COUNCIL OF EUROPE CONSEIL DE L'EUROPE

Strasbourg, 1 March 2002
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Restricted
CDL (2002) 37
Eng.Only

183 / 2002

EUROPEAN COMMISSION FOR DEMOCRACY THROUGH LAW
(VENICE COMMISSION)

LAW
ON POLITICAL PARTIES OF UKRAINE
AND DRAFT BILL ON INCORPORATION
OF AMENDMENTS INTO CERTAIN LEGISLATIVE ACTS

Comments by:

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Opinion 183/2001
Revised comments on
Draft 20/09/2001, Bill of Ukraine
on incorporation of amendments into certain legislative acts of Ukraine following the passing of the Act of Ukraine entitled "On political parties in Ukraine"
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1. General Remarks

This paper contains comments on three documents,

– Draft 20/09/2001, Bill of Ukraine on incorporation of amendments into certain legislative acts of Ukraine following the passing of the Act of Ukraine entitled "On political parties in Ukraine" *(Draft)*, together with

– Information for the draft Bill of Ukraine "On incorporation of amendments into certain legislative acts of Ukraine following the passing of the Act of Ukraine entitled "On political parties in Ukraine" *(Information)* and

– the Law of Ukraine "On Political Parties in Ukraine", as signed by President Kuchma on 5 April 2001 *(Law on Political Parties)*.

All documents are English translations of Ukrainian originals. However, the terminology used in these translations is not entirely consistent, and the translations of the *Draft* and the *Information* had to be clarified twice for the purpose of this opinion. These comments are therefore based on the assumption that there are no other relevant ambiguities or other deficiencies in the English translations.

Part I of the *Draft* refers to two legislative act of Ukraine – the Code of Civil Procedure and the Act of Ukraine "On associations of citizens". These two sources have not been available, which limits the possibilities to comment on the substance and details of the *Draft.* It is therefore possible to comment only on part I.1.1) of the *Draft* containing proposals to add to the Code of Civil Procedure a Chapter 31-Д, with Articles 248-27, 248-28 and 248-29 and on general remarks made in the *Information.*

According to section 3 of the *Information* the purpose of the proposals in the *Draft Decree* is to change provisions of the Code of Civil Procedure of Ukraine and of an Act of Ukraine "On associations of citizens", and the aim of these changes appears to be twofold.

Mainly and in the first place, the changes are said to be proposed in order to make the Civil Code and the Decree on Public Unions compatible with the *Law on Political Parties* and thus to avoid dual legislation on regulation of the organization and activities of a political party. In this aspect the proposals mainly deal with provisions concerning procedure when requests are made "for prohibition of the activities of a political party" or to cancel the registration certificate of a political party.

Apart from that and secondly, the changes are also said to have a far broader aim. According to section 3 of the *Information* they are also proposed in order "ensure reliable implementation of the constitutional rights and freedoms of citizens to unite to form political

parties and adherence to the democratic principles for the foundation and activities of political parties, and should create additional guarantees of control over state executive offices, thus reducing the incidence of violation of constitutional rights and freedoms of citizens."

These latter words raise some general questions, which to some extent touch upon not only the *Draft* but also its base, the already enacted *Law on Political Parties*, and on provisions of the Constitution of Ukraine concerning political parties. These general questions have to be addressed first and before it is possible to address the more specific questions concerning procedure when measures against a political party are contemplated.

Of possible general questions only two are addressed here. They are addressed with the aim to clarify what obligations are put on political parties and what risks they encounter in the case of non-compliance.

2. Activity requirements for political parties

The first general question addressed here is whether political parties should be required to act not only locally or regionally, but also nationwide. According to Article 3 Section 2 of the *Law on Political Parties* there is such a requirement of nationwide activity: "Political parties shall be formed and shall operate in Ukraine only when having the all-Ukraine [nation-wide] status." This general provision is followed up in Articles 10 and 11 of the same *Law*. Article

10 requires at least ten thousand signatures of Ukrainian citizens for registration of a political party, which signatures must be collected in at least two-thirds of the districts of at least two-thirds of the oblasts of Ukraine and in the cities of Kyiv and Sevastopol, and in at least two-thirds of the districts of the Autonomous Republic of the Crimea. And according to Article 11 Section 6 it is mandatory for a newly registered political party to set up "regional, city, and district organisations in most regions of Ukraine, in the cities of Kyiv and Sevastopol, and in the Autonomous Republic of the Crimea" within six months from the date of registration. Failure to comply with these requirements may lead to severe measures against the failing political party, mainly cancellation of the failing party's registration certificate according to Article 24 of the *Law on Political Parties* or a ban of the party by court ruling according to Article 21 of the same *Law*.

The requirements to found a political party and the requirements concerning its activities, once it is duly founded and registered as outlined in the *Law on Political Parties*, are very elaborate; the threshold for founding new parties is very high and so are both the demands on their future activities and the risks, if full compliance is not achieved.

But are so high a threshold and so far reaching demands and high risks really reasonable in a modern pluralistic democracy? There are at least two main reasons why the answer hardly can be yes:

The first reason is that the difficulties of the founding process and the demands on future activities will be an impediment to any challenge to the existing party system arising out of new political ideas. But to raise such obstacles is no good reaction to challenges of this kind. Such challenges should be met in political debate, not by administrative requirements or administrative procedure.

