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The functioning of democratic institutions in Ukraine

Report[1]
Committee on the Honouring of Obligations and Commitments by Member States of the Council of Europe (Monitoring Committee)
Co-rapporteurs: Mr Jordi XUCLÀ, Spain, Alliance of Liberals and Democrats for Europe, and Mr Axel E. FISCHER, Germany, Group of the European People's Party

Summary

The Monitoring Committee 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 committee 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 are implemented and translate into changes in behaviour and practice.

1. Reference to committee: Resolution 1115 (1997).

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A. Draft resolution[2]

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 take 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 are implemented and translate into changes in behaviour and practice.

2. 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.

3. 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 banned from entering Ukraine. While the concerns of the Ukrainian authorities about Russia's propaganda and information war are legitimate and understandable, banning journalist from entering Ukraine should only be applied as a measure of last resort.

4. 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:

4.1. 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, but emphasises that the decentralisation process is important for the stability and democratic consolidation of the country as a whole. 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;

4.2. 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 as well as, where necessary, to amend existing legislation to implement these constitutional amendments;

4.3. 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.

5. 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:

5.1. welcomes the adoption of a new law on the Supreme Court in line with the constitutional amendments;

2. Draft resolution adopted by the committee on 14 December 2016.

5.2. 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;

5.3. 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 encourages the authorities to ensure that all recommendations are reflected in the law to be adopted by the Verkhovna Rada, in order to ensure its full compatibility with Council of Europe standards in this field.

6. 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.

7. The Assembly expresses its disquiet about the human rights concerns 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.

8. 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:

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

8.2. 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;

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

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

9. The Assembly reiterates its call for the adoption of a unified Election Code that introduces a regional proportional election system and is fully in line with European standards. The Assembly 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.

10. 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.

11. The Assembly notes that individual members of the Verkhovna Rada have appealed the Law on State Languages to the Constitutional Court, claiming the unconstitutionality of some of its provisions as well as the manner in which it was adopted. 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 State Languages is repealed by the Court, the low threshold for the use of minority languages contained in that law is maintained.

B. Explanatory memorandum by the Mr Jordi Xuclà and Mr Axel Fischer, co-rapporteurs

1. Introduction

1. The last report prepared by the Monitoring Committee on the situation in Ukraine was debated under urgent procedure in the Parliamentary Assembly on 9 April 2014, and led to the adoption of Resolution 1988 (2014) "Recent developments in Ukraine: threats to the functioning of democratic institutions".[3]

2. Since the adoption of that report, the developments in Ukraine have been dominated by the military aggression by the Russian Federation in eastern Ukraine and the efforts in the framework of the Minsk Agreements to bring that conflict to a peaceful resolution. However, while often overshadowed by the events in eastern Ukraine, a major reform process is being implemented in Ukraine to address the demands made by the Ukrainian population during the Euromaidan protests that led to the fall of the Yanukovich regime.

3. On 12 October 2016, following a joint debate on the report of the Committee on Political Affairs and Democracy by our colleague Kristýna Zelienková on the "Political consequences of the conflict in Ukraine"[4] and the report of the Committee on Legal Affairs and Human Rights by our colleague Ms Marieluise Beck on "Legal remedies for human rights violations on the Ukrainian territories outside the control of the Ukrainian authorities",[5] the Assembly adopted Resolution 2132 (2016) on the political consequences of the Russian aggression in Ukraine and Resolution 2133 (2016) on legal remedies for human rights violations on the Ukrainian territories outside the control of the Ukrainian authorities.

4. The developments with regard to the Russian aggression in Ukraine and the worrisome human rights situation in the Ukrainian territories not under the control of the Ukrainian authorities are succinctly outlined in these two excellent reports. There is therefore at this moment no need for us to repeat what has been said by the Assembly on these issues and we will not touch upon these two areas in the present report. However, in order to complete the picture provided by these two reports we feel that it is important to complement these two reports with a report about the ongoing domestic reforms and related political developments in Ukraine. On our proposal, the Monitoring Committee therefore agreed at its meeting on 9 November 2016 in Paris to ask the Bureau of the Assembly to hold a debate on "The functioning of democratic institutions in Ukraine" during the January 2017 part-session.

5. We realise that it would be impossible in such a short time span to cover in detail in this report all the reforms that are taking place at this moment in Ukraine. We will therefore limit ourselves to some of the main reforms that are taking place, and in particular the constitutional reform process. We intend to provide a detailed and in-depth assessment of the total reform package in the next report on the honouring of obligations and commitments by Ukraine.

2. Domestic political developments

6. On 25 May 2014, an early presidential election took place in Ukraine. The prominent businessman and backer of the Euromaidan movement, Mr Petro Poroshenko, was elected President of Ukraine with 54.7% of the vote.[6] The turnout for these elections, in which nine candidates competed, was 60.3%. The elections were observed by an International Election Observation Mission (IEOM) of which the Assembly was part. According to the IEOM: "The early presidential election in Ukraine was characterized by high voter turnout and the clear resolve of the authorities to hold what was a genuine election largely in line with international commitments and with a respect for fundamental freedoms in the vast majority of the country". Regrettably, no elections could take place in some areas in the east of the country due to the deteriorating security situation as a result of the pro-Russian insurgency, or in Crimea that had been illegally annexed by the Russian Federation. The high percentage of votes received in a democratic and genuinely competitive elections, with a high voter turnout, gave President Poroshenko the clear democratic legitimacy to lead the country and to implement the ambitious reform agenda that was being drawn up to address the popular demands made during the Euromaidan protests.

7. In order to ensure maximum legitimacy of the Verkhovna Rada and its decisions following the Euromaidan events, and taking into account the rapidly deteriorating security situation, early parliamentary elections were organised on 26 October 2014. These elections were observed by the Parliamentary Assembly

3. Doc. 13482.
4. Doc. 14130.
5. Doc. 14139.
6. See also Doc. 13543, "Observation of the early presidential election in Ukraine (25 May 2014)".

in the framework of the International Election Observation Mission.[7] The elections took place in a challenging security situation as a result of the military conflict in eastern Ukraine. As a result, elections did not take place in the parts of the Luhansk and Donetsk oblasts not under the control of the Ukrainian authorities, as well as in Crimea. According to the IEOM, the "early parliamentary elections marked an important step in Ukraine's aspirations to consolidate democratic elections in line with its international commitments".[8]

8. The elections took place in a mixed majoritarian–proportional election system. In the proportional part of the race, the People's Front obtained 22.14% of the votes; the Petro Poroshenko Bloc 21.81%; Samopomich ("Self Reliance") 10.97%; the Opposition Bloc 9.43%; the Radical Party of Oleh Lyashko 7.44%; and Batkivshchyna ("Fatherland") of Yulia Timoshenko 5.68%. Together with the majoritarian mandates obtained this resulted in the Petro Poroshenko Bloc obtaining 132 seats; the People's Front 82 seats; Samopomich 33 seats; the Opposition Bloc 29 seats; the Radical Party of Oleh Lyashko 22 seats; Batkivshchyna 19 seats; and Svoboda 6 seats. Strong Ukraine, the Volia party, Zastup and the Right sector each won one seat in the new parliament. In addition, 94 independents candidates were elected to the parliament. The turnout was 52.4%. This outcome showed clear support for the pro-Maidan parties and the reform programme that had been initiated immediately after the events of February 2014.

