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## December 2015 Plenary Session – Main decisions

*At its 105<sup>th</sup> plenary session which took place 17–18 December 2015 in Venice, the Commission:*

✓ *adopted :*

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- [the \*\*interim\*\* opinion on the draft constitutional amendments focusing on the judiciary of Albania;](#)
- [the opinion on the Legislation on the disciplining and dismissal of judges and their professional evaluation of “the former Yugoslav Republic of Macedonia”;](#)
- [the joint \*\*interim\*\* opinion by the Venice Commission and the OSCE/ODIHR on the Law of \*\*Ukraine\*\* on the condemnation of the communist and Nazi totalitarian regimes;](#)
- [the summary report on voters residing de facto abroad;](#)

✓ *elected for a term of two years **the members of the Enlarged Bureau;***

✓ *held an exchange of views with:*

### LINKS

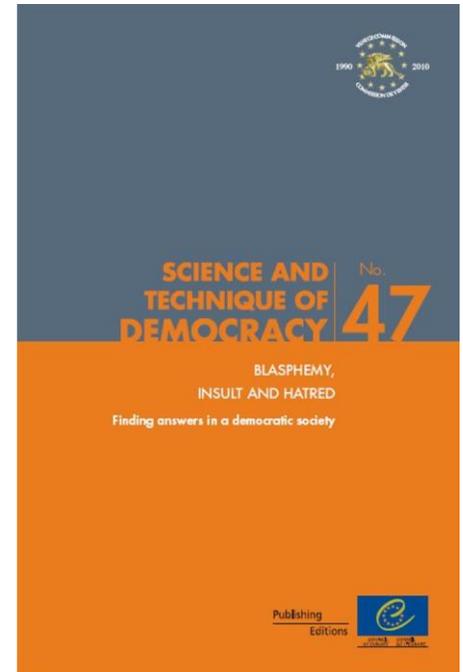
- [Venice Commission website](#)
- [CODICES database](#)
- [World Conference on Constitutional Justice](#)
- [Council of Europe](#)
- [Previous newsletters](#)
- Mr Kristaq Traja, Chair of the High Level Expert Group on the Amendment of the Constitution of **Albania**, and Mr Enkelejd Alibeaj, expert of the Democratic Party;
- Ms Nataliia Novak, MP, Chair of the Committee on Legal Policy and Justice, Mr Sergiy Petukhov, Deputy Minister of Justice and with Mr Nikola Prokopenko, representative of the Ministry of Justice of **Ukraine**;
- Mr Serhiy Holovaty, Adviser to the Speaker of Parliament, on the progress of constitutional reform in **Ukraine**;
- Mr Roberto Caldas, President-elect of the **Inter-American Court of Human Rights**;
- Ms Astrid Thors, **OSCE** High Commissioner on National Minorities;
- Mr Rafael Ribo, Chairman of the European Chapter of the **International Ombudsman Institute**;
- representatives of the **Committee of Ministers**, the **Parliamentary Assembly**, the **Congress** of Local and Regional Authorities and the Council of Europe Development **Bank**.

## December 2015 plenary session

### Other decisions

- Endorsed the **Compilations** of Venice Commission opinions and reports on constitutional amendment and on thresholds in the electoral field;
- Was informed *inter alia* :
  - on progress of work on the draft law on the authority on good governance and the fight against corruption of Tunisia;
  - on recent developments with respect to the **constitutional courts of Bosnia and Herzegovina, Croatia and Poland**, and asked its **President to follow the situation closely**, including by making, where appropriate, public statements in consultation with the Bureau in view of the importance of constitutional justice in a democratic state and the special role of the Venice Commission in promoting it in Europe and world-wide;
  - that the Commission had received [three Awards for its electoral activities from the International Centre for Political Studies \(ICPS\)](#);
  - on the results and conclusions of the Conference on “The Constitutional Protection of Vulnerable Groups: a Judicial Dialogue” and the meeting of the Sub-Commission on Latin America which took place in Santiago, Chile on 4–5 December 2015;
  - on the activities of the **Association of former Venice Commission members and substitute members (AFM)**;
- ...

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



## Publications

### *Just published:*

- Bulletin of the Constitutional Case – Law: Issue 2015/1
- Compilation of joint CDL(OSCE/ODIHR) guidelines on fundamental rights ( English, French)

### *Forthcoming:*

- Bulletin of the Constitutional Case – Law: Issue 2015/2
- “Mass surveillance – Who is watching the watchers?”




