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Challenges to the Rule of Law: A Ukrainian judge's perspective

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Introduction

1. Dear Chair of the Bar Council of England and Wales, dear colleagues and distinguished guests.
It is a great honour (and at the same time a huge responsibility) to share my experience and to represent my thoughts standing at this place at Middle Temple (where every millimetre is a history) in a markable year of celebration 450 years of Hall.
As you know my lecture aims to spotlight the delicate task of balancing judicial reform with independence, affirming the judiciary's role as a stabilising force, even in the face of external aggression.

2. I find it sensible to start with introductory remarks concerning Ukraine's legal and judiciary systems. And after that, we will move to challenges to the Rule of Law in the given context and possible steps to address them.

I will start by saying that belonging to the Continental (Romano-Germanic) legal system means conceptually, that the Ukrainian legal system proceeds from abstractions, formulates general principles and definitions, and distinguishes substantive law from procedural law. It holds courts' case law secondary and considers the legislation as the dominant source of law (with the only exception, prescribed by the Law "On execution of judgments and the implementation of practice of the European Court of Human Rights" (ECtHR, the Court) (2006), which stipulates that the national courts apply the Convention for the Protection of Human Rights (the Convention) and the case law of the ECtHR directly as a source of law in their proceedings).[1]

[1] The Law "On execution of judgments and the implementation of practice of the European Court of Human Rights", 2006, Art.17 Available at: https://zakon.rada.gov.ua/laws/card/3477-15?lang=en

3. It means that in every individual case, the Ukrainian court will interpret the national legislation again and again, within the context of the given circumstances and facts of the particular case, considering the provisions of the Convention and the relevant practice of the ECtHR. The national courts of Ukraine may also apply sources of International Law if it is needed. They may refer to the judgments of the Court of Justice of the European Union, but only as the interpretation acts of the EU Law and not as direct sources of law in Ukraine.

4. On the one hand, the application of multiple sources of law in every case gives more room for evolving the national court's interpretation practice. Ronald Dworkin (2004) asked us to consider a situation in which judges and lawyers were grappling with hard issues of interpretation or with difficult dilemmas posed by multiple sources of law. He said that "in such cases, we might say that what was required as a matter of law might be different from what was required as a matter of justice".[2]

5. That's why, on the other hand, the possibility of interpreting the same laws in similar cases every time the Ukrainian court applies them, complicates the coherence of the court's case law and law enforcement practice.

6. To address this issue, as well as many others such as the low level of public confidence in the judiciary, and serious structural deficiencies identified by the ECtHR – the comprehensive judicial reform was started in Ukraine after the Revolution of Dignity (2014). It was a request of society to reform the judiciary and to bring to disciplinary responsibility those judges, who detained participants of the Revolution without sufficient legal basis, thus casting doubt on their independence. The reform led to the transformation of the four-level general court system (first and second instances, high courts with specialized jurisdiction, and the Supreme Court of Ukraine) to a three-level system (first and second instances, and the Supreme Court[3]). The reform was supposed to bring a new philosophy of the Supreme Court and the judiciary as such, fundamentally new human-centric approaches, the best court managing practices, and a new structure of judgments and quality of motivation.

7. As a result of reform, the former Supreme Court of Ukraine (SCU) was restructured and renamed the Supreme Court (SC) through the amendments to the

[2] Stanford Encyclopedia of Philosophy. The Rule of Law, First published June 22, 2016. Available at: https://plato.stanford.edu/entries/rule-of-law/

[3] The general court system and its administration are regulated by the Law of Ukraine on the Judiciary and the Status of Judges (official translation) Available at: https://zakon.rada.gov.ua/laws/show/en/1402-19#Text
The Constitutional Court of Ukraine (CCU) is not part of the general court system of Ukraine; it operates by the provisions of the Constitution of Ukraine (articles 147–153) and the Law on Constitutional Court of Ukraine.

