



Strasbourg, 18 December 2023

**CDL-AD(2023)050**

Or. Engl.

**EUROPEAN COMMISSION FOR DEMOCRACY THROUGH LAW**  
**(VENICE COMMISSION)**

**UKRAINE**

**AMICUS CURIAE BRIEF**

**ON**

**ADDITIONAL SANCTIONS FOR COMMITTING AN ADMINISTRATIVE  
OFFENCE**

**Approved by the Council for Democratic Elections  
at its 79<sup>th</sup> meeting (Venice, 14 December) and  
adopted by the Venice Commission at its 137th Plenary Session  
(Venice, 15-16 December 2023)**

**On the basis of comments by**

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## I. Introduction

1. By letter of 17 October 2023, the Acting President of the Constitutional Court of Ukraine requested an *amicus curiae* brief of the Venice Commission on the matter of additional sanctions for committing an administrative offence.
2. More precisely, in relation to a case pending before it, the Court asked for the following questions:
  1. in case a mayor has been found guilty of committing administrative offences for failure to report a conflict of interest and of taking actions or adopting decisions under conditions of a real conflict of interests, is an additional sanction to the main sanction in the form of “deprivation of the right to hold positions or to be engaged in activities related to the performance of state or local self-government functions” in conformity with international standards?
  2. does (in accordance with international democratic standards) the right to elect and to be elected as mayor of a city include the right to sit as an elected person?
  3. if the measure goes against international standards, which rights have been violated?
3. Mr S. Darmanović, Ms I. Milašiūtė, Ms J. Otálora Malassis, Mr K. Tuori and Mr B. Vermeulen acted as rapporteurs for this opinion.
4. This opinion was prepared in reliance on the English translation of the applicable legislation. The translation may not accurately reflect the original version on all points.
5. This *amicus curiae* brief was drafted on the basis of comments by the rapporteurs. The *amicus curiae* brief was approved by the Council for Democratic Elections at its 79<sup>th</sup> meeting (Venice, 14 December 2023) and adopted by the Venice Commission at its 137<sup>th</sup> Plenary Session (Venice, 15-16 December 2023).

## II. Background and scope of the *amicus curiae* brief

6. The individual complaint that gave rise to the request involves a mayor who was removed from office since it was discovered that he had received campaign financing from a person who after the election held various positions on the executive committee of the city council (which is chaired by the mayor) and who received various benefits. The court of first instance convicted the mayor on the grounds of the following administrative offences:
  - 1) Failure to report a conflict of interests;
  - 2) Taking actions or making decisions under conditions of a conflict of interest.
7. More precisely, the mayor was found guilty by the Court of First Instance for committing administrative offences under Article 172(1) and (2) of the Code on administrative offences (in the Chapter on Administrative Offences related to Corruption):
  - (1) Failure to inform by a person in the cases and procedure established by law about the presence of a real conflict of interests entails the imposition of a fine from one hundred to two hundred tax-free minimum incomes of citizens.
  - (2) Taking actions or making decisions in conditions of real conflict of interests entail the imposition of a fine from two hundred to four hundred tax-free minimum incomes of citizens.
8. As a result of these administrative offences, a fine of about 176 € was imposed on the mayor.

9. Article 30.6 of the Code on administrative offences, which is contested by the applicant, establishes the possibility of the court to apply an additional penalty:

“Deprivation of the right to hold certain positions or to be engaged in certain activities is ordered by the court for a period from six months to one year, regardless of whether it is provided for in the sanction of the article (sanctions of part of the article) of the Special Part of this Code, when given the nature of the administrative offence committed in his/her official capacity, the person who committed an administrative offence, and other circumstances of the case, the court recognises that it is impossible for him/her to retain the right to hold certain positions or to be engaged in certain activities.”

10. On the basis of this provision (Article 30.6 of the Code on administrative offences), the Court of First Instance applied an additional sanction in the form of deprivation of the right to hold positions related to the performance of state or local self-government functions for a period of 1 year. That sanction automatically led to the termination of the term of office of the mayor, by virtue of Article 79.1.31 of the Law on Local Self-Government in Ukraine. The court of appeals dismissed the Applicant’s claim.

11. The Venice Commission will examine the matter submitted to it by the Constitutional Court of Ukraine and will answer the questions posed by it exclusively on the basis of European and other international standards. The interpretation and application of the Ukrainian constitution falls to the constitutional court. Moreover, taking a stance on the case before the Constitutional Court falls outside of the remit of the Venice Commission.

