

**Address by Mr Gianni Buquicchio,
President of the Venice Commission at the meeting of
the Permanent Council of the OSCE
Vienna, 24 July 2014**

Mr Chairman, ladies and gentlemen,

First of all I would like to thank you for inviting me to speak before the Permanent Council. It is the first time that the President of the Venice Commission is invited to address the Permanent Council but I think this was overdue. It is true that OSCE is more focused on hard security and the Venice Commission as part of the Council of Europe on soft security. But both aspects overlap: without respect for human rights, the rule of law and democratic principles stability and security cannot be guaranteed. We therefore have a long tradition of close co-operation, first of all with ODIHR but also with the High Commissioner for National Minorities and OSCE field missions. I see my invitation to address you as an acknowledgement of the importance of this co-operation.

Let me start by some general information on the Venice Commission. The Venice Commission is the advisory body of the CoE on constitutional matters, composed of independent experts appointed by the governments of our member states. All CoE member states are members of the Venice Commission. In addition, 13 other states are members: USA, Kazakhstan and Kyrgyzstan as well as Korea, Israel, Algeria, Morocco, Tunisia, Brazil, Chile, Mexico, Peru and most recently Kosovo.

Our most important output consists of opinions on constitutional or legislative texts in the area of public law or on legal issues of a constitutional character. We do not provide such opinions at our own initiative but only upon request. Most often the request will come from the State concerned and relate to draft constitutional amendments or draft legislation discussed at the national level. Sometimes there are requests on existing legislation. Requests may also come from Council of Europe statutory bodies, i.e. the Parliamentary Assembly, the Committee of Ministers, the Secretary General or the Congress of Local and Regional Authorities.

When providing our opinions, we are basing our recommendations not only on binding standards but also on soft law, best practices and the experience of other countries. This is quite logical since our advice is not legally binding and in most cases sought by the states concerned on a voluntary basis.

We also produce reports, studies and guidelines of a general character. Here we can act at our own initiative. The probably most important text in this respect is the Code of Good Practice on Electoral Matters, which was endorsed by the Committee of Ministers of the Council of Europe and which is used in our joint opinions with ODIHR as a reference text together with the Copenhagen Document.

The Code proved to be a very useful tool for our partners in numerous countries in Europe and beyond and we can be proud that it is known and referred to by legislators and electoral administrations not only in Council of Europe but also in Central Asia, Latin America and in Arab countries. It has been translated into more than a dozen languages, including Russian, Spanish and Arabic, making it accessible to a large number of national electoral administrations, specialised NGOs, academia and voters in general.

In the electoral field, most of our opinions are indeed adopted as joint opinions of the Venice Commission and ODIHR. We have extended the practice of joint opinions to the fields of freedom of religion, assembly and association, where we also adopted joint guidelines with ODIHR (such as, for example, the 2010 Guidelines on political party regulation and 2014 Guidelines on the legal personality of religious or belief communities). We are currently working on Guidelines on freedom of association which we expect to adopt by the end of 2014. This seems to me a model of excellent co-operation among international organisations. I would like to pay tribute in this context to the readiness for co-operation on the side of ODIHR. I am sure that the new Director of ODIHR will continue this tradition.

Our contacts with the High Commissioner on National Minorities have been intense and fruitful although, due to the working methods of this institution, more informal than with ODIHR. But, whenever the Commission has examined an issue of minorities which might have been of interest to the High Commissioner, there have been informal contacts between the respective Secretariats to avoid that we provide conflicting advice. In recent years the Venice Commission received fewer requests on issues related to protection of national minorities which can explain the reason why our co-operation has been less regular. However, if there are new opportunities to work together, we hope to co-operate with Ms Astrid Thors and her office on the same constructive basis as with her predecessors, in particular Mr. Knut Vollebæk and Mr. Rolf Ekéus.

But let me use the concrete example of a country to describe our role as an efficient instrument of legal assistance. Ukraine currently is at the centre of our attention as much as of other international organisations and international community in general. Ukraine is traditionally one of the countries where the Venice Commission is most active. In the last 20 years the Venice Commission

has adopted more than 60 opinions on Ukrainian legislation focussing on constitutional reforms, legislation in such important areas as protection of fundamental rights and freedoms, public prosecution, judiciary, elections and many other fields.

