

**International Scientific and Practical Conference on the occasion of the
26th anniversary of the Day of Constitution of Ukraine
on "The Role of the Constitutional Court of Ukraine in the Implementation of the
State's Strategy to Obtain the European Union Membership by Ukraine".
Kiev and online, 28 June 2022**

Presentation by Ms Claire BAZY MALAURIE, President of the Venice Commission

Dear Acting Chairman of the Constitutional Court of Ukraine
Dear Presidents and Judges,
Excellencies,
Ladies and Gentlemen,

The 26th anniversary of the Day of Constitution of Ukraine takes place in tragic circumstances, in the middle of a war of Russian aggression against Ukraine.

I first expressed my firm condemnation for this act of aggression by the Russian Federation in my public statement of 1 March 2022.

This statement was supported by the whole Venice Commission at its plenary session on 19 March 2022. The Commission expressed its „full solidarity with Ukraine, which is fighting for the protection of our shared European principles and values of democracy, human rights and the rule of law.“

We deplore the on-going loss of lives and the destruction in Ukraine. Using violence instead of dialogue goes against everything that the Venice Commission stands for; it goes against the core values of the Council of Europe: democracy, the rule of law and, of course, the protection of human rights.

Against the background of these tragic events, today we discuss a more encouraging topic: the consequences of the recent decision by the European Council to grant the status of candidate country to Ukraine, in recognition of its European perspective.

This is a very important step forward for both the Ukraine and the EU.

As we know well from other States that joined the European Union, accession is a complicated process but one that thrusts a country forward in its path.

This concerns so many aspects, including economy, health, social affairs to name but a few.

Being a candidate country to the European Union entails the need for the constitutional and legislative framework to meet very high standards.

Ukraine has been a member of the Council of Europe since 9 November 1995 and has been working on meeting these standards since then. Constitutional and legal reforms have been prepared with the assistance of several Council of Europe bodies, and in particular with the Venice Commission.

It has been a complex process, which has witnessed steps forward but also sometimes backwards. It has overall registered progress, and in this connection I wish to pay tribute to the institutions of Ukraine - the President, the Government, the Verkhovna Rada, the Supreme Court and the ordinary courts, the Ombudsman, and the Constitutional Court - which have continued to work towards democratic development, but also and to a great extent to the Ukrainian people and civil society who have shown resilience and commitment.

The process of accession to the European Union will give a new impetus to reforms and will allow to take stock of areas where reforms are still needed. The work with the Council of Europe will continue based on the parameters established by its monitoring bodies and its advisory bodies, including the Venice Commission.

In the past, the Venice Commission has provided many opinions for Ukraine. You are one of our best 'clients' if I may say so. Since 1995, the Venice Commission has given 96 opinions for Ukraine. This represents a substantial part of the work of the Venice Commission.

The pace was again very brisk until the beginning of this year, when we decided not to interfere with the state's priority of action in the bursting conflict, and so to retain temporarily our pen. We will resume our work with you as soon as possible. At our last session, however, we have adopted an *amicus curiae* brief for the Constitutional Court of Ukraine, at its request, as the Court continues to function despite the war, which is certainly commendable.

I can affirm that our recommendations have been formulated against the background of thorough work and a deep knowledge which the Venice Commission has carried out over the years in dialogue with the authorities and the stakeholders of Ukraine.

Yes, the Venice Commission has sometimes been critical of the manner in which certain reforms were proposed to be carried out.

Anyhow, all our recommendations have been made with a view to meeting Council of Europe standards and thus enabling European integration, and many of them remain valid. While our recommendations are not binding, I encourage the Ukrainian authorities to review what has been said on so many crucial areas.

The implementation of some recommendations has been hampered by the aggression against Ukraine, but I am confident that they will be taken up again soon, including in the framework of EU accession.

This concerns in particular the efforts to achieve an independent judiciary, which will be of crucial importance for the phase of reconstruction.

In the EC decision, there are direct references to the work of the Venice Commission, including on the law on de-oligarchisation. This is indeed a very important topic for Ukraine, and a priority which - like any and all other reforms - needs to be carried out with due respect to the rule of law and for human rights.

My previous remarks include the Constitutional Court itself. As you will remember, we issued two opinions, in December 2020 and March 2021. The opinion on the draft law on Constitutional Procedure was a direct follow-up to the urgent opinion on the Reform of the Constitutional Court from December 2020. Since then, however, the Law on the Constitutional Procedure has not been adopted.

Furthermore, the European Commission requested to enact and implement legislation on a selection procedure for judges of the Constitutional Court of Ukraine, in line with Venice Commission recommendations. In our opinions, we have discussed these issues and we are ready to work on draft legislation on these issues.

As it was said already in 2009, in the first Congress of the World Conference on Constitutional Justice, constitutional courts are not established just because it is modern and fashionable to do so. Constitutional justice is a key element in fostering and deepening the basic values enshrined in the Constitutions.

In our European countries, it means precisely that constitutional courts have to ensure that the executive and legislative acts are consistent with the Constitution, human rights norms, and, and I underline, the Rule of Law. These are European requirements.

Let me repeat that the role of a constitutional court is crucial, as an independent arbitrator whose decisions are binding on all. As they have the last word in so many important disputes; it is important for any Constitutional Court to enjoy public trust but also international recognition that will support their position as guarantor of the legal and constitutional order.

Mr Chairman,

Let me congratulate Ukraine upon its EU candidate status. This is a key step forward for Ukraine and its brave people. It will lead to improvements in many areas but also as concerns democracy, the protection of human rights and the rule of law.

I am confident that the EU candidate status will represent a renewed commitment and an even stronger motivation to implement the Council of Europe standards;

The Venice Commission stands ready to support you vigorously.

Thank you for your attention.