



الجمهورية التونسية  
رئاسة الحكومة



CDL-UD(2018)024  
Or. Engl.

**EUROPEAN COMMISSION FOR DEMOCRACY THROUGH LAW  
(VENICE COMMISSION)**

in co-operation with

**THE PRESIDENCY OF THE GOVERNMENT OF TUNISIA**

**Regional seminar for senior public officials**

**UniDem Med**

**“ TRANSFORMATION AND INNOVATION IN THE SENIOR  
CIVIL SERVICE : CHALLENGES AND OPPORTUNITIES ”**

**Tunis, Tunisia**

**24 - 27 September 2018**

**THE RESPECT OF DEMOCRACY AND RULE OF LAW PRINCIPLES IN THE  
PUBLIC ADMINISTRATION: POLICY AND PRACTICE**

by

**Ms Herdis KJERULF THORGEIRSDOTTIR**

**(First Vice-President of the Venice Commission, Member of the Venice  
Commission on behalf of Iceland)**

Ensuring Sustainable Democratic Governance and Human Rights in the Southern Mediterranean

Funded  
by the European Union  
and the Council of Europe



Implemented  
by the Council of Europe

## **THE RESPECT OF RULE OF LAW PRINCIPLES IN THE PUBLIC ADMINISTRATION**

**Speech by Herdís Kjerulf Thorgeirsdóttir  
First Vice President of the Venice Commission  
UniDem Med  
Tunis 24 September 2018**

The 1948 Universal Declaration of Human Rights which is now 70 years old says in its preamble:

“Whereas it is essential, if man is not to be compelled to have recourse, as a last resort, to rebellion against tyranny and oppression, that human rights should be protected by the rule of law, [...]”

Just like the rule of law and human rights are in the UN approach interconnected so is the achievement of the principles of human rights, democracy and the Rule of Law –regarded as a single objective – the core objective of the Council of Europe which was founded in 1949 in the wake of the horrors of World War II.

With the fall of the Berlin Wall in 1989 it was a general perception that the values of liberal democracy, respecting voters and human dignity, political equality and the rule of law had won the great ideological battle of the 20th century.

Few would have thought that now almost 30 years later democracy, human rights and the rule of law could still not be taken for granted. The world’s longest-established democracies are mired in seemingly intractable problems at home, including rapidly widening social and economic disparities, partisan fragmentation, terrorist attacks, and an influx of refugees that have strained alliances and increased xenophobia. The rising of populism has its roots in the failure of democratic states to adapt adequately to the consequences of globalization.

Most worrisome for the future is that some young people, who have little memory of the long struggles against totalitarianism in various forms, might be losing faith in the democratic project and the rule of law. The civil service is at the crossroads more than ever as societies, nations and regions have become more unstable.

Technology, twin-souled like Goethe’s Faust, has changed the world for good and ill. Truth is monopolized through concentrated ownership of media and telecommunications companies—there is growing disregard for the basic values engrained in the international human rights treaties that emerged after the atrocities of the second world war – self-censorship and fear of openly criticizing authorities or malpractice within the public administration is not only characteristic of authoritarian regimes. Lack of an open public dialogue imperils human rights, democracy and rule of law. A stable democracy is based on the rule of law and the confidence

of citizens in authorities and the civil service. Good governance and the fight against corruption requires oversight not just from institutions, but also from civil society.

It may be recalled that corruption was the key trigger of the revolution of “the Arab Spring” – and that the only formula we know against the perversion of justice and cronyism is democratic control based on rule of law and human rights. The respect for fundamental principles of public service and the rule of law remains crucial for democratic development. The Rule of Law is essential for public administration reforms.

The Venice Commission has produced since its creation almost 30 years ago substantive work on the topic of rule of law which is a fundamental requirement and a constitutional principle for all member states of the Council of Europe; enshrined in legal texts at national constitutional level. The Rule of Law has also been proclaimed as a basic principle at universal level by the United Nations (in the Rule of Law indicators) and at regional level by the Organisation of American States (in the Inter-American Democratic Charter) and the African Union (in its Constitutive Act). References to the Rule of Law may be found in several documents of the Arab League.

The Rule of Law is often and easily used in political debate, as it lacks a clear definition. The Venice Commission in 2011 undertook the task of adopting a Rule of Law Checklist on how to implement the principles of the Rule of Law in an objective thorough, transparent and equal manner. The respect of clear rules and principles by the public authorities strengthen the protection of individuals in their relations with the authorities by providing legal certainty in public decision-making and preventing arbitrary action. The Venice Commission’s Rule of Law Checklist contains detailed question to measure how the public administration in any given country adheres to rule of law principles – hence a means to assess the overall degree of respect for the Rule of Law reforming the social contract between state and society. Since the Venice Commission adopted its “Rule of Law check list” in 2016 it has been since endorsed by all Council of Europe instances.

These core elements listed in the Rule of Law Checklist are the following:

- Legality
- Legal certainty
  
- Prevention of abuse/misuse of powers
  
- Equality before the law and non-discrimination.
  
- Access of Justice
  
- Respect for Human Rights

The Venice Commission does not regard the concept of the Rule of Law as merely formalistic – only requiring that any action of a public official be authorized by law – but also substantive. The Rule of Law must be applied at all levels of public power and in private law relations as **individual human rights** are affected not only by authorities of the State, but also by private actors and entities which perform tasks that were formerly the domain of the State authorities or include unilateral decisions affecting a great number of people as well as by international or supranational organizations.

The Venice Commission stresses the importance of - when using the Checklist - to take into account the **whole context** and avoid mechanical application of specific elements of the Checklist.

The Rule of Law cannot prevail without a well-functioning, independent judiciary and a transparent and accountable civil service. Institutional reform can be difficult in societies in transition where there are ingrained practices of nepotism, influence-peddling and corruption leaving little room for the rule of law to grow. Successful rule of law reform depends as much upon enhancing the trust of citizens towards authorities and the implementation of the rule of law as it does upon reforming legal institutions.

The Venice Commission Rule of Law Checklist will help foster a rule of law culture where people believe that the rule of law governs everyone fairly and equally. It can be very hard to build such trust where there is apparent incongruity between the message of the rule of law and everyday living.

When speaking in Rabat a few months ago someone mentioned to me that the Venice Commission as a well-regarded and trusted institution in the eyes of the international community – has acquired such status that authorities often do not act until the Commission points out the need with regard to human rights and rule of law reform. Hence the Venice Commission recommendations were probably the most important means to influence political will and behavior of *behavior of authorities in the Member States*.

The Venice Commission attempts with its Rule of Law Checklist to enable any willing society to stand up for the rule of law which is a delicate phenomenon – just like any ideal we strive for – and comes easily under threat. The Venice Commission Rule of Law checklist enables those using it to scrutinize the threats from a broad perspective. Political will and attitude from the the state itself seems to be what is most crucial for achieving change. A professional, meritocratic and accountable public administration will help lead any state closer to the rule of law ideal.