

Venice Commission of the Council of Europe
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December 2017 Plenary Session - Main decisions

At its 113th plenary session which took place 8-9 December 2017 in Venice, the Commission:

- ✓ **Paid tribute** to the late Ambassador of San Marino, **Mr Guido Bellatti-Ceccoli**;
- ✓ **Adopted the opinions on:**
 - the [draft constitutional law on referendums of Armenia](#), jointly with the OSCE/ODIHR;
 - the [Legal framework of the Republic of Moldova governing the funding of political parties and electoral campaigns](#), jointly with the OSCE/ODIHR;
 - [draft amendments to Article 37 of the Law of the Republic of Moldova on the People's Advocate – "Financial provisions"](#);
 - the Law on [the Organisation of Ordinary Courts and on two draft laws amending the Law on the National Council of the Judiciary and the law on the Supreme Court of Poland](#);
 - the amended [law of Poland on the Prosecution Service](#);
 - [three draft laws of "the former Yugoslav Republic of Macedonia" on the abolition of the Council for the Establishment of Facts, on amendments to the law on the Judicial Council and on amendments to the law on Witness protection](#);
 - provisions of the [new Law on Education of Ukraine on the language of education](#);
- ✓ **Held an exchange of views with:**
 - Mr Eduard Serbenco, State Secretary in the Ministry of Justice of the Republic of Moldova,
 - Ambassador Janusz Stańczyk, Permanent Representative of **Poland** to the Council of Europe,
 - Mr Zulfi Adili, State Secretary in the Ministry of Justice of "**the former Yugoslav Republic of Macedonia**",
 - Ms Lilia Hrynevych, Minister of Education and Science of **Ukraine**,
 - Mr Marin Mrčela, President of the **Group of States against Corruption (GRECO)** on continued co-operation;
 - representatives of the **Committee of Ministers**, the **Parliamentary Assembly** and the **Congress** of Local and Regional Authorities of the Council of Europe;
- ✓ **Adopted** the report on **Constituency delineation and seat allocation** and the **questionnaire on referendums**;
- ✓ **Was informed** on recent constitutional developments in **Japan**, in **Romania** and in **Spain** and on perspectives of co-operation with **Mexico**;
- ✓ **Was informed** on the activities of the **Association of former Venice Commission members and substitute members**;

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LINKS

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December 2017 plenary session

Other decisions

- ✓ *Following the proposals made by the Committee of Wise Persons, elected for a term of two years:*
- Mr G. Buquicchio (Italy) as **President**;
 - Ms H. Kjerulf Thorgeirsdottir (Iceland) as **First Vice-President**;
 - Ms V. Bílková (Czech Republic) and Mr M. Frendo (Malta) as **Vice-Presidents**;
 - Ms C. Bazy-Malaurie (France), Mr J. M. Castella Andreu (Spain), Mr I-W. Kang (Republic of Korea) and Ms T. Khabrieva (Russian Federation), as **members of the Bureau**;

The Chairs and Vice-Chairs of the Sub Commissions and Councils as follows:

- **Scientific Council:** Chair - Mr J. Helgesen (Norway), Vice-Chair: Mr O. Can (Turkey);
- **Fundamental Rights:** Chair - Mr B. Vermeulen (Netherlands); Vice-Chair - Mr P. Dimitrov (Bulgaria);
- **Federal State and Regional State:** Chair - Ms Regina Kiener (Switzerland); Vice-Chair - Ms S. Cleveland (United States of America) ;
- **International Law:** Chair - Mr I. Cameron (Sweden); Vice-Chair - Mr A. Varga (Hungary)
- **Protection of Minorities:** Chair - Mr J. Velaers (Belgium); Vice-Chair - Mr A. Endzins (Latvia) ;
- **Judiciary:** Chair - Mr R. Barrett (Ireland); Vice-Chair - Ms J. Omejec (Croatia);
- **Democratic Institutions:** Chair - Mr K. Tuori (Finland) ; Vice-Chair - Mr D. Meridor (Israel);
- **Working methods:** Chair - Mr R. Clayton (United Kingdom); Vice-Chair - Mr P. Vilanova Trias (Andorra);
- **Latin America:** Chair - Mr J. L. Sardon (Peru); Vice-Chair - Ms J. Otálora Malassis (Mexico);
- **Mediterranean Basin:** Chair - Mr G. Jeribi (Tunisia); Vice-Chair - Mr M. Medelci (Algeria);
- **Rule of law:** Chair - Mr W. Hoffmann-Riem (Germany); Vice-Chair - Mr S. Holovaty (Ukraine);
- **Gender Equality:** Chair - Ms L. Err (Luxemburg); Vice-Chair - Ms A. Anastas (Albania);
- **Constitutional Justice:** Chair - Mr C. Grabenwarter (Austria); Vice-Chair - Mr Z. M. Knežević (Bosnia and Herzegovina).
- **Council for Democratic Elections¹:** President - Mr O. Kask (Estonia).