The second reason is that the quoted provisions of the *Law on Political Parties* appear to be based on the assumption that all political parties should be active *nationwide* – not only in a region of the country or locally. This assumption is difficult to accept. The democracies of

Europe offer many examples of well established political parties with an agenda focused on and with support concentrated to some part of the country only; and there are even more examples of political parties, which are exclusively active on the local level and within the geographical borders of a local community or a province and which play an important role for democratic life there.

Because of these reasons it is not entirely beyond doubt that Articles 21 and 24 of the *Law on Political Parties* are in compliance with today's European standards.

3. Restrictions for membership in political parties

The second general question addressed here touches upon restrictions for membership in political parties. According to Article 6 Section 1 of the *Law on Political Parties* only citizens with a right to vote under the Constitution of Ukraine shall be eligible as members of political parties, and according to Article 70 of the Constitution of Ukraine only citizens of Ukraine have the right to vote at elections and referendums. Thus, foreign citizens and stateless persons do not have voting rights under the Constitution, and therefore they cannot be party members either. Consequently, the right to freedom of association in political parties according to Article 36 of the Constitution is vested in citizens of Ukraine only.

Restrictions on political activities of foreign citizens and stateless persons are possible under international law. The reason usually given for this rule is the wish to avoid foreign policy conflicts. But can this reason justify the general exclusion of foreign citizens and stateless persons from membership in political parties? The mentioned provisions make it difficult, if not impossible, for *all* foreign citizens and stateless persons to participate in the organized political life in the Ukraine in general. This includes organized political activities on both the national and the local level, and no exception is made for those foreign citizens and stateless persons who have their permanent and legal residence in the country.

Provisions regarding political activities of foreign citizens and stateless persons, however, should take into account that even these individuals are included in guarantees for basic rights according to the human rights documents which are applicable in Europe. In 1992 the Convention on the Participation of Foreigners in Public Life at Local Level (ETS no. 144) was opened for signature by the member States of the Council of Europe, and it entered into force in 1997. It may also be mentioned that the European Union has made it mandatory for its member States to grant foreign citizens from EU-countries both voting rights and eligibility to public office in general elections on the local level.

One reasonable way to comply with these European standards could be to let foreign citizens and stateless persons to some extent participate in the political life of their country of residence. A way to achieve this could be *not* to make citizenship a necessary precondition for voting rights on all levels of general elections and referendums as well as for eligibility to public office and membership in political parties. Instead it could be advisable for the country of residence to seek different solutions for:

- eligibility to public office in general elections,
- voting rights in general elections, and
- – membership in political parties.

Further, it could be reasonable to distinguish between the

– national and

– local level of democratic government in the country.

At the very least the country of residence should make membership in political parties possible for foreign citizens and stateless persons; but it should also be noted that foreign citizens and stateless persons in many European countries can vote in local elections and even can be elected to local public office in such elections.

If a political party in the Ukraine would wish to act according to these European standards, it would take the considerable risk that such an initiative could be viewed as a transgression of the Constitution of Ukraine and the *Law on Political Parties* and that this view could lead to measures against the party.

4. Measures against a political party

If transgressing the Constitution of Ukraine, the *Law on Political Parties* or other laws of Ukraine, a political party can be warned or banned (Article 19 of the *Law on Political Parties*). A warning can be issued by the administrative authority controlling the party (Article 20), a ban by ruling of a court of law (Article 21 section 1). A ban entails termination of the banned party's activities and its dissolution (Article 21 section 2 of the *Law on Political Parties*).

4.1. Article 19 of the Law on Political Parties

Prerequisite for either warning or ban is a transgression of the Constitution or a law, and the wording of Article 19 of the *Law on Political Parties* is sweeping in this respect: No distinction is made between minor and major infractions, and there is no taking into account of the character of the infraction, whether political or not, whether breaching criminal law or disregarding accounting provisions, etc. Each and every transgression may under Article 19 lead to warning or ban; the wording of Article 19 puts virtually no limits on the discretion of the controlling authority, which issues a warning, or the court of law, which rules on an application to ban a political party. So wide discretion is not easily compatible with generally accepted democratic standards.

4.2. Proposals to add to the Code of Civil Procedure a Chapter 31-Д containing Articles 248-27, 248-28 and 248-29

According to its headline Article 248-27 contains provisions on "[t]he right to judicial recourse". The substance of this right according to the first section of this article appears to be that requests for prohibition of activities of a political party or cancellation of the registration certificate of a political party have to be directed to the Supreme Court. Article 248-28 provides (according to the English translation as corrected) that requests to ban a political party (.i.e. to prohibit its activities) or to cancel its registration certificate have "to be considered over a period of ten days by the Supreme Court of Ukraine in the person of three judges, with the participation of the Attorney General or his representative or a representative of the Ministry of Justice and a representative of the political party."

The meaning of the words “with the participation of” is not entirely clear. These words may indicate that the Attorney General or her or his representative etc. are going to participate in the judicial deliberations of the Supreme Court judges; but this interpretation would hardly be compatible with Article 6 of the European Convention for the Protection of Human Rights and Fundamental Freedoms. Another interpretation – more probable, compatible with the European Convention for the Protection of Human Rights and Fundamental Freedoms, and therefore preferable – would be that a public hearing before the three judges has to take place (within – not over a period of – ten days) with the Attorney General appearing as applicant or her or his representative or the Ministry of Justice representative appearing for the applicant and a representative of the political party appearing for the defendant.