

**To Mr. Thorbjørn Jagland, Secretary General of the Council of Europe**

**To Mr. Sebastian Kurz, Federal Minister for Integration Issues, European and International Affairs, Chairman of the Committee of Ministers of the Council of Europe**

**To Mrs. Anne Brasseur, President of the Parliamentary Assembly of the Council of Europe**

**To Mr. Gianni Buquicchio, President of the Venice Commission of the Council of Europe**

**To Mr. Dean Spielmann, President of the European Court of Human Rights**

**To Mr. Gerhart Holzinger, President of the Austrian Constitutional Court, Chair of the Conference of the European Constitutional Courts**

**To Mr. Park Han-Chul, President of the Constitutional Court of Korea, Chair of the World Conference on Constitutional Justice**

**To Mr. Schnutz Rudolf Dürr, Secretary of the World Conference on Constitutional Justice**

Kyiv, February 27, 2014

Judges of the Constitutional Court of Ukraine are extremely concerned about the tragic events that occurred in Ukraine, and together with all the Ukrainian people share sorrow for the victims of armed political confrontation. However, we believe that the principles of constitutional legality in the activity of the sole legislative body of Ukraine – the Verkhovna Rada of Ukraine - must be followed in the process of social and political changes.

On February 24, 2014 the Verkhovna Rada of Ukraine at its plenary session adopted the Resolution “On reaction to the fact of breaking an oath of a judge by judges of the Constitutional Court of Ukraine”. This Resolution provides for the early termination of powers and the dismissal of five judges of the Constitutional Court of Ukraine who were appointed by the quota of the Verkhovna Rada of Ukraine, including the Chairman of the Constitutional Court of Ukraine for breaking oath, and offers the interim President of Ukraine to dismiss for breaking an oath two judges of

the Constitutional Court of Ukraine who were appointed by the President of Ukraine, and the Council of Judges of Ukraine within three days to convene an extraordinary Congress of Judges of Ukraine in order consider dismissal for breaking an oath of five judges of the Constitutional Court of Ukraine who were appointed by the Congress Judges of Ukraine.

Beside, in the above Resolution the Verkhovna Rada of Ukraine assigned the Prosecutor General of Ukraine to initiate criminal proceedings against all judges, who, according to the opinion of People's Deputies of Ukraine are guilty of adopting a decision of the Constitutional Court of Ukraine № 20-rp/2010 of September 30, 2010 (case on observance of the procedure of introducing amendments the Constitution of Ukraine).

The basis for such resolution was the adoption by the judges of the Constitutional Court of Ukraine of the following three decisions:

1) Decision of the Constitutional Court of Ukraine No. 20-rp/2010 dated September 30, 2010 (case on observance of the procedure of introducing amendments the Constitution of Ukraine), according to which the Court recognised as incompatible with the Constitution of Ukraine (unconstitutional), the Law of Ukraine "On Introducing Amendments to the Constitution of Ukraine" No. 2222-IV dated December 8, 2004 in view of the violation of the procedure of its consideration and adoption which loses its effect on the day of the adoption of this decision. According to paragraph two of Article 70 of the Law of Ukraine "On the Constitutional Court of Ukraine" public authorities are obliged to immediately execute the decision on harmonisation of legal acts with the Constitution of Ukraine dated June 28, 1996 in the wording that existed prior to the introduction of amendments to it by the Law of Ukraine "On Introducing Amendments to the Constitution of Ukraine" No. 2222-IV dated December 8, 2004. As it seen from the text of the decision, it does not contain provisions for automatic restoration of the Constitution of Ukraine dated June 28, 1996, on the contrary, it requires that public authorities, including the Parliament of Ukraine, to adopt relevant acts based on this decision.

In pursuance of this Decision of the Constitutional Court of Ukraine, the Verkhovna Rada of Ukraine on February 24, 2014 adopted the Resolution "'On the text of the Constitution of Ukraine in the wording as of June 28, 1996 with amendments and supplements, introduced by the respective laws of Ukraine of December 8, 2004 No. 2222-VI, of February 1, 2011 No. 2952-VI and of September 19, 2013 No. 586-VII". The justification of this Resolution specifies, in particular, that the Verkhovna Rada of Ukraine proceeds from requirements of clause 3 of the resolution part of the Decision dated September 30, 2010 № 20-rp/2010 according to which the Constitutional Court of Ukraine obliged state bodies to immediately implement this Decision, and such implementation implies amendments to the Constitution of Ukraine according to the procedure defined in Chapter XIII of the Constitution of Ukraine.

