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EUROPEAN COMMISSION FOR DEMOCRACY THROUGH LAW

(VENICE COMMISSION)

UKRAINE

OPINION

ON THE AMENDMENTS TO THE RULES OF PROCEDURE

OF THE VERKHOVNA RADA OF UKRAINE

Adopted by the Venice Commission
at its 112th Plenary Session
(Venice, 6 – 7 October 2017)

on the basis of comments by:

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CONTENTS

I. Introduction

1. By letter of 28 February 2017, the Speaker of the Verkhovna Rada of Ukraine, Mr Andriy Parubiy, requested the Venice Commission to prepare an opinion on the amendments to the Rules of Procedure of the Verkhovna Rada of Ukraine (Reg. No. 5522 of 10 February 2017)[1].

2. Ms Hanna Suchocka, Messrs Michael Frendo, Pere Vilanova Trias, and Alain Delcamp acted as rapporteurs for this opinion.

3. On 22 to 24 May 2017 a delegation of the Commission, composed of Ms Hanna Suchocka, Messrs Pere Vilanova Trias, and Alain Delcamp accompanied by Mr Serguei Kouznetsov from the Secretariat, visited Kiev and met with parliamentarians and other local stakeholders, as well as national and international experts. On 15 June the rapporteurs had additional exchanges with the representatives of the Committees on the Rules of Parliamentary Procedure and Support to its Work and on Legal policy and the judiciary of the Verkhovna Rada in Venice followed by a meeting with representatives of both committees in Kiev on 12 September 2017.

4. The present preliminary opinion was prepared on the basis of contributions by the rapporteurs who used the translation of the text of the amendments provided by the Verkhovna Rada of Ukraine. Inaccuracies may occur in this opinion as a result of incorrect translations.

5. This opinion was adopted by the Venice Commission at its 112th Plenary Session (Venice, 6 October 2017).

II. Constitutional framework of the Rules of Procedure of the Verkhovna Rada; scope of the present opinion

A. Constitutional provisions

6. The Rules of Procedure of the Verkhovna Rada of Ukraine are enacted as a single legal act on the basis of the Constitution of Ukraine. This act codifies the activity of the Verkhovna Rada of Ukraine, modalities of establishment and operation of its bodies and officials, as well as other aspects of activities of the parliament.

7. The power to establish and adopt rules of procedure is included in the list of the Rada's main attributions in Article 83 par. 5 and Article 85 par. 15 of the Constitution without any pre-conditions. However, some of the rules on internal organisation of the Rada are part of the text of the Constitution itself as, for example, the list of powers of the Speaker (Article 88), the constitution of committees, special ad hoc committees and enquiry committees (Article 89). It seems incoherent and superfluous that the same provision indicates that the procedure of the establishment of these bodies is subject to specific legislation.

8. The constitutional text includes additional articles on relations between different state powers which can affect in a direct way the text of the Rules of Procedure. The list of these includes: constitution of parliamentary groups and stripping of non-affiliated MPs of their mandate (Article 81)[2]; nomination of the members of the Cabinet of Ministers and its responsibilities (Article 83); legislative initiative, priority of the drafts submitted by the President (Article 93); promulgation of laws and the right of veto by the President (Article 94); adoption of the budget and control over

[1] See CDL-REF (2017)038.

[2] The Commission criticised this provision in its Opinion on the amendments to the Constitution of Ukraine adopted on 8.12.2004 CDL-AD(2005)015 para. 12. See also CDL-AD(2003)019, paras. 56 to 58 and par. 9 of the CDL-AD(2014)037.

its implementation (Articles 96 and 97). Thus the Constitution provides a rather clear framework for the Rules of Procedure.

9. According to paragraph 21 of Article 92 of the Constitution of Ukraine, the Rules of Procedure are adopted as a law[3]. The current version of the Law of Ukraine «On the Rules of Procedure of the Verkhovna Rada of Ukraine» had been adopted by the Verkhovna Rada of Ukraine on February 10, 2010 and since then was amended several times.[4] The Law is a detailed text of 237 articles.

10. The Rules of Procedure were adopted in 2010 under the provisions of the 2004 version of the Constitution of Ukraine. According to the drafters of the text, the amendments aim at harmonising these rules with the current constitutional provisions (after the return in 2014 to the 2004 text of the Constitution[5]) as well as filling gaps relating to the status and mechanisms of parliamentary coalitions.

