues of quorum and deciding majorities in the EDC. For the sake of effective participation of both judicial and non-judicial groups, the law could provide that the EDC could not adopt decisions exclusively by votes of one of those groups. Moreover, the authorities were invited to reconsider the list of nominating bodies, given that some of them were entitled to initiate on their own disciplinary proceedings against judges. Domestic law could further secure the participation of academic professionals in the nomination procedure and the SJC could play a role in the election of the EDC lay members. In this context, the Venice Commission and DGI emphasised that the SJC should remain free from political influence. As a guarantee for political neutrality of the SJC, the law could impose restrictions for the politicians (including recent politicians) to become the SJC members and ensure that the politicians do not take up positions in the SJC without a cooling-off period.

In the Opinion [CDL-AD\(2023\)003](#), on the draft law on courts of **Bosnia and Herzegovina**, the Venice Commission recommended that the draft law should provide a proper division of administrative functions between the HJPC and the Ministry of Justice in the sphere of court management, in particular by replacing the reference to the general monitoring power of the Ministry with a list of more specific powers of court administration. The authorities in Bosnia and Herzegovina expressed willingness to implement this recommendation which was welcomed by the Venice Commission.

In the Opinion [CDL-AD\(2023\)039](#) concerning the draft amendments to the Constitution of **Bulgaria** the Commission considered that dividing the SJC into two separate councils was in line with previous Venice Commission recommendations. The Commission recommended reconsidering the composition of the Prosecutorial Council, so as to ensure the accountability and the effectiveness of the prosecution service while at the same time excluding the control of this institution by the political majority of the day. To avoid the risk of isolation of the two professions, meetings between the two councils could be envisaged without having to be institutionalised, aimed at exchanging information and best practices. The Commission noted that the powers related to appointments, promotion, transfer, dismissal and discipline of judges and prosecutors are concentrated within the judicial and prosecutorial councils, which is positive. It also noted that under the amendments, the composition of the SJC is in line with previous Venice Commission recommendations. Regarding the presence of the Minister of Justice in the SJC, the Commission noted that it has so far been cautious in its approach. If the participation of the Minister in the work of the SJC is maintained, the Minister should not

participate in disciplinary proceedings against judges. The provision that the members of the SJC, elected from the parliamentary quota, should not be members of the judiciary was welcome.

In Opinion [CDL-AD\(2023\)015](#) on the Superior Council of Magistracy and the status of the judiciary in **France**, the Commission examined the composition of the Supreme Council of Magistracy (SCM) and, in particular, at the proportion between judicial and non-judicial members, recalling that the section with jurisdiction on judges should have a majority of judicial members. As to the way members are selected, the Commission highlighted, on the one hand, the importance of balancing the representation of lower and higher courts and allowing a direct selection of judicial members by their peers, and on the other hand, the need to establish (in)eligibility criteria for the selection of non-judicial members with a qualified majority, in order to ensure the maximum diversity. The Commission also assessed that, in light of evolving best practices, the theoretical possibility for the Minister of Justice to participate in all the sittings of the sections of the SCM except those concerning disciplinary matters should be revised. As regards the powers of the SCM, the Commission highlighted the importance to clarify the primary role of the SCM as guarantor of the independence of the judiciary, which the French Constitution entrusts with the President of the Republic.

The Follow-up Opinions [CDL-AD\(2023\)006](#) and [CDL-AD\(2023\)033](#) on common courts in **Georgia** stressed the necessity of the comprehensive reform of the High Council of Justice (HCoJ) which meant addressing effectively the persistent allegations of lack of integrity of the HCoJ and judicial corporatism; reconsidering the powers, functions, decision-making procedures, and the manner of election of members of the HCoJ. Minor or technical amendments to domestic law would not meet that recommendation. The issue of judicial corporatism could be addressed in multiple ways, for example by changing the manner of election of the judicial members of the HCoJ, limiting their other administrative functions in the judiciary, scaling back the powers of the HCoJ to reduce the risk of abuse, dividing its powers between different bodies. Also, it was important to ensure not only the presence, but also the effective participation of lay members in the work of the HCoJ. The Commission recommended therefore revising the decision-making procedure within the HCoJ to ensure an appropriate balance between the two groups represented in the HCoJ (judicial and lay members). Also, the Commission recommended using a staggered technique in the election of members of the HCoJ to make sure that the numerous replacements of members of the judicial council did not undermine the continuity and efficiency of that body.

Lastly, in the Follow-Up Opinion [CDL-AD\(2023\)043](#) the Commission examined a new version of amendments related to the proposed reform the **Kosovo** Prosecutorial Council (KPC). The Commission found the new institutional design of the KPC with three prosecutors elected by their peers in line with the Venice Commission's position that a "substantial part" should be prosecutors elected by their peers. Although several of the previous recommendations had been addressed, the Commission also found that other recommendations regarding the election process of prosecutors, as well as those aimed at strengthening the pluralistic nature of the KPC and enlarging the pool of shortlisted candidates submitted to the plenary session had not been followed. The Commission noted that the procedure for the election of all three lay members by a simple majority in the Assembly gave too much power to a majority-dominated parliamentary committee, thus failing to offer sufficient safeguards against manipulation or the perception of manipulation. It also found a heightened risk of politicisation in the proposal for the increase of the number of the KPC by eight new lay members elected by a simple majority of the Assembly for a transitional period. This could adversely impact the integrity and stability of the mandates of constitutional bodies like the KPC. The Commission recommended several measures to introduce appropriate safeguards against the risk of politicisation including through the involvement of independent experts and bodies in the process of selecting the lay members of the KPC and through the introduction of more

stringent rules on the failure of KPC members to effectively participate in the activity of the KPC without valid reasons.

## 5. Follow-up activities

The implementation of the Commission's recommendations contained in its Opinions remains a process of continued genuine dialogue between the Venice Commission in its advisory capacity and national authorities in their capacity of decision-makers. In order to further increase the impact of its recommendations, in 2023 the Venice Commission, in parallel to Follow-up Opinions, carried out the follow-up activities, occasionally in co-operation with other Council of Europe or EU institutions, in order to help its member states advance in core areas of constitutional or statutory reforms. Examples of such activities are:

- Participation of Venice Commission rapporteurs in the hearing on "*Combatting undue influence: anti-oligarch legislation in Ukraine, Georgia and the Republic of Moldova*" organised by the Monitoring Committee of the Parliamentary Assembly (Paris, 21 March 2023);
- Participation of the President of the Venice Commission, Ms Claire Bazy Malaurie, and of the Secretary of the Commission in a hearing on "*Examining the legitimacy and legality of the ad hominem term-limit waiver for the incumbent President of the Russian Federation*" organised by the Committee on Legal Affairs and Human Rights of the PACE (Strasbourg, 26 April 2023);
- Participation of Venice Commission rapporteurs in a hearing on the legal situation and the functioning of institutions of Serbia organised by the Monitoring Committee of the Parliamentary Assembly (Strasbourg, 26 April 2023);
- Meeting of a delegation of the Venice Commission, led by its President, Ms Claire Bazy Malaurie, with the President of Ukraine, Mr Volodymyr Zelensky, and the Speaker of Parliament, the Deputy Prime Minister, the Minister of Foreign Affairs, the Minister of Justice and the Prosecutor General (Kyiv, 5 May 2023);
- Participation of a Venice Commission member in the hearing organised by PACE on "*The challenge of far-right ideology to democracy and human rights in Europe*" (hearing of the Committee on Political Affairs and Democracy) (Strasbourg, 20 June 2023);
- Participation of a Venice Commission member in the hearing organised by the Parliamentary Assembly on "*Financing of political parties*" (joint hearing of the Committee on Political Affairs and Democracy and the Monitoring Committee) (Strasbourg, 20 June 2023);
- Online participation of the Venice Commission Honorary President, Ms Suchocka, in the exchange of views on "*The Independence and role of prosecutors and judges across the European Union, including appointment procedure*", organised by the Democracy, Rule of Law and Fundamental Rights Monitoring Group of the Committee on Civil Liberties, Justice and Home Affairs of the European Parliament (19 July 2023);
- Online technical consultations on the right to freedom of expression and freedom of the media in the Kyrgyzstan (31 October 2023);
- Participation of the Venice Commission Honorary President, Ms Hanna Suchocka, and of Mr Richard Barrett, member of the Commission, in the official meeting of the extraordinary mechanism of the Advisory Group of Experts (AGE) set up to assist the Ukrainian authorities in evaluating the moral qualities and professional competence of candidate judges of the Constitutional Court of Ukraine;
- Meeting of a Venice Commission delegation, led by Vice-President Mr Michael Frenco, with the President of Georgia, Chairman of the Parliament, Prime Minister, the First Deputy Minister of Foreign Affairs, the head of the Georgian parliamentary delegation to PACE, the leader of the parliamentary majority as well as with parliamentary opposition leaders (Tbilisi, 16 November 2023).

## **IV. ELECTIONS**

In 2023, apart from adopting eight opinions in the field of elections and political parties, the Venice Commission has pursued its co-operation with the Parliamentary Assembly as legal councillor during election observation missions. It has also organised the 4<sup>th</sup> edition of the Scientific Electoral Experts Debates, which enables academics to discuss electoral law issues. It has gone on updating the VOTA database on electoral legislation and played a prominent role in activities linked to electoral reform in Ukraine.

### **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 2023 before each of the Venice Commission's plenary sessions. The revised rules of procedure entered into force on 1 October 2023. 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 are represented by either a President or a Vice-President. At the October meeting, the new Presidency was elected: Mr Stewart Dickson, member of the Congress, as President; Mr Srdjan Darmanović, member of the Venice Commission, and Mr Michael Georg Link, member of the Parliamentary Assembly, as Vice-Presidents of the Council.

### **2. Election observation**

In accordance with the co-operation agreement signed between the Parliamentary Assembly and the Commission on 4 October 2004, the Venice Commission regularly provides legal assistance to the election observation missions of the Parliamentary Assembly. In this context, they observe the opening of the ballot, the voting procedure and the count. The Venice Commission drafts a legal memorandum before each observation mission and is involved in discussions with the heads of delegations.

These missions are a good opportunity for the Commission to strengthen co-operation with the Parliamentary Assembly, with the OSCE/ODIHR and other international organisations involved in election observation and with national Election Management Bodies, to increase the Commission's visibility in the electoral environment and to gather information on shortcomings in the electoral legislation and its implementation.

