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# Recent developments in Ukraine: threats to the functioning of democratic institutions

**Report**[1]
Committee on the Honouring of Obligations and Commitments by Member States of the Council of Europe (Monitoring Committee)
Co-rapporteurs: Ms Mailis REPS, Estonia, Alliance of Liberals and Democrats for Europe, and Ms Marietta de POURBAIX-LUNDIN, Sweden, Group of the European People's Party

*Summary*

The Monitoring Committee deeply regrets the dramatic events on Maidan (Kyiv) from 18 to 20 February 2014 that led to the death of over 100 protesters and 17 police officers and strongly condemns the unacceptable use of snipers and live ammunition against protesters by the Ukrainian authorities at that time. All fatalities, and all human rights abuses that occurred in relation to the Euromaidan protests need to be fully investigated and the perpetrators, including those in the line of command, brought to justice. There can be no impunity for human rights abuses, irrespective of who committed them

The committee considers that the new political environment following the events on Maidan between 18 and 21 February, and the resulting change of power, has opened a window of opportunity for Ukraine's democratic development. In that respect, constitutional reform and the adoption of a new unified election code should be the immediate priority for the Ukrainian authorities. In addition, far-reaching judicial reform and decentralisation of government, including the strengthening of local and regional authorities, should be considered.

The committee regrets that the democratic changes and political developments in Ukraine have been overshadowed by the developments in Crimea and strongly condemns the Russian military aggression and subsequent annexation of Crimea, which is in clear violation of international law, including the United Nations Charter, the OSCE Helsinki Act and the Statute and basic principles of the Council of Europe.

It reaffirms its strong support for the independence, sovereignty and territorial integrity of Ukraine and expresses its great concern about the build-up of large numbers of Russian military troops along the border with Ukraine which are detrimental to the already tense situation in the country.

1. Reference to committee: Reference 4029 of 7 April 2014.

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## A. Draft resolution[2]

1. The Parliamentary Assembly deeply regrets the dramatic events on Maidan (Kyiv) from 18 to 20 February 2014 that led to the death of over 100 protesters and 17 police officers. It considers and regrets that the unprecedented escalation of violence was largely the result of the increasingly hard-handed approach of the authorities, including the so-called anti-terrorist action to break up the Euromaidan protests by force, contrary to all advice given by national and international interlocutors, including by the Assembly in its Resolution 1974 (2014) on the functioning of democratic institutions in Ukraine.

2. The Assembly strongly condemns the use of snipers and live ammunition against protesters by the Ukrainian authorities at that time. Such actions are unacceptable. All fatalities and all human rights abuses that occurred in relation to the Euromaidan protests need to be fully investigated and the perpetrators, including those in the line of command, brought to justice. There can be no impunity for human rights abuses, irrespective of who committed them. At the same time, it is important that these investigations are impartial and free from political motivation or any desire for retribution. They should take place transparently and in full accordance with the requirements of Article 6 of the European Convention on Human Rights (ETS No. 5). The advisory committee proposed by the Council of Europe could play an important role in helping the authorities to ensure that these conditions are met.

3. The Verkhovna Rada played an important and constructive role in resolving the crisis when, in unity and consensus, it managed the change of power and implementation of the main provisions of the 21 February 2014 agreement, in line with the overall tenets of the agreement and with due consideration for constitutional principles. The Assembly therefore fully recognises the legitimacy of the new authorities in Kyiv and the legality of their decisions. It regrets attempts to question the legitimacy of the new authorities, which can only serve to destabilise the country.

4. The Assembly considers that the new political environment following the events on Maidan between 18 and 21 February, and the resulting change of power, has opened a window of opportunity for Ukraine's democratic development. It is now important to use this window of opportunity to establish a genuinely democratic and inclusive system of governance that will guarantee and strengthen the unity of the country.

5. The Assembly takes note of the 2004 constitutional amendments that have been re-enacted by the Verkhovna Rada with a constitutional majority. The Assembly recalls and reiterates its concerns with regard to these constitutional amendments, as expressed in various Assembly resolutions adopted when these amendments were first in force. Further constitutional reform is therefore urgently necessary. The Assembly urges the Verkhovna Rada to use its unique unity at this moment to adopt, without further delay, the constitutional amendments necessary to establish a better balance of power between President and Legislature and to bring the Constitution fully into line with Council of Europe standards and principles. In that respect, the Assembly welcomes the clearly expressed commitment of all political forces in Ukraine to adopt such constitutional amendments in first reading before the next presidential election takes place and in final reading at the start of the next session of the Verkhovna Rada, in September 2014. In view of the short period of time available, the Assembly calls upon the Verkhovna Rada to make full use of the already existing opinions of the European Commission for Democracy through Law (Venice Commission) on previous drafts and concepts for constitutional reform in Ukraine.

6. There can be no question about the legitimacy of the Verkhovna Rada, which was elected in 2012 in elections that were, *inter alia*, observed by the Assembly. At the same time, the Assembly recognises that, as a result of the recent political developments, including the disarray of the Party of Regions, several groups of people in Ukraine fear that they are not, or not well, represented in the Verkhovna Rada and therefore at the level of the central government. In order to ensure the fullest possible representativity of the Verkhovna Rada, which will benefit the unity and stability of the country, pre-term parliamentary elections should be organised as soon as is technically and politically feasible.

7. The next parliamentary elections should be conducted on the basis of a new unified election code and a regional proportional election system, as repeatedly recommended by the Assembly and the Venice Commission. In order to avoid any unnecessary delays in the adoption of such an election code, the Assembly recommends that the Verkhovna Rada develop a unified election code based on the draft that was prepared by the Kliuchkovsky working group, in which all political forces participated and which benefited from the expertise of the Venice Commission.

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2. Draft resolution adopted by the committee on 8 April 2014.

8. While constitutional reform and the adoption of a new unified election code should be the immediate priority for the Ukrainian authorities, far-reaching judicial reform and decentralisation of government, including the strengthening of local and regional authorities, should also be urgently considered and implemented.

9. Regrettably, recent events have increased the east-west divide in the country and led to unease among the population of both parts of the country. In the view of the Assembly, the divide is mostly of political origin, despite the clear historical and cultural differences between the east and the west of Ukraine. It recommends therefore that the authorities develop a comprehensive and inclusive strategy to strengthen local and regional authorities and to decentralise government. Such a decentralisation strategy should be based on the principles of a strong unitary State with an effective system of central governance with delegated responsibilities and powers to the regions. The Assembly strongly objects to any notion of a federalisation of Ukraine, as this would substantially weaken the unity and stability of the country.

10. The lack of independence of the judiciary and the structural deficiencies in the judicial system have been long-standing concerns of the Assembly. Far-reaching judicial reforms should now be promptly implemented. The Assembly reiterates its recommendations made in previous resolutions, which remain valid. The Assembly underscores that constitutional amendments are necessary to establish a judicial system that is fully in line with European standards.

11. The Assembly takes note of the conclusions by the Advisory Committee of the Framework Convention for the Protection of National Minorities that visited Ukraine from 21 to 26 March 2014. The Assembly welcomes the fact that there is no immediate threat to the enjoyment of minority rights in the current situation in Ukraine. At the same time, it calls on the authorities to be proactive in adopting all possible measures that could strengthen the unity of the country and to refrain from any discourse or actions that are divisive and that could undermine – or be instrumental in undermining – the national unity of the country. In this context, the Assembly regrets the decision by the Verkhovna Rada to cancel the Law on the State language, even if this decision was never enacted or implemented.

12. The Assembly expresses its concern about the increasing number of credible reports of violations of the human rights of the ethnic Ukrainian and Crimean Tatar minorities in Crimea, including access to their homes, following its annexation by Russia. It calls upon the Russian authorities to ensure that these violations are immediately halted and all perpetrators prosecuted. In addition, international human rights monitors from the Organization for Security and Co-operation in Europe (OSCE) should be given full access to the region.

13. The frequent and unsubstantiated reports of minority rights violations in Ukraine, as well as the negative portrayal of the new government in Kyiv, by certain national and international media, have had a negative impact on interethnic relations in Ukraine, and ultimately on the unity and stability of the country. We call on all media to refrain from such unsubstantiated reports and to cover the developments in the country and its regions impartially and factually. We call upon the authorities to refrain from any censorship of the media.

14. The Assembly regrets that the democratic changes and political developments in Ukraine have been overshadowed by the developments in Crimea. The Assembly strongly condemns the Russian military aggression and subsequent annexation of Crimea, which is in clear violation of international law, including the United Nations Charter, the OSCE Helsinki Act and the Statute and basic principles of the Council of Europe.

15. In the view of the Assembly, none of the arguments used by the Russian Federation to justify its actions hold true to facts and evidence. There was no ultra-right wing takeover of the central government in Kyiv, nor was there any imminent threat to the rights of the ethnic Russian minority in the country, including, or especially, in Crimea. Given that neither secessionism, nor integration with the Russian Federation, was prevalent on the political agenda of the Crimean population, or widely supported, prior to Russian military intervention, the Assembly considers that the drive for secession and integration into the Russian Federation was instigated and incited by the Russian authorities, under the cover of a military intervention.

16. The so-called referendum that was organised in Crimea on 16 March 2014 was unconstitutional both under the Crimean and Ukrainian Constitutions. In addition, its reported turnout and results are implausible. The outcome of this referendum and the illegal annexation of Crimea by the Russian Federation therefore have no legal effect and are not recognised by the Council of Europe. The Assembly reaffirms its strong support for the independence, sovereignty and territorial integrity of Ukraine.

17. The Assembly expresses its great concern about the build-up of large numbers of Russian military troops along the border with Ukraine, which could be an indication that the Russian Federation is considering further unprovoked military aggression against Ukraine, which is unacceptable.

18. Given the risk of destabilisation and the deterioration of the security regime of the whole region by further Russian military aggression against Ukraine, the Assembly recommends that the signatories of the Budapest Agreement, as well as other relevant European States, explore the possibility for tangible security agreements to ensure Ukraine's independence, sovereignty and territorial integrity.

## B. Explanatory memorandum by Ms Reps and Ms de Pourbaix-Lundin, co-rapporteurs

### 1. Introduction

1. On 30 January 2014, the Assembly adopted, in a debate under urgent procedure, Resolution 1974 (2014) on the functioning of democratic institutions in Ukraine.

