

Annual Colloquium on Fundamental Rights 2018
Impulse statement by Gianni Buquicchio, President of the Venice
Commission
Plenary Session A: Resilient and Inclusive Democracies in Europe

First of all, I would like to thank the European Commission for inviting me as a representative of the Venice Commission of the Council of Europe to provide an impulse statement at this important session.

It is crucial to discuss the resilience of democracies in a period when democracy, as we have understood it traditionally, is increasingly under threat.

Today nobody questions democracy as such. On the contrary, nowadays those who want to undermine democracy use a primitive notion of democracy, reducing it to majority rule, to justify their actions.

But democracy is much more than majority rule.

The founding texts both of the Council of Europe and of the European Union link democracy to the rule of law and respect for human rights.

The three have to be seen together and cannot be opposed to each other.

If politicians win an election, this does not mean that they should stay in power for ever and govern without restrictions.

First of all, their mandate is limited in time. At the following elections the voters must have the possibility to decide freely whether they want to keep the government.

But the voters can only form an opinion on whether to re-elect the government, if fundamental rights, in particular the freedom of expression, are respected.

Without free media there can be no democracy.

The mandate of governments is also limited in substance.

This does not only imply that the government is accountable to parliament. Both the government and the majority must govern in accordance with the Constitution and the law.

No game can be played without respect for the rules.

In our pluralistic societies democracy is a particularly complex game and there is a particular need for arbiters.

These arbiters are the courts, first of all the constitutional courts but also the ordinary courts.

No one can act as arbiter if he or she is dependent on one of the parties.

The courts can play their role as arbiters only if their independence is guaranteed.

It is therefore no coincidence that governments, who do not wish to respect the limitations of their mandate, attack the independence of the courts and, first of all, of the constitutional court of the respective country.

Such attacks are not only attacks against the rule of law but are attacks against democracy, which cannot function without rules.

The Venice Commission therefore sees it as one of its main tasks to defend the independence of constitutional and ordinary courts.

We welcome that the European Union pays more and more attention to the defence of the independence of the judiciary both in its member and in the candidate states.

Unfortunately, we can no longer take it for granted that in an EU member state judicial independence will never be under threat.

Judicial independence is crucial also in other respects.

The judiciary protects the rights of individuals. Only a citizen, who has access to an independent court to defend his or her rights, is an equal citizen.

Corruption, which is a cancer in many societies, undermining the trust of the people in democracy, can be fought only if there are independent courts with the courage to convict also the powerful and the well connected.

For this reason, the Council of Europe, and in particular GRECO, link the fight against corruption to the independence of the judiciary.

The efforts by the European Union and the Council of Europe to defend the independence of the judiciary tend to be rejected by the states concerned as a violation of their sovereignty and of democracy.

Nothing could be further from the truth.

All European states have freely decided to join organisations based on respect for the basic values of democracy, the rule of law and respect for human rights, abandoning in this respect the principle of non-interference in the internal affairs, a principle cherished by dictatorships.

And, as I explained, the existence of independent courts is a precondition of democracy and not a violation of democracy.

Another challenge to democracy today is the loss of confidence in traditional politics in general and political parties in particular.

We may discuss other forms of participation and of including citizens in the functioning of democracy.

But it would be an illusion to consider that in our complex societies representative democracy can be replaced by other forms of participation.

Direct democracy may supplement representative democracy but cannot replace it.

Without political parties, representative democracy cannot function. It is therefore crucial that political parties are democratically structured and offer to all citizens the possibility to participate in a meaningful way.

But we should also appeal to citizens to become politically active, including by joining political parties .

Contrary to NGOs, political parties are not focusing on a specific issue or some specific issues but are ready to assume responsibility for the functioning of the state.

In this role they are indispensable and irreplaceable.

We should therefore not resign ourselves to the loss of credibility of political parties but make every effort to revitalise them.

The possibilities offered by the new information and communication technologies should be used to improve the dialogue between citizens on the one hand and state authorities and political parties on the other.

Thank you very much for your attention.