



**AS/Mon(2012)13 rev**

27 June 2012

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## **Committee on the Honouring of Obligations and Commitments by Member States of the Council of Europe (Monitoring Committee)**

# **Honouring of obligations and commitments by Ukraine**

## **Information note by the co-rapporteurs on the fact-finding visit to Kyiv (26-30 March 2012) and to Kyiv and Kharkiv (14-18 May 2012)<sup>1</sup>**

Co-rapporteurs: Ms Mailis REPS, Estonia, Alliance of Liberals and Democrats for Europe, and Ms Marietta de POURBAIX-LUNDIN, Sweden, Group of the European People's Party

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<sup>1</sup> This information note has been made public by decision of the Monitoring Committee dated 27 June 2012.

## **I. Introduction**

1. Following the adoption of Resolution 1862 (2012) on 26 January 2012, we made two fact-finding visits to Ukraine. The main objective of these visits was to assess the follow up given by the Ukrainian authorities to this resolution and in particular the situation of the imprisoned former government leaders, whose predicament is of particular concern to the Parliamentary Assembly. The statements issued at the end of these visits are attached in Appendix 1.

2. The first visit, to Kyiv, took place from 26 to 30 March 2012. During this visit, we met, inter alia, with the Speaker of the Verkhovna Rada, the Minister of Foreign Affairs, the Minister of Justice, the Prosecutor General and his Deputies, the Ombudswoman of Ukraine, the Presidential Administration, the Head of the Scientific-Expert Group on the preparation of the Constitutional Assembly, and former President of Ukraine, Mr Leonid Kravchuck, the Chairman and members of the Verkhovna Rada Committee on Judicial Policy, the Chairman and members of the Ukrainian delegation to our Parliamentary Assembly, the defence lawyers of imprisoned former government members, representatives of the civil society and members of the international community in Ukraine. In addition, the delegation visited the former Minister of the Interior, Mr Yuriy Lutsenko, in prison. The programme of our visit is attached in Appendix 2.

3. The second visit, to Kyiv and Kharkiv, took place from 14 to 18 May 2012. During this visit, we met, inter alia, with the President of Ukraine, the Deputy Prosecutor General, the Chair and members of the Verkhovna Rada Committees for Legal Policy, Justice and on Legislative Support of Law Enforcement, the Chair and members of the Ukrainian national delegation to our Assembly; the Verkhovna Rada Representative on Human Rights (Ombudsman), the Governor of Kharkiv Oblast and the Mayor of Kharkiv, the Leaders of the Front for Changes Party and the Party of Natalia Korolevska, Ukraine-Forward, the defence lawyers of imprisoned former government members, representatives of the civil society and members of the international community in Ukraine. In addition, we met with former Prime Minister, Yulia Timoshenko, in hospital in Kharkiv, where she is receiving treatment. On that occasion we also had a chance to talk to her German doctor. The programme of our visit is attached in Appendix 3.

4. We would like to thank the Verkhovna Rada and the Head of the Council of Europe Office in Kyiv for the excellent programme. We are grateful to the office of the Prosecutor General for their assistance in obtaining the necessary permissions to visit Mr Lutsenko and Ms Timoshenko. We would also like to thank the Ambassador of Estonia for the hospitality extended to our delegation.

## **II. Imprisoned former government members**

5. In Resolution 1862 (2012), the Assembly expressed its concern about the criminal proceedings initiated against a number of former government members and the manner in which their trials were, and are, conducted. It considered that the shortcomings noted in the criminal proceedings against these persons raise questions as to the fairness of their trials, within the meaning of Article 6 of the European Convention of Human Rights.

6. In the same resolution, the Assembly also expressed its concern about the reportedly deteriorating health situation of a number of imprisoned former government officials. It therefore called upon the authorities to allow, without preconditions, independent medical examinations of the persons concerned and, where necessary, treatment outside the prison system. In addition, also in view of its concerns regarding recourse to detention on remand in Ukraine, the Assembly asked for Mr Lutsenko and Mr Ivashchenko to be released pending the outcome of their trial.

7. Following the adoption of Resolution 1862 (2012), the defence lawyers of Mr Lutsenko and Mr Ivashchenko filed a motion with the court, asking for the immediate release from pre-trial detention of Mr Lutsenko and Mr Ivashchenko on the grounds that this was demanded by the Assembly. This request was refused by the court.

8. On 27 February 2012, Mr Lutsenko was sentenced to four years' imprisonment for exceeding his official powers and for abuse of office. He appealed against this conviction with the Kyiv Appellate Court. On 16 May 2012, this Court upheld the verdict by the Pechersk District Court. His appeal before the Court of Cassation is pending.