2. In this resolution, the Assembly expressed its deep concern about the political crisis that erupted following the decision by the Ukrainian authorities to suspend the procedure for the signing of an association agreement between Ukraine and the European Union. The Assembly was especially concerned and regretted the brutality and excessive and disproportionate use of force by the police forces against the protesters in the demonstrations that followed the decision by the government. It considered that the attempts of the authorities to forcefully break up these so-called "Euromaidan" protests only escalated the political crisis and galvanised the protesters. The Assembly, in very clear terms, therefore called on the authorities to refrain from any attempt to forcefully break up the Euromaidan protest or from any action that could further escalate the crisis. Similarly, the Assembly called upon the protesters to refrain from any actions provoking violent reactions from the police.

3. At the same time, the Assembly was extremely concerned about the credible reports of human rights violations by police and security forces – or persons under their control – against persons involved in the Euromaidan protests. It asked the authorities to ensure that such violations be brought to an immediate halt and that all reports of human rights violations be credibly investigated.

4. In the context of the developments that took place after the adoption of the resolution, it is important to note that the Assembly highlighted the fact that the decision by the authorities in Kyiv not to sign the association agreement was also taken as the result of heavy pressure from the Russian authorities, including threats of economic and political sanctions, contrary to diplomatic norms and obligations and accession commitments. In that context, the Assembly explicitly reminded the Russian Federation of its obligations as a Council of Europe member State.

5. Following the adoption of Resolution 1974 (2014), we travelled to Kyiv for a fact-finding visit from 17 to 21 February 2014. This visit coincided with the dramatic events on Maidan, when the violent attempts by the authorities to break up the Euromaidan protests resulted in over 80 fatalities.[3] As a result of our presence, including on the Maidan itself, we were able to see – first-hand – how the events unfolded on the ground. During the visit, we were able to maintain comprehensive and frequent contacts with all sides in the conflict – authorities, opposition, civil society and protesters – through which we gained a good oversight of the developments. We wish to thank the Verkhovna Rada and the Head of the Council of Europe Office in Kyiv, and his staff, for all the assistance given to our delegation, especially in such difficult circumstances.

6. Sadly, the events on Maidan in Kyiv were soon overtaken by the developments in Crimea as a result of Russia's military intervention that cumulated into the illegal annexation of Crimea by the Russian Federation.

7. In reaction to the events in Kyiv, as well as the developments in Crimea, the Monitoring Committee, at its meeting in St Julian's (Malta) on 28 February 2014, decided to request a debate under urgent procedure on "Recent developments in Ukraine: threats to the functioning of democratic institutions" during the April part-session of the Assembly. On 6 March 2014, the Bureau of the Assembly decided to recommend to the Assembly to hold this debate during the April part-session and to refer it to the Monitoring Committee for report.

8. In order to study the consequences of Russia's annexation of Crimea, as well as the political developments following the events on Maidan, the Presidential Committee and the co-rapporteurs of the Assembly for Ukraine went to the country from 21 to 25 March 2014. In addition to meetings with the authorities in Kyiv, the delegation met with regional authorities and civil society groups, including ethnic organisations, in Donetsk and Lviv.

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3. There is confusion around the exact number of fatalities, although all sources agree they exceed a hundred. The Ukrainian authorities initially announced that approximately 88 people died – including 17 policemen – as a result of the violence on Maidan between 18 and 20 February 2014 and that several hundred people were injured, many of them remaining in a critical condition. Reportedly, since then, at least 16 people have died from the injuries received during the clashes from 18 to 20 February. In addition, 9 persons died in the period from 22 January (when the first person died) to 17 February 2014, bringing the total number of fatalities of the Euromaidan protest to at least 110-120. Given that a number of the injured are still in a critical condition, it is possible that this number will increase.

## 2. Euromaidan[4] events

9. Following the repeal by the Verkhovna Rada, on 28 January 2014, of the so-called anti-protests laws, the negotiations between the authorities and the opposition, united on Euromaidan, gained new intensity. These negotiations focused on the possibility of reintroducing (parts of) the 2004 amendments to the Constitution that had been declared invalid in 2010 by a Constitutional Court decision. These amendments provide for a greater equilibrium in the division of powers between parliament and President than the 1996 Constitution that was in force at that time. In addition, these provisions make the government accountable to the parliament, instead of to the President, which would pave the way for a possible unity government, consisting of members of both the opposition and ruling majority. Reportedly, authorities and opposition had come to an agreement on the principle of the need for changes to the Constitution, although, again reportedly, not on the exact details and the procedure needed to enact them. The plenary session of the Verkhovna Rada of 18 February 2014 was set to discuss constitutional reform on the basis of opposition proposals to re-enact the 2004 constitutional amendments.

10. A detailed outline and discussion of the exact sequence of events on and around Maidan during the period of 18 to 21 February 2014 is beyond the scope of this report. We will limit ourselves to the key moments and an overall assessment of the developments during that week.

11. A large peaceful protest march to the Verkhovna Rada was planned and announced for 18 February 2014, when the Rada was slated to discuss opposition proposals for changes to the Constitution. However, on the morning of 18 February, Verkhovna Rada Speaker Rybak announced that he refused to register the draft bills on constitutional changes prepared by the opposition, ostensibly on technical grounds. Following this decision, the protest rally to the Verkhovna Rada turned violent. Who started the violence is unclear and is a point of contention between the authorities at that time and the protesters, with the then authorities blaming the protesters. The protesters, from their side, blamed the outbreak of violence on *Titushky* – *agents provocateurs* – hired by the authorities.

12. Whoever started the violence, it is clear, in the words of one diplomat we met, that the authorities were well prepared for this eventuality and soon the events entered into an escalating spiral of violence. Police forces were using live ammunition and police snipers were targeting protesters from vantage points on roofs of buildings with rubber bullets and stun grenades. Protesters fought back with Molotov cocktails, home-made explosives and small arms. Moreover, protesters stormed the headquarters of the Party of Regions and occupied it for several hours. By the afternoon of 18 February 2014, when the demonstrators were pushed back to Maidan, at least five protesters had lost their lives.

13. Late in the afternoon, the authorities announced that they would start an “anti-terrorist” operation on Maidan and gave the protesters till 18:00 that day to leave the square. That same night, the authorities shut down Channel 5,[5] a television channel supporting the protests, reportedly without a proper legal basis, in order to prevent broadcasting of the events on Maidan to the Ukrainian population. Despite several urgent calls to the authorities from Ukrainian personalities and the international community, including by your rapporteurs, urging them not to attempt to clear the square and to avoid further bloodshed, the authorities started, at 20:00 that day, a full-fledged attack on Maidan with the stated intention of clearing the square. The increasingly brutal clashes between police and protesters continued all night. Despite that, the police was only able to clear part of Maidan. By the beginning of the morning of 19 February 2014, 26 persons had lost their lives, 10 of them policemen.

14. An emergency meeting between President Yanukovich and opposition leaders (Mr Arseniy Yatsenyuk of Batkivshchyna or the Fatherland Party, Mr Vitali Klitsko of UDAR, and Mr Oleh Tyahnybok of Svoboda) took place during the night of 18 to 19 February 2014. While this meeting failed to reach concrete agreements on how to stop the stand-off, it led to a drop of intensity in the clashes from the morning of 19 February that was mostly maintained during that day. Still, four persons lost their lives during the clashes on 19 February, two of them reportedly being shot by *Titushky*.

15. During the afternoon of 19 February 2014, an informal truce had been declared between protesters and police. While direct clashes temporarily stopped, the police continued to fire stun grenades and to use water cannons against the protesters’ encampment all night. As during the previous night, protesters from inside

4. In this report, we use “Maidan” to denote Independence Square in Kyiv, the geographical space in which the protests were taking place, “Euromaidan” is used to denote the protest movement itself.

5. With the exception of Channel 5, all other national broadcasters are owned by business interests considered to be close to the authorities at that time.

and outside Kyiv continued to join the crowd on Maidan. There are different estimations of the number of protesters on Maidan on the morning of 20 February, but most estimates seem to agree that at least 30 000 protesters were present at that time.

16. During the morning of 20 February 2014, the police suddenly withdrew from the square. Protesters quickly moved in to recover Maidan Square and started to push the police towards the barricades surrounding Maidan that had previously been the unofficial line of contact between police and protesters. The clashes that ensued showed a level of brutality not seen during previous days, with police and special forces opening fire with automatic weapons and special forces sniper teams starting to pick out protesters, as well as emergency medical personnel, one by one. By the end of that day, a staggering number of over 60 protesters had lost their lives, most of them by sniper fire. By mid-afternoon the clashes quietened, when increasing numbers of members of the ruling majority were defecting from the Party of Regions and government and the Foreign Ministers of France, Germany and Poland arrived in Kyiv.

17. During the afternoon of 20 February 2014, a meeting took place between President Yanukovich and the Foreign Ministers of France, Germany and Poland, representing the European Union, in order to mediate a solution to the rapidly escalating situation. This meeting followed a decision by the European Union to impose a visa ban and freeze of the assets of the people responsible for the violence and human rights abuses in Ukraine. Following a meeting with opposition leaders, an agreement between the opposition and authorities was announced on 21 February 2014.

18. The political developments following the Maidan clashes will be discussed below. At the same time, a number of aspects regarding the events of that week should be highlighted.

19. The increasingly escalating spiral of violence was largely the result of the hard-handed approach of the authorities, including their decision to break up the Euromaidan protests by force, contrary to all advice given by national and international interlocutors. We underscore that this is not to say that protesters bear no responsibility for some of the events that occurred during that week. However, during that week, several opportunities came up for the authorities to de-escalate the crisis and stop the violence, but none of them were taken despite advice to the contrary from many different sides. Regrettably, instead, action was often taken that was sure to further escalate the tensions. As a result, the clear impression was created, a position confirmed by several interlocutors, that the presidential administration was deliberately trying to escalate the protests to such an extent that it would justify the declaration of a state of emergency and the deployment of the army to break up the protests. The increasing number of army vehicles in Kyiv by the end of that week seems to support this view.