B. The scope of the opinion

11. The text of the latest amendments was drafted by representatives of different political factions in the parliament suggesting that the draft law could be supported by a large number of MPs.

12. During the exchanges between the rapporteurs of the Venice Commission and representatives of the Rada, there was a common understanding that this partial revision of the text of the Rules of Procedure would be a first step in a more ambitious and detailed reform of the Rada aimed at enhancing its efficiency. Current harmonisation of the text of the Rules of procedure, if supported by the majority of MPs, could create momentum for a more ambitious technical revision of the Rada's internal procedures taking into account the recommendations of national experts and the international community.[6]

13. Considering these two objectives the current opinion will not only focus on the text of amendments submitted to the Venice Commission and their conformity to the existing international standards and best practices but also try to consider these changes in the general constitutional context of Ukraine and previous outstanding recommendations of the Venice Commission and other international organisations.

III. Analysis

A. General Comments

14. In order to assess whether the proposed changes can achieve the two main objectives announced by the drafters – to bring the rules of procedure in line with the constitutional provisions and to enhance the efficiency of the Verkhovna Rada these amendments have to be considered in the light of two major issues:

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[3] See the official text on http://zakon2.rada.gov.ua/laws/show/254%D0%BA/96-%D0%B2%D1%80/page2. See English translation in CODICES database: http://www.codices.coe.int/NXT/gateway.dll?f=templates&fn=default.htm

[4] See CDL-REF (2017)037.

[5] Abolished on 10 October 2010 by a controversial decision of the Constitutional court of Ukraine (see the opinion of the Venice Commission on the Constitutional Situation in Ukraine CDL-AD(2010)044).

[6] See among other sources the "Report and the roadmap on internal reform and capacity-building for the Verkhovna Rada of Ukraine" prepared by the European Parliament's Needs Assessment Mission to the Verkhovna Rada of Ukraine led by Pat Cox, President of the European Parliament 2002-2004. http://www.europarl.europa.eu/resources/library/media/20160229RES16408/20160229RES16408.pdf .

a. the problem of separation of powers in the Ukrainian constitutional system;
b. the legal nature of the act that establishes the internal rules of procedure and the scope of regulation.

15. Although the current amendments to the rules of procedure focus only on bringing the existing text in line with the text of the Constitution it is necessary to take into account the impact they could have on further reform of the parliamentary procedures.

1. The principle of separation of powers

16. Article 6 of the Constitution of Ukraine provides that "*State power in Ukraine is exercised on the principles of its division into legislative, executive and judicial power*."[7] For a number of years most constitutional reforms in Ukraine were trying to meet the challenge of addressing three main issues:

1) to find the best solution concerning the balance between legislative, and executive power, and more specifically between the parliament and the president,
2) to find the best guarantees for independence of the judiciary;
3) to find the best guarantees for a stable parliamentary majority.

17. Despite numerous attempts to create a sound system of separation of powers, the problem of finding the best way to ease the constitutional tension existing between the President, the Parliament and the Cabinet of Ministers, as well as improving the efficiency of state powers through a better division of functions is still on the agenda.

18. The Venice Commission recognises a sovereign right of each country to regulate the relations between its President, the Parliament and the Government in the best proper way according to its constitutional and institutional traditions and to achieve a balance of powers while taking into account the main democratic principles. However, it has underlined on numerous occasions that the chosen system had to be as clear as possible. If there was a shift towards a presidential system, certain minimum requirements of parliamentary influence and control were to be fulfilled.[8]

19. The problem of striking the right balance between different powers in the Ukrainian case has always been more complex than a pure shift of competencies and attributions from one branch to another. The amendments to the Rules of Procedure are part of the process of achieving the effective separation of powers through a clear set of rules regulating parliamentary procedures as foreseen in the Constitution. Past attempts (reforms in 2009, 2014) to change the semi-presidential system with large powers of the Head of State into a more parliamentary system have not succeeded. On the contrary, one can observe a contrary tendency towards the strengthening of a semi presidential system.

