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**AND THE OSCE PROJECT CO-ORDINATOR IN UKRAINE,
GERMAN FOUNDATION FOR INTERNATIONAL LEGAL CO-OPERATION (IRZ)**

INTERNATIONAL CONFERENCE
“Constitutional Control and the Processes
of Democratic Transformation in Modern Society”

on the occasion of the 20th anniversary
of the Constitutional Court of Ukraine

Kyiv, Ukraine
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“CONSTITUTIONAL CONTROL AND THE PROCESSES
OF DEMOCRATIC TRANSFORMATION IN MODERN SOCIETY”

SPEECH BY

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Dear Guests, Ladies and Gentlemen,

In most European Constitutions there are provisions for the protection of human rights and democratic freedoms.

Some Constitutions, such as the Constitution of the Republic of Cyprus, are modelled on the European Convention for the protection of Human Rights.

The effective protection of human rights and democratic freedoms by Constitutional or Supreme Courts, depends on a number of factors.

The first important factor is the independence of the Judiciary. Citizens cannot expect to have their human rights and democratic freedoms protected by the Courts, if the judiciary of their country is not independent from the Executive and Legislative Powers.

Independence of the Judiciary presupposes that the doctrine of separation of powers is entrenched in the Constitutional order of the country, and is respected in fact.

Another important factor for the protection of human rights and democratic freedoms in a country, is the respect for the Rule of law. Two cardinal principles of the Rule of law are that "nobody is above the law" and that "everybody is equal before the law". The relevant Check List on the Rule of Law, prepared by the Venice Commission of the Council of Europe, contains all the important elements for compliance with the Principles of the Rule of Law, according to Contemporary European Legal Culture.

The application of the Rule of law in a country depends on an independent and impartial Judiciary, but, foremost, it depends on judges with honesty and integrity.

There can be no Rule of law and no protection of human rights and democratic freedoms in a country where the Judges are corrupted. Therefore, the main consideration for every civilised society is to have a judicial and legal system that safeguard and protect the honesty and integrity of its Judges. Judicial corruption wherever it exists, should be totally combated and uprooted.

The honesty and integrity of the Judges may be safeguarded, protected and strengthened in many ways, among others by having provisions for their security of tenure and security for their remuneration and other benefits, at least during their term of office.

A country that respects itself and intends to have human rights and democratic freedoms protected for all its citizens, should have also Judges with courage. Judicial courage is a predominant feature of the administration of justice. Especially in periods of economic or social crisis, a country needs Judges who will impose the law and the protection of human rights and democratic freedoms for everyone, without fear or prejudice.

Apart from the constitutional and legal protection of human rights and democratic freedoms in the Constitution and the laws of a country, adequate protection of human rights and democratic freedoms presupposes proper culture and mentality of the people and the media of the country. The people and the media should learn to respect the integrity, the independence and the impartiality of the judges, and this depends, to a great extent, on the judges themselves, who should teach the people and the media, by their own lifestyle and example, that nobody should expect favourable treatment from the Courts but only equal treatment for all, in accordance with the law. Equality, does not mean arithmetical equality, but treatment of same situations in the same manner, and different situations in different manner.

Changes in Constitutions and laws may be easier and quicker than changes in the mentality and culture of the people. It takes years to educate the people to respect the Judiciary, but their respect may be lost in minutes. This is why the Judges should be extremely careful about their judicial and personal conduct and behaviour so that trust and confidence in the Judiciary is built and maintained and never lost.