

Venice Commission of the Council of Europe

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October 2018 Plenary Session - Main decisions

At its 116th plenary session which took place on 19-20 October 2018 in Venice (Italy), the Commission:

✓ **Adopted Opinions on:**

- [the draft law on the legislative initiative of citizens in **Albania**](#), jointly with OSCE/ODIHR ;
- [the Administrative procedure and justice code of **Kazakhstan**](#);
- [the Law no. 120 of the Republic of **Moldova** on preventing and combating terrorism](#);
- [amendments to Law No. 303/2004 on the statute of judges and prosecutors, Law No. 304/2004 on judicial organisation and Law No. 317/2004 on the Superior Council for Magistracy of **Romania**](#);
- [the amendments to the Criminal Code and Criminal Procedure Code of **Romania**](#);
- [the Law amending the Law on the Judicial Council and on the Law amending the Law on Courts of “**the former Yugoslav Republic of Macedonia**”](#);
- [the draft organic law of **Tunisia** on the organisation of political parties and their financing](#);
- [the draft election code of **Uzbekistan**](#), jointly with OSCE/ODIHR ;

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

- Ms Vasilika Hysi, Vice President of the Parliament of **Albania**;
- Mr Ararat Mirzoyan, First Deputy Prime Minister of **Armenia**, and was informed on the latest developments concerning the envisaged early parliamentary elections and on the draft amendments to the Election Code currently pending before parliament;
- Marat Beketayev, Minister of Justice of the Republic of **Kazakhstan**;
- Mr Gheorghe Racoviță and with Ms Ludmila Șchendra, Security and Intelligence Service of the **Republic of Moldova**;
- Mr Florin Iordache, Chair of the Joint Special Parliamentary Commission for amending the Judicial Laws of **Romania**;
- Ms Renata Deskoska, Minister of Justice of “**the former Yugoslav Republic of Macedonia**”;
- Mr Mirza-Ulugbek E. Abdusalomov, President of the Central Election Commission of **Uzbekistan**;
- Mr Mohamed Auajjar, Minister of Justice and Liberties of **Morocco**;
- Mr José Antonio Dias Toffoli, President of the Federal Supreme Court of **Brazil**, on constitutional developments in that country;
- Mr Adama Dieng, **United Nations** Special Adviser on the Prevention of Genocide;
- Mr Stéphane Dion, Ambassador of **Canada** to Germany and Special Envoy to the European Union and Europe and Mr Warren Newman, Senior General Counsel, Constitutional, Administrative and International Law, Department of Justice of Canada;
- 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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LINKS

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October 2018 Plenary Session

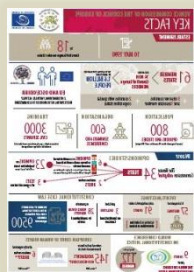
Other decisions

- ✓ **Was informed on follow up to the Opinions on:**
 - ✓ Opinion on the draft Constitutional Law on the Constitutional Court of **Armenia**;
 - ✓ Joint Opinion of the Venice Commission and the OSCE/ODIHR on the draft Law on Referendum of **Armenia**;
 - ✓ Opinion on proposed new Article 37 of the Law on the People's Advocate - Finance Provisions of the Republic of **Moldova**;
 - ✓ Opinion on the draft Law of **Montenegro** on amendments to the Law on the Judicial Council and Judges;
- ✓ **Decided to launch a study on the Rule of law standards pertaining to the Bar;**
- ✓ **Was informed on follow up to the Opinion on the draft amendments to the constitutional provisions on the judiciary of Serbia and took note of the Secretariat Memorandum on the compatibility of the revised draft Amendments to the Constitutional Provisions on the Judiciary with this opinion;**
- ✓ **Was informed on:**
 - progress in the electoral reform process in **Bosnia and Herzegovina**;
 - recent constitutional developments in **Mexico**, in **Peru** and in **Palestine**;¹
 - developments in the recent case-law of the **European Court of Human Rights** as concerns references to Venice Commission studies, reports and opinions;
 - progress of work on the **Venice Principles on the protection and promotion of the Ombudsman Institution**;
- ✓ **Was informed on the results and conclusions of the meeting of**
 - the Council for Democratic Elections (18.10.2018) and took note that the English version of some provisions of the Code of Good Practice on Referendums and of the Code of Good Practice in Electoral Matters will be aligned to the original French version;
 - the Sub-Commission on the Mediterranean Basin (18.10.2018) in particular the results and conclusions of
 - the UniDem-Med Seminar “Transformation and innovation in the senior Civil Service: challenges and opportunities” (Tunis, 24-27.09.2018);
 - the 2nd International Conference of the Arab Union of Administrative Judiciary on “Voting In Elections and Referendums - Right and Duty” (Cairo, 8-9.10.2018);
 - the Sub-Commission on Working Methods (18 October 2018), adopted amendments to Article 14a of the Rules of Procedure on urgent opinions and endorsed the Protocol on the preparation of such urgent opinions;