9. Ms Timoshenko has appealed before the Court of Cassation. The first hearing of the Court of Cassation was scheduled for 15 May 2012. During this hearing, the prosecution requested that the hearing be adjourned to a later date as Ms Timoshenko could not be present for medical reasons. The defence of Ms Timoshenko indicated that, in line with her rights under the Criminal Procedure Code, she had agreed to

the hearing taking place in her absence. However, the court ruled that the hearing would be adjourned to 26 June. Her defence and the opposition parties alleged that the hearing, in reality, was postponed for political reasons.

10. On 21 January 2011, Mr Lutsenko appealed against his arrest and detention on remand before the European Court of Human Rights (ECtHR). A public hearing in the Court took place on 17 April 2012.

11. On 10 August 2011, Ms Timoshenko lodged an application with the ECtHR on the grounds that her prosecution and arrest had been politically motivated and that the detention conditions and medical care provided were inadequate. On 14 December 2011, the Court decided to fast-track her application. The Court took the decision to give priority to her case in view of the serious and sensitive nature of the allegations raised. It should be noted that fast-tracking her application does not automatically mean that the application will be declared admissible by the Court.

12. On 12 April 2012, the former acting Minister of Defence, Mr Valeriy Ivashchenko, was sentenced to five years in prison for "abuse of power". Mr Ivashchenko has appealed against this sentence. His health is reportedly deteriorating and of serious concern. We have strongly criticised his conviction in the light of the many shortcomings in his trial that bring into question the impartiality and independence of the proceedings, as required by Article 6 of the ECHR.

13. Access to the imprisoned former government leaders was initially problematic. Requests by a number of personalities and institutions to meet these persons were refused by the Pechersk District Court in Kyiv or the prison authorities in Kharkiv<sup>2</sup>. Immediately after the Assembly's January part-session, we requested to meet with Mr Lutsenko during our March visit and with Ms Timoshenko during our May visit. Our request to meet Mr Lutsenko was originally refused by the Pechersk District Court. Therefore, in line with legal provisions, we asked, during our visit in March, for the assistance of the Prosecutor General to facilitate the meetings with Mr Lutsenko and Ms Timoshenko. Following his intervention, the refusal to meet with Mr Lutsenko was reversed and we met him on 29 March 2012. In addition, on 10 May 2012, our request to meet with Ms Timoshenko was granted by the Head of the State Penitentiary Service. We subsequently met Ms Timoshenko on 16 May 2012 in the Central Clinical Hospital of the State Railways in Kharkiv, where she is being treated under the supervision of German doctors. We have also received assurances from the authorities that we will be able to meet Mr Ivashchenko during our next visit. We are grateful for the assistance of the Prosecutor in arranging these meetings. The statement we made after visiting Mr Lutsenko is attached in Appendix 4.

14. During our meetings with Mr Lutsenko and Ms Timoshenko, we discussed their criminal cases and the international reaction to their prosecution, the overall political developments in Ukraine especially with regard to the upcoming parliamentary elections in October 2012, and the Assembly's concerns regarding their health and the medical treatment provided by the authorities.

15. The health situation of the defendants, and especially that of Ms Timoshenko, continues to be a cause for concern and controversy.

16. During our visit with Mr Lutsenko, he informed us that the obligatory medical check-up that was made when he was detained, revealed that he had the beginnings of sclerosis of the liver. However, a second set of tests, ordered by the prison authorities, had not confirmed this diagnosis and he was therefore not given any treatment. As a result of the political attention to the health condition of the detained former government members, and especially to Ms Timoshenko, he was not sure which diagnosis to trust. He was therefore afraid that he was not receiving treatment for a potentially life-threatening condition. We asked the authorities to ensure that Mr Lutsenko would be given access to medical expertise he could trust in order to properly diagnose and, if necessary, treat his illness. During our May visit, we were informed by Mr Lutsenko's wife that he had indeed been given access to doctors that he trusted and that they had diagnosed a form of hepatitis<sup>3</sup> that needed to be treated urgently, as it was affecting his liver. However, up to then, he had not received the proper treatment for his illness. In addition, the continuous use of painkillers was affecting his digestive system. We have urged the authorities to give him, without delay, proper treatment for his illness. The Charité Hospital in Berlin, which is providing medical assistance to Ms Timoshenko, has indicated that it is willing to consider providing similar medical assistance to Mr

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<sup>2</sup> In line with Ukrainian law, request to visit persons detained pending trial or pending appeal can be granted by the court responsible for the case. In other cases, such request are decided on by the head of the penitentiary institution in which the person in question is incarcerated.

<sup>3</sup> According to his wife, the prison doctors knew of this condition after the second set of test, but had not informed Mr Lutsenko of his illness.

Lutsenko, if so requested. The newly elected ombudsperson, Ms Lutkovska, recently visited Mr Lutsenko in prison and has recommended that the authorities urgently undertake all the necessary measures to provide adequate treatment for his illness.

