



Opening of the Kosovo Judicial Year Pristina, 16 October 2015

Speech by Mr Gianni Buquicchio President of the Venice Commission

Ms President of the Republic,
Mr Prime Minister,
Ms President of the Constitutional Court,
Mr President of the Supreme Court,
Mr Minister of Justice,
Excellences,
Dear Presidents and Judges,
Ladies and Gentlemen,

I would like to express my satisfaction to be here with you today to celebrate the opening of the judicial year. I am particularly pleased to be in Kosovo, as it is now the youngest Member State of the Venice Commission of the Council of Europe.

Kosovo is not only a recent member of the Venice Commission; it is also a very young State. It makes great strides not only towards its full international recognition but also on the path to consolidate democracy, human rights and the rule of law, which are the basic principles of the Council of Europe.

Kosovo is not yet a member of the pan-European Council of Europe. However, only a year ago, Kosovo has become a full member of the Council's European Commission for Democracy through Law, usually called the Venice Commission.

Within the Council of Europe, the relationship between the Venice Commission and your country is a special one.

Since accession, the Venice Commission is no longer obliged to refer to your country with the famous “asterisk” footnote, referring to the UN Security Council Resolution 1244, which has to be systematically added by the other Council of Europe bodies.

Madam President,

Please let me use this occasion to briefly present our Commission, its membership, its functioning and set out opportunities for fruitful co-operation.

The Venice Commission’s membership is larger than that of the Council of Europe, the Venice Commission has 60 Member States.

Nonetheless, the Commission is an integral part of the Council of Europe and membership in the Venice Commission is sometimes seen as an important step on the way to membership in the Council of Europe.

How is the Commission composed?

The Venice Commission has two levels of membership, first the States who are admitted by decisions of the Council of Ministers of the Council of Europe.

The second layer of membership is the individual members, appointed by the Governments for a four year term.

The individual members meet four times a year in Venice, which is the seat of the Commission, given that it was Italy that made the proposal to establish the Commission right after the fall of the Berlin wall.

According to the Commission’s Statute, the Governments appoint renowned experts in the fields of constitutional law and political science.

In practice, most members are judges of constitutional courts – as is the case for the Kosovo members, former President Hasani and President Rama - or professors of law.

What is most important is that the members do not represent the State which has appointed them. They always act in their individual capacity as independent experts.

Indeed, the members take their independence very seriously. A member who would staunchly defend the position of his or her Government would quickly lose any credibility within the Commission.

Who can request opinions from the Venice Commission?

The Commission is at the service of its Member States who are free to request opinions on draft constitutional changes and draft legislation implementing the constitution.

The Commission provides opinions on electoral legislation, laws on the constitutional court, laws on the judiciary, ombudsman laws, laws on the functioning and financing of political parties or legislation on specific human rights like the freedom of association or the freedom of assembly.

Requests for opinions can be made by State authorities, the President of the Republic, Parliament the Government and other State institutions. The organs of the Council of Europe and international organisation can request opinions as well.

Madam President,

The accession of Kosovo to the Venice Commission was not easy and there were several Governments which did not support this step.

One of the arguments they used was that Kosovo could already benefit from Venice Commission opinions, in the past through requests from UNMIK, now from EULEX, and it was not even necessary that Kosovo became a member of the Venice Commission.

However, the countries supporting accession insisted that it was important that the Kosovo State authorities were able to make such requests themselves and did not depend on the help of international bodies. Therefore, accession was indispensable.

I am pleased that accession has been achieved and we really look forward to receive requests for opinions from your State authorities.

These requests will also be a proof that Kosovo *does not only seek membership in international organisations in order to consolidate its international status but that it takes seriously the commitments and opportunities that come with such membership.*

Of course, also the Constitutional Court, our host today, can request *amicus curiae* opinions, on important cases pending before the Court. Sometimes constitutional courts also request opinions on draft laws governing their work.

Given that the Kosovo members of the Venice Commission are judges at the Court, we also look forward to requests from the Constitutional Court itself.

How does the Venice Commission work?

