



COUNCIL OF EUROPE CONSEIL DE L'EUROPE

Strasbourg, 7 December 2006

Restricted
CDL(2006)107
Engl.Only

Opinion no 411 / 2006

EUROPEAN COMMISSION FOR DEMOCRACY THROUGH LAW
(VENICE COMMISSION)

DRAFT LAW
ON THE CABINET OF MINISTERS
AND CENTRAL PUBLIC EXECUTIVE AUTHORITIES
OF UKRAINE

Comments by

Mr Kaarlo TUORI (Member, Finland)

Comments on the Draft Law of Ministers of Ukraine and Central Public Executive Authorities

1. The Venice Commission has already given an opinion of a previous version of the draft law (CDL (2006)060). Some of the criticism presented in that opinion have been taken into account in the new draft law. However, some problems still remain, starting from the excessive length and detailed nature of the draft law

2. The new draft law is very extensive, comprising 88, often very long articles plus closing and transitional provisions. In particular, many of the provisions concerning the internal organization and working methods of the Cabinet are too detailed and should be moved to decrees of lower rank, such as the Rules of Procedure of the Cabinet of Ministers. The very detailed nature of some of the provisions can also be considered a problem from the point of view of the separation of powers. Through the draft law, the Verkhovna Rada Assembly is proposed a wide-ranging competence to decide on the internal organization and working methods of a central organ of the executive power.

3. Some of the provisions of especially Section II Chapter 1 and Section III Chapter 4 are also problematic from the point of view of the principle of separations of powers. Thus, many of the provisions concerning the procedure to be followed in the Verkhovna Rada should be moved to the Rules of Procedure of this body.

4. The new draft law still includes provisions which are problematic in view of the autonomy granted to by the Constitution to the Autonomous Republic of Crimea. Thus, in Art. 1(5), the Council of Ministers of the Autonomous Republic of Crimea is included in the list of organs through which the Cabinet of Ministers exercises its executive power and whose operation the Cabinet shall direct, coordinate and control.

5. It is also to be doubted whether Art. 25(6), which gives the Cabinet the power address the President or the Verkhovna Rada with the submission to seek the dismissal from office of the Head of the Council of Ministers of the Autonomous Republic of Crimea is in conformity with the autonomy provided by the Constitution. The provision according to which the Cabinet of Ministers shall be entitled to abolish acts issued by the bodies subordinated to the ARC council of Ministers also lacks a basis in the Constitution (Art. 25(8)).

6. The new draft law also includes other provisions which lack a basis in the Constitution, although they regulate issues of constitutional significance. Such provisions include

a. the general qualifications required of a minister (Art. 8(1)),
b. the ministers' dismissal from office upon a submission of the Prime Minister or – in case of the Minister of Defence or the Minister of Foreign Affairs – the President (Art. 13(1),
c. the termination of the powers of the Cabinet because of the resignation of more than a third of its members (Art. 15 and 18)

d. the President's right to participate in the meetings of the Cabinet (Art. 28(7)).

7. Art. 23 on the Delegation of Powers by the Cabinet does not lay down the legal form in which powers may be delegated. In addition, the definition of the powers which may be delegated is very vague. The provision should explicitly lay down that the powers which the Constitution confers on the Cabinet may not be delegated. Provisions in Art. 23 and 62 are partly overlapping.

8. Art. 37(2) implies that the right of the Ombudsman to obtain information from the Cabinet could be limited through law. The Ombudsman should have access to all the information he or she needs in the execution of his or her constitutional function.

9. Art. 37(3) seems to give the Cabinet the right to assess whether the Ombudsman's observations are correct or not. This is not in harmony with the constitutional position of the Ombudsman (Art. 101 of the Constitution). The complementary provisions on the powers of the Ombudsman and the respective duties of the Cabinet and other executive bodies should be included in a separate law on the Ombudsman.