Denys Kovryzhenko
Agency for Legislative Initiatives

# REGULATION OF POLITICAL PARTIES IN UKRAINE

## THE CURRENT STATE AND DIRECTION OF REFORMS

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# Preface

The importance of political parties as fundamental elements of modern democratic governance cannot be overstated. Our modern understanding of representative democracy, as codified and defined in international standards, foresees an essential role for political parties: representing, shaping, leading, transmitting, and coalescing citizens' ideas, interests and views. Indeed, it is quite clear that this vision of political parties was essential to the commitments laid out twenty years ago when the Conference on Security and Cooperation in Europe (CSCE) adopted the *Charter of Paris for a New Europe* and the *Copenhagen Document on the Human Dimension of the CSCE*. At Paris, the participating States proclaimed that "democracy, with its representative and pluralist character, entails accountability to the electorate", affirming some of the essential functions of political parties. In the Copenhagen Document, the participating States unanimously affirmed the "importance of pluralism with regard to political organizations", and committed themselves to "vigorous democracy… [with an] … extensive range of democratic institutions" and declared that they would achieve this by sharing information and co-operating in "developing political parties and their role in pluralistic societies".

Building on this legacy, the OSCE Office for Democratic Institutions and Human Rights' (ODIHR) Democratic Governance work strongly emphasizes the importance of political parties as a key mechanism in fulfilling commitments in the human dimension of security. Parties are a collective platform for the expression of individuals' fundamental rights to association and expression, and the most widely utilized vehicle for political participation. They ensure an informed and participative electorate, and serve as a bridge between the executive and legislative branches of government.

Legislation on political parties needs to respect and balance their dual nature: they are private associations that play a critical role as political actors in the public sphere, which requires well-crafted and tailored legislation considering a wide range of issues. Legislation should not interfere with the freedom of association and political parties must be protected as an integral embodiment of the individuals' right to freely form associations. However, given political parties' unique and vital role in the political process, it is commonly accepted for states to regulate their functioning insofar as is necessary to ensure effective, representative, and fair democratic governance.

The approach to political party regulation varies greatly across the OSCE space: from states that lack particular legislation on political parties (regulating such bodies only under general laws governing associations) to the incorporation of provisions relating to the function of parties in an array of different laws (including specific political party laws, constitutions, general election laws, and laws relating to issues such as media and party financing). We should be cautious about seeing the reform of political parties laws as a panacea for political party development. Nevertheless, addressing the legislative framework for political parties must surely go hand in hand with wider efforts towards political party development.

This project – funded by the European Union – was undertaken by ODIHR with the fundamental objective of strengthening democratic processes in Ukraine and Moldova by increasing the analytical capacity of local think-tanks. The ODIHR recognized that the fundamental relationship between political parties and the democratic institutions in Ukraine and Moldova, presented some key challenges and opportunities for reform. The ODIHR recognized that a targeted approach to addressing these challenges would have to address the legislative and regulatory framework which shapes and constrains the operations of all political parties in Ukraine and Moldova.

The ODIHR decided to join forces with local think tanks – in the case of Ukraine, the Agency for Legislative Initiatives (ALI) – combining ODIHR resources, methodologies and convening authority together with local expertise and analytical capacity. ALI used an ODIHR-developed unique analytical methodology recently (adapted from its forthcoming *Guidelines for Political Parties Legislation*), to form the basis for an analytical study of national political party legislation. ALI then used this study as a reference document to lead a process of consultation, discussion, reflection and discussion, through a participatory series of workshops and focus group meetings, involving leading civil society experts, activists, legal academics, parliamentarians, political party officials, and ministers, as well as international donors and stakeholders. The process also featured opportunities for engagement with peers in the parallel process in Moldova, through peer reviews and commentaries on the analyses developed. In this way, the participants were able to discuss deficiencies and difficulties in political party legislation, and develop recommendations for reform.

The result is *Regulation of Political Parties in Ukraine: the Current State and Direction of Reforms*, a comprehensive report which thoroughly analyses the particular problems and issues in Ukraine's legislative and regulatory framework for political parties. Looking forward, and based on the results of the consultations, it sets out an agenda for reform, based on international and European standards and best practice, useful to both national legislators, policy makers and advocates, as well as international partners and donors.

As will be clear from the report, this publication would not have been possible without the strong leadership, hard work and expertise of ALI, its staff, and in particular its Executive Director, Ihor Kohut, and its Director of Legal Programmes, Denys Kovryzhenko. Further thanks and acknowledgements go to ODIHR's partners in Moldova, Igor Munteanu, of IDIS

"Viitorul", and political party legislation expert Daniel Smilov. The ODIHR would also like to acknowledge the valuable support and assistance of the OSCE Project Coordinator in Ukraine. Last, but not least, the ODIHR would like to express its deep gratitude to the European Union for its generous support in funding this project, a truly non-partisan effort to assist Ukraine to further consolidate its young democracy.

**Denis Petit**

*Acting Head,*
*Democratization Department*
*OSCE ODIHR*

Warsaw, June 2010

# Introduction

The development of the multi-party system in Ukraine started in 1990, when the Parliament repealed Article 6 of the Constitution of the USSR which proclaimed the Communist Party the "core of the political system, and the leading and guiding force of Soviet society." Hence, the 1990 parliamentary elections for the first time ever were held on a competitive basis, since not only the members of the Communist Party but also a number of independent candidates stood for them. The year of the first multi-party elections was also marked by the registration of the first political party (The Ukrainian Republican Party). In the next few years, the number of registered political parties increased: 7 parties were registered in 1991, 6 in 1992, and 17 in 1993. On the eve of the 1994 parliamentary elections, 30 political parties were already registered, and the representatives of 14[1] of them were elected to the parliament (the Verkhovna Rada of Ukraine). The increases in the number of political parties also continued in the following years. For instance, as of April 2003, the number of registered political parties reached 123. In 2003, the Ministry of Justice of Ukraine carried out comprehensive checks of political parties aimed at finding out inconsistencies between the legal requirements of establishment and activities of political parties and their actual operation. As a result of these checks, the number of registered political parties decreased to 98. However, in the following years the number of political parties increased again, reaching 179 by June 1, 2010.[2]

The following factors had a key impact on the development of the party system in Ukraine:

**1) Weak public support of political parties**. It is worth mentioning that in 1994, when the first parliamentary elections to the Verkhovna Rada of independent Ukraine were held, of 4079 parliamentary candidates, 2813 did not belong to any political party; and out of 404 MPs elected, as of June 1996, 203 did not belong to any political party. According to a survey carried out in June 1995, only 31.2% of the respondents believed in the necessity of a multi-party system in Ukraine, and the share of those who were ready to give power to political

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[1] Б.Райковський. Трансформація вітчизняної партійно-виборчої системи//Вісник Центральної виборчої комісії. – 2009. – № 2-3 (16-17). – с. 19

[2] Source: Web site of the Ministry of Justice of Ukraine, at http://www.minjust.gov.ua/o/499

parties and movements was only 8%.[3] The surveys conducted by the Razumkov Center in the period from October 2001 to October 2009 revealed that the level of full confidence in political parties has never exceeded 5%, and the level of complete distrust has varied from 48.9% to 20.6%.[4]

**2) A lack of effective mechanisms to influence the executive (until 2005, when amendments to the Constitution entered into force)**. The 1996 Constitution significantly restricted the possibilities of the parliament (and, hence, of political parties) to adopt legislation and to influence the executive. All parliamentary decisions on draft legislation could easily be vetoed by the head of the state and Parliament could only override vetoes by a two-thirds majority of all MPs. The authority to nominate the Prime Minister was vested exclusively in the head of the state, and the Parliament could only approve or reject a candidate, proposed by the President. All the members of the Government were to be appointed solely by the President, and the latter could at any time discharge them from office without parliament's consent. The President also had extensive powers to appoint and dismiss the heads of local state administrations, who exercised executive power at local and regional levels. A large number of presidential acts in different areas did not require countersignature by the Prime Minister or one of the Ministers, and those acts had to be implemented by the Government. Such a form of government did not strengthen the role of political parties in decision-making, particularly, if one takes into consideration that the President usually belonged to no political party.

**3) Effects of types of electoral systems that were applied during the 1994, 1998 and 2002 parliamentary elections**. The 1994 parliamentary elections were held on the basis of the absolute majority system (AMS), while in the 1998 and 2002 elections, the mixed system was applied to the election of members of the Parliament. The application of AMS resulted in a political fragmentation of the Parliament. This was due to the number of independent MPs, who viewed themselves as responsible only to the voters in the constituencies where they were elected.[5] Furthermore, when the mixed system was introduced, representatives of small and so-called "pro-presidential" parties and blocs were elected mainly in the single-member constituencies. The main results of the introduction of the AMS and mixed system were an absence of stable coalitions within the parliament, weak governments that could not rely on parliamentary support,[6] and constant changes in the composition of the parlia-

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[3] Political Parties in Interaction with Public Institutions (in Ukrainian); http://www.analitik.org.ua/publications/joint/3dd12dea/3dd13f15/; http://www.analitik.org.ua/publications/joint/3dd12dea/3dd25712/

[4] A Survey: Do you Trust Political Parties? (Dynamics, 2001 – 2009) – Razumkov's Center (in Ukrainian); http://www.razumkov.org.ua/ukr/poll.php?poll_id=82

[5] This understanding of the nature of a representative mandate is widely spread even now among both Ukraine's politicians and experts. This understanding is closely concerned with the Soviet practice: the USSR's legislation provided for the imperative mandate and the possibility of recall of the representative by the voters of the respective constituency, even though the mechanism of the recall was not envisaged in legislation.

[6] Since 1996, the term of office of each government in power rarely exceeded 1-2 years. For example, Pavlo Lazarenko was appointed Prime Minister in June 1996, dismissed in June 1997, Valeriy Pustovoitenko was in power from July 1997 until Decmber 1999; Victor Yushchenko – from December 1999 until April

mentary factions. For example, during 1998–2002, there were 600 cases of MPs switching factions. After the transition from AMS to the mixed system, the number of cases of MPs shifting factions decreased, though they remained at a relatively high level: in 2002–2006, deputies changed factions 300 times.[7] In this regard, it should also be noted that AMS had a significant impact on the behaviour of the voters: they directed their attention to personalities, rather than to political programmes and parties' names.

**4) Weak financial capacity of most of the parties**. Since parties did not enjoy the support of the voters, they could not rely on income from membership fees. At the same time, the law did not provide for direct public funding of political parties. Hence, political parties could only rely on private funding from oligarchs and corporations. These entities used this opportunity to capture political parties and to turn them into political branches of their own businesses. This, in turn, entailed the spread of corruption in decision-making, the weakening of ties between the voters and politicians, and the election of a large number of businessmen to the parliament.

However, the parties that have been in power since 2002 have tried to increase their influence on policy-making. That is why during 2003-2004 the Parliament made a number of important decisions that were aimed at strengthening the party system of Ukraine and increasing the role of political parties in exercising power.

First, in 2003, the Verkhovna Rada of Ukraine adopted the Law on Amending Some Legislative Acts of Ukraine due to the Introduction of Public Funding of Political Parties (see para. 4.1.1. of this Report). The Law provided for public funding of statutory activities of political parties and reimbursement of the electoral expenditures from election funds of the parties. The main goal this Law was to achieve a decrease in political parties' dependence on private funding.

Second, in March 2004, the parliament adopted a new version of the Law on Parliamentary Elections, which introduced a proportional electoral system with voting for closed lists of political parties and blocs in a single multi-member constituency. Prior to that, a mixed system had been used, most recently in 2002. This system was supposed to reduce the influence of administrative resources on election results, to strengthen internal party discipline, and to reduce the number of cases of MPs changing factions. However, the main goal this system was thought to achieve was the possibility of forming stable coalitions within the legislature, which would have implied an increase of party influence on the Government and strengthening the overall role of political parties in policy-making.

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2001; Anatoliy Kinakh – from May 2001 until November 2002; Victor Yanukovych – from November 2002 until January 2005; Yulia Tymoshenko – from February till September 2005; Yuriy Yekhanurov – from September 2005 till August 2006; Victor Yanukovych – from August 2006 till December 2007; and Yulia Tymoshenko – from December 2008 till March 2010. See: http://www.kmu.gov.ua/control/uk/publish/article?art_id=1266975&cat_id=661266

[7] Рейтинг депутатів-перебіжчиків, чиї маневри перекроювали політичну карту парламенту; http://paralleli.if.ua/news/1946.html

Third, in April 2004, the Parliament adopted a new Law on Local Elections which introduced for most of the local elections (with the exception of elections to village and town councils held on the basis of the FPTP) the same system that had already been introduced for the parliamentary elections. The main purpose of this Law was to increase the influence of political parties on decision-making at the regional and local levels.

Fourth, in December 2004, the Verkhovna Rada of Ukraine adopted the Law on Amendments to the Constitution of Ukraine. The Law provided for the mandatory formation of a parliamentary coalition in the legislature and introduced the so-called, "party administered mandate." Both innovations were later severely criticized by the Venice Commission.

The amendments to the Constitution to some extent restricted the powers of the President in terms of his influence on the activities of the government. In contrast, the respective powers of the Parliament were broadened. For example, the right to nominate a Prime Minister was granted to the parliamentary coalition; all the members of the Government had to be appointed by the Verkhovna Rada on the proposal of the Prime Minister (with the exception of the Minister of the Foreign Affairs and the Minister of Defence, who would have to be appointed by the Parliament on a proposal from the President). The President also lost his right to discharge members of the Government from office at any time, and instead these powers were vested in the Parliament. The constitutional amendments also strengthened the government's influence on the executive: the Cabinet of Ministers obtained the right to establish, reorganize, and liquidate the ministries, and to appoint and dismiss the heads of the central executive bodies (before the constitutional amendments came into force, these powers were vested in the head of the state).

However, practice has revealed that most of the above reforms have not achieved their goals.

The direct public funding was in the end not provided to political parties, since the Law that envisaged its introduction was repealed (see also paragraphs 1.5.1. and 4.1.1. of this Report). Hence, the heavy dependence of political parties on private funding has remained. Some examples can be presented here just to substantiate the above statement. According to information in the media, on the eve of the 2007 parliamentary elections each of the three leaders in the campaign, namely, the Party of Regions, the bloc Our Ukraine – People's Self-Defence, and the Yulia Tymoshenko Bloc had on its list at least one billionaire and a few "patrons," i.e. millionaires with an annual income of more than 300 million dollars. The biggest number of millionaires was included on the list of the Party of Regions (more than 40), while on lists of the Yulia Tymoshenko Bloc and the bloc "Our Ukraine – People's Self-Defence" the number of millionaires was twice smaller in comparison with the Party of Regions.[8] According to the Razumkov's Center, out of 24 Ukrainian citizens ranked among the richest in Central and Eastern Europe by *Wprost* magazine, seven were elected to the Verkhovna Rada.[9]

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[8] Миллионерам достанется четверть следующей Рады // Дело, 09.09.2007; http://delo.ua/vlast/politika/millioneram-dostanetsja-chetvert-sledujucshej-rady-50580/

[9] Політична корупція в Україні: суб'єкти, прояви, проблеми протидії. Інформаційно-аналітичні матеріали до фахової дискусії „Політична корупція в Україні: стан, чинники, засоби протидії" 27

In parliamentary and local elections, the transition to the proportional system with voting for closed lists entailed a number of ambiguous consequences. Among the positive results of such a transition are a decrease in the number of factions in the Verkhovna Rada to five, the trend towards a reduction in the number of political parties and blocs participating in the parliamentary elections from 45 in 2006 to 20 in 2007.[10] The decrease in the number of participants in the parliamentary elections to some extent simplified the preparation for elections, while a decrease in the number of parliamentary factions has created the necessary prerequisites for forming stable governments. An application of the proportional system in a single multi-member constituency also revealed the decrease of influence of administrative resources on election results. This can be proved by the results of the 2006-2010 national elections, in which the parties and officials in power received less voter support in comparison with previous elections where they were in opposition. Among the shortcomings of the application of the proportional system are a significant increase in the influence of party leadership and donors on nomination of the candidates for election,[11] the poor quality of laws and decisions made by elected bodies influenced by party leadership and business, and the diversion of attention of local politicians toward national policy issues (language, foreign policy), rather than issues important for local communities.[12]

The amendments to the Constitution that introduced a "party administered mandate" significantly decreased the number of cases of MPs changing their factions. However, even in the new Parliament, formed in 2007, there were some MPs expelled from their factions due to infringement of party discipline. The most recent practice in 2010 also revealed that a significant number of MPs who could nominally be members of the opposition to the newly formed government, individually joined the coalition and voted against the decisions of their own parties, on whose lists they had been elected. Hence, in general, the introduction of a "party administered mandate" has not achieved the goals set out by the politicians who supported it. The roots of the problem of poor party discipline are in the approach to the nomination of candidates for elections: most political parties nominated as candidates for elections people appointed by party donors, rather than party "militants." The other reason is that in April 2004, the MPs who belonged to no factions were awarded some specific rights, which to some extent encouraged weakening the party discipline (see also para. 1.4.2. of this Report).

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листопада 2009 р. – К., 2009. – С. 12; http://www.uceps.org/files/news_project/PRZH_Corruption_2009.pdf or http://www.razumkov.org.ua/eng/files/category_journal/NSD111_ukr_1.pdf

[10] 30 parties and blocs participated in the 1998 parliamentary elections, 33 – in the 2002 parliamentary elections, 45 – in the 2006 parliamentary elections, and 20 – in the 2007 elections. Source: О.З.Панкевич, М.П.Кілик. Пропорційна виборча система в Україні: шляхи вдосконалення // Науковий вісник Львівського державного університету внутрішніх справ. – 2009. – № 3. – С. 2; http://www.nbuv.gov.ua/portal/Soc_Gum/Nvlduvs/2009_3/09pozusv.pdf

[11] І.Жданов. Яка виборча система необхідна Україні? // Дзеркало тижня. – 2007. – № 44 (673); http://www.dt.ua/1000/1550/61173/

[12] О.Процак. Місцева влада: деякі наслідки пропорційних виборів; http://westukr.itgo.com/procak_cpd_conf2006-1.html

The amendments to the Constitution that provided for the obligatory formation of a parliamentary coalition were intended to encourage the formation of a relatively stable parliamentary majority, since a failure of the factions to form a coalition within 30 days might entail dissolution of the Parliament by the President. However, experience has shown that a coalition may exist "on paper" and may not necessarily support the government. The constitutional requirement for forming the coalition exclusively out of factions rather than by including individual MPs has provoked situations when a new coalition in the Parliament could not be formed at all.[13]

Although the 2004 constitutional reform to some extent reduced presidential influence on the government, the head of state did retain some leverage to influence the executive. For example, the President was given the right to suspend any governmental decision and to apply to the Constitutional Court to declare the respective decision inconsistent with the Constitution. This allowed the President to block the activities of the government: for example, from December 2008 to July 2009 the President suspended 75 legal acts of the Cabinet of Ministers.[14] The President also retained the right to appoint and dismiss the heads of local state administrations, depriving the government of the possibility to enforce its decisions, and to exercise control over their implementation at the local and regional levels (since many heads of local administrations were 'the people of the President').[15] The amendments to the Constitution also reduced the number of presidential acts that were required to be countersigned by members of the government. Hence, the President obtained some additional discretionary powers. The amendments to the Constitution also did not change the procedure for a veto override, introduced by the 1996 Constitution, which required a two-thirds majority in parliament in support of the respective decision. As a result, the President used the right to veto those laws that were disadvantageous to him, and the parliament could not override a veto due to the absence of the required number of votes.[16]

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[13] This problem was solved by the Decision of the Constitutional Court of Ukraine of April 6, 2010, № 11-рп/2010 in a case on the constitutional petition of 68 People's Deputies of Ukraine concerning official interpretation of Article 83.6 of the Constitution and Article 59.4 of the Rules of Procedure of the Verkhovna Rada of Ukraine pertaining to the possibility of participation of the People's Deputies of Ukraine in forming a coalition of factions in the Verkhovna Rada of Ukraine. In accordance with this Decision, the MPs, including those who are not members of the factions that initiated the forming of the coalition, may participate in the forming of the coalition and to join it at any time. Source: http://zakon1.rada.gov.ua/cgi-bin/laws/main.cgi?nreg=v011p710-10&p=1270074647320297

[14] See: Масове зупинення дії урядових рішень викликає занепокоєння; http://www.ukurier.gov.ua/index.php?articl=1&id=5425

[15] In some cases, the heads of the regional state administrations, following the instructions of the Presidential Secretariat, refused to participate in the sittings of the government because their participation in the sittings was not allowed by the President. See, for example: Ющенко не пустив губернаторів до Тимошенко; http://www.4post.com.ua/politics/97831.html

[16] In 2006, the President exercised his veto right 111 times, in 2007 – 47 times, and in 2008 – 29 times. The Law on the Status of Investigators (registration № 4125 of 6 April 2006) was vetoed 5 times, the Law on the Status of the City-Hero Sevastopol (registration № 3187 of 21 March 2006) – 4 times. See: Д.Ковриженко. Інститут вето: зарубіжний досвід, національне законодавство і практика, пропозиції // Часопис ПАРЛАМЕНТ. – 2009. – № 5. – с. 18; http://www.parliament.org.ua/docs/files/9/1264780670_ans.pdf

The election of the new President of Ukraine has brought to an end the confrontation among the head of state, the parliament, and the government, since at the moment the President and the Prime Minister represent the same political party. However, stand-offs are still possible in the future, in particular if the government is formed by political parties that are in opposition to the president.

In order to test the key findings and recommendations of this Report, to raise awareness of the need for political party legislation reform, as well as to incorporate into the Report suggestions derived from practice and the experience of the representatives of political parties, public officials, civil society experts, and other stakeholders, the Agency for Legislative Initiatives carried out a wide range of consultation and discussion activities. These activities took place within the framework of a joint project of the OSCE-ODIHR and the European Commission. The project included, in particular, the round table "Regulations of Political Parties in Ukraine: the Current State and Directions of Reforms," that took place on March 30, 2010 in Kyiv; three focus groups that took place from 28-30 April 2010, in Lutsk (April 28, 2010), Chernigiv (April 29, 2010), and Kyiv (April 30, 2010); and an international conference "Regulations of Political Parties in Ukraine: the Current State and Directions of Reforms" that took place on May 21, 2010.

The focus groups and international conference were organized under the project, "Analysis and Recommendations for Reform of Political Parties Legislation and Regulation in Ukraine," funded by the European Union and implemented in Ukraine by the OSCE-ODIHR in partnership with the Agency for Legislative Initiatives. The focus groups brought together the representatives of leading political parties (such as the party "Our Ukraine", the Ukrainian People's Party, the political party "Civic Party Pora", the Communist Party of Ukraine, the party "Reforms and Order", All-Ukrainian Association "Motherland", the Party of Regions, and the People's Party), while the international conference included in the discussion of the draft Report representatives from the Ministry of Justice of Ukraine, members of the Central Election Commission, MPs, members of political parties, civil society experts, and other stakeholders. The main goal of all these activities was participants.

As revealed by the discussion of this Report in focus groups, during a round table, and in an international conference, the reforms pertaining to regulation of political parties and electoral campaigns should keep in mind the key role of political parties in policy-making. The respective legal changes should foster, in particular through changes in the electoral systems and funding of political parties, the development of ideological parties, the strengthening of internal party democracy, and an end to the dependence of political parties on private financing.

# 1. DEFINITION OF "POLITICAL PARTY"

## 1.1. LEGAL DEFINITION

### 1.1.1. The definition of "political party" in the constitution, laws, and traditions; consistency of definition; the legal meaning of the definition in the court of law

The statutory definition of a political party was introduced in 1992 by the Law on Civic Associations.[17] The 1996 Constitution of Ukraine does not contain any definition of political party and defines only the tasks of political parties, such as assisting in the formation and expression of the political will of citizens and to participate in elections.[18] The statutory definition of a political party, introduced by the Law on Civic Associations of 1992, was further specified in 2001 by the Law on Political Parties. According to Article 2 of this law, a political party is a legally registered voluntary association of citizens adhering to a certain national social development programme, aimed at assisting in the formation and expression of citizens' political will, and participating in elections and other political events. This definition is consistent – the Law on Civic Associations can be applied to political parties only in cases when the Law on Political Parties in Ukraine does not apply. The definition of political party has legal meaning in a court of law in the sense that only legal entities legally registered as political parties may be considered by courts as "political parties."

### 1.1.2. Differences between political parties and other associations

The Law on Civic Associations divides all civic associations into two groups: political parties and NGOs. The main differences include:

- the activities of political parties are regulated by a separate law; the provisions of the Law on Civic Associations can be applied to political parties only when it does not contradict the Law on Political Parties;
- political parties and NGOs perform different tasks: the key tasks of a political party are to assist citizens to form and express their political will, as well as to participate in elections; the key task of an NGO is to protect the mutual (common) interests of its

[17] The Law was adopted on June 16, 1992.

[18] Article 36 of the Constitution of Ukraine

members. According to the elections laws, NGOs are not entitled to nominate candidates for elections. They are not required to have their own programs of goals and activities as well. However, political parties have the right to nominate candidates for elections and must have programs;

- a political party can be recognized only at the national level, while NGOs may have either a national or local status. In addition, the law provides for the possibility of registering international NGOs in Ukraine, while foreign parties cannot be registered in Ukraine;
- a political party can be founded only by Ukrainian citizens, while an NGO can be founded not only by Ukrainian nationals, but also by foreign citizens or stateless persons;
- certain categories of citizens are not allowed to be members of political parties. The restrictions on membership in NGOs are not as strict as compared with the restrictions applied to political parties;
- an NGO may be officially recognized by a written notification of the Ministry of Justice (in the case of national NGOs) or by the Ministry's local branch (in the case of a local NGO) of its foundation (however, in this case an NGO does not obtain legal entity status; to obtain it an NGO has to submit an application for registration and has to be registered by the Ministry of Justice or its respective local branch). A political party may be officially recognized only through its registration by the Ministry of Justice of Ukraine;
- political parties can be registered only by the Ministry of Justice, while NGOs can be registered either by the Ministry of Justice or by its local branches, depending on the status (national or local) of an NGO;
- there are certain distinctions in approaches to regulation of the business activities of political parties and NGOs: 1) political parties are not allowed to establish enterprises; 2) NGOs are not allowed to sell goods and services (with the exception of goods or services sold by NGOs for prices lower than the market prices for the same types of goods and services provided by other suppliers; see Table 1 below), while political parties can sell certain kinds of goods and services; 3) the restrictions on the sources of party funding are stricter in comparison with the restrictions on the sources of NGO funding;
- there are different sanctions for political parties and NGOs: a party may be warned, its registration may be cancelled, while the sanctions for NGOs are warnings, fines, suspension of certain types of activities, suspension of all activities, and prohibition (dissolution).

More detailed information on the key differences between political parties and NGOs is presented in Table 1 below.

**Table 1.** The Differences in Regulation of Political Parties and NGOs

| | NGOs | Political parties |
|---|---|---|
| **Tasks** | To satisfy and protect citizens' legitimate social, economic, creative, age, national, cultural, sports, and other common interests | To assist in the formation and expression of citizens' political will, to participate in elections and other political events |
| **Status** | International, national and local | National |
| **Foundation** | NGOs can be founded by the citizens of other countries, persons without citizenship, or by citizens of Ukraine. | Political parties can be founded only by the citizens of Ukraine with full legal capacity |
| **Membership** | 1) Any person of at least 14 years of age can be a member<br>2) No membership restrictions<br>3) Parties may not have fixed membership | 1) Only Ukrainian citizens of 18 years of age or older can be members of political parties<br>2) Judges, officials of the public prosecutor's office, officials of the bodies of the Interior, officials of the State Security Service, military servants, officials of the State Tax Authority cannot be members of political parties<br>3) Fixed membership is obligatory |
| **Recognition through registration** | Voluntary (obligatory for international NGOs only). | Obligatory – unregistered political parties are not allowed to operate. |
| **Recognition through notification of foundation** | Allowed for local and national NGOs. An NGO which notified the Ministry of Justice or its local office of its foundation, however, does not obtain legal entity status. It obtains it as soon as it is registered by the Ministry of Justice or its local branch | Prohibited |
| **State authority responsible for registration** | Local offices of the Ministry of Justice (for local NGOs), Ministry of Justice (for international and national NGOs) | Ministry of Justice of Ukraine |
| **Deadline for registration/refusal of registration** | 3 days after applying for registration | 30 days after applying for registration |
| **Obligation to create local organisations** | No | Yes.<br>Within six months from the date of registration, a political party must secure the establishment and registration of its local organizations in the majority of regions ("oblasts") of Ukraine |
| **Programme** | No obligation to have a programme | Party must have a programme. The programme of a political party is an account of the party's tasks and objectives, as well as ways to implement them |
| **Right to nominate candidates for national and local elections** | No | Yes |
| **Right to establish enterprises** | Yes | No (but parties can establish mass media) |
| **Right to have free access to state mass media during elections** | No | Yes |
| **Right to sell goods and services** | In general, NGOs are not allowed to sell goods or services. The only exception from this rule is the case when goods and services are sold by NGOs for prices lower than market prices for the same types of goods and services provided by other (commercial) suppliers. The main reason for the restriction of prices is that NGOs are non-profit organizations – in this way the legislator tried to prevent NGOs from involving themselves in business activities aimed at obtaining profits from the sale of goods and services. Should any NGO infringe this requirement, it can be deprived of its non-profit status by the tax authorities. | Yes. But only for certain types of goods and services. For example, political parties can sell political literature and other propaganda materials, goods with their symbols, and they can obtain funds from festivals, exhibitions, lectures, and other political actions and acquire assets from these activities. |
| **Prohibition of donations from foreign countries and organisations, international organisations, foreign citizens, persons without citizenship, government and local self-government bodies; state and municipal enterprises, institutions and organisations; mixed property enterprises (with state, municipal or foreign shares); non-legalized civic associations; charitable and religious organisations; anonymous donations; donations from other parties other than members of election coalitions** | There is no explicit prohibition | Yes |
| **Sanctions** | Warning, fine, suspension of certain types of activities, suspension of all activities, dissolution (prohibition) | Warning, cancellation of registration, prohibition (ban on political party) |

### 1.1.3. Special rules for politically active organizations other than political parties

National legislation contains no provisions for political associations other than political parties. Theoretically, politically active organizations may exist in the form of NGOs, but in this case, they will not be entitled to have any of the rights of political parties.

### 1.1.4. Types of regulatory regimes for political parties (national/provincial)

According to Article 92 of the Constitution of Ukraine, the principles of foundation and activities of political parties must be determined by the laws of Ukraine. Hence, political parties are regulated only at the national level. It also should be mentioned that the Autonomous Republic of Crimea has no right to regulate any issues relevant to political parties.

### 1.1.5. The possibility of recognition of regional (sub-national) parties

According to the Article 3 of the Law on Political Parties, parties can be established and can carry out any activities on condition that they have a legal national status. Thus, the law does not provide for the possibility of registration and operation of regional (sub-national) parties. Provisions of the Law on Political Parties that provide for the registration of only national-level parties were criticized by the Venice Commission in its statement that such a requirement "constitutes a legal impediment to forming parties that concentrate on matters concerning regional issues (for example, the Autonomous Republic of the Crimea)."[19]

Furthermore, in its Code of Good Practice in the Field of Political Parties, the Venice Commission emphasized that state bodies should not limit the right to establish political parties only at the national level, but also on regional and local levels.[20] In this regard, it should be mentioned that in many states, such as Austria, Greece, Finland, France, Italy, Japan, Luxembourg, Malta, Spain, the law provides no distinctions between political parties on the basis of levels of government at which parties operate, regardless of whether the governmental system of the country is unitary, federal, or other. There are some exceptions to this rule. For example, Georgia prohibits political parties on the grounds of regional or territorial status. Canada distinguishes between political parties on the federal and provincial level. In Germany, politically active associations at the local level do not fall within the concept of political party in the sense of the Basic Law and legislation on political parties.[21] As dis-

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[19] 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, Finland), Mr. Valeriu Stoica (Romania). – paragraphs 9, 15; http://www.venice.coe.int/docs/2002/CDL-AD(2002)017-e.asp

[20] 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 the Explanatory Report, adopted by the Venice Commission at its 78th Plenary Session (Venice, 13-14 March 2009). – para. 14; http://www.venice.coe.int/docs/2009/CDL-AD(2009)021-e.asp

[21] Report on the Establishment, Organization, and Activities of Political Parties prepared by Mr. Hans Heinrich Vogel (Substitute Member, Sweden) on the basis of replies to the questionnaire on the establishment,

cussion of this Report in the focus groups has revealed,[22] the idea of supplementing current legislation with provisions allowing regional or local political parties to appear in political arenas is not supported either by representatives of key political parties or experts. The main arguments against this idea are that:

- current legislation does not restrict parties in their right to limit their activities to certain regions of Ukraine;
- the possibility of registration of regional parties may entail fatal consequences to the territorial integrity of the state and may destabilize the situation in some regions of Ukraine, in particular in the Autonomous Republic of Crimea or Transcarpathians;
- the best alternative to the possibility of registration of regional or local political parties may be the amendment of current laws with provisions to allow voters to nominate themselves as candidates in local elections (where the possibility of self-nomination is restricted only to mayoral elections and elections to town and village councils).

## 1.2. Official recognition (registration) of political parties

### 1.2.1. The official party registers

There are official registers of political parties and their local organizations. The Ministry of Justice administers the Register of political parties, and its local bodies administer separately the registers of party local organizations in every region, district, and city. The content of these registers and the procedure for administering them were determined by the Order of the Ministry of Justice № 556/7 of July 3, 2001. It is important to highlight that data from the registers of local party organizations are not included in the Register of Political Parties administered by the Ministry of Justice. This negatively influences the effectiveness of the Ministry's control over political parties and over their observance of current laws.

According to Order № 556/7 of July 3, 2001, for every party the following information should be specified in the Register:

- the date of application for registration;
- the name of the political party;
- the legal address of the political party;
- the date when the charter and programme of the political party were approved;
- the date of registration of the political party and the number of the certificate of registration;
- the main tasks of the political party;
- information on the governing bodies of the political party;
- information on any further changes in the documents submitted by a political party at the time of application for registration; and
- information on the payment of the registration fee.

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organization, and activities of political parties, adopted by the Venice Commission at its 57th Plenary Session (12-13 December 2003); http://www.venice.coe.int/docs/2004/CDL-AD(2004)004-e.asp

[22] For further information on the focus groups see the Introduction to this Report.

For every party organization at the local level, the following information has to be included in the relevant Register of local party organizations:

- the date of application for registration of the local party organization;
- the name, registration number, and the date of registration of the political party;
- the name of the local party organization, the date and number of the minutes of the founding congress where the decision on establishment of the local party organization was adopted;
- the address of the local organization;
- the date of registration of the local organization and its registration number;
- information on the governing bodies of the organization;
- information on any further changes to the documents submitted at the time a local party applied for registration for the first time;
- information on whether the organization is a legal entity or not.

Some political party information from the Register is available on the website of the Ministry of Justice of Ukraine (http://www.minjust.gov.ua/0/499), in particular, it includes information on names, dates of registration, numbers of certificates of registration, their addresses, and names and surnames of their leaders. Other information from the Register is not posted on the website of the Ministry, but is available on request by any person. The registers of local party organizations are not publicly available.

Therefore, there is a need to:

- unite the Registers of political parties and Registers of local party organizations into a single Register;
- make the information from a single Register publicly available.

### 1.2.2. Possibility of sub-national registration (recognition) of political parties

According to Article 11 of the Law on Political Parties, parties are registered at the national level by the Ministry of Justice of Ukraine (see also para. 1.1.5. of this Report). Regional, republican (in the Autonomous Republic of Crimea), district, and city organizations of political parties are registered, respectively, by the regional, republican, district, and city bodies of the Ministry of Justice of Ukraine.[23] These organizations can be registered only on condition that the party has already been registered with the Ministry of Justice.

### 1.2.3. The requirements an entity must meet to be recognized/registered as a new party

In accordance with Article 10 of the Law on Political Parties, in order to be registered with the Ministry of Justice, a new party must convene a constituent assembly. The following decisions have to be adopted by the constituent assembly of a political party:

- the establishment of the political party;
- the adoption of a charter;
- the adoption of a party programme; and

[23] Article 11.7 of the Law on Political Parties in Ukraine

- the election of the governing and supervisory bodies of the party.

The decision to establish a political party must be supported by 10,000 voters, whose signatures have to be collected in at least two-thirds of districts of at least two-thirds of the regions of Ukraine and the cities of Kyiv and Sevastopol, and in the Autonomous Republic of Crimea.

If the above requirements are met, a party can submit to the Ministry of Justice the following documents[24]:

- a charter and programme;
- the minutes of the constituent assembly of the political party with an indication of the date, venue of the congress, and number of votes for establishment of the political party;
- the lists with the signatures of 10,000 voters who supported the establishment of the political party, certified by the persons who collected the signatures;
- an information on the composition of the governing bodies of the party;
- a document certifying the payment of the registration fee;
- the name and address of the bank in which the party intends to open its accounts.

All submitted documents must comply with the legal requirements; otherwise, the Ministry of Justice may refuse to register the political party.

The provisions of Articles 10 and 11 of the Law on Political Parties with respect to the procedure for establishment and registration could be subject to the following critical assessment:

First, the Venice Commission emphasized that the requirements for establishing a political party are very complex; and the threshold for founding new parties appears rather high. In the opinion of the experts of the Venice Commission, the difficulties in the establishment process could be an impediment to any challenge to the existing party system arising out of new political ideas.[25] However, the trend towards an increase in the number of registered political parties seems to argue against such an interpretation. Nevertheless, when this Report was discussed with experts, a significant number of them concluded that the procedure for establishing political parties should be simplified, since the existing requirements for the establishment of political parties do not achieve the goals that were pursued at the time when the restrictions were introduced.

Second, such requirements do not conform to Article 11.2 of the ECHR, which says that no restrictions shall be placed on the exercise of the right to freedom of association with others, other than as prescribed by law and are necessary in a democratic society to protect the interests of national security or public safety, for the prevention of disorder or crime, for the

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[24] Article 11 of the Law on Political Parties in Ukraine

[25] 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, Finland), Mr. Valeriu Stoica (Romania). – paragraphs 7, 8; http://www.venice.coe.int/docs/2002/CDL-AD(2002)017-e.asp

protection of health or morals, or for the protection of the rights and freedoms of others.[26] This assertion is based on the judgments of the European Court of Human Rights, in particular the case of Koretskyy and others v. Ukraine.[27]

In its decision, the ECHR emphasized that:

- refusal to grant legal entity status to an association of individuals amounts to an interference with the exercise of the right to freedom of association; therefore Ukraine must comply with Article 11.2 of the ECHR;
- the provisions of the law regulating registration of associations should be "foreseeable" for the persons concerned and should not grant an excessively wide margin of discretion to the authorities in deciding whether a particular association may be registered; and
- the restrictions applied must be based on a "pressing social need" and only convincing and compelling reasons can justify restrictions on freedom of association.

Articles 10 and 11 of the Law on Political Parties in Ukraine grant a wide margin of discretion to the Ministry of Justice of Ukraine in deciding whether a particular party may be registered. In fact, the Ministry can refuse to register a political party on several grounds. For example if the charter of a party contains textual discrepancies with provisions of the law, then registration can be denied. Court practice (see Annex 2 for further information) shows that the Ministry of Justice, while deciding whether to register a party, checks not only the formal compliance of the documents submitted for registration with legal requirements, but also the authenticity of the signatures in support of the establishment of the political party (this examination, moreover, can be selective with respect to different parties and different signatures), and the name of the party (whether it coincides with the names of already registered parties).

The requirement to file lists with signatures of voters supporting the foundation of a political party, though in compliance with the Constitution, does not conform to the criterion of a "pressing social need" since, if taking into consideration the number of registered political parties in Ukraine, it has reduced neither the number of parties operating temporarily (during election campaigns only), nor the number of political parties pursuing narrow corporate interests.[28] In the case of Koretskyy and others v. Ukraine, the main claims of the applicants were upheld by the ECHR because, inter alia, the association "intended to pursue peaceful and purely democratic aims and tasks" and there was no indication that the asso-

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[26] Convention for the Protection of Human Rights and Fundamental Freedoms. as amended by Protocols No. 11 and No. 14; http://conventions.coe.int/treaty/en/Treaties/Html/005.htm

[27] Judgement of the ECHR in the case of Koretskyy and others v. Ukraine No 40269/02, § 47, 3 April 2008; http://cmiskp.echr.coe.int/tkp197/view.asp?action=html&documentId=830484&portal=hbkm&source=externalbydocnumber&table=F69A27FD8FB86142BF01C1166DEA398649

[28] Decision of the Constitutional Court of Ukraine, June 12, 2007, № 2-рп/2007 in the case on the constitutional petition of 70 People's Deputies of Ukraine concerning compliance with the Constitution of Ukraine (constitutionality) of the provisions of Articles 10.1, 11.2.3, 11.5, 11.6, 15, 17.1, 24, and item 3 Chapter VI "Final Provisions" of the Law of Ukraine on Political Parties in Ukraine (case on establishment of political parties in Ukraine); http://zakon1.rada.gov.ua/cgi-bin/laws/main.cgi?nreg=v002p710-07&p=1260610221550455. See also Annex 2.

ciation "would have used violent or undemocratic means to achieve its aims". The Law on Political Parties however, includes the possibility to refuse to register a political party even in the case of a party pursuing purely democratic aims and tasks.

### 1.2.4. Provisions requiring parties to conform to particular organizational rules

The charter of a political party should include a list of the statutory bodies in the political party, the procedures for their establishment, their powers, and term of office; the procedures for admission, suspension, and termination of membership in the party; the rights and obligations of the members; the grounds on which membership can be suspended or terminated; the procedures for the establishment, general structure, and competence of regional, city, and district party organizations and the smallest units of a political party; and the procedures for conventions, party assemblies, conferences, meetings, and other representative bodies of a political party.[29] If a charter does not contain any of the above provisions, the party will not be registered with the Ministry of Justice.

### 1.2.5. Regulation of certain kinds of parties (parties of linguistic minorities, parties composed only of women/men, parties of certain regions of the country)

National legislation does not provide for dividing political parties into any types, and applies equally to all registered political parties. Charters of political parties cannot introduce membership restrictions on the basis of sex, nationality, or other criteria.[30]

### 1.2.6. The requirements a party must meet to remain registered

The Law on Political Parties sets a number of conditions on parties to remain registered. In particular, a party should:

- submit correct information when applying for registration, because if within three years from the date of registration, the party is found to have submitted false information, its registration can be cancelled;
- within 6 months from the date of its registration, establish and secure the registration of local branches in most regions of Ukraine;
- within 10 years from the date of registration nominate candidates for presidential or parliamentary elections; and
- not transgress the requirements of establishment and activities of political parties as set forth in the Constitution and laws of Ukraine (see paragraph. 1.3.3. of this Report for further details).

The constitutionality of some of the above provisions has been considered by the Constitutional Court of Ukraine. However, the Court came to the conclusion that they were in line with the provisions of the Constitution and did not violate the right to freedom of associa-

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[29] Article 8 of the Law on Political Parties in Ukraine

[30] Article 7 of the Law on Civic Associations

tion.[31] Provisions of the Law on Political Parties have also been subject to criticism from the Venice Commission. The experts of the Commission emphasized that the Law makes no distinction between minor and major infractions, and there is no account of the nature of the infraction, i.e., if it was political, breached the criminal law, or disregarded accounting provisions. Hence, each and every transgression may, under Article 19 of the Law on Political Parties, lead to either a warning or prohibition of the political party.[32] In this regard, it should be mentioned that Article 19 of the Law on Political Parties is interpreted by the national courts narrowly. In other words, a political party may be prohibited by a court of law only if it transgresses Article 37 of the Constitution, Article 4 of the Law on Civic Associations, or Article 5 of the Law on Political Parties[33] (see also para. 1.3.3. of this Report). In other words, a political party cannot be banned for any transgression of the law as the experts of the Venice Commission stated, it can be prohibited only in the exceptional cases exhaustively listed in the Constitution and laws of the country. However, it is possible to partially agree with the comments of the experts of the Venice Commission since the relevant constitutional and legal provisions per se can be interpreted broadly, in particular as regards activities aimed at 1) liquidation of Ukrainian independence, 2) undermining state security, 3) encroaching on human rights, and 4) encroaching on public health. The possibility of a broad interpretation of this language by the Ministry of Justice was confirmed in the Decision of the Supreme Court of Ukraine on November 5, 2004 in a case filed by the Ministry of Justice of Ukraine to ban a political party.[34] In this case, the Ministry of Justice lodged a suit with the Supreme Court of Ukraine to close the party "Ukrainian National Assembly" on the grounds that it had distributed propaganda materials and leaflets fostering hatred on account of nationality and ethnicity and offending citizens of Russian and Jewish origins. The Supreme Court came to the conclusion that the plaintiff failed to prove the grounds for prohibition of a political party and dismissed all of the plaintiff's claims (more detailed information on this case can be found in Annex 2 and para. 1.3.4. of this Report). Even though,

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[31] The Decision of the Constitutional Court of Ukraine of June 12, 2007 № 2-рп/2007 in the case on constitutional petition of 70 People's Deputies of Ukraine concerning compliance with the Constitution of Ukraine (constitutionality) of the provisions of Articles 10.1, 11.2.3, 11.5, 11.6, 15, 17.1, 24, and item 3 Chapter VI "Final Provisions" of the Law of Ukraine on Political Parties (case on establishment of political parties in Ukraine); http://zakon1.rada.gov.ua/cgi-bin/laws/main.cgi?nreg=v002p710-07&p=1260610221550455. For further information see Annex 2.

