

**Address by Mr Gianni Buquicchio**  
**President of the Venice Commission**  
**presenting its Annual Report of Activities for 2016**  
**to the Committee of Ministers**

Wednesday, 21 June 2017

Mr Chairman, Ambassadors, Ladies and Gentlemen,

Thank you for your warm words of welcome and of appreciation for the Venice Commission. The support of the Committee of Ministers is an important stimulus for our work, even more important in times when our work becomes increasingly sensitive and difficult.

Let me start by referring to another Annual Report, that of the Secretary General on the state of human rights and democracy in Europe. In the introduction to the report, the Secretary General poses the question of how resilient Europe's democracies are when confronted with the new challenges brought about by mounting populism.

In my opinion the Venice Commission can play a key role in contributing to this resilience. I see our role as two-fold:

- On the one hand, we have to continue with our traditional role of assisting countries and, in particular, the more recent democracies in building better democratic systems;
- On the other hand, we must stand firm everywhere in defending European values and warn against attempts to undermine them.

You are probably more interested in the most recent developments. I will therefore focus on current issues and refer you for the activities of last year to our written report.

To start with our first role of continued co-operation, at our session last week, two countries were on the agenda, which are particularly successful examples of such co-operation: Georgia and Armenia.

With respect to **Georgia** we adopted an opinion on a draft revised Constitution. This revised Constitution is the second major reform following the constitutional reform of 2010, it addresses the criticism we raised with respect to this reform and completes the transformation of the political system into a parliamentary democracy.

I particularly welcome, in this respect, the commitment of the Georgian parliament not to adopt any amendment which would be negatively assessed by the Venice Commission.

Many of our comments are already reflected in the draft and I am confident that once finally adopted, the text will be in line with our opinion. The next step will then be to continue co-operation on the implementing legislation.

With **Armenia**, we are already at this second stage of co-operation concerning the implementing legislation. We provided an opinion on the amended Constitution in 2015. As is the case for Georgia, it was a second comprehensive constitutional reform, following the one of 2005.

The aims of the reform were also to complete the transition to a parliamentary form of government, to strengthen the rule of law and to address our Commission's criticism of the 2005 reform. Last year, we adopted an opinion on the new electoral code, last week an opinion on the revised law on the constitutional court and our next opinion will be on the new judicial code.

This is an excellent example of a strategic co-operation going beyond a specific piece of legislation.

**Ukraine** could also be mentioned in this respect although, after the progress initially made following the Maidan events due to the much more complicated political situation, co-operation has slowed down. I'll travel to Kyiv later this month to discuss with President Poroshenko ways in which to make this co-operation more dynamic again.

We also hope that **Serbia** will launch a constitutional reform in the field of the judiciary, which is overdue, but difficult since it requires a referendum.

With many other countries we co-operate well. This concerns in particular judicial reform, which is an essential challenge for many countries and where we support the Council of Europe Action Plan on strengthening judicial independence and impartiality launched in Sofia last year, as well as electoral legislation and legislation on fundamental rights.

What are the reasons of the **success of this co-operation** with the Venice Commission in many countries? Our expertise, our consistency, our ability to fine-tune any advice to the specific situation in the country as well as the independent and non-political character of our advice are crucial elements.

But, our main asset is probably the **credibility and trust** the Commission has acquired through its work in our partner countries in Europe and beyond.

In societies with conflictual relations between majority and opposition and few trusted institutions, the involvement of a trusted outsider may be the only means of providing a reform process with the necessary credibility.

Mr Chairman,

In an ideal world, the Venice Commission would not be needed at all, and in a slightly less ideal world, we could focus on our co-operation with member states to advance reforms. Recent developments in Europe oblige us to assume increasingly a role which the Financial Times has recently called "custodian of constitutional probity all over Europe".

We are, nowadays, confronted with a simplistic approach to democracy, reducing it to the majority vote, which is the very opposite of "democracy through law". As pointed out by the Secretary General in his Annual Report, some governments are openly challenging constitutional constraints and disregarding international obligations.

Our mandate is to defend constitutionalism, the rule of law, human rights and respect for international commitments and deepen the understanding of these values.

We have developed a number of standards and tools in this respect, such as the Rule of Law Checklist, which was endorsed by your Committee.

But, increasingly we have been obliged to criticise attempts in some member states to get rid of or, to weaken, **constitutional constraints** and we had to be quite firm in this respect.

**Checks and balances** are important in any political system. They are crucial in presidential systems, where a lot of power is concentrated in the hands of a single individual.

How often have we all, in recent months, thought that luckily the United States is a country with strong checks and balances?

The most important constraint on the powers of politicians in a modern democracy tend to be **constitutional courts**. From the very beginning, the Venice Commission has closely co-operated with these courts and contributed to their establishment in most new democracies.

We are working with the Conference of European Constitutional Courts and we have initiated, and provide the Secretariat of the World Conference on Constitutional Justice. I would like to seize this opportunity to thank the Lithuanian authorities for hosting the next congress of the World Conference in Vilnius in September and I hope that all member courts will be allowed to come to the conference.

Constitutional courts are increasingly the first or main victims of attempts to govern without any constitutional constraints. One of the main tasks of the Venice Commission, as the custodian of constitutional probity, is to defend their role and independence.

