



Venice Commission of the Council of Europe

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## December 2017 Plenary Session – Main decisions

*At its 109<sup>th</sup> plenary session which took place 9–10 December 2016 in Venice, the Commission:*

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

- ♦ the Law for the temporary re-evaluation of Judges and Prosecutors of **Albania** (Vetting Law);
- ♦ the draft constitutional law of the Republic of **Armenia** on political parties;
- ♦ the draft constitutional law of the Republic of **Armenia** on the Human Rights Defender;
- ♦ the draft law on the ethno-cultural Status Law of the District of Taraclia (Republic of **Moldova**);
- ♦ Draft Law No. 161 of the Republic of **Moldova** amending and completing existing legislation in the field of combating cybercrime,
- ♦ Emergency Decrees of **Turkey**,
- ♦ the draft law on the Constitutional Court of **Ukraine**;

#### ✓ *Paid tribute to the late Mr Boualem Bessaïh, member of the Venice Commission in respect of Algeria;*

#### ✓ *Held an exchange of views with*

- ♦ Ms Arpine Hovhannisyan, Minister of Justice of **Armenia** and Mr Arman Tatoyan, Human Rights Defender of Armenia,
- ♦ Mr Igor Vremea, member of the Legal Committee, Nominations and Immunities, Parliament of the **Republic of Moldova**;
- ♦ Mr Selahaddin Menteş, Deputy Undersecretary, Ministry of Justice of **Turkey**,
- ♦ Mr Oleksiy Filatov, Deputy Head of the Presidential Administration of **Ukraine**,
- ♦ Mr Lorenzo Córdova Vianello, President of the National Electoral Institute of **Mexico**;
- ♦ 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 on bioethics;*

#### ✓ *Elected Ms Jasna Omejec as Co-Chair of the Joint Council on Constitutional Justice and Chair of the Sub-Commission on Constitutional Justice, following the non-renewal of the term of office of Mr Tanchev;*

## December 2016 plenary session

### Other decisions

- *Was informed on follow-up to:*

- ♦ The Second Joint Opinion on the Electoral Code of **Armenia** (as amended on 30 June 2016);
- ♦ the Opinion on the suspension of the second paragraph of Article 83 of the Constitution of **Turkey** (parliamentary inviolability);
- ♦ the Opinion on the Act on the Constitutional Tribunal of **Poland**;
- ♦ the Joint opinion on the draft law "on Introduction of amendments and changes to the Constitution" of the **Kyrgyz Republic**;
- ♦ the *amicus curiae* Brief for the Constitutional Court of **Albania** on the restitution of property;

- *Was informed on:*

- the decision by the Bureau to postpone examination of the draft opinion on amendments to the Organic law on the Constitutional Tribunal of **Spain** to a forthcoming session;
- recent constitutional developments in Morocco and co-operation with Morocco, in particular through the **UniDem-Med Campus**;
- constitutional developments in **Georgia, Ireland, Italy, Sweden, the United Kingdom and the United States**, as well as in **Argentina**;



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

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## Publications



*Just published:*

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

*Forthcoming:*

- Bulletin of the Constitutional Case – Law: Issue 2016/2

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

## December 2016 Plenary Session

### Selected Opinions

#### Albania

*Amicus Curiae Brief for the Constitutional Court on the Law on the Transitional Re-evaluation of Judges and Prosecutors (The Vetting Law) – [CDL-AD\(2016\)036](#)*

#### Background

By a letter of 28 October 2016, the President of the Constitutional Court of Albania, Mr Bashkim Dedja, requested an amicus curiae brief from the Venice Commission on the conformity of Law no. 24/2016 on the Transitional Re-Evaluation of judges and Prosecutors in the Republic of Albania (hereinafter, “the Vetting Law”) with international standards including the European Convention on Human Rights (hereinafter, “ECHR”). The context of this request is a claim before the Constitutional Court of Albania requesting the Vetting Law to be declared unconstitutional and incompatible with the ECHR.



*President of the Venice Commission  
Gianni Buquicchio on national  
Albanian television*

The Constitutional Court has put four questions to the Venice Commission, related to the compatibility of certain aspects of Law no. 84/2016 with the Constitution and Articles 6 and 8 ECHR as well as on whether the participation of the judges of the Constitutional Court, who are themselves subject of the vetting procedure, in the examination of the constitutionality of the Vetting Law may be considered as a conflict of interest which requires their disqualification.

#### Conclusions

Concerning the issue of conflict of interest and the possible disqualification of constitutional judges, the Venice Commission underlines that all the constitutional judges, according to the Constitution and the Vetting Law, will be the subject of the Vetting Law which provides for the re-evaluation of every judge in Albania including the judges of the Constitutional Court. Therefore, the possible conflict of interest may affect the position, not only of one or some constitutional judges, but of all the constitutional judges sitting at the Constitutional Court. Consequently, the disqualification of the constitutional judges because of the existence of a conflict of interest would result in the total exclusion of the possibility of judicial review of the Vetting Law in view of its conformity to the Constitution. This would undermine the guarantees ensured by a functioning judicial review of legislation. This situation could be considered by the Constitutional Court as an “extraordinary circumstance” which may require departure from the principle of disqualification in order to prevent denial of justice.