17. In response to the ongoing controversy regarding Ms Timoshenko's health, the authorities allowed Ms Timoshenko to be examined by a team of independent doctors from Canada and Germany. Their findings were not officially made public, which continued to fuel speculations. After several parts of the report were leaked to the press it was finally made public in April.

18. On 15 March 2012, the European Court of Human Rights issued an interim measure in which it asked the Ukrainian authorities to ensure that Ms Timoshenko receives adequate medical treatment in an appropriate institution. In addition, the Court communicated a series of questions regarding the medical treatment and conditions in the prison in Kharkiv. The State Penitentiary Service announced that, in its view, adequate services existed in the Kharkov prison colony. However, the Minister of Justice indicated that no legal obstacles existed to prevent Ms Timoshenko from being treated outside the prison system, if this was necessary for medical reasons.

19. On 4 April 2012, the Ukrainian authorities announced that Ms Timoshenko could receive treatment in the Hospital of the State Railways in Kharkiv. It invited the German team of doctors from the Charité Hospital in Berlin, which had examined Ms Timoshenko in February 2012, to certify the conditions in the hospital and to advise the medical services on her treatment.

20. On 20 April 2012, Ms Timoshenko was transferred to the hospital. According to Ms Timoshenko, this transfer took place against her will and she alleges that she was maltreated by prison guards during her transfer. Pictures of the bruises she claimed to have received as a result her maltreatment were widely circulated on the internet. Ms Timoshenko filed a formal complaint with the prosecution about her alleged mistreatment. In addition, as a protest, she started a hunger strike.

21. The authorities, for their part, have announced that Ms Timoshenko had agreed to her transfer to the hospital but after her arrival refused to be treated or returned to prison. She was then forcibly returned to prison. However, the authorities categorically deny that she was mistreated during this transfer. Ms Timoshenko's claims were investigated by the Prosecutor General, who concluded that her forced return to prison had taken place in line with legal norms and standards and that she was not mistreated. On the other hand, the outgoing Ombudsperson visited Ms Timoshenko in prison and said that her bruises indicated that she had been mistreated.

22. The issue of her forced transfer and alleged mistreatment is highly controversial and politicised. Statements by experts and officials that are quoted to support the claim of either the authorities or of Ms Timoshenko's are in contradiction and often subject to counter claims. As a result, we are not in a position to make a judgment on the veracity of the claims of either the government or Ms Timoshenko.

23. Following an offer of the Charité Hospital in Berlin to supervise her treatment, Ms Timoshenko was transferred, on 9 May 2012, to the Hospital of the State Railways in Kharkiv. On that same day Ms Timoshenko also ended her hunger strike.

24. On 16 May 2012, we met with Ms Timoshenko in the Hospital of the State Railways in Kharkiv. In addition, we had a chance, in full agreement with Ms Timoshenko, to talk with the German doctor supervising her treatment.

25. When we met Ms Timoshenko, she was recuperating from her hunger strike. The treatment plans for her back problem had been finalised by her German doctors and the actual treatment would be starting during the week of our visit.

26. Ms Timoshenko's room in the hospital is under 24 hour video surveillance. Ms Timoshenko alleged that the treatment rooms are also under constant video surveillance. However, this could not be confirmed by our own inspection of the treatment rooms, or by the German doctors that are treating her. According to the Prosecutors Office, the video surveillance is limited to her room and takes place in line with European standards<sup>4</sup>.

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<sup>4</sup> According to the Prosecutors Office the images are not recorded and the monitors are staffed by female police officers.

27. Ms Timoshenko is understandably preoccupied with the possibility that her medical information will be used for political purposes. Leaks of her medical information have strengthened her concerns in this respect. These concerns guide her position towards all aspects of her medical treatment.

28. The German doctor we talked to confirmed that Ms Timoshenko is suffering from a non-life threatening back problem. This condition is made worse by the stress resulting from her prosecution and from her imprisonment. This affliction is causing her severe pain that is affecting her mobility. He confirmed that the medical facilities in the hospital are adequate for the treatment of her condition. He also expressed his trust in the quality of the medical staff in the hospital. However, a key issue is Ms Timoshenko's lack of trust in the independence of the medical staff provided by the authorities. In her view, this lack of independence could potentially allow the authorities to misuse her treatment, and the medical information gained from it, for political purposes. Ms Timoshenko's lack of trust has been reinforced by the online publication by the authorities of the outline and schedule of her treatment.

29. This distrust will complicate her long-term recuperation prospects, especially as part of her condition is psychosomatic. In the view of the German medical team, her long-term recuperation would therefore be better secured in a hospital outside Ukraine.

30. Given the sensitivity of the issue, we have called upon all parties to respect the privacy and confidentiality of medical information and to refrain from leaking such information for political purposes.