2023 has been marked by a relatively high number of election observation missions. These missions concerned the following states:

*Bulgaria* – early parliamentary elections of 2 April 2023  
*Montenegro* – presidential elections of 19 March and 2 April 2023  
*Montenegro* – early parliamentary elections of 11 June 2023  
*Poland* – parliamentary elections of 15 October 2023  
*Serbia* – early parliamentary elections of 17 December 2023  
*Türkiye* – presidential and parliamentary elections of 14 and 28 May 2023

### **3. VOTA database**

The VOTA database on electoral legislation, which continues to be managed jointly by the Venice Commission and the Electoral Tribunal of the Federal Judiciary of Mexico (TEPJF), is updated regularly. In 2023, 31 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.

### **4. Other co-operation activities**

#### ***Scientific Electoral Experts Debates***

Other co-operation activities included the 4<sup>th</sup> edition of the Scientific Electoral Experts Debates on “*The stability of electoral law*”, Barcelona, 3 November 2023. This conference had been initiated by the Council for Democratic Elections which considered that, more than thirty years after the start of the internationalisation of electoral issues, it is high time to assess the meaning of the principle of the stability of electoral law. In spite of the emphasis put on the stability of electoral law, one could not but observe that electoral legislation is regularly revised shortly before elections. The debates addressed: the scope of the principle of the stability of electoral law; regulatory levels – including the role of secondary (EMBs’) legislation; the timing of the change; emergency situations; digital technologies and elections. Following the conference, it was suggested to prepare a new interpretative declaration on the stability of electoral law, which could, in particular, revisit the scope of the principle (including, for example, human rights issues and election dispute resolution). It could also be concluded that, instead of a strict one-year rule, it might be better to have broad consensus after extensive consultation with relevant stakeholders. According to the participants of the conference, the issue of innovation in the field of digital technologies should be raised too, and more generally the cases when it could imply a need for late amendments.

#### ***Bilateral activities***

In November 2022, the Venice Commission had played a prominent role in a High-level meeting on democratic governance of Ukraine which was intended at examining, in particular, the way to organise post-war elections. This activity was followed by the High-Level Dialogue II “*Good Democratic Governance in Ukraine: Achievements, Challenges and Way Forward in the Post-War Period*”, Kyiv, 4 December 2023, where the issue was addressed on the basis of the developments in the meantime as well as proposals by the Ukrainian stakeholders. The Venice Commission also took part in the following activities concerning **Ukraine**: a Parliamentary Electoral Dialogue “*Challenges and Needs for Holding out-of-country voting for Ukraine’s Post-War Elections*”, organised by *International IDEA*, in Brussels on 30-31 May 2023; and the 1<sup>st</sup> Expert discussion “*Political rights and transitional justice in Ukraine: electoral context in the post-war period*”, Kyiv, online, 24 November 2023, organised by the Council of Europe and the Committee of the Verkhovna Rada of Ukraine on State Power, Local Self-Government, Regional and Urban Development.

## V. CONSTITUTIONAL JUSTICE

### 1. Joint Council on Constitutional Justice (JCCJ)

Over the years, 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). On 24-25 April 2023, the 20<sup>th</sup> 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 hosted by the Constitutional Court of Bulgaria.

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

The WCCJ brings together 120 constitutional courts and councils and supreme courts in Africa, the Americas, Asia, Australia/Oceania and Europe.<sup>8</sup> 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 provides the Secretariat for 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 11 March 2023, the Bureau of the WCCJ, which steers the WCCJ's activities, held its 20<sup>th</sup> meeting in Venice. At this meeting, it summarised the outcomes of the 5<sup>th</sup> Congress of the WCCJ, hosted by the Constitutional Court of Indonesia in October 2022. The Bureau also 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 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. The preparations of the 6<sup>th</sup> WCCJ Congress also have been discussed by the Bureau: the candidacy of the Spanish Constitutional Tribunal as a host court for the next Congress, to take place in 2025 was accepted.

The Venice Commission's secretariat also participated in the annual events of different linguistic and regional groups of the WCCJ. In October 2023, Mr Gianni Buquicchio, President Emeritus and Special Representative of the Venice Commission, and Ms Simona Granata-Menghini, Secretary of the Venice Commission took part in the Southern and Eastern African Chief Justices' Forum (SEACJF) conference and annual general meeting in Arusha, Tanzania, marking the 20<sup>th</sup> anniversary since the establishment of the Forum. The topic of the conference was “*The Role of the National Judiciaries in Dispute Resolution under the African Continental Free Trade Area (AfCFTA): application of Modern Technologies for High Efficiency in Justice Dispensation*”. In 2003 the Venice Commission was instrumental in setting up the Southern African Judges Commission, the SAJC, which has become today the SEAJCF. Co-operation with the Venice Commission is foreseen in this association's founding constitution as one of the means to pursue its goals. The Venice Commission has since cooperated with SEAJCF within the framework of the World Conference on Constitutional Justice.

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<sup>8</sup> In 2023 the WCCJ secretariat received a membership request from the Constitutional Court of Suriname, which will be discussed in by the WCCJ Bureau in March 2024 and by the General Assembly in 2025.

From 23 to 25 October 2023, a Venice Commission expert participated and moderated the high-level conference on “*The Contribution of Constitutional Courts in Protecting and Strengthening Fundamental Values of Democracy, Rule of Law, and Fundamental Human Rights and Freedoms*” organised in the framework of the 14<sup>th</sup> Anniversary of the Judicial Year of the Constitutional Court of Kosovo.

### **3. CODICES database**

The CODICES database 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 2023, constitutional courts and equivalent bodies actively contributed to CODICES, which was regularly updated, and 581 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.

At the end of 2023, work on an upgraded CODICES database of the Venice Commission was completed for its online launch early 2024. This comprehensive resource for constitutional case law boasts a user-friendly design, improved search functionalities, and streamlined features for academics, legal professionals, and the public alike.

### **4. E-Bulletin on Constitutional Case-law**

In 2023, the fully electronic “e-Bulletin on Constitutional Case-Law” continued to be published three times a year, containing summaries of the most important decisions provided by the constitutional courts or equivalent bodies of all 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. Currently, 132 e-Bulletins are available from which 24 are special Bulletins and 88 are regular ones.

In addition to the regular e-Bulletin, Resolution III of the Circle of Presidents of the Conference of European Constitutional Courts (25 May 2022, Chisinau) invited the Venice Commission to prepare a special Bulletin for the 19<sup>th</sup> Congress of the Conference of European Constitutional Courts (CECC) to take place in May 2024 on the topic “*Forms and Limits of Judicial Deference: The Case of Constitutional Courts*”. Most of work on this Special Bulletin was done during 2023.

The Special Bulletin on Covid-19 is also available.

## 5. Venice Forum

The online 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:

- In 2023, 25 posts were made in the Newsgroup. 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.
- The restricted Classic Venice Forum enables courts to ask other courts for specific information on case-law. In 2023, the Classic Venice Forum dealt with 23 comparative law research requests from 12 different courts.
- As in previous years, the Venice Commission offered all members and liaison officers the possibility of subscribing to the Constitutional Justice Media Observatory that provides an overview of the work of courts as reported in online media. In 2023, links to 303 articles of the Constitutional Justice Media Observatory were sent to members and liaison officers.<sup>9</sup>

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<sup>9</sup> 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.

## VI. CO-OPERATION PROGRAMMES

In 2023, the Venice Commission continued implementing Joint EU/CoE Programmes in Central Asia and the Southern Mediterranean region, as well as co-operation activities in Latin America funded by voluntary contributions from member states in such fields as constitutional assistance, constitutional justice, reform of the judiciary as well as electoral legislation and practice. Co-operation with Ombudsman institutions and associations aimed at promoting the "Venice Principles".

A new joint EU/CoE project "*Support to democratic reforms, human right mechanisms and rule of law principles in Latin America, Central Asia and Mongolia*" (2024-2026) was signed in the second half of 2023. Its implementation will start in 2024.

### 1. Central Asia

In 2023, the Venice Commission organised both bilateral and regional activities in the framework of the project "*Promote efficient functioning of state institutions and public administration*", which is part of the Joint European Union and Council of Europe Central Asia Rule of Law Programme (2020-2024) and covers Kazakhstan, Kyrgyzstan, Tajikistan, Turkmenistan and Uzbekistan. The Venice Commission provided targeted technical assistance and legal advice on demand from the authorities in Central Asian countries regarding constitutional and legal reforms.

On 24 and 25 April 2023, in Sofia, Bulgaria, the liaison officers of the Constitutional Courts of Kazakhstan and Kyrgyzstan participated in the 20<sup>th</sup> meeting of the Joint Council on Constitutional Justice of the Venice Commission (JCCJ) and in the mini-conference that followed on "*Measures taken by States in response to the COVID-19 crisis and their impact on constitutional justice - constitutional jurisprudence on emergency situations*". This was the occasion for the liaison officers from the two countries to gain new skills and to share best practices with their peers from the 33 other courts/members of the JCCJ and the 4 representatives of the regional groups present in Sofia.

On 25-26 May 2023, the Venice Commission organised, in co-operation with the Constitutional Court of **Uzbekistan**, an international conference on "*Models of constitutional complaints in Central Asian countries*", namely best practices on the models of constitutional review of legislation. Debates also focused on the individual constitutional complaint as an effective mechanism for protecting fundamental rights. Representatives from the Constitutional Courts of Uzbekistan, Kazakhstan, Kyrgyzstan and Tajikistan contributed to the event.

On 21-22 June 2023, the Venice Commission organised jointly with the Constitutional Court of **Kyrgyzstan** an international conference on "*The Constitution as a foundation for building a democratic state under the rule of law*". The participants discussed the constitutional legacy, the significance of constitutional justice in establishing a democratic state and the responsibilities of constitutional courts during a time of worldwide transformations. Representatives of the Constitutional Courts from 15 countries attended this high-level event including participants from Kazakhstan, Tajikistan and Uzbekistan.

On 7-8 September 2023, the Venice Commission organised jointly with the Constitutional Court of **Kazakhstan** an international conference on "*Constitutional justice: dignity, freedom and justice for all*". High-level representatives from constitutional courts of more than 30 countries across the world discussed the role of constitutional control in protecting human rights, the efficiency of constitutional control as regards the respect of the rule of law standards as well as access to justice and equal opportunities. The conference, dedicated to the 75<sup>th</sup>

anniversary of the Universal Declaration of Human Rights, was attended by senior representatives from Kyrgyzstan, Tajikistan, Turkmenistan and Uzbekistan.

Another important conference organised on 20 October 2023 in co-operation with the Supreme Court of **Kyrgyzstan** on "*Criminal Justice and Human Rights – emerging trends and challenges*" explored the various elements of the inquisitorial and adversarial proceedings with a focus on the human rights standards in criminal proceedings established through the case-law of the European Court of Human Rights. Representatives of the Supreme and lower instance Courts from Kyrgyzstan, Kazakhstan and Uzbekistan contributed to the event.

