



Ukraine

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I. INTRODUCTION

Annus horribilis is both a straightforward and comprehensive concept to mark the year 2022 for Ukraine: the year of war, death, and suffering. The full-scale Russian invasion on February 24, 2022, was more than a detrimental challenge to Ukraine; the mere existence of an independent nation was at stake. For the first time in Ukraine, martial law was implemented nationally. This extraordinary constitutional regime affected all public administration and policy making areas during the reporting period. On the one hand, the Ukrainian society and government at all levels united and solved many complex wartime problems, which helped to both preserve the state's independence and receive a candidate status for accession to the European Union. On the other hand, any significant and long-term restrictions toward human rights and freedoms during times of war, even in states with developed democracies, significantly devalues the "strength" of the rule of law and establishes the ground for authoritarian-like experiments. Unfortunately, such trends have become increasingly tangible in post-February 24, 2022, Ukraine.

II. MAJOR CONSTITUTIONAL DEVELOPMENTS

1. Russia-Ukraine War: Martial Law of 2022

Almost immediately after the full-scale Russian invasion on February 24, President Zelensky declared¹ martial law in Ukraine, which was approved² by Parliament. Under the Constitution, if the President of Ukraine declares martial law (Article 106.1.20), the Parliament should hold a meeting within two days (Article 83.3) and approve such President's measures (Article 85.1.31). Using the same constitutional provisions as in declaring martial law, the President can also decide about the general or partial mobilization,³ which should also be approved by the Parliament. Additionally, as prescribed in Article 64, under the conditions of martial law, specific restrictions on rights and freedoms may be established with the indication of the period of effect for such restrictions, with the exception of Articles 24, 25, 27, 28, 29, 40, 47, 51, 52, 55, 56, 57, 58, 59, 60, 61, 62 and 63. And last but not least, following Article 157.2, the Constitution cannot be amended during times of martial law or states of emergency.

In such a way, the constitutional provisions were protected by drafters in cases of some emergency or war, which Ukraine now faces. In case of possible peace negotiations with Russia, the Ukrainian Constitution is

protected from its violation, for example⁴. Additionally, the Law “On Legal Regime of Martial Law”⁵ (Article 19.1.4) bans any national or local elections, as well as referendums during periods of martial law.

Unfortunately, during times of war, there are more risks of law violations from the aggressor state and national authorities, which may result in the Constitutional and legislative provisions being forgotten. However, the most concerning issue is that when individuals are under pressure of war, emotional, economic, social, and other issues, they may choose the wrong way of thinking, that democracy is not as important as a “strong leader” and war winning. Such logic may potentially lead to winning the war but losing democracy.⁶ And now, after the year of a full-scale invasion, we can see some constitutional violations by Ukrainian authorities that may be signs of the worst predictions.

According to the Ukrainian Constitutional provisions, every person has the right to freely leave Ukraine, except for restrictions prescribed by law (Article 33.1). Moreover, all government authorities, local government, and their officials shall be obliged to act only on the grounds, within the powers, and manner envisaged by the Constitution and the laws of Ukraine (Art. 19 part 2).

But, violating the Constitutional provisions, the Cabinet of Ministers changed⁷ the Ordinance on the statement of Rules for crossing the state border by citizens of Ukraine.⁸ It banned the exit from Ukraine for all men from 18 to 60, with some minor exemptions. Thus, the Cabinet violated the constitutional rule that only the Parliament’s act (i.e., law) may regulate such issues. Neither the Law “On the order of departure from Ukraine and entrance to Ukraine of citizens of Ukraine”⁹ (special law on the border crossing), the Law “On mobilization training and mobilization”¹⁰, and the named Law “On the legal regime of martial law” do not mention any provisions about the ban on crossing the national border by Ukrainian citizens, because of the imposition of martial law.¹¹

We should also mention that in the first days or even weeks, such violations proba-

bly could be argued by the critical situation in the country and other circumstances, but continuing constitutional violations during the whole year cannot be justified at all.

Another example of constitutional violation was the ban on an online translation of the Ukrainian Parliament meeting during the war, which was enforced firstly without any documented decision, but later was tried to become legalized by the Parliament’s resolution.¹² But following the logic of the provision of Article 84.1, the meeting should be held publicly and closed only in isolated, reasoned, and extraordinary cases, rather than being closed for all times of war.