31. On 31 May 2012, following a request by the Ukrainian authorities, the European Court of Human Rights decided to lift the interim measures with regard to the medical treatment of Ms Timoshenko, as it considered the demands of the Court to be satisfied. On the same date, the Court refused to grant a new request for interim measures that was submitted by Ms Timoshenko on 25 April 2012, in which she requested the Court to require the authorities to allow her to be treated in Germany.

32. In our meeting with President Yanukovich, we expressed our, and the Assembly's, concerns about the ongoing imprisonment of former government members. Nobody should be above the law and immune from prosecution for criminal actions, including – and perhaps especially – politicians. However, the onus is on the prosecution to prove the guilt of these persons before an independent and impartial court in a fair trial within the meaning of Article 6 of the ECHR. Given the deficiencies in the legal process up to now, we continue to have strong doubts that this was the case for the imprisoned former government members. Unless, and until, their guilt is proven beyond doubt, in a fair trial, their continued imprisonment is unacceptable. In addition, questions remain about the nature of the charges brought against these persons, which seem to amount to the criminalisation of normal political decisions. We therefore urged the President to use the legal means available to him to release these persons and resolve the issue in line with European standards.

33. President Yanukovich appeared to be open to our comments and indicated that he wanted to resolve this issue, not only because it was in the interest of his own government. However, as the integrity of the justice system had been questioned, he insisted that the legal process needed to be finalised before he could intervene politically in the process. He expressed his hope that the Court of Cassation, which will hear Ms Timoshenko's appeal on 26 June 2012, would resolve the issue. The proceedings of the court would be monitored by observers from the European Parliament<sup>5</sup>. Their presence would ensure that the proceedings in the Court of Cassation would be fully in line with Ukrainian legislation as well as European standards. In addition, the Court of Cassation would be guided by the spirit of the new Criminal Procedure Code that had recently been adopted by the Verkhovna Rada<sup>6</sup>. However, President Yanukovich promised us that he would take the necessary political decisions to resolve this situation in line with European standards if it was not satisfactorily resolved by the Court. He invited us to discuss the steps that needed to be taken if his political intervention became necessary after the decision of the Court of Cassation.

### III. Elections

34. During our meeting with Mr Yanukovich, we stressed that, should the opposition leaders still be imprisoned during the elections, even the slightest irregularity could bring the legitimacy of the elections into question.

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<sup>5</sup> On 6 June 2012, former EP President, Pat Cox, and former Polish President, Aleksander Kwasniewski, were appointed to observe the Court of Cassation proceedings.

<sup>6</sup> The new Criminal Procedure Code was drafted in consultation with the Council of Europe. Experts provided by the latter assessed the law before it was signed into force by President Yanukovich. See also § 39 -44.

35. A number of interlocutors have suggested that the upcoming parliamentary elections should not be considered legitimate and democratic in the event that prominent imprisoned opposition members are not allowed to run in these elections. We strongly oppose the idea of *a priori* declaring the elections undemocratic and illegitimate should these individual opposition members be prevented from running. The democratic nature of these elections should be assessed on the basis of their conduct. The possibility, or not, of these persons to run for these elections is one of the factors on which such an assessment should be based, but should not predetermine its conclusion. At the same time, it is clear that the prosecution of former government members, who are prominent opposition leaders, is affecting the pre-election climate and that their non-participation would stain the elections.

#### IV. Criminal Code

36. In Resolution 1862 (2012), the Assembly asked the authorities to amend Articles 364 and 365 of the Criminal Code in order to remedy the over-broad discretion given to the courts and prosecution when interpreting these articles. The over-broad interpretation of these articles has allowed their arbitrary application. These articles have not been amended. A number of proposals for amendments have been made by the opposition, but these were rejected by the ruling majority.

37. The authorities have announced that they intend to draft an entirely new Criminal Code that they expect to send to the Verkhovna Rada for adoption early in 2013. They have informed us that this new Criminal Code will address the concerns expressed with regard to Articles 364 and 365. We have called on the authorities to ensure that such a new Criminal Code is sent to the Council of Europe for opinion, before adoption by the Verkhovna Rada in final reading.

38. At the same time, the authorities have amended the current Criminal Code in order to “humanise the punishments for economic crimes”. These amendments have, in effect, replaced prison sentences for purely economic crimes, with fines. We regret that Articles 364 and 365 were not changed in conjunction with those amendments .

#### V. Criminal Procedure Code

39. A substantial number of systemic deficiencies in the Ukrainian justice system relate to provisions in the current<sup>7</sup> Criminal Procedure Code. Previous drafts of a new Criminal Procedure Code, in 2004, 2007 and 2009, failed to be adopted by the Verkhovna Rada. In 2011, the administration prepared a draft for a entirely new Criminal Procedure Code. This code was drafted in consultation with the Council of Europe, which was also asked to provide an opinion on the draft text. This opinion was finalised in November 2011<sup>8</sup>. In their opinion, the Council of Europe experts noted that the draft law was a considerable improvement on the current Criminal Procedure Code. However, the opinion made a number of recommendations to address the remaining shortcomings, a number of them significant, in the draft law.

