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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 their fact-finding visit to Kyiv, Dnipropetrovs'k and Kharkiv (18 to 22 May 2015)**

Co-rapporteurs: Ms Mailis REPS (Estonia, Alliance of Liberals and Democrats for Europe), and Mr Jean-Claude Mignon (France, Group of the European People's Party)

#### **I. Introduction**

1. This visit was a follow-up to our visit in March this year, with an overall focus on the regional developments in the Dnipropetrovs'k and Kharkiv oblasts, which border the conflict zone. An additional objective of our visit was to be updated with regard to the (constitutional) reform process, in particular with regard to decentralisation. The visits to the regions allowed us to gauge the support for, and views on, these reforms in the regions visited. In the conduct of our visits we met with a number of key regional actors who have a direct influence on the developments on the national level.

2. During our visit we held meetings with, inter alia the Speaker of the Verkhovna Rada; the Minister for Internal Affairs, the Deputy Prime Minister for Regional Development, Construction, Housing, and Utilities, the Deputy Head of the Presidential Administration, the Chairman of the Ukrainian Delegation to the Assembly, the Governors of Kharkiv and Dnipropetrovs'k; the Presidents of the Regional Councils of Kharkiv and Dnipropetrovs'k; the Deputy Mayors of Dnipropetrovs'k and Kharkiv; the Regional Heads of the SBU in Kharkiv and Dnipropetrovs'k; the former Deputy Governors of Dnipropetrovs'k Mr Svyatoslav Oliynyk and Hennadiy Korban; members of the parliamentary group "Democratic Control"; opposition bloc leader and former presidential candidate Mr Mykhailo Dobkin; as well as representatives of civil society and the international community in Dnipropetrovs'k and Kharkiv. The programme of the visit is attached.

3. We would like to thank the Verkhovna Rada and Head of the Council of Europe office in Kyiv and his staff for the organisation programme and kind assistance given to our delegation. In addition we are grateful to the Head of the United Nations Human Rights Monitoring Mission to Ukraine for his assistance in organising the programmes in Kharkiv and Dnipropetrovs'k.

#### **II. Recent developments**

4. As noted in our previous information note, as a result of the Minsk package of measures, the implementation of the reform agenda and the resolution of the conflict, as foreseen in the Minsk agreement, are intertwined.

5. A detailed description of the developments with regard to the implementation of the package of measures to implement the Minsk agreements that was signed on 12 February 2015 in Minsk, and especially with regard to the ceasefire agreement that is part of it, are beyond the scope of this information note. Regrettably, the ceasefire agreement is violated on a daily basis by all sides in the conflict. In addition, heavy

\* Document declassified by the Monitoring Committee at its meeting on 4 September 2015.

weapons continue to be present in the exclusion zone, in violation of the Minsk agreements. The violations of the ceasefire agreement and concentration of forbidden weapons in the exclusion zone are especially high around Donetsk and Mariupol. While the ceasefire agreement has resulted in an absence of large-scale military hostilities, the continuous violations of the Minsk agreements raise the fear that the conflict could escalate at any moment. Given the number of people who have died in battle since the ceasefire agreement was signed, a number of interlocutors questioned whether a cease fire was actually in place at all.

6. The impact of the military conflict and the sense of fragility of the ceasefire agreement are especially strong in the Kharkiv and Dnipropetrovs'k oblasts which border the conflict (or Anti-Terrorist Operation (OTA)) zone. Those who have died in the hostilities are brought to Kharkiv and Dnipropetrovs'k and those wounded are treated in the medical facilities in these cities. This and the continuing influx of IDPs from the conflict zone has put enormous stress on the social services and economies of these two regions. As a result of this influx, unemployment has increased and the salary levels have gone down, which has increased the tensions between local population and IDPs.

