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**EUROPEAN COMMISSION FOR DEMOCRACY THROUGH LAW**



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**Comments on the draft Constitution  
of Ukraine**

**by Prof. Sergio BARTOLE (Italy)**

COMMENTS ON THE DRAFT CONSTITUTION  
OF UKRAINE

by Prof. Sergio BARTOLE (Italy)

According to the agreements with the Secretary I have dealt with parts II and VIII of draft Constitution of Ukraine.

Part II  
art.65.3

It would be more suitable referring to the principles of the international law instead of speaking of principles of international rights. International law does not always establish rights.

Chapter 8 does not explicitly guarantee the private property with respect to the public property whose extent is not previously circumscribed by the Constitution. Which was the intention of the framers of the Constitution? This topic is relevant to the implementation of art. 74, which restricts to the powers of the State and apparently connects the State's regulations to the development of the freedom of enterprise only. Is the creation of public enterprises allowed? and is their presence in the market constitutionally possible? or the freedom of enterprise concerns private enterprises only? Obviously, my guess is that art.74.3 regards emergency situations only.

(See comments by Mr. Ragnemalm and draft report of the 13th meeting CDL-PV (92) 13 prov. pag.5)

art.87

Does it take in consideration also the problems of the acknowledgement and of the care of the children born outside a marriage?

art.91

Is the public recognition of private schools allowed? or have they to keep functioning outside the public educational system?

art.95

What does the expression public associations means? have all of them to be recognized? what does the recognition require and which effects does it imply?

art.99.2

Has this purpose to be implemented by all the media separately or should its implementation be the result of the existence of the pluralism of the media?

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Part VIII

I share the opinion of prof. Steinberger that 25 members of the constitutional court are too many.

art. 241.3

Does it mean that a prior consent of the court is required before criminally indicting, arresting or subjecting to any other treatment limiting their freedom and rights the members of the Court?

art. 242.3

This function should be given the constitutional Court to guarantee the independence of its members.

(art. 217.2 Does the implementation of this provision imply an application of one of the parties in the proceeding?)

art. 243.3

Which are the powers of the Representative of National Assembly of human rights? Can he stop the citizen's complaints?

art. 244.1.1

My guess is that the constitutional Court shall report on the correspondence of the international agreements with the Constitution, and not vice versa.

art. 244.1.2

The Court will not interfere with political affairs if the provisions about the limits of the concerned bodies are clearly established. Are they?

art.244.2

Consultative functions are not fitted for a constitutional Court: they often imply an interference with political affairs.

art. 248.1

What does the process of its review mean?

art. 249

What does real cases mean?