[32] Opinion on the Ukrainian Law 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, Finland), Mr.. Valeriu Stoica (Romania). – paragraph 26; http://www.venice.coe.int/docs/2002/CDL-AD(2002)017-e.asp

[33] Such an interpretation of the grounds for prohibition of political parties is reflected, in particular, in the Resolution of the Kyiv District Administrative Court of March 18, 2008 in case № 3/134 on the lawsuit lodged against the Ministry of Justice of Ukraine seeking to declare registration of the Communist Party of Ukraine (Renewed) as illegal, to cancel the decision on registration of the Communist Party of Ukraine (Renewed) and to oblige the Ministry of Justice to lodge with the Supreme Court a lawsuit seeking to prohibit the Communist Party (Renewed); http://www.reyestr.court.gov.ua/Review/1602531. For further information on the case see also Annex 2.

[34] Decision of the Supreme Court of Ukraine of November 5, 2004 in the case on the lawsuit filed by the Ministry of Justice seeking to ban a political party; http://zakon1.rada.gov.ua/cgi-bin/laws/main.cgi?nreg=n0114700-04. For further information see Annex 2.

since 2004, the Ministry of Justice has not initiated the prohibition of any political parties, the possibility of such initiatives still exists. Therefore, the grounds for prohibition of political parties, envisaged by Article 37 of the Constitution and by relevant laws, should be defined more precisely in order to exclude the possibility of an overly broad interpretation.

The legal provisions defining the grounds for cancellation of registration of political parties, such as a party's failure to establish and secure registration of its local organizations in 14 regions of Ukraine or finding false information in the documents submitted for registration, should be subject to critical assessment. In this regard, it should be mentioned that:

- the Ministry of Justice should check the accuracy of information presented in the documents for registration of a political party within the term for its consideration of the application for registration of a political party, and if the party is in fact registered, the Ministry should not be entitled to move to have it de-registered on the grounds of incorrect submissions;
- the requirement for the mandatory registration of local party organizations in most regions of Ukraine is an unjustified and unnecessary administrative impediment to the activities of political parties and does not achieve the goals that this requirement was intended to pursue - local party organizations may be established as required by law, but this does not necessarily mean that they will carry out any activities in the relevant regions. In other words, the local branches may exist only on paper;
- compliance of the above provisions with Article 11 of the ECHR is doubtful, particularly regarding compliance with such criterion as the "pressing social need" (see para. 1.2.3. of this Report);
- the position of the Venice Commission[35] and a number of European democracies on the grounds for dissolution of political parties is that "prohibition or enforced dissolution of political parties may only be justified in the case of parties that advocate the use of violence or use violence as a political means to overthrow the democratic constitutional order, thereby undermining the rights and freedoms guaranteed by the constitution". Therefore, according to the Venice Commission, these measures should be used with utmost restraint[36];
- as follows from Article 11.6 of the Law on Political Parties, a political party may establish local organizations in most regions of Ukraine and terminate them immediately after the 6 month term after registration; in this case, the Ministry of Justice cannot sue a party in a court to have it de-registered, because the only obligation on political

[35] In some European states, there are no legal provisions on the prohibition or dissolution of political parties (Belgium, Greece, and Austria apart from the ban on national-socialist organizations). In Switzerland, recourse to prohibit or dissolve a political party is impossible during peace time. Other countries have not had to prohibit or dissolve political parties for decades: Finland, since the 1930s, Liechtenstein, since 1945, Denmark, since 1953, Germany, since 1956. See also: Guidelines on the Prohibition and Dissolution of Political Parties and Analogous Measures, adopted by the Venice Commission at its 41st Plenary Session (Venice, 10 – 11 December, 1999); http://www.venice.coe.int/docs/2000/CDL-INF(2000)001-e.asp

[36] Guidelines on the Prohibition and Dissolution of Political Parties and Analogous Measures, adopted by the Venice Commission at its 41st Plenary Session (Venice, 10 – 11 December, 1999); http://www.venice.coe.int/docs/2000/CDL-INF(2000)001-e.asp

parties in light of Article 11.6 is to establish local organizations within 6 months from the day of registration; and
- as court practice reveals, the number of cases relating to the cancellation of registration of political parties is decreasing from year to year (see Annex 2).

Hence, in the short-term, the grounds for cancellation of registration of political parties should be restricted to only one, failure to nominate candidates for national elections within 10 years from the date of the party's registration. In the long-term, the provisions on the possibility of cancelling the registration of political parties should be repealed in order to correspond to best European practices in the field of dissolution of political parties.

### 1.2.7. The costs and benefits to a party of being registered/legally recognized

Article 10 of the Law on Political Parties prohibits unregistered parties from carrying out any activities. Therefore, political parties cannot decide on their own whether to be registered. The main benefits of registration of an entity as a political party are the possibility:
- of nominating candidates for national and local elections (the right to nominate candidates for parliamentary elections, elections to regional councils, to the Verkhovna Rada of the Autonomous Republic of Crimea, and to district and city councils are granted to political parties that were registered no later than 365 days prior to the date of elections[37]), candidates as official observers in elections and members of election commissions, and to have free-of-charge access to public media during election campaigns; and
- exercising some specific rights that are not vested in other civic associations (see para. 1.3.1. of this Report).

The activities of political parties are subject to some restrictions that are not imposed on NGOs. (See para. 1.1.2. of this Report.)

### 1.2.8. Provisions on the disposal of assets of/by the party

The current laws provide for some restrictions on the disposal of assets of political parties:
- the assets of political parties cannot be transferred to their members;
- the assets of political parties can be used only for achieving the goals and objectives defined by parties' charters[38]; and
- in the case of liquidation of a political party, its assets can be transferred only to another political party or to the state budget of Ukraine.[39]

At the same time, the law does not clearly define the procedure for disposal of assets of political parties in case of their reorganization. This is one of the main reasons why existing political parties do not merge or split – it is easier to establish a new party than, for example, to split or merge existing one(s). Therefore, the procedure for reorganization of political

[37] See para. 3.1.2. of this Report.

[38] Article 21 of the Law on Civic Associations

[39] Article 7.11.11 of the Law on Corporate Income Tax

parties and for disposal of assets in case of reorganization should be more clearly defined in the Law on Political Parties.

### 1.2.9. The consequences of losing recognition/registration

A party may lose its registration through:
- prohibition, or
- cancellation of registration.

Under Article 24 of the Law on Political Parties, the grounds for *cancellation of registration* of a political party are:
- failure to establish and secure registration of local organizations in 14 regions of Ukraine within 6 months from the date of registration;
- discovery by the Ministry of Justice within 3 years from the date of registration that a party has presented incorrect information in the documents submitted for registration; and
- failure to nominate candidates for presidential or parliamentary elections within 10 years from the date of registration.

A political party can be banned in the case of violations of the requirements of its establishment and activities as envisaged by Article 37 of the Constitution, Article 5 of the Law on Political Parties, and Article 4 of the Law on Civic Associations (see para. 1.2.6. and 1.3.3. of this Report).

Cancellation of registration and prohibition of a political party entails the same consequences: termination of all the party's activities, dissolution of its governing bodies, the smallest party units, and local organizations, as well as termination of membership in local branches, the smallest party units, and other structural subdivisions.[40]

### 1.2.10. The agency with the authority to make registration/de-registration decisions

Political parties are registered with the Ministry of Justice of Ukraine.[41] The authority to make decisions on cancellation of registration or prohibition of a political party is vested in the Kyiv District Administrative Court.[42] The right to lodge lawsuits against political parties to have their registration cancelled or to have the parties banned is granted to the Ministry of Justice.[43]

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[40] Articles 23, 24 of the Law on Political Parties in Ukraine

[41] Article 11.1 of the Law on Political Parties in Ukraine

[42] Article 19.3 of the Code of Administrative Court Procedure

[43] Article 24 of the Law on Political Parties in Ukraine

### 1.2.11. The mechanisms aiming to ensure due process of registration and de-registration of political arties

*Ensuring the due process of registration of political parties*

The Law on Political Parties provides for some mechanisms aiming to ensure due process of registration of parties:

- the list of documents to be submitted to the Ministry of Justice for political party registration is defined by law and cannot be extended by secondary legislation (by-laws);[44]
- refusal of registration cannot prevent the political party from re-applying for registration;
- the deadline for making a decision on the registration of a political party is determined by law (30 days from the date of application for registration) and cannot be extended to more than 45 days from the date of the receipt of documents for registration; and
- a failure to either register or deny registration may be appealed in court.

However, due process in registration of political parties cannot be considered properly ensured on account of the following:

- the Ministry of Justice is not legally obliged to specify the complete list of grounds on which the decision on refusal of registration was made;[45]
- the laws on Political Parties, Civic Associations, and Corporate Income Tax were adopted at different times and their provisions contradict each other, providing the Ministry of Justice with the possibility to refuse a political party registration on the grounds of inconsistency between the submitted documents (such as the charter of political party) and one of the laws; and
- the Ministry of Justice has a wide margin of discretion in deciding whether to register a political party, particularly with respect to whether the submitted documents (the name of the party, lists with signatures) meet the legal requirements.

*In order to ensure due process in the registration of political parties, it is advisable to:*

- bring the different laws governing the establishment and activities of political parties (namely, the Law on Political Parties, the Law on Civic Associations, and the Law on Corporate Income Tax) into agreement;
- impose on the Ministry of Justice an obligation to specify in its decisions on refusal of registration of a political party the complete list of reasons for refusing to register the political party; and
- narrow the margin of discretion held by the Ministry of Justice in checking the documents submitted by political parties for their registration.

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[44] Article 11.2 of the Law on Political Parties in Ukraine

[45] Article 16 of the Law on Civic Associations, Article 11 of the Law on Political Parties in Ukraine

*Ensuring due process in the de-registration of political parties*

Due process of the de-registration of political parties can be ensured by vesting authority concerning the cancellation of registration or the prohibition of political parties in the Kyiv District Administrative Court rather than in the Ministry of Justice.

### 1.2.12. Appeals against registration/de-registration decisions

Decisions of the Ministry of Justice on the registration or refusal to register a political party, as well as failure to make any decision within the term specified by law, may be contested at the local administrative court at the plaintiff's location.[46] A decision of the Kyiv District Administrative Court on the cancellation of a political party may be appealed to the Kyiv Administrative Court of Appeals.[47]

### 1.2.13. The possibility of private individuals and other parties/organizations to move to have a party de-registered

According to Article 17 of the Code of Administrative Court Procedure and Article 24 of the Law on Political Parties, the right to file a suit against a political party to cancel its registration can be exercised only by the Ministry of Justice of Ukraine. However, court practice reveals that the possibility of initiating the cancellation of political parties exists also for those citizens whose constitutional rights or freedoms were infringed by the registration of the political party (see Annex 2).

The most striking example of such a practice is case № 3/134 considered by the Kyiv District Administrative Court on March 18, 2008 on a lawsuit filed against the Ministry of Justice, seeking to declare the registration of the Communist Party (Renewed) illegal, to cancel the decision to register the Communist Party (Renewed), and to oblige the Ministry of Justice to file a lawsuit in the Supreme Court to ban the Communist Party of Ukraine (Renewed).[48]

The plaintiff stated that:

- the registration of a political party, which had activities aimed at the illegal seizure of state power and used discrimination as a means to achieve its statutory objectives, jeopardized the "constitutional rights and freedoms of millions of people," including those of the plaintiff and his family;
- the plaintiff found out that the CPU (R) did not have local organizations in most regions of Ukraine; therefore the respondent was in violation of Article 11 of the Law on Political Parties, and the Ministry of Justice did nothing to prevent this violation and

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[46] Article 19.2 of the Code of Administrative Court Procedure

[47] Article 20.2 of the Code of Administrative Court Procedure

[48] Resolution of the Kyiv District Administrative Court of March 18, 2008 in case № 3/134 on the lawsuit lodged against the Ministry of Justice of Ukraine seeking to declare registration of the Communist Party of Ukraine (Renewed) http://www.reyestr.court.gov.ua/Review/1602531. See Annex 2 for further information.

failed to exercise proper control over the observance of the Law on Political Parties by the CPU (R); and
- some provisions of the Charter of the CPU (R) did not comply with the Constitution and the Law on Political Parties.

The court, however, dismissed all the claims of the plaintiff on the grounds that:
- all provisions of the CPU (R) Charter were in line with legal provisions,
- the Ministry of Justice exercised control over the activities of the political party, and that this was proved by presenting its requests for information from local party organizations addressed by the Ministry to the CPU's regional branches;
- the plaintiff failed to provide the court with evidence that his rights, freedoms, or legal interests had been violated by the decision to register the CPU (R); and
- at the time the plaintiff sued the Ministry of Justice and the CPU (R), the one year limit for lawsuits had already expired.

### 1.2.14. The mechanisms aiming to ensure equal treatment of different political parties

Article 4 of the Law on Political Parties states that all parties are equal before the law. However, some parties are "more equal" than others. For example, in national elections only parties registered no later than 365 days before election day can establish blocs and nominate candidates for elections.[49] In local elections only local party organizations registered no later than 365 days before election day can nominate candidates for local elections[50] (see also para. 1.3.1. of this Report). In parliamentary elections, people nominated by parties represented in the legislature, have priority for positions in district and polling electoral commissions.[51] In local elections, local organisations of political parties represented in the Verkhovna Rada are granted priority for positions in territorial electoral commissions.[52]

## 1.3. PROTECTION AGAINST STATE INTRUSION

### 1.3.1. Legally enforceable rights of political parties and their standing as organizations to sue to enforce their rights

The rights of political parties are specified in Article 20 of the Law on Civic Associations and Article 12 of the Law on Political Parties. In particular, Article 20 of the Law on Civic Associations grants political parties the following rights:
- to participate in civil relations,
- to acquire property and non-property rights,
- to present and defend their interests and those of their members in state and civic bodies,

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[49] Article 44 of the Law on Presidential Elections and Article 10 of the Law on Parliamentary Elections

[50] Article 35-3 of the Law on Local Elections

[51] Articles 27, 28 of the Law on Parliamentary Elections

[52] Article 22-1 of the Law on Local Elections

- to participate in political activities,
- to provide ideological, organizational, and financial support to other civic associations,
- to obtain information,
- to establish mass media,
- to promote the party's ideas and objectives, and to participate in decision-making processes concerning gender equality policy,
- to delegate its representatives to consultative and advisory bodies for issues connected to ensuring the equal opportunities of women and men, and
- to carry out monitoring of implementation of decisions pertaining to gender policy.

However, most of the above rights can be exercised not only by political parties, but also by NGOs. The specific rights of political parties include the right to participate in national and local elections, to maintain international contacts with foreign political parties, international and intergovernmental organizations, to participate in state policy development, and to have access to state mass media during election campaigns. The above list of rights is not exhaustive; parties may have other rights stipulated by laws and their statutes. Like other legal entities, parties have the right to file suits in the courts to enforce their rights. The relevant procedures are regulated by the Code of Civil Procedure, the Code of Administrative Court Procedure, and other procedural codes.

### 1.3.2. Legal privileges/protections of political parties beyond those afforded to other kinds of associations

Political parties have some specific rights that are not granted to other types of associations (see para. 1.3.1. of this Report). Parties do not have specific privileges or protections in relations with state authorities and courts.

### 1.3.3. Grounds for banning a political party, possibility of closure on account of bankruptcy

A political party can be terminated through:

- reorganization or liquidation (self-dissolution) by decision of a party's assembly (congress);
- prohibition; or
- cancellation of registration (see para. 1.2.9. of this Report).

The Kyiv District Administrative Court may decide to ban a political party on submission of a complaint by the Minister of Justice of Ukraine if a party infringes Article 37 of the Constitution of Ukraine, Article 4 of the Law on Civic Associations, or Article 5 of the Law on Political Parties. Article 37 of the Constitution and Article 5 of the Law on Political Parties prohibit establishment and operation of political parties which have objectives or activities aimed at liquidating Ukrainian independence, the forceful change of the constitutional order, violating Ukraine's sovereignty and territorial integrity, undermining national security, unlawfully seizing power, propaganda of war and violence, inciting inter-ethnic, racial or religious hatred, encroaching on human rights and freedoms, encroaching on public health,

or establishment of para-military or armed units. The same Article of the Constitution and Article 4 of the Law on Civic Associations prohibit establishment and operation of political parties with governing bodies or structural units outside Ukraine, as well as establishment or operation of structural units of political parties in executive bodies, courts, the Armed Forces, the State Border Services, the State Special Service for Transport, the State Service for special communications and protection of information, in state enterprises, institutions, and organizations, and state educational institutions.

According to the Law on Restoring Debtor's Solvency and Declaring a Debtor Bankrupt, only entities that may conduct entrepreneurial (commercial or profit-based) activities can be declared bankrupt. Since parties and other civic organizations are not allowed to conduct any entrepreneurial activities and enjoy non-profit status, they cannot be declared bankrupt.[53]

### 1.3.4. Restrictions on permissible party programs, application of the consequences of violating such restrictions to party members, officials, office-holders elected under the party's banner, and period of application of the consequences

Programs of political parties should not include objectives inconsistent with the requirements of Article 37 of the Constitution, Article 5 of the Law on Political Parties, and Article 4 of the Law on Civic Associations (see para. 1.3.3. of this Report). Should a party programme fail to comply with these requirements, the Ministry of Justice may refuse to register the party.[54] If the above restrictions are violated after the registration of the political party, the Ministry of Justice may turn to the Kyiv District Administrative Court to have this party banned or prohibited from activity.

The prohibition on a political party does not imply any consequences to its members, party officials, or elected representatives other than termination of their membership in the political party.

Since 1991, the national courts have considered two cases relating to the prohibition of political parties:

The first case concerned the constitutionality of the Decrees of the Presidium of the Verkhovna Rada of Ukraine on temporary termination of the activities of the Communist Party of Ukraine and on the prohibition of the activities of the Communist Party of Ukraine. The first of these decrees provided for termination of the activity of the CPU, sealing off the premises of the party committees, prohibition of the use of property by the Communist Party, and the transfer of assets of the CPU to the balance of the Verkhovna Rada of Ukraine and local councils. The second Decree, dated 30 August 1991, prohibited the activity of the Communist Party of Ukraine. The Constitutional Court in its decision of December 27, 2001

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[53] Article 1 of the Law on Restoring Debtor's Solvency and Declaring a Debtor Bankrupt

[54] Article 11 of the Law on Political Parties in Ukraine

(see Annex 2), in the case on the Decrees of the Presidium of the Verkhovna Rada of Ukraine on the Communist Party of Ukraine, registered on July 22, 1991,[55] emphasized that:

- the Communist Party of Ukraine was registered by the Ministry of Justice of the Ukrainian SSR as a civic association on July 22, 1991; the statutory objectives and activities of the CPU at the time when the 1991 Moscow *coup d'état* attempt took place, did not contravene the constitutional requirements on activities of political parties (which was then confirmed by the results of an investigation carried out by the Prosecutor General's Office);
- according to the Constitution of the USSR, the Constitution of the Ukrainian SSR, and the Law of the USSR on civic associations of 1990, civic associations could be terminated only on the decision of a court of law; having prohibited the activities of the CPU, the Verkhovna Rada of Ukraine undertook the powers of judicial bodies, which contradicted the principle of division of powers between the legislative, executive, and judicial branches; and
- ratification of the decrees was inconsistent with articles 6 and 19 of the Constitution of Ukraine stipulating that state bodies had to exercise power within the limits determined by the Constitution and in line with the laws of Ukraine. On the basis of these conclusions, the Constitutional Court of Ukraine declared the decrees unconstitutional.[56]

The second case relating to prohibition of political parties was considered by the Supreme Court of Ukraine in a lawsuit filed by the Ministry of Justice to ban the party, "The Ukrainian National Assembly".[57] In October 2004, the Ministry of Justice lodged a complaint with the Supreme Court to ban the party, alleging that it had infringed Articles 21, 24, 37 of the Constitution of Ukraine and Article 5 of the Law on Political Parties. In particular, the lawsuit claimed that the party had organized several demonstrations and distributed agitation materials and leaflets inciting hatred on account of nationality and ethnicity, offending citizens of Russian and Jewish origins. Information on the party website, as well as in the party's press-releases, also contained information that could be considered incitement to ethnic hatred.

In its decision, the Supreme Court emphasized that the Ministry of Justice failed to give compelling evidence proving that party activities were aimed at inciting hatred or violating human rights and freedoms. The Court also acknowledged that press-releases, information on the party's website, leaflets, and other documents presented to the Court by the Ministry of Justice, contained no information that could be considered incitement to hatred or encroachment on human rights and freedoms. Expressions in the documents were considered by the Court a form of political debates and discussions of public life, criticisms, and opinions. Therefore, even though some expressions, opinions, ideas, and other information

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[55] Decision of the Constitutional Court of December 27, 2001 in the case on the Decrees of the Presidium of the Verkhovna Rada of Ukraine on the Communist Party of Ukraine, registered on July 22, 1991. http://zakon1.rada.gov.ua/cgi-bin/laws/main.cgi?nreg=v020p710-01&p=1260610221550455

[56] For further information on the cases see Annex 2.

[57] Decision of the Supreme Court of November 5, 2004. http://zakon1.rada.gov.ua/cgi-bin/laws/main.cgi?nreg=n0114700-04

could raise concerns within society, the Court, taking into consideration the pluralism of opinions, freedom of expression, and freedom of association, came to the conclusion that the plaintiff failed to prove the existence of any grounds for the prohibition of the political party and dismissed all of the plaintiff's claims (see Annex 2).

### 1.3.5. Provisions pertaining to the re-registration of political parties and their implementation/enforcement

Current legislation does not provide for the re-registration of political parties, it provides for the registration of changes to the statutory documents of a political party, submitted during its initial registration.

Article 11 of the Law on Political Parties obliges parties to inform in writing the Ministry of Justice of any changes to the party's name, programme, charter, governing bodies, or addresses within a week after any decisions on such changes. A political party must submit to the Ministry of Justice the following documents:

- application for registration of changes to statutory documents, signed by an authorized representative of the political party;
- minutes of the congress (convention) of the party with the resolution to make changes to statutory documents;
- 2 copies of the charter with changes;
- the certificate of registration of the political party and its charter (both original);
- documents certifying the change of legal address of a political party (when the legal address has been changed).

In case of changes to the name of a political party, its legal address or objectives, the Ministry of Justice issues a new certificate of registration to the political party.[58] Within 30 days from the date of receipt of the documents, the Ministry of Justice decides whether to register changes to the statutory documents of a political party.

There are two main reasons for refusal to register changes to the statutory documents of political parties: infringement of the laws or internal party rules governing the procedure for making changes to statutory documents (such as, for example, making changes through violation of procedures required to be followed by a party's charter or adoption of the changes by an internal body of the political party that did not have the powers to adopt such decisions), or infringement of a 7-day term within which a party has to notify the Ministry of Justice of changes to statutory documents.

In a few cases, the Ministry of Justice refused to register changes to the statutory documents of political parties, although such cases should be considered something extraordinary rather than standard practice. In particular, on February 3, 2010 the Ministry of Justice refused to register changes in the governing bodies of the Social Christian Party, adopted at the 4th

[58] Para. 12 of the Resolution of the Cabinet of Ministers of Ukraine № 140 of 26.02.1993

Convention of the Party on July 7, 2007.[59] On April 22, 2010, the Ministry of Justice also refused to register changes to the Party of Legal Protection's charter and governing bodies made by the head of the party.[60]

## 1.4. THE REGULATION OF ACTIVITIES OF POLITICAL PARTIES IN THE PARLIAMENT

### 1.4.1. The requirements for recognition of a party/group in the parliament

A parliamentary faction may be recognized as such on condition that:

- it is formed on the basis of a political party or bloc that has met the electoral threshold;
- it includes at least 15 MPs;
- the full name of the faction and its abbreviation correspond to the name of the party or coalition that forms the faction; and
- it was registered with the Secretariat of the Verkhovna Rada of Ukraine.[61]

To be registered as a faction by the Parliament's Secretariat, 15 MPs have to sign and send to the Secretariat notification of their decision to establish a parliamentary faction. They should specify the name of the faction, its composition, the party affiliation of the respective MPs, and the surnames of the head and deputy heads (not more than one deputy head for every 15 members) of the faction.

### 1.4.2. Independent groups and their rights

For a long time since the amendments to the Constitution of December 8, 2004 had entered into force, the Rules of Procedure did not provide for the possibility of registering in the Parliament independent groups of MPs. This restriction was justified and aimed at preventing members of the factions from abandoning factions of the parties under whose lists they had been elected.

However, on April 27, 2010, the Parliament adopted Law № 2157-VI to provide for the possibility of MPs, who did not belong to any factions (due to being expelled from their factions), joining into independent groups.[62] There are no requirements on the minimum number of

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[59] The Order of the Ministry of Justice № 204/5 of February 3, 2010 on refusal to register changes to the governing bodies of the Social Christian Party; http://castle.minjust.gov.ua/o/news/24535

[60] The Order of the Ministry of Justice, № 843/5 of April 22, 2010 on registration of changes to the governing bodies of the Party of Legal Protection, adopted at the 7th Special Convention of the Party on 10 January 2010, and on refusal to register changes to the Charter of the Party of Legal Protection, adopted at the 7th Special Convention of the Party on 10 January 2010, and on changes to the governing bodies of the political party made by the Order of the Head of the Party on March 5, 2010; http://zakon1.rada.gov.ua/cgi-bin/laws/main.cgi?nreg=v843_323-10&p=1270074647320297

[61] Articles 58-60 of the Rules of Procedure of the Verkhovna Rada of Ukraine

[62] An independent group is considered to be established as soon as a head or coordinator of a group announces of its establishment. In other words, the procedure for establishing independent groups is rather simple if compared to the procedure for faction formation.

members in an independent group. However, if a group does not consist of less than 15 MPs, some rights of the factions can be granted, such as:[63]

- the right to participate in the sittings of the Conciliation Board (which decides on parliamentary agenda and on the most important issues of parliamentary work) and to participate in the decision-making of the Board with voting rights;
- the right to submit proposals on the composition of temporary special committees and inquiry committees; and
- the right of a representative of the group to make a speech in the parliamentary sitting on any issue included on the parliamentary agenda.

The above amendments to the Rules of Procedure of the Verkhovna Rada of Ukraine could be subject to criticism, since granting additional rights to MPs who do not belong to any faction stimulates a weakening of party discipline within the factions and reduces party influence on the formation of parliamentary coalitions and the government.

### 1.4.3. The provisions in the Rules of Procedure that may affect political parties

The Rules of Procedure grant factions a number of important rights:[64]

- the right to submit proposals on the working plan of the session of parliament (such proposals have to be taken into account by the Secretariat of the Verkhovna Rada before adoption of the final version of the working plan by the Conciliation Board) and to submit proposals for the agenda of parliamentary sittings;
- the right to 3-minute official statements on any issue (this right can be exercised every Tuesday in the weeks when parliamentary sittings are held (the same right is also granted to MPs regardless of their membership in factions);
- the right to demand 30-minute breaks in the sittings (this right can be exercised jointly by two factions and only one time during each sitting);
- the right of the representative of the faction to make a speech on any issue included on the agenda of the sitting (this right is granted to MPs who are not members of any faction only in certain cases);
- the right to make a speech in support or against proposals which are planned to be put up for a vote in an accelerated procedure for considering the bills (this right is not granted to independent MPs);
- the right to form a coalition of parliamentary factions in the Verkhovna Rada (individual MPs are not entitled to initiate forming a coalition, they may only join it once it has been formed) and to leave the coalition;
- the right to oppose the policy of a parliamentary coalition and the government (individual MPs are not entitled to exercise the rights of opposition);
- the right to be represented in the Conciliation Board of parliamentary factions, to convene its sittings, to participate in the sittings and decision-making of this Board;

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[63] If an independent group consists of less than 15 MPs, such group does not have any additional rights, including those of the factions.

[64] Articles 19, 24, 25, 27, 30, 31, 34, 61, 65, 68, 73, 81 of the Rules of Procedure of the Verkhovna Rada of Ukraine

- and the right to representation in the leadership of the parliamentary committees in accordance with the quotas of representation defined for each faction (this right is not secured for independent MPs).

### 1.4.4. Restrictions concerning the formation, dissolution, merger, split of groups during the parliamentary term, and restrictions regarding party switching by individual members

A parliamentary faction will be dissolved if the number of its members is reduced to less than 15 MPs. If this happens, the Speaker has to announce in the plenary meeting, the dissolution of the faction within 15 days from the date when the number of the faction's members reduced to 14 or less MPs.

The Rules of Procedure do not provide for the possibility of merging or splitting the factions once they are formed. All factions should be formed during the first session of the Parliament before the elections of the Speaker. An MP cannot switch his faction on his own will – in this case his office will be terminated (since 2004, the party-administered mandate was introduced through amendments to the Constitution).[65] The only possibility for an MP to leave the faction and, at the same time, to save the mandate, is to be expelled from the faction on the basis of the decision of the latter. If an MP has been expelled from a faction, he

[65] Introduction of the "party administered mandate" was criticized by the Venice Commission. In its Opinion on the Amendments to the Constitution of Ukraine, the Commission highlighted that amendments to the Constitution, which envisaged the possibility of termination of a deputy's mandate in case of his or her leaving or not joining the parliamentary faction to which he or she belonged at the time of the election, gives the parties the power to annul electoral results and might also have the effect of weakening the Supreme Council of Ukraine itself by interfering with the free and independent mandate of the deputies, who would no longer necessarily be in a position to follow their convictions. In the opinion of the experts of the Commission, linking the mandate of a national deputy to membership in a parliamentary faction or bloc is also inconsistent with other constitutional provisions (in particular, Article 79 of the Constitution of Ukraine) which envisage that MPs represent the people and not their parties. The implementation of the constitutional provisions regarding "party administered mandate" has also shown that its introduction has not entailed stability and effectiveness of the governing parties and blocs since the MPs in practice can vote according to their convictions and at the same time remain members of the Parliament. In the Report on the Imperative Mandate and Similar Practices, the Venice Commission emphasized that the imperative mandate is unknown in practice in Europe. At the time of the adoption of the above Report, the model of "party administered mandate," as regards European countries, existed only in Ukraine and Serbia. See also: Opinion on Three Draft Laws Proposing Amendments to the Constitution of Ukraine, adopted by the Venice Commission at its 57th Plenary Session (Venice, 12 – 13 December 2003) on the basis of comments by Mr. Sergio Bartole (Substitute Member, Italy); Ms. Finola Flanagan (Member, Ireland), Ms. Herdis Thorgeirsdottir (Substitute Member, Iceland); Mr. Kaarlo Tuori (Member, Finland); http://www.venice.coe.int/docs/2003/CDL-AD(2003)019-e.asp; Opinion on the Amendments to the Constitution of Ukraine adopted on 8.12.2004, adopted by the Venice Commission at its 63rd Plenary Session (Venice, 10-11 June 2005) on the basis of comments by Mr. Kaarlo Tuori (Member, Finland), Mr. Sergio Bartole (Substitute Member, Italy), Ms. Finola Flanagan (Member, Ireland); http://www.venice.coe.int/docs/2005/CDL-AD(2005)015-e.asp; Report on the Imperative Mandate and Similar Practices, adopted by the Council for Democratic Elections at its 28th meeting (Venice, 14 March 2009) and by the Venice Commission at its 79th Plenary Session (Venice, 12-13 June 2009) on the basis of comments by Mr. Carlos Closa Montero (Member, Spain); http://www.venice.coe.int/docs/2009/CDL-AD(2009)027-e.asp

may remain "independent," join with other independent MPs in an independent group, or join any other faction.

### 1.4.5. The rights of MPs who are not members of any party or group

In general, MPs who have been expelled from their factions have the same rights and obligations as all other MPs. In practice, however, a "factional" MP is in a more privileged position than independent MPs since current legislation grants parliamentary factions some additional rights that are not granted to MPs without membership in a faction (see para. 1.4.3. of this Report).

## 1.5. CHANGES IN THE REGULATORY FRAMEWORK

### 1.5.1. The number and nature of changes and amendments to the legal framework pertaining to political parties in the last 3-5 years

Since 2004, the Law on Political Parties was reviewed 5 times:

- *The Amendments to the Law on Political Parties of 6 July 2005* prohibited membership in political parties of the employees of the state tax service. The amendments introduce a simplified and accelerated procedure for registration of the smallest party units and local party branches without legal entity status. In accordance with the amendments, the smallest party units and local party organizations could be recognized on condition of notice to the relevant local branch of the Ministry of Justice on their establishment; the local body of the Ministry is obliged to issue a certificate of recognition within 3 hours from the time of notification.
- Because of the decrease of the electoral threshold from 4 percent to 3 percent of the votes cast in parliamentary elections, on July 7, 2005 the Law on Political Parties was amended as well. The amendment granted the right to public financing to those political parties that met the newly established 3% threshold (according to the previous version of the Law on Political Parties in Ukraine, the right to public financing was granted to parties that met the 4% electoral threshold).
- *The Law on the State Budget of Ukraine for 2007,* adopted on 19 December 2006, suspended direct public funding of the statutory activities of political parties for 2007.
- In 2007, all the provisions of the Law on Political Parties pertaining to direct public funding of political parties and the reimbursement of electoral expenditures from election funds of the parties were repealed by the *Law on State Budget of Ukraine for 2008 and on Amendments to Certain Other Legislative Acts of Ukraine*, dated 28 December 2007. The Constitutional Court of Ukraine declared the relevant provisions of the Law unconstitutional (see also para. 4.1.1. of this Report).
- Finally, the *Law on Amendments to and on Abrogation of Certain Legislative Acts of Ukraine pertaining to Operation of the State Penal Service of Ukraine*, dated 14 April 2009, prohibited membership in political parties of employees of the State Penal Service.

# 2. PARTIES AS ORGANIZATIONS

## 2.1. MEMBERSHIP

### 2.1.1. Regulation of the rights and obligations of membership

The Law on Political Parties and the Law on Civic Associations do not contain provisions regarding the rights and obligations of members of political parties. Article 8.1.4. of the Law on Political Parties in Ukraine explicitly states that the rights and obligations of party members have to be defined in parties' statutes.

### 2.1.2. The requirements for party membership (age, citizenship, ideological tests, profession, race/ethnicity, and gender)

Only a *citizen of Ukraine* entitled to vote in national elections can be a member of a political party.[66]

The Law on Political Parties in Ukraine lists some kinds of activities incompatible with membership in a political party. For example, the following persons are forbidden from being members of political parties: judges, officials in the public prosecutor's office, the Ministry of the Interior, the Security Service of Ukraine, the state tax authorities, persons who are on military service, and employees of the State Penal Service.

At the same time, as defined by the above Law, the list of officials who are not allowed to be members of political parties is not exhaustive and is supplemented by the other laws of Ukraine. It should be mentioned that Ukrainian legislation provides no common approach to defining who is not allowed to be a member of a political party. For instance, the Law on Public Service does not explicitly prohibit membership in political parties of public servants. At the same time, the Law provides for the principle of political neutrality of the public service, which cannot be fully implemented due to public servants' engagement in political activities.

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[66] Article 6 of the Law on Political Parties in Ukraine

As concerns the possibility of restricting membership in political parties on the grounds of certain criteria, such as sex, religion, or ethnicity, establishing such criteria would not comply with Article 24 of the Constitution of Ukraine and Articles 6 and 7 of the Law on Civic Associations which explicitly prohibit privileges or restrictions based on color of skin, political, religious, and other beliefs, sex, ethnicity, social origin, place of residence, language, and other grounds.

In analyzing the Law on Political Parties, experts from the Venice Commission have drawn attention to the fact that both foreign citizens and stateless persons are forbidden from being members of political parties. Although restrictions on the political activities of foreign citizens and stateless persons are possible under international law and are introduced in order to avoid foreign policy conflicts, the general exclusion from membership in political parties of foreign citizens and stateless persons, who have their permanent and legal residence in the country, do not comply with good European practices and, in the opinion of the Venice Commission experts, can hardly be justified in light of the 1992 Convention on the Participation of Foreigners in Public Life at the Local Level. Therefore, the Venice Commission recommended that foreign citizens and stateless persons be allowed to participate to some extent in the political life of Ukraine, and at the very least through the possibility of membership in political parties.[67] In a number of European states, foreign citizens can even vote in local elections and be elected to local public office.[68]

Assessing the recommendations of the experts of the Venice Commission, it is important to mention that Ukraine is not a signatory to the 1992 Convention on the Participation of Foreigners in Public Life at the Local Level. Also, as the results of the discussion of this Report in focus groups has shown, Ukraine's politicians and experts do not support the idea of granting the right to membership in political parties to foreign citizens and stateless persons, especially taking into consideration the fact that national legislation does not provide for the establishment of local and regional parties. Experts stated that broader involvement of foreigners and stateless persons in public life at the local level could be achieved through amendments to the Law on Local Elections rather than through legislation pertaining to

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[67] At the same time, many countries restrict membership in political parties to national citizens only. This is the case in Albania, Bulgaria, Canada, Croatia, Czech Republic, Estonia, Georgia, Greece, Lithuania, "the former Yugoslav Republic of Macedonia", the Russian Federation, and Turkey. However, in a number of states, foreign nationals are allowed to be members of political parties, for example in Germany, the Netherlands, Slovenia, Finland, Spain, and some other countries. For further information, see: Report on the Establishment, Organization, and Activities of Political Parties prepared by Mr. Hans Heinrich Vogel (Substitute Member, Sweden) on the basis of replies to the questionnaire on the establishment, organization, and activities of political parties, adopted by the Venice Commission at its 57th Plenary Session (12-13 December 2003); http://www.venice.coe.int/docs/2004/CDL-AD(2004)004-e.asp

[68] 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, Finland), Mr.. Valeriu Stoica (Romania). – paragraphs 16 – 20; http://www.venice.coe.int/docs/2002/CDL-AD(2002)017-e.asp

political parties, in particular, through granting foreigners and stateless persons the rights to vote and be elected in local elections. [69]

### 2.1.3. Types (direct/indirect; individual/corporate), classes, and levels of membership established by law or party rules

Membership in a party is individual and direct only; corporate membership is allowed only in NGOs.[70] The charters of all political parties represented in the parliament do not envisage classes and levels of membership because, according to current legislation, all members of a party should have equal rights.[71]

The restriction of party membership to only fixed membership does not allow parties to introduce different classes and levels of membership, such as, for instance, classes of supporters (sympathizers) and members. If different levels and classes of membership were introduced, it could allow citizens to decide the degree to which they want to be involved in the party, and it could allow parties to provide special privileges for those who are involved in party activities more actively. It should be highlighted that in a number of European states parties distinguish different levels of membership, types of association, and participation in the tasks of political parties, encompassing different rights and obligations for the members. For example, the Socialist Party and the Reform Movement in Belgium distinguish between levels of "adherents" and "associates." A similar distinction can be found in the People's Party and Spanish Socialist Workers Party in Spain and in the Christian Democratic Union of Germany (members versus guests).[72]

Hence, it is advisable to consider amending the Law on Political Parties with provisions granting the parties a right to introduce not only fixed membership but also other types of membership.

### 2.1.4. Legal constraints on parties with regard to membership criteria, membership fees, other obligations of membership, and capacity to refuse/expel members

The Law on Political Parties lists some requirements for party membership criteria:

- nationality (only a citizen of Ukraine can be a member of political party);
- age (only people over 18 are eligible to be members of political parties);
- capacity (incapacitated persons are forbidden from being members of political parties);
- profession (people employed by certain public authorities cannot be members of political parties);

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[69] For further information on the focus groups see the Introduction to this Report.

[70] Article 12.4 of the Law on Civic Associations

[71] Article 6 of the Law on Civic Associations

[72] 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 the Explanatory Report, adopted by the Venice Commission at its 78th Plenary Session (Venice, 13-14 March 2009). – paragraph 113; http://www.venice.coe.int/docs/2009/CDL-AD(2009)021-e.asp

- membership in other parties (a person cannot be a member of more than one party);
- individual fixed membership (only individuals can be members of political parties; parties are required to register all their members); and
- prohibition of restrictions of membership on the basis of sex, ethnicity, and other factors.[73]

The legislation does not place any restrictions on the right of a party to regulate membership fees, rights, obligations of membership, refusal or expulsion of members, and suspend membership etc. – all these issues are left to parties' discretion.[74]

### 2.1.5. The possibility of being a member of two (or more) political parties

Article 6 of the Law on Political Parties and the charters of all political parties represented in the parliament prohibit membership in more than one political party at the same time. However, this restriction can be easily circumvented since there is no exchange of information on membership between different political parties.

### 2.1.6. The minimum period of membership for full exercise of the rights of membership; The rights and obligations of members of political parties.

Since national legislation does not envisage the possibility of introducing different classes and levels of membership by political parties, any person admitted to the ranks of party members has the same rights as any other member of the party. However, the charters of some political parties (for instance "Forward, Ukraine!" [75] / "People's Self-Defence") provide for the status of "probationary member", in order to check whether a person can be admitted to membership or not. A person can be admitted as a member only on the condition that a certain time from the date of submission of application for membership has expired. In "Forward, Ukraine!" / "People's Self-Defence," for example, not less than 6 months must pass from the date of application for membership and actual admission to membership in the party.[76]

*The rights of members of political parties*

The rights of members of political parties are defined only by the charters of political parties and usually include the following rights:

- to elect and be elected to the governing bodies of the political party;[77]

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[73] Article 24.2 of the Constitution of Ukraine, Article 6 of the Law on Political Parties in Ukraine, Article 7 of the Law on Civic Associations

[74] Article 6 of the Law on Political Parties in Ukraine

[75] On April 13, 2010 the name of the political party "Forward, Ukraine!" was changed into "People's Self-Defence"; http://www.nso.org.ua/ua/about

[76] Paragraph 2.2. of the Charter of the party "Forward, Ukraine!" ("People's Self-Defence")

[77] Para. 3.5. of the Charter of All-Ukrainian Association "Motherland"; para. 2.5. of the Charter of the Ukrainian Social Democratic Party; para. 3.3. of the Charter of the Party "Reforms and Order"; para. 4.5.1. of the

- to participate in the meetings of the statutory bodies, to which the member was elected;[78]
- to submit proposals to the governing bodies concerning party policy, to express (or defend) one's point of view during consideration of such proposals, and to propose amendments to the charter and programme of the party;[79]
- to have access to information on party activities;[80]
- to propose candidates for nomination for elections by the party;[81]
- to criticize the activities or behaviour of other members, as well as activities of the statutory bodies or officials of the party;[82]
- to participate in the implementation of programs and projects of the party, and in activities of the party;[83]

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Charter of the party "Our Ukraine"; para. 17 of the Charter of the People's Movement of Ukraine; para 2.2. of the Charter of Ukrainian People's Party; para. 3.6. of the Charter of the Christian Democratic Union; para. 4.5.1. of the Charter of the European Party of Ukraine; para. 3.10.2. of the Charter of the political party "Civic Party Pora"; para. 4.1. of the Charter of the Motherland's Defenders Party; para 2.3. of the Charter of the Communist Party; Article 6 of the Charter of the People's Party; and para. 4.1. of the Charter of the Party of Regions.

78 Para. 3.5. of the Charter of All-Ukrainian Association "Motherland"; para 2.5. of the Charter of the Ukrainian Social Democratic Party; para. 3.6. of the Charter of the Christian Democratic Union; and para. 4.1. of the Charter of the Motherland's Defenders Party

79 Para. 3.5. of the Charter of All-Ukrainian Association "Motherland"; para. 2.5. of the Charter of the Ukrainian Social Democratic Party; para. 3.3. of the Charter of the Party "Reforms and Order"; para. 4.5.1. of the Charter of the party "Our Ukraine"; para. 17 of the Charter of the People's Movement of Ukraine; para 2.2. of the Charter of Ukrainian People's Party; para. 3.6. of the Charter of the Christian Democratic Union; para. 4.5.1. of the Charter of the European Party; para. 2.3. of the Charter of the Communist Party of Ukraine; Article 6 of the Charter of the People's Party; and para. 4.1. of the Charter of the Party of Regions.

