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Constitutional reform - on the way to strengthening fundamental rights

Toward the rule of law through high-quality rule-making: contribution of the Council of Europe

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Ladies and gentlemen,

I would like to express my gratitude for the invitation to address this distinguished audience.

I have spent almost 25 years in the national Parliament of the Republic of Latvia, and in the Parliamentary Assembly of the Council of Europe. On the basis of my professional and personal experience I conclude how essentially multilateral cooperation within the framework of international organizations can contribute into the quality of national law-making.

In this respect, the Council of Europe plays a really unique role. This international organisation was founded in 1949, after the World War II, to uphold human rights, democracy, and the rule of law in Europe. It unites 46 member states, with a total population of almost 700 million.

Needless to say, membership in the Council of Europe does not anyhow undermine or question sovereignty of the member states. We as independent states face common challenges such as military conflicts, forced migration, international crime, climate change and many more. These challenges can be effectively tackled only together, on the basis of common standards and rules. Mutual support, cooperation, and synergy is a necessary prerequisite for sustainable development – or even survival – in a modern globalized world.

Council of Europe member states have different constitutional systems. Parliamentary republics, presidential republics, and even constitutional monarchies are among the member states. However, all of them are grounded on common basic values.

The issue of universality of basic principles of democracy, human rights, and rule of law caused heated debates some decades ago. However, nowadays there seems to be a broad consensus with this regard. Universal standards are enshrined in the UN principles and instruments, even if practical forms and methods of implementation of these standards may be diverse.

However, universal instruments are not enough. Regional, including European, systems play an important complementary role, transforming general universal values into concrete practical forms adjusted to regional specificity.

Sharing practical experience and best practice in implementation of common standards is mutually beneficial and facilitates progress and further development of the European societies.

Of course, activities of the Council of Europe are aimed, first of all, at the member states. However, also other states from different regions geographically outside of Europe can benefit from them.

The continental European and Central Asian legal systems derive historically from common roots, they have much in common in many regards. Therefore, cooperation between the Council of Europe and Central Asian states, including Uzbekistan, has a great potential for mutual enrichment.

I would like to single out one specific feature of the Council of Europe. Unlike most of international organizations where parliamentary dimension is weak or non-existent at all, in our organization Parliamentary Assembly plays a significant role. It is one of the three main organs of the Council of Europe.

Moreover, the organization includes also a body which provides cooperation at the level of local and regional authorities – the Congress which is the third main organ, along with the Committee of Ministers and Parliamentary Assembly.

The Assembly is composed of the delegations of national parliaments of all member states. It is essential to stress that the rules require that the composition of all delegations must respect gender balance, as well as proportionally reflect the strength of different political groups in the national parliament. In other words, parliamentary opposition must be decently represented. If these statutory requirements are not met, the credentials of the delegation may be rejected, and this indeed happened on several occasions.

The Assembly holds four week-long sessions a year in Strasbourg. Besides, the Assembly committees meet regularly, around 8 times a year, in the Council of Europe premises. Once a year each committee is entitled to meet outside of official premises, usually upon invitation of a parliament of some member state.

Unlike in other inter-governmental organizations, the Parliamentary Assembly is granted broad powers. In particular, the Assembly elects the Secretary General (out of candidates preliminarily selected by the Committee of Ministers). It also appoints the Human Rights Commissioner, one of the key figures in the organization.

In my view, one more function of the Assembly is even more important, i.e. the election of judges of the European Court of Human Rights. Each government nominates three candidates who must meet requirements set by the European Convention of Human Rights. They are interviewed by a special Assembly committee which may reject the list if at least one of the candidates does not meet the criteria of professional qualifications, personal integrity, and independence. At the final stage, the Assembly members elect a judge by secret vote.

This task is particularly important since the system of the European Convention and European Court of Human Rights is at the heart of the Council of Europe's activities. It is really unique. As a rule, declarations, resolutions and recommendations of international organizations are not binding and, in principle, can be ignored. On the contrary, judgments of the Court are legally binding, and each member state undertakes the commitment to obey them when accedes to the organization and ratifies the Convention.

Moreover, the Council of Europe closely monitors execution of judgments and maintains a dialogue with corresponding member states until the Committee of Ministers decides that the judgment has been fully executed.

