



Venice Commission of the Council of Europe

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March 2019 Plenary Session - Main decisions

At its 118th plenary session which took place on 15-16 March 2019 in Venice (Italy), the Commission:

- ✓ **Held a minute of silence** in memory of Mr Mourad Medelci, Member of the Venice Commission in respect of Algeria;

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✓ **Adopted opinions on:**

- the [Concept paper on amendments to the Criminal Procedure Code of Georgia](#) concerning the relationship between the prosecution and the police;
- the [Hungarian laws on Administrative Courts](#) and on the entry into force of the Law on Administrative Courts and certain transitional rules;
- the proposed [revision of the Constitution of Luxembourg](#);
- [draft law on the Judicial Council of North Macedonia](#);
- [on separate appeals against rulings on preventive measures \(deprivation of liberty\) of first instance courts of Ukraine](#) - *amicus curiae* brief for the Constitutional Court;

✓ **Also adopted:**

- the Principles on the protection and promotion of the **Ombudsman Institution (“the Venice Principles”)**;
- [Report on term limits](#): Part II - Members of Parliament and Part III - Representatives elected at sub-national and local level and executive officials elected at sub-national and local level;
- Report on [Funding of Associations](#);
- Annual Report of Activities 2018;

LINKS

- [Venice Commission website](#)
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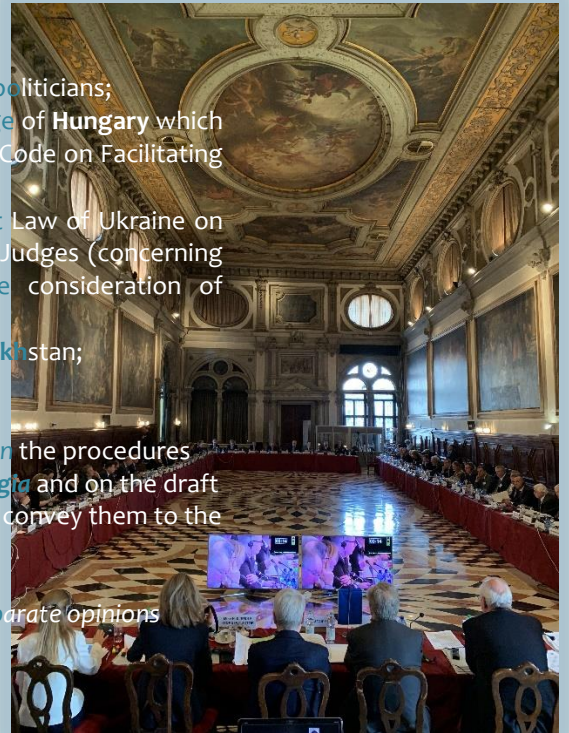
✓ **Held an exchange of views with:**

- Ms Natia Mezvrishvili, Deputy Minister of Internal Affairs and with Ms Irine Tsakadze, Head of the Legal Department, Ministry of Justice of **Georgia**,
- Mr László Trócsányi, Minister of Justice of **Hungary**,
- Mr Henri Kox, MP, Member of the Committee on Institutions and Constitutional Review of **Luxembourg**,
- Ms Renata Deskoska, Minister of Justice of **North Macedonia**,
- Mr Peter Tyndall (International Ombudsman Institute - IOI), Ms Catherine De Bruecker (Association of Mediators and Ombudsman of **the Francophonie - AOMF**), Mr Andreas Potakis (Association of **Mediterranean** Ombudsmen - **AOM**), Ms Carmen Comas-Mata Mira (**Iberoamerican** Federation of Ombudsman - **FIO**), Mr Vladen Stefanov (Office of the **United Nations** High Commissioner for Human Rights), as well as with Ms Krista Oinonen, Chair of the CDDH Drafting Group on Civil Society and National Human Rights Institutions (**CDDH-INST**);
- Mr Francisco Guerrero, Secretary for Strengthening Democracy, Organization of American States (**OAS**),
- Mr Lorenzo Córdova Vianello, President of the National Electoral Institute of **Mexico**, and signed a Memorandum of Understanding with **INE**;