80 Para. 3.5. of the Charter of All-Ukrainian Association "Motherland"; para. 2.5. of the Charter of the Ukrainian Social Democratic Party; para. 3.3. of the Charter of the Party "Reforms and Order"; para. 4.5.1. of the Charter of the party "Our Ukraine"; para. 17 of the Charter of the People's Movement of Ukraine; para 2.2. of the Charter of Ukrainian People's Party; para. 3.6. of the Charter of the Christian Democratic Union; para. 4.5.1. of the Charter of the European Party of Ukraine; para. 3.10.2. of the Charter of the party "Civic Party Pora"; para. 4.1. of the Charter of the Motherland's Defenders Party; para 2.3. of the Charter of the Communist Party of Ukraine; and para. 4.1. of the Charter of the Party of Regions

81 Para. 3.5. of the Charter of All-Ukrainian Association "Motherland"; para. 3.3. of the Charter of the Party "Reforms and Order"; para. 4.5.1. of the Charter of the party "Our Ukraine"; para. 3.6. of the Charter of the Christian Democratic Union; para. 4.5.1. of the Charter of the European Party of Ukraine; para. 3.10.4. of the Charter of the party "Civic Party Pora"; Article 6 of the Charter of the People's Party; and para. 4.1. of the Charter of the Party of Regions

82 Para. 3.6. of the Charter of the Christian Democratic Union; para. 2.3. of the Charter of the Communist Party of Ukraine; and para. 4.1. of the Charter of the Party of Regions

83 Para. 3.5. of the Charter of All-Ukrainian Association "Motherland"; para. 2.5. of the Charter of the Ukrainian Social Democratic Party; para. 3.3. of the Charter of the Party "Reforms and Order"; para. 4.5.1. of the Charter of the party "Our Ukraine"; para. 17 of the Charter of the People's Movement of Ukraine; para 2.2. of the Charter of Ukrainian People's Party; para. 4.5.1. of the Charter of the European Party of Ukraine; para. 3.10.13. of the Charter of the party "Civic Party Pora"; para. 4.1. of the Charter of the Motherland's Defenders Party; Article 6 of the Charter of the People's Party; and para. 4.1. of the Charter of the Party of Regions

- to provide the party with financial support;[84] and
- to cancel personal membership in the party.[85]

The above list is not exhaustive, the charters of some political parties provide for additional rights, such as right to unite in the smallest party units,[86] to be protected by the party from prosecution for political beliefs and opinions,[87] the right to protection of members' rights, honour, and dignity by the party,[88] the right to "apply, in the case of violations of members' rights by the party's bodies or officials to the Control Commission of the regional party organization, and in case of disagreement with the Commission's decision – to apply to the Control Commission of the party, Main Board, or Congress of the party;" "to receive thanks for the member's work;"[89] and "to join any factions, formed by other parties, on condition that the party failed to form its own faction in the representative elected body."[90]

Only some of these rights can be exercised exclusively by members of a political party, such as the right to be a delegate for a party convention, the right to participate in establishment of the smallest party units (since the smallest party units according to the charters of political parties can be established only by party members), the right to elect to the governing bodies (if these bodies are formed by congresses of members) and, clearly, the right to cease membership in the party. Other rights, including, for example, the right to be nominated as a candidate for elections, to obtain information on party activities, to provide a party with financial support, to criticize activities of the members of the party or its governing bodies, can be exercised not only by party members, but, theoretically (since there are no restrictions in the laws or charters in this regard), also by other persons even if they are not party members.

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[84] Para. 3.3. of the Charter of the Party "Reforms and Order"; para. 3.10.9. of the Charter of the party "Civic Party Pora"; Article 6 of the Charter of the People's Party; and para. 4.1. of the Charter of the Party of Regions

[85] Para. 3.5. of the Charter of All-Ukrainian Association "Motherland"; para. 2.5. of the Charter of the Ukrainian Social Democratic Party; para. 3.3. of the Charter of the Party "Reforms and Order"; para. 4.5.1. of the Charter of the party "Our Ukraine"; para. 17 of the Charter of the People's Movement of Ukraine; para 2.2. of the Charter of Ukrainian People's Party; para. 3.6. of the Charter of the Christian Democratic Union; para. 4.5.1. of the Charter of the European Party of Ukraine; para. 3.10.15. of the Charter of the party "Civic Party Pora"; para. 4.1. of the Charter of the Motherland's Defenders Party; para 2.3. of the Charter of the Communist Party of Ukraine; Article 6 of the Charter of the People's Party; and para. 4.1. of the Charter of the Party of Regions

[86] Para. 3.6. of the Charter of the Christian Democratic Union

[87] Para. 3.5. of the Charter of All-Ukrainian Association "Motherland", para. 2.3. of the Charter of the Communist Party of Ukraine; Article 6 of the Charter of the People's Party; and para. 4.1. of the Charter of the Party of Regions

[88] Para. 4.5.1. of the Charter of the European Party of Ukraine; and para. 3.10.10. of the Charter of the party "Civic Party Pora"

[89] Para. 3.3. of the Charter of the party "Reforms and Order"

[90] Article 6 of the People's Party

*The obligations of party members*

As a rule, charters of political parties represented in the parliament impose on party members the following obligations:

- to act in accordance with the charter and programme of the political party, and to avoid engaging in activities that may discredit the party;
- to promote the ideas and ideology of the party, and to attract new members to party;
- to implement decisions of the governing bodies of the party;
- to participate in meetings or activities of the bodies of the political party, to which a member was elected, and to participate in the activities of the political party or its organization (unit);
- to provide information on changes to the data submitted to obtain membership in the party;
- to support candidates for elections that are nominated or supported by the party; and
- to pay membership fees.

The charters of some political parties[91] provide for other obligations of membership, such as to join a faction formed by the political party, and in case of election to the parliament or local self-government body, to be accountable for the member's activities to the public.[92]

### 2.1.7. The level of independence of political parties in determining the content of their charters

In accordance with Article 10 of the Law on Political Parties, party charters may be adopted only by constituent assemblies (congresses) of a party. Charters are regulated internally, but they must still comply with all relevant legal requirements.[93]

In particular, Article 8 of the Law on Political Parties and Article 13 of the Law on Civic Associations define the list of minimal requirements of information that party charters must contain:

- the name of the party (both full and abridged);
- the purpose and objectives of the party;
- the list of statutory bodies of the party, the procedures for their establishment, the scope of powers, and the terms of office;
- procedures for admitting new members to the party, and suspension and termination of membership;
- rights and obligations of membership, and the grounds on which membership may be suspended or terminated;
- procedures for establishment, general structure, and scope of powers of regional, city, and district party organizations, and the smallest party units;

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[91] For instance, some of these charters include the People's Party, the party "Our Ukraine", and the party "Reforms and Order"

[92] Article 7 of the Charter of the People's Party

[93] Articles 13.3-13.4 of the Law on Political Parties in Ukraine

- procedures for making changes and amendments to the charter and programme of the political party;
- procedures for convening and holding party conventions, conferences, meetings and other representative bodies of the political party;
- sources of financing and the procedures for the use of property and funds of the political party;
- procedures for reporting, monitoring, and performing business (non-profit) activities of the political party; and
- procedures for the liquidation (self-dissolution) and re-organization of the political party, and use of funds and property left after its liquidation (self-dissolution).

The independence of political parties in determining the content of their charters is somewhat restricted. At the time this report was discussed in the focus groups, most of the experts were inclined to conclude that envisaging in the law certain requirements for the charters of political parties in general serves its purpose since it induces the founders of political parties to draw more attention to some important issues which are worth including in party charters.[94] In addition, such requirements, if specified in charters, may contribute to more effective internal governance within a party.

## 2.2. ORGANIZATIONAL STRUCTURE

### 2.2.1. The legal requirements on a party's organisational structure

According to the Law on Political Parties, the organizational structure of political parties has to include central and local levels. The local level of a party's structure must be represented by regional, city, and district party organizations, as well as by the smallest party units. A party may also include in its organizational structure at the local level other local organizations, such as organizations in city districts. In its general organizational structure, a party must provide for the existence of a representative body (conference, congress, assembly), other governing bodies (the law leaves at the discretion of political parties to decide the list of governing bodies), and bodies of internal control. Charters of political parties may also provide for the establishment in their organizational structures any other bodies or units.[95]

### 2.2.2. The organizational structure of parties and principal party organs, and the procedure for their establishment

The charters of all political parties represented in the parliament provide for the establishment at the central level of the party's internal structure the following bodies:

- the representative body (congress, conference);
- the executive committee (deciding current issues between congresses);
- the board of leadership (that runs the party's day-to-day activities)

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[94] For further information on the focus groups see the Introduction to this Report.

[95] Articles 8 and 10 of the Law on Political Parties in Ukraine

- the secretariat (providing the party and its governing bodies with analytical, informational, technical, legal, and other support); and
- the body of internal party control.

Most parties in European countries have internal structures similar to that introduced in Ukrainian parties.[96] Charters of some parties that do not have representation in the parliament of Ukraine, however, provide for the establishment in internal party structures of other bodies. For example, in the Party of Legal Protection, there is a special body (a Council of Founders) with extensive powers that, in most political parties, are normally vested in congresses. Among these powers are the right to adopt final decisions on suspension of activities of the political party, on the party's reorganization or self-dissolution, the right to interpret the charter and the programme of the party, to give opinions on compliance of decisions of the congress and other bodies of the party with the Regulations of the Council of Founders, to convene congresses, and to expel members from the party.[97]

The representative body is the supreme governing body of a party. The delegates for the congress are elected by the conferences (general meetings) of the respective regional party organizations in accordance with quotas of regional representation, determined by the executive committee of the party. Only in a few parties the quotas of representation are defined directly in the charters. This is a specific case of the Party of Regions which the Charter says that regional representation of the delegates in a congress is determined by number of party members in a relevant region.[98] In the party, "Our Ukraine," all the regional party branches have to be equally represented in the congress.[99]

All the charters of the parties represented in the parliament stipulate that party congresses should be convened at least one time in two years. The exceptions are the Party of Motherland Defenders and the party "Forward, Ukraine" ("People's Self-Defence") with charters that stipulate that congresses should be convened at least once in five years.

The executive committee decides on current issues concerning the political party between party congresses. Among the parties represented in the parliament, this body has different names – in most parties, the name for this body is the political council, however, the charters of some of the political parties have introduced other names, such as the Main

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[96] 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). – para. 131; http://www.venice.coe.int/docs/2009/CDL-AD(2009)021-e.asp

[97] Para. 49, 50 of the Regulations of the Council of the Founders; http://www.partiya-pravozahistu.com.ua/content/view/1/10/; para. 29, 89 of the Charter of the Party of Legal Protection; http://www.partiya-pravozahistu.com.ua/content/view/4/5/

[98] Para. 6.1. of the Charter of the Party of Regions

[99] Para. 7.2.5. of the Charter of the party "Our Ukraine"

Council,[100] the Central Leadership,[101] the Executive Committee,[102] and the Central Council.[103] In all the parties represented in the parliament, members of the executive committee are elected by the party congress.

The charters of most political parties list officials who are entitled to be ex officio members of the executive committee. For example, in the Party of Regions,[104] the *ex officio* members of the Political Council are the head of the party, his deputies, the head of the party faction in the parliament and his deputies, the heads of regional party organizations, and the head of the Central Control Commission of the party. The Main Council of the party "Reforms and Order" consists of the head of the party, his deputies, the head of the Executive Committee of the party, the heads of regional party organizations, and MPs, who are members of the political party.[105] *Ex officio* members of the Political Council of the party "Our Ukraine" are the heads of regional party organizations, MPs, members of the government, the speaker of the Verkhovna Rada of the Autonomous Republic of Crimea, speakers of the regional councils, mayors of the capitals of the regions, mayors of Kyiv and Sevastopol, and heads of regional state administrations.[106] In the political party, "Forward, Ukraine" (renamed "People Self-Defence"), the only *ex officio* member of the Political Council is the head of the party, whereas the others are elected by the party congress.[107] The Central Leadership of the People's Movement of Ukraine consists of the chairman of the party, his deputies, members of the board of leadership, and heads of regional party organizations.[108] The head, deputy heads, and heads of regional party organizations are *ex officio* members of the Central Leadership of the Ukrainian People's Party.[109] The same composition of the executive committee has been introduced in the Labour Party of Ukraine (which has been recently renamed "Strong Ukraine").[110] The head, his deputies, members of the board of leadership, the head of party's Secretariat, and heads of regional party organizations are *ex officio* members of of the Political Council of the People's Party.[111] The Central Council of the party "Civic Party Pora" is composed of heads of the regional party organizations (who are *ex officio* members; other members are to be elected by the party congress); the *ex officio* members of the Central Council of the Party of Motherland Defenders are the head of the party, the honorary

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100 The party "Reforms and Order"

101 The People's Movement of Ukraine, the Ukrainian People's Party

102 the Communist Party of Ukraine

103 The Party of Motherland Defenders and the party "Civic Party Pora"

104 Para. 6.3. of the Charter of the Party of Regions

105 Para. 5.7. of the Charter of the party "Reforms and Order"

106 Para. 7.3.3. of the Charter of the party "Our Ukraine"

107 Para. 4.10. of the Charter of the party "Forward, Ukraine!" ("People's Self-Defence")

108 Para. 79 of the Charter of the People's Movement of Ukraine

109 Para. 3.6.7. of the Charter of the Ukrainian People's Party

110 Para. 8.3.1. of the Charter of the Labour Party of Ukraine. On November 28, 2009 the name "Labour Party of Ukraine" was changed to "Strong Ukraine"

111 Article 33 of the Charter of the People's Party

head of the party, the head of the Secretariat of the party, and the head of regional party organization in the Autonomous Republic of Crimea.[112]

The board of leadership runs a party's day-to-day activities between the meetings of the executive committee (most charters of the parties represented in the parliament stipulate that the meetings of the executive committee are held at least once in 2-6 months). This body in different parties has different names, such as the Secretariat,[113] the Political Council,[114] the Council,[115] the Political Executive Committee,[116] and the Presidium of the Central Committee.[117]

In some parties[118] this body is formed by the executive committee, while in other parties – by congress.[119] In most cases, the charters of political parties list ex officio members of the boards of leadership. In the Party of Regions, *ex officio* members of the board of leadership are the head, deputy heads, the head of the faction of the party in the parliament, and the head of the Central Control Commission;[120] in the party "Reforms and Order" [121] and in "Our Ukraine," [122] it is the head, deputy heads, the head of the Executive Committee; in the People's Movement of Ukraine, the Ukrainian People's Party, and the Labour Party of Ukraine ("Strong Ukraine") – it is the head of the party and his deputies. In the People's Party, *ex officio* members of the Political Executive Committee are the head, deputy heads, and the head of the secretariat of the party.

In most parties represented in the parliament, party leaders are elected for a defined term set by the party congress. The only exception to this rule is the party "Civic Party Pora", whose head is elected by the board of leadership.[123]

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[112] Para. 6.6. of the Charter of the Motherland's Defenders Party

[113] The Party "Reforms and Order" and the Motherland's Defenders Party

[114] The People's Movement of Ukraine and the party "Civic Party Pora"

[115] The Ukrainian People's Party

[116] The party "Forward, Ukraine!" ("People's Self-Defence"), the Labour Party of Ukraine ("Strong Ukraine"), and the People's Party

[117] The Communist Party of Ukraine

[118] The Party of Regions, the party "Our Ukraine," the Ukrainian People's Party, the party "Forward, Ukraine" ("People's Self-Defence"), and the Communist Party of Ukraine

[119] The People's Party, the Labour Party of Ukraine ("Strong Ukraine"), and the People's Movement of Ukraine

[120] Para. 6.5. of the Charter of the Party of Regions

[121] Para. 5.13. of the Charter of the party "Reforms and Order"

[122] Para. 7.4.2. of the party "Our Ukraine"

[123] Para. 5.21. of the Charter of party "Civic Party Pora"

The deputy heads can be elected by a party congress[124] or by the executive committee of the party.[125] However, in both cases, the party charters envisage that deputy heads are elected only on proposal of the party leader.

The Secretariat[126] of a party (or the Executive Committee,[127] the Central Executive Committee,[128] the Secretariat of the Central Leadership,[129] and the Secretariat of the Executive Committee[130]) provides a party and its governing and local bodies with informational, analytical, legal, technical, and other support. As a general rule, the head of the secretariat is appointed by the executive committee of the party.[131] In the Labour Party of Ukraine ("Strong Ukraine"), the head of the secretariat is appointed by the party leader, in the "Civic Party Pora" by the board of leadership.

Supervision over the implementation of the charter and programme of a party, over the party's internal discipline, the financial activities of the party, and the activities of the control bodies of local party organizations is exercised by the central control commission of the party. In all the parties represented in the parliament this commission is formed by the party congress.

### 2.2.3. Authority to use a party's name, nominations, finance, the party programme, membership, and changes to the party's rules

*The use of a party's name*

In all parties, the right to use the party's name belongs to the head of the party who can exercise it without any prior authorization. In many parties, the authority to use the party's name is vested in the congress, the executive committee, and in the board of leadership.[132]

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[124] The People's Movement of Ukraine, the party "Reforms and Order", the Labour Party of Ukraine ("Strong Ukraine"), the European Party of Ukraine

[125] The party "Our Ukraine", "Forward, Ukraine!" ("People's Self-Defence"), the Motherland's Defenders Party, and the party "Civic Party Pora"

[126] The Labour Party of Ukraine ("Strong Ukraine"), the People's Party

[127] The Party "Reforms and Order", the party "Civic Party Pora"

[128] The party "Our Ukraine"

[129] The People's Movement of Ukraine

[130] The Communist Party of Ukraine

[131] Namely, in the party "Reforms and Order", the party "Our Ukraine", the party "Forward, Ukraine!" ("People's Self-Defence"), the People's Movement of Ukraine, and the Ukrainian People's Party

[132] For example, in the Party of Regions, this authority is vested in the Board of Leadership, in the Ukrainian Social Democratic Party – in the executive committee, in the People's Movement of Ukraine – in the congress, the executive committee, and board of leadership; in the Ukrainian People's Party and the Christian Democratic Union – in the executive committee; in the European Party of Ukraine – in the congress and executive committee; in the party "Civic Party Pora" and the Motherland's Defenders Party – in the executive committee, in the People's Party – in the executive committee and board of leadership; and in the Labour Party of Ukraine ("Strong Ukraine") – in the congress and executive committee.

Most parties do not do not define in their charters the procedure for the use of party's name by heads of the smallest party units and local party organizations.[133] In practice, however, the head of the smallest party unit or local party organization can make statements without prior authorization on behalf of the relevant unit or local organization.[134] If he/she is going to use a party's name or make statements on behalf of the entire party, prior consent of the applicable body of the party (executive committee, board of leadership, or leader) is required.[135] At the same time, in the European Party of Ukraine, executive bodies of the local and regional organizations have the right to use the party's name in their political statements without any prior consent from the central bodies of the party. The least democratic in this respect is the Ukrainian Social Democratic Party because its charter stipulates that political statements, even on behalf of the local or regional party organization, require consent from the head of the party.

*Nominations*

Charters of most political parties represented in the parliament declare the right of any party member to elect and be elected to any bodies of a party, including the bodies of the relevant local party organization (see, for example, para. 2.1.6. of this Report). However, the procedure for exercising this right is not properly defined in parties' charters.

In most parties, party leaders have very broad powers allowing them to influence the selection of party officers. For instance, in the majority of parties represented in the parliament, candidates for deputy heads are selected solely by party leaders. In some parties (the Party of Regions, the Party of Motherland Defenders, and the People's Party), party leaders are granted with the exclusive right to nominate candidates to the body of internal party control. In many cases, it is the party leader who decides the composition of the executive committee and/or board of leadership.[136]

The right to nominate candidates for presidential and parliamentary elections is the exclusive right of a party congress. The authority for nomination of the candidates in local elections is vested in the representative bodies of the local party organizations. The procedure for nominating candidates for elected office, however, is not properly defined in the party rules. This significantly increases the influence of party leadership on nominations.

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[133] All-Ukrainian Association "Motherland", the party "Reforms and Order", the party "Our Ukraine", the party "Forward, Ukraine!" ("People's Self-Defence"), the People's Movement of Ukraine, the Ukrainian People's Party, the party "Civic Party Pora", the Motherland's Defenders Party, and the Communist Party of Ukraine.

[134] This is the case of, for example, the Labour Party of Ukraine.

[135] For instance, in the Labour Party of Ukraine ("Strong Ukraine") and in the Christian Democratic Union.

[136] For example, this is the case in the All-Ukrainian Association "Motherland", the Ukrainian Social Democratic Party, in the People's Movement of Ukraine, in the Ukrainian People's Party, in the Motherland's Defenders Party, in the party "Reforms and Order", in "Forward, Ukraine!" ("People's Self-Defence"), and in the European Party of Ukraine.

In practice, in most political parties, candidates for elected office are nominated in the same way: a leader's inner circle prepares a draft list of candidates for elections to be nominated by the party. This list is then approved by the leader. Then, the approved list is presented to the executive committee for discussion. The executive committee may make minor changes to the list, and when these changes (if any) have been made, the executive committee submits the list to the party congress for final approval. In most cases, the congress approves the list unanimously.[137]

*Disposal of funds and property*

The right to use the funds and property of the party belongs to the executive committee of the party. It is also authorized to determine the procedures for the use of the party's funds and property by regional and local branches. The executive committees of the regional and local organizations that obtain legal entity status can, at their own discretion, dispose of finances and property acquired on their own. If the property or funds were received from the political party, the local party organization may dispose of them on condition of authorization from the executive committee of the party. The use of party finances and property is supervised by the control commissions of regional organizations and by the central control commission of the party.

*Changes to a party programme and internal rules*

In all parties, the party programs and charters can be approved or changed only by the party congress. The procedures for initiating, discussing, and considering the proposals to a charter or programme of the political party are not regulated in charters at all or regulated only superficially. The other internal party rules (with the exception of the party charter) are approved and changed by the executive committee of a party.

*Membership*

It is common practice in most parliamentary parties that decisions on membership can be made by the conference of the local organization, by a governing body of the organization of a higher level (local or regional), or by the governing body of the party (executive committee or board of leadership). In a number of cases,[138] the decision of the smallest party unit granting party membership comes into force only if approved by the governing body of organization of a higher level. In the People's Party, the right to admit members is the exclusive right of the local party organization, in the party "Reforms and Order," this right belongs to the governing body of the regional organization or to the secretariat of the party (however, in the party "Reforms and Order," this right may be transferred to the smallest party units

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[137] І.Жданов. Яка виборча система необхідна Україні? // Дзеркало тижня. – 2007. – № 44 (673); http://www.dt.ua/1000/1550/61173/

[138] For example, this is the case in the People's Movement of Ukraine, in the Ukrainian People's Party, in the European Party of Ukraine, in the party "Civic Party Pora", and in the Communist Party of Ukraine.

and local party organizations).[139] The right to terminate membership in a party belongs to the body authorized to accept membership or to the executive body of the party organization of the higher level (in all the parties represented in the parliament).

### 2.2.4. The organizational structure of a party at the local level

The territorial structure of any party includes a basic level (represented by the smallest party units), a local level (represented by local party organizations that unite several smallest party units), and a regional level (represented by local party organizations in regions or oblasts and the cities of Kyiv and Sevastopol, and the Autonomous Republic of Crimea).

The smallest party unit can be established by a decision of its constituent assembly (conference, meeting). Establishing the smallest party unit requires authorization or further recognition by the local party organization. Some party charters provide for recognition of the smallest party unit even by the regional party organization.[140] The smallest party units may be established by at least three members of the political party.[141] As a matter of fact, the smallest party unit cannot obtain the status of legal entity. The organizational structure of the smallest party unit includes the general assembly of its members, the collective executive body, directed by the head of a unit, and who is elected by the conference for a term, specified in the charter of the political party.

In some parties,[142] the executive body can be only collective. In other parties, it should be collective only on condition that the number of members of a unit exceeds a certain threshold (for example, 50 members in the Party of Regions and in the Labour Party of Ukraine ("The Strong Ukraine," and 15 members in the Ukrainian Social Democratic Party and in the Communist Party of Ukraine. In addition to these bodies, the charters of some political parties[143] provide for the establishment in the smallest party unit of a supervisory body, authorized to consider complaints and proposals of the members of a unit and to supervise the finances of a unit. Charters of most political parties stipulate that the smallest party unit may be dissolved by decision of a conference of a unit or by decision of an executive body of the party organization at a higher level (local or regional). Moreover, it is left to the discretion of the relevant party organization to decide whether a unit should be dissolved.

A local party organization unites several primary organizations and may obtain the status of a legal entity upon the decision of an executive body of a regional party organization. The governing bodies of the local party organization are its conference and executive committee, headed by a leader of the local organization, who is elected by the conference for a set

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139 Para. 3.2. of the Charter of the party "Reforms and Order"

140 For instance, the party "Reforms and Order", the party "Our Ukraine"

141 In the party "Our Ukraine" and in the European Party of Ukraine the smallest party units may be established by at least 5 members of political party

142 Namely, in the Christian Democratic Union and in the Motherland's Defenders Party

143 Namely, of the Labour Party of Ukraine ("Strong Ukraine"), the People's Party, the Communist Party of Ukraine, the party "Civic Party Pora"

term. An executive body decides on the current issues of local organization between the conferences. Charters of most parties provide for the establishment in the organizational structure of local organization of a board of leadership that runs a local organization on day-to-day basis. Both the executive committee and the board of leadership of local organization are headed by the director of a local party organization. Charters of some political parties[144] provide for the establishment in local organizations of control (supervisory) commissions, entitled to consider complaints and proposals of the members of a party and to supervise finances of a local organization. In other parties, these powers are vested in supervisory (control) commissions of the regional organizations.

A local organization, as a general rule, can be dissolved by decision of an executive body of the regional organization or by a decision of the executive committee of a party.

Regional party organizations unite all the local party organizations in a particular region or in an oblast, in the city of Kyiv or Sevastopol, or in the Autonomous Republic of Crimea. Decisions on its establishment must be approved by the executive committee or board of leadership of a political party. Upon registration by the regional branch of the Ministry of Justice of Ukraine, a regional party organization obtains legal entity status. The governing bodies of a regional organization are the conference, the executive committee, with the main task to run the regional organization between conferences, and the board of leadership. Both the executive committee and the board of leadership are headed by the leader of the regional party organization. He or she is elected by the conference for a certain term. In all the parties, a regional conference is empowered to form a control (supervisory) commission of the regional organization and to elect its members. The control commission supervises compliance with the decisions of the regional and local organizations, implementation of the party's programme, the use of funds at the local or regional level, and observance of party discipline and ethics. It also resolves any conflicts in the party's branches should they occur. A regional organization of the party can be dissolved by decision of the executive committee of the political party.

### 2.2.5. Transparency of activities of political parties

Article 6.1 of the Law on Civic Associations states that transparency is one of the basic principles of political parties. The same Article of the Law stipulates that political parties are obliged to make public on a regular basis their key documents, the composition of their leadership, and data on sources of financing and expenditures. Furthermore, according to Article 22 of the Law on Civic Associations and Article 17 of the Law on Political Parties in Ukraine, parties have to annually publish in the national media their budgets, a statement on income and expenses, and a property statement. Ukrainian legislation provides no other legal requirements on parties to enhance the transparency of their activities.

Proper implementation of the above legal provisions is complicated by a number of obstacles:

- the laws do not define which parties' documents should be considered "key documents";

[144] The Labour Party of Ukraine ("Strong Ukraine"), the People's Party, the Communist Party of Ukraine, the party "Civic Party Pora"

- the laws do not define who exactly should be considered party leadership;
- the laws do not set clear requirements for the scope of information to be reflected in the income and expenses statement and the property statement of a political party;
- the laws do not determine the timeframe within which the income and expenses statement, the property statement, "key documents," and information on the composition of governing bodies should be made publicly available; and
- the laws do not introduce penalties to be imposed on political parties for violating the requirements on publication of information and reports.

In general, the activities of political parties in Ukraine are less transparent since:

- only parties represented in the parliament and a few political parties without parliamentary representation have their own websites;
- the lower the level of a party branch in the organizational structure, the less information on its activities is publicly available (this is the case for most parties without representation in the parliament, but it also applies to parties in the parliament);
- on parties' websites, only general information on their activities is available (history of foundation, charter and programme, statements of the leader and influential members of the party, information on composition of the governing bodies of the political party and its regional organizations; information on party activities in government, and information on general conditions of admitting to a party); and
- decisions of the congresses and other important internal rules (with exception of the charter and programme), information on income, expenditures, and property of the party and its local organizations, as a general rule, are not available on party websites.

### 2.2.6. Officials and bodies that must be included in a party's organizational structure in accordance with law

In accordance with Articles 8 and 10 of the Law on Political Parties, a political party must include in its organizational structure the following bodies: a representative body (congress, conference, assembly), other governing bodies and control (supervisory) bodies (see also para. 2.2.1. of this Report).

## 2.3. INTERNAL DEMOCRACY

### 2.3.1. Legal provisions on internal democracy and legal definition of 'internal democracy'

The law does not contain a definition of "internal democracy."[145] The Law on Civic Associations only provides for some principles for the work of political parties, aiming at enhancing

[145] In a number of European states, political parties are legally required to observe democratic principles in their decision-making and activities. Among these countries are Albania, Andorra, Croatia, the Czech Republic, Finland, and Germany. In other countries (Belgium, Cyprus, Georgia, Greece, Ireland, Italy, and the UK) no such requirements are imposed by law on political parties. See: Report on the Establishment, Organization and Activities of Political Parties prepared by Mr. Hans Heinrich Vogel (Substitute Member,

internal democracy. For example, according to Article 6 of this Law, parties have to be run on the basis of equality of all members, and lawfulness and transparency; all main issues of the political party must be settled at the meetings of all members of the political party or their representatives. Article 7 of the Law on Civic Associations prohibits parties from admitting and expelling members on the basis of sex or ethnicity.

As the discussion of this Report in the focus group has shown, in most parties internal democracy is weak since party leadership plays a key role in nominating candidates for elections, forming the bodies of the party, and making changes to party charters; decision-making is centralized; the activities of local party organizations are controlled by executive bodies; internal party discussions are not widely disseminated, and criticizing a party leader or a party in general may result in expulsion from the party.[146] At the same time, the idea of making amendments to the Law on Political Parties to introduce additional mechanisms to enhance internal party democracy (through imposing restrictions or obligations on political parties) was not supported, because in practice such an approach may lead to state intrusion in internal party activities, in violation of Article 11 of the ECHR. In the opinion of the experts, enhancing internal party democracy may be carried out through:

- allowing voters to some extent to vote for individual candidates rather than for closed lists - in elections which are currently held on the basis of the proportional system with voting for closed lists of political parties and blocs;
- promotion of development of local party organizations, in particular through making changes to legislation on local elections encouraging participation in election of parties rather than blocs;
- the weakening of parties' dependence on private funding (in particular, through introducing public funding and imposing restrictions on the value of private donations and the sources of funding); and
- the will of party members to introduce the mechanisms aiming at strengthening internal party democracy.

### 2.3.2. Enforcement of party rules and the right to bring enforcement action

According to Article 17 of the Code of Administrative Court Procedure, all the issues relating to a party's internal activities are excluded from the competence of the administrative courts. Hence, if an internal party decision does not comply with the party's charter or restricts a member's rights, the member of the political party cannot turn to the court to have the relevant decision cancelled. However, it should be mentioned that the Ministry of Justice exercises control not only over the observance of legislation by political parties, but also over observance by parties of their charters. This control is exercised when the Ministry considers the possibility of registration of changes to the statutory documents of a political party (for further details see para. 1.3.5. of this Report). For example, the Ministry of Justice

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Sweden) on the basis of the replies to the questionnaire on the establishment, organization, and activities of political parties, adopted by the Venice Commission at its 57th Plenary Session (12-13 December 2003). – para. 47; http://www.venice.coe.int/docs/2004/CDL-AD(2004)004-e.asp

[146] For further information on the focus groups see the Introduction to this Report.

decides whether the requirements of the law or party charter were observed when a party leader was elected or when changes to the party's charter were made. If the requirements are not observed, the Ministry of Justice can refuse to register changes to the statutory documents. The relevant decision of the Ministry of Justice may be contested in administrative court. If this is the case, the court will check whether in fact the legal requirements were violated when the changes to the statutory documents were introduced. As court practice shows, sometimes the courts consider these types of cases.[147]

The experts of the Venice Commission recommended allowing members of a party to have access to court in case they believe that a decision of a body of a political party has violated the party's charter.[148] At the time when this report was discussed, most experts came to the conclusion that allowing members to contest party decisions in courts is a premature step that could lead to permanent lawsuits against political parties by their members and, consequently, to blocks on decision-making within parties. Therefore, the control over conformity of party decisions with charters should be primarily internal. It also should be mentioned that in European states there is no common approach to regulation of the issues pertaining to the possibility of contesting party decisions in court. In some countries (Ireland, Finland, France, Hungary, Lithuania, Malta, and Turkey) the laws provide for such a possibility, while in other countries (Albania, Armenia, Austria, Azerbaijan, Bosnia and Herzegovina, Bulgaria, Cyprus, the Czech Republic, Greece, and Switzerland) these issues are regulated by the internal provisions of the political party.[149]

Internal control over the enforcement of party rules includes the following features:

- in any party, the right to supervise enforcement of party rules belongs to the control (supervisory) commission of regional organizations and to the control commission of the party. However, these commissions are not empowered to cancel decisions that contradict the rulings of the statutory bodies of the party, the party's charter or programme, and they may only inform the executive bodies of a party about the violations of internal party rules;
- the charters of all parties in the parliament stipulate that the executive body of the organization at the higher level is entitled to repeal decisions of statutory bodies of the organization at the lower levels;
- representative bodies at the basic (primary), local, and regional levels have the right to cancel decisions of the executive bodies of the organizations at their respective level (including decisions of the head of the organization); and

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147 See, for example, the Resolution of the Kyiv district administrative court of April 15, 2010 in a case № 2a-12677/09/2670; http://www.reyestr.court.gov.ua/Review/9628878

148 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 (Romania). – para. 24; http://www.venice.coe.int/docs/2002/CDL-AD(2002)017-e.asp

149 Report on the Establishment, Organization, and Activities of Political Parties prepared by Mr. Hans Heinrich Vogel (Substitute Member, Sweden) on the basis of replies to the questionnaire on the establishment, organization, and activities of political parties, adopted by the Venice Commission at its 57th Plenary Session (12-13 December 2003). – para. 42; http://www.venice.coe.int/docs/2004/CDL-AD(2004)004-e.asp

- between congresses (conventions, general meetings, conferences), the executive committees of local and regional party organizations may cancel the decisions of the boards of leadership.

### 2.3.3. Legal requirements on establishing internal control mechanisms to control behaviour and/or resolve internal disputes

Political parties are not legally required to establish internal mechanisms to control the behaviour of their members or resolve internal disputes. Nevertheless, the charters of all the political parties represented in parliament have introduced such mechanisms. Control over the behaviour of party members and the resolution of internal disputes is exercised by the control (supervisory) commissions and commissions on ethics.

### 2.3.4. Provisions in party rules regarding internal democracy (direct or representative) in the selection of party leaders, candidates, and programs

Party charters do not regulate the procedure for selection of party leaders, they just declare the right of any member of a political party to elect and be elected to the governing bodies of political parties. All primary, local, and regional party organizations can submit to the organization at the higher level proposals on the selection of party leader, candidates for respective elections, and changes to the programme or charter of the party. However, the effective mechanisms of enforcement of the above provisions are not envisaged in the party charters.

The right to appoint a party leader, to nominate candidates for national elections, and to change the programme of the party belongs to the congress of the party. The congress is a representative body: the executive committee at its own discretion or in accordance with the charter (for instance, in the Party of Regions and in "Our Ukraine"), determines the quota of regional representation at the congress, and the regional conferences elect delegates for the congress. The right to submit proposals on delegates is granted to members of regional and local organizations, however, the charters do not regulate the procedure for submitting such proposals. The regional and local conferences of the party have the same nature, i.e. the executive committee of the organization at the higher level determines the quota for representation of delegates from organizations at the lower level, and the latter elect to their conferences delegates for the conferences at the higher level. Direct democracy exists only at the level of the smallest party units since their members can directly elect the head of the unit and enact decisions relating to the current issues of the unit.

Attention should be paid to the practice of some European states, where parties have already introduced mechanisms of direct internal democracy. Mechanisms of direct democracy for the election of the leader have been introduced by the Green Federation in Italy, the Reform Movement and the Socialist Party in Belgium, the Union for a Popular Movement and the Socialist Party in France, as well as the Green Party in Ireland. As the practice of some political parties shows, some mechanisms aiming to enhance internal democracy can be introduced within governing bodies of a representative nature. For instance, in Spain, the

Secretary-General of the Spanish Socialist Workers' Party and the President of the People's Party are elected by the delegates' assembly and the two latter parties require candidates to obtain the prior support of a significant (20-25%) part of the delegates to enter competition for the post. The Labour Party in the United Kingdom represents a specific mechanism where the members of the Parliamentary Labour Party act as gatekeepers (candidates must be members of this group or have their support) but a party-wide ballot is conducted for the selection among nominees.[150]

### 2.3.5. Procedure for making/changing party rules

The charter of a party can be adopted, amended, or changed only by the party congress. In all parties, amending the charter or party programme requires a qualified majority of votes of 2/3 of members present at the national congress (see also para. 2.2.3. of this Report).

### 2.3.6. The extent to which participation is limited to formal members (as opposed to supporters and contributors)

The right to participate in the representative bodies of the party or its regional, local, or primary organizations is restricted to party members. Charters of some political parties[151] provide for the possibility of engaging "supporters" in party activities, but the supporters are not granted the rights of members (see also para. 2.1.3. of this Report).

### 2.3.7. Gender and other quotas in party rules/law concerning party positions/ committees

The current legislation does not provide for any mechanisms aiming to ensure appropriate representation of women in the governing bodies of political parties. None of the charters of political parties represented in the parliament provide for such mechanisms either.

As revealed by the results of the discussion of this Report in focus groups,[152] ensuring an appropriate representation of women in bodies of political parties requires changes in electoral systems on the basis of which representative bodies are formed, introducing public financing of party programs aimed at encouraging the active participation of women in public life, and surmounting the stereotypes concerning the role of women in political life which exist within society. The participants of the focus groups also stressed that women's representation in the governing bodies of political parties should be promoted primarily through internal party regulation rather than through restrictive or obligatory provisions of the Law on Political Parties in Ukraine. In this regard, it is advisable to consider the experience of

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[150] See: 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 the Explanatory Report, adopted by the Venice Commission at its 78th Plenary Session (Venice, 13-14 March 2009). – paragraphs 137 – 138; http://www.venice.coe.int/docs/2009/CDL-AD(2009)021-e.asp

[151] For instance, the Charter of the party "Civic Party Pora"

[152] For further information on the focus groups see the Introduction to this Report.

some political parties in European countries that have already developed women's sections or commissions in charge of guaranteeing gender equality. Women's sections are present in the structure of the Austrian Social Democratic Party, the Christian Democratic Union in Germany, The Greens in Luxembourg, the Norwegian Labour Party, the Socialist Party of Portugal, the Social Democratic Party in Sweden, and the Labour Party of the United Kingdom. Commissions on gender equality are present in the structure of the Socialist Party in Belgium, the French Socialist Party, and the Spanish Socialist Workers' Party.[153]

### 2.3.8. The legal requirements for political parties to be "democratic"

The laws of Ukraine do not require political parties to be "democratic" (see also para. 2.3.1. of this Report). However, since relations inside parties, in general, are outside the competence of the courts, the term 'democratic' has never been interpreted by the courts. In practice, democracy inside a party is understood as the possibility of not only the leaders of the party, but also ordinary members, to influence party policy, nominate candidates for elections, decision-making at the local and central levels of the party's organizational structure, freedom of discussion and criticism of party policy, and decisions of the governing bodies of a party.

## 2.4. RESTRICTIONS ON PARTY ACTIVITIES, INCLUDING NON-POLITICAL OR BUSINESS ACTIVITIES

### 2.4.1. Restrictions on certain formations (based on ideology, non-democratic activity, and personality based)

There are no personality-based restrictions on parties in Ukraine. The complete list of prohibited goals and activities of political parties is defined by Article 37 of the Constitution, Article 4 of the Law on Civic Associations, and Article 5 of the Law on Political Parties in Ukraine (see para. 1.3.3. of this Report).

### 2.4.2. Restrictions on parties establishing military or quasi-military groups

The law forbids political parties from establishing quasi-military or armed formations. Article 260 of the Criminal Code of Ukraine provides for criminal responsibility for establishing illegal quasi-military or armed formations. According to data of the State Register of court decisions, the provisions of Article 260 of the Criminal Code have never been applied in practice.

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[153] 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 the Explanatory Report, adopted by the Venice Commission at its 78th Plenary Session (Venice, 13-14 March 2009). – para. 152; http://www.venice.coe.int/docs/2009/CDL-AD(2009)021-e.asp

# 3. PARTIES IN ELECTIONS

## 3.1. BALLOT ACCESS AND FORMAT

### 3.1.1. The procedure to be followed by a recognized/registered party to assure a place on the ballot

In order to assure a place on the ballot in the parliamentary elections,[154] a party must meet the following requirements:

- it must be registered no later than 365 days before the day of elections;
- no later than 90 days before the day of elections, it should hold a congress to nominate candidates for elections; and no less than 200 delegates must participate in this congress;
- the party can nominate no less than 18 and no more than 450 candidates in a single nationwide multi-member constituency;
- the party must notify the Central Electoral Commission of the date and venue of the congress no later than 5 days before the congress;
- the party should nominate a list of candidates with the priority (numbers) of all the candidates specified;
- no later than 85 days before the date of the parliamentary elections (no later than 75 days before the election if the CEC refused to register the candidates nominated by the party), the party has to submit to the CEC all the documents required for the registration of the candidates from the party, including:
  - an application for registration of the candidates;
  - a copy of the certificate of registration of a party and a copy of the party's charter;
  - an excerpt from the minutes of the congress relating to the voting for the list of candidates nominated for elections;
  - the list of candidates nominated by the party;
  - a written statement from every candidate included on the party list showing agreement to: be elected from the party's list, an obligation in case of election to stop activities that are incompatible with the mandate, consent to the publication of the

[154] Article 10.2., Articles 55-63 of the Law on Parliamentary Elections; http://zakon1.rada.gov.ua/cgi-bin/laws/main.cgi?nreg=1665-15&p=1270074647320297

candidate's biography, and an obligation within one month after official announcement of the election results to transfer enterprises and assets to the management of another person;
- an autobiography of every candidate;
- the election programme of the party in Ukrainian;
- property and income statements of every candidate nominated by the party;
- an election deposit of 2000 times the minimum monthly wages (EUR 181 270)[155]; and
- photographs of each candidate in a number and size determined by the CEC.

The right to nominate candidates for parliamentary elections is also granted to electoral blocs. Electoral blocs must meet the following requirements:
- all parties that want to establish a bloc must be registered no later than 365 days before the day of election,[156] otherwise the bloc would not be entitled to nominate candidates for parliamentary elections;
- each party establishing a bloc should hold a congress to enact a decision on the establishment of a bloc; these congresses should be held no later than 90 days before the day of elections;
- the leaders of the relevant political parties or authorized persons of the parties' representatives have to sign an agreement on establishing a bloc;
- the full name of a bloc should include the names of all the parties establishing the bloc and should not contain the names of the parties that are not the members of the bloc or names of famous persons if they are not candidates nominated by the bloc, or if the names of such persons are not used in the official names of at least one party establishing the bloc;[157] and
- in addition to documents submitted by parties, a bloc must submit to the CEC some additional documents, namely the decisions of the congresses of political parties on establishing the bloc, excerpts from the minutes of the congresses of the parties on establishing an electoral bloc, and the signed agreement to establish the electoral bloc.[158]

A party that is the member of an electoral bloc has no right to nominate candidates independently of a bloc and can be a member of only one bloc at the same time. No later than 35 days before elections, a political party may leave a bloc, and within the above term a bloc may be dissolved by all the parties that passed resolutions for its establishment. In the first case, the party loses its status as electoral subject, in the latter case, all the parties that dissolved the bloc can no longer be considered electoral subjects. However, if a party leaves a bloc no later than 90 days before elections, it has the right to nominate its own candidates for elections.[159]

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[155] As of June 1, 2010 the minimum monthly wage in Ukraine was UAH 884. The official exchange rate of the Hryvnia to the Euro as of June 1, 2010 was 9.753421 Hryvnias for 1 Euro.