In 2023, three Opinions were adopted in respect of Kyrgyzstan: on the amendments to the law on the Rules of Procedure of the Parliament of Kyrgyzstan [CDL-AD\(2023\)001](#), on the draft constitutional law on the *Akyikatchy* (Ombudsman) [CDL-AD\(2023\)038](#)<sup>10</sup> and on the draft law about the media [CDL-AD\(2023\)040](#)<sup>11</sup>.

## 2. Southern Mediterranean

The Venice Commission's activities with the countries of the Southern Mediterranean region have focused on four areas: the UniDem programme, legal advice, Ombudsman institutions and constitutional justice. These activities were implemented in the framework of the Joint EU/CoE South Programme V "*Protecting human rights, the rule of law and democracy through shared standards in the Southern Mediterranean*".

In 2023, the Venice Commission continued to provide its support to the state institutions in the Southern Mediterranean in the framework of the UniDem Med (University of Democracy for the Southern Mediterranean) seminars. Capacity development activities focused on the reform of the public administration in the region in line with the internationally recognised rule of law standards. The 8<sup>th</sup> annual meeting of UniDem Med coordinators in charge of assessing the impact of previous seminars, identifying priorities and proposing themes for UniDem Med seminars, took place on 15 March 2023 in Lisbon, Portugal. This meeting was organised in synergy with the official launch of the South V Programme, which took place on 13 and 14 March 2023 in the same place.

The 17<sup>th</sup> UniDem Med seminar on "*Digital Transformation and Artificial Intelligence: Regulation and Enforcement*" was organised jointly with the Ministry of Digital Transition and Administration Reform of the Kingdom of Morocco, on 21-22 November 2023 in Rabat. Exchanges of views and best practices focused mainly on the legal and political framework within which digital transformation and the development of artificial intelligence must be incorporated into the reform of public administration; equal treatment and non-discrimination; the proportionality and transparency of public administration decisions; respect for privacy and data protection.

In June 2023, the Lebanese Minister of Justice requested the Commission's Opinion on a draft law on administrative justice. This request follows on from an Opinion on the independence of the courts adopted in 2022. The draft Opinion has been prepared under the Quick Response Mechanism<sup>12</sup> and will be adopted by the Venice Commission at its March 2024 plenary session.

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<sup>10</sup> Both opinions were prepared in the framework of the project "*Promote efficient functioning of state institutions and public administration*", which is part of the Joint European Union and Council of Europe Central Asia Rule of Law Programme (2020-2024).

<sup>11</sup> The preparation of the Opinion was financed by the Venice Commission through the project "Venice Commission action to promote the development of democratic institutions based on respect for the rule of law and human rights" (2019-2023).

<sup>12</sup> The requests for an Opinion can be activated through the Quick Response Mechanism (QRM) in the framework of the South Programme V which is a tool designed for the provision of legislative expertise to support priority reforms in areas of Council of Europe expertise based on requests received from partner authorities in the Southern Mediterranean region.

Furthermore, in 2023 the Venice Commission provided support aimed at sharing international standards with regard to the Ombudsman institutions. On the occasion of the 20<sup>th</sup> anniversary of the creation of the Institution of the Ombudsman of the Kingdom of Morocco, an international conference entitled "*Ensuring the development dimension of the effectiveness of human rights in public policies: What role for ombudsmen and mediators?*" was held on 28 February 2023 in Rabat. In his opening speech, Mr Gianni Buquicchio, President Emeritus and Special Representative of the Venice Commission, presented the "Venice Principles", emphasised the universal nature of the twenty-five legal standards drawn up by the Commission, through the adoption of two Resolutions by the United Nations General Assembly, and praised the work of the Institution of the Mediator of Morocco in this respect.

As part of the capacity-building and knowledge enhancement in the constitutional field for judges and staff of constitutional courts in the Southern Mediterranean, the liaison officers of the Constitutional Courts of Algeria and Palestine\*<sup>13</sup> took part in the 20<sup>th</sup> meeting of the Joint Council on Constitutional Justice of the Venice Commission (JCCJ) and in the mini-conference that followed on "*Measures taken by States in response to the COVID-19 crisis and their impact on constitutional justice - constitutional jurisprudence on emergency situations*". The Algerian and Palestinian liaison officers were invited to share the experience of their courts with the 33 other courts/members of the JCCJ and the 4 representatives of the regional groups present in Sofia, Bulgaria, on 24 and 25 April 2023.

### 3. Latin America

In 2023, the Venice Commission continued its fruitful co-operation with its member states and partners in Latin America - Mexico and Chile, financed by the voluntary contributions from member states<sup>14</sup>.

The Venice Commission continued its active co-operation with its main Mexican interlocutors, the Electoral Tribunal of the Judicial Power of the Federation (TEPJF) and the National Electoral Institute (INE). Representatives of the Venice Commission participated in two events organised in 2023 by the TEPJF. The first one, from 20 to 21 June 2023, entitled "*Digital technologies: democracy and regulation in Europe and America*", an international conference co-organised by the TEPJF and the Venice Commission, aimed at engaging the Latin American countries in the debate on the regulatory process of digital technologies, social media, and artificial intelligence currently taking place in Europe. From 11 to 12 September 2023, a member of the Venice Commission participated in another event devoted to the analysis, from an international comparative perspective, of the background and legal framework of the Mexican electoral system as well as the main challenges that the Mexican electoral jurisdictional authorities will face during the 2023-2024 electoral process ("*2024 Elections in Mexico. International Jurisdictional Electoral Accompaniment*").

Upon invitation from INE, representatives of the Commission contributed to the *II Summit for Electoral Democracy: "Electoral authorities facing disinformation"* which took place from 4 to 6 December 2023 in Mexico City. In view of the challenges that fake news and disinformation pose to elections, the conference's aim was to discuss the role of electoral authorities in combating misinformation and fake news, with the aim of benefiting a better and fairer electoral competition, which contributes to the integrity of elections and the strengthening of democracies.

The Venice Commission reinforced its partnership with the Organisation of American States (OAS), with which a Co-operation Agreement on advancement and realisation of exchange,

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<sup>13</sup> 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.

<sup>14</sup> The activities were financed by the Venice Commission through the project "*Venice Commission action to promote the development of democratic institutions based on respect for the rule of law and human rights*" (2019-2023).

co-operation and technical assistance actions related to the further development of the principles of rule of law and separation of powers in Latin America was signed in 2020. Representatives of OAS attended the 137<sup>th</sup> plenary Session of the Venice Commission in December 2023 and informed the plenary and the Council for Democratic Elections about the trends observed in electoral processes in Latin America and the Caribbean and discussed possible avenues for future co-operation.

In 2023, the Senate of Chile requested an Opinion from the Venice Commission on the 2023 Chilean constitutional reform [CDL-AD\(2023\)034](#)<sup>15</sup>. The draft opinion was examined at the joint meeting of the sub-commission of the Venice Commission on Democratic Institutions and on Latin America on 5 October 2023 and was subsequently adopted at the 136<sup>th</sup> plenary session (6-7 October 2023). The Opinion was translated and published in the Spanish language for the benefit of the Chilean people<sup>16</sup>.

#### 4. Ombudsman institutions

The Venice Commission has been able to consolidate its co-operation with Ombudsman institutions through legal assistance and participation in conferences organised by the Commission's Ombudsman partner institutions and associations. These activities allowed to raise awareness of the "Venice Principles".

The Venice Commission examined the draft constitutional law on the *Akyikatchy* (Ombudsman) of Kyrgyzstan and its compliance with international standards, in particular the "Venice Principles" [CDL-AD\(2023\)038](#)<sup>17</sup>. The Opinion was adopted at the Venice Commission 136<sup>th</sup> plenary session in October 2023 and was translated and published in the Russian language.

In 2023, the Commission was invited to participate in six conferences organised by Ombudsman institutions and associations. This strengthened co-operation with the networks of associations that have been partners of the Commission for many years, such as the AOM and the AOMF, and created new synergies with Ombudsman institutions.

In the framework of co-operation with the Association of Mediterranean Ombudsmen (AOM), the Commission was invited to participate in the 12<sup>th</sup> meeting and general assembly of the Association of Mediterranean Ombudsmen "*Integrity and Independence of Ombudsman Institutions: Resilience in the midst of challenges*", on 24-25 May 2023, in Pristina, Kosovo. Participation was online and provided an opportunity to present the work of the Venice Commission aimed at reinforcing the independence of Ombudsman institutions, whether through the "Venice Principles" or through the wider institutional support that the Commission is able to provide. The Conference on "*The Right to Good Administration*", organised by the AOM under the auspices of Maltese Ombudsman institution on 31 October and 1<sup>st</sup> November 2023 in Valletta, was an opportunity to produce the "Malta Declaration" inviting states to enshrine a right to good administration in national law. The conference provided an opportunity to give a targeted presentation of the "Venice Principles" as an effective tool for the work of Ombudsman institutions in their relations with the administration, and to renew the dialogue with various member institutions of the network, as well as to answer numerous questions on the implementation of this standard-setting document.

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<sup>15</sup> The preparation of the Opinion was financed by the Venice Commission through the project "*Venice Commission action to promote the development of democratic institutions based on respect for the rule of law and human rights*" (2019-2023).

<sup>16</sup> The activity was financed by the Venice Commission through the project "*Venice Commission action to promote the development of democratic institutions based on respect for the rule of law and human rights*" (2019-2023).

<sup>17</sup> The opinion was prepared in the framework of the project "*Promote efficient functioning of state institutions and public administration*", which is part of the Joint European Union and Council of Europe Central Asia Rule of Law Programme (2020-2024).

As part of its co-operation with the Association of Ombudsman and Mediators of the Francophonie (AOMF), the Commission was invited to attend the Association's General Assembly, on 23 November 2023 in Luxembourg, where it was able to present the Commission's various possible means of action. On this occasion, the Commission was able to identify a significant need for institutional support on the part of the sub-Saharan institutions that are members of this network. The Commission also took part in the seminar "*Crisis management, what role for the Ombudsman?*", organised by the Ombudsman of the Grand Duchy of Luxembourg and the Association of Ombudsman and Mediators of the Francophonie (AOMF) on 24 and 25 October 2023 in Luxembourg.

The Commission took part in the conference organised by the institution of the Ombudsman of Türkiye "*The future of human rights in the 21st century*" on 11-12 January 2023 in Ankara. It was an opportunity to present its vision of the Ombudsman's role in the protection of human rights and to meet members of the Islamic Organisation of Ombudsmen Association chaired by the Ombudsman of Türkiye (OICOA).

The Commission was able to contribute to the organisation of an international conference in Rome on 20-21 September 2023 on "*The role of the Ombudsman in the world: between reality and possibility*" organised by the Lazio Region Ombudsman<sup>18</sup>. The Conference was attended by over 200 persons, including more than 60 Ombudsman institutions from all over the world, and produced a broad impact regarding the awareness on the implementation of the "Venice Principles".