7. On 6 May 2015, the four working groups foreseen in the package of measures on the implementation of the Minsk agreements were set up. The following persons were appointed as the initial chairpersons of these groups:

- a) Security: Ambassador Ertugrul Apakan (Chief Monitor of the OSCE SMM to Ukraine)
- b) Political affairs: Ambassador Pierre Morel IDPs and refugees and humanitarian assistance: Dr. Thomas Mirow (ex- Chairman of the EBRD)
- c) Economic affairs and rehabilitation: Ambassador Heidi Tagliavini (interim head)

8. These working groups met again on 19 May and on 1 June 2015. No concrete results were reported. A new meeting is planned for 19 June, but it is unclear at the moment of writing how the renewed outbreak of fighting will influence the meeting schedule. These working groups function also as a mechanism to involve the insurgent groups in the discussions on the local elections in Ukraine and the reference to their status in the Ukrainian Constitution, as foreseen in the package of measures, while, for the moment, sidestepping the question of the legitimacy of the self-proclaimed representatives of the insurgent forces.

9. Despite the establishment of the working groups, very little progress can be reported with regard to the implementation of the political chapters of the Minsk agreement. It is clear that the current renewed offensive by the Russian-backed insurgents will negatively affect the implementation of the political chapters, if not scuttle the Minsk agreement altogether.

10. Aside from the constant violations of the ceasefire agreement, the implementation of the political chapters is also under stress from the deep disagreement between the parties - Ukraine on one side and Russia with the insurgent forces on the other – but also within these two parties themselves.

11. In the proposal tabled in the working groups set up under the Trilateral Contact Group, the insurgent forces reportedly proposed that full control be given to the regions over the prosecution services and police. The Ukrainian authorities, both from the side of the President as well as of the government, have declared that this would undermine the unitarian character of the Ukrainian State as well as uniform implementation of the law, and is therefore unacceptable. In response, they proposed the establishment of municipal guards, which would give local authorities a level of control over community policing in the areas under their responsibility.

12. With regard to local elections, the package of agreements stipulate that they should be organised under Ukrainian law, conducted in line with international standards for democratic elections and under international observation. President Poroshenko maintains that the local elections will be held in October on the date foreseen in the Constitution. However, many political forces have argued that the voters should know what local authorities (and with what powers) they are voting for. In their view, the decentralisation paragraphs in the Constitution should first be adopted before local elections can take place, which would mean postponing the elections to 2016. Many interlocutors have emphasised that it will be impossible to organise democratic elections under gunpoint of Russian and insurgent troops. Elections can therefore only be organised when the security situation has stabilised and Russian troops have withdrawn from Ukraine. This view is supported by a considerable part of the Ukrainian political spectrum, including by the Prime Minister and Minister of the Interior. It is clear to us that under the current security situation it will be impossible for independent international monitors to observe the elections, as required by the Minsk agreements, if elections are at all possible.

13. Four separate drafts have been tabled in the Verkhovna Rada for a new local election code, which underscores the divergence of views with regard to the system to be used for local elections, especially for

the local and regional councils. Two of these proposals seem to allow parties to rearrange their candidate lists after the elections have taken place, which is at odds with generally accepted European standards for democratic elections.

14. In April 2015, the Verkhovna Rada adopted a law to postpone the implementation of the law on the General Prosecutor. The authorities argued that the necessary conditions in the prosecution service, especially with regard to the regional level, were not in place for the law to be implemented. The adoption and enactment of a new law on the prosecution service has been a long-standing recommendation and point of attention for the Assembly. The postponement of its implementation is a setback for the legal reform process. The civil society, most notably the Reanimation Package of Reforms coalition, had lobbied for an alternative version of the law to postpone its implementation that would have mitigated some of the negative effects. Regrettably this alternative was not passed.

15. Recent months have seen a very public standoff between President Poroshenko and his former ally, billionaire business man and (now former) Governor of Dnipropetrovs'k, Ihor Kolomoisky. On 19 March the Verkhovna Rada passed the law "on joint stock companies" that lowered the number of shareholders that needed to be present in meetings of a State-owned joint stock company from 60% to 50%. This law threatened the control of Mr Kolomoisky over UkrTransNafta and UkrNafta and facilitated the replacement of the CEOs of these companies, who were seen as loyal to Mr Kolomoisky and whose replacement he had been able to block until then. In reaction, armed security guards of UkrTransNafta, reportedly members of one of the voluntary battalions that are financed by Mr Kolomoisky, did not allow the newly appointed CEO, who is seen as close to President Poroshenko, to enter the building. This blockage was publicly supported by Mr Kolomoisky in a controversial television interview. President Poroshenko's reaction was swift and he forced Mr Kolomoisky to resign as Governor of Dnipropetrovs'k on 25 March 2015.

