

**Forum "Ukraine 30". Justice Development
Day 3, 3 March 2021**

**Mr Gianni Buquicchio
President of the Venice Commission of the Council of Europe
Opening Address**

Ladies and Gentlemen,

I am pleased to meet you online in the Forum "Ukraine 30" on Justice Development. On numerous occasions, the Venice Commission worked with Ukraine on justice development.

While our proposals have not always been followed, our efforts continue unabated.

Before discussing concrete issues, let me talk about the relationship between the fight against corruption and judicial independence.

As I pointed out in my joint letter with the President of GRECO last October, an effective fight against corruption and respect for judicial independence and the Rule of Law have to go hand-in-hand.

There can be no effective fight against corruption without an independent judiciary and respect for the Rule of Law.

Equally, there can be no independent judiciary and respect for the Rule of Law when corruption is pervasive.

As long as corruption remains widespread the Ukrainians cannot enjoy the rule of law.

Nor will you achieve public trust in institutions or confidence on the part of investors. Your country cannot prosper under those circumstances.

Creating specialised institutions or adopting new laws will not in itself improve the ability to prevent and combat corruption.

But effective, well-funded, and well-staffed anti-corruption institutions and courts that are left to do their work without undue interference will make a difference.

In short, and this is the case for all reforms across the judiciary, you need political will and professionally competent people chosen on merit.

I draw to your attention to the importance of implementing in full GRECO's recommendations.

Doing so will address corruption in the judiciary and allow courts to focus on what they are there for – to settle disputes fairly and lawfully.

President Zelenskyy / Deputy Prime Minister,

Let me turn to recent opinions and proposals that the Venice Commission has adopted upon request by the Ukrainian authorities.

We have focused on two main areas – the ordinary judiciary and the Constitutional Court.

As concerns the ordinary courts, the Commission adopted in October 2020 a joint opinion on draft Law 3711 that *inter alia* would amend the law 'On the Judiciary and the Status of Judges'¹.

The Venice Commission concluded that it was urgent to re-establish the High Qualification Commission of Judges and to fill some 2000 vacancies in the first and second instance courts. This is about one third of all judicial posts.

The Commission proposed re-establishing the High Qualification Commission of Judges through a mixed national/international body, the so-called "Selection Committee".

The High Qualification Commission should retain its autonomy from the High Judicial Council, which needs serious reform as well.

An integration of these two bodies can be done after a full reform of the High Judicial Council.

While draft law no. 3711 was considered to be a "fast track" law last October, I note that it still has not been adopted and our recommendations have not been implemented.

As for the Constitutional Court, last December, we adopted two urgent opinions, one on the situation of the anti-corruption mechanisms, following Decision 13-R/2020 of the Constitutional Court of Ukraine and one on the Reform of the Constitutional Court itself.²

¹ [CDL-AD\(2020\)022](#).

² [CDL-AD\(2020\)038](#) and [CDL-AD\(2020\)039](#).

I would like to warmly thank President Zelenskyy for having requested these two urgent opinions and for withdrawing draft law No. 4288 that would have dismissed all judges of the Constitutional Court.

We should not forget that the Constitutional Court played also a positive role in the implementation of judgements of the European Court of Human Rights.

In its urgent opinion on the Reform of the Constitutional Court, the Venice Commission analysed serious shortcomings of Decision 13-r/2020 -

but the Commission came to the conclusion that the Constitutional Court's decisions are final and binding and that blocking the activity of the Court would be a severe breach of the Rule of Law, the separation of powers and the independence of the judiciary.

The opinion recommended *inter alia* strengthening the provisions on the reasoning of the decisions of the Constitutional Court and improving the system of recusals as well as disciplinary procedures.

Currently the Venice Commission prepares another opinion on the draft law on Constitutional Procedures, which aims to implement these recommendations.

This opinion will be adopted at our March session.

A key element of the December urgent opinion was the recommendation to establish a new system of competitive selection of judges, involving a screening body with international participation.

Current vacancies at the Constitutional Court should be filled only when this system is in place.

Here the circle closes because this recommendation links to the recommendation made in respect of the ordinary judiciary to establish a mixed national/international body.

We have seen - not perfect but very positive - results of such mixed mechanisms in the field of anti-corruption bodies and in the vetting of the Supreme Court.

I can feel that there is considerable resistance against the establishment of further mixed bodies but I am convinced that they are really needed if your country wishes to fight the flaw of corruption.

National sovereignty is an important value but, believe me, corruption undermines sovereignty much more than international cooperation ever could.

In Ukraine, we have a serious problem of public trust in State institutions. Even when they do honest and good work, people do not trust them because so many corrupt practices have been revealed in the past.

People do not know who they can believe.

When this is not possible from the inside, trust has to be built with outside help, with the support of the international community who are ready to nominate international experts with high moral quality;

experts who can ensure that candidates are properly vetted before they are appointed.

This is what these various proposals - called Ethics Commission, Selection Committee or screening body - are all about.

International experts shall be working side by side with Ukrainians to ensure that your courts and judicial bodies are composed of people who live up to high moral and ethical standards.

Concepts and strategic orientation are on the table. Now, they should be implemented.

I do hope that the Ukrainian Parliament will get its act together and unblock the discussions to adopt laws that enable these mixed bodies to work together for the benefit of the Ukrainian people.

It is time to act and adopt the laws that will make a difference and to implement them. The Council of Europe and its Venice Commission are here to help and support you.

Thank you for your attention.