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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)
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Summary

The Monitoring Committee expresses its concerns with regard to the criminal proceedings initiated against a number of former government members. It considers that the charges amount to the post facto criminalisation of normal political decision-making. The committee considers that the assessment of political decisions and their effects is the prerogative of parliaments and, ultimately, of the electorate, and not of the courts. It therefore calls on the Ukrainian authorities to remove the articles of the Criminal Code that allow for the criminalisation of normal political decision making and asks that all charges based on these articles against former government members be dropped.

In addition, the committee considers that the numerous shortcomings noted in the trials against former government members may have undermined the possibility for them to obtain a fair trial within the meaning of Article 6 of the European Convention of Human Rights. In the view of the committee, these shortcomings are the result of systemic deficiencies in the justice system in Ukraine. These deficiencies, which are not new and have been long-standing concerns of the Parliamentary Assembly, are covered by the accession commitments of Ukraine to the Council of Europe. The committee therefore urges the authorities to promptly address these issues in line with Assembly recommendations.

With regard to the upcoming elections, the committee regrets that the new electoral code for parliamentary elections does not take into account the main recommendations of the Assembly and the Venice Commission. It urges the authorities to implement a number of key recommendations before the next elections take place. In this respect, the committee considers that the upcoming parliamentary elections will be a litmus test for Ukraine's commitment to democratic principles.

With regard to the reform programme of the Ukrainian authorities, the committee is concerned that, despite the initial positive results, the drive and political will to implement these reforms are diminishing. It therefore urges the authorities to implement promptly the reforms needed to honour the country's accession commitments and to build a robust democracy in the country.

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

A. Draft resolution[2]

1. The Parliamentary Assembly expresses its concern with regard to the criminal proceedings initiated under Articles 364 (abuse of office) and 365 (exceeding official powers) of the Criminal Code of Ukraine against a number of former government members, including the former Minister of the Interior, Mr Juriy Lutsenko, the former Acting Minister of Defence, Mr Valeriy Ivashchenko, and the former first Deputy Minister of Justice, Mr Yevhen Korniychuk, as well as the former Prime Minister, Ms Yulia Tymoshenko.

2. The Assembly considers that Articles 364 and 365 of the Ukrainian Criminal Code are overly broad in application and effectively allow for post facto criminalisation of normal political decision-making. This runs counter to the principle of the rule of law and is unacceptable. The Assembly therefore urges the authorities to promptly remove these two articles from the Criminal Code and for the charges against former government officials which are based on these provisions to be dropped. The Assembly wishes to emphasise that the assessment of political decisions and their effects is the prerogative of parliaments and, ultimately, of the electorate, and not of the courts. It considers that strict international standards delimitating political and criminal responsibility need to be developed.

3. The Assembly regrets the numerous shortcomings noted in the trials against former government members and considers that they may have undermined the possibility for the defendants to obtain a fair trial within the meaning of Article 6 of the European Convention of Human Rights (ETS No. 5).

4. In the view of the Assembly, these shortcomings are the result of systemic deficiencies in the justice system in Ukraine. These deficiencies are not new and have been long-standing concerns of the Assembly, relating, *inter alia*, to the lack of independence of the judiciary, the excessive recourse to, and length of, detention on remand, the lack of equality of arms between the prosecution and defence, as well as the inadequate legal reasoning by the prosecution and courts in official documents and decisions.

5. With regard to the independence of the judiciary, the Assembly:

5.1. reaffirms its deep concern about the lack of independence of the judiciary and considers that this is the principal challenge for the justice system in Ukraine;

5.2. considers that the current judicial appointment procedure undermines the independence of the judiciary. It invites the authorities to abolish, or at least considerably shorten, the five-year probationary period for judges and to remove the Verkhovna Rada from the appointment process;

5.3. considers that judges in their probation period should not preside over politically sensitive or complex cases;

5.4. considers that the composition of the High Council of Justice runs counter to the principle of separation of powers and also undermines the independence of the judiciary. The Assembly therefore asks for amendments to be adopted to the relevant laws that effectively remove the representatives of the Verkhovna Rada, the President of Ukraine and the Prokuratura from the membership of the High Council of Justice. Pending the adoption of these amendments, these three institutions should appoint non-political members to the High Council of Justice;

5.5. invites the Verkhovna Rada to promptly adopt the necessary constitutional amendments that would remove the provisions which impede the implementation of the recommendations of the Assembly mentioned in paragraphs 5.2. and 5.4;

5.6. expresses its concern about the many credible reports that disciplinary actions have been initiated, and judges removed from office by the High Council of Justice on the basis of complaints from the Prosecutor's office because the judges in question had decided against the prosecution in a given court case. Such practices are incompatible with the principle of the rule of law and should be stopped at once.

6. With regard to detention on remand, the Assembly:

6.1. expresses its concern regarding the excessive recourse to detention on remand, often without justification or valid reasons, in the Ukrainian justice system;

[2] Draft resolution adopted unanimously by the committee on 15 December 2011.

6.2. notes in this regard that unlawful and excessive detention on remand is one of the major issues in judgments handed down against Ukraine by the European Court of Human Rights;

6.3. reaffirms that, in line with the principle of presumption of innocence, detention on remand should only be used as a measure of last resort when there is a clear risk of absconding or subversion of justice;

6.4. calls on the authorities to ensure that the Criminal Procedure Code provides a clear procedure for the review of the lawfulness and duration of detention on remand. In addition, guidelines should be given that ensure that detention on remand is only applied as a measure of last resort and only on the basis of a well-grounded decision by a court.

7. With regard to equality of arms between the prosecution and defence, the Assembly:

7.1. notes with concern the bias in favour of the prosecution which is endemic in the Ukrainian justice system;

7.2. calls on the authorities to ensure that, in the Criminal Procedure Code, equality of arms between prosecution and defence is guaranteed both in law and in practice;

7.3. invites the authorities to ensure in particular that the Criminal Procedure Code explicitly provides for the defence to be provided with a copy of the case file of the prosecution and given a reasonable time, under the control of a judge, to familiarise itself with it.

8. The Assembly notes with concern reports that the health of the former Minister of the Interior, Mr Jurij Lutsenko, and of the former acting Minister of Defence, Mr Valeriy Ivashchenko, who are in detention on remand, is rapidly deteriorating and that both of them need medical treatment outside the prison system. The Assembly asks that both men be released at once for humanitarian reasons pending the outcome of their trial, also in view of its concerns regarding recourse to detention on remand in Ukraine.