9. Following the early parliamentary elections, a ruling coalition was formed that encompassed most of the parliament with the exception of the MPs linked to the Opposition Bloc.[9] The members of the ruling coalition at the time of its formation were: Petro Poroshenko Bloc, Peoples Front of Prime Minister Yatsenyuk, the Radical Party of Oleh Lyashko, Samopomich and Batkivshchyna. This was a very heterogeneous coalition with the partners holding differing opinions on a number of policy areas including on the reform of the Constitution and the fight against corruption. On 1 September 2015, the Radical Party of Oleh Lyashko left the ruling coalition as it opposed the support of the government for the decentralisation chapter of the constitutional reform (see below).

10. In this context it should be stressed that in Ukrainian politics mere party affiliation is not always a guarantee of support for a certain position or policy. Beyond party factions also informal internal and cross-party factions and groups exist, often based on a single issue or other interests, including economic and oligarchic interests. This was especially clear with regard to the constitutional reform, where a number of provisions on both decentralisation and judicial chapters proved to be controversial across party lines.

11. With the ongoing security challenges in eastern Ukraine and the slow pace of reform, including with regard to the fight against corruption, public support started waning for a number of parties, or party officials, that were perceived as part of a self-serving political establishment. In this context, the position of then Prime Minister Yatsenyuk, who was widely unpopular among the Ukrainian public, who saw him as ineffective in implementing reforms and fighting the rampant corruption in Ukraine, became an issue of political contention, with his party's support sinking into low single digits.

12. On 25 October 2015, local elections took place in Ukraine. These elections confirmed a change in the support for the different political factions. The People's Front of Mr Yatsenyuk did not participate in the local elections as its public support had sunk below 2%. Petro Poroshenko's Bloc maintained the support it had obtained at the parliamentary elections, mostly as a result of a number of coalitions it entered into at the local level with several other parties and groups. The winners within the governing coalition were Batkivshchyna and to a lesser extent Samopomich. Two new parties, Vidrodzhennia, of Kharkiv Mayor Gennady Kernes, and UKROP, of former Deputy Governor of Dnipropetrovs'k Hennadiy Korban, established themselves as political forces with a national dimension in these local elections. It should be noted that, while Mr Poroshenko's party did well percentage-wise, six of the seven main regional capitals were won by members of other parties.

13. On 16 February 2016, President Poroshenko asked Prime Minister Yatsenyuk to resign. However, on the same day the government of Mr Yatsenyuk survived a vote of no-confidence in the Verkhovna Rada, reportedly with the help of a number of MPs of the Poroshenko Bloc. Subsequently, on 17 February 2016, Batkivshchyna and, on 18 February 2016, Samopomich announced that they were leaving the ruling coalition. With those two parties leaving the ruling coalition, the government had lost its ruling majority and had 30 days to form a new majority if it wished to avoid pre-term elections. Following several weeks of political negotiations between all parties, who were generally eager to avoid the prospect of early elections, Mr Yatsenyuk formally resigned on 12 April 2016. He was replaced by the then Speaker of the Verkhovna Rada, Volodymyr Groysman. Mr Groysman, who is well respected by the international community, is a close ally of President Poroshenko. Other ministers from Yatsenyuk's People's Front maintained their positions in the government,

7. Doc. 13641, "Observation of the early parliamentarian elections in Ukraine (26 October 2014)".
8. IEOM, Statement of Preliminary Findings and conclusions.
9. The Opposition Bloc consists mostly of former members of Mr Yanukovich's Party of Regions.

underscoring the continuing political influence of the People's Front. The new government was supported by the Petro Poroshenko Bloc, the People's Front and Samopomich as well as the Revival and People's Will Party. Batkivshchyna officially declared itself in opposition to the new government.

14. On 30 May 2015, President Poroshenko appointed controversial former Georgian President Mikheil Saakashvili as Governor of Odessa, citing both the latter's reformist and anti-Kremlin credentials. However, soon the relations between Mr Saakashvili and the government in Kyiv, including with President Poroshenko, soured – reportedly over Mr Saakashvili's brazen political style, as well as his continued involvement in Georgian domestic politics, which led to tensions in the relations between Georgia and Ukraine. For his part, Mr Saakashvili increasingly expressed frustration with the slow pace of reforms and limited results in the fight against corruption. On 7 November 2016, Mr Saakashvili, who had become increasingly isolated, resigned from his post of Governor of Odessa, citing corruption in government circles and the unwillingness to push through reforms as the main reasons for his resignation. On 7 November 2016, he announced that he was establishing a new political party in Ukraine.

15. On 17 December 2015, the Kyiv District Court disbanded the Communist Party of Ukraine on the basis of the law on the condemnation of Communist and Nazi regimes and symbols. This decision raised a number of questions with regard to freedom of expression and association in Ukraine. At the request of the Monitoring Committee, the European Commission for Democracy through Law (Venice Commission) adopted an opinion on the law on condemnation of Communist and Nazi regimes and symbols in December 2015.[10] In this opinion, the Venice Commission concluded that it "recognize[s] the right of Ukraine to ban or even criminalise the use of certain symbols of and propaganda for totalitarian regimes. While States are free to enact legislation that bans or even criminalises the use of symbols and propaganda of certain totalitarian regimes, such laws must comply with the requirements set by the [European Convention on Human Rights] and other regional or international human rights instruments ..." and that "While Law No. 317-VIII may be considered as pursuing legitimate aims, it is not precise enough to enable individuals to regulate their conduct according to the law and to prevent arbitrary interference by public authorities".[11] With regard to the banning of parties, the opinion concluded that "the Law should clarify that banning any association is a measure of last resort in exceptional cases, proportionate to the offence. This is particularly the case for political parties in the light of their important function in a democratic society".[12] The Communist Party of Ukraine had become politically irrelevant following its overt public support for the illegal annexation of Crimea by the Russian Federation. As a result of this falling support it had all but disappeared and had no MPs in the Verkhovna Rada. However, we wish to reiterate that, in our view, it is up to the voters to condemn the party to irrelevancy over its policies, and not to the courts.