These various events enabled the Commission to promote the "Venice Principles", to recall the global nature of these standards, and to encourage better understanding and use of them, both from the point of view of strengthening the institution, promoting or defending it in the event of threats, and from the point of view of fulfilling the institution's mission. The conferences were also a valuable opportunity for dialogue with Ombudsman institutions and to explore the various forms of support that the Venice Commission and the Council of Europe can offer.

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<sup>18</sup> The activity was financed by the Venice Commission through the project "*Venice Commission action to promote the development of democratic institutions based on respect for the rule of law and human rights*" (2019-2023).

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

In 2023, 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 and national bodies and organisations.

### 1. Council of Europe

#### *Committee of Ministers*

The Council of Europe held its 4<sup>th</sup> Summit in Reykjavik on 16-17 May 2023 under the auspices of the Icelandic chairmanship of the Committee of Ministers. The President of the Venice Commission, Ms Claire Bazy Malaurie, participated in the 4<sup>th</sup> Summit and delivered a statement. In the Reykjavik Declaration the Heads of State and Government<sup>19</sup> undertook to raise the profile and strengthen the Venice Commission, “by, for example, giving more visibility and status to its Rule of Law Checklist and exploring ways the Organisation can better support the implementation of its recommendations”.

On 19 April 2023, Ms Claire Bazy Malaurie, presented the 2022 Annual Report of Activities of the Commission to the Committee of Ministers. The presentation was followed by an exchange of views with the Ambassadors of the member and observer states of the Council of Europe. On 8 November, the President of the Venice Commission held the first exchange of views with the Committee of Ministers, specifically devoted to the impact of the Commission's work. President Bazy Malaurie provided an overview of the follow-up opinions and follow-up activities of the Venice Commission which have increased in 2023, accompanied by a substantial increase of media interest and references to the Commission in the press in Council of Europe member states.

The Committee of Ministers referred to the work and recommendations of the Venice Commission in its decisions and other documents adopted in the context of supervision of execution of the ECtHR judgments, concerning notably the following (groups of) cases:

- *Gafgaz Mammadov group v. Azerbaijan* (Application No. 60259/11)
- *Mushfig Mammadov and others v. Azerbaijan* (Application No. 14604/08)
- *Khadija Ismayilova group v. Azerbaijan* (Application No. 65286/13)
- *Mugemangango group v. Belgium* (Application No. 310/15)
- *Sejdić and Finci group against Bosnia and Herzegovina* (Application No. 27996/06)
- *S.Z. group / Kolevi v. Bulgaria* (Applications Nos. 29263/12 and 1108/02)
- *Miroslava Todorova v. Bulgaria* (Application No. 40072/13)
- *Merabishvili v. Georgia* (Application No. 72508/13)
- *Bekir-Ousta and Others group v. Greece* (Application No. 35151/05)
- *Baka v. Hungary* (Application No. 20261/12)
- *Dmitriyevskiy group v. Russian Federation* (Application No. 42168/06)
- *Navalnyy and Ofitserov group v. Russian Federation* (Application No. 46632/13)
- *Vladimir Kharitonov group v. Russian Federation* (Application No. 10795/14)
- *Kavala v. Türkiye* (Application No. 28749/18)
- *Ülke group v. Turkey* (Application No. 39437/98)
- *Ahmet Yıldırım group v. Turkey* (Application No. 3111/10)
- *Merit group* (Application No. 66561/01) and *Svetlana Naumenko group* (Application No. 41984/98) v. Ukraine

<sup>19</sup> <https://rm.coe.int/4th-summit-of-heads-of-state-and-government-of-the-council-of-europe/1680ab40c1>

- *Oleksandr Volkov group v. Ukraine (Application No. 21722/11)- Selahattin Demirtaş (No. 2) group v. Turkey (Application No. 14305/17)*
- *Lutsenko (Application No. 6492/11) and Tymoshenko (Application No. 49872/11) v. Ukraine*
- *Polyakh and Others v. Ukraine (Application No. 58812/15)*
- *Fedorchenko and Lozenko group v. Ukraine (Application No. 387/03)*

The [Council of Europe Action Plan for Georgia 2024-2027](#), approved by the Committee of Ministers on 18 October 2023, referred to the Venice Commission's opinions in its Chapters 2.2. Rule of Law, 2.3. Democracy/Elections.

On 14-15 September 2023, under the auspices of the Latvian Presidency of the Committee of Ministers of the Council of Europe, the Venice Commission in co-operation with the Centre for Constitutional and Political Studies (CEPC) held an international seminar entitled "Constitutions and War". The round table discussions delved into these critical issues, drawing from historical and contemporary examples. It explored how constitutional frameworks can contribute to enhancing accountability, protecting human rights, and fostering reconciliation in the aftermath of armed conflicts.

Lastly, Permanent Representatives of several member and observer States participated in the four plenary sessions carried out in Venice in 2023 and exchanged views with the Venice Commission.

### ***Council of Europe Parliamentary Assembly (PACE)***

In 2023, upon requests made by the Parliamentary Assembly, the Commission adopted 11 opinions on **Azerbaijan** [CDL-AD\(2023\)007](#), **Georgia** [CDL-AD\(2023\)033](#), **France** [CDL-AD\(2023\)024](#), [CDL-AD\(2023\)015](#), **Germany** [CDL-AD\(2023\)020](#), **the Netherlands** [CDL-AD\(2023\)029](#), **Poland** [CDL-AD\(2023\)037](#) and **Ukraine** [CDL-AD\(2023\)018](#), [CDL-AD\(2023\)021](#), [CDL-AD\(2023\)025](#) and [CDL-AD\(2023\)028](#).

Representatives of the Commission participated as legal experts in seven PACE election observation missions during early parliamentary elections in Bulgaria, Montenegro and Serbia, the parliamentary elections in Poland and parliamentary and the presidential elections in Türkiye.

Mr Michael Georg Link was elected Vice-President of the Council for Democratic Elections. PACE representatives regularly took part in the four 2023 plenary sessions of the Venice Commission and meetings of the Council. Following the December 2023 plenary session, the Enlarged Bureau of the Venice Commission held an exchange of views with the Presidential Committee of the Parliamentary Assembly.

In addition, Venice Commission representatives took part in the following events organised by the Parliamentary Assembly:

- Monitoring Committee hearing on "*Combating undue influence: anti-oligarch legislation in Ukraine, Georgia and the Republic of Moldova*" (21 March 2023, Strasbourg);
- Exchange of views on Serbia organised by the Monitoring Committee (26 April 2023, Strasbourg/online);
- International conference on "*Elections in times of crisis – challenges and opportunities*", co-organised by PACE and the Swiss Parliament (9-10 May 2023, Bern);
- Meeting of the Committee on Legal Affairs and Human Rights on "*The examination of the legitimacy and legality of the ad hominem derogation from the term of office of the outgoing President of the Russian Federation*" (26 May 2023, Strasbourg);

- Hearing by the Political Affairs Committee on “*The challenge of far-right ideology to democracy and human rights in Europe*” (20 June 2023, Strasbourg);
- Joint hearing of the Political Affairs and Monitoring Committees on “*Financing of political parties*” (21 June 2023, Strasbourg);
- Meeting of the Monitoring Committee entitled: “*The strategies and tools of the Council of Europe to ensure the respect of human rights, rule of law and democracy obligations in the resolution of conflicts*”, hosted by the Italian Parliament (4-5 December 2023, Rome).

### **Congress of Local and Regional Authorities**

Mr Leendert Verbeek, the Congress President, addressed and had an exchange of views with the Commission at its October 2023 plenary session. Mr Stewart Dickson (Chamber of Regions) was elected President of the Council for Democratic Elections. In 2023, the Congress representatives regularly took part in the meetings of the Council.

The President of the Venice Commission Ms Claire Bazy Malaurie addressed the 45<sup>th</sup> plenary session of the Congress. In her statement, she welcomed the good co-operation between the two institutions, notably in the framework of the Council for Democratic Elections and highlighted the synergies in their respective work. Ms Bazy Malaurie stressed the importance of the respective actions to promote European standards at local, national, European, and international level. The statement was followed by an exchange of views between the Venice Commission’s President and the Congress’ members.

A representative of the Venice Commission made a presentation on the subject “*Are regional interests sufficiently represented through the second chamber of parliaments?*” at the 44<sup>th</sup> Session of the Congress (21 March 2023, Strasbourg).

In the context of preparation by the Commission of the Report on bicameralism, the rapporteurs of the Venice Commission cooperated and exchanged information with the Congress’ expert working on related issues.

### **European Court of Human Rights**

In 2023, 31 judgments and two decisions of the **ECtHR** contained references to the Commission’s work.<sup>20</sup> In these cases, the Court referred both to general reports of the Venice Commission and country related opinions. By the end of 2023 the ECtHR had referred to the Venice Commission’s documents in more than **270 judgments and 55 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, the Netherlands, North Macedonia, Norway, Poland, Portugal, Romania, Russian Federation, Serbia, Slovakia, Slovenia, Spain, Sweden, Switzerland, Türkiye, Ukraine and United Kingdom.<sup>21</sup>

### **Council of Europe 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. Country reports on [Serbia](#) and [Spain](#) referred to the related Venice Commission’s Opinions. The work of the Commission was also referred to in other documents such as her submission under Rule 9.4 of the Rules of the Committee of Ministers for the supervision of the execution of judgments and of the terms of the friendly

<sup>20</sup> For the 2023 ECtHR case law in English: [HUDOC - European Court of Human Rights \(coe.int\)](https://hudoc.echr.coe.int/)

<sup>21</sup> For all cases available in English containing references to the Venice Commission, see here: [HUDOC - European Court of Human Rights \(coe.int\)](https://hudoc.echr.coe.int/)

settlements in cases regarding [Bosnia and Herzegovina](#)<sup>22</sup>, and in her Human Rights Comment on crackdown on peaceful environmental protests<sup>23</sup>.

The Commissioner addressed and had an exchange of views with the Commission at its 2023 June plenary session.

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

In 2023, eight Opinions were prepared jointly with DGI on **Armenia** CDL-AD(2023)045, **France** CDL-AD(2023)015, **Republic of Moldova** [CDL-AD\(2023\)005](#), [CDL-AD\(2023\)023](#), [CDL-AD\(2023\)032](#), [CDL-AD\(2023\)035](#), **the Netherlands** CDL-AD(2023)029 and **Ukraine** CDL-AD(2023)027. The preparation of joint Opinions continued to increase the Council of Europe's influence and facilitated the sharing of expertise. It also enhanced the impact of the recommendations made and further consolidated the Organisation's efforts in providing a multidimensional approach to different problems.

