

Venice Commission of the Council of Europe

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October 2016 Plenary Session – Main decisions

At its 108th plenary session which took place 14–15 October 2016 in Venice, the Commission:

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LINKS

- [Venice Commission website](#)
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- [World Conference on Constitutional Justice](#)
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✓ *Adopted opinions on:*

- the restitution of property in **Albania**;
- the draft electoral code of **Armenia** as amended on 30 June 2016;
- the Referendum proposing Amendments to the Constitution of Azerbaijan;
- the mode of election of delegates in the House of Peoples of the Parliament of the Federation of **Bosnia and Herzegovina**,
- the introduction of amendments and changes to the Constitution of the **Kyrgyz Republic**;
- the Act on the Constitutional Tribunal of **Poland**;
- the Electoral Code of “**the former Yugoslav Republic of Macedonia**” as amended on 9 November 2015;
- the suspension of Article 83 of the Constitution of **Turkey** (Parliamentary inviolability);
- the Draft Laws N° 3587 and N° 3587–1 on guarantees for freedom of peaceful assembly in **Ukraine**;
- the **interpretative declaration** of the Code of good practice in electoral matters on the **publication of lists of voters having participated in elections**;
- the **compilation** of Venice Commission opinions and reports on **freedom of expression**;

✓ *Expressed concern about continuing attacks on constitutional courts and obstacles to their functioning;*

✓ *Heard an address by:*

- Mr Shahin Aliyev, Head of Department of Legislation and Legal Expertise, Office of the President of the Republic of **Azerbaijan**; at the request of Mr Aliyev, the Commission further decided to publish the observations of the authorities of Azerbaijan;
- Mr Nils Muižnieks, Council of Europe **Commissioner for Human Rights**,
- Mr Michael O’Flaherty, **Director of the European Union Agency for Fundamental Rights**;

✓ *Held an exchange of views with*

- Mr Mustafa Erol, Deputy Under-Secretary, Ministry of Justice of **Turkey**,
- representatives of the **Committee of Ministers**, of the **Parliamentary Assembly**, of the **Congress and Development Bank** of the Council of Europe;

October 2016 plenary session

Other decisions

- *Was informed on*
 - the co-operation with **Japan** and with **Morocco**;
 - the constitutional developments in **Chile**, **Greece** and the **United Kingdom**;
 - the recent legislative reforms relating to the Supreme Tribunal of the Principality of **Monaco**;
 - the issues relating to the appointment of judges of the Constitutional Court of the **Slovak Republic**;
 - the results and conclusions of the meeting of the **Council for Democratic Elections** on 13 October 2016;
 - the decision by the Bureau to postpone examination of the draft opinion on amendments to the Organic law on the Constitutional Tribunal of **Spain** to a forthcoming session;
- *Was informed on the follow up to :*
 - the **Rule of Law Checklist**;
 - the Final Opinion on the revised draft constitutional amendments on the Judiciary (15 January 2016) of **Albania**;
 - the *amicus curiae* Brief for the Constitutional Court of the Republic of **Moldova** on the Right of Recourse by the State against Judges;
 - the Joint Opinion on the draft law on changes to the electoral code of the Republic of Moldova;



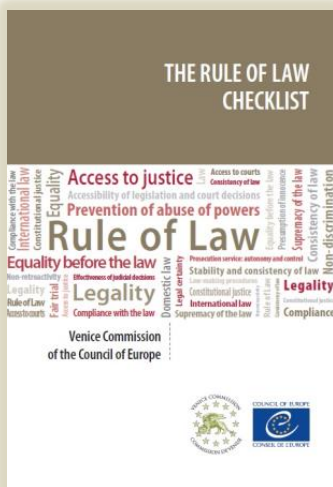
Publications

Just published:

- [The rule of law checklist](#) (Russian, Arabic)
- Recent electoral opinions on Ukraine and general reports in the electoral field adopted by the Venice Commission (Ukrainian)
- Bulletin of the Constitutional Case – Law: Issue 2013/

Forthcoming:

- Bulletin of the Constitutional Case – Law: Issue 2016/2



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

October 2016 Plenary Session

Selected Opinions

Turkey

Opinion on the suspension of Article 83 of the Constitution of Turkey (parliamentary inviolability) CDL-AD(2016)027

Background

On the basis of Resolution 2127 (2016)¹ of the Parliamentary Assembly of the Council of Europe on "Parliamentary immunity: challenges to the scope of the privileges and immunities enjoyed by members of the Parliamentary Assembly", the President of the Assembly requested by letter of 1 July 2016 an opinion of the Venice Commission on the suspension, by a provisional clause, of Article 83 of the Constitution of Turkey, which guarantees parliamentary inviolability of members of the Grand National Assembly (hereinafter "the National Assembly" or Parliament).

