

Venice Commission of the Council of Europe

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June 2017 Plenary Session - Main decisions

At its 111th plenary session which took place 16-17 June 2017 in Venice, the Commission:

✓ *Adopted opinions on:*

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- the [draft law on the Constitutional Court of Armenia](#);
- on the amendments to the [Electoral Code of Bulgaria](#) (jointly with OSCE/ODIHR);
- [the draft revised Constitution of Georgia](#);
- [the draft law of Hungary on the Transparency of Organisations Receiving Support from Abroad](#), following the Preliminary Opinion which had been sent to the **Hungarian** authorities with the authorisation of the Bureau;
- the President's proposal [to expand the President's powers to dissolve Parliament](#) of the **Republic of Moldova**;
- the draft law of the **Republic of Moldova** relating to [the electoral system for the election of the Parliament](#) ((jointly with OSCE/ODIHR);

✓ *Authorised the rapporteurs to issue preliminary opinions (and to send them to the authorities prior to the October session) on:*

- ✓ the amendments to the [Law on Tertiary Education of Hungary](#);
- ✓ the draft judicial code of **Armenia**;

LINKS

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

- Ms Arpine Hovhanissyan, Vice-President of the National Assembly of **Armenia**,
- Mr Yavor Notev, Deputy Speaker of the National Assembly of **Bulgaria**,
- Mr Irakli Kobakhidze, Speaker of the Parliament of **Georgia**, and with Ms Anna Dolidze, Parliamentary Secretary to the President of Georgia,
- Mr László Trócsányi, Minister of Justice of **Hungary**,
- Mr Maxim Lebedinski, Adviser to the President of the **Republic of Moldova**, Mr Andrian Candu, Speaker of the Parliament of the Republic of Moldova, and with Messrs. V. Ghiletschi and V. Bolea, MPs;
- Mr Pavlo Pinzenik, First Deputy Chair of the Committee on the rules of Procedure and Internal Organisation of the Verkhovna Rada of **Ukraine**,
- representatives of the Committee of Ministers, of the Parliamentary Assembly and of the Congress of Local and Regional Authorities of the **Council of Europe**; Mr Igli Totozani, former Advocate of the Albanian People and former President of the Association of the Mediterranean Ombudsmen (**AOM**) and with Mr Marc Bertrand, Mediator of Wallonia, of the Wallonia-Brussels Federation (Belgium) and President of the Association of Ombudsmen and Mediators of the French-Speaking World (**AOMF**);
- representatives of the **Committee of Ministers**, the **Parliamentary Assembly** and the **Congress** of the Council of Europe;

✓ *Agreed to establish a working group on referendums;*

June 2017 plenary session

Other decisions

✓ Was informed on **follow-up to:**

- the Amicus Curiae brief for the Constitutional Court of the Republic of **Moldova** on the criminal liability of judges;
- the Opinion on the Amendments to the Organic Law on the Constitutional Court of **Georgia** and to the Law on the Constitutional Legal Proceedings of Georgia;
- the Joint opinion with OSCE/ODIHR on the draft checklist of the Council of Europe's Congress of Local and Regional Authorities for compliance with international standards and best practices **preventing misuse of administrative resources** during electoral processes at local and regional level;
- the Opinion on the amendments to the Constitution of **Kazakhstan**; and to
- the Draft Law on the Constitutional Court of **Ukraine**;

✓ Decided to compile a **list of constitutional and legal principles pertaining to Ombudsman institutions**;

✓ Was informed on/of:

- the results and conclusions of the **Seminar** on "the international legal order in a challenging world: challenges for the **monitoring procedure of the Parliamentary Assembly** of the Council of Europe (Helsinki, 16 May 2017),
- the **5th Intercultural Workshop on Democracy** on "Interaction between Constitutional Courts and equivalent jurisdictions and ordinary courts" (Nicosia, 3-4 April 2017),
- the **Conference** on "The interaction between the political majority and the **opposition in a democracy**" (Bucharest, 6-7 April 2017) and of
- the **14th European Conference of Electoral Management Bodies** on "Operational EMBs for democratic elections" (Saint Petersburg, 15-16 May 2017);
- an exchange of letters between the President of the Commission and the President of Catalonia (Spain) concerning the question of a **possible referendum on self-determination of Catalonia**;
- on the conclusion of two **co-operation agreements** with the Interparliamentary Assembly of the CIS and with the National Electoral Institute (INE) of Mexico;



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

Publications

Just published:

- Bulletin on Constitutional Case–Law: **Issue 2016/3**
- Venice Commission: Cooperation with the Constitutional Courts
- Annual Report of Activities 2016

Forthcoming:

- Bulletin on Constitutional Case – Law: Issue **2017/1**
- Special Bulletin on Constitutional Case – Law: **Role of Constitutional Courts in upholding and applying constitutional principles**



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

June 2017 Plenary Session

Selected Opinions

Georgia

Opinion on the draft revised Constitution - [CDL-AD\(2017\)013-e](#)

Background

By a Resolution of 15 December 2016, the Parliament of Georgia set up a State Constitutional Commission with the task of preparing amendments to the Constitution of Georgia. On 20 January 2017, in the framework of the planned constitutional reform, Mr Gianni Buquicchio, President of the Venice Commission, accompanied by Mr Thomas Markert, Secretary of the Venice Commission, visited Tbilisi and held meetings with the President of Georgia, the Chairperson of the Parliament, the First Deputy Chairperson, the Minister of Justice, representatives of NGOs and experts. During the visit, the Chairperson of the Parliament, Mr Irakli Kobakhidze, requested the Venice Commission to prepare an opinion on the draft revised Constitution of Georgia. The visit to the country took place on 30 March and on 8 May 2017, the Georgian authorities sent the English translation of the draft revised Constitution to the Venice Commission for assessment, as well as an "Explanatory note to the Constitutional Bill Amending the Constitution of Georgia". A large number of NGOs and political parties from Georgia provided written comments on aspects of the draft.



Parliamentary Chairman Irakli Kobakhidze and Venice Commission President Gianni Buquicchio. January 20, 2017. Photo: Parliament of Georgia

Conclusions

In general, the proposed **reform deserves a positive assessment**. It completes the evolution of Georgia's political system towards a parliamentary system started by the 2010 constitutional reform and constitutes a positive step forward to consolidate and improve the country's constitutional order, based on the principles of democracy, the rule of law and the protection of fundamental rights.

This being said, Georgia remains a fairly centralised country with a parliament which will remain unicameral for the foreseeable future. It lacks a longstanding tradition of judicial independence. Under such circumstances there is a **risk of domination by the majority in parliament** and consideration should be given in the future to the possibility of strengthening checks and balances, for example by the introduction of a second chamber and strengthening the role of the opposition in parliament. The replacement of the current proportional/majoritarian election system by a proportional system is, without doubt, a positive step towards increasing pluralism in parliament. However, this positive step is limited by three mechanisms:

- the 5% threshold rule in legislative elections is maintained;
- the undistributed votes below the 5% threshold are allocated to the winning party and,
- electoral coalitions (party blocks) are abolished.

The introduction of an **indirect election system for the President** is as such in line with the European standards. It is welcome that the new system will not be applicable at next year's election but only from 2023. It should, however, be born in mind that, also in the absence of a functioning senate, the main counterbalance to a strong government with an overwhelming parliamentary majority in the Georgian constitutional system is the President. Consequently, the passage to an indirect election system should not result in the **constant and exclusive election of the candidate presented by the parliamentary majority** as President. Measures in order to better guarantee the pluralism in the Parliament (and consequently in the Election Board) and the principle of checks and balances are thus necessary. The Venice Commission reiterates its recommendation concerning the *proportional allocation* of unallocated mandates and/or reduction of the *threshold* under the precedent paragraph. In addition, it is also recommendable to require a qualified majority in the first round of the election of the President by the Election Board. ...

*[Full text of the opinion](#)
[List of all opinions on Georgia](#)*

Selected opinions

Hungary



Aerial view of a demonstration held in support of civil organisations on 12 April 2017. (Photo: Attila Pethe)

Opinion on the draft law on the transparency of organisations receiving support from abroad - [CDL-AD\(2017\)015-e](#)

Background

On 27 April 2017, the Parliamentary Assembly of the Council of Europe adopted Resolution 2162(2017)¹ requesting the opinion of the Venice Commission on the compatibility with Council of Europe standards of the Hungarian draft law on the transparency of organisations receiving support from abroad (hereinafter, “the Draft Law”). The visit to the country took place on 11-12 May 2017; a preliminary opinion was prepared on the basis of contributions by the rapporteurs and sent to the Hungarian authorities on 2 June 2017. On 13 June 2017, the Hungarian Parliament adopted the Law with certain amendments.

Conclusions

Having analysed the draft law the Commission wishes to stress that while on paper certain provisions requiring transparency of foreign funding may appear to be in line with the standards, the context surrounding the adoption of the relevant law and specifically **a virulent campaign by some state authorities against civil society organisations** receiving foreign funding, portraying them as acting against the interests of society, may render such provisions problematic, raising a concern as to whether they breach the prohibition of discrimination, contrary to Article 14 ECHR. In particular, although the label “organisation receiving support from abroad” objectively appears to be more neutral and descriptive compared, in particular, to the label of “foreign agent”, it should be emphasised that placed in the context prevailing in Hungary, marked by strong political statements against associations receiving support from abroad, this label risks stigmatising such organisations, adversely affecting their legitimate activities and having a chilling effect on freedom of expression and association.