#### *Committee on Artificial Intelligence (CAI)*

The Commission continued to participate in the work of the Committee on Artificial Intelligence (CAI), which is preparing an international treaty in the field.

#### *GRECO*

In 2023, the GRECO referred to the Commission's recommendations in its reports on [Armenia](#), [Bosnia and Herzegovina](#), [Cyprus](#), [Hungary](#), [Republic of Moldova](#), [Poland](#), [Romania](#) and [Ukraine](#).

### ***Co-operation with the Directorate General of Democracy and Human Dignity (DGII)***

#### *Department of Democracy and Governance*

The Venice Commission took part in the following events organised by the Department of Democracy and Governance:

- Conference on E-voting and use of ICT in elections "*Taking stock and moving forward*" (16 June 2023, Strasbourg);
- Conference on "*The role of electoral training centres*" (28-29 November 2023, Strasbourg);
- The Second meeting under the High-Level Dialogue "*Good Democratic Governance in Ukraine: achievements, challenges and the way forward in post-war period*" (4 December 2023, Kyiv).

#### *European Commission against Racism and Intolerance (ECRI)*

The [General Policy Recommendation No.17](#) adopted on 29 June 2023 by ECRI contains references to the Opinion regarding certain aspects of the protection of children in Hungary [CDL-AD\(2021\)050](#), and the Opinion on the prohibition of so-called 'propaganda of homosexuality' [CDL-AD\(2013\)022](#). The reports adopted by ECRI in 2023 on [Armenia](#), [Azerbaijan](#), [North Macedonia](#) and [Poland](#) also contained references to the Commission's work.

<sup>22</sup> [https://search.coe.int/commissioner/Pages/result\\_details.aspx?ObjectId=0900001680ab0701](https://search.coe.int/commissioner/Pages/result_details.aspx?ObjectId=0900001680ab0701)

<sup>23</sup> [Crackdowns on peaceful environmental protests should stop and give way to more social dialogue - Commissioner for Human Rights \(coe.int\)](#)

### *European Committee on Democracy and Governance (CDDG)*

In 2023, the Venice Commission continued to cooperate with the European Committee on Democracy and Governance (CDDG), specifically its Working Groups on Governance (GT-G), on Deliberative and Participatory Democracy (GT-DD) and on Green Public Administration (GT-A).

### *Framework Convention for the Protection of National Minorities*

In its work on the **Republic of Moldova** the Advisory Committee on the FCNM referred to the 2022 Joint OSCE/ODIHR and Venice Commission's Opinion on the draft electoral code CDL-AD(2022)025.

## **2. European Union**

In 2023, co-operation with the EU was further strengthened and the EU continued to refer frequently to the work of the Commission. The European Union Representative participated in the four plenary sessions in 2023. During its country visits in the framework of the preparation of Opinions, the Venice Commission has continued to meet with the European Union representations in the countries, where relevant.

### ***European Council / Council of the EU***

#### *References to the Venice Commission*

The European Council decisions regarding the EU accession on Bosnia and Herzegovina, Georgia, North Macedonia and Ukraine referred to Venice Commission work.<sup>24</sup>

In their Joint statement following the 24<sup>th</sup> EU-Ukraine Summit made in Kyiv on 3 February 2023,<sup>25</sup> Mr Charles Michel, President of the European Council, Ms Ursula von der Leyen, President of the European Commission, and Mr Volodymyr Zelenskyy, President of Ukraine, referred to Venice Commission recommendations, as well as to continued co-operation with the Venice Commission.

#### *Participation in events*

The Venice Commission was represented at two events organised within the framework of the *Sweden's Presidency of the European Council in 2023*, namely the Stockholm Symposium on Democracy and the Rule of Law (21 – 22 June 2023) and the Conference on “How can parliamentarians help safeguard and strengthen democracy and the rule of law?” (18 – 19 June 2023, Stockholm).

### ***European Commission***

In 2023, the EC continued to refer extensively to the work of the Venice Commission notably when addressing rule of law issues in EU member states, candidate countries and beyond.

#### *References to the Venice Commission*<sup>26</sup>

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<sup>24</sup> [Council conclusions on enlargement, 12 December 2023](#)

<sup>25</sup> [Joint statement following the 24th EU-Ukraine Summit - Consilium \(europa.eu\)](#)

<sup>26</sup> [Search results - EUR-Lex \(europa.eu\)](#) – 2023 EC documents with references to Venice Commission

Following the Venice Commission's contributions to the EU 2023 Rule of Law Report, 29 different opinions, reports and studies of the Venice Commission were referred to in 21 (out of 27) country chapters of the Report. The respective recommendations for Croatia, Cyprus, Malta and Romania also mentioned the Venice Commission's work<sup>27</sup>.

The EC Vice-President Jourová's speaking points on the 2023 Rule of Law Report of 5 July 2023<sup>28</sup> referred to the Venice Commission.

On 8 November, the European Commission adopted its 2023 Reports on [Bosnia and Herzegovina](#), **Georgia**, **the Republic of Moldova**, [Montenegro](#), **North Macedonia**, **Serbia**, **Türkiye**, [Ukraine](#) recommending amongst others, that the Council of the EU opens accession negotiations with Ukraine and the Republic of Moldova, as well as with Bosnia and Herzegovina and Georgia, once the necessary degree of compliance with the membership criteria is achieved and that certain reform steps are taken. The respective reports referred to the Venice Commission recommendations on more than 200 occasions overall<sup>29</sup>.

Furthermore, the EC President, Ms Ursula von der Leyen, and the Commissioner for Enlargement, Mr Olivér Várhelyi,<sup>30</sup> recalled the Venice Commission's recommendations when addressing the accession conditions/steps concerning **Georgia**, the **Republic of Moldova** and **Ukraine**.<sup>31</sup> In addition, Commissioner Várhelyi referred to the work of the Venice Commission in statements concerning **Albania**<sup>32</sup> and **Kosovo**.<sup>33</sup>

In the Joint press statement, following the 7<sup>th</sup> Association Council meeting between the European Union and the Republic of Moldova on 7 February 2023<sup>34</sup>, the EU called on the Republic of Moldova to follow on the recommendations of the Venice Commission and to continue co-operation with it.

Furthermore, the EC referred to the Venice Commission's texts on such topics as [inclusive and resilient electoral processes in the Union and enhancing the European nature and efficient conduct of the elections to the European Parliament; effective EU citizenship 2020-2023; 2023 EU Justice Scoreboard; the implementation of the European Union's external action instruments; defence of democracy; promoting the engagement and effective participation of citizens and civil society organisations in public policy-making processes; the fight against corruption; establishing harmonised requirements in the internal market on transparency of interest representation carried out on behalf of third countries and the visa suspension mechanism](#).

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<sup>27</sup> [eur-lex.europa.eu/legal-content/EN/TXT/HTML/?uri=CELEX:52023DC0800](https://eur-lex.europa.eu/legal-content/EN/TXT/HTML/?uri=CELEX:52023DC0800)

<sup>28</sup> [Speaking points on the Rule of Law Report 2023 \(europa.eu\)](#)

<sup>29</sup> [Strategy and Reports - European Commission \(europa.eu\)](#)

<sup>30</sup> [Press remarks by Commissioner Várhelyi \(europa.eu\)](#)

<sup>31</sup> - [Commission adopts 2023 Enlargement package](#) – Press release, 8/11/22023 (references on Moldova and Georgia)

- [Speech by the EC President : Preparation of December EUCO 2023 \(europa.eu\)](#),

- [Address by President von der Leyen to Members of Verkhovna Rada](#), 4/11/ 2023, Kyiv

- Statement by Neighbourhood and Enlargement Commissioner Olivér Várhelyi, following the informal General Affairs Council, 22 June 2023, Stockholm;

- Remarks by Commissioner Várhelyi at the Structured Dialogue organised by the AFET Committee of the European Parliament, 28 June 2023, Brussels;

- [Commissioner Várhelyi statement on the 2023 Enlargement Report during the European Parliament debate on Commission statement - EU enlargement policy 2023](#), 8/11/2023

<sup>32</sup> [2022 annual report on Albania \(europa.eu\)](#) - Remarks of Commissioner Várhelyi in Plenary Session of the European Parliament, 11 July 2023

<sup>33</sup> Remarks of Commissioner Várhelyi on the 2022 annual report on Kosovo in Plenary Session of the European Parliament, 9 May 2023, Brussels; Remarks by Commissioner Várhelyi at the joint press conference with H.E. Ms Vjosa Osmani-Sadriu, President of Kosovo\*, 25 May 2023, Brussels.

<sup>34</sup> [Joint press statement following the seventh Association Council meeting between the European Union and the Republic of Moldova - Consilium \(europa.eu\)](#)

*Exchanges of views / Participation in activities*

President Bazy Malaurie delivered an opening speech at the Conference of the Presidents of Constitutional Jurisdictions of EU member states, organised by EU Commissioner for Justice Mr Didier Reynders (10 November 2023, Brussels).

*Joint European Union and Council of Europe Programmes*

In 2023, the Venice Commission continued its co-operation with several countries and regions within the framework of the joint European Union/Council of Europe programmes:

- Joint European Union and Council of Europe Programme “*Horizontal Facility for the Western Balkans and Türkiye 2023-2026*” – [The Expertise Co-ordination Mechanism \(ECM\)](#);
- Joint European Union and Council of Europe Programme “*Partnership for Good Governance*” 2023-2027 – [The Quick Response Mechanism \(QRM\)](#);
- 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 project “[Promoting Efficient Functioning of State Institutions and Public Administration in Central Asia](#)” (2020-2023);
- A new Joint EU/CoE project “*Support to democratic reforms, human right mechanisms and rule of law principles in Latin America, Central Asia and Mongolia*” was signed at the end of 2023.

***European External Action Service (EEAS)***

In 2023, the EEAS referred to the Venice Commission in press releases and statements concerning **Albania, Azerbaijan, Bosnia and Herzegovina, Georgia, Kyrgyzstan, the Republic of Moldova and Ukraine**<sup>35</sup>.

***European Parliament (EP)***

Following the EP request for an Opinion by the Venice Commission on the “Key principles of democracy in Union governance, in particular the separation of powers, accountability and checks and balances” of 12 October 2022, the Commission started working on the above-mentioned subject.

*References to the Venice Commission’s work*<sup>36</sup>

In 2023, the EP referred to the Venice Commission’s documents in its work on the following subjects: [implementation of the common foreign and security policy](#); the [Rule of Law situation in the European Union](#); [institutional relations between the EU and the Council of Europe](#); [combating discrimination in the EU](#); [composition of the European Parliament](#); [investigation of the use of Pegasus and equivalent surveillance spyware \(Recommendation\)](#); [extending the list of EU crimes to hate speech and hate crime](#).

