



Venice Commission of the Council of Europe

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March 2018 Plenary Session - Main decisions

At its 114th plenary session which took place on 16-17 March 2018 in Venice (Italy), the Commission:

- ✓ **Paid tribute to late Mr Boguslaw Banaszak**, member in respect of Poland;
- ✓ **Was informed of the difficult financial situation** following the reduction of the Commission’s budget, **thanked Italy** for its recent voluntary contribution in addition to its statutory one, and encouraged all member states to also consider making additional contributions to the Commission’s budget;
- ✓ **Adopted the Opinions on:**
 - ◆ the draft law of **Armenia** on [amendments to the Law on Freedom of Conscience and on Religious Organisations](#) (jointly with the OSCE/ODIHR);
 - ◆ the draft [Constitutional amendments as adopted in the second reading in December 2017 by the Parliament of Georgia](#);
 - ◆ [amendments to the electoral legislation of the Republic of Moldova](#) (jointly with the OSCE/ODIHR);
 - ◆ the draft laws amending and supplementing the Constitution of the Republic of **Moldova** [in respect of the judiciary](#) and [regarding freedom of association \(Article 42 of the Constitution\)](#);
 - ◆ the draft law on the [prevention and protection from discrimination](#) of “**the former Yugoslav Republic of Macedonia**”;
 - ◆ the draft law of **Romania** [revising Government Ordinance 26/2000 on associations and foundations](#) (jointly with the OSCE/ODIHR);
 - ◆ two draft laws of **Ukraine** “[On introducing changes to the Tax Code to ensure public transparency of the financing of public associations and the use of international technical assistance](#)” and “[On introducing changes to some legislative acts to ensure public transparency of information on finance activity of public associations and of the use of international technical assistance](#)” (jointly with the OSCE/ODIHR);
- ✓ **Held an exchange of views with:**
 - Ms Tamar Khulordava, Chair of the EU Integration Committee of the Parliament of **Georgia**,
 - Mr Sergiu Sirbu, Member of Parliament, Democratic Party (PDM) and with Mr Sergiu Ostaf, Director of the Resource Center for Human Rights (CREDO) of the **Republic of Moldova**,
 - Ms Oana Consuela Florea, Member of Parliament of **Romania**,
 - Ms Gjulten Mustafafova, State Advisor for Non-discrimination and Human Rights at the Ministry of Labour and Social Policy of “**the former Yugoslav Republic of Macedonia**”,
 - Mr Lamberto Zannier, **OSCE High Commissioner on National Minorities** on possible synergies with the Commission, and with
 - the representatives of the statutory bodies of the Council of Europe;

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March 2018 Plenary Session

Other decisions

- ✓ *Adopted the Report on Term limits, Part I: Presidents* at the request of the Organization of American States and its **Annual Report of activities 2017**;
- ✓ *Took note of the Report on the Identification of electoral irregularities through statistical methods*;
- ✓ *Was informed on follow up to the opinions on :*
 - questions related to the appointment of Judges of the Constitutional Court of the **Slovak Republic**;
 - the draft Law of **Ukraine** on Anti-Corruption Courts and on the draft Law on Amendments to the Law on the Judicial System on the Status of Judges;
 - the Amendments to the law of **Ukraine** on elections regarding the exclusion of candidates from party lists;
 - the provisions of the Law of **Ukraine** on Education of 5 September 2017, which concern the use of the State Language and Minority and other Languages in Education;
 - the Rules of Procedure of the Constitutional Chamber of the Supreme Court of the **Kyrgyz Republic**;
 - the draft acts amending the Act on the National Council of the Judiciary, the Act on the Supreme Court and the Act on the organisation of Ordinary Courts of **Poland** and Opinion on the Act on the Public Prosecutor's Office of Poland; Opinion on the Act on the Constitutional Tribunal and Opinion on amendments to the Act of 25 June 2015 on the Constitutional Tribunal of Poland; and
 - Comments on Recommendation 2110(2017) of the Parliamentary Assembly of the Council of Europe on the **implementation of judgments of the European Court of Human Rights** in view of the reply of the Committee of Ministers.
- ✓ *Was informed on :*
 - the request for assistance relating to the composition of the Judicial Council of **Montenegro**;
 - progress in the constitutional reform process in **Serbia**;
 - progress of work on the draft report on the **recall of Mayors/local elected representatives**;
 - progress in the preparation of the **“Venice Principles” on the protection and promotion of Ombudsman Institutions**;
 - recent constitutional developments in **Kazakhstan**, in **Palestine¹** and in **Turkey** ;
 - recent and possible future co-operation with **Libya**;
 - the results and conclusions of the International Conference on the “Role of administrative courts in electoral disputes” organised by the **Arab Union of Administrative Justice** (Cairo, 8-9 January 2018);