Additionally, we should accent on some legal inequalities, which may cause the violation of constitutional provisions. During wartime, police officers, investigators, and prosecutors are protected by the law and cannot be mobilized, but advocates (barristers), who are the only defenders in courts, can be mobilized. Since nearly 60% of advocates are men, there is a real risk of violating constitutional provisions prescribing the right to legal protection and protection in the courts.¹³

2. The impact of the Russian invasion on the European integration processes in Ukraine

Ukraine’s European integration aspirations acquired constitutional content after the Constitution of Ukraine was amended by *Law No. 2680-VIII of 7 February 2019*. This concerned the addition of the Preamble with the words “and confirming the European identity of the Ukrainian people and the irreversibility of the European and Euro-Atlantic course of Ukraine,” as well as the relevant powers of the Parliament (Article 85.1.5), the role of the President of Ukraine (Article 102.3), and the powers of the Government (Article 116.1-1).

On February 11, 2021, the European Parliament published a report on Ukraine’s success in implementing the Association Agreement with the European Union (ratified by *Law No. 1678-VII of 16 September 2014*). In 2021, Ukraine was preparing to formally apply for EU membership in 2024 to join the European Union in the 2030s.

After the beginning of the Russian invasion, the question of accelerated European integration began to be raised. On February 26, 2022, Polish President Andrzej Duda called for Ukraine’s accelerated accession to the EU on Twitter. Slovenian Prime Minister Janez Janša, along with Polish Prime Minister Mateusz Morawiecki, proposed a plan for Ukraine’s rapid integration into the EU by 2030 in a letter to European Council president Charles Michel.¹⁴ Slovakian Prime Minister Eduard Heger also proposed to the EU to create a new special procedure for Ukrainian accession and to help Ukraine get back on its feet and recover from the war in the future.¹⁵

On February 28, Ukraine officially submitted a letter of application for membership and requested immediate admission to the European Union under a special procedure. On March 1, the European Parliament recommended that Ukraine be made an official candidate for EU membership and voted on the European Parliament resolution of March 1, 2022, on the Russian aggression against Ukraine (2022/2564(RSP)) (with 637 in favour, 13 against, and 26 abstained). Therefore, it was the beginning of the European official procedure.

On June 17, the European Commission recommended that the European Council grant Ukraine the perspective to become a member of the European Union and candidate status for accession¹⁶. Simultaneously with the recommendation to approve the candidate status, the Commission listed seven required reforms to be implemented by Ukraine:

- reform the process of appointing judges of the Constitutional Court of Ukraine (see below).
- continuation of judicial reform.
- anti-corruption, including the appointment of the head of the Special Anti-Corruption Prosecutor’s Office.
- anti-money laundering reform.
- implementation of the anti-oligarchic law, including recommendations of the Venice Commission.
- harmonization of national audio-visual legislation with the EU law.
- change in legislation on national minorities.

In addition, Ukraine has prepared a “Questionnaire: Information requested by the European Commission to the Government of Ukraine for the preparation of the Opinion on the application of Ukraine for membership of the European Union.”

On February 2, 2022, the European Commission published an analytical report on Ukraine’s alignment with the EU *acquis*.¹⁷ In general, the European integration vector of Ukraine contributes to the emergence of new scientific research regarding the implementation of constitutional principles in the context of the future adherence to the Treaties of the EU.¹⁸

3. Appointment of the CCU judges: struggle towards the implementation of the competitive procedure in line with the EU recommendation

One of the European Commission’s recommendations for Ukraine of June 17, 2022, was the enactment and implementation of the legislation on a selection procedure for judges of the Constitutional Court of Ukraine (CCU), including a pre-selection process based on the evaluation of their integrity and professional skills, in line with Venice Commission (VC) recommendations.¹⁹

Contrary to this very recommendation, on July 27, 2022, the Parliament appointed Olha Sovhyria, an MP (a member of the pro-presidential parliamentary faction), as well as a permanent parliamentary representative in the CCU, as a judge of the CCU (resolution No. 2442-IX) in violation of the requirement of the Law “On Constitutional Court of Ukraine” prohibiting an MP with a valid mandate to be appointed as a CCU judge and without de-facto any competitive selection process, required by the Constitution. A newly appointed judge took the oath before the CCU on August 2, 2022. Because of previous political activities and potential conflict of interest, a new judge was subjected multiple times to (self-)recusal in cases under consideration of the CCU.

Then, at least technically, in trying to implement the recommendation mentioned above, on August 12, MPs registered draft law No.

