

Venice Commission of the Council of Europe

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March 2017 Plenary Session - Main decisions

At its 110th plenary session which took place 10-11 March 2017 in Venice, the Commission:

✓ *Adopted opinions on:*

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LINKS

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- the draft amendments to the Constitution of the Republic of **Kazakhstan**,
- the draft law of the Republic of **Kazakhstan** on administrative procedures;
- draft law No 281 amending the legislation of the Republic of **Moldova** dealing with the "Security Mandate";
- the criminal liability of judges (the amicus curiae brief for the Constitutional Court of the Republic of **Moldova**);
- the appointment of judges to the Constitutional Court of the **Slovak Republic**;
- the amendments to the law on the Constitutional Court of **Spain**;
- the measures provided in the recent emergency decree laws of **Turkey** with respect to the freedom of the media;
- the amendments to the Constitution of **Turkey** submitted to a national referendum on 16 April 2017,
- the law of **Turkey** on criminal peace judgeships;
- the draft Checklist of the **Congress** of Local and Regional Authorities of the Council of Europe for compliance with international standards and best practices preventing misuse of administrative resources during electoral processes at local and regional level;

✓ *Held an exchange of views with:*

- Mr Talgat Donakov, Deputy Head, Administration of the President of the Republic of **Kazakhstan**,
- Mr Róbert Madej, Chairman of the Constitutional and Legal Affairs Committee of the National Council of the **Slovak Republic**, and with Mr Jan Mazak, Adviser to the President of the **Slovak Republic**,
- Mr Rafael Andrés Leon Cavero, Government Agent, Ministry of Justice of **Spain**,
- Mr Selahaddin Menteş, Deputy Undersecretary, Ministry of Justice of **Turkey**;
- Mr Michael Georg Link, **Director of the OSCE Office for Democratic Institutions and Human Rights**, on present and future co-operation;
- Mr Ali Abu Diak, Minister of Justice of the **Palestinian National Authority**, on possible co-operation;
- Mr Rafael Ribo, Chairman of the European Chapter of the **International Ombudsman Institute**;
- representatives of the Committee of Ministers, of the Parliamentary Assembly and of the Congress of Local and Regional Authorities of the **Council of Europe**;

✓ *Endorsed the **compilation** of Venice Commission opinions and reports concerning **referendums** and decided to prepare a further report on referendums;*

March 2016 plenary session

Other decisions

- ✓ *Was informed on follow-up to:*
 - the Opinion on the Act on the Constitutional Tribunal of **Poland**;
 - the Opinion on Emergency Decree Laws of **Turkey** N°s 667-676 adopted following the failed coup of 15 July 2016;
 - 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 Joint Opinion on the draft constitutional law of **Armenia** on political parties; the Opinion on the draft constitutional law on the human rights defender of Armenia;
 - the amicus curiae Brief for the Constitutional Court of **Bosnia and Herzegovina** on the mode of elections in the House of Peoples of the Parliament of the Federation of Bosnia and Herzegovina;
 - the Opinions on the package of draft laws aimed at the reform of the judicial system of **Georgia**;
 - the Opinion on the draft code of judicial ethic of the Republic of **Kazakhstan**;
 - the Joint Opinion on the draft law on the prosecution service of the Republic of **Moldova** and
 - the Final Opinion on the Amendments to the Federal Constitutional Law on the Constitutional Court of the **Russian Federation**;

- ✓ *Adopted its annual report of activities 2016;*
- ✓ *Was informed about/on:*
 - future co-operation on the constitutional reform in **Georgia**;
 - constitutional developments in **Hungary** and **Romania**;
 - a project concerning **Rule of Law oversight** in the European Union;
 - the Conference of **Arab Electoral Management Bodies** on "Strengthening the Independence of Electoral Management Bodies" which took place in **Tunis** on 7-9 February 2017,
 - the **election of Mr Oliver Kask as President of the Council** for Democratic Elections for a term of two years;



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

Publications



Just published:

- Bulletin on Constitutional Case–Law: **Issue 2016/2**

Forthcoming:

- Bulletin on Constitutional Case – Law: Issue **2016/3**
- "European Conference of Electoral Management Bodies"
- "Cooperation with the Constitutional Courts and equivalent bodies"

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

March 2017 Plenary Session

Selected Opinions

Turkey

Opinion on the amendments to the Constitution of Turkey adopted by the Grand National Assembly on 21 January 2017 and to be submitted to a National Referendum on 16 April 2017 - [CDL-AD\(2017\)005](#)

Background

By a letter dated 16 December 2016, the Chair of the Monitoring Committee of the Parliamentary Assembly of the Council of Europe informed the Venice Commission of the Committee's decision on 14 December to request its opinion on the draft law on the amendments to the Constitution of Turkey at its earliest convenience.