9. The Assembly welcomes the fact that a number of important reforms were implemented, *inter alia*, in the area of the integration of the Ukrainian economy into the European economic space. This underscores the importance given by the authorities to the closer European integration of the country.

10. The Assembly reaffirms its position that it will not be possible to implement the reforms necessary for Ukraine to meet its commitments to the Council of Europe without first reforming the current Constitution. It therefore calls on the President and the Verkhovna Rada to promptly initiate a comprehensive constitutional reform process and not to delay this until after the next parliamentary elections have taken place. The Assembly welcomes the positive opinion given by the European Commission for Democracy through Law (Venice Commission) to the proposal for a constitutional assembly, which the Assembly expects to be at the basis of the constitutional reform process. In addition, the Assembly urges the authorities to make full use of the recommendations given in the Venice Commission's opinions on previous drafts for constitutional reform.

11. The Assembly welcomes the systematic requests by the authorities for the opinion of the Venice Commission on draft laws which they prepare. However, it notes that, on several occasions, the draft laws on which opinions have been asked are subsequently withdrawn and that the recommendations of the Venice Commission are not taken into account in the laws ultimately adopted by the Verkhovna Rada. The Assembly therefore urges the authorities to take fully into consideration the opinions of the Venice Commission when preparing new laws, including on previous drafts on the same subject matter. In this context, the Assembly expects the positive opinions given on the draft laws – prepared by the Presidential Commission for the Strengthening of Democracy – on the bar, on freedom of assembly and on the constitutional assembly to be taken into consideration in the draft laws that are sent to the Verkhovna Rada for adoption.

12. The Assembly takes note of the adoption, on 17 November 2011, of the Law of Ukraine on the Election of Peoples Deputies. While welcoming that a number of its previous concerns were addressed, the Assembly regrets that its main recommendations, namely the adoption of a Unified Electoral Code, and the adoption of a regional proportional election system, were not implemented. With regard to the new electoral legislation, the Assembly:

12.1. emphasises that the adoption of this parliamentary elections law should not be used as a pretext for not adopting a Unified Electoral Code, which is still needed to ensure a coherent legal framework for all elections in Ukraine which is fully in line with European standards;

12.2. is concerned that the raising of the threshold for the proportional elections to 5%, combined with the prohibition on parties to form electoral blocs to run in the elections, will negatively affect the opportunities for new or smaller parties to enter parliament. The Assembly is concerned that these provisions may reduce pluralism and further increase polarisation in the new parliament. It recommends that the threshold be lowered and the prohibition on electoral blocs be removed from the electoral legislation before the next parliamentary elections;

12.3. regrets the continued inclusion in this law of provisions that limit the right to stand for election for anyone convicted of a crime, regardless of the severity of the crime committed, and requests that constitutional amendments be adopted promptly that would allow these provisions to be removed from the electoral legislation;

12.4. calls on the authorities to fully implement the recommendations of the Council of Europe Group of States against Corruption (GRECO) with regard to political party financing.

13. The Assembly considers that the upcoming parliamentary elections will be a litmus test for Ukraine's commitment to democratic principles. The Assembly is of the view that international observation of these elections will substantially contribute to their democratic conduct. It considers that the Assembly should contribute to the international election observation with a large delegation.

14. The Assembly notes that several important accession commitments have still not been fulfilled, despite the fact that Ukraine acceded to the Council of Europe in 1995, nearly 17 years ago. The successive governments, as well as the Verkhovna Rada and its political factions, share responsibility for this failure. In Resolution 1755 (2010), the Assembly welcomed the ambitious reform programme of the authorities to honour the remaining accession commitments. Despite the initial positive results in several areas, the Assembly is concerned about signals that the drive and political will to implement these reforms are diminishing. The Assembly therefore urges the authorities, as well as all political forces in the country, to implement promptly the reforms needed to honour Ukraine's accession commitments and to build a robust democracy in the country.

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

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1. Introduction

1. The Parliamentary Assembly last debated the functioning of democratic Institutions in Ukraine in the wake of the presidential election of January 2010 – and the subsequent change of power – when it adopted, on 20 October 2010, Resolution 1755 (2010). Since then, we have been visiting the country regularly to keep abreast of political developments in Ukraine, with the initial intention of producing a full report on the honouring of commitments and obligations by Ukraine early in 2011.

2. However, since the adoption of Resolution 1755 (2010), there have been ongoing reports and allegations that personal freedoms and democratic rights are increasingly being flouted in the country. Regrettably, this seems to be a continuation of a trend we already commented upon in our last report when we expressed our concerns about reports and allegations that democratic freedoms and rights had come under pressure in Ukraine.

3. The allegations of a diminishing respect for personal rights and democratic freedoms in Ukraine have been compounded by the trials against a number of former government officials, including former Prime Minister Yulia Timoshenko. These trials have been branded as politically motivated and as revanchist prosecution by opposition supporters and raise a number of questions about selective justice and the criminalisation of political decisions.

4. The trials against former government members were observed by several national and international observers. Their findings clearly showed that these trials were marred by numerous serious shortcomings resulting from deficiencies in the criminal justice system. The problems with the judiciary and with the justice system in Ukraine have been highlighted in several monitoring reports of the Assembly and resolving these deficiencies is part of Ukraine's accession commitments to the Council of Europe. However, to date, none of the country's successive governments have made any serious progress in addressing these shortcomings.

5. On 4 October 2011, the Monitoring Committee discussed the situation in Ukraine in relation to the trials against former government members. At this meeting, the committee expressed its concerns about the apparent deficiencies in Ukraine's legal system and the resulting questions about respect for the rule of law in the country. In addition, the committee expressed it disquiet about the negative impact these trials – and their outcome – were having on Ukraine's relations with the rest of Europe and in particular the European Union. The committee therefore decided to ask the Bureau of the Assembly to put an item on the functioning of democratic institutions in Ukraine on the agenda for the Assembly's January 2012 part-session.

6. In this report, we will outline the trials against former government members, as well as the shortcomings – some of them systemic – that these trials have brought to light. In addition, given the impact that these trials could have on the upcoming parliamentary elections,[3] we will touch upon the ongoing electoral reform in the country.

[3] The next parliamentary elections are scheduled for October 2012.