Let's now switch to the question which is crucial in the context of our today's discussion, namely: how states who are not members of the Council of Europe may benefit from this detailed and well-elaborated system for the protection of human rights and rule of law? The organization has paid a serious attention to this issue and developed several mechanisms to ensure some possibilities in this respect.

In principle, the Convention system is explicitly designed for only state parties to the Convention. However, indirectly it is beneficial also for other states.

When a violation is found by the Court, corresponding state must remedy the violation by taking so called individual measures. For example, re-opening of the judicial procedure, restitution of property, reinstatement of position, etc. Besides, the state must compensate damage to the victim of violation. However, in the meantime this state must adopt the so-called general measures to ensure that similar violations will not be repeated in the future. As a rule, such measures include adoption of amendments to relevant legislation, as well as changes in administrative procedures and practices.

Analysis of general measures adopted following judgments of the Strasbourg Court may become a useful and practical inspiration and offer guidelines to law-makers who wish to prevent possible human rights violations, close legal gaps, fix flaws and deficiencies in laws, regardless of whether their state is a party to the European convention of human rights.

The Parliamentary Assembly has adopted a flexible approach to enable participation of parliaments of non-member states in its activities.

In order to facilitate the process of accession of the countries from Central and Eastern Europe, the Assembly introduced in 1989 a so-called special guest status, applicable to all national legislative assemblies of European non-member states, which had signed the Helsinki Final Act and the Charter of Paris for a New Europe. The status is open to parliaments of states which have applied for membership to the Council of Europe. The decision to grant special guest status is taken by the Bureau of the Assembly.

However, the special guest status may be revoked if the corresponding state violate basic principles of the organization. For example, the National Assembly of Belarus had obtained the status in 1992 but it was suspended after Belarus explicitly refused to abolish capital punishment – what is incompatible with membership in the Council of Europe.

The number of seats allocated to each special guest delegation is the same as that likely to be attributed when the corresponding state becomes a full member.

Special guests have many rights in the Assembly and in committees, with the exception of the right to vote or to stand for election.

Another form of engagement of non-member states is the Observer status. The Assembly may, on the proposal of the Bureau, grant Observer status to national parliaments of non-member states which meet the conditions set out in relevant Statutory Resolution of the Committee of Ministers.

At the moment the Observer status has been granted to the delegations of parliaments of Canada, Israel, and Mexico. Members of observer delegations have the right to sit in the Assembly and attend committee meetings but without the right to vote. They have the right to speak with the authorisation of the President of the Assembly.

In addition, in 2009, the Assembly decided to establish a Partner for Democracy status. This status aims at developing co-operation with parliaments of non-member States of neighbouring regions as a means of consolidating democratic transformations and promoting stability, good governance, respect for human rights and the rule of law.

The national parliaments of all southern Mediterranean and Middle Eastern countries participating in the Union for the Mediterranean-Barcelona Process and of central Asian countries participating in the OSCE are eligible to request partner for democracy status with the Assembly.

At the moment the parliaments of Jordan, Kyrgyzstan, Morocco, and Palestine have been granted the Partner for Democracy status. The parliaments concerned should appoint delegations composed to ensure a fair representation of the political parties or groups within the parliament. Members of such delegations may sit in the Assembly and attend committee meetings but without the right to vote. They have the right to speak with the authorisation of the President of the Assembly.

Special arrangements have been adopted to accommodate representation of Turkish Cypriot Community in the Assembly. Since 2004, two elected representatives of the Turkish Cypriot community participate in the activities of the Assembly, its committees and political groups with broad rights – except for the right to vote or be elected to the committee chairmanships.

Another special case is arrangements which enable representation and participation of the Assembly of Kosovo.

Therefore, the Assembly elaborated flexible rules with the aim to allow inclusive approach to involvement of non-member states' parliamentarians in its activities and enhance inter-parliamentary cooperation beyond formal member states as much as possible.

Besides the European Convention of Human Rights, a number of other important instruments have been adopted under the auspices of the Council of Europe. The full list of these multilateral treaties contains 224 instruments. Participation in most Council of Europe treaties is not exclusively limited to the member States of the Council of Europe. These treaties are open to accession by non-member European and non-European states, provided that they have been formally invited to accede by the Committee of Ministers.

For example, more than 40 states from Asia, Africa, North and South America have ratified the Convention on Cybercrime or acceded to it since its opening for signature in 2001.