Photo: *Hürriyet Daily News*

The current Constitution of the Republic of Turkey, approved by popular referendum in 1982 at the end of a period of military rule, has been amended almost 20 times; the amendments have concerned more than 110 of the 177 articles of the Constitution. In three instances, the amendments were partly (1987) or fully (2007 and 2010) approved through a referendum. Through the 2007 amendments, the role of the President has become increasingly important and scholars have described the system as a sort of "attenuated parliamentarism". This form of parliamentarism may be considered as one of the many forms of so-called semi-presidential regimes. The direct election of the President, introduced in 2007, is the main element of this trend towards semi-presidentialism. The ruling Justice and Development Party, AKP, had made the executive presidency central to its campaign promises at the general elections of June 2015. The current set of 18 articles amending the Constitution was submitted to parliament by AKP and by the Nationalist Movement Party, MHP, on 10 December 2016, adopted by the Parliament on 21 January 2017 and signed by the President on 10 February 2017. It will be submitted to a national referendum on 16 April 2017.

Conclusions

The Venice Commission is of the view that the substance of the proposed constitutional amendments **represents a dangerous step backwards in the constitutional democratic tradition of Turkey**. The Venice Commission wishes to stress the dangers of degeneration of the proposed system **towards an authoritarian and personal regime**. In addition, the timing is most unfortunate and is itself cause of concern: the current state of emergency does not provide for the due democratic setting for a constitutional referendum.

The following features of the proposed regime raise particular concern with regard to separation of powers:

- The new President would exercise executive power alone, with an unsupervised power to appoint and dismiss ministers, who do not form a collegiate government, and to appoint and dismiss all the high officials on the basis of criteria determined by him or her alone.
- The President would be empowered to choose one or more Vice-presidents; one of them, without any democratic legitimacy and without validation by parliament, would be called to exercise presidential functions in case of vacancy or temporary absence of the presidential position.
- The President, Vice-presidents and ministers would be accountable only by the procedure of impeachment, which is a very weak tool of parliamentary supervision;
- The President would be allowed to be a member and even the leader of his or her political party, which would give him or her influence over the legislature.
- The principle of compulsory synchronization of presidential and parliamentary elections would be introduced.
- The President would be given the power to dissolve parliament on any grounds whatsoever, which is fundamentally alien to democratic presidential systems, while being obliged to call in this case also early presidential elections. This way of resolving political problems is, at best, rudimentary. ...

[Full text of the opinion](#)
[List of all opinions on Turkey](#)

Selected opinions

Spain

Opinion on the Law of 16 October 2015 amending the Organic Law no. 2/1979 on the Constitutional Court of Spain – CDL-AD(2017)003



A delegation of the Venice Commission on a visit to Spain in the framework of the preparation of the Opinion (March 2016)

Background

By letter of 9 October 2015 the Chair of the PACE Monitoring Committee requested an opinion of the Venice Commission on the Law of 16 October 2015 amending the Organic Law no. 2/1979 on the Constitutional Court of Spain introducing measures to enforce the execution of Court's judgments. In his letter, Mr Schennach requested that the opinion not be made public before the parliamentary elections in Spain on 20 December 2015. The Commission therefore envisaged the adoption of the opinion for its session in March 2016 and a visit of the rapporteurs was planned for February 2016. However, in view of the difficulties of forming a government in Spain, a visit of the rapporteurs to Madrid was postponed from February to April 2016. Appeals by the Government of the Basque Region and by the Catalan region against the Amendment were pending before the Constitutional Court since 30 December 2015. As the Amendment concerns the very Law on the Constitutional Court, the Commission decided to continue working on the opinion while the case was pending before the Court.

A delegation of the Venice Commission visited Madrid on 25 April 2016. Shortly after the visit, new parliamentary elections were called for June 2016 and the Commission postponed the adoption of the opinion to its session in October 2016. In September 2016 the President of the Constitutional Court informed the Venice Commission that the Court was about to hand down its judgment in cases brought against the Amendment by the Governments of the Basque and the Catalan Regions and he requested that the Venice Commission postpone the adoption of its opinion on the Amendment until these judgments had been adopted. The Bureau of the Commission agreed to that request. Following its discussion in the Sub-Commission on Constitutional Justice (Venice, 9 March 2017) and an exchange of views with Mr Rafael Andrés Leon Cavero, Government Agent of the Ministry of Justice of Spain, the present opinion was adopted by the Venice Commission at its 110th plenary session (Venice, 10-11 March 2017).

Conclusions

The Venice Commission recalls that judgments of Constitutional Courts have a final and binding character. As a corollary of the supremacy of the Constitution, judgments of Constitutional Courts have to be respected by all public bodies and individuals. Disregarding a judgment of a Constitutional Court is equivalent to disregarding the Constitution and the Constituent Power, which attributed the competence to ensure this supremacy to the Constitutional Court. When a public official refuses to execute a judgment of the Constitutional Court, he or she violates the principles the rule of law, the separation of powers and loyal cooperation of state organs. Measures to enforce these judgments are therefore legitimate. In the light of the absence of common European standards, this opinion examines to which extent the Amendment introduced to Organic Law no. 2/1979 on the Constitutional Court of Spain is an appropriate means to achieve this legitimate objective.