2. The prosecution of former government members

7. Following the change of power in Ukraine after the Presidential election in 2010, criminal investigations were initiated against a number of members and officials in the previous government. The most prominent cases are those against the former Minister of the Interior, Mr Jurij Lutsenko, the former Acting Minister of Defence, Mr Valeriy Ivashchenko, the former first Deputy Minister of Justice, Mr Yevhen Kornychuk, as well as the former Prime Minister, Ms Yulia Timoshenko.

8. A criminal investigation was started against Mr Lutsenko on 2 November 2010. On 13 December 2010, he was charged under Articles 191 (misappropriation of state property) and 365 (exceeding/misuse of official powers) of the Criminal Code of Ukraine. The grounds given for the charges were that Mr Lutsenko had illegally promoted his driver to the rank of police officer, allowed expenses for the annual Militia Day festivities in violation of a government decision and exceeded his powers as minister when ordering the police monitoring of a security service driver suspected of complicity in the alleged poisoning of former President Yushenko.[4] On 26 December 2010, Mr Lutsenko was arrested for failing to co-operate with the prosecution. He has been in detention on remand ever since.

9. Investigations started against Mr Ivashchenko on 20 August 2010 and he was charged, on 27 August 2010, under Articles 364 (abuse of office) and 365 (exceeding/misuse of official powers) of the Criminal Code of Ukraine for having signed a document authorising the reorganisation of a shipyard that allegedly allowed for the unlawful sale of state property. He was arrested on 21 August 2010 and has been in detention on remand since that date.

10. Mr Kornychuk is the son-in-law of Supreme Court President, Mr Vasyl Onopenko, who is considered to be a close ally of Ms Timoshenko. He was First Deputy Minister of Justice from 2007 to 2010. Mr Kornychuk was charged under Article 365 (exceeding/misuse of official powers) of the Criminal Code for having given a legal opinion, as deputy Justice Minister, that allowed the Ministry of Economy to give a contract, without tender, to a law firm in which he had been a partner. In addition, he was charged under Article 366 (forgery by a state official) for not properly filing this legal opinion. He was arrested on 22 December 2010 and remained in detention until 14 February 2011, when he was released following a meeting between President Yanukovich and his father-in-law. His trial is ongoing.

11. Ms Timoshenko was initially charged under Articles 364 (abuse of office) and 365 (exceeding/misuse of official powers) of the Criminal Code of Ukraine for having ordered the conversion of the proceeds of the greenhouse gas quota to the general state budget, for having caused the delay of custom payments for 1 000 ambulances that were ordered by her administration and for having illegally signed the agreement between Naftogas and Gazprom on the sale of Russian gas to Ukraine which ended the energy crisis between these two countries in 2009. The recent court proceeding against Ms Timoshenko dealt with the charges relating to the gas deal. Ms Timoshenko was arrested and put in pre-trial detention for contempt of court on 5 August 2010.

12. On 11 October 2011, the Court sentenced Ms Timoshenko to seven years of prison and banned her from holding official office for three years, for the gas deal. In addition, she was ordered to pay 150 million euros to cover the presumed losses of the Ukrainian state as a result of this deal. Her conviction was widely condemned by European leaders as being politically motivated.

13. Ms Timoshenko has appealed against her conviction and her case will now be heard by the Kyiv Appeal Court. During her appeal, she will remain in detention.

14. Following the concerns expressed by several European leaders with regard to Ms Timoshenko's conviction, President Yanukovich initially indicated that he understood the criticism and called the case against Ms Timoshenko regrettable. President Yanukovich added that he was sure that the verdict would be appealed and that "what decision it [the appellate court] will take and under which legislation has great importance". This was seen by many as an indication that the authorities were willing to amend the Criminal Code with a view to removing or otherwise decriminalising Articles 364 and 365. Amendments to the Criminal Code to this effect were tabled and reportedly endorsed in the Legal Affairs Committee of the Verkhovna Rada, but their adoption in second reading was postponed to a later date. They were subsequently rejected in second reading on 15 November 2011.

[4] First preliminary report of the legal monitoring of the trials against a number of former government officials by the Danish Helsinki Committee.

15. To the surprise of many, especially in the light of the indications that the authorities were willing to decriminalise Articles 364 and 365, new charges were brought against Ms Timoshenko for alleged embezzlement. These charges relate to the period when Ms Timoshenko was the president and co-owner of the company United Energy Systems of Ukraine (UESU), which was a major player in the gas trade between Russia and Ukraine, as well as in the transit of Russian gas via Ukraine to the rest of Europe. According to the charges that were brought against her under Articles 19, paragraph 2 (misappropriation, embezzlement or transfer of property by abuse of official position) and 15, paragraph 2 (criminal attempt), Ms Timoshenko, in criminal conspiracy with then Deputy Prime Minister Pavlo Lazarenko,[5] allegedly arranged for an official state guarantee for the payment, in supplies and services, to Russia of the gas delivered, while in reality transferring the money to cover the cost of these supplies and services to the bank account of Mr Lazarenko.

16. On 14 November 2011, new charges were brought against her relating to her role as president of UESU, this time for tax evasion, theft and concealing foreign currency revenues. In addition, investigations were re-opened in a series of cases that were formally closed in 2005. Reportedly, she is also investigated for possible complicity in the murder of businessman and MP Mr Yevhen Shcherban. A number of questions have been raised with regard to these new charges, which we will return to below.

17. We would like from the outset to emphasise that the trials should not be seen from the perspective of opposition versus ruling majority but from that of the rule of law and the guarantee of a fair trial for all persons in Ukraine. We are not in a position to judge the merits of the case or the question of guilt or otherwise. No-one, including, or especially, leading politicians should be beyond the law for common crimes. However, the trials against these former government members raise important questions with regard to the criminalisation of normal political decision-making and, as a consequence, politically motivated charges. In addition, these cases have brought to the forefront a number of systemic shortcomings and deficiencies in Ukraine's legal system that undermine the right to a fair trial and the rule of law in Ukraine.

18. Articles 364 (abuse of office) and 365 (exceeding/misuse of official powers) of the Criminal Code of Ukraine are a remnant from the Soviet Criminal Code, where these articles were introduced under Josef Stalin. Articles 364[6] and 365[7] allow for an overly broad interpretation and considerable discretion by the Prosecutor. In effect, as is apparent from the cases against the former government members, these articles allow for the post facto criminalisation of normal political decisions by government officials that, with hindsight, can be questioned or that were opposed by the then opposition, now government. Criminalising normal political decision-making is a violation of the rule of law and paves the way for politically motivated charges. This is unacceptable in a democratic society. In addition, the assessment of political decisions and their effects is the prerogative of parliaments and, ultimately, of the electorate, and not of the courts. Given the calls in many countries for the prosecution of politicians[8] for their macro-economic decisions that led to the current financial crisis, we would like to recommend that strict international standards delimitating political and criminal responsibility be developed by the Assembly.