20. Paradoxically some constitutional mechanisms which have been introduced to give more powers and strengthen the role of the parliament have de facto weakened it. In spite of the constitutional rules on coalitions, the political factions which formed a ruling coalition were divided on some of the crucial reforms undertaken since 2014, notably on the constitutional reforms on decentralisation and on judiciary.

[7] See the text of the Constitution on: http://www.codices.coe.int/NXT/gateway.dll?f=templates&fn=default.htm .
[8] See also other opinions of the Venice Commission on constitutional reforms in Ukraine, notably, CDL-AD(2015)029, CDL-AD(2015)028, CDL-AD(2009)024 and CDL-AD(2005)015 .

2. Legal nature of the act regulating parliamentary procedures and its internal structure

21. Each state body is autonomous by the virtue of the relevant constitutional provisions. The degree of this autonomy depends on the way in which it is established. It can be argued that an elected body has more "potential" autonomy as compared to one which is appointed by an elected assembly. This is particularly true in the case of any assembly which "represents" the people[9] and is invested with the power to adopt laws[10].

22. In most modern constitutional and democratic regimes, it is considered that Parliament's "essential property" is its normative and organisational autonomy (as well as the resulting budgetary autonomy). Parliament itself fixes and approves its rules of procedure without interference from any other state body (save the judicial control of compliance of its acts with the Constitution, when necessary).

23. The Constitution of Ukraine provides that the Rules of Procedure are adopted as a law. It is undisputable that the law is higher in the hierarchy of norms than, for example, a by-law. However in the case of the internal regulation of parliament, regulation by a Law in fact limits the autonomy of the Parliament itself. This happens because a law is elaborated with a certain degree of participation of other "legislative actors", notably the President and the Cabinet of Ministers. In the general framework of the Constitution, Parliament should have an exclusive right to regulate its internal organisation, the role of MP's, its own internal procedure and structure. In this context there is an additional aspect that should be taken in consideration: norms and regulations in Ukraine are very complex. The law cannot and should not regulate all aspects of the parliamentary activity. If the parliament wishes to be more efficient, flexible and less rigid in the adoption of its internal regulation, the Ukrainian authorities should take into consideration a differentiated system of regulations. Some issues which concern the right of external subjects should be regulated by a law, but the whole internal procedure of the Rada should be regulated by an internal act of Parliament (regulation). It would be advisable to address this issue in the framework of any next revision of the Constitution.

24. In the context of such detailed and complex rules it might be useful to consider the issues that should not be part of the text of the rules of procedure, but rather regulated through other instruments, like statutes of political parties, unwritten rules of conduct and parliamentary traditions. As it has been indicated in the previous paragraph, the current Rules of procedure of the Verkhovna Rada are extremely detailed. The issue at stake is to find the best way to enhance the efficiency and flexibility of the parliament.

B. Specific comments on the Articles of the draft law.

25. The draft amendments to the Rules of procedure introduce changes and amend several sections of the current Rules of procedure in the following fields:

a) internal mechanisms of the Rada aimed at appointment of the Cabinet of Ministers after general elections or after its resignation;
b) Constitution of a coalition;
c) appointment of the Prime Minister, Ministers of Defence and of Foreign affairs;
d) dismissal of Cabinet of Ministers members;
e) responsibility of the government and accountability to the parliament;

[9] This represents its main feature and distinction from the president who is also elected directly by the people. His mandate of representation is by no means superior to the representatives elected to the parliament.
[10] Article 75 of the Constitution provides that the Verkhovna Rada is the only state body invested with legislative powers.

f) powers of the Speaker;
g) appointment and revocation of certain public officials: Head of the Security Service, Governor of the Central Bank, judges of the Constitutional Court, Prosecutor General and others;
h) termination of People Deputy's (MPs) powers.

26. The main changes introduced to the text of the Rules can be divided between two main areas:

1) composition of the Rada and political process: issues related to dismissal of MPs who do not join parliamentary factions, constitution of coalitions and conditions for the nomination of the Government as well as its dismissal;
2) legislative procedure, internal organisation of the work of the Verkhovna Rada and its powers to appoint, endorse the nomination of different officials and their dismissal.

