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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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**OBSERVATIONS REGARDING THE LAW
OF POLITICAL PARTIES
UKRAINA, 2001**

The Law has as object the establishment of the legal frame regarding the exert of the right to political association liberty, that is regarding the constitution, the organization and the working of political parties.

Art. 1

The right of association in political parties is established.

The right of political association is reserved to ukrainian citizens, aspect allowed by art.16 in European Convention of man's rights.

There are stipulated the restriction instances of the exert of this right. The legitimate showed purposes correspond to the ones from art.11 paragraph.2 in European Convention of man's right. In the same time the text contains a norm of reference to the constitutional disposals regarding other instances too; we can not know if these other instances are or are not legitimate purposes in accordance with the European Convention.

The negative size of the political association liberty is purposely established, under the aspect of the right of not being a part of a political party and of the right of leaving a political party.

It is prohibited the citizens' discrimination based on their political affiliation.

Art. 2

The text gives a definition for the political parties in concordance with this law.

Art. 3

It is stipulated the legal foundation of working of political parties.

Art. 4

It is established the equality and nondiscrimination of political parties regarding the laws and public authorities. For a greater accuracy, it would be convenient that these principles to vise purposely the justice too.

Art. 5

The law stipulates the legitimate purposes which justify interference in the liberty of association.

The dissolution of a political party is established only by the Supreme Court.

Yet, there is no express stipulation regarding the dissolution of the political parties which vises "the necessity of the measure in a democratic society", meaning the imperious nature of the interference and the proportionality of the measure with legitimate purpose which is followed.

Art. 6

There are indicated restrictions regarding the association liberty of some categories (members in the army, police and state administration), which can be found in art.11 paragraph 1 in European Convention too. With all these, the European Convention talks about imposing some "legitimate" restrictions, while the general interdiction made by the text, regarding all civil servants, is obvious disproportionate.

It is purposely specified that political parties are allowed to work only on a territorial base.

Art. 7 - art. 9

There are settled the political and juridical identification elements of the political parties.

Art. 10

It is settled the setting up of the political parties. The minimum number needed of the members is of 10.000, that means the law enforcer wants seriousness and minimum force from political parties.

But in the same time, another need for building up a political party and its existence regards the fact that its members must have their residences in at least 2/3 from the districts and administrative regions of the state. This need, which follows the building up of political parties exclusively at national level, seems excessively in report with the necessities of an interference in the political association liberty in a democratic society.

Art. 11

The registering of political parties belongs to Justice Ministry. This fact may raise notes of interrogation regarding the objectiveness and the fairness of a political party's building up, because the Justice Ministry is subordinate to the Government, that means it is a political structure. More suitable would have been that competence to belong or to a judicial instance, or to an autonomous administrative body and to be neuter by the Government.

The text stipulates a maximum term for answering the registering need (45 days). It is not stipulated any sanction if the term is overfulfilled, without the applicant to receive any answer to his request of registering.

The law stipulates the existence of some duties for the registering of political parties. The absence of any indication regarding these ones' quantum makes to be possible the implementation of some great duties, which to represent a real impossibility in constituting a political party, that means an interference in the association liberty which is not necessary in a democratic society.

It is express disposed that the territorial structures of the political parties, for organizing and working, must register, after the national registering of the political party, at the territorial structures of the Justice Ministry. This procedure is very long, it is useless also (as long as the political party was registered at national level) and blocks for a long time the beginning of the legal activity of the political party at all country level. In this case too, the procedure of the registering takes place in front of an administrative authority subordinated to the Government.

The obligation that the political parties have to present yearly to the Justice Ministry information regarding their territorial subdivisions seems excessively.

The rejection of the registering petition is possible if any of the documents deposited with this one encroaches upon any of the state's laws. The measure seems to be excessively because any minor vice leads to the non- registration of the political party. There is no procedure to allow the applicant, informed beforehand by the authority that is going to decide, to remedy the shortcoming from the registering petition. It is true that the applicant has the possibility to give another petition, but this means o complete new procedure, with the improvement of all documents, with the payment of a new register duty and, as a result, with the lapse of a large period of time till the possibility of a legal existence of the political party.

If the register petition is rejected, the duties stipulate purposely the obligation of the competent authority to justify the decision, as the applicant's right to dispute the rejection decision in justice and to formulate a new petition.

Art. 12

It is settled the access to media of the political parties, therefore the exert of free expression established by art.10 in European Convention of man's rights. With all these, the respective right is established only through reference to other laws, and this does not allow the appreciation of its concordance with the disposals in European Convention. It is also very questionable the usage of "state controlled press" term.

Political parties can carry on international activities too.

" Liberty of opposition " forms which political parties have are express and limited enumerated in the text. This establishment which is a restriction (few and reduced forms as impact) represents an unjustified interference in the liberty of political association, being totally disproportional, that means being useless in a democratic society.

Art. 13

International activity of political parties is allowed only under coordination aspect and not under a subordination one.

Art. 14

Political parties can have goods for the unfolding of their activity.

Political parties are qualified purposely as associations without working purpose.

Art. 15 - art. 17

The law stipulates purposely some very strict limits for the financing of the political parties. The sanction of any encroachment of these limits means the confiscation of those funds for the state budget.

It would have been better that a so very severe limit of the financing of political parties, accompanied by so very hard sanctions, to be doubled by the settlement of a public financing of political parties, in accordance with the results obtained by these ones in elections.

The obligation of the banks to oversee and inform the public authorities about the way of political patries' financing shows that, under this aspect, it was preferred the preventive system (more severe) in stead of the repressive one (more liberal, interfering only *post factum*).

Art. 18

Political parties are examined by a systematic and total control from the Justice Ministry (excepting electoral operations, dependent on the specialized organ). It is an administrative system, not a judicial of control one, being exerted by an administrative authority with political nature, subordinate to the Government and not to a judicial instance or not even to an independent administrative authority.

The control forms of the Justice Ministry for the political parties are very severe, and there is the obligation to present any documents regarding the organization and the working of political parties. Under color of a legality control, the Government may know any information about the political parties with whom it is in electoral fight or which are in opposition. This thing touches a vital interest for the autonomy of political parties facing the state, for the correctness of the electoral fights, for the existence of pluralism and of a democratic society.

The law stipulates the possibility of disputing the decisions taken by the control authority. With all these, it is not purposely given any guarantee regarding the effective and impartial nature of those attack ways, thing that runs counter to the disposals of art. 13 correlated with art. 11 in European Convention of man's right.

Art. 19 - art. 24

The law brings a sanction system for the non-observance of the juridical laws regarding the organization and working of political parties. The sanction of warning is applied by a political administrative authority, subordinate to the Government, and not by a judicial instance or not even by an independent administrative authority. There is not stipulated any way of attack against this sanction, thing that runs counter to art. 13 together with art. 11 in European Convention.

The very severe sanction of dissolving the political party is applied for every non-observance of the law. From the point of view of this interference in the association liberty with the disposals of art. 11 paragraph 2 in European Convention, there isn't or the possibility of verification for observance of the demands of the law's predictability, either isn't respected the need of measure's proportionality with the followed purpose, so its need in a democratic society.

In the case of individual sanctions too, there is a simple reference to other laws, thing that does not allow the verification of the accessibility criterion of the law which operates the interference in the exert of political association liberty.

Chapter IV

The text contains transitory disposals, showing that political parties which exist at the time when the law sets forth must not register again, but obliges them in one year's time from the date of the next parliamentary elections to adapt their own statutes to the new disposals in the law and to present them to the Justice Ministry