19. The court proceedings in the case against Ms Timoshenko, as well as in those against other former government officials, have reportedly been chaotic and marred by procedural errors. They underscore the existing problem of bias towards the prosecution in the legal system in Ukraine. Ukraine has an acquittal rate of less than 1%, which means that a person brought before a court has virtually no chance of being acquitted. In addition, strong functional links exist between the prosecution and the judiciary. Observers of court cases have commented on the fact that judges in general seem to side with the prosecution against

[5] Mr Lazarenko, who was Prime Minister of Ukraine under President Kuchma from 1996 to 1997, was arrested in the United States and convicted, by a US court, to nine years in prison for corruption, money laundering and fraud.

[6] "[abuse of office]: ... wilful use of authority or official position contrary to the official interests by an official for mercenary motives or other personal benefit or benefit of any third persons, where it caused any substantial damage to legally protected rights, freedoms and interests of individual citizens, or state and public interests, or interests of legal entities… The same act that caused any grave consequences shall be punishable by imprisonment for a term of three to six years with the deprivation of the right to occupy certain positions or engage in certain activities for a term up to three years."

[7] "… Excess of authority or official powers, that is a wilful commission of acts, by an official, which patently exceed the rights and powers vested in him/her, where it caused any substantial damage to the legally protected rights and interest of individual citizens, or state and public interests, or interests of legal entities … Any such actions as provided for by paragraph 1 or 2 of this Article, if they caused any grave consequences, – shall be punishable by imprisonment for a term of seven to ten years with the deprivation of the right to occupy certain positions or engage in certain activities for a term up to three years."

[8] In Iceland, criminal charges were brought against a former Prime Minister for failing to take decisions during the collapse of the Icelandic banks. Not surprisingly he denounces these charges as political vendetta.

the defence issues brought before the court. This raises important questions with regard to the independence of the judiciary, as well as the equality of arms between prosecution and defence.

20. The bias in favour of the prosecution was also evident from the use of detention on remand in these cases. In all cases outlined above, the judges agreed with the request of the prosecution for detention on remand, often without providing any legal reasoning for their decisions and in a situation where there was little apparent risk that the defendants would flee or obstruct the course of justice. Allegations that the use of detention on remand, as well as the nearly unlimited powers of the prosecution to summon the defendants, were used to harass these persons and to make their position as political leaders impossible, are credible and of serious concern.

21. A key issue of concern is the fact that, under Ukrainian legislation, a person convicted of a serious crime is prohibited from standing in local and national elections, unless his or her criminal record is erased by a court. In the view of many observers, the current cases are also, if not exclusively, aimed at preventing these persons from participating in the upcoming parliamentary elections that are scheduled to take place in October 2012. The problematic and controversial nature of the charges against these persons, as well as the manner in which the trials took place and the deficiencies noted, lends credence to these accusations. It is clear that Ukraine's democratic credentials and relations with the Assembly would be severely damaged if any of these persons would be prevented from participating in the upcoming elections on the basis of a conviction on alleged politically motivated charges in a trial of questionable fairness.

22. As mentioned, a number of questions have been raised with regard to the nature of the new charges that were filed against Ms Timoshenko by the prosecutors. With regard to the embezzlement case, there is a lack of clarity as to when the crime was actually committed, either in 1996, when the state guarantee for the gas procurements was given, or in 2000, when the contract was discontinued due to the failure of repayment of the debts by UESU. This is relevant in the context of the statute of limitations for embezzlement. The current Criminal Code provides for a 15-year statute of limitations for the embezzlement of which Ms Timoshenko has been charged. This Criminal Code was adopted in 2001. In the previous Criminal Code, which was in force when the state guarantee was given, the statute of limitations was 10 years. As a result, some interlocutors have argued that the crimes for which Ms Timoshenko is now charged are time-barred. This is a complex legal question, which no doubt will become an important legal argument during her trial. This underscores the importance that she should obtain a fair trial that fully respects the principle of equality of arms between prosecution and defence.

23. A number of previously closed investigations have been re-opened by the prosecution. These investigations relate to alleged tax evasion, concealment of revenues, embezzlement of state property and forgery by Ms Timoshenko, as well as by her husband and father-in-law. Most of these cases had been closed by the Prosecutor's office in 2005, when Ms Timoshenko was Prime Minister. The decision to close these cases was subsequently confirmed by the Supreme Court of Ukraine. Ukrainian law, as in other countries, allows for the re-opening of investigations in the event that important new evidence comes to light. Several interlocutors have expressed doubts that the Prosecutor's office had the required new evidence when it re-opened the cases against Ms Timoshenko. For their part, the authorities have argued that the closure of the cases by the Prosecutor General at that time was politically motivated and that therefore these cases were illegally closed.

24. We do not wish to comment or speculate on the merits of the subject matter of the new charges that have been brought against Ms Timoshenko. We emphasise, however, that the questions regarding these charges raise serious legal issues that need to be examined. That, in turn, underscores the need for a fully transparent legal process which respects all the requirements for a fair trial as guaranteed by the European Convention on Human Rights.

25. In addition to the concerns already mentioned about the criminalisation of normal political decision-making, the ongoing trials against former government members have brought to the forefront a series of systemic deficiencies in Ukraine's legal system. These legal deficiencies have been longstanding points of concern for the Assembly which, in its many resolutions on Ukraine, has exhorted successive governments of the country to address them and to bring the justice system into line with European standards. We can only regret that none of the successive governments of the country, as well as successive convocations of the Verkhovna Rada, have shown the commensurate political will, or made the necessary efforts, to satisfactorily address these deficiencies in the country's legal system.

3. Legal issues

3.1. Lack of independence of the judiciary

26. The independence of the judiciary in Ukraine continues to be a principal concern. The judiciary is widely seen as being dependent on, and – to an extent – serving, political interests. This is compounded by the fact that the justice system is grossly underfunded in Ukraine, which strengthens the dependency of the judiciary on public and private interests and creates a potential fertile ground for corruption.[9] In Resolution 1755 (2010), we therefore called upon the current authorities to ensure that the justice system is sufficiently funded from the state budget.[10]

27. A systemic problem undermining the independence of the judiciary is the manner in which the judges are appointed. As outlined in our last report to the Assembly, judges are appointed by the President, on a recommendation of the High Council of Justice, based on a proposal by the High Qualifications Commission for Justice, for an initial period of five years. After this five-year probation period, judges can be elected by the Verkhovna Rada, on proposal of the High Qualifications Commission, to a lifetime position.

