

Venice Commission of the Council of Europe  
Follow the Venice Commission on Twitter @VeniceComm!



## March 2016 Plenary Session – Main decisions

*At its 106<sup>th</sup> plenary session which took place 11–12 March 2016 in Venice, the Commission:*

### INSIDE THIS ISSUE

- 1 [March 2016 Plenary Session](#)
- 2 [Selected opinions](#)
- 3 [Selected reports](#)
- 4 [Publications](#)
- 5 [Selected events](#)
- 6 [Forthcoming activities](#)

### LINKS

- [Venice Commission website](#)
- [CODICES database](#)
- [World Conference on Constitutional Justice](#)
- [Council of Europe](#)
- [Previous newsletters](#)

#### ✓ *adopted opinions on:*

- [the draft constitutional amendments on the judiciary of Albania](#) (the final opinion);
- joint opinion by the Venice Commission and the OSCE/ODIHR on [amendments to the Election Code of Georgia](#),
- the [draft constitutional law “on protection of the Nation” of France](#);
- constitutional issues addressed in the [amendments to the Act of 25 June 2015 on the Constitutional Court of Poland](#);
- the amendments to the [Constitutional law on the Constitutional Court of the Russian Federation](#) (implementation of findings of international bodies for the protection of human rights and freedoms) (the interim opinion);
- some [provisions of the Penal Code of Turkey related to the freedom of expression](#),
- the [Law on protection of privacy and the Law on the protection of whistleblowers of “the former Yugoslav Republic of Macedonia”](#);
- 

#### ✓ *Decided on the [new composition of the Scientific Council for the next two years](#) ;*

#### ✓ *held an exchange of views with inter alia:*

- Mr Konrad Szymański, Secretary of State, Ministry of Foreign Affairs, and with Mr Aleksander Stępkowski, Undersecretary of State, Ministry of Foreign Affairs of **Poland**,
- Mr Andriy Klishas, Chair of the Committee on Constitutional Legislation and State Construction, Federation Council and with Mr. Dmitry Vyatkin, Deputy Chairman of the Committee of the State Duma on Constitutional Legislation and State-building, **Russia**;
- Mr Selahaddin Menteş, Deputy Undersecretary, Ministry of Justice, **Turkey** ;

....

## December 2015 plenary session

### Other decisions

#### – Also adopted:

- the [joint Guidelines by the Venice Commission and the OSCE/ODIHR for preventing and responding to the misuse of administrative resources during electoral processes](#);
- the [Checklist on the Rule of Law](#);
- the Annual Report of Activities 2015;

#### – Endorsed:

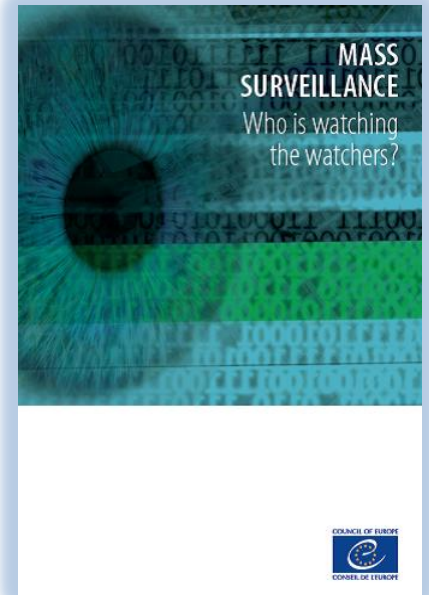
- the compilations of Venice Commission opinions and reports concerning political parties (update) and local self-government;

#### – Was informed on:

- the upcoming meeting of the Bureau of the World Conference on Constitutional Justice;
- co-operation with the countries of Central Asia and with Tunisia;
- the developments concerning the Constitutional Courts of Bosnia and Herzegovina, Croatia, Slovakia and Turkey and **decided to make a public declaration** in support of Constitutional Courts and constitutional justice;
- a future conference on the topic of constitutional monitoring;
- the results and conclusions of the meeting of the Council for Democratic Elections on 10 March 2016;

...