### **III. International Standards**

#### **A. International treaties**

12. The right to be elected guaranteed by Article 3 of Protocol No. 1 to the ECHR only concerns the elections to the legislature. Consequently, that provision is not directly relevant for assessing the right to be elected in local elections or holding, for instance, the position of a mayor. Instead, as the Venice Commission has recently made clear in an Opinion concerning Ukraine, the relevant standard consists of Art. 25 of the International Covenant on Civil and Political Rights (ICCPR), guaranteeing the right to participate in political affairs.<sup>1</sup>

13. The additional sanction of Article 30.6 of the Code on administrative offences covers positions filled by elections (and also by appointment). Here the relevant standards, which cover both state and local level, derive from Art. 25 b ICCPR.

14. Article 25 ICCPR reads:

“Every citizen shall have the right and the opportunity, without any of the distinctions mentioned in article 2 and without unreasonable restrictions:

- (a) To take part in the conduct of public affairs, directly or through freely chosen representatives;
- (b) To vote and to be elected at genuine periodic elections which shall be by universal and equal suffrage and shall be held by secret ballot, guaranteeing the free expression of the will of the electors;
- (c) To have access, on general terms of equality, to public service in his country.”

15. Furthermore, General Comment No. 25 of the Human Rights Committee is relevant, in particular paras 15 and 16:

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<sup>1</sup> Venice Commission, Ukraine - Joint opinion of the Venice Commission and ODIHR on the draft law amending certain legislative acts which restrict the participation in the state power of persons associated with political parties whose activities are prohibited by law, [CDL-AD\(2023\)025](#), § 17.

“15. The effective implementation of the right and the opportunity to stand for elective office ensures that persons entitled to vote have a free choice of candidates. Any restrictions on the right to stand for election, such as minimum age, must be justifiable on *objective and reasonable criteria*. Persons who are otherwise eligible to stand for election should not be excluded by unreasonable or discriminatory requirements such as education, residence or descent, or by reason of political affiliation. No person should suffer discrimination or disadvantage of any kind because of that person's candidacy. States parties should indicate and explain the legislative provisions which exclude any group or category of persons from elective office.

16. Conditions relating to nomination dates, fees or deposits should be reasonable and not discriminatory. If there are reasonable grounds for regarding certain elective offices as incompatible with tenure of specific positions (e.g. the judiciary, high-ranking military office, public service), measures to avoid any conflicts of interest should not unduly limit the rights protected by paragraph (b). The grounds for the removal of elected office holders should be established by laws based on *objective and reasonable criteria and incorporating fair procedures*.<sup>2</sup>

## **B. Code of good practice in electoral matters**

16. The Code of good practice in electoral matters<sup>3</sup> provides:

*“I.1.1.d: Deprivation of the right to vote and to be elected:*

- i. provision may be made for depriving individuals of their right to vote and to be elected, but only subject to the following cumulative conditions:
- ii. it must be provided for *by law*;
- iii. the *proportionality principle* must be observed; conditions for depriving individuals of the right to stand for election may be less strict than for disenfranchising them;
- iv. The deprivation must be based on mental incapacity or *a criminal conviction for a serious offence*.
- v. Furthermore, the withdrawal of political rights or finding of mental incapacity may only be imposed by *express decision of a court of law*.”

## **IV. Analysis**

### **A. Does the right to elect and to be elected as mayor of a city include the right to sit as an elected person?**

17. The additional sanction at issue consists in the deprivation of the right to hold positions related to the performance of state or local self-government functions.

18. There is an inherent link between the right to be elected and the right to sit as an elected person. *One implies the other*. The European Commission of Human Rights already considered that “it is not enough that an individual has the right to stand for election, he must also have a right to sit as a member once he has been elected by the people. To take the opposite view would render the right to stand for election meaningless”.<sup>4</sup> This principle was confirmed by the European Court of Human Rights, which considered “that [Article 3 of Protocol No. 1 to the ECHR] guarantees the individual's right to stand for election and, once elected, to sit as a member

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<sup>2</sup> Article 25 ICCPR applies not only to elected officials, but also to appointed ones: see Article 25 (c) and General Comment No. 25, para. 23.

<sup>3</sup> Venice Commission, Code of good practice in electoral matters, [CDL-AD\(2002\)023rev2-cor](#), I.1.1.d.