Publications



Just published:

- Bulletin on Constitutional Case–Law: **Issue 2017/2**

Forthcoming:

- Bulletin on Constitutional Case – Law: Issue **2017/3**
- **2017 Annual report of activities**

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

March 2018 Plenary Session

Selected Opinions

Report on Term limits - Part I - Presidents - [CDL-AD\(2018\)010](#)

Background

By a letter dated 24 October 2017, the Secretary General of the **Organization of American States (OAS)** invited the Venice Commission to undertake a study on the right to re-election, against the background of a recently observed bad practice of modification of presidential terms through decisions of constitutional courts rather than through a reform process. The report is based on a comparative survey of countries in Europe, Africa, Asia and Americas, as well as previous works of the Venice Commission in which it had clearly expressed its critical approach towards constitutional provisions allowing for more than one re-election of the head of state in presidential and semi-presidential systems.

Conclusions

In its Report the Commission said that re-election is not a human right as such, but a modality of the right to be elected. The Commission is in favour of presidential term limits in presidential and semi-presidential regimes. They help prevent the abuse of power and do not unduly limit the rights of either aspirant candidates or voters. A constitutional amendment is required to modify them, but such amendments if they result in prolonging the presidential mandate should have effect only for future holders of the office. Popular referendums to approve such amendments should not be used to circumvent parliamentary procedures. Finally, constitutional courts may play a role after relevant amendments have been adopted by the constitutional legislator.

There is **no specific and distinct right to re-election**; limits on presidential terms foreseen by the constitution represent a restriction to the right to stand for office. Replying to the question on whether term limits unduly restrict the human and political rights of aspirant candidates, the Commission concluded that **the right to be elected is not an absolute right**, and may be subject to objective and reasonable limits. Limiting presidential mandates in presidential and semi-presidential systems aims at securing democracy and does not amount to discrimination, if the term limits are neutral and are not imposed or lifted in a manner that would prematurely remove someone from office or secure the continued service of someone currently holding office.

Term limits do not unduly limit the human and political rights of voters, either. It is true that they may inhibit voters from choosing the incumbent president again. This is however an inevitable consequence of the legitimate restriction of the right of incumbent presidents to run for office again. Term limits should be seen as a self-imposed restriction on the power of the people to choose a representative, in order to maintain a democratic system. At any rate, to modify term limits, a constitutional amendment is required. If such amendments seek to prolong the presidential mandate, the motivation should be to improve the machinery of government, and not the personal power and interests of the incumbent, the Commission stressed. If enacted, **such amendments should have effect only for future holders of the office**, and not for the incumbent.

While approval by referendum may strengthen the legitimacy of the constitutional amendment, recourse to referendums should not be used to circumvent parliamentary amendment procedures. Popular referendums aimed at abolishing limits on presidential terms are usually called for directly or indirectly by the incumbent and are particularly dangerous, the Commission concludes. As to the possible role of supreme or constitutional courts, they should intervene only after the amendment has been adopted by the constitutional legislator.



Poster for re-election campaigns
by [YouPrint](#)

March 2018 Plenary Session

Selected Opinions



The delegation of the Venice Commission and OSCE/ODIHR exchanging views with the Ukrainian MPs
-
Kyiv, January 2018

Ukraine - Joint Opinion on Draft Law No. 6674 "On Introducing Changes to Some Legislative Acts to Ensure Public Transparency of Information on *Finance Activity of Public Associations* and of the Use of International Technical Assistance" and on Draft Law No. 6675 "On Introducing Changes to the Tax Code of Ukraine to Ensure *Public Transparency of the Financing of Public Associations* and of the Use of International Technical Assistance"- [CDL-AD\(2018\)006](#)

Background

The Opinion was prepared at the request of the Chair of the Monitoring Committee of the Council of Europe's Parliamentary Assembly dated 14 December 2017. The Opinion covers the draft laws introducing changes to legislative acts and tax code of Ukraine, which would replace previously imposed and criticised e-declarations for anti-corruption activists by a regime of burdensome tax reporting and enhanced public disclosure of detailed financial information, to be submitted by civil society organisations (public associations) with total annual income exceeding 14,350 EUR and individual beneficiaries of international technical assistance.

Conclusions

Stringent financial reporting and disclosure requirements for public activists, coupled with severe sanctions, are likely to have a chilling effect on civil society in Ukraine and should be removed in their entirety or significantly narrowed down. Furthermore, it is crucial that Ukraine's plans to cancel the e-declaration requirements for anti-corruption activists, which likewise raise several serious human rights issues, are implemented as a matter of urgency, before 1 April 2018, the deadline for submission of the first declarations.