[Read all decisions of the March 2016 plenary](#)



## Publications

#### Just published:

- In the collection "Point of view – Point of law": [“Mass surveillance: who is watching the watchers?”](#)
- [Compilation of joint CDL\(OSCE/ODIHR\) guidelines on fundamental rights](#) (Arabic)
- [“Main reference texts of the Venice Commission in the field of elections and political parties”](#) (Russian);
- [“Judicial systems of the Central Asia: a comparative overview”](#) (Russian)
- “Main reference texts and opinions of the Venice Commission in the field of elections in Ukraine” (Ukrainian);
- Bulletin of the Constitutional Case – Law: Issue 2015/2



#### Forthcoming:

- Bulletin of the Constitutional Case – Law: Issue 2015/3

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

## March 2016 Plenary Session

### Selected Opinions

#### Poland

*Opinion on the constitutional issues addressed in the amendments to the Act of 25 June 2015 on the Constitutional Court of Poland*



*Meeting room of the Venice Commission of the Council of Europe at the March 2016 plenary*

#### Background

By letter dated 23 December 2015, the Minister for Foreign Affairs of Poland, Mr Witold Waszczykowski, requested the opinion of the Venice Commission on the constitutional issues addressed in two legislative proposals, submitted to the *Sejm* on 2 and on 15 December 2015 respectively, to amend the Act on the Constitutional Tribunal of 25 June 2015 (hereinafter “the Act”). In his letter of 31 December 2015, Minister Waszczykowski transmitted to the Venice Commission the amendments to the Act, which had been adopted on 22 December 2015 and promulgated on 28 December 2015 (hereinafter, “the Amendments”).

#### Scope of the opinion

The request for an opinion by the Venice Commission refers to the amendments to the Constitutional Tribunal Act of December 2015. While these Amendments do not directly relate to the composition of the Constitutional Tribunal, it is evident that they have an intrinsic link to the composition of the Tribunal, not least because one of the provisions of the Amendments sets a quorum for the Tribunal (13 out of 15 judges) that cannot be reached if the Court is not fully composed.

This opinion only refers to the composition of the Court where this is necessary in order to understand the constitutional situation that could result from the Amendments (see section **Error! Reference source not found.** below). There is, however, no need to examine the Amendments of 19 November 2015, since they were found to be unconstitutional by the Constitutional Tribunal in its judgement of 9 December 2015. This judgement seems to have settled the issues raised by those amendments.

#### Conclusion

Constitutional democracies require checks and balances.<sup>1</sup> In this respect, where a constitutional court has been established, one of the central elements for ensuring checks and balances is the independent constitutional court, whose role is especially important in times of strong political majorities. Therefore, the Venice Commission welcomes the fact that all the interlocutors, whom its delegation met in Warsaw, expressed their commitment to the Constitutional Tribunal as a guarantor of the supremacy of the Constitution in Poland. However, as long as the situation of constitutional crisis related to the Constitutional Tribunal remains unsettled and as long as the Constitutional Tribunal cannot carry out its work in an efficient manner, not only is the rule of law in danger, but

[Full text of the opinion](#)

---

[Link to the film on the 25th anniversary of the Venice Commission](#)

---



*President of the Commission Buquicchio greeting President of Poland Duda*

## March 2016 Plenary Session

### Selected reports

#### [Rule of Law Check List](#)

At its 86th plenary session (March 2011), the Venice Commission adopted the Report on the Rule of Law (CDL-AD(2011)003rev). This report identified common features of the Rule of Law, *Rechtstaat* and *Etat de droit*. A first version of a checklist to evaluate the State of the Rule of Law in single States was appended to this report.

On 2 March 2012, the Venice Commission organised, under the auspices of the UK Chairmanship of the Committee of Ministers of the Council of Europe, in co-operation with the Foreign and Commonwealth Office of the United Kingdom and the Bingham Centre for the Rule of Law, a conference on “The Rule of Law as a practical concept”. The conclusions of this conference underlined that the Venice Commission would develop the checklist by, inter alia, including some suggestions made at the conference.



