Parliamentary Assembly
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COUNCIL OF EUROPE
CONSEIL DE L'EUROPE

Resolution 1346 (2003)[1]

Honouring of obligations and commitments by Ukraine

Parliamentary Assembly

1. The Parliamentary Assembly refers to its Resolutions 1179 (1999), 1194 (1999), 1239 (2001), 1244 (2001) and in particular to Resolution 1262 (2001) on the honouring of obligations and commitments by Ukraine, adopted by the Assembly on 27 September 2001.

2. With regard to domestic legislation and implementation of reforms, the Assembly is pleased to note that:

2.1. the Law on the Judiciary was adopted by the Verkhovna Rada on 7 February 2002 and entered into force on 1 June 2002;

2.2. the Civil Code was finally adopted on 16 January 2003 by the Verkhovna Rada and signed by the President on 3 March 2003. It will come into force on 1 January 2004;

2.3. a new Law on the Ratification of the European Charter for Regional or Minority Languages was adopted by the Verkhovna Rada on 15 May 2003;

2.4. the code of civil procedure of Ukraine was adopted at the first reading with good prospects of its final approval in the near future;

2.5. Ukraine has made progress in further reforming the judicial system, in particular with the creation of the Court of Appeal of Ukraine, of the Higher Administrative Court of Ukraine and of the State Judiciary Administration within the framework of courts of general jurisdiction;

2.6. Ukraine has acceded to a number of important Council of Europe legal instruments and, in particular, to Protocol No. 13 of the European Convention on Human Rights concerning the Abolition of the Death Penalty in all Circumstances, and to Protocols Nos. 1 and 2 to the European Convention on the Prevention of Torture and Inhuman or Degrading Treatment or Punishment.

3. With regard to the remaining commitments in the fields of domestic legislation and implementation of reforms, the Assembly urges the Ukrainian authorities to continue their efforts, but also to strengthen co-operation with the Council of Europe in order to ensure full compatibility of Ukrainian legislation and practice with the Organisation's principles and standards, especially with standards guaranteed by the European Convention on Human Rights, as well as full compliance with the decisions of the Strasbourg Court as regards the individual and general measures that may be required by the Committee of Ministers.

4. The Assembly also reminds the Ukrainian authorities of the necessity to respect their engagements set out in paragraphs 12.v and 12.vii of Opinion No 190 (1995) regarding Ukraine's application for membership of the Council of Europe, concerning the necessity to incorporate in Ukraine's internal legal and administrative system, and especially in the internal legal and administrative practices, the principles of the Framework Convention for the Protection of National Minorities, and the European Charter of Local Self-Government as well as Assembly Recommendation 1201 (1993).

1. Assembly debate on 29 September 2003 (27th Sitting) (see Doc. 9852, 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). Text adopted by the Assembly on 29 September 2003 (27th Sitting).

5. The Assembly recognises that legal reforms have advanced in many areas, but is preoccupied by the lack of enforcement and recalls the need for a proper implementation of existing legislation. In particular, it expresses its deep concern with the slow progress made by the Ukrainian authorities in the implementation of the principles and standards of the Council of Europe, which is demonstrated by:

5.1. the lack of results in bringing to justice those responsible for the murder of the journalist, Mr Gongadze;

5.2. the obscure results following the investigation of a case of intimidation and beating of Mr Yeliashkevich, a member of parliament;

5.3. the application of disproportionate penalties to persons who participated in the political demonstration on 9 March 2001 and who are still in prison and, therefore, could be considered as political prisoners in Ukraine;

5.4. the practice of the highest executive giving systematic instructions to the general prosecutor's office with regard to special cases of criminal prosecution and, particularly, those relating to journalists;

5.5. the numerous cases of prosecution by the general prosecutor's office and the High Council of Justice of judges attempting to arrive at decisions in accordance with the law;

5.6. the lack of access of opposition political forces, represented in Parliament, to electronic media, especially state-controlled electronic media;

5.7. the continuing practice of imposing on journalists officially approved guidelines (temnyki) for covering events, which constitutes a newly-created type of implicit censorship;

5.8. the fact that the latest version of a draft code of criminal procedure, in a number of its provisions, is incompatible with the standards of the Council of Europe which are guaranteed by the European Convention on Human Rights and by the case-law of the European Court of Human Rights.

6. Accordingly, the Assembly urges the Ukrainian authorities:

6.1. to finalise adoption as soon as possible of those major laws in the legal field of Ukraine's commitments which are still on hold, notably the code of civil procedure and the code of criminal procedure. With regard to the code of criminal procedure, it is highly recommended that the text that is adopted take account of the previously obtained conclusions of the Council of Europe experts;

6.2. to fully implement the reform of the general prosecutor's office, in accordance with Council of Europe principles and standards, and to implement in close co-operation with the relevant bodies of the Council of Europe the joint plan of action pertaining to the reform of the Ukrainian prosecutor's office.

6.3. to secure the full adherence of the state organs to the rule of law, to strengthen the independence of judges from state administration and to restore citizens' trust in the court system in general.

7. The Assembly notes that although the March 2002 parliamentary elections marked some improvement over previous elections, several serious flaws still persist, and are perturbing the democratic consultation process. It thus encourages Ukraine to demonstrate its desire for democratic progress by ensuring a democratic and transparent preparation for free and fair presidential elections next year. In this respect, the Assembly resolves to send a special mission to Ukraine to follow the preparations for the elections and declares its intention to observe their conduct.

