



2 March 2022

*Dear Madam President of the Constitutional Court of the Republic of Moldova Domnica Manole,
Dear Presidents of the Constitutional Courts and equivalent institutions of the CECC,
Dear Madam President of the Venice Commission Claire Bazy Malaurie,*

On 24 February 2022, the world witnessed the most brutal violence and hostility committed by the Russian Federation against the independent and sovereign State of Ukraine. The acts of aggression disregarding the fundamental principles of international law are currently still ongoing and, apparently, have become even worse. The situation caused by the crime of aggression is a deep concern to all of Europe, state institutions, many international and non-governmental organisations.

The constitutional courts normally do not comment on political crises, but this situation exceeds anything that we've had to experience or dealt with in Europe in 21st Century. Committed to the promotion of the universal constitutional values of democracy, the rule of law and the protection of human rights, enshrined in every European national constitution, by this joint letter, the Supreme Court of Estonia, the Constitutional Court of the Republic of Latvia and the Constitutional Court of the Republic of Lithuania express their solidarity and unity with their Ukrainian counterparts and the Nation of Ukraine and condemn without any reservations the acts of aggression by the Russian Federation against the independent State of Ukraine and its territorial integrity. The legal justification presented by the aggressor can be accepted neither from the point of view of international law nor in the light of fundamental constitutional principles. Independence is not self-evident. Freedom is not self-evident. It is not enough to enshrine them in constitutions and international treaties. These fundamental principles must be promoted, implemented, respected and restored, especially if anyone threatens them.

The Conference of European Constitutional Courts (hereinafter – the CECC) was founded and functions on the basis of the common fundamental constitutional values, being part of the European constitutional heritage. Members of the CECC are united in the common goal to promote, respect and implement democracy, the rule of law and the protection of human rights and freedoms.

Article 3 of the Statute of the Conference of European Constitutional Courts (hereinafter – the Statute) states that the Congress of the CECC held at the regular intervals takes “steps to enhance the independence of constitutional courts as an essential factor in guaranteeing and implementing democracy and the rule of law, in particular with a view to securing the protection of human rights”. Article 6 of the Statute determines the conditions of membership in the CECC: “The status of a full member may be granted only to European Constitutional Courts being bound by the fundamental principles of democracy and the rule of law and the duty to respect human rights.”

We, as the European constitutional judicial community, whose activity is based on the above-mentioned undeniable values, cannot ignore the war of the Russian Federation against Ukraine, which is threatening the independence and territorial integrity of Ukraine, causing irreparable loss to human rights and drawing the perspective of renouncing democratic traditions. By ignoring it and by remaining silent, we would deviate from those constitutional principles that are enshrined in our constitutions and from our direct commitment to promote and implement them.

Therefore, the constitutional justice institutions of the Baltic States appeal to all members of the CECC to stand in solidarity with Ukraine and with those who have contributed to strengthening the rule of law in Ukraine in the last years, and to condemn together all acts of aggression, violation of territorial integrity and national sovereignty and all human rights abuses committed by the Russian Federation in the independent State of Ukraine. Moreover, we call not only for expressing our support, but also for acting in defence of the core European democratic values.

On 25 May 2022, the Preparatory Meeting of the Circle of Presidents of the CECC will take place. According to Article 9 of the Statute, namely its paragraph 2(a), the Circle of Presidents is the central decision-making body and has competence in admission, suspension and expulsion of members.

As stated above, the CECC was established with the purpose of bringing together constitutional courts or other equivalent institutions, which are among the key institutions in guaranteeing and implementing democracy and the rule of law, in particular with a view to securing the protection of human rights.

By responding with silence and absence of our clear position, we will presume that the member of the CECC – the Constitutional Court of the Russian Federation – still adheres to those principles and is keen to promote and guarantee them, which, taking into consideration its previous jurisprudence and inaction towards the horrible events of these days in Ukraine, becomes hard to imagine.

“Judicial power, according to the principles of national and international law, doesn’t interfere in politics and doesn’t comment on political decision; however, in the context of the large-scale aggressive war that is now being waged by the Russian Federation against the Ukrainian state, and the gravest international crimes committed by the forces of the aggressor, in particular war crimes and crimes against humanity, the judicial community cannot stand aside”, Ukrainian judges say in their open appeal to the Constitutional Court of the Russian Federation, the Supreme Court of the Russian Federation and all the judges of the Russian Federation, and there are no reasons to disagree with them.

Constitutional control and the implementation of constitutional justice is the guarantee of democracy, the rule of law and the protection of human rights; constitutional courts are the guardians of those constitutional values. Thus, can the Constitutional Court of the Russian Federation still be considered a European constitutional court sharing the same constitutional values?

In the light of the above, we would like to draw your attention to the fact that, on 25 February, the Council of Europe suspended the rights of the representation of the Russian Federation in the Committee of Ministers and in the Parliamentary Assembly as a result of the armed attack by the Russian Federation on Ukraine. The Russian Federation is considered to have seriously violated its obligations under Article 3 of the Statute of the Council of Europe to accept the principles of the rule of law.

Taking into account that the Constitutional Court of the Russian Federation is one of the state power institutions having not made any clear statement on disapproving the actions of the Russian Federation, it should meet the consequences. **Therefore, we suggest considering the withdrawal of the membership of the Constitutional Court of the Russian Federation from the CECC** on the ground of Article 7 para 2. of the Statute of the CECC which stipulates that "... where there is another important reason for concluding that effective co-operation in good faith between the Conference and a member is no longer possible, a member may be declared to have lost its membership."

Moreover, the same consequences should be applied to the Constitutional Court of the Republic of Belarus, which is an associate member of the CECC. By lending its soil to the Russian Federation for military attacks against Ukraine and by joining the acts of aggression with its military troops, the Republic of Belarus has contributed to the war actions initiated by the Russian Federation. The Constitutional Court of the Republic of Belarus remains without response to the decisions of the state power institutions of Belarus. **Hence, at the same time, we suggest considering the withdrawal of the associate membership of the Constitutional Court of the Republic of Belarus from the CECC.**

Furthermore, on 19 March 2022, the 17th Bureau Meeting of the World Conference on Constitutional Justice (WCCJ) will be held in hybrid form in order to prepare for the 5th Congress, dedicated to constitutional justice and peace. Currently, the President of the Constitutional Court of the Russian Federation is foreseen to act as the key-note speaker in the section C of the Congress, related to the limitations of the role of constitutional courts in maintaining peace. Considering the previous jurisprudence of the Constitutional Court of the Russian Federation, formulated in its decision of 19 March 2014, justifying the annexation of Crimea, and in the absence of the clear position of the Constitutional Court of the Russian Federation towards the events of these previous days in Ukraine, there are reasonable doubts whether the Constitutional Court of the Russian Federation shares the same fundamental constitutional values of democracy, the rule of law and respect for human rights. **Therefore, we suggest discussing this issue and, on behalf of the CECC, considering the withdrawal of the President of the Constitutional Court of the Russian Federation as one of the key-note speakers of the 5th Congress of the WCCJ.**

Availing ourselves of this opportunity, we express the assurances of our highest consideration.

Villu Kõve
Chief Justice
of the Supreme Court
of Estonia



Aldis Laviņš
Vice-President
of the Constitutional Court
of the Republic of Latvia



Danutė Jočienė
President
of the Constitutional Court
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