Image: Freedomworks.org

The Venice Commission wishes to acknowledge the contribution of the Bingham Centre for the Rule of Law, notably for the compilation of the selected standards in part III. The Commission also wishes to thank the secretariats of the Consultative Council of European Judges (CCJE), the European Commission against Racism and Intolerance (ECRI), the Framework Convention for the Protection of National Minorities and the Group of States against Corruption (GRECO), as well as of OSCE/ODIHR and of the European Union Agency for Fundamental Rights (FRA) for their co-operation.

The introductory part (I) first explains the purpose and scope of the report and then develops the interrelations between the Rule of Law on the one side and democracy and human rights on the other side (“the Rule of Law in an enabling environment”).

6. The second part (II, benchmarks) is the core of the checklist and develops the various aspects of the Rule of Law identified in the 2011 report: legality; legal certainty; prevention of abuse of powers; equality before the law and non-discrimination and access to justice; while the last chapter provides two examples of particular challenges to the Rule of Law (corruption and conflict of interest, and collection of data and surveillance).

7. The third part (III, selected standards) lists the most important instruments of hard and soft law addressing the issue of the Rule of Law.

[Read the Rule of Law Check List](#)

## Selected Events

### *France – the framework of the constitutional reform to be improved to comply fully with European standards*

15/03/2016



Strasbourg, Council of Europe – The Venice Commission published an opinion in which it states that the framework of the current constitutional reform in France could be improved. In particular, any decision to deprive persons of their nationality must fully respect the right to a fair trial and the principle of proportionality.

In the Commission's opinion, the introduction of a system for the deprivation of nationality or the rights attached to nationality, applying to all French nationals, whether of French origin or naturalised, or mono-, bi- or multinational, does not in itself infringe international standards. Nonetheless, the Commission recommends that the Constitution should specify that deprivation is an "ancillary penalty", which must be applied by a criminal court on an individual and proportionate basis following a fair trial.

As to the state of emergency, the Venice Commission welcomes the attempt to incorporate it into the Constitution. It recommends, however, that the French Constitution should not only include the possibility of declaring (and renewing) a state of emergency but also outline the formal, material and temporal limits by which it should be circumscribed.

[Link to the text of the opinion](#)



### *Declaration by the Venice Commission on undue interference in the work of Constitutional Courts in its member States*

16/03/2016

At its 106th plenary session (Venice, 11–12 March 2016), the Venice Commission had to discuss several cases of undue interference in the work of Constitutional Courts in its member States, a topic which will also be a focus of the 4th Congress of the World Conference on Constitutional Justice (Vilnius, 10–13 September 2017).

A specific opinion, adopted at the 106th plenary session, dealt with amendments to the Law on the Constitutional Tribunal of Poland.

The Venice Commission expresses serious concern over statements made by the President of Turkey who has declared that he will not respect a recent judgment of the Constitutional Court of Turkey and has moreover threatened to abolish this Court. As a Member State of the Council of Europe, Turkey is bound by the Council's fundamental principles, that of democracy, the protection of human rights and the rule of law. These threats against the Constitutional Court of Turkey are in clear violation of the Council of Europe's fundamental principles.

Furthermore, the Venice Commission is concerned about problems and delays in appointing judges to the Constitutional Courts of Slovakia and Croatia based on information it has received.

As concerns Georgia, the Commission is concerned about public calls from the executive to terminate the mandate of the President of the Constitutional Court, which risks undermining the authority of this Court.



## Selected Events

### Democratic Institutions and Fundamental Rights

#### Turkey – forthcoming opinion – visit to the country

13 – 14/10/2015

Ankara – In the framework of the preparation of an opinion on the regulation of publications on the internet and combating crimes committed by means of such publication, a delegation of the Venice Commission visited Turkey. The delegation met with the representatives of the following Turkish authorities: the Ministry of Transport, Maritime Affairs and Communications, the Telecommunication Communication Presidency, the Union of Access Providers, the Court of Cassation, the Union of Turkish Bar Associations, the Ministry of Justice, the Prosecutor's Office, Peace Courts' Judges and the Constitutional Court.



