



Venice Commission of the Council of Europe

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December 2018 Plenary Session - Main decisions

At its 117th plenary session which took place on 14-15 December 2018 in Venice (Italy), the Commission:

✓ Held a minute of silence in memory of the victims of the **Strasbourg attack of 11 December 2018**;

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✓ **Adopted opinions on:**

- [the draft Constitutional amendments of **Albania** enabling the vetting of politicians](#);
- [the Provisions on the Prosecutorial Council in the draft organic Law on the Prosecutor's Office and on the Provisions on the High Council of Justice in the Existing Organic Law on General Courts of **Georgia**](#);
- [the **Hungarian** Law of 20 July 2018 amending certain tax laws and other related laws and on the immigration tax \(section 253 on the special immigration tax\), jointly with the OSCE/ODIHR](#);
- [the Concept Paper on the reform of the High Judicial Council of **Kazakhstan**](#);
- [the Constitutional arrangements and separation of powers and the independence of the judiciary and law enforcement bodies of **Malta**](#);
- [the law amending the law on Courts of "**the former Yugoslav Republic of Macedonia**"](#);
- [the Amendments to the electoral legislation and related "harmonisation laws" of **Turkey** adopted in March and April 2018, jointly with the OSCE/ODIHR](#);

LINKS

- [Venice Commission website](#) ✓
- [CODICES database](#)
- [World Conference on Constitutional Justice](#)
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✓ *Held an exchange of views with:*

- Ms Klotilda Bushka, Secretary of the Committee on Legal Affairs and Human Rights, Assembly of **Albania**, and with Mr Oerd Bylykbashi, Representative of the Democratic Party,
- Ms Tamar Chugoshvili, First Deputy Chairperson, Parliament of **Georgia**,
- Mr Balázs Orbán, State Secretary, Prime Minister's Office of **Hungary**,
- Mr Talgat Donakov, Chairman of the High Judicial Council of the Republic of **Kazakhstan**,
- Mr Owen Bonnici, Minister for Justice, Culture and Local Government of **Malta**,
- Ms Ljubica Karamandi-Popcevska, Legal Expert, Ministry of Justice of "**the former Yugoslav Republic of Macedonia**",
- Mr Ömer Yilmaz, Rapporteur Judge, Department of Human Rights, Ministry of Justice of **Turkey**,
- Mr Ahmed Abdel Aziz Abu El Azm, President of the Council of State of Egypt,
- the representatives of the Committee of Ministers, the Parliamentary Assembly and the Congress of Local and Regional Authorities of the Council of Europe;

✓ Was informed on the "[Follow up](#)" page on the website of the Commission which contains information on the follow up to its opinions since 2017;

✓ endorsed the [Compilation of Venice Commission opinions and reports concerning digital technologies in the electoral process](#);

December 2018 Plenary Session

Other decisions

✓ **Was informed on follow up to the Opinions on:**

- Opinion on draft amendments to Law No. 303/2004 on the Statute of Judges and Prosecutors, Law No. 304/2004 on Judicial Organisation and Law No. 317/2004 on the Superior Council for Magistracy of **Romania** and Opinion on draft amendments to the Criminal Code and the Criminal Procedure Code of Romania;
- *Amicus curiae* brief for the **European Court of Human Rights** in the case of Berlusconi v. Italy on the minimum procedural guarantees which a State must provide in the framework of a procedure of disqualification from holding an elective office;
- Opinion on the Draft Act of **Poland** amending the Act on the National Council of the Judiciary; on the Draft Act amending the Act on the Supreme Court, proposed by the President of Poland, and on the Act on the Organisation of Ordinary Courts;



✓ **Was informed about the report of the Committee on Political Affairs and Democracy of the Parliamentary Assembly on “Updating guidelines to ensure fair referendums in Council of Europe member States” and decided, upon the proposal of the Council for Democratic Elections, to launch the revision of its 2007 Code of Good Practice on Referendums;**

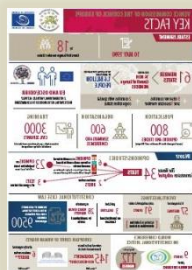
✓ **Was informed on the activities of the Association of former Venice Commission members and substitute members (AFM CDL);**

✓ **Was informed on:**

- recent constitutional developments in **Canada** and in **Japan**, the **Republic of Korea** and in the **United Kingdom**;
- the results and conclusions of the **6th Inter Cultural Workshop on Democracy** “The Role and Place of Independent Bodies in a Democratic State” (Tunis, 13-14 November 2018) and of the **VIII International Congress of Comparative Law** “Comparative Law in search of the Constitutional ideal” (Moscow, 7-8 December 2018);
- **the Council of Europe and Venice Commission external funding**;
- the results and conclusions of the meetings of the **Sub-Commissions on Latin America** (Mexico City, 30 November 2018), **on Democratic Institutions and on Mediterranean Basin** (13 December 2018); **Sub-Commission on Fundamental Rights** (13 December 2018) and of the **Council for Democratic Elections** (13 December 2018);
- the preparation of a **Conference on stocktaking of democratic reforms in Central and Eastern Europe after 1989**, to be held in Lund on 6-7 May 2019, under the auspices of the Finnish Presidency of the Committee of Ministers of the Council of Europe; ...

