



COUNCIL OF EUROPE CONSEIL DE L'EUROPE

Strasbourg, 15 July 2002
Opinion No. 183 / 2002

CDL-AD (2002) 17
Or. English

EUROPEAN COMMISSION FOR DEMOCRACY THROUGH LAW
(VENICE COMMISSION)

**OPINION ON
THE UKRAINIAN LEGISLATION
ON POLITICAL PARTIES**

**adopted by the Venice Commission
at its 51st Plenary Session
(Venice, 5-6 July 2002)**

on the basis of comments by

**Mr Kaarlo TUORI (Member, Finland),
Mr Hans-Heinrich VOGEL (Substitute Member, Sweden)
Mr Valeriu STOICA (Member, Romania)**

Introduction

1. On 7 November 2001 the Venice Commission was asked by the Parliamentary Assembly of the Council of Europe to issue an opinion on the Ukrainian legislation on political parties and in particular on the Law on Political Parties¹.

2. During its 50th Plenary session in Venice 8-9 March 2002, the Commission examined the comments submitted by Messrs Vogel and Stoica (see CDL (2002) 37 and (2002) 42) on the Law on Political Parties of Ukraine. The Rapporteurs pointed out a number of problems in the examined legislation, which were at risk of running contrary to the principles of modern pluralistic democracies.

3. After an exchange of views with Mr Mark Orzikh, Professor of Law at the Odessa National Academy, representing the Ukrainian authorities, the Commission decided to postpone the adoption of the opinion and to send a fact-finding mission in order to collect more information on the matter².

4. On 10 – 12 June 2002 a delegation of the Venice Commission consisting of Messrs H. Vogel, K. Tuori and two representatives of the Secretariat travelled to Ukraine. During this visit, the Rapporteurs held an exchange of views with Mr O. Lavrinovitch, Minister of Justice of Ukraine, Mr V. Zinchenko, Vice President of the Verkhovna Rada and Mr. L. Podpalov, Deputy Head of Administration of the President of Ukraine. They also had an exchange of views with a number of parliamentarians and a group of experts of the Ministry of Justice. The following opinion, which takes into account the views expressed by the representatives of the Ukrainian authorities on these occasions, was adopted by the Venice Commission at its 51st Plenary Session (Venice, 5-6 July 2002).

A. General Remarks

5. This paper contains comments on three documents (see CDL (2002) 36)³:

– the Law of Ukraine “On Political Parties in Ukraine” (*hereinafter “the Law on Political Parties”*), as signed by President Kuchma on 5 April 2001;

– the draft Bill of Ukraine “On incorporation of amendments into certain legislative acts of Ukraine following the passing of the Act of Ukraine entitled *On political parties in Ukraine*” of 20 September 2001 (*hereinafter “the Draft Law”*) and

– the “Information on the draft Bill of Ukraine On incorporation of amendments into certain legislative acts of Ukraine following the passing of the Act of Ukraine entitled *On political parties in Ukraine*” (*hereinafter “the Information”*);

It also takes into account the relevant provisions of the Law of Ukraine “On associations” of 16 June 1992, last amended on 11 July 2001⁴ (*hereinafter “the Law on Associations”*).

¹ Letter of Mr. J. B. Mota Amaral, Chair of the Committee on the honouring of obligations and commitments by Member States of the Council of Europe from 7 November 2001.

² CDL (2002) PV50, item 14, page 11.

³ The unofficial translations of these acts appear in appendices I, II, III and IV to this opinion.

⁴ Закон України «Об объединении граждан» от 16 июня № 2460-ХІІ с изменениями и дополнениями, внесёнными Законами Украины от 11 ноября 1993 года № 3582-ХІІ, от 18 ноября 1997 года № 642/97-ВР, от 13 мая 1999 года № 655-ХІV, от 21 декабря 2000 года № 2171-ІІІ, от 11 июля 2001 года № 2651-ІІІ.

6. The Commission had recourse to the English translations of the said documents. However, the terminology used in the translations which were available to the Commission was not entirely consistent, and, in particular, the meaning of the translations of the *Draft* and the *Information* had to be clarified for the purpose of this opinion. Some of the ambiguities were further clarified during the fact-finding mission in Ukraine.