In its Report, the Venice Commission distinguishes between the non-liability and inviolability of Members of Parliament. 'Non-liability' refers to "*immunity against any judicial proceedings for votes, opinions and remarks related to the exercise of parliamentary office, or in other words, a wider freedom of speech than for ordinary citizens*". In turn, 'inviolability' means "*special legal protection for parliamentarians accused of breaking the law, typically against arrest, detention and prosecution, without the consent of the chamber to which they belong*". In any case, inviolability is only temporary and justice can proceed after the end of the mandate of a MP.

Conclusions

The Venice Commission welcomes that the Amendment does not touch parliamentary non-liability, which is an essential element of parliamentary immunity.

Nevertheless, the inviolability of these Members of Parliament should be restored. The Venice Commission is of the opinion that, in the current situation in Turkey, parliamentary inviolability is an essential guarantee for the functioning of parliament. The Turkish Grand National Assembly, acting as the constituent power, confirmed this by maintaining inviolability for future cases. The current situation in the Turkish Judiciary makes this the worst possible moment to abolish inviolability.

Moreover, most of the files concerned by this abrogation relate to freedom of expression of Members of Parliament. Freedom of expression of MPs is an essential part of democracy. Their freedom of speech has to be a wide one and should be protected also when they speak outside Parliament. The non-violent pursuit of non-violent political goals such as regional autonomy cannot be the subject of criminal prosecution. Expression that annoys (speech directed against the President, public officials, the Nation, the Republic etc.) must be tolerated in general but especially when it is uttered by MPs. Restrictions of the freedom of expression have to be narrowly construed. Only speech that calls for violence or directly supports the perpetrators of violence can lead to criminal prosecution. The case-law of the European Court of Human Rights shows that Turkey has a problem with safeguarding freedom of expression, not least with respect to cases considered as propaganda for terrorism. This is partly due to the fact that, as explained in the Opinion CDL-AD(2016)002, the scope of several provisions of the Penal Code is too wide. This endangers freedom of expression in general but notably also freedom of expression of members of the National Assembly.

The constitutional amendment of 12 April 2016 was an ad hoc, "one shot" *ad homines* measure directed against 139 individual deputies for cases that were already pending before the Assembly. Acting as the constituent power, the Grand National Assembly maintained the regime of immunity as established in Articles 83 and 85 of the Constitution for the future but derogated from this regime for specific cases concerning identifiable individuals while using general language. This is a misuse of the constitutional amendment procedure.



Meeting room of the Venice Commission of the Council of Europe

Selected Events

Albania – Constitutional amendments on the judiciary finally adopted by unanimous vote



Tirana – In the evening of 21 July the Albanian Assembly approved the constitutional amendments related to the justice reform, with a unanimous vote. The current constitutional amendments provide for the re-organisation of the High Judicial Council, the Constitutional Court and several other supreme State institutions related to the judiciary, as well as for the creation of a temporary vetting mechanism supposed to remove corrupt and incompetent judges from the judiciary.

These amendments were the result of a long and laborious process, to which the Venice Commission contributed by preparing two opinions (CDL-AD(2015)045 and CDL-AD(2016)009) and participating in the development of the concept of the reform. The pivotal role of the Venice Commission was repeatedly acknowledged by all major political players in the country, including Mr Lulzim Basha, the Chairman Democratic Party of Albania.

Bosnia and Herzegovina – Statement by the Venice Commission's President Gianni Buquicchio

23/09/2016

Strasbourg – I am alarmed by the fact that, despite a decision by the Constitutional Court of Bosnia and Herzegovina of 17 September 2016 to suspend the referendum in Republika Srpska scheduled for 25 September 2016, the authorities of Republika Srpska intend to go ahead with the organisation of the referendum. In a state governed by the rule of law the judgments of the Constitutional Court are implemented and are not made the subject of a vote, whether in parliament or by the people.

The Constitutional Court has declared the Day of the Republika Sprska unconstitutional as being discriminatory against non-Serb residents of this Entity. The purpose of the referendum is to undermine the authority of this judgment. This is not acceptable. Following the new decision by the Constitutional Court the only possible legitimate reaction of the authorities in an Entity belonging to a Council of Europe member state is not to hold the referendum.