March 2019 Plenary Session

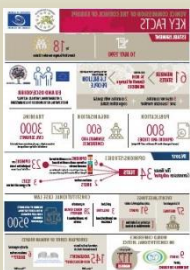
Other decisions

- ✓ **Was informed on follow up to the Opinions on:**
 - ✓ draft constitutional amendments of **Albania** enabling the vetting of politicians;
 - the Provisions of the so-called “Stop Soros” draft Legislative Package of **Hungary** which directly affect NGOs (in particular draft Article 353A of the Criminal Code on Facilitating Illegal Migration);
 - the draft law of **Ukraine** on Anticorruption Courts and on the Draft Law of Ukraine on Amendments to the Law on the Judicial System and the Status of Judges (concerning the introduction of mandatory specialisation of judges on the consideration of corruption and corruption-related offences);
 - the Concept Paper on the reform of the High Judicial Council of **Kazakhstan**;
 - the draft election code of **Uzbekistan**;
- ✓ **Authorised the rapporteurs to prepare urgent opinions on the draft law on the procedures and criteria for selection and nomination of Supreme Court judges of **Georgia** and on the draft law on the Advisory Council on Sustainable Development of **Tunisia** and to convey them to the requesting authorities prior to the June 2019 Plenary Session;**
- ✓ Decided to ask the Enlarged Bureau to examine the issue of whether *separate opinions* should be appended to Venice Commission opinions;
- ✓ Was informed on recent constitutional developments in **Ukraine**;
- ✓ Was informed by Ms Liliane Maury Pasquier, President of Parliamentary Assembly of the Council of Europe, and by the President of the Venice Commission on the results and conclusions of the meeting of the Enlarged Bureau with the **Presidential Committee of the Parliamentary Assembly**, held on 16 March 2019;
- ✓ Was informed on the results and conclusions of the meetings of
 - the **Bureau of the World Conference on Constitutional Justice** (Santo Domingo, 8 February 2019);
 - the **Sub-Commission on Democratic Institutions** (14 March 2019), in particular, on progress of work on the **preliminary draft Parameters on the relationship between the parliamentary majority and the opposition in a democracy: a checklist**.



[Read all the decisions of the March 2019 plenary](#)

Publications



Just published:

- E-Bulletin on Constitutional Case–Law: **Issue 2018/3**
- The Venice Principles

Forthcoming:

- E - Bulletin on Constitutional Case – Law: **Issue 2019/1**
- Rule of Law Checklist (**Spanish version**)
- **2018 Annual report of activities**

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

March 2019 Plenary Session

Selected Opinions

Hungary - laws on Administrative Courts and on the entry into force of the Law on Administrative Courts and certain transitional rules - [CDL-AD\(2019\)004](#)

Background

On 9 November 2018, the Minister of Justice of Hungary, Mr Laszlo Trocsanyi, requested the opinion of the Venice Commission on the provisions of the Law on administrative courts (hereinafter "the Law") and the Law on the entry into force of the Law on administrative courts and certain transitional rules (hereinafter "the Transitional Rules").

The Commission's analysis has placed special emphasis, beyond the individual provisions of the two laws, on the accumulated effect of those provisions, within the legal framework governing Hungary's legal system in the wake of the large-scale constitutional and legislative measures adopted by the country, in this area, in the last decade.

Conclusions

The principle of creating a new separate legal order in the administrative law falls within the sovereign right of the national legislature and is fully in line with European standards and practices. Moreover, the guaranteeing of the transfer of all current administrative judges wishing to be incorporated in the new administrative courts and the opening of access to the function of administrative judge to individuals with substantial experience of working in public administration are to be commended.

The organisational and administrative model adopted for the administrative courts has some of the same drawbacks as the one which, on the basis of the legislation passed in 2011, had been selected for the organisation and administration of ordinary courts and had come in for criticism from the Venice Commission in its analysis. The major drawback is that very extensive powers are concentrated in the hands of a few stakeholders and there are no effective checks and balances to counteract those powers.

