Parliamentary Assembly
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COUNCIL OF EUROPE
CONSEIL DE L'EUROPE

Opinion 190 (1995)[1]

Application by Ukraine for membership of the Council of Europe

Parliamentary Assembly

1. Ukraine applied to join the Council of Europe on 14 July 1992. By Resolution (92) 29 of 23 September 1992, the Committee of Ministers asked the Parliamentary Assembly to give an opinion, in accordance with Statutory Resolution (51) 30 A.

2. To establish the primacy of its own laws over those of the Soviet Union, Ukraine made a declaration of sovereignty on 16 July 1990. On 24 August 1991, with the imminent dissolution of the Soviet Union, independence was declared in Ukraine and received massive public support in the referendum of 1 December 1991. A series of amendments to the Constitution of 1978 set the state on the path towards democracy.

3. Special guest status with the Parliamentary Assembly of the Council of Europe was granted to the Ukrainian Parliament on 16 September 1992.

4. Parliamentary and presidential elections were held in Ukraine in spring and summer 1994. Assembly observers of the first round of the parliamentary elections concluded that "the electoral process was fairly conducted and the election was free and fair, despite an apparently flawed electoral law...". New laws on elections and political parties are now being prepared.

5. In the course of 1994, after separate but co-ordinated visits effected at the request of the Assembly, two eminent jurists reported "spectacular progress" in bringing the constitutional provisions and general legislation of Ukraine into conformity with the Council of Europe's general principles (notably the European Convention on Human Rights). They concluded that further profound reform was necessary, but that this might well be effected "after accession". This report was released on 6 April 1995. It was the basis for the visit of the Assembly's three rapporteurs to Ukraine (Kiev and Crimea) from 10 to 14 April 1995.

6. The constitutional situation has since been clarified - notably in regard to the separation of powers, the protection of human rights and the prospects for fast economic reform - with the signing by the President and the Parliament of Ukraine, on 8 June 1995, of a constitutional agreement on basic principles of the organisation and functioning of state power and local self-government. This agreement should be followed by the adoption of a new constitution in conformity with the Council of Europe's principles, not later than 8 June 1996. Meanwhile, provisions and concepts of the Constitution of 1978 which are incompatible with the agreement are made inoperative.

7. The Act of 17 March 1995, the Constitutional Agreement of 8 June 1995 and a presidential decree of 19 August 1995 confirm the special status of Crimea. The precise scope of its autonomy is to be laid down in the new Constitution of Ukraine, as well as in the Crimean Constitution which is now being drawn up by its parliament for approval by the Parliament of Ukraine.

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1. Assembly debate on 26 September 1995 (26th Sitting) (see , report of the Political Affairs Committee, rapporteur: Mr Masseret; Doc. 7398, opinion of the Committee on Legal Affairs and Human Rights, rapporteur: Mr Németh; and Doc. 7396, opinion of the Committee on Relations with European Non-Member Countries, rapporteur: Mrs Severinsen). Text adopted by the Assembly on 26 September 1995 (26th Sitting).

8. Ukraine's relations with the Russian Federation will be a determining factor for the security of the country, as well as for stability in the region. Ukraine is heavily dependent on Russia for energy. It is deeply in debt to the Russian Federation. More than 11 million (22%) of Ukraine's 52 million population are ethnic Russian. Four million ethnic Ukrainians live in Russia. In Crimea - administrative authority over which was transferred to Ukraine in 1954 - ethnic Russians account for 70% of the population. Russia retains an interest in access to the ports of the Black Sea, which in turn give access to the Mediterranean. On 9 June 1995, an agreement was signed by the President of Ukraine and the President of Russia on division of the Black Sea fleet of the former Soviet Union and on access to the naval facilities in Sebastopol. This has removed a significant cause of tension and distrust. It should help towards the conclusion of a comprehensive treaty of friendship, co-operation and partnership, the provisional text of which was initialled on 8 February 1995.

9. A partnership and co-operation agreement between Ukraine and the European Union was signed on 14 June 1994. Progress in macro-economic stabilisation and structural reform, despite unfavourable developments in terms of trade, enabled the signing of a further "interim agreement" on 1 June 1995. Membership of the World Trade Organisation is envisaged.

10. With support from the European Union, the International Atomic Energy Agency and the G-7, Ukraine expects to close the Chernobyl nuclear power plant before the year 2000, according to a timetable announced on 19 May 1995. Following a decision to transfer all tactical and strategic nuclear weapons inherited from the former Soviet Union to the Russian Federation, Ukraine acceded on 5 December 1994, as a non-nuclear weapon-state to the Treaty on Non-Proliferation of Nuclear Weapons. Laws have been enacted to combat illegal trade in nuclear materials, after consultation with the International Atomic Energy Agency and the Nuclear Suppliers Group.

