Parliamentary Assembly
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COUNCIL OF EUROPE
CONSEIL DE L'EUROPE

Resolution 2145 (2017)[1]

The functioning of democratic institutions in Ukraine

Parliamentary Assembly

1. The Parliamentary Assembly welcomes the ambitious reform programme put in place by the Ukrainian authorities to address the demands made by the Ukrainian population during the "Revolution of Dignity". It recognises that these reforms are taking place in a challenging environment, as a result of the Russian aggression in eastern Ukraine and the illegal annexation of Crimea. While recognising the links between the Minsk process and a number of reforms, the Assembly emphasises that the absence of progress in the implementation of the Minsk Agreements should not be used as an excuse for not maintaining the pace of, or commitment to, the implementation of the other reforms that are essential for the democratic consolidation of the country. Much progress has been achieved in changing the legal framework needed for the reforms. It is now important that these legislative changes be implemented and translate into changes in behaviour and practice.

2. Given the role of the Council of Europe as the leading human rights organisation that provides high European legal standards and accumulates best practice for their implementation, the Assembly welcomes the close co-operation of Ukraine with the relevant bodies of the Organisation. Such interaction embraces support for the implementation of strategically important areas of domestic reform, including decentralisation, judicial and electoral legislation, the fight against corruption and the effective protection of human rights. A significant part of this support is provided by the Council of Europe's Action Plans for Ukraine, and the Assembly welcomes the considerable progress achieved in the implementation of the current action plan for the period from 2015 to 2017.

3. The Assembly expresses its concern about the hardening of the political discourse following the Euromaidan events and the war in eastern Ukraine, with opposing Ukrainian political forces accusing each other of being traitors or extremists. While the past needs to be addressed, the Assembly calls on all political forces to overcome divisions and animosity and work together for the stability and democratic consolidation of the country. The Assembly urges the authorities to take all measures to ensure a pluralistic political environment in which the political opposition can fulfil its democratic role.

4. Polarisation and tensions have affected the media environment in the same way as they have the political environment, resulting in several attacks on journalists and media outlets, which is unacceptable. Welcoming the condemnation of these attacks by the authorities, the Assembly urges them to investigate the attacks fully and transparently and to ensure that the perpetrators are brought to justice. It notes that a number of Russian journalists and media representatives have been declared a threat to national security and the constitutional order and have therefore been banned from entering Ukraine. While the concerns of the Ukrainian authorities about Russia's propaganda and information war are legitimate and understandable, banning journalists from entering Ukraine should only be applied as a measure of last resort, in accordance with Articles 16 and 17 of the European Convention on Human Rights (ETS No. 5) and Article 20 of the International Covenant on Civil and Political Rights. The Assembly is concerned about the publication of the names and addresses of a large number of journalists accredited in the Donbass region who were therefore accused of collaboration with the rebels, calling into question their personal integrity.

1. *Assembly debate* on 25 January 2017 (6th Sitting) (see Doc. 14227, report of the Committee on the Honouring of Obligations and Commitments by Member States of the Council of Europe (Monitoring Committee), co-rapporteurs: Mr Jordi Xuclà and Mr Axel Fischer). *Text adopted by the Assembly* on 25 January 2017 (6th Sitting).

5. The Assembly reiterates the importance of comprehensive constitutional reform for the successful implementation of the overall reform of the country. It therefore warmly welcomes the priority given by the authorities and the Verkhovna Rada to the constitutional reform process and the results achieved to date. In particular, the Assembly:

5.1. welcomes the close co-operation with the European Commission for Democracy through Law (Venice Commission) and the Congress of Local and Regional Authorities of the Council of Europe in drafting the decentralisation chapter, on the basis of the European Charter of Local Self-Government (ETS No. 122) and other applicable Council of Europe standards. It recognises that the adoption of this chapter is closely linked to progress in the implementation of the Minsk Protocols. The Assembly therefore expresses the hope that progress in the implementation of the Minsk Protocols by all signatories, in particular the Russian Federation, will allow the amendments to be adopted in final reading in the near future. It herein underlines that the decentralisation process is important for the stability and democratic consolidation of the country as a whole, also taking into account the ethnic composition of the regions;

5.2. welcomes the adoption in final reading of the constitutional amendments with regard to the judiciary and justice system, which remove important obstacles to the reform of the judiciary, in line with Council of Europe norms and standards. It calls on the authorities, and especially the Verkhovna Rada, to promptly adopt all required implementing legislation and, where necessary, to amend existing legislation to implement these constitutional amendments;

5.3. particularly welcomes the abolition of the general oversight function of the Prosecutor General, which was contrary to European standards. It underscores that by abolishing this oversight function, Ukraine has honoured one of its remaining accession commitments to the Council of Europe.