16. The intertwinement of political and economic interests continues to be a point of serious concern in Ukraine. Mr Poroshenko was a prominent businessman before being elected President and has appointed a number of former associates in his administration. Moreover, all parties, without exception, have a number of wealthy businessmen within their ranks. Oligarchic interests therefore continue to be an important political factor in Ukraine and this has not diminished since the Euromaidan events. A point in case has been the breakdown in relations between President Poroshenko and Ihor Kolomoiskiy. Mr Kolomoiskiy, a wealthy businessman like Mr Poroshenko, was appointed by President Poroshenko as Governor of Dnipropetrovs'k. He is widely credited as having used his influence to avoid the insurgency that was instigated in Luhansk and Donetsk from spreading to Dnipropetrovs'k and Kharkiv. In addition, he financed a number of the voluntary battalions fighting in eastern Ukraine alongside the Ukrainian army, when the army's capacities were stressed to their limits. Following a standoff over the leadership of Ukraine's main energy company, President Poroshenko fired Mr Kolomoiskiy from his position as Governor of Dnipropetrovs'k. The controversial arrest of Hennadiy Korban, former Deputy Governor of Dnipropetrovs'k and one of the leaders of UKROP – a party considered close to Mr Kolomoiskiy that has been in active opposition to Mr Poroshenko and his policies – was decried as politically motivated by Mr Korban's supporters. This intertwinement of oligarchic and political interest has contributed to the public perception of the high level of corruption and a political class in which at least a part puts its own interests before that of the voters or Ukraine as a nation.

17. The ongoing intervention by Russia in eastern Ukraine is hardening the media environment in Ukraine. Journalists who have sought accreditation from the *de facto* authorities of the so-called "Donetsk People's Republic" ("DPR") and "Luhansk People's Republic" ("LPR"), or journalists who are openly critical of the policy with regard to the areas not under the control of the central government, are often harassed and threatened or even attacked.[13] While most of these threats and attacks are made by civilians, they are not seen as being

10. CDL-AD(2015)041.
11. Ibid., paragraphs 116-120.
12. Ibid., paragraph 118.

investigated properly, giving rise to a sense of impunity for those attacks that undermines the freedom of the media. This was compounded by the publication of information obtained from hacked e-mail accounts of "DPR" officials, which included the names and contact details of journalists having asked for accreditation in the "DPR".[14] The publication of this information was publicly condemned by President Poroshenko but reportedly welcomed by other government officials, including the Minister of the Interior. On 3 August 2016, the Deputy Minister for Information Policy, Ms Tetyana Popova, resigned from her position citing the authorities' lack of will to investigate harassment and threats to journalists. On 20 July 2016, journalist Pavel Sheremet was killed in Kyiv by a car bomb. His murder was strongly condemned by the authorities, which indicated that the possible involvement of the Russian secret services in his murder was being investigated. However, to date no-one has been arrested or charged with his murder. At the beginning of September 2016, protesters blocked and tried to set fire to the building of the Ukrainian Television Station Inter,[15] a popular television station co-owned by Serhiy Lyovochkin, former Chief of Staff of ousted President Yanukovich[16] and oligarch Dmytro Firtash, for allegedly being pro-Russian. This arson attack was condemned by, *inter alia*, the representative for freedom of the media of the Organization for Security and Co-operation in Europe (OSCE), Ms Dunja Mijatovic. In the context of the ongoing information war with Russia, President Poroshenko signed, on 27 May 2016, a decree banning 17 Russian journalists and media representatives from entering Ukraine on the grounds that they would be a threat to national security and the constitutional order. This follows a similar decree on 16 September 2015 that was widely criticised by the international community. While the concerns by the Ukrainian authorities about Russia's propaganda and information war are legitimate and understandable, banning journalists from entering Ukraine and ultimately limiting media freedom seems to be an inappropriate response to this threat.

18. The Opposition Bloc has made several allegations of harassment and intimidation of opposition supporters, which are denied by the authorities. We intend to continue to follow these allegations closely and call on all political forces to overcome divisions and animosity.

19. In the context of the stability of the country, it is also important to stress the continuation of an inclusive policy towards minority languages. The alleged abolishment[17] of the law on State languages was instrumentalised to instigate the illegal annexation of Crimea and the conflict in the east. However, as outlined in the above-mentioned 2014 report on "Recent Developments in Ukraine: threats to the functioning of democratic institutions", this law was never abrogated and remained continuously in force. While reportedly the authorities are not planning to abrogate this law, 57 individual members of the Verkhovna Rada have appealed this law to Constitutional Court, claiming the unconstitutionality of some of its provisions as well as the manner in which it was adopted. The protection of minorities and the use of their languages are guaranteed in the Constitution, as well as by the law on the ratification of the European Charter for Regional and Minority Languages (ETS No. 148). The law on State languages lowers the threshold for the use of minority languages in public affairs and education to 10%. While we cannot comment on the ongoing appeal to the Constitutional Court, we urge the authorities to continue to promote an inclusive minority language policy and to ensure, in the event the law on State Languages is repealed by the Court, that the 10% threshold for the use of minority languages is maintained.

20. On 17 November 2016, the Verkhovna Rada postponed the ratification of the Council of Europe Convention on Preventing and Combating Violence against Women and Domestic Violence (CETS No. 210, "Istanbul Convention"), reportedly over concerns about the references to sexual orientation in the convention. We hope that the Verkhovna Rada will soon overcome its hesitance and urge it to promptly ratify this important convention.

21. On 15 November 2016, protests took place in Kyiv over rising prices and poor economic performance, as well as over the failure of some banks. Radio Free Europe reported that a number of people told their reporters that they had been paid to participate in the protests.[18] The authorities had virtually locked down the centre of Kyiv over these protests as they feared that they could be the start of a campaign orchestrated by Russia to destabilise Ukraine, the plans of which had been obtained in the hacking of the e-mail account of President Putin's advisor, Vladislav Sukov.[19]

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13. www.rferl.org/a/ukraine-attacks-on-journalists-media-landscape-press-freedom/27923284.html.
14. Some have alleged that these accounts were hacked, and their contents published, with the involvement of the Security Service of Ukraine (SBU). However, this is strongly denied by the SBU itself.
15. www.bbc.com/news/world-europe-37284528.
16. Mr Lyovochkin is currently an MP for the Opposition Bloc.
17. In the wake of the Euromaidan events of February 2014, the Verkhovna Rada voted, on 25 February 2014, to abolish the law on State Languages, however acting President Oleksandr Turchynov refused to sign that decision into force and the law has remained fully in force.
18. www.rferl.org/a/ukraine-paid-protests/28124497.html.

