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(VENICE COMMISSION)

COMMENTS

ON THE DRAFT LAW ON PARLIAMENTARY OPPOSITION

IN UKRAINE

by

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The law on the parliamentary opposition provides for the institution of the opposition as a corporation which requires a formal affiliation of the interested deputies who share the rejection of the official policy of the parliamentary majority (that is the totality of the political approaches - views - expressed in the program of action of the Cabinet approved by the parliament, normative legal acts of the Verkhovna Rada as adopted by the parliamentary majority and normative acts of the Cabinet). I have the feeling that the definition (art. 1) covers too many elements. It could be advisable to identify the differentiating factor in one element only, that is in the behaviour of the concerned deputies at the moment of the appointment of the Cabinet: the deputies who are supposed to identify themselves with the opposition are those who vote against the Cabinet. Their behaviour in the case of the adoption of parliamentary normative acts or of legal acts of the Cabinet can be not relevant because, in the frame of a normal parliamentary dialectic, even deputies who are members of the opposition, may vote for the approval of draft laws initiated by the Cabinet. A correct functioning of the Parliament implies this possibility and it should be advisable not to freeze the relations between the majority and the opposition in such a way that a deputy is identified as member of the opposition only if he always votes against the proposals of the Cabinet.

Moreover the definition of the opposition is also very unclear when the prohibition of some oppositional activities is dealt with by the draft with the purpose of prohibiting illegal manifestations of opposition. On one side, the identification of the limits covers activities which are outside the parliamentary floor and, on the other side, the expressions used in the law are too vague and ambigous, don't distinguish between speeches or manifestations of opinions and organizational activities aimed at the mentioned purposes. They don't evidently comply with the principle of the rule of law and don't allow the use of the clear and present danger test.

It is interesting that the law (art. 8) refuses the principle of the imperative mandate when it allows an individual deputy or a deputy faction to move from the majority to the opposition and from the opposition to the majority. It implies a freedom of movement and choice which apparently conflicts with other constitutional choices of Ukraine.

The law presents a list of the rights and parliamentary functions which are specilly reserved to the opposition. Some of them are clearly tipical of a group of deputies (artt. 10, 1, 1), 2), 4); 11 and 12, 1, 1), 2), 4), and 3), but there are other rights and functions which don't require the presence of a group of deputies and may be exercised by individual deputies. What is the law adding to existent package of the rights and functions of the individual members of the opposition in the Verkhovna Rada? We cannot think that, for instance, provisions 15 and 16 of the law imply the abrogation of the similar provisions of other normative acts which provide for the analogous rights and functions of the individual deputies. It would be advisable to introduce in the law a provision aimed at confirming the rights and functions which are entrusted to the members of the parliament by other normative provisions. And what about art. 21 on the right to appeal to State authorities to eliminate violations of law? Is it introducing a new right or does it only confirm the internal compliance, in this matter, with art. 13 ECHR?

In any case there are in the law many provisions which deserve a favourable evaluation: for instance, art. 11, art. 12, art. 13, art. 14, art. 17 and art. 18. On the other side, it is not easy to understand the relevance, for instance, of art. 19 which provides for the right to partecipate in formation of membership of Stte authorities. Which are the effects of these provisions with regard to the appointment, nomination and election of the membership of State authorities which are dealt with by other legislative or (even) constitutional provisions?

The opinion of the author of this comment is that the law deserves positive consideration. But it requires some more coordination with other Ukrainian normative (specially constitutional) provisions and the mentioned clarifications about the existing rights and functions of the deputies.