[Read all the decisions of the December 2018 plenary](#)

Publications



Just published:

- E-Bulletin on Constitutional Case–Law: **Issue 2018/2**

Forthcoming:

- E-Bulletin on Constitutional Case – Law: **Issue 2018/3**
- Rule of Law Checklist (**Spanish version**)
- **2018 Annual report of activities**

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

December 2018 Plenary Session

Selected Opinions

Hungary - Joint Opinion on the Law of 20 July 2018 amending certain tax laws and other related laws and on the immigration tax (section 253 on the special immigration tax) - [CDL-AD\(2018\)035](#)

Background

By a letter of 10 October 2018, the Chairperson of the Committee on Legal Affairs and Human Rights of the Parliamentary Assembly requested the Venice Commission to prepare an opinion on the compatibility with international human rights standards of the law of 20 July 2018 amending certain tax laws and other related laws, and on the immigration tax (hereinafter “the law”) of Hungary. The Commission decided to prepare the Opinion jointly with the OSCE Office for Democratic Institutions and Human Rights (ODIHR).

Section 253 of the Act (labelled as “On the special immigration tax”) imposes a 25% tax on:
(1) the financial support to an immigration-supporting activity carried out in Hungary or
(2) the financial support to the operations of an organisation with a seat in Hungary that carries out immigration-supporting activity.

An immigration-supporting activity is defined as “any programme, action or activity that, either directly or indirectly, aims at promoting immigration” and which is realised through carrying out media campaigns and media seminars, and participating in such activities, organising education, building and operating networks or propaganda activities that portray immigration in a positive light. The special immigration tax aims at obliging NGOs conducting activities in the field of migration to bear the costs that have arisen as a result of their activities, which contribute to the growth of immigration and result in public tasks and expenditure.

Conclusions

While the Commission recognised that it is necessary for States to raise revenue through taxation, it stressed that by targeting specific activities of associations, the special tax restricts the objectives of associations and constitutes an interference with their rights to freedom of association and expression.

The Commission pointed to the vague character of some terms used in the provision such as “indirect promotion of migration” or “portraying immigration in a positive light” which make the provision overly broad and offer too little guidance to understand when the tax may be imposed. The provision therefore does not meet the criterion of “legality”. The Opinion also underlined that certain characteristics of the special immigration tax indicate that it is imposed for the purpose of limiting the potential of NGOs to seek funds for their legitimate activities in the field of immigration.

The Commission expressed serious concerns about the legitimacy of this aim which has the effect of dissuading persons, including legal persons, from lawfully advocating a particular political point of view. Lastly, in the assessment of the necessity and proportionality of the interference, the Opinion took into account the cumulative effect created by the imposition of the special immigration tax, together with the reporting obligations imposed by the Law on Transparency of Organisations Receiving support from abroad and the restrictions imposed by the implementation of Section 353A of the Criminal Code on Facilitating Illegal Migration on legitimate activities of NGOs. It concluded that the special tax represents an unnecessary and disproportionate interference with the right to freedom of association and expression of NGOs and should be repealed.

[Full text of the opinion](#)



Hungarian government billboard
anti-immigration campaign,
April 2018

[All Opinions on Hungary](#)

December 2018 Plenary Session

Selected Opinions

Malta - Opinion on Constitutional arrangements and separation of powers - [CDL-AD\(2018\)028](#)

Background

The Opinion is the result of two requests, from the PACE Committee on Legal Affairs and Human Rights on 10 October 2018 and from the Maltese Minister for Justice, Culture and Local Government on 13 October 2018. The scope of both requests was roughly similar, i.e. to look into the constitutional arrangements of the country, the separation of powers, judicial independence and the position of the law enforcement bodies.



This scope was very broad and it was near to impossible to provide a comprehensive and exhaustive analysis of the existing constitutional arrangements. Therefore, the draft opinion covered only the most relevant topics. The proposed constitutional reform required a holistic approach. In Malta, all interlocutors of the Commission's delegation had acknowledged the need for reform, notably as concerns the judiciary and the role of criminal prosecution.

Even if the request from PACE was prompted by the assassination of an investigative journalist Daphne Galizia, the draft opinion did not look into this specific case or any other individual cases but was limited to the constitutional arrangements as such.

Conclusions

As concerns the executive power, under the Maltese Constitution, it is the Prime Minister who is clearly the centre of political power. Other actors such as the President, Parliament, the Cabinet of Ministers, the Judiciary or the Ombudsman are too weak to provide sufficient checks and balances. The Commission therefore recommended strengthening these powers. Regarding Parliament, the Opinion recommended tightening the rules on conflicts of interest, raising the salaries of 'part-time' MPs so that they would not depend on other remunerated positions attributed to them by the executive power and ensuring that MPs have sufficient access to non-partisan information to perform their controlling function. The President of Malta should be strengthened through powers of – notably judicial - appointments without the intervention of the Prime Minister. The Opinion also recommended considering electing the President of Malta with a qualified majority.