1. Composition of the Rada and political process.

27. The proposed regulations on parliamentary factions and the coalition of factions try to further develop the corresponding provisions of Chapter IV of the Constitution. Several articles in the constitutional text, notably on coalitions and on factions, were aimed at strengthening the Parliament by creating a stable parliamentary majority. This was seen as an appropriate solution in the case of a split of political parties in Parliament and a remedy to difficulties in parliament's normal operation due to the electoral law and the lack of political culture. The constitutional provisions on this coalition, repeated in the Rules of procedure of the Parliament could be seen as a kind of catalyst to create a stronger coalition.

28. Nevertheless, some of the concerns previously expressed by the Venice Commission with respect to this approach, notably as to the status of MPs and party discipline have to be repeated in this opinion.

29. According to Article 81 par. 6 of the Constitution, the authority of a People's Deputy of Ukraine terminates prior to the expiration of his/her term of office in the event of his or her failure (as having been elected from a political party or an electoral bloc of political parties) to join the parliamentary faction representing the same political party.[11] As far as rules on coalition are concerned, there is also a strong "constitutional" pressure to form a coalition since the President has the power to dissolve the parliament if political factions fail to form a coalition (Article 90 paragraph 1). These provisions are reflected and developed by the text of the current amendments to the Rules of procedure of the Verkhovna Rada.

a. *Mandate of MPs*.

30. The new amendments to the Rules of procedure further develop the provisions of Article 81 par. 2 of the Constitution on the right of political parties to strip MPs of their mandate if they fail to join the faction of the party on whose list they were elected. This practice has been criticised by the Venice Commission on several occasions, the latest reference being the 2016 opinion on the exclusion of candidates from party lists.[12] According to a generally

[11] Where a People's 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 exits from such a faction, his or her authority shall be early terminated on the basis of a law upon the decision of the highest steering body of the respective political party (electoral bloc of political parties) from the date of adoption of such decision."

[12] CDL-AD(2016)018 Opinion on the Amendments to the Law of Ukraine on elections regarding the exclusion of candidates from party lists adopted by the Council of Democratic Elections at its 55th meeting (Venice, 9 June 2016) and by the Venice Commission at its 107th Plenary session (Venice, 10-11 June 2016). See also opinions: CDL-AD(2015)025 Joint Opinion on the draft amendments to some legislative acts concerning prevention and fight against political corruption of Ukraine; CDL-

accepted principle in modern democracies, the parliamentary mandate belongs to an individual MP, because he/she receives it from voters via universal suffrage and not from a political party.[13]

31. The value of a free mandate for the democratic systems was underlined in a number of international documents. For example, the report on the impact of political party control over the exercise of the parliamentary mandate prepared under the auspices of the Inter-parliamentary Union in 2013 recommended that: "*The national legislature should consequently protect the basic elements of the free parliamentary mandate, in particular the MPs' responsibility to represent the entire nation, the MPs' freedom to determine their political affiliation, and their irrevocability. The national legislature should also refrain from legislation which subjects the MPs to excessive party control possibly resulting in the early termination of their mandates. In particular, direct or indirect (by means of expulsion from the party) revocation of the mandate by political parties should be avoided. Where such a possibility has been established by law, the legislators should consider revisiting the issue in order to ensure conformity of the law with the principles of the free parliamentary mandate.*"[14]

32. The establishment of an obligatory link between an elected national deputy (who belongs to the electoral list of a party or bloc of parties) and his or her parliamentary group or bloc has the effect that a breach of this link (withdrawal or exclusion of a deputy belonging to a particular parliamentary group or bloc from his or her parliamentary group of bloc) would therefore *ipso facto* put an end to the parliamentary mandate of the deputy concerned. This is contrary to the principle of a free and independent mandate[15].

33. Even if the question of belonging to a parliamentary group or bloc is distinct from the question of submission to the group's or bloc's discipline in concrete situations, the freedom of the mandate implies the deputy's right to follow his or her convictions. The deputy can be expelled from the parliamentary group or bloc, or can leave it, but the expulsion or withdrawal from the group or bloc should not involve *per se* the loss of the deputy's mandate.

