

# THE ROLE OF THE VENICE COMMISSION IN SHAPING EUROPEAN CONSTITUTIONALISM

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## **Abstract**

*The recent turmoil in the European constitutional space, caused by some decisions of the constitutional courts and the CJEU that have brought up again the juxtaposition of the final authority conflicting claims between these courts, and with it the debate over supremacy versus EU law, with all its consequences hence, they determined us to turn our attention to an institutional actor that influences, more or less visibly, constitutionalism in the EU, and which must also be included in the equation of these events: the Venice Commission. In this light, the study presents the landmarks of the emergence, development, increasing influence of the Venice Commission in the European space and the real ways in which it has exercised and still exercises a strong influence on the constitutional development and standardization of law in this space.*

**Keywords:** *European constitutionalism, Venice Commission, European Union, CJEU, constitutional courts.*

**JEL Classification:** K33, K34

## **1. Venice Commission. Characterization and brief history**

Created in 1990 as **an advisory body on the constitutional law of the Council of Europe**, and identified in the literature as the “spiritual child” of Professor and Judge Antonio la Pergola<sup>2</sup>, the Venice Commission has become over time a reference body not only in Europe but throughout the world, significantly influencing the democratic developments globally.

According to its Statute<sup>3</sup>, the European Commission for Democracy through Law shall be an independent consultative body which co-operates with the member states of the Council of Europe, having as a specific field of action the guarantees offered by law in the service of democracy. The Commission’s objectives shall be strengthening the understanding of the legal systems of the participating States, notably with a view to bringing these systems closer; promoting the rule of law and democracy; examining the problems raised by the working of democratic institutions and their reinforcement and development. The Commission shall give priority to work concerning: the constitutional, legislative and administrative principles and techniques which serve the efficiency of democratic institutions and their strengthening, as well as the rule of law; fundamental rights and freedoms, notably those that involve the participation of citizens in public life; the contribution of local and regional self-government to the enhancement of democracy. Member States and Council of Europe bodies may request opinions from the Commission<sup>4</sup>. The European Union may also request opinions on its area of competence<sup>5</sup>. As for the Member States, parliaments, governments or ministers usually request for such opinions. The Commission also accepts such requests from the Constitutional Courts or the Ombudsmen. Throughout its work, the Venice Commission promotes the core values of the Council of Europe’s work, namely human rights, democracy and the rule of law, as landmarks of a common constitutional space for the Member States<sup>6</sup>, thus contributing to the process of modernization and standardization of law in these States<sup>7</sup>.

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<sup>2</sup> Martje de Visser, *A critical assessment of the role of the Venice Commission in Processes of Domestic Constitutional Reform*, [https://www.venice.coe.int/cocentre/A\\_Critical\\_Assessment\\_of\\_the\\_Role\\_of\\_the\\_Venice\\_Commission.pdf](https://www.venice.coe.int/cocentre/A_Critical_Assessment_of_the_Role_of_the_Venice_Commission.pdf), consulted on 1.10.2021.

<sup>3</sup> [https://www.venice.coe.int/WebForms/pages/?p=01\\_01\\_Statute](https://www.venice.coe.int/WebForms/pages/?p=01_01_Statute), consulted on 1.10.2021.

<sup>4</sup> For the corresponding stages, see [https://www.venice.coe.int/WebForms/pages/?p=01\\_activities&lang=EN](https://www.venice.coe.int/WebForms/pages/?p=01_activities&lang=EN), consulted on 1.10.2021

<sup>5</sup> Cameron, Iain Thorburn, *The Role of the Venice Commission in Strengthening the Rule of Law (July 13, 2020). Rule of Law in the EU: 30 Years After the Fall of the Berlin Wall (Forthcoming)*, Available at <http://dx.doi.org/10.2139/ssrn.3650021>, consulted on 1.10.2021.

<sup>6</sup> G. Buquicchio, P. Garrone, *Vers un espace constitutionnel commun? Le role de la Commission de Venise*, [www.venice.coe.int](http://www.venice.coe.int).

<sup>7</sup> T. Toader, M. Safta, *Constitutional Contentious*, Hamangiu Publishing House, Bucharest, 2021.

