Parliamentary Assembly
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COUNCIL OF EUROPE
CONSEIL DE L'EUROPE

Resolution 1755 (2010)[1]
Final version

The functioning of democratic institutions in Ukraine

Parliamentary Assembly

1. The Parliamentary Assembly welcomes the increase in legislative activity in Ukraine in the wake of the 2010 presidential election and the establishment of a new governing coalition, which could lead to political stability. It considers that political stability is an essential condition for the consolidation of democracy in Ukraine. However, it is concerned that this relative stability is fragile, as the underlying systemic causes of the instability that has plagued the country in recent years have not been addressed.

2. The Assembly reiterates that the only manner in which lasting political stability can be ensured is through constitutional changes that establish a clear separation of powers, as well as a proper system of checks and balances between and within the executive, legislative and judicial branches of power.

3. Noting the concerns expressed with regard to the concentration of power by the new authorities in Ukraine, the Assembly considers that the consolidation of power by a newly established administration, when achieved according to democratic principles, is understandable, and in many cases even desirable, but warns that such consolidation should not lead to the monopolisation of power by a single political force, as this would undermine the democratic development of the country.

4. The Assembly warmly welcomes the priority given, and political will displayed, by the authorities to honouring Ukraine's remaining accession commitments to the Council of Europe. The Assembly offers its full support to the authorities in their efforts to implement the ambitious and far-reaching package of reforms that are necessary to honour Ukraine's commitments and obligations as a member of the Council of Europe.

5. The Assembly is concerned that the hasty manner in which the authorities are implementing these reforms could negatively affect respect for proper democratic principles and, ultimately, the quality of the reforms themselves. The fulfilment of the remaining accession commitments entails the implementation of a series of far-reaching and complex reforms which will have a deep impact on Ukrainian society. The successful implementation of these reforms is therefore only possible if they are based on wide political consensus and public support. This, in turn, is only possible if respect for parliamentary procedures and democratic principles is strictly observed.

6. Close co-operation with the European Commission for Democracy through Law (Venice Commission) is crucial to ensure that the legislative reform packages that are currently being developed are fully in compliance with European standards and values. The Assembly therefore calls upon the authorities and leadership of the Verkhovna Rada of Ukraine to ensure that the Venice Commission is asked for an opinion on the final versions of draft laws before they are adopted in a final reading.

1. *Assembly debate* on 5 October 2010 (31st Sitting) (see Doc. 12357 and addendum, report of the Committee on the Honouring of Obligations and Commitments by Member States of the Council of Europe (Monitoring Committee), co-rapporteurs: Mrs Reps and Mrs Wohlwend). *Text adopted by the Assembly* on 5 October 2010 (31st Sitting).

7. The different areas that are covered by the recent reform initiative have already been extensively addressed by the Assembly in previous resolutions dealing with Ukraine. Reaffirming its position on these reforms, the Assembly, with regard in particular to:

7.1. electoral reform:

7.1.1. reiterates its recommendation that a Unified Election Code be adopted in Ukraine and welcomes the fact that a draft for such a Unified Code has now been tabled for adoption in the Verkhovna Rada;

7.1.2. considers that electoral reform should not only entail the adoption of a new election code, but also of a new electoral system, and reiterates its recommendation that an electoral system be adopted that consists of a proportional system based on open lists and multiple regional constituencies;

7.1.3. reiterates that the imperative mandate that was introduced with the constitutional amendments of 2004 runs counter to European democratic standards;

7.1.4. calls upon all political forces to make good on their promise to reform the legal framework for elections and to demonstrate the commensurate political will to adopt a Unified Election Code and a new electoral system, in line with recommendations of the Venice Commission and the Assembly, well before the next parliamentary elections;

7.1.5. urges the authorities to adopt provisions on party financing in the Law on Political Parties that are fully in line with European standards, especially with regard to transparency of party financing, and to consider additional measures that would reduce the dependence of political parties on economic and commercial interests;

7.2. reform of the Prokuratura:

7.2.1. recalls that Ukraine, upon accession to the Council of Europe, made the following commitment: “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”, and regrets that this commitment still remains to be implemented;

7.2.2. reaffirms that the general oversight function of the Prosecutor’s Office in Ukraine runs counter to European standards and that, also as a result of that function, it has powers that far exceed those necessary in a democratic state;

7.2.3. calls upon the authorities and the Verkhovna Rada to adopt, as soon as possible and in close consultation with the Venice Commission, a law on the public Prosecutor’s Office that is fully in line with European standards and values;

7.2.4. considers that constitutional amendments are essential to remove the general oversight function from the Prosecutor’s Office and reform this institution in line with Ukraine’s accession commitments;

7.2.5. recommends that, as an alternative to the oversight function, the role of the ombudsperson is strengthened and a system of free legal aid put in place;

7.3. reform of the justice system:

7.3.1. considers that the reform of the judiciary and justice system is essential for the consolidation of the rule of law in Ukraine, and reiterates its position that this reform should be undertaken with a view to, *inter alia*, eliminating all forms of corruption in the judiciary, while ensuring the independence of the courts;

7.3.2. considers that the Law on the Judicial System and the Status of Judges of Ukraine is a cornerstone of the reform of the justice system and a key to ensuring the independence of the judiciary. It therefore deeply regrets that this law was adopted and enacted in great haste in July 2010, without waiting for the opinion of the Venice Commission that had been requested by the Minister of Justice of Ukraine;