Constitution, which came into effect in September 2016. These draft amendments to the Constitution were discussed with the European Commission for Democracy through Law (Venice Commission).[4]

8. The new Judiciary Act (2016) provided for transitional provisions, including the establishment of the new Supreme Court and the appointment of judges based on competition results. The judges of the former Supreme Court of Ukraine had the right to participate in the competition for the new Supreme Court appointments. On the 7th of November 2016, the High Qualification Commission of Judges (HQCJ) announced a competition for 120 posts of judge for the SC. A total of 846 candidates participated in the competition. Among the candidates were 17 judges of the SCU[5] and six of them became judges of the new formed Supreme Court. However, the Plenary of the former Supreme Court of Ukraine challenged the provisions of the new Judiciary Act 2016 before the Constitutional Court of Ukraine (which ruled in their favour), and later, eight judges of the former Supreme Court of Ukraine made an application to the ECtHR. The judgment in this case was delivered in July 2021. In the case *Gumenyuk and Others v. Ukraine* the ECtHR held that there had been a violation of Article 6 § 1 and Article 8 of the Convention. The court found that a clear lack of coordination in addressing the applicants' situation for a considerable period seriously undermined the legal certainty and predictability of the constitutional principles on judicial independence. [6]

9. Returning to the selection process, it was the first time in the history of Ukraine that the selection of judges to the Supreme Court was held in the form of open competition, grounded on the best practices of different 45 states, including the United States and the United Kingdom. It was the first time open for advocates and academicians as well as career judges. The selection process took one year and included several stages such as national legislation knowledge examination; drafting a judgment; several psychological tests and the interview with a psychologist; and interviews with the members of the HQCJ and the High Council of Justice (HCJ) as the two key judicial governance bodies. In the final ceremonial stage – the President of Ukraine issued a decree on the appointment of judges of the proposal of the High Council of Justice.

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[4] Venice Commission. Opinion No. 803 / 2015, Strasbourg, 7 December 2015. Secretariat Memorandum on the compatibility of the Draft Law of Ukraine on amending the Constitution of Ukraine as to Justice as submitted by the President to the Verkhovna Rada on 25 November 2015 with the Venice Commission's opinion on the proposed amendments to the Constitution of Ukraine regarding the Judiciary. Available at: https://www.venice.coe.int/webforms/documents/?pdf=CDL(2015)057-e

[5] *Gumenyuk and Others v. Ukraine*, no. 11423/19, 22 July 2021, Para 13.

[6] Ibid, Para 100.

10. The new Supreme Court began operating on the 15th of December 2017. It retained the power of cassation review, and it was composed of the Grand Chamber and four cassation courts (the Administrative Cassation Court, the Commercial Cassation Court, the Criminal Cassation Court, and the Civil Cassation Court). It consists of 152 judges to date (including 21 judges of the Grand Chamber).

11. The judicial reform (2016) introduced a large number of innovations: the new tools to ensure the unity and coherence of the court's practice; the new procedure for referring to the Constitutional Court; "model case procedure"[7], etc.

12. Despite all previous work, unfortunately, the Supreme Court became known because of a high-profile corruption case that was reported in the middle of May this year.[8] The Plenum of the Supreme Court reacted immediately and within two days its President was given a vote of no confidence and dismissed from his position. He was detained and an investigating judge rejected several times to release him on bail.

13. The National Anti-Corruption Bureau (NABU) and the Specialized Anti-Corruption Prosecutor's Office (SAP) completed the investigation of this case on the 4th of October 2023. It means that the materials of the case must be transferred to the High Anti-Corruption Court of Ukraine and open to the defence for perusal.

The version of suspicion is that the bribery was connected with decisions in favour of businessman Kostyantyn Zhevago[9] in the case of the Poltava mining and processing plant. Businessman Zhevaho rejected all the accusations of trying to bribe the Supreme Court.

14. It is noticeable, that recently a French court rejected an appeal from Ukraine's government to extradite Kostyantyn Zhevago due to procedural concerns. As was stipulated in the numerous mass media, the court concluded that Ukraine is unable to

[7] A model case is a "clone administrative case" accepted for proceedings by the Supreme Court as a court of first instance for delivering a model judgment.