If we make even a short “visit” on the Commission’s website<sup>8</sup>, we will notice the thesaurus that has been created over time not only by putting these opinions together, but also by the tools developed along the way, such as the codes of good practice in various subjects and the CODICES database<sup>9</sup>, constantly renewed with the most relevant decisions of the constitutional courts of the Commission. Likewise, the multitude of international events in which the Venice Commission is involved demonstrates its role as a key player in constitutional and legislative reforms, as well as a mediator in times of tension and challenges to democratic values.

In this article we want to open an investigation of this evolution, capitalizing, in part, a personal experience as a liaison of the Constitutional Court to the Venice Commission<sup>10</sup>. Given the breadth of the subject, we will point out some points that are mainly related to the role of the Venice Commission as a “moderator” of the world and European dialogue of the constitutional courts and as a “modeler” of the constitutional and legislative reforms.

## 2. The Venice Commission, “moderator” of the European and global dialogue of the constitutional courts

We believe that this role of “moderator” of the Commission can be retained, as long as it is always present at the major events that bring together the constitutional courts at European and global level, as well as those that mark anniversaries or important topics of debate for constitutional justice.

As for the first category, which we have generically characterized by the phrase “major events”, we consider, notably, the World Conference on Constitutional Justice, which currently brings together 117 members, the Association of Francophone Constitutional Courts and the Conference of European Constitutional Courts. In this regard, we mention that at the XV Congress of the Conference of the European Constitutional Courts with the theme “Constitutional justice. Functions and relationships with the other public authorities”, organized on 23-25 May 2011, the Statute of the World Conference on Constitutional Justice was signed in Bucharest, with the support of the Venice Commission<sup>11</sup>. The Secretariat of the World Conference shall be provided by the Venice Commission. Given this involvement, the Venice Commission is a key player in all the meetings which these cooperation structures of the constitutional courts hold.

Regarding the second category, namely the events that mark the debate on key issues for constitutional justice, we offer as an example, among the many available, one that we consider particularly suggestive, namely the Colloquium organized on 12 July 2018 by the Constitutional Tribunal of Andorra, with the theme “Constitutional Courts, the guarantee of the democratic quality of societies”<sup>12</sup>. On that occasion, Schnutz Rudolf Durr, Head of the Constitutional Justice Division and Secretary-General of the World Conference on Constitutional Justice, presented a paper entitled *Constitutional Courts: an endangered species?*, suggestive not only for the tensions and pressures on the constitutional courts, but also for the considerable, direct influence of the Venice Commission in solving such tensions. We mention as eloquent the situation in which the secretary of the Venice Commission, currently President G. Buquicchio, convinced the President of Georgia to abandon the idea of merging the Constitutional Court with the Supreme Court. The Constitutional Court of Kyrgyzstan was similarly saved<sup>13</sup>.

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<sup>8</sup> <https://www.venice.coe.int/webforms/events/>, consulted on 1.10.2021

<sup>9</sup> <http://www.codices.coe.int/NXT/gateway.dll?f=templates&fn=default.htm>, consulted on 1.10.2021

<sup>10</sup> Between 2012-2017.

<sup>11</sup> [https://www.venice.coe.int/webforms/documents/default.aspx?pdf=CDL-WCCJ-GA\(2017\)010-e](https://www.venice.coe.int/webforms/documents/default.aspx?pdf=CDL-WCCJ-GA(2017)010-e), consulted on 1.10.2021.

<sup>12</sup> *Les Cours Constitutionnelles, garantie de la qualite democratique des societies*, under the coordination of Professor Dominique Rousseau, Collection grands Colloques, 2019.

<sup>13</sup> Schnutz Rudolf Durr, *Constitutional Courts: an endangered species?*, in *Les Cours Constitutionnelles, garantie de la qualite democratique des societies*, under the coordination of Professor Dominique Rousseau, Collection grands Colloques, 2019, p. 118.