28. The five-year probation period is of concern as it opens up the possibility for undue influence on the decision-making of judges in their probation period. This is compounded by the fact that the decision to grant a lifetime position is made by the Verkhovna Rada in plenary sitting. As stated by the European Commission for Democracy through Law (Venice Commission): "The Parliament [Verkhovna Rada] is undoubtedly more engrossed in political games and the appointments of judges could result in political bargaining in parliament in which every member of Parliament coming from one district or another will want to have his or her own judge."[11] Unfortunately, both the role of the Verkhovna Rada in the appointment of judges, as well as the five-year probation period, are provided for in the Constitution. The Assembly, in Resolution 1755 (2010), already reiterated its position that, without changing the constitution itself, it is impossible to reform the judiciary and justice system in Ukraine in line with European standards and norms.

29. Given the vulnerability of judges on probation period, the appointment of these judges to preside over politically sensitive cases is questionable.[12] The fact that the majority of the judges in the above-mentioned cases, including in the case against Ms Timoshenko, are still in their five-year probationary period, has given rise to questions about the independence of these courts and proceedings from the political interests of the ruling majority.

30. It is not only the excessive length of the probation period and the role of the Verkhovna Rada in the appointment process that undermines the independence of the Judiciary, but also the role and composition of the High Council of Justice and High Qualifications Commission.

31. The Minister of Justice, contrary to the principle of separation of powers, is represented on the High Qualifications Commission which has, *inter alia*, considerable influence on the appointment of, as well as on disciplinary procedures against, judges. In addition, the procedure for the appointment of judges to permanent judicial positions prescribes that the High Qualifications Commission *de facto* submits the candidate judge's performance to public scrutiny. It is clear that this affects the independence of judges during the probation period and risks politicising the appointment process.

32. According to Article 5 of the Law of Ukraine on the High Council of Justice, the High Council of Justice is composed of 20 members as follows: "The Verkhovna Rada of Ukraine, the President of Ukraine, the Congress of Judges of Ukraine, the Congress of Advocates of Ukraine, the Congress of Representatives of Higher Legal Educational Establishments and Scientific Institutions shall each appoint three members, and the All-Ukrainian Conference of Employees of the Public Prosecutors' Office shall appoint two members of the High Council of Justice. The Chairman of the Supreme Court of Ukraine, the Minister of Justice of Ukraine, and the Procurator-General of Ukraine are ex officio members of the High

[9] Ukraine was placed 134th on Transparency International's (TI) Global Corruption Barometer and received a score of 2.4 on the Corruption Perception Index (with 10 being the best possible score). In the public perception of corrupt institutions, the judiciary scores the highest of all institutions with a score of 4.4 on a scale of 1 (not corrupt) to 5 (extremely corrupt)

[10] Resolution 1755 (2010), paragraph 7.3.8.

[11] CDL-AD(2010)026, paragraph 62.

[12] This was also mentioned by the Venice Commission in CDL(2011)033, paragraph 49, which states that "During the first temporary appointment, judges have less room for independence from the political power, both executive and legislative. It should be ensured that judges in these temporary positions cannot be appointed to deal with major cases with strong political implications".

Council of Justice". This composition clearly violates the principle of separation of powers as well as the European norm that, on bodies of judicial self-administration, judges elected by their peers should have a dominant position, if not the majority of the votes.

33. The inclusion of representatives of the prosecution, including the Prosecutor General,[13] on the High Council of Justice not only defies the principle of separation of powers, but also highlights the close functional relationship between the judiciary and prosecution. It explains to a large extent the bias towards the prosecution in court proceedings, as already mentioned. In this context, we are extremely concerned about the many substantiated reports, including from the Association of Ukrainian Judges, that disciplinary actions were initiated, and judges removed from office by the High Council of Justice on the basis of complaints of the Prosecutor's office due to the fact that the judge in question had decided against the prosecution in a court case. This is unacceptable in a state under the rule of law.

3.2. Excessive use and length of detention on remand

34. Pre-trial detention, according to European norms, should only be used as a measure of last resort, when there exists a risk of subversion of justice. The current Criminal Procedure Code in Ukraine confers considerable discretion on the Prosecutor to request detention on remand, and does not require that he justifies that request. As mentioned, courts commonly follow the request of the prosecutors, without judging the merits of the request, including with regard to detention on remand.

35. The issue of unlawful and excessive length of detention on remand is one of the major issues in judgments of the European Court of Human Rights against Ukraine, with more than 50 judgments on this issue having been delivered against Ukraine since 2005. The Court has noted the fact that the judicial authorities are under no legal obligation to state the grounds when authorising the detention on remand or to set a time limit for such detention. In addition, a clear procedure for the review of the lawfulness or length of detention on remand is lacking in Ukrainian law and judicial decisions authorising detention at the trial stage of judicial proceedings cannot be appealed.

36. The concerns regarding the excessive use and length of detention on remand have already been underscored in previous reports and resolutions. In addition, the trials against former government members also demonstrate the potential for abuse of detention on remand. The recourse to lengthy detention on remand of public figures, when there is no risk of flight or subversion of the investigations, cannot be legally justified. Credible allegations have been made that these persons were detained pending the investigations and trial in order to render their functioning as politicians and party leaders impossible.

37. Recourse to detention on remand without sufficient legal justification also raises issues of a humanitarian nature. Reportedly, both Mr Lutsenko and Mr Ivashchenko have severe health conditions and are in need of urgent medical attention that cannot be provided, at the level of quality required, by the prison health services. In the absence of proper medical care, their health is reportedly rapidly deteriorating with a realistic prospect that they may not survive their ordeal. Given the lack of legal justification for their detention on remand, in combination with the very low risk that they could abscond, these persons should be released on humanitarian grounds without any further delay. In addition, Ms Timoshenko has also developed severe health problems in prison, after a fall in which she hurt her back. According to the Ukrainian Ombudsperson, Ms Nina Karpacheva, who visited her in prison, Ms Timoshenko would need medical examinations and treatment outside the prison system. She strongly condemned the fact that, as a result of her medical condition, the investigators had started to interrogate Ms Timoshenko in her prison cell in relation to the new charges brought against her. In response, President Yanukovich announced, on 22 November 2011, that Ms Timoshenko would be allowed to undergo treatment outside the prison. Following a medical examination in a Hospital in Kyiv, she was transferred, on 29 November 2011, to the prison hospital ward to receive the treatment that was recommended. On 30 November, Ms Timoshenko was visited by a delegation of the European Committee for the Prevention of Torture and Inhuman or Degrading Treatment or Punishment (CPT).