34. The Venice Commission has repeatedly opposed the imperative mandate or similar practices which contradict European democratic standards. Any imperative mandate or similar practice in existence should be phased out and not further strengthened. In particular, it cannot be up to a political party to terminate a mandate. Such a solution like the one adopted in the Ukrainian system *de facto* has changed the free mandate into an imperative one. This was strongly criticised already in the 2005 opinion of the Venice Commission on the new Constitution, which recommended to the authorities "[…] *that Article 81 § 2 (6) and 81 § 6 be removed from the Constitution. Instead, the free and independent mandate of the deputies should be explicitly guaranteed*."[16]

AD(2015)020 Report on the method of nomination of candidates within political parties; CDL-AD(2010)024 Guidelines on political party regulation, by the OSCE/ODIHR and the Venice Commission and CDL–AD(2005)015 Opinion on the amendments to the Constitution of Ukraine adopted on 8.12.2004.

[13] Cf ECtHR, Paunović and Milivojević v. Serbia, Application no. 41683/06, Judgment of 24 May 2016, para.63.

[14] Analitical paper on the IPU survey concerning the impact of political party control over the exercise of the parliamentary mandate, – prepared for IPU by Z.Kędzia, A. Hauser in 2013. See http://www.ipu.org/conf-e/129/control-study.pdf .

[15] See also Resolution 1601 (2008) of the Parliamentary Assembly of the Council of Europe "Procedural guidelines on the rights and responsibilities of the opposition in a democratic parliament". Guideline 1: "*Independence: Parliamentarians must exercise their mandate independently and must not be bound by any instruction or receive a binding mandate.*"

[16] CDL–AD(2005)015 Opinion on the amendments to the Constitution of Ukraine, paragraph 13.

35. Political party control over implementation of the mandate by MPs, including the enforcement of party discipline, should be basically seen as an internal matter of political parties and their membership. Specific measures to ensure the internal democracy of political parties, transparency of parties' regulations and clear rules in their statutes by contrast can have a positive impact on the elected representatives as part of internal accountability.[17] The national legislature should avoid linking the relationship between MPs and their political parties with the legal status of parliamentarians. In particular, breaches of party discipline, including public statements or voting inconsistent with the party line should not be recognised by law as a sufficient basis for early termination of the MP's mandate.

36. Pending the necessary constitutional revision abolishing the mechanism of revocation of MPs mandate, the Rules of procedure of the Rada should aim at minimizing the negative impact of this power of political parties by establishing internal checks by the parliament in cases an MP is under threat of losing his/her mandate. The Rada could establish a specialised body that could review each case and issue a non-binding opinion.

b. Formation of a coalition and the appointment of members of the Government.

37. The draft amendments introduce a new chapter "Coalition of the MPs factions at the Verkhovna Rada of Ukraine". The proposed text proposes a detailed procedure for the establishment and operation of a coalition.

38. Regulations on coalition of factions in Articles 61 – 65 of the Rules of procedure seem to be overburdened with formal requirements. Moreover, the procedure for establishing a "secretariat of the faction" also lacks clarity. The Venice Commission has expressed its critical views on such a formal procedure for establishing a parliamentary majority and its contribution to enhance political stability in Ukraine in its 2005 opinion on the Constitution (CDL – AD (2005)015):

"[…] *It may be questioned whether such a formalised procedure for forming a parliamentary majority would contribute to enhancing political stability in Ukraine. Furthermore, it could hardly be seen as compatible with the freedom of the choice and decision guaranteed to political parties by the Constitution, in conformity with European standards in this field. Generally speaking, alliances between political parties depend on the free choice of the parties concerned, and will last as long as the governing bodies of the parties find it convenient to stick to the negotiated agreements. In addition, a coalition government may give disproportionate power to small parties and therefore be unrepresentative.*"[18]

39. These recommendations of the 2005 opinion are still valid and could be revisited by the drafters of the amendments to the Rules of procedure.

40. The new articles propose additional measures to "stabilise" the coalition. Article 61 par. 4 provides that "*the lists of people's deputies – members of MP's factions, which formed the coalition, are attached to the coalition agreement, with their personal signatures.*" The text of the same paragraph also indicates that "*these lists form an integral part of the coalition agreement*." This measure can be interpreted as reinforcing the control of political parties over their members in the parliament and therefore have to be assessed critically.