### 3. The Venice Commission, support of national constitutional reforms

Probably the strongest influence of the Venice Commission is manifested in the opinions and the recommendations made on the initiatives for the revision of the Constitution. For example, Romania has requested support in this regard both for the adoption of the Constitution<sup>14</sup> as well as for its revision in 2003, as well as on the occasion of other initiatives for revision. As a directly known example, since we worked on drafting the decision issued by the Constitutional Court and we followed the opinion sent by the Venice Commission, we should mention the initiative for the revision of the Constitution, on which the Constitutional Court ruled by Decision No 80 of 16 February 2014<sup>15</sup>. In the Opinion of 21-22 March 2014, adopted at the 98th Plenary Session, the Venice Commission ruled, upon the request of the Prime Minister of Romania, on the same initiative for the revision of the Constitution. In the formulated Opinion, an explicit reference was made to the decision pronounced by the Constitutional Court of Romania, thus achieving a delimitation of competences, in the sense of observing the latter decision and the lack of competence of the Venice Commission to rule upon it: „On 17 February 2014, the Constitutional Court of Romania declared, in the light of Article 152, the unconstitutionality of certain provisions of the draft revision law. It is not the role of the Venice Commission to assess the constitutionality of given proposals or the judgment of the Constitutional Court [...], the present analysis aims at assessing the proposed amendments to the Romanian Constitution in the light of existing European standards and experience”. We noticed on other occasions<sup>16</sup> that, regarding the majority of the texts with regard to which the Constitutional Court found the unconstitutionality or formulated recommendations by Decision No. 80 of 16 February 2014, the Venice Commission also made recommendations, emphasizing either drafting imperfections or substantive issues. This is not only the case for Romania, but also for Poland, Estonia, Lithuania, Latvia, etc., as well as for other countries outside the European space<sup>17</sup>.

Having seen the effervescence of the recent resurgence of discussions on the issue of sovereignty and especially on the constitutional identity in the European Union, we cannot help to wonder which is in fact the content of the latter concept, sometimes circulated on populist grounds. As long as the Constitutions of the States that passed to democracy after the fall of communism in Europe were in the “crucible” of the Venice Commission, and took over the recommendations of this forum set up as a support and promoter for democracy, they certainly have a common framework and profile, that of democracy, of the rule of law, a concept which was also developed on the basis of the efforts of the Venice Commission. Likewise, as has been pointed out in the literature<sup>18</sup> *the constitutional identity* shall be constituted by the aggregation of national identity elements given the fact that the notion of *constitutional identity* shall not be enshrined in the national legal text and, even less, it is not explicitly stated in the conventional text (European Convention for the Protection of Human Rights and Fundamental Freedoms) or in the case-law of the European Court of Human Rights. Thus, it was shown that “*constitutional identity*” is a flexible concept that is based on the religious, ethnic or cultural identity of a State, and in the discussion about *constitutional identity* it is necessary to delimit it from *the identity of the Constitution* - the two phrases knowing different reporting forums: (1) on the one hand, if we agree on the hybrid construction of constitutional identity that acts as a *construct* of religious, cultural, ethnic elements that interact in an implicit dynamism, we will come to the conclusion that it designates a *purely*

<sup>14</sup> [https://www.venice.coe.int/webforms/documents/?pdf=CDL\(1991\)001-e](https://www.venice.coe.int/webforms/documents/?pdf=CDL(1991)001-e), consulted on 1.10.2021.

<sup>15</sup> Official Gazette of Romania, Part I, no. 246 of 7 April 2014.

<sup>16</sup> T. Toader, M. Safta, *Constitutional Contentious*, Hamangiu Publishing House, Bucharest, 2021.

<sup>17</sup> For a list of the Opinions and their content, see <https://www.venice.coe.int/webforms/documents/?topic=4&year=all>, consulted on 1.10.2021

<sup>18</sup> N. Voiculescu, M. Berna, *Epistemological uncertainty and difficulties in establishing the relationship between European and national human rights norms. Special look at the Decision of the Constitutional Court of Romania No 390 of 8 June 2021*, <https://www.universuljuridic.ro/incertitudine-epistemologica-si-dificultati-in-stabilirea-raportului-intre-norme-europene-si-cele-nationale-in-materia-drepturilor-omului-privire-speciala-asupra-deciziei-curtii-constitutionale/>, with reference to Tudorel Toader, Marieta Safta, *The Dialogue of Constitutional Judges*, Universul Juridic Publishing House, Bucharest, 2015, p. 91-93.

