



## **XIX Congress of the Conference of European Constitutional Courts**

### **Minutes of the meeting of the Circle of Presidents of 23 May 2024**

*23 May 2024, 11:30 – 12:30, Palace of the Republic*

*Chisinau, Republic of Moldova*

#### **I. Participants in the meeting:**

##### **Representatives of the Presiding Court:**

1. Ms Domnica MANOLE, President of the Constitutional Court of the Republic of Moldova (accompanied by Mr Teodor PAPUC, Deputy Secretary General, Constitutional Court of the Republic of Moldova).

##### **The Circle of Presidents participants (heads of delegations of Member Courts):**

2. Ms Holta ZAÇAJ, President of the Constitutional Court of Albania;
3. Mr Yervand KHUNDKARYAN, Justice, Constitutional Court of the Republic of Armenia;
4. Mr Christoph GRABENWARTER, President of the Constitutional Court of Austria;
5. Mr Farhad ABDULLAYEV, Chairman of the Constitutional Court of the Republic of Azerbaijan;
6. Mr Pierre NIHOUL, President of the Constitutional Court of the Kingdom of Belgium;
7. Ms Pavlina PANOVA, President of the Constitutional Court of the Republic of Bulgaria;
8. Ms Valerija GALIĆ, President of the Constitutional Court of Bosnia and Herzegovina;
9. Mr Miroslav ŠEPAROVIĆ, President of the Constitutional Court of Croatia;
10. Ms Laura DÍEZ BUESO, Justice, Constitutional Court of the Kingdom of Spain;
11. Mr Ivo PILVING, Chairman of the Administrative Law Chamber, The Supreme Court of Estonia;
12. Ms Corinne LUQUIENS, Member, Constitutional Council of France;
13. Mr Merab TURAVA, President of the Constitutional Court of Georgia;
14. Ms Réka VARGA, Judge, Constitutional Court of Hungary;

15. Mr Giovanni AMOROSO, Vice-President of the Constitutional Court of Italy;
16. Mr Aldis LAVIŅŠ, President of the Constitutional Court of the Republic of Latvia;
17. Mr Hilmar HOCH, President of the Constitutional Court of the Principality of Liechtenstein;
18. Mr Gintaras GODA, President of the Constitutional Court of the Republic of Lithuania;
19. Ms Dobrila KACARSKA, President of the Constitutional Court of the Republic of North Macedonia;
20. Mr Jean-Philippe DEROSIER, Member, Supreme Court of Monaco;
21. Mr Milorad GOGIC, President of the Constitutional Court of Montenegro;
22. Ms Dineke de GROOT, President of the Supreme Court of the Kingdom of the Netherlands;
23. Mr Justyn PISKORSKI, Judge, Constitutional Tribunal of Poland;
24. Mr José João ABRANTES, President of the Constitutional Court of Portugal;
25. Mr Gheorghe STAN, Judge, Constitutional Court of Romania;
26. Ms Snežana MARKOVIĆ, President of the Constitutional Court of the Republic of Serbia;
27. Mr Ivan FIAČAN, President of the Constitutional Court of the Republic of Slovakia;
28. Mr Matej ACCETTO, President of the Constitutional Court of the Republic of Slovenia;
29. Mr Vlastimil GÖTTINGER, Secretary General, Constitutional Court of the Czech Republic;
30. Mr Kadir ÖZKAYA, President of the Constitutional Court of the Republic of Türkiye;
31. Mr Viktor GORODOVENKO, Judge, Constitutional Court of Ukraine.

Guests:

Mr Vahe DERMITSHYAN, Legal Advisor, Venice Commission.

Representatives of the following Member Courts were not present at the meeting of the Circle of Presidents on 23 May 2024:

- The Constitutional Court of the Federal Republic of Germany,
- The Swiss Federal Supreme Court,
- The Constitutional Court of the Grand Duchy of Luxembourg,
- The Constitutional Tribunal of the Principality of Andorra,
- The Supreme Court of Ireland,

- The Supreme Court of the Kingdom of Denmark,
- The Constitutional Court of Malta,
- The Supreme Court of the Kingdom of Norway,
- The Supreme Constitutional Court of Cyprus.