7.3.3. asks the authorities to bring the system of training of judges and the training institutes into compliance with European standards. For this purpose, judicial training must be part of the judicial branch and should be controlled and supervised by an independent body of judicial self-administration, as recommended by the Venice Commission;

7.3.4. asks the authorities to ensure that the Law on the Judicial System and the Status of Judges and the Law on Amendments to Legislative Acts, concerning prevention of abuse of the right to appeal, take into account any recommendations, or concerns addressed, in the forthcoming Venice Commission opinions, by amending the laws as required;

7.3.5. considers that without constitutional amendments it will not be possible to reform the judiciary in line with European standards and values;

7.3.6. urges the authorities to reform the Bar and establish a professional Bar association in line with the commitments Ukraine undertook on accession to the Council of Europe;

7.3.7. asks the authorities to adopt, as soon as possible, the new Criminal Procedure Code, to request Council of Europe expertise on the draft of this code, and address any possible concerns before it is adopted in a final reading;

7.3.8. calls upon the authorities to ensure that the justice system is sufficiently funded from the state budget, as the current situation of chronic underfunding increases the potential for corruption and undermines the rule of law;

7.4. fight against corruption:

7.4.1. regrets the decision of the Verkhovna Rada to postpone, until 2011, the entry into force of the package of anti-corruption laws that were developed with the assistance of the Council of Europe, as well as the vetoing by the former president of the anti-money laundering law. The Assembly welcomes the adoption, by the Verkhovna Rada, of the Law on Preventing and Counteracting the Legalisation (Laundering) of Proceeds from Crime that came into force on 20 August 2010;

7.4.2. welcomes the priority given by the new president to the fight against corruption and urges him to ensure that the aforementioned package of anti-corruption laws is now enacted without further delay and that all the recommendations made by the Group of States against Corruption (GRECO) in its joint first and second round evaluation report are now promptly implemented;

7.4.3. calls upon the Verkhovna Rada to adopt the laws that are pending in parliament on Conflict of Interest and Ethics in Public Service, on Asset Declarations of Public Officials and on Access to Public Information, after having obtained a Venice Commission opinion on these drafts;

7.5. civil society:

7.5.1. highlights the importance of civil society for Ukraine's democratic development and therefore asks the authorities to speed up the adoption of a new law on civic organisations with a view to addressing the deficiencies noted in the current legal framework for non-governmental organisations;

7.5.2. asks the Verkhovna Rada to adopt the Law on Peaceful Assemblies, on the basis of the comments and recommendations of the Venice Commission.

8. The Assembly expresses its concern about the increasing number of credible reports of undue involvement by the Security Service of Ukraine (SBU) in domestic political affairs, including pressure put on journalists and party and civil society activists and their relatives. It considers such activities unacceptable in a democratic society and therefore calls upon the authorities to reform the security services and their functions in line with European standards.

9. The Assembly notes that the reforms are constrained in many areas by the current constitutional provisions. Therefore, it will not be possible to implement the reforms necessary for Ukraine to meet its commitments to the Council of Europe without first reforming the constitution. The Assembly therefore calls upon the authorities and opposition to jointly implement a constitutional reform package that addresses the current shortcomings, as well as the underlying causes of the systemic political instability, in line with its previous recommendations. In this respect, the Assembly reiterates its previous recommendation that the current constitution should be amended instead of an entirely new constitution being adopted.

10. The Assembly takes note of the decision of the Constitutional Court of Ukraine of 1 October 2010 that declares as unconstitutional Law No. 2222 amending the constitution in 2004. The Assembly considers that this decision should now prompt the Verkhovna Rada to initiate a comprehensive constitutional reform process with a view to bringing Ukraine's constitution fully in line with European standards.

11. An increased respect for democratic freedoms and rights has been one of the main achievements in Ukraine's democratic development in recent years. Any regression in the respect for and protection of these rights would be unacceptable for the Assembly.

12. The Assembly expresses its concern about the increasing number of allegations, and credible reports, that democratic freedoms and rights, such as freedom of assembly, freedom of expression and freedom of the media, have come under pressure in recent months. It considers that the interference of state organs, such as the law enforcement and security services, in the work of journalists and media organisations is incompatible with a democratic society. The Assembly calls upon the authorities to fully investigate all reports of infringements of rights and freedoms and to remedy any violations found. In addition, it calls upon the authorities to ensure that legal proceedings do not result in the selective revocation of broadcasting frequencies and to review any decision or appointment that could lead to a conflict of interest, especially in the field of law enforcement and the judiciary.

13. Media freedom and pluralism are cornerstones of democracy. The Assembly is therefore concerned about recent developments that could undermine these principles. It calls upon the authorities to take all necessary measures to protect media freedom and pluralism in Ukraine and to refrain from any attempts to control, directly or indirectly, the content of the reporting in the national media.

14. The Assembly is concerned that allegations of possible electoral fraud could indicate a lack of trust of electoral stakeholders in the fairness of the conduct and administration of the forthcoming elections. Considering that trust in the administration of the elections is essential for their democratic nature, it calls upon the authorities to ensure a balanced composition of the election administration at all levels, including leadership positions. It recommends that the authorities consider adopting additional measures to foster the trust of electoral contestants and voters in the electoral process.

15. The Assembly reaffirms it readiness to assist Ukraine in strengthening its democratic institutions and firmly establishing a society based on the principles of democracy, respect for human rights and the rule of law.