*subjective reality and strictly dependent on personal perception and interpretive (2) on the other hand, the identity of the Constitution is a much more articulate concept that can be derived by appealing to the rules and principles established in the content of the fundamental law*".<sup>19</sup> Regardless of the conceptual delimitations, we consider that in a European Union under the sign of those values and under the conditions of passing through the "filter" of the Venice Commission, the national constitutions have the same democratic identity as elements related to the rule of law as it is defined in a convergent manner by the Venice Commission and the institutions of the European Union cannot have a different meaning in the Member States as the "identity" element cannot be invoked in these respects.

#### 4. The Venice Commission, "framer" of constitutionalism in the European Union

The shaping of constitutionalism has been and is achieved not only through the opinions on the adoption and amendment of fundamental laws in Europe and in the world, but also through the adoption of the codes of good practice or other synthesis documents on the major topics of democracy: the rule of law, justice, elections, referendum, political parties, etc.

Thus, regarding **the rule of law**, the document entitled Rule of law checklist, adopted at the 106th plenary session, Venice, 11-12 March 2016<sup>20</sup>, is unanimously known and invoked in the practice of constitutional courts, which is a true guide to the criteria of the rule of law. The importance of this concept and the requirements it implies is demonstrated by the establishment at European Union level of the Rule of Law Assessment Mechanism<sup>21</sup>, with consequences in the process of re-evaluating sovereignty and traditional constitutionalism. We must share the view expressed in this regard by Professor Martin Belov<sup>22</sup>, according to which the rule of law is foreshadowed as "the most important ordering principle in the context of post-Westphalian constitutionalism, global constitutionalism and constitutional pluralism", as the rule of law and judicial dialogue are mutually reinforcing. The courts shall be, as the same author emphasized, "natural protectors and promoters of the rule of law. They shall be the guardians of the supremacy and primacy of international and supranational norms. They shall be the key guardians of fundamental rights. The courts shall be the promoters of legal certainty, the guarantors of the legitimate expectations of the citizens and gradually they shall become the masters of the legal order." The courts shall perform this role inside and outside the borders and thus they shall be "the pillars of the rule of law beyond and within the statehood in the context of both Westphalian and post-Westphalian constitutionalism". **By establishing the rule of law mechanism at EU level, applicable to all Member States, all EU courts, regardless of borders, level, jurisdiction, shall be called to speak the "same language" of the rule of law defined at European level, which is an extraordinary tool of harmonization.** As a result, more than ever, the idea expressed some time ago by Professor Martin Belov, whom we quoted in these paragraphs, is illustrated by the fact that **"the rule of law is a principle which is *per se* capable of leading/coordinating the complexity of composite legal orders and fragmented and pluralistic societies."** We note that in this regard, too, the role of the Venice Commission, which "coagulated" the criteria of the rule of law in the above-mentioned document, must be retained before the European Union appropriates the assessment of the rule of law as a fundamental mechanism for political and legal integration.

**The electoral legislation** has often been under "the scrutiny" of the Commission, and the supplementary document is the **Code of Good Practice on Electoral Practices - Guidelines and Explanatory Report**, adopted by the European Commission for Democracy through Law at its

<sup>19</sup> Ibidem, with reference to Elena-Simina Tănăsescu, *About the constitutional identity and the integrator role of the Constitution*, Curierul Judiciar, article available on: <https://www.curieruljudiciar.ro/2017/05/28/despre-identitatea-constitucionala-si-rolul-integrator-al-constitutiei/>, accessed on 10 October 2021.

<sup>20</sup> [https://www.venice.coe.int/webforms/documents/default.aspx?pdffile=CDL-AD\(2016\)007-e](https://www.venice.coe.int/webforms/documents/default.aspx?pdffile=CDL-AD(2016)007-e), consulted on 1.10.2021.