40. In total, more than 4,000 amendments to the draft Criminal Procedure Code were tabled in the Verkhovna Rada. These amendments included several that were tabled by the ruling majority in order to address the shortcomings noted in the Council of Europe opinion. A number of interlocutors expressed their fear that the extraordinary large number of amendments were a veiled attempt to derail the adoption of this Code in the Verkhovna Rada. However, the ruling coalition informed us that it intended only to accept amendments that were tabled in line with Council of Europe recommendations. We issued a statement welcoming the adoption of the new Criminal Procedure Code, which is attached in Appendix 5.

41. On 13 April 2012, the Verkhovna Rada adopted the new Criminal Procedure Code of Ukraine. On the same day, President Yanukovich announced that he would only sign the law into force after having received assurances from the Council of Europe that it is fully in line with European standards and norms.

42. In its opinion on the Criminal Procedure Code, as adopted by the Verkhovna Rada, the Council of Europe experts concluded that: “ *the amendments introduced to the draft code [...] considerably improve on a draft that was already highly satisfactory.*” Following this opinion, the President signed the new Criminal Procedure Code into force on 14 May 2012. The latest opinion notes a few areas that could be further improved to ensure that the provisions in the Code are fully in line with European standards and norms. We expect that these recommendations will be implemented in the near future.

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<sup>7</sup> The CPC that is currently in force. The new law, which was adopted on 13 April 2012, will come into force only in January 2013.

<sup>8</sup> DG-I(2011)16.

43. The new Criminal Procedure Code addresses a number of the deficiencies highlighted by the Assembly. In particular, the new Code, *inter alia*, introduces an adversarial system with increased powers for the defence lawyers; establishes control of the courts over the criminal investigations and introduces a number of measures to substantially reduce the use of detention on remand. In addition, as a result of the amendments in second reading, only colleges of judges whose permanent positions have been confirmed can hear cases against senior officials. A special State Anti-Corruption Bureau will be established to investigate, *inter alia*, allegations of corruption among judges and law enforcement officers. Also the powers of the tax authorities and Secret Services in criminal cases have been reduced.

44. The new Criminal Procedure Code will enter into force on 1 January 2013. However, a number of provisions have much longer transitional periods, especially as a considerable number of laws need to be adopted or amended, to fully implement the new Code. We would like to emphasise that this Code will only have the desired effect if it is implemented in its entirety and in good faith. We intend to follow the implementation of the Code in the framework of the ongoing monitoring procedure for Ukraine. In that respect, we welcome that the authorities requested the assistance of the Council of Europe in the implementation phase of this major piece of legislation.

## **VI. Constitutional reform and other legislative initiatives**

45. As noted, *inter alia*, in Resolution 1682 (2012) and Resolution 1755 (2010), many of the deficiencies in Ukraine's justice system can only be addressed through changes to the Constitution. During our visit in March, we met former President Kravchuk, Chairman of the Constitutional Expert Group that was tasked with preparing the Constitutional Assembly. This Constitutional Assembly will be responsible for drafting a new Constitution. On 17 May 2012, President Yanukovich issued a decree establishing the Constitutional Assembly. This Assembly consists of 95 members selected from parliamentary factions, political parties, academics and representatives of civil society. Mr Kravchuk was appointed President of the Constitutional Assembly. Some interlocutors have complained that the composition of the Constitutional Assembly is biased in favour of the ruling coalition. We have not been able to discuss this issue with the authorities or Mr Kravchuk, but stress that the Constitutional Assembly should be truly representative and broad in its composition.

46. The European Commission for Democracy through Law (Venice Commission) has produced a number of opinions on previous drafts for Constitutional amendments. In addition, Assembly resolutions also contain a number of recommendations for constitutional changes. The authorities have informed us that they wish to start from scratch and write a completely new draft for the Constitution. However, we urge the authorities, and in particular the members of the Constitutional Assembly, to fully take into account the above-mentioned opinions and recommendations in the drafting of the new Constitution.

47. A key demand of the Assembly, and one of the remaining unfulfilled accession commitments, is the adoption of a Law on the Bar. On 5 June 2012, the Verkhovna Rada adopted the Law on the "Practice of law and advocacy". This law is reportedly based on the draft prepared by the Presidential Commission on the Strengthening of Democracy, which was positively assessed on by the Venice Commission. We expect that the authorities will also send the law as adopted to the Venice Commission for an assessment.