[156] Article 10.2. of the Law on Parliamentary Elections

[157] Article 56 of the Law on Parliamentary Elections

[158] Article 58 of the Law on Parliamentary Elections

[159] Article 63 of the Law on the Parliamentary Elections

In order to assure a place on the ballot in the presidential election,[160] a party must meet the following requirements:

- it must be registered no later than one year before the election day;
- no later than 71 days before the election, the party has to hold a congress to nominate presidential candidate, and no less than 200 delegates have to participate in this congress;
- a party can nominate only one presidential candidate;
- a party must notify the Central Electoral Commission about the date and venue of the congress no later than 2 days before the congress; and
- no later than 68 days before the election, a party has to submit to the CEC all the documents required for the registration of a presidential candidate, including:
  - an application for the registration of a candidate;
  - a copy of the certificate of registration and a copy of the charter of the political party;
  - the excerpt from the minutes of the congress at which the candidate was nominated;
  - the excerpt from the minutes of the congresses of the parties with the decision to establish an electoral bloc for nomination of a presidential candidate, as well as the agreement establishing the bloc (these excerpts and agreement should be submitted only by electoral blocs);
  - the excerpt from the minutes of the congress (inter-party congress of the parties establishing a bloc), certifying that the presidential candidate was nominated for election;
  - a written statement by the presidential candidate agreeing to be nominated by the party or by the bloc, certifying the obligation within a month after the official announcement of election results to transfer enterprises and assets to the management of another person and to stop all activities incompatible with the presidency, and consent to the disclosure of biographical information on the candidate and of his property and income statements;
  - the autobiography of the candidate;
  - the election programme in Ukrainian;
  - deposit of UAH 2,500,000 (EUR 256,320)[161];

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[160] Articles 44 – 52 of the Law on Presidential Election

[161] The official exchange rate of the Hryvnia to the Euro, as of June 1, 2010, was 9.753421 Hryvnias for 1 Euro. In the opinion of the experts of the Venice Commission and the OSCE/ODIHR, this requirement is significantly high and represents an unnecessary restriction on candidacy, particularly for candidates from small parties or those who choose to run in the elections as independent candidates. Therefore, the experts have recommended to significantly decrease the amount of the monetary deposit required for the candidacy. See: Joint Opinion on the Law on Amending Some Legislative Acts on the Election of the President of Ukraine adopted by the Verkhovna Rada of Ukraine on 24 July 2009 by the Venice Commission and the OSCE/ODIHR, adopted by the Council for Democratic Elections at its 30th meeting (Venice, 8 October 2009) and by the Venice Commission at its 80th Plenary Session (Venice, 9-10 October 2009) on the basis of comments by Ms. Angelika Nussberger (Substitute Member, Venice Commission, Germany), Mr. Jessie Pilgrim (Electoral expert, OSCE/ODIHR). – para. 17; http://www.venice.coe.int/docs/2009/CDL-AD(2009)040-e.asp or www.legislationline.org/documents/id/15626

  - property and income statements; and
  - photographs in size and number as defined by the CEC.

In order to assure a place on the ballot in local elections which are held in multi-member constituencies,[162] a local party organization must comply with the following requirements:

- it has to be registered by a relevant regional or local branch of the Ministry of Justice of Ukraine no later than 365 days before the day of elections;
- no later than 28 days before elections, it has to hold a meeting or conference to nominate the candidates for elections; the number of candidates nominated for elections should not exceed the number of seats in the local or regional council;
- a local party branch must notify the territorial electoral commission on the date and venue of the conference no later than 1 day before the conference; and
- no later than 24 days before elections, the local organization has to submit all the documents required for registration of candidates:
  - an application for registration;
  - a copy of the certificate of registration of the local/regional party organization, and excerpts from the minutes of the conference where the candidates were nominated;
  - a list of candidates nominated by the local/regional party organization;
  - a copy of passport or temporary certificate of citizenship of Ukraine of every candidate;
  - a statement of each candidate on his consent to be nominated by the party organization and consent to the publication of biographical information;
  - an autobiography of every candidate;
  - a declaration of assets and income of every candidate included on the list; and
  - photographs of all the candidates nominated by the local/regional party organization.

To assure a place on the ballot in local elections which are held in single-member constituency,[163] a local party organization must comply with the following requirements:

- it has to be registered by a relevant regional or local branch of the Ministry of Justice of Ukraine no later than 365 days before the day of elections;
- no later than 28[164] or 26[165] days before elections, it has to hold a meeting or conference to nominate the candidates for elections; to each constituency only one candidate can be nominated;
- a local party branch must notify the territorial electoral commission on the date and venue of the conference no later than 1 day before the conference;
- no later than 24 days before elections, the candidate nominated by local party organization to a single-member constituency has to submit all the documents required for registration:
  - a passport or temporary certificate of citizenship of Ukraine;

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[162] Articles 35-37, 41 of the Law on Local Elections

[163] Articles 35, 36, 38, 39, 41 of the Law on Local Elections

[164] In elections of the deputies of village and town councils, and mayors of the villages, towns and cities

[165] In elections of the deputies of the Verkhovna Rada of the Autonomous Republic of Crimea, regional, district, city, city district councils

- an application for his or her registration signed by the head of local/regional party organization;
- a copy of the certificate of registration of the local/regional party organization, and excerpts from the minutes of the conference where the candidate was nominated;
- a statement on consent to be nominated by the party organization and consent to the publication of biographical information;
- an autobiography;
- a declaration of assets and income; and
- 6 photographs.

It is important to note that in contrast to the previous version of the Law on Local Elections, a new version of this Law, adopted on July 10, 2010, does not provide for the establishment of electoral blocs for nomination of the candidates for local elections. In addition, regional and local party organizations, as well as candidates nominated by them, are no longer required to submit to the territorial electoral commissions the lists with voters' signatures, election programmes and statements on consent to stop all activities incompatible with a mandate in case of being elected.

Furthermore, under the new Law on Local Elections the right to nominate candidates for local elections is vested only in party organizations of the level that corresponds to the level of a council to where elections are held, and local choices of candidates are not required to be ratified by party organizations of a higher level. This means that, for instance, candidates for city councils can be nominated only by city party organizations, for district (rayon) councils - by district party organizations, for regional (oblast) councils – by regional party organizations. If a party does not have organizations at certain level (city, district or regional), it cannot nominate candidates for the relevant councils.

Such an approach favors the political parties with branchy organizational structures. According to the general information provided by the Ministry of Justice of Ukraine at the end of March 2010, the Socialist Party of Ukraine had the biggest number of registered party organizations (16,000 organizations; the party is not represented in the parliament), followed by the People's Party with more than 13,000 organizations; the Social Democratic Party (United) (more than 12,000 organizations; the party doesn't have representation in the legislature); the All-Ukrainian Association "Motherland" (about 12,000 organizations); the Ukrainian People's Party (more than 10,000 organizations); the Party "Our Ukraine" and the Party of Regions (more than 7,000 organizations); the Peasants' Party (more than 6,000 organizations; the party is not represented in the parliament); the Communist Party of Ukraine, the Party "Single Center", the Party "Democratic Union" (about 5,000 organizations; the Party "Democratic Union" does not have representation in the Verkhovna Rada); the People's Democratic Party (4,000 organizations; the party is not represented in the parliament); the People's Movement of Ukraine (more than 3,000 organizations), the Ukrainian Social Democratic Party, the Ukrainian Republican Party "Sobor" and the People's Movement of Ukraine for Unity (about 2,000 organizations); the Party "Reforms and Order" (about 1,000 organizations).[166]

[166] ПР і ЄЦ – найбільш розвинуті партії в Україні; http://www.4post.com.ua/politics/161684.html

### 3.1.2. The procedure to be followed by an unregistered party to assure a place on the ballot

Unregistered parties are not allowed to participate in national and local elections. New parties (registered later than 365 days before elections) have no right to nominate candidates for all elections.

Most politicians and experts see the need for further restrictions on the nomination of candidates by political parties registered less than one year before the elections. This position can be explained by the fact there have been a number of cases when newly established political parties were used as a tool for underhanded competition in elections through defamatory statements against other parties' candidates in elections, for achieving majority by one political party in the territorial or polling election commissions, and for blocking the activities of election commissions due to the absence of a quorum in the meetings of commissions.

The arguments presented in support of the restrictions can hardly be considered convincing since political parties established more than one year before the date of elections, and which did not participate in the elections for a long period of time, could in fact be used for the same purposes of dishonest competition as newly established ones.

### 3.1.3. The procedure to be followed by independent candidates to secure a place on the ballot

Independent candidates may nominate themselves for only presidential election, elections of the village and town mayors, and for elections to the village and town councils.[167]

The OSCE/ODIHR Election Observation Mission has repeatedly recommended allowing the nomination of independent candidates for parliamentary elections.[168] However, there is no consensus on this among the politicians and experts. At the time when this Report was discussed in focus groups, the representatives of political parties mostly believed that the possibility of nominating independent candidates should exist only in some local elections, and it should not be possible for elections to the parliament. Some experts, on the contrary, emphasized that the possibility of self-nomination should be provided in all elections in Ukraine.

Providing for the possibility of self-nomination in parliamentary elections may lead to a weak political structure of the parliament and weak government, as well as to other short-

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[167] Article 10 of the Law on Presidential Election, Article 35 of the Law on Local Elections

[168] Ukraine. Pre-Term Parliamentary Elections, 30 September 2007. OSCE/ODIHR Election Observation Mission Report. – Warsaw, 20 December 2007. Recommendation 3; http://www.osce.org/documents/odihr/2007/12/29054_en.pdf; Ukraine. Parliamentary Elections 26 March 2006. OSCE/ODIHR Election Observation Mission Report. – Warsaw, 23 June 2006. – Recommendation 4; http://www.osce.org/documents/odihr/2006/06/19631_en.pdf

comings. Therefore, the possibility of self-nomination should be restricted to local elections only, and may be envisaged for the parliamentary elections only in mid-term or long-term.

*General requirements for the nomination of independent candidates in the presidential election*

To secure a place on the ballot in presidential elections, an independent candidate no later than 68 days before the election, should submit to the CEC the following documents:

- an application for registration certifying the candidate's agreement to transfer enterprises and assets to the management of another person within a month after the official announcement of election results, suspension of all activities incompatible with the presidency, and consent to the disclosure of the candidate's biographical information and property and income statements;
- an autobiography of the candidate;
- an election programme in Ukrainian;
- an election deposit of UAH 2,500,000 (EUR 256,320)[169];
- the candidate's property and income statements; and
- photographs in size and in number as determined by the CEC.

*General requirements for the nomination of independent candidates in local elections*

In order to assure a place on the ballot in elections of village and town mayors, deputies of village and town councils,[170] an independent candidate has to submit to the relevant territorial electoral commission no later than 24 days before elections the following documents:

- a passport or temporary certificate of citizenship of Ukraine;
- an application for his or her registration;
- a statement on consent to the publication of biographical information;
- an autobiography;
- a declaration of assets and income; and
- 6 photographs.

The procedure for nominating independent candidates is simpler than the procedure for the nomination of candidates by parties and blocs. However, candidates, as a general rule, choose to be nominated by political parties rather than be self-nominated. For instance, in the 2010 presidential elections, of 18 candidates 10 were nominated through the procedure of self-nomination. Only 2 of those who nominated themselves as candidates were affiliated with political parties – the president of Ukraine Victor Yushchenko and Mykhailo Brodsky. Those 8 candidates who were nominated for presidency by political parties were leaders of the respective parties. This can be explained by the fact that nomination by a political party means that a candidate has the possibility of using party resources for participation in elections (for instance, a candidate may use party funds to pay an election deposit or form an

[169] The official exchange rate of the Hryvnia to the Euro on June 1, 2010 was 9.753421 Hryvnias for 1 Euro.

[170] Articles 38, 39 of the Law on Local Elections

election fund). In addition, nomination by a political party increases the name-recognition of the political party and the candidate among the voters.

### 3.1.4. The requirements to be met by individual candidates to appear on the ballot and the possibility of representation of a party by a candidate without the party's consent

*General requirements to be met by candidates for elections*

In parliamentary and presidential elections, all the candidates are nominated to a single national constituency by the congresses (intra-party) of political parties and electoral blocs. In fact, there is no local ratification of choices of candidates, since the candidates for both parliamentary and presidential elections have to be nominated within narrow time frames: in the parliamentary elections - not earlier than 119 days before the day of the parliamentary elections, and not later then 90 days before the date of elections[171], in the presidential election – not earlier than 89 days before the date of election, and not later than 71 days before the day of election.[172] Within these narrow time frames, it is almost impossible to convene and to hold both party conferences at local level and a party congress at a national level, to submit the local choices to the congress, and to approve the local choices by a congress. Hence, in practice, the candidates for nomination by the congress are selected by the executive committee of political party, which then submits candidacies directly to the party congress for final approval.

To appear on the ballot in parliamentary elections, an individual candidate on a party list must meet the following requirements:

- a candidate should have the right to stand for parliamentary elections, i.e. he has to be a citizen of Ukraine, at least 21 years of age, and residing in Ukraine for at least 5 years before the parliamentary elections;
- a candidate should not be incapacitated (based on a court ruling) or convicted for committing an intentional crime except in the case when a criminal record was cleared or settled; and
- a candidate has to be nominated by a political party or bloc.

The CEC can cancel the registration of a candidate for elections if:

- the candidate refuses to stand for election;
- the party or bloc has cancelled its decision to nominate the candidate and applied to the CEC for cancellation of the candidate's registration no later than 15 days before the elections;
- the candidate lost his right to stand for elections;
- the party or bloc that nominated a candidate lost its status as electoral subject;
- the candidate was included on the list of several parties or blocs on his written consent; or
- the candidate repeatedly committed an offense for which he had been warned by the CEC.

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[171] Article 55.2 of the Law on Parliamentary Elections

[172] Article 44.1 of the Law on Presidential Election

Every citizen has the right to stand for presidential elections if he or she is a citizen of Ukraine, at least 35 years old, has the right to vote in parliamentary elections, speaks Ukrainian, and has resided in Ukraine for at least 10 years before the elections.

The registration of a presidential candidate with the CEC can be cancelled if:
- the candidate refuses to stand for elections (on condition that a statement on the refusal of candidacy was submitted to the CEC no later than 5 days before the election);
- the party or bloc that nominated the candidate lost its status as an electoral subject; or
- the candidate lost the right to be elected as the President of Ukraine.

Every citizen of Ukraine has the right to stand for local elections if he or she is at least 18 years of age, is not incapacitated, and has not been convicted for committing an intentional crime except for cases when the criminal record was cleared or settled.

The territorial electoral commission (TEC) can cancel the registration of a candidate if:
- the candidate refused to stand for elections (on condition that a statement on the refusal of candidacy was submitted to the TEC no later than 5 days before the day of election);
- the local party organization which nominated the candidate applied to the territorial electoral commission for cancellation of the candidate's registration (on condition that such an application was submitted to the TEC no later than 5 days before the day of elections);
- the candidate lost the right to stand for local elections;
- the candidate had been nominated by a branch of the party that was terminated;
- the candidate was nominated for local elections by party organizations of different parties;
- the candidate nominated to a multi-member constituency was at the same time nominated for local elections, other than mayoral elections or elections to the relevant council in a single-member constituency;
- the candidate was nominated to more than one single-member constituency; and
- the candidate repeatedly committed an offense for which he had been warned by the TEC.

*The possibility of a candidate representing a party without the party's consent*

The laws on national and local elections explicitly prohibit the spread of deliberately false or defamatory information about parties, blocs, and candidates for elections. Moreover, in accordance with the Law on Civic Associations, a party has the exclusive right to use its own name. Hence, candidates in an election are forbidden from making statements that they represent a party, if they are not specifically authorized by the party to make such statements. In particular, this includes cases when a candidate was self-nominated or nominated by a party other than the party name being used by the candidate.

### 3.1.5. Party designations on the ballot and ballot structure

In parliamentary elections, the names of the parties and blocs appear on the ballot paper according to as order determined by lot. The CEC determines the order before approval of the form and text of the ballot.

The ballot paper includes the number of each party or bloc, its full name, and (under the text with the name of the party or bloc) the names, surnames and patronymics of the first five candidates in each party's list. The text of the ballot can be printed only on the one side of the ballot paper.[173]

In presidential elections, the candidates appear on the ballot paper in alphabetical order by surname. For each candidate, the following information should be indicated: name, surname, patronymic, year of birth, residence, place of employment, party membership of the candidate (if he is a member of the party), name of the party or bloc that nominated the candidate (or indication that the candidate nominated himself as a candidate). The text of the ballot can be printed only on one side of the ballot paper.[174]

In local elections in multi-member constituencies, the names of the local party organizations appear on the ballot in accordance with the dates of application for registration of candidates for elections. The ballot paper includes the number of each party organization according to the date of application for registration, the full name of local party organization, and the names, surnames, and patronymics of the first five candidates on the list of a party organization. The text of the ballot can be printed only on the one side of the ballot paper.[175]

In local elections in single-member constituencies, candidates appear on the ballot in alphabetical order by surname, with a listing of their names, surnames, patronymics, date of birth, education, place of residence, place of employment, party membership, and name of the party organization that nominated the candidate (if so nominated). The text of the ballot can be printed only on one side of the ballot paper.[176]

### 3.1.6. Restriction of electoral participation to [registered] political parties

The right to nominate candidates for parliamentary elections is granted to registered political parties and blocs of registered political parties.

In the presidential elections, candidates can be nominated through self-nomination or by registered political parties and blocs of registered parties.

In elections of the mayors of the cities, as well as in elections to the Verkhovna Rada of the Autonomous Republic of Crimea, regional, district, city and city district councils, candidates can be nominated only by registered organizations of registered political parties. Furthermore, to be granted the right to nominate candidates for elections, a local party organization must be registered no later than 365 days before the day of elections.

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[173] Article 78 of the Law on Parliamentary Elections

[174] Article 71 of the Law on the Presidential Election

[175] Article 66 of the Law on Local Elections

[176] Article 66 of the Law on Local Elections

In elections of town and village mayors, and elections to village and town councils, candidates can be nominated through self-nomination or by registered party organizations (see also paragraphs 3.1.1-3.1.3. of this Report).

### 3.1.7. The possibility of joint sponsorship of candidates by parties through fusion, panachage, apparentement, and the possibility of nominating more than one list of party candidates in a single district

Parties cannot jointly sponsor candidates since this possibility is excluded by the electoral legislation for parliamentary and local elections. A party cannot nominate more than one list of candidates in a single constituency.

### 3.1.8. The possibility of being a candidate for more than one office, in more than one district, and on the list of more than one party

If parliamentary elections are not held simultaneously with other elections, an individual cannot be a candidate of two parties or electoral blocs at the same time. Since parliamentary elections are held in a single multi-member constituency, the possibility of being a candidate in several districts is excluded. The same rules apply to presidential elections if they are not held simultaneously with other elections.

In local elections, candidate nominated to multi-member constituency under mixed system can be simultaneously nominated only as mayoral candidate or can be nominated to a single-member constituency to the local council, to which he or she was nominated to multi-member constituency. For instance, if a candidate was nominated on a party list to a regional council in multi-member constituency, he can be nominated only to the same regional council in a single-member constituency or as a mayoral candidate. If in local elections an individual was nominated to a single-member constituency, he or she cannot be simultaneously nominated to any other single-member constituency, regardless of the type of local elections (if different local elections are held simultaneously). In all types of local elections that are held simultaneously, an individual can be nominated by only one local party organization.[177]

If different types of elections (presidential, parliamentary, local) are held simultaneously, an individual can be a candidate for all offices and can be nominated by different parties for different types of elections (for example, for parliamentary elections by party X, for presidential elections by party Y, and for local elections by party Z).

### 3.1.9. "Write-in" candidates

Write-in candidacies are prohibited in all elections.

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[177] Article 35 of the Law on Local Elections

### 3.1.10. Type of list system (open/closed) and determination of list order

Elections for parliament are held on a proportional system basis with closed lists and in single multi-member constituency, where all members of the parliament are elected. Elections for the Verkhovna Rada of the Autonomous Republic of Crimea, regional, district, city and city district councils are held on the basis of a mixed system: 50% of deputies are elected on the basis of a proportional system with closed lists and in single multi-member constituencies, 50% - on the basis of the first-past-the-post system. Elections for town and village councils and elections of mayors are held on the basis of the first-past-the-post system. To presidential election absolute majority system is applied.

The order of the candidates on lists under proportional system both in national and local elections is determined by the congress of a party or, in local elections, by conventions or conferences of the local party organizations.

## 3.2. PARTIES IN CAMPAIGNS

### 3.2.1. Regulation of party activities in the context of campaigns and types of regulated activities

Party activities in campaigns are regulated by three separate laws on elections: the Law on Parliamentary Elections, the Law on Presidential Elections, and the Law on Local Elections. These laws were adopted at different times and do not correspond with each other. The Law on Political Parties does not apply to the activities of political parties as electoral subjects.

In parliamentary elections, the election campaign starts at the moment when the CEC adopts a decision to register candidates nominated by a political party or bloc and ends at midnight of the last Friday before the day of elections.

In presidential elections, a candidate may start campaigning on the day following the CEC adoption of a decision to register that person as a presidential candidate. A presidential candidate must finish campaigning by midnight on the last Friday before the day of election. Before a possible second round of voting, a presidential candidate, admitted to participate in the second round, may start campaigning on the day following the CEC designation of a second round of elections. Campaigning should finish by midnight of the last Friday before elections.

In local elections, a candidate or local party organization which nominated candidates for elections may start campaigning on the day following the relevant TEC adoption of a decision to register a candidate/candidates. The election campaign in local elections ends at midnight on the last Friday before elections.[178]

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[178] Article 65 of the Law on Parliamentary Elections, Article 57 of the Law on Presidential Election, and Article 47 of the Law on Local Elections

The elections law prohibits everybody from campaigning outside the officially designated time period. However, in practice, this restriction can be easily circumvented – most parties start campaigning before the day of appointment of elections. This is because the provisions of the laws on elections, including the provisions pertaining to the sanctions for infringement, can be applied to only electoral subjects; and parties, blocs and individual candidates are not considered by the laws on elections as electoral subjects until they have been registered by the CEC or TEC.

Electoral laws contain a general definition of the "election campaign."[179] An election campaign is defined as any activity aimed to induce voters to vote for or against a particular electoral subject. Election campaigning includes, inter alia, the following activities: meetings with voters, rallies, demonstrations, pickets, conducting public debates, discussions, round tables, press conferences on election programs, activities on electoral subjects, political advertising, interviews, videos, distribution of printed campaign materials, political outdoor advertising, concerts, sport competitions with the support of parties, blocs, or candidates, and public appeals to vote for or against political parties, blocs, and candidates.[180]

Under the laws on elections, an election campaign may be funded from two sources – from the State Budget of Ukraine and relevant local budgets, and from the funds of electoral subjects. In the presidential election and local elections in single-member constituencies, the right to establish electoral funds belongs only to individual candidates. In the parliamentary elections and local elections in multi-member constituencies, the electoral funds can be established only by parties or, in local elections, by local party organizations.

The laws on elections provide equal opportunities for campaigning for all candidates (parties and blocs). For example, if a private broadcasting company provides a candidate with paid or free airtime for placement of political advertisements, it must provide other candidates (parties or blocs) with the same time and under the same conditions (for the same price or, if airtime was provided free of charge, for free) for political advertising. The same rule applies to public broadcasting, printed media, and premises for campaign activities.

Election campaigns must comply with the following rules and regulations:

- election campaigning in penal institutions and military units is restricted – the meetings of the candidates for elections with voters in penal institutions and military units are possible only if allowed jointly by the territorial election commission and the head

[179] In 2007, the OSCE/ODIHR Election Observation Mission recommended to a number of media-related amendments to the Law on Parliamentary Elections, including a clear definition of the concept of "election campaigning" and its forms in relation to media coverage of the election campaign, establishment of a wider range of sanctions in the case of violation of the laws by the media, including fines, and a shortening of the 15-day blackout period for the publication of results of opinion polls. See also: Ukraine: Pre-Term Parliamentary Elections, 30 September 2007. OSCE/ODIHR Election Observation Mission Report. – Warsaw, 20 December 2007. – Recommendation 24; http://www.osce.org/documents/odihr/2007/12/29054_en.pdf

[180] See, for example, Article 66 of the Law on Parliamentary Elections.

of the respective institution or unit; all the electoral subjects or their representatives have the right to be present at such meetings;
- the law explicitly prohibits election campaigning in the premises of state authorities and local administration;
- placing political advertisements on buildings and premises of the executive and local administration is prohibited;
- political advertisements and other election materials must not contain calls for the liquidation of Ukrainian independence, the violent overthrow of the constitutional order, the violation of the sovereignty and territorial integrity of the country, undermining state security, illegal seizure of state power, propaganda of war, violence, or incitement of ethnic, racial, national, or religious hatred, or violations of human rights and freedoms;
- it is prohibited to distribute deliberately false or defamatory information about candidates, parties, and blocs;[181]
- campaigning should not be accompanied by any direct or indirect bribery of voters;
- it is prohibited to campaign through foreign media operating in the territory of Ukraine or campaigning in media registered in Ukraine, in which the foreign share exceeds 50%;[182]
- placement of campaign materials on cultural heritage sites is not allowed;
- candidates holding positions in executive bodies or in local administration have no right to engage in campaign activities to such subordinated persons, or to use official transport, communications, or premises; and
- it is prohibited to distribute printed campaign materials without specifying the publisher, circulation, and persons responsible for the publication.

As it has been already mentioned above, laws on elections provide for the financing of certain types of campaign activities from the state and local budgets. For example, in parliamentary elections, the following activities are financed from the state budget of Ukraine:[183]
- publication of the election programme of every party and bloc in the official newspapers Voice of Ukraine and Governmental Courier, as well as in one regional printed media;

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[181] In 2006, the OSCE/ODIHR Election Observation Mission recommended a review of the relevant provisions of the Law on Parliamentary Elections. The Mission, in particular, emphasized that media should not be held responsible for "unlawful" statements made by candidates. The respective provision of the Law should be changed in order to state clearly, and with no exceptions, that the responsibility for the content of free and paid advertisements lies solely with the contestants. See: Ukraine. Parliamentary Elections, 26 March 2006. OSCE/ODIHR Election Observation Mission Report. – Warsaw, 23 June 2006. – Recommendation 26 ; http://www.osce.org/documents/odihr/2006/06/19631_en.pdf

[182] The relevant provision of the Law on Presidential Elections was criticized by the OSCE/ODIHR Election Observation Mission in 2004. The Mission stressed, in particular, that the law violates the principle that citizens have the right to receive and impart information regardless of borders as set out in paragraph 26.1 of the OSCE Moscow Document. However, the relevant provision still exists in both the Law on Presidential Elections and in the Law on Parliamentary Elections. See also: Ukraine. Presidential Election, 31 October, 21 November, and 26 December 2004. OSCE/ODIHR Election Observation Mission Final Report. – Warsaw, 11 May 2005. – Recommendation 9; http://www.osce.org/documents/odihr/2005/05/14224_en.pdf

[183] Articles 67, 69, 70 of the Law on Parliamentary Elections

- provision of airtime for election campaigning for each party and bloc (for each party: 60 minutes on national public television, 60 minutes on national public radio, 20 minutes on regional TV channels in every region, and 20 minutes on regional radio channels in every region); and
- publication of information posters of parties and blocs with full programs, complete lists of candidates and photographs of the first five candidates in the lists (2 copies of a poster of one party or bloc for every polling site).[184]

In the presidential election, the following expenses are financed from the State budget:[185]

- publication of information posters of presidential candidates, including the full programs of candidates and general information about the candidates and their photographs (5 copies of a poster of every candidate for every polling site);
- provision of airtime for election campaigning for every candidate (30 minutes on the national public TV channel, 45 minutes on the national public radio channel, 30 minutes on regional TV channels in each region, and 20 minutes on regional radio channels in each region);
- provision of airtime for debates between presidential candidates (at least 60 minutes for every two candidates before the first round of elections and at least 100 minutes for the two candidates participating in the second round of the election); and
- publication of an election programme of every presidential candidate in the official newspapers Voice of Ukraine and Governmental Courier, as well as in regional printed media.

In local elections, the following campaign activities are financed from local budgets:[186]

- publication of information posters of local party organizations, candidates nominated to single-member constituencies (with the exception of candidates to village, town councils, and to city councils of the small (rayon) cities), including general information about the candidates, their photographs (only in single member constituencies[187]), and full lists of candidates (in multi-member constituencies), with two copies of each poster for every candidate and local party organization in each polling site);[188]
- provision of printed space for election campaigning for candidates nominated to single-member constituencies and for local party organizations which nominated candidates to multi-member constituencies (amount of printed space for electoral subjects depends on the funds provided from the local budget); and

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[184] In connection with this, the OSCE/ODIHR Election Observation Mission came to the conclusion that one poster per polling site informing the voters about the parties present on the ballot should be enough, and information posters printed by the state separately for every party are not necessary. The task of informing voters about candidates should fall on parties and not on the government administration. See: Ukraine. Parliamentary Elections, 26 March 2006. OSCE/ODIHR Election Observation Mission Report. – Warsaw, 23 June 2006. – Recommendation 19; http://www.osce.org/documents/odihr/2006/06/19631_en.pdf

[185] Articles 59, 61- 63 of the Law on Presidential Elections

[186] Articles 49, 50, and 52 of the Law on Local Elections

[187] In multi-member constituencies posters are not legally required to include the photographs of the candidates

[188] In contrast to the previous version of the Law on Local Elections, the new version of the Law does not require publication in information posters of the full programmes of candidates and local party organizations

- provision of airtime for election campaigning for every candidate in a single-member constituency[189] and for every local party organization in a multi-member constituency (amount of airtime for electoral subjects depends on the funds provided from the local budget).

### 3.2.2. Regulation of candidate activities in the context of campaigns

Legal provisions governing the election activities of parties apply to candidates unless otherwise provided by law. In particular, candidates have to campaign within the time limits specified by law, and to follow the other restrictions on campaign activities stipulated by law.

During election campaigns, the candidates can campaign for themselves, and for or against other candidates, parties, and electoral blocs. The laws on elections do not contain any provisions aiming to restrict competition between candidates from the same party or bloc in the same electoral district. In other words, the candidate is free to criticize another candidate from the same party in the same constituency. Should this happen, the conflicts between candidates are resolved by the party or bloc that nominated the candidates.

### 3.2.3. Differences in regulation between parties and candidates

In the elections laws, there are no separate provisions regulating the campaign activities of the parties, electoral blocs and local party organizations separately from the activities of the candidates in the elections.

The differences in the regulation of campaign activities of parties and candidates depend only on whether the law provides for the possibility of nomination to a single-member constituency. If such a possibility is provided for, the regulation of campaign activities apply mainly to the candidates that are the main objects of regulation. This means, for example, that individual candidates, not parties, have the option to establish electoral funds, have access to the media for campaigning, and can submit reports on the use of electoral funds. Nevertheless, in this case, the restrictions on campaigning apply to both candidates and parties or blocs (local party organizations in local elections).

If candidates can be nominated only to multi-member constituency, parties and blocs (local party organizations in local elections), not the candidates, are the main objects of legal regulation (parties establish electoral funds to finance the campaign activities of their candidates, and parties are provided with free or paid airtime on TV and radio, and submit reports on the use of electoral funds).The elections laws uphold the principle of equality of all electoral subjects in carrying out campaign activities.[190] The only deviation from this principle is that parties and independent candidates (where possibility of their nomination

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[189] Under the new version of the Law on Local Elctions, airtime for election campaigning is not provided for candidates to village, town councils and to councils of the small (rayon) cities.

[190] Article 3 of the Law on Presidential Elections, Article 3 of the Law on Parliamentary Elections, and Article 4 of the Law on Local Elections

is provided) have unequal access to financial resources for campaigning. For example, the electoral funds of party candidates can be formed from the party funds, while parties are not allowed to donate to the electoral funds of independent (self-nominated) candidates. Restrictions on campaign activities and provisions on access to the media apply equally to both party-nominated and independent candidates.

### 3.2.4. The rules on mass media access (equality of access, provision of time, and complete bans)

Outdoor political advertising and political publicity on radio, TV, and in printed media is allowed both inside and outside of the time frames for election campaigning (see para. 3.2.1. of this Report) on condition that it is not prohibited by the laws on elections.

*Mass media access at the expense of the state budget*

Certain types of campaigning in public media are free of charge for the candidates, parties, and blocs. The cost of election campaign activities in public media is reimbursed to public broadcasting companies and public printed media from the state budget (in national elections) or local budgets (in local elections). Local budgets receive state budget financial assistance for these purposes. Access to public media during local and national elections is based on the principle of equality of access (see para. 3.2.1. of this Report).

*Mass media access at the expense of the electoral funds of electoral subjects*

Electoral subjects can also carry out campaign activities in public and private media at the expense of their electoral funds.

The elections laws[191] provide for a number of mechanisms aimed at ensuring equal opportunities of access to private and public media during the election campaign period:[192]

- at the very beginning of an election campaign, broadcasting companies and printed media are obliged to make public cost rates for airtime and printed space. The laws also provide some mechanisms to prevent overvaluation of the cost of political advertising with respect to commercial advertising;
- airtime or printed space at the expense of electoral funds may be granted only on contract between the media and manager of the account of the electoral fund, and only on condition of advance payment for airtime and printed space;

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[191] Articles 68-70 of the Law on Parliamentary Elections, Articles 60-61 and 63 of the Law on Presidential Elections, and Articles 50-52 of the Law on Local Elections

[192] Ukrainian legislation on elections over-regulates the activities of private media during election campaigns. It should be mentioned that in 2004, the OSCE/ODIHR Election Observation Mission stressed that: 1) the media-related provisions of the Elections Laws fail to clearly distinguish between state and private media; and 2) the right of private media to editorial comment and critical analysis should be respected. See: Presidential Election, 31 October, 21 November. and 26 December 2004. OSCE/ODIHR Election Observation Mission Final Report. – Warsaw, 11 May 2005. – Recommendations 29, 31; http://www.osce.org/documents/odihr/2005/05/14224_en.pdf

- only an electoral subject can be a customer of political advertising on radio, TV, and printed media during the campaign period;
- printed or audiovisual media (both private and public), which provided an electoral subject with airtime or printed space, are required to grant airtime or printed space under the same conditions to other electoral subjects (this requirement does not apply to media founded by political parties with the status of electoral subject); and
- candidates, parties, and blocs have the right to reply to or refute information that they consider to be "inadequate" (media are obliged to ensure the possibility of exercising the right to reply).

Articles 13 and 14 of the Law on Advertising of July 3, 1996 set quotas on political advertising in printed and audiovisual media. Broadcasting time for political advertising during an election campaign may not exceed 25% of the total broadcasting time within one hour and 20% of broadcasting time within 24 hours (unlike many other countries, in Ukraine, the quota for political advertising is included in the quota for commercial advertising). In printed media, print space for political advertising may not exceed 20% of the total print space of each copy of print medium (newspaper or magazine). These quotas to some extent restrict equality of access of electoral subjects to the media since it may refuse to place political advertising under the pretext of exceeding the quota on political advertising.

### 3.2.5. Restrictions on third party campaigning

Participation of third parties in election campaigns is restricted by several mechanisms:

- the financing of the election campaign of a candidate, party, or electoral bloc from sources other than electoral funds and budgetary funds (allocated for certain purposes like free access to media) is strictly prohibited (see, for example, Article 48 of the Law on Parliamentary Elections);
- only parties have the right to make donations to the electoral funds of electoral subjects (they can make donations to their own electoral funds, the funds of the candidates nominated by them, and to the electoral funds of blocs that they established), candidates (they can make donations to the electoral fund of the party, bloc or local party organization that nominated them, or to their own electoral funds in the case of nomination to a single-member constituency), and individuals (who can make contributions to any party, bloc, local party organization or candidate in a single-member constituency);
- certain categories of individuals are not allowed to participate in campaigning (members of electoral commissions, foreigners, stateless persons, and public officials of the executive bodies and local administration, law enforcement agencies, and courts); and
- only electoral subjects can be customers of political advertising in the media.

At the same time, there are a lot of gaps in the regulation of third party participation in election campaigns that allow people and parties to circumvent the relevant restrictions. For example, if any campaign activities are carried out free-of-charge and without the direct use of mass media, they are not prohibited by law. In fact, any individual may campaign for or against electoral subjects. Activities of legal entities are also not properly regulated. For example, a legal entity may surreptitiously hire individuals to make donations to electoral funds or

to campaign for or against electoral subjects for "free". Since the limits on donations to electoral funds and political parties do not correspond to each other, any individual or legal entity may finance a political party, not through an electoral fund, but directly (see para. 4.2.5. of this Report). Hence, de jure, third party campaigning is prohibited, but de facto, third parties can easily circumvent the restrictions and can be actively involved in campaign activities.

## 3.3. WOMEN IN ELECTIONS

In the Verkhovna Rada of the Ukrainian Soviet Socialist Republic the share of women reached 30% (in 1985, 157 women were elected to the Ukrainian parliament)[193], as a consequence of the introduction by the Communist Party of the USSR of a non-official quota for women representation in elected office.[194] After the first multi-party elections of 1990 the representation of women in the parliament decreased significantly. On the whole, during 1990–2010 the share of women in the parliament has varied from 3% to 8.5%.[195] By the percentage of women in the parliament Ukraine ranks 108th, behind the Democratic Republic of the Congo, Ghana and Samoa, but ahead of such countries as Botswana, Algeria, Kuwait and the Libyan Arab Jamahiriya.[196]

The analysis of representation of women in positions in the state bodies and bodies of local self-government leads to a following distressing conclusion: the higher the position, the lower the representation of women. For instance, by the end of 2008 a share of women in the highest positions (first category) of the bodies of local self-government was 7.7%, in the lowest positions (sixth category) in the same bodies – 79%. As of 31 December 2008, the share of women in the highest positions of the state bodies was only 12.5%, and in the lowest positions of these bodies, 69.6%.[197]

It should be mentioned that Ukraine has made a number of commitments under key international documents in the field of elimination of the discrimination against women, in particular as concerns political life. Among these documents are the Convention on the Elimination of All Forms of Discrimination against Women[198] and the UN Millennium

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[193] See: І.Омелян. Гендер у політиці – історія боротьби за політичні права жінок; http://gender.at.ua/news/2010-03-04-294

[194] See: Права людини в Україні – 2004. Доповідь правозахисних організацій. / За ред. Є.Захарова, І.Рапп, В.Яворського /Українська Гельсінська спілка з прав людини. – Харків: Фоліо, 2005. – с. 255; http://helsinki.org.ua/files/docs/1117296126.pdf

[195] After the 1990 parliamentary elections the share of women in the parliament was 3%, the 1994 parliamentary elections – 5,7%, the 1998 parliamentary elections – 8,1%, the 2002 parliamentary elections – 5,1%, the 2006 parliamentary elections – 8,5%, the 2007 parliamentary elections – 7,6%. See: Web site of the Ministry of Justice of Ukraine http://www.minjust.gov.ua/0/15477

[196] Women in national parliaments. Situation as of 31 May 2010; http://www.ipu.org/wmn-e/classif.htm

[197] Гендерна статистика України: сучасний стан, проблеми, напрями удосконалення / Галустян Ю.М., Герасименко Г.В., Макарова О.В. – К., 2009. - с. 148, 150; http://gender.at.ua/load/0-0-1-72-20

[198] The Convention on the Elimination of All Forms of Discrimination against Women was ratified through the Order of the Presidium of the Supreme Council of the USSR, № 3565-X, December 19, 1980; http://zakon1.rada.gov.ua/cgi-bin/laws/main.cgi?nreg=995_207&p=1270074647320297

Development Goals. In accordance with Article 7 of the CEDAW, states should "take all appropriate measures to eliminate discrimination against women in the political and public life of the country". Under the UN Millennium Development Goals a minimum 30% of either gender should be represented in legislative and executive bodies by 2015. In 2010 the OSCE/ODIHR Election Observation Mission stressed the importance of fulfillment obligations under the UN Millennium Development Goals by Ukraine and highlighted the fact that "women are underrepresented in the legislature". [199]

Article 24 of the Constitution of Ukraine prohibits any restrictions or privileges of the constitutional rights and freedoms based on sex, and provides for equal opportunities for men and women in public and political life. This provision constitutes a legal basis for other legislative acts aiming to achieve an appropriate representation of women in public office. In particular, Article 161 of the Criminal Code of Ukraine provides for the criminal liability for discrimination based on sex. In accordance with provisions of Article 161, any direct or indirect restriction of personal rights (including the right to elect or to be elected) or awarding privileges based on sex is penalized by fine (UAH 3400–8500 or EUR 349–871[200]), or by restriction of freedom for up to 5 years with or without prohibition to hold certain positions or to perform certain kinds of activities for up to three years. The same actions combined with violence, fraud or threats or committed by officials are punished by a fine (UAH 8500–17000 or EUR 871–1743[201]) or by a prison term of two to five years with or without prohibition to hold certain positions or to perform certain kinds of activities for up to three years. However, some experts[202] think that the possibility of achieving a conviction for discrimination under Article 161 of the Criminal Code is very restricted since it is difficult to prove the fact of discrimination in court, in particular as concerns the restriction of the right to elect and to be elected.

On September 8, 2005 the Verkhovna Rada of Ukraine adopted the Law on Ensuring Equal Rights and Opportunities for Women and Men. According to Article 15 of this Law, political parties and electoral blocs which nominate candidates for parliamentary elections have to provide for the representation of both men and women in the lists of candidates for elections. However, the Law on Parliamentary Elections does not contain any provisions aiming to either implement or to ensure the possibility of enforcement of Article 15 of the Law on Ensuring Equal Rights and Opportunities for Women and Men.[203] In turn, the charters of

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[199] Ukraine. Presidential Election. 17 January and 7 February 2010. OSCE/ODIHR Election Observation Mission Final Report. – Warsaw, 28 April 2010. - p. 20; http://www.osce.org/documents/odihr/2010/04/43675_en.pdf

[200] The official exchange rate of the Hryvnia to the Euro as of June 1, 2010 was 9.753421 Hryvnias for 1 Euro

[201] The official exchange rate of the Hryvnia to the Euro as of June 1, 2010 was 9.753421 Hryvnias for 1 Euro

[202] Механізми захисту від дискримінації за ознакою статі: варіанти для України. Проект від 31.05.2007. – Міжнародний центр перспективних досліджень. - с. 6; http://www.icps.com.ua/files/articles/47/37/Counteracting%20discrimination%20Green%20Paper.doc

[203] In 2007, the OSCE/ODIHR Election Observation Mission recommended to undertake significant efforts to effectively enhance the participation of women as candidates and increase the representation of women in Parliament and government. The Mission also recommended bringing the Law on Political Parties and Law on Parliamentary Elections into compliance with the Equal Opportunity Law. See: Pre-Term Parliamentary Elections 30 September 2007. OSCE/ODIHR Election Observation Mission Report. – Warsaw, 20 December 2007. – Recommendations 34, 35; http://www.osce.org/documents/odihr/2007/12/29054_en.pdf

all parties represented in parliament also do not envisage the procedure for the nomination of candidates for election that could increase the chances of women to be elected.

Therefore, the current legislation and party rules pertaining to promotion of women's representation among nominees for public office are declarative and cannot be effectively enforced.

The issue of appropriate representation of women among the candidates for public office has been already addressed in a number of documents of the Council of Europe, the Venice Commission and the OSCE/ODIHR. Among these documents we should particularly highlight:

- PACE Recommendation 1676 (2004) on women's participation in elections,
- PACE Recommendation 1899 (2010) on increasing women's representation in politics through the electoral system,
- Recommendation (2003)3 of the Committee of Ministers to member states on balanced participation of women and men in political and public decision making,
- the 2004 OSCE Action Plan for the Promotion of Gender Equality,
- the Venice Commission Code of good practice in electoral matters,
- the Venice Commission Code of good practice in the field of political parties,
- the Venice Commission Report on the impact of electoral systems on women's representation in politics, as well as many other documents.

The Recommendation (2003)3 of the Committee of Ministers to member states on balanced participation of women and men in political and public decision making emphasizes that the representation of either women or men in any decision-making body in political or public life should not fall below 40%. The Committee of Ministers also recommended member states to consider a number of legislative and administrative measures aiming to achieve this goal, in particular to consider possible constitutional and/or legislative changes, including positive action measures, which would facilitate a more balanced participation of women and men in political and public decision making, to consider adopting legislative reforms to introduce parity thresholds for candidates in elections at local, regional, national and supra-national levels; where proportional lists exist - consider the introduction of zipper systems, consider action through the public funding of political parties in order to encourage them to promote gender equality.[204]

The Code of good practice in the field of political parties particularly stresses that "the introduction of measures for gender equality is progressively becoming the dominant trend… continued and repeated situations of gender unequal representation cannot, by any means, be considered proof of good practice".[205]

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[204] See Appendix to Recommendation (2003)3 of the Committee of Ministers to member states on balanced participation of women and men in political and public decision-making (adopted by the Committee of Ministers on 12 March 2003 at the 831st meeting of the Ministers' Deputies); https://wcd.coe.int/ViewDoc.jsp?id=2229

[205] 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 the Explanatory Report, adopted by the Venice Commission at its 78th Plenary Session (Venice, 13-14 March 2009). – para. 37; http://www.venice.coe.int/docs/2009/CDL-AD(2009)021-e.asp

Taking all these recommendations into account, in a significant number of states different measures aimed at achieving appropriate representation of women in elected office have already been taken. Some of these measures are presented in Table 2 below.