[8] See, inter alia, BBC, Ukraine Supreme Court head held in corruption probe, 16 May 2023.

[9] Mr. Zhevago is an ex-member of parliament who lives in France and controls the iron pellet producer Ferrexpo. Ukraine wants him extradited in connection to 2019 charges of embezzling and laundering $113 million at Finance & Credit Bank, a bank that collapsed in 2015. In 2021, he was put on the Interpol wanted list and was arrested in France in December 2022 at Ukraine's request. He was later released on bail for 1 million euros.
The National Anti-Corruption Bureau of Ukraine (NABU) then announced in August 2023 that Mr. Zhevago is suspected of having bribed the head of the Supreme Court and other Supreme Court judges in exchange for a decision in his favor.

guarantee that Mr. Zhevago "will be tried by a court that can ensure fundamental procedural guarantees and protection of the defence rights".[10]

15. My concern is that just *ipso facto*, all the previous work of the Supreme Court turned out in a shadow on the background of the corruption case. It is very disappointing to observe how easily we can lose something we've been building with huge efforts. The general public has less trust and interest in the legal positions of the court. The general public isn't interested in the fact that from the first days of the war till the present all judges of the Supreme Court have been donating 60 percent of their salaries to the Ukrainian Army. Thus, since the war started around 10 million pounds have been transferred by my former colleagues, not including personal donations and targeted help.

16. Moreover, according to Ukrainian legislation, courts must administer justice even during times of emergency or war times. During the war, the court system in general did not stop functioning even for one single day. In 2022 the courts of Ukraine considered around 3 million cases. The SC (four cassation courts and the Grand Chamber) considered 71 thousand cases.[11]

17. Sadly, after the corruption case was reported, the political intentions (which initially appeared in 2019) to reform the Supreme Court as an institution, immediately became justified for civil society. In June 2023, the National Security and Defence Council of Ukraine decided to enhance the fight against corruption in the judiciary[12]. In response to that decision, the Parliamentary Committee on Legal Policy prepared the draft law as regards the introduction of additional procedures to enhance public trust in the judiciary.

18. This draft law (i) broadens the grounds for checking the integrity and discipline of judges by introducing a new type of "court monitoring" by the HCJ; and (ii) introduces the use of lie-detector (polygraph) in various contexts of judicial career

[10] French court rejects appeal to extradite Ukrainian billionaire Zhevago. Available at: https://www.reuters.com/world/europe/french-court-rejects-appeal-extradite-ukrainian-billionaire-zhevago-2023-11-10/

[11] Верховний Суд у цифрах та фактах за 2022 рік (Supreme Court in facts and figures in 2022). Available at: https://supreme.court.gov.ua/userfiles/media/new_folder_for_uploads/supreme/rizne/Zvit_VS_2022.pdf

[12] European Commission. Key findings of the 2023 Report on Ukraine. Available at: https://ec.europa.eu/commission/presscorner/detail/en/QANDA_23_5631

(recruitment, competitive transfers, the court monitoring, and the disciplinary proceedings).[13]

19. On the 9th of October 2023, the Venice Commission examined the draft law on request of HCJ and concluded that "[I]t is not the first time that the Ukrainian authorities have prepared legislation to enhance public trust in the judiciary. In its 2020 Opinion, the Venice Commission and DGI observed that "[t]he judicial system of Ukraine has been subject to numerous changes in recent years. Following presidential elections, the new political power would often start new changes to the judicial system. In the absence of a holistic approach, various pieces of legislation were adopted that did not have the character of a comprehensive reform." In this regard, the Opinion also underlined the importance of the stability of the judicial system, and the necessity to refrain from frequent fragmentary judicial reforms and ensure a comprehensive and coherent approach.[14]

20. The Venice Commission has earlier expressed its serious concerns regarding the use of lie detectors in the context of judicial career. This technology remains a largely controversial matter and should be avoided in the context of judicial career. This is even more so where such an intrusive tool may be used on broad grounds, in an arbitrary manner (as there are no criteria for the use of discretion by the HCJ), and when it is not accompanied by effective remedies and procedural safeguards. In addition, the Venice Commission recalled that under its Rule of Law Checklist, a law has to be, *inter alia*, clear and predictable (or "foreseeable as to its effects" in the words of the European Court of Human Rights [15]).