## **II. Topics discussed during the meeting:**

1. The final declaration of the Congress;
2. Handing over the chairmanship of the CECC.

## **II. Summary of the meeting of the Circle of Presidents of 23 May 2024**

**1. Ms Domnica MANOLE**, President of the Constitutional Court of the Republic of Moldova, greeted all 31 members present at the meeting of the Circle of Presidents, noting that, according to the Statute of the Conference, the quorum is met. The first topic that was discussed and presented for adoption by the Circle of Presidents was the Final Declaration, that was submitted to the representatives of the constitutional courts. Ms MANOLE invited the members present to comment on the text presented.

*"Every European constitutional court deals with issues at the intersection of law and politics. There should be no limitation on the performance of their functions by reason of the political dimension of a constitutional dispute.*

*All parts of the constitutions should be justiciable. The supreme democratic function of the constitutional courts is to impose them on the legislators and to review compliance therewith.*

*The role of the constitutional courts during states of emergency is to ensure that authorities act within constitutional boundaries and carefully weigh human rights concerns alongside the latest scientific knowledge. Despite the challenges, our courts must remain committed to this crucial task.*

*In an integrated system of fundamental rights protection, our courts must also remain committed to European standards and avoid conflicts with supranational courts. The dialogue between them is necessary for the creation of a common legal space of fundamental rights protection. "*

In this context, **Mr Aldis LAVIŅŠ (Latvia)** proposed that in paragraph three, which talks about the role of the constitutional courts and the state of emergency, with the focus only on the pandemic, the text “and the current geopolitical context” should be added after the phrase “scientific knowledge”. For the rest, he agreed with the text presented.

**Mr Giovanni AMOROSO (Italy)** suggested replacing the word “constitutions” with the word “legislations” in the second paragraph of the draft Final Declaration.

**Ms Holta ZAÇAJ (Albania)** supported the remark of the colleague from Italy, stressing that all legislation must be examined from the perspective of compatibility with the Constitution and recommended that the entire paragraph be reformulated, as judges examine legislation and its compatibility with the Constitution, proposing the following formula: "The supreme democratic function of constitutional courts shall remain the review of the compatibility of legislation with the Constitution. All their decisions should be enforceable and binding on all the powers."

In his speech, **Mr Aldis LAVIŅŠ (Latvia)** mentioned that the original wording of the second paragraph should be maintained, as it does not highlight the whole legal system, but precisely emphasises the Constitution and its parts. Referring to the Latvian legislative system, he noted that it would be contrary to the approach that Latvian Constitutional Court underlines in its jurisprudence. He mentioned that it is important to understand what is envisaged in this paragraph, where the emphasis is on the entire legal system and he supports keeping the second paragraph in the initial formula.

**Mr Christoph GRABENWARTER (Austria)** stressed the difficulty of creating a short text from a broader decision and acknowledging the efforts of the organizers to summarize the discussions of the conference in a concise document, he noted the following: he supported his Latvian colleague's idea for paragraph three and offered a compromise for the second paragraph by deleting the first sentence and amending the second, as follows: "The supreme democratic function of the constitutional courts is to impose the obligations under the Constitution on the legislators and to review their compliance". He proposed adding this sentence to the first paragraph, in order to preserve the essence and avoid misunderstandings.

**Mr José João ABRANTES (Portugal)** expressed his support for the proposal made by his colleague from Austria.

**Mr. Kadir ÖZKAYA (Turkey)** noted that finding a consensus on such a text was not an easy thing, given that everyone could have different opinions and that the text prepared was sufficiently convincing for all. That is why he considers that the text should be accepted as it is, without any modification. With reference to the proposal of his colleague from Latvia regarding the geopolitical context, he does not consider it appropriate, because it would bring relativity to the text.