48. Also on 5 June 2012, the Verkhovna Rada adopted a Law to "Amend several legislative acts of Ukraine (strengthening the guarantees of judges' independence)". These amendments are aimed to address, to a certain extent, the concerns expressed by the Assembly with regard to the appointment and dismissal of judges. While we welcome the willingness of the authorities to address the concerns of the Assembly, we reiterate that these concerns can only be comprehensively addressed by Constitutional amendments.

## **VII. New Ombudsperson**

49. The term of the previous Verkhovna Rada Representative for Human Rights (Ombudsperson), Ms Nina Karpachova, expired in the spring of 2012. The ruling majority decided not to put her forward as a candidate for a new term. Two candidates participated in the election for a new Ombudsperson, Ms Valery Lutkovska – the then government agent at the European Court of Human Rights in Strasbourg – and a well-known Human Rights activist and President of the Kharkiv Human Rights Group, Mr Yevhen Zakharov. On 25 April 2012, Ms Lutkovska was elected as new Ombudsperson for a term of seven years.

50. Opposition members have voiced doubts about the independence of Ms Lutkovska from the authorities, given her previous employment as a government agent at the ECtHR. However, Mr Zakharov, who ran against her in the elections, expressed his confidence in her and praised her qualities as a lawyer

as well as her independence. Similarly, we were impressed with the integrity and independence she displayed in our meeting with her in May 2012. We look forward to working closely with her on a number of human rights issues that are of concern to the Assembly.

### **VIII. Concluding remarks**

51. The coming summer months will be a crucial period with regard to solving the issue of the imprisoned former government members. The Court of Cassation hearing on 26 June 2012 could play an important role in that respect. If this issue is not satisfactorily resolved in cassation, President Yanukovich will have no other option than to intervene politically in order to resolve the issue. In that case, we intend to take up the invitation by President Yanukovich and visit Kyiv on an urgent mission to discuss the possible steps to be taken. The Assembly should maintain its patience over that period. However, it would be unacceptable if the existing status quo with regard to the imprisoned former government members continues during the upcoming elections. The Assembly should return to this issue during its October 2012 part-session should a satisfactory solution not have materialised by then.

## APPENDIX 1

**Ukraine: authorities' plans to address deficiencies in justice system welcome, but should now lead to concrete results**

Strasbourg, 02.04.2012 – Mailis Reps (Estonia, ALDE) and Marietta de Pourbaix-Lundin (Sweden, EPP/CD), monitoring co-rapporteurs for Ukraine of the Parliamentary Assembly of the Council of Europe (PACE), have welcomed plans to address structural deficiencies in the Ukrainian justice system, such as the draft Code of Criminal Procedure, but stressed that these plans now need to be adopted and, most importantly, implemented.

They were speaking at the end of a visit to Kyiv from 26 to 30 March 2012 to discuss the follow-up given by the authorities to Resolution 1862 (2012), which the Assembly adopted in response to its concerns regarding the prosecution of several members of the previous government.

Referring to imprisoned former government officials, the co-rapporteurs stressed that the authorities should not only address the underlying deficiencies, but also the questionable legal processes that are the result of them. "Not doing so would violate the right to a fair trial as spelled out in the European Convention on Human Rights," they said.

The co-rapporteurs also visited former Interior Minister Yuriy Lutsenko in prison. "Until now, our requests for such visits have been refused. The fact that this visit was made possible, with the assistance given by the Prosecutor General, signals, we hope, that the authorities have accepted our calls for a constructive dialogue with a view to finding a satisfactory solution for this issue that is unnecessarily straining relations with our Assembly. This is an important first step," said the co-rapporteurs.

With regard to Mr Lutsenko, the co-rapporteurs asked the authorities to ensure that he receive all the necessary independent, mutually-trusted medical expertise needed to properly diagnose and treat his illness. In addition, they urged the authorities to ensure that his appeal process fully conformed to the principles of a fair trial as spelled out in Article 6 of the European Convention on Human Rights.

The co-rapporteurs will visit Ukraine again in May this year.

**Ukraine: PACE co-rapporteurs welcome access given to Yulia Tymoshenko**

Strasbourg, 19.05.2012 – The co-rapporteurs for the monitoring of Ukraine by the Parliamentary Assembly of the Council of Europe (PACE), Mailis Reps (Estonia, ALDE) and Marietta de Pourbaix-Lundin (Sweden, EPP/CD), have welcomed the recent access given by the authorities to imprisoned opposition leaders.

After meeting with former Prime Minister Yulia Tymoshenko in the Kharkiv hospital where she is being treated, the rapporteurs said they were glad that she is now receiving proper medical treatment under the supervision of doctors she trusts.

At the same time, they expressed their concern at recent leaks of information regarding her health situation and the treatment she will receive: "Medical information is by definition private and confidential. In addition, trust in her treatment, and its privacy, is important for its success. Such leaks undermine this trust and are unacceptable. We call upon all concerned not to leak information or use her medical condition, or that of other imprisoned opposition leaders, for political purposes," said the two co-rapporteurs.