22. Visa liberalisation with the European Union has been one of the key priorities for the Ukrainian authorities. On 20 April 2016, the European Commission proposed to the European Council and European Parliament to lift visa requirements for short-stay travel of Ukrainian citizens to the Schengen area. On 17 November 2016, the European Council agreed on its negotiating position on visa liberalisation for Ukraine. The Chairperson of the Foreign Affairs Committee of the European Parliament called for the visa liberalisation process to be finalised soon.

3. Constitutional reform

23. Following the change in power that resulted from the Euromaidan events, and in line with the 21 February 2014 agreement brokered by the European Union, the Verkhovna Rada reinstated the 2004 amendments to the Ukrainian Constitution with a view to providing a more inclusive and democratic division of power with proper democratic safeguards. It should be recalled that the Assembly and the Venice Commission had previously criticised the 2004 amendments as containing important deficiencies and shortcomings that could hinder the comprehensive reforms that were needed for the country.[20] Noting that there was a unique window for constitutional reform following the Euromaidan events, the Assembly therefore urged the Verkhovna Rada to implement a comprehensive reform of the Constitution with a view to bringing it fully into line with European standards and norms.[21] The need to reform the Constitution was also agreed upon in the European Union-brokered agreement on 21 February 2014.

24. The constitutional reform process soon got caught up in the implementation of the Minsk Protocol that had been agreed upon in an attempt to resolve the military conflict in eastern Ukraine. The original Minsk Protocol, signed on 5 September 2014, called for decentralisation of power.[22] The "Package of Measures for the Implementation of the Minsk Agreements", that was signed on 12 February 2015 in an attempt to resolve the breakdown of the ceasefire agreement and escalation of hostilities between the Ukrainian and the Russian- backed forces, linked the principle of decentralisation with the explicit need for constitutional reform.[23]

25. Given the extent of the constitutional reform that was needed, as well as the tight deadlines imposed by the "Package of Measures for the Implementation of the Minsk Agreements", it was agreed that, as a first step, the constitutional reform would focus on the decentralisation and justice system chapters of the Constitution. While we understand and agree with the need to focus in first instance on efforts to reform the judicial and decentralisation chapters of the Constitution, we, and the previous monitoring co-rapporteurs on Ukraine, have consistently expressed our concern that a phased implementation of constitutional reform could result in only a partial reform. Constitutional reform is a complicated process under any circumstances and it may be difficult to find successive constitutional majorities for repeated constitutional reforms, especially in the context of the increasing heterogeneity of the Verkhovna Rada. We would like to emphasise that the constitutional reform process should go beyond the judicial and decentralisation chapters. Reform is also needed with regard to other chapters, and in particular with regard to the division of powers between the President, the government and the Verkhovna Rada, with a view to addressing the deficiencies noted by the Assembly in this regard in its previous monitoring reports on Ukraine.

26. A Constitutional Commission, tasked with drafting the constitutional amendments, was set up by President Poroshenko on 3 March 2015. This commission is chaired by the Speaker of the Parliament. Its composition was agreed upon on 31 March 2015 and includes 12 members from the international community. The Council of Europe is represented by three members: the Special Representative of the Secretary General

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19. A Ukrainian hacker group claimed to have gained access to Mr Surkov's e-mail account as well as that of his assistant and published on 27 October 2016, the first 2 337 e-mails from Mr Surkov's account. On 3 November 2016, another batch of e-mails from another account pertaining to Mr Surkov were published. While they did not contain a bombshell, these e-mails outlined in detail Russia's leading role in creating and implementing the insurgency in eastern Ukraine, as well as plans to purportedly destabilise Kyiv between November 2016 and March 2017 with the aim of forcing early parliamentary and presidential elections in Ukraine. While the Russian authorities denied Mr Surkov's account had been hacked, several of the persons who were mentioned in, or originally sent, the e-mails that were published, confirmed their authenticity (www.nytimes.com/2016/10/28/world/europe/ukraine-russia-emails.html).

20. See also Doc. 13482, paragraphs 41-45.

21. Resolution 1988 (2014).

22. Minsk Protocol, paragraph 3.

23. Package of Measures for the Implementation of the Minsk Agreements, paragraph 11: "Carrying out constitutional reform in Ukraine with a new constitution entering into force by the end of 2015 providing for decentralization as a key element (including a reference to the specificities of certain areas in the Donetsk and Luhansk regions, agreed with the representatives of these areas), as well as adopting permanent legislation on the special status of certain areas of the Donetsk and Luhansk regions in line with measures as set out in the footnote until the end of 2015."

of the Council of Europe, the Congress of Local and Regional Authorities and the Venice Commission. Following its establishment, three working groups were set up, reflecting the priorities of the commission: on judicial reform; on decentralisation; and on human rights and fundamental freedoms. However, the work of the third working group did not result, to our knowledge, in proposals for amendments to the Constitution. We welcome the close co-operation between this commission and the Council of Europe, as exemplified by the three members of our organisation in this commission.

3.1. Decentralisation

27. The constitutional reform with regard to decentralisation concerns two separate but interlinked issues:

– the constitutional provisions needed to allow the decentralisation of the powers and establishing the principles of local and regional self-government;

– the constitutional provisions that would allow for the establishment of a special status for certain areas of the Donetsk and Luhansk Oblasts.

28. The constitutional provisions on decentralisation were developed in close co-operation with the Venice Commission and the Congress of Local and Regional Authorities. In its opinion on the initial draft for the decentralisation chapter, the Venice Commission concluded that these chapters formed a good basis for the reforms which are "largely compatible with the European Charter of Local Self-Government".[24] It made a number of recommendations to bring this chapter fully into line with the Charter. In a memorandum prepared by the Secretariat,[25] the Venice Commission subsequently welcomed that most of its recommendations – including all substantial ones – had been introduced by the authorities in the constitutional amendments that were adopted in first reading by the Verkhovna Rada.

29. The decentralisation chapter foresees the establishment of "prefects", or representatives of the President, at the regional level. Their main function is the supervision and co-ordination of services provided by the central government. However, a number of parties in the governing coalition have expressed concern that the prefects have extensive powers that would allow the President to impose his political preferences and policies on local self-government and to block decisions of local governments that he deems undesirable from a political point of view.[26] Both the Congress and the Venice Commission have emphasised that the function of prefect, as foreseen in the constitutional amendments, does not contradict European standards.

30. The constitutional provision that allows for the establishment of a special status for certain areas of the Donetsk and Luhansk Oblasts is the most controversial and contentious. In order to adhere to its obligations under the "Package of Measures to Implement the Minsk Agreements",[27] the Verkhovna Rada adopted, on 31 August 2016, in first reading, Article 18 of the transitional provisions which reads: "Specific arrangements for self-government of some parts of Donetsk and Luhansk oblasts shall be set forth in a separate law." The fact that this article was included in the transitional provisions raised some questions about its temporal validity. In its opinion[28] on this issue, prepared at the request of the Normandy Format countries, the Venice Commission concluded that, as Article 18 had been adopted according to the same procedure and with the same majority as the rest of the Constitution, it carries the same weight and has the same effect as the rest of the Constitution and therefore can by no means be considered to be of a temporary character. As is the case for the rest of the Constitution, this article remains valid until it is repealed by the Verkhovna Rada.

