

## Address by the President of Latvia, Egils Levits, at the national judicial conference 'Independent courts for democratic societies'

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Honourable Mr Strupišs, justices, ladies and gentlemen, participants,

I

I am delighted to join you today for annual judicial conference. I have experienced several such conferences in the past but this one is special, as we return to in-person format after a two-year pause. I believe everyone is happy to see their colleagues in person after all those hybrid events.

Two years of pandemic have taught us how to be efficient when working online. All courts and Judicial Council deserve a big thank you for how quickly they adapted to these unusual circumstances and moved proceedings to online platforms even before legislature's mandate, when the pandemic was raging. Courts continued to work thanks to high level of technological development that Latvia has reached. While other countries struggled, Latvia had no problem leaning into virtual technologies. It was extremely important to ensure that procedural rules are applied and interpreted in a way that allows courts to continue serving justice. Thank you for the job well done! For showing flexibility in adapting to new mode of work.

II

Today's conference comes at a time when there is a war raging in Ukraine, on our doorstep. Russia has invaded Ukraine and continues to commit war crimes and crimes against humanity to challenge the existing world order. This is not a war against Ukraine only. It is an attack on the whole Western world and Europe, an attempt to undermine our values and makes us play by the aggressor's rules.

With weapons in hands, Ukrainians are fighting for our common values as we speak. Freedoms and fundamental rights, democratic political system and rule of law are values that the West and Europe cherish. And Latvia is one of countries that shares these values.

### III

Progressive constitutionalism is the political system of the choice in Western world. But it has been around and is prevalent only lately, and in a relatively small number of countries. All the other political systems that have existed, or continue to function, can be critically labelled and isolated by a blanket term 'undemocratic political systems'. I believe the modern world nowadays consists of countries with modern, constitutional, democratic systems and countries that are undemocratic, and what we see in Ukraine is the clash of two worlds. Alternative, non-democratic world has been dominated by autocracies and totalitarian regimes of the 20th and 21st century. In the 20th century Latvia has experienced all of them: autocracy, totalitarianism, modern and constitutional democracy. That is our bitter past and it has a lot to do with how our legal science formed.

Modern constitutionalism, in turn, is based on two fundamental principles – democracy and rule of law that are essential to this political system. Let me reiterate, modern constitutionalism works only if both of these elements are at play. To illustrate, let me mention just some examples in history where one of these elements was missing. Democracy, for example, without rule of law formed the political system of ancient Athens. Whereas political systems based on the rule of law, without democracy, are very rare. But there are two good examples. One is ancient Israel – the so-called age of Levites or judges between 13th and 11th century. The other is Sardinian judicate, a time between the 9th and 15th century when Sardinia was ruled by law. These two are rare and yet exciting examples of human history when rule of law existed without democracy. Nowadays, it is our job to remind that modern constitutionalism needs both of these components.

Countries that have chosen modern constitutionalism need both elements, and these elements need to be in balance. Balance determined by constitution. In Latvia, this balance is maintained by Constitutional Court, just like in other modern constitutional states. Balance between both is the very core of modern constitutional system, its defining characteristic.

### IV

There can be tensions between the two. Tensions are natural, even necessary and unavoidable. Tensions exist because both principles serve different goals, different purposes. Democracy serves the majority, i.e., establishes the rule of majority. Rule of law, on the other hand, is counter-majoritative. It is based on legal norms, such as constitutions, laws, general legal dogmatics. Majority is irrelevant here. The key role is played by an institution whose task is to verify the validity of decisions from the perspective of superseding legal norms.

Each of these principles has its own means and ends. Democracy supports the will of the majority. Why the majority and not minority, or the will of an individual? Because that is how you secure the support and satisfaction of the most possible people. That is the very purpose of democracy. Rule of law, on the other hand, protects the minority interests and will of individual against injustices perpetrated by a group. Rule of law therefore does not seek to support the will of majority as it strives to ensure justice defined by legal norms on a more abstract level, such as constitutional and general legal dogma.

Fundamental features of democracy are therefore debated in the political realm. In the parliament, government and society. The aim of such discourse is to decide on the best course of action in particular circumstances. The understanding of what is best may, of course, differ but the end goal is to find a democratic solution that fits most.

Rule of law, in turn, is debated in the legal realm, not the political one. The aim of this discourse is to find a just solution, not the most suitable one.

### V

Rule of law is implemented by an independent judiciary, which is expected to guarantee that each individual has the right to defend his or her rights in an honest court and these rights will be respected and can be enforced.

It is no coincidence that populist governments, although democratically elected, are very keen to make judiciary less independent. Populism aspires to establish a different balance. It seeks to change the constitutional balance between the principles of democracy and rule of law. It idolises the supremacy of democracy, putting it above the rule of law. Populism strive to move the 'centre of gravity' of a modern, democratic and constitutional political system, as I already mentioned, away from rule of law towards democracy. And it is one of the key objectives of the Constitutional Court to protect the integrity of such balance.

In a modern constitutional state, government institutions that operate in the democratic framework, and the society at large, are expected to respect the rule of law and the balance between two principles. Respect is the way such political system treats the rule of law and such treatment is binding upon government bodies and the whole society.

