Parliamentary Assembly
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COUNCIL OF EUROPE
CONSEIL DE L'EUROPE

Resolution 1364 (2004)[1]

Political crisis in Ukraine

Parliamentary Assembly

1. The Parliamentary Assembly is deeply concerned at the recent developments in the Verkhovna Rada of Ukraine relating to the consideration of the draft law on amendments to the Constitution of Ukraine and in this context refers to its Resolutions 1179 (1999), 1239 (2001), 1244 (2001), 1346 (2003), and in particular to Recommendation 1451 (2000) on reform of the institutions in Ukraine. It notes that recently a procedure was initiated that is not in compliance with the rules of procedure of the Verkhovna Rada or Article 19 of the Constitution of Ukraine.

2. The Assembly deeply regrets that the Ukrainian authorities, including the President of Ukraine and the Ministry of Foreign Affairs, consider the activities of the Council of Europe, namely the Assembly's monitoring procedure, the visits of the co-rapporteurs of the Monitoring Committee and their statements as "interference in the internal affairs of Ukraine". In this regard, it recalls that Ukraine voluntarily accepted the obligations arising from its membership in accordance with the Statute of the Council of Europe. Therefore, the Assembly finds the stand taken by the Ukrainian authorities groundless and unjustified.

3. The Assembly supports any sincere aspiration of the executive and the legislative authorities of Ukraine to pursue democratic reforms aimed at substantially strengthening the power of the legislative body and enhancing the independence of the judiciary, thus contributing to a greater separation of powers and an improved system of checks and balances, as required by the standards of the Council of Europe.

4. The nature of the reforms and the system of governance chosen is the internal affair of any sovereign state, but only as long as they are carried out with due respect to the constitution of the country in question.

5. In this respect, the Assembly reiterates that the current constitution, in force since 1996, constitutes the main domestic legal instrument on the basis of which the country can develop a genuine democracy, and insists on strict respect of its provisions, in particular as regards amendments to the constitution, whatever their necessity and appropriateness.

6. Within this context, the Assembly is convinced that any decision reforming the constitutional election rules taken on the eve of presidential elections is likely to be biased and divisive, and therefore considers the timing of the current debate on constitutional reform highly inappropriate.

7. The Assembly strongly regrets the fact that the crisis in the Verkhovna Rada has been sparked by lack of discussion of the officially registered draft amendments to the constitution and by the motions tabled by the opposition. The Assembly finds that such practices are inappropriate in a democratic state guided by the principles of the rule of law.

8. At the same time, it deplores the means the opposition has resorted to in retaliation in order to block the parliament's regular work.

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1. Assembly debate on 29 January 2004 (7th sitting) (see Doc.10058, report of the Committee on the Honouring of Obligations and Commitments by Member States of the Council of Europe (Monitoring Committee), co-rapporteurs: Ms Severinsen and Ms Wohlwend). Text adopted by the Assembly on 29 January 2004 (7th Sitting) .

9. The Assembly refers to the opinion of the European Commission for Democracy through Law (Venice Commission) adopted on 13 December 2003, which welcomed the efforts made to reform the system of government to bring the Ukrainian system closer to European democratic standards but concluded that "the precise solutions chosen in the various drafts do not yet seem to have attained that aim and introduce other amendments to the constitution that would appear to be a step backwards".

10. The Assembly deplores the fact that none of the recommendations of the Venice Commission have been taken into account in the course of the revision of the three draft laws (Nos. 3207-1, 4105 and 4180) by the Constitutional Court of Ukraine nor by the ad hoc parliamentary Constitutional Committee before submitting draft law No. 4105 for discussion in the Verkhovna Rada. The Assembly therefore urges the relevant Ukrainian authorities to take into account all recommendations made so far by the Venice Commission and to continue to hold an open and constructive dialogue with the commission with a view to further improving the draft laws currently under debate.

