

END NOTE

UKRAINIAN PRESIDENT BACKS DOWN IN WAKE OF HARSH PACE RESOLUTION

By Taras Kuzio

A Council of Europe group of rapporteurs headed by Hanne Sevreinsen visited Ukraine on 18-20 January. They reported their highly critical findings to the Council of Europe on 26 January, and, on the basis of their report, the Parliamentary Assembly of the Council of Europe (PACE) voted to hold a debate on "the political crisis in Ukraine." (The planned topic had been "the constitutional crisis in Ukraine.") Following PACE debate on 29 January, delegates adopted in a 46-13 vote a damning resolution on Ukraine.

That PACE resolution expressed support for Kyiv's "sincere aspirations" to conduct democratic reforms. But at the same time it made clear that PACE and other Western organizations and governments view the reforms currently being implemented as an attempt at blocking a victory by leading opposition candidate and former Prime Minister Viktor Yushchenko in the presidential election to be held in October 2004. The PACE resolution questions the timing of political reforms in an election year.

The resolution asked Ukraine to begin cooperating with the European Commission for Democracy Through Law (the so-called Venice Commission), whose advice parliamentary speaker Volodymyr Lytvyn requested, but subsequently ignored, regarding proposed constitutional amendments that would pave the way for parliament to elect the president in 2006. Ukraine's parliament effectively ignored the commission's advice to retain the system under which Ukraine's president is elected by popular vote by approving on 24 December those draft constitutional amendments. PACE condemned this action in its resolution, stating in point 50 its resolution that the authorities "had no intention whatsoever to follow any of the recommendations of the Venice Commission" adopted on 13 December. This, the resolution points out, "casts serious doubt as to the real willingness of the Ukrainian authorities to cooperate with the Venice Commission in any meaningful way.

The second point of the PACE resolution expressed regret that Ukrainian authorities, including President Leonid Kuchma and the Foreign Affairs Ministry, "consider the activities of the Council of Europe, namely the assembly's monitoring procedure, the visits of the co-rapporteurs of the Monitoring Committee, and their statements" as "'interference in the internal affairs of Ukraine.'" In response, the resolution reminded the Ukrainian leadership that it voluntarily accepted the obligations of the Council of Europe when it joined in 1995. Consequently, "the assembly finds such a stand of the Ukrainian authorities...groundless and unjustified."

Other issues raised in the resolution dealt with the lack of independence of the judiciary, the need to hold presidential elections as scheduled this year, and called on the secretary-general of the Council of Europe to appoint a special representative for Ukraine. The resolution criticized the removal of Mukachevo Mayor Vasyl Petyovka, who was aligned with the opposition bloc Our Ukraine. The resolution ended by threatening to suspend Ukraine if it does not hold elections this year or if it continues to force through constitutional changes.

During their January visit to Ukraine, the Council of Europe rapporteurs also focused on two other issues. First, they called on Kuchma not to run for a third term. Both Poland and the United States have declared their disagreement with the 30 December Constitutional Court decision allowing Kuchma to do so based on their ruling that he is only in his first term.

Second, the rapporteurs criticized the lack of any progress in the investigation into the killing in autumn 2000 of opposition journalist Heorhiy Gongadze. The media situation in Ukraine has considerably worsened since Gongadze's killing, with the opposition excluded from appearing on state- and oligarch-controlled television. Point 12 of the PACE resolution called, among many other things, for a "nationwide popular discussion" on constitutional changes, especially on television and radio. This is a welcome call, as television coverage of what the Ukrainian authorities call political reform has been conducted in traditional Soviet style, with workers collectives and other state bodies being forcibly made to sign petitions in support of such "reform" and in condemnation of the opposition.

The PACE resolution therefore presented the Ukrainian authorities with a difficult dilemma, particularly as it was followed by strong statements and comments from the EU (backed by acceding countries and European Free Trade Association members), NATO, Poland, and the United States. Faced with this widespread Western condemnation, the Ukrainian authorities had two choices. The first was to continue to ignore the Venice Commission and to continue to condemn Western "interference" in Ukraine's internal affairs, as well as carry on railroading constitutional changes through parliament. Such a step would have possibly led to Ukraine's suspension from the Council of Europe and a deterioration of relations with the United States, EU, and NATO. Ukraine would have de facto become a second Belarus. Social Democratic Party-united parliamentary faction head and former President Leonid Kravchuk recently warned that following such a path of isolation from the West could lead to the undoing of his work in 1991-92 that brought Ukraine's independence.

Ukraine's second option was to yield to PACE pressure and drop the most contentious issues in the proposed constitutional changes, under which the procedure for choosing the president would be changed from popular vote to election by parliament.

The authorities responded by taking the second option, with parliament voting on 3 February to remove the articles pertaining to electing the president by parliamentary vote and also approving a resolution to hold elections this year through popular vote for a five-year term. These reworked constitutional changes would continue

to transfer power from the executive to the prime minister, meaning that the president elected this year might merely turn out to be a figurehead. The pro-presidential majority in parliament would therefore continue to hold real, effective power through their control of parliament and government, while the opposition would inherit a highly weakened executive.

This scenario permits Kuchma to continue to maintain a modicum of balance between Russia and the West. Lytvyn promised to cooperate with the PACE special representative on Ukraine once that official is named, and with the Venice Commission.

Unlike the 24 December vote, which was only backed by the pro-presidential majority and the Communist Party, the 3 February vote was also backed by the Socialists, who argued that political reform should be undertaken before the presidential elections. The opposition is therefore now even more divided, with only the right (Our Ukraine and the Yuliya Tymoshenko Bloc) continuing to insist that political reform be undertaken after only the elections. This position is backed by PACE, the European Union, and the United States.

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