3.3. Lack of equality of arms between prosecution and defence

38. Equality of arms between prosecution and defence is essential for a fair trial and respect for the rule of law. Regrettably, the trials against the former government leaders clearly demonstrated that such equality is not guaranteed by the legal system in Ukraine.

[13] In Resolution 1755 (2010), the Assembly repeated its criticism of the extraordinary powers conferred to the Prosecutor General as a result of the "General Oversight" function of the Prosecutor General. We do not wish repeat that discussion in this report, but reaffirm our concerns in that respect.

39. Bias towards the prosecution is not only prevalent in the judiciary, but is also engrained in the justice system itself. The defence is not given a copy of the case file and can only access it at the Prosecutor's office on days and hours prescribed by the Prosecutor. The Prosecutor is free to set the days and times as he sees fit and at short notice. Defendants and their lawyers are obliged to come on the days and at the times set by the Prosecutor, which means that the latter can *de facto* summon the defendants and their lawyers without restriction. It is not allowed to make copies of documents in the case file. This procedure also allows the Prosecutor to interfere directly in the quality of the defence by ordering an unrealistically short time for the defence to familiarise themselves with the case file. In the case against Mr Lutsenko, the Prosecutor General ordered his arrest after 13 days on the grounds that Mr Lutsenko was not familiarising himself quickly enough with the more than 6 000 pages of his case file.

40. The manner in which the Prosecutor presents a case file to the defence and his prerogative to decide on the timetable for the defence to familiarise themselves with its contents, clearly undermine the principle of equality of arms and, as a result, of a fair trial. In addition, the fact that the Prosecutor can summon the defendants and their lawyers at will, often at short notice and without any recourse for the defendants, opens up the possibility of abuse and harassment by the prosecution. In our meetings with defence lawyers, we received several reports that indicate that such harassment was indeed taking place also with a view to hindering the defendants in executing their tasks as politicians and party officials. The above-mentioned arrest of Mr Lutsenko seems to be a point in case in this respect.

3.4. Inadequate legal reasoning and justification in indictments

41. In previous reports, we already expressed our concerns about the insufficient or inadequate legal reasoning in indictments and other trial documents. Interlocutors have indicated that indictments often lack clear descriptions of the criminal acts that the defendants are alleged to have committed, as well as the articles of the law they are supposed to have violated by that act.[14] Without such clarity in the indictment, proper defence is difficult, if not impossible, and the fairness of the court proceedings is affected. This was also the case in the indictments issued against the four former government members mentioned in this report.

4. Constitutional reform

42. It should be emphasised that the above-mentioned deficiencies and shortcomings in the justice system have been long-standing concerns. Successive governments in Ukraine have repeatedly acknowledged the deficiencies in the justice system and expressed their intention to address them. However, to date, this has been to no avail. The developments in relation to the recent trials underscore the need for the authorities to urgently reform the justice system in line with European norms and standards, in accordance with the accession commitments undertaken nearly 17 years ago.

43. The current authorities, for their part, have indicated that a number of the shortcomings mentioned in this report will be resolved by the new Criminal Procedure Code which they hope parliament will adopt in early 2012. A draft Criminal Procedure Code has been prepared by the Presidential Administration and sent to the Council of Europe for opinion and advice. The opinion is expected to be published early 2012. We intend to discuss its findings in a future report.

44. As we argued in our previous report, it will not be possible to reform Ukraine's judiciary and justice system in conformity with European norms and standards without substantially amending the Constitution. Our arguments remain valid, also after the Constitutional Court declared the 2004 Constitutional amendments null and void on 1 October 2010. For example, the role of the Verkhovna Rada in the appointment of judges and the five-year probation period for new judges – both of which are problematic – are enshrined in the Constitution. In addition, constitutional provisions prevent the altering of the composition of the High Council of Justice in such a manner as to avoid its politicisation and dependency on the political interests of the governing majority.

45. In the view of the Assembly, as expressed in Resolution 1755 (2010), the Constitutional Court decision of 1 October 2010 should now be the starting point for a Constitutional reform process. This is more than ever necessary. Profound Constitutional reforms are necessary for the country to be able to meet its accession commitments and obligations to the Council of Europe. President Yanukovich, as well as several ministers of his administration, have expressed their willingness to initiate a comprehensive

[14] See, for example, the second preliminary report on the monitoring of trials against for former government members conducted by the Danish Helsinki Committee (page 23).

reform of the Constitution, and promised that such reform would be implemented in close consultation and co-operation with the Venice Commission.

46. In January 2011, President Yanukovich issued decree 224/2011, in which he asked the Scientific Group on Constitutional Assembly Preparation, led by former President Kravchuk, to prepare an outline for the Constitutional reform process. In addition, he appointed former Deputy Head of the Presidential Administration in charge of Constitutional reforms under President Yushenko, Ms Marina Stavniychuk, to the same position – and with the same responsibilities – in his administration. Ms Stavniychuck is also a member of the Venice Commission, which should facilitate the co-operation with the Presidential administration on the forthcoming reforms.

47. The Ukrainian Commission for the Strengthening of Democracy, set up by President Yanukovich to advise him on the reforms needed to honour the country's commitments to the Council of Europe, drew up a proposal for a Constitutional Assembly upon the request of the President. The proposal for a Constitutional Assembly – which would have a consultative role in the drafting process of the Constitutional amendments – was warmly welcomed in the Venice Commission's opinion[15] requested by the authorities.

48. That said, the efforts of the authorities to reform the Constitutional framework seem to have run out of steam. We were informed that Constitutional reforms will only be initiated after the next parliamentary elections scheduled for October 2012. The authorities ostensibly hope that the ruling coalition will have a constitutional majority after those elections, which would allow them to adopt a Constitution without the need for negotiations with the opposition.

49. Given that the overall reform process is effectively impaired by the current Constitution, we urge the authorities not to wait until after the parliamentary elections before drafting the new Constitution. In addition, we wish to emphasise that Constitutional reform should be based on an as broad a consensus as possible between all political forces in Ukraine and should not be based on a diktat of the ruling majority, even if it were to have a constitutional majority.