They also expressed their concern at reports that the health situation of former Interior Minister Yuriy Lutsenko is rapidly deteriorating. "We expect that the authorities will ensure he receives the same quality treatment as Ms Tymoshenko," said the co-rapporteurs.

During their stay in Kyiv, the co-rapporteurs had an extensive exchange of views with President Yanukovich. This they took as a clear signal of his willingness to enter into a dialogue on the concerns expressed in the Assembly's resolutions on these issues. "We expect that this will now lead to substantive and concrete results. These are urgently needed, also in the light of the forthcoming elections in the country. We will continue to follow these developments actively and closely," the co-rapporteurs concluded.

APPENDIX 2

**Programme of the fact-finding visit to Kyiv (26-30 March 2012)**

Ms Mailis REPS, member of Parliament

Ms Marietta de POURBAIX-LUNDIN, member of Parliament

Mr Bastiaan KLEIN, Secretary of the Monitoring Committee of the Parliamentary Assembly

**Monday 26 March 2012**

Evening Briefing by Ambassador Vladimir RISTOVSKI, Head of the Council of Europe office in Kyiv(\*)

**Tuesday 27 March 2012**

09:30 NGO meeting\* (Mr A. BUSHCHENKO, Helsinki Human Rights Union; Mr Y. ZAKHAROV, Kharkiv Human Rights Group; Mr R. ROMANOV, Renaissance Foundation; Mr O. MARTYNENKO / AUMHRPLE, Ms A. MUKSHYMENKO, Public Advocates; Mr D. GROYSMAN, Vinnytsia Human Rights Group; Mr O. BUKALOV, Donetsk Memorial)

11:30 Meeting with lawyers of government members charged with criminal offences\* (Mr S. VLASENKO, Mr B. NECHYPORENKO, Mr I. FOMIN)

14:30 Meeting with the Parliamentary delegation to the PACE

19:00 Dinner with representatives of the diplomatic community hosted by the Estonian Ambassador\* (Sweden, Finland, Spain, USA, Denmark, Poland, France)

**Wednesday 28 March 2012**

09:00-09:45 Meeting with Mr Volodymyr LYTVYN, Head of the Verkhovna Rada

09:50-10:30 Meeting with the President of Ukraine in 1991-1994, Mr Leonid KRAVCHUK, Head of the Scientific-Expert Group on the preparation of the Constitutional Assembly

10:35-11:15 Meeting with members of the Verkhovna Rada Committee on Judicial Policy

11:30-12:15 Meeting with Mr Victor PSHONKA, General Prosecutor

12:30-13:15 Meeting with Ms Nina KARPACHOVA, Verkhovna Rada Representative on Human Rights (Ombudswoman)

14:30 Meeting with Ms Maryna STAVNIYCHUK, Presidential Adviser, Presidential Administration Main Office for Constitutional and Legal Modernization Affairs Head

15:45-16:30 Meeting with Mr Oleksandr LAVRYNOVYCH, Minister of Justice

17:00-18:00 Meeting with Ms Maria JURIKOVA, EUD Deputy Head, and Mr Hannes SCHREIBER, Head of the Political Section\*

**Thursday 29 March 2012**

09:00-10:00 Meeting with Mr Andriy PORTNOV, Counselor of the President and Head of the Main Department on Judiciary of the Administration of the President, and Ms Hanna HERMAN, Presidential Adviser, Presidential Administration Main Office for Humanitarian and Social-Political Affairs Head

10:30 Meeting with Mr Yuriy LUTSENKO, former Minister of the Interior

14:30-15:15 Meeting with Mr Kostiantyn HRYSHCHENKO, Minister for Foreign Affairs

17:30 Press conference\*

(\*) Meetings organised by the Council of Europe Office in Kyiv

## APPENDIX 3

**Programme of the fact-finding visit to Kyiv and Kharkiv (14-18 May 2012)**

Ms Mailis REPS, member of Parliament

Ms Marietta de POURBAIX-LUNDIN, member of Parliament

Mr Bastiaan KLEIN, Secretary of the Monitoring Committee of the Parliamentary Assembly

**Monday, 14 May 2012**

Afternoon and evening: arrival of members of the delegation

**Tuesday, 15 May 2012**

- 10:00 Meeting with Mr Borys NECHYPORENKO, lawyer of Mr IVASHCHENKO\*
- 11:00 Meeting with Deputy General Prosecutor, Mr Anatoli PRYSHKO
- 12:00 Meeting with the Verkhovna Rada Parliamentary delegation to the PACE
- 14:00 Meeting with the Head of the Verkhovna Rada Committee on Justice, Mr Serhiy KIVALOV
- 15:00 Meeting with the Head of the Verkhovna Rada Committee on Legal Policy, Mr Serhiy MISHCHENKO
- 16:00 Meeting with the Head of the Verkhovna Rada Committee on Legislative Support of Law Enforcement, Mr Victor SHVETS
- 17:30 Meeting with the Leader of the Front of Changes Party, Mr Arseniy YATSENIUK\*
- 21:15 Departure from Kyiv to Kharkiv