The new financial reporting and disclosure regime, if introduced, would **conflict with freedom of association, the right to respect for private life and the prohibition of discrimination**. Even if there were indications of money laundering, the correct response would be criminal investigations against specific NGOs, and not blanket reporting requirements. The Venice Commission and the OSCE/ODIHR cannot see a need for such amendments and recommend that they be either removed entirely or at least narrowed down substantially, to ensure their necessity, clarity and proportionality. In particular, public associations should not be made subject to stricter financial reporting and disclosure requirements than other non-profit organisations, businesses or other legal entities and must be guaranteed the same rights as other legal entities.

The income threshold for determining the organisations covered by the new requirements should be significantly increased, and less stringent requirements should apply to organisations which have not received any form of public support.

Reporting on and public disclosure of the identity of the ten most-paid employees of civil society organisations, and of some of the donors and contractors of such organisations should be removed, as well as the reporting and disclosure requirements for individuals receiving income from international donors.

If new financial reporting and disclosure obligations for these civil society organisations were to be finally introduced, the provisions on sanctions should be significantly amended, to provide for the possibility to correct potential mistakes; to render the sanctions proportionate to different types and degrees of violations; to remove loss of organisations' non-profit status from the list of sanctions or at least make it clear that this can only be imposed as a sanction of last resort.

[Full text of the Opinion](#)

[All opinions on Ukraine](#)

Selected Events

Democratic Institutions and Fundamental Rights

Freedom of peaceful assembly - revision of the Joint Guidelines

22 - 23/02/2018

Warsaw - The Venice Commission participated in a workshop organised by the OSCE / ODIHR Panel as part of the revision of the Joint Guidelines on the freedom of peaceful assembly.




Constitutional Justice

World Conference on Constitutional Justice - Meeting of the Bureau

17/03/2018

Venice - At its 13th meeting, the Bureau of the World Conference on Constitutional Justice examined, inter alia, the financial report prepared by the Secretariat and discussed the topic for the 5th Congress of the World Conference (hosted by the Constitutional Council of Algeria in 2020), the organisation of a training session on CODICES and the Venice Forum for liaison officers in February 2019, the support for Member Courts that come under undue pressure and the activities of the regional and linguistic groups represented in the Bureau.



 [Website of the WCCJ](#)

Elections and political parties

PACE session - fair referendums in member States

24/01/2018

Strasbourg, Council of Europe - The President of the Venice Commission Mr Gianni Buquicchio addressed the PACE's Committee on Political affairs and Democracy on the following topic: "A commitment to introduce rules to ensure fair referendums in Council of Europe member States."



 [Website of the PACE](#)

Neighbourhood Cooperation

UniDem Campus for the Southern Mediterranean: 3rd National Coordinators Meeting 05/02/2018

Paris - The third meeting of the focal points of the seven partners participating in the UniDem Seminars for the Southern Mediterranean (Algeria, Jordan, Lebanon, Morocco, Mauritania, Palestine* and Tunisia) was held on 5th February 2018 in the Council of Europe Office in Paris.

The participants discussed the challenges and the perspectives as regards the modernisation of the public administration, took stock of achievements of 2017 UniDem Med seminars and determined the topics, dates and venues of upcoming 2018 UniDem Med seminars.

UniDem seminars were established for the Southern Mediterranean region in September 2015, with the aim of modernising public administration through the exchange of best democratic practices among senior civil servants from the two shores of the Mediterranean.



(*This designation shall not be construed as recognition of a State of Palestine and is without prejudice to the individual positions of Council of Europe member States on this issue.)

[UniDem Med project website](#)

Role of administrative courts in electoral disputes – international conference 08 - 09/01/2018

Cairo – The Venice Commission participated in an international conference on the “Role of administrative courts in electoral disputes”, organised by the Arab Union of Administrative Justice.

Experts from Egypt, Tunisia, Iraq, Lebanon, Mauritania, Sudan, Bahrain and France addressed the issue of electoral disputes before the administrative judges from the courts members of the Union.



[Website of the AUAJ](#)

Forthcoming activities

Opinions

- **Hungary** - the compatibility of the Hungarian government's "Stop Soros" legislative package with international human rights standards;
- **Malta** - the draft Equality Act and the Human Rights and Equality Act;
- **Montenegro** - draft law on amendments of the Law on freedom of religion (postponed);
- **Spain** - "Citizens' security law" (postponed).

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

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
- Venice Principles on the ombudsman institution

Compilations

- Freedom of expression
- Checks and balances
- Judges and courts