20. While the escalation of violence seems to have been supported by the President and his inner circle, this was not the case for the rank and file of his Party of Regions. As noted in our previous report,[6] the Party of Regions was divided over both the causes for, and handling of, the Euromaidan protests, and considerable pressure was deployed to keep potential dissidents in the fold. However, the increasing violence and brutality during the week of 17 to 21 February 2014, culminating in the deployment of snipers, seemed to have been the breaking point. By early Thursday 20 February 2014, the main financial interests reportedly withdrew their support from the President, as evidenced by the fact that many of the television stations under their control – which until then had avoided covering the protests, or had been broadcasting mostly the government's view of them – started to cover the violent events non-stop and largely impartially. This was followed by the resignation of large numbers of key personalities and MPs from the Party of Regions. By Friday morning 21 February 2014, when President Yanukovich was still discussing with the Foreign Ministers of Germany, France and Poland, it was already clear, including to President Yanukovich himself, that the President had lost the support of his party and was actively disowned by them. In our view, this was a key reason for his sudden departure/escape from Kyiv on the Friday evening. Probably even more than statements by a number of Euromaidan factions that they would not accept the part of the European Union agreement that allowed President Yanukovich to remain in power, despite popular lore to the contrary.

21. There has been considerable speculation in the media, some reportedly instigated for political purposes, regarding the snipers that were used on Maidan. Allegations have been made that the snipers were in reality provocateurs from the side of the protesters. However, this is contradicted by official statements acknowledging that orders to use live ammunition were given, as well as considerable footage by renowned media outlets that show special forces sniper teams firing at the protesters. In addition, we ourselves witnessed sniper teams being armed in the grounds of the presidential administration building. We can therefore categorically and authoritatively state that there is no doubt that sniper teams were deployed by, and

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with full consent of, the authorities. At the same time, it should be acknowledged that the spiralling violence had led to calls for protesters to arm themselves. Indeed, a small number of protesters armed with hunting rifles and small arms captured from police officers were witnessed on Maidan, including by your rapporteurs.

22. There have been persistent allegations about Russia's involvement in the events on Maidan from 18 to 21 February 2014, including of involvement of Russian personnel in the police and special forces operations on Maidan. An official investigation into possible Russian involvement in these events has been launched by the Ukrainian authorities. Without wishing to make a judgment on the merits of these allegations, we note that Russia on no occasion used its considerable influence on the authorities at that time to de-escalate the tensions and violence. On the contrary, on numerous occasions the Ukrainian authorities were exhorted by high-level Russian officials to break down the protests by force. In this respect, the deplorable statement, on 20 February 2014, by Russian Prime Minister Medvedev that the Ukrainian authorities should stop allowing themselves "to be used as a doormat" by the protesters was utterly inappropriate and irresponsible at best.

### 3. The 21 February agreement

23. A translation of the text of the agreement of 21 February 2014 between the authorities and opposition that was brokered by the European Union can be found in Appendix 1 to this report.

24. Some forces have suggested that this agreement was never implemented due to the unexpected flight of President Yanukovich immediately following the signing of the agreement. In our view, a careful assessment shows that the agreement has to a large extent been implemented, if not to the letter then at least to the spirit of the agreement.

25. President Yanukovich had signed the agreement as President on behalf of his administration. However, as mentioned, by the time he signed this agreement, it was clear to him that he had lost the support of, and control over, his party and administration. He therefore decided to flee Kyiv and later the country.

26. Despite the unexpected flight of President Yanukovich, both the opposition and ruling majority in the Verkhovna Rada agreed to re-enact the 2004 amendments to the Ukrainian Constitution, agreed on an early presidential election, and formed a new government on the basis of a consensus in the Verkhovna Rada.[7] These were all issues that were part of the agreement. The only major change was the impeachment of President Yanukovich. In line with legal and constitutional requirements, the implementation of the 21 February agreement depended on the President to sign the different decisions into law after they were adopted by the Verkhovna Rada. His flight therefore impeded the implementation of the agreement, and in the tense situation at that time, put the stability of the country at risk. Therefore, the Verkhovna Rada decided in near consensus (with only two votes against) to impeach the President. In line with constitutional provisions, the new Speaker of the Verkhovna Rada, Alexander Turchinov,[8] became acting President of the country, with all the legal powers to implement the agreement and govern the country in tandem with the Verkhovna Rada and the newly appointed government.

27. The agreement also stipulated that the protest encampment on Maidan would be cleared and the barricades removed to unblock the roads. This part of the agreement was not implemented. Following the sudden change of power, Maidan turned into an *impromptu* memorial for those that had fallen on Maidan and became a rallying point for the population to demand respect for the nation's sovereignty during the military invasion and subsequent annexation of Crimea by Russia. In addition, it has become a tourist attraction in the capital. The ongoing presence of the encampments on Maidan, which are totally peaceful, are widely accepted by all political forces and cannot be considered problematic. Regrettably, until 1 April 2014, the Right Sector continued to occupy a limited number of buildings, which reportedly stopped after the police surrounded their headquarters in the Dniepro Hotel and demanded they leave and disarm.

28. The 21 February 2014 agreement foresaw the disarming of all armed civil groups.[9] This was only partially implemented. The new authorities originally decided to set up joint patrols of police and self-defence groups to restore public trust in the police and security forces. However, according to the authorities, some of the groups started to engage in criminal activities and criminal gangs started disguise themselves as self-defence groups. A meeting with the self-defence forces and the Minister of the Interior was convened where

7. The agreement had called for a government of national unity. However, following the departure of the President and the full revelations of what had happened in the week before the agreement was signed, the ruling majority expressed its wish not to take part in the new government, but fully supported its establishment in the Verkhovna Rada. This is clearly in line with the spirit of the agreement.
8. Former Speaker Rybak resigned on the morning of Saturday 22 February 2014, citing health reasons.
9. Maidan self-defence groups as well as titushkyi.

the former were told to disarm. Practically all groups complied, but the Rights Sector regrettably refused. All joint patrols between police and protesters, with the exception of Maidan itself, were discontinued. We strongly welcome the public statements of the Minister of the Interior that there will not be any impunity for criminal acts committed by members of self-defence groups. The seriousness of the authorities in this respect was underscored by their decision to issue an arrest warrant for Right Sector leader Oleksandr Muzychk, who was shot when he resisted arrest and opened fire on the police officers sent to arrest him. On 1 April 2014, after a shooting on Maidan that involved a member of the Right Sector, the police surrounded their makeshift headquarters in the Dnieprо Hotel in Kyiv and forced them to disarm and leave the building. On that same day, the Verkhovna Rada adopted a decision to immediately disarm all illegally armed groups in Ukraine. In addition to the Right Sector, this decision also covers a number of armed pro-Russian groups that are active in the country, mostly in the East. We welcome the decision of the authorities to disarm all these groups, whose existence hampers the stability and unity of the country.

29. While not part of the agreement, on 22 February 2014 the parliament decided with consensus to release Ms Yulia Timoshenko from prison.

### 4. The Euromaidan movement

30. There have been widespread speculations about the nature of the Euromaidan movement. Allegations have been made that the Euromaidan protest movement was in essence an extremist, fascist and anti-Semitic movement. This position was especially promoted in the Russian media, in what seems to have been a reflection of the official view of the Russian Government.

31. We have described the origin and subsequent development of the Euromaidan movement in detail in our previous report.[10] Euromaidan originally started as a protest against President Yanukovich's decision to cancel the signature of the association agreement with the European Union. It soon transformed itself into a general protest movement against the authority's perceived corruption and mismanagement, and indeed a protest movement against the political class as such. This anti-establishment undertone was the main reason that the political opposition parties could not claim full control over the Euromaidan movement and had to negotiate their position with the other civil organisations and movements that made up Euromaidan.

32. In addition to being "anti-political establishment", Euromaidan also had a decidedly nationalistic or patriotic basis. Considerable support of Euromaidan was the result of the fact that the cancellation of the association agreement was seen to be the result of Russian pressure and an infringement of Ukraine's sovereignty. This was a much stronger motive for the protests than the support for closer association with the European Union as such. This was also clear from the considerable number of Russian speakers from the east that joined the protests in Kyiv, and protesters that publicly argued against joining either the European Union or the Eurasian Union.

33. Euromaidan was made up of individuals and groups representing a very wide range of political opinions. It involved civil movements from all sides of the political spectrum and from both east and west of the country. These movements and parties also contained radical groups from both sides of the political spectrum. Radical right-wing and ultranationalist groups were indeed part of the Euromaidan movement. The most visible of these groups was the so-called Right Sector, due to its prominence in the Maidan self-defence groups. However, despite their notoriety, they made up only a small part of the Euromaidan movement and it would therefore be incorrect to qualify the Euromaidan movement as such as extremist right-wing or ultra-nationalist.

34. Right-wing groups, some originating from football supporter organisations, formed the core of the so-called self-defence groups which sprang up in reaction to the attempts to break up the protest by force in December 2013. However, by mid-January, the protest movement had been radicalised to such an extent that members of the self-defence groups came from all political sides, although right-wing and nationalist groups continued to be dominant in leadership positions in these groups.

35. The Right Sector, or *Pravyi Sektor*, is a collective of ultra-nationalist groups that was formed in the early days of the Maidan movement and it played an important role in the developments on Maidan. The Right Sector originally refused to disarm after the change of powers and some of its members have been implicated in criminal gang activities following the Maidan events. One of the leaders of the Right Sector, Oleksandr Muzychko, was killed by Ukrainian police forces after he opened fire when they tried to arrest him in a town in western Ukraine. Following his death, protests were organised in front of the Verkhovna Rada by the Right

10. Doc. 13405.

Sector, which demanded the resignation of the Minister of the Interior, Arsen Avakov, which the latter refused to do. In a sign that the moderate majority of the Euromaidan forces were distancing themselves from the Right Sector, Speaker, and acting President Turchynov condemned, on 28 March 2014, the Right Sector's "destabilising" actions. In addition, as mentioned above, on 1 April 2014, the parliament voted to disarm all illegally armed groups in Ukraine, including the Right Sector.

36. It has been alleged that the Euromaidan movement was essentially anti-Semitic in nature. Anti-Semitism is a concern in most of the former Soviet Union geographical area, and not only in Ukraine. However, the Ukrainian Jewish Congress, as well as the Chief Rabbi of Ukraine, has made on several occasions public statements that Euromaidan was not more, nor less anti-Semitic than the rest of Ukraine, and that several Jewish organisations were actively involved in the protests. It should be noted that the anti-Semitic nature also seems to be belied by the fact that some of the leaders of Euromaidan, reportedly including current Prime Minister Arseniy Yatsenyuk, are Jewish or of Jewish descent. The alleged anti-Semitic nature of Euromaidan has been used as one of the arguments by Russia to justify its military operations and subsequent annexation of the Crimea and Sevastopol regions. In that context it should be noted that all Jewish organisations in Ukraine, including in Crimea, have expressed their support for the sovereignty and territorial integrity of Ukraine and have denounced the Russian annexation of Crimea and Sevastopol.[11]

37. Another group that is often mentioned to justify claims that Euromaidan was an extremist movement is Svoboda. Together with UDAR and Batkivshchyna, Svoboda is one of the three parliamentary political parties that were part of the Euromaidan movement. Svoboda is a nationalist, or patriotic, right-wing party. Svoboda has been associated with a number of questionable statements, including by its leader Oleh Tyahnybok. However, under the leadership of the latter, the party has formally dissociated itself from its extremist origins and has become a mainstream political force in Ukraine. In recent meetings after the Maidan events, Svoboda leaders informed us about the wish of Svoboda to reach out more to the east[12] of Ukraine and to become a centrist, but staunchly nationalist, party. While Svoboda is a nationalist and right-wing party, classifying it as fascist or extremist would be an incorrect exaggeration and not contribute to a proper understanding of the political environment in Ukraine.

