



Address by Mr Gianni Buquicchio
President of the Venice Commission
presenting its Annual Report of Activities for 2015
to the Committee of Ministers

Wednesday, 1 June 2016

Ms Chairperson, Ambassadors, Ladies and Gentlemen,

First of all, I would like to thank you for your warm words of welcome and of appreciation for the Venice Commission. It is always a pleasure for me to exchange views with the Committee of Ministers.

These exchanges are even more important at the moment, where we are confronted with, to put it diplomatically, a period of increasing **challenges** for Europe.

Challenges are there to be met and the Venice Commission is doing its best to contribute in meeting them. I am proud to say that I believe the Venice Commission to be one of Europe's best tools to face many of these -quite fundamental - challenges.

In times like these, the focus must be on the basics. The mandate of the Venice Commission is precisely to deal with the implementation of basic values in practice.

With respect to one of the basic values, the **rule of law**, we have now finalised a new tool, the checklist on the rule of law, which you will find in your files.

This checklist renders the notion of the rule of law more operational and practical by identifying clear benchmarks in many areas.

It should be a useful tool both for the Council of Europe and the European Union as well as for their member states.

While the checklist is based on our report from 2011 on the rule of law, it was not an easy tool to develop and I would like to thank the UK Chairmanship of the Committee of Ministers, which organised a conference in London in 2012 providing a decisive impetus to this work.

I am very pleased that the current Estonian chair shares this interest and that Minister Kaljurand will personally participate in the launching event of the checklist during the Assembly session in June.

There can be no rule of law without an independent and impartial judiciary and this remains a major challenge in many member states. We have traditionally focused our attention, as has the Council of Europe in general, on strengthening the independence of the judiciary. This remains essential.

However, the issue of corruption within the judiciary has become increasingly a major concern in many countries.

It is therefore very welcome that an efficient, impartial and independent judiciary appears as the first of the five building blocks of democratic security in the report by the Secretary General on the state of democracy, human rights and the rule of law.

The new Council of Europe Action Plan for strengthening judicial independence and impartiality, which was launched at the High Level Conference in Sofia in the framework of the Bulgarian chairmanship of the Committee of Ministers, shows that the judiciary is a main priority of our Organisation.

I had the privilege to deliver the keynote speech at the Sofia Conference and refer you to this speech for a more detailed analysis of the situation. On this occasion, I would like to highlight only two points:

1. Although we are a body that primarily deals with legal rules, we are aware that the problem does not mainly lie in bad legal rules, but in the lack of a real culture of judicial independence and respect for judicial independence. Further improving the legislation is useful, but not sufficient and we have to continue working on implementation.
2. Nevertheless, we have to further improve the rules in some countries and to adapt them to the new challenges, in particular to that of judicial corruption.

Two countries have consulted us recently on a general vetting of all sitting judges, they are Ukraine and Albania.

To the disappointment of some judges, the Venice Commission has not raised an objection of principle to this vetting. It is true that any dismissal of a judge interferes with judicial independence and therefore has to be approached with extreme caution.

However, we cannot overlook the fact that in some countries the judiciary has completely lost the trust of society.

Corruption is the ultimate denial of judicial independence and impartiality. If it becomes pervasive, extraordinary measures against it must be taken. Obviously, sufficient guarantees have to be provided to ensure that the judges concerned are treated fairly and objectively.

This sounds easier than it is since, in a system of pervasive corruption, who can be trusted to distinguish between the good and the bad judges?

In both cases, Albania and Ukraine, the contribution of the Venice Commission was crucial to ensure the quality of the texts which will hopefully be adopted very soon.

Even more importantly, the involvement of the Venice Commission gave these texts sufficient credibility both domestically and internationally, to be accepted.

You will find several other examples of Venice Commission involvement in reforms of the judiciary and/ or the prosecution service in our Annual Report.

Ms Chairperson,

Let me now turn to the second core value, **democracy**.

I would like to seize this opportunity to congratulate the Armenian authorities on the revised Constitution, which was drafted in close co-operation with the Venice Commission.

The main result of the reform is the move towards a parliamentary system of government. We are now continuing our co-operation with respect to the legislation required for the implementation of the revised Constitution, starting with the electoral code.

In Ukraine, we greatly contributed to the drafting of the constitutional amendments on decentralisation, as well as on the judiciary.

Both texts were adopted in the first reading and take our recommendations fully into account. These amendments have the potential to push the country forward and I hope that the very complicated political situation in the country will not prevent the final adoption of these texts.

The adoption of the constitutional amendments on the judiciary by the Verkhovna Rada is foreseen for tomorrow. We will therefore soon know whether our efforts were successful..

Over the last years, our electoral activities have tended to focus more on the implementation of the legislation than on its drafting.