B. The *Law on Political Parties*.

1. Activity requirements for political parties

7. The requirements to found a political party and the requirements concerning its activities, once it is duly founded and registered as outlined in the *Law on Political Parties*, are very elaborate; the threshold for founding new parties⁵ appears rather high and so are both the demands on their future activities⁶ and the risks of possible sanctions⁷, if full compliance is not achieved.

8. The difficulties of the founding process and the demands on future activities risks being an impediment to any challenge to the existing party system arising out of new political ideas. However, to raise such obstacles is no good reaction to challenges of this kind. Such challenges should be met in political debate, not by administrative requirements or administrative procedure.

9. It is particularly difficult to share the assumption in the *Law on Political Parties* that all political parties should be active *nationwide* – not only in a region of the country or locally, a requirement that constitutes a legal impediment to forming parties which concentrate on matters concerning *regional* issues (for example, the Autonomous Republic of the Crimea).

10. The Commission recalls in this respect that democracies of Europe offer many examples of well established political parties with an agenda focused on and with support concentrated to some part of the country only; and there are even more examples of political parties, which are exclusively active on the local level and within the geographical borders of a local community or a province and which play an important role for democratic life there.

11. During their visit to Ukraine, the members of the Commission's delegation learned that, in practice, many of the 124 parties active in Ukraine are regional or local in character. Ukrainian authorities justified the requirement in question with reference to the need to prevent regional fragmentation of the country. Most Ukrainian officials were convinced that the political rights of individuals were not threatened since the freedom of political activity on the local level was sufficiently guaranteed under the *Law on Associations* of 1992.

⁵ According to Article 10 of the *Law on Political Parties* “[...]The resolution [for creating a political party] shall be supported by at least ten thousand signatures on the part of Ukrainian citizens with a right to vote during elections, [which signatures are to be] collected in at least two-thirds of the districts of at least two-thirds of the administrative regions [oblasts] of Ukraine and in the cities of Kyiv and Sevastopol, and in at least two-thirds of the [administrative] districts of the Autonomous Republic of the Crimea”.

⁶ According to Article 3 Section 2 of the *Law on Political Parties*: “Political parties shall be formed and shall operate in Ukraine only when having the all-Ukraine [nation-wide] status.” In Article 10 there are territorial requirements for collecting the signatures in order to register a new political party. Further, according to Article 11, Section 6, it is mandatory for a newly registered political party to set up “regional, city, and district organisations in most regions of Ukraine, in the cities of Kyiv and Sevastopol, and in the Autonomous Republic of the Crimea” within six months from the date of registration.

⁷ Failure to comply with the aforementioned requirements may lead to severe measures against the failing political party, mainly cancellation of the failing party's registration certificate according to Article 24 of the *Law on Political Parties* or a ban of the party by court ruling according to Article 21 of the same Law.

12. However, the Commission does not share this opinion. From the scope of the changes proposed by the *Draft Law*, it is evident that the *Law on Political Parties* will regulate the functioning of political parties. Moreover, Article 10 Section 3 of the *Law on Political Parties* provides that “[...] Unregistered political parties shall not be allowed to operate”. All articles of the *Law on Associations* are modified with a view of excluding regulations on parties (exclusion of Article 2, changes in Articles 4 Section 2, Article 11 Section 1, Article 12 Section 1, Article 14 Section 3, etc). Thus a clear distinction is established between political parties and other types of associations.

13. Parties enjoy certain rights, enumerated in Art. 12 of the *Law on Political Parties*, comprising the right to participate in elections, including local elections. Only one article of the *Law on Associations* - Article 20 (Rights of registered associations) in its Section 4 gives associations the right “to participate in political activities, to hold public activities (meetings, gatherings, demonstrations, etc)⁸”, but it is questionable whether this provision can be regarded as sufficient in the light of interpretation of freedom of association in most Council of Europe’s Member States.

14. Because of the specific rights of political parties, the legal form of an association cannot be regarded as a substitute for the status of political party. In addition, the above-mentioned Art. 10(3) may be interpreted as an obstacle to the exercise of political activities by associations registered under the general *Law on Associations*.

