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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

Mr Sergio BARTOLE (Substitute Member, Italy)

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I.

1. On behalf of parliamentary factions of the Verkhovna Rada of Ukraine Mr. V. Shybko, chairman of the Foreign Affairs Committee of that body, asked the opinion of the Venice Commission on some draft amendments to the law of Ukraine " On status of the People's Deputy of Ukraine (MP) " presented by the parliamentary faction " Yulia Tymoshenko Bloc " (BYUT).

2. The draft is evidently aimed at the implementation of the second paragraph, point 6), and of the last paragraph of art. 81 of Ukrainian Constitution which provide for the termination of the authority of MP prior the expiration of his/her term in office in case of his failure to join the parliamentary faction representing the political party from which he/she was elected, or of his/her exit from such a faction. The power of adopting the decision to terminate early the authority of the MP is entrusted to the highest steering body of the respective political party.

3. The draft is clearly connected to a previous law on amendments to the legislation concerning the status of deputies of the Verkhovna Rada of the autonomous Republic of Crimea and of local councils in Ukraine adopted by the Verkhovna Rada of Ukraine on 12 January 2007 which provides grounds for the recall of deputies by the voters and by the relevant political party. The law was analyzed by the Venice Commission in its Opinion n. 423/2007 (CDL-AD(2007)018), the conclusion of which states that the law leaves important decisions on the status of the deputies to the governing bodies of the parties and the voters " which both do not present the necessary guarantees of independence and neutrality ", while " they violate the principle of the free and independent mandate of the deputies introducing the imperative mandate, which is not compatible with the traditional and generally accepted doctrine of representative democracy ".

4. In adopting its opinion on the newly introduced draft amendments, the Venice Commission cannot but take into account its previous comments while - at the same time - it shall try to understand whether and why the new proposals differ from the piece of legislation which the Commission analyzed in March 2007.

II.

5. Notwithstanding the clumsy and ambiguous English translation of the draft amendments, if we compare them with the provisions of art. 81 of the Constitution, we realize that the purpose of the amendments is to give a wider scope to the constitutional provisions developing and specifying the meaning of the original constitutional statements. The proposed addition of art. 4* to the law on status of People's Deputy of Ukraine offers three different qualifications of the failure to join the parliamentary faction representing the political party from which the interested MP was elected (point 2), and three other qualifications of the exit of the concerned MP from such a faction (point 3).

6. We cannot but admit that in this way the draft amendments could have the result of partly limiting the discretion of the highest body of the relevant political party which is competent to adopt the decision on the early termination of the authority of the MP. As a matter of fact, perhaps only the provisions concerning the refusal of the MP to participate in the activities of the faction and the actual counteraction to those activities (in point 2 of the new art. 4*), and the provisions about an input of the MP to the coalition contrary to the coordinated political position of the deputy faction (in point 3 of the same art. 4*), could imply difficulties of interpretation leaving space to the discretion of the competent authority.

7. The drafters of the proposal are evidently taking into account the remarks made by Venice Commission in its opinion n. 423/2007 (CDL-AD(2007)018) about the danger of entrusting decisions affecting the status of a People's Deputy to a body " which do not present the necessary guarantees of independence and neutrality ". They hope to compensate these defaults with the drafting of provisions which do not offer to the competent authority the possibility of drawing inspiration from its political line and platform in view of the elaboration of the interpretation of the law which has to be applied. The idea is that the provisions of art. 81 of the Constitution are statements of principles, which have to be specified and qualified by implementing legislative rules which have to be applied in an all - or - nothing fashion.

III.

8. But the efforts of the drafters of the BYUT are not sufficient to avoid the criticism expressed by the Opinion of the Venice Commission. The fact is that the provision for an early termination of the authority of a MP is in itself incompatible with the principles of the parliamentary government according to the European standards of democracy.

9. As a matter of fact, the draft amendments are not aimed at introducing that peculiar form of direct democracy, namely the recall of a MP by the people, and which could be presented as an improvement to the democratic relations between the voters and their representatives in Parliament. Recall clearly requires that the termination of the authority of a MP is adopted by the same body which elected the MP. Instead the proposal is entrusting the power of terminating the authority of the People's Deputies of Ukraine to the highest body of the political party from which the concerned Deputy was elected. In this way, it introduces a correction to the rules concerning the status of the MPs by substituting the imperative mandate for the freedom of mandate which is one of the main feature of the parliamentary democracy. The MP has to stick to the line decided by the party and is not free to accept or not to accept it on the basis of his interpretation of the will of the voters.

10. The draft amendments are not improving the functioning of the representative machinery of the Ukrainian Republic establishing a close relations between the electors and the MPs and allowing the first ones to dismiss the second ones if there is a political conflict between the two. The new rules have the purpose of nullifying the freedom of the deputies, who are obliged to follow the political decisions of the highest body of the party if they do not want to be deprived of their authority. It is the authority of the party which is evidently strengthened. The Venice Commission's opinion clearly stated that even the need to promote party discipline does not justify the introduction of the imperative mandate. Such a solution does not strengthen the democracy because it does not allow the MPs to stay freely in touch with the electors and to respond to changes in public opinion. It strengthens the power of the steering bodies of the parties, while political conflicts should rather be solved through free debates between political parties and the public in general.

11. Therefore, even if the draft amendments are aimed at implementing some provisions of the Ukrainian Constitution, they raise issues of consistency with the European standards and have to be replaced by new and more satisfying provisions, if not by a revision of art. 81 of the Ukrainin Constitution.