Parliamentary Assembly
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COUNCIL OF EUROPE
CONSEIL DE L'EUROPE

Resolution 1466 (2005)[1]

Honouring of obligations and commitments by Ukraine

Parliamentary Assembly

1. Ukraine joined the Council of Europe on 9 November 1995. Upon accession, it committed itself to respect its general obligations under the Statute of the Council of Europe, namely pluralist democracy, the rule of law and respect for human rights and fundamental freedoms of all persons under its jurisdiction. At that moment, Ukraine also agreed to comply, within set deadlines, with a number of specific commitments listed in Assembly Opinion N°. 190 (1995).

2. In 2004 Ukraine went through critical presidential elections : two fraudulent rounds of voting in October and November 2004 provoked non-violent, massive popular protests and led to a repeat second round on 26 December that in general complied with Council of Europe standards of free and fair elections. Ukrainian people thus demonstrated their commitment to democratic values and aspirations for a better leadership that would reinforce the rule of law and human rights in the country and fight corruption.

3. To live up to the high expectations generated by the Orange Revolution, the new leadership has pledged sweeping political, legal, social and economic reforms. In the first nine post-revolution months, it has nonetheless encountered numerous difficulties originating in particular from the rule of the previous regime as well as from internal conflicts within the new administration. The Assembly urges the Ukrainian authorities to carry on with the reform process and not to let political competition jeopardise the country's development.

4. The Assembly welcomes the positive evolution in Ukraine and the first achievements of the new authorities. It hopes that the new leaders will manage to preserve their steadfast resolve and to succeed in the crucial reforms, which Ukraine badly needs. In this regard, the preparation and conduct of the 2006 parliamentary and local elections in line with Council of Europe standards will be a major test for the new authorities. The 2006 elections will show whether Ukraine has passed the point of no return on its road to becoming a truly democratic European state governed by the rule of law. In this respect, the Assembly declares its readiness to send a pre-electoral mission to Ukraine to follow the preparations for the elections and subsequently to deploy a large-scale observer mission to follow their conduct.

5. In its Resolution 1346 (2003) on the honouring of obligations and commitments by Ukraine, the Assembly concluded that, although notable progress had been made by Ukraine in the field of legislation since the adoption of the Assembly's Resolution 1262 (2001), the country had 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 had not yet been fully established.

6. The Assembly is pleased to note that Ukraine has since made further significant progress :

6.1. a new Code of Civil Procedure entered into force on 1 September 2005 ;

6.2. a Code of Administrative Justice was adopted in July 2005 and put into effect on 1 September 2005, enabling the operation of administrative courts ;

6.3. all pre-trial detention centres have been transferred to the State Department for the Execution of Punishments ;

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1. Assembly debate on 5 October 2005 (28th Sitting) (see Doc. 10676, report of the Committee on the Honouring of Obligations and Commitments by Member States of the Council of Europe (Monitoring Committee), co-rapporteurs : Mrs Severinsen and Mrs Wohlwend). Text adopted by the Assembly on 5 October 2005 (28th Sitting).

6.4. a new code on the execution of sentences has been enacted and the number of persons in custody has significantly decreased ;

6.5. publication of the European Committee for the Prevention of Torture and Inhuman or Degrading Treatment or Punishment (CPT) report has been authorised ;

6.6. a law on public financing of political parties came into effect on 1 January 2005 ;

6.7. a law that reinforced legislation on prosecution of acts of torture and the protection of the rights of detainees and persons placed under arrest was adopted in January 2005 ;

6.8. the reservation to Article 5, paragraph 3, of the European Convention on Human Rights (ETS N °. 5) has been withdrawn ;

6.9. a law strengthening the state service for enforcement of non-criminal judicial decisions was adopted in June 2005 ;

6.10. the draft law on the establishment of the system of public television and radio in Ukraine was adopted in the first reading as well as a new version of the Law on Television and Radio Broadcasting ; a new law on the national council on broadcasting was enacted ;

6.11. Protocol N°. 14 to the European Convention on Human Rights (CETS N°. 194) and the recent Convention on the Prevention of Terrorism (CETS N°. 196) were signed respectively in November 2004 and May 2005 ;

6.12. the ratification procedure with regard to the European Charter for Regional or Minority Languages (ETS N°. 148) was finally concluded in September 2005 ;

6.13. the European Agreement relating to Persons Participating in Proceedings of the European Court of Human Rights (ETS N°. 161), the Civil Law Convention on Corruption (ETS N°. 174) and the Convention on Cybercrime (ETS N°. 185) were ratified in November 2004, March 2005 and September 2005 respectively.

7. The Assembly also commends the new authorities for eliminating the previously widespread censorship practices with regard to mass media and ensuring freedom of expression and freedom of assembly throughout the country. Furthermore, the new leadership has committed itself to fighting corruption and trafficking in human beings and tackling the problem of torture and ill-treatment.