15. Accordingly, the requirement of a national coverage for political parties might represent a serious restriction to the political activity on regional and local level. Taking into the consideration the status of the right to form political parties as a *fundamental* right and the legally privileged position of parties in political activities, the Commission considers that the requirement of a national character should be at least loosened in the text of the law.

2. *Restrictions for membership in political parties*

16. According to Article 6 Section 1 of the *Law on Political Parties* only citizens with a right to vote under the Constitution of Ukraine shall be eligible as members of political parties, and according to Article 70 of the Constitution of Ukraine only citizens of Ukraine have the right to vote at elections and referendums. Thus, foreign citizens and stateless persons do not have voting rights under the Constitution, and therefore they cannot be party members either. Consequently, the right to freedom of association in political parties according to Article 36 of the Constitution is vested in citizens of Ukraine only⁹.

17. Restrictions on political activities of foreign citizens and stateless persons are possible under international law. The reason usually given for this rule is the wish to avoid foreign policy conflicts. But this can hardly justify the general exclusion of foreign citizens and stateless persons from membership in political parties. The mentioned provisions make it difficult, if not impossible, for *all* foreign citizens and stateless persons to participate in the organized political life in Ukraine in general. This includes organized political activities on both the national and the local level, and no exception is made for those foreign citizens and stateless persons who have their permanent and legal residence in the country.

⁸ Закон Украины «Об объединении граждан» от 16 июня № 2460-XII, Article 20, page 6.

⁹ The *Law on Associations* does not impose any restrictions of this kind and gives the right to participate in associations to any person over 14 (Article 12).

18. Provisions regarding political activities of foreign citizens and stateless persons, however, should take into account that even these individuals are included in guarantees for basic rights according to the human rights documents which are applicable in Europe. In 1992 the Convention on the Participation of Foreigners in Public Life at Local Level (ETS no. 144) was opened for signature by the member States of the Council of Europe, and it entered into force in 1997. In light of the latter Convention, an absolute ban on non-citizens' membership in political parties can be considered unjustified.

19. One reasonable way to comply with these European standards could be to let foreign citizens and stateless persons to some extent participate in the political life of their country of residence. At the very least, the country of residence should make membership in political parties possible for foreign citizens and stateless persons; but it should also be noted that foreign citizens and stateless persons in many European countries can vote in local elections and can even be elected to local public office in such elections.

20. Instead, if a political party in Ukraine would wish to act according to these European standards, it would take the considerable risk that such an initiative could be viewed as a transgression of the Constitution of Ukraine and the *Law on Political Parties* and that this view could lead to measures against the party.

3. Registration of political parties and control over their activities

21. As it has been already mentioned above, according to Article 10 Section 3 of the *Law on Political Parties*, "a political party shall start operating only after being (officially) registered" and "unregistered political parties shall not be allowed to operate".

22. Article 11 provides for a detailed procedure of registration of a political party, including the obligation for the party to present yearly to the Ministry of Justice information regarding their territorial subdivisions. In the Commission's view, this requirement is excessive, especially considering the strict registration rules that apply.

23. According to Article 18, Section 1 of the *Law on Political Parties*, the Ministry of Justice exercises control over the parties with regard to the observance of the Constitution and other laws, and also with regard to the party's statute or charter. These powers of the Ministry of Justice are not clearly defined and delimited, which, in the Commission's view, might constitute a potential threat to the autonomy of parties. Accordingly, it is advisable that the Ministry's powers, including the power to obtain documents and other information from the parties, should be set out in a detailed and accurate manner.

24. The Commission considers in particular that control over the statute or charter of a party should be primarily internal, i.e. should be exercised by the members of the party. As regards external control, the members of a party should have access to a court in case they consider that a decision of a party organ violates the statute. In general, judicial control over the parties should be preferred over executive control.

4. Measures against a political party

25. Under Article 19 of the *Law on Political Parties*, if transgressing the Constitution of Ukraine or other laws of Ukraine, a political party can be warned or banned. A warning can be issued by the administrative authority controlling the party (Article 20), while a ban may be decided by ruling of a court of law (Article 21 section 1). A ban entails termination of the banned party's activities and its dissolution (Article 21 section 2).

