

**THE SPECIAL ADVISOR TO COUNCIL OF EUROPE'S SECRETARY GENERAL FOR
UKRAINE**

STATEMENT

**AT THE HIGH-LEVEL CONSULTATION OF THE ORGANISATION FOR ECONOMIC
CO-OPERATION AND DEVELOPMENT (OECD)**

“UKRAINE DAY”

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OECD CONFERENCE CENTRE

PARIS, FRANCE

Council of Europe's support to Ukraine on Governance

A. We support Ukraine through a comprehensive Action Plan: we seek to ensure the country's democratic security.

The Council of Europe supports Ukraine through a comprehensive Action Plan in the fields of Human Rights, Rule of Law and Democracy. The SG of the Council of Europe, T. Jagland, described our action as action to ensure “democratic security”.

The CoE action in Ukraine pursues three objectives that are interlinked and interdependent: restore trust to the institutions; ensure stability of the legal environment; and achieve full respect of the commitments and treaty based obligations subscribed by Ukraine before the Council of Europe and the other Member States.

We seek to create an independent, fair efficient justice system; to put in place a balanced distribution of power between State institutions, doing away with concentration, creating checks and balances and bringing power closer to citizens.

You will easily see how important these elements are to achieve good governance in Ukraine.

We all know that a well functioning judiciary is indispensable to restore trust. We have worked together with the Ukrainian Government, in the framework of the Justice Reform Council. The Law on Fair Trial adopted some months ago is the result of this intensive work and we are happy to see that self-governing bodies of the Judiciary are about to be put in place.

The President of Ukraine has recently adopted an ambitious Strategy to reform the Judiciary and the related legal institutions. We have worked together with the Justice Reform Council and the European Union to make this strategy fully compatible with CoE standards and with the European ambitions of the country and we will continue to support the implementation of this strategy together with the European Union and other international partners in such areas as the independence, professional development and accountability of judges, the efficiency of the administration of justice, the guarantees for advocacy and legal aid, the means for alternative dispute resolution.

Most importantly, we worked in reforming the Criminal procedure law and in particular the General Prosecutor (GP) Office with a view to reducing drastically the Prosecutor's general function of supervising legality – inherited from the soviet system – and concentrate the GP tasks in criminal prosecution before courts. Removing the general supervision of legality from the GP is – we believe - a major step ahead. Not so much because the GP is concentrated in criminal prosecution tasks but above all because by removing several layers of unwarranted control over the administration, the citizens and private initiatives we reduce corruption and undue influence.

The bodies of the Ministry of Interior are also being profoundly reformed. The CoE is presently reviewing the Law on National Police in cooperation with the Verkhovna Rada. We do the same in respect of the new draft law on the State Bureau of Investigations.

The National Anticorruption Bureau is now established and is expected to start its operation soon. We assist the Ukrainian authorities by providing expert advice and exchanges of good practices. We

also seek to ensure that the reforms introduced are coherent with criminal procedure law and the reform of the Prosecution and that they do not infringe on the rights of the accused, the presumption of innocence and the principles of due process. Actually, it makes no sense to adopt an anti-corruption legislation that may be found in breach of obligations entered into by Ukraine in particular in the field of fundamental rights.

Several laws have been adopted concerning local democracy and decentralization, including laws that enable local authorities to raise taxes and manage significant parts of budgetary resources. We expect the forthcoming local elections to bring to the forefront of the political scene a new generation of politicians, as was the case with legislative elections last autumn. The Venice Commission (the *European Commission for Democracy through Law*) intensively work with the Ukrainian Parliament to adopt the new law on local elections.

Laws on media have been adopted that avoid State interference and guarantee pluralism and transparency.

In this framework we strongly support the participation of civil society in the reform process. Of course, we witness how civil society activists are now prominently present in the political scene of Ukraine, a development that we can only welcome. At the same time, we seek to provide a framework for regular and institutionalized input from the civil society. This is an essential tool to avoid opacity and engage the Ukrainian society as a whole – as opposed to a political leadership only - in the reform process. A lesson learnt from the past is that “ownership” of the reform process by the legal professionals, the business community and civil society in general is the only way to ensure the sustainability of the reforms.

B. Safeguarding Democracy, Rule of Law and Human Rights in Ukraine: an ongoing process

Does this mean that trust to institutions, stability and rule of law are now achieved and fully respected in Ukraine?

I would say that the reform process has now achieved a cruising speed and is moving in the right direction. It is however not yet completed.

The Constitutional Reform is the cornerstone of the reform process. It shall

- Consolidate judicial independence, not so much by removing individual judges but by removing the institutional barriers to independence, by removing the channels that create links with political power and allow undue influence over the judiciary. Removing the probational appointment of judges in the Constitution, ensure that the appointment, career and accountability of judges is dealt with by their peers on the basis of objective criteria and not by politicians (in other terms that judicial self-governing bodies have these powers and are composed by a majority of judges (preferably) elected by their peers)
- Put in place a Judicial system that is efficient and transparent, with no overlapping competencies, no excessively cumbersome procedures, and where judicial decisions are implemented properly, fully and rapidly. Let me just mention in this respect that the problem of non-execution of domestic judgments is one of the main issues the European Court of Human Rights deals with in Ukraine (presently more than 10.000 cases are pending before

the Court where the applicants complain that final judgments obtained in Ukraine remain non enforced).

