



Venice Commission of the Council of Europe

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October 2017 Plenary Session - Main decisions

At its 112th plenary session which took place 6-7 October 2017 in Venice, the Commission:

✓ **Adopted opinions on:**

- [the draft judicial code of Armenia](#),
- [the Judicial System Act of Bulgaria](#),
- [the draft revised Constitution of Georgia](#) as adopted in the second reading on 23 June 2017;
- the provisions in Emergency Decree Law No. 674 concerning the [exercise of local democracy in Turkey](#);
- the Draft Law on [amendments to the Rules of Procedure and Internal Organisation of the Verkhovna Rada of Ukraine](#);
- the draft law on [anti-corruption courts](#) and on the draft law on the introduction of mandatory specialisation of judges for corruption and corruption related offences in **Ukraine**;

✓ **Adopted:**

- the [amicus curiae brief for the European Court of Human Rights in the case of Berlusconi v Italy](#),
- the elements for the Committee of Ministers' reply to Parliamentary Assembly Recommendation 2110(2017) [on "the implementation of judgments of the European Court of Human Rights"](#);

✓ **Held an exchange of views with inter alia:**

- Mr Arthur Hovhannisyan, First Deputy Minister of Justice of **Armenia**,
- Mr Evgeni Stoyanov, Deputy Minister of Justice 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 Palkovics, Minister of State for Education, Ministry of Human Capacities and with Mr Krisztián Kecsmár, Minister of State for EU and international judicial co-operation, Ministry of Justice of **Hungary**,
- Mr Pavlo Pinzenik, First Deputy Chair of the Committee on the Rules of Procedure and Internal Organisation of the Verkhovna Rada of **Ukraine**, and with Mr Oleksiy Filatov, Deputy Head of the Presidential Administration of Ukraine,
- Mr Mohammed Benabdelkader, Minister Delegate to the Head of Government, Responsible for the reform of the Administration and the Civil Service of **Morocco**,
- Mr Luis Almagro, Secretary General, **Organisation of American States**;
- Mr Eduardo Ferrer Mac-Gregor, Judge at the **Inter-American Court of Human Rights**;
- Mr Sumit Bisarya, Senior Project Manager, on co-operation with **International IDEA**;

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October 2017 plenary session

Other decisions

- ✓ **Endorsed the preliminary opinions on:**
 - Act XXV of 4 April 2017 on the amendment of Act CCIV of 2011 of **Hungary** on Tertiary Education;
 - legal issues raised by the decree issued by President Maduro on 23 May 2017 calling for the election of National Constituent Assembly in **Venezuela**;
- ✓ **Endorsed the *Compilation of its opinions and reports relating to Electoral dispute resolution*;**
- ✓ Elected the four members of the **Committee of wise persons to prepare the elections to the Commission's offices**, to be held in December 2017, as follows: Mr Bartole, Mr Esanu, Ms Hermanns and Ms McMorrow;
- ✓ Signed a **memorandum of understanding between the Venice Commission and Morocco**, relating notably to the organisation of the UniDem-Med Campus for high civil servants of the MENA countries;
- ✓ Held an exchange of views with Mr Kosuke Yuki, Consul, Consulate General of Japan in Strasbourg, on co-operation with **Japan** and expressed its gratitude to the Japanese authorities for their recent **voluntary contribution**;
- ✓ **Was informed on follow-up to :**
 - the Opinion on the proposal by the President of the Republic of **Moldova** to expand the President's powers to dissolve Parliament;
 - the Joint opinion on the draft laws of the Republic of **Moldova** on amending and completing certain legislative acts (electoral system for the election of the Parliament) and
 - the Opinion on the draft Law on the Constitutional Court of **Ukraine**;
- ✓ **Was informed :**
 - by Ms Arpine Hovhanissyan, Vice-President of the National Assembly of **Armenia**, on progress in the implementation of the revised Constitution of Armenia;
 - on recent constitutional developments in **Palestine**, **Tunisia** and **Spain**;



[Read all the decisions of the October 2017 plenary](#)

Publications



Just published:

- Bulletin on Constitutional Case–Law: **Issue 2017/1**
- Preventing and responding to the misuse of administrative resources during electoral processes - Guidelines (English, French, Russian)

Forthcoming:

- Bulletin on Constitutional Case – Law: Issue **2017/2**
- 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](#)

October 2017 Plenary Session

Selected Opinions

Ukraine -

Opinion on the draft law on anti-corruption courts and on the draft law on the introduction of mandatory specialisation of judges for corruption and corruption related offences - [CDL-AD\(2017\)020](#)



*Delegation of the Venice Commission
rapporteurs
visiting Ukraine
6-7 October 2017*

Background

By letter of 30 June 2017, the Speaker of the *Verkhovna Rada* of Ukraine requested the Venice Commission to prepare an opinion on compliance with the Council of Europe standards of the draft law on anti-corruption courts (draft law No. 6011 of 11 February 2017) and of the draft law on amendments to the Law of Ukraine ‘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) (draft law No. 6529 of 31 May 2017) (CDL-REF(2017)035 and CDL-REF(2017)036).