Sustainable, well-resourced and remunerated courts are the only way to achieve adequate level of the rule of law in practice. Internal and external shocks, political bargaining and selfish desires of influential political figures should have no effect on independence of the judiciary, which is expected to loyally serve the law and rights.

## VI

Given the current geopolitical developments, I feel it is necessary to also comment on what is going on in Ukraine. When Ukrainian judges voluntarily swapped their robes for uniforms and decided to physically defend their statehood and rule of law, and the national aspirations of Ukrainian nation, they should be given respect because such honourable gesture of Ukrainian judges can be considered a golden standard for all civic movements. A judge not only taking care of justice through his or her judgements but also giving everything they have got to defend their national independence and free state where rule of law and justice can be further ensured is admirable.

In a modern constitutionalism, a judge is the public official that has the constitutional duty to protect the constitutional foundations of the state, especially if it is a democratic state that adheres to the rule of law.

Judges should always be driven by desire to make Latvia stronger and more democratic, with sustainable rule of law, as they apply Satversme, laws and general legal principles in particular cases, their private and professional life.

Society expects judges to be role models. Every 'rotten apple' that casts a shadow on the judiciary will be remembered by people much longer than all the good deeds combined that often go unnoticed by most people.

Sustainable judiciary is a system with precise rules and procedures that politicians shall respect. There are specific procedures for appointing a judge or promoting him or her to another post. There should be no political meddling whatsoever.

## VII

We belong to the West. A world where personal freedoms and self-determination, democracy and rule of law are paramount. We need to be able to protect these values and you, dear judges, have a special role to play.

Modern legal system is very complex and demands constant attention on finding the most adequate solution in terms of justice. Any hope of simplifying our legal system is an illusion. Societies are becoming more and more complex. Rights are becoming more and more complex due to that. Balance between rule of law and fairness is growing more complex. If you have complex society and rudimentary rights, legal system will begin to fail in the area of fairness. As a society, which, of course, also includes judges and lawyers, we need be aware and prepare for the fact that rights will only go more complicated from already high levels of sophistication. Legislators should, of course, make sure that laws are adequately simple but there is a limit to which you can go in this regard. Modern lawyer must be well-versed in all the complexity of applicable rights and laws, know where national laws prevail and which are the cases when supremacy of European or international laws is to be ensured.

Preamble of our constitution, Satversme, identifies constitutional values that serve as our beacon in the 'raging sea of complexity' when it comes to various clashes between laws and norms. When you see the constitutional values, which courts are meant to protect and that underpin the specific paragraphs in laws, and have firm sights on the overall goals of judicial system, which are linked to justice for all, it becomes a lot easier to adjudicate and find the right answers. Excessive formalism and narrow

interpretation of the law in the institutional interests is not the right approach. The right approach is to find the spirit of the law, and its purpose, and put it to use. That is how our case law and courts should work.

## VIII

Let me go back to our constitution, Satversme, once more. It is an amazingly contemporary document. Even hundred years after its adoption it continues to provide us with the right answers we need to solve today's problems. It ensures that rights are universally applicable. In addition to general legal principles and other applicable provisions, Satversme also contains answers to questions we are yet to ask or even think about. That is how universality of national laws should work, also in Latvia. This issue has been explored in the past too. That is why court does not have to do it. It also requires us to dive deep into all areas of national law, including, of course, constitution. Especially the core elements of the Latvian State identified in Satversme.

There is also other phenomena deeply linked to geopolitical environment and current situation in Europe. A phenomena that is indicative of a kind of a crisis in modern constitutionalism. It has been debated a lot in recent years, and it is completely removed from what is currently happening in Ukraine.

Let me underline – democracy in Europe and Latvia can be described as self-defending democracy. A democracy that has created procedures and constitutional safeguards that prevent the use of freedoms guaranteed by such democracy against itself. Government departments and society are expected to protect and defend democracy against threats, and our constitution provides the necessary tools to do that. By the way, this is also what the Preamble of Satversme prescribes. It is the sacred obligation of our people, and all state institutions and courts must contribute to it. Satversme also contains the self-defending democracy elements. These elements have been recognised by our Constitutional Court and Court of Justice of the European Union.

Satversme gives us all tools we need to protect democracy and rule of law against enemies. To support Satversme and Latvia as a democratic state governed by rule of law, we must use them wisely.

Courts and judges also play a distinct and significant role in ensuring the self-defending capability of our democracy. You have the power and responsibility over integrity of our modern, democratic constitutional political system.

By adjudicating individual cases you establish the balance between fundamental personal freedoms and the overall good of the society. You are tasked with detection and prevention of abuse of these rights by anyone acting in bad faith to undermine and weaken our society or values underpinning the political system established by Preamble of Satversme.

Just remember what happened to the Weimar Republic. Its democracy collapsed when its courts began ignoring undemocratic forces, letting them use seemingly legal means to weaken the democracy and take over the power.

## IX

The title of today's conference is 'Independent courts for democratic societies'. Court independence is currently as relevant as ever. I believe you have plenty of questions that you would like to discuss in this regard. Good luck with the debate. Wish you all a fruitful conference and many valuable take-aways!

Thank you!



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