Selected Events

Democratic Institutions and Fundamental Rights

Romania – parliamentary and judicial control of the intelligence and security services

13 – 14/10/2015

Bucharest – Conference on "Parliamentary and judicial control of the intelligence and security services – Romania and the EU", co-organised by the Friedrich-Ebert-Stiftung Foundation in Romania and the National Union of Judges of Romania. Iain Cameron, a member of the Venice Commission in respect of Sweden, will present the work of the Venice Commission in this area.



Constitutional Justice

Poland – 30th anniversary of the Constitutional Tribunal

17/10/2016

Gdansk – The President of the Venice Commission, Mr Buquicchio, participated in the Conference on "The Constitutional Court as Guardian of Constitutional Values" co-organised by the Constitutional Tribunal of Poland and the Mayor of Gdansk, held in celebration of the 30th anniversary of the Constitutional Tribunal of Poland. In his welcome speech, Mr Buquicchio informed the participants about the adoption of the Commission's Opinion on the Act on the Constitutional Tribunal on 14 October 2016.



[Link to the opinions on Poland](#)

Electoral issues – Armenia – visit to the country

14 - 15/11/2016

Yerevan – A delegation of the Venice Commission, together with representatives of the OSCE/ODIHR, will travel to Yerevan on 14 and 15 November to discuss the new draft law on political parties. The relevant draft opinion is on the agenda of the December plenary session of the Commission.

This activity falls in the framework of the Programmatic Co-operation Framework (PCF) for Armenia, Azerbaijan, Georgia, Republic of Moldova, Ukraine and Belarus, funded by the European Union and the Council of Europe and implemented by the Council of Europe.



[Website of the PCF](#)

Neighbourhood Cooperation

South Mediterranean – 4th Regional UniDem Campus seminar for high-level civil servants

04-07/04/2016

Rabat – The 4th Campus UniDem Med seminar was organised by the Venice Commission at the request of and in cooperation with the Ministry of Civil Service and Modernisation of the Administration of the Kingdom of Morocco on theme of the “Reform of the General Statute of the Civil Service” on 30 October – 3 November 2016 in Rabat. The seminar examined four general topics:

- (I) public service principles and values,
- (II) strategic management of human resources,
- (III) professionalisation and training, and
- (IV) ethics and deontology.

The Rabat meeting brought together around 60 participants, including senior civil servants and experts from both the Southern Mediterranean and Europe.

Discussions showed that the process of modernising the administration should not override the respect for the principles of good governance and accountability to citizens. The current challenge lies in the fact that administrative reforms aimed at the efficiency of the administration should be reconciled with the principles of the rule of law and the new missions of an administration that is in a process of integration of the culture of human rights.

The Seminar has also laid the foundations for future collaboration based on complementarity with the EU funded SIGMA project implemented by the OECD namely by bridging administrative and constitutional law using the standards of the Venice Commission. Acting Moroccan Minister in charge of Public Administration and Modernisation of the Administration Mr. Driss MEROUNE attended the closing session of the Seminar and the diplomas award ceremony, which was also covered by the Moroccan Press Agency in a video report.



- › [Photo gallery of the Rabat seminar](#)
- › [Video report by MPA on the seminar](#)
- › [UniDem Campus Med Facebook page](#)
- › [Webpage on the UniDem Campus Med programme](#)

Forthcoming activities

Opinions

- **Albania** – amicus curiae brief on the Law for the temporary re-evaluation of Judges and Prosecutors (Vetting Law);
- **Armenia** – draft law on political parties; draft law on Human Rights Defender;
- **Moldova** –draft law on the ethno-cultural Status Law of the District of Taraclia (Republic of Moldova);
- **Republic of Moldova** – draft law amending and completing existing legislation in the field of combating cybercrime
- **Kyrgyz Republic** – amendments and changes to the Constitution;
- **Poland** – Act on the Constitutional Tribunal;
- **Turkey** – emergency decrees;
- **Russia** – Law on undesirable activities of organisations; latest amendments to the Law on the Constitutional Court;
- **Spain** – “Citizens’ security law”; the Law on the changes to the powers of the Constitutional Court;
- **Ukraine** –Draft Law on the Constitutional Court.

Studies

Electoral Issues

- “25 years of international election observation – lessons to be learnt”
- Political parties – Joint CDL-OSCE/ODIHR Guidelines

Constitutional Justice

- Report on the Composition of Constitutional Courts – update
- Study on Individual Access to Constitutional Justice – update

Democratic Institutions and Fundamental Rights

- Freedom of Peaceful Assembly – joint CDL-OSCE/ODIHR guidelines
- Study on the role of the opposition in a democratic Parliament – update
- Legislative provisions on foreign funding of NGOs

Compilations

- Freedom of expression
- Checks and balances