



**Address by Mr Gianni Buquicchio, President of the Venice Commission,  
presenting the Annual Report of Activities for 2019 to the Committee of Ministers**

**(Strasbourg, 17 June 2020)**

I am addressing you today in somewhat unusual circumstances. Your work has been perturbed by the pandemic. For us, the situation is even more difficult since our members travel to the sessions in Venice from more than 60 states. We therefore could not organise our March and June sessions in Venice and had to adjust our working methods.

In March we adopted a limited number of fairly uncontroversial opinions by means of a written procedure. This worked well. Now, at our session of this week, we intend to adopt ten often quite complex and sensitive opinions.

These opinions concern the media legislation and the appointment of constitutional court judges in Albania, the reform of the constitutional court and the crime of overthrowing the constitutional order in Armenia, specific issues of criminal procedure in Kosovo, education in minority languages in Latvia, proposals by the government of Malta to implement mainly with respect to the judicial system the recommendations of our Opinion from 2018, constitutional amendments concerning the judiciary in Moldova, draft amendments to the Constitution of Russia relating to the execution of judgments of the European Court of Human Rights and the replacement of elected mayors by government appointees in Turkey.

From this list you can see that our services are requested as much as before and that we have continued to work at full steam. Obviously, I cannot go into detail concerning these, still to be adopted, opinions.

In order to take the specific situation into account, we are, however, providing more time and more opportunities than usual to our members, and especially to the states concerned, to comment on the draft opinions in order to ensure that also under current circumstances all voices are heard and all relevant arguments reflected in the texts.

With respect to several opinions, we were still able to carry out the visits to the countries concerned. With respect to more recent requests, we had to replace the visits by videoconferences with as many stakeholders as possible.

Mr Chairperson,

The pandemic has made the issues relating to the state of emergency the main topic in legal discussions and the Greek Presidency has included it prominently into its programme.

For us, this is not at all a new subject matter. We started working on emergency powers in 1992 and prepared a first general study in 1995.

In states of emergency specific human rights may be restricted to a greater extent than usual or derogated from. There may also be changes to normal rules of horizontal and vertical distribution of powers.

The Venice Commission has worked on both aspects, not only through general reports - for example on the parliamentary oversight of the armed forces - but also through opinions prepared, at the request of governments or PACE, on constitutional provisions and emergency legislation in several Venice Commission member states.

Even prior to the COVID crisis, states of emergency were not an unknown situation in our member states. Several countries declared them, on all or on part of their territories, in very recent times.

But the COVID-19 crisis has been unprecedented in several respects: because it has affected all countries worldwide, because of the extent and the gravity of the threat, because the threat was so little known, and because the health crisis has rapidly been coupled with a tremendous, global economic and social crisis.

The pandemic has revealed several weaknesses of our political, social, economic and also legal culture, and the Council of Europe will certainly address them in the coming months.

The Venice Commission has taken up the specific aspect which relates to its field of expertise: how to delegate powers from the parliament to the executive to increase effectiveness, while at the same time preserving democracy, the rule of law and respect for human rights.

We have recently prepared a report containing some reflections on this matter, and we have identified some guiding principles which need to be respected within the framework of each constitutional model.

We now plan to study the matter in depth in the light of the current experience with the pandemic.

In order to dispose of the relevant information, we have launched an Observatory on the implementation of states of emergency in Venice Commission member states.

This observatory will be put online shortly, on the Commission's website, and will provide precious, objective information about how states have reacted to the crisis in terms of separation of powers, parliamentary control, protection of fundamental rights and judicial review.

States of emergency entail a dichotomy between normality and emergency. We need to overcome the latter to return to the first. And we need to learn from the emergency to be better prepared for future crises but also to better live normality.

Besides this new emphasis on emergency situations, our traditional activities are continuing. Let me flag a few developments of general interest.

In two member states, Armenia and Moldova, an oligarchic regime has been overthrown. We are accompanying both countries in their efforts to renew their democratic system.

One of the main challenges, especially for the Armenian but also the Moldovan authorities, is to find the right balance between, on the one hand, the need for meeting the expectations of the people and for real change in the country, and, on the other, the requirements of legal stability and to maintain rule of law standards.

This balancing exercise requires a deep adherence to the values which the Council of Europe proclaims. We are trying to assist the authorities in striking the right balance.

Some other countries are continuing to co-operate closely with us. North Macedonia has been making particular efforts to implement all our recommendations in the area of the judiciary.