### 5. Legitimacy and elections

38. Questions have been raised, mainly by the Russian authorities, with regard to the impeachment process of former President Yanukovich. Reportedly, this was mostly in order to challenge the legitimacy of the new authorities in Kyiv and the legality of their decisions, in order to destabilise the democratic institutions in Ukraine. Nearly all Council of Europe member States, as well as the G7 member States, have recognised the legitimacy of the new Ukrainian Government. Many interlocutors and legal experts have pointed to the fact that the act of impeachment, and indeed all the decisions to implement the 21 February agreement, were taken with a constitutional two-thirds majority and most of them by consensus. The impeachment decision seems therefore to have been in line with the spirit of the constitutional provisions, although the procedure itself left a lot to be desired. There is no question about the legitimacy of the Verkhovna Rada, which was elected in 2012 and whose composition did not change as a result of the events of February 2014. There can therefore be no question with regard to the legitimacy of the new authorities and their decisions. The legitimacy of the government will be further strengthened by the upcoming presidential election, which will take place on 25 May 2014.

39. While there can be no question about the legitimacy of the current parliament, the Euromaidan was largely an anti-political establishment movement that reflected the lack of public trust in the political establishment of the country. The current ruling majority can therefore not claim to fully represent the Euromaidan movement. At the same time, the MPs that resigned from the Party of Regions have formed two new parties,[13] while the leftover Party of Regions is in the process of re-establishing its party structures. As a result of the disarray in the Party of Regions, part of the Russian-speaking population in the east of the country, which was the support base for the Party of Regions, fear that their interests are not, or only partly, represented in the Verkhovna Rada.

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11. The Crimean peninsula of Ukraine consists of the Autonomous Republic of Crimea and the City with Special Status of Sevastopol. For brevity we will use the term "Crimea" in the remainder of this report.

12. While Svoboda's strongest support is in the west of the country, it also obtained considerable support in the east of the country, indicating that it has increasing national appeal.

13. It should be noted that the Party of Regions and these two groups together still hold the majority in the Verkhovna Rada.

40. In the current political and social context, with a considerable external threat to the unity of the country, it is important to ensure that the Verkhovna Rada genuinely represents all of the people of Ukraine. It is therefore important that the presidential elections are followed by parliamentary elections as soon as practically and politically feasible.[14]

## 6. Constitutional and political reform

41. The re-enactment of the 2004 amendments to the Ukrainian Constitution was a central part of the 21 February agreement. These amendments prescribe a more inclusive division of power, and more comprehensive democratic safeguards in situations where there is tension or conflict between the President and the Verkhovna Rada or where the Verkhovna Rada is divided. However, in a situation where the President can count on the support of the constitutional majority in the Rada, the effect of the constitutional provisions is, *de facto*, not very different.

42. In the light of the above, the issue of whether these amendments were enacted correctly will change little with regard to the current situation. However, for the record, when in Kyiv in February 2014, several constitutional experts informed us that the Constitution could be re-enacted by a two-thirds majority in parliament using the same argumentation that allowed the Court in 2010 to cancel the enactment of the 2004 amendments. So either the re-enactment is legal or, if not, then the suspension of these amendments in 2010 was illegal. Therefore, the 2004 amendments would be valid whichever way you look at it.[15]

43. It should be noted that the 2004 amendments to the Constitution were criticised by both the European Commission for Democracy through Law (Venice Commission) and the Assembly when they were in force.[16] In 2004, these amendments added further deficiencies to an already deficient 1996 Constitution. The division of power between the parliament, President and government as defined by the 2004 Constitution lacks clarity and was a source of tension and conflict during the Yushchenko administration. Under these amendments, the presidency still remains a powerful post and conflicts between the different branches of power can easily paralyse the executive, which was evident between 2004 and 2010. In addition, the 2004 Constitution codifies the principle of an imperative mandate and cemented the *procuratura* style oversight function of the Prosecutor General in the Constitution. The deficiencies that have been reintroduced will hinder the implementation of the reforms that have been initiated and adopted in close co-operation with the Council of Europe. The recently adopted Criminal Procedure Code and the draft law on the Prosecutor General are in all likelihood unconstitutional under the 2004 Constitution.

44. It is therefore of the utmost importance that further constitutional reform is implemented and amendments to the Constitution are adopted that bring it fully into line with Council of Europe standards.[17] This should be the main priority for the Verkhovna Rada at the moment, especially given its current internal unity. Until now, most legal reforms have been based on a faulty foundation as the Constitution was hindering reforms. Constitutional reform should therefore be implemented without any further delay, before any factions and individual MPs might be tempted to fall back into the old habit of putting limited self-interest before the common good, as unfortunately was often witnessed during the last decade. We therefore welcome the assurances by the Speaker of the Verkhovna Rada that the constitutional amendments will be adopted in first reading before the presidential election on 25 May 2014 and in final reading – in line with constitutional provisions – during the next sitting of the Verkhovna Rada in September this year.

45. Given the short period of time to draft the constitutional amendments, we urge the Verkhovna Rada to make good use of the work previously done with regard to constitutional reform and especially the opinions of the Venice Commission on the different drafts and concepts for amendments to the Ukrainian Constitution that were developed over the last few years.

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14. The pre-term elections should not stand in the way of the implementation of urgently needed reforms. In addition, in order to ensure that all parts of Ukraine will feel represented in the new convocation of the Verkhovna Rada, it is important that the Party of Regions, and split-offs, are given sufficient time to re-establish themselves.

15. The main legal argument was that the Constitutional Court did not declare the 2004 amendments unconstitutional but only their enactment, as that took place before the Constitutional Court's opinion was received. As there was no two-thirds majority in 2010 to re-enact them at that time, the Constitution reverted back to the 1996 version. Now the parliament has the two-thirds majority needed to enact the 2004 amendments. The fact that the Constitutional Court decided in 2010 on the 2004 amendments would indicate that there are no time limits for the adoption and enactment of constitutional amendments.

16. See, *inter alia*, documents CDL-AD(2005)015, CDL-AD(2010)044 and Doc. 10058, Resolution 1364 (2004), Doc. 10676, Resolution 1466 (2005), Doc. 12357 and Resolution 1755 (2010).

17. As in previous reports, we maintain the position that constitutional reform should be implemented by adopting amendments to the current Constitution and not by adopting a totally new Constitution from scratch.

46. Electoral reform is another priority issue. In order to ensure that the Verkhovna Rada is fully representative of Ukrainian society, it is important that parliamentary elections are organised soon and are based on a new unified election code. We urge that this code introduce the regional proportional election system, as recommended for some time by the Assembly and the Venice Commission, lest the systemic problems that have plagued the division of powers and functioning of the Verkhovna Rada be perpetuated. The adoption of such a new election code is far less problematic than it may seem. In 2010, a new unified election code was drafted by the so-called Kliuchkovsky working group of the Verkhovna Rada. All parties participated in the drafting of this code, which took place in close co-operation with the Venice Commission. Regrettably, this draft was removed from the agenda by the Party of Regions after the 2010 Constitutional Court decision re-instating the 1996 Constitution. However, it could be adopted quite quickly and could count on the support of most if not all political forces in the country.

47. Constitutional and electoral reform should have absolute priority as practically all other reforms that are needed for the country are based on them. This priority is recognised by both the Ukrainian authorities as well as other international partners. Other reforms are important and their preparations should continue, but they should not be allowed to deflect focus from the speedy implementation of constitutional and electoral reform.

48. Two other key reforms that need to be addressed promptly, after the constitutional and electoral reform are finalised, are judicial reform and decentralisation of government and strengthening of local and regional authorities.

49. The lack of independence of the judiciary and the structural deficiencies in the judicial system have been long-standing concerns of the Assembly and were discussed in detail in previous reports.[18] Judicial reform should be implemented without any unnecessary delays and our recommendations made in previous reports and resolutions adopted by the Assembly are still fully valid. However, as highlighted on previous occasions, a successful reform of the judiciary is dependent on constitutional reform being implemented first.

50. The events following Maidan have increased the east-west divide in the country and led to unease among the population in both sides of the country. As we will argue below, despite the clear historical and cultural differences between the east and the west of Ukraine, the divide is mostly of political making. Therefore the best manner to counteract this divide is to strengthen local and regional authorities and to decentralise government. A decentralisation strategy and policy should therefore be drafted as a matter of priority. However, given the sensitivity of this issue and its potential impact on intercommunity relations, it is important that such decentralisation strategy is adopted by a parliament that is seen as fully representative of Ukrainian society. We therefore recommend that it be adopted only after the next parliamentary elections.

51. We wish to underscore that decentralisation does not equal the federalisation of Ukraine, which would severely damage the unity of the country and is only favoured by Russia, ostensibly for ulterior motives.

52. Both constitutional reform and electoral reform are areas in which the Assembly has considerable experience and expertise and could therefore be areas *par excellence* for the concrete assistance of the Assembly.

## 7. Intercommunity relations and protection of minorities

53. The political crisis in Ukraine that started in November 2013 brought the east-west divide in Ukraine to the foreground again. While support for President Yanukovich was more pronounced in the east and support for the Euromaidan movement more prevalent in the west, it is important to underscore that there was large participation and support from both eastern and western Ukraine for the Euromaidan protests.

54. While the recent political crisis has exacerbated the east-west divide, it should be noted that this division had been largely absent from the political agenda in recent years and the extent of this divide in reality seems less than is often reported by the media. At the same time, it is clear that tensions and mistrust are very near the surface, especially after the recent events, and can be easily misused or made to flare up.