The following country-specific EP resolutions and other documents also referred to the Venice Commission’s work: [Rule of Law in Malta: 6 years after the assassination of Daphne Caruana Galizia and the need to protect journalists](#); [the electoral law, the investigative committee and](#)

<sup>35</sup> [Press releases | EEAS \(europa.eu\)](#) , [Statements/declarations | EEAS \(europa.eu\)](#)

<sup>36</sup> The search for the references to the Commission’s work can be done here: [Texts adopted | Plenary | European Parliament \(europa.eu\)](#)

[the rule of law in Poland](#); the 2022 Commission Reports on [Albania](#), [Bosnia and Herzegovina](#), [Kosovo](#), [Montenegro](#), [Serbia](#), [Türkiye](#); [EU-Azerbaijan relations](#), [challenges facing the Republic of Moldova, 19 April 2023](#); [taking stock of the Republic of Moldova's path to the EU](#); [establishing the Ukraine Facility](#) and on [Uzbekistan](#).

#### *Exchanges of views / Participation in activities*

*The Venice Commission was represented at the following EP events:*

- *Parliamentary Electoral dialogue “Challenges and needs for holding out-of-country voting for Ukraine’s post – war election “, co-organised by the International IDEA and the European Parliament (30-31 May 2023, Brussels);*
- *exchange of views on “the Independence and role of prosecutors and judges across the European Union, including appointment procedure”, organised by the Democracy, Rule of Law and Fundamental Rights Monitoring Group of the Committee on Civil Liberties, Justice and Home Affairs of the EP (19 July 2023, online).*

### **3. OSCE/ODIHR**

The long-standing co-operation between the Venice Commission and OSCE/ODIHR continued in 2023, in particular concerning elections and referendums. Nine Opinions in this field concerning European countries were drafted jointly. These Opinions concerned **Armenia** (draft amendments to the Electoral Code and related legislation [CDL-AD\(2023\)030](#)), **Georgia** (draft amendments to the Election Code and to the Rules of Procedure of the Parliament of Georgia [CDL-AD\(2023\)047](#)), **Germany** (amendments of the Federal Election Act [CDL-AD\(2023\)020](#)), the **Republic of Moldova** (amendments to the Electoral Code and other related laws concerning ineligibility of persons connected to political parties declared unconstitutional – Opinion [CDL-AD\(2023\)031](#) and follow-up Opinion [CDL-AD\(2023\)048](#), *amicus curiae* brief for the Constitutional Court of the Republic of Moldova [CDL-AD\(2023\)049](#)), **Ukraine** (draft law amending certain legislative acts which restrict the participation in the state power of persons associated with political parties whose activities are prohibited by law [CDL-AD\(2023\)025](#)), **Azerbaijan** (Law on Political Parties [CDL-AD\(2023\)007](#)) and Republika Srpska (**Bosnia and Herzegovina**) (draft law on the Special Registry and Publicity of the Work of Non-Profit Organisations [CDL-AD\(2023\)016](#)).

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

### **4. United Nations**

#### *References to the Venice Commission*

The **UN Special Rapporteur on the rights to freedom of peaceful assembly and of association**, Mr Clément Nyaletsossi Voule, in his report on “*General principles and guidelines on ensuring the right of civil society organizations to have access to resources*”<sup>37</sup> extensively referred to the Venice Commission/OSCE Joint Guidelines on Freedom of Association [CDL-AD\(2014\)046](#). In its Resolution on **Co-operation between the United Nations and the Council of Europe**<sup>38</sup> of 26 April 2023, the UN General Assembly referred to the Venice Commission’s work.

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<sup>37</sup> [A/HRC/53/38/ADD.4](#)

<sup>38</sup> [A/RES/77/284](#)

The **UN Committee on Economic, Social and Cultural Rights** in its review of the 4<sup>th</sup> periodic report of Armenia under the International Covenant on Economic, Social and Cultural Rights<sup>39</sup> recalled the Venice Commission Opinion on the constitutional implications of the ratification of the Istanbul convention [CDL-AD\(2019\)018](#). The **UN Human Rights Council** in its Report on Situation of human rights in **Belarus**<sup>40</sup> and its relevant Resolution of 13 July 2023<sup>41</sup> strongly encouraged Belarus to address long-standing systemic shortcomings pertaining to the electoral legal framework and practices, following the recommendations made by, *inter alia*, the Venice Commission.

The Commission's Opinion on the draft law on the courts of **Bosnia and Herzegovina** is referred to in the letter of 3 May 2023 addressed by the **UN Secretary General** to the President of the UN Security Council on the implementation of the Peace Agreement on Bosnia and Herzegovina.<sup>42</sup>

The Report of the Office of the **United Nations High Commissioner for Human Rights** (OHCHR) on **Malta**<sup>43</sup> referred to the Commission's Opinions on constitutional arrangements and separation of powers, the independence of the judiciary and law enforcement in Malta and on proposed legislative changes [CDL-AD\(2020\)006](#). In a similar document on **Luxembourg**<sup>44</sup> the Commission's Opinion on the Proposed Revision of the Constitution CDL-AD (2019)003 was cited.

The Report of the **UN Secretary-General**<sup>45</sup> on **Kosovo** mentions the Commission's work on the Law on the Kosovo Prosecutorial Council. In another Report to the **UN Security Council** regarding Kosovo<sup>46</sup> the UN Secretary General referred to the Commission's 2022 recommendations on vetting of justice officials CDL-AD(2022)011 and its 2014 opinion concerning religious communities [CDL-AD\(2014\)012](#). The **Working Group on the Universal Periodic Review** in its Report on **Montenegro**<sup>47</sup> recommended to the Government to continue to ensure the implementation of the recommendations of the Venice Commission.

#### *Participation in events*

Ms Claire Bazy Malaurie, President of the Venice Commission, participated in the 3<sup>rd</sup> thematic discussion of the **UN Commission on Crime Prevention and Criminal Justice** (CCPCJ) on the implementation of the Kyoto Declaration (21-22 September 2023, Vienna/online). The event focused on the Pillar III of the Kyoto Declaration "*Promoting the rule of law*".

## **5. Other national and international organisations/bodies/NGOs**

### ***Centre for Constitutional and Political Studies (CEPC)***

The Venice Commission, in co-operation with the Complutense University of Madrid, the Centre for Political and Constitutional Studies, the Global Electoral Justice Network, and the Central Electoral Commission of Spain, held the III international conference entitled "*Cybersecurity and Elections: Guarantees against information disorders in the digital arena - Democracy, rights and elections*" (10-12 May 2023, Madrid).

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<sup>39</sup> [Committee on Economic, Social and Cultural Rights Commends Armenia for Revising Rules on the Right to Strike, Raises Questions on Measures to Combat Poverty and Housing Programmes for Socially Disadvantaged Persons, Refugees | OHCHR](#)

<sup>40</sup> [A/78/53](#)

<sup>41</sup> [A/HRC/RES/53/19](#)

<sup>42</sup> [S/2023/318](#)

<sup>43</sup> [A/HRC/WG.6/45/MLT/3](#)

<sup>44</sup> [A/HRC/WG.6/43/LUX/3](#)

<sup>45</sup> [S/2023/735](#)

<sup>46</sup> [S/2023/247](#)

<sup>47</sup> [A/HRC/54/14](#)

In addition, under the auspices of the Latvian Presidency of the Committee of Ministers of the Council of Europe, the Venice Commission in co-operation with the Centre for Constitutional and Political Studies (CEPC) held an international seminar entitled “*Constitutions and War*” (14 – 15 September 2023, Madrid).

### ***Cyprus Forum***

An expert of the Venice Commission participated in a panel concerning the “*Role of the Attorney General and Checks and Balances*”, in the context of the Cyprus Forum 2023 which focused on Transparency and was organised by an NGO “*Oxygono*”, in association with the Delphi Economic Forum, (29-30 September 2023, Nicosia).<sup>48</sup>

### ***Global Network on Electoral Justice (GNEJ)***

The Commission co-organised the International Conference on “*Cybersecurity and Elections*” (10-12 May 2023, Madrid) in co-operation *inter alia* with the GNEJ. In addition, a representative of the Commission took part online in two meetings of the Observatory of Gender Equality of the GNEJ (24 April and 3 October 2023), which prepared a document aimed at assessing and strengthening the integration of a gender perspective in electoral judgments and at preventing gender-based political violence in the electoral context.

### ***Judges@europe Forum***

The Commission participated in a conference on good administration of justice which was organised by the European Judicial Training Network (EJTN). It brought together judges from 25 EU member states, as well as a large number of high-level speakers from key European and international institutions, including the Court of Justice of the European Union, the European Court of Human Rights, the Council of Europe and the United Nations (25-27 October 2023, Syracuse).

### ***World Jurist Association***

The 28<sup>th</sup> edition of the Biennial World Law Congress “*Peace Through Law*”, organised by the World Law Foundation on 19-21 July 2023 in New York, coincided with the 60<sup>th</sup> anniversary of the World Jurist Association. Some thousand participants of over 60 nationalities, including heads of state, authorities, judges from supranational and national courts, policy makers, academics, lawyers, activists, students, and related professionals took part in 35 simultaneous panels with over 250 speakers. Representatives of the Commission took part in the panel “*What are the concerns about democracy in the digital age?*”.

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<sup>48</sup> <https://2023.cyprusforum.cy/programme/>.

