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Main decisions of the June 2019 plenary session and a selection of adopted texts

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- Montenegro – legal status of religious communities
- Use of digital technologies and elections

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Forthcoming opinions and studies

Useful links:

- Venice Commission
- Council of Europe
- WCCJ
- Previous issues



JUNE 2019 PLENARY SESSION

THE COMMISSION, AT ITS 119TH SESSION (21-22 JUNE, VENICE) TOOK THE FOLLOWING DECISIONS:

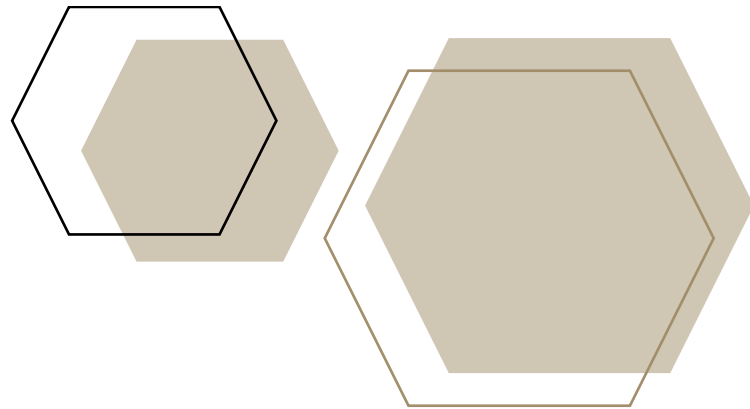
- endorsed the urgent [Opinion on the selection and appointment of Supreme Court judges of Georgia](#), with one additional clarification;
- adopted the Opinions on:
 - [the draft law of Montenegro on freedom of religion and beliefs and the legal status of religious communities](#),
 - [Emergency Ordinances GEO N° 7 and GEO N° 12, amending the Laws of Justice of Romania](#);
 - [the constitutional situation in the Republic of Moldova with particular reference to the possibility of dissolving parliament](#);
 - [the draft organic law of Tunisia on the Authority for Sustainable Development and the Rights of Future Generations](#);
- adopted the following texts of the general nature:
 - [Joint Guidelines on Freedom of Peaceful Assembly \(3rd Edition\)](#) of the Venice Commission and OSCE-ODIHR;
 - [Parameters on the relationship between the parliamentary majority and the opposition in a democracy](#): a checklist;
 - [Report on the use of digital technologies and elections](#);
 - [Report on the recall of mayors and other local elected representatives](#);



JUNE 2019 PLENARY SESSION

AMONG OTHER DECISIONS, THE COMMISSION:

- endorsed the [Compilations of opinions and reports concerning electoral systems and gender representation](#) and concerning [electoral systems and national minorities](#);
- was informed on **recent constitutional developments in Armenia**, including on the recent public declarations regarding the sitting members of the Constitutional Court, and asked the President to follow the situation closely with a view to making, if appropriate, a public statement in this respect;
- Authorised the preparation of an **urgent opinion on the reform of the judicial code of Armenia**, to be forwarded to the requesting authorities prior to the October Plenary Session;
- Was informed on recent events as well as on prospects for co-operation with Argentina, Mongolia and Uzbekistan;
- Was informed on recent constitutional developments in **Kazakhstan, Lithuania and Peru**;



THE COMMISSION ALSO:

- Was informed on **follow up to the opinions** on:
 - the law of **Hungary** on administrative courts and the law on the entry into force of the law on administrative courts and certain transitional rules;
 - Constitutional arrangements and separation of powers and the independence of the judiciary and law enforcement of **Malta**;
 - the draft law on the Judicial Council of **North Macedonia**;
 - the draft amendments to the Law on Courts of **North Macedonia**;
 - 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" of **Ukraine**;
 - **separate appeals against rulings on preventive measures** (deprivation of liberty) of first instance cases – amicus curiae for the Constitutional Court of **Ukraine**.

READ ALL THE DECISIONS [HERE](#)



SELECTED TEXTS

MONTENEGRO - the draft law on freedom of religion and beliefs and the legal status of religious communities - [CDL-AD\(2019\)010](#)

Apart from the recommendations concerning public consultation and religious education, the Commission recommended the following regarding the issue of property of religious communities:

- provide sufficient detail and explanations so as to satisfy the requirements of foreseeability and accessibility;
- provide protection equivalent to the ordinary procedure, both in terms of substantive rules and procedural safeguards and guarantees;
- A clear reference should be given to the relevant provisions of the codes of administrative and civil procedure containing the standards of proof that will be used in the implementation of the draft provisions;
- explicitly mention the right of the religious community concerned to be notified of and participate in the administrative procedure before the public authority responsible for cadaster affairs as soon as the public authority submits a request for change of title in favour of the state over religious property in the real estate cadaster;
- Register state ownership rights only after a final (administrative or judicial) decision is made;
- clearly mention that the change in the title over religious property will not automatically affect the pre-existing right to use such property. The state has at any rate the right to impose strict conditions on the use of the property in order to protect the cultural heritage. ...