Publications

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



Just published:

- E-Bulletin on Constitutional Case–Law: **Issue 2018/1 (e-version only from now on)**
- UniDem Campus Med – **South Programme III**
- **2017 Annual report of activities**

Forthcoming:

- E - Bulletin on Constitutional Case – Law: **Issue 2018/2**
- Rule of Law Checklist (**Spanish version**)

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

October 2018 Plenary Session

Selected Opinions

Romania - Opinion on draft amendments to Law No. 303/2004 on the Statute of Judges and Prosecutors, Law No. 304/2004 on Judicial Organisation, and Law No. 317/2004 on the Superior Council for Magistracy - [CDL-AD\(2018\)017](#)

Background

In a letter dated 3 May 2018, the President of Romania requested the opinion of the Venice Commission on three legislative drafts amending existing legislation in the field of the judiciary:

- Draft law amending Law no. 303/2004 on the status of judges and prosecutors,
- Draft Law amending Law no. 304/2004 on judicial organization, and
- Draft Law amending Law no. 317/2004 on the Superior Council of Magistracy.

The Monitoring Committee of PACE also asked, on 4 May 2018, for the opinion of the Venice Commission on the three drafts.

In view of the complexity of the proposed amendments, as well as of the related legislative process, involving successive versions of the three texts, the opinion focuses on the provisions raising more critical issues for the reforms, which are being undertaken.



A delegation of the Venice Commission meeting with the Romanian authorities, Bucharest, September 2018

Conclusions

According to the Romanian authorities, the reform process was necessary and has been undertaken in order to provide answers to existing problems and needs of the judicial system and to adapt it to new social realities. The proposed amendments were aimed at strengthening independence of judges, by separating judges' and prosecutors' careers, but also at increasing efficiency and accountability of the judiciary. Some of the changes were needed in order to implement a number of decisions of the Romanian Constitutional Court.

A number of improvements are being proposed, such as the exclusive role of the SCM in the appointment and revocation of high-ranking judges or the separation of the decision-making, on judges' and prosecutors' matters, within the SCM.

However, as emphasised in the present opinion, there are important aspects introduced by the three drafts, which seen alone, but especially taking into account their cumulative effect, in the complex political context currently prevailing in Romania, are likely to undermine the independence of Romanian judges and prosecutors, and the public confidence in the judiciary. Although welcome improvements have been brought to the drafts following criticism and a number of decisions of the Constitutional Court, it would be difficult not to see the danger that, together, these instruments could result in pressure on judges and prosecutors, and ultimately, undermine the independence of the judiciary and of its members and, coupled with the early retirement arrangements, its efficiency and its quality, with negative consequences for the fight against corruption. In addition, the legislative process, which has proved to be very divisive for the Romanian society, has been criticised for being excessively fast and lacking transparency, and conducted in the absence of inclusive and effective consultations.