The Conference of European Electoral Management bodies, which we have organised this year together with the Permanent Electoral Authority of Romania and which addressed the issue of new technologies in elections, is an example in this respect.

The Venice Commission has also contributed to the launching of an Arab Conference of Electoral Management Bodies and we will co-operate closely with this Conference.

We have recently observed, however, that there is a renewed interest in the reform of electoral legislation and at our session next week, we will deal with the electoral legislation of Armenia, the Republic of Moldova and Ukraine.

As regards the third value, the protection of **human rights**, our main focus are those fundamental freedoms that are particularly crucial for a democratic system, notably freedom of expression and freedom of assembly and association. It is no coincidence that these freedoms are also in the focus of the Report by the Secretary General.

During the course of last year, we have adopted opinions on legislation relating to the freedom of expression in Hungary and Montenegro and in March of this year, we have dealt with legislation in “the former Yugoslav Republic of Macedonia” and Turkey.

As regards freedom of association, the rules applicable to organisations receiving financial support from abroad are the most controversial topic in a number of countries.

I am aware that you have also debated this topic and that the Report by the Secretary General asks for a review of the applicable standards.

While we are thus dealing with challenges to all **three core values** of our Organisation, as a body of constitutional experts, we are fully conscious that these values form a coherent whole and should not be looked at in isolation.

We are increasingly confronted with a simplistic approach, which reduces democracy to the rule of the majority without any limitations and without recognising the need to safeguard the rule of law and respect for human rights.

This “winner takes all” approach to democracy is particularly wide-spread in the more recent democracies, but seems to also find increasing support in older democracies.

For the Council of Europe, only an approach based on the respect for all three core values can be accepted.

The Report by the Secretary General envisages the development of guidelines concerning the role and responsibility of the political majority and its interaction with the opposition.

The Venice Commission, following an earlier proposal by the Presidential Committee of the Parliamentary Assembly, has established a working group on this topic. We will take into account our earlier report on the role of the opposition and work together with PACE and DG II.

At the same time, we should not overlook the fact that the opposition in some countries is also not acting in a responsible manner.

At the national level, in most member states, constitutional courts are the key institutions that ensure that democratically elected majorities respect the rule of law and human rights.

The Venice Commission has from the outset closely co-operated with these courts. We contributed to their establishment and to increasing their competences, including by supporting the introduction of the individual complaint as outlined in our report prepared at the request of Germany.

We will continue to co-operate closely with constitutional courts bilaterally and multilaterally, including through the World Conference on Constitutional Justice. We will continue to insist on the need to respect the role of constitutional courts and on the need to implement their judgments. This is an indispensable element of the rule of law.

Ms Chairperson, Ladies and Gentlemen,

The challenges faced by Europe cannot be a reason to reduce our activities in Europe's **neighbourhood**.

The refugee crisis shows how short-sighted this would be.

The Venice Commission will continue its activities in the Southern Neighbourhood, where we launched the UniDem Campus for civil servants from the Southern Mediterranean countries, as well as in the Eastern Neighbourhood, where the European Union will fund a new programme of electoral co-operation with Kyrgyzstan.

Finally, the Venice Commission may also play a role in issues directly affecting **this Organisation**.

At our session next week, we will adopt our final opinion on the Amendments to the Constitutional Law of the Russian Federation on the Constitutional Court.

As you know, these amendments concern the execution of decisions by international courts and in particular the European Court of Human Rights. I do not wish to go into any details before the adoption of the opinion by the Commission, but in my view, the recent decision by the Russian Constitutional Court also contains a number of positive elements.

Ladies and Gentlemen,

In conclusion, I would like to convey the message that in times of challenges and crisis, it is essential to focus on the core values and key issues. This corresponds to the natural role of the Venice Commission.

This task has not become any easier, quite the contrary.

Nevertheless, I believe that we already have achieved much with **modest means**. But we cannot create miracles.

For our activities in particular in the neighbourhood, we receive financial support from outside our ordinary budget and I would like to thank the representatives of the European Union, Norway, Italy and Turkey, as well as those governments who supported the Action Plan for Ukraine from which we benefit.

Our main activities are nonetheless in Europe, defending the core values of this Organisation, and they should have a solid financial basis. If we continue to be subjected to a policy of zero nominal growth, our Commission will no longer be able to carry out all tasks expected from it.

Your Committee likes to speak about prioritisation. In times like these it indeed seems indispensable to prioritise.

If you share my opinion that the activities of the Venice Commission are a priority, I encourage you to convince your governments that this priority has to be reflected in the budgetary decisions.

If the zero nominal growth policy were to be continued for the Council of Europe – something I would deeply regret –, it should not be applied across the board and exceptions should be made for priorities.

Thank you very much for your attention. I did not have the time to go into much detail on individual countries, but I am ready to reply to your questions.