- ✓ *Was informed on follow-up to:*
- the Opinion on Article XXV of 4 April 2017 on the Amendment of Act CCIV of 2011 on National Tertiary Education of Hungary;
 - the Opinion on the draft revised Constitution of Georgia as adopted by the Parliament of Georgia at the second reading on 23 June 2017;
 - the Amicus Curiae Brief for the Constitutional Court of Albania on the Law on the Transitional Re-evaluation of Judges and Prosecutors (The Vetting Law);
 - the Opinion on articles 216, 299, 301 and 314 of the Penal Code of Turkey;
 - the Opinion on questions relating to the appointment of judges of the Constitutional Court in the Slovak Republic; and
 - the Opinion on the Law on the People's Advocate (Ombudsman) of the Republic of Moldova;

Publications

[Read all the decisions of the December 2017 plenary](#)

Just published:

- Bulletin on Constitutional Case–Law: **Issue 2017/1**
- Reference texts in the field of the judiciary (English, French)
- Special Bulletin on Constitutional Case – Law: **Role of Constitutional Courts in upholding and applying constitutional principles**

Forthcoming:

- Bulletin on Constitutional Case – Law: Issue **2017/2**



[Link to the calendar of recent and current events](#)

December 2017 Plenary Session

Selected Opinions



Crowds in the city of Wrocław make their voices heard, urging the government to scrap the proposed judicial measures.

(Photo: Reuters/Agencja Gazeta/M.Michalak)

Poland – Opinion on the Draft Act amending the Act on the National Council of the Judiciary; on the Draft Act amending the Act on the Supreme Court, proposed by the President of Poland, and on the Act on the Organisation of Ordinary Courts *CDL-AD(2017)031*

Background

The Opinion concerns two drafts submitted by the Polish President to the *Sejm* (Polish Parliament), which proposed to amend the **Act on the National Council of the Judiciary** and the **Act on the Supreme Court**, as well as recently already adopted amendments to the **Act on Ordinary Courts**. The request came from the President of the Parliamentary Assembly of the Council of Europe, following its Resolution 2188 (2017).

Conclusions

Regarding the **Draft Act on the National Judiciary Council (NCJ)**, the election of the 15 judicial members of the NCJ by the *Sejm*, in conjunction with the immediate replacement of the currently sitting members, will lead to a far reaching politicisation of this body. The Venice Commission recommended that, instead, judicial members of the NCJ should be elected by their peers, as in the current Act.

Among issues concerning the **Draft Act on the Supreme Court**, the Commission determined that the creation of two new chambers within the Supreme Court – the *Disciplinary Chamber* and *Extraordinary Chamber* – is “ill advised” in that it is composed of newly appointed judges, entrusted with special powers that put these chambers far above the others. The compliance of this model with the Constitution must be checked and inexperienced lay members should not participate in proceedings before the Supreme Court, as would be permitted under the draft act. The competency for electoral disputes, for example, should not be entrusted to the newly created Extraordinary Chamber.

Furthermore, the proposed system of “extraordinary review” of final judgments endangers the stability of the Polish legal order. It is made additionally problematic because this mechanism is also retroactive and permits the reopening of cases decided long before its enactment.

The Commission also called on Polish authorities to allow Supreme Court justices – including the First President – to serve until the currently existing retirement age. The draft act, by calling for the early removal of a large number of Supreme Court judges due to the lowering of the retirement age, with immediate effect, “violates [the judges’] individual rights” and also “jeopardises the independence of the judiciary as a whole”.

