

Resolution 1549 (2007)¹

Functioning of democratic institutions in Ukraine

Parliamentary Assembly

1. The Parliamentary Assembly is concerned by the political events in Ukraine which have evolved in recent months and culminated in President Victor Yushchenko's decree of 2 April 2007 announcing the dissolution of the Verkhovna Rada (Parliament of Ukraine). The continuing political instability is the result of the systematic failure by the successive Ukrainian governments to establish coherent policies backed by substantial legal, administrative and economic reforms. The political reforms that would set "the rules of the game" and enable law-based institutions to guarantee democratic rights and freedoms and promote political competition have not been completed to date.

2. The Assembly stresses that the current crisis in Ukraine is also the result of the hasty and incomplete constitutional and political reform of 2004, under which a number of changes were made to the Constitution of Ukraine without taking into account the reservations of the European Commission for Democracy through Law (Venice Commission) and without holding a comprehensive public debate in the country. The Assembly regrets that the strong criticism expressed in its [Resolution 1466 \(2005\)](#) on the honouring of obligations and commitments by Ukraine and its repeated calls on the Ukrainian authorities to address these issues as a matter of urgency, in order to secure the legitimacy of the constitutional changes of 2004 and their compliance with European standards, have all gone unheeded.

3. In this context, the Assembly recalls its numerous appeals to reform the institutions in Ukraine as expressed in Resolutions 1179 (1999), 1239 (2001), 1244 (2001), 1346 (2003), 1364 (2004) and 1466 (2005), and in Recommendations 1395 (1999), 1416 (1999), 1451 (2000) and 1722 (2005). It recognises the achievements of the orange revolution that have allowed key democratic freedoms to take root in Ukraine: the country now enjoys freedom of speech and of the media, freedom of assembly, freedom of political competition and parliamentary opposition, and a vibrant civil society. Moreover, a year ago the country proved its ability to conduct free and fair legislative elections. What Ukraine lacks today, however, are guarantees built into its democratic institutions that would consolidate those newly acquired freedoms.

4. Personal rivalries and short-sighted manoeuvring for personal gain, linked to posts and positions, have led to various attempts by some political forces to take advantage of the constitutional vacuum that emerged with the coming into effect of the controversial 2004 constitutional amendments in January 2006. The Assembly regrets that the absence of an independent counterweight allows the key state bodies to consider themselves above the law. This has seriously tarnished the reputation of all the political leaders in Ukraine.

5. The Assembly launches an urgent appeal to the President, members of parliament and the Government of Ukraine to resolve their current crisis in a strictly constitutional and peaceful manner, either by calling early elections, emanating from the ruling of the Constitutional Court, or by way of a negotiated compromise. In this process, all political forces should abstain from sharp and biased public statements in support or condemnation of any political force in Ukraine.

6. In this regard, the Assembly notes that the top leaders of the country have maintained dialogue throughout the crisis. It also takes note of the fact that the Ukrainian leadership has so far succeeded in maintaining stability and civil peace in the country, which testifies to the existence of an internal potential to

1. Assembly debate on 19 April 2007 (16th Sitting) (see [Doc. 11255](#), 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 Wohlgend). Text adopted by the Assembly on 19 April 2007 (16th Sitting).



overcome the current crisis. Furthermore, it is a positive sign that the law enforcement agencies have so far performed their function of sustaining public order and safety without direct involvement in the political struggle and that the armed forces have maintained their neutrality.

7. However, the Assembly is concerned by the reports that some political forces are recruiting minors to participate in mass political actions, which is in violation of the United Nations Convention on the Rights of the Child. It stresses that such practices are unacceptable and calls upon all political forces in Ukraine to honour this convention, to which Ukraine is a party.

8. The Assembly calls on the political forces of Ukraine, as a matter of urgency, to resume work on the improvement of the Constitution of Ukraine and the related legislation in order to finally establish an effective system of checks and balances and bring constitutional provisions into line with European standards. Constitutional reform should be part of the discussions aimed at the resolution of the current political crisis. The Assembly expects that the Venice Commission will be actively involved in the process of drafting constitutional reform proposals.

9. The Assembly reaffirms that the recall of people's representatives by the political parties ("imperative mandate") is a practice which is unacceptable in a democratic state. The relevant constitutional provisions need to be abrogated in line with the recommendations made by the Venice Commission in 2004 and similar provisions also need to be deleted from ordinary legislation. The Assembly believes that a consistent political programme, responsible and committed party membership and scrupulous screening of parties' candidates are more effective tools for encouraging party and faction discipline.

10. The Assembly recognises that both regular and pre-term elections constitute a legitimate democratic instrument for the people to choose and control the authorities that act in their name. Early elections are a normal practice in all democratic countries of the Council of Europe, and as such could be accepted as a key building block of political compromise. However, the Assembly underlines that for any elections to be considered democratic, they should be conducted according to a legitimate procedure that allows fair campaigning and free choice for voters.