55. A detailed discussion of the historical origins and evolvement of the east-west divide in Ukraine is beyond the scope of this report. While there are clear and distinct historical and cultural differences between the two sides, the divide is mainly ethno-linguistic and to a large extent political in making.

18. See, *inter alia*, Doc. 12814.

56. It is important to make a differentiation between the number of ethic Ukrainians and ethnic Russians and the distribution of the use of the Russian and Ukrainian languages in Ukraine. According to the 2001 census, ethnic Ukrainians make up around 78% of the population while ethnic Russians amount to around 17%. The percentage of ethnic Russians in the west and centre of the country is between 1.2% to 9%, while in the east and south, ethnic Russians make up between 14% and 40% of the population. The Crimea is the only region of Ukraine where ethnic Russians are in the majority, with 58%.

57. According to the same census, Russian is the native language of approximately 30% of the population and Ukrainian around 67%. Again, the use of Ukrainian is much more prevalent in the west and centre where for 81% to 97% of the population Ukrainian is the native language (and Russian the native language for 1% to 10%). In the east and south, Ukrainian is the native language for 24% to 70% (and Russian the native language for 25% to 75%) of the population. Again the exception is Crimea where Russian is the native language of 77% of the population (90% in Sevastopol).

58. It should be noted that the use of the Russian language in Ukraine is larger than the percentage of persons who speak it as a native language. A number of polls have been conducted that show that 40% to 50% of the population consider Russian to be their main language of communication. This percentage is much higher in urban centres, including in the centre of the country, where Russian is the language of communication for the majority of the population. The exception is the west of the country, where Ukrainian is by far the language used by the majority of the population, including in urban centres.

59. These ethno-linguistic differences between east and west also have a distinct political component, with parties that are considered to be in favour of closer relations with Russia more popular in the East and parties that favour a closer integration with Western Europe more popular in the West. The Party of Regions, which is historically considered the party that represented the interests of the Russophone part of the population, has its strongest support base in the eastern part of the country, while the parties traditionally considered to be closest to the interest of ethnic Ukrainians and the Ukrainian-speaking part of the population, such as Svoboda and Batkivshchyna, have their strongest support-base in the western part of Ukraine. At the same time, it is important not to overestimate these political differences. In the 2012 parliamentary elections the Party of Regions led the proportional races in the eastern and southern oblasts with 40% to 60% of the vote, but Batkivshchyna/United opposition still gained between the 10% and 20% of the vote in these regions, with the exception of Donetsk oblast where it only gained 6%. Similarly, Batkivshchyna/United Opposition led the proportional races in the western and central oblasts, with 30 to 40%, but the Party of Regions still gained 4% to 20% in these Oblasts and even led the race in Zakarpatska oblast with 30% of the votes. Svoboda, which is considered a Ukrainian nationalist or patriotic party, only led in Lviv oblast with 38% of the vote. It had an average support of 17% in the western oblasts but still gained between 4% and 10% and in the central, southern and eastern oblasts, with the exception of the oblasts of Donetsk and Luhansk, as well as Crimea where it only gained around 2% of the vote.

60. It is important to note that hardly any radical pro-Russian political parties exist that favour integration with Russia. In the 2012 parliamentary elections, the only pro-integrationist party was the Russian Bloc which gained 0.31% of the vote, while in the Crimean elections in 2010 the pro-integration party Russian Unity of Sergey Aksyonov only scored 4.2% of the vote. In addition, during the visit to Donetsk on 23 March 2014, despite the tense political situation and beautiful weather, only around 1 500 persons showed up at a previously announced demonstration in favour of the integration of the Donbas region with Russia. This underscores the very low level of support of secessionist or integrationist ideas and movements in Ukraine.

61. In this context, the collapse of the Party of Regions is of serious concern. As mentioned, the Party of Regions had its strongest support base in the east of the country. Following the events on Maidan of 18 to 20 February 2014, 89 MPs resigned from the Party of Regions. They later formed two new parties, the Economic Development Party and the Sovereign European Ukraine Party, which do not – yet – have well-established party structures. The remainder of the Party of Regions is re-establishing and reorganising itself. As a result, as we noted when in Donetsk, many people in the east currently fear that their interest are not, or not correctly, represented in the Verkhovna Rada and at the level of the central government in Kyiv. For the unity of the country it is therefore essential that such representation is re-established quickly and that parliamentary elections take place as soon as feasible. At the same time, it is important to give sufficient time before the elections for the different political parties, including the Party of Regions and its split-offs, to (re)establish their party structures in all parts of the country. In the meantime, alternative channels for communication and consultation need to be established between the central authorities and oblasts in the east and south of the country.

62. In the current tense situation, it is important that all sides refrain from actions and discourse that could further exacerbate the east-west divide. Reportedly, a multitude of law initiatives have been tabled in the Verkhovna Rada. Many of these initiatives seem to be primarily aimed at satisfying the expectations of one group or another that participated in the protests. We urge the Rada not to adopt any initiatives that are contentious or divisive and that could undermine the unity of the country. While many of these initiatives are unlikely to be implemented, one initiative, even if never implemented, had a disruptive impact on the national unity of the country.

63. On 25 February 2014, the Verkhovna Rada adopted a law to cancel the Law on the State Language (commonly called the language law). The language law, in its first draft, had intended to make Russian the second national language in Ukraine, on a par with Ukrainian. This provision was later deleted and not included in the language law that was adopted by the Verkhovna Rada, but it resulted in the law being both notorious and contested among the Ukrainian public. The adoption of the law to cancel the language law was therefore highly symbolic[19] and construed as an attack on the Russian-speaking minority, whose rights would be weakened.

64. It is important to note that the law to cancel the language law was never signed into force by the President. The language law and all its provisions therefore have remained continuously in force. Moreover, even if the cancellation had been enforced, its effects would have been limited, especially in Crimea. The protection of minorities and the use of their languages are guaranteed and regulated in the Constitution; the Law on Minorities; as well as the Ratification Law of the European Charter for Regional or Minority Languages (ETS No. 148). The language law does not alter this. The language law is an implementing law that lowered to 10% the threshold for the use of minority languages in public affairs and for receiving a full education in a minority language. Given that Russian is spoken by more than 50% of the population in Crimea, their rights were not substantially affected by the adoption of the language law; neither would they be by its withdrawal. That notwithstanding, the adoption of the law to cancel the language law sent a wrong message, especially to the east of the country and was a big mistake by the Verkhovna Rada.

65. The Russian ethnic minority is well integrated in Ukrainian society and the cohabitation of the Russian and Ukrainian language groups is largely unproblematic, although tensions sometimes arise. Following allegations by Russia of discrimination of ethnic Russians, the Committee of Ministers of the Council of Europe decided to request the Advisory Committee of the Framework Convention for the Protection of National Minorities to make an *ad hoc* visit to Ukraine. This *ad hoc* visit took place from 21 to 26 March 2014. Regrettably, due to the annexation of Crimea by the Russian Federation, the advisory group was not in a position to visit Crimea. The report of the Advisory Committee is in Appendix 2 to this report.

66. In its report, the Advisory Committee concluded that there was no immediate threat to the enjoyment of minority rights in Ukraine, with the exception of Crimea where the Advisory Committee expressed its great concerns about the reported threats to the safely and rights of the Crimean Tatar and Ukrainian minorities. In addition, the Advisory Committee expressed its concerns about the negative impact on inter-ethnic relations in the Ukraine of media coverage by some national and international media, including frequent unsubstantiated reports of minority rights violations in Ukraine.

67. During our visit to Donetsk, several interlocutors also pointed at the importance of the socio-economic factors on the unity of the country and the importance of ensuring economic development in the east. Worsening socio-economic conditions could make Russia an attractive option for certain parts of the population living in the Russian-Ukrainian border regions, especially given the considerable economic resources invested in the Russian regions bordering Ukraine by the Russian authorities.

### 8. Human rights violations and investigations

68. All human rights violations committed in relation to the Euromaidan protests should be investigated and the perpetrators brought to justice. There can especially be no impunity for human rights violations by police and security forces. Police and security forces, which have a legal mandate for the use of force, should be held to higher standards when in function than normal citizens.

69. At the same time, it is important that these investigations are impartial and free from political motivation or any desire for retribution. The advisory committee proposed by the Council of Europe could play a key role in ensuring not only that all violations are properly investigated by the authorities, but also that these

19. Reportedly the law was proposed to placate the more radical Maidan forces after it was clear that they would not be given key positions in the new government.

investigations take place in accordance with European norms and the requirements under Article 6 of the European Convention on Human Rights (ETS No. 5). We welcome that the authorities and opposition have now appointed their representatives on this panel, enabling it to start its work in the very near future.

70. The European Court of Human Rights has started looking into the complaints filed with it in relation to the ongoing protests. On 3 February 2014, the Court communicated the application *Sirenko v. Ukraine* (Application No. 9078/14) to the Ukrainian authorities and asked it to submit its observations. This case deals with a complaint by a participant in the protests that he was beaten up by the police and illegally arrested.

71. Following the joint visit with the Presidential Committee, we met with the Prosecutor General and his deputies. He informed us that all fatalities, policemen and demonstrators, are being investigated as homicides, irrespective of who may be responsible for the deaths. The investigations are complicated, as they do not only concern protesters and law-enforcement officials, but also *Titushky*.

72. On 3 April 2014, the Minister of the Interior, Arsen Avakov, announced that the investigations had identified the special police forces snipers that shot the Euromaidan protesters on 20 February 2014. On the same day, the head of the Ukrainian Secret Service announced that the authorities had proof that Russian Federal Security Service operatives had been involved in planning the operations against the protesters on Maidan.

## 9. The illegal annexation of Crimea by the Russian Federation

73. The developments in Crimea, cumulating in the illegal annexation of this region by the Russian Federation, has dominated and overshadowed the political developments in Ukraine. As mentioned, while the political crisis that ensued after November 2013 has exacerbated the east-west divide, it should be noted that this division had been largely absent from the political agenda in recent years and the extent of this divide has been less than is sometimes erroneously reported by the media.

74. The Crimea has a special status in Ukraine as an Autonomous Republic, while Sevastopol is a city with a special status under Ukrainian law. The Crimea (the Autonomous Republic of Crimea and the City of Sevastopol) is the only region of Ukraine where ethnic Russians are in the majority (58% of the population). The total population is approximately 1.9 million inhabitants. Ethnic Ukrainians make up 24% and Crimean Tatars, who were originally deported by Stalin, make up 12% of the population. The Crimea, historically Russian, was transferred to Ukraine in 1954 reportedly by Khrushchev, although this is disputed.[20] In return for Crimea, Russia received Taganrog and other land areas.