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

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## December 2015 Plenary Session

### Selected Opinions

#### Ukraine

*Opinion on the condemnation of the communist and national socialist (Nazi) regimes*



*Meeting room of the Venice Commission of the Council of Europe*

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[Link to the film on the Venice Commission](#)

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#### Background

On 24 September 2015, Mr Stefan Schennach, Chair of the Parliamentary Assembly's Committee on the Honouring of Obligations and Commitments by Member States of the Council of Europe, requested an opinion from the Venice Commission on Law no. 317-VIII "*On the condemnation of the communist and national socialist (Nazi) regimes, and prohibition of propaganda of their symbols*" (CDL-REF(2015)045; hereinafter: "Law no. 317-VIII" or the "Law").<sup>1</sup> The Organization for Security and Co-operation in Europe's Office for Democratic Institutions and Human Rights (OSCE/ODIHR) joined the Venice Commission for this opinion.

On 16 November 2015, a delegation composed of a rapporteur and two members of the Secretariat of the Venice Commission as well as a representative and an expert from OSCE/ODIHR travelled to Kyiv to meet with the authorities and civil society.

#### Scope of the opinion

The scope of this Joint Opinion only covers Law no. 317-VIII, submitted for review by the Parliamentary Assembly of the Council of Europe. It is therefore limited and does not constitute a full and comprehensive review of all the legal acts that were amended by Law no. 317-VIII. This Joint Opinion also does not address the other three laws,<sup>1</sup> together with which Law no. 317-VIII formed a so-called "*decommunisation package*", which is the term often applied to the process of dismantling communist legacies in post-communist States.

The Joint Opinion raises key issues and provides indications of areas of concern. In the interests of concision, this Joint Opinion focuses mainly on problematic areas rather than on the positive aspects of Law no. 317-VIII. The ensuing recommendations are based on relevant international human rights and rule of law standards and OSCE commitments, Council of Europe and United Nations standards, as well as good practices from other Council of Europe Member States and OSCE participating States. Where appropriate, they also refer to the relevant recommendations made in previous Venice Commission and OSCE/ODIHR opinions and reports.

[Full text of the opinion ...](#)

## December 2015 Plenary Session

### Selected reports

#### [Report on voters residing \*de facto\* abroad](#)

At its 45<sup>th</sup> meeting (13 June 2013), the Council for Democratic Elections examined for the first time the issue of voters residing *de facto* abroad while being still registered as resident in-country, which had not been dealt with in the Report on out-of-country voting ([CDL-AD\(2011\)022](#)). This question was raised following suspicions of fraud by impersonation of voters residing *de facto* abroad; they were sometimes indicated as having voted whereas it is very doubtful that they were in the country on polling day. At its 46<sup>th</sup> meeting (20 December 2013), the Council for Democratic Elections discussed the issue on the basis of a secretariat memorandum (CDL-EL(2013)011). This document underlined the absence of a common definition of the concept of residence (or domicile); it pointed out other elements to be taken into account before deciding whether to study the management of electoral registers with regard to voters residing *de facto* abroad who remain registered as residents in their country of origin. The Council decided to proceed with its reflexion on the issue.



The present report is intended at summarising the findings of the various documents quoted above by focusing on the problems linked to voters *de facto* abroad and the solutions found to prevent fraud.

The Congress of Local and Regional Authorities of the Council of Europe addressed the issue in a report entitled “Electoral lists and voters residing *de facto* abroad”(CG/2015(28)6FINAL), which led to the adoption of [Recommendation 369 \(2015\)](#) and [Resolution 378 \(2015\)](#). This document was also taken into account.

#### **Conclusions**

While there is no international standard yet on the right to vote of citizens abroad nor on the definition of residence, consistency and effectiveness of electoral legislation and practice have to be ensured. This implies respect for the “one person – one vote” principle: universal suffrage for all those admitted to vote but also the exclusion of impersonation and multiple voting. The latter aspect appears as the main concern when talking about voters *de facto* abroad.

[Read the Report on voters residing \*de facto\* abroad](#)

## Selected Events

### *European Union – Venice Commission – Reforms in Ukraine 25 – 27/11/2015*



European Parliament, Strasbourg – President of the Venice Commission Gianni Buquicchio was invited to exchange of views on ongoing reforms in Ukraine with the Delegation of the European Parliament to the EU–Ukraine Parliamentary Association Committee.

The participation of the President was highly valued by the President of the EP Delegation Mr Andrej Plenković (EPP, HR). After the session Mr Plenković issued a statement.

[Text of the statement by the President Plenković](#)

### *Electoral Awards 2015 – The Venice Commission receives an international prize*

14/11/2015

Puerto Vallarta, Mexico – The Venice Commission received the International Institutional Engagement Award at the International Centre for Political Studies (ICPS) Electoral Awards Ceremony. It had also been shortlisted in the two other awards' categories: the Gender Equality and the Minority Participation.

Mr Alberto Guevara Castro, member of the ICPS jury, handed the prize at the December plenary session to the President G.Buquicchio and of the Vice–Presidents E. Tanchev.