**Mr Jean-Philippe DEROSIER (Monaco)** agreed with the proposal made by his Austrian colleague. He also addressed the Latvian colleague's proposal on the third paragraph, stressing that it is not within the competence of a constitutional judge to assess scientific knowledge. Constitutional judges should focus on assessing safeguards

and complying with the Constitution, assessing whether certain legal norms respect the right to be protected, but do not assess scientific knowledge.

**Ms Réka VARGA (Hungary):** With reference to the second paragraph, she agrees with the proposal of the President of the Austrian Constitutional Court, proposing as a remark to extend the term “legislators”. With regard to the third paragraph, referring to the suggestion of the colleague from Monaco, she suggested to end the sentence with the words “human rights concerns”.

**Ms Corinne LUQUIENS (France)** also agreed with the proposal made by her colleague from Austria, but would prefer to avoid the word “impose”, stating that the constitutional courts do not really impose something on legislators, but control that the legislator complies with constitutional obligations.

Regarding paragraph three, she acknowledged that the assessment of the latest scientific knowledge is partly the responsibility of judges, as in previous decisions they have stated on several occasions that, in the current state of scientific knowledge, there is no disproportionate nature between the consideration of individual freedoms and public health requirements in relation to the pandemic. Although they used that reference to scientific knowledge, she considers that its deletion from the third paragraph would not be problematic.

Taking into account the proposals put forward, **Ms Domnica MANOLE (Moldova)** said that the text of the Declaration had been reformulated, as follows:

*"Every European constitutional court deals with issues at the intersection of law and politics. There should be no limitation on the performance of their functions by reason of the political dimension of a constitutional dispute.*

*The supreme democratic function of the constitutional courts is to impose the obligations under the Constitution on legislators and to review compliance therewith.*

*The role of the constitutional courts during states of emergency is to ensure that authorities act within constitutional boundaries and carefully weigh human rights concerns. Despite the challenges, our courts must remain committed to this crucial task.*

*In an integrated system of fundamental rights protection, our courts must also remain committed to European standards and avoid conflicts with supranational courts. The dialogue between them is necessary for the creation of a common legal space of fundamental rights protection. "*

**Mr Pierre NIHOUL (Belgium)** suggested an addition to the second paragraph, namely the introduction of the phrase “and other authorities” after the word “legislators”.

**Mr Aldis LAVIŅŠ (Latvia)** expressed concern that removing the phrases “scientific knowledge” and “geopolitical context” would lose the added value, arguing that during the pandemic it was obvious that judges relied on scientific knowledge and that they see what is happening in the world, namely the war in Europe. He insisted on the fact that the text could still be developed, which would benefit everyone.

Other proposals have not been mentioned.

**Ms Domnica MANOLE put to the vote the approval of the text of the Final Declaration in the amended formula that was given for reading and the permission for it to be read in front of the press.**

*Vote: In favour - more than 2/3 of the members. The text of the Final Declaration and its communication to the press were approved.*

**2.** Turning to the next topic on handing over the presidency of the Conference to the next court for a three-year term, **Ms Domnica MANOLE (Moldova)** reiterated that the Constitutional Court of Albania and the Constitutional Court of Latvia had submitted their candidacies for the presidency of the CECC.

Thus, Ms MANOLE proposed voting in the order in which the candidacies were submitted, first for the Constitutional Court of Albania, then for the Constitutional Court of Latvia.

**Mr Justyn PISKORSKI (Poland)** came with explanations regarding the withdrawal of the candidacy of the court he represents, referring to some changes that are to take place this year in the Court, such as the appointment of a new president and of at least three more judges, and the assumption of this presidency and the obligation to prepare the next congress, would be an obligation for the new president who is not yet known. He also added that he supports the candidacy of the Constitutional Court of Latvia, being willing to provide the necessary support in organizing the next congress.