6. The Assembly expects the adoption of the constitutional amendments to give new impetus to the reform of the judiciary with a view to ensuring its genuine independence from external and internal interference and influence. The Assembly therefore:

6.1. welcomes the adoption of a new law on the judicial system and the status of judges in line with the constitutional amendments;

6.2. takes note of the proposed amendments to the law on the Constitutional Court, which, in the view of the Venice Commission, are an improvement on the current legislation; it encourages the authorities to address the remaining recommendations of the Venice Commission, in particular with regard to individual complaints to the Constitutional Court;

6.3. takes note of the fact that the draft law on the High Council of Justice was drafted in close co-operation with the Council of Europe and welcomes the adoption by the Verkhovna Rada of this law, which reflects the recommendations of the Council of Europe and is compatible with its standards in this field. The Assembly asks the authorities to seek a Venice Commission opinion on the adopted law and implement any recommendations contained in that opinion.

7. The Assembly welcomes the progress in the investigations, and reiterates its call to the authorities to fully investigate the violence and fatalities during the Euromaidan protests, as well as the events in and around the Trade Union building in Odessa in line with the recommendations of the International Advisory Panel of the Council of Europe.

8. In the view of the Assembly, the constitutional reform process should not be limited to the decentralisation and judicial chapters but also address other areas where deficiencies have been noted, including with regard to the division of powers.

9. The Assembly expresses its concern about the human rights issues that have been raised with regard to the law on lustration. It therefore urges the Verkhovna Rada to adopt, without delay, the amendments to this law that were prepared in co-operation with the Venice Commission in order to address these concerns and to look for additional measures to ensure that all the recommendations in the Final Opinion of the Venice Commission are reflected in the law and that the implementation of the law is fully in line with European standards.

10. In the view of the Assembly, the widespread corruption in Ukraine continues to be a main point of concern. The prolonged absence of marked and concrete progress in this area, including with regard to prosecutions and convictions, could potentially diminish the effects of the ambitious reform agenda of the authorities and, in the long run, undermine public trust in the political and judicial system as a whole. In this context, the Assembly is concerned that the pace of the fight against corruption is too slow, and concrete results are too limited. Moreover, it reiterates its concern about the intertwinement of political and economic

interests in the country's political environment, which influences public perception and can hinder the fight against corruption. The Assembly therefore welcomes the establishment of the main institutional framework to fight corruption in the country and expects this to now lead to tangible and concrete results, including with regard to prosecutions and convictions. In particular, the Assembly:

10.1. welcomes the implementation of the e-declaration system and calls on the authorities to ensure that the National Agency on Corruption Prevention has the required resources to audit these asset declarations;

10.2. calls on the authorities to ensure that the Specialised Anti-Corruption Prosecutor has sufficient resources to execute his/her tasks, including to open offices in all regions of the country;

10.3. encourages the authorities to establish a specialised anti-corruption court, and to fight the widespread corruption in the judiciary, which is essential for the success of the fight against overall corruption;

10.4. welcomes the adoption of the law on the civil service and calls on the authorities to ensure the speedy adoption of all implementing legislation.

11. The Assembly reiterates its call for the adoption of a unified Election Code that introduces a proportional election system and is fully in line with European standards. It expresses its concern about the fact that Article 81 of the Constitution of Ukraine allows for the dismissal of a member of parliament who switches his/her allegiance to a party or faction other than the one in respect of which he/she was elected. This is contrary to European standards and this constitutional article should be amended in the context of the ongoing constitutional reform. For the same reasons, the Assembly urges the Verkhovna Rada to abrogate the recent amendments to the law on the election of people's deputies that allow political parties to *ex post facto* change the 2016 party lists of candidates.

12. The Assembly notes that the Verkhovna Rada has postponed the ratification of the Council of Europe Convention on Preventing and Combating Violence against Women and Domestic Violence (CETS No. 210, "Istanbul Convention"). It encourages the Verkhovna Rada to place it again on its agenda and to ensure the speedy ratification of this important instrument.

13. The Assembly notes that individual members of the Verkhovna Rada have appealed against the Law on the Principles of the State Language Policy to the Constitutional Court, claiming that some of its provisions and the manner in which it was adopted are unconstitutional. The Assembly expresses its concerns that some projects are aimed at narrowing the current rights of national minorities. It is of foremost importance that, under the legal regulations to be modified, national minorities can preserve current rights to use their minority languages which are provided by the Constitution and by all international commitments of the country. Emphasising the importance of the continuation of an inclusive policy towards minority languages for the stability of the country, the Assembly calls on the authorities to ensure that, in the event that the Law on the Principles of the State Language Policy is repealed by the Court, the low threshold for the use of minority languages contained in that law is maintained.

14. In this regard, the Assembly encourages all relevant bodies of the Council of Europe to further provide Ukraine with necessary expert assistance aimed at strengthening democratic institutions, to continue monitoring the situation in and around Ukraine and to take all possible steps to make the Russian Federation uphold its obligations under international law and international commitments in order to ensure respect for human rights in annexed Crimea and the release of all Ukrainian political prisoners and illegally detained persons.