

CONFERENCE OF MINISTERS OF JUSTICE OF THE COUNCIL OF EUROPE
Videoconference, 9 November 2020
“Independence of Justice and the Rule of Law”

Speech by Gianni Buquicchio, President of the Venice Commission

Ladies and gentlemen,

2016 witnessed a revolutionary event which went unnoticed at first but soon came to be remarked: the Rule of Law ceased to be an impenetrable concept whose meaning changed with idioms and latitudes and even led to irreconcilable stances.

Thanks, largely, to the Venice Commission’s “Checklist”, the Rule of Law became an operational set of practical benchmarks. Perfectible, completable, amendable – but accessible and comprehensible, irrespective of language and origin. This set of benchmarks enables thorough, objective, transparent and fair assessments of the Rule of Law situation in any given country.

Nowadays, the conceptual complexity of the Rule of Law is no more a pretext to avoid dealing with it in substance. The Rule of Law now attracts unprecedented interest in international forums and in government circles.

It has never been so easy to identify systemic problems, notably in the area of independence of justice and to point to standard-compliant solutions. The Council of Europe possesses a formidable machinery which it puts at the disposal of its member states. Standard setting, monitoring, cooperation: they are all in place to design, accompany and implement enlightening reforms. These tools function to identify weaknesses, prevent problems, correct them, be both proactive and reactive to Rule of Law challenges. The Venice Commission has cooperated very actively with numerous of its member states on such reforms.

Unfortunately, as much as we may claim victory because the understanding of the rule of law has improved, we cannot but acknowledge that respect for the rule of law is declining in some quarters.

In recent years, in several countries we have witnessed deliberate attempts by the Executive to control the judges: Constitutional Courts at first, then Supreme Courts, and then ordinary courts.

The interlinks of the Rule of Law with democracy and respect for human rights are dramatically evident in this context: controlling the courts means eroding the separation of powers, means controlling election results, even providing selective and discriminatory justice. Controlling the judiciary enables side-lining whole categories of citizens and diminishing or denying protection of entire categories of rights. It enables making political choices as to who deserves protection and what rights deserve protection. It denies equality. It stirs divisions and conflict among groups and individuals.

The adverse impact of serious Rule of Law deficiencies on the whole democratic setup of our member states is potentially enormous.

The Council of Europe is well aware of these risks and has continued to work towards the implementation and strengthening of the Rule of law. It has done so also in relation to the Covid-19 crisis, which is having a strong impact on our fundamental values.

The European Union has recently adopted an additional and comprehensive rule of law mechanism “as a key building block in the common commitment of the EU and the Member States to reinforce the rule of law” and has just issued its First Annual Report on the Rule of Law situation across the European Union. The EU Annual Report builds, as it must, on the work of the Council of Europe and of the Venice Commission in particular.

Ladies and Gentlemen,

The Rule of Law has at least two dimensions: the technical one, that is the constitutional and legal mechanisms which put it in place, and the cultural one, that is the mindset which guides the interpretation and implementation of these rules but also shapes the acceptance of these rules by their final beneficiaries: the individuals.

The rules should be changed and perfected, of course. We need to be open and ready to reconsider our models if they become outdated and fail to deliver. For example, the Venice Commission has noticed that several countries struggle with the concept of accountability of the judiciary or with the composition of Judicial Councils. Genuine research for appropriate, possibly new solutions should be promoted. But we should not accept that the standards be ignored or manipulated for partisan reasons.

Ladies and Gentlemen,

Having carefully listened to all the other introductory speeches, let me conclude my intervention with the following:

In the current environment, it is more important than ever that we acknowledge, show understanding and be constructive about national specificities and legal or political issues.

This does not mean that we should be complacent. On the contrary, we most definitely should – must – counter any attempts at destroying the Rule of Law and its overarching culture.

The battle against the rule of sheer power and its destructive “winner-takes-all” mentality must never cease!

As part of the Council of Europe, the Venice Commission will continue to work strenuously towards building the rule of law-compliant political and legal culture which is necessary to achieve the democratic structure we so cherish: we will not give in or give up in the face of attempts to reinstate the rule of sheer power and undo what we have been working so hard at building and developing over the years of our existence.