This has been the topic of some of our most important opinions and the Venice Commission has asked me to make statements defending constitutional courts whenever their independence is threatened.

Our role of defending parliaments and independent institutions, such as constitutional and ordinary courts, goes hand in hand with our role of **defending fundamental freedoms**, especially those essential in a democracy such as freedom of expression and freedom of association as the basis of a functioning civil society.

But, the new populist tendency is not only to get rid of domestic constraints, but also, and especially, to disregard **international commitments**. This is of particular concern for the Council of Europe and threatens to undermine the European Convention on Human Rights.

As constitutional lawyers, we have much sympathy for the wish to safeguard national constitutional values, but this should be done by reconciling national and international approaches and not by disregarding inconvenient international obligations.

If we have to be firm in defending our values, this does not mean that we should reject justified criticism or attempts to modify rules to adjust them to new challenges. While our basic values are immutable, the specific rules implementing them are not.

Let me give two examples. With respect to the judiciary, we have accepted that in countries where judicial corruption is endemic, **vetting** mechanisms for sitting **judges** may be necessary, as long as there are sufficient guarantees and the aim is to strengthen judicial independence and impartiality and not to bring the judiciary under political control.

With respect to freedom of association, we have accepted that it may be a legitimate aim to ensure **transparency of funding of NGOs** from abroad. We strongly underlined, however, the need to avoid the stigmatisation of NGOs and to provide for balanced procedures. We are also, at the request of the Secretary General, preparing a study on the legal aspects of foreign funding of NGOs.

Mr Chairman,

Let me be brief on our role in the **neighbourhood policy** of our Organisation. In Central Asia, we have started an ambitious project focused on electoral reform in Kyrgyzstan, funded by the EU, and we hope to also obtain funding for a more general programme for co-operation in the region, covering also Tajikistan and Uzbekistan. In particular, Kazakhstan has recently made some - quite limited - steps forward and we should build on them.

In the Southern neighbourhood, in addition to bilateral co-operation with Tunisia, Morocco and Jordan (and hopefully soon Algeria), we have a training programme for civil servants from 7 Arab countries launched in co-operation with Morocco, which proved very popular and successful, and we helped to establish, and contribute to the functioning of the Arab Conference of Election Management bodies.

Ladies and gentlemen,

After this *tour d'horizon* on our activities, I'd like to briefly address some general questions concerning our work.

A question, which is frequently asked, concerns the **impact of our opinions** and how we follow them up. As regards our co-operation activities, I can say that our opinions usually have a considerable impact on the legislative texts to be adopted.

Constitutions and laws tend to be complex and address many issues. Not all remarks by the Commission are taken on board, but a substantial part of them are, especially of the key recommendations.

There may, however, be considerable time lags. Not all planned legislation is adopted immediately and I have given you examples of recommendations of the Commission on Armenia and Georgia which were implemented several years later.

Also, the mere fact of involving the Venice Commission will have an effect on the reform, since it implies that there is a wish to comply with international standards and to follow the often well-known *acquis* of the Commission.

When we intervene, not at the request of the country, but at the request of Council of Europe organs, the impact of our opinions depends much more on political factors beyond our control. Even if our opinions may then not be reflected in the adopted texts, they tend, at least, to shape the national and international discussion and provide an orientation for the future.

It is difficult to give precise figures in this area, although you will find some indications in the Progress Review Reports. To make things more transparent, our Secretariat is planning – resources permitting – to establish a follow-up system for our opinions.

To sum up, our role is, if anything, growing in importance in a period of new challenges. I am confident that the Venice Commission will be able to continue to play its role, if it has the support of member states. There tends to be a lot of verbal support and appreciation for our work, but we also need practical support. Our **budget** is extremely modest compared to the scope of our activities and our 61 member states.

If you decided to continue applying the zero nominal growth policy to our budget, we would no longer be able to deal with all requests. If you consider the activities of our Commission to be priorities, you will have to reflect this priority in your budgetary decisions. Our budget is separate from the Ordinary Budget and the Secretary General cannot make any transfers to it. The responsibility is therefore yours.

Recently, there have been some **leaks of draft opinions**. We have taken steps, such as indicating on each page that the text is a restricted draft. Since our sessions are quite big, with more than 100 participants, leaks cannot be prevented entirely. One further step, we could take, would be to discontinue our practice of sending draft opinions to permanent representations. I am not sure whether this would make a significant difference, since most leaks tend to occur in the countries subject of the opinions, where there is the biggest public interest. However, we are ready to follow the wishes of your committee in this respect.

Finally I have one more issue to raise with you. The Venice Commission was approached by the Organisation of American States on whether it would be ready to provide an opinion on President Maduro's initiative to set up a constituent assembly in Venezuela. This is indeed an issue of concern, but Venezuela is not a member of the Venice Commission, and the Organisation of American States is not an organisation regularly participating in our work and thereby entitled to request an opinion. However, there is a Memorandum of Understanding of 2011 between OAS and the Council of Europe and, if the Committee of Ministers agrees, we could proceed on this basis.

Thank you very much for your attention. I look forward to your questions.