[Further reading](#)



Church of St. Nicholas, Kotor

• **THE USE OF DIGITAL TECHNOLOGIES AND ELECTIONS – REPORT** [CDL-AD\(2019\)016-E](#)

Digital technologies have reshaped the ways in which societies translate the will of the people into votes and representation, and they have to a large extent changed political campaigning. Even though the internet fosters some aspects of the democratic contest, it also hampers them. The worldwide pervasiveness of digital technologies has moved the arena of democratic debate to the virtual world, raising many questions about their influence on voter turnout and the need to survey and regulate online social behaviour. Moreover, adequate protection against cyber warfare needs to be ensured.

The aforementioned phenomena interfere with a number of fundamental rights protected at European and universal level by several international declarations and conventions, such as the right to free elections and freedom of expression, the right to privacy and personal data protection and the right to protection against cybercrime.

The recent shift in the influence of internet-based channels of electoral communication calls for action in the following areas:

- A. Revision of rules and regulations on political advertising;
- B. Accountability of internet intermediaries in terms of transparency and access to data enhancing transparency of spending, specifically for political advertising.
- C. Quality journalism: strengthening of news accuracy and reliability, enhanced engagement with the audience, strengthening of public service media and local media, and empowering self-regulation;
- D. Empowerment of voters towards a critical evaluation of electoral communication targeted action for preventing exposure to false, misleading and harmful information;

- E. Open internet: ensuring net neutrality, considering legally strengthening users' rights to an open internet, and ensuring that any restrictions on access to internet content are based on a strict and predictable legal framework;
- F. Data protection: affirming and protecting the right to anonymity on the internet, regulating and strictly limiting the creation and use of profiles, in all kinds of different contexts. In addition, the Council of Europe might consider adopting guidelines on the restrictions to be imposed on surveillance technologies, including the international trade in such technologies; promoting Convention 108 as the "gold global standard"; and possibly developing a specific legal instrument to address the high risk that the use of digital technologies in political campaigns and advertising represents to personal data protection.



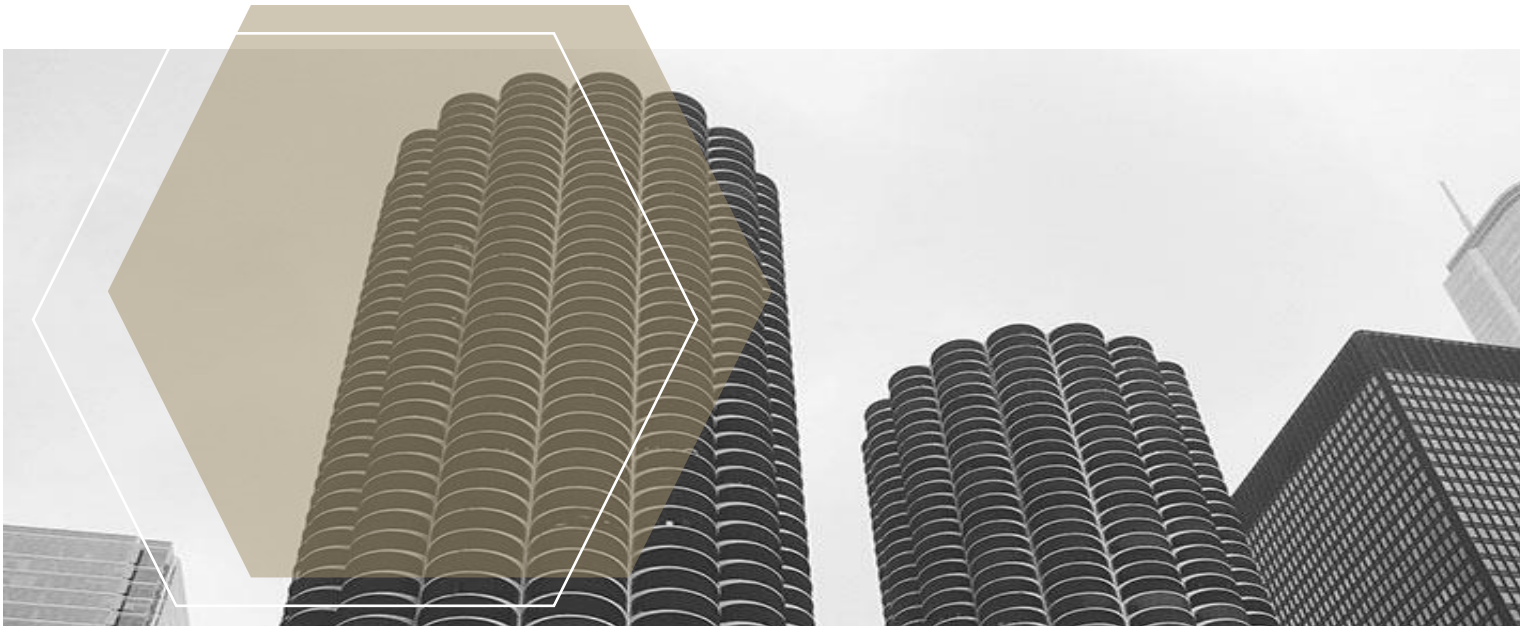
PARAMETERS AND CHECKLIST:

RELATIONSHIP BETWEEN THE PARLIAMENTARY MAJORITY AND THE OPPOSITION IN A DEMOCRACY

In Resolution 1601 (2008) the PACE stated that the existence of "a political opposition inside and outside of parliament is an essential component of a well-functioning democracy", and the Venice Commission fully subscribes to this view. In the past decade the Venice Commission observed a worrying political trend in a growing number of countries, which is sometimes described by the formula "**the winner takes it all**".

Following this trend, checks and balances restraining the power of the parliamentary majority are dismantled. Rushed adoption of laws without genuine political debate have become more frequent. Top judges and officials of independent agencies are appointed or dismissed single-handedly by the majority. In its relevant opinions, the Venice Commission has warned against reducing democracy to simple majoritarianism. Its 2010 Report, in § 159, was still optimistic, when stating that "democracy is today stronger in Europe than ever before in history". It may be that this is not the case anymore, as demonstrated by more tense relations between the majority and the opposition. ...

Today there is a lack of established standards for these important issues; there is no common model defining the respective roles of the parliamentary opposition and majority. It is impossible to devise a comprehensive set of precise standards in this area, which would be valid for all democratic political regimes. It is possible, however, to identify certain general principles which govern this relationship, and which reflect the common European constitutional heritage, and to explain their inner logic, outline some best practices, or, sometimes, give some negative examples. ... [Text of the report](#)



IN THE PIPELINE: OPINIONS AND STUDIES

OPINIONS

- Albania - draft law on the finalisation of transitional ownership processes
- Albania – the scope of the power of the President to set the dates of elections
- Armenia - Constitutional implications of the ratification of the Council of Europe Convention on Preventing and Combating Violence against Women and Domestic Violence (Istanbul Convention)
- Armenia - draft amendments to the Judicial Code
- Armenia - Amicus curiae brief for the Constitutional Court of Armenia relating to Article 300.1 of the Criminal Code
- Bosnia and Herzegovina – legislation on freedom of assembly
- Bulgaria - the draft amendments to the Criminal Procedure Code concerning the investigation in respect of top magistrates
- Kosovo - the draft Law on legal acts
- Moldova - the draft Law on the reform of the Supreme Court of Justice
- North Macedonia – Law on the use of languages
- Republic of Moldova – amicus curiae brief for the Constitutional Court on the liability of former Constitutional Court judges (new)
- Peru - linking constitutional amendments to the vote of no-confidence
- Spain - the « Citizens' Security Law »
- *Mugemangango v. Belgium* - Amicus curiae Brief for the European Court of Human Rights on electoral issues
- Ukraine - Law on “Supporting the functioning of the Ukrainian language as the State language”

STUDIES

- Parliamentary elections in nationwide constituency without international recognised borders
- Update - Political parties - Joint CDL-OSCE/ODIHR Guidelines
- Update - Study on individual access to constitutional Justice
- Update - Report on the composition of Constitutional Courts
- Study on gender equality
- Revision of the Code of good practice on referendums
- Report on electoral law and electoral administration in Europe (new version)
- Study on election dispute resolution
- Diagnostic of the legislative framework of independent bodies of Tunisia