31. It should be noted that, in compliance with the Minsk Agreements,[29] the Ukrainian Parliament had already adopted the law on the special status of the Donbas on 17 March 2015. In the trilateral contact group, representatives of the separatist forces have stated that they wish to maintain full control over the judiciary, prosecution and police forces, which was rejected by the authorities in Kyiv as this would be contrary to the principle of a unitary nation. In that respect, it is to be regretted that in the course of an interview, the Russian Foreign Minister Lavrov stated that the Donbas special status should be permanent and that this status should include "the right to speak the Russian language on the territory of Donbas, the right for special economic ties

24. CDL-AD(2015)028.
25. DDL-AD(2015)029.
26. It should be noted here that, following a recommendation by the Venice Commission, any order by the President to suspend an act of a local self-government body, or to suspend the body itself, should be confirmed by the Constitutional Court without delay.
27. See also AS/Mon (2015) 13 and AS/Mon (2015) 21.
28. CDL-AD(2015)030.
29. Minsk Protocol, paragraph 3: "Decentralisation of power, including through the adoption of the Ukrainian law 'On temporary Order of Local Self-Governance in Particular Districts of Donetsk and Luhansk Oblasts'."

with Russia, the right to take part in appointing prosecutors, judges, have their own law-enforcement agencies, including people's militia, and many more things",[30] which is not what was agreed in the "Package of Measures to Implement the Minsk Agreements" or the Minsk Agreements themselves.

32. The constitutional amendments on decentralisation, including the controversial Article 18 of the transitional provisions, were adopted in first reading on 31 August 2016. As already mentioned in Ms Zelienkova's report, as a result of the continuing violations of the ceasefire agreement and absence of progress with the implementation of the other provisions of the Minsk Agreements with regard to the security situation by the Russian Federation, there is a general feeling among the Ukrainian public that only Ukraine is implementing the Minsk Agreements, while the Russian Federation and its proxies in Luhansk and Donetsk have not honoured their obligations under these agreements. Realising that it is unlikely that in such a context sufficient support could be found to adopt in final reading the constitutional amendments on decentralisation – which includes Article 18 of the transitional provisions – the vote in final reading has been provisionally postponed until significant progress has been made with the implementation of the Minsk Agreements by the Russian Federation and their proxies in Donetsk and Luhansk.

33. While we do understand the difficulties and delays in the adoption of the decentralisation paragraphs due to their close link with the (absence of) developments with regard to the implementation of the Minsk Agreements, we wish to emphasise that, in our view, the absence of progress in the implementation of the Minsk Agreements should not be used as an excuse for not implementing the other reforms that are essential for the democratic consolidation of the country. In that context, we welcome that, despite the fact that the constitutional amendments with regard to decentralisation have not yet been adopted, the authorities continue with their efforts to decentralise power and strengthen local government in Ukraine. A law on the merger of local communities was adopted on 25 December 2015. As a result, 847 villages voluntarily merged into 172 new communities, which were given increased competencies and resources. It is hoped that this will lead to more mergers, which in turn will strengthen local government in Ukraine and provide a sound basis for future decentralisation reforms.

3.2. Judiciary and justice system

34. The Assembly has repeatedly stressed that the adoption of constitutional amendments ensuring the independence of the judiciary is a crucial precondition for the reform, in line with European standards, of the justice system as a whole. Therefore, the considerable progress that has been achieved with regard to the constitutional reform in relation to the justice system and the judiciary should be welcomed.

35. Following lengthy negotiations, on 2 June 2016, the constitutional amendments with regard to the judiciary and justice system were adopted in final reading by the Verkhovna Rada. The constitutional amendments with regard to the justice system were drafted in close consultation with the Venice Commission. In its final opinion[31] on the draft amendments, the Venice Commission welcomed that many of its recommendations – given in a preliminary opinion – had been taken up by the authorities.

36. The draft constitutional amendments removed the role of the Verkhovna Rada and President in the appointment of judges and abolished the right of the President to dismiss judges, which were widely seen as a threat to the independence of the judiciary. The President now formally appoints judges strictly on the basis of a binding proposal by the High Qualifications Commission, which is an independent part of High Council of Justice, which is also the sole organisation that can dismiss judges. The Venice Commission had recommended that the promotion and transfer of judges should be the sole prerogative of the High Council of Justice, although it would be admissible in the current situation in Ukraine that the President maintains these powers during a clearly delimited transitional period. The constitutional amendments also change the composition of the High Council of Justice in order to ensure that the majority of its members are judges and to remove the possibility for the President or the Verkhovna Rada to dominate and unduly influence its work and decisions. Following the adoption of the constitutional amendments, a draft law on the High Council of Justice was submitted to the Verkhovna Rada by President Poroshenko on 26 September 2016. The Council of Europe, jointly with the Judicial Reform Council, had provided an expertise on the draft law and reportedly most of the recommendations were incorporated in the draft that was submitted to the parliament. According to the draft law, the High Council of Justice will be composed of 21 members. Ten will be elected by the Congress of Judges, two will be appointed by the President and two by the Verkhovna Rada. In addition, two

30. http://tass.ru/en/world/849055.
31. CDL-AD(2015)027.

members will be elected by the Congress of Lawyers of Ukraine, two by the Ukrainian Congress of Prosecutors and two by academic institutions. The Chairperson of the Supreme Court of Ukraine is an *ex officio* a member of the High Council of Justice.

37. In a welcome development, the constitutional amendments have removed the general oversight function from the Prosecutor General. This general oversight function was contrary to European standards and norms. Ukraine has thus honoured one of its remaining accession commitments to the Council of Europe.

38. The constitutional amendments create a three-level court system and a unified Supreme Court, which have been long-standing recommendations of the Venice Commission. A new law on the Supreme Court, that would establish the Supreme Court in its new format and allow for the appointment of its members (a so-called reset of the Supreme Court) was adopted by the Verkhovna Rada but was sent, on 3 October 2016, to the Constitutional Court by an unanimous decision of the current (old) Supreme Court. We hope this will not result in lengthy delays for the establishment of the new Supreme Court, given its importance for the efficient functioning of the justice system.