21. Several days ago, the above-mentioned draft law was improved and the idea of applying a lie detector was removed from the draft text. This example was one of the numerous initiatives concerning the SC, which demonstrated rather a populistic approach, than something connected with the real needs of this institution.[16]

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[13] Joint Follow-up Opinion of the Venice Commission and the Directorate General of Human Rights and Rule of Law (DGI) of the Council of Europe to the joint opinion on the draft amendments to the Law "On the Judiciary and the Status of Judges" and Certain Laws on the Activities of the Supreme Court and Judicial Authorities (CDL-AD(2020)022), adopted by the Venice Commission at its 136th Plenary Session (Venice, 6-7 October 2023), Para 11. Available at: https://www.venice.coe.int/webforms/documents/default.aspx?pdffile=CDL-AD(2023)027-e

[14] Ibid, Para 24.

[15] *Sanchez v. France*, no. 45581/15, 15 May 2023, para. 124.

[16] More facts and figures about the Ukrainian Judiciary may be found in the Report, published on my profile page at the official website of the BIICL – T. Antsupova. Judiciary in Ukraine: Evolution through the Systemic Deficiencies and Everlasting Reforms. Available at: https://www.biicl.org/documents/11895_judiciary_in_ukraine_prof.pdf

How to ensure the independent high-quality judiciary as a guarantor of the Rule of Law, especially in times of war?

22. The war that has been ravaging Ukraine since early 2014, and especially the full-scale invasion of 24 February 2022 brought new challenges and questions such as "Will Russia's war kill the Rule of Law in Ukraine and Europe?"[17] I would rephrase the question – is it practically possible to ensure the Rule of Law during a full-scale war?

23. According to well-known philosopher Friedrich Hayek, "[g]overnance during wartime necessarily required total mobilization and management of all of the society's manpower and resources".[18] In this connection my question is – where are the limits of such "mobilization"? May it affect the constitutional rights and freedoms of a person, which are guaranteed in a peaceful time and what is the judiciary's role as a stabilising force?

24. To respond to these questions, first of all, I would like to say, that in times of war laws of peace change to laws of war inevitably. During the international armed conflict, the principles and norms of International Humanitarian Law must be respected, and national Martial law may provide certain exceptions, limitations, or restrictions from general rules. According to the Constitution of Ukraine "[u]nder the conditions of martial law or a state of emergency, specific restrictions on rights and freedoms may be established with the indication of the period of effect for such restrictions"[19].

Secondly, during times of war, an interaction between the International Law of Human Rights and International Humanitarian Law is coming on the stage. In the context of the protection of individual rights and freedoms Ukraine is currently under the regulation of Article 15 of the Convention, which stipulates that "[I]n time of war or other public emergency threatening the life of the nation any High Contracting Party may take measures derogating from its obligations under this Convention to the extent strictly required by the exigencies of the situation, provided that such measures are not inconsistent with its other obligations under international law". [20] At the same time, non-derogable rights under the Convention are well known: the right to life, except in respect of deaths resulting from lawful acts of war; the prohibition of torture, prohibition of slavery, and no punishment without law.

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[17] Lyal S. Sunga. Will Russia's War Kill the Rule of Law in Ukraine and Europe? Available at: https://verfassungsblog.de/will-russias-war-kill-the-rule-of-law-in-ukraine-and-europe/

[18] The Rule of Law, First published June 22, 2016. Available at: https://plato.stanford.edu/entries/rule-of-law/

[19] Constitution of Ukraine (official translation), Art. 64. Available at: https://zakon.rada.gov.ua/laws/show/en/254%D0%BA/96-%D0%B2%D1%80#Text

[20] Convention for the Protection of Human Rights and Fundamental Freedoms as amended by Protocol No. 15 (as from its entry into force on 1 August 2021), Rome, 4.XI.1950, Art. 15. Available at: https://rm.coe.int/1680a2353d

Thirdly, the judiciary's role manifests itself in the fact that there mustn't be any act or decision of state authority that is out of judicial control, or beyond the Rule of Law. This role equally concerns international, supranational, and national courts in the frames of their jurisdiction. A special value of constitutional judicial control appears in connection with balancing the public interest (defence, national security, protection of the rights and freedom of others) and individual constitutional rights and freedoms. Despite a state having a wide margin of appreciation, it should pursue a legitimate aim which must be clearly defined. The essential attention within the courts' methodology in such cases must be paid to the proportionality test.