It is essential to stress that, as a rule, European conventions are supplied with expert bodies in charge with monitoring, evaluation of implementation, and providing recommendations to state parties.

Non-member states who have acceded to the Council of Europe conventions may benefit from participation in and activities of these expert committees.

For example, the Council of Europe's Committee of Experts on the Operation of European Conventions on Co-operation in Criminal Matters is the forum in which, since 1981, experts from all member and observer states, as well as international organisations, come together to elaborate ways to improve international co-operation in criminal matters and identify solutions to practical problems encountered in the application of Council of Europe Conventions in this field. The Conventions relevant to the activities of this Committee cover such areas as extradition, mutual assistance in criminal matters, international validity of criminal judgments, transfer of criminal proceedings and of sentenced persons, search, seizure and confiscation of the proceeds from crime, and other.

I would like to specifically single out the European Convention for the Prevention of Torture and Inhuman or Degrading Treatment or Punishment. This Convention provides for the setting up of an international committee – known as the Committee for the Prevention of Torture, or CPT - empowered to

visit all places where persons are deprived of their liberty by a public authority. The committee, composed of independent experts, may make recommendations and suggest improvements in order to strengthen the protection from torture and inhuman or degrading treatment. This preventive, non-judicial mechanism is an important addition to the system of protection under the European Convention on Human Rights.

No non-member states have acceded to this convention so far. However, detailed analyses, conclusions and recommendations of CPT are available to all parliaments and governments. On the basis of my long parliamentary experience I can assert that CPT's conclusions are really indispensable for improving the state of affairs in the places of detention and ensuring respect to human rights in this most vulnerable area.

Several monitoring and expert committees, besides country-specific reports and recommendations, regularly elaborate and adopt general, or thematic recommendations. One of relevant examples is thematic recommendations prepared by the Advisory Committee of the Framework Convention for the Protection of National Minorities.

Modern principles of the protection of minorities were first formulated in the CSCE/OSCE Copenhagen Document in 1990. The Council of Europe Framework Convention transformed this political declaration into a legally binding convention. Therefore, the main principles of this convention are shared not only by the Council of Europe member states, but also by the OSCE participating states.

The Advisory Committee has adopted thematic commentaries on the key aspects of minority rights, including education, language rights, and participation. These commentaries might be used as useful guidelines also by non-member states in this extremely sensitive area which is crucial for ensuring peace and stability in the entire OSCE region and beyond.

Besides these treaty-based expert bodies, the Council of Europe has established several committees which's activities are not directly related to some particular convention.

The European Commission against Racism and Intolerance (ECRI) is one of the most important of them. ECRI is a human rights monitoring body which specialises in questions relating to the fight against racism, discrimination on

grounds of “race”, ethnic/national origin, colour, citizenship, religion, language, and other characteristics, xenophobia, antisemitism and intolerance in Europe. It prepares reports and issues recommendations to member States.

Besides regular country-specific reports, ECRI has issued a series of General Policy Recommendations formally addressed to the governments of member states – but, of course, non-member states can also benefit from them. These recommendations cover such issues as national legislation to combat racism and racial discrimination, equality bodies to combat racism and intolerance at national level, combating hate speech, national surveys on the experience and perception of discrimination and racism, preventing and combating anti-Muslim racism and discrimination, combating racism while fighting terrorism, and other.

The European Commission for Democracy through Law, or the Venice Commission, is an advisory body of the Council of Europe, composed of independent experts in the field of constitutional law.

(Papuashvili?)

The role of the Venice Commission is to provide legal advice to its member states and, in particular, to help states wishing to bring their legal and institutional structures into line with European standards and international experience in the fields of democracy, human rights and the rule of law. It also helps to ensure the dissemination and consolidation of a common constitutional heritage.

The Commission has 61 member states. Besides the 46 Council of Europe member states, these include Algeria, Brazil, Canada, Chile, Costa Rica, Israel, Kazakhstan, the Republic of Korea, Kosovo, Kyrgyzstan, Morocco, Mexico, Peru, Tunisia and the USA. Argentina, Japan, the Holy See and Uruguay are observers, special partnership exists with and South Africa and Palestine.

Besides, the Venice Commission may issue its opinions by request of other states. In particular, Uzbekistan several times requested opinions of the Venice Commission (in 2012, in 2018 and in 2020).