16. The adoption of the law "on joint stock companies" and dismissal of Mr Kolomoisky as Governor of Dnipropetrovs'k is often explained as a sign of the authorities willingness to take on Ukraine's powerful oligarchs and to reduce their influence in Ukrainian politics. However a number of interlocutors disagreed with this explanation, suggesting that, in reality, the stand-off was a result of a realignment of interests - and attempt to redistribute resources - within the oligarchic elite itself, of which both men are prominent members. Other interlocutors pointed at Mr Kolomoisky's stature in Ukrainian society and warned that the stand-off is far from over and could have a profound impact on Ukraine's domestic political environment. The recent decision by a group of MPs to ask the Prosecutor General to investigate past claims of alleged corruption against President Poroshenko should probably be seen in this context.

17. It should be noted that Mr Kolomoisky is widely credited for having used his considerable influence and resources to avoid the insurgency spreading to Dnipropetrovs'k and Kharkiv. Moreover, he was seen as an efficient Governor of Dnipropetrovs'k and his financing of a number of voluntary battalions to fight the Russian military intervention in eastern Ukraine earned him a reputation as a true Ukrainian patriot. Reportedly this has earned him considerable support among the Ukrainian population, in addition to his considerable economic influence.

18. During our visit it was clear that the fight between President Poroshenko and Mr Kolomoisky is impacting on the regional political environment in Dnipropetrovs'k as well as Kharkiv. The support for the President in the regional councils, which generally have remained loyal to Mr Kolomoisky, has been reduced, which leaves him increasingly dependent on his appointed governors and central State structures under his control to implement his policies. Reportedly, in Dnipropetrovs'k, and to a lesser extent in Kharkiv, this has led to an increasing alignment between President Poroshenko and former Party of Regions forces, united in the opposition bloc.

19. During our visit, civil society organisations in Dnipropetrovs'k were reporting an increase in interference of the governor's office and regional secret services offices in their work since the change of governors, which if confirmed as a trend, would be of serious concern.

20. In our meetings with the regional SBU headquarters in both Dnipropetrovs'k and in Kharkiv, we were informed that the security forces continue to regularly foil attempts by Russian-backed separatist to raise tensions in the two regions. Considerable quantities of weapons and explosives are intercepted by the security forces on a regular basis. While most of the weapons intercepted seem to be related to the military conflict, security services informed us that, as a result of their ready availability, there has also been an increasing influx of assault weapons into the criminal environment, which is of concern for public safety in all of Ukraine. Notwithstanding the heightened alert and success of the security services in arresting saboteurs, a number of terrorist acts have taken place in these regions, most notably the bomb attack on a pro-unity rally in Kharkiv on 22 February 2015.

21. On 14 May 2015, Amnesty International published its report “Breaking Bodies, Torture and Summary Killings in Eastern Ukraine”, which documents torture and human rights abuse committed by Russian-backed forces and forces loyal to the authorities in Kyiv during the conflict. In addition, it documents summary executions of Ukrainian troops by Russian-backed forces. We strongly condemn these human rights abuses, which often amount to war crimes, committed by all sides in this conflict. We urge the Ukrainian authorities to fully and transparently investigate any and all allegations of human rights abuses and war crimes committed by forces under its control.

22. In its report, Amnesty International noted allegations that civilians have been arrested by both sides in order to be used as currency in prisoner exchanges. We received similar allegations from representatives of civil society organisations, as well as the international community, during our visits in Kharkiv and, to a lesser extent, Dnipropetrovs’k.