39. An important question that was raised during the adoption of the constitutional amendments on the judiciary is the manner in which it can be ensured that sitting judges have both the required professional capacity and integrity for their work. A large number of political forces, and indeed Ukrainian society, favoured the mass dismissal of all sitting judges and having them reapply for their positions. The Venice Commission strongly opposed this idea as it would violate European standards with regard to the independence of the judiciary and the rule of law. For that reason, this proposal was also opposed by the authorities. As a compromise, it was agreed that all sitting judges would be subjected to an evaluation process before being appointed for an indefinite term, which was introduced by the constitutional amendments. This would not violate European norms. A special High Qualification Commission was set up for this purpose, under, but independent from, the High Council of Justice. In the period February-June 2016, a total of 300 judges were evaluated. We were informed that 20% of the judges resigned or refused to participate in the evaluation process, 5% of the judges were send to the National School of Judges for further training and in 15% of the cases, the decision of the Qualification Commission is still pending based on “further reviews”. The other 60% of judges evaluated have been given permanent positions. This process has not been without controversy, especially from among the judges themselves. Supreme Court judges and specialised court judges have not yet undergone evaluation by the High Qualifications Commission.

40. As part of the vetting of the sitting judges, a Public Integrity Council – that would have civil society representatives among its members – is foreseen to assist the High Qualifications Council in assessing candidates for judicial positions. While the High Qualifications Council can ignore the advice of the Public Integrity Council, the notion of the involvement of what seems to be a non-judicial body in the appointment process of judges potentially raises some questions about possible infringements of the principle of the independence of justice. At the very least, the exact powers and appointment process for this body should be clearly circumscribed by law.

41. Part of the legal reforms the authorities have prepared, on the basis of the constitutional amendments on the judiciary, is a new law on the Constitutional Court. On 7 October 2016, the President of Ukraine requested the opinion of the Venice Commission on this law. In its draft opinion,[32] the Venice Commission welcomed the new law as a clear step forward, in line with European standards, concerning constitutional justice. A key aspect of this law is a new appointment procedure for judges of the Constitutional Court. One third of the judges are appointed by the President of Ukraine, one third by the Verkhovna Rada and one third by the Congress of Judges, on the basis of a competitive selection process by specific screening commissions. This competitive selection process was welcomed by the Venice Commission. However, it recommended that the outcome of the selection process in the screening commissions should be binding on the appointing bodies, while the majority for the Rada to appoint should be raised to a two-thirds majority, as this would better assure the independence of the Constitutional Court. The introduction of a strict time limit for the appointment of new judges was also welcomed in the light of the constitutional crisis in 2005, where the failure to appoint new judges at that time resulted in the court losing its quorum to take decisions. Ukraine allows for individual normative complaints to the Constitutional Court. In its draft opinion, the Venice Commission recommended that the law on the Constitutional Court allow for full individual complaints (laws and acts) to ensure that “individuals have the possibility to protect their fundamental rights effectively on the

32. CDL(2016)042.

national level before Ukrainian courts without having to resort to the European Court of Human Rights".[33] While welcoming the improvements contained in this draft law, we call on the authorities to address all the recommendations of the opinion by the Venice Commission, including with regard to individual complaints.

42. The adoption of a number of important laws to implement the constitutional changes with regard to the judiciary are now necessary, as are amendments to a number of already existing laws. While we are aware of the workload this implies, we urge the authorities to promptly adopt the required legislation with a view to ensuring both a genuinely independent judiciary and an effective justice system. This in turn is an essential prerequisite for the successful fight against the endemic corruption in the country, which we will discuss in the next section.

43. An issue that has raised considerable controversy in Ukraine has been the lustration of public officials. A lustration law was adopted by the Verkhovna Rada on 16 September 2014 and signed into force on 9 October 2014. The law came into effect on 16 October. According to this law, persons that, *inter alia*, helped the previous authorities to usurp power, took action or inaction that undermined the foundations of the national security of Ukraine, served in leading positions in the Soviet Union, or ordered or abetted the police action against Euromaidan protesters, are excluded from serving in government positions or holding high-level civil service positions. Elected persons are expressly excluded from lustration as are persons who have since served in anti-terrorist operations (both in the regular army and in volunteer battalions) in eastern Ukraine. A number of human rights questions were raised and the Monitoring Committee therefore requested an opinion of the Venice Commission on this law.

44. The Venice Commission issued an interim opinion on 12 December 2014[34] and adopted a final opinion at its plenary meeting on 19 and 20 June 2015.[35] According to the Venice Commission, lustration in itself does not constitute a violation of human rights, nor is it in contravention of European standards. However, in order to be acceptable in the context of European standards, the lustration process needs to fulfil a number of criteria: guilt must be proven in each individual case; due process before the courts must be guaranteed; lustration needs to have strict time limits, both in the period of its enforcement as well as the period to be covered; and it should not be intended as a substitute for criminal law, i.e. be intended as a punishment for people who have violated the law. In this context, the Venice Commission, in its interim opinion, noted a number of concerns with regard to the period covered by the lustration law, the broad range of positions to be screened, and insufficient safeguards to ensure that individual guilt is established. The Ukrainian authorities acknowledged that the law contained shortcomings and established a constructive dialogue[36] with the Venice Commission on possible improvements to this law. A number of issues were addressed or clarified in separate decrees and, in April 2015, the authorities prepared a set of amendments to the lustration law, which, according to the Venice Commission, addresses many, albeit not all, of the shortcomings in this law. However, to our great regret, at the moment of writing, these amendments had not yet been adopted by the Verkhovna Rada. As a result, a number of human rights concerns remain with regard to this law and the lustration process. We urge the Verkhovna Rada to promptly adopt these amendments and to address the remaining concerns of the Venice Commission that were not covered by these amendments.

45. The first phase of the lustration process, the lustration of government ministries and security services, was implemented immediately after the law was signed into force. On 28 October 2014, the Justice Ministry published on its website a list of 179 government officials who had been dismissed as a result of the lustration process. On 5 November 2014, then Prime Minster Yatsenyuk announced the start of the second phase of the lustration process that would involve all State agencies, including law-enforcement agencies.

4. The fight against corruption

46. The endemic corruption in Ukraine continues to be a main point of concern. The prolonged absence of marked and concrete progress in this area, including in prosecutions and convictions, could potentially diminish the effects of the ambitious reform agenda of the authorities and undermine the trust in the political system by the Ukrainian public, who would consider it as a betrayal of the principles of the "Revolution of Dignity". All Ukrainian stakeholders are therefore encouraged to step up their efforts, at all levels, to fight corruption in the country.

33. Ibid., paragraph 38.
34. CDL-AD(2014)044.
35. CDL-AD(2015)012.
36. Ibid., paragraph 109.

47. On 16 November 2016, Transparency International published its report "People and Corruption: Europe and Central Asia 2016". According to the surveys in this report, Armenia, Bosnia and Herzegovina, Lithuania, the Republic of Moldova, the Russian Federation, Serbia and Ukraine are seen as having the most severe corruption problems. In Transparency International's Global Corruption Perceptions Index of 2015, Ukraine was ranked 130th out of 168 with a score of 27, slightly up from its previous score.

