

Venice Commission of the Council of Europe

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## June 2018 Plenary Session - Main decisions

At its 115<sup>th</sup> plenary session which took place on 22-23 June 2018 in Venice (Italy), the Commission:

### ✓ Adopted Opinions on:

- [the effects of the decisions of constitutional courts on final judgments in civil and administrative cases](#) (the amicus curiae brief for the Constitutional Court of **Georgia**);
- [the compatibility with international human rights standards of the Hungarian Government's new "Stop Soros" legislative package](#) to the extent that it affects NGO activities in Europe (joint opinion with the OSCE/ODIHR);
- [the "draft law on amending and supplementing the Law no. 03/l-174 on the Financing of Political Entities \(amended and supplemented by Law no. 04/l-058 and Law no. 04/l-122\) and Law no. 003/l-073 on General Elections \(amended and supplemented by Law no. 03/l-256\)" of Kosovo](#),
- [the draft act amending the Constitution, on the draft act on the human rights and equality commission and on the draft act on equality of Malta](#),
- [the draft law on amendments to the Law of Montenegro on the Judicial Council and Judges](#);
- [the draft amendments to the constitutional provisions on the judiciary of Serbia](#);

### ✓ Endorsed the [Compilations of Venice Commission opinions and reports relating to qualified majorities and anti-deadlock mechanisms](#) and on [social and economic rights](#);

### ✓ Held an exchange of views with:

- Mr Artak Zeynalyan, Minister of Justice of **Armenia** and Ms Arpine Hovhannisyan, Vice President, National Assembly of Armenia, on future co-operation and was informed on the planned legal reforms in Armenia;
- Ms Nela Kuburović, Minister of Justice of **Serbia**,
- Mr Balázs Orbán, State Secretary, Prime Minister's Office of **Hungary**,
- Mr Florin Iordache, Chair of the Joint Special Parliamentary Commission for amending the Judicial Laws of **Romania**, and Mr Bodgan Dima, State Advisor, Presidential Administration,
- Mr Mentor Borovci, Director of Legal Office, Office of the Prime Minister of **Kosovo**,
- Mr Nikola Saranović, Deputy Minister, Director General at the Directorate for International Cooperation and projects, Ministry of Justice of **Montenegro**,
- Ms Brigitte Ohms, Member of the Steering Committee for Human Rights (CDDH),
- Mr Gerhard Reissner, former President of the **Consultative Council of European Judges** (CCJE);
- Mr Tamás Sulyok, President of the Constitutional Court of **Hungary** and Mr Jinsung Lee, President of the Constitutional Court of the **Republic of Korea**;
- the representatives of the **Committee of Ministers**, the **Parliamentary Assembly** and the **Congress of Local and Regional Authorities** of the Council of Europe;

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## June 2018 Plenary Session

### Other decisions

#### ✓ Was informed on :

- progress of work on the draft opinion on the draft legislation on the judiciary of **Romania** and authorised the rapporteurs to prepare a preliminary opinion to be sent to the Romanian authorities in July 2018, following consultation with the Bureau and the Chair of the Sub-Commission on the Judiciary;
- progress of work on the **Venice Principles** on the protection and promotion of the Ombudsman Institution;
- assistance to **Albania** in the framework of electoral reform;
- support to **Bosnia and Herzegovina** for the reform of the rules on the election of the House of Peoples of the Federation;
- recent constitutional developments in **France** and in **Kazakhstan**;

#### ✓ Decided to:

- continue examination of the **Report on the recall of mayors** and other local elected representatives, with a view to adoption at a forthcoming session;
- to prepare a **Study on separate opinions of constitutional court judges**;
- to co-organise a conference on stocktaking of **progress of reforms in Central and Eastern Europe since 1989**, in Lund (Sweden) in spring 2019;

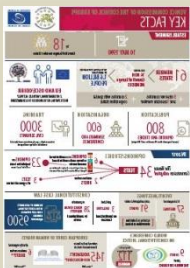
#### ✓ Was informed on follow up to the Opinions on:

- Constitutional amendments as adopted at the second reading in December 2017 by the Parliament of **Georgia**;
- the draft act amending the Act on the National Council of the Judiciary of **Poland**, 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 of Poland;
- 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 Law on National Referendum of **Ukraine** and the draft law on principles of the state language policy of Ukraine;
- **the draft checklist concerning the abuse of administrative resources in elections** at the local and regional level, **prepared by the Congress** of Local and Regional Authorities of the Council of Europe.