Conclusions

The Venice Commission concluded that many of the provisions of the draft law provided a good basis for the establishment of a high specialised anti-corruption court, but made several recommendations to reduce the risk that it could be considered unconstitutional. In order to dispel any doubts about the constitutionality of the legislative procedure, the Venice Commission invited the President of Ukraine to promptly submit his own draft law on anti-corruption courts – which should be based on the Venice Commission’s recommendations. The draft law (Draft Law No. 6011) thus needed to be withdrawn.

The Commission stressed that corruption is one of Ukraine’s major problems, parts of the judiciary itself have for many years been considered as weak, politicised and corrupt, and its ongoing reform – which is promising and to be strongly supported – will take several years to complete. The only way forward in the fight against high-level corruption in Ukraine is the prompt establishment of a high specialised anti-corruption court (HACC), as foreseen in the Law “On the Judicial System and the Status of Judges”, whose judges are selected in a transparent procedure with international involvement.

The HACC has clear characteristics of a specialised court, rather than a special or extraordinary court, and thus does not jeopardise the unity of the judiciary. However, deviations from the general rules should be limited to what is necessary for the anti-corruption courts to work effectively, and care must be taken to avoid the possible impression that anti-corruption judges are of different or privileged class of judges. The level of remuneration for the HACC judges should be reconsidered; it should be commensurate with the increased demands of their position but should not differ too much from generalist judges’ remuneration.

The key components of the current draft should be maintained, namely the establishment of an independent HACC and appeal instance whose judges are of impeccable reputation, adequately protected and are selected on a competitive basis in a transparent manner. Temporarily, international organisations and donors active in providing support for anti-corruption programmes in Ukraine should be given a crucial role in the body competent for selecting specialised anti-corruption judges, similar to the role envisaged for them in draft law No. 6011. The international involvement seems to be justified in the specific situation in Ukraine, with due regard to the principle of Ukraine’s sovereignty. ...

October 2017 Plenary Session

Selected Opinions

Case of Berlusconi v Italy



Amicus curiae brief for the European Court of Human Rights in the case of Berlusconi v Italy - [CDL-AD\(2017\)025](#)

Background

By letter of 24 July 2017, the Registrar of the European Court of Human Rights (hereinafter “ECtHR” or “the Court”) informed the Venice Commission that on 19 July 2017 the President of the Court had decided to invite the Commission to present written observations in the case of Berlusconi v. Italy, on the following issue:

What are the minimum procedural guarantees which a State must provide in the framework of a procedure of disqualification from holding an elective office?

A comparative table of the pertinent legislation of 62 states was prepared (CDL-REF(2017)041).

This *amicus curiae* brief relates to the voiding of the mandate of a Member of Parliament.

Conclusions

The European Court of Human Rights has previously stated that the States may decide either to leave it to the courts to determine the proportionality of a measure restricting convicted prisoners’ voting rights, or to incorporate provisions into their laws defining the circumstances in which such a measure should be applied. In this latter case, it will be for the legislature itself to balance the competing interests in order to avoid any general, automatic and indiscriminate restriction. This possibility applies a fortiori to disqualification voiding an elective mandate, because stricter requirements may clearly be imposed on the eligibility to stand for election to Parliament (and in the Commission’s opinion, even more in case of disqualification voiding the electoral mandate), as distinguished from voting eligibility, as also the Court has accepted.

Statutory disqualification should take into account such factors as the gravity and nature of the offence committed and the conduct of the offender. Disqualification should therefore only be provided in connection with certain types of offences or with particularly long sentences. It would also appear appropriate that the law adjust the duration of the measure to the sentence imposed and thus, by the same token, to the gravity of the offence.