75. We visited Crimea (both Simferopol and Sevastopol) in September 2011. While nearly all interlocutors, including the Speaker of the Crimean Verkhovna Rada and the Deputy Prime Minister, were decidedly pro-Russian, independence or integration with Russia was not on the political agenda and only supported by some small radical pro-Russian groups. In the words of the Crimean leadership at that time, the overall position was that it was more advantageous to “be special” in Ukraine, than to “be normal” in Russia.

76. Immediately following the change of power in Kyiv, several prominent members of the State Duma and Council of the Federation of Russia – including members of our Assembly – visited Crimea and made statements there, as well as in Moscow, expressing the clear support of the Russian authorities for any attempts by Crimea to change its relationship with the rest of Ukraine or possible requests to join the Russian Federation. This, together with numerous other issues, including the low level of support for secession expressed during the visit of the co-rapporteurs in September 2011, gives credence to reports by several interlocutors that the drive for secession and integration into the Russian Federation was largely instigated and incited by the Russian authorities.

77. On 26 February 2014, the Crimean Tatars organised a large pro-Ukrainian demonstration. This demonstration clashed with a pro-Russian counter rally. The causes of the violence are disputed by the two sides.

78. On 28 February 2014, Russian military troops occupied strategic points all over Crimea, including the regional government buildings, the Crimean Parliament and transport hubs such as the airport, and blockaded Ukrainian military bases. While the soldiers did not wear military insignia – which is in contravention to international law – the military hardware and weaponry used – which are unavailable to civilians – and the

20. Others say the decision to transfer Crimea was made by Malenkov.

discipline and apparent military experience in evidence, are clear proof that these were Russian military forces. This was confirmed in numerous press interviews as well as by posterior statements by leading Russian politicians.

79. In this context, it should be noted that the presence of Russian troops in Crimea is governed by the base agreement between Russia and Ukraine. This agreement allows Russia up to 25 000 military personal in Crimea. However their movements are strictly delimited and defined. They should remain in their bases of deployment and can only be moved outside their bases with the explicit agreement of the Ukrainian authorities, which they did (and do) not have.

80. While occupied by military forces, reportedly Russian, the Crimean Parliament convened in a closed extraordinary session and dismissed the government. It elected Sergey Aksyonov as the new Crimean Prime Minister. The proceedings and vote took place behind closed doors and are widely questioned and regarded as circumspect. Mr Aksyonov is the leader of the radical pro-Russian party, Russian Unity. In the 2010 regional elections his party gained only 4% of the votes in the elections to the Crimean Verkhovna Rada.

81. On 1 March 2014, the Council of the Federation of the Russian Parliament authorised President Putin to use military force in Crimea, which was condemned by the international community. In the meantime, there were attempts by Russian forces to entice Ukrainian military battalions to defect and switch sides. However, these attempts were largely unsuccessful. On 6 March 2014, the Crimean Parliament decided to organise a referendum on 16 March on whether Crimea should join the Russian Federation. In response, the Ukrainian Prosecutor indicted the Crimean leadership for illegal secession and high treason.

82. The referendum in Crimea was illegal under the Ukrainian (as well as Crimean) Constitution, and violated international standards and norms, according to the opinion of the Venice Commission on this issue.[21] As a result, its conduct and outcome are illegal and have no legal basis. In addition, the reported outcome is highly questionable. According to reports, the turnout was 82% and 96% voted in favour of joining the Russian Federation. However, Russians account for only 54% of the population; around 12% are Crimean Tartars and 24% ethnic Ukrainians and these groups had announced a boycott of the referendum, as had some Russian groups. The combination of an 82% turnout and a 96% vote in favour of annexation is therefore implausible.[22][23]

83. On 28 February 2014, a draft Federal Constitutional Law on "Amending the Federal Constitutional Law on the Procedure of Admission to the Russian Federation and Creation of a New Subject within the Russian Federation" was introduced in the Russian State Duma. This law aimed to make it possible to accept new subjects of the Russian Federation on the basis of a referendum in the region that asks to join the Federation without the consent of the State to which it belongs. The explanation accompanying this law clearly refers to the events in Crimea. According to the draft opinion of the Venice Commission[24] on this law, requested by the Secretary General of the Council of Europe, the draft law "is not compatible with international law. It violates in particular the principles of territorial integrity, national sovereignty, non-intervention in the internal affairs of another state and pacta sunt servanda". The law was withdrawn from the agenda of the State Duma, as the legal avenue of declaring independence by Crimea, followed by a request for integration in the Russian Federation, was chosen.

84. On 17 March 2014, the Crimean Parliament declared that it seceded from Ukraine and was a new independent nation. At the same time, and in that capacity, it made a request to join the Russian Federation, bypassing in this manner the Russian constitutional requirement that the country to whom it pertained should be in agreement.

85. On the same day, President Putin informed the Russian Parliament that such a request had been made and called for a session on 18 March, during which the treaty by which Crimea and Sevastopol joined the Russian Federation as two new entities was signed. On 19 March, this treaty was accepted by the Russian Constitutional Court. The treaty was ratified by the State Duma on 20 March and by the Council of the Federation on 21 March, after which the illegal annexation of Crimea by the Russian Federation was a fact.

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21. CDL-AD(2014)002.
22. Some interlocutors we met during our visit in March reported that the turnout of the referendum was closer to 35%-40%, less than the reported 82%.
23. During our visit to Ukraine interlocutors with extensive contacts in Crimea claimed that in reality the turnout of the referendum was closer to 30%-40%. We have no possibility to independently verify these claims.
24. CDL-AD(2014)004.

Following the annexation, Russian troops occupied the military bases of Ukraine that are situated in Crimea and confiscated its navy ships and airplanes. The Ukrainian authorities estimate that the value of military assets confiscated by the Russian Federation exceeds US$20 billion.

86. There are fears that the Russian intervention in Ukraine will not stop with Crimea. In several statements President Putin has announced that Russia will protect the interests of the Russian minority also elsewhere in the territory of Ukraine. The Donbas area, which is home to most of Ukraine's arms industry, as well as the Odessa region, are potentially at risk of Russian military intervention and occupation. The occupation of the Odessa region would bring Ukraine's access to the Black Sea fully under Russian control and would provide Russia with a direct land corridor to Transnistria which is under *de facto* Russian control. In this context, it should be noted that, on 17 February 2014, the *de facto* authorities in Tiraspol announced that they would soon make a formal request to join the Russian Federation as a new entity.

87. On 24 March, the Supreme Allied Commander of NATO, General Breedlove, announced that Russia had amassed around 30 000 soldiers, including logistical and support units on the borders with Ukraine and that this provided Russia with enough military capability to invade eastern Ukraine and to create a land bridge to Transnistria. Russian authorities have claimed that these troops are participating in military exercises. However, this has been countered by NATO officials as well as other military specialists, who have noted that the troops do not seem to be engaged in any form of exercise and that, in addition, the makeup of the military force is very unusual for a military exercise. We wish to add that, even if this were indeed a military exercise, the wisdom of organising a military exercise of this scale, close to the borders to Ukraine, in the tense and nervous present environment, should be questioned at best. The Russian authorities announced that they had reduced their military strength on the Russian border, however this was contradicted by, *inter alia*, NATO officials.

88. The unprovoked military aggression by Russia against Ukraine and the occupation/annexation of Crimea is in clear violation of international law, including the United Nations Charter, the Organization for Security and Co-operation in Europe (OSCE) Helsinki Act and the Statute and basic principles of the Council of Europe. In addition, it violates at least two accession commitments, namely to refuse the notion of a special interest zones and the commitments to resolve international disputes peacefully according to international law. They possibly also violate Russia's commitment to fulfil its obligations under the Conventional Armed Forces (CFE) agreement. Their action also violates several bilateral agreements, most importantly the 1994 Budapest Agreement signed by the United Kingdom, the United States, Russia and Ukraine, in which Russia pledged to respect and protect Ukraine's internationally recognised borders, to refrain from the threat or use of force against the territorial integrity of Ukraine, and to refrain from any economic coercion to affect political decision-making in Kyiv.

89. On 13 March 2014, the Ukrainian authorities lodged an inter-State case against the Russian Federation with the European Court of Human Rights under Article 33 of the Convention. On the same day, considering that the situation in Crimea gave rise to a continuing risk of serious violations of the Convention, the Court granted an interim measure under Article 39 of its Rules of Court and called upon "both Contracting Parties concerned to refrain from taking any measures, in particular military actions, which might entail breaches of the Convention rights of the civilian population, including putting their life and health at risk, and to comply with their engagements under the Convention".[25]

## 10. Concluding remarks

90. The new political environment following the events on Maidan between 18 and 21 February 2014 and the resulting change of power have opened a new window of opportunity for Ukraine's democratic development. It is now important that a democratic, inclusive system of governance of the country is established that will guarantee the unity of the country.

91. These democratic developments should be based upon constitutional reform that should be implemented without any further delay and on pre-term presidential elections to ensure the fullest possible democratic legitimacy of the new authorities. That should then be followed, when technically and politically feasible, by pre-term parliamentary elections, to ensure that all regions of the country feel represented in the central government. Constitutional and electoral reform are areas in which the Assembly has considerable expertise that could be offered to the Verkhovna Rada.

25. ECHR 073(2014). In its decision of 3 April 2014, the Committee of Ministers of the Council of Europe called upon both parties to comply without delay with this interim measure.

92. The parliamentary elections should be based on a new unified election code. We urge the Verkhovna Rada to adopt a unified election code on the basis of the draft that was prepared by the Kliuchkovsky working group in order to avoid any unnecessary delays in the adoption of such an election code.

93. While the adoption of constitutional reform and a new unified election code should be the main priorities for the Ukrainian authorities, far-reaching judicial reform and decentralisation of government, including strengthening of local and regional authorities should also be urgently considered and implemented by the authorities. The decentralisation of government could especially help to strengthen the country. Such a decentralisation strategy should be based on a strong unitary State with an effective and efficient central system of governance. The federalisation of Ukraine, as sometimes proposed by some parties for seemingly ulterior motives, should be avoided as this would, conversely, weaken the unity of the country.

94. All human rights violations committed in relation to the Euromaidan protests should be fully and impartially investigated and the perpetrators brought to justice. There can be no impunity for human rights violations irrespective of who committed them.