The Venice Commission acknowledges that the draft law on the transparency of organisations receiving support from abroad is explained as pursuing the legitimate aim of ensuring transparency of civil society organisations in order to prevent undue foreign political influence. The draft law may also contribute to the fight against money laundering and the financing of terrorism. However, these legitimate aims cannot be used as a pretext to control NGOs or to restrict their ability to carry out their legitimate work. This effect would go beyond the legitimate aim of transparency which is alleged to be the only aim of the Law under consideration.

In addition, the Venice Commission has identified certain problematic aspects of the draft law and has called upon the Hungarian authorities to consider several recommendations as concerns the procedure and the substance.

The Venice Commission also analysed the text of the Law as adopted on 13 June 2017. The Commission recognises that **some of these amendments represent an important improvement**. At the same time some other concerns were not addressed and the amendments do not suffice to alleviate the Venice Commission’s concerns that the Law will cause a **disproportionate and unnecessary interference with the freedoms of association and expression**, the right to privacy, and the prohibition of discrimination.

[Read the Opinion](#)
[All opinions on Hungary](#)

Selected Events

Democratic Institutions and Fundamental Rights

Georgia – working meetings on constitutional reform

28 - 29/08/2017

Batumi – The President of the Venice Commission Mr Buquicchio met with the President of Georgia, the Prime Minister, the Speaker, the Minister of Foreign Affairs, representatives of the opposition and the civil society.

The meetings were held on the sidelines of the XVIIth Congress of the Conference of European Constitutional Courts.



Constitutional Justice

WCCJ - World Conference on Constitutional Justice – New member

07/08/2017

The Supreme Court of Kenya has joined the World Conference on Constitutional Justice, which now has 110 members.

▶ [WCCJ site](#)

Elections and political parties

Albania - parliamentary elections - Legal assistance to the PACE observation mission

24- 26/06/2017

Tirana - A delegation of the Venice Commission accompanied the Parliamentary Assembly of the Council of Europe (PACE) delegation to advise on the legal framework of the parliamentary elections of 25 June 2017 in Albania.

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



Neighbourhood Cooperation

Assistance to the Kyrgyz Republic in the electoral field

04 - 05/08/2017

Issyk-kul – The Working Group under the Office of the President of the Kyrgyz Republic, tasked with improving the Electoral System in the Kyrgyz Republic, and in particular, with developing a new comprehensive Electoral Reform Strategy, held their first meeting in Issyk-kul, Kyrgyzstan on 4-5 August 2017.

A number of issues were discussed at the meeting, among them a package of draft laws to tackle vote buying, the schedule of meetings to develop the aforementioned strategy, as well as its structure and the content.

The meeting was organized with the support of the Venice Commission within the framework of the project "Support to Strengthening Democracy through Electoral Reform in the Kyrgyz Republic" funded by the European Union.

▶ [Website of the CEC of Kyrgyzstan](#)



Morocco - 13th Forum on the Modernisation of Public Administration and State Institutions

05- 06/07/2017

Rabat - The Vice-president of the Venice Commission, Mrs Herdis Kjerulf Thorgeirsdottir, attended the 13th Forum on the Modernisation of Public Administration and State Institutions on "Fight against corruption in public services in Africa as an operational element of a responsible governance".

She presented the "Rule of Law Checklist" of the Venice Commission.



Forthcoming activities

Opinions

- **Armenia** – draft judicial code;
- **Bulgaria** – Law on judicial power as amended in March and July 2016;
- **Georgia** – draft constitutional reform;
- **Hungary** – amendments to the Tertiary Education Act ; conflict between the right to privacy and other fundamental rights;
- **Montenegro** – draft law on amendments of the Law on freedom of religion;
- **Poland** – amended law on the Prosecution Service;
- **Spain** – “Citizens’ security law”;
- **Turkey** – emergency decrees and appointing unelected mayors;
- **Ukraine** – draft law "On amendment to the Rules of Parliamentary Procedure of Ukraine"; compliance with the Council of Europe standards of the draft law on anti-corruption courts and the draft law on the specialisation of judges for corruption-related offences.

Studies

Electoral Issues

- Allocation of seats to constituencies
- Political parties – Joint CDL-OSCE/ODIHR Guidelines – revision
- Identification of electoral irregularities through statistical methods
- Referendums
- 25 years of international election observation

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 ombudsman institution

Compilations

- Freedom of expression
- Checks and balances
- Electoral disputes

[Calendar of the forthcoming meetings](#)