**Table 2.** Some measures that could facilitate appropriate representation of women in elected office

| Measures | Examples |
|---|---|
| **Legal (compulsory, mandatory) quotas** | Albania, Armenia, Belgium, Bosnia and Herzegovina, Greece, Spain, FYR Macedonia, Portugal, Serbia, Slovenia, France. In some countries compulsory quotas are used in national elections; other countries (such as Greece) use them only for local or regional elections. By the end of 2008, twelve member states of the Council of Europe had adopted legal quotas for national elections. |
| **Reserved seats** | Afghanistan, Burundi, Egypt, Jordan, Kyrgyzstan, Sudan, Tanzania, Uganda. There are no provisions for reserved seats for women in Europe at the moment. |
| **"Zipper" or "zebra"** | France (zipper rule applies to municipal elections in communes with more than 3 500 inhabitants, to elections to the Senate and European Parliament) |
| **Public financing** | Croatia |
| **Voluntary (party) quotas** | Voluntary quotas are the most widespread measure of promotion of women's representation in elected office. According to the Venice Commission, in most Council of Europe member states at least one party represented in the parliament has introduced voluntary quotas. Among the parties which use voluntary quotas are the Christian Democratic Union in Germany, the Socialist Party in Portugal, the Liberal Democrats in the United Kingdom, the Labour Party in Ireland, the Labour Party in the United Kingdom, French Socialist Party, The Greens of Luxembourg, the Austrian People's Party, the Social Democratic Alliance in Iceland, the Party of the Italian Communists, the Alliance 90/The Greens in Germany, the Hungarian Socialist Party, the Social Democrats of the Czech Republic and other parties. By 2000, among 76 European parties, with at least ten members in the lower house, almost half (35 parties) used gender quotas |

**Sources:**
1. IDEA Global Database of Quotas for Women; http://www.quotaproject.org/
2. Code of Good Practice in the Field of Political Parties, adopted by the Venice Commission at its 77th Plenary Session (Venice, 12-13 December 2009) and Explanatory Report, adopted by the Venice Commission at its 78th Plenary Session (Venice, 13-14 March 2009); http://www.venice.coe.int/docs/2009/CDL-AD(2009)021-e.asp
3. Report on the Impact of Electoral Systems on Women's Representation in Politics adopted by the Council for Democratic Elections at its 28th meeting (Venice, 14 March 2009) and the Venice Commission at its 79th plenary session (Venice, 12-13 June 2009) on the basis of contribution by Mr. Michael Krennerich (Expert, Germany); http://www.venice.coe.int/docs/2009/CDL-AD(2009)029-e.asp

The results of the discussion of this Report in focus groups[206] showed that at the moment the issue of the promotion of women's representation in elected office is not considered as the highest priority for reforms in the field of political parties and elections. The most important task for reforms in the respective field, according to participants in the focus groups, is enhancing internal party democracy and restricting the influence of the party leaderships and donors on the nomination of candidates for elections. In the opinion of the focus group participants, women's participation in political life should be promoted primarily indirectly, rather than through the introduction of mandatory quotas.

[206] For further information on the focus groups see the Introduction to this Report.

## 3.4. MINORITIES IN POLITICAL PARTIES AND ELECTIONS

### 3.4.1. Legal definition of "minorities"

The definition of national minorities was introduced by the Law on National Minorities in Ukraine of June 25, 1992. According to Article 3 of this Law, minorities are citizens of Ukraine who are not Ukrainians by ethnicity and express the feeling of national consciousness and commonality with each other. The law does not provide for recognition of minorities by the state - everybody who recognizes him/herself as a minority belongs to the minorities.

On 9 December, 1997 the Verkhovna Rada of Ukraine ratified the Framework Convention for the Protection of National Minorities.

According to Ukrainian population census of 2001, at the time when the census was completed, 37.5 million Ukrainians (77.8% of entire population) lived in Ukraine, as well as 10.9 million (22.2%) representatives of other nationalities. The biggest national minority of the country were Russians (8.3 million or 17.3% from all the population). The most numerous ethnic groups were Byelorussians (0.6% population), Moldovans (0.5% population), Crimean Tatars (0.5% population), Bulgarians (0.4% population), Hungarians (0.3% population), Romanians (0.3% population), Poles (0.3% population), Jews (0.2% population), Armenians (0.2% population), Greeks (0.2% population), Roma, Georgians, Gagauzi, Germans (each 0.1% population).[207]

### 3.4.2. Legal and internal party regulation on ensuring representation of minorities within party governing bodies

None of the charters of political parties represented in the parliament contain any provisions concerning representation of minorities within the governing bodies of political parties. In European countries, the representation of minorities and migrants in the governing bodies of political parties is regulated mainly by the parties themselves. Some of them just declare in their charters a commitment to ensure participation of minorities or migrants at all levels of the respective parties (for example, the Greens of Luxembourg, the United Left in Spain), while other political parties have introduced special mechanisms to facilitate participation of minorities in party activities, such as parallel structure of party bodies for Sami-Political Group in the Norwegian Labour Party or ethnic minorities forums in the Labour Party in the United Kingdom.[208]

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[207] Second Report Submitted by Ukraine Pursuant to Article 25, Paragraph 1 of the Framework Convention for the Protection of National Minorities (Received on 8 June 2006). – p. 8 – 9; http://www.coe.int/t/dghl/monitoring/minorities/3_FCNMdocs/PDF_2nd_SR_Ukraine_en.pdf

[208] 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 the Explanatory Report, adopted by the Venice Commission at its 78th Plenary Session (Venice, 13-14 March 2009). – paragraphs 115-116; http://www.venice.coe.int/docs/2009/CDL-AD(2009)021-e.asp

At the time this Report was discussed in the focus groups, most of the experts and representatives of political parties stated that there was no need to take any special measures aiming to promote representation of national minorities in the governing bodies of political parties. In their opinion, if a party wants to be supported by the voters who belong to national minorities, it has to take the interests of national minorities into consideration through, for example, including in its election programme points that address minorities and nominating representatives of national minorities for elections.[209] The experts also stressed that there are some parties in Ukraine which, as it appears from their names, address minority issues, for example, the Party of Hungarians of Ukraine and the Democratic party of Hungarians of Ukraine.[210] Hence, if the other parties do not encourage representation of minorities in their governing bodies, minorities may try to get representation in the governing bodies of those parties that address their needs.

### 3.4.3. Regulation of representation of minorities among party nominees for public office

Article 24 of the Constitution of Ukraine and the laws on elections prohibit any restrictions or privileges based on race and ethnicity. In addition, Article 161 of the Criminal Code provides for criminal liability for any direct or indirect restriction of personal rights or awarding privileges based on ethnicity or any other grounds (see para. 3.3. of this Report). Some provisions pertaining to representation of minorities among candidates for elections are included into the Law on National Minorities in Ukraine, however, they are declarative and do not provide for any measures to be taken for their enforcement. For example, Article 9 of this Law declares the rights of the minorities "to be elected or to be appointed to any position in the legislative, executive, judicial bodies, in the bodies of local or regional self-government". However, none of the laws establishes mechanisms for exercising this right. As concerns internal party regulation of the representation of minorities among candidates for elections, the charters of all political parties represented in the parliament do not envisage mechanisms for promoting nomination of minorities for public office.

In general, the analysis of the current legislation leads to a conclusion that party rules and legislative provisions provide for the opportunity to compete, but do not give an electoral advantage.

In this connection, the Venice Commission highlighted that in the Council of Europe member states where the strict requirements of minimum membership and regional representation exist, these are likely to affect the possibilities of minorities to form political parties (Moldova, Ukraine, and the Russian Federation). The Venice Commission further noted that where the establishment of political parties based on ethnicity or region is plainly prohibited (Bulgaria and the Russian Federation), measures like reserved seats, lower electoral thresholds, special parliamentary committees, adapted constituency boundaries, voting rights for non-citizens and constitutionally guaranteed representation of minorities in parliament are especially desirable for promoting the political participation and rep-

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[209] For further information on the focus groups see the Introduction to this Report.

[210] Source: website of the Ministry of Justice of Ukraine; http://www.minjust.gov.ua/o/499

resentation of minorities.[211] Furthermore, the Code of good practice in electoral matters particularly stresses that special rules guaranteeing national minorities reserved seats or providing for exceptions to the normal seat allocation criteria for parties representing national minorities do not in principle run counter to equal suffrage.[212]

Some European countries have already taken measures in order to promote the representation of minorities in elected office. Among these countries are Slovenia (the only country that grants dual voting rights to members of national minorities: two representatives of the Italian and Hungarian minorities elected on special lists have full status as members of parliament[213]); Cyprus (where the members of each the Maronite, Armenian and Latin religious groups elect a deputy to the House of Representatives, with a consultative status); Croatia (out of 140 seats, eight seats are guaranteed in advance for national minority members and they shall be distributed among the minorities: the Serb national minority elects three representatives; the Hungarian national minority and the Italian national minority elect each one representative; the Czech and Slovak national minorities elect one representative together; the Austrian, Bulgarian, German, Polish, Roma, Romanian, Ruthenian, Russian, Turkish, Ukrainian, Vlach and Jewish national minorities elect one representative together; Albanian, Bosnian, Montenegrin, Macedonian and Slovenian national minorities elect one

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[211] These measures are provided not only by the Code of Good Practice in the Field of Political Parties, but also by the Lund Recommendations on the Effective Participation of National Minorities in Public Life. In particular, according to the Lund Recommendations, measures that can ensure opportunities for minorities to have an effective voice in decision-making bodies may include: (a) special representation of minorities through a reserved number of seats in the parliament or in parliamentary committees, (b) allocating to members of national minorities cabinet positions, positions on nominated advisory bodies or other high-level organs; (c) providing the possibility of establishing political parties based on communal identities, (d) facilitating minority representation through electoral systems (holding elections in single-member districts, reflection of a political party's share in the national vote in its share of the legislative seats under proportional system, preference voting, lower numerical thresholds for representation in the legislature, geographic boundaries of electoral districts may facilitate minority representation). For further information see: The Lund Recommendations on the Effective Participation of National Minorities in Public Life. – p. 8 - 9; http://www.osce.org/documents/hcnm/1999/09/2929_en.pdf; 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 the Explanatory Report, adopted by the Venice Commission at its 78th Plenary Session (Venice, 13-14 March 2009). – para. 113; http://www.venice.coe.int/docs/2009/CDL-AD(2009)021-e.asp

[212] Code of Good Practice in Electoral Matters: Guidelines and Explanatory Report, adopted by the Venice Commission at its 52nd session (Venice, 18-19 October 2002). – para. 2.4, clause "b"; http://www.venice.coe.int/docs/2002/CDL-AD(2002)023rev-e.asp

[213] The admissibility of dual voting for members of national minorities has already been assessed by the Venice Commission. The Commission emphasized that dual voting is an "exceptional measure" that has to be within the framework of the Constitution, and can only be justified if it is impossible to reach the aim pursued through other less restrictive measures which do not infringe upon equal voting rights; it has a transitional character; and it concerns only a small minority. For further information see: Report on Dual Voting for Persons Belonging to National Minorities adopted by the Council for Democratic Elections at its 25th meeting (Venice, 12 June 2008) and the Venice Commission at its 75th Plenary Session (Venice, 13-14 June 2008) on the basis of contributions by Mr. Sergio Bartole (Member, Italy) and Mrs. Josette Durrieu (Expert, France). – para. 10, 71; http://www.venice.coe.int/docs/2008/CDL-AD(2008)013-e.asp

representative together); [214] Germany and Poland (where the electoral threshold is not applied to minority parties), and a number of other states.[215]

At the time this Report was discussed in the focus groups,[216] the representatives of the political parties stressed that currently there is no need to take any special measures aiming to facilitate the representation of national minorities in representative bodies. The main argument used was that those political parties that want to be supported by members of national minorities are themselves interested in the nomination of the representatives of national minorities for election (see para. 3.4.2. of this Report).

The above statement can be proven by the information reflected in the Third Report submitted by Ukraine pursuant to Article 25, Paragraph 1 of the Framework Convention for the Protection of National Minorities. According to the Third Report, the share of the Crimean Tatars from the total number of public servants in the Autonomous Republic of Crimea, as of 2009, was 7.9% (400 persons in total), among these 400, 104 persons were employed by the executive bodies of the Autonomous Republic of Crimea, and 178 by the district state administrations. In the 2007 elections one representative of the Crimean Tatars was elected to the Verkhovna Rada, 7 representatives were elected to the Verkhovna Rada of the Autonomous Republic of Crimea, 137 members of the Crimean Tatar minority were elected to district and city councils of the Autonomous Republic of Crimea (125 of them were nominated as candidates for respective elections by the People's Movement of Ukraine), more than 900 Crimean Tatars were elected to the town and village councils of the Crimea.[217] In accordance with

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214 The similar affirmative action electoral rules have been introduced in Bosnia and Herzegovina. For further information see: Report on Electoral Rules and Affirmative Action for National Minorities' Participation in Decision-Making Process in European Countries adopted by the Council for Democratic Elections at its 12th meeting (Venice, 10 March 2005) and the Venice Commission at its 62nd Plenary Session (Venice, 11-12 March 2005) on the basis of comments by Mrs. Mirjana Lazarova Trajkovska (Member, "The Former Yugoslav Republic of Macedonia"). – para. 24; http://www.venice.coe.int/docs/2005/CDL-AD(2005)009-e.asp; Report on Dual Voting for Persons Belonging to National Minorities adopted by the Council for Democratic Elections at its 25th meeting (Venice, 12 June 2008) and the Venice Commission at its 75th Plenary Session (Venice, 13-14 June 2008) on the basis of contributions by Mr. Sergio Bartole (Member, Italy) and Mrs. Josette Durrieu (Expert, France). – para. 11 – 12; http://www.venice.coe.int/docs/2008/CDL-AD(2008)013-e.asp; 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 the Explanatory Report, adopted by the Venice Commission at its 78th Plenary Session (Venice, 13-14 March 2009). – para. 114; http://www.venice.coe.int/docs/2009/CDL-AD(2009)021-e.asp

215 Further information on measures that have been taken to promote the representation of national minorities in elected office, which are in place in states mentioned in this Report, as well as in other states, can be found in the Report on Electoral Rules and Affirmative Action for National Minorities' Participation in Decision-Making Process in European Countries adopted by the Council for Democratic Elections at its 12th meeting (Venice, 10 March 2005) and the Venice Commission at its 62nd Plenary Session (Venice, 11-12 March 2005) on the basis of comments by Mrs. Mirjana Lazarova Trajkovska (Member, "The Former Yugoslav Republic of Macedonia"); http://www.venice.coe.int/docs/2005/CDL-AD(2005)009-e.asp

216 For further information on the focus groups see the Introduction to this Report.

217 Third Report Submitted by Ukraine Pursuant to Article 25, Paragraph 1 of the Framework Convention for the Protection of National Minorities (Received on 7 May 2009). – p. 49; http://www.coe.int/t/dghl/monitoring/minorities/3_FCNMdocs/PDF_3rd_SR_Ukraine_en.pdf

the Second report submitted by Ukraine pursuant to Article 25, Paragraph 1 of the Framework Convention for the Protection of National Minorities, Romanians and Hungarians also have significant representation in elected office in the territories where they constitute a large part of the population. For example, there are 18 Romanians among 104 deputies of Chernivtsi regional (oblast) council and 37 Romanians among 41 deputies of Gertsayiv district council. Among 85 deputies of the Transcarpathian regional (oblast) council there are 9 Hungarians, in Uzhgorod city council there are 2 Hungarians among 41 deputies, in Beregiv city council there are 10 Hungarians among 30 deputies. Among the deputies of district councils there are 68 Hungarians among the 90 deputies of Beregiv district, 19 Hungarians among the 90 deputies of Vynogradivskyi district, 18 Hungarians among the 62 deputies of Uzhgorod district, and 6 Hungarians among 78 deputies of Mukachiv district.[218] As concerns representation of Russians in elected office, official information on this is not available, however, there is also no any sign that Russians are underrepresented in the parliament, and in local or regional councils in the territories, in which the share of Russians is significant.

In order to secure effective representation of national minorities in elected bodies, the OSCE/ODIHR Election Observation Mission in 2007 recommended to consult with national minorities on issues which concern them when amending electoral legislation, and to take into account the Lund recommendations on the Effective Participation of National Minorities in Public Life of the OSCE High Commissioner on National Minorities and the OSCE/ODIHR Guidelines to Assist National Minority Participation in the Electoral Process.[219]

However, taking measures aiming to promote representation of national minorities in elected bodies is complicated by two major factors. Firstly, the parliamentary elections are held on the basis of the proportional system with voting for closed lists of political parties and blocs. Most local elections are held on the basis of the mixed system under which 50% of the deputies of the relevant councils are elected under proportional system with voting for closed lists of local party organizations, and the remaining deputies of local councils are elected only among those candidates who were nominated by local party organizations (since the possibility of self-nomination is envisaged only in elections of village and town mayors, and deputies of village and town councils). Secondly, the current legislation does not provide for the possibility of registration of the parties of national minorities. Of course, some parties may focus primarily on minority issues, but they have just the same legal status as any other parties. Therefore, it is impossible to apply lower electoral thresholds to parties, which in fact represent the minorities.

The idea of amending the Law on Political Parties in Ukraine with provisions allowing national minorities to establish their own parties was strongly criticized by national experts

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[218] Second Report Submitted by Ukraine Pursuant to Article 25, Paragraph 1 of the Framework Convention for the Protection of National Minorities (Received on 8 June 2006). – p. 36 – 37; http://www.coe.int/t/dghl/monitoring/minorities/3_FCNMdocs/PDF_2nd_SR_Ukraine_en.pdf

[219] See: Ukraine. Pre-Term Parliamentary Elections 30 September 2007. OSCE/ODIHR Election Observation Mission Report. – Warsaw, 20 December 2007. – Recommendation 36; http://www.osce.org/documents/odihr/2007/12/29054_en.pdf

and politicians.[220] The main reason given for this was that the legal recognition of minority parties could threaten the territorial integrity of the state and entail disintegration processes in those regions where the share of national minorities is significant.

Some other measures envisaged in the Lund Recommendations, can hardly be applied in Ukraine at the moment. For example, granting political parties a share of the seats in the legislature according to their share of the national vote according to the proportional system, which favours small parties, may increase the number of factions in the parliament and result in overall political instability in the legislature. The idea of transition to parliamentary elections on the basis of the first-past-the-post system, which may favour national minorities, was not supported by most of Ukraine's experts or the majority of political parties represented in the legislature consulted for this report. The reservation of seats for minorities does not comply with the Constitution, and therefore it would require a constitutional amendment.

Probably the only legislative measure aiming to promote representation of minorities in elected bodies that can be supported by the parliament in a long-term perspective, is providing the possibility of self-nomination for local elections under the mixed system or under the first-past-the-post system (if mixed system is replaced by the first-past-the-post system), and introduction of a system of preference voting under the proportional system for parliamentary elections. In order to ensure appropriate representation of minorities in public and political life, it is also necessary to make significant changes to the Law on National Minorities in Ukraine, since the latter does not provide a clear definition of minorities and effective mechanisms to enforce the rights of minorities, in particular as concerns their rights in public and political life.

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[220] In particular, this idea was not supported by some experts who participated in the round table "Regulations of Political Parties in Ukraine: the Current State and Directions of Reforms", and by most of the representatives of political parties who participated in the focus groups that took place from 28-30 April 2010, in Lutsk (April 28, 2010), Chernigiv (April 29, 2010), and Kyiv (April 30, 2010). For further information on the focus groups and round tables see the Introduction to this Report.

# 4. PARTY FUNDING

## 4.1. PUBLIC SUBSIDIES

### 4.1.1. Direct public financing of political parties

Currently, there is no direct public funding of political parties in Ukraine.[221] The state supports parties only indirectly (see para. 4.1.4. of this Report).

On November 27, 2003, the parliament passed the Law on Amending Some Legislative Acts of Ukraine due to the Introduction of Public Funding of Political Parties. The Law introduced direct public funding of statutory activities of political parties and provided for reimbursement to political parties of election funds expenditures on campaigning in parliamentary elections. In accordance with this Law, public funding of statutory activities of political parties had to start from January 1, 2007. The expenditures for election campaigns would be reimbursed after the 2006 parliamentary elections.

However the Law on State Budget of Ukraine for 2007 suspended the financing of statutory activities of political parties for 2007, and the Law on State Budget of Ukraine for 2008 repealed all the provisions on public financing of political parties that were introduced in 2003 (see also para 1.5.1. of this Report).

On May 22, 2008, the Constitutional Court declared these provisions of the 2008 State Budget Law unconstitutional. The decision of the Constitutional Court was not itself concerned with the public financing of political parties. While considering the case the Court decided whether the Law on State Budget of Ukraine can suspend or abrogate provisions of other laws actively in force, in particular those that define the scope of rights and obligations of legal entities and individuals. The Court came to the conclusion that the Law on State Budget cannot amend,

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[221] Direct public funding of political parties has been introduced in all European states with the exception of Moldova (where direct funding of political parties has been suspended), Ukraine, and Cyprus. The absence of direct public funding of political parties has been critically assessed by GRECO. See, for instance: GRECO. Third Evaluation Round. Evaluation Report on Latvia on Transparency of Party Funding (Theme II). – p. 23; http://www.coe.int/t/dghl/monitoring/greco/evaluations/round3/GrecoEval3(2008)1_Latvia_Two_EN.pdf

suspend, or abrogate other laws because such a possibility leads to discrepancies in laws and, therefore, restrictions of the existing rights and freedoms enshrined in the Constitution.[222] However since the Constitutional Court's decisions do not have retroactive effect, the validity of the repealed provisions of the Law on Political Parties in Ukraine was not reinstated.

*Forms of direct public funding of political parties envisaged in the Law of November 27, 2003*

According to repealed Article 17-1 of the Law on Political Parties in Ukraine, direct state funding had to be provided to political parties in two forms:

- funding of those statutory activities of political parties that were not related to their participation in elections to the state and local self-governmental bodies;
- reimbursement of the electoral expenditures from election funds of the parties, including those that were part of coalitions.

*The amount of funding and the criteria for allocating funds between parties (as provided for in the law of November 27, 2003)*

The right to direct public funding of statutory activities was given to those political parties that met the 3% election threshold either independently or within electoral blocs.[223] The right to reimbursement of the electoral expenditures from election funds was also given to those parties that met the 3% election threshold either independently or within electoral blocs.

Article 17-2 of the Law on Political Parties (also repealed) established a cap on annual state funding of statutory activities of political parties. It was set by multiplying 1% of the established minimum monthly wage (as of 1 January of the year preceding the one when the funds would be provided) by the number of the voters included on voter lists in the most recent regular parliamentary elections. If the public funding of political parties had been introduced in 2007 as it had been planned, 227,049,748.2 Hryvnias (EUR 19,831,590)[224] would have been allocated for the direct public funding of statutory activities of political parties in 2010.

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[222] See also (in Ukrainian): Decision of the Constitutional Court of Ukraine of May 22, 2008 № 10-рп/2008 in the case on the subject and content of the Law on State Budget of Ukraine; http://zakon.rada.gov.ua/cgi-bin/laws/main.cgi?nreg=v010p710-08&p=1268178034135029

[223] The laws of some European states (Spain, Finland) also provide for financing of only those political parties that are represented in the legislature. However, in order to ensure equal opportunities for different political parties, the Venice Commission recommended extension of public financing to political parties representing a significant part of the voters and presenting candidates for election. See: Guidelines and Report on Financing of Political Parties, adopted by the Venice Commission. – p. 5; http://www.venice.coe.int/docs/2001/CDL-INF(2001)008-e.asp). Providing direct public funding only to parliamentary parties has been criticized by GRECO (See.: GRECO. Third Evaluation Round. Evaluation Report on Spain on the Transparency of Party Funding (Theme II). – p. 15; http://www.coe.int/t/dghl/monitoring/greco/evaluations/round3/GrecoEval3(2008)3_Spain_Two_EN.pdf; GRECO. Third Evaluation Round. Evaluation Report on Finland on the Transparency of Party Funding (Theme II). – p. 13; http://www.coe.int/t/dghl/monitoring/greco/evaluations/round3/GrecoEval3(2007)2_Finland_Two_EN.pdf).

[224] As of January 1, 2009, the minimum monthly wage in Ukraine was UAH 605. The number of voters on the voter lists in the last general parliamentary election was 37,528,884. The official exchange rate of the Hryvnia to the Euro on January 1, 2010 was 11.448893 Hryvnias to 1 Euro.

The total amount of funds allocated for direct financing of statutory activities of political parties had to be divided by the Ministry of Justice between the political parties and coalitions that managed to overcome the election threshold in proportion to the votes that they received in such elections. Election coalitions had to divide the state funding in accordance with the procedure established by the parties that formed the relevant coalition.

The cap that could be received by each political party or coalition as reimbursement for its parliamentary campaign expenditures was established in Article 98 of the Law on Parliamentary Elections (also repealed) according to which the political parties and coalitions that had met the election threshold were entitled to the reimbursement of their actual expenses, but not more than 100,000 the minimum monthly wages for every party/coalition. Parties that formed an electoral coalition were authorised to divide the state funding as per agreement between them.

Before Article 98 of the Law on Parliamentary Elections was repealed, the Central Election Commission (in 2006 and 2007) twice passed decisions on reimbursement of election campaign expenditures to political parties that met the election threshold. In fact, the political parties received reimbursement for their expenditures on the 2006 parliamentary campaign in 2007, but expenses on the 2007 parliamentary elections were never reimbursed to political parties since the 2008 State Budget Law did not provide any funds for the reimbursement.

**Table 3.** Reimbursement of Election Expenditures to Political Parties in 2006 and 2007 (according to the decisions of the Central Election Commission)

| Name of the Party (bloc) | 2006 | 2007 |
|---|---|---|
| | Planned reimbursement (reimbursed in 2007) | Planned reimbursement (never actually reimbursed) |
| **The Party of Regions** | 35 000 000 (EUR 5 490 963)* | 44 000 000 (EUR 6 013 854)** |
| **Bloc of Yulia Tymoshenko** | 13 500 885 (EUR 2 118 082)* | 44 000 000 (EUR 6 013 854)** |
| **Our Ukraine** | 35 000 000 (EUR 5 490 963)* | 44 000 000 (EUR 6 013 854)** |
| **The Socialist Party** | 35 000 000 (EUR 5 490 963)* | 0 (failed to meet the threshold) |
| **The Communist Party of Ukraine** | 8 352 358 (EUR 1 310 357)* | 14 836 862 (EUR 2 027 880)** |
| **Lytvyn's Bloc** | 0 (failed to meet the threshold) | 39 147 393 (EUR 5 350 607)** |
| **TOTAL** | 126 853 243 (EUR 19 901 326)* | 185 984 255 (EUR 25 420 048)** |

**Sources:** 1. The Decision of the CEC, № 1215 of May 4, 2006; http://www.cvk.gov.ua/pls/acts/ShowCard?id=21638&what=0
2. The Decision of the CEC, № 554 of November 6, 2007; http://www.cvk.gov.ua/pls/acts/ShowCard?id=23369&what=0

* 1 EUR = 6,374110 UAH (the official exchange rate of the Hryvnia to the Euro as of May 4, 2006)
** 1 EUR = 7,316440 UAH (the official exchange rate of the Hryvnia to the Euro as of November 6, 2007)

### 4.1.2. Public financing of party groups in parliament is equivalent to party support: Amounts, conditions, constraints

Factions in the Parliament do not receive money directly. Their activities are supported by the Secretariat of the Verkhovna Rada of Ukraine, which provides necessary documents,

analyses, premises for sittings, equipment, and communications. Employees of a faction's secretariat are public servants and receive salaries directly from the state budget. The total amount of direct support for a faction's operation cannot be evaluated because parliamentary expense items are classified.

### 4.1.3. Public financing of candidates for public office: Amounts, conditions, constraints

The state and local self-governmental bodies do not finance electoral subjects directly. Candidates, parties, and coalitions are provided only with indirect (non-cash) support (see para. 4.1.4. of this Report).

### 4.1.4. Indirect public financing of political parties and candidates in elections

*Indirect public financial support to political parties*

Political parties enjoy a non-profit status, and certain types of income are exempt from corporate income tax.[225] The list of income exempt from tax includes revenues received in the form of funds or property transferred free of charge or provided as irretrievable financial aid or donations, as well as in the form of passive incomes (dividends, interest, royalty), and funds or property received from the main activities of the political party (including revenues from sale of public and political literature, other mobilizing and propaganda materials, goods with party symbols, conducting festivals, exhibitions, lectures, and other political actions).

Also, in accordance with Article 5.3.2 of the Law on Private Income Tax, a taxpayer may claim a deduction from annual taxable income for donations to non-profit organizations, including political parties, on condition that the value of the donation exceeds 2% but does not exceed 5% of the total taxed income for the year when donations were made. Under Article 5.2.2. of the Law on Corporate Income Tax, a taxpayer may include donations to non-profit organizations as gross expenses (taxable profit is defined as gross income less gross expenses and depreciation charges) on condition that the value of donations exceeds 2% and does not exceed 5% of taxable profit in the reporting year. Other forms of indirect state support to parties are not provided.

*Indirect public financial support to candidates in elections*

The accounts of election funds for parties, blocs, and candidates are exempt from corporate income tax and private income tax. Another form of support to candidates, parties, and blocs is financing for certain types of campaigning from the state budget of Ukraine or local budgets (see para. 3.2.1. of this Report).

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[225] Article 7.11.3 of the Law on Corporate Income Tax

### 4.1.5. Definition of "fairness" as a criterion of public financing. Restrictions on the unauthorised use of state resources.

Under the Law of November 27, 2003, public funds provided for financing the statutory activities of political parties were allotted to parties and blocs proportionate to the number of votes received by parties and blocs in the previous parliamentary elections. Reimbursement of the electoral expenditures from election funds of parties had to be divided among political parties on the basis of the principle of equality, i.e. in accordance with actual expenses from election funds. As concerns indirect public support to political parties, it is provided on the basis of the principle of equality – all the parties with non-profit status are equal in their right to tax privileges.

In election campaigns, indirect public financial support is granted to electoral subjects on an equal basis. Restrictions on the unauthorized use of state resources are reviewed in para. 5.3.5. of this Report.

## 4.2. FUND-RAISING LIMITS

### 4.2.1. Restrictions on sources of elections financing for political parties and candidates

*Restrictions on sources of financing of political parties*

According to Article 14 of the Law on Political Parties and Article 22 of the Law on Civic Associations, political parties cannot be financed by:

- public authorities or local self-government bodies;
- state- or community-owned companies, institutions, and organizations, as well as legal entities with state or community shares or shares owned by non-residents[226];
- companies with foreign-owned shares exceeding 20%;
- foreign states and their citizens, stateless persons, foreign companies, institutions, and organizations;
- anonymous persons or people using pseudonyms;
- charitable and religious associations and organizations;
- political parties that are not part of the electoral coalition
- non-legalised (i.e. not registered by the Ministry of Justice) civic associations.

Political parties are entitled to receive income from certain types of their own activities (see para. 4.2.9. of this Report for further information).

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[226] At the same time, the Law does not prohibit the financing of political parties by legal entities that provide goods and services for public administration. The lack of such a restriction does not comply with Article 5 of the CCommon Rules against Corruption in the Funding of Political Parties and Electoral Campaigns. See: Recommendation Rec(2003)4 of the Committee of Ministers to member states on Common Rules against Corruption in the Funding of Political Parties and Electoral Campaigns (Adopted by the Committee of Ministers on 8 April 2003 at the 835th meeting of the Ministers' Deputies); http://www.coe.int/t/dghl/monitoring/greco/general/Rec(2003)4_EN.pdf

*Restrictions on sources of financing of candidates in elections*

In presidential elections, the election fund of a presidential candidate can be formed from his own funds, the funds of the political party that has nominated him, or the funds of political parties that formed a coalition to nominate a candidate, as well as from individual donations.[227]

In parliamentary elections, the election fund of a political party/election bloc can be formed from the funds of the political party (or funds of the parties that have formed a coalition) and from individual donations[228].

The sources of donations to election funds in local elections are defined by Article 64 of the Law on Local Elections, according to which the election fund of a local party organization that nominated candidates in a multi-member constituency, is formed from the funds of such an organization, as well as individual donations. The election fund of a mayoral candidate or any other candidate nominated to a single-member constituency can be formed from the personal funds of the candidate, the funds of the local party organization that nominated the candidate, or individual donations.

Foreigners, stateless persons, and anonymous contributors are not allowed to make donations to election funds of political parties, blocs and candidates in both national and local elections.[229]

According to Article 8 of the Common Rules against Corruption in the Funding of Political Parties and Electoral Campaigns, the rules regarding funding of political parties should apply mutatis mutandis to the funding of electoral campaigns of candidates. However, the national laws on the financing of political parties and electoral campaigns are at variance with each other. For instance, political parties can be financed by legal entities while candidates in elections cannot. The latter restriction can be easily circumvented, in violation of Article 3 of the Common rules against corruption because they require the adoption of measures to prevent established ceilings from being circumvented. As provided for in all elections laws, donations of political parties to their own election funds, to the elections funds of their candidates, and to the election funds of electoral blocs, formed by such parties, are not restricted in the number of transfers and amounts of donations.

Accordingly, a party may receive a donation from a legal entity and transfer it to the account of a party's election fund, the election fund of a candidate, or a bloc. Therefore, the restrictions on sources of funding of political parties and electoral campaigns should be brought in correspondence with each other.

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227 Article 43 of the Law on Presidential Election

228 Article 53 o the Law on Parliamentary Elections

229 Article 43 of the Law on Presidential Elections, Article 53 of the Law on Parliamentary Elections, and Article 64 of the Law on Local Elections

### 4.2.2. Restrictions on anonymous contributions to political parties and candidates for elections

Anonymous donations to political parties as well as independent candidates for election are prohibited.[230]

### 4.2.3. Limits on the amounts of allowable contributions to political parties and candidates in elections

Current legislation does not limit the value of donation to a political party from any donor.[231] The absence of limits on the amounts of donations to political parties might not be in line with the provisions of Article 3 of the Common Rules against Corruption in the Funding of Political Parties and Electoral Campaigns which encourages states to consider the possibility of introducing rules limiting the value of donations to political parties.

In presidential elections, there is no limit set on the amount that can be contributed to the election fund of a presidential candidate by the candidate himself/herself or by the party or bloc that nominated the candidate for elections. Donation from an individual to the election fund of a presidential candidate should not exceed 400 times the minimum monthly wage (UAH 353,600 or EUR 36,254[232]).

In parliamentary elections, like in presidential elections, there is no limit set on the amount and number of donations from a political party to the party's own election fund or to the fund of an election bloc in which the party participates. Donations from an individual to the election fund of a party or bloc should not exceed 400 times the minimum monthly wage (UAH 353,600 or EUR 36,254[233]).

In local elections, donations from a local party organization to its own election fund or the election fund of the bloc, as well as to the election fund of a candidate nominated by the local party organization to a single-member constituency are not restricted in amount or number.

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[230] Article 14 of the Law on Political Parties in Ukraine, Article 43 of the Law on Presidential Elections, Article 53 of the Law on Parliamentary Elections, and Article 64 of the Law on Local Elections

[231] In Ukrainian legislation there is no clear definition of donation to a political party. Therefore, a donation is interpreted narrowly – as funds or property directly acquired by a political party (see also para. 4.2.5. of this Report). In this connection, it should be mentioned that Article 2 of the Common Rules against Corruption in the Funding of Political Parties and Electoral Campaigns defines donation more broadly as any deliberate act to bestow advantage, economic or otherwise, on a political party. See: Recommendation Rec(2003)4 of the Committee of Ministers to member states on the Common Rules against Corruption in the Funding of Political Parties and Electoral Campaigns (Adopted by the Committee of Ministers on 8 April 2003 at the 835th meeting of the Ministers' Deputies); http://www.coe.int/t/dghl/monitoring/greco/general/Rec(2003)4_EN.pdf

[232] As of June 1, 2010, the minimum monthly wage in Ukraine was UAH 884. The official exchange rate of the Hryvnia to the Euro on June 1, 2010 was 9.753421 Hryvnias to 1 Euro.

[233] As of June 1, 2010, the minimum monthly wage in Ukraine was UAH 884. The official exchange rate of the Hryvnia to the Euro on June 1, 2010 was 9.753421 Hryvnias to 1 Euro

In a single-member constituency, donations from candidates to their own election funds are not restricted as well. Donations from an individual to any election fund in any local elections cannot exceed ten times the minimum monthly wage (UAH 8,840 or EUR 906[234]).

Again, the restrictions limiting the value of donations to the election fund of a candidate, party, or bloc can be easily circumvented, since the law does not prevent individuals from making donations to a political party and to a party's election fund simultaneously. Since there are no restrictions on the value of donations to political parties, any individual can make a donation to a political party, and the party then may transfer it to party's election fund as the party's own donation. This gap in regulation does not allow for the implementation of the provision in clause "b" of Article 3 of the Common Rules against Corruption in the Funding of Political Parties and Electoral Campaigns recommending member states to adopt measures to prevent established ceilings from being circumvented. Hence, the existing restrictions on amounts of donations to election funds should also apply to donations to political parties.

### 4.2.4. Regulation of loans to parties

A political party may obtain loans from any person who is allowed to make donations to political parties (see para. 4.2.1. of this Report). The value of any loan from one person is not restricted. According to the Law on Corporate Profit Tax, if a party takes out a loan and, according to the conditions of the loan, is not required to pay interest, the loan is treated as irretrievable financial aid and is exempt from corporate profit tax. If a party takes a loan with interest, it is treated as retrievable financial aid and subject to corporate income tax.[235]

In elections individual candidates and parties may finance their campaign activities at through loans only if the latter have transferred them to the election funds.

In general, as follows from Articles 2 and 3 of the Common Rules against Corruption in the Funding of Political Parties and Electoral Campaigns, loans to political parties should be treated as donations and should be subject to restrictions on sources and value as applied to any other donations.

### 4.2.5. Regulation of in-kind contributions

The definition of 'donation to a political party' includes only those contributions that are **directly** received by the party in the form of property (assets) or financial resources. Thus, the Law on Political Parties does not apply to donations in the form of services, as well as to donations in the form of property or financial resources that are not directly received by political parties. A party can receive them from any source; the amount of in-kind donation(s) from the same source during a set period is not restricted; parties are not legally required

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[234] As of June 1, 2010, the minimum monthly wage in Ukraine was UAH 884. The official exchange rate of the Hryvnia to the Euro on June 1, 2010 was 9.753421 Hryvnias to 1 Euro

[235] Article 22 of the Law on Civic Associations and Articles 1.22.1 and 7.11.3 of the Law on Corporate Income Tax

to include such donations in their financial reports; and the law does not provide any procedure for estimating the value of such donations (for example, on the basis of common prices in the market for analogous types of goods and services).

A few attempts to regulate in-kind donations were made in the electoral laws. However, even so, there were a number of gaps in the regulations that allowed for the circumvention of established restrictions. In general, the current regulation of in-kind donations does not comply with Articles 3 and 8 of the Common Rules against Corruption in the Funding of Political Parties and Electoral Campaigns.

The elections laws provide for some provisions that restrict in-kind donations during election campaigns (see also para. 3.2.4. and 3.2.5. of this Report for further information):

- media are not allowed to set discounts or surcharges for airtime or print space;
- election campaign activities can be financed only from the state budget (in national elections), local budgets (in local elections), and at the expense of the electoral funds; other sources of financing are prohibited (in other words, anybody who wants to finance campaign activities can do so only through electoral funds);
- campaigning in the media is allowed only if the respective contract between the electoral subject and media was signed and only if the airtime or print space was prepaid; the right to place political advertisements in the media is for electoral subjects only;
- if the owner of a premise provides a venue to an electoral subject, he is obliged to provide the venue to other electoral subjects on the same conditions (same price); the same rule applies to printed and audiovisual media;
- the candidates who hold positions in government agencies, state- and community-owned enterprises, organizations, and institutions, are prohibited from engaging in campaign activities through their subordinates, official transport, communications, or premises.

However, as mentioned above, there are some gaps in the regulation of in-kind donations to electoral subjects that significantly decrease the effectiveness of the above provisions:

- the above mechanisms aiming at restricting in-kind donations are not applied right before the electoral process (after setting the elections, for instance), but only from the moment when political parties, blocs, or candidates have been registered by the election commissions as electoral subjects (this implies that before the registration of candidates for elections in-kind donations are not regulated at all; see also paragraphs 3.2.1. and 3.2.5. of this Report);
- any individual is free in his right to campaign for or against any electoral subject in elections, since the exercise of this right is closely connected with the right to freedom of expression, enshrined in the Constitution of Ukraine; in practice most party activists, party staff, and other persons engaged in campaigning participate in campaigns "for free" (however, they are paid in cash and the relevant party expenses are not reflected in any financial statements or reports, and they are not controlled by the CEC or other state bodies);
- the elections laws provide no clear distinction between political advertising and media coverage of activities of public officials; as a result, the same information on a public official standing for election in some cases is presented as an official's activities (in this

case, the official does not pay for the airing or printing of such information, and the expenditures related to such "coverage" are not reflected in any financial statements or reports), in other cases it is presented as political advertising;[236]

- the legal definition of political advertising is very narrow; in the last elections this led to the spread of surreptitious political advertising in news and current affairs programs. They were not paid from election funds and were not reflected in any reports;[237]
- the use of premises and media owned by electoral subjects (parties and blocs in multi-member constituencies and individual candidates in single-member constituencies) is not subject to any restrictions or regulations (these expenses are not reflected in financial reports and are beyond the control of the CEC and other state bodies).

### 4.2.6. Restrictions on intra-party transfers of funds (between levels of organization, across subdivision, electoral district boundaries)

Intra-party transfers of funds are regulated by the statutes of parties and are not restricted by law.[238] During election campaigns, there is only one related restriction: the right to make "internal" donations to the electoral fund belongs to the electoral subject that nominated the candidate for respective elections. This means that a party cannot transfer funds directly to the electoral funds of local candidates, who were nominated by the party's local organization, or to the electoral fund of its local organization participating in local elections. In this case, the party has to transfer funds to its local organization first, and the local organization will then transfer the money to its own electoral fund or to the electoral fund of the candidate nominated by this organization in a single-member district.

### 4.2.7. The role of party membership fees and other direct payments by formal members

Currently, it is impossible to estimate the amount of funding received by political parties through membership fees because they are not presented separately in the financial statements of political parties or included in the total amount of funding from all other sources of funding.[239] The law does not oblige parties to make any information on membership fees publicly available, and parties, in turn, are not going to make this information publicly available on their own initiative. At the time when this Report was discussed in the focus groups, party representatives emphasized that a share of membership fees in parties' budgets did not exceed 5–10 percent of all income or funds.[240] In the opinion of some experts, however, membership fees play a relatively significant role in the financing of only one party – the

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[236] See also: Ukraine. Presidential Election 17 January and 7 February 2010. OSCE/ODIHR Election Observation Mission Final Report. – Warsaw, 28 April 2010. – p. 15; http://www.osce.org/documents/odihr/2010/04/43675_en.pdf

[237] Ukraine. Presidential Election 17 January and 7 February 2010. OSCE/ODIHR Election Observation Mission Final Report. – Warsaw, 28 April 2010. – p. 16; http://www.osce.org/documents/odihr/2010/04/43675_en.pdf

[238] Article 16 of the Law on Political Parties in Ukraine

[239] The Order of the State Tax Administration № 233 of July 11, 1997 on approval of the form of financial statement on the use of funds by non-profit organizations

[240] For further information on the focus groups see the Introduction to this Report.

Communist Party of Ukraine. However, even the Communists are able to finance through membership fees only 10% to 50% of the needs of local party organizations.[241]

### 4.2.8. Regulation of relations between parties and affiliated groups (e.g., trade unions) with regard to contributions, shared resources (e.g., buildings), assignment of workers

Relations between parties and affiliated groups are not legally regulated. The law only establishes restrictions on sources of funding. This is also the only element legally regulated in the context of relations between political parties and non-profit organizations. For other possible points of interaction between political parties and legal entities, the following general rule applies: a legal entity may carry out only those activities that correspond to its statutory goals. For example, if there are provisions in a party's charter that permit financing of NGOs or other types of non-profit organizations, then the party may provide them with financial support. The same rule applies to other organizations in their relations with political parties, i.e. they can provide the party with financial support only if such a possibility is envisaged in their charters.

### 4.2.9. Regulation of a party's engagement in normal business activities as a way of raising funds - the differences in regulation between parties and businesses

As a general rule, parties are not allowed to perform commercial (entrepreneurial) activities. The only exception to this rule is the sale of social and political publications, other campaign and promotion materials, products with political party symbols, organising festivals, celebrations, exhibitions, lectures, and other political events.[242] Income received from these activities is exempt from corporate income tax under Article 7.11.3 of the Law on Corporate Income Tax. Political parties cannot receive incomes from shares or other securities, as well as establish companies, with the exception of mass media.

### 4.2.10. Period of application of the restrictions (at all times/only in the context of elections), and the definition of the electoral period

Restrictions on the financing of political parties apply at all times. Restrictions on the financing of political parties as electoral subjects apply only during the election process (electoral period) and only to electoral subjects. This means that legal entities are not allowed to make donations to the election funds of parties, but they can make donations directly to political parties, and the parties may transfer the funds to their election funds (see also para. 4.2.1. of this Report).

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[241] According to the information provided by the Committee of Voters of Ukraine; "В Україні немає партій, які існують на членські внески" – "Українська правда", 12 January 2007. http://www.pravda.com.ua/news/4b1a9c7532f13/

[242] Article 21 of the Law on Civic Associations and Articles 7.11.11. and 7.11.13 of the Law on Corporate Income Tax

There is no clear definition of the electoral period in the elections laws. Since restrictions stipulated by laws can be applied to electoral subjects only, the electoral period starts from the date of registration of the candidates in elections (see para. 3.2.1. of this Report) and ends with the closing of polling stations.

## 4.3. SPENDING LIMITS

### 4.3.1. Limits on the allowable amounts of party and candidate spending (in total and for particular purposes)

*Amounts of allowable spending*

The Law on Political Parties in Ukraine does not set any restrictions on the amounts of party spending.