5. Electoral reform

50. The upcoming parliamentary elections, scheduled for October 2012, will be crucial for Ukraine's democratic development. While the ruling coalition hopes to strengthen its mandate and to gain the constitutional majority necessary to implement Constitutional reform, the main opposition parties intend to prove that they are still a viable political alternative to the ruling coalition and have recovered from their defeat in the 2010 presidential elections. In addition, a number of new political parties – albeit often with already familiar figureheads – have sprung up in the hope of entering parliament after the elections. These new parties have started party organisation-building all over the country. Their election into parliament could result in a welcome widening of pluralism in Ukraine's currently polarised political environment.

51. One of the main achievements of Ukraine after the Orange Revolution was the fact that it repeatedly conducted elections that were globally in line with European norms and standards for democratic elections. This was confirmed in the 2010 Presidential election which brought President Yanukovich to power. Any regression on this achievement would be an unacceptable development.

52. Unfortunately, during the October 2010 local elections, serious shortcomings were noted which represented a step backwards in comparison to the presidential election and were at odds with the positive trend since 2004. The conduct of the upcoming parliamentary elections will therefore be a litmus test for the current administration's commitment to democratic values and standards.

53. A number of shortcomings noted resulted from last-minute changes to the electoral legislation. There is an indication that the old habit of playing with the rules instead of playing by the rules has not disappeared. This, in turn, underscores the importance that electoral legislation for the upcoming elections should be adopted in time and be based on a consensus between all electoral stakeholders

54. As mentioned in our previous report to the Assembly,[16] in 2009, the Verkhovna Rada established a special working group to draft a new and unified electoral code. This cross-party working group, which was composed of representatives of most political forces as well as experts and representatives of civil society, collaborated closely with the Venice Commission, as well as other international actors, such as the OSCE/ODIHR. Regrettably, the Party of Regions declined to participate in the work of this group. The

[15] CDL-AD(2011)002.
[16] Doc. 12357, paragraphs 31-40.

working group tabled a draft Unified Electoral Code at the end of 2010. However, this draft has not been placed on the agenda of the Verkhovna Rada. Instead, President Yanukovich announced that his administration would prepare a completely new proposal for an electoral code and submit it to the Verkhovna Rada. He subsequently established a special presidential working group for electoral reform, headed by the Minister of Justice and composed of a wide range of representatives and experts, to draft his administration's proposal for a new electoral code.

55. This presidential working group was initially given support by the international community. However, its working methods began to raise serious concerns. Several organisations that participated in this working group complained about the lack of transparency and accountability in the group and were left with the clear impression that the real drafting of the new electoral code – and all relevant decision-making on the matter – was taking place behind closed doors, outside the framework of the working group. In addition, a balance between the different political forces in this group was lacking. This is all the more regrettable as a wide consensus on, and trust in, the new electoral code is essential for the conduct of genuinely democratic parliamentary elections in Ukraine in 2012.

56. The adoption of an adequate legal framework for the conduct of elections in Ukraine has been a long-standing demand of the Assembly. The recommendations of the Assembly for such a code have consistently emphasised two key issues, namely the need to adopt a Unified Election Code that would govern all elections in Ukraine and the need to adopt an election system, based on a wide consensus between all electoral stakeholders, that can provide for democratic elections and that would result in a representative and accountable parliament.

57. The Assembly and the Venice Commission have been consistently recommending the adoption of a Unified Election Code to replace the current legal framework in which each type of election is governed by its own separate law. The provisions of these different laws are often incompatible and in contradiction with each other. Initially, the authorities fully and publicly supported the Assembly's recommendation. However, to our regret, during our visit in April 2011, we were informed by the Minister of Justice that the work of the working group was limited to the drafting of a new electoral code for the parliamentary elections. We would recall that the current code for parliamentary elections has been considered to be the least problematic among the different laws governing elections in Ukraine.

58. Before 1998, all members of the Verkhovna Rada were elected in single-mandate majoritarian constituencies. In 1998, a mixed system was introduced by which half of the members were elected on the basis of a proportional election system with closed party lists in a single national constituency and the other half in single-mandate majoritarian constituencies. None of the elections that were organised in the 1998-2004 period were considered to be fully in line with European standards and a number of shortcomings were noted that were directly related to the election system in use.

59. Following the 2004 constitutional amendments, a fully proportional system based on closed party lists with a 3% threshold in a single national constituency was introduced. This system was used in both the 2006 and the 2007 early elections. Both these elections were considered overall as democratic by international observers. However, the closed party list system has hindered the consolidation of democracy in Ukraine as it, *de facto*, allows for the concentration of political power in the hands of a few individuals and limits intra-party democracy and transparency.

60. In principle, each country has the right to choose the election system that suit its needs and national particularities best, as long as the system is in line with European standards and on condition that it produces democratic results. As the majoritarian, the fully proportional, as well as the mixed system have all failed to produce the desired democratic results, the Assembly has recommended the adoption of a regional proportional system based on open lists and multiple regional constituencies. In the view of the Assembly, such a system would ensure intra-party democracy and voter transparency, as well as strengthen regional representation and increase accountability.

61. The decision of the Constitutional Court to invalidate the 2004 Constitutional amendments has meant that the election system has reverted to the pre-2004 mixed election system. The Minister of Justice informed us, during our visit in April 2011, that the authorities intend to maintain this mixed system for the next parliamentary elections in 2012. In addition, the choice of the election system was not to be part of the mandate of the presidential working group on electoral reform. We regret the fact that the pre-2004 mixed system is to be maintained, despite the fact that the regional proportional system is supported by most international organisations, the Venice Commission, as well as, most importantly, by most political parties in Ukraine.

62. On 23 January 2011, the Minister of Justice of Ukraine asked the Venice Commission for an opinion on the draft Law of Ukraine on the Election of the People's Deputies of Ukraine. In its joint opinion[17] with the OSCE/ODIHR, the Venice Commission regrets that its long-standing recommendation for a Unified Electoral Code has not been implemented, especially as a draft Unified Electoral Code had already been tabled in the Verkhovna Rada and was readily available to the Presidential working group on electoral reform.

63. The Venice Commission emphasised that, as a rule, election legislation should be adopted on the basis of consensus between the main electoral stakeholders in order to ensure trust and confidence in the electoral process and its outcome. The lack of transparency of the drafting process was regretted, as was the fact that numerous decisions on key electoral issues, such as choice of electoral system, the increased 5% threshold for entering parliament, as well as the banning of electoral blocs, were taken unilaterally, without much discussion, by the ruling majority, against the wish of the opposition parties.