As to the **involvement of the organs allegedly under the control of the executive power in the process of re-evaluation of judges and prosecutors** with regard to the principle of independence of the judiciary, the analysis of the text of the Vetting Law shows that, despite the involvement of bodies, such as HIDAACI or CISD, in the investigation process and the initial research for evidence, the evaluation and assessment of any information or evidence gathered by those executive bodies rests with the Independent Commission and the Appeal Chamber which possess both the characteristics of judicial bodies and have the power to verify themselves the evidence gathered by the executive organs.

*Continued on the following page*

## Selected opinions

### *Albania – “vetting law”*

*(continued from the previous page)*



On this basis, it may be concluded that the system put in place by the Vetting Law does not as such seem to amount to an interference with the judicial powers.

As to whether **the lack of possibility for judges and prosecutors undergoing the vetting process to challenge the decisions** given by the re-evaluation institutions before domestic courts is in breach of Article 6 ECHR, the Venice Commission considers that the answer to this question depends on the qualification of the Appeal Chamber in the Constitution and the Vetting Law. For the Venice Commission, those legal texts provide sufficient elements in order to conclude that the Appeal Chamber may be considered as a specialised jurisdiction which presents judicial guarantees to the persons affected by the vetting procedure.

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[Read full text of the opinion](#)

### *Poland – statement by the President of the Venice Commission*

*16/01/2017*

*“I am worried about the worsening situation within the Constitutional Tribunal of Poland. Following the attempts to influence the work of the Tribunal by means of legislative amendments, which were criticised by the Venice Commission, practical steps are now taken with the apparent aim to ensure that the Tribunal act in accordance with the will of the current political majority:*

- The new President of the Tribunal was elected on the basis of a questionable procedure;*
- The new President delegated her powers to another judge who was elected on a legal basis that had been found unconstitutional by the Tribunal;*
- The Vice-President of the Tribunal was sent on a vacation he had not asked for;*
- The election of three sitting judges is challenged seven years after the election.*

*Hitherto the Constitutional Tribunal played a crucial role to ensure respect for human rights, the rule of law and democratic principles in Poland. It is alarming that it is systematically made impossible for the Tribunal to carry out this role assigned to it by the Polish Constitution.”*



*President Buquicchio giving interview to a Polish TV station regarding his statement*

## Selected Events

### Democratic Institutions and Fundamental Rights

#### Global constitutional heritage – international conference 07/12/2016

Venice – The Venice Commission of the Council of Europe in co-operation with the International Institute for Democracy and Electoral Assistance (IDEA) and with the International Association of Constitutional Lawyers (IACL-AIDC) organised an international Conference entitled “Global Constitutional Discourse and Transnational Constitutional Activity”.



### Constitutional Justice



#### WCCJ – World Conference on Constitutional Justice – 104 members

2/12/2016 – 15/01/2017

Accession of the Supreme Tribunal of Monaco on 2 December 2016 and of Constitutional Council of Djibouti on 15 January 2017 to the World Conference on Constitutional Justice, brought its membership to 104 members.

▶ [WCCJ site](#)

#### "The former Yugoslav Republic of Macedonia" – Technical assistance to the State Election Commission 23 – 26/01/2017

Skopje – At the request of the State Election Commission of "the former Yugoslav Republic of Macedonia", a delegation of the Venice Commission undertook a fact-finding mission with a view to defining the modalities of a long term technical assistance. The delegation met with national and international stakeholders and joined the State Election Commission in its retreat.



## Neighbourhood Cooperation

### South Mediterranean – Independence of electoral administrations – Arab EMBs workshop and 2nd General Assembly

07 – 09/02/2017

Tunis – The Venice Commission in co-operation with the United Nations Development Programme's Regional Electoral Support Project and the Independent High Electoral Commission of Tunisia assisted the Organisation of Electoral Management Bodies of Arab countries in organising its Second General Assembly and a workshop on the independence of electoral administrations (EMBs).

The workshop gave an opportunity to the EMBs from the Arab States to share knowledge and raise awareness about the principle of EMB independence; bring together international experience and comparative models from around the world. Among other issues participants exchanged views about the international principles and indicators that govern the independence of EMBs and identify the key independence challenges facing the Arab Electoral Management Bodies.



### UniDem for the Southern Mediterranean: 2nd National Coordinators Meeting

25/01/2017

Paris – The second meeting of the focal points of the seven partners participating in the UniDem Seminars for the Southern Mediterranean (Algeria, Jordan, Lebanon, Morocco, Mauritania, Palestinian National Authority and Tunisia) was held 25 January 2017 in the Council of Europe Office in Paris.

Participants discussed their respective national priorities and will determine the topics, dates and venues of upcoming UniDem Med seminars in 2017. Established for the Southern Mediterranean in September 2015, UniDem Med seminars aim to the exchange of best democratic practices among senior civil servants across the Mediterranean.



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

## Forthcoming activities

### Opinions

- Armenia – law on Constitutional Court ;
- Georgia – draft constitutional reform
- Kazakhstan – law on administrative procedures; draft constitutional reform;
- Republic of Moldova –draft law No 281 amending the legislation of the Republic of Moldova dealing with the “Security Mandate”; criminal liability of judges;
- Slovakia – appointment of judges to the Constitutional Court;
- Spain – “Citizens’ security law”; the Law on the changes to the powers of the Constitutional Court;
- Turkey – emergency decree laws of Turkey with respect to the freedom of the media; amendments to the Constitution; law on criminal peace judgeships.

### Studies

#### Electoral Issues

- The misuse of administrative resources during electoral processes at local and regional levels – Congress draft checklist
- 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
- Referendums