In States where disqualification does not operate automatically but requires an implementing decision by Parliament, its decision does not represent an autonomous interference with the representative’s right to be elected. For this reason, only limited procedural requirements apply, in particular the right of the MP to submit arguments, to appear before the Parliament in person and to be assisted by an attorney, the holding of a public hearing, the public character of the decision. An appeal to the Constitutional Court against the decision by Parliament appears to be a logical additional guarantee in countries where direct access to the Constitutional Court is already provided, but should not be regarded as necessary.

Selected Events

Democratic Institutions and Fundamental Rights

Ukraine – forthcoming opinion – country visit

31/10/2017 - 01/11/2017



Constitutional Justice

Association of Asian Constitutional Courts

30/10/2017 - 02/11/2017

Seoul - The President of the Venice Commission participated in the 1st International Symposium on "Constitutionalism in Asia: Past, Present and Future" organised by the Secretariat for Research and Development of the Association of Asian Constitutional Courts (AACC SRD).

▶ [Website of the AACC SRD](#)

Elections and political parties

Misuse of administrative resources during electoral processes: a major challenge for democratic elections - Regional Conference

09 - 10/11/2017

London - The Parliamentary Assembly (PACE) and the Venice Commission, in co-operation with the Congress of Local and Regional Authorities of the Council of Europe, organised a regional conference entitled "Misuse of administrative resources during electoral processes: a major challenge for democratic elections". Members of Parliaments and representatives of the Central electoral administrations of the countries beneficiaries of the Partnership of Good Governance participated in this conference as well as a panel of international experts, specialists in the topic of the conference.

This activity falls in the framework of the Partnership for Good Governance (PGG) 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.



Neighbourhood Cooperation

Women and the labour market – 6th UniDem Med Seminar

07 - 08/11/2017

Algiers, Algeria - In cooperation with the Algerian Constitutional Council and the Directorate General of the Civil Service and the Administrative Reform of Algeria (DGFPPRA), the Venice Commission is organising, from 7 to 8 November, the 6th UniDem Med Regional Seminar. The seminar entitled "Women and the labour market" will take place in Algiers (Algeria) and will bring together senior officials and experts from Europe and the Southern the Mediterranean - Algeria, Jordan, Lebanon, Morocco, Palestine and Tunisia. The seminar will discuss issues related to the principles of equality, the constitutional and legal framework and good practices in the area of women's empowerment in the civil service and in the economic sector.



The main objective of the UniDem Med campus (University for Democracy) is to contribute by peer-to-peer exchanges to the modernization of the administration in the South of the Mediterranean by applying the law and consolidating the institutions. The project aims to strengthen the legal capacity of senior officials in areas related to good governance, the rule of law and human rights, as well as to strengthen the links between the public administrations of the region.

The seminar is funded by the joint Council of Europe-European Union program "Towards strengthened democratic governance in the Southern Mediterranean.

- [UniDem Med Project](#)
- [Website Constitutional Council of Algeria](#)
- [Website DGFPPRA](#)
- [South Programme II](#)

Kyrgyz Republic - Assistance in the electoral field

11 - 12/11/2017

Bishkek – 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, met in Bishkek, Kyrgyzstan, on 11-12 November 2017 to hold further discussions on the above-mentioned Strategy. A number of issues were discussed at the meeting, among them basic legal principles, freedom of expression, freedom of assembly, electoral dispute resolution, and international standards and recommendations.



This activity is part of the project "Support to Strengthening Democracy through Electoral Reform in the Kyrgyz Republic" is implemented by the Venice Commission with funding provided by the European Union and the Council of Europe.

Forthcoming activities

Opinions

- **Armenia** – draft constitutional law on referendums; draft amendments to the Law on freedom of religion;
- **Hungary** - conflict between the right to privacy and other fundamental rights;
- **Moldova** - Legal framework of the Republic of Moldova governing the funding of political parties and electoral campaigns; draft amendments to Article 37 of the Law of the Republic of Moldova on the People's Advocate –"Financial provisions";
- **Montenegro** - draft law on amendments of the Law on freedom of religion;
- **Poland** – amended Law on the Prosecution Service; Law on the Ordinary Courts Organisation, and two draft laws on amending the Law on the National Council of the Judiciary and the Supreme Court;
- **Spain** - "Citizens' security law";
- **"The former Yugoslav Republic of Macedonia"** - three draft laws of "the former Yugoslav Republic of Macedonia" on the abolition of the Council for the Establishment of Facts, on amendments to the law on the Judicial Council and on amendments to the Law on Witness protection;
- **Ukraine** - provisions of the new Law on Education of Ukraine on the language of education.

Studies

Electoral Issues

- 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