64. The opinion welcomed a number of positive changes in the law in line with previous recommendations of the Venice Commission, such as:

– the fact that individual candidatures are now possible in the majoritarian races;

– the fact that voters can no longer be added to the voters' list on election day by the election commissions themselves but only by court order;

– the removal of the provisions that allowed parties to change their representatives on the elections commissions without cause up until election day;

– the streamlined complaint procedures.

At the same time, the opinion noted with regret that a number of shortcomings noted in previous opinions and election observation reports, some of them serious, had not been properly addressed, such as:

– the provisions that limit or abolish the passive voting rights of persons convicted of a crime regardless of the severity of the crime committed. This is especially relevant in the context of the ongoing trials against former government members;

– the lack of criteria and deadlines for the definition of constituency boundaries;

– the prohibition for parties to form electoral blocs;

– the fact that the provisions on the basis of which the Precinct Election Commissions can invalidate the election results are arbitrary and establish a high level of permissible fraud.

65. The draft election code has raised the threshold to enter parliament from 3% to 5%. The combination of the increased threshold with the prohibition for political parties to form party blocs or joint lists seriously limits the possibilities for smaller or new parties to enter parliament. This, in turn, can reduce political pluralism in the new parliament and could potentially exacerbate the polarisation in the Verkhovna Rada. This is a matter of serious concern.

66. It should be noted that the authorities have argued that the provisions that limit, or abolish, the passive voting rights of persons convicted of a crime, cannot be removed from the electoral code without a constitutional amendment.

67. The President has the right to demand that draft laws proposed by him be put on the agenda of the Verkhovna Rada. However, he sent his draft to the Verkhovna Rada with the request to reconcile his draft with other alternatives before it was put on the agenda. This was done to ensure that all alternatives for an electoral code would be heard in the Rada. This initiative is to be welcomed.

68. On 3 September 2011, the Verkhovna Rada decided to set up a committee, consisting of representatives of all parties and factions in the Verkhovna Rada, to reconcile the different draft laws and to come up with a common draft. On 17 November 2010, the Verkhovna Rada adopted the new electoral code for the parliamentary elections, reportedly with the support of the main opposition factions in parliament. To our regret, most of our – as well as the Venice Commission's – points of concern, such as the mixed election system, the increase in the threshold from 3% to 5%, as well as the prohibition of party blocs, were maintained.

[17] CLD-AD(2011)037.

69. The newly adopted electoral code will have an important effect on the pre-electoral environment. Special care should be taken to ensure that its provisions regarding the threshold and prohibition of party blocs will not be to the detriment of smaller or newly emerging political forces. We would recommend that the Assembly observe the upcoming parliamentary elections in Ukraine with a large delegation.

70. On 30 November 2011, the Council of Europe Group of States against Corruption (GRECO) adopted its third report on Ukraine, in which it emphasised, *inter alia*, that determined action was required in the field of campaign financing with a view to reducing dependence of parties and MPs on powerful economic interest groups.

6. Concluding remarks

71. The trials against the former government leaders have strained Ukraine's relations with its European partners and undermined its European aspirations. While the reactions of the European Union and some of its member states are understandable, it is important to keep an eye on the larger strategic picture and to ensure that Ukraine's further integration into the European family is not derailed. Only integration into the European family will ensure the consolidation of democracy and respect for human rights and the rule of law in the long run. This was also the essence of the message of Ms Timoshenko in her recent letter to European leaders, urging them not to cancel the Deep and Comprehensive Free Trade Agreement.

72. At the same time, it is also clear that the abuse of the justice system for political purposes cannot be tolerated from a member of the Council of Europe. While the country has the full right to prosecute anybody for ordinary crimes, it also has the obligation to ensure that each person obtains a fair trial and that the legal processes, including charges and convictions, are free from political influence and considerations. This is especially important when pursuing charges against leading politicians from the opposition.

73. We therefore call on the Ukrainian authorities, without further delay, to decriminalise ordinary political decision-making and to ensure that no-one will be, or remain, convicted for such charges. In addition, the Ukrainian authorities should ensure that all trials, and especially those against leading politicians, are in full compliance with the highest standards for a fair trial and that the principle of presumption of innocence should be respected. Detention on remand, especially when there is no risk of absconding or perversion of justice, is unjustified and unacceptable. Those former government members who are currently in detention on remand should be released immediately pending their trial. Implementing these measures would be a clear signal of the commitment of the current authorities to the norms and values of the Council of Europe. Conversely, failing to do so within a reasonable time frame, would raise serious doubts regarding the commitment of the authorities to the principles of democracy and the rule of law. In such an event, we would recommend that the Assembly consider appropriate sanctions.

74. In our previous report, we outlined the ambitious reform programme that was initiated by the current authorities and which was welcomed by the Assembly. Initially, several important results were achieved, including in the area of a closer integration of the Ukrainian economy into the European economic space. This underscores the importance given by the authorities to the closer European integration of the country. Regrettably, there are some indications that the reform process is running out of steam as only a few substantial developments have taken place with regard to the reform programme announced by the authorities. Implementing those reforms would have addressed, *inter alia*, a number of long-standing deficiencies and shortcomings that are at the origin of the criticism of the ongoing trials of former government members. Amendments promised to address concerns about the Law on the Judiciary and the Status of Judges, especially with regard to the independence of the judiciary, have not yet been put on the agenda of the Verkhovna Rada. We therefore call on the authorities to pursue their reform programme without hesitation or delay and to put constitutional reform as the top priority of this programme.

75. Since 2004, Ukraine has been holding elections that were globally in line with European standards. Unfortunately, the 2010 local elections deviated from that trend. Should the parliamentary elections in 2012 not be conducted in full compliance with European standards, this would be a serious regression in the country's democratic development. That would be unacceptable. The upcoming parliamentary elections are therefore a litmus test for Ukraine's commitment to democratic principles.

76. Ukraine joined the Council of Europe in 1995 with the commitment to reform its democratic institutions in line with Council of Europe standards. The successive governments of the country have, to date, not honoured the accession commitments that were formulated to achieve that goal. All political forces, as well as the Verkhovna Rada as an institution, share responsibility for that. The current authorities, as well as all political forces in the country, should now make serious efforts finally to fulfil the remaining accession commitments and to build a robust democracy in the country.