Regarding already passed amendments to the **Act on Ordinary Courts**, the Venice Commission opinion includes several recommendations. The decision of the Minister of Justice to appoint and dismiss a court president should be subject to approval by the NCJ or by the general assembly of judges of the respective court, taken by a simple majority of votes. Ideally, general assemblies of judges should submit candidates to positions of presidents to the Minister of Justice for approval. In addition, the Minister of Justice should not have the discretionary power to extend the mandate of a judge beyond the retirement age and should not have “disciplinary” powers vis-à-vis court presidents. Any sanction on court presidents should be imposed in the same procedure as a disciplinary sanction against a judge.

[Full text of the opinion](#)

December 2017 Plenary Session

Selected Opinions



Venice Commission's rapporteurs
at the Verkhovna Rada
October 2017

Ukraine - provisions of the new Law on Education of on the language of education - [CDL-AD\(2017\)030](#)

Background

By letter of 29 September 2017, the Ministry of Foreign Affairs of Ukraine requested the Venice Commission to prepare an opinion on Article 7 of the Law on Education of 5 September 2017 (hereinafter the Education Law), which regulates the use of the state language and minority and other languages in education (see CDL-REF(2017)047). In its Resolution 2189(2017) of 12 October 2017 (The new Ukrainian law on education: a major impediment to the teaching of national minorities' mother tongues), the Parliamentary Assembly of the Council of Europe expressed concerns about this Law and asked the Ukrainian authorities to fully implement forthcoming recommendations and conclusions of the Venice Commission and to modify the new Education Act accordingly.

Conclusions

While introducing a comprehensive legitimate reform of the Ukrainian education system which globally seems to be positively received, the new Education Law also proposes new principles for the use of languages as medium of education and as subject of instruction. In particular, Article 7 of the new Law, by reducing the scope of education in minority languages, notably at the secondary level, has drawn strong criticism and protests both domestically and internationally.

This criticism seems justified due to a number of reasons. The Article, as adopted, is quite different from the draft on which minorities were consulted. Clarity and legal precision are essential when implementing relevant international principles. However, Article 7 actually allows to radically change the previous language regime, at least in secondary education, towards a system focused on the mandatory use of the Ukrainian language as the language of education. This could result in a substantial diminution in the opportunities available to persons belonging to national minorities to be taught in their languages, which would amount to a disproportionate interference with the existing rights of persons belonging to national minorities. In addition, the short deadline for the implementation of the new rules raises serious concerns about the quality of education.

Many concerns may, however, also be immediately addressed through other legislative acts and when implementing Article 7 as adopted, especially through the Law on General Secondary Education. In this respect, the Commission recommends in particular:

- to fully use, when adopting implementing legislation, the possibilities provided by paragraph 4 of Article 7 to ensure a sufficient level of teaching in official languages of the European Union for the respective minorities;
- to continue ensuring a sufficient proportion of education in minority languages at the primary and secondary levels, in addition to the teaching of the state language;
- to improve the quality of teaching of the state language;
- to amend the relevant transitional provisions of the Education Law to provide more time for a gradual reform;
- to exempt private schools from the new language requirements in accordance with Article 13 of the Framework Convention;
- to enter into a new dialogue with representatives of national minorities and all interested parties on the language of education.
- to ensure that the implementation of the Law does not endanger the preservation of the minorities' cultural heritage and the continuity of minority language education in traditional schools. ...

[Full text of the Opinion](#)

[All opinions on Ukraine](#)

Selected Events

Democratic Institutions and Fundamental Rights

Serbia - Assistance to the Ministry of Justice for the constitutional reform in the field of the judiciary

10-11/01/2018

Belgrade - A delegation of the Venice Commission met on 10 and 11 January with the Minister of Justice, the Republic Public Prosecutor, representatives of the Ministry of European Integration and the Office for Cooperation with Civil Society as well as the academic community with a view to discussing the upcoming constitutional changes. This was the second visit to the Republic of Serbia to provide recommendations to the Ministry of Justice with respect to drafting the relevant constitutional amendments in the field of the judiciary.

This activity took place in the framework of "Horizontal Facility for the Western Balkans and Turkey", a Joint Programme funded by the European Union and the Council of Europe and implemented by the Council of Europe.



Constitutional Justice

Ukraine – meeting with the Constitutional Court

25/01/2018

Strasbourg, Council of Europe - Mr Thomas Markert, the Director and Secretary of the Venice Commission, met a delegation of the Constitutional Court of Ukraine in order to discuss co-operation between the Constitutional Court and the Venice Commission.