The Venice Commission therefore recommends to Romanian authorities to:

- Re-consider the system for the appointment / dismissal of high-ranking prosecutors, including by revising related provisions of the Constitution, with a view to providing conditions for a neutral and objective appointment/dismissal process by maintaining the role of the institutions, such as the President and the SCM, able to balance the influence of the Minister of Justice;
- Remove the proposed restriction on judges and prosecutors freedom of expression;
- Supplement the provisions on magistrates' material liability by explicitly stating that, in the absence of bad faith and/or gross negligence, magistrates are not liable for a solution which could be disputed by another court; amend the mechanism for recovery action in such a way as to ensure that the action for recovery only takes place once and if liability of the magistrate has been established through the disciplinary procedure;

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[All Opinions on Romania](#)

[Full text of the opinion](#)

October 2018 Plenary Session

Selected Opinions

Republic of Moldova - Opinion on the Law on preventing and combating terrorism - [CDL-AD\(2018\)024](#)

Background

By letter of 2 August 2018, Ms Victoria Iftodi, the Minister of Justice of the Republic of Moldova, requested an opinion from the Venice Commission on the Law on Preventing and Combatting Terrorism.

The request by the Ministry of Justice was prompted by the recommendation of 4 August 2017 by the EU – Republic of Moldova Association Council. The Council had suggested assessing Law no. 120 with regard to its compliance with human rights standards (see p. 2.3 of the Recommendation). Consequently, Law no. 120 will be assessed from the human rights' perspective.

The primary concern of this opinion is not casting aspersions on the work and practices of the Secret Intelligence Service (the SIS), i.e. the body responsible under Law no. 120 for preventing and combating terrorism, but with assisting the Republic of Moldova in getting the operational framework right.

This opinion does not cover all issues which may arise in relation to Law no. 120. This Law has been in operation only since September 2017, and since the Republic of Moldova has been fortunate in not being a target for terrorists, there is little or no jurisprudence or administrative practice in this area. Consequently, the Venice Commission will focus on those elements of the Law which may potentially lead to abuses, even if the application of this Law has not, to date, or at least as yet to the best of its knowledge, given rise to major issues.

Conclusions

Law no. 120, adopted in 2017, establishes principles and rules of the fight against terrorism, and the institutional arrangements in this sphere. The Venice Commission reiterates that a State needs effective intelligence and security services: intelligence is thus an inescapable necessity for modern governments. The Republic of Moldova, in the face of the terrorist threat, is entitled to take extraordinary measures. However, those measures should be mutually coherent, foreseeable, and compatible with the human rights obligations which Moldova has under the international and European human rights law. From this perspective, Law no. 120 needs a thorough revision, and its relation with other relevant legislation (in particular the Criminal Procedure Code and Law no. 59 on the special investigative activities) should be specified more clearly.

The Venice Commission is confident that such revision may be done without affecting the necessary effectiveness of anti-terror mechanisms and powers. Amongst the most important amendments, the Venice Commission recommends the following:

- The list of measures which the Secret Intelligence Service may take within the “prevention” mandate (insofar as they may affect private persons) and of the corresponding obligations of private persons, must be reviewed. These measures should be described with due precision as to their material scope, and the Law must provide that some of those measures need an external authorisation (a court warrant, a decision by the prosecution, etc.) and specify the measures and the relevant procedures in detail.
- The Speaker of Parliament should not have the power to coordinate anti-terrorist activities; this should be a prerogative of the executive. Instead, a clear and unambiguous oversight procedure must be put in place: the parliamentary control mechanism should be reinforced, involving either the sub-commission on the Secret Intelligence Service, or a mixed expert body, both with strong presence of the opposition. In addition to the examination of general reports, such bodies should have access to the specific files. A proper record-keeping system should be put in place within the Secret Intelligence Service.

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[Read more...](#)



[All Opinions on Moldova](#)

Selected Events

Democratic Institutions and Fundamental Rights

Ombudsman Institutions – “Venice Principles” – Meeting of stakeholders

31/10/2018

Paris - The Working Group met with International organisations and Ombudsman Institutions for an exchange of views on the Draft Principles on the Protection and Promotion of the Ombudsman Institution (“the Venice Principles”).



Constitutional Justice

Morocco – international symposium

27 - 28/09/2018

Marrakech - The Constitutional Court organised an international symposium entitled “Access to constitutional justice: new challenges to the a posteriori constitutional review”.