<sup>4</sup> EComHR, *M. v. the United Kingdom*, no. 10316/83, 7 March 1984.

of parliament”.<sup>5</sup> The rationale behind this rule is that the right to be elected would be an empty shell, deprived of any effectiveness, if the legal protection of that right did not extend to elected representatives in carrying out their duties on behalf of the voters.<sup>6</sup> The Venice Commission considers that this principle applies to all elective positions.<sup>7</sup>

19. The Venice Commission therefore concludes that the right to elect and to be elected as mayor of a city does include the right to sit as an elected person.<sup>8</sup>

**B. In case a mayor has been found guilty of committing the administrative offences under consideration, is an additional sanction (in the form of „deprivation of the right to hold positions or to be engaged in activities related to the performance of state or local self-government functions“) in conformity with international standards? If the measure goes against international standards, which rights have been violated?**

20. The right to stand for elections – and, by way of consequence, the right to sit as an elected person – is not absolute. This issue has been addressed in detail in the European Court of Human Rights’ advisory opinion on the assessment, under Article 3 of Protocol No. 1 to the Convention, of the proportionality of a general prohibition on standing for election after removal from office in impeachment proceedings.<sup>9</sup> Similar principles apply to restrictions to the rights guaranteed by Article 25 ICCPR as developed by General Comment No. 25: the restrictions must be justifiable on objective and reasonable criteria. They must be prescribed by law, pursue a legitimate aim and respect the principle of proportionality.<sup>10</sup>

**1. Prescribed by law**

21. The legality requirement demands that disqualification from office be based on clear norms of law.<sup>11</sup> The Court of First instance found the mayor guilty of administrative offences under Article 172(1) and (2) of the Ukrainian Code of administrative offences. Article 24 of the Code of Ukraine on Administrative offences reads: “the following administrative penalties may

<sup>5</sup> ECtHR, [Sadak and Others v. Turkey \(no. 2\)](#), nos. 25144/94 and 3 others, 11 June 2002, § 33, and references.

<sup>6</sup> Venice Commission, Ukraine - Opinion on the draft law on Amendments to Article 51 of the Rules of Procedure of the Verkhovna Rada on political liability of Members of Parliament of Ukraine associated with political parties whose activities have been suspended, [CDL-AD\(2023\)026](#), §§ 19-20; Venice Commission, *Amicus curiae* brief for the Constitutional Court of Ukraine on Draft Law 1027 on the early termination of a Deputy’s mandate, [CDL-AD\(2019\)029](#), § 26. Cf. Venice Commission, Report on exclusion of offenders from parliament, [CDL-AD\(2015\)036cor](#), §§ 28-29.

<sup>7</sup> According to General Comment No. 25, § 6, the right to participate in public affairs applies to legislative bodies and executive offices (including mayors).

<sup>8</sup> Removal from office could however be considered as proportionate more easily than ineligibility to be elected: see Venice Commission, Report on exclusion of offenders from parliament, [CDL-AD\(2015\)036cor](#), § 162: “The democratic nature of the elections is therefore not hampered if the mandate is terminated, even if the effects of the restriction are more severe for a member of an elected body than for a person standing for election. This could make the termination of a mandate following a criminal conviction more easily admissible than the ineligibility to be elected.”

<sup>9</sup> ECtHR, [Advisory opinion on the assessment, under Article 3 of Protocol No. 1 to the Convention, of the proportionality of a general prohibition on standing for election after removal from office in impeachment proceedings](#), Request no. P16-2020-002, 8 April 2022, 8 April 2022.

<sup>10</sup> For an overview of the relevant case-law, cf. Venice Commission, [CDL-AD\(2023\)026](#), Ukraine - Opinion on the draft law on Amendments to Article 51 of the Rules of Procedure of the Verkhovna Rada on political liability of Members of Parliament of Ukraine associated with political parties whose activities have been suspended, §§ 17ff; Ukraine - Joint opinion of the Venice Commission and ODIHR on the draft law amending certain legislative acts which restrict the participation in the state power of persons associated with political parties whose activities are prohibited by law, [CDL-AD\(2023\)025](#), §§ 17ff – and the quoted case-law. In both opinions, the Commission laid specific emphasis on the principle of proportionality, individual assessment and procedural safeguards, as well as effective remedies. See also Venice Commission, Code of good practice in electoral matters, [CDL-AD\(2002\)023rev2-cor](#), I.1.1.d.