8. Whilst welcoming the zeal of the new authorities with regard to the prosecution of previous election frauds, the Assembly underlines that it is of utmost importance to bring to justice not only those who executed illegal orders but most of all the masterminds behind the massive election fraud, those who instigated violence or bribed voters, in order to prevent future infringements and to instil the principles of the rule of law.

9. The Assembly notes that the new wording of the Law on the Election of People’s Deputies, adopted in July 2005, has significantly enhanced the election procedures and taken account of the recommendations of international observers issued after the last presidential elections. However, the new law introduces the possibility to suspend the activities of media outlets, including without a prior court decision, which is highly likely to lead to abuse. The Assembly, therefore, urges the Ukrainian authorities to amend this provision as soon as possible, and to enact legislation on the state registry of voters. Legal liability for election violations listed in the new law should be established as well.

10. Five years after the disappearance and murder of the journalist Gongadze, the Assembly is dissatisfied that after the indictment in March 2005 of the alleged direct perpetrators of the murder, the investigation of the case has been stalled, in particular as regards the prosecution of those who ordered and organised this crime. It regrets that the case against those who allegedly carried out the murder has been separated from the main case file, and that the offence has been qualified as a murder committed by a group of persons following their prior collusion, which is seen as a step towards excluding from the prosecution the masterminds and organisers. In addition, Mrs Gongadze’s lawyer has been suspended ; no inquiry into the previous, ineffective investigation of the case has been conducted ; and the law-enforcement bodies failed to prevent the death of the former Minister of the Interior, who committed suicide in suspicious circumstances, and to apprehend General Pukach, who is suspected of being the link to the masterminds, etc. The Ukrainian authorities have also failed, so far, to implement the provisions of the Assembly’s resolutions requesting a new investigation into the Yeliashkevych case and a credible examination of the Melnychenko recordings.

11. Whilst welcoming the broad reform agenda of the new authorities, the Assembly considers that the following specific measures need to be taken in order to accelerate the reforms that will transform Ukraine into a stable and prosperous European democracy.

12. With respect to the improvement of the conditions for the functioning of pluralist democracy in the country, the Assembly calls on the Ukrainian authorities to :

12.1. adopt the laws on the functioning of the branches of power, as required by the constitution, in particular to enact as soon as possible the laws on the President of Ukraine and on the Cabinet of Ministers of Ukraine ;

12.2. strengthen the oversight function of the parliament, in particular to adopt the law on the Verkhovna Rada's temporary special and investigatory commissions ; establish legislative guarantees and conditions for the functioning of parliamentary opposition ; streamline the parliament's internal activity by adopting a law on the new Rules of Procedure ;

12.3. continue the reform of local self-government in order to implement the provisions of the European Charter of Local Self-Government (ETS N°. 122) ;

12.4. transform the state broadcasters into public service broadcasting channels in line with relevant Council of Europe standards ; start privatisation of the printed media founded by public authorities ; guarantee the transparency of media ownership ; create equal conditions for the functioning of all media by revising the 1997 Law on Governmental Support for the Media and Social Protection of Journalists ; ratify the European Convention on Transfrontier Television (ETS N°. 132) ; ensure that the new version of the Law on Television and Radio Broadcasting is in line with Council of Europe standards and with the recommendations of its experts.

13. With regard to the respect for the rule of law and protection of human rights, the Assembly calls on the Ukrainian authorities :

13.1. to continue the reform of the judiciary in order to ensure its independence and effectiveness. To this end, in particular, it is necessary to subordinate the State Judicial Administration to the judiciary ; to transfer to the latter the authority to appoint presidents of courts ; to allocate all necessary resources to it, notably for the functioning of administrative courts vested with the adjudication of election disputes ; and to guarantee by law the level of remuneration of judges ;

13.2. to ensure that the composition of the Constitutional Court of Ukraine is renewed without undue delay after the expiration of the term of office of its justices ;

13.3. to establish a professional Bar association, by adopting a new law on the Bar without further delay, as required by Assembly Opinion N°. 190 (paragraph 11.ix) and in compliance with the principles of the Council of Europe and the case law of the European Court of Human Rights ;

13.4. regretting the step back in the reform of the Prokuratura marked by the December 2004 constitutional amendments, to modify the role and functions of this institution as required by Assembly Opinion N°. 190 (paragraph 11.vi) and paragraph 9 of the transitory provisions of the 1996 Constitution of Ukraine and in line with Assembly Recommendation 1604 (2003) on the role of the public prosecutor's office in a democratic society governed by the rule of law ;

13.5. to reform the Security Service of Ukraine in line with Council of Europe standards, in particular Assembly Recommendations 1402 (1999) and 1713 (2005) ;

13.6. to finalise the new version of the draft code of criminal procedure and adopt it without further delay to comply with the commitment for which the initial deadline expired in November 1996. The final version of the draft code should be debated in the parliament only after the opinion of Council of Europe experts on the final text is obtained and taken into account ;