The President of the Venice Commission Mr Gianni Buquicchio participated in the opening session.

Tunisia – Statement by the President of the Venice Commission

14/11/2018

Tunis – The President of the Venice Commission Mr Gianni Buquicchio has made the following statement:

"Constitutional courts are the guardians of constitutions. It is essential that the Constitutional Court provided for by the Constitution of Tunisia be established and begin to exercise its functions as soon as possible. I call on all the political forces sitting in the People's Representatives Assembly to elect without further delay the parliamentary quota of the members of the Court by a qualified majority, as stipulated by the Constitution, in order to ensure a pluralist composition of the Court."

Elections and political parties

Voting in elections and referendums – between right and duty - international conference

08 - 09/10/2018

Cairo - The Egyptian Council of State organised in cooperation with the Venice Commission and the Arab Union of Administrative Judiciary an international conference entitled “Voting in Elections and Referendums – between Right and Duty”. This event gathered judges and academia from Egypt, other countries from the region and European experts.



- ▶ Web site of the Arab Union of Administrative Judiciary
- ▶ South Programme III

Neighbourhood Cooperation

Transformation and Innovation in the Senior Civil Service – 8th UniDem Med Seminar


24 - 27/09/2018

Tunis - The Venice Commission, in cooperation with the Presidency of the Government of Tunisia, organised the 8th UniDem Med regional seminar from 24 to 27 September 2018 in Tunis, Tunisia. The seminar entitled “Transformation and Innovation in the Senior Civil Service: challenges and opportunities” gathered some 50 senior servants and experts from 11 European and southern Mediterranean countries, namely Algeria, Jordan, Lebanon, Morocco, Palestine* and Tunisia. They exchanged best practices as regards the process of innovation in the civil service against a backdrop of respect for rule of law and basic civil service values and principles.

Besides, the seminar explored ways to instil leadership and excellence in the senior civil service with regard to recruitment, management of competencies and evaluation as well as the way new public management can contribute for improved democratic governance and better accountability before the citizens.

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](#)

Role and place of independent bodies in a democratic state - 6th Intercultural workshop of democracy


13 - 14/11/2018

Tunis - The Venice Commission, in co-operation with the Ministry of Foreign Affairs of Tunisia, have organised the 6th Intercultural Workshop on Democracy on "The role and place of independent bodies in a democratic state".

This regional event was held in Tunis from 13 to 14 November 2018 bringing together leading European experts and senior officials from independent bodies of Tunisia and other countries of the Southern Mediterranean.

The debates focused on themes such as: relations of independent bodies with the executive, legislative and judicial powers, composition, technical skills, accreditation and funding of bodies etc.

The workshop was funded by the Joint Council of Europe-European Union Programme "Ensuring the Sustainability of Democratic Governance and Human Rights in the Southern Mediterranean", [South Program III](#).

-  [Intercultural workshops on democracy](#)
- [Workshop programme](#)
- [Conclusions](#)



Forthcoming activities

Opinions

- **Albania** – draft Constitutional amendments enabling the vetting of politicians;
- **Georgia** – the draft provisions on the Prosecutorial Council on the Prosecutor's Office and on the provisions on the High Judicial Council in the Law on courts of general jurisdiction;
- **Hungary** - the Hungarian Law of 20 July 2018 amending certain tax laws and other related laws and on the immigration tax (section 253 on the special immigration tax); *questions related to the protection of privacy (postponed)*;
- **Kazakhstan** - the Concept Paper on the reform of the High Judicial Council;
- **Luxembourg** - the Revised Constitution;
- **Malta** - the Constitutional arrangements and separation of powers and the independence of the judiciary and law enforcement bodies;
- **Montenegro** - *draft law on amendments of the Law on freedom of religion (postponed)*;
- **Spain** - *"Citizens' security law" (postponed)*;
- **"The former Yugoslav Republic of Macedonia"** - the Law amending the Law on Courts;
- **Turkey** - the Amendments to the electoral legislation and related "harmonisation laws" of Turkey adopted in March and April 2018

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
- New technologies in the electoral process