<sup>21</sup> First Report – 2020 - [https://ec.europa.eu/info/policies/justice-and-fundamental-rights/upholding-rule-law/rule-law/rule-law-mechanism/2020-rule-law-report\\_ro](https://ec.europa.eu/info/policies/justice-and-fundamental-rights/upholding-rule-law/rule-law/rule-law-mechanism/2020-rule-law-report_ro).

<sup>22</sup> M. Belov, *Judicial Dialogue – Westphalian or Post-Westphalian Constitutional Phenomenon?*, in M Belov (editor), *Judicial Dialogue*, Eleven International Publishing 2019, pp. 25-51.

52nd Plenary Session (Venice, 18-19 October 2002)<sup>23</sup>, an act that underlines the principles that constitute the basis of the European electoral heritage, namely “*universal, equal, freely expressed, secret and direct suffrage*”. We stated on other occasions<sup>24</sup> that these principles, as well as the provisions of the Code were invoked in the case-law of the Constitutional Court of Romania after 2010, aimed at emphasizing certain obligations of the legislator in this matter, determined by the finding of numerous amendments in the electoral legislation and the shortcomings of the electoral system in the 2008 parliamentary elections and in the 2009 presidential elections<sup>25</sup>. As the Constitutional Court noted in the invoked case-law, the Code of Good Practice in Electoral Matters emphasizes the stability of certain rules of electoral law, “*especially those covering the electoral system per se, the composition of electoral commissions and the drawing of constituency boundaries.*” The same document also states that “*It is not so much changing voting systems which is a bad thing – they can always be changed for the better – as changing them frequently or just before (within one year of) elections. Even when no manipulation is intended, changes will seem to be dictated by immediate party political interests*”.

Likewise, the Constitutional Court often referred in its decision to the **Code of Good Practice on Referendums** (adopted by the Council for Democratic Elections at its 19th meeting and by the Venice Commission to its 70th Plenary Session, Venice, March 2007), mainly when the stability of the relevant legislation, the validity of the referendum and its effects were questioned. Thus, the Code elaborated by the Venice Commission states that the fundamental aspects in the matter of the referendum law must not be able to be amended at least one year before the referendum or must be regulated by the Constitution or at a higher level than the ordinary law. The Constitutional Court referred to these distinctions in Decision No 736 of 24 July 2012<sup>26</sup>, Decision No 334 of 26 June 2013<sup>27</sup>, in which it was noted, inter alia, that “*over time, the legislative instability in the referendum, caused by the amendment of this legislation, notably during periods when Parliament was preparing for a procedure to dismiss the President, and currently on the occasion of the initiation of the procedure for the revision of the Constitution, it was revealed that it was not only a factor of legal uncertainty, but also a cause of civic challenge to this legislation, impugned on the occasion of its enforcement*”, as well as the fact that “*Parliament can (and, as it results from the decisions of the Court, it must) intervene in this matter of the referendum legislation, provided that it is not subject to strictly conjunctural amendments, based on claims of opportunity or political understanding, which benefit one or another of the political forces represented in Parliament and which form a parliamentary majority at some point*”. These recitals substantiated, as we have shown, the solution given by this decision, the Court holding that, “*in order to ensure compliance with the general principle of legal stability in the referendum, in accordance with the recommendations of the Code of Good Practice on Referendums, adopted by the Venice Commission, with Protocol no. 1 to the European Convention for the Protection of Human Rights and Fundamental Freedoms and the International Covenant on Civil and Political Rights, the provisions of the Law amending and supplementing Law No 3/2000 on the organization and holding of a referendum are constitutional, but they cannot be applicable to the referendums organized within one year from the date of entry into force of the amending law*”. It is also noted its strong substantiation on the recommendations contained in the Code of good practices in the matter of referendum, which were taken into account by the legislator, in view of the decision of the Constitutional Court.

It this light, it should be noted that, although the acts of the Venice Commission are recommended, by taking them in the decisions of the Constitutional Court of Romania and, in general, in the decisions of the constitutional courts, decisions of a generally binding nature, they

<sup>23</sup> www.venice.coe.int, consulted on 1.10.2021.

<sup>24</sup> T. Toader, M. Safta, *Constitutional Contentious*, Hamangiu Publishing House, Bucharest, 2021.