11. The Assembly launches an urgent appeal to the parties, blocks, parliamentary factions and groups represented in the Verkhovna Rada to resolve their problems in a peaceful manner through open dialogue and with full respect for parliamentary rules and regulations, and particularly:

11.1. by securing the legitimacy of any constitutional reform by admitting that, in this instance, the rules of procedure of the Verkhovna Rada failed to be respected by all parties concerned, taking into account that "voting by raising hands" in Parliament is not provided for by law, including the Rules of Procedure;

11.2. by proceeding to an open debate on all three draft laws (Nos. 3207-1, 4105 and 4180) on constitutional amendments which would involve proper public information and a nationwide popular debate on these issues, especially pluralistic political debates on national television and radio channels;

11.3. by fully taking into account the recommendations of the Venice Commission when amending the Constitution, and in particular reconsidering their position regarding the imperative mandate of national deputies, the ten-year limit on judges' tenure and the extension of the mandate of the Prosecutor General, all of which conflict with the principles of democracy and the rule of law;

11.4. by ensuring that the next presidential election be held as scheduled, and for the term prescribed in the current constitution, in view of the fact that changing the election modalities immediately before the elections are due can only confuse the electorate;

11.5. by agreeing to submit any constitutional changes relating to the term and mode of the election of the President of the Republic to a nationwide referendum, as provided in Article 156 of the constitution in force.

12. The recent rulings of the Constitutional Court have once again shown the vulnerability of the independence of the judiciary in Ukraine. In the earnest belief that only a fully independent judiciary can provide the stability that is necessary to establish the rule of law, the Assembly is concerned by the ruling of the Constitutional Court of Ukraine of 25 December 2003 (No. 22-rp) as it corresponds neither to the present nor to the previous constitution in force when President Kuchma was first elected in 1994. The Assembly still hopes that the President of Ukraine will demonstrate democratic responsibility by stepping down at the end of his second term as foreseen by the country's constitution.

13. With regard to the forthcoming presidential election in October 2004, the Assembly shares the concern of many Ukrainian citizens that the election may not be truly free, fair, open and transparent. It maintains that any form of authoritarian practices like intimidation of voters, pressurising of election commissioners, curtailing the freedom of expression, or media bias in favour of some candidates of the ruling political forces, is clearly unacceptable. When full respect has been given to all these elements, the same must apply to the result of the election.

14. The Assembly calls upon the President of Ukraine to submit in the very near future the candidates proposed to fill the seats in the Central Electoral Commission which have been vacant since the expiry of the mandate of the former incumbents.

15. In the light of the above, the Assembly calls upon the Secretary General of the Council of Europe to urgently appoint a special representative in Ukraine whose mandate should be to follow current political developments in the country, to provide advice and Council of Europe expertise if and when needed and generally to enhance and co-ordinate the ongoing co-operation with the Ukrainian authorities.

16. It also considers that the activities relating to the Council of Europe media action plan agreed with Ukraine should be stepped up in order to achieve a noticeable improvement of the general framework in which the media operate and to promote substantial changes in the media culture in view of the forthcoming election campaign.

17. The Assembly is also concerned about the recent events in the town of Mukachevo concerning the election of the mayor and urges that this problem be resolved in accordance with the legislation of Ukraine. The Assembly recommends that the Congress of Local and Regional Authorities of the Council of Europe undertake a monitoring mission for the future mayoral election in the town of Mukachevo, to ensure that the election is free and impartial.

18. The Assembly is of the opinion that the recent infringements of the voting procedures in the Verkhovna Rada violate Ukraine's obligations under Article 3 of the Statute of the Council of Europe. If any further attempts should be made to push through political reforms by amending the constitution in a manner which is not prescribed by law and is unconstitutional, or if Ukraine should fail to guarantee free and fair elections on 31 October 2004, the Assembly may decide to challenge the credentials of the Ukrainian delegation in accordance with Rule 9 of the Assembly's Rules of Procedure and subsequently may decide to request the Committee of Ministers to suspend Ukraine's membership of the Council of Europe in accordance with Article 8 of the Statute of the Council of Europe.

19. The Assembly will continue to closely follow the developments in Ukraine and stands ready to contribute to a constructive dialogue between the political forces represented in the Verkhovna Rada.