- Enable decentralisation, by removing obstacles to substantive transfer of competencies to local authorities, by establishing a new system of decentralized power that will favor the merger of smaller communities into bigger entities, more capable to assume devolution of power and responsibility, being simultaneously closer to the citizens and having a wide margin in deciding and administering regional and community matters.
- Achieve a better balancing of powers between the President, the Parliament and the Cabinet of Ministers. This appears essential for the stability of the country.

The Constitutional reform is thus not an option but a necessity.

It is the only way forward and a pre-condition for the success of the reform process. We are happy to participate as observers in the Constitutional Commission and we hope that it will be soon able to present a comprehensive draft to the Verkhovna Rada, a draft that definitely and resolutely addresses the issues of

- Decentralization, in accordance with the European Charter of Local Self Government, the Recommendations of the Venice Commission and of the Committee of Ministers;
- the judiciary, in accordance with the ECHR the judgments of the Court, the opinions of the Venice Commission and the Recommendations of the Committee of Ministers.

The Justice Reform Strategy approved by the President and the related Action Plan will not bring results if the Constitution does not consolidate the reform and does not prevent undue interference from politics into justice.

Equally, the decentralization process will not achieve the expected results if there is no trust to local authorities or if their decision making power is curtailed by interferences of the central power.

There is thus a need for courageous, determined and consensual leadership and we hope – we are confident- that we will witness such leadership in the crucial weeks and months to come!

C. Ukraine is subject to a European control

Pending the completion of the reform process, Ukraine does not remain in a vacuum as regards the protection of individual rights and the proper functioning of its institutions.

The Council of Europe has a performing machinery (both political, judicial and treaty based) to monitor the obligations of its Member States and take corrective action whenever needed. This monitoring system is based on the European Convention on Human Rights and the European Court of Human Rights but also on other Conventions and treaty based monitoring mechanisms. I will only refer to some of them which are of particular relevance here:

- The GRECO (a peer pressure body composed of delegations of MS) monitors the Anti-corruption efforts of Ukraine and makes concrete recommendations as to both the law and the practice followed in this field, including as to the independence, composition, powers and efficiency of the anti-corruption bodies; our cooperation projects with Ukraine in the field of fight against corruption rely on GRECO's findings and recommendations.

- The Venice Commission is following very closely the reform process. Not only is the Constitutional Reform heavily based on the recommendations that the Venice Commission has put forward in the last months and years, but also the Commission's rapid reaction to legislative initiatives may further steer and guarantee that the reform process is in line with principles of European law. Thus, the Commission's criticism on the so called "lustration law" (the law aiming at restoring trust to state administration by "cleansing" the state machinery from corrupt or unreliable civil servants) triggered a review of the challenged provisions; the revision seeks to make the lustration process compatible with the principles of good administration. The Venice Commission will adopt its opinion on the revised "lustration law" later this week. We expect that its recommendations will be followed so as to minimize the risk of lengthy litigations before courts and ultimately create a safe legal environment both for civil servants and Ukrainian citizens, including domestic and foreign entrepreneurs.

The same is true as far as the constitutional and legislative initiatives concerning the removal of immunities of MPs and judges are concerned. The Venice Commission opinion will be issued this week and we believe it will provide guidance as to the contents of the legislation concerned as well as to its implementation in a manner compatible with the democratic principle of separation of powers.

- Last but not least, the European Court of Human Rights ensures on the basis of individual applications brought before it that fundamental rights are respected. I specifically refer to
 - > the right to a fair trial by an independent court in the determination of civil rights and obligations (that covers of course commercial litigation)
 - > the right to have a trial within a reasonable time
 - > the right to have the judgment executed and implemented fully and adequately
 - > the respect for property rights

as well as to a number of principles such as the obligation to ensure legal certainty and to avoid arbitrary (selective, or discriminatory) implementation of laws.

The European Court of Human Rights does not of course replace the courts of Ukraine. However, when (in Ukraine as in any other MS of the CoE) the domestic judicial system is unable to safeguard the above rights, the European Court is able to provide the judicial protection that is required in the common European legal space. This is the reason the Court was set up; this is why the European Convention of Human Rights is seen as a constitutional instrument of the European public order, and this is why the Court's judgments are mandatory for MS and their execution is supervised by the Committee of Ministers of the 47 Member States of the Council of Europe.

D. Cooperation

If there is one thing to underline in concluding my remarks, I would simply stress the openness and extraordinary spirit of cooperation that the CoE and – I believe – the international community has

experienced in Ukraine. This openness is probably the most significant guarantee for the success of the reform process.

Ukraine is a big country and Ukraine is under stress. It is under stress because of the dire security situation that has detrimental effects on the economy and the society. But it has also an extraordinary potential and an unprecedented political will to respect its international obligations and to improve the lives of its citizens. This should neither be forgotten nor underestimated.