

Venice Commission of the Council of Europe

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June 2016 Plenary Session – Main decisions

At its 107th plenary session which took place 10–11 June 2016 in Venice, the Commission:

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LINKS

- [Venice Commission website](#)
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✓ *Adopted opinions on:*

- the draft code on Judicial Ethics of **Kazakhstan**;
- the draft Amendments to the Electoral Code of the Republic of **Moldova** – the joint opinion by the Venice Commission and the OSCE/ODIHR;
- the right to recourse action by the State against judges (the amicus curiae brief for the Constitutional Court of the Republic of **Moldova**);
- the draft Amendments to the Law on the Police and other Laws of **Poland**;
- the Amendments to the Federal Constitutional Law on the Constitutional Court of the **Russian Federation** (the Final opinion);
- the Law “on undesirable activities of foreign and international organisations” of the **Russian Federation**;
- the Law of Turkey on regulation of publications on the Internet and combating crimes committed by means of such publication;
- the Legal Framework for curfews in **Turkey**;
- on the Amendments to the Law of **Ukraine** on election of people’s deputies regarding the exclusion of candidates from party lists;

✓ *Elected :*

- Mr Kaarlo Tuori, member in respect of Finland and Chair of the Sub Commission on the Rule of Law, as First Vice–President of the Commission, replacing Ms Hanna Suchocka (Poland), whose mandate has not been renewed;
- Ms Hanna Suchocka, former member in respect of Poland, as Honorary President of the Venice Commission;

✓ *Held an exchange of views with inter alia:*

- Mr Aleksander Stępkowski, Undersecretary of State, Ministry of Foreign Affairs of **Poland**;
- Mr Andrey Klishas, Chair of the Committee on Constitutional Legislation and State Construction of the Federation Council of the **Russian Federation** and with Mr Dmitry Vyatkin, Deputy Chairman of the Committee of the State Duma on Constitutional Legislation and State–building,
- Mr Suat Hayri Aka, Deputy Undersecretary, Ministry of Transport, Maritime Affairs and Communications and with Mr Basri Bağcı, Deputy Undersecretary, Ministry of Justice of **Turkey**;

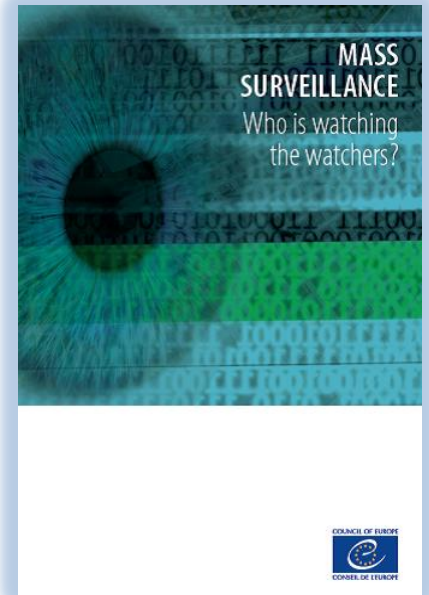
June 2016 plenary session

Other decisions

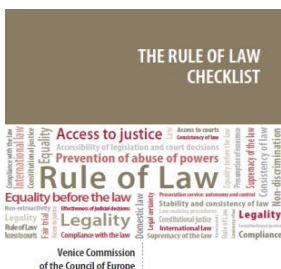
- ✓ **Endorsed the preliminary opinions on:**
 - the draft electoral code of **Armenia** as of 18 April 2016;
 - the amendments to the Organic Law on the Constitutional Court of Georgia and on the Law on Constitutional Legal Proceedings of **Georgia**;

- ✓ **Was informed on:**
 - the results and conclusions of the Conference on “Elections in Ukraine in the context of European democratic standards” which took place in Kyiv on 26–27 May 2016;
 - co-operation with Tunisia and constitutional developments in Algeria, Georgia, Italy and Turkey;
 - developments concerning the Constitutional Court of Croatia;
 - progress in the preparation of the International Conference on “Global Constitutional Discourse and Transnational Constitutional Activity”;
 - the results and conclusions of the meetings of the Joint Council on Constitutional Justice on 7–8 June 2016, the Council for Democratic Elections on 9 June 2016 and of the Scientific Council on 9 June 2016 and endorsed the compilations of Venice Commission opinions and reports concerning gender equality and media and elections;
 - Was informed on follow-up to the opinions on :
 - the proposed amendments to the Constitution of **Ukraine** regarding the judiciary, as approved by the Constitutional Commission on 4 September 2015;
 - Amendments to the Act of 25 June 2015 on the Constitutional Tribunal of **Poland**;
 - ...