25. In this context, I find fair enough Lon Fuller's opinion, "applying a norm to a human individual is not like deciding what to do about a rabid animal or a dilapidated house. It involves paying attention to a point of view. As such it embodies a crucial dignitarian idea – respecting the dignity of those to whom the norms are applied as beings capable of explaining themselves".[21]

26. Indeed, wartime and times of emergency challenge the Rule of Law. But as far as judicial power is not replaced by police or military operations or revolutionary expediency Russia's war will not kill the Rule of Law in Ukraine and Europe. Thus, the role of the independent high-quality judiciary as a guarantor of the Rule of Law became even more important in challenging times, as we all understand.

27. In this respect, Lord Neuberger, the former President of the Supreme Court of the UK during his Bar Council Law Reform Lecture in 2016 emphasized: "The UK has enjoyed over 300 years without a revolution, invasion or dictator, there is a danger of taking the rule of law and, in particular, the importance of an independent high-quality judiciary, for granted. And this danger is reinforced if the public does not understand how and why the system works as it does".[22]

28. In comparison with Ukraine, the judiciary has not had any period of stability for the last 100 years (soviet totalitarianism and WWII, "Perestroika" and the collapse of the USSR were changed to independence's times of turbulence and instability, everlasting judicial reforms, all kinds of experiments, and finally the full-scale Russian invasion). As a result, the general public does not understand "how and why the system works as it does", which causes a lot of political manipulations with public opinion, and in particular cause a low level of public confidence in the judiciary.

[21] Stanford Encyclopedia of Philosophy. The Rule of Law, First published June 22, 2016. Available at: https://plato.stanford.edu/entries/rule-of-law/

[22] Lord Neuberger. The Role of the Supreme Court Seven Years On – Lessons Learnt Bar Council Law Reform Lecture 2016, 21 November 2016. Available at: https://www.supremecourt.uk/docs/speech-161121.pdf

29. Russian war in Ukraine is a tragedy that will span generations, it is an existential threat to the Ukrainian nation. It has been a continued attempt of Russia to eradicate the Ukrainian language, culture, and the nation as such. However, the international agreements after WWII, the shared idea of "never again" and the Budapest Memorandum (1994) make the current try of Russia as brutal and cynical as ever before and therefore unprecedently threatening the international legal order and the International Rule of Law.

30. The challenges that the Ukrainian judiciary meets are multilevel.

There are internal and external enemies (dozens of collaborationists have been brought to criminal responsibility); there are 11 000 pending disciplinary complaints against judges (2023); there is a conflict of worldviews between judges representing soviet law schools and contemporary law schools; the system of courts is understaffed (there are more, then 2000 judicial vacancies); there is a need to complete evaluating (vetting) the qualification of some 1 900 sitting judges, which was suspended in 2019; despite Ukraine is a digital state with high qualified IT specialists the current electronic court system in Ukraine has limited technical capabilities and requires improvement, etc.

31. To address the challenges a group of judges of the Supreme Court elaborated the Draft Strategy of the SC which was represented at the Plenum on 6th of October 2023. It includes the main directions for strengthening the institution for the next 5 years. It aimed to create a system that will effectively counter corruption risks; increase readiness for work in conditions of war and other emergencies; promote digitalization to ensure better access to justice, better service, and a reduction the expenses; communicate effectively with civil society and other branches of state power; to implement best global management practices; to create the "*amicus curie*" circle and to improve judicial diplomacy.