In national and local elections there are no restrictions on the amounts of spending from electoral funds.[243]

The absence of such restrictions is not in line with Article 9 of the Common Rules against Corruption in the Funding of Political Parties and Electoral Campaigns, recommending the adoption of measures to prevent excessive funding for the needs of political parties, such as, establishing limits on expenditures in electoral campaigns.

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[243] The Venice Commission and the OSCE/ODIHR recommended consideration of a reinstatement of a spending limit that could help ensure a level playing field while being sufficiently high to allow for the free conduct of campaigns. See: Joint Opinion on the Law on Amending Some Legislative Acts on the Election of the President of Ukraine adopted by the Verkhovna Rada of Ukraine on 24 July 2009 by the Venice Commission and the OSCE/ODIHR, adopted by the Council for Democratic Elections at its 30th meeting (Venice, 8 October 2009) and by the Venice Commission at its 80th Plenary Session (Venice, 9-10 October 2009) on the basis of comments by Ms. Angelika Nussberger (Substitute Member, Venice Commission, Germany), Mr. Jessie Pilgrim (Electoral Expert, OSCE/ODIHR). – para. 49; http://www.venice.coe.int/docs/2009/CDL-AD(2009)040-e.asp

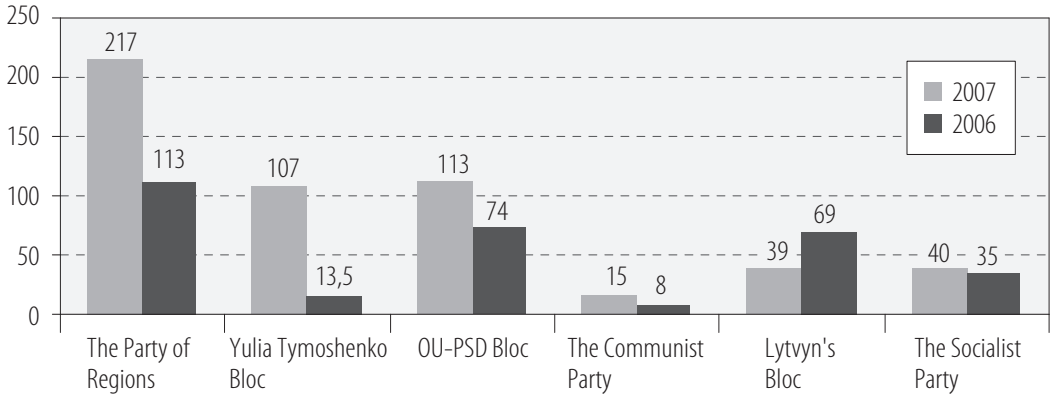
**Table 4.** Limits on Election Funds Spending in Presidential and Parliamentary Elections, 19912 –010[244]

| Years | Presidential Elections | Years | Parliamentary Elections |
|---|---|---|---|
| July 5, 1991 to March 16, 1994 | The Law did not provide for the possibility of establishing election funds by presidential candidates | By November 11, 1993 | The Law did not provide for the possibility of establishing election funds by the candidates in elections |
| February 24, 1994 to March 5, 1999 | 10,000 times the minimum monthly wages (minimum monthly wage as of February 24, 1994 was 60,000 KRB; as of March 5, 1999 74 UAH; the official exchange rates as of February 24, 1994 was 1 ECU=38,487 KRB, as of March 5, 1999, 1 EUR = 4.001948 UAH) | November 18, 1993 to September 19, 1995 | 10,000 times the minimum monthly wage for a candidate in a single-member constituency (minimum monthly wage as of November 18, 1993 was 20,000 KRB, as of September 19, 1995, 60,000 KRB. The official exchange rate as of November 18, 19931 – ECU=5,270 KRB, as of September 19, 19951 – ECU=192,790 KRB) |
| March 5, 1999 to March 18, 2004 | 100,000 times the non-taxable minimum wages (1,700,000 UAH; the official exchange rate as of March 5, 19991 – EUR = 4.001948 UAH; as of March 18, 20041 – EUR=6.52904 UAH) | September 19, 1995 to September 24, 1997 | 20 times the non-taxable minimum wages for a candidate in a single member constituency (non-taxable minimum wage as of September 19, 1995: 1,400,000 KRB, not taxable minimum wage as of September 24, 1997: 17 UAH; official exchange rates as of September 19, 19951 – ECU=192,790 KRB; as of September 24, 19971 – ECU=2.0471 UAH) |
| March 18, 2004 to August 21, 2009 | 50,000 minimum monthly wages (minimum monthly wage as of March 18, 20042 –05 UAH, as of August 21, 20096 –30 UAH; official exchange rates as of March 18, 20041 – EUR=6.52904 UAH; as of August 21, 20091 1 EUR=11.229 UAH) | September 24, 1997 to October 18, 2001 | No limits |
| After August 21, 2009 | No limits | October 18, 2001 to July 7, 2005 | • 10,000 not taxable minimum wages for a candidate in a single member constituency (170,000 UAH);<br>• 150,000 non-taxable minimum wages for every party or bloc in single national constituency (2,550,000 UAH)<br>official exchange rates as of October 18, 20011 – EUR=4.787434 UAH; as of July 7, 20051 – EUR=6.022022 UAH |
| | | After July 7, 2005 | No limits |

[244] Sources: Законодавство України http://www.nau.ua; Лїга закон http://search.ligazakon.ua/l_doc2.nsf/link1/ed_1993_01_01/SH000004.html; Національний банк України http://www.bank.gov.ua/fin_ryn/of_kurs.htm

At the time when this Report was discussed in the focus groups, a significant number of experts agreed that the absence of any restrictions on amounts of spending meant an unending increase of expenses for election campaigns.[245] Nevertheless, the idea of re-establishing caps on expenditures for elections was generally not supported. The main negative aspects discussed were that re-establishing limits might lead to surreptitious financing of election campaigns, and that there would be a high risk of selective application of the legal restriction. In particular, sanctions for violations of the cap might be selectively applied. Some experts alleged that expenses for campaigning could be limited by restricting political advertising on the radio and television during the election period but such restrictions should be established only if the definition of political advertising were clearer. However, setting restrictions on political advertising would not likely be supported by the main political parties since politicians tended to think that the radio and television are the most effective channels of communication with the voters.

**Figure 1.** The Official Expenses of Political Parties and Blocs in 2006–2007 Parliamentary Elections (in million UAH)




**Source:** Обушний С.М. Фінансове забезпечення діяльності політичних партій в Україні: Автореф. дис... к.е.н. – Київ, 2007. – с.12

*Limits on spending for specific purposes*

Like the other legal entities, political parties may spend their funds only on statutory objectives and activities. Party expenses for political advertising are not restricted (with the exception of when a party is registered by the election commission as an electoral subject).

As a general rule, money from electoral funds in all elections can be spent only for purposes related to campaign activities in relevant elections and relevant constituencies. This means, for example, that funds may not be transferred to the electoral funds of other electoral subjects (in the same elections), and funds collected for the finance of parliamentary elections cannot be used to finance local or presidential elections, and vice versa.

[245] For further information on the focus groups see the Introduction to this Report.

The definition of campaign activities is very broad and includes inter alia the production of campaign materials, the use of mass media, services related to campaigning (transport services and maintenance of transport, lease of premises, lease of equipment for the purpose of campaigning, lease of premises for meetings with voters, production and lease of bill-boards, and communications services), as well as "other campaign activities."[246]

### 4.3.2. Restrictions on third party spending

In accordance with current legislation, third parties may finance election campaigns only by making donations to the election funds of electoral subjects; in this case such donations are subject to restrictions on sources and amounts of donations (for further details see paragraphs 4.2.1.-4.2.3. of this Report). In other words, financing elections by means other than by making donations to the election funds is forbidden. However, in practice, this ban can be easily circumvented (see paragraphs 3.2.5. and 4.2.5. of this Report).

### 4.3.3. Period of application of restrictions (at all times/only in the context of elections)

The restrictions on spending for political parties apply at all times. Spending limits and other restrictions for electoral subjects apply only during the "electoral period" (see para. 4.2.10. of this Report).

## 4.4. REGULATORY AUTHORITY AND REPORTING REQUIREMENTS

### 4.4.1. General reporting requirements

*Reporting requirements for political parties*

Political parties are required to prepare three types of reports:[247]

- income and expenses statement;
- property statement;
- the statement on the use of funds by a non-profit organization.

The Law establishes no requirements on the form and content of the income and expenses statement or the property statement. No such requirements can be found in the legislative acts of the Government and the Ministry of Justice of Ukraine. A party is not required to submit an income and expenses statement or property statement to any state body; it is only required to publish them annually in one of the national print media.

The Statements on the use of funds by a non-profit organization should be submitted by every political party and its local organizations that obtain legal entity status (as concerns

[246] CEC Resolution of 5.01.2006 on the procedure for the financial accounting of the receipt and use of electoral fund resources in parliamentary elections

[247] Article 17 of the Law on Political Parties in Ukraine and State Tax Administration Order № 23 of 11 July 1997 on approval of the form of financial report on the use of funds by non-profit organizations

the use of funds by that local organization). These statements should be submitted quarterly to the local state inspectorates. In this regard, it should be mentioned that local tax inspectorates cannot be considered independent bodies as noted in Article 14 of the Common Rules against Corruption in the Funding of Political Parties and Electoral Campaigns. The statements on the use of funds by non-profit organizations are not consolidated since they do not include accounts of local party organizations with legal entity status, accounts of media operations founded by a political party, as well as other entities connected with a political party.

As follows from the State Tax Administration Order № 233 of July 11, 1997, the nature and value of each donation received by a political party should not be specified in the statement on the use of funds by a non-profit organization (see para. 4.4.2. of this Report). The lack of such a requirement can be explained by the fact that the main goal of the statement is not to enhance transparency of political parties, but to correct the calculation of any amount of taxes to be paid to the budgets (if an entity has carried out any taxable activities within the reporting period).

These points lead to the conclusion that the reporting provisions for political parties do not comply with Articles 111 –3 of the Common Rules against Corruption in the Funding of Political Parties and Electoral Campaigns.

*Reporting requirements for electoral subjects*

All laws on elections require submission of financial statements on the receipt and use of election funds. These statements have to be submitted by election fund managers to the appropriate election commissions: to the CEC in national elections and to the territorial election commissions in local elections.

In national elections, the statement must be submitted no later than the 15th day after the election,[248] and in local elections, on the 5th day after the election.[249] The requirements as to the content of these reports are not listed in the laws, and therefore, it is up to the CEC to decide what information should be presented in the statements (see para. 4.4.2. of this Report). The legislation does not require that statements on the receipt and use of election funds be submitted to the election commissions before the elections, nor does it require making these publicly available before election day. This was critically assessed by the OSCE/ODIHR Election Observation Mission.[250] The lack of legal requirements on making reports publicly available before elections has also been criticized by GRECO.[251]

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248 Article 52 of the Law on Parliamentary Elections, Article 42 of the Law on Presidential Elections

249 Article 63 of the Law on Local Elections

250 Ukraine. Presidential Election. 17 January and 7 February 2010. OSCE/ODIHR Election Observation Mission Final Report. – Warsaw, 28 April 2010. – p.14; http://www.osce.org/documents/odihr/2010/04/43675_en.pdf

251 GRECO. Third Evaluation Round. Evaluation Report on Estonia. Transparency of Party Funding (Theme II) adopted by GRECO at its 37th Plenary Meeting (Strasbourg, 31 March – 4 April 2008). – p. 16; http://www.coe.int/t/dghl/monitoring/greco/evaluations/round3/GrecoEval3(2007)5_Estonia_Two_EN.pdf ; GRECO.

Political parties and local party organizations are not legally obliged to present to the election commissions any reports other than statements on the receipt and use of election funds. Hence, the election commissions are not entitled to exercise control over financial transactions of accounts of political parties and their local organizations. Third parties, including individuals, media, and political parties that did not nominate candidates for elections are not obliged to report on the financing of election campaigns to any state body. In other words, the election commissions have a very narrow picture of financing in election campaigns.

### 4.4.2. Identification and reporting on individual contributions and expenditures over a set limit

*Identification of contributions and expenses in party reports*

All donations (including the source and value of each donation) to political parties and their expenditures (including information on value, recipient, and purpose) must be registered in the accounts.

At the same time, parties are not obliged to report on donations and expenses, since the statement on the use of funds by a non-profit organization must contain only the total amount of income (in forms of irretrievable financial aid or voluntary donations, income from the sale of publications and goods with party symbols, and grants and subsidies) and the *total* amount of expenses.

The lack of legal provisions requiring political parties to specify in their financial reports the nature and value of each donation, including those over a certain amount, as well as information on the donor, is not in line with Article 12 of the Common Rules against Corruption in the Funding of Political Parties and Electoral Campaigns.

*Identification of individual contributions and expenses in the financial reports of electoral subjects*

In all elections, each individual donation to the election fund and every expense must be individually identified and reported. In the presidential elections, the managers of election funds for *each* individual donation must present the following information:

- date of donation;
- number of payment order;
- name, surname, patronymic of the donor;
- the date of birth of the donor;
- place of residence and address of the donor; and
- value of donation.

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Third Evaluation Round. Evaluation Report on Poland on Transparency of Party Funding (Theme II) adopted by GRECO at its 40th Plenary Meeting (Strasbourg, 1 – 5 December 2008). – p. 26; http://www.coe.int/t/dghl/monitoring/greco/evaluations/round3/GrecoEval3(2008)2_Poland_Two_EN.pdf

For donations of political parties to the election funds of the presidential candidates and for donations of self-nominated candidates to their own electoral funds, **only** the following information should be indicated in a statement on the receipt and use of election funds[252]:

- date of payment;
- number of payment order; and
- value of donation.

For each item of expenditure from the current account of an election fund of a presidential candidate, the following information should be specified:

- date of payment;
- number of payment order;
- beneficiary (full name of beneficiary, his code in the State registry of enterprises and organizations of Ukraine or in the State registry of individual tax-payers);
- purpose of payment; and
- amount of expenditure.[253]

The same procedure of identification and reporting on private donations and electoral expenses is provided for parliamentary[254] and local[255] elections.

### 4.4.3. Audit and publication of financial reports

*The audit and publication of financial reports of political parties*

The law does not envisage any mandatory audit of a political party's incomes and expenses statement, the property statement, or the statement on the use of funds by a non-profit organization.

According to Article 22 of the Law on Civic Associations, political parties have to publish their budgets. The Law, however, does not determine the terms or procedure for publication, and it does not set any requirements on the content of budgets.

Article 17 of the Law on Political Parties requires parties to publish annually in national printed media a financial statement of income and expenses and a property statement. As

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[252] It is not necessary to specify in the statement information concerning from where a candidate or political party has received a transfer into the account of the election fund. Therefore, it is impossible to understand from the statements who exactly has financed a candidate or political party.

[253] Resolution of the CEC № 148 of 9 October 2009 on the procedure for preparing and the form of financial statements on the receipt and use of the electoral funds of presidential candidates

[254] Resolution of the CEC № 72 of 5 January 2006 on the procedure for preparing financial statements on the receipt and use of election funds of parties, blocs, and parliamentary candidates which were registered with the Central Election Commission

[255] Resolution of the CEC № 323 of December 29, 2005 on the procedure for preparing financial statements on the receipt and use of election funds of local party organizations, election blocs, mayoral candidates, and candidates in single member constituencies

to the statements on the use of funds by a non-profit organization, they are not legally required to be published at all.

The Ukrainian laws do not envisage any requirements on the terms, content, or procedures for publishing the statement on income and expenses or the property statement. Therefore, the relevant legal provisions do not fully comply with clause 'b', Article 13 of the Common Rules against Corruption in the Funding of Political Parties and Electoral Campaigns.

In practice some parties publish their statements, but since there are no requirements on their content, these reports contain only general information, such as the total amount of income, expenses, and book value of property at the time of preparing the statement.

*Audit and publication of financial reports of electoral subjects*

Financial statements on the receipt and use of election fund resources are not required to be audited. The sole responsibility for comprehensiveness, reliability, and timeliness of the statements rests with the managers of the election funds.

The Law on Parliamentary Elections does not oblige the CEC to publish statements on the receipt and use of election funds of parties and blocs. Parties and managers of the accounts do not publish them as well.[256] The lack of relevant provisions in the law does not correspond with Section 3, Article 7 of the UN Convention against Corruption[257] encouraging states to consider taking appropriate legislative and administrative measures to enhance transparency in the funding of candidates for elected public office and, where applicable, the funding of political parties.

Article 43 of the Law on Presidential Elections specifies that the information on the amount of election funds and financial statements reporting on their use should be published by the CEC in the official newspapers "Voice of Ukraine" and "Governmental Courier" no later than the 18th day after the ballot. In practice, however, only general information is published: (1) the total value of all individual donations; (2) the total value of donations from self-nominated candidates (to his own election fund) or party (to its own election fund or to the fund of a bloc that nominated a presidential candidate), and (3) the total amount of expenditures for campaigning.

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[256] In this regard, the OSCE/ODIHR Election Observation Mission emphasized that consideration should be given to amending the Law on Parliamentary Elections to make it a legal obligation for electoral subjects to publicly disclose their campaign revenues and expenditures; this could be done directly by the CEC disclosing the parties'/blocs' campaign expenditure returns or through publication in the media. See: Ukraine. Pre-Term Parliamentary Elections, 30 September 2007. OSCE/ODIHR Election Observation Mission Report. – Warsaw, 20 December 2007. – Recommendation 20; http://www.osce.org/documents/odihr/2007/12/29054_en.pdf

[257] The Convention was ratified through the Law of Ukraine, № 251-V, October 18, 2006; http://zakon1.rada.gov.ua/cgi-bin/laws/main.cgi?nreg=251-16&p=1270074647320297

According to Article 64 of the Law on Local Elections, the territorial election commissions, no later than the fifth day from the date of submission of the statements, have to publish in the local media the statements on the receipt and use of election funds by local party organizations and candidates nominated to single-member constituencies. As practice suggests, these statements, like those published by the CEC for presidential elections, contain only general information on income and expenses.

### 4.4.4. The regulatory authority: procedure for formation, scope of powers, authority to lodge complaints, and staff resources

State control over the observance by political parties as non-profit organizations of the legal requirements on reporting is exercised by local tax inspectorates.

The State Tax Administration is the executive body, and its head is appointed and dismissed by the Cabinet of Ministers of Ukraine upon proposal of the Prime Minister; this proposal is submitted to the Prime Minister, in turn, by the Minister of Finance. The Head of the STA appoints and dismisses (upon proposal of the head of regional tax authority) the heads of local tax authorities.[258] The head of the local state authority, in turn, takes inspectors (who are responsible for examination of the reports of non-profit organizations, including parties) on the staff. The STA and its local branches exercise their powers on the basis of undivided authority (decisions are made by the head of the local tax authority).

The tax authorities have extensive powers, including the right to launch and hold investigations and to impose administrative fines for violations of tax regulations (for example, if the party failed to submit a report in time or if the report contains incorrect information).

Any person may lodge a complaint with the local tax authority on the violation of laws on the financing of non-profit organizations and reporting by a political party, but in this case, the complaint must contain evidence that can be verified. Local tax authorities have the staff to conduct investigations (controllers, inspectors, and tax police officers).

It is impossible to assess how effectively the state tax authorities exercise control over political parties since information on that is unavailable to the public. Apparently, the activities of political parties are checked rarely, since they do not pay taxes (such as, VAT and corporate income tax) and, therefore, the possibility of a party violating tax laws is extremely low (this is the main reason why political parties are not "interesting" to tax authorities). As court practice reveals (see also Annex 2), the majority of disputes between the tax authorities and political parties are concerned with the failure of local party organizations to submit statements on the use of funds as non-profit organizations. However, in the 1999 presidential elections and in the 2002 parliamentary elections, there had been a number of cases when contributors to the main opposition forces in Ukraine were harassed by the tax

[258] Article 5 of the Law on State Tax Service; para. 8 of the Government Regulation № 778 of 26 May 2007 on approval of the Statute of the State Tax Administration of Ukraine

authorities on the grounds that they had allegedly evaded taxes.[259] Such cases of potentially politically motivated harassment of the opposition's donors were also reported in 2004,[260] and in 2010.[261]

Government oversight over the observance by electoral subjects of legal requirements on reporting on the receipt and use of electoral funds is exercised by the CEC (in national elections) and by territorial election commissions (in local elections).

The CEC consists of 15 members. The Law on the Central Election Commission declares the CEC an independent state agency. The Law includes a number of mechanisms to ensure the independence of the CEC (see also para. 5.1.2. of this Report).

The CEC may consider all matters related to its authority on the basis of complaints or requests or on its own initiative (for example, when the Commission discovers a violation of election laws or electoral rights).

Any person has the right to submit a request. For example, an individual may inform the CEC about violations of the electoral rights of other persons or a breach of the elections law. Any electoral commission, candidate (party, coalition), or voter (if his personal rights were violated has the right to lodge a complaint in the case of a violation of legal provisions on financing of electoral subjects and their reporting obligations. Control over the financing of elections and fulfilling reporting obligations is exercised by the CEC members themselves and by a special department of the CEC Secretariat.

The practice shows that while exercising control over the financing of national election campaigns, the CEC primarily focuses on control over money flows in accounts of election funds. In other words, this is the field where any violation is almost impossible. If an electoral subject finds an infringement of provisions regarding the financing of elections campaigns, he, as a matter of fact, does not file a complaint with the CEC, since surreptitious financing of election campaigns is a common practice, and is used by all political parties. The weak effectiveness of the control over financing of political parties can be proved by the fact that Article 159-1 which provides for criminal liability for violation of the existing rules on financing of election campaigns, has never actually been applied by the courts.[262]

Under the new Law on Local Elections, all the territorial electoral commissions (TEC) in local elections are formed upon proposals of the local organizations of political parties rep-

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[259] Marcin Walecki. Ukraine: the authoritarian abuse of disclosure, Transparency International Global Corruption Report 2004, p. 41-42; http://www.transparency.org/content/download/4418/26665/file/05_Disclosure_and_enforcement.pdf

[260] See: Звіт Комітету Виборців України за підсумками моніторингу передвиборчої ситуації в Україні протягом березня – травня 2004 року. – с. 4-6; http://www.cvu.org.ua/files/1087977500_DTS-report-0-ukr.doc

[261] See: Тиск влади на опозицію – „бумеранг" по-українськи; http://cityukraine.info/?ukrnews=15129

[262] In the State Register of the Court Decisions there are no verdicts concerned with application of Article 159-1 of the Criminal Code of Ukraine.

resented in the parliament. The regional, district (with the exception of districts in Crimea), city (in cities of Kiev and Sevastopol, and regional (oblast) cities) TECs are formed by the Central Electoral Commission, while district and city commissions in the Autonomous Republic of Crimea are formed by the Central Electoral Commission of the Autonomous Republic of Crimea. District TECs then form city (in small (rayon) cities), town and village TECs, while city TECs form city district TECs. The TEC consists of 8 to 15 members. Each relevant local party organization can propose only three nominees. If the number of proposed candidatures exceeds 15, a higher level TEC decides at its own discretion on the appointments to a TEC at a lower level. In contrast to the previous version of the Law on Local Elections, the new version of the Law does not provide for the possibility of electing the head, deputy head, and the secretary of a TEC by lot – the Law leaves this to the discretion of higher level commissions to decide. Each member of the TEC is politically dependent, since he can be at any time recalled by the local party organization that nominated him.[263]

The main activity of the TEC is its meeting session, which is legitimate only if more than half of all members are present[264] (with the exception of setting election results, when meeting session is legitimate regardless of the number of members present). The new version of the Law on Local Elections does not define the required number of votes for adoption of the decisions of the TEC, except for the day of elections, when the decision is adopted if it receives an absolute majority of votes of all members present, but not less than three votes of the members of the commission.[265] Like the CEC, the TEC may consider all matters related to its authority on the basis of complaints or requests, or on its own initiative. Any electoral commission (in this case the complaint should be lodged by the TEC to the court), candidate, local party organization, or voter (if his/her personal rights were violated) has the right to lodge a complaint for the violation of legal provisions on financing electoral subjects and their reporting obligations. Each TEC can recruit specialists for examination of the financial reports of electoral subjects. However, the capacity of the TECs, especially at the local level (villages, towns, and small cities) to conduct investigations (particularly independent investigations) is doubtful, taking into consideration that the TECs are obliged to publish financial reports within five days of receipt.[266]

### 4.4.5. Sanctions for violations and their application

Failure to make the financial statement on income and expenses, property statement, and budget of the party public is punishable only with an announcement of warning by the Ministry of Justice of Ukraine.[267]

However, a warning for these violations has never been issued by the Ministry of Justice.

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[263] Article 29 of the Law on Local Elections

[264] According to the previous version of the Law on Local Elections, a meeting session was legitimate only if 2/3 of all members were present

[265] Article 27 of the Law on Local Elections

[266] Article 64.13 of the Law on Local Elections

[267] Articles 19, 20 of the Law on Political Parties

If a party fails to submit to the local state authority its statement on the use of funds as a non-profit organization, this party can be deprived of non-profit status and excluded from the Registry of Non-profit Organizations and Institutions.[268] Since the respective decisions of local tax authorities are not subject to publication, it is impossible to estimate how this sanction is applied in practice. As practice shows (see Annex 2), if a local party organization permanently fails to submit its statements on the use of funds as a non-profit organization, the state tax inspectorate does not deprive it of non-profit status, but rather lodges a suit to terminate it as a legal entity.

The election laws, the Code of Administrative Offences, and the Criminal Code do not establish any liability for election fund managers, who fail to submit statements on the formation and use of electoral funds.

[268] Para. 5.1. of the STA Regulations № 232 of 11 July 1997 on the State registry of non-profit organizations and institutions

# 5. ENFORCEMENT

## 5.1. REGULATORY AUTHORITY

### 5.1.1. The agency with authority to investigate or supervise party activities on its own initiative

According to Article 18 of the Law on Political Parties in Ukraine, party activities are supervised by the Ministry of Justice of Ukraine (regarding party observation of the Constitution of Ukraine, the Law on Political Parties, the Law on Civic Associations, and the charters of political parties) and by the Central Electoral Commission (regarding observation by political parties of the legislation on elections). In addition to these supervisory bodies, some oversight functions are also vested in the state tax inspectorates (see para. 4.4.4. of this Report). The decisions of these bodies connected to the supervision over party activities and sanctioning the political parties may be contested by political parties in administrative courts (see also paragraphs 1.2.10., 1.2.12., 1.3.3., 2.3.2. of this Report).

### 5.1.2. Regulatory agency: the procedure for formation, responsibility, accountability, appointments, funding, reporting, and making reports public

The Ministry of Justice is the central body of the executive. The minister is appointed by the Parliament upon proposal of the Prime Minister. The minister of justice can be dismissed by the Parliament on its own initiative, and he is accountable to the Cabinet of Ministers and to the Verkhovna Rada of Ukraine. The Ministry of Justice and its local offices are financed from the State budget of Ukraine; it reports on its activities to the Cabinet of Ministers and to the Verkhovna Rada of Ukraine (mainly during the governmental "Q&A Hour" in the parliament). Written reports on the activities of the Ministry are not prepared, but detailed information on its activities is publicly available on the website of the Ministry.

The CEC is an independent state body (see para. 5.1.3. of this Report). The activities of the CEC and its Secretariat are financed from the State budget of Ukraine[269]. The Law defines the CEC as an independent body, and therefore it is not obliged to report on its activities to

[269] Article 36 of the Law on Central Election Commission

any state authority. However, in practice, the head of the CEC has never refused to present information on CEC activities if requested by the parliament. Such information has never been published, but one can easily find it in the transcripts of the parliamentary sittings (these transcripts are available on the parliament's web site).

### 5.1.3. Independence of the agency and the mechanisms for ensuring its independence

The Ministry of Justice cannot be considered an independent agency since the minister is a politician appointed by the Parliament, the Ministry itself belongs to the executive branch, and the staff is appointed and dismissed by the Minister. Also, due to the lack of reforms in the field of public service, there is no clear separation between political and administrative positions within the central executive agencies, including the Ministry of Justice.

Concerning the CEC, there are some mechanisms in place to ensure its independence from political influence:

- the members of the CEC are appointed and dismissed by the parliament on the proposal of the President;
- the members of the CEC are appointed for 7 year terms, the grounds for a member's discharge from office are exhaustively listed in the law, and all the members of the CEC can be discharged from office at one time only on condition that the relevant proposal of the president was supported by not less than two-thirds of all members of the parliament;
- the head, deputy heads, and the secretary of the CEC are elected by other members of the Commission from their own ranks;
- membership in the CEC is incompatible with any representative mandate, membership in other electoral commissions, business activities, part-time work (with the exception of teaching, research, and other creative work), holding positions in the executive bodies of business institutions and enterprises, and positions of the representatives of authorised persons of the electoral subjects;
- a member of the CEC cannot be a member of any political party; and
- interference in the CEC activities is explicitly prohibited by law.

In practice, the CEC is not completely independent since:

- it is financed from the state budget, therefore the government and the parliament can influence the CEC activities; and
- the appointments of the members can be a result of political consensus between the head of the state and parliamentary majority.

## 5.2. TRANSPARENCY

### 5.2.1. Rules, regulations, information on transparency of political parties

Article 6.1. of the Law on Civic Associations states that transparency is one of the basic principles of functioning of political parties. The same article of the law stipulates that political parties are obliged to make public on a regular basis their principal documents, composition of leadership, and data on sources of financing and expenditures. Furthermore, according to

Article 22 of the Law on Civic Associations and Article 17 of the Law on Political Parties in Ukraine, parties have to annually publish their budgets (also in the national mass-media on an annual basis), their financial reports on revenues and expenditures, and reports on property. Ukrainian legislation provides for no other legal requirements on the parties aiming at enhancing the transparency of activities of political parties (see also para. 4.4.3. of this Report).

## 5.3. SANCTIONS

### 5.3.1. Party members' right to call a party/its officials to account for unauthorized actions

As a general rule, a party can be brought to account for the actions or decisions of its governing bodies or officials. This directly follows from Article 20 of the Law on Political Parties in Ukraine and the tax legislation. Current laws also provide for clear distinction between sanctions that can be imposed on a political party as a legal entity and sanctions that can be imposed on party officials. Party officials can be brought to account for committing crimes or offences included in the Criminal Code or other laws, if they committed the crimes while exercising their powers as party officials. In this case, any member of a political party, as well as any other person, can move to have them brought to account. However, if a party official has infringed only internal party regulations, and such an infringement does not constitute an action punishable under law, the possibility of holding such an official responsible as well as penalties for the violation are determined solely by internal party rules.

### 5.3.2. Sanctions that can be imposed for undertaking professional, military, and civil service while retaining membership in a political party

The law prohibits membership in political parties while engaged in the above-listed kinds of activities (see para. 2.1.2. of this Report for further information). If a person who is not allowed to be a member of political party infringes the relevant legal requirements, he or she can be discharged from office, but no other sanctions may be imposed on such a person. If this legal provision is infringed by a political party (for example, if the party failed to suspend or terminate the membership of a person who is not allowed to be a member of the political party), the Ministry of Justice may administer a warning to the party, but no other sanctions can be imposed on the political party.

### 5.3.3. Types of sanctions against political parties

The following types of sanctions may be imposed on political parties for infringement of legal requirements:[270]

- announcement of a warning by the Ministry of Justice of Ukraine;
- prohibition of the political party;
- cancellation of the registration of a political party;

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[270] Articles 15, 19-21, and 24 of the Law on Political Parties in Ukraine, para. 5.1. of the STA Regulations № 232 of 11 July 1997 on the State Registry of Non-profit Organizations and Institutions; Article 17 of the Law on Procedure of Expiration of Obligations of Taxpayers Before Budgets and State Funds

- loss of funds obtained from illegal sources;
- deprivation of non-profit status and exclusion from the Registry of non-profit organizations and institutions;
- fines (imposed only for violations of the tax laws, dues, and fees).

A warning is announced for violations of any legal provisions unless these violations require the prohibition of the political party or cancellation of the registration of the political party.

A party can be prohibited if it infringes the requirements of establishment and activities of political parties set forth in the Constitution and laws of Ukraine. The exhaustive list of such requirements is included in Article 37 of the Constitution, Article 5 of the Law on Political Parties in Ukraine, and Article 4 of the Law on Civic Associations (see para. 1.3.3. of this Report for further information).

Registration of a party can be cancelled in three cases provided for by the Law on Political Parties in Ukraine (see para. 1.2.9. of this Report for further information).

If the party receives financing from prohibited sources, it must transfer the respective funds to the State budget of Ukraine, otherwise such funds can be confiscated by a court of law for the benefit of the state.

Any violation of the laws on non-profit organizations by political parties may result in deprivation of non-profit status and exclusion of a party from the Registry of Non-profit Organizations and Institutions.

If a party fails to submit to the local tax authorities a statement on the use of funds as a non-profit organization, the party may be deprived of non-profit status and have to pay a fine in the amount of UAH 170 (EUR 17)[271] for each non-submission or untimely submission of statements. If a political party uses its non-profit status for purposes contrary to the law, it must pay corporate income tax for the period during which violations occurred (but for no more than 3 years) and a fine in the amount of 200% of the corporate income tax.[272]

Current legislation provides a clear separation between sanctions that can be applied to parties and sanctions that can be applied only to party members, officials, and candidates. Only sanctions envisaged specifically for political parties can actually be applied to parties. Members and officials of political parties can be brought to account only for violations committed by them as individuals or officials. Sanctions for such violations are stipulated by the Criminal Code of Ukraine (Article 161 of the Code provides criminal liability for inciting hatred or discrimination on the grounds of ethnicity, gender, religion, etc.) and the Code of Administrative Offences. Sanctions envisaged by the Criminal Code and the Code of Administrative Offences cannot be applied to any legal entity, including political parties.

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[271] The official exchange rate of the Hryvnia as of June 1, 2010 was 9.753421 Hryvnias for 1 Euro.

[272] Article 17.1.6-1 of the Law on the Procedure of Expiration of Obligations of Taxpayers Before Budgets and State Funds

### 5.3.4. Application of sanctions against political parties in practice (the number of investigations, prosecutions, convictions, and types of cases)

Since 2001, when the Law on Political Parties in Ukraine was adopted, none of the political parties has been banned. In 2003, the Ministry of Justice carried out extensive checks of political parties aimed at finding inconsistencies between the legal requirements for political parties and their actual operations. According to the results of the investigation, 46 parties had infringed the legal requirements, and the Ministry of Justice turned to the Supreme Court of Ukraine to cancel the registration of 37 parties. The list of the most widespread violations included the absence of the party at the legal address, absence of local branches in most regions of Ukraine, and failure to inform the Ministry of Justice of changes to the governing bodies or the Charter of a political party.[273] However, the grounds for cancellation of registration were interpreted narrowly: the position of the Supreme Court of Ukraine was that the registration of a political party can only be cancelled in three cases as provided for in the Law on Political Parties. The Supreme Court of Ukraine cancelled the registration of only those parties that failed to secure registration of their local branches in most regions of Ukraine (28 parties). Since 2003, the Ministry of Justice carries out only spot checks of political parties. For example, in 2008, the Ministry checked four parties (all of them were issued warnings), and in 2009, 20 registered parties were checked (as a result of the checks, the Ministry turned to the Kyiv administrative court for the cancellation of registration of eight parties). All court decisions in these cases, which have been available in the State Registry of Court Decisions, are included in Annex 2.

### 5.3.5. Sanctions for abuse of state resources

There are gaps and shortcomings in the current laws that diminish the ability to prevent the abuse of state resources for political purposes, including those relevant to election campaigns. For example, in accordance with the Law on Political Parties in Ukraine, parties can be financed by entities that provide goods and services for public administration. There are no clear restrictions on participation in election campaigns for elected officials, such as the President, MPs, members of the Government, and local councillors. At the same time, the Law on the Procedure of Media Coverage of State Authorities and Bodies of Local Self-Government provides for the mandatory coverage of the activities of certain public officials by state media and sets no distinction between such coverage and political advertising. Among other factors which negatively influence the effectiveness of preventing abuse of state resources for political goals are the absence of independent public broadcasting, the lack of restrictions on state bodies owning media outlets (which allows them to use media as mouthpieces for their own purposes), the insufficient role of the National Broadcasting Council in regulating broadcasting activities, and the lack of reforms in the field of public service (which leads to mixing political and administrative functions within government agencies and the possibility of discharge from office on political reasons).

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[273] According to the information provided by the press service of the Ministry of Justice of Ukraine; http://www.kmu.gov.ua/control/publish/article?art_id=852636

Hence, the abuse of state resources for political goals is not something rare in Ukraine. In the last few years, the OSCE/ODIHR Election Observation Missions have pointed out some examples of such abuse. For instance, in the Final Report on the Presidential Election of 2010, the Mission emphasized that "during both rounds, Ms. Tymoshenko misused administrative resources for campaigning, thus blurring the line between her roles as candidate and state official..., distributed land certificates, ambulances or school buses."[274] Similar examples of abuse of state resources can be seen in the pre-term parliamentary elections of 2007 when the President publicly called on people to support the "Our Ukraine – People's Self-Defence" Bloc, and these calls were aired for free by the state radio and television on the basis of the Law on the Procedure of Media Coverage of State Authorities and Bodies of Local Self-Government.[275]

The above-mentioned shortcomings and gaps in regulation lead to a very narrow interpretation of abuse of state resources in Ukraine to include only crimes and certain types of offences directly prohibited in the criminal, administrative, or electoral laws. For example, if any person abuses state resources, this person can be a subject to criminal liability under Article 364 of the Criminal Code of Ukraine. This Article provides for criminal penalties for abuse of power, i.e., intentional use by a public official of power or position against the interests of public service, in the interests of third parties, or in favour of personal interests. The person can be brought to account under Article 364 only if the abuse of power entailed "significant damage" to the rights, freedoms, or interests of citizens, the state, public interests, or the interests of legal entities. "Significant damage" is assessed in monetary terms and defined as greater than UAH 1,700 (EUR 174).[276]

The penalties that can be imposed are: community service for up to 2 years, detention for a term of 6 months, restriction of freedom for up to 3 years with restriction on holding certain positions, or performance of certain activities within 3 years. If abuse of state resources is committed by a law-enforcement agency official or the crime entails "heavy damage" (damage in the amount of UAH 4250 (EUR 436),[277] more severe sanctions are applied (deprivation of liberty for up to 10 years with expropriation of property and restrictions on holding positions or carrying out certain kinds of activities for a term of 3 years).

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[274] Ukraine. Presidential Election. 17 January and 7 February 2010. OSCE/ODIHR Election Observation Mission Final Report. – Warsaw, 28 April 2010. – p.14; http://www.osce.org/documents/odihr/2010/04/43675_en.pdf

[275] Ukraine. Pre-Term Parliamentary Elections. 30 September 2007. OSCE/ODIHR Election Observation Mission Report. – Warsaw, 20 December 2007. – p. 17; http://www.osce.org/documents/odihr/2007/12/29054_en.pdf

[276] The official exchange rate of the Hryvnia to the Euro as of June 1, 2010 was 9.753421 Hryvnias for 1 Euro. If the crime caused damage that can be assessed in monetary terms, the amount of damage can be estimated on the basis of the existing evidence in a case, such as documents and expert conclusions. The analysis of court decisions pertaining to implementation of Article 364 of the Criminal Code reveals that in some cases damage cannot be assessed in precise monetary terms. In these cases courts decide based on whether the authority of the relevant body or the state as a whole was undermined and how significantly. If the crime "significantly" undermined the authority of a state body then the damage can be considered "significant". In any case, it is up to the court to decide such issues since there is no methodology for assessment of non-material losses.

[277] The official exchange rate of the Hryvnia as of June 1, 2010 was 9.753421 hryvnias to 1 Euro.

Article 184-1 of the Code on Administrative Offences provides for administrative liability for use by a public official in his or her private interests, or interests of other third parties, public funds, official premises, transport or communications, or other state resources. The person can be brought to account under this article if abuse of state resources caused damage in an amount of not more than UAH 85 (EUR 8.7)[278]. In this case, a fine in the amount of UAH 42.58 –5 can be imposed. In other cases, the only available sanction for abuse of state resources is discharge from office.

Penalties for some kinds of abuse of state resources by election candidates are also envisaged by the elections laws.

The Law on Parliamentary Elections and the Law on Local Elections stipulate that if a candidate abuses state resources, he will be warned by the CEC (in parliamentary elections) or TEC (in local elections). If he repeatedly commits the same offence, the CEC or TEC (in local elections) cancels his registration. However, parties and coalitions that nominate parliamentary candidates, as well as local party organizations that nominated candidates for local elections, are not subject to any liability, even if offences have been committed by their candidates on the party's, bloc's or local party organization's initiative.[279]

The Law on presidential elections is the most tolerant to abuse of state resources: if a presidential candidate abuses state resources, the only sanction that can be imposed is a warning to the candidate. Thus, the presidential candidate can permanently abuse state resources, and each time he will be "punished" with just by warning.

[278] The official exchange rate of the Hryvnia as of June 1, 2010 was 9.753421 hryvnias for 1 Euro.

[279] Article 64 of the Law on Parliamentary Elections, Article 45 of the Law on Local Elections

# Annexes

## ANNEX 1. SUMMARY AND RECOMMENDATIONS[280]

The political parties in Ukraine are regulated by a number of laws that were adopted at different times, and which contain provisions that sometimes contradict provisions in other laws. Some legal provisions contradict the ECHR and European standards in the field of political parties, and, therefore, should be reviewed. In recent years, the Parliament has tried to initiate several reforms aiming at strengthening the role of political parties in policy-making. However, most of these reforms have not achieved their goals. Among the problems that should be solved in the future are dependence of political parties on private funding and weak internal democracy within political parties. Significant efforts should be applied by the legislature and political parties themselves to promote representation of either gender in elected office and governing bodies of political parties, as well as to promote participation of national minorities in public and political life – the existing laws do not tackle both of these issues. Therefore, it is advisable:

1. To bring the laws pertaining to political parties into compliance with each other.

2. To create conditions for the further development (strengthening) of the party system in Ukraine, in particular by making relevant changes to elections laws and introducing mechanisms alternative to the "party administered mandate" that will prevent MPs from abandoning parties and the lists, to which they were elected;

3. To improve the regulations for establishing and terminating the activities of political parties:
   - to review the provisions that require parties to submit, when applying for registration, lists with 10,000 signatures of voters;
   - to determine more precisely scope of powers of the Ministry of Justice pertaining to the registration of political parties;

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[280] It is worth repeating here that while this report has been produced with the financial assistance of the European Union, within the framework of a joint project of the European Union and the OSCE ODIHR, the views expressed in this report, and specifically the recommendations contained in it, can in no way be taken to reflect the official opinion of the European Union, nor do they necessarily reflect the policy and position of the OSCE ODIHR.

- to consolidate the register of political parties and all the registers of local party organizations into a single database, and to make information from the consolidated register publicly available through the web site of the Ministry of Justice;
- to define directly in the Law on Political Parties the procedure for terminating the activities of local party organizations;
- to first narrow the list of grounds for cancellation of registration of political parties, in long-term perspective – to repeal the provisions that provide for the cancellation of the registration of political party;
- to define specifically in the Law on Political Parties the procedure for reorganization of political parties and the disposal of assets of the reorganized parties.

4. To improve the procedure for exercising control over the activities of political parties, and to widen the list of sanctions that can be imposed on political parties:
   - to determine the powers of the Ministry of Justice to control the activities of political parties more precisely, and in the long-term, provide for independent external control over political parties, for example, through the courts;
   - to limit the grounds for issuing warnings to political parties and introduce other sanctions that can be imposed on political parties, such as fines.

5. To consider the possibility of additional public funding for political parties which introduces voluntary quotas to promote women's representation in their governing bodies and for elected offices. In the long-term, consider the possibility of introducing mandatory quotas of representation of both genders among the candidates for local and national elections.

6. To consider changes to the electoral system for local elections aiming to increase the presence of minorities in local representative bodies in the territories where minorities constitute a significant part of the population.

7. To introduce effective mechanisms to prevent the abuse of state resources for political goals, including in election campaigns.

8. To bring the regulations into compliance with the European standards on fighting corruption in the financing of political parties and election campaigns, in particular:
   - to re-introduce direct public funding of political parties to encourage the internal development of political parties;
   - to restrict private funding of political parties in terms of value of donations and sources of financing;
   - to unify the regulations of financing of political parties and election campaigns;
   - to give the CEC authority to exercise an effective control over financing of political parties and national election campaigns;
   - to consider consolidating the accounts of political parties to include local organizations and other entities directly or indirectly connected to political parties;
   - to enhance transparency of financing of political parties and election campaigns;
   - to envisage effective and proportionate penalties for any infringement of the rules concerning the financing of political parties and election campaigns.