<sup>25</sup> Decision No 61 of 14 January 2010 (Official Gazette of Romania, Part I, no. 76 of 3 February 2010); Decision No 503 of 20 April 2010 (Official Gazette of Romania, Part I, no. 353 of 28 May 2010); Decision No 51 of 25 January 2012 (Official Gazette of Romania, Part I, no. 90 of 3 February 2012).

<sup>26</sup> Official Gazette of Romania, Part I, no. 516 of 25 July 2012.

<sup>27</sup> Official Gazette of Romania, Part I, no. 407 of 5 July 2013.

are imposed on the legislator according to the effects established for the decisions of those courts. Therefore, the Venice Commission indirectly but very strongly influences the modeling of law at European and global level. As an example, we note that although the Code of Good Practice in Electoral Matters is not mandatory, by taking over the requirements imposed by this Code in the decisions of the Constitutional Court (the most eloquent being the 1-year term before elections when it is not recommended the amendment of the electoral legislation), the “recommendations” have transformed into obligations of the legislator, based on the provisions of Article 147 (4) of the Constitution which enshrines the general binding nature of the decisions of the Constitutional Court<sup>28</sup> and by reference to the reasoning of the Court in the application of constitutional provisions, usually those enshrining the rule of law.

**The independence of the judiciary** has been also an important topic of debate in the recent years, which is a recurring topic on the agenda of the Venice Commission, which has ruled on the statute of judges and prosecutors in general, as well as on specific amendments to the legislation in the field, such as the norms generally called the *Laws of Justice* in Romania, and, in context, regarding the establishment of the Section for the Investigation of Offences<sup>29</sup>. And earlier, in 2012, in a crisis situation involving several political and institutional actors, the Venice Commission issued a comprehensive opinion on the situation in Romania, which is an excellent plea for compliance with the principle of constitutional loyalty<sup>30</sup>. Moreover, in the 2017, 2018 and 2019 Reports of the Venice Commission, the Cooperation and Verification Mechanism recommended and then reiterated the recommendation to establish a robust and independent system for appointing high-ranking prosecutors, based on clear and transparent criteria, with the support of the Venice Commission, which can provide sufficient guarantees against political involvement in the procedure and which will lead to the appointment of persons with the highest professional competence and the best reputation<sup>31</sup>.

## 5. Conclusions

The subject is complex and deserves to be approached on multiple dimensions, as long as the developments of the recent years demonstrate the increased authority of the Venice Commission, the fact that this is “in all and everything” related to democracy and constitutionalism globally.

This consolidation is not without risks, in the sense that an interesting thesis expressed in the literature is that the Venice Commission itself could become “captive”, given that it cannot censor

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<sup>28</sup> See, for example, Decision No 150 of 12 March 2020, published in the Official Gazette of Romania, Part I, no. 215 of 17 March 2020 paragraph 77 „therefore, given that both aspects of the principle of legal certainty are met, the Court notes that, by adopting the Government Emergency Ordinance No 26/2020, the legislator did not comply with the obligation to refrain from amending the regulatory framework in electoral matters, as it was developed in the case-law of the Constitutional Court, nor the recommendations of the Code of Good Practice in Electoral Matters developed by the European Commission for Democracy through Law (the Venice Commission). By amending the essential elements regarding the exercise of electoral rights in less than one year before the term or early parliamentary elections, the legislator violated the constitutional provisions of Article 1 (3) and (5) on the rule of law, the obligation to comply with the Constitution and the principle of legal certainty.”

<sup>29</sup> CDL-AD(2018)017-eRomania - Opinion on draft amendments to Law No. 303/2004 on the Statute of Judges and Prosecutors, Law No. 304/2004 on Judicial Organisation, and Law No. 317/2004 on the Superior Council for Magistracy, adopted by the Commission at its 116th Plenary Session (Venice, 19-20 October 2018), CDL-AD(2021)019-eRomania - Opinion on the draft Law for dismantling the Section for the Investigation of Offences committed within the Judiciary, adopted by the Venice Commission at its 127th Plenary Session (Venice and online, 2-3 July 2021), CDL-AD(2019)014-e, Romania – Opinion on Emergency Ordinances GEO No. 7 and GEO No. 12 amending the Laws of Justice, adopted by the Venice Commission at its 119th Plenary Session (Venice, 21-22 June 2019).