**Wednesday, 16 May 2012**

- 10:00 Meeting with NGOs: Ms Ludmila KLOCHKO, Head of the Public Reception Office; Mr Denis KOBZIN, Director of the Kharkiv Institute for Social Research; Mr Dergiy SAZHIN, lawyer, All-Ukrainian Foundation of Regional Initiatives; Mr Hennadiy TOKAREV, lawyer, Head of the Strategic Litigation Centre of the Kharkiv Human Rights Protection Group; Mr Yevgeniy ZAKHAROV, Head of the Kharkiv Human Rights Protection Group\*
- 11:00 Meeting with NGOs: Ms Oleksandra RUDNIEVA, President of the International Legal Council of Ukraine; Ms Olga MIROSHNYK, President of the Kharkiv Foundation of Local Democracy; Mr Zurab ALASANIA, Editor-in-Chief of the "MediaPort"; Ms Viktoria SHEVCHUK, Civil Network "Opora"
- 12:00 Meeting with the Head of the Kharkiv State Administration, Mr Mykhaylo DOBKIN
- 13:00 Meeting with the Mayor, Mr Gennadiy KERNES
- 15:00 Meeting with Ms Yulia TYMOSHENKO

**Thursday, 17 May 2012**

- 10:35 Departure from Kharkiv to Kyiv
- 12:30 Meeting with the President of Ukraine, Mr Viktor YANUKOVYCH
- 15:00 Press conference

- 16:00 Meeting with the Deputy Head of the Batkivshchyna Party, Mr Hryhoriy NEMYRIA; the lawyer of Ms Yulia TYMOSHENKO, Mr Serhiy VLASENKO; the lawyer of Mr LUTSENKO, Mr Ihor FOMIN; and Ms Iryna LUTSENKO
- 17:00 Meeting with the Verkhovna Rada Representative on Human Rights (Ombudsperson), Ms Valeria LUTKOVSKA
- 19:30 Informal meeting with the diplomatic community in Kyiv
- 21:00 Dinner with Ms Natalia KOROLEVSKA, Chairperson of the "Party of Natalia Korolevska Ukraine – Forward!"

**Friday, 18 May 2012**

Morning Departure of members of the delegation

(\*) Meetings organised by the Council of Europe Office in Kyiv

APPENDIX 4

**PACE Monitoring co-rapporteurs met Yuriy Lutsenko in prison**

Strasbourg, 29.03.2012 - Mailis Reps (Estonia, ALDE) and Marietta de Pourbaix-Lundin (Sweden, EPP/CD), co-rapporteurs for the monitoring of Ukraine by the Parliamentary Assembly of the Council of Europe (PACE), today met in prison former Ukrainian Minister of the Interior Yuriy Lutsenko.

Noting the concerns about his health, the co-rapporteurs called on the authorities to provide all necessary expertise to properly diagnose and treat his illness.

The co-rapporteurs expressed their will to continue searching for a solution for the former government members who have been detained and whose trials have been a matter of great concern for the Parliamentary Assembly, as expressed in Resolution 1862 (2012) on “the functioning of democratic institutions in Ukraine”, passed in January.

APPENDIX 5

**PACE monitoring rapporteurs welcome adoption of new Code of Criminal Procedure in Ukraine**

Strasbourg, 13.04.2012 – The two co-rapporteurs for the monitoring of Ukraine by the Parliamentary Assembly of the Council of Europe (PACE), Mailis Reps (Estonia, ALDE) and Marietta de Pourbaix-Lundin (Sweden, EPP/CD), have welcomed the adoption by the Verkhovna Rada yesterday of the new Code of Criminal Procedure for Ukraine.

Given the extraordinarily large number of amendments that were tabled to the original draft, the co-rapporteurs especially welcomed the pledge of the President of Ukraine that he will only sign this code into law after having received assurances from the Council of Europe that it is fully in line with European standards and norms.

“A new Code of Criminal Procedure that is fully in line with European standards, if implemented fully and without reservations, would be an important step towards addressing some of the deficiencies in Ukraine’s justice system that were highlighted in PACE Resolution 1832 (2012),” the co-rapporteurs said.

“We stand ready and look forward to continuing the dialogue with the Ukrainian authorities with a view to addressing the other deficiencies and issues mentioned in this resolution”, they added.

The co-rapporteurs intend to visit Ukraine for this purpose from 14 to 18 May 2012.