11. In this respect the Assembly notes with concern that the existing provisions of election legislation that regulate preterm elections within the constitutionally set timeframe (sixty days) are insufficient and do not guarantee proper conditions for free and fair elections. It regrets that the government has not complied with the legally valid decree (until proven otherwise) and has not allocated the required funding for these elections.

12. The Assembly also urges the Ukrainian authorities and the country's political forces to address as soon as possible the problem of the parliamentary election system, which may represent one of the causes of the weakness of the political system. A fully proportional system with closed party lists and with all of Ukraine being treated as one single constituency, as endorsed by the constitutional amendments of 2004, does not guarantee the election of a parliament representing Ukrainian society in all its diversity.

13. The Assembly deplores the fact that the judicial system of Ukraine has been systematically misused by other branches of power and that top officials do not execute the courts' decisions, which is a sign of erosion of this crucial democratic institution. An independent and impartial judiciary is a precondition for the existence of a democratic society governed by the rule of law. Hence the urgent necessity to carry out comprehensive judicial reform, including through amendments to the constitution.

14. The Assembly reiterates that the authority of the sole body responsible for constitutional justice – the Constitutional Court of Ukraine – should be guaranteed and respected. Any form of pressure on the judges is intolerable and should be investigated and criminally prosecuted. On the other hand, it is regrettable that in the eight months of its new full composition, the Constitutional Court has failed to produce judgments, thus failing to fulfil its constitutional role and to contribute to resolving the crisis in its earlier stages, which undermines the credibility of the court. There is an urgent need for all pending judgments, and in particular the judgment concerning the constitutionality of the Presidential Decree of 2 April 2007, to be delivered. If delivered, the latter should be accepted as binding by all sides.

15. In the light of the above, the Assembly recommends that the Ukrainian authorities urgently adopt the following concrete measures to address the causes of the crisis and prevent further dysfunctioning of democratic institutions in Ukraine:

15.1. to re-launch the constitutional reform project, in close co-operation with the Venice Commission, in order to improve the Constitution of Ukraine and bring it in line with European standards, in particular as regards the provisions on the separation of powers, the imperative mandate, the judiciary and the Prokuratura, as stipulated in various opinions of the Venice Commission on the subject and Assembly Resolutions 1364 (2004) on the political crisis in Ukraine and 1466 (2005);

15.2. to adopt and enact without further delay basic constitutional laws (laws on the Rules of Procedure of the Verkhovna Rada of Ukraine, on the temporary special and investigatory commissions of the parliament, on central bodies of the executive power, on the parliamentary opposition, on referendum, etc.) and to bring the Law on the Cabinet of Ministers of Ukraine in line with the Constitution of Ukraine, taking into account relevant European standards and the opinion of the Venice Commission;

15.3. to amend the Law on the Elections of People's Deputies in order to set up proper procedures for the organisation of pre-term elections in case of dissolution of the parliament;

15.4. to envisage changing the system of parliamentary elections, for example by introducing open party lists whereby voters could indicate their preferences as to particular candidates included in the election lists proposed by political parties (blocs) and by dividing the country into different constituencies;

15.5. to carry out the reform of the judiciary on the basis of the Judicial Reform Concept adopted by the President of Ukraine in May 2006, with the aim of establishing an independent and effective judiciary, taking into account the recent opinion of the Venice Commission;

15.6. to launch the reform of the criminal justice system and law-enforcement agencies and to take legislative and practical measures to tackle all forms of corruption, including political corruption.

16. The Assembly believes that, in order to effectively implement the above recommendations, all parties involved in the conflict should engage in an open and constructive dialogue on the settlement of the situation in Ukraine.

17. The Assembly calls upon the Secretary General of the Council of Europe, as a matter of priority, to take all appropriate measures within his competence to contribute to the process of settlement of the crisis in Ukraine. It also considers that the activities relating to the Council of Europe Action Plan for co-operation with Ukraine should be stepped up in order to achieve a noticeable strengthening of democratic institutions in Ukraine.

18. The Assembly asks the Venice Commission to give an opinion on the existing legal basis for pre-term parliamentary elections in Ukraine and on the possible ways to improve electoral legislation based on European practice.

19. The Assembly confirms its readiness to help Ukraine overcome its current deadlock either through its assistance mechanisms or other specific arrangements. Nevertheless, it is up to the Ukrainian political leaders to work out the most appropriate solution for its internal problems. The Assembly believes that not all domestic avenues for a quick, efficient and legitimate political compromise have been exhausted as yet. It therefore calls upon the Ukrainian leaders to build up new political confidence by establishing sound mechanisms for the protection of national unity, fair political competition and coherent and comprehensive reforms, the main directions of which are outlined in the Assembly's [Resolution 1466 \(2005\)](#).

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