7662 introducing some elements of the competitive selection. One notable example was for the establishment of the Advisory Group of Experts (AGE) with national and international experts to assess the moral qualities and legal competence of candidate judges for the CCU. On September 6, the Parliament adopted draft law No. 7662 in the first reading and on October 10, it was submitted to receive an opinion of the VC.

On November 23, the VC published an urgent opinion (CDL-PI(2022)046), which generally spoke positively about Ukraine’s intentions and efforts to improve the competitive selection process of the CCU judges, but included many critical remarks and recommendations. On December 13, the Parliament adopted draft law No. 7662 with many amendments, which distorted some of VC’s recommendations, such as *Law No. 2846-IX*. On December 20, the President signed *Law No. 2846-IX*, which came into effect on December 23. Somehow surprised, a day before the President signed *Law No. 2846-IX*, VC published an updated version of its opinion (CDL-AD(2022)054-e), which was adopted at its 133rd Plenary session (December 16-17, 2022), with more critical remarks. Namely, the Commission: (1) stressed that candidates who are judged by the AGE to be “not suitable” [in respect of constitutional requirements regarding high moral qualities and the level of competence in the field of law] should be excluded from further consideration and must not be chosen by the appointing bodies (*Law No. 2846-IX* explicitly reserves such option for relevant appointing bodies); (2) noted that as long as the AGE will be operating with international members, the number of AGE members should be increased to seven to prevent a stalemate in the decisions and the seventh member should be on the international quota (*Law No. 2846-IX* provides for six members for AGE—3 national and 3 international ones). It is worth mentioning that under this law, VC itself shall appoint two members of AGE, and at the end of 2022, a few people anticipated challenges with this matter, which happened in the next year.²⁰

A few words on the CCU vacancies and appointments in 2022. A reminder: the

CCU comprises 18 judges; the President, the Parliament, and the Congress of Judges appoint 6 judges for the only 9-year term. On May 19, 2022, Oksana Hryshchuk and, on September 21, 2022, Oleksandr Petryshyn (appointed by the President of Ukraine on 26 November 2021) took the oath before the CCU. They became judges instead of Oleksandr Tupytsky and Oleksandr Kasminin, whose 9-year terms expired in May and September 2022. None of the adjudications challenging the President’s questionable actions to dismiss Tupytsky and Kasminin before their terms expired were completed during the reporting period.²¹ It is worth noting that Tupytsky left Ukraine and was declared wanted by the national authorities.

At the beginning of 2022, one vacancy from the Congress of Judges quota existed in the CCU. In 2022, because of 4 resignations, 5 vacancies emerged: 2 from the Congress of Judges and 3 from the Parliament. The list of judges who resigned in 2022: Oleksandr Lytvynov (April 26, 2022), appointed by the Congress of Judges in 2013; Serhii Sas (December 7, 2022), appointed by Parliament in 2014; Ihor Slidenko (December 7, 2022), appointed by Parliament in 2014; and Iryna Zavhorodnia (December 7, 2022), appointed by Parliament in 2018. To sum up, the CCU entered 2023 with 13 judges and five vacancies. It is also worth mentioning that in 2022, the CCU failed to elect their new President after ex-President Tupytsky’s term officially expired. Since December 2020, Serhii Holovaty, the most senior judge by age, has been de facto the Acting President.

III. CONSTITUTIONAL CASES

In 2022, the CCU delivered a total of 13 decisions,²² The First Senate adopted one decision, the Second Senate had eight decisions, and the Grand Chamber adopted the remaining number of decisions. Despite the pending request from Parliament on March 16, 2021, no opinions on the constitutional amendment draft laws have been delivered.

1. *Decision No. 2-r/2022 (Grand Chamber): A Priori Constitutional Review Case*

The CCU declared Law on Amendments to Article 80 of the Constitution of Ukraine (regarding the Immunity of People’s Deputies of Ukraine) (Law No. 27-IX of September 3, 2019) constitutional. This CCU case is a classic case on the consequent (*a posteriori*) review of the constitutional amendments, which is quite a difficult and ambiguous area of comparative constitutional law. The Acting President of the CCU even requested an *amicus curiae* brief from the Venice Commission on the limits of *a posteriori* review of constitutional amendments in Ukraine. The Commission refused to decide whether the national law of Ukraine indeed allows for *a posteriori* review of constitutional amendments by the CCU; however, it made some theoretical observations on such an issue, analyzing applicable foreign practice and relevant existing case law of the CCU (see Further Reading). Before mentioning the outcome of this case, it is important to point out some background information on Law No. 27-IX because it is essential for understanding this case.