48. Most of the reforms in the fight against corruption have focused on the establishment of a new institutional framework. This institutional framework to implement the anti-corruption strategy consists of a three-tier set of institutions: the National Anti-Corruption Bureau (NABU); the Specialised Anti-Corruption Prosecutors Office (SAPO); and the National Agency for the Prevention of Corruption (NAPC). A number of political forces have questioned whether the current court system, given the endemic corruption among the judiciary, would be capable, or indeed willing, to effectively deal with corruption cases. They have therefore called for the establishment of a special anti-corruption court to complement the above-mentioned institutions.

49. The Specialised Anti-Corruption Prosecutor's Office was the first to be established. It is functionally independent of the Prosecutor General's Office, which has no right to interfere in the cases that are dealt with by the Special Prosecutor. However, before the establishment of NABU, the Specialist Prosecutor was dependent on the investigation services of the normal prosecution service. This reportedly led to tensions between the two services that hindered the effective investigation into alleged corruption cases.

50. The tensions between the two institutions were especially clear during the term of Viktor Shokin, who was appointed Prosecutor General on 10 February 2015 and who was generally perceived as being unwilling to tackle the endemic corruption in the government or to reform the prosecution service. However, despite the strong domestic and international criticism, he remained in office until 29 March 2016. When the well-respected Head of the Security Service of Ukraine, Valentyn Nalyvaichenko, publicly questioned why the Prosecutor General had not followed up on a number of high-level corruption cases brought to his attention by the Security Service of Ukraine, he was relieved of his function by President Poroshenko. Only when, on 15 February 2016, Deputy Prosecutor General Kasko, a reformer with considerable support in the international community, resigned, citing "patronising corruption, lack of reform and lack of progress on important investigations", did President Poroshenko ask Prosecutor General Shokin to resign. On 22 February 2016, President Poroshenko officially submitted to the Verkhovna Rada a request for the dismissal of Prosecutor General Shokin, who was dismissed on 29 March 2016.

51. On 12 May 2016, the Verkhovna Rada appointed Mr Yuriy Lutsenko, then faction leader of the PPB and a close ally of President Poroshenko, as Prosecutor General. Mr Lutsenko was Minister of the Interior in the government of Yulia Timoshenko and was imprisoned on politically motivated charges by former President Yanokovich. He has been an outspoken critic of the endemic corruption in the country and widely seen as someone who would give new impetus to the fight against corruption.

52. Since the summer of 2016, both the NABU and the NAPC became operational, finalising the establishment of the institutional framework to implement the anti-corruption strategy.

53. NABU has 284 staff, of which 200 are investigators. Since its establishment, investigations have reportedly been started in 187 cases of which 19 have already been sent to the courts. NABU has started investigating a number of deputy prosecutors for alleged corruption, which has led to tense relations between the Prosecutors Office and NABU. Prosecutor General Lutsenko has questioned on a number occasions the exclusive prerogative of NABU to investigate corruption cases, especially given its (still) relatively small size and limited geographical presence.[37]

54. A key activity of the newly established NAPC is the electronic asset declaration system for public officials, the so-called e-declaration system. This system, developed with the assistance of the United Nations Development Programme (UNDP), was adopted by the NAPC members on 10 June 2016 and became functional on 15 August 2016. There was some controversy surrounding the certification of the system, as well as with regard to data protection. More than 50 000 top-level public officials, including the President, government ministers and members of the Verkhovna Rada had to declare their assets, as well as those of their closest family members, by 30 October 2016. As from January 2017, all other public officials covered by the law on asset declaration will also have to file their e-declarations, reportedly bringing the total number of persons to be scrutinised to over 100 000. A group of 45 MPs, mostly from the Opposition Bloc, have questioned the constitutionality of the law on asset declaration and have sent the law to the Constitutional Court for review.

37. Currently NABU is only present in three regions. More regional offices are foreseen to be established in the near future.

55. The e-declarations, which are publicly accessible, can be a highly effective tool in the fight against corruption and allow the Ukrainian public to scrutinise the assets of their elected officials, as well as civil servants, judges and government officials. Reportedly, more than 200 judges have resigned from their functions in order to avoid the obligatory declaration of their assets, underscoring the potential of the system.

56. The publication, in line with the law, of the asset declarations of government officials and members of the Verkhovna Rada stirred quite some controversy when it appeared that a number of them had quite considerable assets, including large quantities of cash.[38] While this may also indicate a lack of trust in the Ukrainian banking system, and while this cash is not necessarily illicitly obtained, it does underscore the gap between those officials and the average Ukrainian citizen, whose average income and assets are a far cry from these amounts. The public discontent about the revelation of the assets of government officials and members of parliament has led to calls to expand the powers of the NABU and to accelerate the establishment of a special anti-corruption court. It also added to the public perception that the authorities do too little to fight corruption. It is important that the authorities are seen as giving priority to the fight against corruption, and that they start to achieve concrete results – for the moment the results are too limited in comparison to the extent of the problem. At the same time, the public outcry following the publication of the e-declarations should also be seen as a sign of its effectiveness, or at least of its potential. For that reason, the first results were widely welcomed by the international community.

57. In order to maintain public trust in the political system, in the light of these declarations, it is now important that they are transparently audited and that any suspicious declarations, or evident discrepancies between assets owned and the salary of the person in question, are fully investigated, and if justified by the evidence, criminal charges filed. According to the law on asset declaration, the NAPC will now audit the declarations and check their correctness. In case of suspected intentional errors or omissions in the declarations, or evident discrepancies between income and assets, the NAPC will transfer the file to the NABU for investigation, which can then transfer the file to the SAPO for prosecution if criminal wrongdoings are uncovered. It is not clear how the NAPC, with its current resources, will be able to audit the more than 100 000 expected e-declarations within a reasonable period of time. Given the potential of the e-declaration system as a tool to fight corruption, it is important that the NAPC be provided with the required resources to do its work. At the same, the public nature of the e-declarations cannot be underestimated, as this allows the public to scrutinise the declarations and flag any suspicion of illicit enrichment.

58. In the context of the fight against corruption, the reform of the civil service in Ukraine is also of importance. A new civil service law came into force on 1 May 2016 and a strategy for civil service reform was adopted by the government on 24 June 2016. The civil service law will, *inter alia*, govern the hiring process of civil servants and establish rules on ethics and conflict of interest. However, a number of implementing laws still need to be adopted and other laws amended in order to implement the law on the civil service.

