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

**COMMENTS ON**  
**THE DRAFT LAW**  
**ON THE ALL-UKRAINIAN REFERENDUM**  
**by Mr O. LAVRYNOVYCH**  
**(Member of Parliament of Ukraine)**

**Endorsed by the Venice Commission**  
**at its 77<sup>th</sup> Plenary Session**  
**(Venice, 12-13 December 2008)**

**prepared by**

**Mr Péter PACZOLAY (Member, Hungary)**

## **Introduction**

1. *The Venice Commission was asked on 15 February 2008 by the Chairman of the Verkhovna Rada of Ukraine, Mr A. Yatseniuk, to comment the two Draft Laws on the All-Ukrainian Referendum and on Local Referendum of Ukraine presented by Mr Olexandr Lavrynovich (Registration No. 1374 - CDL-EL(2008)025) and Mr Yuriy Kliouchokovskyi (Registration No. 1374-1 - CDL-EL(2008)009), Members of Parliament.*

2. *The Commission named Mr Péter Paczolay and Mr Ángel Sanchez Navarro to provide their comments on both draft laws. The following comments prepared by Mr Paczolay were endorsed by the Commission in Venice at its 77<sup>th</sup> Plenary Session (Venice, 12-13 December 2008).*

## **The present regulation of referendum in Ukraine**

3. Currently, the referendum can be organised on the basis of the Constitution of Ukraine and the 1991 law on all-Ukraine and Local Referendums. The law on referendums in force was adopted in 1991 (with amendments in 1992). As the Opinion of the Venice Commission underlined the law was never harmonised with the constitution.<sup>1</sup>

4. Chapter III of the present constitution regulates elections and referendum.<sup>2</sup> Article 69 says that “the expression of the will of the people is exercised through elections, referendum and other forms of direct democracy.” It remains unclear what are the other forms of direct democracy in this context. Article 72 regulates the different types of referenda.

5. The exclusive field of referendum is the decision to alter the territory of Ukraine. This case is resolved exclusively by an All-Ukrainian referendum (Article 73).

6. An All-Ukrainian referendum might be designated either by the Verkhovna Rada of Ukraine or by the President of Ukraine, in accordance with their authority established by this Constitution. The Verkhovna Rada calls all-Ukrainian referendum on issues provided for in Article 73 of the Constitution.

7. The other way to call an All-Ukrainian referendum is by popular initiative on the request of no less than three million citizens of Ukraine who have the right to vote, on the condition that the signatures in favour of designating the referendum have been collected in no less than two-thirds of the oblasts, with no less than 100 000 signatures in each oblast.

8. Article 74 regulates the prohibited subjects: a referendum shall not be permitted in regard to draft laws on issues of taxes, the budget and amnesty.

9. The different drafts of a new Ukrainian constitution also address the institution of the referendum, basically with a view to enlarge the use of direct democracy even in the every-day political life.<sup>3</sup>

10. The two present drafts of the laws on All-Ukrainian referendums (draft laws introduced by Mr Kliuchkovsky 1374-1 and by Mr Lavrynovych 1374) try to elaborate the rules of referenda within the legal framework of the present constitution. However, certain provisions in the draft seem to go beyond the constitutional norm and can result in politically motivated manipulation

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<sup>1</sup> See CDL-INF(2000)14, para 7.

<sup>2</sup> See CDL(2006)070.

<sup>3</sup> See Opinion 462/2008, CDL-AD(2008)015.

of the referendum, notably, in changing the Constitution in a way not foreseen by the text of the Constitution of Ukraine.<sup>4</sup>

11. Both drafts suffer from the usual difficulties: they are too long, very detailed, thus often confusing.

12. However, they address the main and necessary issues in an appropriate way that can serve as a legal ground for organising a referendum.

### **Remarks on the draft (1374) submitted by Mr Lavrynovych**

13. The draft law is aimed at establishing the new legal framework for organising national referendums in Ukraine. The law on referendums currently in force has been adopted in 1991.

14. The text consists of 84 articles thus it is much shorter than the other proposal, however it is still complex and detailed. It is a general legislative practice in Ukraine that all electoral laws are very detailed, the different laws repeat the same provisions. This meticulous regulation is considered a guarantee for the uniform application of the electoral law. Venice Commission opinions several time pointed out that this complexity has a lot of shortcomings, nevertheless it is obvious that the legislative initiatives in Ukraine are stuck to this way of regulation.

15. Article 3 defines the terms to organise a referendum on '*people's initiative*' according to Article 74 of the Constitution as mentioned above under the following terms: It can be organised on request coming from at least 3 million citizens from 2/3 of regions collecting each no less than 100,000 signatures. The referendum is called by the President of Ukraine.

16. The proposal for a constitutional referendum can come from the President of Ukraine or at least 2/3 of the MPs. It is called by the President if it concerns changes in certain articles of the Constitution, and by the Parliament in case of a "new version" of the Constitution.

17. Article 6 restricts the possibility of holding referendums that cannot be organised in times of state of emergency, they cannot coincide with elections, and only a single question is submitted to the vote. These restrictions can be accepted but it might restrict the possibility of holding a referendum together with other elections or to let decide the people on more issues on the same day. This might lead to a repetition of elections and referenda that – indifferently from the superfluous and high costs – keeps the political life overheated because of the continuous campaigns.

18. The article also establishes a one-year moratorium on the issues already submitted to referendum. This moratorium might be too short, it would be better to avoid the yearly repetition of referenda on the same issues.

19. Articles 12 – 20 deal with the initiative groups on referendum.

20. It is agreeable that people's initiatives are channelled in a way that could rule out those initiatives that are not serious. Therefore the idea of the initiative group is good, instead of opening up the initiative to any citizen as it happens in some countries. The regulation of the procedure is complex as usual.

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<sup>4</sup> The Venice Commission has clearly expressed its views on this matter in its opinion on the Implementation of referendum in Ukraine (CDL(2000)073).

21. Despite the registering of the personal data of all the participants at the citizens' meeting initiating a referendum the interference of state authorities is not possible, as the whole process is under the authority of the Central Election Commission. For example, the refusal by the CEC to register the group of initiators is open to an appeal to a court (Article 15.3).

22. Similarly, state bodies cannot interfere in the work of initiative groups on collecting the signatures. Certain restrictions are established as to places where signatures can be collected: work premises as well as places of payment of salaries and social benefits (Article 16).

23. As regards the group of initiators to be established at the citizens' meeting, the minimum number of fifty citizens to form that group seems exaggerated. The high number can make the group ineffective, and put into jeopardy the whole procedure (Article 14.8).

24. The rule on the priority of initiatives as regulated in Article 15.6 is an important point as it excludes the running of parallel initiatives (although the translation is confusing).

25. The provision that all campaigning (including sociological research, public opinion polls' results and forecast) must stop 15 days before the referendum day (Article 20.13) is exaggerated and given the present-day technical possibilities not too realistic. The extreme length of the prohibition period restricts the right of the citizens to get the necessary information in order to make the appropriate choice at the polls.