## ANNEX 2. COURT DECISIONS ON THE REGISTRATION AND TERMINATION OF ACTIVITIES OF POLITICAL PARTIES AND THEIR LOCAL ORGANIZATION

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**Date:** 30.08.2000

**Type of Case:** Cancellation of the registration of a local party organization

**Court Decision/Ruling/Resolution:** Ruling of the Chamber on Civil Cases of the Supreme Court of Ukraine as of July 30, 2000 on an appeal in cassation by the Head of the regional office of the Ministry of Justice of Ukraine in Lviv Region concerning the cancellation of registration of a regional (oblast) party organization of the Communist Party of Ukraine[281]

**Circumstances of the Case and Content of the Court Decision:** On January 6, 1999, the Lviv regional office of the Ministry of Justice of Ukraine registered the Lviv regional organization of the Communist Party of Ukraine. The certificate of registration was signed by the head of the regional office of the MoJ, who had been already discharged from office. On December 8, 1999, the Lviv regional council took decision № 222 on consideration of the issue regarding activities of a regional organization of the Communist Party of Ukraine and, soon after, adopted decision № 54 of 9.02.2000 on support of citizens, political parties, and civic associations of Lviv region claiming to prohibit activities of the communist organizations in Ukraine. On the basis of these decisions and on the grounds that the certificate of registration of the regional party organization was signed by the head of the regional office of the MoJ, who had been already discharged from office and had no authority to sign any documents relating to the activities of regional office of the MoJ, the Board of the regional office of the MoJ in a decision dated 17.01.2000 annulled an entry in the registry of public associations regarding the registration of the regional party organization. Consequently, on 18 February 2000, the head of the regional office of the MoJ cancelled the registration of the regional organization of the CPU. The founders of the regional party organization sued the office of the MoJ at Volyn regional court in order to cancel the decision of the board and the head of the regional office of the MoJ. On 27 June 2000, the court upheld their claims, cancelled both decisions, and obliged the regional office of the MoJ to restore the entry in the registry of civic associations relating to the registration of regional party organizations. The head of the regional office of the MoJ lodged an appeal in cassation at the Supreme Court of Ukraine in order to cancel the decision of the Volyn regional court. The Chamber on Civil Cases of the Supreme Court of Ukraine dismissed the claim on the grounds that: 1) decisions of the board and head of the regional office of the MoJ did not comply with the law since the only ground for annulment of the entry in the register was termination of the organization; however, the Lviv regional party organization had never been terminated; 2) decision to cancel the registration of the regional party organization violated the rights of the founders of the organization, enshrined in Article 36 of the Constitution, in particular freedom of association and right to membership in political parties and civic associations; 3) the head of the regional office of the MoJ only signed the certificate of registration and did not decide on registration, hence, he did not exercise power over registration or refusal of registration; moreover, the certificate was signed when the head of regional office of the MoJ was still in office; 4) only the court was empowered to terminate all or some of the activities of civic associations or to prohibit them.

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**Date:** 27.12.2001

**Type of Case:** Prohibition of a political party

**Court Decision/Ruling/Resolution:** Decision of the Constitutional Court of Ukraine of December 27, 2001 № 20-рп/2001 in a case on the constitutional petition of 139 People's Deputies of Ukraine concerning compliance with the Constitution of Ukraine (constitutionality) of the Decrees of the Presidium of the Supreme Council of Ukraine on temporary termination of the activity of the Communist Party of Ukraine and on the prohibition of the activity of the Communist Party of Ukraine (case on the Decrees of the Presidium of the Supreme Council of Ukraine on the Communist Party of Ukraine, registered on July 22, 1991)[282]

**Circumstances of the Case and Content of the Court Decision:** On August 26, 1991, the Presidium of the Supreme Council of Ukraine passed the Decree on Temporary Termination of the Activity of the Communist Party of

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[281] http://zakon.rada.gov.ua/cgi-bin/laws/main.cgi?nreg=n0117700-00&p=1268178034135029

[282] http://zakon.rada.gov.ua/cgi-bin/laws/main.cgi?nreg=n0117700-00&p=1268178034135029

Ukraine. The decree provided for the termination of the activity of the CPU, sealing off the premises of the party's committees, prohibition of the use of property of the Communist Party, transfer of assets of the CPU on the balance of the Supreme Council of Ukraine, and local councils. On August 30, 1991 the Presidium of the Supreme Council of Ukraine prohibited the activity of the CPU. 139 MPs lodged a constitutional petition in the Constitutional Court of Ukraine for a review of the constitutionality of the above decrees.The Constitutional Court of Ukraine in its decision emphasized that: 1) the Communist Party of Ukraine as a civic association was registered by the Ministry of Justice of the Ukrainian SSR on July 22, 1991; the statutory objectives and activities of the CPU in the 1991 Moscow coup d'état attempt did not contravene the provisions of the Constitution, relating to principles of foundation and activities of political parties (which was confirmed by the results of an investigation carried out by the Prosecutor General's Office); 2) according to the Constitution of the USSR, the Constitution of the Ukrainian SSR, the Law of the USSR on civic associations of 1990, civic associations could be terminated only through a decision of a court of law; having prohibited the activities of the CPU, the Supreme Council of Ukraine undertook the powers of investigating and judicial bodies, which contradicted the principle of division of power into legislative, executive, and judicial branches; 3) ratification of the decrees was inconsistent with articles 6 and 19 of the Constitution of Ukraine which stipulated that state bodies had to exercise power within the limits determined by the Constitution and in line with laws of Ukraine. On the basis of these conclusions, the Constitutional Court of Ukraine declared the decrees unconstitutional. At the same time, the Constitutional Court mentioned that according to the Constitution of the Ukrainian SSR, the Communist Party of the Soviet Union belonged neither to civic associations nor to political parties – it had a special status in the core of the political system, a guiding and directing force of Soviet society. Thus, the Communist Party of Ukraine, registered as a civic association in 1991, could not be considered the legal successor of the CPSU or the Communist Party of Ukraine as a branch of the CPSU. However, the unconstitutionality of the decrees did not require the restitution of property of the CPSU to the Communist Party of Ukraine.

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**Date: 25.06.2003**
**Type of Case: Cancellation of the registration of a political party**

**Court Decision/Ruling/Resolution:** Decision of the Supreme Court of Ukraine of June 25, 2003 in a lawsuit filed by the Ministry of Justice of Ukraine seeking to cancel the registration of the Party of Communists (Bolsheviks) of Ukraine[283]

**Circumstances of the Case and Content of the Court Decision:** On July 16, 2003, the Ministry of Justice of Ukraine filed a lawsuit that sought to cancel the registration of the Party of the Communists (Bolsheviks) of Ukraine. The lawsuit alleged that the political party failed to bring its statutory documents in compliance with legal requirements and to secure foundation and registration of party organizations in most regions of Ukraine, as required by Section 6 Article 11 of the Law on Political Parties. According to Article 24 of the Law on Political Parties, failure to secure foundation and registration of local party organizations in most regions of Ukraine within 6 months after registration of a party is grounds for cancellation of the registration of a political party. Taking this into consideration, the Supreme Court of Ukraine cancelled the registration of the party.

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**Date:** 5.11.2004
**Type of Case:** Prohibition of a political party

**Court Decision/Ruling/Resolution:** Decision of the Supreme Court of Ukraine as of November 5, 2004 in the case filed by the Ministry of Justice of Ukraine seeking to prohibit the political party[284]

**Circumstances of the Case and Content of the Court Decision:** In October 2004, the Ministry of Justice of Ukraine lodged a complaint with the Supreme Court of Ukraine that sought to prohibit political party "K" (in fact, it was the Ukrainian National Assembly Party). The plaintiff alleged that the political party violated articles 21, 24, and 37 of the Constitution of Ukraine and article 5 of the Law on Political Parties in Ukraine. In particular, the lawsuit claimed that the party had organised several demonstrations accompanied by distribution of agitation materials and leaflets inciting hatred on account of nationality and ethnicity and offending citizens

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[283] http://www.scourt.gov.ua/clients/vs.nsf/0/6BB42A927D21E4B3C2256D7B003E673A?OpenDocument&CollapseView&RestrictToCategory=6BB42A927D21E4B3C2256D7B003E673A&Count=500&

[284] http://zakon1.rada.gov.ua/cgi-bin/laws/main.cgi?nreg=n0114700-04

of Russian and Jewish origins. Information on the party website, as well as its press-releases, also contained information that could be considered incitement to ethnic hatred.

In its decision, the Supreme Court of Ukraine emphasized that the Ministry of Justice failed to give compelling evidence proving that the party activities were aimed at incitement of hatred or encroachment on human rights and freedoms. The Court also acknowledged that press-releases, information on the party website, leaflets, and other documents presented to the Court by the Ministry of Justice contained no information that could be considered incitement to hatred or encroachment on human rights and freedoms. Expressions contained in the provided documents were considered by the Court as a form of political debate and discussions of public life, criticisms, and opinions. Therefore, even though some expressions, opinions, ideas and other information could raise concerns within society, the Court, taking into consideration the pluralism of opinions, freedom of expression, and freedom of association, came to the conclusion that the plaintiff failed to prove the grounds necessary for prohibition of the political party and dismissed all the plaintiff's claims.

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**Date:** 25.01.2007

**Type of Case:** Termination of a local party organization as a legal entity on the ground of non-submission of financial reports to the tax authorities

**Court Decision/Ruling/Resolution:** Decision of the Donetsk regional commercial court as of January 25, 2007 in case № 31/445пн on a lawsuit lodged by the state tax inspectorate of Kalinin district of the city of Donetsk against the Zhovtnevy district organization of the Party "Reforms and Order" of the city of Mariupol[285]

**Circumstances of the Case and Content of the Court Decision:** The Zhovtnevy district organization of the Party "Reforms and Order" in the city of Mariupol was registered as a legal entity on May 16, 2001. Since 13.05.2002, the organization did not submit to the local tax inspectorate any statements on the use of funds as a non-profit organization. Article 38 of the Law on State Registration of Legal Entities and Individual Entrepreneurs states that if a legal entity fails to submit required reports to state tax authorities during one year, it can be terminated as a legal entity on the basis of a court decision. Hence, the state tax inspectorate filed a lawsuit against the local party organization to terminate it as a legal entity. However, the court decided to apply to the case the provisions of the Law on Political Parties in Ukraine rather than provisions of the Law on State Registration of Legal Entities and Individual Entrepreneurs. In this regard, the court considered that the terms "local party organization" and "party" are one and the same in their nature, hence, local party organizations must be terminated on the grounds and in accordance with the procedures established for political parties. Since tax authorities have no right to file for the prohibition or cancellation of a political party, they do not have right to appeal to courts in order to have a party registration cancelled. Accordingly, the court dismissed the plaintiff's claims.

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**Date:** 12.06.2007

**Type of Case:** Constitutionality of the Law on Political Parties in Ukraine

**Court Decision/Ruling/Resolution:** Decision of the Constitutional Court of Ukraine of June 12, 2007 № 2-рп/2007 in the case of a constitutional petition of 70 People's Deputies of Ukraine concerning compliance with the Constitution of Ukraine (constitutionality) of the provisions of Articles 10.1, 11.2.3, 11.5, 11.6, 15, 17.1, 24, and item 3 of Chapter VI "Final Provisions" of the Law of Ukraine on Political Parties in Ukraine (case on establishment of political parties in Ukraine)[286]

**Circumstances of the Case and Content of the Court Decision:** 70 Peoples Deputies of Ukraine lodged at the Constitutional Court of Ukraine a constitutional petition that sought to declare some provisions of the Law on Political Parties in Ukraine unconstitutional. The MPs claimed, with reference to articles 36, 37, and 64 of the Constitution, that relevant provisions of the Law infringed the right to freedom of association. Having considered the case, the Constitutional Court of Ukraine emphasized in its decision that: 1) freedom of association can be subject to restrictions in the interests of national security, public order, protection of public health of the citizens, protection of rights and freedoms of other people, as well as in the other cases prescribed by the Constitution; 2) since all the parties in Ukraine can have only national status, the legal requirements of

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[285] http://www.reyestr.court.gov.ua/Review/385364

[286] http://zakon1.rada.gov.ua/cgi-bin/laws/main.cgi?nreg=v002p710-07&p=1260610221550455

collecting 10,000 signatures of voters for the registration of a political party in two-thirds of the districts of two-thirds of the regions of Ukraine (with the exception of the Autonomous Republic of Crimea), as provided for by Article 10 of the Law on Political Parties complies with the Constitution of Ukraine; 3) on the same grounds, Article 11 of the Law on Political Parties in Ukraine, which the foundation and registration of party organizations in most of the regions of Ukraine (with exception of the Autonomous Republic of Crimea), complies with the Constitution of Ukraine; 4) the above provisions of articles 10 and 11 of the Law on Political Parties in Ukraine do not place restrictions on the exercise of right to freedom of association, they just determine the procedure for the exercise of this right, prevent the registration of political parties that would operate on a short term basis (e.g., during election campaigns only) or pursue narrow corporate interests; the requirements of these articles do not violate the principle of equality of parties under the law, since they can be applied to all political parties; 5) the restrictions imposed on sources of party financing, provided for by Article 15 of the Law on Political Parties in Ukraine, are admissible and in line with international standards in the field of political parties and are aimed at ensuring equal opportunities for all political parties and securing the interests of national security; 6) the registration fee does not restrict the right to freedom of association; 7) according to the Constitution of Ukraine, the primary role of political parties is to promote expression of the political will of citizens and participation in elections, and the provisions of Article 24 of the Law on Political Parties in Ukraine, requiring political parties to participate in national elections at least once in 10 years, conform to the Constitution; 8) provisions of the Law on Political Parties in Ukraine concerning submission to the MoJ of the lists with voters' signatures when applying for registration, publication of annual party reports in national media, and requirements on bringing party statutes into correspondence with the Law have to be considered restrictions that are admissible in a democratic society, and there are no reasons to declare them unconstitutional; 9) on the basis of the Constitution and international law ratified by Ukraine, the parliament is empowered to regulate political parties, however, respective legal provisions cannot restrict the scope of the constitutional right to freedom of association; 10) the Constitution of Ukraine does not provide the Autonomous Republic of Crimea with any privileges in the formation of political parties compared to the other regions of Ukraine ("oblasts" cities of Kyiv and Sevastopol); the requirement of collecting signatures in the Crimea as a precondition of party registration with the MoJ and of registration of local party organizations in the Autonomous Republic of Crimea, infringes the principle of equality of citizens regardless of their places of residence; therefore, the provisions of articles 10 and 11 concerning the Crimea are unconstitutional.

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**Date:** 16.10.2007

**Type of Case:** Official interpretation of the Law on Political Parties in Ukraine

**Court Decision/Ruling/Resolution:** Decision of the Constitutional Court of Ukraine of October 16, 2007 № 9-рп/2007 in the constitutional petition of the Ministry of Justice of Ukraine concerning official interpretation of the provisions of Article 11.6 of the Law of Ukraine on Political Parties (case on establishment and registration of party organizations)[287]

**Circumstances of the Case and Content of the Court Decision:** The Ministry of Justice of Ukraine filed a constitutional petition in the Constitutional Court of Ukraine which sought to interpret provisions of Section 6 Article 11 of the Law on Political Parties in Ukraine. According to these provisions, a political party within 6 months from the date of registration must secure the foundation and registration of its regional (oblast), district and city organizations in most of the regions (oblasts), in cities of Kyiv and Sevastopol, in the Autonomous Republic of Crimea.

The Constitutional Court of Ukraine emphasized in its decision the following: 1) in accordance with Article 133 of the Constitution of Ukraine, administrative-territorial system of Ukraine consists of 27 units (24 regions, cities of Kyiv and Sevastopol, the Autonomous Republic of Crimea); 2) the provisions of Section 6 Article 11 of the Law on Political Parties in Ukraine must be interpreted as an obligation of political party to secure establishment and registration of regional party organizations in at least 14 administrative units of Ukraine of regional level; 3) if a party failed to secure establishment and registration of its regional organizations in at least 14 regions of Ukraine, the registration of the political party can be cancelled; 4) the issue regarding the number of party organizations at the district level, which the party must establish within

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[287] http://zakon1.rada.gov.ua/cgi-bin/laws/main.cgi?nreg=v002p710-07&p=1260610221550455

6 months from the date of its registration, is not properly regulated either by Section 6 Article 11 of the Law or by its other provisions of the Law, therefore the Constitutional Court of Ukraine has no jurisdiction over it.

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**Date:** 12.02.2008

**Type of Case:** Appeals against inactivity of the Ministry of Justice related to the registration of a political party; violation of the term of registration of political party

**Court Decision/Ruling/Resolution:** Ruling of the Higher Administrative Court of Ukraine as of February 12, 2008 in case № к-27912/06 on appeal against inactivity of the Ministry of Justice related to the registration of "The Party of the Humanists of Ukraine" on appeal in cassation filed by the representative of the Ministry of Justice of Ukraine against the Resolution of the Pechersk District Court of the city of Kyiv dated January 11, 2006, and against the Ruling of the Kyiv Court of Appeals of July 11, 2006[288]

**Circumstances of the Case and Content of the Court Decision:** The Ministry of Justice of Ukraine violated the time limit requirements for consideration of application for registration of "The Party of the Humanists of Ukraine." When the time for consideration had already expired, the Ministry refused to register the political party on the grounds that voters who had supported establishment of the political party with their signatures, were absent at the place of their recorded residence. This, according to the MoJ, indicated that some signatures of voters had been falsified. Hence, these signatures were excluded by the Ministry from the lists and, as a result, the party failed to get the required number of voters' signatures in support of its establishment. The Party lodged a lawsuit against the MoJ in the Pechersk district court of the city of Kyiv. The lawsuit claimed that the decision of the MoJ had not been passed in time and the refusal of registration was groundless. The court agreed with the arguments of plaintiff and obliged the Ministry to register the Party. The court decision was upheld by the Kyiv Court of Appeals on July 11, 2006 in a case upon appeal of the MoJ. However, the representative of the MoJ lodged an appeal in cassation with the Higher Administrative Court of Ukraine. In its decision, the Higher administrative court of Ukraine emphasized that the MoJ failed to register or refuse to register the political party in the time frame set by Article 11 of the Law on Political Parties in Ukraine and failed to prove that the signatures of voters in the lists were falsified. Hence, the Court upheld all previous court decisions and dismissed the claims of the representative of the Ministry.

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**Date:** 18.03.2008

**Type of Case:** Appeals of decisions on the registration of political parties

**Court Decision/Ruling/Resolution:** Resolution of the Kyiv District Administrative Court of March 18, 2008 in case № 3/134 on the suit lodged against the Ministry of Justice of Ukraine seeking to declare registration of the Communist Party of Ukraine (Renewed) as illegal, to cancel the decision on registration of the Communist party of Ukraine (Renewed), and to oblige the Ministry of Justice of Ukraine to lodge with the Supreme Court of Ukraine a complaint seeking to prohibit the Communist Party of Ukraine (Renewed)[289]

**Circumstances of the Case and Content of the Court Decision:** The Communist Party of Ukraine (Renewed) was registered with the Ministry of Justice on 9 November 2000. The plaintiff turned to the court with the claim to cancel the MoJ decision on registration of the party. The lawsuit alleged that: 1) the registration of the political party, whose activities are aimed at the illegal seizure of state power and achievement of statutory goals based on discriminating methods, jeopardized the "constitutional rights and freedoms of millions of people," including those of the plaintiff and his family; 2) the plaintiff had found out that the CPU (R) did not have local organizations in the majority of the regions of Ukraine, therefore the provisions of Article 11 of the Law on Political Parties in Ukraine were being violated by the respondent and the MoJ which failed to exercise proper control of the observance of the Law on Political Parties of Ukraine by the CPU (R); 3) some provisions of the Statute of the CPU (R) did not comply with the Constitution and the Law on Political Parties in Ukraine. Having considered the case, the court dismissed all the claims of the plaintiff on the grounds that: 1) all provisions of the CPU (R) Statute were in line with the laws, 2) the Ministry of Justice exercised control over the activities of the political party, proved by presenting requests for information about local party organizations in respective regions addressed to the local branches of the MoJ; 3) the plaintiff failed to provide the court with evidence that his rights, freedoms, or interests were infringed by the decision on registration;

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[288] http://www.reyestr.court.gov.ua/Review/2713229

[289] http://www.reyestr.court.gov.ua/Review/1602531

4) at the moment of lodging the lawsuit with the court the time limit for suing for the protection of infringed rights (1 year after violation) had already expired.

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**Date:** 03.04.2008

**Type of Case:** Appeals of refusal to register a civic association/political party

**Court Decision/Ruling/Resolution:** Judgement of the ECHR in the case of Koretskyy and others v. Ukraine No. 40269/02, § 47, 3 April 2008[290]

**Circumstances of the Case and Content of the Court Decision:** On 7 June 2000, 6 people founded the association, "Civic Committee for the Preservation of Wild (Indigenous) Natural Areas in Bereznyaky" ("Civic Committee"). Mr. Koretskyy was elected as the Civic Committee's head. On 27 July 2000, the applicants filed an application for State registration of the Civic Committee together with a copy of its articles of association with the Kyiv City Department of Justice. The application and articles of association were returned to the applicants and they were advised to make changes to the text, which was noted down by the City Department in the same documents.

On 6 September 2000, the applicants submitted the redrafted version of the articles of association, in which the Department's corrections were only partially accepted. By letter of 18 September 2000, the City Department informed the applicants of its refusal to register the Civic Committee on the ground that its articles had not been drafted in accordance with the domestic law. In particular, the Civic Committee's status was not indicated; the provision that the Civic Committee could have representative offices in other cities and towns of Ukraine did not correspond to the provision that its activities were to be carried out on the territory of Kiev; the articles listed two aims of the organization instead of one aim and tasks; the Executive Board of the Civic Committee *was* entrusted with economic functions while section 24 of the Associations of Citizens Act envisaged that the economic activities of an association could only be carried through separate legal entities which it could establish for that specific purpose; and the provisions that the Civic Committee could carry out publishing activities on its own and involve volunteers in its activities as members were contrary to the same law. Finally, the applicants had not taken into account all the corrections made to the text of the articles of association and they had submitted only a copy of the document showing that they had paid registration fees but the original was actually required.

On 30 November 2000, the applicants lodged a complaint with the Pecherskyy District Court of Kyiv seeking the annulment of the City Department's decision not to register the Civic Committee. On 13 March 2001, the court rejected the applicants' complaint as unsubstantiated. On 28 August 2001, the Kyiv City Court of Appeals upheld the first-instance court's decision.

The courts held that the refusal to register the Civic Committee had been lawful, since the articles of association contained textual discrepancies with the relevant provisions of the domestic legislation. In particular, the aim of the Civic Committee was not defined correctly and did not correspond to the requirements of sections 3 and 13 of the Associations of Citizens Act. The provisions of paragraphs 1.4, 5.1, and 7.11 of the articles of association authorising the Executive Board of the Civic Committee to carry out "everyday administrative and financial" activities and envisaging that the Civic Committee could perform publishing activities were not in compliance with sections 9 and 24 of that law. The wording of paragraphs 6.1 and 6.4 of the articles of association as regards the participation of volunteers in the Civic Committee's activities contravened the principle of equality of members of an association embodied in section 6 of the law.

On 14 March 2002, a panel of three judges of the Supreme Court rejected the applicants' request for leave to appeal in cassation, finding no grounds for examination of the case by the Civil Case Chamber of the Supreme Court. On 7 July 2002, the applicants decided to shut down the Civic Committee and discontinue its activities. On 12 September 2002, the applicants filed an application with the ECHR under Article 34 of the Convention for the Protection of Human Rights and Fundamental Freedoms.

In its judgment on the case, the ECHR emphasized that:

1) a refusal by the domestic authorities to grant legal entity status to an association of individuals amounts to an interference with the applicants' exercise of their right to freedom of association; even assuming that

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[290] http://cmiskp.echr.coe.int/tkp197/view.asp?action=html&documentId=830484&portal=hbkm&source=externalbydocnumber&table=F69A27FD8FB86142BF01C1166DEA398649

the Civic Committee could have carried out its activities without the State registration, the Civic Committee's ability to function properly without legal entity status would have been impeded;

2) the expression "prescribed by law" in the second paragraph of Article 11 of the Convention not only requires that the impugned measure should have some basis in domestic law, but also refers to the quality of the law in question; the provisions of the Associations of Citizens Act regulating the registration of associations are too vague to be sufficiently "foreseeable" for the persons concerned and grant an excessively wide margin of discretion to the authorities in deciding whether a particular association may be registered; therefore, the judicial review procedure available to the applicants could not prevent arbitrary refusals of registration;

3) the State's power to protect its institutions and citizens from associations that might jeopardize them must be used sparingly, as exceptions to the rule of freedom of association are to be construed strictly and only convincing and compelling reasons can justify restrictions on that freedom; however, neither the courts' decisions nor the Government's submissions in the present case contain an explanation for, or even an indication of, the necessity of the existing restrictions on the possibility of associations to distribute propaganda and lobby authorities with their ideas and aims, their ability to involve volunteers as members or to carry out publishing activities on their own; the Civic Committee intended to pursue peaceful and purely democratic aims and tasks and there is no indication that the association would have used violent or undemocratic means to achieve its aims, nevertheless the authorities used a radical, in its impact on the applicants, measure which went so far as to prevent the applicants' association from even commencing its main activities; in these circumstances the restrictions applied in the case did not pursue a "pressing social need".

For the above reasons the ECHR held that there was a violation of Article 11 of the Convention.

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**Date:** 11.06.2008

**Type of Case:** Cancellation of registration of political party

**Court Decision/Ruling/Resolution:** Ruling of the Kyiv Administrative Court of Appeals of June 11, 2008, in case № 22-a-2571/08 on the appeal lodged by "The Party of Law" against the Resolution of the Pechersk district court of the city of Kyiv in the case of a suit filed by the Ministry of Justice of Ukraine seeking to cancel the registration of "The Party of Law"[291]

**Circumstances of the Case and Content of the Court Decision:** On May 30, 2007, the Pechersk district court of the city of Kyiv cancelled the registration of "The Party of Law" on the grounds that the political party failed to comply with requirements in Section 6 Article 11 of the Law on Political Parties. This party had been registered by the MoJ on June 1, 2003. Within 6 months after its registration it secured registration of only two local party organizations. The Ministry of Justice sued the party and its registration was cancelled by court order. "The Party of Law" filed an appeal against the court decision; however, the Kyiv administrative Court of Appeals upheld the previous court decision in the case.

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**Date:** 14.01.2009

**Type of Case:** Termination of a local party organization as a legal entity on the grounds of non-submission of financial reports to the tax authorities

**Court Decision/Ruling/Resolution:** Resolution of the Snigurivsk district court of Mykolaiv region (oblast) of January 14, 2009, in case № 2-a-18/2009 in a lawsuit of the Snigurivsk interdistrict state tax inspectorate against the Snigurivsk district organization of the Party "Reforms and Order" seeking to terminate the local party organization as legal entity[292]

**Circumstances of the Case and Content of the Court Decision:** The Snigurivsk district organization of the Party "Reforms and Order" was registered on February 12, 2005. After registration, the party did not submit to the Snigurivsk interdistrict state tax inspectorate statements on the use of funds as a non-profit organization. The state tax inspectorate lodged a suit to have the organization terminated. Article 38 of the Law on State Registration of Legal Entities and Individual Entrepreneurs stipulates that failure of a legal entity to submit

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[291] http://www.reyestr.court.gov.ua/Review/1874624

[292] http://www.reyestr.court.gov.ua/Review/2729950

statements and financial reports to local tax authorities within one year after registration results in the termination of the legal entity on the basis of a court decision. The court took this into consideration and upheld the claims of the state tax inspectorate on the termination of the local party organization as legal entity.[293]

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**Date:** 17.02.2009

**Type of Case:** Cancellation of the registration of a political party

**Court Decision/Ruling/Resolution:** Decision of the Kyiv District Administrative Court of February 17, 2009 in case № 3/590 on a lawsuit against the Ministry of Justice of Ukraine seeking to cancel the registration of the Communist Party of Ukraine, lodged by the National Association of Veterans, the United Association of Cossacks of Ukraine "SICH", the National Association of Political Prisoners and Repressed, the Association of the Researchers of Famines in Ukraine, and the Kyiv branch of the Union of the Army Officers of Ukraine and others[294]

**Circumstances of the Case and Content of the Court Decision:** 10 plaintiffs lodged a lawsuit with the Kyiv District Administrative Court against the Ministry of Justice of Ukraine, seeking to oblige the Ministry to cancel the registration of the Communist Party of Ukraine on the grounds that activities of the Party did not comply with fundamental human rights, transgressed the provisions of the Constitution, and violated the laws of Ukraine. The plaintiffs stated that: 1) the registration of the Communist Party was carried out with violations of current laws since the Programme and the Charter of the Party did not conform to the Constitution of Ukraine; 2) activities of the Communist Party of Ukraine threatened the sovereignty and territorial integrity of the state, and it violated the rights and freedoms of the citizens, in particular the rights and freedoms of the plaintiffs. The Communist Party of Ukraine was registered with the Ministry of Justice of Ukraine on 5 October 1993. The Court highlighted in its resolution that the registration of the party was public, and the plaintiffs knew or could know of the fact that the party was registered. According to the legislation that was in force at the time of registration of the party, a decision on registration of the political party could be contested within 2 months from the date of its adoption (article 2485 of the Code on Civil Procedure of 18.07.1963). Therefore, the time for filing a complaint had elapsed, and the plaintiffs failed to explain to the court why they did not go to court within the term defined by the law. For this reason, the court dismissed all the plaintiffs' claims.

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**Date:** 14.04.2009

**Type of Case:** Termination of a local party organization as a legal entity on the the grounds of non-submission of financial reports to the tax authorities

**Court Decision/Ruling/Resolution:** Resolution of the Odessa District Administrative Court of April 14, 2009 in case № 2-a-13401/08/1570 on a lawsuit lodged by the Kotovsk United State Tax Inspectorate against the Kotovsk district organization of the Political Party "Forward, Ukraine!" seeking to terminate the local party organization as a legal entity[295]

**Circumstances of the Case and Content of the Court Decision:** The Kotovsk district organization of the Political Party "Forward, Ukraine!" was registered on July 30, 2007. On the October 17, 2008, the head of the Kotovsk United State Tax Inspectorate decided to de-register all of the tax payers who were registered with the inspectorate and did not submit the required statements and reports. On December 2, 2008, the inspectors found out that since 2007, the Kotovsk district organization of "Forward, Ukraine!" had not submitted any

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[293] Court decisions pertaining to the termination of local party organizations on the grounds of non-submission of financial reports to the tax authorities are ambiguous. In some cases, the courts emphasized that local party organizations can be terminated only on the grounds provided for political parties, therefore, non-submission of financial reports to state authorities cannot be the ground for termination of local party organizations. However, in this and some other cases, the courts ruled that a local party organization is a type of legal entity, therefore, it can be terminated on the grounds provided for any other legal entities. To unify the court practice concerning termination of local party organizations, the Law on Political Parties in Ukraine should be supplemented with provisions providing for the list of grounds for termination of local party organizations.

[294] http://www.reyestr.court.gov.ua/Review/3059471

[295] http://www.reyestr.court.gov.ua/Review/4585721

statements on the use of funds as a non-profit organization. According to Article 38 of the Law on State Registration of Legal Entities and Individual Entrepreneurs, failure to submit statements and financial reports to local tax authorities within one year after registration as a legal entity results in termination of the legal entity. Therefore, the state tax inspectorate lodged an appeal in the Odessa District Administrative Court to have the party organization terminated. The court agreed with the claims of the plaintiff.

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**Date:** 23.04.2009

**Type of Case:** Appeal of the refusal to register a political party; use of the name of a political party

**Court Decision/Ruling/Resolution:** Resolution of the Kyiv District Administrative Court № 15/390 of April 23, 2009 in the case of a lawsuit against the Ministry of Justice of Ukraine seeking to cancel Order № 1619/5 of the Ministry of Justice of Ukraine of 24.09.2008 to refuse registration of the Socialist Party of Regions, and to oblige the Ministry of Justice to register the political party "The Socialist Party of Regions"[296]

**Circumstances of the Case and Content of the Court Decision:** On July 25 the Head of the Socialist Party of Regions submitted to the MoJ an application for registration of the Socialist Party of Regions. The Ministry refused to register the political party (24.09.2008) on the grounds that the name of the party did not differ from the names of the Party of Regions and the Socialist Party of Ukraine, which already had been registered with the Ministry. During the court proceedings it was found that the Ministry of Justice had not taken into consideration the conclusions of the Institute of Linguistics named after O. Potebnia, to which the Ministry had applied for a statement, which argued that the names "The Socialist Party of Regions", "The Party of Regions" and "The Socialist Party" are not one and the same. Moreover, the decision to deny registration was made when the term for consideration of application for registration had already expired. Hence, the Court came to the conclusion that the decision to deny registration was groundless, overturned it, and obliged the Ministry of Justice to consider the application for registration from the political party once again.

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**Date:** 07.07.2009

**Type of Case:** Termination of a local party organization as a legal entity on the grounds of absence at its legal address

**Court Decision/Ruling/Resolution:** Resolution of the Mykolaiv District Administrative Court of July 7, 2009 in case № 2a-2075/09/1470 on the lawsuit lodged by the Pervomaisk United State Tax Inspectorate against the Pervomaisk city organization of the Party "Revival" seeking to terminate the local party organization as a legal entity[297]

**Circumstances of the Case and Content of the Court Decision:** The Pervomaisk city organization of the Party "Revival" was registered on April 3, 2003. On 10 September 2007, it was found that the organization was absent at its legal address, which, according to Article 38 of the Law on State Registration of Legal Entities and Individual Entrepreneurs, is a ground for termination of a legal entity. Therefore, the Pervomaisk United State Tax Inspectorate sued the local party organization to terminate it as a legal entity. The Mykolaiv District Administrative Court emphasized in its resolution that the Law on Political Parties in Ukraine determines the procedure for termination only of political parties, but not of local party organizations. In this connection, the general laws must be applied to the procedure for termination of local party organizations (i.e., Article 38 of the Law on State Registration. Since Article 38 of the Law stipulates that absence of a legal entity at its registered address can entail termination of its status as a legal entity, the court ruled that the local party organization is to be terminated as a legal entity.[298]

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[296] http://www.reyestr.court.gov.ua/Review/3612860

[297] http://www.reyestr.court.gov.ua/Review/4885046

[298] The same decisions on the same grounds were handed down by this court in other cases: in the case № 2a-2071/09/1470 upon a lawsuit filed by Pervomaisk united state tax inspectorate against Pervomaisk city organization of All-Ukrainian Party of Spirituality and Patriotism (7.07.2009); http://www.reyestr.court.gov.ua/Review/4929533; in the case № 2a-2072/09/1470 upon a lawsuit filed by Pervomaisk united state tax inspectorate against Pervomaisk district organization of the Agrarian Party of Ukraine (07.07.2009); http://www.reyestr.court.gov.ua/Review/4885045

**Date:** 20.07.2009

**Type of Case:** Termination of a local party organization as a legal entity on the ground of non-submission of financial reports to the tax authorities

**Court Decision/Ruling/Resolution:** Resolution of the Zhytomyr District Administrative Court of July 20, 2009 in case № 2a-2025/09/0670 on the lawsuit lodged by the Olevsk District State Tax Inspectorate against the Olevsk district organization of the Socialist Party of Ukraine seeking to terminate the local party organization as a legal entity[299]

**Circumstances of the Case and Content of the Court Decision:** The Olevsk District Organization of the Socialist Party of Ukraine was registered as a legal entity on January 23, 2006. In December 2009, the Olevsk District State Tax Inspectorate sued in Zhytomyr District Administrative Court to terminate the Olevsk district organization of the Socialist Party of Ukraine on the grounds that the party organization did not submit any financial statements within a year. The court emphasized in its decision that: 1) state tax authorities have the right to initiate termination of legal entities, which carry out profitable activities; 2) political parties are not allowed to engage in profitable activities, they are titled with non-profit status; therefore, the state tax inspectorate has no right to sue a local party organization to have it terminated on the basis of Article 38 of the Law on State Registration of Legal Entities and Individual Entrepreneurs; 3) the Law on Political Parties includes an exhaustive list of state bodies that have the right to initiate the prohibition of a political party or cancellation of its registration, and the tax authorities are not included on this list. On these grounds, the court dismissed all the plaintiff's claims.

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**Date:** 20.08.2009

**Type of Case:** Termination of a local party organization as a legal entity on the grounds of non-submission of financial reports to the tax authorities

**Court Decision/Ruling/Resolution:** Resolution of the Donetsk District Administrative Court as of August 20, 2009 in the case № 2a-11399/09/0570 upon a lawsuit lodged by Dobropilsk united state tax inspectorate against Oleksandrivsk district organization of political party "All-Ukrainian Association "Motherland" seeking to terminate local party organization as legal entity[300]

**Circumstances of the Case and Content of the Court Decision:** The Oleksandrivsk district organization of the political party "All-Ukrainian Association Motherland" was registered on May 3, 2001. On March 31, the Dobropilsk United State Tax Inspectorate found out that the party organization had not submitted the required financial statements, resulting in a lawsuit against the party organization to terminate it as a legal entity. In its decision, the court stated: 1) the procedure of state registration and termination of political parties is determined by special laws, in particular by the Law on Political Parties; 2) the activities of political parties can be terminated only through reorganisation, liquidation, prohibition, and cancellation of registration; 3) the list of the bodies entitled to initiate and to make decisions regarding to termination of activities of political parties is determined by the Law and it does not include state tax authorities; 4) control over the observance of legal requirements by political parties is exercised only by the Ministry of Justice. Hence, the court ruled that the plaintiff did not have a right to sue a local party organization in order to terminate it as a legal entity'.[301]

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[299] http://www.reyestr.court.gov.ua/Review/4821258

[300] http://www.reyestr.court.gov.ua/Review/4820190

[301] The same decisions (rulings, resolutions) in cases of lawsuits lodged by state tax inspectorates were handed down by other courts (however, in general, court decisions with regard to termination of local party organizations are controversial: in some cases, the courts upheld the claims of the state tax inspectorates and terminated the local party organizations, while in the other cases the same arguments of the tax authorities were declared unsubstantiated and their claims were denied by the courts; see other decisions on the termination of local party organizations, reflected in the Table). See, e.g.: Decision of the Dnipropetrovsk District Administrative Court of October 13, 2009 in case № 2-a-6486/09/0470 on the lawsuit lodged by the State Tax Inspectorate in the Babushkin District of the City of Dnipropetrovsk against the Dnipropetrovsk regional organization of the political party "The Pragmatic Choice" seeking to terminate its regional party organization as a legal entity; http://www.reyestr.court.gov.ua/Review/5468938; Resolution of the Volynsk District Administrative Court of May 13, 2009 in case № 2a-14447/09/0370 on the lawsuit

**Date:** 29.09.2009

**Type of Case:** Cancellation of registration of a political party

**Court Decision/Ruling/Resolution:** Resolution of the Kyiv District Administrative Court of September 29, 2009 in case № 2a-10344/09/2670 on a lawsuit lodged by the Ministry of Justice of Ukraine against the political party "The People's Freedom" seeking to cancel its registration (certificate № 155-п.п. dated 2.10.2008)[302]

**Circumstances of the Case and Content of the Court Decision:** The political party "The People's Freedom" was registered by the Ministry of Justice of Ukraine on October 2, 2008. Up to April 3, 2009 the political party secured registration of only 2 local organizations. Hence, the party violated Section 6 Article 11 of the Law on Political Parties in Ukraine, which required securing registration of local party organizations in at least 14 regions of Ukraine. The Ministry of Justice lodged a lawsuit at the Kyiv District Administrative Court seeking to cancel registration of the political party. The court upheld the plaintiff's claims.

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**Date:** 22.10.2009

**Type of Case:** Cancellation of the registration of a political party

**Court Decision/Ruling/Resolution:** Resolution of the Kyiv District Administrative Court as of October 29, 2009 in case № 2a-9157/09/2670 on a lawsuit lodged by the Ministry of Justice of Ukraine against the political party "Ukraine of the Future" seeking to cancel registration of the political party (certificate № 152-п.п. dated 18.07.2008)[303]

**Circumstances of the Case and Content of the Court Decision:** The political party "Ukraine of the Future" was registered with the Ministry of Justice of Ukraine on July 18, 2008. At the time when the Ministry of Justice filed the lawsuit the party had secured registration of 9 regional ('oblast') organizations. However, at the court session, the representative of the party presented the certificates of registration of 18 regional organizations of the party. In its decision, the court emphasized that violation of the term for securing registration of local party organizations cannot be considered an unconditional ground for cancellation of party registration, since the party had secured registration of the required number of local organizations before the start of the court proceedings. The court came to a conclusion that there were no grounds for cancellation of the registration of the political party and dismissed the claims of the plaintiff.

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**Date:** 5.11.2009

**Type of Case:** Cancellation of the registration of a political party

**Court Decision/Ruling/Resolution:** Ruling of the Kyiv Administrative Court of Appeals as of November 5, 2008, in case № 2-a-10344/09/2670 on an appeal lodged by the political party "The People's Freedom" against the Resolution of the Kyiv District Administrative Court of September 29, 2009 in case № 2a-10344/09/2670 on a lawsuit lodged by the Ministry of Justice of Ukraine against the political party "The People's Freedom" seeking to cancel its registration (certificate № 155-п.п. dated 2.10.2008)[304]

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of Ratnivsk Interdistrict State Tax Inspectorate against the Starovyzhivsk District Organization of the political party "The Democratic Union" seeking to terminate the local party organization as a legal entity; http://www.reyestr.court.gov.ua/Review/3944645; Decision of the Kharkiv Regional Commercial Court of July 13, 2007 in case № 56/97-07 on a lawsuit lodged on behalf of the State represented by the Krasnokutsk District State Tax Inspectorate by the public prosecutor of the Krasnokutsk district of Kharkiv region (oblast) against the Krasnokutsk district organization of the political party seeking to terminate its local party organization as a legal entity; http://www.reyestr.court.gov.ua/Review/1031096; Decision of the Donetsk Regional Commercial Court of January 25, 2007 in case № 31/438пн on the lawsuit lodged by the State Tax Inspectorate in the Kalininsk district of Donetsk against the Mariupol city organization of the Ukrainian Republican Party seeking to terminate its local party organization as a legal entity; http://www.reyestr.court.gov.ua/Review/1301584

[302] http://www.reyestr.court.gov.ua/Review/5067360

[303] http://www.reyestr.court.gov.ua/Review/6856318

[304] http://www.reyestr.court.gov.ua/Review/6674598

**Circumstances of the Case and Content of the Court Decision:** The political party "The People's Freedom" was registered by the Ministry of Justice of Ukraine on October 2, 2008. Up to April 3, 2009 the political party secured registration of only 2 local organizations. Hence, the party violated Article 11.6 of the Law on Political Parties in Ukraine that required securing the registration of local party organizations in at least 14 regions of Ukraine. The Ministry of Justice filed a complaint in the Kyiv District Administrative Court to cancel the registration of the party. The court upheld the plaintiff's claim. The court's resolution was contested by the political party "The People's Freedom" at the Kyiv Administrative Court of Appeals.

The Kyiv Administrative Court of Appeals found that by April 3, 2009 the party had already established its primary branches and local organizations in 15 regions of Ukraine, in other words – in most regions of Ukraine. By the time the Ministry of Justice filed a lawsuit at the Kyiv District Administrative Court to cancel the party's registration, 21 regional organizations of the party had already been registered, and the District Administrative Court did not take this fact into account. The ruling of the Kyiv Administrative Court was very interesting because it was the first time ever that the Ukrainian court reffered to Article 11 of the ECHR and some documents of the Venice Commission. In particular, the court mentioned in the ruling that the District Administrative Court did not take into consideration provisions of Article 11 of the ECHR and this, in turn, led to neglect of the Venice Commission Guidelines on prohibition and dissolution of political parties and analogous measures, adopted by the Venice Commission on 101 –1 December, 1999. The Kyiv Administrative Court of Appeals separately noted that the cancellation of registration of a political party in terms of legal consequences was in fact a similar measure to banning a political party. Based on these arguments the court upheld the appeal of the "The People's Freedom" and overturned the decision of the Kyiv District Administrative Court.

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**Date:** 11.11.2009

**Type of Case:** Cancellation of the registration of a political party

**Court Decision/Ruling/Resolution:** Resolution of the Kyiv District Administrative Court of November 11, 2009 in case № 2a-10348/09/2670 on the lawsuit lodged by the Ministry of Justice of Ukraine against the Progressive Democratic Party of Ukraine seeking to cancel its registration (certificate № 163-п.п. dated 18.1.2008)[305]

**Circumstances of the Case and Content of the Court Decision:** The Progressive Democratic Party of Ukraine was registered with the Ministry of Justice on November 11, 2008. As of June 10, 2009, the party had secured registration of 15 regional organizations, and at the time when the Ministry of Justice lodged a lawsuit against the political party, the party had already secured registration of its organizations in 17 regions of Ukraine. The court highlighted in its decision that 1) violation of the term for securing registration of local party organizations, defined by Article 11.6 of the Law on Political Parties in Ukraine, cannot be considered an unconditional grounds for cancellation of a party's registration; 2) the real possibility of registration of local party organizations appears only at the moment when the party obtains a legal entity status, and the term for securing registration of local party organizations should be counted from that date; 3) since the party's activities do not threaten independence, Ukraine's sovereignty, constitutional order, or the rights and freedoms of the citizens, the party's registration cannot be cancelled. On these grounds the court dismissed all the claims of the Ministry of Justice.