The Commission invites the Hungarian authorities to re-examine the legislation submitted to its assessment and, in so doing, take into consideration, in consultation with all the parties concerned, *inter alia*, the following recommendations:

- to amend the recruitment procedure, with a view to providing for criteria for the Minister to change the ranking of candidates established by the personnel council of the NAJC, and introduce a requirement of consent from the council for that change and, at the very least, a judicial remedy enabling candidates to challenge the Minister's decision; to provide for stricter and more precise legal supervision of the conditions in which the Minister may declare the recruitment procedure unsuccessful;
- to examine the possibility of strengthening the "judges" component within the personnel council of the NAJC (see para. 51 above);
- to amend the procedure for appointing heads of court to involve, in an effective role, the personnel council of the NAJC in the Minister's final decision in the same way as for the initial appointment of judges, and to provide, at the very least, for a judicial remedy against that decision;
- to identify means of counterbalancing the prerogatives of the presidents, including the President of the Supreme Administrative Court, by more heavily involving the judges or their elected representatives, the administrative judicial councils and/or the NAJC in dealing with the different issues; to provide for a legal remedy against certain binding decisions of the President. ...

[All Opinions on Hungary](#)

[Full text of the opinion](#)



March 2019 Plenary Session

Selected documents

Funding of associations - Report [CDL-AD\(2019\)002](#)



[All Venice Commission's documents on freedom of association](#)

Introduction

By letter of 23 November 2016, the Secretary General of the Council of Europe, Mr Thorbjørn Jagland requested the Venice Commission to prepare a review of the standards applying to foreign funding of non-governmental organisations (NGOs) in the member states of the Council of Europe. The Secretary General also indicated that the findings of the review would allow him to consider the need for new Committee of Ministers guidelines on this issue.

The right to freedom of association, including therefore the right of associations to seek resources, may be restricted only under the three cumulative conditions foreseen in, inter alia, Article 11(2) of the ECHR and Article 22(2) of the ICCPR, i.e. the restriction must:

- be prescribed by law (condition of legality, including the requirements of foreseeability and accessibility),
- pursue at least one of the legitimate aims indicated in Article 11(2) ECHR and Article 22(2) ICCPR (the condition of legitimacy),
- be necessary in a democratic society to achieve that legitimate aim (the condition of necessity requiring also proportionality).

The resources received by associations may legitimately be subject to some reporting and transparency requirements which, however, should not be unnecessarily burdensome, and must be proportionate to the size of the association and the scope of its activities. The Commission considers, however, that the legitimacy of the aim pursued by the transparency requirements depends on the nature of the obligation imposed on associations. In this context, “reporting obligations” should be distinguished from “public disclosure obligations” imposed on associations concerning their financial sources. A “reporting obligation” consists in reporting to the relevant authorities the amount and the origin of the funding. A “public disclosure obligation” consists in making public, for instance on the website of the association concerned or in the press or the official journal, the source of funding (either domestic or foreign) and potentially, the identity of donors.

Conclusions

The following main conclusions are drawn and recommendations are made:

- States must create an enabling environment in which associations can effectively operate and facilitate access of associations to funding, including foreign funding, in order to achieve their aims;
- Legitimate aims of interference with the right of associations to seek financial and material resources:
 - Any measure restricting the right of associations to seek, secure and use resources, including foreign resources, must pursue one of the legitimate aims under Article 11(2) ECHR and 22(2) ICCPR;
- Proportionality of interference with the right of associations to seek financial and material resources:
 - Any reporting obligations should be based on a prior risk assessment concerning the specific involvement of the NGO sector in the commission of crimes such as terrorism financing and money laundering;
- Discrimination:
 - Any difference in treatment among civil society organisations concerning the reporting/public disclosure obligations on their funding, should be justified on the basis of objective and reasonable grounds;
- Guarantee of effective legal protection:
 - Legal provisions concerning the funding of associations and any limitations implied therein should be clear, precise and certain, and should be interpreted and applied in a manner that enhances the effective exercise of the right to freedom of association to ensure that the enjoyment of that right is practical and effective, and not theoretical or illusory;