### Constitutional Justice

#### Spain – forthcoming opinion – country visit

2/11/2015

Madrid –In the framework of the preparation of an opinion on amendments to the organic Law on the Constitutional Court of Spain, a delegation of the Venice Commission composed by Vice-President Grabenwarter and Mr Neppi Modona, held meetings with the Constitutional Court, the Constitutional Commission of the Congress of Deputies, the General Council of the Judiciary, the Ministries of Foreign Affairs and Justice and with academics.



### Electoral issues – 13th European Conference of the Electoral Management Bodies

14 - 15/04/2016

Bucharest – The Venice Commission in cooperation with the Permanent Electoral Authority organised the thirteenth European Conference of the Electoral Management Bodies. All details are available on the Conference's dedicated webpage (link below).

This activity partially falls in the framework of the Programmatic Cooperation Framework (PCF) for Armenia, Azerbaijan, Georgia, Republic of Moldova, Ukraine and Belarus, funded by the European Union and the Council of Europe and implemented by the Council of Europe.



- [Website of the Permanent Electoral Authority of Romania](#)
- [Dedicated webpage](#)
- [Synopsis / Conclusions of the Conference](#)

## Neighbourhood Cooperation

### South Mediterranean – 2nd Regional UniDem Campus seminar for high-level civil servants

04-07/04/2016

Rabat, Morocco – The Venice Commission, in cooperation with the Ministry of Public Service and Modernisation of the Administration of the Kingdom of Morocco, organised the second UniDem Campus seminar for high-level civil servants of the MENA region (Algeria, Egypt, Jordan, Lebanon, Libya, Morocco, Mauritania, the Palestinian National Authority and Tunisia).

The seminar focused on “Open government”. The topics discussed were as follows:

- Open government: principles and implementation;
- Citizen participation;
- Transparency and budgetary transparency, accountability,
- Access to information;
- Public sector integrity and anti-corruption; and
- E-government for openness and participation.

This event is part of a regional legal capacity-building programme called “UniDem Campus for the Southern Mediterranean countries”.

[Link to the webpage on the UniDem Campus Med programme](#)

### Jordan – Women’s participation in elections – international workshop

19 – 21/04/2016

Dead Sea – a delegation of the Venice Commission participated in a workshop entitled «The role of electoral management bodies in enhancing women’s participation in elections», which took place at the Dead Sea in Jordan, on 19–21 April 2016.

The Commission’s participation in the event was funded through the South Programme "Towards strengthened democratic governance in the Southern Mediterranean", a joint programme funded by the European Union and implemented by the Council of Europe.



## Forthcoming activities

### Opinions

- **Armenia** – new draft electoral Code;
- **Georgia** – amendments to the law on Constitutional Court and to the law Constitutional Legal Proceedings;
- **Kazakhstan** – draft code on judicial ethics
- **Republic of Moldova** – amicus curiae brief on the right to recourse action by the state against judges; amendments to the Electoral Code;
- **Montenegro** – draft amendments to the Law on Minority Rights and Freedom; draft law on freedom of religion;
- **Poland** – draft amendments to the Law on the Police and other Laws;
- **Russia** – Law on undesirable activities of organisations; latest amendments to the Law on the Constitutional Court;
- **Spain** – “Citizens’ security law”; the Law on the changes to the powers of the Constitutional Court
- **The former Yugoslav Republic of Macedonia** – Electoral Code as amended in November 2015;
- **Turkey** – Law N°5651 on the Internet; legal framework for curfews;
- **Ukraine** – Law on the condemnation of the communist and Nazi totalitarian regimes; exclusion of candidates from party lists.

### Studies

#### Electoral Issues

- “25 years of international election observation – lessons to be learnt”
- Publication of list of voters having participated in elections

#### Constitutional Justice

- Report on the Composition of Constitutional Courts – update
- Study on Individual Access to Constitutional Justice – update

#### Democratic Institutions and Fundamental Rights

- Freedom of Peaceful Assembly – joint CDL–OSCE/ODIHR guidelines
- Study on the role of the opposition in a democratic Parliament – update

#### Compilations

- Media and elections
- Gender equality