The EU accession process and the capacity of the Ukrainian Judiciary

32. The draft strategy of the SC fits well with those requirements expressed in the Ukraine 2023 Report of the European Commission on EU Enlargement policy. Among the other recommendations: "A new strategy for the reform of the justice system to respond to the challenges of wartime still needs to be developed, in a transparent and inclusive manner, and adopted".[23] The European Commission Report is a historical

[23] Commission Staff Working Document. Ukraine 2023 Report. Accompanying the document Communication from the Commission to the European Parliament, the Council, the European Economic and Social Committee and the Committee of the Regions 2023. Communication on EU Enlargement policy. Brussels, 8.11.2023, p. 22 Available at: https://neighbourhood-enlargement.ec.europa.eu/system/files/2023-11/SWD_2023_699%20Ukraine%20report.pdf

document for Ukraine as a unique European state whose EU accession aspirations coincided with active hostilities to defend the state from the aggressor. It was logical, but unfortunately under tragic circumstances, for Ukraine to receive the status of a candidate state for joining the European Union on the 23rd of June, 2022.

33. This report covers the period from June 2022 to June 2023. Its Chapter 23 is dedicated to Judiciary and fundamental rights and recommends in the coming year, in particular:
- fill the open vacancies in the Constitutional Court of Ukraine in line with the adopted legislation; relaunch the selection of ordinary judges based on the improved legal framework, including clear integrity and professionalism criteria and the strong role of the Public Integrity Council; resume the evaluation of the qualification of judges (vetting), which was suspended in 2019;
- establish the service of disciplinary inspectors following a transparent and meritocratic selection process and resume the handling of disciplinary proceedings against judges prioritising high-profile cases and cases nearing the statute of limitation; take effective measures to address corruption risks in the Supreme Court;
- complete a comprehensive IT audit, including the existing IT systems, business processes and organisational structure, and based on the audit results, adopt and start implementing a roadmap to modernise IT in the judiciary, including the development of the new case management system.

34. In the subchapter "Independence and impartiality" the European Commission concluded: "Despite the legal and institutional guarantees, the risks of undue internal and external interference in the work of the judiciary and the prosecution service persist, and further efforts by the competent institutions are needed to effectively reduce them."[24]

35. The ensuing internal and external independence of the judiciary has been the first time identified by the ECtHR's in the case of *Agrokompleks v. Ukraine* in 2011. This case concerned the insolvency proceedings initiated by a private company against the biggest oil refinery in Ukraine, in an attempt to recover its outstanding debts. The applicant company complained in particular about the unfairness of the insolvency proceedings, alleging that the domestic courts had not been independent or impartial given the intense political pressure surrounding the case, the State authorities having a strong interest in its outcome. The Court held that there had been a violation of Article 6 § 1 of the Convention as regards the lack of independence and impartiality

[24] Commission Staff Working Document. Ukraine 2023 Report. Accompanying the document Communication from the Commission to the European Parliament, the Council, the European Economic and Social Committee and the Committee of the Regions 2023. Communication on EU Enlargement policy. Brussels, 8.11.2023, p. 24. Available at: https://neighbourhood-enlargement.ec.europa.eu/system/files/2023-11/SWD_2023_699%20Ukraine%20report.pdf

of the domestic courts. It noted in particular that, as confirmed by documentary evidence, various Ukrainian authorities had intervened in the judicial proceedings on a number of occasions. The Court also recalled that it had already condemned in the strongest terms attempts by non-judicial authorities to intervene in court proceedings, considering them to be incompatible with the notion of an "independent and impartial tribunal". The Court emphasised that the scope of the State's obligation to ensure a trial by an independent and impartial tribunal was not limited to the judiciary but also implied obligations on any other State authority to respect and abide by the judgments and decisions of the courts. Judicial independence further demanded that individual judges be free from undue influence, including from within the judiciary. The fact that, in the present case, the president of the Higher Arbitration Court had given direct instructions to his deputies to reconsider the court's ruling … had been contrary to the principle of internal judicial independence.[25]