<sup>30</sup> CDL-AD(2012)026-rom, Opinion on the compatibility with the Constitutional principles and the Rule of Law of the actions taken by the Government and the Parliament of Romania in respect of other State institutions and on the Government emergency ordinance on amendment to Law No 47/1992 on the organization and functioning of the Constitutional Court and on the Government emergency ordinance amending and completing Law No 3/2000 on the organization and holding of a referendum in Romania, adopted by the Venice Commission at its 93rd Plenary Session (Venice, 14-15 December 2012).

<sup>31</sup> [https://ec.europa.eu/info/policies/justice-and-fundamental-rights/upholding-rule-law/rule-law/assistance-bulgaria-and-romania-under-cvm/reports-progress-bulgaria-and-romania\\_ro](https://ec.europa.eu/info/policies/justice-and-fundamental-rights/upholding-rule-law/rule-law/assistance-bulgaria-and-romania-under-cvm/reports-progress-bulgaria-and-romania_ro), consulted on 1.10.2021.

the government's choice regarding the representatives appointed in this forum.<sup>32</sup> We consider that the multinational structure of the Commission, as well as the procedure of working and adopting opinions, substantially reduces this risk. Furthermore, the members know that they are appointed as independent members and are protected by this statute, despite the attempts made by governments to withdraw their appointment, which gives them some detachment from the national political factor. However, the risk of political influence in any decision-making and influence forum at national, European and global level must not be neglected.

From this perspective, we find interesting a new approach that we have identified in the recent law literature, which puts "face to face" the work and the documents of the Commission on the relevant rules on the revision of the Constitution and a reference work by a well-known author of constitutional law, relating to the same subject<sup>33</sup>. In the conclusions of such study, it was shown, among other things, that the analyzed author, Professor Richard Albert, and the Venice Commission intend to provide guidelines for the design and drafting of legal norms for the constitutional revision. Neither of them proposes a universal system or a set of rules. They rather both insist that this design is a matter of achieving the right balance, on a case-by-case basis and for both, the balance to be found - prima facie - is between rigidity and flexibility, the Venice Commission's approach being more legal, as aspect which is certainly justified in view of the position and the role of this body.

Such comparative examination on various topics of the Venice Commission's practice and legal doctrine in various fields would be a plus for the scientific knowledge, mutual enrichment and an additional tool for universal "connection" to the same standards of democracy, unanimously accepted and uniformly interpreted. In fact, as the trends of the recent years have shown, the Reports of the Venice Commission contain increasingly consistent references to the law literature, a conclusive example of which is the Report on Separate Opinions adopted at the 117th plenary session (Venice, 14-15 December 2018)<sup>34</sup>, of interest also for Romania which is mentioned with the situation determined by a decision of the Plenum of the Constitutional Court which conditioned the publication of the separate opinions of the constitutional judges. This kind of approach is more important in the context in which the authority and influence of the Commission at the States level are significantly determined by the more or less deferential attitude of the national authorities, including the constitutional courts, which are also subject to external and internal juridical developments and influences.

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<sup>32</sup> Cameron, Iain Thorburn, *The Role of the Venice Commission in Strengthening the Rule of Law (July 13, 2020). Rule of Law in the EU: 30 Years After the Fall of the Berlin Wall (Forthcoming)*, Available at <http://dx.doi.org/10.2139/ssrn.3650021>.

<sup>33</sup> St-Hilaire, Maxime, *Richard Albert v. The Venice Commission on Constitutional Amendments and the Rule of Law: A Systematic and Critical Comparison (August 30, 2021)*, „Manitoba Law Journal”, Vol. 45, No. 1, Forthcoming, Available at <http://dx.doi.org/10.2139/ssrn.3914315>.

<sup>34</sup> [https://www.venice.coe.int/webforms/documents/default.aspx?pdffile=CDL-AD\(2018\)030-e](https://www.venice.coe.int/webforms/documents/default.aspx?pdffile=CDL-AD(2018)030-e), consulted on 1.10.2021.

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