On August 29, 2019, President Zelensky registered seven draft laws on constitutional amendments²³ and re-registered a constitutional amendment draft law of ex-President Poroshenko initiated in 2017 (No. 7203). This draft law aimed to abolish the parliamentary immunity of people’s deputies (MPs) from January 1, 2020. In 2018, the CCU delivered a positive opinion on draft law No. 7203 (*Opinion No. 2-v/2018*); however, it warned that a decision to abolish parliamentary immunity could affect MPs’ independence and the exercise of their constitutional powers.²⁴ Additionally, draft law No. 7203a was adopted in a hyper-speed manner as Law No. 27-IX. The first vote on draft law No. 7203a took place at 00:31 a.m. on August 30, 2019. The meeting of the Parliament that had stated on August 29 continued to the deep night. On September 3, 2019, during the next session of Parliament, the second vote occurred. In fact, such a one-day “session” of the newly elected Parliament was intentionally inserted before the commencement of a regular session on

September 3, 2019, to provide a first vote for the draft law required by the Constitution.²⁵ Such procedural manipulations with the constitutional amendment process caused a new proceeding in the CCU. The CCU was asked about the constitutionality of Law No. 27-IX adoption process, not its essence.

By this decision, CCU (1) reaffirmed its previous position on the applicability of *a posteriori* review toward constitutional amendments in effect; (2) saw no solid violation of the constitutional amendment procedure in respect of Law No. 27-IX. In a dissenting opinion, Judge Oleh Pervomaisky criticized the Court’s approach and argumentation in general, pointing out that the voting process in the case of Law No. 27-IX contradicted some constitutional values, the principles of democracy, the rule of law, and the requirement of stability of constitutional and legal regulation. Even in a concurring opinion, Judge Vasyl Lemak also criticized the constitutional amendment process in five days as inconsistent with the goals of the Article 155 of the Constitution.

2. *Decision No. 4-r/2022 (Grand Chamber): Statutory Name of Religions Organizations Case*

The CCU reviewed a case on the constitutionality of the Law of Ukraine “On Amendments to Article 12 of the Law of Ukraine ‘On Freedom of Conscience and Religious Organizations,’” submitted by 49 MPs, and declared those provisions constitutional.

The question was about the name of religious organizations that are part of the structure of a religious organization, the management center of which the country recognized by law as having carried out military aggression against Ukraine and/or temporarily occupied part of the territory of Ukraine.

MPs considered that Law provisions violate the right of everyone to freedom of worldview and religion guaranteed by the Constitution of Ukraine, the right of citizens of Ukraine to freedom of association in public organizations, as well as the procedure for prohibiting the activity of associations, established by the Constitution of Ukraine.

Reviewing the case, the Court mentioned that the critical aspect, in this case, is the aim of restrictions and that the right to freedom of worldview and religion, guaranteed by the constitutional provisions, is an individual right, which is a generalization of the institutional rights of religious organizations. The state government has the right to apply measures limiting the right to freedom of outlook and belief (religion), particularly for public order or national security guarantee. The court pointed out that the law does not concern the internal aspect of the right to freedom of outlook and belief (religion), and restrictions of this right, about clarifying the name of certain religious organizations (associations) relate exclusively to its external aspect (*forum externum*). Furthermore, the Court considered that the case review took place in the conditions of martial law introduced in Ukraine during the Ukrainian people’s struggle against the Russian Federation’s aggression, which determined the legitimacy of the authority’s measures.

After examining all aspects and arguments, the Court decided that the organization should mention, in its full official name/title, the name of the “mother organization,” so the analyzed Ukrainian legislation provisions are constitutional.

3. *Decision No. 9-r(II)/2022 (Second Senate): Regarding the Inviolability of Property Rights Case*

The CCU reviewed a case regarding a constitutional complaint of the Private Joint Stock Company “Odesteplocomunenergo” (hereinafter – the Complainant). The complaint challenged Constitution of Ukraine (constitutionality) of subparagraph “a” of paragraph 2 of part six of Article 37 of the Law of Ukraine “On State Registration of Corporeal Rights to Real Estate and Their Encumbrances,”²⁶ and declared this provision unconstitutional.