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

## Publications



#### Just published:

- Bulletin on Constitutional Case–Law: **Issue 2017/3**
- Venice Commission: **Key facts 2017**

#### Forthcoming:

- Bulletin on Constitutional Case – Law: **Issue 2018/1 (e-version only from now on)**
- **2017 Annual report of activities**

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

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## June 2018 Plenary Session

### Selected Opinions

#### Hungary - new “Stop Soros” legislative package and NGO activities in Europe - [CDL-AD\(2018\)013](#)

##### Background

In a letter dated 22 March 2018, the Chairperson of the Committee on Legal Affairs and Human Rights of the Parliamentary Assembly of the Council of Europe, Mr Frank Schwabe, informed the Venice Commission that the Committee, at its hearing on “Protecting human rights defenders in Council of Europe members States”, held on 14 March 2018 in Paris, had decided to request an opinion from the Venice Commission on the compatibility with international human rights standards of the Hungarian government’s “Stop Soros” legislative package, which included Bill t/1976 on the licencing of organisations supporting migration, Bill t/19775 on the immigration financing duty and Bill t/19774 on the immigration restraint order. On 25 May, the Hungarian government announced that a new package was being prepared; it was submitted on 29 May to the Parliament. On 31 May 2018, the Chairperson of the Committee on Legal Affairs and Human Rights of the Parliamentary Assembly confirmed that the initial opinion request of 22 March 2018 also covered the newly proposed legislative amendments to the extent that they affect NGOs activities in Europe.

##### Conclusions

The introduction of a criminal offence establishing criminal liability for intentionally assisting irregular migrants to circumvent immigration rules is not in and by itself contrary to international human rights standards and may be considered as pursuing the legitimate aim of prevention of disorder or crime under the second paragraph of Article 11 ECHR.

Draft Article 353A, however, goes far beyond that. It criminalises organisational activities which are not directly related to the materialisation of the illegal migration, such as “preparing or distributing informational materials”. This on the one hand runs counter to the role of assistance to victims by NGOs, restricting disproportionately the rights guaranteed under Article 11 ECHR, and on the other hand, criminalises advocacy and campaigning activities, which constitutes an illegitimate interference with the freedom of expression guaranteed under Article 10 ECHR. Draft Article 353A lacks the required clarity to qualify as a “legal basis” within the meaning of Article 11 ECHR.

In addition, there may be circumstances in which providing “assistance” is a moral imperative or at least a moral right. As such, the provision may result in further arbitrary restrictions to and prohibition through heavy sanctions of the indispensable work of human rights NGOs and leave migrants without essential services provided by such NGOs. Under the draft provision, as it currently stands, persons and/or organisations that carry out informational activities, support individual cases, provide aid on the border of Hungary may be under risk of prosecution even if they acted in good faith in line with the international law for supporting the asylum seekers or other forms of legal migrants, for instance victims of trafficking. **The proposed amendment therefore criminalises activities that are fully legitimate** including activities which support the State in the fulfilment of its obligations under international law. Moreover, as “financial gain” is not considered as an element of the offence (but only as an aggravating circumstance), the draft provision is not accompanied by a humanitarian exception clause.

Draft Article 353A lacks the requisite precision and does not meet the foreseeability criterion as understood in the ECtHR case-law. As it criminalises the initiation of an asylum procedure or asserting other legal rights on behalf of asylum seekers, it entails a risk of criminal prosecution for individuals and organisations providing lawful assistance to migrants. Moreover, a humanitarian exception clause is not provided and the draft provision lists open options as to the targeted organisational activities, while advocacy and campaigning activities, including informing individuals of their rights and legal protections, are not excluded from its scope. It should be reiterated that only intentionally encouraging migrants to circumventing the law could give rise to criminal prosecution. Assistance by NGOs of asylum seekers in applying for asylum and lodging appeals cannot be regarded as such circumvention. In addition, the provision risks jeopardising the funding of NGOs as it does not clearly differentiate “financial gain” as the strict counterpart of an illegal activity and “any income” generated in the ordinary activities of NGOs. ...