In Albania, we have become to a certain extent, in the absence of a functioning constitutional court, an arbiter among the various state powers. While we welcome the trust we enjoy in Albanian society, we hope that this situation will not continue.

Our co-operation with Ukraine continues, especially in the field of elections and referendums. On the other hand, we also had reason to be quite critical with respect to the originally planned measure of drastically reducing the number of judges in the Supreme Court, a measure subsequently declared to be unconstitutional by the Constitutional Court.

With respect to Poland and Romania, we also had to warn against negative developments with respect to judicial independence. In Romania there are positive signs but as of now several recommendations have not yet been addressed.

In Bulgaria, we pointed to the excessively strong position of the Prosecutor General as a reason for concern.

To sum up, the situation of the judiciary and the prosecution service in many countries will have to remain a focus of our attention. The institutions of the European Union are following very closely what we do in these areas.

Without an independent judiciary, there can be no protection of human rights.

But it is also important that independent Ombudsman institutions can defend and promote fundamental rights before a case is coming to court.

The Venice Principles for the Protection and Promotion of the Ombudsman institution we adopted in March 2019 and which were endorsed by your Committee fill a gap by defining

concrete standards for the protection of such institutions. They attracted a lot of positive attention world-wide.

Issues of minority languages have again become more prominent on our agenda. We adopted, in co-operation with representatives of the Framework Convention and the Language Charter, opinions on language issues in North Macedonia and Ukraine and will do so this week on Latvia.

Our opinion on the constitutionality of the Istanbul Convention, prepared for Armenia, is important for many countries and is another example of synergies among the various services of the Council of Europe.

Mr Chairperson,

Earlier in my speech I mentioned the important challenges for the functioning of democratic institutions in emergency situations. We should, however, not forget that even before the pandemic the democratic institutions did not function in all member states in a satisfactory manner and that the rights of the opposition were sometimes neglected.

We therefore adopted last year parameters for the relationship between the parliamentary majority and the opposition.

Electoral law has always been a main focus of our activities. It is a field where we work particularly closely with OSCE-ODIHR, the Parliamentary Assembly and the Congress.

It is probably the area of our work where new technologies have the strongest impact and where there is the clearest need to develop standards on their use.

A first step was the adoption by the Venice Commission, last year, of a report on digital technologies and elections.

Further to this report, the Venice Commission decided to proceed towards the identification of principles for a fundamental rights-compliant use of digital technologies in electoral processes. New standards are less needed for the electoral process in the narrow sense than for the electoral campaign.

Last year we provided an *amicus curiae* brief to the European Court of Human Rights in the case *Mugemangango vs. Belgium* on the lack of legal remedies against decisions by parliaments on electoral issues.

This case showed that there can be flaws in the electoral legislation also of older democracies, which did not update their rules in the same manner as the new democracies did.

This is an example, as well as our opinions on Malta and constitutional reform in Luxembourg, that the Venice Commission is not a body just for the new democracies in Central and Eastern Europe but for all European countries.

But our role goes beyond Europe. Thanks to generous contributions from the European Union, we will be able to intensify our activities in Central Asia in the Framework of the Joint Programme for the Eastern Neighbourhood and continue our activities in the Southern Neighbourhood in the framework of South Programme 4.

The EU is also supporting specific Venice Commission activities in Latin America. As soon as the situation allows, I will, thanks to an initiative by Ambassador Montobbio, visit the Ibero-American institutions in Spain to explore the possible synergies between our respective activities.

You may remember that three years ago, when I presented our Annual Report, you authorised the Venice Commission to issue, at the request of the Organisation of American States, an opinion on the decree calling elections to a constitutional assembly in Venezuela. Our co-operation with OAS has intensified since then. On the sixth of June I signed, together with the Secretary General of OAS, a co-operation agreement between our institutions, which implements the Memorandum of Understanding between the Council of Europe and OAS in our field.

Ambassadors,

Before concluding I would like to thank the many ambassadors from countries, which have provided us with financial support last year. These contributions have made our life easier and our action more effective. I would, in particular, like to thank the ambassador of Belgium for an unusually generous long-term contribution and the ambassador of Italy for the logistical and financial support over the last 30 years.

We had planned to invite all the ambassadors to the celebration of our 30th anniversary in the splendid location of the Sala del Maggior Consiglio of the Doge's Palace in Venice. Unfortunately, such an event is not feasible under current conditions and we will have to celebrate our 30<sup>th</sup> anniversary in a more modest manner.

Finally, I would like to thank the Secretary of the Commission.

I look forward to your questions and comments.