13.7. to further improve conditions of detention and medical treatment in the penitentiary establishments and detention facilities in line with CPT standards and recommendations ; finalise the transfer of the State Department for the Execution of Punishments to the Ministry of Justice as required by Opinion N°. 190 (paragraph 11.vii) ; establish an independent body at national level to monitor places of detention and continue the commendable practice of authorising the publication of CPT reports with respect to Ukraine ;

13.8. to continue efforts aimed at fighting corruption and make sure that economic reforms do not simply lead to the redistribution of power among oligarchs ; take full advantage of Ukraine's participation in GRECO and ratify the Criminal Law Convention on Corruption (ETS N°. 173) ;

13.9. to step up the activities in the field of combating trafficking in human beings, allocate sufficient resources for this purpose and ratify the Council of Europe Convention on Action against Trafficking in Human Beings (CETS N°. 197) ;

13.10. to ensure full and speedy implementation of the decisions of the European Court of Human Rights, in particular in the cases of Sovtransavto and Melnychenko ; adopt the law on the execution of decisions of the European Court of Human Rights and ratify Protocol N°. 14 to the Convention ;

13.11. to improve the democratic control over the law-enforcement bodies, continue to apply a zero-tolerance policy and to secure a prompt, impartial and full investigation into all allegations of torture and other ill-treatment, including prosecution and punishment of those responsible for these acts and ensure reparation to victims or their families ;

13.12. to guarantee the protection against arbitrary or illegal detention ; secure strict compliance by law-enforcement bodies with the principles of due criminal procedure in accordance with international standards, including guaranteeing all detainees prompt and regular access to lawyers and to a doctor of their choice, and ensuring that all detainees have their relatives promptly informed of their whereabouts, in particular whilst investigating election and corruption related offences ; abrogate provisions which allow the prosecution to ban an attorney from the representation of his/her clients if a criminal case was instituted against him/her, as incompatible with the standards of the Council of Europe ; ensure that state officials making public statements respect the presumption of innocence ;

13.13. to improve the conditions of access to a court by establishing a system of free legal aid in line with Council of Europe standards and the case law of the European Court of Human Rights ;

13.14. to establish effective control over the interception of communications by law-enforcement bodies and to this end adopt special legislation, which would comply with the democratic standards on the protection of privacy and national security ;

13.15. with regard to the Gongadze case and following the promise of the new leadership to solve the case and the indictment of the alleged perpetrators, to consider the investigation as being complete only when the case, which includes the indictments against all those who ordered, organised and carried out the murder, is sent to court ; to investigate and if necessary prosecute the officials responsible for the shortcomings of the previous and current investigations ;

13.16. referring to Assembly Resolutions 1239 (2001), 1262 (2001), and 1346 (2003), to conduct a credible examination of the recordings allegedly made by Mykola Melnychenko and obtain his testimony ; launch a new investigation into the Yeliashkevych case and other high-profile cases allegedly documented on the Melnychenko recordings ; to hold as soon as possible a parliamentary hearing, open to the public, on the Gongadze case in the Verkhovna Rada of Ukraine ;

13.17. to enhance the legal framework for access to information, strictly adhere to Article 34 of the Ukrainian Constitution on freedom of information while classifying documents, and to declassify all official documents which were closed to the public contrary to the law ;

13.18. to introduce clear rules on the restitution of church property as required by Opinion N°. 190 (1995) (paragraph 11.xi) ;

13.19. to ratify Protocol N°. 12 to the European Convention on Human Rights (ETS N°. 177) ;

13.20. to implement in good faith the Framework Convention for the Protection of National Minorities (ETS N°. 157), especially in the field of education, and revise the 1992 Law on National Minorities in Ukraine taking into account the recommendations of the European Commission for Democracy through Law (Venice Commission) and the Advisory Committee on National Minorities ;

13.21. to ratify as soon as possible the revised European Social Charter (ETS N°. 163).

14. The Assembly recalls its Resolutions 1346 (2003) and 1364 (2004), where it emphasised that all provisions of the constitution in force should be thoroughly respected and that the recommendations of the Venice Commission should be fully taken into account within the process of amending the Constitution of Ukraine. It deeply regrets that the constitutional amendments of 8 December 2004, adopted as part of a package deal to halt the political turmoil, contained provisions which the Venice Commission has repeatedly found incompatible with the principles of democracy and the rule of law, in particular with regard to the imperative mandate of people's deputies and the powers of the Prokuratura. The Assembly is also concerned that the new constitutional changes were adopted without prior consultation with the Constitutional Court, as envisaged by Article 159 of the Ukrainian Constitution and interpreted in the Constitutional Court of Ukraine's decision of 1998. Therefore, the Assembly urges the Ukrainian authorities to address these issues as soon as possible in order to secure the legitimacy of the constitutional amendments and their compliance with European standards.

15. In light of the above, the Assembly resolves to pursue its monitoring of the honouring of obligations and commitments by Ukraine and to return to the assessment of Ukraine's compliance with its obligations and commitments, and to consider the possibility of moving over to a post-monitoring dialogue with the Ukrainian authorities after the March 2006 parliamentary and local elections.