The Complainant considered that the disputed provision of the Law gives the Ministry of Justice of Ukraine the authority to “deprive a person of the right to ownership by cancelling state registration on the basis of mistakes made by the state registrar of property

rights (that is, on the basis of circumstances that cannot depend on the person whose private property right is subject to registration) <...> thereby violating Article 41.4 of the Constitution of Ukraine, according to which the right to property is inviolable.”

The CCU has emphasized that under the current legislation of Ukraine, a person acquires the right to own real estate and is able to fully exercise it, in particular having the ability to dispose of their property, after the state registration of the right to own the real estate (passing a decision on the state registration of the right to own immovable property, entering and further preservation (availability) of the corresponding registration record in the State Register of Property Rights to immovable property). Because making a registration entry on the cancellation of the state registration of the right of ownership in the State Register of Rights, the Complainant had lost the ability to freely and independently dispose of the immovable property, including its alienation.

According to the requirements of the Constitution of Ukraine, in its activities, the state must implement the constitutional principle of its responsibility to the person and the directly related principle of “good governance,” which consists of the state’s obligation to implement in its activities the fundamental principles of construction, organization, and implementation of state power to establish true democracy, respect for human rights, and the rule of law as pan-European values. When interfering with property, the state must consider the need to ensure a “fair balance” in the protection of the specified public interest and individuals’ property rights.

The CCU has determined that the disputed provision of Article 37 of Law No. 1952-IV contradicted the principles of “state responsibility to person” and “good governance.” The provision did not establish reasonable means of interference with property rights in cases where the grounds for annulment of the decision on state registration of rights are erroneous decisions and actions of the state registrar. Therefore, the contested provision of Article 37 of Law No. 1952-IV contradicts

Article 3.2, Article 8.1, and Article 41.1&4 of Ukraine’s Constitution.

IV. LOOKING AHEAD

Undoubtedly, the war and the imposition of martial law will continue to influence the main direction of the country’s constitutional system development in 2023. Although Ukrainian society entered 2023 with anticipations of victory and peace, the current events do not leave much room for optimism regarding crucial trends presented in this report.

V. FURTHER READING

English Summaries of the Constitutional Court of Ukraine Decisions in 2022 (available online), <<https://ccu.gov.ua/en/docs/4567>> accessed 30 April 2023.

Venice Commission, Amicus Curiae brief on the limits of subsequent (a posteriori) review of constitutional amendments by the Constitutional Court, adopted by the Venice Commission at its 131st Plenary Session (Venice, 17-18 June 2022), CDL-AD(2022)012.

Venice Commission, Joint amicus curiae brief on certain questions related to the election and discipline of the members of the High Council of Justice, adopted by the Venice Commission at its 132nd Plenary Session (Venice, 21-22 October 2022), CDL-AD(2022)023.

Venice Commission, Urgent joint opinion of the Venice Commission and the OSCE/ODIHR on the draft law on local referendum, issued on 10 February 2022 pursuant to Article 14a of the Venice Commission’s Rules of Procedure and endorsed by the Venice Commission at its 132nd Plenary Session (Venice, 21-22 October 2022), CDL-AD(2022)038.

Venice Commission, Opinion on the draft law “On Amendments to Certain Legislative Acts of Ukraine on improving the procedure for the selection of candidates for the position of judge of the Constitutional Court

of Ukraine on a Competitive Basis”, adopted by the Venice Commission at its 133rd Plenary session (Venice, 16-17 December 2022), CDL-AD(2022)054.