95. We welcome the conclusion by the Advisory Committee of the Framework Convention for the Protection of National Minorities that visited Ukraine from 21 to 26 March, that there is no immediate threat to the enjoyment of minority rights in the current situation in Ukraine. This confirms our impressions during the visit with the Presidential Committee to Ukraine from 21 to 25 March 2014. At the same time, we call on the authorities to be proactive and to adopt all possible measures to strengthen the unity of the country and to refrain from any discourse or actions that are divisive and that could undermine – or be instrumental in undermining – the national unity of the country.

96. We express our concern about the increasing number of reports by credible organisations – confirmed by the Advisory Committee – about the increasing number of violations of the human rights of the ethnic Ukrainian and Crimean Tatar minorities in Crimea. We call on the Russian authorities, as the power in *de facto* control of the region, to ensure that these violations are immediately brought to an end and all perpetrators prosecuted.

97. We regret that the democratic changes and political developments In Ukraine have been overshadowed by the developments in Crimea. The Russian military aggression and subsequent annexation/ occupation of Crimea is in clear violation of international law, including the United Nations Charter, the OSCE Helsinki Act and the Statute and basic principles of the Council of Europe. Russia's violation of the Statute of the Council of Europe and its accession commitments and obligations, as well as the consequences that these should have, is the subject of another report under consideration by the Assembly. However, from the perspective of co-rapporteurs of the monitoring procedure we can clearly say that none of the arguments used by the Russian Federation to justify its actions hold true. There was no ultra-right wing takeover of the central government in Kyiv, nor was there any imminent threat to the rights of the ethnic Russian minority in the country, including, or especially, in Crimea where they are in the majority. In addition, neither secessionism, nor integration with the Russian Federation was prevalent on the political agenda of the Crimean population prior to Russian military intervention, nor could these issues count on the support of more than a small percentage of the population. The drive for secession and integration into the Russian Federation was instigated and incited by the Russian authorities and mostly implemented by Russian military forces with the assistance of some small civil organisations aligned with it. The referendum was neither legal, nor, as we outlined, was its outcome plausible. In short, it was a classic case of unprovoked military aggression resulting in the annexation/occupation of the territory of a neighbouring country. Clear signals need to be given to avoid further aggression and military action, given the build-up of Russian troops on the Ukrainian borders.

98. All the Ukrainian political forces that we met expressed their disappointment that none of the other signatories of the Budapest Agreement had stood by the security guarantees they had given Ukraine in return for it giving up its nuclear arsenal. Some of them even went as far as suggesting that Ukraine should reconsider its non-nuclear status if security guarantees continue not to be honoured. We naturally strongly advise against such a move, which would be detrimental to the security of the region as a whole. However, to avoid the destabilisation of the region as a whole by further military action, we would suggest that the signatories of the Budapest agreement, as well as other relevant European States, explore tangible security agreements to ensure Ukraine's independence, sovereignty and territorial integrity.

99. At the moment of finalising this explanatory memorandum we regrettably have to report that the situation in Ukraine is not calming down. On the contrary, pro-Russian protesters stormed regional government buildings in Donetsk and Kharkiv on 6 April and today, 7 April, occupied the State Security Service buildings in Donetsk and Luhansk, reportedly robbing the armoury of the weapons present in Luhansk. The Ukrainian authorities have blamed Russia for instigating these seizures. In a separate

development, a Ukrainian Naval officer was killed by a Russian soldier in Crimea and another one beaten and detained by Russian troops. Needless to say that these developments greatly risk destabilising the already tense situation in Ukraine.

**Appendix 1 – 21 February 2014 agreement**

**Agreement on the Settlement of Crisis in Ukraine**

*Concerned with the tragic loss of life in Ukraine, seeking an immediate end of bloodshed and determined to pave the way for a political resolution of the crisis,*

*We, the signing parties, have agreed upon the following:*

1. Within 48 hours of the signing of this agreement, a special law will be adopted, signed and promulgated, which will restore the Constitution of 2004 including amendments passed until now. Signatories declare their intention to create a coalition and form a national unity government within 10 days thereafter.

2. Constitutional reform, balancing the powers of the President, the government and parliament, will start immediately and be completed in September 2014.

3. Presidential elections will be held as soon as the new Constitution is adopted but no later than December 2014. New electoral laws will be passed and a new Central Election Commission will be formed on the basis of proportionality and in accordance with the OSCE & Venice commission rules.

4. Investigation into recent acts of violence will be conducted under joint monitoring from the authorities, the opposition and the Council of Europe.

5. The authorities will not impose a state of emergency. The authorities and the opposition will refrain from the use of violence. The Parliament will adopt the 3rd amnesty, covering the same range of illegal action as 17th February 2014 law.

Both Parties will undertake serious efforts for the normalisation of life in the cities and villages by withdrawing form administrative and public buildings and unblocking streets, city parks and squares.

Illegal weapons should be handed over to the Ministry of Interior bodies within 24 hours of the special law, referred to in point 1 hereof, coming into force. After the aforementioned period, all cases of illegal carrying and storage of weapons will fall under the law of Ukraine. The forces of authorities and of the opposition will step back from confrontational posture. The Government will use law enforcement forces exclusively for the physical protection of public buildings.

6. The foreign Ministers of France, Germany, Poland and the Special Representative of the President of the Russian Federation call for an immediate end to all violence and confrontation.

Kyiv, 21 February 2014

**Signatories:**

*President of Ukraine:*

Viktor Yanukovych

*For the Opposition:*

Vitaliy Klichko, UDAR

Oleh Tyahnibok, Svoboda

Arsenij Yatseniuk, Batkivshchyna

**Witnessed by:**

*For the EU:*

*Poland*

**Radoslaw Sikorski**, Foreign Minister

*Germany*

**Frank-Walter Steinmeier**, Foreign Minister

*France*

**Laurent Fabius,** Foreign Minister

*For the Russian Federation*

**Vladimir Lukin**, Special Envoy

**Appendix 2 – Report of the Advisory Committee on the Framework Convention for the Protection of National Minorities ad hoc visit to Ukraine 21-26 March 2014**

CM(2014)46

2 April 2014[26]

1196 Meeting, 2 April 2014

1 General questions

1.8 Situation in Ukraine

Report of the Advisory Committee on the Framework Convention for the Protection of National Minorities – Ad hoc visit to Ukraine 21-26 March 2014

**Introduction**

1. This report of the Advisory Committee on the Framework Convention for the Protection of National Minorities is prepared in response to the decision of 14 March 2014 of the Committee of Ministers, instructing the Advisory Committee to review, in light of recent developments, the situation of national minorities in Ukraine and report on its findings as soon as possible (CM/Del/Dec(2014)1194/1.7). In line with this decision, a delegation of the Advisory Committee travelled to Ukraine from 21 to 26 March 2014. Given the ad hoc nature of this request, the report is not based on a comprehensive assessment of the implementation of the Framework Convention in Ukraine. Rather, it reflects the findings of the Advisory Committee as regards the situation pertaining to minority rights following meetings with representatives of the Afghan, Armenian, Azeri, Bulgarian, Crimean Tatar, Gagauz, Georgian, Hungarian, Jewish, Karaim, Kazakh, Lezghin, Moldovan, Polish, Roma, Romanian, Russian, Tajik and Uzbek communities in Ukraine. These meetings took place in Odessa, Kharkiv and Kyiv; minority representatives in Western Ukraine were contacted by phone and the delegation met Crimean Tatar representatives in both Odessa and Kyiv.

2. This report is adopted in the context of fundamental structural reform processes that are ongoing in Ukraine, including with regard to its Constitution, Electoral Law, and local self-government arrangements. These all have a vital impact on the enjoyment of rights of persons belonging to national minorities as citizens of Ukraine. The report is also adopted ahead of presidential elections on 25 May 2014 and parliamentary elections to be possibly conducted in autumn 2014.

3. The Advisory Committee is grateful to the representatives of minority associations, civil society, international organisations and the authorities who agreed to meet the delegation at short notice. Given the particular focus of this report, not all concerns that were shared are reflected but only those that are of direct relevance to recent developments. The Advisory Committee looks forward, however, to conducting a comprehensive assessment in the course of the upcoming fourth cycle of monitoring under the Framework Convention.

**Main findings**

4. According to representatives of all minorities with whom meetings took place, the level of implementation of minority rights has not changed in 2014. Recent events have had no repercussions on the extent of schooling in minority languages or the possibility to use minority languages or regional languages in official contacts with authorities. While these events have created uncertainty and there is considerable fear among minority populations about possible military conflict following developments in Crimea, the Advisory Committee observed generally stable conditions and no sense of lawlessness. Most minority representatives reported that their daily life is continuing as before and that they have no specific concerns with regard to the enjoyment of their minority rights in the current context. While apprehensive about the overall situation in the country, they expressed their support for Ukrainian sovereignty and territorial integrity and conveyed their expectations in the new authorities to strengthen minority rights protection frameworks in line with “European values”, in particular as regards respect for human and minority rights.

5. The Advisory Committee is concerned, however, about the negative impact of some media coverage, at national and international level, on inter-ethnic relations in Ukraine. The regular and, based on the delegation’s assessment, frequently unsubstantiated media reports of ongoing human and minority rights

26. This document has been classified restricted until examination by the Committee of Ministers.

violations in Ukraine raise tension and fears among the population that are not conducive to calming the overall environment and are particularly unhelpful in the current pre-election context. This situation requires the immediate attention of national and international actors to avoid further escalation.

**Main concerns regarding specific national minorities**

6. There are grave and immediate concerns regarding the safety and access to rights of persons belonging to the Crimean Tatars. The overall security situation in Crimea is reportedly very tense with armed but unidentifiable paramilitary groups manning a variety of check-points, where they stop residents and check their identity and belongings. The Advisory Committee points to civil society reports of kidnappings, intimidation and ill-treatment in connection with these so-called “self-defence groups”, which constitute an immediate obstacle to the freedom of movement of Crimean residents, including persons belonging to national minorities. Given the open resistance to events unfolding in Crimea demonstrated by Crimean Tatar leaders and the fact that most Crimean Tatars boycotted the referendum called for by the local authorities on 16 March, persons belonging to the Crimean Tatars are exposed to particular risk. According to representatives, some 5 000 persons, predominantly Crimean Tatars and mainly women and children, have left the peninsula for mainland Ukraine in recent weeks.