The role of the Venice Commission in providing “emergency constitutional aid” to states in transition is of special importance. Its expertise is widely recognized far beyond the Council of Europe, this body is particularly important for non-member states.

Finally, I would like to mention an important activity of the Parliamentary Assembly, namely, election observation. The Assembly systematically observes elections in any country which is subject to the Assembly's monitoring procedure or post-monitoring dialogue, or which has applied for membership. It also observes elections in the countries whose parliaments hold or have requested partner for democracy or special guest status with the Assembly. The Bureau of the Assembly may also decide to observe parliamentary or presidential elections and referenda in other states.

Election observation is conducted in close cooperation with the OSCE Office for Democratic Institutions and Human Rights. This is an important contribution into improvement of the procedures of free and fair elections, a key element of democracy.

In conclusion, a couple of words about specific framework of cooperation between the Council of Europe and Central Asian states, notably Uzbekistan.

In 2011, the Council of Europe launched its Policy towards neighbouring regions, which aims at extending co-operation beyond European borders and notably at developing a common legal space based on the Council of Europe's values and instruments.

Since 2020, the Central Asia Rule of Law Programme is in operation. It is a co-operation initiative, co-funded by the European Union and the Council of Europe and implemented by the Council of Europe in Kazakhstan, Kyrgyzstan, Tajikistan, Turkmenistan, and Uzbekistan.

The Programme aims to reinforce human rights, rule of law and democracy in Central Asian countries in accordance with European and other international standards by offering assistance to reform processes, based on a demand-driven approach.

The main objectives of the programme are:

- Facilitating the creation of a common legal space between Europe and Central Asia and enhancing human rights protection;
- Promoting transparency and action against economic crime;
- Promoting efficient functioning of state institutions and public administration.

As I already mentioned, the European and Central Asian legal systems derive historically from common roots and remain similar in many respects. The strategic goal of this action is to facilitate a process of creating a common legal space between Europe and Central Asia, based on European and international standards.

It includes two complementary components: raising awareness about Council of Europe Conventions and enhancing human rights protection through education. The latter component is implemented within the framework of the Council of Europe Programme on Human Rights Education for Legal Professionals (HELP).

We consider the Council of Europe Conventions a key reference to reinforce human rights, democracy and the rule of law, and to promote a common legal space at pan-European level and beyond. It is therefore important to promote a sound understanding and effective implementation of the Conventions system among national authorities and civil society actors in Central Asia. Within the framework of the action and depending on the needs and priorities of each partner, a number of activities on regional and national level are organised, including:

- Legislative review and assessments;
- Preparation of recommendations and publications;
- Peer to-peer exchanges, conferences, seminars, working groups, etc.

The Programme takes into account cross-cutting issues such as non-discrimination, gender mainstreaming, and, depending on the nature of the activities, ensure the inclusive involvement of civil society in their implementation.

In this framework, Uzbek national authorities expressed their interest in receiving more information about the benefits of a common legal space between Europe and Uzbekistan based on the key Council of Europe conventions open to non-member states as well as other international standards. It included inter alia the Convention on Cybercrime, the European Convention on Extradition, the European Convention on Mutual Assistance in Criminal Matters, the Convention on the Transfer of Sentenced Persons, the Criminal Law Convention on Corruption and the Civil Law Convention on Corruption.

Uzbekistan is the first country of the region to have launched a tutored HELP course (“Rights of Persons with Disabilities” for judges) in 2022. Relevant

Uzbek authorities identified the HELP courses on Violence against women and domestic violence and on Human trafficking as courses to be adapted to the national legal order as a matter of priority. As far as I know, both courses have been launched for a group of prosecutors in April 2023.

Several seminars were held in Uzbekistan in the framework of the Programme on such topical issues as “Data protection and privacy” and “Independence of judges in light of the European standards”. Both seminars were organised in cooperation with the Chamber of lawyers and the School of judges under the High Judicial Council of the Republic of Uzbekistan.

A regional conference on the topic “Modernisation of the public administration in Central Asia and respect of the rule of law principles” was held in Tashkent in May 2022.

These are only some examples of very promising cooperation between the Council of Europe and Central Asian authorities and lawyers’ communities. I am sure that closer cooperation will be mutually beneficial. Joining forces, sharing experiences, and learning from each other is a powerful tool to strengthen democracy, human rights, and rule of law in our countries and beyond.

Thank you.