The Amendment attributes to the Constitutional Court the task of executing its decisions. When there is a refusal to execute a decision of the Court, the Court may take a series of measures, including imposing repetitive coercive penalties and suspending the official refusing execution. Attributing the overall and direct responsibility for the execution of the Constitutional Court's decision to the Court itself should be reconsidered, in order to promote the perception that the Constitutional Court only acts as a neutral arbiter, as judge of the laws.

Several of the measures which the Constitutional Court can take when it encounters a refusal to execute one of its decisions are not problematic. However, two measures raise questions: the repetitive, coercive penalty payments applied on individuals and the suspension from office of officials who refuse to execute the Courts' decisions....

[Read the Opinion](#)

Selected Events

Democratic Institutions and Fundamental Rights

Interaction between majority and opposition – International conference

06 – 07/04/2017

The conference, co-organised by the Venice Commission and the Presidency of Romania, was placed under the patronage of the President of Romania and of the Secretary General of the Council of Europe and brought together representatives of Parliaments (both from the majority and the opposition) from different Council of Europe member states, members of the Parliamentary Assembly of the Council of Europe, experts and civil society representatives, members of the Venice Commission including its President G. Buquicchio. The event, a stage in the preparation of its new report by the Venice Commission, provided an opportunity for a brainstorming on the challenges posed by the interaction majority-opposition and, in the light of the lessons learnt on the modalities likely to make this interaction more constructive and more effective.



Constitutional Justice

WCCJ – World Conference on Constitutional Justice – Bureau meeting

11/03/2017

Venice, Italy – The Bureau of the World Conference on Constitutional Justice held its 11th meeting in Venice, Italy, where it discussed the preparation of its 4th Congress on "the Rule of Law and Constitutional Justice in the Modern World" which will be held in Vilnius, on 11–14 September 2017.



▶ [WCCJ site](#)

Ukraine – “International standards and electoral dispute resolution in Ukraine” – Roundtable

16/03/2017

Kyiv – The Venice Commission co-organised with IFES Ukraine an expert round table on “International standards and electoral dispute resolution in Ukraine”. This roundtable aimed to present and discuss international standards for establishing effective election dispute programs and Ukrainian key practices in this sphere, based on the contributions from domestic and international experts.

This activity is part of the assistance in the electoral field provided in the framework of the Council of Europe’s Action Plan for Ukraine.



Neighbourhood Cooperation

Performance, merit and equality in the civil service – regional UniDem Med Seminar

27 – 30/03/2017

Tunis – the Venice Commission in cooperation with the Presidency of the Government of Tunisia organised a regional Seminar UniDem Med (Universities for Democracy for the Southern Mediterranean) from 27 to 30 March 2017 on the theme of “Performance, merit and equality in the civil service”.

50 senior public servants from the MENA region (Middle East and North Africa) – Algeria, Jordan, Lebanon, Mauritania, Morocco, Palestinian National Authority and Tunisia – attended the seminar as well as experts from the two shores of the Mediterranean. The working languages of the seminar are Arabic and English.

The main objective of the Project Campus-Med UniDem (University for Democracy) is to contribute to a more effective administration and good governance respecting human rights, enforcing law and consolidating institutions. Seminars of Campus UniDem Project provide legal capacity development sessions for senior executives of public administration in areas related to good governance and the rule of law and to human rights. The Campus brings together senior civil servants from the southern Mediterranean with a view to exchanging experiences and strengthening the links between the public administrations from the region.

- ▶ [UniDem Campus Med webpage](#)
- ▶ [Facebook page](#)

Interaction between Constitutional Courts and similar jurisdictions and ordinary courts – 5th Intercultural workshop on democracy

03 – 04/04/2017

Nicosia – The Venice Commission organised, in the framework of the Presidency of Cyprus of the Committee of Ministers of the Council of Europe and in co-operation with the Ministry of Foreign Affairs of Cyprus, the 5th Intercultural Workshop on Democracy on the theme “Interaction between Constitutional Courts and similar jurisdictions and ordinary courts”.

The workshop took place in Nicosia (Cyprus), from Monday 3 April to Tuesday 4 April 2017. It was attended by judges of Constitutional Courts and Councils as well as ordinary courts from Algeria, Egypt, Jordan, Lebanon, Morocco, the Palestinian National Authority and Tunisia.



Forthcoming activities

Opinions

- **Armenia** – draft law on Constitutional Court;
- **Bulgaria** – Electoral code; changes to the Judicial System Act;
- **Georgia** – draft constitutional reform;
- **Republic of Moldova** – draft revision of the electoral legislation; draft law amending the Constitution;
- **Spain** – “Citizens’ security law”;
- **Turkey** – the constitutionality of the measures in Decree Law No. 674 which concern the exercise of local democracy;
- **Ukraine** – draft law "On amendment to the Rules of Parliamentary Procedure of Ukraine" (Reg. No. 5522 of 10 February 2017).

Studies

Electoral Issues

- Allocation of seats to constituencies
- 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

Compilations

- Freedom of expression
- Checks and balances
- Electoral disputes

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