



EUROPEAN COURT OF HUMAN RIGHTS
COUR EUROPÉENNE DES DROITS DE L'HOMME

International Conference – 5th Anniversary of the Supreme Court of Ukraine:

“Implementation of the Rule of Law: Role of the Supreme Court in modern conditions”

Speech by Síofra O’Leary
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President Kniaziev,
Distinguished speakers and guests,

It is my great pleasure, as President of the European Court of Human Rights, to participate in the opening of this conference and to convey to you on behalf of myself and the judges of the Strasbourg Court, our congratulations on the occasion of your Court’s 5th anniversary.

Today’s conference brings together online an impressive number of Court Presidents, judges, lawyers and scholars.

I am very pleased to share this virtual stage with the Secretary General of the Council of Europe and with Koen Lenaerts, President of the Court of Justice of the European Union, Europe’s other apex court.

Our presence, and the presence of the many Presidents from superior courts, reinforces judicial dialogue and demonstrates in clear terms Europe’s unwavering support for your judicial institutions during these tragic times for Ukraine and for European values.

We reconvene today because of the bombs which rendered the conference in December impossible. Then, as now, we salute your resilience.

Today’s conference addresses a fundamental question. It is one which we dared not believe we would need to ask ourselves: How do we ensure compliance with the rule of law in times of war?

Russia’s war in Ukraine has shown us, in ways in which we hoped we would not see again on our continent, that the three pillars upon which the Council of Europe and the Court stands: democracy, human rights and the rule of law, are not values that are acquired once and for all; they must be fought for every day.

They must be defended because the European Convention on Human Rights is above all a peace project and one which needs to be safeguarded. For too long we may have taken what the Convention has offered for granted.

Through its protection of key civil and political rights the Convention plays an important role in ensuring that the elements for a peaceful society: democracy, tolerance and pluralism are in place. It seeks to prevent their dismantling by authoritarian governments. The European Convention creates a climate in which the escalation of conflict becomes less likely.

However, where conflict does occur, States and individuals, victims of conflicts, can turn to our Court for reparation and a public statement of a violation of international law.

Today we meet as judges. Judges may also fall victim to war and I know that you have some heart-breaking examples in Ukraine. Against the odds, courts in Ukraine continue to operate in extremely challenging circumstances. This has not gone unnoticed in Strasbourg.

We know that our judicial endeavour is one of the most important safeguards for the preservation of Europe's rules-based order. Such an endeavour requires strong, independent and impartial courts which function within a national system that is governed by the rule of law.

As the Grand Chamber held in 2020 in an Icelandic case, *Guðmundur Andri Ástráðsson*¹, the Article 6 guarantee of independence refers to the necessary personal and institutional independence that is required for impartial decision making, and characterises both:

(i) a state of mind, denoting a judge's imperviousness to external pressure as a matter of moral integrity, and

(ii) a set of institutional and operational arrangements which must provide safeguards against undue influence and/or unfettered discretion of the other state powers, both at the initial stage of the appointment of a judge and during the exercise of his or her duties.²

The need for strong, independent and impartial courts also explains why internal judicial disciplinary procedures must contain appropriate safeguards as the Court held almost a decade ago in the landmark judgment in *Oleksandr Volkov v. Ukraine*³.

To this case-law on the protection of judicial independence under Articles 6 and 8 the Court added just two weeks ago the judgment in *Ovcharenko and Kolos v. Ukraine*⁴. The case concerned the dismissal by Parliament of two Constitutional Court judges for breach of their oath as a result of a judgment they had rendered. The Court emphasised the importance of a clear and foreseeable legal framework concerning judicial immunity and judicial accountability. It considered that the liability of a judge for the substance of his or her judicial activity was a highly delicate question which required that a distinction be made between a disputable interpretation or application of the law, on the one hand, and a decision or measure which revealed a serious and flagrant breach of the law, arbitrariness, a serious distortion of the facts, or an obvious lack of legal basis for a judicial measure on the other. The requirements of legal certainty mandated the need for stringent legal argumentation when applying a concept such as "breach of oath", particularly when it came to the tenure of judges in a constitutional court which has to play a crucial role in maintaining the rule of law and democracy.

In applying the European Convention you ensure the promotion of the rule of law within Ukraine.

¹ *Guðmundur Andri Ástráðsson v. Iceland [GC]*, no. 26374/18, 1 December 2020

² *Ibid.*, § 234

³ *Oleksandr Volkov v. Ukraine*, no. 21722/11, 9 January 2013.

⁴ *Ovcharenko and Kolos v. Ukraine*, nos. 27276/15 and 333692/15, 12 January 2023.

The rule of law as defined by the Strasbourg Court's case-law includes key principles such as legality, legal certainty, preventing abuse of power, equality before the law and access to justice. Your first session today will address one of those principles, namely legal certainty and the importance of a coherent and consistent judicial practice. A deterioration in the quality of the rule of law is therefore symptomatic of a general democratic decline.

In another Ukrainian case, *Agrokompleks*,⁵ our Court reiterated that *legal certainty* requires that where courts have finally determined an issue, their rulings should not be called into question. *Agrokompleks* also touched on the need for judicial independence I referred to earlier, with the Court insisting on the fact that constitutional safeguards of judicial independence and impartiality do not suffice. Rather those safeguards must be effectively incorporated into everyday administrative attitudes and practices, such that judges must be free from undue influence not only from outside the judiciary, but also within.⁶

The second topic which you will look at today touches on the role of modern technology in improving access to justice. The importance of technology was highlighted during the global Covid-19 pandemic, and it strikes me that the pandemic in some ways prepared us for understanding how and why we must protect the rule of law in times of crisis.

The extent of the challenge posed by the pandemic required, and continues to require, great democratic resilience in order to avoid emergency powers curtailing fundamental rights and conflicting with the rule of law. Now we are faced with war: the most extreme and violent of all crises. Our democratic resilience must be redoubled and the core purpose of the Convention system – now in its eighth decade – is to assist you in this regard.

I wish to emphasise that our Court, faithful to the core values of the Council of Europe and the Convention, will continue to ensure that the most serious violations of human rights by Russia are subject to judicial examination for the benefit of the victims themselves and for the international legal order. It is clear that the Convention system is based on the principle that a former High Contracting State cannot retroactively absolve itself of its obligations under international law.

Before concluding, let me underline the excellent dialogue which we have with the Supreme Court of Ukraine and the active participation of your court in our Superior Courts Network. This network now counts 103 members from 44 member states - an astonishing figure given that we have only been up and running for 7 years. We are confident that the recently launched Knowledge Sharing platform, and its potential expansion to non-official languages including Ukrainian, will embed the notion of the European Convention even further in your national system.

Ladies and Gentlemen,

The preamble to the European Convention on Human Rights stresses that human rights and fundamental freedoms "*are the foundation of justice and peace in the world*". Now more than ever, we must remind ourselves that the European Convention is a bedrock for preserving and rebuilding that peace.

Thank you for inviting me to address you this morning and I wish you a very fruitful day of discussions.

⁵ *Agrokompleks v. Ukraine*, no. 23465/03, 6 October 2011, § 142 - 152.

⁶ *Ibid.*, §§ 136 - 137.