<sup>11</sup> See in particular Venice Commission, Code of good practice in electoral matters, [CDL-AD\(2002\)023rev2-cor](#), I.1.1.d.ii.

be applied for committing an administrative offence <...> *deprivation of the right to hold certain positions or to be engaged in certain activities*". The additional sanction is therefore prescribed in the law. While there is no express mention of the position of mayor, this provision appears sufficiently clear to allow for depriving mayors of their position.

22. The Venice Commission notes that the Ukrainian courts are given a wide margin of appreciation to apply or not the sanction of disqualification: Article 30.6 of the Code of Administrative Offences provides for such a sanction "when given the nature of the administrative offence committed in his/her official capacity, the person who committed an administrative offence, and other circumstances of the case, the court recognises that it is impossible for him/her to retain the right to hold certain positions or to be engaged in certain activities". The text of this provision is rather vague, as it does not refer explicitly to the objective elements which should form the judge's conviction about an "impossibility" to retain the mandate. To assess whether the requirement of foreseeability has been fulfilled, the question should be raised whether the existing case-law enables the citizen "to regulate his conduct: he must be able - if need be with appropriate advice - to foresee, to a degree that is reasonable in the circumstances, the consequences which a given action may entail."<sup>12</sup> The past years Article 30.6 has been applied in various cases. The Venice Commission cannot express its final view as to the foreseeability of this administrative sanction. It falls on the Constitutional Court to assess this matter.

## 2. Legitimate aim

23. Like Article 3 of Protocol No. 1 to the ECHR, Article 25 ICCPR does not contain a list of "legitimate aims" capable of justifying restrictions on the exercise of the rights it guarantees. To be legitimate, the aim the restriction pursues must be compatible with the principle of the rule of law and the general objectives of the treaty. Article 25 ICCPR provides that the right to take part in public affairs, including the right to be elected, shall not be subject to "unreasonable restrictions", and any limitation must be justifiable on objective and reasonable criteria.<sup>13</sup>

24. The main purpose of an additional sanction for offences like the one under consideration is to prevent further cases of conflict of interest in the state administration (or the local one in the present case). Democracy is based on the trust of the voters. Subsequently revealed and sanctioned acts by an elected representative undermine this trust. In previous assessments, the Venice Commission has stressed that anti-corruption measures play an important role in building up a democratic society: corruption has a negative impact on the trust in the public institutions and on social cohesion within the society.<sup>14</sup> It could even be argued that it goes against the principle of democracy that representatives retain their mandates despite being convicted after elections for a serious offence when due to the misuse of administrative resources or corruption the candidate has gained an undue advantage. Disqualification, voiding an electoral mandate, in such a case should not be considered as limiting democracy, but as a means of preserving it.<sup>15</sup>

25. The request of the Ukrainian Constitutional Court suggests, that a particular person made a monetary contribution to the election fund of the candidate-mayor, and that person after the election was awarded by the mayor with positions in the executive committee of the city council and with allowances for high working achievements and payments of health benefits. It seems that the courts in this case have imposed an administrative sanction of forfeiture of the seat

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<sup>12</sup> ECtHR *The Sunday Times v. the United Kingdom* (No. 1), 6538/74, 26 April 1979, § 49.

<sup>13</sup> United Nations. Human Rights Committee. CCPR/C/21/Rev.1/Add.7. 27 August 1996. General Comment 25, § 15.

<sup>14</sup> Venice Commission, Final Opinion on the Law on Government Cleansing (Lustration Law) of Ukraine as would result from the amendments submitted to the Verkhovna Rada on 21 April 2015, [CDL-AD\(2015\)012](#), § 26.

<sup>15</sup> Venice Commission, Amicus curiae brief for the European Court of Human Rights in the case of Berlusconi v. Italy, [CDL-AD\(2017\)025](#), § 11.

because of corruption-related offences in the context of an election, not as a criminal sanction for corruption. As underscored by the Venice Commission, such a measure can be in the interest of democracy.

26. Thus, the sanction of disqualification corresponds in principle to the legitimate aim of building and maintaining a democratic state by forbidding the continuation of a mandate in respect of which conflicts of interest have been proven. This measure is particularly relevant for the defence of the rule of law in case of mayors, since they are the closest contact between public institutions and the daily lives of the citizens. It also is a specifically relevant instrument in the current context in Ukraine, which has to take fierce anti-corruption measures in order to implement the highest international standards in the fight against corruption and to make this process sustainable in the long term, thus contributing to the state's democratic development.