In order to promote his candidacy, **Mr Aldis LAVIŅŠ (Latvia)** intervened with several arguments in favour of the organization of the congress by the Constitutional Court of Latvia, such as: the geographical position and geopolitical context, the reputation of a good organizer of international events, but also the so-called "geographical image" of the Conference, since this year the congress took place in Moldova, located in South-Eastern Europe, in 2025 the judges will meet in Spain – Southwest Europe to participate in the World Conference on Constitutional Justice. Thus, he suggested that it is necessary to organize the event in Northeastern Europe - in Latvia.

**Mr José João ABRANTES (Portugal)** stressed that he likes all 3 countries – Poland, Latvia and Albania, but he considers that there was a contradiction in the argumentation presented, since we were talking about the whole Europe and the unity of Europe, considering it unusual to differentiate between Eastern and Western Europe, all of them being devoted to European values. At the same time, he considered that Latvia would announce its candidacy in advance, so that the members could examine all the candidacies and declared his support for Albania.

**Ms Holta ZAÇAJ (Albania)** explained that the decision to submit the candidacy of the Court she represents was a thoughtful one, analysing with her team the resources at their disposal and their capacities, so that the decision would not be an impulsive one. She also stressed that Albania has the experience of organizing two major European summits, and even if the country needs recognition, being on the way to joining the European Union, this would not be the only reason why she submitted the candidacy. Ms ZAÇAJ argued that the Constitutional Court of Albania is a long-standing member and that it is time for a Mediterranean conference to be organised, stressing that the forum should take into account events that are organised within it and not elsewhere. She mentioned Albania's commitment and the respect for the procedures, as well as the deep reform of justice in her country, recognized as an important step towards accession to the European Union. Finally, she asked to cast the vote in favour of Albania.

In his intervention, **Mr Christoph GRABENWARTER (Austria)** referred to the 2021 World Conference on Constitutional Justice, which took place in Bali, and noted that “many of those present are guided by the spirit that, as European constitutional courts, they should demonstrate unity and a sense of belonging by working towards the same idea”. He recalled the situation when it was being discussed which European court would be a member of the Bureau of the Conference to represent the European continent, when Austria, France and Albania decided not to run in favour of Latvia's candidacy. Thus, he suggested examining the possibility of Latvia withdrawing their candidacy this time. Otherwise, it is necessary to initiate the voting procedure.

**Mr Jean-Philippe DEROSIER (Monaco)** stressed the legitimacy of his Latvian colleague's candidacy, in accordance with the provisions of the Statute which allows for the submission of candidacies until the time of voting. However, he noted that the debate created a delicate situation, given that there are candidacies announced before the conference, some withdrawn and others submitted at the last minute, expressing sensitivity to the arguments of the three colleagues and highlighting the need for a balanced geographical representation. In order to avoid such situations in the future, he suggested amending the Statute so that the deadline for submitting applications would be provided.

**Mr José João ABRANTES (Portugal)** proposed as a compromise that the next congress should be held in Albania and the other in Latvia.

**Mr Aldis LAVIŅŠ (Latvia)** expressed his confusion at the reproaches received and expressed regret that he had raised this issue at the last moment, noting that the President herself had asked if there were any other applications and that if he had known that it was customary to submit applications a few months in advance, he would not have opted for this solution.

**Ms Domnica MANOLE (Moldova)** explained that neither the Statute nor the Rules of Procedure of the Conference provided for a deadline for the submission of candidatures. She also mentioned that on 11 October 2023, the question on the submission of candidacies for the presidency of the CECC was sent to all members.

Ms Domnica MANOLE proposed voting on the candidacies for the presidency of the Conference in the order in which they were submitted. Respectively, **the candidacy of the Constitutional Court of Albania for taking over the presidency of the CECC was put to the vote.**

*Vote: In favour – 20 votes. The candidacy of the Constitutional Court of Albania did not meet the required number of votes.*

**Ms Corinne LUQUIENS (France)** proposed voting for the second candidate – the Constitutional Court of Latvia, to see if the candidacy meets a two-thirds majority of votes. Otherwise, she suggested as a solution the designation of the candidacy that obtained the most votes in order to ensure the continuity of the activity of the Conference and, respectively, of the organization of a new Circle of Presidents. The election of a constitutional court that will preside over the Conference is absolutely necessary.

