



**CONFERENCE ON
“The New Millennium Constitutionalism”
Yerevan, 1-2 November 2018**

**Presentation by
Mr Gianni Buquicchio
President of the Venice Commission**

Mr Chairman of the Board of Trustees of the Centre of Constitutional Culture, dear Gagik,

Mr President of the Constitutional Court of the Republic of Armenia,
Ladies and Gentlemen,

I would like to thank first the Chairman of the Board of the Centre, Mr Harutyunyan, and the President of the Constitutional Court of Armenia, Mr Tovmasyan, for their kind words and their warm welcome.

It is always a pleasure for me to be in Armenia, where the work of the Venice Commission and its contribution to the development of democracy through law is highly appreciated. In turn, Armenia is appreciated for being a country open to international cooperation.

From the very beginning the Venice Commission has been involved with the work of the Centre. My colleague, Jan Helgesen, was present, when the Centre was launched two years ago, and I attended the conference the Centre organised in Rome last year.

The establishment of the Centre on Constitutional Culture reflects the idea, which I fully share, that it is not sufficient to have good constitutional texts but that it is

essential that in each country there is a constitutional culture ensuring that the constitution is fully implemented, not only its letter but also its spirit.

The Constitution can guarantee individual rights and become the foundation of the state's democratic order only if the values enshrined in it are shared by the society and have entered into the consciousness of the political elite.

Only then can it effectively limit power and organise public life.

Constitutional culture makes constitutions real. As you know better than I do, the 1936 Constitution of the Soviet Union contained many good provisions but these provisions had nothing to do with reality.

The culture prevailing at the time in the Soviet Union was the opposite of constitutionalism. Constitutionalism is the idea that the authority of government derives from and is limited by a fundamental law.

Under constitutionalism there can be no power without constraints. But of course nothing was further from the ideas of Stalin than the notion that his power should be limited by law.

This was certainly an extreme case, where the text of the Constitution and the practice of the State were in complete contradiction. Today we have somewhat more nuanced situations.

Most countries in Central and Eastern Europe have adopted new, democratic constitutions, mostly with the help of the Venice Commission.

The texts of the constitutions are generally good, but they tend not to be fully reflected in the reality of government, since the culture of constitutionalism is not fully developed.

Let me take the example of Armenia in this respect. After the end of the Soviet Union, Armenia enacted a new democratic constitution and a new institution was established to ensure respect for the Constitution, the Constitutional Court.

The court adopted many judgments, which contributed to the development of a new constitutional culture.

Moreover, with the assistance of the Venice, two very important constitutional reforms were carried out in 2005 and 2015, which aimed at strengthening the rule of law and completing the transition to a parliamentary system.

The Venice Commission highly praised the work of the Constitutional Commission in 2015. We were convinced that, thanks to these reforms, Armenia had one of the best constitutions in Europe. But, despite this very good constitution, the citizens of Armenia were obviously not satisfied with the situation in their country and, earlier this year, carried out a velvet revolution. Does this mean that our positive assessment of the Constitution was wrong?

I do not think so.

The problem was that those in power had not internalised the values of the new Constitution and regarded it as a tactical instrument to maintain their power.

The people proved to be wiser and insisted that practice should reflect the constitutional principle that power derives from the people and that the people can change those in power through democratic and non-violent means.

Also the constitutional culture of the political elite had changed, if not sufficiently.

The previous authorities did not try to stay in power through force and accepted that they had lost the confidence of the people and that they therefore had to relinquish power.

This consensus in society that any change of power has to take place through democratic and non-violent means bodes well for the future of your country.

I have no doubt that the new authorities to be elected in December will govern not only according to the text but also to the spirit of the new Constitution.

The new Constitution will provide them with the means to govern well. On the one hand, it provides sufficient checks and balances on those in power; on the other hand, it also provides sufficient guarantees for political stability and enables effective government.

This does not mean that the job is done and Armenia will be a flourishing democracy without major problems. More reforms will have to follow. Local democracy will have to be strengthened and not only the political elite but also the judiciary will have to internalise the democratic political culture.

Mr Chairman, ladies and gentlemen,

The title of the today's event is "the New Millennium Constitutionalism". Developments in Armenia can make us optimistic about the perspectives for constitutionalism in the new millennium.

We see progress also in other countries, in neighbouring Georgia, in Ukraine and elsewhere.

On the other hand, we cannot close our eyes before the fact that there have been setbacks in some other countries, including in countries where we thought that democracy had been consolidated. The basic idea of constitutionalism is that power is not unlimited but always subject to constraints.

This principle is not convenient for those in power and we have recently seen a resurgence of a primitive concept of democracy. According to this concept, there is no need for constitutional constraints if those in power were democratically elected.

This is the very opposite of "democracy through law".

This restrictive notion of democracy does not take any account of the basic principles and constitutional values and is not capable of providing a foundation for peace and the stability of the country.

It neglects the need to ensure the rights of all individuals, including minorities, and the need to safeguard free democratic debate in order to ensure that there will be a level playing field at the next elections. If state power is monopolised, elections will not be free and fair and the opposition has little chance to come to power.

Shrinking space for civil society organisations, the erosion of democratic accountability, of the principle of separation of powers and the independence of the judiciary, corruption, weakening of checks and balances are only a few of the contemporary methods used in attempts in some states to get rid of the above mentioned constitutional constraints.

The first victims of such attacks against constitutionalism tend to be constitutional courts, since they are the guardians of the constitutional order and their task is to ensure respect for the constraints on the power of politicians. We should therefore all defend the independence of constitutional courts against attacks by other state powers.

In my capacity of President of the Venice Commission I regularly warn against attempts to undermine the independence of constitutional courts. Once the independence of constitutional courts is compromised, we are on a slippery slope and all other constraints on power are at risk.

We can see in Poland that the government, as soon as it had taken control of the Constitutional Court, immediately started to undermine the independence of the ordinary judiciary. Let us therefore be vigilant whenever the independence of constitutional courts is under attack.

Ladies and gentlemen,

There are many challenges for constitutionalism in the new millennium. All countries, including the most developed democracies, will have to find responses to new challenges arising from technical progress.

More recent democracies, such as Armenia, will have to consolidate what has already been gained and ensure that democratic constitutional culture becomes pervasive throughout society.

Nowhere can we take it for granted that pluralistic democracy will not come under attack. International standards and international bodies such as the Venice Commission can help countries to resist attempts to return to an authoritarian system of government.

But the decisive force defending pluralistic democracy has to be the constitutional culture of the respective country.

Thank you very much for your attention and allow me to conclude my presentation by wishing that the discussion today and tomorrow will clarify the important components of constitutionalism in the new millennium and contribute to understanding its crucial role in the process of building of a genuine democracy.