23. During our visit, we noticed an increasing number of persons advocating the erecting of an internal boundary between the conflict areas and the rest of Ukraine in order to isolate the conflict area. This solution is also gaining currency among the political elites in the country. While understandable in the context of the frequent attempts by Russian-backed forces to destabilise other regions of Ukraine, the complete isolation of these areas from the rest of the country would disproportionately affect the civilian population residing in these areas and could hinder the long-term resolution of the conflict

24. On 13 February, President Poroshenko established an International Advisory Council for Reforms and appointed former Georgian President Mikheil Saakashvili as its Chair. Other members of the advisory council are: former prime Ministers Carl Bildt of Sweden, Mikulas Dzurinda of Slovakia and Andrius Kubilius of Lithuania, as well as MEPs Elmar Brok and Jacek Saryus-Wolski and renowned Professor Anders Åslund of the Peterson Institute for International Economics. Senator McCain of the United States declined membership of this Advisory Council due to US Senate regulations. Most, if not all, members of the Advisory Council are well-known members of the European People’s Party. There are some concerns that this narrow political composition of the International Advisory Council could affect its potential within the international community.

25. On 21 May 2015, the Verkhovna Rada adopted a Resolution in which it declared a “Derogation from Certain Obligations under the International Covenant on Civil and Political Rights and the Convention for the Protection of Human Rights and Fundamental Freedoms”. Subsequently, on 9 June 2015, the Secretary General of the Council of Europe received an official notification<sup>1</sup> by Ukraine that it would derogate certain rights from the European Convention on Human Rights under Article 15 of the Convention. Article 15 allows contracting States to derogate from certain obligations under the Convention in situations of “emergency, war or in other circumstances threatening the life of a nation”. The Ukrainian authorities notified that the derogation, which is limited to the so-called anti-terrorist operation zone, concerns certain provisions of Articles 5, 6, 8 and 13 of the Convention. It is important to note that, even with this derogation, Ukraine remains fully covered by the European Convention on Human Rights and the jurisdiction of the Court.

26. President Poroshenko has ordered all volunteer battalions to be brought under the central command of the army. On 11 March 2015, the Minister of Defence reported that all volunteer battalions had been brought under central command, but had to retract this statement on 29 April, when he acknowledged that a number of volunteer battalions, including those of the Right Sector, had not yet been integrated in the central command structure. The Right Sector is reportedly resisting the incorporation of its battalions in the central command structure<sup>2</sup>.

### III. Constitutional reform

27. A number of interlocutors have indicated that it will be difficult to find a constitutional majority for an inclusion in the Constitution special reference for the areas of Luhansk and Donetsk that are not under the control of the central authorities in Kyiv. On the other hand, Russia and the insurgent troops backed by it are reportedly seeking full political and cultural autonomy, with the central authorities only being responsible for defence, foreign affairs and monetary policies. This would go far beyond what was agreed in Minsk and is understandably unacceptable for most, if not all, political forces in Ukraine.

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<sup>1</sup> <http://conventions.coe.int/treaty/Commun/ListeDeclarations.asp?PO=U&NT=005&MA=999&CV=1&NA=15&CN=999&VL=1&CM=5&CL=ENG>.

<sup>2</sup> Ironically Right Sector leader Dmytro Yarosh was appointed by President Poroshenko as advisor to the Chief of Staff of the Ukrainian armed forces to coordinate the integration of the volunteer battalions in the central command structure.

28. In addition to the constraints on constitutional reform as a result of the war, it is clear that the political developments described above affect the historically complicated constitutional reform process. However, the Speaker of the Parliament, who is also Chairman of the Constitutional Working Group set up by President Poroshenko, was optimistic that the first set of constitutional amendments could be adopted in first reading before the summer recess, which would allow for their final adoption in early autumn 2015

29. At its meeting on 13 May 2015, the Constitutional Working Group discussed the first draft of the amendments dealing with the chapters on decentralisation and on the judiciary. Based on these discussions, the Speaker estimated that both chapters would be ready for adoption in first reading on 15 July 2015. He estimated that the remaining chapters, including the chapter on the Constitutional division of powers could be adopted in first reading in the autumn of 2015. The chapters on the division of powers and political the system are arguably the most sensitive and contentious parts of the constitutional reform process. We have urged the authorities to ensure that there will be no undue delay in discussing and adopting these chapters, especially when the immediate pressure somewhat subsides after adopting constitutional amendments to allow decentralisation and local self-government.