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



Publications



Just published:

- [The rule of law checklist](#) (English, French)
- [“The Freedom of Peaceful Assembly in Europe”](#), Max Plank Institute, Germany
- [“Blasphemy and other limitations of freedom of expression”](#) (mini-publication by the Joint Council for Constitutional Justice)
- Bulletin of the Constitutional Case – Law: Issue 2015/3

Forthcoming:

- Bulletin of the Constitutional Case – Law: Issue 2016/1

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

June 2016 Plenary Session

Selected Opinions

Russian Federation

Opinion on the Amendments to the Federal Constitutional Law on the Constitutional Court of the Russian Federation [CDL-AD\(2016\)016](#)



Meeting room of the Venice Commission of the Council of Europe

Background

On 11 December 2015, the First Deputy Chairperson of the Legal Affairs Committee of the Parliamentary Assembly of the Council of Europe requested an opinion of the Venice Commission on the “draft legislation pending before the Russian Federation’s parliament which would empower the Constitutional Court to determine whether findings by international bodies on protection of human rights and freedoms (including those of the European Court of Human Rights) are to be implemented or not”. The Federal Law of the Russian Federation in question (no. 7–KFZ introducing amendments to the Federal Constitutional Law no. 1–FKZ of 21 July 1994 on the Constitutional Court of the Russian Federation) entered into force on 15 December 2015.

The 2015 amendments to the Constitutional Law on the Constitutional Court of the Russian Federation have empowered the latter court to declare decisions of international courts, notably of the European Court of Human Rights, as “unenforceable”. Such judgment would be based on the incompatibility of such decisions with the “fundamentals of the Russian constitutional system” and the “human rights regime established by the Constitution of the Russian Federation”. The consequence of such a finding by the Constitutional Court would be that “no actions/acts whatsoever” aimed at enforcing the international decision may be taken/adopted in the Russian Federation.

Conclusions

The Venice Commission comes to the conclusion that, if the 2015 amendments are maintained, the Federal Constitutional Law on the Constitutional Court of the Russian Federation, as modified, needs to be amended in light of the analysis contained in the Opinion CDL-AD(2016)016. At least the following measures should be taken:

- The power and any reference to the power of the Constitutional Court to rule on the “enforceability” of an international decision should be removed from the Federal Constitutional Law on the Constitutional Court; “enforceability” should be replaced by “compatibility with the Russian Constitution of a modality of enforcement, proposed by the Russian authorities, of an international decision”; this power should be excluded in respect of a specific measure of execution indicated by the European Court of Human Rights itself in its judgment;
- The Federal Constitutional Law on the Constitutional Court should make clear that individual measures of execution contained in judgments of the European Court of Human Rights, such as the payment of just satisfaction, may not be the object of an assessment of constitutionality;
- New Article 1044 paragraph 2 and Article 106 part 2 of the Federal Constitutional Law on the Constitutional Court should be removed;
- Provision should be made in the Federal Constitutional Law on the Constitutional Court for the duty of the Russian authorities, if the Constitutional Court rules that a measure of enforcement is incompatible with the Russian Constitution, to find alternative measures for executing the international decision. One of these possibilities might be to amend the legislative framework, even the Constitution.
- Article 47 of the Federal Constitutional Law on the Constitutional Court should be amended so as to ensure that any proceedings before the Constitutional Court of the Russian Federation involving the assessment of the compatibility with the Russian Constitution of a measure of execution of an international decision should necessarily involve the individual who acted as applicant before the relevant international court or body.

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

June 2016 Plenary Session

Selected opinions

Turkey – Opinion on the legal framework for curfews – [CDL-AD\(2016\)010](#)



Background

Since the summer 2015, South-East Turkey has seen an unprecedented increase in violence and full-scale acts of war between Turkish security forces and armed groups operating in the region, with severe consequences: major losses of human lives, including a large number of civilian losses, along with considerable material damage.

Despite the seriousness of the situation they were facing, the Turkish authorities chose not to declare a state of emergency to engage in the security operations they considered necessary in the areas concerned, whereas these operations and the related measures (such as curfew) inevitably entail restrictions to rights and freedoms, which sometimes have extremely serious consequences.

On 15 March 2016 the Chair of the Monitoring Committee of the Parliamentary Assembly of the Council of Europe wrote to the Venice Commission, requesting its opinion on the compatibility of the legal framework governing curfews in Turkey with European standards.

Conclusions

The Venice Commission wishes to underline, as it has done on previous occasions,⁴ that it strongly condemns all acts of terrorism. Such acts strike at the heart of the values enshrined in the European Convention on Human Rights (ECHR) and can never be justified. The Venice Commission further reiterates that a democratic state is entitled to defend itself when attacked and has a duty to protect its population from such acts. It is aware of the gravity of the situation facing the Turkish authorities, the complex nature of the challenges to be addressed in their fight against terrorism and the heavy responsibility weighing on them in this regard, as well as of the fact that PKK has been listed by the EU as a terrorist organisation.

The Commission would like to point out, however, that although it is a state's duty to muster all its resources to combat the terrorist threat and protect its citizens from such attacks, it is also crucial in a democratic society to strike the right balance between security needs and the exercise of rights and freedoms, showing due regard for the requirements of the rule of law, notably with the principle of legality, justified by necessity and proportionate.

...