### 3. Proportionality

27. Any restriction to the right to be elected, including in case of disqualification from a mandate, must respect the principle of proportionality. However, the conditions for depriving individuals of the right to stand for election may be less strict than for disenfranchising them.<sup>16</sup> According to the case-law of the ECtHR on Article 3 of Protocol No. 1, restrictions on the right to be elected should be limited to what is necessary to ensure the proper functioning of the democratic regime. For example, in assessing the proportionality of a general measure restricting the exercise of the rights guaranteed by Article 3 of Protocol No. 1 to the ECHR, the Venice Commission recalls that the European Court of Human Rights found that decisive weight should be attached to the existence of a time-limit and the possibility of reviewing the measure in question.<sup>17</sup>

28. In the case under consideration, the sanction was imposed as the result of a judicial ruling once the responsibility for the commission of an administrative offence related to a conflict of interests had been proven.

29. As already stated by the Venice Commission, “the margin of appreciation is wide’ for members states, but it ‘is not all-embracing’ (Hirst (no. 2), § 82). It is, of course, this issue which has been most contentious in the case-law of the Strasbourg Court. The proportionality test is the main common European standard to be applied for restrictions on the right to stand in elections or for the loss of mandate.”<sup>18</sup>

30. The assessment of proportionality must be based on the gravity of the offence committed. A balance has therefore to be established between the aim of the protection of the democratic order and the right to stand for elections, while considering the specific circumstances of the case. This is the task of the judiciary, including, if appropriate, of the Constitutional Court as the last instance. The Venice Commission will however make remarks which should help assessing whether the principle of proportionality has been respected.

31. At the outset, the Venice Commission remarks that the condition of the existence of a time-limit (the measure cannot exceed one year) is fulfilled.

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<sup>16</sup> Venice Commission, Code of good practice in electoral matters, [CDL-AD\(2002\)023rev2-cor](#), I.1.1.d.iii. See the case-law on Article 3 of Protocol No. 1 to the ECHR, as widely quoted in Ukraine - Joint opinion on the draft law amending certain legislative acts which restrict the participation in the state power of persons associated with political parties whose activities are prohibited by law, [CDL-AD\(2023\)025](#), §§ 55ff.

<sup>17</sup> ECtHR, [Advisory opinion on the assessment, under Article 3 of Protocol No. 1 to the Convention, of the proportionality of a general prohibition on standing for election after removal from office in impeachment proceedings](#), Request no. P16-2020-002, 8 April 2022, § 90, with further references, in particular ECtHR *Paksas v. Lithuania*, [GC], no. [34932/04](#), 6 January 2011, § 109.

<sup>18</sup> Venice Commission, Report on exclusion of offenders from parliament, [CDL-AD\(2015\)036cor](#), § 18.



32. The condition of an express decision of a court of law is clearly satisfied. The procedure followed for administrative offences seems to comply with requirements of individual assessment and procedural safeguards. Moreover, the dismissal may be challenged before courts of appeal, which is consistent with the requirement of effective remedies, one of the guarantees of due process.<sup>19</sup>

33. Furthermore, the Code of Good Practice in Electoral Matters provides that the deprivation of the right to vote and to be elected can only be based on a *criminal conviction for a serious offence* imposed by *express decision of a court of law*.<sup>20</sup> However, the European Court has allowed also for the possibility of an additional measure of deprivation from standing for election for a candidate whom a court finds to have exceeded the maximum permitted amount of election expenditure, and qualified such penalty as an ancillary one, not as a criminal sanction.<sup>21</sup>

34. The most frequent reason provided for in countries with a removal from office procedure is that of removal due to a criminal conviction.<sup>22</sup> Forfeiture due to the nature of the *sanction* in general applies only when a person is sentenced to imprisonment.<sup>23</sup> National legislation may differ concerning the nature of the *offence* but focuses in particular on electoral offences. The nature of the offence and/or of the sanction thus enables to assess the seriousness of the offence.