Ladies and gentlemen,

The Commission, probably more than any other international institution in Europe, has the knowledge not only of the comparative constitutional law but, what is of outmost importance, has an institutional memory of the constitutional developments. We were already involved in the preparation of the 1996 Constitution and adopted a number of opinions on planned or carried out constitutional reforms in practically every year from 2000 to 2011. These are only the opinions of a general scope.

I think that it is not a secret that the list of the main constitutional issues has not considerably changed since the first assessment of the 1996 Constitution. After this first opinion on the constitutional provisions the Venice Commission repeatedly recommended to the Ukrainian authorities proposing constitutional reforms to review and reconsider the following issues:

- 1) The lack of clarity as to separation of powers between the executive and the legislative branches;
- 2) The need to strengthen the powers of the Rada;
- 3) The necessity to abolish practices that amount to imperative mandate;
- 4) The procedure of appointment of the Prime Minister and other members of the Government;
- 5) The autonomy of the Prosecutors from political power and some of their powers, notably the general supervision of legality;

- 6) The need to improve provisions on the independence of the judiciary;
- 7) To introduce clear guarantees for protection of Russian language and minority languages on the territory of Ukraine;
- 8) The necessity to give more powers to the regional and local authorities.

It is regrettable that some of these recommendations were not taken on board during the major constitutional reform that took place in 2004. Most of the issues listed above were not settled in the new constitutional text.

As I have already mentioned earlier, there were also opinions on more specific constitutional issues such as the death penalty, the functioning of the constitutional court and in particular important opinions on the constitutional aspects of the reform of the prosecutor's office and the judiciary. These opinions are still very relevant for the current reforms and I hope that our Ukrainian partners will address most of our previous recommendations in the framework of the present effort to amend the Constitution.

Today all of us are following with great attention the new constitutional developments in Ukraine.

At the moment we are fully involved in this new constitutional reform process. We were asked by President Poroshenko at the beginning of this month to provide an opinion on the proposal for constitutional reform submitted by him to the Verkhovna Rada. Considering the urgency and the importance of the matter the Commission appointed 10 members and eminent experts to work on the text of the amendments. Their preliminary comments will be sent to the Ukrainian authorities today.

The constitutional amendments address some of the previous recommendations of the Venice Commission such as the imperative mandate, the general

supervisory powers of the Prosecutor General and decentralisation. According to the draft the President keeps a number of important powers, some of them are even strengthened.

It is regrettable that these amendments do not include proposals on the reform of the judiciary. The Ukrainian authorities have explained that the President was barred from submitting amendments to the provisions on the judiciary because a set of proposed amendments was already pending before the Rada since 2013. We have learned last week that this text has been rejected so it is again possible to address this area. The Commission regrets that this long-awaited and extremely important reform has not yet taken place and urges the Ukrainian authorities to address this issue without delay.

To the knowledge of the Venice Commission, the Ukrainian civil society has neither been informed nor consulted on the amendments under consideration. If the exceptional circumstances prevailing in Ukraine today may have justified an exceptionally speedy preparation of the amendments, the Venice Commission wishes to reiterate that it is essential in order for the constitutional reform to succeed that it should be prepared in an inclusive manner.

I was pleased to learn yesterday that the Ukrainian authorities had the intention to continue their work on the set of constitutional amendments on the basis of our exchanges of views and to seek a broad political and public consensus.

Ladies and gentlemen,

Constitutional reform is certainly a priority area of reform at this stage, but it is not enough to help our Ukrainian friends to overcome the current crisis. Ambitious and serious changes are needed on the level of ordinary legislation. We were involved, and will continue to be involved, in a number of other reforms of particular importance for the European future of the country: electoral reform, reform of the judiciary and reform of the prosecution service.

We provided a number of opinions on legislative and/ or constitutional amendments and this co-operation will certainly continue or even intensify in the nearest future.

One of such important areas where we have a long-standing co-operation with the ODIHR is electoral legislation. In the last years our organisations prepared several joint opinions on legislation concerning both presidential and parliamentary elections. A number of important recommendations had been made as to the possible improvement of legislation in this important field.

