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EUROPEAN COMMISSION FOR DEMOCRACY THROUGH LAW

OPINION

**ON THE DRAFT CONSTITUTION
OF UKRAINE**

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**COMMENTS ON THE DRAFT CONSTITUTION OF UKRAINE.
PART II. HUMAN AND CIVIL RIGHTS AND FREEDOMS.
(CDL (95) 28.)**

Art. 13

The first para. declares, from the very beginning of the Section concerning human rights, that the authorities of Ukraine are to be subjected to a double set of standards - those following from the Constitution itself, as well as those following from the international system for the protection of human rights.

As the Venice Commission has had the opportunity to express on a number of occasions, such a system of double standards might run the risk of internal inconsistency. The answer to this dilemma depends, however, on the exact drafting of the provision(s) regulating the relationship between international and domestic law.

I shall, furthermore, have to make the observation that the concepts "generally recognized principles and rules of international law" might leave the readers with some uncertainty, since these concepts do not have an undisputed meaning.

Para. 2 states that everyone is protected "from his birth". If this is taken literally, the article - and the whole Section - does not protect the unborn child. I do not know whether this is the intention of the drafters.

Art. 16

This provision is certainly a traditional one. One might ask, however, whether a general prohibition in the Constitution against the expulsion of a national might turn out, in the future, to be too restrictive. As the international cooperation is progressing, a state may find itself in a position in which the extradition even of a national is to be expected (for instance in order to let him be tried abroad for crimes committed abroad).

Art. 17

This article is much to be welcomed. The point of departure is clearly the equal status between the citizens of Ukraine and aliens. One might possibly argue, however, that the wording of the last part of para. 1 is somewhat open, when it leaves it to the laws of the state to make exceptions from this equality. There is one qualification, though, in the sense that this legislation cannot contravene the international treaties in the area.

Art. 18

The question on the death penalty is a difficult one; I shall refrain from commenting upon the political and moral aspects of such a penalty. Although the international organisations are making efforts to eradicate capital punishment, one cannot claim that any use of the death penalty at present violates international law.

(There is, in the English translation, a spelling error in para 2, the text should read: "may not be applied".)

Art. 19

This article reflects a modern and up-to-date approach vis a vis environmental matters. I do fear, however, that the wording is very general, also when the text declares the right to be compensated for such damage.

Art. 20

This text combines rights and duties. The last para. - on the duty of adult children to look after their parents - opens an area of new problems in the human rights discourse.

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Due to time restrictions, I shall have - at this preliminary stage - to make the following general observations regarding the remaining articles:

The catalogue established in the draft indicates that the drafters want to provide a far-reaching protection of human rights.

I note, however, that the texts do not specify the restrictions which will have to be linked to the exercise of the respective rights, one can hardly imagine that the rights shall be absolute and unlimited.

The draft also include socio-economic rights. As a general reflection, one shall have to warn against unrealistic expectations in this area. The Venice Commission has also on a couple of occasions focused on the complicated problem of the "justicibility" of this category of rights.