5. Electoral reform

59. The reform of the electoral system and the adoption of a unified Election Code that would bring coherence to the legal provisions that govern the different elections in Ukraine, has been a long-standing recommendation of the Assembly. This recommendation has gained even more importance as a result of the Package of Measures for the Implementation of the Minsk Agreements, signed on 12 February 2015, which reiterates that local elections should be organised in certain areas of the Donetsk and Luhansk on the basis of Ukrainian law.[39]

60. As mentioned in previous reports, for the parliamentary elections both the Venice Commission and the Assembly have repeatedly recommended that such a new unified Election Code should introduce a variant of the regional proportional election system, in order to address the systemic problems that have plagued the division of powers and functioning of political parties and the Verkhovna Rada.

61. In Resolution 1988 (2014), adopted on 9 April 2014, the Assembly therefore called on the authorities to organise the next parliamentary elections on "the basis of a new unified Election Code and a regional proportional election system"[40] the adoption of which should be an "immediate priority for the Ukrainian

38. In a number of cases, well over the equivalent of one million euros.
39. Package of Measures for the Implementation of the Minsk Agreements, paragraph 4: "Launch a dialogue, on day 1 of the withdrawal, on modalities of local elections in accordance with Ukrainian legislation and the Law of Ukraine 'On interim local self-government order in certain areas of the Donetsk and Luhansk regions' as well as on the future regime of these areas based on this law."
40. Resolution 1988 (2014), paragraph 7.

authorities".[41] However, as mentioned in the report of the ad hoc committee that observed the early parliamentary elections on 26 October 2014,[42] these elections took place before many of the electoral reforms could be implemented and therefore took place under the (amended) 2012 electoral legislation. Regrettably, as is often seen to be the case, following the elections the political interest in electoral reform waned and was overtaken by other developments and priorities.

62. A number of drafts for a unified Election Code are formally on the agenda of the Verkhovna Rada.[43] Some of these proposals have been developed with the assistance of the Venice Commission and address shortcomings noted by the Assembly and the Venice Commission; others contain provisions that have been flagged as problematic under international standards. A working group has been established consisting of experts and stakeholders, that works closely with the Venice Commission and is tasked with drafting a unified Election Code on the basis of, *inter alia*, these proposals. There are no indications of preference for any of the draft laws that are circulating. Regrettably, according to several interlocutors, there seems to be a lack of commensurate political will to push forward with the drafting of a unified Election Code, especially now that the prospect of new elections has receded.

63. It is important that the drafting of a new unified Election Code, that takes fully into account the recommendations made by the Venice Commission, is given the priority it deserves and put on the agenda of the Verkhovna Rada well before the next parliamentary elections take place.

64. On 16 February 2016, the Verkhovna Rada adopted a series of amendments to the law on the Election of People's Deputies. These amendments would make it possible for parties to change the order of the candidates, and to effectively exclude them from the list, after the election has taken place but before they are sworn into parliament. The validity of this law was limited to the electoral lists for the 2016 early elections and seems to have been aimed at giving the political parties control over who would enter parliament to fill vacant seats as a result of the foreseen government reshuffle.[44] Indeed, immediately following its adoption several political parties asked the Central Election Commission to remove one or more candidates from their lists.

65. Irrespective of the temporal limitation of these amendments, they raise a number of issues with regard to international standards, specifically with regard to the principle of direct suffrage and the right of the voters to have full knowledge of the consequences of their vote, i.e. the representatives they elect. The Monitoring Committee therefore requested, on 9 March 2016, an opinion by the Venice Commission on these amendments. In its opinion, which it adopted at its plenary meeting on 9 and 10 June 2016, the Venice Commission[45] concluded that "the empowerment of political parties ex post facto to deny the electorate its choice and choose who to place on its party list in a position to be elected"[46] and thus the "power of political parties to remove from their lists, after an election has taken place, candidates who at the time were 'deemed unelected' but retain a potential to be elected"[47] is contrary to international standards. Like the Venice Commission, we therefore urge that these provisions, even if only valid for the election lists for one particular election, be removed from the law.

66. In the context of this opinion, the Venice Commission noted that Article 81 of the Ukrainian Constitution allows the removal of the mandate of an MP who has switched to another political party or grouping other than that for which he or she was elected, on the basis of a request by the party on whose list that person was elected. The Venice Commission reiterated its concerns about this possibility that enables elected MPs to be dismissed, in violation of European standards. We strongly recommend that this possibility be removed from the Constitution in the context of the ongoing constitutional reform.

6. Concluding remarks

67. Following the Euromaidan events, the Ukrainian authorities embarked on an ambitious and far-reaching reform programme. The authorities should be commended for their commitment to the reforms which are taking place in the context of a challenging political and economic environment as a result of the effects of the ongoing war in eastern Ukraine and illegal annexation of Crimea. However, it should be underscored that, while the reform process is overshadowed, and in several areas interlinked with the developments in eastern

41. Ibid., paragraph 8.
42. Doc. 13641, paragraphs 12-14.
43. Members of the Verkhovna Rada have the right of individual initiative and can propose draft laws.
44. See paragraph 13 above.
45. CDL-AD(2016)018.
46. Ibid., paragraph 39.
47. Ibid.

Ukraine, absence of progress in the implementation of the Minsk Agreements should not be used as an excuse to slacken the pace of, or commitment to, the overall reform process, which is essential for the democratic consolidation of the country as a whole. Much progress has been achieved with the reform of the legal framework and adoption of new laws. However, it is now important that these legislative changes are implemented and result in the intended changes in behaviour and practice. This is especially true for the fight against the endemic corruption in the country.

68. The reform of the Constitution, which has been a long-standing recommendation of the Assembly, should be welcomed. Until now, the constitutional reform process has focused on the chapters on decentralisation and on the judiciary and the justice system. However, constitutional reform should not be limited to these areas, and continues to be needed in other areas, in particular the division of powers between the President, the government and the Verkhovna Rada, with a view to addressing the systemic deficiencies noted by the Assembly in this regard. In this context, we also reiterate the recommendation of the Assembly to adopt a new, unified, Election Code, well before the next elections.

69. The adoption of the constitutional amendments with regard to the judiciary, which will address many shortcomings with regard to the justice system and independence of the judiciary, is to be warmly welcomed, especially the abolition of the general oversight functions of the Prosecutor General, which was an accession commitment by Ukraine to the Council of Europe. It is now important that all the necessary implementing legislation is adopted and, where needed, existing legislation amended, to allow for the prompt implementation of the constitutional amendments.

70. While welcoming the fact that the institutional framework to combat the endemic corruption in the country is now in place, we are concerned that the pace of the fight against corruption is too slow, and that concrete results are still too few. We therefore urge the authorities to step up the fight against corruption and to ensure that the new institutional framework will now lead to marked and tangible results. In that context, the authorities should consider accelerating the establishment of a special anti-corruption court.