7. In addition, there is great uncertainty and fear among Crimean Tatars regarding their future. Representatives expressed their full commitment to Ukrainian territorial integrity but pointed to the practical necessity for residents of Crimea to co-operate with the local authorities in daily life, particularly when it comes to issues related to property or the performance of public duties by legal professionals. Wide parts of the Crimean Tatar population are afraid that they may be forced to leave the territory – a fear felt all the more intensely as Crimean Tatars have twice suffered from deportations in the past, in 1783 and in 1944. The Advisory Committee is further deeply concerned about the safety and enjoyment of cultural, education and language rights of all national minorities in Crimea, including in particular the numerically smaller ones such as the Karaim and Krimchak as well as persons belonging to the Ukrainian community who are in a minority situation in Crimea.

8. A number of legislative drafts concerning Crimea are under consideration in the Verkhovna Rada in Kyiv, including the Law on the Status and Rights of Formerly Deported Persons, a law for the ratification of ILO Convention 169 on the Rights of Indigenous Peoples, and a Law on Occupied Territories. While welcoming the concern and attention paid to the situation of the Crimean Tatars and the adoption, after many years of discussions, of a declaration on 20 March 2014 to recognise the Crimean Tatars as indigenous people, the Advisory Committee is concerned that the Law on Occupied Territories may severely penalise all those who are forced by circumstances to co-operate with the authorities who are in effective control, including by accepting Russian citizenship to maintain their properties.

9. According to representatives of the Jewish community, there has been no increase in anti-Semitism in Ukraine in recent months and there is no fear of such developments within the broader Jewish community. Reports of a surge in hate crime against members of the Jewish community and synagogues have publicly been denounced as propaganda by Jewish representatives themselves who expressed, including towards the delegation of the Advisory Committee, their confidence in the authorities in Kyiv. The Advisory Committee is, however, concerned that these unverified media reports of hate crimes against persons belonging to the Jewish community may further raise tensions and thereby in fact provoke such attacks.

10. The Advisory Committee observed a variety of views among the Russian minority, ranging from full support for the Ukrainian authorities and the view that minority rights, including language rights, are sufficiently established, to the likening of the current situation related to language rights to “genocide of the Russian people”. The Advisory Committee is concerned that the natural diversity of opinions and geopolitical viewpoints existing within the Russian minority may be instrumentalised in the current climate and may give rise to additional tension, including intra-ethnic friction. Given the amplification by the media in particular of radical views among the minority, some representatives expressed serious concerns about being affiliated with these views based on their ethnic and linguistic identity. While there have been to date no reports of limitations or perceived threats to the use of Russian language in Western parts of Ukraine, the Advisory Committee considers it crucial for the authorities to ensure that the use of all minority languages continues to be actively encouraged throughout Ukraine.

11. Persons belonging to the Kazakh and Armenian minorities reported concerns within their communities that their loyalty to Ukraine may be called into question following reports in the media about statements issued by the Governments of Armenia and Kazakhstan in support of the Russian Federation. The Advisory Committee

also notes the particularly complex situation for persons belonging to the Lezghin minority given that they originate from the territory of the Russian Federation and fear losing contact with their families and community in Dagestan.

12. Apart from the above concerns, the Advisory Committee did not encounter any particular threat to or immediate concern for access to rights, including language rights, of persons belonging to national minorities in Ukraine. Representatives of most minorities reported no deterioration in access to rights but rather expectations that their situation may in fact improve. There are hopes within the Polish minority, for instance, that any new language legislation will extend safeguards also to languages of smaller and dispersed minorities. Representatives of the Moldovan and Gagauz minorities agreed that support for their languages must be increased but considered that the first priority of the authorities should be to promote the socio-economic conditions of persons belonging to national minorities, particularly in the regions. The Roma minority, whose representatives expressed deep disappointment with the Government Strategy for the Integration of Roma adopted in March 2013 and the very limited attention that has been paid to their urgent concerns thus far, is hopeful that Ukraine may indeed join the Roma Decade in the coming months.

13. The Advisory Committee is, however, concerned about reports of nationalist aggression against Roma settlements in the recent past. While hate crime against persons belonging to the Roma minority in Ukraine has been regularly reported over the last years and interlocutors of the delegation indicated that attitudes of law enforcement towards Roma had not deteriorated in 2014, the Advisory Committee considers it crucial that particular attention is paid by the authorities to prevent further such attacks in the current context.

**Findings of the Advisory Committee with regard to the implementation of specific rights under the Framework Convention**

*a) Language rights*

14. According to representatives of all minorities with whom meetings were arranged and in line with monitoring conducted by the Ministry of Education in 2013, the August 2012 Law on the Principles of State Language Policy had no practical impact on the number of minority language schools or the use of languages in official contacts. Nonetheless, the call by the Verkhovna Rada to abrogate the law on 23 February 2014 created significant apprehension among parts of the Russian, Hungarian, and Romanian minorities, whose languages are considered regional languages in some of Ukraine's 27 regions as a result of the Law. The Advisory Committee notes that this Law remains in force today, following the decision of the Acting President on 27 February 2014 to veto its abrogation. It further notes that the Law has been controversial from its adoption as a number of critical concerns from minority communities as well as from international experts including the Venice Commission had not been taken into account.

15. In its third Opinion on the implementation of the Framework Convention in Ukraine, adopted in March 2012, the Advisory Committee considered that the Law, then in its draft stage, could promote mono-lingualism by the larger minorities and jeopardise the use of Ukrainian as the official language and main tool of communication, and that it did not foresee sufficient safeguards for the languages of numerically smaller minorities, such as the Karaim and Krimchak, whose languages are indeed threatened. Most interlocutors of the Advisory Committee in March 2014 attested to the absence of any special measures to protect and promote the languages of numerically smaller minorities, in particular those without a kin-state. Except for the Russian, Hungarian and Romanian minorities, representatives of most other minority groups described the law as a political instrument to appease and manage the claims of Russian speakers without giving Russian official language status, rather than an effort to address the needs and expectations of all, including numerically smaller minorities.

16. In addition, the Advisory Committee considered in its third Opinion that the Language Law could further polarise society around the issue of language and that much more comprehensive consultations with representatives of all minorities should have been conducted prior to its adoption. This assessment remains even more valid now, in particular given the very strong demands expressed by representatives of the Russian minority. The Advisory Committee considers it vital that the authorities do not adopt any hasty amendments to language legislation at a moment when they are likely to have destabilising effects. They should instead ensure that comprehensive consultations give effective opportunities to minority representatives to participate in the drafting process. While representatives of the Romanian and Hungarian minorities are reportedly involved as experts in the current working group tasked to review the language legislation, Russian minority representatives consider that they are not adequately represented in the working

group. The Advisory Committee considers the genuine representation of the important concerns of different minorities, including the numerically smaller ones, in the working group as a precondition for any credible discussion of future language legislation.

*b) Education rights*

17. The Advisory Committee refers to its assessment of the education situation in its third Opinion, as no changes in the number of or practices in minority language schools have been reported. Teaching in the official language remains insufficient in a number of minority language schools. The incentive to learn Ukrainian has reportedly further diminished as a result of the current language legislation, particularly in regions where minority languages have been recognised as regional languages. Moreover, representatives of the Romanian minority continue to be concerned about the limited availability of suitably trained teachers who are able to teach in Romanian, which raises broader concerns about access to quality education for this community.

18. The Advisory Committee welcomes the commitment expressed by the Ministry of Education to reassure minority communities that their minority language education will continue to be available. It also welcomes assurances that, despite the current austerity and the limited budget, no cuts will be made in the printing and distribution of textbooks in minority languages, including for the Crimean Tatar and Ukrainian language schools located in Crimea.

*c) Participation rights*

19. The participation of persons belonging to national minorities in public as well as in socio-economic life of Ukraine was considered insufficient by the Advisory Committee in 2012 and remains so. In the current context, particular efforts must be made to ensure that minority representatives are informed of ongoing developments, including in the legislative and constitutional field, and are given effective means to participate. The collapse of the Party of Regions has further diminished opportunities for persons belonging to the Russian minority to be effectively represented in political decision-making, particularly in the East. Urgent efforts must be made to create alternative channels of participation for the Russian minority to avoid further isolation and radicalisation. It is of regret to the Advisory Committee in this respect that representatives of the Russian minority in Kharkiv declined the several invitations for a meeting. Confidence-building measures are immediately needed to ease tensions and promote an environment in which minority protection legislation and frameworks can be negotiated with effective participation of minority representatives. Efforts of some political figures, including the Prime Minister, to address the population in the Russian language and to reconfirm Ukraine’s commitments towards its minority populations are welcome first steps in this regard.

**Conclusions**

20. The Advisory Committee observed no immediate threat to the enjoyment of minority rights in the current situation in mainland Ukraine. It expresses urgent concerns, however, for the safety and access to rights of minority populations in Crimea, in particular the Crimean Tatars, numerically smaller minorities as well as persons belonging to the Ukrainian community, who are in a minority situation in Crimea. There is an urgent need for an international presence to monitor the evolving situation on the ground in Crimea, including as regards ongoing institutional arrangements led by the local authorities, which have a direct impact on the enjoyment of rights of persons belonging to national minorities. In addition, it is vital that any Law on Occupied Territories that is discussed in the Verkhovna Rada in Kyiv fully takes the concerns of Crimean residents into account and does not penalise those who are forced to co-operate with the authorities in effective control.

21. With the present language legislation remaining in force, there is no immediate necessity to adopt amendments. Moreover, doing so could create considerable further tension in the current context. The Advisory Committee urges the authorities to refrain from moving too hastily in this field and to engage in a comprehensive and effective consultation process with representatives of all minorities before taking any further steps. In addition, any review of the language legislation should be undertaken within a broader and long-term engagement concerning the review and implementation of minority rights related policies. Such engagement should also draw upon the expertise available in the Council of Europe and the OSCE High Commissioner on National Minorities. The Advisory Committee looks forward to continuing its constructive co-operation with the OSCE as well as the United Nations structures on the ground in Ukraine for this purpose.

22. Despite the support for and trust in the authorities expressed by most minority representatives, there is an urgent need for the central and regional authorities to engage in more direct and structured dialogue and confidence-building measures with minority populations throughout Ukraine. Functioning channels must be

established without delay to ensure that all minority populations in Ukraine are duly informed of and can effectively participate in the ongoing reform processes concerning important legislative frameworks directly affecting their concerns.

23. It is further crucial that targeted measures are taken to promote responsible journalism, curtail the propagation of prejudice and stereotypes based on ethnic and linguistic identity, and limit the negative effects of some media reporting on inter-ethnic relations in Ukraine.