41. Article 65 paragraph 1 adds an important element on the procedures in case one of the political parties has an absolute majority in the parliament (based on the last paragraph of

[17] See CDL-AD (2009)021. Code of Good Practice in the field of Political Parties adopted by the Venice Commission at its 77th Plenary Session (Venice, 12-13 December 2008) and Explanatory Report adopted by the Venice Commission at its 78th Plenary Session (Venice, 13-14 March 2009)
[18] CDL–AD(2005)015, paragraph 16.

Article 83 of the Constitution) by establishing that "*If based on the results of the election to the Verkhovna Rada a deputy faction is formed, which includes most people's deputies from the Verkhovna Rada's constitutional composition, then such deputy faction has coalition rights under the Constitution of Ukraine*".

42. The rules of procedure do not explain if a single coalition must exist during the whole legislature. According to the authors of the draft, the coalition's main task is propose candidates for different executive positions. It would seem that parliamentary groups are left with the power to form a new coalition in case of dissolution of a previous one. The aim of these rather complex procedures would seem similar to the constructive vote of no confidence in Germany (*konstruktives Misstrauensvotum)* or vote of confidence in France (*motion de censure*).[19] The weakness of this mechanism in Ukraine is due to the fact that the Prime Minister cannot engage the responsibility of the Government on his or her own initiative. He or she depends not only on the parliamentary majority but, in a quite direct way on the President in a number of areas (notably, on his powers to choose candidates to become Ministers of Foreign Affairs and Defence or the power of the President to suspend "the operation of the acts by the Cabinet of Ministers on grounds of their inconsistency" with the provisions of the Constitution).[20]

43. In most modern democracies the issue of coalitions is left within the general political sphere and not regulated by rules of parliamentary procedure. The issue of who holds the majority in the House to be able to legislate should not be overregulated. The detailed manned in which that majority is achieved should not form part of the regulation of the parliament. The very legalistic approach to regulating political grouping in the Rada could seriously reduce their flexibility.

44. Such detailed regulations should not be part of the law on the rules of procedure. This recommendation also covers the text of the Constitution. The right to establish a coalition is a "normal" parliamentary right in all democracies, but the obligation to create a coalition and a provision that failure to do so within a determined timeframe will lead to the dissolution of the parliament should not be part of the Constitution. It would be advisable to change the approach and progressively transform such overregulation to a limited regulation by law (or even act of parliament) and to leave more space for political (party) agreements and arrangements.

2. Legislative procedure, internal organisation of the work of the Verkhovna Rada and the power to appoint officials

a. Legislative procedure

45. The text of the amendments follows the constitutional provisions as to legal initiative. The new Article 89 reflects the constitutional provision and the proposed text is an improvement compared to the existing version of the rules. According to the new par. 1 Article 89 of the draft the President of the Central Bank will no longer have the right of legal initiative. This change is to be welcomed.

46. According to the Constitution of Ukraine the President has both the right of legal initiative and the right of veto. The Rules of procedure reflect this provision; however it would be advisable to consider in the future whether these two powers should co-exist.

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[19] The 2005 opinion suggested that Article 87 of the Constitution of Ukraine, relating to the issue of the responsibility of the Cabinet of Ministers, could be amended to provide that the Verkhovna Rada may express its lack of confidence in the Cabinet only by electing a successor of the Prime Minister by the vote of a majority of its Members. In Commission's opinion this would "*allow a new majority coalition of political factions to be created within the Parliament at the moment of the introduction of the motion of no confidence.*"

[20] Paras.10 and 15 of Article 106 of the Constitution of Ukraine.

47. One of the proposals of the draft (new art. 137) aiming at strengthening the powers of the Parliament is the right of the Speaker to publish a law not signed by the President if the Rada adopts such a law with a majority of two thirds. This is a positive and commendable development in terms of asserting the legislative powers of the Rada as an autonomous Constitutional institution.

48. The proposed amendment to Article 139 of the Rules of procedure on publication of the laws and other acts of the Rada is an assertion of the legislature's right to enact them.