8. As regards the conditions of detention in the country, the Assembly shares the concerns of the European Committee for the Prevention of Torture and Inhuman or Degrading Treatment or Punishment (CPT) and the Ukrainian Commissioner for Human Rights and it deplores the lack of progress in numerous areas, especially concerning the ill-treatment of persons deprived of their liberty by law-enforcement agencies; overcrowding both in militia and penitentiary establishments, police malpractice against all prisoners, poor health care and insufficient financing. Moreover, the Assembly welcomes the consent of the Ukrainian authorities to publish all reports of the CPT with respect to Ukraine, which were drawn up following its visits from 1998 to 2000, and which were published in October 2002. It invites the Ukrainian authorities:

8.1. to complete the transfer of the entire penitentiary administration system to the authority of the Ministry of Justice, as well as to complete the transfer of different pre-trial detention centres, still under the authority of the Ministry of the Interior or of the Security Services, to the State Department for the Execution of Punishments, in accordance with the amendments to the appropriate laws adopted by the Verkhovna Rada on 6 February 2003;

8.2. to further improve the conditions of detention in the country and to implement the recommendations of the CPT following its visits in 1998, 1999 and 2000 (published in October 2002);

8.3. to investigate allegations of police harassment of the lesbian and gay community and to take disciplinary action as appropriate. The police should be made aware of the need to respect the rights of lesbian, gay, bisexual and transsexual persons, inter alia, through the inclusion of relevant material in police training courses and manuals.

9. The Assembly invites the Ukrainian authorities to undertake appropriate measures in order to ensure the right to information by means of the foreign media.

10. As regards the protection of the status of the legal profession, the Assembly notes that one of the commitments undertaken by Ukraine, according to which a professional bar association will be established, has not yet been fulfilled. It therefore encourages the Ukrainian authorities to continue the dialogue with the relevant services of the Council of Europe on this issue.

11. The Assembly condemns the very high incidence of violence against journalists (the most prominent among them being the killings of Georgyi Gongadze in 2000 and Ihor Alexandrov in 2001), and the low number of such crimes which have been solved. It is also concerned by the continued abuse of power, particularly in the provinces, with regard to taxation, regulations and police powers in order to intimidate opposition media. It reiterates its call on the Ukrainian authorities to conduct their media policy in a way which will convincingly demonstrate respect for the freedom of expression in the country. In this respect, it also calls on the Ukrainian authorities to provide the opposition with equitable access to the state-owned national and regional television channel.

12. The Assembly is concerned about the presidential administration's attempts to establish ever tighter control over the state-run, oligarch-controlled and independent media. In this respect it welcomes the resolution adopted by the Verkhovna Rada on 16 January 2003 on the issue of political censorship in Ukraine and, in particular, the amendments adopted on 3 April 2003 concerning a number of laws dealing with freedom of expression, as the aim of these amendments is to offer better legal protection to journalists, particularly in relation to the question of their liability for the dissemination of information and their access to official documents. It expresses the firm hope that these provisions will be effectively implemented at all levels of administration (national, regional and local).

13. The Assembly is pleased to take note of the fact that Ukraine was one of the first member states of the Council of Europe to agree to publish a report by the Organisation's experts on the freedom of expression and information in Ukraine, in accordance with the Assembly's Recommendation 1589 (2003) of 28 January 2003.

14. It is of great importance to establish an objective and functioning public broadcasting system in Ukraine. In this respect the Assembly welcomes the fact that the texts of the following draft laws were submitted to the Council of Europe to be reviewed in the light of recommendations previously made by the Council of Europe experts on the Ukrainian law on television and radio broadcasting (new version), on amendments to Article 13 of the Ukrainian law on television and radio broadcasting, on the National Council of Ukraine on television and radio broadcasting (new version), on amendments to certain Ukrainian laws on television and radio broadcasting (pertaining to legal regulation in the sphere of satellite and cable television and radio broadcasting), on the printed press in Ukraine, on amendments to certain Ukrainian laws (on responsibility for infringements of legislation on the printed press), and also the draft law on amendments to certain Ukrainian laws (on the protection of state secrets). It would be essential to dissociate this sector – vital for the free formation of public opinion – from any political interference, especially in view of next year's presidential elections. The Assembly therefore urges the Ukrainian authorities to implement – in close co-operation with the relevant bodies of the Council of Europe – the recommendations previously made by the Council of Europe's experts. The Assembly also expects that the laws on information and on the printed press, which are at present under revision in the Verkhovna Rada, will be submitted to the Council of Europe in proper time for review before adoption.

15. The Assembly stresses that in the process of amending the Constitution of Ukraine all provisions of the constitution in force should be thoroughly respected, in particular as regards the procedure of amending the constitution. It calls on the Ukrainian authorities to fully co-operate with the organs of the Council of Europe in this regard, and in particular to take account of the opinions of the Venice Commission during the process of amending the constitution.

16. In the light of the above, the Assembly concludes that, although notable progress has been made by Ukraine in the field of legislation since the adoption of Assembly Resolution 1262, this country has not yet honoured all obligations and commitments it entered into on becoming a member state of the Council of Europe, and that the rule of law in many areas has not yet been fully established. Therefore it resolves to pursue the monitoring procedure in respect of Ukraine in close co-operation with the Ukrainian delegation.