The key to the success of the work of the Venice Commission is dialogue. Within the Commission, each member is of course an expert on his or her constitutional system and we engage in constructive dialogue.

We learn from each other about the advantages and disadvantages of particular national arrangements and we discuss how these could be adapted in order to fit a different context.

Dialogue is also essential with the stakeholders in the country for which the Venice Commission works.

When an opinion is prepared, the Venice Commission always establishes a small working group of its members, we call them rapporteurs.

Whenever possible, the rapporteurs travel to the country where they meet and exchange with the relevant authorities - with representatives from Government, from Parliament, from the Judiciary - but also with opposition and civil society.

These meetings give the rapporteurs a valuable insight not only into the national discussion on the issues examined but they also show which avenues for compromise and consensus are available.

Let me just point out that the members from the country concerned never become rapporteurs for their own country. This rule ensures that they do not come under pressure to influence an opinion on their country.

Practically all opinions are adopted by consensus but again, the member from the country concerned cannot prevent such consensus to be achieved.

What are the standards, which the Venice Commission applies?

First, I should insist that the opinions of the Venice Commission are not binding, the Commission only makes recommendations.

Of course, we try to use arguments, which are likely to convince our partners; we always hope that our recommendations are accepted and implemented but we cannot force the country concerned to do so.

It is true that sometimes political actors like the European Union will call upon a State to follow a recommendation, which the Venice Commission has made, but this is part of diplomacy and international politics and remains out of the Commission's ambit, which is legal only.

The recommendations of the Venice Commission are based on a wide range of sources. Of course, there is the binding European Convention on Human Rights and its interpretation by the Strasbourg Court but the Venice Commission will also refer to soft law like recommendations of the Committee of Ministers of the Council of Europe.

In certain fields, the Venice Commission itself has identified standards, for example in its widely recognised Codes of Good Practice in Electoral Matters or on political parties. In some areas, the Commission defined standards together with OSCE/ODIHR, for example in the field of the freedom of assembly or freedom of association.

However, the Venice Commission also refers to basic principles of constitutional law such as checks and balances and often simply to common sense.

What is important is to see that the Venice Commission accepts choices made in the country, for instance for a parliamentary or a presidential system and will then only call for the introduction of safeguards to make these basic choices viable.

Ladies and Gentlemen,

We have gathered here for the opening of the judicial year.

What does the Venice Commission do to support the independence of the Judiciary?

The Venice Commission works both on the constitutional and the legislative level in the field of the Judiciary.

Whenever it prepares an opinion on a draft Constitution or draft constitutional amendments, the Commission will recommend the establishment of an independent Constitutional Court with strong powers and effective access by individuals.

Central concerns of the Venice Commission are also the independence and impartiality of the ordinary judiciary. Here, key questions are the appointment of judges, their careers and of course judicial discipline.

In a number of countries which we work with, corruption in the judiciary is a serious problem and we recognise that the fight against corruption is essential for the survival of real democracy.

With our partners, we try to devise systems which help shielding the judiciary from political influence while enabling an effective fight against corruption in the country.

Finally, the Venice Commission actively supports Constitutional Courts in its member States.

According to the founding father of constitutional courts the Austrian Professor Kelsen: "A Constitution which would not establish a constitutional court with the power to annul unconstitutional acts, is a light which does not shine."

Constitutional Courts are a cornerstone for democracy, the protection of human rights and the rule of law.

The Venice Commission insists on the institutional, administrative and notably financial independence of the constitutional courts.

Constitutional Courts decide delicate issues. It is in the very nature of their constitutional function that their decisions sometimes displease the Government or Parliament.

Notably in new democracies, it is essential that they cannot be “punished” by these powers for unwelcome judgments.

Madam President,

Let me conclude that the Venice Commission is ready to work closely with Kosovo, with all its State institutions, the President, Parliament, the Government and, of course, the Constitutional Court.

The Commission is available to work with Kosovo in all fields of its competence, constitutional law in the narrow sense but also in electoral law, in the field of human rights and of course the independence of the Judiciary.

I do look forward to a fruitful co-operation with Kosovo.

Thank you very much for your attention.