11. Accordingly, in the light of assurances given by the highest authorities of the state (letter of 27 July 1995 from the President of Ukraine, the President of the Parliament and the Prime Minister), and on the basis of the following considerations, the Assembly believes that Ukraine is able and willing, in the sense of Article 4 of the Statute of the Council of Europe, to fulfil the provisions for membership of the Council of Europe as set forth in Article 3: "Every member of the Council of Europe must accept the principles of the rule of law and of the enjoyment by all persons within its jurisdiction of human rights and fundamental freedoms, and collaborate sincerely and effectively in the realisation of the aim of the Council...":

11.1. Ukraine has been taking part in various activities of the Council of Europe since 1992 - through its participation in intergovernmental co-operation and assistance programmes (notably in the fields of legal reform and human rights) and the participation of its special guest delegation in the work of the Parliamentary Assembly and its committees;

11.2. political dialogue" between Ukraine and the Committee of Ministers of the Council of Europe was initiated on 13 July 1994;

11.3. a joint European Union/Council of Europe programme for the reform of the legal and judicial system and local government is being prepared and its implementation is scheduled for autumn 1995;

11.4. Ukraine has signed the Framework Convention for the Protection of National Minorities. Moreover, it has acceded to the European Cultural Convention, the European Convention on Information on Foreign Law and its additional protocol and the European Outline Convention on Transfrontier Co-operation between Territorial Communities or Authorities;

11.5. the following legislation, in conformity with Council of Europe standards, will be enacted within a year from accession:

a new constitution;

a framework-act on the legal policy of Ukraine for the protection of human rights;

a framework-act on legal and judicial reforms;

a new criminal code and code of criminal procedure;

a new civil code and code of civil procedure;

a new law on elections and a law on political parties;

11.6. the role and functions of the Prosecutor's Office will change (particularly with regard to the exercise of a general control of legality), transforming this institution into a body which is in accordance with Council of Europe standards;

11.7. the responsibility for the prison administration, for the execution of judgments and for the registration of entry to and exit from Ukraine will be transferred to the Ministry of Justice before the end of 1998;

11.8. the independence of the judiciary in conformity with Council of Europe standards will be secured, notably with regard to the appointment and tenure of judges; the professional association of judges will be involved in the procedure for the appointment of judges;

11.9. the status of the legal profession will be protected by law and a professional bar association will be established;

11.10. the Constitutional Court of Ukraine will be competent to decide on the compatibility of the acts of the legislative and executive authorities of the Autonomous Republic of Crimea with the Constitution and laws of Ukraine;

11.11. a peaceful solution to the disputes existing among the orthodox churches will be facilitated while respecting the Church's independence vis-à-vis the state; a new non-discriminatory system of church registration and a legal solution for the restitution of church property will be introduced;

11.12. the state and progress of legislative reform will permit the signature and ratification, within the delays indicated, of the European conventions listed hereunder;

11.13. policy towards ethnic minorities will be further developed on the basis of the Framework Convention for the Protection of National Minorities and according to the principles of Assembly Recommendation 1201 (1993) on an additional protocol to the European Convention on Human Rights on this question.

12. The Parliamentary Assembly notes that Ukraine shares its interpretation of commitments entered into as spelt out in paragraph 11, and intends:

12.1. to sign the European Convention on Human Rights at the moment of accession; to ratify the Convention and Protocols Nos. 1, 2, 4, 7 and 11 within a year; to recognise, pending the entry into force of Protocol No. 11, the right of individual application to the European Commission and the compulsory jurisdiction of the European Court (Articles 25 and 46 of the Convention);

12.2. to sign within one year and ratify within three years from the time of accession Protocol No. 6 of the Convention for the Protection of Human Rights and Fundamental Freedoms on the abolition of the death penalty, and to put into place, with immediate effect from the day of accession, a moratorium on executions;

12.3. pending further research on the compatibility of the two legal instruments, not to sign the Commonwealth of Independent States (CIS) Convention on Human Rights and other relevant CIS documents, given the fact that individual applications submitted under this convention might render impossible the effective use of the right to individual application under Article 25 of the European Convention on Human Rights;

12.4. to sign and ratify within a year from the time of accession the European Convention for the Prevention of Torture and Inhuman and Degrading Treatment or Punishment;

12.5. to ratify within a year from the time of accession the Framework Convention for the Protection of National Minorities, and to conduct its policy towards minorities on the principles set forth in Assembly Recommendation 1201 (1993) and incorporate it into the legal and administrative system and practice of the country;

12.6. to sign and ratify, and meanwhile to apply the basic principles of other Council of Europe conventions, notably those on extradition, on mutual assistance in criminal matters, on the transfer of sentenced persons, and on laundering, search, seizure and confiscation of proceeds from crime;

12.7. to sign and ratify, within one year from accession, the European Charter of Local Self-Government and the European Charter for Regional or Minority Languages, to study with a view to ratification the Council of Europe's Social Charter, and meanwhile to conduct its policy in accordance with the principles of these conventions;

12.8. to seek settlement of international disputes by peaceful means (an obligation incumbent upon all member states of the Council of Europe);

12.9. to sign and ratify within a year from the time of accession the General Agreement on Privileges and Immunities of the Council of Europe, and its additional protocols;

12.10. to co-operate fully in the monitoring process for implementation of Assembly Order No. 508 (1995) on the honouring of obligations and commitments by member states of the Council of Europe, as well as in monitoring processes established by virtue of the Committee of Ministers' Declaration of 10 November 1994 (95th Session).

13. For these reasons, the Assembly recommends that the Committee of Ministers:

13.1. invite Ukraine to become a member of the Council of Europe;

13.2. allocate twelve seats to Ukraine in the Parliamentary Assembly.