Thus, the Verkhovna Rada of Ukraine has actually performed that very Decision of the Constitutional Court of Ukraine, which had become the main ground for the early termination of the powers of judges of the Constitutional Court of Ukraine and their dismissal from office for breaking an oath. Obviously, the

provisions of the EResolution, which provide that the Constitutional Court of Ukraine adopted the Decision № 20-rp/2010 dated September 30, 2010, in an unconstitutional manner and having assumed the authority of the Verkhovna Rada of Ukraine, had changed the constitutional order in Ukraine contradicts the factual and legal circumstances of the case.

2) Decision of the Constitutional Court of Ukraine dated January 25, 2012 No. 3-rp/2012 (in the case upon the constitutional petition of the Board of the Pension Fund of Ukraine concerning official interpretation of the separate provisions of the Constitution of Ukraine, Budget Code of Ukraine, Code of Administrative Proceedings of Ukraine) according to which “one of the features of Ukraine as a social state is the provision of general public needs in the sphere of social protection at the expense of the State Budget of Ukraine proceeding from financial capabilities of state which is obliged to distribute justly and impartially social wealth among citizens and territorial communities and to aspire to balance the budget of Ukraine. At the same time the level of state guarantees of the right to social protection shall meet the Constitution of Ukraine, and the aim and means of change of mechanism of social benefits and assistance calculation – to the principles of proportionality and justice... The Cabinet of Ministers of Ukraine regulates the order and the scope of social benefits and assistance which are financed at the expense of the State Budget of Ukraine pursuant to the Constitution and laws of Ukraine. Courts when deciding on cases on social protection of citizens are guided, in particular by the principle of legality which envisages application by courts of laws of Ukraine as well as legal acts of respective state bodies issued on the grounds, within the limits of authority and in the manner envisaged by the Constitution and laws, including legal acts of the Cabinet of Ministers of Ukraine adopted within the limits of its authority, on the grounds and in pursuance of the Budget Code, the law on the State Budget of Ukraine for a relevant year and other laws”.

The Resolution states that this Decision the Constitutional Court of Ukraine has allowed the Cabinet of Ministers of Ukraine to "manually" adjust the level of social benefits, however, the judges of the Constitutional Court of Ukraine emphasise that according to the said Decision the Cabinet of Ministers of Ukraine in its activity in regulation the procedure and amount of social benefits shall be guided by the Constitution and laws of Ukraine, which meets the requirements of paragraph two of Article 19 of the Constitution of Ukraine, "Bodies of state power and bodies of local self-government and their officials are obliged to act only on the grounds, within the limits of authority, and in the manner envisaged by the Constitution and the laws of Ukraine".

3) Decision № 2-rp/2013 of 29 May 2013 (case on the official interpretation of certain provisions of the Constitution of Ukraine and the Law of Ukraine "On the Election of Deputies of the Autonomous Republic of Crimea, Local Councils and Heads of Village, Settlement and City"), pursuant to which "after the entry into force of the Law of Ukraine “On Introducing Amendments to the Constitution of Ukraine on Holding Regular Elections of People’s Deputies of Ukraine, the President of

Ukraine, Deputies of the Verkhovna Rada of the Autonomous Republic of Crimea, Local Councils and Heads of Village, Settlement, City” No. 2952-VI dated February 1, 2011 all next regular elections of deputies of the Verkhovna Rada of the Autonomous Republic of Crimea, village, settlement, city, district and oblast councils and heads of village, town, city elected at regular or special election are held simultaneously on the entire territory of Ukraine on the last Sunday of October of the fifth year of authority of councils or heads elected on regular elections on October 31, 2010."

People's Deputies of Ukraine believe that this Decision of the judges of the Constitutional Court of Ukraine violated the right of citizens to freely elect and be elected to bodies of state power and local self-government established in paragraph one of Article 38 of the Constitution of Ukraine. However, according to the content of the new wording of Article 141 of the Constitution of Ukraine "Regular local elections and election to the Verkhovna Rada of the Autonomous Republic of Crimea take place on the last Sunday of October of the fifth year of the authority of the respective council or the respective head elected on regular elections", and this, in fact means that these elections are held simultaneously throughout the territory of Ukraine in the last week of October, the fifth term of office of councils or heads, elected at regular elections on October 31, 2010.

People's Deputies of Ukraine, who initiated this Resolution, note that this is the first step towards lustration of judges of Ukraine.

Judges of the Constitutional Court of Ukraine are extremely concerned that this Resolution of the Verkhovna Rada of Ukraine is not consistent with the constitutional principles of the rule of law and separation of powers in a legal state.