36. In the relatively recent case of *Samsin v. Ukraine*[26], a different aspect of the judicial independence was considered – namely "automatic lustration" as a legal ground for the dismissal of judges. The case concerned the dismissal of a former Supreme Court of Ukraine judge, Igor Samsin, under the Government Cleansing (Lustration) Act (GCA) brought in to address negative developments in public service in the period when former President Viktor Yanukovych was in power. The law was applied systematically to specific categories of public and civil servants who had been in posts between 2010 and 2014. Mr. Samsin was banned from employment in the public service for 10 years (until the end of 2024), and his name was put in a publicly accessible Lustration Register. In addition, as his resignation application was not considered, he was deprived of the benefits associated with judicial retirement despite being close to retirement age. The Court found a violation of Article 8 (right to respect for private and family life) of the European Convention on Human Rights. In particular, it found that the measures envisaged by the GCA and imposed on the applicant had not been necessary in a democratic society.

37. In the most recent case *Ovcharenko and Kolos v. Ukraine* the applicants were dismissed as judges of the Constitutional Court of Ukraine for their participation in a judgment, which the authorities interpreted as an unlawful act restoring a previous version of the Constitution which had led to the usurpation of power by the former President Viktor Yanukovych. The Court held, "[t]here was no indication that law limited in some way the scope of review that the courts could exercise in cases. It had been crucial for the domestic courts to assess whether the applicants had been provided with sufficient guarantees of an independent and impartial examination of their cases and to address all relevant factual and legal issues that had been decisive for the outcome of the case. In particular, the question whether their dismissal had

[25] *Agrokompleks v. Ukraine*, no. 23465/03, 06 October 2011.
[26] *Samsin v. Ukraine*, no. 38977/19, 14 October 2021.

been compatible with the constitutional guarantees of judicial independence, including the question of functional immunity of Constitutional Court judges limiting the scope of their legal liability for the results of their votes as members of the Constitutional Court, had called for an elaborate response. It could not be tacitly discarded and had to be examined in detail, if the judicial review were to be considered "sufficient" for the purposes of the Convention. As this had not been done, the decisions on the applicants' dismissal could not be considered sufficiently reasoned." [27]

38. Ukraine has been a member of the Council of Europe and the party to the Convention for nearly 30 years. We learnt many lessons from the biggest "school of democracy", and we are still learning. My strong belief is that the Ukrainian judiciary is capable of being strengthened in the context of the European integration process.

Conclusion

39. In conclusion, I would like to emphasize that Ukraine exists within the paradigm of the contemporary world and its economic, geopolitical, historical, and security components. It was labelled for a long time as a post-Soviet state; however, for the last 32 years of independence, the people of Ukraine have proved their ability to be a strong nation. The deficiencies of the Ukrainian judicial system are not unique within the European legal area. And the capacity and determination to overcome those deficiencies are still there despite the challenges brought by the aggressive war started by Russia.

40. To ensure the independent high-quality judiciary as a guarantor of the Rule of Law in wartime I suggest following the "5S" formula: safety (security) – strategy – sequence – stability – support.

41. Objectively, there is a big difference in the administration the UK and the Ukrainian judiciary systems. Despite our states coming from different historical circumstances, geopolitical situations, and legal systems, we share the values of democracy, the Rule of Law, and human rights being the Member States of the Council of Europe. It is noticeable that this organization reacted promptly to Russian aggression by its exclusion from membership on the 16th of March 2022.[28]. In my honest opinion, the voice of the UK as a founder of the Council of Europe, its impact and commitment to pan-European values, principles, and standards are hugely important as stabilising force in a dangerous time of aggressive war on the European continent.

[27] *Ovcharenko and Kolos v. Ukraine*, nos. 27276/15 and 33692/15, 12 January 2023, Para 91.
[28] Council of Europe. Exclusion of the Russian Federation from the Council of Europe and suspension of all relations with Belarus, 17 March 2022. Available at: https://www.coe.int/en/web/ccpe/-/the-russian-federation-is-excluded-from-the-council-of-europe

Thank you for your attention, your interest in the topic of the lecture, and your support of my country.

Glory to Ukraine!