35. The Venice Commission recalls that the legal classification of the offence (in this case probably as administrative) at a domestic level does not exclude its possible "criminal" nature for the Convention purposes. The European Court of Human Rights has developed the so-called "*Engel* criteria",<sup>24</sup> most recently again summarised in the *Vasile Sorin Marin* case "[T]he first criterion is the legal classification of the offence under national law, the second is the very nature of the offence and the third is the degree of severity of the penalty that the person concerned risks incurring. The second and third criteria are alternative and not necessarily cumulative. However, this does not exclude a cumulative approach in cases where separate analysis of each criterion does not make it possible to reach a clear conclusion as to the existence of a criminal charge".<sup>25</sup> In the latter case, an administrative fine of around 50 € was considered as punitive in nature and therefore as falling under the criminal limb of Article 6 ECHR. Should the fines imposed by the Code of Administrative Offences be considered as punitive rather than as preventive, it is possible that the measure under Article 30.6 would also fall under the criminal limb of Article 6 ECHR.

36. At any rate, the Venice Commission does not exclude removal from office in case of measures under Article 30.6 of the Code on administrative sanctions, whether they fall under the criminal limb of Article 6 ECHR or only qualify as administrative measures of a preventive or restorative, non-punitive nature.<sup>26</sup> Of course, if such measures fall under the criminal limb,

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<sup>19</sup> Venice Commission, Rule of Law Checklist, [CDL-AD\(2016\)007](#), II.2.c.viii.

<sup>20</sup> Venice Commission, Code of good practice in electoral matters, [CDL-AD\(2002\)023rev2-cor](#), I.1.1.d.iv-v. The Venice Commission considers that sanctions for conflict of interests, illegal or criminal actions, abuse of power or corruption should be addressed in judicial proceedings and not through political processes: Venice Commission, Opinion on the compatibility with Constitutional principles and the Rule of Law of actions taken by the Government and the Parliament of Romania in respect of other State institutions and on the Government emergency ordinance on amendment to the Law N° 47/1992 regarding the organisation and functioning of the Constitutional Court and on the Government emergency ordinance on amending and completing the Law N° 3/2000 regarding the organisation of a referendum of Romania, [CDL-AD\(2012\)026](#), § 78.

<sup>21</sup> ECtHR, *Pierre-Bloch v. France*, no. 24194/94, 21 October 1997, §§ 127, 128.

<sup>22</sup> ECtHR, *Galan v. Italy (dec.)*, no. 63772/16, 18 May 2021, § 61.

<sup>23</sup> Venice Commission, Report on exclusion of offenders from parliament, [CDL-AD\(2015\)036cor](#).

<sup>24</sup> ECtHR, *Engel and Others v. the Netherlands*, no. 5100/71; 5101/71; 5102/71; 5354/72; 5370/72, 8 June 1976, §82; *Öztürk v. Germany*, 8544/79, 21 February 1984; *Lutz v. Germany*, 9912/82, 25 August 1987

<sup>25</sup> ECtHR, *Vasile Sorin Marin v. Romania*, 17412/16, 3 October 2023, § 41.

<sup>26</sup> Venice Commission, Report on exclusion of offenders from parliament, [CDL-AD\(2015\)036cor](#). Cf. Venice Commission, Report on the recall of mayors and local elected representatives, [CDL-AD\(2019\)011](#), § 89.

the procedure before the courts will have to fulfil the criteria of Article 6 paras 1-3 ECHR and Article 7 ECHR. Furthermore, such measures under Article 30.6 are only acceptable in the light of the proportionality principle in case of serious offences against rules that protect the integrity of the election process and outcome, and more generally the democratic system of government: these measures should concern offences endangering the democratic system, such as electoral irregularities, violations of electoral-financial regulations or election-related conflicts of interest.<sup>27</sup>

37. The question arises therefore whether the nature of the offence or of the sanction can be considered as serious enough to lead to disqualification. In the present case, the Venice Commission notes that the primary sanction itself (an administrative fine of about 176 €) is not a very heavy one. It belongs to the Constitutional Court to assess whether the nature of the offence which led to a rather light administrative fine can be considered as serious enough to also lead to the additional sanction of disqualification, and therefore to conclude whether or not the law, as applied in the instant case, strikes a fair balance between the legitimate aim pursued (see paras 24-26 above) and the protection of the right to sit as an elected person.