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- 1 Decree No. 64/2022 from Feb. 24, 2022.
- 2 Law No. 2102-IX from Feb. 24, 2022.
- 3 On February 24, the president decided about general mobilization (Decree No. 69/2022 from February 24, 2022), which was approved by the parliament (Law No. 2105-IX from Mar. 3, 2023), was prolonged many times, and continues now.
- 4 Sergiy Panasyuk, Could a Political Compromise Be Constitutional? Legal Hurdles for Possible Negotiations with Russia, *Washington Law Review Online Blog*, Sept. 1, 2022, at: <https://washingtonlawreview.org/could-a-political-compromise-be-constitutional-legal-hurdles-for-possible-negotiations-with-russia/>
- 5 Law No. 389-VIII from Mar. 3, 2023
- 6 See Sergiy Panasyuk, 'Is the Risk of Winning the War in Ukraine but Losing Democracy Real?', *IACL-AIDC Blog* (11 October 2022), <https://blog-iacl-aidc.org/new-blog-3/2022/10/11/is-the-risk-of-winning-the-war-in-ukraine-but-losing-democracy-real>
- 7 The Ordinance was changed many times after the full-scale invasion.
- 8 Ordinance No. 57 from Jan. 27, 1995, with further changes
- 9 Law No. 3857-XII from Jan. 21, 1994.
- 10 Law No. 3543-XII from Oct. 21, 1993.
- 11 See Sergiy Panasyuk, The war hostages: Does the ban for men to travel abroad violate Ukraine's national law and international obligations?, *Int'l J. Const. L. Blog*, Aug. 10, 2022, at: <http://www.icconnectblog.com/the-war-hostages-does-the-ban-for-men-to-travel-abroad-violate-ukraines-national-law-and-international-obligations/>
- 12 Decree No. 2568-IX from Sep. 22, 2023.
- 13 Sergiy Panasyuk, Balancing Human Rights Protection and Defense of the Motherland in Ukraine, *Oxford Human Rights Hub Blog*, Nov. 21, 2022, at: <https://ohrh.law.ox.ac.uk/balancing-human-rights-protection-and-defense-of-the-motherland-in-ukraine/>
- 14 See: Joint letter of Slovene and Polish Prime Minister on the Ukrainian European Perspective. GOV.SI. At: <https://bit.ly/3Lv9n96>
- 15 Slovakia pushes for 'special track' for Ukraine toward joining the EU. *POLITICO*. February 27, 2022. At: <https://bit.ly/441gjh9>
- 16 Communication from the Commission to the European Parliament, the European Council and the Council. Commission Opinion on Ukraine's application for membership of the European Union. COM(2022) 407 final from Jun. 17, 2022.
- 17 Analytical Report following the Communication from the Commission to the European Parliament, the European Council and the Council Commission Opinion on Ukraine's application for membership of the European Union. SWD(2023) 30 final.
- 18 For more details, see Kochyn, Volodymyr. "Research methodology of legal regulation of economic relations in the conditions of privatization and European integration" in *Private Law and Business*. 2023. No. 22. P. 158-169, URL: <https://doi.org/10.32849/2409-9201.2023.22.20>.
- 19 For more details, see Marusiak, Oleksandr. "Recommendation 1: Enact and implement legislation on a selection procedure for judges of the Constitutional Court of Ukraine, including a pre-selection process based on evaluation of their integrity and professional skills, in line with Venice Commission recommendations" in *Entrance exam for Ukraine: what we should do to implement EU recommendations, Reanimation Package of Reforms*, pp. 6-12, URL: https://www.researchgate.net/publication/366426738_Entrance_exam_for_Ukraine_what_we_should_do_to_implement_EU_recommendations_Recommendation_1
- 20 Looking ahead, I would like to add that on 25 January 2023, the President of the Venice Commission sent to the Chairperson of Ukraine's Parliament a follow-up letter to Opinion CDL-AD(2022)054-e. The Commission has decided that the preconditions for the nomination of candidate members of the AGE by the Venice Commission are not fulfilled in Law No. 2846-IX.
- 21 The 2021 Global Review of Constitutional Law, pp. 362-263.
- 22 In 2021, the CCU delivered 10 decisions.
- 23 The 2020 Global Review of Constitutional Law, pp. 320-321.
- 24 CCU also quoted para. 18 of the Venice Commission's opinion of 2015 on such matters (CDL-AD(2015)013-e): "Fighting corruption is indeed a major justification for restricting parliamentary inviolability. However, in a political system, with a fragile democracy such as in Ukraine, where, as the Venice Commission was informed, judicial corruption is widespread, a complete removal of inviolability can be dangerous for the functioning and the autonomy of Parliament."
- 25 Article 155 of the Constitution provides the following logic of constitutional amendment process: "A draft law on introducing amendments to the Constitution of Ukraine, except for Chapter I — "General Principles," Chapter III — "Elections. Referendum," and Chapter XIII — "Introducing Amendments to the Constitution of Ukraine," previously adopted by the majority of the constitutional composition of the Verkhovna Rada of Ukraine, is deemed to be adopted, if at the next regular session of the Verkhovna Rada of Ukraine, no less than two-thirds of the constitutional composition of the Verkhovna Rada of Ukraine have voted in favour thereof." Under Article 83.1 of Constitution, "[r]egular sessions of the Verkhovna Rada of Ukraine commence on the first Tuesday of February and on the first Tuesday of September each year".
- 26 Law No. 1952-IV from Jul. 1, 2004.