▶ [Constitutional Court of Ukraine](#)

Elections and political parties

OAS - Declaration of Principles for International Election Observation

13- 14/12/2017

Washington – Upon the invitation of the Organisation of American States (OAS), a delegation of the Venice Commission participated in the 12th Implementation Meeting of the Declaration of Principles for International Election Observation.



✚ [Website of the OAS](#)

Neighbourhood Cooperation

Study visit to the Council of Europe by a delegation from the Kyrgyz Republic - 12 - 15/12/2017

Strasbourg – A study visit for representatives of Presidential Administration, Parliament, Central Election Commission, State Registration Service, MFA, Committee on Information and Technologies and representatives from NGOs from the Kyrgyz Republic to the Council of Europe took place on 12-15 December 2017. The participants were able to follow closely the work of the Venice Commission, the Parliamentary Assembly, judges and lawyers of the ECtHR and other bodies and services of the Council of Europe.

During the seminar organised on 14 December the participants learnt about European standards in the field of data protection as well as the experience of several European countries.

Finally, a meeting with representatives of the Working Group under the Office of the President of the Kyrgyz Republic present in Strasbourg will be held on 15 December with the aim of continuing dialogue on the development of a new comprehensive Electoral Reform Strategy. The Working Group is tasked with improving the Electoral System in the Kyrgyz Republic, and in particular, with developing the above-mentioned Strategy.

The project “Support to Strengthening Democracy through Electoral Reform in the Kyrgyz Republic” is implemented by the Venice Commission with funding provided by the European Union and the Council of Europe.

South Mediterranean - Venice Commission President's address to the Ministerial Conference of SIGMA - 13 - 14/12/2017

Paris - The President of the Venice Commission, Mr Gianni Buquicchio addressed the SIGMA Ministerial conference which took place from 13 to 14 December 2017 in Paris on the importance of the rule of law for citizens and businesses. Mr Thomas Markert, Secretary of the Venice Commission, represented as well the Commission at the Paris meeting.

SIGMA is a project implemented by OECD and co-financed by the European Union and the OECD. The project has worked on public administration reform (PAR) in more than 30 partner countries to help them to establish professional public administrations, effective financial management and economic development.

Since 2016 a constructive tripartite collaboration between the Venice Commission, SIGMA and the Southern Mediterranean partners has been developed as part of the UniDem Med project. This collaboration is based on the expertise of the Venice Commission in the field of democracy, human rights and the rule of law.



- ▶ [Website of the 25th anniversary of SIGMA](#)
- ▶ [UniDem Med project](#)
- ▶ [Speech of the President Buquicchio \(video\)](#)

Forthcoming activities

Opinions

- **Armenia** – draft amendments to the Law on freedom of religion;
- **Hungary** - conflict between the right to privacy and other fundamental rights;
- **Republic of Moldova** - draft Law on the modification and completion of the Constitution; draft law on modification to the Article 42 of the Constitution on freedom of association;
- **Montenegro** - draft law on amendments of the Law on freedom of religion;
- **Romania** - draft law revising the Ordinance on associations and foundations;
- **Spain** - “Citizens’ security law”;
- **“The former Yugoslav Republic of Macedonia”** - draft law on prevention and protection against discrimination;
- **Ukraine** - Opinion on two draft laws “On Introducing Changes to the Tax Code of Ukraine to Ensure Public Transparency of the Financing of Public Associations and the Use of International Technical Assistance” and “On Introducing Changes to Some Legislative Acts to Ensure Public Transparency of Information on Finance Activity of Public Associations and on the Use of International Technical Assistance” (Laws # 6674 and # 6675).

Studies

Electoral Issues

- Local recall referendum
- Election dispute resolution
- Recall of Mayors
- Individual Right to Re-election
- Political parties - Joint CDL-OSCE/ODIHR Guidelines - revision
- Identification of electoral irregularities through statistical methods
- Referendums
- 25 years of international election observation

Constitutional Justice

- Composition of Constitutional Courts - update
- Individual Access to Constitutional Justice - update

Democratic Institutions and Fundamental Rights

- Freedom of peaceful assembly – joint CDL-OSCE/ODIHR guidelines - revision
- Role of the opposition in a democratic Parliament – update
- Legislative provisions on foreign funding of NGOs
- Gender equality
- Venice Principles on ombudsman institution

Compilations

- Freedom of expression
- Checks and balances
- Electoral disputes