**Ms Domnica MANOLE (Moldova)** confirmed what was mentioned by the member of the French Constitutional Council regarding the necessity and importance of electing a constitutional court, adding that the non-election would create a state of uncertainty within the CECC, thus making it imperative to designate a court that will take over the presidency, since the mandate of the Constitutional Court of the Republic of Moldova has expired.

**Mr. Kadir ÖZKAYA (Turkey)** asked if there was a clear rule that required 2/3 votes and not a majority, which could also be applicable to this situation. Otherwise, an impossible situation would be created as mentioned above. At the same time, he noted that there are countries that are not present at this meeting, and 20 votes would represent a majority.

**Mr José João ABRANTES (Portugal)** supported the proposal of his colleague from France, noting that it was necessary to put the second candidature, Latvia, to the vote in order to see the situation as a whole.

**Ms Domnica MANOLE put to the vote the candidacy of the Constitutional Court of Latvia.**

*Vote: In favour – 11 votes. The candidacy of the Constitutional Court of Latvia did not meet the required number of votes.*

In view of the results of the two votes, **Ms Domnica MANOLE (Moldova)** asked whether the Presidency of the Conference could be handed over by a simple majority of votes, as suggested by the colleagues from France and Portugal, or should the voting procedure be repeated.

**Ms Corinne LUQUIENS (France)** commented that she did not consider it necessary to repeat the procedure, as the vote had established a simple majority in favour of Albania's candidacy, which, regrettably, was detrimental to Latvia's candidacy.

In view of the fact that there could be even more votes, **Ms Domnica MANOLE proposed that the candidacy of the Constitutional Court of Albania be put to a repeated vote.**

*Vote: In favour – 21 votes. The candidacy of the Constitutional Court of Albania for the presidency of the CECC met the required number of votes.*

**Ms Domnica MANOLE (Moldova)** congratulated the Constitutional Court of Albania.

Ms Domnica MANOLE also requested the permission of the members of the Circle of Presidents to inform the press about the creation of the committee that will prepare the report on the request for membership of the Constitutional Court of Kosovo, about the Final Declaration of the XIXth Congress and about the transmission of the presidency of the CECC. These topics were put to the vote.

*Vote: Unanimity of votes. The press communication of the mentioned topics was approved.*

At the end of the meeting, Ms Domnica MANOLE thanked the members of the Circle of Presidents, highlighting the professionalism with which the topics were treated, as well as the importance of this forum of the European constitutional courts. She underlined the valuable experience gained within the Conference of European Constitutional Courts and the great honor of holding the presidency of the Conference for a three-year term, which allowed the Constitutional Court of the Republic of

Moldova to increase its international visibility. Ms MANOLE expressed her hope for closer collaboration between constitutional courts in the future.

Ms MANOLE also formulated a final proposal for the next President of the Conference, namely the need to adjust the provisions of the Statute and Regulations of the Conference to the new realities, with firm rules. The example of the experience with the exclusion of the Constitutional Court of the Russian Federation was brought, an issue also discussed in Bali at the World Conference on Constitutional Justice, which has already prepared amendments to its Statute, to be approved at the 2025 World Congress, which will take place in Spain.

Thus, Ms Manole suggested the creation of a commission to adjust the provisions of the Statute and Regulations of the Conference, which could be adopted at the next Congress.

**Mr. Pierre NIHOUL (Belgium)** thanked and congratulated Ms Domnica MANOLE (Moldova) for the way in which she organized the debates and exercised the three years of the Presidency.

The meeting of the Circle of Presidents was declared closed.