A world map in a light red color, overlaid on a darker red background. The map shows the outlines of continents and countries. A white horizontal line is positioned below the 'I·CONnect' text.

I·CONnect

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Richard Albert, David Landau, Pietro Faraguna and Giulia Andrade
Editors



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Malta

The most significant development in Malta has been the operation of the new gender corrective electoral mechanism, incorporated into the Constitution in 2021. At the 2022 General Election, 12 female candidates were allocated seats in the Maltese Parliament to ensure a more gender-balanced representation.

Mongolia

In 2022, the Constitutional Court resolved two significant cases which rebalanced the political system. Additionally, the government aimed to adopt a new constitutional amendment three years after the previous amendment in 2019. In the last couple of years, the state of liberal democracy in Mongolia has regressed to a level reminiscent of its transitional period in the early 1990s (V-Dem Project 2023).

Morocco

Morocco provides an interesting case for examining how constitutionalism has functioned in a context characterized by a consistent combination of “traditional” forms of political authority with “modern” political institutions. The dualism between “traditional political authority” and the principles of liberal democracy continues to hinder Morocco’s democratic progress.

Nepal

In 2022, Nepal witnessed political instability and turmoil, with the Citizenship Amendment Bill pushing heads of the government and leading to disagreements. The President, a mere ceremonial head, refused to give assent to the bill, which sparked protests, and the decision was targeted as unconstitutional, further deepening the constitutional crisis.

Netherlands

Constitutional amendments introduced a general provision in the Constitution, extended the non-discrimination grounds to include disability and sexual orientation, modernized the right to privacy of communications,

embedded the right to a fair trial, established an electoral college for the Upper House for non-resident nationals, and ‘recalibrated’ the constitutional amendment procedure.

New Zealand

The COVID-19 pandemic’s shadow continued through an anti-vaccine mandate occupation on New Zealand’s Parliament grounds. However, other constitutional concerns began to resurface, such as the New Zealand Bill of Rights (Declarations of Inconsistency) Act 2022 and recognizing indigenous rights in the reform of water infrastructure.

Nigeria

Nigeria’s democracy remained stagnant as a hybrid regime with flawed elections, except for the presidential term limit. The electoral contests utilized ethno-religious sentiments, revealing the absence of social coordination by the Constitution. The loss of faith in the electoral process, lack of judicial autonomy, and slow pace of justice administration further intensify Nigeria’s social disintegration.

North Macedonia

In 2022, the government did not substantially secure the rule of law or address the country’s high-level corruption. North Macedonia’s bid for EU integration was vetoed by yet another EU member, Bulgaria.

Pakistan

The Supreme Court’s judgment in ‘PPPP & others v. Federation of Pakistan’ PLD 2022 SC 574 ought to be celebrated for upholding constitutional supremacy. In this decision, the Court overturned the unconstitutional dissolution of the National Assembly and mandated that the vote of no confidence be carried out in a timely manner.

Paraguay

In 2022, Paraguay celebrated the 30th anniversary of its Constitution. Significant politi-

cal events included the selection of high-level authorities, primary elections, challenges related to narco-politics, and corruption. The report focuses on constitutional developments regarding participatory democracy, administrative law, and personal data protection. Furthermore, it also explores two notable cases involving electoral law and identity rights.

Peru

The political tensions of recent years have led to an intense constitutional and political crisis. This political turmoil has resulted in widespread protests, the declaration of a state of emergency, and police violence. The current crisis is also deeply rooted in the constitutional design of Peru.

Poland

In 2022, Polish authorities continued the illiberal remodeling of the constitutional system. The Constitutional Tribunal adjudicated to lift the constraint emanating from the EU and international law. The year concluded with the legislation regarding the Supreme Court and preparations for the 2023 parliamentary election.

Portugal

2022 was a year marked by changes in the political scene, with an increase of the far-right’s influence in Parliament. In addition, there was a process of revising the Constitution and workers’ discontent. The Courts have also provided interesting decisions on metadata, elections, COVID-19 measures, and employment security.

Romania

In 2022, new amendments were introduced to the judiciary laws, and the European Commission announced its intention to lift the Cooperation and Verification Mechanism.

Slovakia

The nearly permanent internal political crisis of 2022 culminated in a no-confidence vote