#### 4. Derogations to Human Rights treaties

38. The Commission is aware that Ukraine has notified derogations to several rights under the ICCPR and the ECHR, including Article 3 of Protocol No. 1 to the ECHR and Article 25 of the ICCPR. Article 4(1) ICCPR and Article 15 ECHR allow for derogations to “*the extent strictly required by the exigencies of the situation*” and the nature of the rights affected by the derogation, the circumstances leading to, and the duration of, the emergency situation have to be duly taken into account. The Commission underlines that the mere fact that a derogation is justified by the exigencies of the general situation does not mean that specific measures taken are required in the sense of Article 15 ECHR and Article 4 ICCPR (‘strictly required by the exigencies’). As the situation of a public emergency is not mentioned in the *amicus curiae* request, the Venice Commission will not examine whether the sanctions could be justified on the basis of a derogation to human rights treaties.

### V. Conclusion

39. In reply to the questions put by the Constitutional Court of Ukraine in relation to a case concerning the dismissal of a mayor found guilty of committing administrative offences for failure to report a conflict of interest and taking actions or adopting decisions under conditions of a real conflict of interests, the Venice Commission has reached the following conclusions;

2. *Does (in accordance with international democratic standards) the right to elect and to be elected as mayor of a city include the right to sit as an elected person?*

40. In conformity with the case-law of the European Court of Human Rights, the Venice Commission considers that there is an inherent link between the right to be elected and the right

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<sup>27</sup> Cf. Venice Commission, Ukraine - Joint opinion of the Venice Commission and ODIHR on the draft law amending certain legislative acts which restrict the participation in the state power of persons associated with political parties whose activities are prohibited by law, [CDL-AD\(2023\)025](#); Ukraine - Opinion on the draft law on Amendments to Article 51 of the Rules of Procedure of the Verkhovna Rada on political liability of Members of Parliament of Ukraine associated with political parties whose activities have been suspended, [CDL-AD\(2023\)026](#); Republic of Moldova - Joint Opinion of the Venice Commission and ODIHR on amendments to the Electoral Code and other related laws concerning ineligibility of persons connected to political parties declared unconstitutional, [CDL-AD\(2023\)031](#). See also Venice Commission, Report on exclusion of offenders from Parliament, [CDL-AD\(2015\)036](#), § 155; Amicus curiae brief for the European Court of Human Rights in the case of Berlusconi v. Italy, [CDL-AD\(2017\)025](#), §§ 10 and 22 (on the conditions for disqualification from office); Report on the recall of mayors and local elected representatives, [CDL-AD\(2019\)011](#), § 89.

to sit as an elected person. The right to elect and to be elected as mayor of a city does include the right to sit as an elected person.

1. *In case a mayor has been found guilty of committing administrative offences for failure to report a conflict of interest and taking actions or adopting decisions under conditions of a real conflict of interests (amounting to corruption), is an additional sanction (to the main sanction of a fine) in the form of „deprivation of the right to hold positions or to be engaged in activities related to the performance of state or local self-government functions“ in conformity with international standards?*
3. *if the measure goes against international standards, which rights have been violated?*

41. To answer these questions, the Venice Commission recalls that a restriction to the right to be elected and to sit as a mayor is acceptable if it is prescribed by law, pursues a legitimate aim and is in conformity with the principle of proportionality.

- Concerning the first condition (prescribed by law), the Venice Commission considers that there may be doubts concerning the foreseeability of article 30.6 of the Code of Administrative Offences. To assess whether the requirement of foreseeability has been fulfilled, the question should also be raised whether established case-law enables the citizens to regulate their conduct: they must be able - if need be with appropriate advice - to foresee, to a degree that is reasonable in the circumstances, the consequences which a given action may entail.
- Concerning the legitimate aim, the Venice Commission considers that preventing conflicts of interest in the election process is in the interest of democracy and therefore based on objective and reasonable criteria.
- Concerning the proportionality of the measure, a balance has to be established between the aim of the protection of the democratic order and the right to stand for elections while considering the specific circumstances of the case. Restrictions are (in principle) acceptable in case of serious offences against rules that protect the integrity of the election process and outcome, and more generally the democratic system of government. It belongs to the Constitutional Court to assess whether an offence which led to a rather light administrative fine can nevertheless be considered as serious enough to justify the additional sanction of disqualification, and therefore to determine whether a fair balance has been struck between the legitimate aim pursued and the protection of the right to sit as an elected person. In this assessment the nature of the offence (an election-related conflict of interests) and the specific context in Ukraine should be taken into account.

42. The Venice Commission remains at the disposal of the Constitutional Court of Ukraine for further assistance in this matter.