49. The proposed amendments address only a limited number of topics concerning legislative procedure. Problematic issues related to the complexity of the procedure of adoption of constitutional amendments and the right of individual MPs to submit draft laws are not part of the current set of amendments. The right of individual members to initiate legislation and the procedure for examining such an initiative is one of the crucial issues in the discussion on the status of MPs in the Ukrainian parliamentary system.

b. Internal organisation of the Rada

50. The first affirmation of parliamentary autonomy is the capacity of an assembly to define its own rules for its work without outside interference. However, it is clear that it is not enough to have a detailed text of Rules of procedure. Traditions and customs developed by the MPs together are also extremely important. In this way the parliamentary autonomy is permanently under construction, which cannot but reaffirm the significance of the principle of separation of the powers. This process is not "against" other powers – which are also invested by the Constitution, but is rooted in the fact that MP's have a special role in representing the people. They have the duty to find the best solutions for the common welfare of citizens through legislative acts and to be also the "eyes" of the people in scrutinising the government and public administration.

51. The second important element is the budget of the Rada, which has to be voted by the parliament itself but elaborated according to a different procedure from the budgets of ministries and public administration. It is the condition of the exercise of the specific mandate given directly by the people. This issue is not covered by the text of the amendments but could and should be part of future discussion about the reform of the Rada.

52. The third element that has an important impact on the efficiency of the parliament is its secretariat which should be composed of independent, competent civil servants and attached to the parliament. The status of the members of the secretariat should be similar to other civil servants (or provide the same guarantees) and the same set of rules and deontology should apply to all members of Rada's staff. The decision on whether these civil servants are to be recruited by proper means of the parliament or chosen among civil servants of the state in general is a matter left outside of the scope of the proposed amendments.[21] However, the amendments introduce several changes that have a direct impact on its secretariat.

53. The list and scope of executive functions attributed to the head of the secretariat of the parliament acting under the authority of the Speaker is a delicate question. It is important that the choice of the head of the secretariat is approved by the assembly as a whole. The borders between the powers of the Speaker, who is in charge of the consensus among the members, good working of parliament and is a symbol of the parliament autonomy, and the responsibilities of the head of administration acting under his or her authority are to be clearly identified. The Speaker would be expected to have limited interest (it's abundantly demonstrated by international experiences) to deal with the administrative details below the head of administration accountable to him.

[21] This matter will be part of a specific law on parliamentary service.

54. The Speaker symbolises the unity of the assembly and it is in his or her interest to enjoy the support of his/her fellow MPs. Two main areas can be identified, notably the presidency of the plenary (including the distribution of legislative work and the agenda) and the administrative and financial management of the Parliament. In most legislative assemblies these tasks can be fulfilled with the participation of specific bodies chaired by the Speaker (such as, for example, the Conciliation commission of the parliamentary factions of the Verkhovna Rada of Ukraine as foreseen in Article 73 of the Rules of procedure). Other specific bodies could be established by the rules of procedure under the auspices of the Speaker in order to prepare decisions on issues related to the status of MPs (conflict of interest, immunity), staff policy (status, organisation, promotions, etc.), budget and other issues.

55. Article 78 of the Rules of procedure is completed with a new paragraph 2 that gives the Speaker of the Rada the power to organise the Verkhovna Rada's activities, coordinate the activities of the committees, ad hoc interim commissions, and interim investigation commissions. Paragraph 15 is also amended and provides that he/she "*issues orders on the topics pertaining to organization of activities of the Verkhovna Rada and the Management of the Verkhovna Rada of Ukraine Secretariat, as well as the business trips of people's deputies, officers of the Verkhovna Rada, in cases provided for by the Law, and signs such documents*". The new additions should not lead to a concentration of powers in the hands of the Speaker and which could compromise the idea of an assembly as a collective body.[22]

c. *The power to appoint officials*

56. The amendments of the Rules of procedure introduce some changes concerning the nomination of different officials. Articles 205 – 208, 211, 212, 222, 231 and 232 are revised and completed, providing a detailed description of the appointment procedures foreseen by the Constitution. A new detailed Article 206 (1) is added, providing a detailed procedure for terminating the powers of the Cabinet of Ministers of Ukraine, Prime Minister and other members of the cabinet.

57. It would be useful to make a more clear distinction in the text between the powers to appoint and dismiss officials (for example, the Head of Security Service, the Governor of the National Bank and Verkhovna Rada's Ombudsman) and to endorse appointments and dismissals proposed by the President and other executive bodies (Prime Minister, Ministers of Foreign Affairs and Defence).

