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EUROPEAN COMMISSION FOR DEMOCRACY THROUGH LAW
(VENICE COMMISSION)

COMMENTS

**ON THE DRAFT AMENDMENTS
TO THE LAW
ON THE STATUS OF PEOPLE'S DEPUTIES
OF UKRAINE**

by

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1. By letter of 11 May 2007, V. Shybko, Chairman of the Foreign Affairs Committee of Verkhovna Rada of Ukraine requested an expert opinion from the Venice Commission on the draft amendments to the Law of Ukraine on Status of People's Deputy of Ukraine, presented by the parliamentary faction "Yulia Tymoshenko Bloc" (BYUT).

2. The proposal aims at to add amendments to Articles 4, 5, and 13 of the Law of Ukraine on Status of People's Deputy of Ukraine.

Article 4 creates additional grounds for the early termination of powers of a People's Deputy:

3.

a) a People's Deputy loses its mandate by force of law in case he/she fails to join the deputy faction of the political party on whose list was elected, or

b) split from the faction.

4. Non-joining a faction is defined as the refusal to sign a written message to join the faction, or the refusal to participate in its activities, actual counteraction to its activities.

5. The split from the faction is realized according the draft by a written appeal to leave the faction, a *de facto* exit from it, any participation in the activity of another faction.

6. The highest body of the relevant political party adopts a decision on the early termination of the powers of the People's Deputy. This decision overrules the decision of the Central Electoral Commission on the registration of the corresponding person as a People's Deputy. In three days the Central Electoral Commission registers as a People's Deputy the next candidate on the list of the political party in question.

7. The proposed amendments follow the same logics as previous amendments to the Constitution, or to the legislation concerning the status of deputies of the Verkhovna Rada of the Autonomous Republic of Crimea and of local councils. In this context the draft amendments implement the relevant provisions of the Constitution. Article 81 § 2 (6) makes possible the termination of office because of the failure, as having been elected from a political party (an electoral bloc of political parties), to join the parliamentary faction representing the same political party (the same electoral bloc of political parties), and similarly for the withdrawal from such a faction. Article 81 § 6 of the Constitution declares that if a People's Deputy of Ukraine, as having been elected from a political party (an electoral bloc of political parties), fails to join the parliamentary faction representing the same political party (the same electoral bloc of political parties) or withdraws from such a faction, the highest steering body of the respective political party (electoral bloc of political parties) decides to terminate early his or her powers on the basis of a law.

8. In this sense, the new amendments comply with the relevant constitutional provisions. Only the last one of the proposals goes further: Article 14 would declare that a People's Deputy shall not be out of any fraction. This rule clearly, and in a sharper way contradicts to the European tradition of the free mandate of parliamentarians, and establishes an exclusive role for the parties to represent the voters.

9. However, also those regulations that implement the Constitution, and primarily their basic philosophy has been consequently criticised by the Venice Commission. These objections recently have been summed up by Opinion No. 423/2007, adopted on June 1-2, 2007.

Similar provisions in the Ukrainian legal system were criticized by the Venice Commission in the past mainly on the ground that they violate the principle of the free and independent mandate of the deputies by introducing the imperative mandate, which is not compatible with the traditional and generally accepted doctrine of representative democracy. By prohibiting the transfer of a deputy from a political group to another (called "floor-crossing" in politics), especially when such a transition is rendered necessary by the political, social and economic developments witnessed with society, these provisions severely cut the relations between civil society and Parliament. Thus the reassertation of these rules by the newly proposed amendments are contrary to European standards. The Venice Commission therefore strongly recommends their removal from the Ukrainian legal order.