During its last plenary session on 13 June 2014, the Venice Commission was informed about the recent changes in the legislation of Ukraine on presidential elections. The 2009 Joint opinion of the Venice Commission and the OSCE/ODIHR was very critical as to certain aspects of the Law on Presidential elections. Among other important issues, the Commission had recommended to the authorities to review rules on registration of candidates, territorial organisation of electoral administration, to give a wider access to national NGOs to election observation and to improve procedures on vote counting and financing of electoral campaigns.

In an effort to follow the 2009 recommendations and make the Presidential elections more transparent, the Ukrainian legislator had introduced a number of important changes to the Law on Presidential elections in March 2014. The new amendments considerably improved several sections of the law, notably by easing the registration requirements for candidates, fixing the borders of electoral districts, limiting the number of electoral commission members, prohibiting the updating of electoral lists on the day of elections and by giving NGOs the possibility to observe elections.

We really welcomed this positive attitude.

We have heard about a possibility of a new reform of the legislation on parliamentary elections in Ukraine. While the Venice Commission remains at the disposal of the authorities to assist them in this important endeavour, I would like to remind that the principle of stability of the electoral law requires that major changes should be done significantly ahead of the vote in order for the participants in the electoral process to dispose of sufficient time to get acquainted with the new "rules of the game". Me and my colleagues at the Commission hope that such an important reform would be carried out in the same spirit as the reform of legislation on presidential elections and that the recommendations of international organisations, notably by my organisation will be taken on board.

These are all typical areas of activity of our Commission. Although we devoted recently a lot of our time and efforts to our co-operation with Ukraine, we did not forget other priority issues in our other member States - currently we are involved in constitutional reform processes in Armenia and Georgia, judicial reform in Albania, Armenia, Georgia and Serbia; earlier this year we provided opinions on electoral reform in Bulgaria, Kyrgyzstan and Moldova, judicial reform in Bosnia and Herzegovina, Kyrgyzstan, Moldova and Tajikistan, constitutional reform in Romania and human rights legislation in the Russian Federation and Kosovo.

These examples show that not only Europe but, also Central Asia is part of our geographical focus. The Commission has been assisting countries like Kazakhstan, Kyrgyzstan, Tajikistan and Uzbekistan in such important fields as the constitutional justice, reforms of the judiciary and of electoral legislation and practice.

A more recent development is that we have become quite active also in the Southern Mediterranean. We were closely involved in the process of adopting a new democratic Constitution in Tunisia. While earlier drafts contained some

quite problematic provisions, the Constitution as finally adopted is a very positive text reflecting modern standards of democracy and respect for human rights. We now look forward to co-operating with Tunisia on the legislation implementing the Constitution. Last spring we were involved in the assistance focussed on the new electoral law and its implementation.

As regards Morocco, the focus of co-operation is on judicial reform and anti-discrimination legislation. With Jordan we are mainly co-operating in the field of constitutional justice and with Egypt we worked on freedom of association.

I am pleased that we had numerous occasions to co-operate with OSCE/ODIHR on issues related to Southern Mediterranean countries. One of the examples of such common effort could be the Third Intercultural Workshop on democracy on standards in the field of political parties organised in Bucharest in October 2013. Representatives of 11 Arab countries attended this event co-organised by the Venice Commission, the Ministry of Foreign Affairs of Romania in co-operation with ODIHR.

We are thus co-operating not only with European countries but also with Europe's Eastern and Southern neighbourhood. In the field of constitutional justice our activities are world-wide.

The Venice Commission took the initiative to establish the World Conference on Constitutional Justice, a body which now has 90 courts as its members, and ensures the Secretariat of the World Conference.

Constitutional justice has indeed been one of the main areas of activity of the Venice Commission from the very beginning. It is not least due to the influence of our Commission that practically all new democracies in Central and Eastern Europe established constitutional courts. This reflects our conviction that such courts play a crucial role to ensure that the values enshrined in the Constitution are implemented in practice.

Mr Chairman,

I was only able to provide a brief overview of our main activities. I will be pleased to go into more detail when replying to your questions. I think, however, that this overview was sufficient to show how much we have in common. Moreover, I think I have also shown that especially the relationship between the Venice Commission and ODIHR is a model of good co-operation between international organisations. Very often, lip service is paid to the need of such co-operation. But we have shown that it can work in practice and this has been to the benefit not only of the Venice Commission and ODIHR, of the Council of Europe and the OSCE, but of the states concerned and their people.