## VIII. LIST OF ADOPTED TEXTS WITH KEYWORDS

### CDL-AD(2023)001

**Kyrgyzstan** - Opinion on the amendments to the Law on the Rules of procedure of the parliament of the Republic of Kyrgyzstan, adopted by the Venice Commission at its 134<sup>th</sup> plenary session (Venice, 10-11 March 2023)

(Constitutional Court, mandatory constitutional control of international treaties, principle of separation of powers, ratification of international treaties, principle of retroactivity, right to appeal to the constitutional court)

### CDL-AD(2023)002

**Bosnia and Herzegovina** - *Amicus curiae* brief on the question of the appellate review in the courts of Bosnia and Herzegovina, adopted by the Venice Commission at its 134<sup>th</sup> plenary session (Venice, 10-11 March 2023)

(Organisation of the judicial system, principle of independence and impartiality of judges, internal judicial independence, the right to a second-degree jurisdiction, institutional forms of appeal, fair trial guarantees, assignment of judges, assignment of cases)

### CDL-AD(2023)003

**Bosnia and Herzegovina** - Opinion on the draft law on courts of Bosnia and Herzegovina, adopted by the Venice Commission at its 134<sup>th</sup> plenary session (Venice, 10-11 March 2023) (Organisation of the judicial system, state level jurisdiction, "implied powers", Court of Bosnia and Herzegovina, jurisdiction of the High Court of Bosnia and Herzegovina, internal organisation of the courts, immunity of judges, duty of neutrality of judges, evaluation of judges)

### CDL-AD(2023)004

**Ukraine** - *Amicus curiae* brief relating to the procedure for appointing to office and dismissing the Director of the National Anti-Corruption Bureau and the Director of the State Bureau of Investigation, adopted by the Venice Commission at its 134<sup>th</sup> plenary session (Venice, 10-11 March 2023)

(National Anti-Corruption Bureau, State Bureau of Investigation, appointment and dismissal procedure of the Directors, process of the constitutional amendments, substantive constitutional review of the constitutional amendments, principle of separation of powers, checks and balances, democracy, rule of law, human rights and freedoms, application of martial law, examination and adoption of constitutional amendments during the martial law)

### CDL-AD(2023)005

**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 external assessment of judges and prosecutors, adopted by the Venice Commission at its 134<sup>th</sup> plenary session (Venice, 10-11 March 2023)

(Judicial reform, vetting of judges, vetting of prosecutors, Assessment Commissions, substantive grounds for the vetting, procedures before the Assessment Commissions, Superior Council of Magistracy, Superior Council of Prosecutors, appellate review, Supreme Court of Justice, proportionality of sanctions)

### CDL-AD(2023)006

**Georgia** - Follow-up Opinion to four previous opinions concerning the Organic Law on Common Courts, adopted by the Venice Commission at its 134<sup>th</sup> plenary session (Venice, 10-11 March 2023)

(Judicial reform, legislative process, reform of the High Council of Justice, lay members, anti-deadlock mechanism, judicial corporatism, Supreme Court judges, qualification requirements,

nomination procedure, right to an appeal against the nomination decision, reallocation of candidates, secondment of judges, suspension from office, disciplinary liability of judges)

#### [CDL-AD\(2023\)007](#)

**Azerbaijan** - Joint opinion of the Venice Commission and the OSCE/ODIHR on the Law on political parties - approved by the Council for Democratic Elections at its 76<sup>th</sup> meeting (Venice, 9 March 2023) and adopted by the Venice Commission at its 134<sup>th</sup> plenary session (Venice, 10-11 March 2023)

(Political parties, legislative process, establishment of a political party, state registration, verification, suspension and restoration of the activity, dissolution, operation of a political party, political party membership requirements, financing of political parties)

#### [CDL-AD\(2023\)008](#)

**Republic of Moldova** - Opinion on the draft law on the Intelligence and Security Service, as well as on the draft law on counterintelligence and external intelligence activity, adopted by the Venice Commission at its 134<sup>th</sup> plenary session (Venice, 10-11 March 2023)

(Intelligence and security service, governance and powers, accountability and control, respect for fundamental rights and safeguards, quality of the law)

#### [CDL-AD\(2023\)009](#)

**Georgia** - Interim opinion on the draft law on de-oligarchisation, adopted by the Venice Commission at its 134<sup>th</sup> plenary session (Venice, 10-11 March 2023)

(De-oligarchisation, definition and designation as oligarch, the right to respect for private and family life, the right to freedom of expression, the right to freedom of assembly and association, interference with human rights, legitimate aim, lawfulness, necessity in a democratic society)

#### [CDL-AD\(2023\)010](#)

**Republic of Moldova** - Interim opinion on the draft law on limiting excessive economic and political influence in public life (de-oligarchisation), adopted by the Venice Commission at its 134<sup>th</sup> plenary session (Venice, 10-11 March 2023)

(De-oligarchisation, definition and designation as oligarch, the right to respect for private and family life, the right to freedom of expression, the right to freedom of assembly and association, interference with human rights, legitimate aim, lawfulness, necessity in a democratic society)

#### [CDL-AD\(2023\)011](#)

**Montenegro** - Follow-up Opinion to the opinion on the draft amendments to the law on the Judicial Council and Judges, adopted by the Venice Commission at its 134<sup>th</sup> plenary session (Venice, 10-11 March 2023)

(Judicial Council, work related rights of the judges, political incompatibility of judges, anti-deadlock mechanisms, evaluation of judges, ethical and disciplinary violations, disciplinary sanctions)

#### [CDL-AD\(2023\)015](#)

**France** - 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 Superior Council of Magistracy and the status of the judiciary as regards nominations, mutations, promotions and disciplinary procedures, adopted by the Venice Commission at its 135<sup>th</sup> plenary session (Venice, 9-10 June 2023)

(Superior Council of Magistracy, composition of the Council, judicial and non-judicial members, nominations of judges and prosecutors, disciplinary proceedings)

#### [CDL-AD\(2023\)016](#)

**Bosnia and Herzegovina** - Joint Opinion of the Venice Commission and the OSCE/ODIHR on the draft law of Republika Srpska on the Special Registry and Publicity of the Work of Non-

Profit Organizations, adopted by the Venice Commission at its 135<sup>th</sup> plenary session (Venice, 9-10 June 2023)

(Associations and foundations, foreign and international non-governmental organisations, special registry of non-profit organisations, foreign funding, foreign assistance, oversight and inspections, restrictions and obligations, fines and sanctions, the right to freedom of association, the right to freedom of expression, effective remedies)

#### **CDL-AD(2023)017**

**Georgia** - Final Opinion on the draft law on de-oligarchisation, adopted by the Venice Commission at its 135<sup>th</sup> plenary session (Venice, 9-10 June 2023)

(De-oligarchisation, countering oligarchic influence, personal approach, systemic approach)

#### **CDL-AD(2023)018**

**Ukraine** - Opinion on the Law on the prevention of threats to national security, associated with excessive influence of persons having significant economic or political weight in public life (oligarchs), adopted by the Venice Commission at its 135<sup>th</sup> plenary session (Venice, 9-10 June 2023)

(De-oligarchisation, countering oligarchic influence, personal approach, systemic approach, legislative process, definition and designation as oligarch, the right to respect for private and family life, the right to freedom of expression, the right to freedom of assembly and association)

#### **CDL-AD(2023)019**

**Republic of Moldova** - Final Opinion on limiting excessive economic and political influence in public life (de-oligarchisation), adopted by the Venice Commission at its 135<sup>th</sup> plenary session (Venice, 9-10 June 2023)

(De-oligarchisation, countering oligarchic influence, personal approach, systemic approach, Action Plan for de- oligarchisation)

#### **CDL-AD(2023)020**

**Germany** - Joint Opinion of the Venice Commission and OSCE/ODIHR on the amendments of the German Federal Election Act, approved by the Council for Democratic Elections at its 77<sup>th</sup> meeting (8 June 2023) and adopted by the Venice Commission at its 135<sup>th</sup> plenary session (Venice, 9-10 June 2023)

(Electoral legal framework, electoral reform, stability of electoral law, electoral system and constituencies' representation)

#### **CDL-AD(2023)021**

**Ukraine** - Opinion on the Law on national minorities (communities), adopted by the Venice Commission at its 135<sup>th</sup> plenary session (Venice, 9-10 June 2023)

(National minorities, the rights of national minorities, freedoms and obligations of national minorities, linguistic rights and right to education, public policy, international co-operation and foreign relations of national minorities)

#### **CDL-AD(2023)022**

**Ukraine** - Follow-up Opinion to the 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 (draft law no. 9322 of 25 May 2023), adopted by the Venice Commission at its 135<sup>th</sup> plenary session (Venice, 9-10 June 2023)

(Constitutional Court, independence and impartiality of the Court, Advisory Group of Experts, composition, selection procedure, assessment criteria, decision-making model, recusal/self-recusal procedure)

#### **CDL-AD(2023)023**

**Republic of Moldova** - Joint Follow-up opinion of the Venice Commission and the Directorate

General of Human Rights and Rule of Law (DGI) of the Council of Europe to the opinion on the draft law on the external assessment of Judges and Prosecutors, adopted by the Venice Commission at its 135<sup>th</sup> plenary session (Venice, 9-10 June 2023)  
([Assessment Commissions, vetting, assessment procedure, proportionality of sanctions](#))

#### [CDL-AD\(2023\)024](#)

**France** - Interim opinion on the Article 49.3 of the Constitution, adopted by the Venice Commission at its 135<sup>th</sup> plenary session (Venice, 9-10 June 2023)  
([National Assembly, vote of confidence, motion of no-confidence, deadlocks, parliamentary blockage, legislative process, the role of parliament, separation of powers, efficient decision-making, law-making power in the hands of the executive, control of the constitutional council](#))

#### [CDL-AD\(2023\)025](#)

**Ukraine** - Joint opinion on the draft law amending certain legislative acts of Ukraine which restrict the participation in the state power of persons associated with political parties whose activities are prohibited by law, approved by the Council for Democratic Elections at its 78th meeting (5 October 2023) and adopted by the Venice Commission at its 136<sup>th</sup> plenary session (Venice, 6-7 October 2023)  
([Universal suffrage, right to stand for election, restrictions, proportionality, banning of political parties, individualisation of restrictions, procedural safeguards against arbitrariness, martial law, emergency situation, time limits of restrictions](#))

#### [CDL-AD\(2023\)026](#)

**Ukraine** - Opinion on the draft law on Amendments to Article 51 of the Rules of Procedure of the Verkhovna Rada on political liability of Members of Parliament of Ukraine associated with political parties whose activities have been suspended, adopted by the Venice Commission at its 136<sup>th</sup> plenary Session (Venice, 6-7 October 2023)  
([Deprivation of parliamentary rights due to political party affiliation, \*de facto\* loss of parliamentary mandate, right to stand for election, right to sit as a member of the Parliament, time limits of restrictions, legitimate aim and proportionality of restrictions during and after martial law, procedural guarantees](#))

#### [CDL-AD\(2023\)027](#)

**Ukraine** - Joint Follow-up Opinion of the Venice Commission and the Directorate General of Human Rights and Rule of Law (DGI) of the Council of Europe to the joint opinion on the draft amendments to the Law “On the Judiciary and the Status of Judges” and Certain Laws on the Activities of the Supreme Court and Judicial Authorities ([CDL-AD\(2020\)022](#)), adopted by the Venice Commission at its 136<sup>th</sup> plenary session (Venice, 6-7 October 2023)  
([Judicial reform, judicial integrity, anti-corruption, compliance with disciplinary standards, judicial independence, separation of investigating and decision-making authority, use of lie detectors \(polygraphs\) in the context of judicial career, High Council of Justice](#))

#### [CDL-AD\(2023\)028](#)

**Ukraine** - Follow-up opinion to the opinion on the law on national minorities (communities) (draft law #9610), adopted by the Venice Commission at its 136<sup>th</sup> plenary session (Venice, 6-7 October 2023)  
([Rights of national minorities, linguistic rights and right to education, foreign relations of national minorities](#))