[All Opinions on Malta](#)

As concerns the judiciary, vacancies for judicial office are not announced or published. The Judicial Appointments Committee, established by constitutional amendment in 2016, vets candidates for judicial appointment and includes suitable candidates in a permanent register. When a vacancy comes up, the Prime Minister is free to choose a candidate from that register or from among the sitting magistrates (first instance judges). The Commission recommended widening the composition of the JAC, publishing judicial vacancies and enabling the JAC to not only vet candidates but also to rank them upon merit. The Opinion also recommended abolishing the possibility that judges are dismissed by Parliament.

As concerns prosecution, it is the Police who investigate crimes and who then press the charges in court. The office of the Attorney General (AG) is involved in prosecution only for the most serious crimes, but the AG is also the Legal Adviser to the Government. The Opinion recommended setting up an office of an independent Director of Public Prosecutions or Prosecutor General with security of tenure, being responsible for all public prosecutions, subject to judicial review. The AG would remain the Legal Adviser to the Government and the Police could focus exclusively on investigative work.

[Read more...](#)

Selected Events

Democratic Institutions and Fundamental Rights

Russian Federation - VIII International Congress of Comparative Law: «Comparative law in search of the constitutional ideal»

07 - 08/12/2018

Moscow - The Venice Commission participated in the VIIIth International Congress of Comparative Law entitled “Comparative Law in search of the Constitutional Ideal”. Dedicated to the 25th Anniversary of the Constitution of the Russian Federation, the Congress took place in Moscow (7-8 December 2018) and was organised by the Institute of Legislation and Comparative Law under the Government of the Russian Federation.



Constitutional Justice

World Conference on Constitutional Justice (WCCJ) – 114 members worldwide!

05/12/2018

Council of Europe, Strasbourg - the Finnish Supreme Court and the Palestinian Supreme Constitutional Court have joined the World Conference on Constitutional Justice. It counts now 114 member courts worldwide!

▶ [Webpage of the WCCJ](#)



Elections and political parties

ARMENIA – Early Parliamentary Elections – Legal assistance to the PACE observation mission

08 - 09/12/2018

Yerevan - A delegation of the Venice Commission accompanied the Parliamentary Assembly of the Council of Europe (PACE) election observation delegation to advise on the legal framework of the early parliamentary elections of 9 December 2018 in Armenia.

The delegation observed the opening, voting and counting processes of the parliamentary elections.



Neighbourhood Cooperation

International Congress and Meeting of the Sub-Commission for Latin America

29 - 30/11/2018

Mexico City – The Federal Electoral Tribunal of Mexico and the Venice Commission organised an international Congress “The guarantees of democratic processes: international standards and constitutional principles in a comparative perspective”.

A meeting of the Sub-Commission for Latin America of the Venice Commission was held on the side-lines of the Congress.



- ▶ Programme and the concept of the Congress
- ▶ Draft annotated agenda of the Sub-Commission on Latin America

KYRGYZ REPUBLIC - Assistance in the electoral field

07/12/2018

Bishkek - In the framework of the project “Support to Strengthening Democracy through Electoral Reform in the Kyrgyz Republic” a round table on cybercrime and cybersecurity was held on 7 December 2018 in Bishkek.

Representatives of the Government of the Kyrgyz Republic including the State Security Council, the State Registration Service (SRS), the Ministry of the Interior, the General Prosecutor’s office and other national institutions, together with civil society representatives were provided with an opportunity to gain knowledge and share experiences about existing international standards in the field of cybersecurity and cybercrime. The round table served as a forum for sharing best practices from other countries in this field.



The project “Support to Strengthening Democracy through Electoral Reform in the Kyrgyz Republic” is implemented by the Venice Commission and co-funded by the European Union and the Council of Europe.

Ombudsman Institution - FIO

22/11/2018

Andorra la Vella - The Venice Commission participated in the XXIII Congress of the Ibero-American Federation of Mediators (FIO) held in the Principality of Andorra on 22 November 2018.



- ▶ [Website of the FIO](#)

Forthcoming activities

Opinions

- **Georgia** – Legislative amendments to the Criminal Procedure Code of Georgia concerning the relationship between the prosecution and the police;
- **Hungary** – the Law on the entry into force of the Law on Administrative Courts and certain transitional Rules; *questions related to the protection of privacy (postponed)*;
- **Luxembourg** – the Revised Constitution;
- **Montenegro** – draft law on amendments of the Law on freedom of religion ;
- **Spain** – “Citizens’ security law” (*postponed*);
- **"The former Yugoslav Republic of Macedonia"** - the Law on the use of languages
- **Ukraine** – *amicus curiae* brief on separate appeals against interim measures of first instance courts

Studies

Electoral Issues

- Local recall referendum
- Election dispute resolution
- Individual Right to Re-election – Part II
- Political parties - Joint CDL-OSCE/ODIHR Guidelines - revision
- Referendums
- Social media in elections

Constitutional Justice

- Composition of Constitutional Courts - update
- Individual Access to Constitutional Justice - update
- Separate opinions of Constitutional Courts

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
- Venice Principles on the ombudsman institution

Compilations

- Electoral systems
- Judges and courts (update)