[Full text of the opinion](#)



“Stop Soros!” campaign posters  
(Shutterstock)

[All Opinions on Hungary](#)

## June 2018 Plenary Session

### Selected Opinions



*The delegation of the Venice Commission exchanging views with the Prosecutor General of Serbia*

*Belgrade, January 2018*

[Full text of the Opinion](#)

[All Opinions on Serbia](#)

## Serbia - Opinion on the draft amendments to the constitutional provisions on the judiciary - [CDL-AD\(2018\)011](#)

### Background

In a letter dated 13 April 2018, Ms Nela Kurubović, Minister of Justice of Serbia, made a request for an opinion by the Venice Commission on the draft amendments to the constitutional provisions on the judiciary.

In November 2017, the Ministry of Justice had requested the Venice Commission's assistance in drafting constitutional amendments pertaining to the judiciary. The Venice Commission appointed Mr James Hamilton, a former member of the Venice Commission, with a view to providing assistance to the Ministry of Justice in drafting a constitutional amendment proposal on the judiciary.

The draft amendments were prepared by the Ministry of Justice, following the adoption of the National Action Plan for Chapter 23 of the EU accession negotiations by Serbia with the European Commission, opened in July 2016, with the aim of depoliticising the judiciary and to strengthen its independence. The draft amendments were adopted by the Government of Serbia prior to being submitted to the Venice Commission for the present opinion. Mr Hamilton did not co-draft provisions, but provided advice on the concept paper prepared by the Ministry of Justice.

The Venice Commission regretted the acrimonious environment around the process amending the Constitution of Serbia of 2006: it was counter-productive for a process, the aim of which was to bring all relevant actors together in order to achieve a common goal of bringing Serbia's judiciary into line with European standards. It therefore encouraged the Serbian authorities to spare no efforts in creating a constructive and positive environment around the public consultations to be held when the National Assembly would examine the draft amendments, in the interests of the country's entire process of judicial reform – a process that also involves the important alignment of secondary legislation on the judiciary with the amendments, all of which is to be achieved within a very short period of time.

### Conclusions

The Venice Commission welcomed the draft amendments and acknowledged the efforts of the Serbian Government in pursuit of its aspirations to develop and evolve as a modern democracy for the benefit of all the Serbian people and in prioritising the need to meet the highest standards of compliance criteria with international best practices and the rule of law. Nevertheless, there are a number of outstanding issues that should be addressed in this important process of amending the Constitution of Serbia.

The Venice Commission made therefore the following main recommendations:

#### **1) Composition of the HJC and the role of the National Assembly:**

The election of non-judicial members of the HJC by the Assembly, introducing a first round (3/5th majority) and a second round, in the event that not all the candidates are elected (this time by a 5/9th majority) provides little incentive for the majority in the National Assembly to avoid a second round of voting. This creates the possibility that half of the members of the HJC will be a coherent and like-minded group in line with the wishes of the current government. This Amendment is therefore unlikely to be suitable to ensure pluralism within the HJC and the Venice Commission invites the Serbian authorities to find another solution.

#### **2) Composition of the HPC and the role of the National Assembly:**

As with the HJC, it is important that the HPC not be dominated by the current majority in the National Assembly so as to give it credibility and to gain public trust in the system. Therefore, having five out of 11 members elected by the National Assembly in addition to the Minister of Justice and the Supreme Public Prosecutor of Serbia – who is also elected by the National Assembly – gives rise to concern. As in the case of the HJC, a better solution to ensure pluralism in the Council should be found, and the issues raised for judges in the HJC apply to the prosecutors in the HPC, to the extent applicable. ...

[read more...](#)

## Selected Events

### Democratic Institutions and Fundamental Rights

#### Romania – forthcoming opinion – visit to the country

11 - 12/06/2018

Bucharest - A delegation of the Venice Commission visited Romania to have a series of exchange of views concerning three draft laws revising the Romanian laws on judicial organisation, on the Superior Council of Magistracy and on the Statute of judges and prosecutors. The delegation had meetings with the President of Romania, the Ministry of Justice, the High Court of Cassation and Justice, the Constitutional Court, the General Prosecutor's Office and the National Anticorruption Directorate, the Superior Council of Magistracy, parliament representatives including the Special Parliamentary Committee for amending the laws of justice, associations of judges and prosecutors, and civil society organisations.



