



Recommendation 1451 (2000)¹

Reform of the institutions in Ukraine

Parliamentary Assembly

1. The Assembly refers to its Resolutions 1179 (1999) and 1194 (1999) and its Recommendations 1395 (1999) and 1416 (1999) on the honouring of obligations and commitments by Ukraine.
2. It welcomes a number of positive steps recently taken by the Ukrainian authorities, notably the decision of the Verkhovna Rada to authorise ratification of Protocol No. 6 to the European Convention on Human Rights, following the ruling of the Constitutional Court that the death penalty is unconstitutional, as well as ratification of the European Charter for Regional or Minority Languages.
3. However, it expresses its deep concern as regards the so-called “referendum” on reform of the institutions scheduled for 16 April 2000, the modalities and organisation of which remain unclear.
4. It notes that the current constitution in force since 1996 constitutes the main domestic legal instrument on the basis of which the country can develop a genuine democracy, and insists on strict respect for its provisions, in particular as regards amendments to the constitution, whatever their necessity and appropriateness.
5. It also takes note of the decision of the Constitutional Court dated 29 March 2000, which ruled that:
 - 5.1. Questions Nos. 1 (confidence in the parliament) and 6 (approval of the constitution by referendum) are unconstitutional;
 - 5.2. in case of positive answers to Questions Nos. 2, 3, 4 and 5, the changes to the constitution must be considered by the Verkhovna Rada;
 - 5.3. the President of Ukraine and the Central Electoral Commission must take action to implement the decision of the Constitutional Court.
6. It recalls that the constitution provides in Articles 155 and 156 for a specific procedure to be followed to amend the constitution, and that this procedure must be respected.
7. Furthermore, the Assembly stresses that a valid referendum cannot be organised until a new law on referendum procedure has been passed by the Verkhovna Rada.
8. It is concerned about the possible consequences for the separation of powers of an abrupt disruption in the system of checks and balances of the country’s institutions, aiming at substantially strengthening the role of the President and substantially weakening the role of parliament.
9. The Assembly takes into account the opinion of the European Commission for Democracy through Law (“Venice Commission”) adopted on 31 March 2000 in which it concluded that:
 - 9.1. the present referendum cannot directly amend the constitution;
 - 9.2. it seems highly questionable whether a consultative referendum at the people’s initiative is admissible;

1. Assembly debate on 4 April 2000 (10th Sitting) (see [Doc. 8666](#), report of the Committee on the Honouring of Obligations and Commitments by Member States of the Council of Europe, rapporteurs: Mrs Severinsen and Mrs Wohlwend; and [Doc. 8695](#), opinion of the Committee on Legal Affairs and Human Rights, rapporteur: Mr Eörsi). Text adopted by the Assembly on 4 April 2000 (10th Sitting).



9.3. it is up to the Constitutional Court of Ukraine to decide whether, at the present stage of the implementation of the Ukrainian Constitution, there is in general a legal basis for the holding of referendums in Ukraine;

9.4. one of the questions submitted for the referendum is clearly unconstitutional, while the other questions are extremely problematic and/or unclear;

9.5. taken together, the adoption of the proposals contained in the referendum would disrupt the balance of powers between the President and the parliament;

and that these elements, taken together, cast grave doubts on both the constitutionality and the admissibility of the referendum as a whole, and therefore urges its Monitoring Committee, for report, and its Committee on Legal Affairs and Human Rights, for opinion, to follow closely the constitutional developments in Ukraine.

10. The Assembly therefore launches an urgent appeal to the President of Ukraine to postpone the so-called "referendum" until a new law on referendum procedure is adopted.

11. The Assembly therefore recommends that the Committee of Ministers seek to ensure that all provisions of the constitution in force in Ukraine are thoroughly respected in the implementation of the referendum results, in particular as regards any procedure aimed at amending the constitution. If the referendum results are implemented in a non-constitutional manner, or if the constitution were to be amended through non-constitutional means, it recommends that Ukraine's membership of the Council of Europe be suspended.