30. The authorities have stated that they will send the constitutional amendments to the Venice Commission for opinion before their adoption by the Verkhovna Rada. Verkhovna Rada Speaker Groysmann announced that he would present the amendments adopted on 18 June to the Venice Commission on 19 June. We intend to return to Ukraine in early autumn to familiarise ourselves with the developments, especially with regard to the constitutional reform process.

## Appendix 1 – Programme

### **Programme of the fact-finding visit to Kyiv, Kharkiv and Dnipropetrovs'k (18 – 22 May 2015)**

Co-rapporteurs: Ms Mailis Reps, Estonia, Alliance for Liberals and Democrats for Europe  
Mr Jean-Claude Mignon, France, Group of the European People's Party

Secretariat: Mr Bas Klein, Deputy Head of Secretariat, Monitoring Committee

#### **Monday, 18 May 2015**

##### **In Kyiv**

- 14:30 Briefing by with the Head of the Council of Europe Office in Kyiv (\*)
- 15:45 Meeting with Speaker of the Parliament, Volodymyr Groysman
- 18:00 Meeting with Democratic Control

#### **Tuesday, 19 May 2015**

##### **In Dnipropetrovs'k**

- 11:30 Round table on Political Developments and Reform
- Regional Office for LSG Reforms
  - Analytychna Varta (analysis of legislation, anti-corruption in public institutions)
  - Ukrainskiy Zahyst ("Ukrainian Protection") (protection of human rights, volunteers)
  - Anti-Corruption Human Rights Protection Council
  - Center of the Human Rights Protection
  - Regional Youth Committee on Human Rights Protection
  - Defender of rights of people with disabilities
- 13:00 Lunch
- 14:00 Meeting with President of the regional council, Yevhen Udod
- 15:30 Meeting with Regional Governor, Valentyn Reznichenko
- 17:00 Meeting with the Head of local SBU office
- 18:30 Meeting with Svyatoslav Oliynyk, former Deputy Governor of Dnipropetrovs'k

#### **Wednesday, 20 May 2015**

##### **In Dnipropetrovs'k (continued)**

- 08:30 Working breakfast with Hennadiy Korban, former Deputy Governor of Dnipropetrovs'k
- 10:00 Round table on Conflict and its Consequences including Community Relations
- Kryvyi Rih Human Rights Protection Society
  - "Gorenje", Charity Foundation
  - People's Defender NGO
  - "Sich", Human Rights Group
  - NGO "Civil Platform of Ukraine"
  - Charity Foundation "Pomogaem"
  - Charity Foundation "Dopomoga Dnipra"
  - IHRC/Slavetna Sich
- 11:30 Meeting with Deputy Mayor of Dnipropetrovs'k

13:00 *Departure to Kharkiv by car*

**In Kharkiv**

16:30 Meeting with Regional Governor Ihor Rainin and the Head of the Local SBU Office

18.00 Meeting with Deputy Mayor of Kharkiv

19:30 Meeting with Mykhailo Dobkin, former Presidential candidate for the Opposition Bloc

**Thursday, 21 may 2015**

**In Kharkiv (cont)**

- 11:00 Round table on Political Developments and Reform
- Regional Office for LSG Reforms
  - Harkiv Human Rights Group
  - International Legal Council "Legiteam"
  - OPORA
  - All-Ukrainian Foundation of Regional Initiative
  - Public Alternative
  - Association of Ukrainian Monitors on Human Rights Conduct in Law Enforcement (Association UMDPL),
  - Maidan Monitoring
- 13:30 Lunch meeting with the Head of the regional office of the United Nations Human Rights Mission to Ukraine
- 15:00 Round table on Conflict and its Consequences including Community Relations
- Station Kharkiv
  - Kharkiv Institute for Social Researches
  - Kharkiv with you
  - Center for community developing
  - Kharkiv Civil Forum
  - "Proliska"
  - Public Alternative
  - Vydrodzhennya foundation East region
  - Ukrainskie rubezhi
- 17:00 Meeting with President of the regional council, Serhiy Chernov

**Friday, 22 May 2015**

07:00 *Departure for Kyiv*

**Meetings in Kyiv organised by the Verkhovna Rada (continued)**

9:00 Meeting with Minister of the Interior, Arsen Avakov

10:00 Meeting with the Deputy Head of the Presidential Administration

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