26. A prerequisite for either warning or ban is a transgression of the Constitution or a law, and the wording of Article 19 of the *Law on Political Parties* is sweeping in this respect: no distinction is made between minor and major infractions, and there is no taking into account of the character of the infraction, whether political or not, whether breaching criminal law or disregarding accounting provisions, etc. Each and every transgression may under Article 19 lead to warning or ban; the wording of Article 19 puts virtually no limits on the discretion of the controlling authority which issues a warning, or the court of law which rules on an application to ban a political party.

27. In the Commission's opinion, so wide a discretion is not easily compatible with generally accepted democratic standards.

5. *Financing of Political Parties*

28. Concerning the provisions on funds and other property of political parties and on financial reporting of parties in Articles 14–17 of the *Law on Political Parties*, the representatives of the Ukrainian authorities that met with the Commission's delegation pointed out that there was still only limited experience of application of these provisions. They also mentioned that more detailed legislation could be necessary and that, in any event, the Guidelines and Report on the Financing of Political Parties adopted by the Venice Commission at its 46th Plenary Meeting (see CDL-INF (2001) 8) would be taken into account.

C. *The Draft Law*

1. *The purpose of the Draft Law*

29. According to Section 3 of the *Information*, the purpose of the *Draft Law* is to change the relevant provisions of the Code of Civil Procedure and of the "*Law on Associations*", and the aim of these changes appears to be twofold.

30. Mainly and in the first place, the changes are said to be proposed in order to make the Civil Code and the *Law on Associations* compatible with the *Law on Political Parties* and thus to avoid dual legislation on regulation of the organization and activities of a political party. In this aspect the proposals mainly deal with provisions concerning the procedure to be followed when requests are made "for prohibition of the activities of a political party" or for cancelling the registration certificate of a political party.

31. Apart from that and secondly, the changes are also said to have a far broader aim, i.e. they should "ensure reliable implementation of the constitutional rights and freedoms of citizens to unite to form political parties and adherence to the democratic principles for the foundation and activities of political parties, and should create additional guarantees of control over state executive offices, thus reducing the incidence of violation of constitutional rights and freedoms of citizens."

2. *Proposals to add a new Chapter in the Code of Civil Procedure (Chapter 31-Д containing Articles 248-27, 248-28 and 248-29)*

32. According to its headline, Article 248-27 contains provisions on "the right to judicial recourse". The substance of this right, according to the first section of this article, appears to be that requests for prohibition of activities of a political party or cancellation of the

registration certificate of a political party have to be directed to the Supreme Court. Article 248-28 provides (according to the English translation as corrected) that requests to ban a political party (i.e. to prohibit its activities) or to cancel its registration certificate have “to be considered over a period of ten days by the Supreme Court of Ukraine in the person of three judges, with the participation of the Attorney General or his representative or a representative of the Ministry of Justice and a representative of the political party.”

33. The Commission finds that this new chapter of the Code of Civil Procedure appears to be justified.

3. *Proposals to amend the Law on Associations*

34. As it has already been said in paragraphs 12 and 13 above, the *Draft Law* takes out all references to political parties as a form of association falling within the ambit of application of the *Law on Associations*.

35. The Commission agrees with the logics of this change.

D. Conclusions

36. The Commission considers that the *Law on Political Parties* raises certain issues of compatibility with the right to freedom of association as accepted and applied in most Council of Europe’s Member States.

37. These issues may be summarised as follows:

- a) the requirement that a political party should necessarily operate nationwide should be at least loosened in the text of the law;
- b) foreign citizens and stateless persons should be allowed to participate to some extent in the political life of their country of residence, at the very least by making possible their membership in political parties;
- c) the controlling powers of the Ministry of Justice over the parties with regard to the observance of the Constitution and other laws, including the power to obtain documents and other information from the parties, should be determined in an detailed and accurate manner;
- d) control over a party’s statute or charter should be primarily internal, i.e. should be exercised by the members of the party. As regards external control, the members of a party should have access to a court in case they consider that a decision of a party organ violates the statute;
- e) a distinction should be introduced in Article 19 amongst different degrees and contexts of transgressions to the Constitution and the degree of the sanctions incurred.

38. The *Draft Law* fulfils its aim of adapting the relevant legislation to the provisions of the *Law on Political Parties*.