



**Ministerial conference, 25th anniversary of SIGMA
Paris, 13–14 December 2017**

**Speech of the President of the Venice Commission
Mr Gianni Buquicchio**

Ladies and gentlemen,

Before developing the theme of the rule of law, I would like to emphasise the importance of the co-operation between the Venice Commission and SIGMA, and the complementarity of our work.

A constructive and useful tripartite collaboration between the Venice Commission, SIGMA and Southern Mediterranean countries has been in place since 2016, based on the expertise of the Venice Commission in the field of democracy, human rights and the rule of law.

This co-operation is appreciated by our partners and I would like to take this opportunity to thank SIGMA, the European Union, the OECD and the partner countries for the quality of the collaboration, and to express the wish that it stand the test of time.

I would like to say a bit more about the Venice Commission and co-operation with the States that you represent. The Venice Commission, the Council of Europe's advisory body on constitutional matters, has been providing aid to States in democratic transition since its creation in 1990.

It currently comprises 61 member states from all continents, including almost all the SIGMA partner states.

The Venice Commission disseminates international standards on democracy, human rights and the rule of law in various ways. It is recognised in particular for its opinions on constitutions and legislation, as well as its comparative studies and guidelines,

including the Report on the Rule of Law and the Rule of Law Checklist, which is available to you today.

However, this represents only one area of its work. The Venice Commission therefore created the UniDem campus seminars to spread the aforementioned common values, starting with Eastern European States as of 1999.

By bringing together senior officials, this work has helped to improve the efficiency of the administration. Indeed, an efficient administration can help establish a culture of transparency in society, thereby instilling greater public confidence in State structures and public policies.

The success of the UniDem campus has led to its replication in another part of the world. In 2015, the UniDem Med project was launched for Southern Mediterranean partner countries, as part of a partnership between the Venice Commission and the Ministry of the Reform of the Administration and the Civil Service of the Kingdom of Morocco.

In this respect, allow me to acknowledge the presence of Mohamed Ben Abdelkader, the minister in charge of the Reform of the Administration and the Civil Service, who has done so much to ensure the success of the Campus, and to thank him for his commitment.

Six UniDem Med seminars have already been organised. They have touched on various topics such as human rights and public service, open government, merit and equality as well as the reform of the statute of the civil service, anti-corruption and integrity in the public sector, and gender equality.

I will now move on to the specific subject of our discussions today.

First, what are we talking about when we are dealing with the rule of law? At first glance, the notion of "Rule of Law" may appear to be a scholarly issue, or a general principle to be referred to but which achieves nothing substantial.

The work of the Venice Commission, which resulted in the Rule of Law Checklist which has been made available to you, proves just the opposite. It endows the rule of law with core elements. If the checklist does not give a definition, it is in order to better focus on what rule of law actually means in concrete terms.

That is what I am going to briefly present, by indicating the concrete implications of rule of law, rights and duties for both state institutions and individuals – and, conversely, the risks arising from the absence or lack of rule of law.

As an introduction, it should be specified that the notion rule of law cannot be understood in isolation. Rule of law is inseparable from human rights and democracy. Democracy implies involving the population in the decisions made within a society; human rights protect individuals from arbitrariness and excessive attacks on their liberties, thus guaranteeing human dignity.

What are the core elements of the Rule of law? There are five key principles:

- Legality
- Legal certainty
- Prevention of abuse/misuse of powers
- Equality before the law and non-discrimination
- Access to justice

In addition, the Venice Commission addressed two challenges specific to the rule of law: on the one hand, corruption and conflict of interest, on the other hand, data collection and surveillance.

So who are the recipients of the rule of law? Is it not a paradox to talk to you about citizens and businesses? Or rather individuals, whether they are nationals, foreigners, for-profit or non-profit organizations, or NGOs?

Admittedly, the main recipients of the principle of the rule of law are States and their various organs. The rule of law affects the structure of the state as well as the functioning of its institutions. Legislative power should be left to the executive and judges, while discretionary powers need to be limited, particularly with regard to their use by the executive branch in administrative matters.

However, the principle of legality implies everyone respecting rights, both individuals – nationals, foreigners, businesses – and State organs. This applies primarily to the exercise of public powers by individuals, but it goes much further.

On an even more general note, individuals must respect the law and benefit from it. Rights and duties are inseparable, as reflected in Tom Bingham's definition that the rule of law implies that all persons and authorities within the State, whether public or private, should be bound by and entitled to the benefit of laws publicly made, taking effect (generally) in the future and publicly administered in the courts.

Let us now return to the five main principles, and imagine the consequence of their absence or weakness, especially for individuals:

In the absence of legality, the powers of the authorities would be far too broad, even unlimited. We can therefore see the extent to which liberties and human rights would be compromised.

Without legal certainty, no one could determine the consequences of their actions. We can easily imagine the implications of this for day-to-day life, especially for businesses given that, more than anything else, economic actors hate uncertainty.

As for abuse/misuse of powers, only those benefitting from it could ever wish for it. This is rarely the case for individuals.

The same is true of equality. While it may be tempting, as George Orwell famously put it, to be more equal than others, the great majority of individuals will remain among the least equal.

Finally, access to justice ensures that the law is not *lex imperfecta*, that it is effective and not a dead letter, as the ancient Romans had already understood. This is the cornerstone of the rule of law.

If we look at businesses in particular, it is plain to see that they are not tempted to invest in the absence of guarantees of the rule of law, which, as I have already said, is inseparable from democracy and human rights.

We have seen that the rule of law thus guarantees both the exercise of rights and respect for the duties of individuals. The role of the latter goes even further, as they participate in monitoring respect of the rule of law. How?

The rule of law is much more than the respect of substantive laws, i.e. Rule by Law, Rule by the Law, or even Law by Rules. It is a coherent whole which is enshrined in a culture.

As the rule of law checklist states, "the rule of law can only flourish in a country whose inhabitants feel collectively responsible for the implementation of the concept, making it an integral part of their own legal, political and social culture". This shows the responsibility of everyone, each citizen, each individual.

Admittedly, the authorities remain primarily responsible for the implementation of the rule of law. This obviously concerns their daily activity, which must be within the law (this is one of the pillars of the principle of legality), but also the assessment of respect for the rule of law and the promotion of a culture of the rule of law.

Here again, however, individuals also have an important role to play. Indeed, the evaluation of the implementation of the rule of law is not exclusively reserved to the authorities. There has to be an outside view, and the checklist is specifically designed to allow everyone to carry out this evaluation.

In other words, we are all responsible for the actual respect of the rule of law. Do not forget this.