The Commission notes that the curfews imposed since August 2015 have not been based on the constitutional and legislative framework which specifically governs the use of exceptional measures in Turkey, including curfew. To comply with this framework, any curfew measure should be associated with emergency rule, as provided for in Articles 119 to 122 of the Constitution. This would also be in keeping with the approach of the Commission, which has stressed in its work that de facto emergency powers should be avoided and it is better to declare them officially along with their accompanying lists of obligations and guarantees including the obligation to inform international organisations of any derogations from fundamental rights and the reasons for these, thus subjecting their application to the supervision of these organisations or to parliamentary debate and approval.

In the Venice Commission's opinion, the Provincial Administration Law, on which decisions imposing curfews were based, and the decisions themselves do not meet the requirements of legality enshrined in the Constitution and resulting from Turkey's international obligations in the area of fundamental rights, in particular under the ECHR and relevant case-law.

To remedy this situation, the Venice Commission invited the Turkish authorities to implement several recommendations.

[Read other Opinions on Turkey](#)

Selected Events

*The 61st member state of
the Venice Commission –
Costa Rica*



Strasbourg – Following a request by the Minister for Foreign Affairs of Costa Rica on 6 July 2016 the Committee of Ministers of the Council of Europe invited the country to become the 61st member state of the Venice Commission.

On 22/08/2016 the President of the Constitutional Chamber of the Supreme Court of Justice Mr Ernesto JINESTA LOBO was appointed as Member and Judge at the Supreme Court of Justice Mr Fernando CASTILLO VIQUEZ as Substitute member in respect of Costa Rica.

***Declaration by the President of the Venice Commission
on the rule of law situation in Turkey***

18/07/2016

"I strongly condemn the attempted coup d'état in Turkey; any changes in the government must follow democratic channels.

At the same time, I am alarmed by the Turkish media reports: since the failed coup, two judges of the Constitutional Court and five members of the High Council of Judges and Prosecutors have been arrested. More than 2700 judges have been suspended and many have been detained. I am convinced that especially while reacting to a violent attempt to overthrow an elected government, it is essential to respect the rule of law.

Mass dismissals and arrests of judges are not an acceptable means to restore democracy. As any citizen, each judge has the right to a fair procedure – disciplinary and/or criminal – during which his or her responsibility must be duly proved and his or her defence rights must be respected."



Selected Events

Democratic Institutions and Fundamental Rights

Poland – forthcoming opinion – visit to the country

12 – 13/09/2016

Warsaw – A delegation of the Venice Commission will visit Poland in the framework of the preparation of an opinion on the Act on the Constitutional Tribunal adopted by the Seim this summer. The programme of the visit includes meetings at the Supreme Court, Parliament, the Ministry of Justice, the Constitutional Tribunal, the Ombudsman and the Chancellery of the Prime Minister. The delegation was headed by the Vice-President of the Venice Commission, Mr Tuori (Finland); Ms Cleveland (USA) and Mr Scholsem (Belgium) take also part in the delegation. The rapporteurs are accompanied by the Secretary of the Venice Commissions Markert and by the Head of the Constitutional Justice Division Dürr.



Constitutional Justice

World Conference on Constitutional Justice (WCCJ) – 100 members!

17/06/2016

Strasbourg – Statement by the President of the Venice Commission: "I am very pleased to announce that, with the accession of the Constitutional Tribunal of Cape Verde, the World Conference on Constitutional Justice has reached the 100 membership mark, with its members hailing from all five continents. These 100 Constitutional Courts, Constitutional Councils and Supreme Courts, members of the World Conference, are all committed to the common values of democracy, the protection of human rights and the rule of law as expressed in the Statute of the World Conference, which is essential for the promotion of these values worldwide. I am very proud that the Venice Commission, as the Secretariat of the World Conference, was able to assist in the establishment of the World Conference and contribute to its success."



[Link to the website of the WCCJ](#)

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

- **Albania** – amicus curiae brief on the restitution of property;
- **Armenia** – new draft electoral Code;
- **Azerbaijan** – Referendum proposing Amendments to the Constitution;
- **Bosnia and Herzegovina** – the mode of election of delegates in the House of Peoples of the Parliament of the Federation of BiH;
- **Georgia** – amendments to the law on Constitutional Court and to the law Constitutional Legal Proceedings;
- **Kyrgyz Republic** – amendments and changes to the Constitution;
- **Poland** – Act on the Constitutional Tribunal;
- **“The former Yugoslav Republic of Macedonia”** – the Electoral code as amended on 9 November 2015;
- **Turkey** – the suspension of Article 83 of the Constitution of Turkey (Parliamentary inviolability); emergency decrees;
- **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;
- **Ukraine** –Draft Laws on guarantees for freedom of peaceful assembly.

Studies

Electoral Issues

- “25 years of international election observation – lessons to be learnt”
- Publication of list of voters having participated in elections
- Political parties – Joint CDL–OSCE/ODIHR Guidelines

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
- Legislative provisions on foreign funding of NGOs

Compilations

- Freedom of expression
- Checks and balances