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CDL-AD(2007)031

Or. Engl.

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

**OPINION**

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

**Adopted by the Venice Commission  
at its 72<sup>nd</sup> Plenary Session  
(Venice, 19-20 October 2007)**

**On the basis of comments by**

**Mr Sergio BARTOLE (Substitute Member, Italy)  
Mr Peter PACZOLAY (Member, Hungary)**

## I. Introduction

1. By letter of 11 May 2007, Mr Vitaliy Shybko, Chairman of the Foreign Affairs Committee of the Verkhovna Rada of Ukraine and Head of the Ukrainian Delegation to the Parliamentary Assembly of the Council of Europe, requested an expert opinion from the Venice Commission on the Draft Amendments to the Law of Ukraine on the Status of People's Deputy in Ukraine presented by the parliamentary faction "Yulia Tymoshenko Bloc" (CDL (2007)071).

2. Messrs Sergio Bartole and Peter Paczolay were appointed as rapporteurs. The present draft opinion was drawn up on the basis of their comments (CDL(2007)069) and CDL(2007)070) and adopted by the Commission at its 72<sup>nd</sup> Plenary Session (Venice).

## II. Background

3. These comments are based on an unofficial English translation of the Draft Amendments, which is at times ambiguous and lacking clarity. The English text may not accurately reflect the original version on all points and, consequently, certain comments may be due to problems of translation.

4. The Draft Amendments are intended to implement Article 81 § 2 item 6) of the Ukrainian Constitution,<sup>1</sup> which provides for the termination of the mandate of a deputy prior to the expiration of his/her term in office in case of his/her failure to join the parliamentary faction representing the political party from which he/she was elected, or his/her withdrawal from such a faction. Article 81 § 6 of the Constitution also calls for the adoption of a law to govern the early termination of the powers of a deputy.<sup>2</sup>

5. The newly proposed Article 4\* lays down three different qualifications of failure to join the relevant parliamentary faction (item 2), and three other qualifications of withdrawal from the relevant parliamentary faction (item 3).

## III. Main Issues raised by the draft amendments

6. These newly introduced qualifications constitute some progress in as much as they specify the meaning and scope of the above-mentioned constitutional provisions. This partly responds to one of the criticisms already voiced by the Venice Commission, namely that the discretion left to the highest steering body of the respective political party entitled to decide on the early termination of the deputy's mandate was too wide.<sup>3</sup> The criticism remains, however, valid in as much as two sets of provisions are still likely to entail difficulties of interpretation involving a discretion for the highest steering body of the political parties: the "*refusal (of the deputy) to participate in the activities of the faction*" and the "*actual counteraction to the activities of the faction*" (see item 2 of the newly proposed Article 4\*), as well as the "*input of the People's*

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<sup>1</sup> Article 81 § 2 item 6) reads as follows: "Powers of a National Deputy of Ukraine shall terminate prior to the expiration of his or her term in office in the event of: (...) (6) his or her 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) or his or her withdrawal from such a faction".

<sup>2</sup> According to Article 81 § 6: "Where a National 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) shall decide to terminate early his or her powers on the basis of a law, with the termination taking effect on the date of such a decision".

<sup>3</sup> See Opinion on the 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, CDL-AD(2007)018, ad § 14.

*Deputy to the coalition contrary to the coordinated political position of the deputy faction”* (see item 3 of the newly proposed Article 4\*).

7. Bearing in mind that the Draft Amendments seem in general to comply with the relevant constitutional provisions, one element goes further and is highly problematic: The newly proposed Article 13 item 5) provides that a *“People’s Deputy shall not be out of any faction”*. This rule constitutes a clear and blatant violation of the European tradition of the free mandate of parliamentarians, by establishing an exclusive role for the parties to represent the voters.

8. From a more general perspective, the Draft Amendments clearly follow the same logic as the Law on Amendments to Certain Laws concerning the Status of Deputies of the Verkhovna Rada of the Autonomous Republic of Crimea and Local Councils of Ukraine (CDL (2007)003), which was adopted on 12 January 2007 and on which the Venice Commission adopted a critical opinion earlier this year: the Commission came to the conclusion *inter alia* that the law left 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”*, so that the recall of deputies as provided for in the Ukrainian legal order *“violates 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”*.<sup>4</sup>

9. In view of the foregoing, the Draft Amendments cannot contribute to the strengthening of democracy in Ukraine. Rather, they are likely to undermine the freedom of the deputies, who would be obliged to follow the political decisions taken by the highest body of their party if they do not want to be deprived of their powers. Although the authority of the party would obviously be strengthened, it should not be overlooked that even the need to promote party discipline does not justify the introduction of the imperative mandate.<sup>5</sup> Furthermore, such a solution does not allow the deputies to stay freely in touch with the electors and to respond to changes in public opinion. Finally, it strengthens the power of the steering bodies of the parties, while political conflicts should preferably be solved through free debates between political parties and the public in general.

#### **IV. Conclusions**

10. The Draft Amendments are aimed at implementing the provisions of the Ukrainian Constitution introducing the imperative mandate, a mechanism which has repeatedly been criticised by the Venice Commission.

11. While certain elements in the Draft under examination may be seen as positive in that they could somewhat limit the excessive discretion left to the steering bodies of the political parties, its main philosophy remains incompatible with European standards and practice. Furthermore, the introduction of a prohibition, for a deputy, to declare himself/herself out of any faction, constitutes a clear and blatant violation of the European tradition of the free mandate of parliamentarians.

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<sup>4</sup> CDL-AD(2007)018, ad §§ 20-21. See also consolidated Opinion on the Ukraine Constitutional Reform Project, adopted by the Venice Commission at its 47th plenary session on 6-7 July 2001, CDL-INF(2001)11 ad Point 1; Opinion on three Draft Laws Proposing Amendments to the Constitution of Ukraine, adopted by the Venice Commission at its 57th plenary session on 12-13 December 2003, CDL-AD(2003)19, ad §§ 19-22 ; Opinion on the Amendments to the Constitution of Ukraine adopted on 8.12.2004, adopted by the Venice Commission at its 63rd plenary session on 10-11 June 2005, CDL-AD(2005)015, ad §§ 10-13.

<sup>5</sup> CDL-AD(2007)018, ad § 22.

12. Given that the Draft Amendments reaffirm a solution which is at odds with European standards and notwithstanding their clear constitutional basis, the Venice Commission strongly recommends their removal from the Ukrainian legal order. The Ukrainian authorities should also consider amending Article 81 of the Constitution with a view to withdrawing the provisions introducing the imperative mandate for members of the Verkhovna Rada.