



INTERPARLIAMENTARY COMMITTEE MEETING

“The first Annual Rule of Law Report by the Commission and the role of national Parliaments”

Tuesday, 10 November 2020

**Intervention by Gianni Buquicchio,
President of the Venice Commission**

Ladies and Gentlemen,

I would like to thank you for having invited me to take part in this meeting during “these uncertain times,” as we keep saying. But that is exactly what they are, uncertain times, with the pandemic still very much present among us and countries all over the world trying to handle the situation as best they can.

In doing so, countries must not lose sight over what is important – notably tackling this pandemic to protect human lives while at the same time ensuring that there is but a minimal impact on democracy, the rule of law and fundamental rights.

This is no easy feat. The pandemic has deepened the already existing challenges to fundamental rights and has added new ones.

Governments everywhere are struggling to find a balance between on the one hand protecting the right to health of their populations, and of all segments of the population, and on the other hand preserving social interaction and the economic activity, which in turn are preconditions to enjoying so many social and fundamental rights.

Handling states of emergency cannot be the pretext to erode the principles of democratic decision-making, separation of powers and accountability – the impact of a state of emergency on democracy and the Rule of Law must be kept to a minimum.

Ladies and gentlemen,

second lockdowns have been imposed in several countries.

In this context, I would like to commend the work of the European Parliament, and notably the Committee on Civil Liberties, Justice and Home Affairs (LIBE) that led to the drafting of its ***Resolution on the impact of Covid-19 measures on Democracy, the Rule of Law and Fundamental Rights***.

I am also very proud that the Venice Commission has been able to contribute to this effort with its Interim Report ***on the measures taken in the EU Member States as a result of the Covid-19 crisis and their impact on Democracy, the Rule of Law and Fundamental Rights*** – requested by the President of the European Parliament, Mr Sassoli.

In our Interim Report, we mention that we are fully aware that all actions taken by EU Member States to tackle the Covid-19 crisis will, inevitably, have an impact to a lesser or greater degree on democracy, the rule of law and fundamental rights.

The key lies, however, in how quickly the situation is redressed in order to maintain a balance and return to normalcy as soon as possible. Where that is not possible, it is imperative that the situation be reassessed on a regular basis.

With the Covid-19 crisis – that is precisely where we are now – returning to normalcy is not an option for the moment because the risk to public health is too great.

In Europe, when the Covid-19 crisis first started, countries had either chosen to declare a state of emergency to deal with the crisis or had chosen a different approach.

The Venice Commission is in favour of a *de jure* state of emergency – which means a declared state of emergency – because a formal declaration tends to provide better guarantees for democracy, the rule of law and fundamental rights in cases of emergency.

Whereas a *de facto* state of emergency – in which there is no declaration of a state of emergency – the crisis is dealt with by ordinary law – which is often not equipped to provide the necessary safeguards.

Having said that, a *de facto* state of emergency can be maintained where there is legislation that covers crisis by setting out explicitly the objectives, contents and scope of any delegation of power from the legislative to the executive, with safeguards.

However, in most countries, it is a scramble to provide new legislation when the crisis is already in full swing. Hence our preference for a *de jure* state of emergency.

As clearly stated in the European Parliament's Resolution and in our Interim Report, it is crucial that the declaration and prolongation (when needed) of a state of emergency and the activation and application of emergency measures be subject to effective parliamentary and judicial review (at the national and international level).

Powers that are transferred from the legislative to the executive branch must be proportionate in their scope and extent to the nature and severity of the threat to be overcome and must be subject to subsequent approval by parliament.

Parliament must therefore have the ability to end a state of emergency or the transfer of power.

The role of parliament is therefore crucial during a crisis and must be maintained.

This means that it needs to be able to continue to hold its plenary sessions – even where attendance in person is not possible – the necessary tools and mechanisms must be in place to ensure that sessions can be held, including through the use of digital tools, video conferences and so on.

Elections are also a very important aspect of democracy – and our Interim Report recommends that in a state of emergency the decision to postpone elections should be made by parliament, if it exceeds a certain duration (e.g. over six months), and that any election delay should clearly define the authority with the ability to delay and fix electoral dates and the establishment of new deadlines, such as voter registration and the duration of election campaigns.

In addition, social distancing requirements limit the freedom of assembly, including rallies and door-to-door visits, which affect election campaigns. In this respect the Interim Report recommends that countries should make efforts to compensate these limitations by, for instance, using traditional and social media, with online advertising and debates.

To conclude, Ladies and Gentlemen,

When we refer to actions taken by EU Member States during a crisis, we mean the introduction of emergency measures.

Where emergency measures are rule of law-compliant, they will have built-in guarantees against abuse, notably regarding the principle of proportionality under its various aspects.

This principle is key, particularly in the electoral field, where the impact of any postponement of elections must be balanced against the risks for free and universal suffrage including the right to form an opinion - arising from actually holding elections during an emergency situation.

Respect for the principle of proportionality must be subject to effective, non-partisan parliamentary scrutiny and to meaningful judicial review by independent courts.

The report adopted by the Venice Commission in October is an interim one: we will continue to look into the issues raised by this global and prolonged state of emergency and will issue a final report which will benefit from this additional European experience.

Thank you very much for your attention and stay safe!