According to Article 126 of the Constitution of Ukraine "The independence and immunity of judges are guaranteed by the Constitution and the laws of Ukraine. Influencing judges in any manner is prohibited". The adopted Resolution is also inconsistent with Article 28 of the Law of Ukraine "On the Constitutional Court of Ukraine", according to which the judges of the Constitutional Court of Ukraine shall not bear legal liability for the results of voting or for expression of their opinions in the Constitutional Court of Ukraine and its Collegia, except liability for offence or slander when considering cases, adopting decisions and providing opinions by the Constitutional Court of Ukraine. Moreover, the Resolution runs contrary to the provisions of the Law of Ukraine "On the Judicial System and Status of Judges", which provide that "A judge in his/her work on the administration of justice is independent of any undue influence, pressure or interference" and "State bodies, bodies local self-government, their officials and officers, as well as natural and legal persons and their associations are obliged to respect the independence of judges and not to infringe upon it" (paragraphs one and five Article 47). Besides, group dismissal of the Judges of the Constitutional Court of Ukraine from the office was performed in violation of the procedure of dismissal of judges from office established by the Law.

Judges of the Constitutional Court of Ukraine are also concerned about threats of violence towards some of them and their families as well as the prohibition to go abroad which, specifically, endanger lives of two judges of the Constitutional Court of Ukraine who need immediate treatment abroad.

Judges of the Constitutional Court of Ukraine draw attention to the fact that independence of judges and non-interference in their work are guaranteed by the Constitution and are fundamental principles of the rule of law, which was stressed on numerous occasions at the highest representative forums of constitutionalists from around the world.

The Venice Commission has repeatedly noted the fundamental role of the constitutional court as the guarantor of the constitutional order of the state and fundamental rights. Constitutional Court that is serious about its mission sometimes is forced to make decisions that are not welcomed by the majority today. The legitimacy of the court to perform in such a way comes directly from the Constitution. This should be recognised by other bodies of state authority and in any case it can not justify any interference with the independence of the court.

The Parliamentary Assembly of the Council of Europe notes in paragraph 14 of the Resolution of April 19, 2007 No1549 (2007) "... the power of a sole body of constitutional justice - the Constitutional Court of Ukraine - should be guaranteed and respected. The pressure in any way for the judges is intolerable ..."

As it is stated by the European Court of Human Rights in its judgment in the case "Oleksandr Volkov v. Ukraine" dated May 27, 2013 "the violations found in the case suggest that the system of judicial discipline in Ukraine has not been organised in a proper way, as it does not ensure sufficient separation of the judiciary from other branches of State power. Moreover, it does not provide appropriate guarantees against abuse and misuse of disciplinary measures to the detriment of judicial independence, the latter being one of the most important values underpinning the effective functioning of democracies"(p.199).

Since Ukraine is a member of the Council of Europe and the Constitutional Court of Ukraine is a fully-fledged member of the Conference of European Constitutional Courts and the World Conference on Constitutional Justice, Judges of the Constitutional Court of Ukraine consider it necessary to address to these highly respected international organisations to draw their attention and to evaluate the situation involving the Constitutional Court of Ukraine.

This petition was approved at a Meeting of the Judges of the Constitutional Court of Ukraine on February 27, 2014.

#### Appendixes:

1. Resolution of the Verkhovna Rada of Ukraine № 4076 dated 24 February 2014 "On reaction to violations of oath by the judges of the Constitutional Court of Ukraine" (voted at the plenary session of the Verkhovna Rada of Ukraine on 24.02.2014, the final text of the Resolution as of 27.02.2014 3 p.m. is not officially released).

2. Extract from short-hand record of the plenary session of the Verkhovna Rada of Ukraine of February 24, 2014.

3. Extract from the Resolution of the Verkhovna Rada of Ukraine № 750-VII dated 22 February 2014 "On the text of the Constitution of Ukraine in the wording of June 28, 1996 with amendments and additions, made by the laws of Ukraine dated 8

December 2004 №2222-IV, 1 February 2001 №2952-VI, 19 September 2013 №586-VII".

4. Summary to the Decision of the Constitutional Court of Ukraine №20-rp/2010 dated September 30, 2010 (in English).

5. Summary to the Decision of the Constitutional Court of Ukraine № 3-rp/2012 dated January 25, 2012 (in English).

6. Summary to the Decision of the Constitutional Court of Ukraine № 2-rp/2013 dated May 29, 2013 (in English).

Copies of this appeal are forwarded to the following constitutional courts, which concluded memoranda and agreements on the development of co-operation: Russian Federation, Republic of Moldova, Republic of Belarus, Republic of Tajikistan, Republic of Bulgaria, Republic of Poland, Republic of Lithuania, Republic of Serbia, Slovak Republic.