[Read more...](#)

Selected Events

Democratic Institutions and Fundamental Rights

MONTENEGRO - forthcoming opinion - country visit

23 - 24/05/2019

Podgorica - In the framework of the preparation of the draft opinion on freedom of religion and beliefs and legal status of religious communities of Montenegro, a Venice Commission delegation travelled to Podgorica on 23 - 24 May 2019 to exchange views with the authorities, representatives of religious communities and civil society organisations.

The draft opinion was on the agenda of the June 2019 plenary session of the Commission.



Constitutional Justice

Joint Council on Constitutional Justice

23 - 24/05/2019

Rome - The Constitutional Court of Italy hosted the 18th meeting of the Joint Council on Constitutional Justice of the Venice Commission. The topic of this year's mini conference was the "Independence of the Judiciary, the role of the constitutional courts".



Elections and political parties

ARMENIA - Reform of the legal framework governing elections

08 - 09/06/2019

Yerevan – The Venice Commission participated in a brainstorming workshop with Members of Parliament of Armenia on the reform of the legal framework governing elections.

The event was co-organised by IFES, USAID and the Parliament of Armenia.



Neighbourhood Cooperation

Towards a public service closer to citizens - 9th UniDem Med seminar

12 - 14/06/2019

Marrakech - The Venice Commission, in cooperation with the Ministry of Reform of the Administration and the Civil Service of the Kingdom of Morocco, organised the 9th UniDem Med Regional Seminar entitled "Towards a public service closer to the citizens: models and good practices".

This seminar brought together senior officials and experts from Europe and the Southern Mediterranean (Algeria, Morocco, Mauritania, Palestine *, Tunisia) to exchange best practices in terms of bringing the administration and users closer together based on respect the rule of law and fundamental principles of the civil service.

Participants discussed issues such as administrative de-concentration /decentralisation, accessibility and digitalisation of administrative services.



IX Forum of Latin American democracy “Challenges of politics and democracy in the digital age”

04 - 05/04/2019

Mexico City – The President of the Venice Commission Mr Gianni Buquicchio co-opened the IXth edition of the prestigious Forum of Latin American Democracy. This year the topic was “Challenges for politics and democracy in the digital age”.

The Forum was organised by the National Electoral Institute of Mexico. Many international organisations such as OAS, International IDEA, IFES, IIDH as well as prominent representatives of the Latin American countries were also involved in the Forum.

- [Web page of the IX Forum of Latin American democracy](#)



MONGOLIA - Separation of powers and Constitutional Court – International conference

06 - 07/06/2019

Ulaanbataar - The Constitutional Court of Mongolia and the Venice Commission organised a conference "Separation of powers and Constitutional Court". The President of the Venice Commission Mr Gianni Buquicchio participated in the event.



Forthcoming activities

Opinions

- **Georgia** – selection and appointment of Supreme Court judges;
- **Moldova** – constitutional situation with specific reference to the conditions for the dissolution of parliament;
- **Montenegro** – draft law on freedom of religion and beliefs and the legal status of religious communities;
- **Romania** – Emergency Ordinances GEO N° 7 and GEO N° 12 amending the Laws of Justice;
- **Spain** – “Citizens’ security law”;
- **North Macedonia** – the Law on the use of languages;
- **Tunisia** – draft organic law on the Authority for Sustainable Development and the Rights of Future Generations;
- **Ukraine** – Law on “Ensuring the functioning of the Ukrainian language as a State language”; draft law “On the Bar and Practice of Law”.

Studies

Electoral Issues

- Local recall referendum
- Election dispute resolution
- Political parties - Joint CDL-OSCE/ODIHR Guidelines - revision
- Referendums
- Social media in elections
- Use of digital technologies and elections

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
- Gender equality

Compilations

- Electoral systems and gender representation
- Electoral systems and national minorities
- Judges and courts (update)