### *Request for opinion – Poland*

23/12/2015



Strasbourg, Warsaw – the Minister of Foreign Affairs of Poland Mr Witold Waszczykowski, on behalf of the Polish government, requested the Venice Commission's opinion on "the constitutional issues addressed in the two proposals for the legislation amending the Act on the Constitutional Court of 25 June 2015. Both instruments were introduced into the agenda by the Polish Parliament by two groups of MPs, respectively on 2 and 15 December 2015 (Parliamentary Text Nos. 129 and 122)". The final text of the Act was adopted on 22 December, published on 28 December 2015 (Journal of Laws 2015, item 2217). The text was translated and sent to the Secretariat on 14 January 2016.

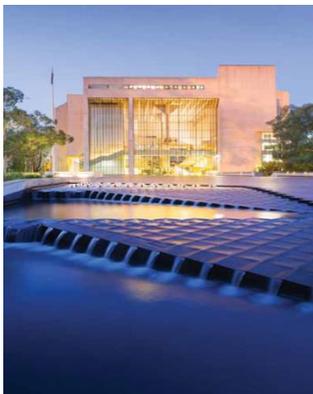
The opinion will be adopted by the March 2016 plenary session.

## Selected Events

### Democratic Institutions and Fundamental Rights Constitutional reforms in Ukraine

13 – 14/10/2015

Kyiv – a delegation of the Venice Commission as well as representatives of other parts of the Council of Europe participated in the high-level conference on the Constitutional reform entitled “Constitutional reforms in Ukraine – Outcomes and perspectives”.



### Constitutional Justice

#### WCCJ – Australian High Court joins the Conference

2/11/2015

With the accession of the High Court of Australia, the World Conference on Constitutional Justice is now represented on all five continents. The WCCJ, established and managed by the Venice Commission, counted 98 member courts by the end of 2015.

[Website of the High Court of Australia](#) [Webpage of the WCCJ](#)

### Elections and political parties

#### Ukraine – Electoral System Week

02 - 04/02/2016

Kyiv – The International Foundation for Electoral Systems (IFES) and the Venice Commission of the Council of Europe co-organised several events entitled the “Electoral System Week”.

Members of the Ukrainian parliament, the leading experts in the election system design, representatives of CEC and civil society participated in the three events that took place at the President hotel and in the premises of the Verkhovna Rada.

- [Statement on Outcome of the Election System Week](#)
- [Venice Commission documents on elections in Ukrainian](#)



## Neighbourhood Cooperation

### UniDem Campus for the Southern Mediterranean Countries – 1st National Coordinators Meeting

12/11/2015

Paris, France – The 1st National Coordinators Meeting of the UniDem Campus for the Southern Mediterranean Countries took place in Paris, France on 12 November 2012. The purpose of this meeting was:

- to present the Venice Commission's contribution to the PATHS Module 1;
- to select the topics and venues for the seminars for 2016; to discuss the working methods of the UniDem Seminars as well as the follow-up to the seminars; and
- to present the new web page dedicated to the UniDem seminars.



### South Mediterranean – Training seminar for civil servants of the MENA region – Contribution by the Venice Commission

30/11/2015 – 03/12/2015

Venice – The Venice Commission makes a contribution to the 1st PATHS training Module entitled: “Constitutional justice, transitional justice and the legislative process”.

This 1st module of training in the framework of the PATHS (Programme on Advanced Training on Human Rights for the Council of Europe's Southern Neighbourhood) is aimed at high-level public servants from the MENA Region.

The Venice Commission's contribution covers the topics relating to constitutional justice and the legislative process on 30 November and 1 December 2015.



## Forthcoming activities

### Opinions

- **Albania** – draft constitutional amendments on the judiciary;
- **Armenia** – new draft electoral Code;
- **France** – draft revision of the French Constitution aimed at incorporating rules on a state of emergency and on the deprivation of nationality;
- **Georgia** – amendments to the Election Code;
- **Montenegro** – draft law on freedom of religion;
- **Poland** – amendments to the Act on the Constitutional Tribunal; draft amendments to the Law on the Police and other Laws;
- **Russia** – Law on undesirable organizations; 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** – law on the protection of the privacy and the law on the protection of whistleblowers;
- **Turkey** – Law N°5651 on the Internet and Articles 216, 301 and 314 of the Penal Code;
- **Ukraine** – Law on the condemnation of the communist and Nazi totalitarian regimes;

### Studies

#### Electoral Issues

- Guidelines on preventing and tackling of misuse of administrative resources during elections
- “25 years of international election observation – lessons to be learnt”

#### 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
- Rule of law – check list
- Study on the role of the opposition in a democratic Parliament – update

#### Compilations

- Local government
- Political parties

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