#### [CDL-AD\(2023\)029](#)

**The Netherlands** - Joint opinion of the Venice Commission and Directorate General of Human Rights and Rule of Law (DGI) of the Council of Europe on the legal safeguards of the

independence of the judiciary from the executive power, adopted by the Venice Commission at its 136<sup>th</sup> plenary session (Venice, 6-7 October 2023)

(Independence of judiciary, organisation of judicial governance, appointment of judges and court administrators, right to appeal against disciplinary measures, separation of powers, double mandate of judges and members of parliament, double mandate of the Council of State, the Supreme Court, Minister of Justice and Security, the Council for the Judiciary, the court management boards)

#### **CDL-AD(2023)030**

**Armenia** - Joint Opinion of the Venice Commission and the OSCE/ODIHR on the Draft Amendments to the Electoral Code and related legislation, adopted by the Venice Commission at its 136<sup>th</sup> plenary session (Venice, 6-7 October 2023)

(Electoral legislation, election administration, elections during emergencies, transparency of the electoral process, accessibility of voters, voter lists, voter registration, political party and candidate lists, election campaign regulations, election oversight, campaign finance regulations, provisions for gender equality)

#### **CDL-AD(2023)031**

**Republic of Moldova** - Joint Opinion of the Venice Commission and ODIHR on amendments to the Electoral Code and other related laws concerning ineligibility of persons connected to political parties declared unconstitutional, approved by the Council for Democratic Elections at its 78<sup>th</sup> meeting (Venice, 5 October 2023) and adopted by the Venice Commission at its 136<sup>th</sup> plenary session (Venice, 6-7 October 2023)

(Universal suffrage, right to stand for election, restrictions, proportionality, banning of political parties, individualisation of restrictions, procedural safeguards against arbitrariness)

#### **CDL-AD(2023)032**

**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 anti-corruption judicial system and on amending some normative acts, adopted by the Venice Commission at its 136<sup>th</sup> plenary session (Venice, 6-7 October 2023)

(Judicial reform, anti-corruption, unitary of the judiciary, the Anticorruption Court, The Anticorruption Chamber of Court of Appeal, vetting of judges, monitoring the lifestyle of judges)

#### **CDL-AD(2023)033**

**Georgia** - Follow-up opinion on previous opinions concerning the Organic Law on Common Courts, adopted by the Venice Commission at its 136<sup>th</sup> plenary session (Venice, 6-7 October 2023)

(Judicial reform, legislative process, reform of the High Council of Justice, lay members, decision making majorities in the High Council of Justice, anti-deadlock mechanism, judicial corporatism, Supreme Court judges, qualification requirements, nomination procedure, right to appeal against the nomination decision, reallocation of candidates, secondment of judges, suspension from office, disciplinary liability of judges)

#### **CDL-AD(2023)034**

**Chile** - Opinion on the 2023 Constitutional Reform, adopted by the Venice Commission at its 136<sup>th</sup> plenary session (Venice, 6-7 October 2023)

(Constitutional reform, fundamental principles, constitution-making process, rules on constitutional amendment, status of international treaties, crossing the floor, electoral threshold, gender equality, ex ante control of constitutionality, role of the ombudsman)

**CDL-AD(2023)035**

**Republic of Moldova** - Joint follow-up opinion of the Venice Commission and the Directorate General of Human Rights and Rule of Law (DGI) of the Council of Europe to the joint opinion on the draft Law on the external assessment of Judges and Prosecutors, adopted by the Venice Commission at its 136<sup>th</sup> plenary session (Venice, 6-7 October 2023)  
([Vetting, assessment procedure, proportionality of sanctions, non-retroactivity of law](#))

**CDL-AD(2023)036**

**Montenegro** - Opinion on the draft Law on the Government adopted by the Venice Commission at its 136<sup>th</sup> plenary session (Venice, 6-7 October 2023)  
([Supremacy of law, transparency of law-making process, separation of powers, organic legislation, quasi-constitutionality, constitutional entrenchment, quorum for decisions of government, prohibition of dual nationality for members of government, provisions for acting prime minister, restricting the powers of an outgoing government](#))

**CDL-AD(2023)037**

**Poland** - Urgent Opinion on the Law on the State Commission to Investigate Russian Influence on Internal Security in the Republic of Poland between 2007 and 2022 and on the draft law amending that Law, issued on 26 July 2023, pursuant to Article 14a of the Venice Commission's Rules of Procedure, endorsed by the Venice Commission at its 136<sup>th</sup> plenary session (Venice, 6-7 October 2023)  
([State security, foreign influence, arbitrariness, necessity and proportionality, right to respect for private and family life, right to freedom of expression, right to freedom of assembly and association, right to free elections, right to a fair trial, right to a tribunal established by law](#))

**CDL-AD(2023)038**

**Kyrgyzstan** - Opinion on the draft constitutional law on the "Akyikatchy" (Ombudsman) of Kyrgyzstan, adopted by the Venice Commission at its 136<sup>th</sup> plenary session (Venice, 6-7 October 2023)  
([Ombudsman, national human rights institutions, jurisdiction, immunity, election, termination of powers, staff and budget](#))

**CDL-AD(2023)039**

**Bulgaria** - Opinion on the draft amendments to the Constitution, adopted by the Venice Commission at its 136<sup>th</sup> plenary session (Venice, 6-7 October 2023)  
([Constitutional amendment, lack of public participation, judicial reform, Supreme Judicial Council, prosecutorial council, efficiency and accountability of the prosecution service, chief prosecutor, Minister of Justice, dual citizenship, controlling and regulatory bodies, formation of a caretaker government, probationary period for judges, tenure, judicial appointments, anti-deadlock mechanisms, the Inspectorate of the judiciary, constitutional complaint](#))

**CDL-AD(2023)040**

**Kyrgyzstan** - Opinion on the Draft Law of Kyrgyzstan about the media, adopted by the Venice Commission at its 136<sup>th</sup> plenary session (Venice, 6-7 October 2023)  
([Media legislation, freedom of expression, freedom of information, restrictions and prohibitions for using mass media, state registration, termination and suspension of mass media, accreditation of journalists, right to refute information in mass media, right to reply in mass media](#))

**CDL-AD(2023)041**

**Republic of Moldova** - Follow-up opinion to the opinion on the draft law on the intelligence and security service as well as on the draft law on counterintelligence and intelligence activity, adopted by the Venice Commission at its 136<sup>th</sup> plenary session (Venice, 6-7 October 2023)

(Intelligence and security service, governance and powers, accountability and control, respect for fundamental rights and safeguards, quality of the law)

#### [CDL-AD\(2023\)042](#)

**Ukraine** - Urgent follow-up opinion to the opinions on the Law "On Amendments to certain legislative acts of Ukraine to clarify the provisions on the competitive selection of candidates for the position of judge of the Constitutional Court of Ukraine", issued on 25 September 2023 pursuant to Article 14a of the Venice Commission's Rules of Procedure, endorsed by the Venice Commission at its 136<sup>th</sup> plenary session (Venice, 6-7 October 2023)

(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\(2023\)043](#)

**Kosovo** - Follow-up opinion to the previous opinions concerning amendments to the Law on the Prosecutorial Council, adopted by the Venice Commission at its 137<sup>th</sup> plenary session (Venice, 15-16 December 2023)

(Prosecutorial Council, composition, election of prosecutorial members and lay members, risk of corporatism and risk of politicisation)

#### [CDL-AD\(2023\)044](#)

**Georgia** - Opinion on the Law on the Special Investigation Service and on the provisions of the Law on Personal Data Protection concerning the Personal Data Protection Service, adopted by the Venice Commission at its 137<sup>th</sup> plenary session (Venice, 15-16 December 2023)

(Special Investigation Service, Personal Data Protection Service, independence of organisations, security of tenure, selection and appointment procedures, dismissal, functional immunity of the staff, jurisdiction, inclusive legislative procedures)

#### [CDL-AD\(2023\)045](#)

**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 Concept Paper concerning the reform of the Ethics and Disciplinary Commission of the General Assembly of Judges, adopted by the Venice Commission at its 137<sup>th</sup> plenary session (Venice, 15-16 December 2023)

(Ethics and Disciplinary Commission, investigation of disciplinary cases, nomination and election of lay members, anti-blocking mechanism)

#### [CDL-AD\(2023\)046](#)

**Georgia** - Opinion on the provisions of the Law on the fight against Corruption concerning the Anti-Corruption Bureau, adopted by the Venice Commission at its 137<sup>th</sup> plenary session (Venice, 15-16 December 2023)

(Anti-corruption Bureau, Inter-Agency Anti-Corruption Council, fight against corruption, independence and autonomy, appointment and dismissal procedures, mandatory drug test, asset and interest declaration)

#### [CDL-AD\(2023\)047](#)

**Georgia** - Joint Opinion of the Venice Commission and ODIHR on the Draft amendments to the Election Code and to the Rules of Procedure of the Parliament of Georgia, approved by the Council for Democratic Elections at its 79<sup>th</sup> meeting (Venice, 14 December 2023) and adopted by the Venice Commission at its 137<sup>th</sup> plenary session (Venice, 15-16 December 2023)

(Central Election Commission, election administration, anti-deadlock mechanism, selection procedures for appointment, stability of electoral law)

**CDL-AD(2023)048**

**Republic of Moldova** - Joint Follow-up Opinion of the Venice Commission and ODIHR to the Joint Opinion on amendments to the Electoral Code and other related laws concerning ineligibility of persons connected to political parties declared unconstitutional, approved by the Council for Democratic Elections at its 79<sup>th</sup> meeting (Venice, 14 December 2023) and adopted by the Venice Commission at its 137<sup>th</sup> plenary session (Venice, 15-16 December 2023)

(Universal suffrage, right to stand for election, restrictions, banning of political parties, consequences, legitimate aim, proportionality, foreseeability, individualisation of restrictions, procedural safeguards against arbitrariness)

**CDL-AD(2023)049**

**Republic of Moldova** - Joint *amicus curiae* brief of the Venice Commission and ODIHR on the ineligibility of persons connected to political parties declared unconstitutional, approved by the Council for Democratic Elections at its 79<sup>th</sup> meeting (Venice, 14 December 2023) and adopted by the Venice Commission at its 137<sup>th</sup> plenary session (Venice, 15-16 December 2023)

(Universal suffrage, right to stand for election, restrictions, banning of political parties, consequences, legitimate aim, proportionality, foreseeability, individualisation of restrictions, procedural safeguards against arbitrariness)

**CDL-AD(2023)050**

**Ukraine** - *Amicus curiae* brief relating to additional sanctions for committing an administrative offence, adopted by the Venice Commission at its 137<sup>th</sup> plenary session (Venice, 15-16 December 2023)

(Universal suffrage, right to stand for election, right to sit as an elected person, administrative offence, restrictions, sanction of disqualification, legitimate aim, proportionality, foreseeability)