Both the President of Romania and the Monitoring Committee of the Parliamentary Assembly of the Council of Europe have requested the opinion of the Venice Commission on the three draft laws.

### Constitutional Justice

#### Joint Council on Constitutional Justice

26 - 27/06/2018

Lausanne - The Federal Court of Switzerland hosted the 17th meeting of the Joint Council on Constitutional Justice of the Venice Commission. Some 60 representatives from 44 courts participated in this meeting.



On this occasion a mini-Conference entitled “Gender, equality and discrimination” was organised. Issues pertaining to gender equality and discrimination as regards trans-sexuality and (trans)gender, same sex marriages and #MeToo campaign dealt with by the national courts as well by the European Court of Human Rights were highlighted by the liaison officers from Austria, Belgium, Croatia, Georgia, Hungary, the Netherlands and Switzerland.

### Elections and political parties

#### Electoral issues - 15th Conference of the Electoral Management Bodies

19 - 20/04/2018

Oslo - The Venice Commission organised the 15th Conference of Electoral Management Bodies in co-operation with the Section for Elections of the Ministry of Local Government and Modernisation of Norway. The Conference was dedicated to “Security in Elections”. All details are available on the Conference's dedicated webpage (link below).



[Website of the 15<sup>th</sup> EMBs Conference](#)

## Neighbourhood Cooperation

### Improving the relations between the administration and the citizens – 7th UniDem Med Seminar 23 - 26/04/2018

Rabat - the Venice Commission in cooperation with the Ministry of the Reform of the Administration and the Civil Service of the Kingdom of Morocco organised the 7th UniDem Med Regional Seminar. The seminar was entitled "Improving the relations between the administration and the citizens: a democratic imperative". The event brought together senior public officials and experts from Europe and the Southern Mediterranean - Algeria, Jordan, Lebanon, Mauritania, Morocco, Palestine\* and Tunisia.

Debates highlighted existing international and national standards, mechanisms and good practices aimed to increase the users' satisfaction. Participants also discussed critical issues such as simplification of procedures, change management, e-governance and digital transformation, access to data and various complaints management systems.

The main objective of the UniDem Med Campus (University for Democracy) is to contribute through peer-to-peer exchanges to the modernisation of the administration in the southern Mediterranean by enforcing law and consolidating institutions. The project strengthens the legal capacities of senior civil servants in areas related to good governance, rule of law and human rights as well as contributes to the strengthening of the links between the public administrations from the region.

The seminar was funded by the joint Council of Europe-European Union program "Ensuring Sustainable Democratic Governance and Human Rights in the Southern Mediterranean", South Programme III.

*(\*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 Campus Med project website](#)

### Assistance to the Kyrgyz Republic in the electoral field - Seminar on cybersecurity 03/04/2018

Council of Europe, Strasbourg - In the framework of the project "Support to Strengthening Democracy through Electoral Reform in the Kyrgyz Republic" a working seminar on cybersecurity was held for representatives from the Kyrgyz Republic on 3 April 2018.

Representatives of the State Registration Service (SRS), State Security Council and of the civil society of the Kyrgyz Republic learnt the founding principles of the Budapest Convention, as well as implications of cybersecurity during the electoral processes.

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.



## Forthcoming activities

### Opinions

- **Albania** – draft law on the legislative initiative of citizens ;
- **Kazakhstan** - draft code of administrative procedures;
- **Luxembourg** - the Revised Constitution;
- **Montenegro** - draft law on amendments of the Law on freedom of religion (postponed);
- **Romania** - draft legislation on the judiciary;
- **Romania** - Criminal Code and Criminal Procedure Code;
- **Spain** - “Citizens’ security law” (postponed);
- **"The former Yugoslav Republic of Macedonia"** - Law on Courts and Law on the Judicial Council;
- **Tunisia** - draft organic law on the organisation of political parties and their financing;
- **Turkey** - amendments to the electoral legislation and related "harmonisation laws" adopted in March and April 2018;
- **Uzbekistan** - draft electoral code.

### 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

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