58. The Amendments to the text of Article 208 concerning the procedure for the appointment and the dismissal of the Verkhovna Rada's Ombudsman are confusing. The dismissal procedure of the Ombudsman should be a reflection of the appointment procedure foreseen in the Rules of procedure. This does not seem to be the case.[23]

[22] The concentration of powers in the hands of the Speaker of the parliament has been criticized by the Commission in its opinion on Opinion of the Rules of Procedures of the Assembly of "the former Yugoslac Republic of Macedonia" (CDL-AD (2009)025, Section C).

[23] Moreover, during the exchanges with the representatives of the Rada the rapporteurs were informed that a number of laws on appointment of public officials included provisions on secret vote which were contrary to the decision of the Constitutional court of Ukraine N°RP-15 of 11 July 2012 establishing that secret vote was contrary to the Constitution.

IV. Conclusions

59. The amendments to the Rules of Procedure of the Verkhovna Rada of Ukraine aimed at harmonizing them with the text of the Constitution are an important step in starting the reform aimed at enhancing the efficiency of the parliament. The Venice Commission hopes that this opinion will not only help the parliament to reconsider some of the proposed changes aimed at bringing the Rules of Procedure in line with the text of the Constitution, but also to create a momentum for further reforms which will increase the efficiency of the Verkhovna Rada.

60. It is clear that the Rules of procedure of the parliament are not only a set or rules or a technical description of its attributions. They have an important symbolic value as the expression of the autonomy and independence of the assembly as a representative and legislative power.

61. The Commission is aware that the Rules of procedure depend on the existing Constitutional framework and political arrangements between different forces in the legislature. In any revision of such documents, there is a temptation to create a set of new detailed rules or to copy the existing provisions of the Constitution. However, one should be aware of two factors. The first is that the Rada is better served with a set of internal regulations adopted and amended by it autonomously rather than by the rigid instrument of a Law. The second is that the best international practice show that, as far as procedure of a parliament is concerned, not everything can or should be fixed by the written Rules of procedure. In order to ensure the efficiency and leave a certain margin for a quick response to situations of conflict or crises, the MPs and different political forces they represent should be able to operate on the basis of unwritten consensus building mechanisms and democratic traditions. Such unwritten rules could also be perceived as an additional guarantee of the pluralism within the parliament.

62. The proposed amendments do not always follow this logic. The drafters of the text might find it useful to reconsider some of the proposed modifications. Since several problematic articles reflect the current Constitutional provisions the Venice Commission hopes that its observations will be useful in any future constitutional reform. The main recommendations could be summarised as follows:

1) Problematic provisions of the Law requiring amending the Constitution:

    a. The Rules of procedure should not be adopted as a law but as an internal act of parliament.

    b. The proposed amendments to the Rules of procedure based on Article 81 of the Constitution on revocation of MPs mandate in case he/she does not join a political faction could and should be reconsidered in the light of previous recommendations of the Venice Commission. Pending necessary constitutional reform the Rules of Procedure could provide for procedures aimed at minimizing the negative effect of Article 81 by giving the power to a specialised body of the Rada to review each case and issue a non-binding opinion.

    c. Detailed written rules on formation of coalitions could be an obstacle for the operation of the parliament, notably in the light of Articles 83 and 90 of the Constitution that fix a term of one month for the formation of a coalition and a possibility of a dissolution of the Rada if political factions fail to agree.

2) Amendments to the Rules of Procedure which do not require amending the Constitution and could be reviewed:

   a. The requirement to attach to the coalition agreement the list of MPs – members of a faction can be interpreted as reinforcing the control of political parties over their members in the parliament and therefore should be reviewed.

   b. Some of the procedures are too detailed and repetitive (like the appointments procedures foreseen in Article 205 on the appointment of Prime Minister, Ministers of Defence and of Foreign Affairs and 206/206(1) on the appointment of members of the Cabinet of Ministers) and as a consequence, could create additional tensions and become an obstacle for the efficient work of the parliament.

   c. The extensive responsibilities of the Speaker on purely administrative issues could be reconsidered by giving him the general authority to supervise the Rada's secretariat and leaving the administrative management to the Head of the secretariat.

63. The Venice Commission remains at the disposal of the authorities for any further *cooperation on the issue of the reform of the procedures of the Verkhovna Rada.*