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**Date:** 30.11.2009

**Type of Case:** Cancellation of the registration of a political party

**Court Decision/Ruling/Resolution:** Resolution of the Kyiv District Administrative Court as of November 30, 2009 in the case № 2a-10350/09/2670 upon a lawsuit lodged by the Ministry of Justice of Ukraine against political party "The Civic Movement of Ukraine" seeking to cancel registration of political party (registration certificate № 161-п.п. dated 28.10.2008)[306]

**Circumstances of the Case and Content of the Court Decision:** The political party "Civic Movement of Ukraine" was registered by the Ministry of Justice of Ukraine on October 28, 2008. Within 6 months after registration the party secured the establishment and registration of only 3 local organizations. This was not in line

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[305] http://www.reyestr.court.gov.ua/Review/7270014

[306] http://www.reyestr.court.gov.ua/Review/6902316

with Section 6 Article 11 of the Law on Political Parties in Ukraine and could result in the cancellation of registration. The Ministry of Justice filed a lawsuit in the Kyiv District Administrative Court against the "Civic Movement of Ukraine" seeking to cancel its registration. However, in court, the representative of the political party presented to the court certificates of registration of local party organizations in 18 regions of Ukraine. The Kyiv District Administrative Court in its resolution stated that violation of the term for securing registration of local party organizations cannot be considered an unconditional basis for the cancellation of a party's registration, since the party secured the registration of its local organizations before the start of court proceedings. On these grounds the court dismissed all the claims of the Ministry and came to the conclusion that there were no grounds for cancellation of the registration of the political party.

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**Date:** 17.12.2009

**Type of Case:** Cancellation of the registration of a political party

**Court Decision/Ruling/Resolution:** Resolution of the Kyiv District Administrative Court of December 17, 2009 in case № 2a-10347/09/2670 on a lawsuit lodged by the Ministry of Justice of Ukraine against the political party "The Civic Party of Ukraine" seeking to cancel its registration as a political party (registration certificate № 159-п.п. dated 23.10.2008)[307]

**Circumstances of the Case and Content of the Court Decision:** The Political party "The Civic Party of Ukraine" was registered with the Ministry of Justice of Ukraine on 23 October 2008. Within six months from the date of its registration the political party secured registration of only one local organization, which was not in compliance with the requirements of Article 11.6 of the Law on Political Parties and could result in the cancellation of registration of a political party. Therefore, the Ministry of Justice filed a lawsuit against the party to have its registration cancelled. However, at the court session, the party's representative presented the certificates of registration of local party organizations in 14 regions of Ukraine. In its resolution, the court emphasized that violation of the term for securing registration of local party organizations in 14 regions of Ukraine cannot be considered unconditional grounds for the cancellation of a party's registration, since the party secured registration of the required number of local organizations before the start of the court proceedings. Since the representative of the party showed proof of establishment and registration of local party organizations in most regions of Ukraine, the court came to the conclusion that there were no grounds for cancellation of registration of political party.

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**Date:** 23.12.2009

**Type of Case:** Cancellation of the registration of a political party

**Court Decision/Ruling/Resolution:** Resolution of the Kyiv District Administrative Court of December 23, 2009 in case № 2a-10346/09/2670 in a lawsuit lodged by the Ministry of Justice of Ukraine to cancel the registration of the political party "Awakening" (registration certificate № 154-п.п. dated 04.09.2008)[308]

**Circumstances of the Case and Content of the Court Decision:** The political party "Awakening" was registered by the Ministry of Justice of Ukraine on September 4, 2009. By the time the Ministry of Justice filed the lawsuit, the party had failed to establish any local organizations. In court, though, the representative of the political party presented the certificates of registration of 16 regional party organizations. In its resolution the court emphasized that violation of the term for securing registration of local party organizations in 14 regions of Ukraine cannot be considered an unconditional ground for cancellation of party registration, since the party secured registration of the required number of local organizations before the start of the court proceedings. As the representative of the party presented the certificates of registration of local party organizations in most regions of Ukraine, the court came to the conclusion that there were no grounds for cancelling the registration of the political party.

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[307] http://www.reyestr.court.gov.ua/Review/7270151

[308] http://www.reyestr.court.gov.ua/Review/7516941

**Date:** 02.02.2010

**Type of Case:** Cancellation of the registration of a political party

**Court Decision/Ruling/Resolution:** Resolution of the Kyiv District Administrative Court of February 2, 2010 in case № 2-a-10351/09/2670 on a lawsuit of the Ministry of Justice of Ukraine against the political party "The Party for Protection of Human Rights" seeking to cancel its registration (certificate № 157-п.п. dated 06.10.2008)[309]

**Circumstances of the Case and Content of the Court Decision:** The political party "The Party for Protection of Human Rights" was registered by the Ministry of Justice on June 6, 2008. At the date when the Ministry of Justice applied to the court, the party had already secured registration for local organizations in 16 regions of Ukraine. Hence, the party was not in violation of the legal requirements on political parties, and there were no reasons to cancel its registration. The court dismissed the claims of the Ministry of Justice.

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**Date:** 10.02.2010

**Type of Case:** Cancellation of the registration of a political party

**Court Decision/Ruling/Resolution:** Ruling of the Kyiv Administrative Court of Appeals of February 10, 2010, in case № 2a-9157/09/2670 on an appeal lodged by the Ministry of Justice of Ukraine against the Resolution of the Kyiv District Administrative Court dated 22 October 2009 in a lawsuit lodged by the Ministry of Justice of Ukraine against the political party "Ukraine of the Future" to cancel its registration as a political party[310]

**Circumstances of the Case and Content of the Court Decision:** The political party "Ukraine of the Future" was registered with the Ministry of Justice of Ukraine on July 18, 2008. At the time the Ministry of Justice filed a lawsuit the party had secured registration of 9 regional ('oblast') organizations. However, at the court session the representative of the party presented the certificates of registration for 18 regional organizations of the party. In its resolution, the court emphasized that violation of the term for securing registration of local party organizations cannot be considered unconditional grounds for the cancellation of party registration, since the party had secured registration of the required number of local organizations before the start of the court proceedings. The court came to a conclusion that there were no grounds for the cancellation of registration of political party and dismissed the claims of the plaintiff.

The Ministry of Justice lodged an appeal against the resolution of the Kyiv District Administrative Court to have this resolution cancelled and to find in favour of the previous claims of the Ministry of Justice. The Kyiv Administrative Court of Appeals found that at the time when the case was considered by the Kyiv District Administrative Court the political party showed appropriate evidence of registration of local party organizations in most regions of Ukraine. Thus, since there were no reasons for overturning the resolution of the Kyiv District Administrative Court, the Court of Appeals dismissed the claims of the Ministry of Justice.

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[309] http://www.reyestr.court.gov.ua/Review/9207015

[310] http://www.reyestr.court.gov.ua/Review/7937473

## ANNEX 3. THE LAW ON POLITICAL PARTIES IN UKRAINE AND THE LAW OF UKRAINE ON CIVIC ASSOCIATIONS

### THE LAW ON POLITICAL PARTIES IN UKRAINE

*(Unofficial translation with the latest amendments as of 01/06/2010)*[311]

### CHAPTER I.

### GENERAL PROVISIONS

**Article 1.** Citizens' Right to Associate in Political Parties

Citizens' right to freely associate in political parties to exercise and protect their rights and liberties, and to satisfy their political, economic, social, cultural, and other interests is determined and guaranteed by the Constitution of Ukraine. Restrictions on this right are allowed pursuant to the Constitution of Ukraine, in the interests of national security, public order, health care, or so as to protect the rights and freedoms of other peoples, as well as in other cases envisaged by the Constitution of Ukraine.

No-one shall be forced to join a political party or restricted in voluntarily withdrawing from a political party.

Partly affiliation or non-affiliation shall not warrant any restrictions of [civil] rights and liberties or any benefits or privileges on the part of the state.

Any restrictions in terms of political party membership shall be the sole prerogative of the Constitution and laws of Ukraine.

**Article 2.** A Definition of a Political Party

A political party shall be understood as a legally registered voluntary association of citizens adhering to a certain national social development programme, aimed at assisting in the formation and expression of citizens' political will, participating in elections and other political events.

**Article 3.** Legal Basis and Regulation of the Activities of Political Parties

Political parties shall conduct their activities in accordance with the Constitution of Ukraine, this Law, and other laws of Ukraine, as well in accordance with their statutes/charters enacted in accordance with the procedures provided for by this Law.

Political parties shall be formed and shall operate in Ukraine only when having the national status.

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[311] The text of the Law without latest amendments can also be found at: http://www.legislationline.org/documents/action/popup/id/7110. This version includes all amendments.

**Article 4.** Guarantees of the Activities of Political Parties

Political parties shall be equal before the law.

Bodies of state authority and local self-government and their officials shall be prohibited to discriminate against certain political parties or grant them privileges, and nor shall they assist political parties unless otherwise provided by law.

Bodies of state authority and local self-government and their officials shall be prohibited to interfere in the formation and internal activities of political parties and their local offices, except in cases envisaged by this Law.

**Article 5.** Restrictions on the Formation and Operation of Political Parties

The formation and operation of political parties shall be prohibited if their programme objectives or activities are aimed at:

(1) liquidating Ukrainian independence;
(2) forcefully changing the constitutional order;
(3) violating Ukraine's sovereignty and territorial integrity;
(4) undermining national security;
(5) unlawfully seizing power;
(6) propagandizing war and violence, inciting interethnic, racial or religious animosity;
(7) encroaching on human rights and freedoms;
(8) encroaching on public health.

Political parties shall not have paramilitary formations.

A political party shall be banned only if so ruled by a court of law. In the first instance such ban shall be deliberated by the Supreme Court of Ukraine.

## CHAPTER II.
## MEMBERSHIP AND FORMATION OF POLITICAL PARTIES

**Article 6.** Membership of Political Parties and Restrictions

Only citizens with a right to vote under the Constitution of Ukraine shall be eligible as members of political parties.

A citizen shall be a member of only one political party at a time.

The following persons shall not be eligible:

(1) judges;
(2) officials of the public prosecutor's office;
(3) officials of bodies of the Interior;
(4) employees of the Security Service of Ukraine;
(5) military personnel;
(6) officials of the state tax authorities;
(7) staff of the State Penal Service of Ukraine.

Members of political parties shall terminate their membership while occupying any of the above posts/ranks/positions.

The procedures of joining a political party, suspending or terminating membership shall be determined by that party's statute/charter.

Political party membership shall be attested. A compulsory condition of such attested membership shall be a Ukrainian citizen's statement submitted to a given party's statutory body and expressing that citizen's desire to become a member of that party.

The form of attesting [recording] political party membership shall be determined by a given party's statute/charter.

No political party structures shall be formed within the executive, judicial or local self-government authorities, military units, state enterprises, institutions of learning, and other government-run institutions and organizations.

**Article 7.** Programme of a Political Party

Political parties shall each have a programme. The programme of a political party shall be statement of that party's tasks and objectives, as well as ways to implement them.

**Article 8.** Statute of a Political Party

Every political party shall have a statute. Each such statute shall contain:

(1) name of the political party;
(2) a list of the statutory bodies of the political party, procedures of their formation, their respective powers, and term of office;
(3) procedures of admission to the political party, suspension and termination of membership, etc.;
(4) rights and obligations of the membership, grounds on which membership is suspended or terminated;
(5) procedures of the formation, general structure, and competence of regional, city, and district party organizations and the smallest party units;
(6) procedures of introducing changes in and amendments to the statute and programme of the political party;
(7) procedures of convening and holding party conventions, conferences, meetings, and other representative bodies of the political party;
(8) finance sources and budget;
(9) procedures of liquidation (self-dissolution) and reorganization of the political party, and use of funds and property left after its liquidation (self-dissolution).

**Article 9.** Name and Symbols of a Political Party

The name and symbols of a political party shall not coincide with those of any other (registered) political parties.

Replication of the national symbols of Ukraine or other countries in the symbols of a given political party shall be prohibited.

A political party may have party symbols, including the party anthem, flag, emblem, and motto. The symbols of a political party shall be officially registered with the Ministry

of Justice of Ukraine in keeping with procedures designated by the Cabinet of Ministers of Ukraine.

Regional, city, and district [party] organizations and other structural subdivisions shall use the name of a given party with supplements indicating their position within the political party's organizational structure.

**Article 10.** Formation of a Political Party

A political party shall be formed as resolved by its constituent convention (conference, meeting). The resolution 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 the Autonomous Republic of the Crimea.

The constituent convention (conference, meeting) of a political party shall adopt its statute and programme, and shall elect its executive and supervisory-auditing bodies.

A political party shall start operating only after being [officially] registered. Unregistered political parties shall not be allowed to operate.

## CHAPTER III.
## REGISTRATION AND RIGHTS OF POLITICAL PARTIES

**Article 11.** Registration of Political Parties

Registration of political parties shall be the prerogative of the Ministry of Justice of Ukraine.

In order to register a political party, the following documents shall be submitted along with an application:

(1) statute and programme of the political party;
(2) minutes of the constituent convention (conference, meeting) of the political party, specifying the date, place, and number of votes for the formation of the political party;
(3) signatures of Ukrainian citizens supporting the formation of the political party, collected in keeping with this Law and certified by the persons collecting the signatures;
(4) information about the structure of the executive bodies of the political party;
(5) document attesting the payment of the registration fee;
(6) name and address of the bank with which the party has opened accounts.

The Ministry of Justice of Ukraine shall register a given political party after verifying the documents thus submitted.

After registration, a political party shall obtain the status of a legal entity.

The amount payable as registration fee shall be determined by the Cabinet of Ministers of Ukraine.

A political party, within six months from the date of registration, shall secure the formation and registration, in accordance with this Law, its organizations in most regions of Ukraine.

The regional, city, and district party organizations or other structural subdivisions envisaged by the statute shall be registered by relevant bodies of the Ministry of Justice of

Ukraine, unless otherwise provided by law, only after the political party has been registered with the Ministry of Justice of Ukraine. After registration, regional, city, and district party organizations may obtain the status of a legal entity, if so envisaged by the statute.

The smallest party units, which according to the statutes of political parties, are not granted legal entity status, shall legalize their operation by written notification of the foundation of the respective body to the Ministry of Justice of Ukraine within 10 days after their foundation. The smallest party units shall also provide notice regarding the foundation with respect to local bodies of the executive power and local self-government.

The relevant body of the Ministry of Justice of Ukraine within three hours after the receipt of the documents for registration shall issue a certificate of registration to the smallest party unit.

Bodies, authorized to register political parties and their regional, city, and district organizations envisaged by the statute, shall administer the respective registers. The latter's format shall be approved by the Ministry of Justice of Ukraine.

After registration, the Ministry of Justice of Ukraine and its pertinent bodies shall issue political parties and their regional, city, district organizations or other structural subdivisions envisaged by their statutes with registration certificates in the format designated by the Cabinet of Ministers of Ukraine.

Every political party shall annually inform the Ministry of Justice of Ukraine about its regional, city, district organizations or other structural subdivisions envisaged by the statute. Every political party shall also advise the Ministry of Justice of Ukraine of any changes in the name, programme, statute, and executive bodies of the party, their address and whereabouts within a week after making decisions on such changes.

The Ministry of Justice of Ukraine shall annually publish a list of registered political parties and their legal addresses.

Within 30 days from the date of receipt of the documents indicated in Clauses 1-6 of this Article 11, the Ministry of Justice of Ukraine shall determine to grant or refuse registration of a given political party. The said time-limit may be extended by the Ministry of Justice of Ukraine in case of necessity, provided the additional time does not exceed 15 days.

Registration may be refused if [any of the documents] thus submitted turn out at variance with the Constitution, this or [any] other laws of Ukraine.

The registration authorities indicated in Section 5 of this Article 11 shall determine to register the statute-designated regional, city, district organizations or other structural subdivisions of a given political party within 10 days from the date of receipt of the registration application certified by the political party's supervisory body.

Enclosed the application shall be:

– a copy of the statute of the political party;
– protocol [minutes] of the constituent meeting or conference forming a given regional, city, district organization or any other structural subdivision of the political party.

When refusing registration, the Ministry of Justice of Ukraine shall provide the applicant with a written motivated resolution.

Decisions granting or refusing registration, or failure to make such a decision, on the part of the Ministry of Justice of Ukraine or other registration authorities may be appealed to a court of law.

Refusal of registration shall not prevent a given political party from applying for registration again.

**Article 12.** Rights Vested in Political Parties

Political parties shall have a right to:

(1) freely operate within the limits set by the Constitution of Ukraine, this and other laws of Ukraine;
(2) participate in the elections of the President, Verkhovna Rada of Ukraine, and other bodies of state authority and local self- government and of their officials in keeping with procedures established by the laws of Ukraine;
(3) use state-controlled media and set up their own media as provided by the laws of Ukraine;
(4) maintain international contacts with political parties and volunteer organizations in other countries, international and intergovernmental organizations, establish (associate in) international associations in keeping with this Law;
(5) provide ideological and material support to youth, women's and other citizens' associations, and assist with their formation.

Political parties shall be guaranteed the freedom of opposition, including:

– an opportunity to make public and defend the party stand with regard to state and public life;
– participate in the discussion of acts of the authorities, make public and motivate its criticism, using government-run and nongovernmental media in keeping with legally established procedures;
– submit proposals to bodies of state authority and local self- government, which proposals these authorities must consider in keeping with established procedures.

**Article 13.** International Activities of Political Parties

Political parties may maintain contacts with political parties and volunteer organizations in other countries, international and intergovernmental organizations, make co-operation agreements, and conduct other activities inasmuch as they do not contradict the laws and international treaties of Ukraine. Political parties shall not make any agreements making these parties subordinate to or dependent on any foreign organizations or political parties.

Political parties may establish international associations/unions or join them provided their statutes/charters envisage the creation of only consulting or coordinating central bodies.

## CHAPTER IV.
## FUNDS AND OTHER PROPERTY OF POLITICAL PARTIES

**Article 14.** Funds and Other Property of Political Parties

The state shall guarantee political parties the right to have funds and other property to carry out their statutory tasks.

Political parties shall be non-profit organizations.

In order to carry out their statutory tasks, political parties shall be entitled to movable and immovable property, funds, equipment, transport, and other facilities the acquisition

of which is not prohibited by the laws of Ukraine. Political parties may lease any such movable and immovable property as they may require.

**Article 15.** Finance Restrictions

Financing political parties shall be prohibited:
(1) on the part of bodies of state authority and local self- government, except in cases envisaged by the law;
(2) on the part of state and municipally owned enterprises, institutions, and organizations, as well as by enterprises, institutions, and organizations having government or municipal shares or with a foreign interest;
(3) on the part of other countries and foreign nationals, enterprises, institutions, and organizations;
(4) on the part of benevolent and religious associations and organizations;
(5) on the part of anonymous persons or persons using pseudonyms;
(6) on the part of political parties other than members of the election bloc.

Banks shall notify the Ministry of Justice of Ukraine of any entries on political parties' accounts contrary to this Law.

Funds received by political parties contrary to this Law shall be transferred by these parties to the State Budget of Ukraine or exacted by a court of law for the benefit of the state.

**Article 16.** Exercise of Title to Property Owned by a Political Party

The title to a political party's property, including money owned by that party, shall be exercised in accordance with the laws of Ukraine and in keeping with procedures designated by that party's statute.

**Article 17.** Financial Reporting of a Political Party

A political party shall have a monthly financial report covering incomes and expenditures and a report on its property carried by a central government-run periodical.

Political parties shall keep books and records in accordance with set procedures.

## CHAPTER V.
## STATE CONTROL OVER THE ACTIVITIES OF POLITICAL PARTIES

**Article 18.** Bodies Exercising State Control over Political Parties

State control over political parties shall be exercised by:
(1) the Ministry of Justice of Ukraine, in terms of observance of the Constitution, [other] laws of Ukraine, and party statute/charter;
(2) the Central Election Committee and district election committees, in terms of observance, by a given political party, of the election procedures.

Political parties shall provide any such documents and explanations as may be required by the controlling authorities.

Decisions made by controlling authorities may be contested in keeping with legally established procedures.

**Article 19.** Measures that Can be Taken re Political Parties

The following measures can be taken with regard to political parties transgressing the Constitution, this and other laws of Ukraine:
(1) warning of unlawful activity;
(2) banning the political party at fault.

**Article 20.** Warning of Unlawful Activity

If the leadership of a political party publicly announces its intention to commit acts punishable under the law, the controlling authority shall issue a notice warning against such unlawful activity.

If an act committed by a political party does not entail other kinds of answerability, the controlling authority shall instruct this party to correct the transgression.

The leadership of a political party shall promptly correct any such transgressions as may have caused such warning, and shall within five days notify the authority that issued the warning of the measures taken to correct the transgressions.

**Article 21.** Banning a Political Party

A court of law may rule to ban a political party, as submitted by the Ministry of Justice or General Prosecutor of Ukraine, in case it transgresses [any of] the requirements to the formation and operation of political parties set forth in the Constitution, this and other laws of Ukraine.

A ban on a political party shall entail termination of that party's activities, dissolution of its executive bodies, regional, city, and district organizations, the smallest party units, and other structural subdivisions envisaged by the statute of that party, and termination of its membership.

**Article 22.** Amenability of Officials and Citizens for Transgressions of the Laws on Political Parties

Officials and citizens found to have transgressed this Law, namely:
(1) by forming, organizing, and participating in unregistered political parties;
(2) restricting the rights of or persecuting citizens due to political party affiliation or non-affiliation;
(3) refusing registration to a political party for no valid reasons;
(4) granting a political party any advantages or restricting the lawful rights of a party and its membership;
(5) transgressing the law when using party symbols;
(6) inflicting material or moral damage on a political party;
(7) organizing paramilitary units;

(8) participating in a banned political party or committing other acts punishable under the law,

shall be meted out disciplinary and administrative punishments, made liable or criminally prosecuted in accordance with the laws of Ukraine.

**Article 23.** Termination of a Political Party

A political party shall be terminated by reorganization or liquidation (self-dissolution), or when banned or stripped of the registration certificate in keeping with procedures set forth in this and other laws of Ukraine.

A political party shall be reorganized or self-dissolved as resolved by that party's convention (conference) in accordance with its status. Simultaneously, the convention (conference) shall resolve to use the party property and funds for statutory or charitable purposes.

**Article 24.** Cancellation of the Registration Certificate

If a political party fails to comply with Section 6 of Article 11 hereof, if within three years from the date of registration this party is found to have submitted corrupt information when applying for registration, if this party fails to nominate Ukrainian presidential and parliamentary candidates within ten years, the registration authority shall turn to the Supreme Court of Ukraine, requesting cancellation of the registration certificate. The latter shall not be revoked for any other reasons.

The Supreme Court ruling revoking the registration certificate shall entail termination of a given political party, dissolution of its executive bodies, regional, city, and district organizations, the smallest party units, and other statutory subdivisions, and shall terminate party membership.

## CHAPTER IV.
## CLOSING PROVISIONS

1. This Law shall inure on the date of publication.
2. The enactment of this Law shall not entail re-registration of political parties.
3. The political parties shall, not later than a year from the date of the next elections to the Verkhovna Rada of Ukraine, take all measures required to implement this Law, make the required adjustments in their statutory documents, and submit them to the Ministry of Justice of Ukraine.
4. The Cabinet of Ministers, acting within its competence, shall make decisions ensuing from this Law and submit proposals aimed bringing legislative acts in conformity with this Law.

President of Ukraine
Leonid Kuchma
City of Kyiv,
April 5, 2001

# LAW OF UKRAINE ON CIVIC ASSOCIATIONS

*(Unofficial translation with the latest amendments as of 01/06/2010)* [312]

The citizens' right for freedom to unite in the public associations is an inalienable human right which is secured by the General Declaration of Human Rights and is guaranteed by the Ukrainian Constitution and laws. The State favors the development of political and public activities, creative initiative of citizens and provides equal conditions of activity for their associations.

## I. GENERAL PROVISIONS

### **Article 1.** Civic Association

A civic association is a voluntary civic union, founded on the basis of common interests for joint realization of the rights and freedoms by the citizens.

According to the present Law, any civic organization regardless of its name (people's movement, congress, association, foundation, league and so on) is considered to be a political party or a civic organization.

The present Law does not pertain to religious, co-operative societies and civic associations with the general purpose to gain profit, to commercial funds, bodies of local and regional self-government (including councils and committees of micro-districts, house, street, blocks, village, settlement committees), voluntary formations, such as public order squads, comrades' courts, other civic associations, which are founded and act according to the corresponding laws.

The activities of the trade unions are determined by the Ukrainian Trade Unions Law.

### **Article 2.** Political Party

A political party is an association of people who adhere to a certain national program of social development, which have the main purpose of taking part in the development of the state policy, forming the central power bodies, the bodies of local and regional self-governments, obtaining representation in them.

### **Article 3.** Civic organization

A civic organization is an association of citizens, founded to satisfy and to protect their legitimate social, economic, creative, age, national, cultural, sports and other common interests.

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[312] The text of the Law without latest amendments can also be found at: http://www.legislationline.org/documents/action/popup/id/7132. This version includes all amendments.

**Article 4.** Restrictions on foundation and activities for civic associations

Civic associations cannot be legalized, and the activity of the legalized associations can be prohibited by court in case their purpose is:
– to change constitutional order by force, and to change the state territorial integrity in any illegal form;
– to undermine the state security if acting in favor of foreign states;
– to propagate war, violence or fascism and neofascism;
– to incite national and religious hatred; – to found illegal militarized formations;
– to restrict universally recognized human rights.

The foundation and activities of political parties with governing bodies and structural units situated outside Ukraine, as well as foundation and activities of structural units of political parties in the bodies of the executive and judicial power, in the Armed Forces and in the State Frontier Service of Ukraine, State Special Service for Transport, State Service of Ukraine for Special Communications and Protection of Information, in the state enterprises, institutions and organizations, and state educational institutions, shall be prohibited.

**Article 5.** Civic Associations Legislation

The legislation on civic associations includes the Ukrainian Constitution, the present Law and other legislative acts, adopted according to its premises.

## II. PRINCIPLES OF ACTIVITIES AND STATUS OF CIVIC ASSOCIATIONS

**Article 6.** Principles of foundation and activities of civic associations

Civic associations are founded and run on the basis of voluntarity, equality of all the members (participants), self-government, lawfulness and openness (transparency). They are free to choose the directions of their activities.

The activities of civic associations can be limited only by the Ukrainian Constitution and laws.

All the main issues of the civic association activities must be settled at meetings of all members of a civic association or their representatives.

Civic associations must publish regularly their main documents, information on the composition of their governing bodies, sources of finance and expenditures.

**Article 7.** Prohibition to restrict the rights and freedoms of citizens depending on their belonging or not belonging to civic associations

Nobody can be forced to join any civic association.

Belonging or not belonging to an association can not be a ground for the restriction of rights and freedoms or for any privileges and advantages given by the State.

It is not allowed to require mentioning the membership (participation) of a person of a civic association in the official documents, except for the cases determined in the Ukrainian laws.

It is prohibited not to accept or to expel a person from a political party because of his/her sex or nationality.

Restrictions for some categories of citizens to join political parties are determined by the Ukrainian Constitution and laws.

The civic associations officials are subject to Labor, social security and social insurance legislation.

**Article 8.** The State and civic associations

The State guarantees the observance of rights and legal interests of the civic associations, legalized in the order provided by the present Law.

Interference of the state bodies and officials to the civic association activities as well as interference of public associations to the state bodies and officials' activities and the activities of the other civic associations is not allowed, except for the cases provided by the present Law.

The Supreme Soviet (Parliament) of Ukraine defines tax preferences for some kinds of economic or other commercial activities of civic associations, their establishments, organizations and enterprises founded by them. It also defines the maximum amounts of special and general annual donations for political parties, approves the list of the all-Ukrainian civic associations, which have some pecuniary aid from the State.

**Article 9.** Status of the civic associations

Civic associations are founded and act, having either all-Ukrainian, or local, or international status.

All-Ukrainian civic associations are associations, whose activities extend to the whole territory of Ukraine and which have local centers in the majority of its regions (oblasts).

Local associations are associations, whose activities extend to the territory of a corresponding administrative-and-territorial unit or region.

A civic association itself determines the territory of its activities.

A civic organization has an international status if its activities extend to the territory of Ukraine and at least one other state.

Political parties in Ukraine are founded and act exclusively with the all-Ukrainian status.

**Article 10.** Unions of civic associations

Civic associations have the right to freely found, or unite in, different unions (leagues, societies and so on), to form blocks and coalitions, to make agreements on cooperation and mutual assistance with other civic associations.

Formation and legalization of civic associations unions, their activities and liquidation are determined by the present Law.

## III. PROCEDURES FOR MAKING AND SUSPENDING THE ACTIVITIES OF CIVIC ASSOCIATIONS

**Article 11.** Founders of the civic associations founders

Political parties are set up on the initiative of Ukrainian citizens, who have reached the age of 18 years, are not found incompetent by court and not imprisoned.

All citizens of Ukraine, citizens the other countries, people without citizenship, who attained to the age of 18 years, can set up civic organizations. The founders of youth and children's civic organizations should be at least 15 years of age.

The decision to form a civic association is made by a constituent congress (conference) or by a general meeting.

Civic associations themselves are founders of civic associations unions.

**Article 12.** Membership in civic associations

Only Ukrainian citizens of at least 18 years of age can be members of political parties.

Any person of at least 14 years of age can be a member of any civic organization [NGO], except for the youth and children's organizations. The age of youth and children's civic organizations members is determined by their statutes within the limits determined by the Laws of Ukraine.

Civic organizations can have no fixed individual membership.

Civic associations can have Collective members, if it is determined by their statutes.

**Article 12-1. Name of a civic association**

The name of a civic association shall be determined by a decision of the constituent convention (conference) or general convention of the civic association.

The name of a civic association shall consist of two parts – general and individual. General name (party, movement, congress, union, society, formation, fund, foundation, association, community, etc.) can be the same for different types of civic associations. An individual name of a civic association shall be mandatory [for association] and must be different from the individual names of other civic associations with the same general names, registered in accordance with the procedure provided for by law.

A civic association, in addition to its full name, can also have an abridged name, which shall be fixed in the constituent and statutory documents of the civic association (in the resolution of the constituent body, in the statute, or regulations).

A civic association, registered in accordance with the procedure provided for by law, has the exclusive right to use its name. Use of the name of a civic association by individuals and legal entities, who are not members of the organization, for purposes not related to the activities of such association, shall be prohibited.

**Article 13. Statutory documents** of civic associations

Civic association acts on the basis of its statute or regulations (hereafter - statutory document).

A statutory document of a civic association must include:

1) name of a civic association (full and abridged in accordance with section 3 of Article 12-1 of this Law), its status and legal address;
2) purpose and objectives of a civic association's activities;
3) conditions and procedures of admittance and expulsion of members of a civic association;
4) members' (participants') rights and duties;
5) procedures of creation and activities of bodies, local centers of a civic association and their competences;
6) sources of financing and the procedure for the use of funds and other property of association, procedure for reporting, control, carrying out economic and other activities that are necessary for fulfillment of its statutory objectives;
7) procedures of amending and appending the statute of a civic association;
8) procedures of suspending of a civic association's activities and of solving property issues, connected to the liquidation of a civic association.

A statutory document can include other provisions concerning some peculiarities of founding and activities of a civic association.

A statute of a civic association must not contradict Ukrainian laws.

**Article 14.** Legalization of civic associations

Legalization (official recognition) of civic associations is mandatory and is administered through their registration or notification about their formation. The activities of non-legitimized or forcibly dissolved by court associations are illegal.

A civic association has the status of a legal person if registered.

Political parties and international civic organizations must be registered by the Ukrainian Ministry of Justice.

The legalization of civic associations is exercised, is corresponding to the intended status, by the Ukrainian Ministry of Justice, local state administrations, executive committees of village, settlement, city councils of people's deputies.

If the activity of a local civic association extends to the territory of two or more administrative-and-territorial units, their legalization is administered by a respective higher authority .

State executive local bodies, executive committees of village, settlement, City Councils of People's Deputies register the local centers of the registered all-Ukrainian and international civic associations, if such registration is prescribed by the associations' statutes.

The body which registers the association shall inform the media of its registration (official recognition).

**Article 15.** Registration of civic associations

To register a civic association, its founders should submit an application. An application to register a political party must be signed by at least one thousand citizens of Ukraine, who have the right to vote.

An application should be submitted together with the statute (regulations) of a civic association, minutes of the constituent congress (conference), information on the leadership of the central statutory bodies, information on local units, and documents certifying the payment of the registration fee, with exception for cases when a civic association is not obliged to pay a registration fee. A political party also presents its program.

An application for registration of a local non-government organization shall be considered within 3 days from the day of the receipt of the documents. The applicant shall be informed in writing about the decision to register or refusal to register within one working day after the decision.

An application for registration of an all-Ukrainian [national] or international non-governmental organization shall be considered within one month. The applicant shall be informed in writing of the decision on registration within 10 days.

The representatives of a civic association may be present when the application for registration is considered.

Changes to the statutory documents of a registered civic association shall be subject to mandatory registration.

The bodies responsible for registration of civic associations shall administer the registers of these associations.

An amount of the registration fee is determined by the Cabinet of Ministers of Ukraine.

**Article 16.** Denial of registration

A civic association may be denied of registration if its name, statutory or other documents, submitted for the registration, contradict the legal requirements.

The decision to deny an association of registration must contain the grounds for the denial. This decision can be objected to court .

The registering authority informs about the denial of registration of civic associations in mass media.

**Article 17.** Notification of Foundation

Civic organizations, their unions can legalize their existence by a written notification correspondingly to the Ministry of Justice, local executive bodies, executive committees of village, settlement, City Councils of People's Deputies.

**Article 18.** Symbols of civic associations

Civic associations can have their own symbols.

Such civic associations' symbols are approved according to their statutes .

Symbols of political parties must not reproduce state or religious symbols.

Symbols of civic associations must be registered in the order, determined by the Cabinet of Ministers of Ukraine.

**Article 19.** Suspending of activities of a civic association

Activities of a civic association can be suspended by its reorganization and closing down (self-dissolution, compulsory dissolution).

A reorganization of civic association is accomplished according to its statute . Re-registration of a newly founded civic association is accomplished in the order specified in the present Law.

A civic association closing down is accomplished on the basis of its statute or of the court verdict.

## IV. RIGHTS, ECONOMIC AND OTHER COMMERCIAL ACTIVITIES OF CIVIC ASSOCIATIONS

**Article 20.** Rights of registered civic associations

To realize purposes and tasks fixed in their statute documents, registered civic associations have the right:

- to participate in civil legal relations, to acquire property and non-property rights;
- to present and defend their lawful interests and legal interests of their members (participants) in state and civil bodies;
- to take part in political activities, to conduct public mass actions (meetings, rallies, demonstrations and so on);
- to give ideological, organizational, material support to other public associations, to promote their formation;
- to found establishments and organizations;
- to obtain information, necessary to realize their purposes and tasks, from the state authorities and local self-government bodies;
- to make proposals to the state and administration authorities;
- to spread information and to popularize their ideas and purposes;
- to found mass media;
- to participate in the preparation of draft decisions on gender equality, which are adopted by the bodies of the executive power or local self-government;
- to delegate their representatives to consultative and advisory bodies responsible for ensuring equal rights and opportunities of women and men, which are established at the bodies of the executive power and local self-government;
- to monitor issues related to ensuring equal rights and opportunities of women and men.

Civic associations have the right to found enterprises, necessary to realize their tasks.

According to the procedures stipulated by laws political parties also have the right:

- to participate in making of the state policy;
- to take part in forming of the government bodies and their agencies;

– to have an access to state mass media in times of election campaigns.

Civic associations have other rights provided by the Ukrainian laws.

**Article 21.** Property of civic associations

Civic associations can have assets and other property, necessary to carry out their statute activities.

Civic associations get the right of property over the assets and other belongings, transferred to them by their founders, members (participants) or the State, acquired from entrance fees and membership dues, donations of citizens, enterprises, institutions and organizations. Civic associations also have belongings acquired at their own expense or by other means, not prohibited by law. Political parties also have the right on property, acquired from sale of public-and-political literature, other agitation and propaganda materials, goods with their symbols, from conducting of festivals, exhibitions, lectures and other political actions.

Civic organizations have the right on property and assets, acquired from economic and other commercial activities of self-financing establishments, organizations and enterprises, founded by them.

The assets and other property of civic associations, including those being liquidated, cannot be distributed among their members, and is used to fulfill statutory tasks or for charity, and in cases stipulated by law, they can be extracted as revenue of the State by court decision.

**Article 22.** Limitations of acquirement of assets and other property by the political parties, their establishments and organizations

Political parties, their establishments and organizations cannot directly or indirectly acquire assets and other property from:

– foreign countries and organizations, international organizations, foreign citizens and people without citizenship;
– government bodies, state enterprises, institutions and organizations, except for the cases specified in the Ukrainian laws;
– enterprises, founded on the basis of mixed property, if a share of the State or a foreign partner is more than 20%;
– non-legalized civic associations;
– anonymous donators.

Political parties cannot get profits from shares and other securities, they are prohibited to open accounts and keep valuables in foreign banks.

Political parties must publish their annual budgets.

**Article 23.** Realization of the property right

Property right of civic associations is realized by their higher statute bodies (general meetings, conferences, congresses etc.) in the order, determined by the Ukrainian laws and their statute documents.

Civic associations' higher statute bodies can empower their agencies, local centers or civic associations unions to perform particular property management functions.

**Article 24.** Economic and other commercial activities

To realize their tasks and purposes, the registered civic associations can carry out necessary economic and other commercial activities by making of self-financing organizations and institutions with a status of legal entity and by founding of enterprises in the order determined by laws.

Political parties, their institutions and organizations cannot found enterprises, except for mass media and to carry out economic and other commercial activities except for selling the public-and-political literature, other agitation and propaganda materials, goods with their symbols, conducting of festivals, exhibitions, lectures and other social and political actions.

Civic associations, their institutions and organizations must lead accounting and book keeping, statistical records, be registered in tax inspection state agencies and pay taxes in amounts, determined by laws.

## V. SUPERVISION AND CONTROL OVER THE ACTIVITIES OF CIVIC ASSOCIATIONS. RESPONSIBILITY FOR BREAKING OF LAWS

**Article 25.** State supervision and control over civic associations activities

State control over civic associations' activities is exercised by the state bodies in the order, determined by the Ukrainian laws.

State bodies, that register civic associations, exercise control over their observance of statute regulations. The representatives of these bodies have the right to be present at the actions conducted by public associations, to require necessary documents, to get explanations.

The supervision over the observance of laws by civic associations is exercised by the Public Prosecutor's offices.

Sources and volume of financing, tax payments of civic associations are under control of the corresponding financial organs and tax inspection.

**Article 26.** Procedure of financial control

A civic association presents an income and expenses declaration to financial organs according to prescribed procedures.

On the basis of financial declarations the newspaper "Voice of Ukraine" publishes annual lists of persons, whose donations for political parties exceed the limits set by the Ukrainian Supreme Soviet.

Special Committee of the Ukrainian Supreme Soviet comprised of deputies - representatives of all political parties, presented in the Parliament, examine their financial activities during a year and inform about the results at the Supreme Soviet Plenary Meeting.

If a political party violates financial rules, it shall be brought to account in accordance with the laws. Illegal incomes shall be seized upon decision of a court of law in accordance with procedure established by law, and shall be transferred to the state budget of Ukraine.

**Article 27.** Responsibility for violation of laws

Officials of the legalizing bodies for the civic associations, and citizens bear the disciplinary, civil, administrative and criminal responsibility for violation of the laws on civic associations.

Civic associations bear the responsibility specified in the present Law and other Ukrainian laws.

Leadership in the civil association, which is not legalized in legally prescribed way, denied of legalization, or dissolved by court decision, but continues its activities, and equally the participation in activities of such associations, lead to administrative or criminal responsibility.

**Article 28.** Penalties

A civic association if violated the laws can be inflicted on such punishments:
– warning;
– fine;
– temporary prohibition (suspending) of some kinds of activities;
– temporary prohibition (suspending) of activities;
– compulsory dissolution (closing down).

**Article 29.** Warning

If a civic association has broken the law, the corresponding registration body should give a warning in a written form, if the present Law doesn't provide some other penalty.

**Article 30.** Fine

If a civic association has broken the law in a gross or systematic form, a registration body or a Public Prosecutor can fine a civic association in court.

**Article 31.** Temporary prohibition (suspending) of some kinds of activities or the whole activities of a civic association

On the appeal of a registration body or a Public Prosecutor the court can temporarily prohibit some kinds of activities or the whole activities of a civic association for a period of 3 months in order to stop the illegal activities of a civic association.

Temporary prohibition of some kinds of a civic association activities can be exercised by prohibition of mass actions (meetings, rallies, demonstrations and so on), of publishing, conducting banking and financial operations etc.

A body that applied to the court to stop a civic association activity can ask to prolong the term. But the general period of temporary prohibition should not exceed 6 months.

The court can renew civic association's activities in full scope if a public association has eliminated the reasons of the temporary prohibition and if a public association has applied for the renewal.

**Article 32.** Compulsory dissolution (closing down)

On appeal of a registration body or a Public Prosecutor the court dissolve (close down) a public association in the following cases:

1. Commitment of actions, specified in the Article 4 of the present Law.
2. Systematic or gross violation of the Article 22 of the present Law.
3. Conducting illegal activities after infliction of penalties provided by the present Law.
4. Reduction of political organization members' number up to a number when such an organization can not exist.

A court simultaneously decides on the closing if a printed media organ of an association that is compulsory dissolved.

A body entitled to register civic associations shall inform the media of the dissolution of a civic association within 5 days after a court decision has come into force.

A decision on the dissolution of an all-Ukrainian and international non-government organizations carrying out activities in the territory of Ukraine, shall be adopted [only] by court.

## VI. INTERNATIONAL RELATIONS OF CIVIC ASSOCIATIONS. INTERNATIONAL CIVIC ASSOCIATIONS

**Article 33.** International relations of civic associations

Civic associations, their unions according to their statutes can set up or join international civic (non--government) organizations, make international unions of civic associations, maintain direct international contacts and relations, make corresponding agreements and take part in conducting of actions which do not contradict international obligations of Ukraine.

Political parties have the right to set up or to join international unions, whose statutes provide for formation of only consultative and coordinative central bodies.

**Article 34.** International civic associations

Affiliations of foreign civic organizations. International civic associations, branches, departments, representations, other structural centers of civic (non-government) organizations of foreign countries on the territory of Ukraine conduct their activities according to the present Law and the other Ukrainian laws.

A registered civic association that is the founder or member of any international organization or has in any other way extended its activities to the territory of a foreign state, shall within one month submit required documents to the Ministry of Justice of Ukraine for its registration as an international organization unless otherwise provided by the laws of Ukraine.

The Cabinet of Ministers of Ukraine establishes a registration procedure for branches and other structural centers of foreign public organizations.

President of Ukraine L. KRAVCHUK
Kyiv
16.06.1992
N2460-XII

## ANNEX 4. LIST OF THE OPINIONS OF THE VENICE COMMISSION AND OSCE/ODIHR ON THE LAWS OF UKRAINE PERTAINING TO POLITICAL PARTIES AND ELECTIONS

1. Ukraine. Presidential Election 17 January and 7 February 2010. OSCE/ODIHR Election Observation Mission Final Report. – Warsaw, 28 April 2010; http://www.osce.org/documents/odihr/2010/04/43675_en.pdf

2. Joint Opinion on the Law on Amending Some Legislative Acts on the Election of the President of Ukraine adopted by the Verkhovna Rada of Ukraine on 24 July 2009 by the Venice Commission and the OSCE/ODIHR, adopted by the Council for Democratic Elections at its 30th meeting (Venice, 8 October 2009) and by the Venice Commission at its 80th Plenary Session (Venice, 9–10 October 2009) on the basis of comments by Ms. Angelika Nussberger (Substitute Member, Venice Commission, Germany), Mr. Jessie Pilgrim (Electoral expert, OSCE/ODIHR); http://www.venice.coe.int/docs/2009/CDL-AD(2009)040-e.asp

3. Ukraine. Pre-Term Parliamentary Elections 30 September 2007. OSCE/ODIHR Election Observation Mission Report. – Warsaw, 20 December 2007; http://www.osce.org/documents/odihr/2007/12/29054_en.pdf

4. Opinion on Legislative Provisions Concerning Early Elections in Ukraine, adopted by the Venice Commission at its 71st Plenary Session (Venice, 1-2 June 2007) on the basis of comments by Mr. Angel Sanchez Navarro (Substitute Member, Spain); http://www.venice.coe.int/docs/2007/CDL-AD(2007)021-e.asp

5. Ukraine. Parliamentary Elections 26 March 2006. OSCE/ODIHR Election Observation Mission Report. – Warsaw, 23 June 2006; http://www.osce.org/documents/odihr/2006/06/19631_en.pdf

6. Opinion on the Law on Elections of People's Deputies of Ukraine by the Venice Commission and OSCE/ODIHR, adopted by the Council for Democratic Elections at its 15th meeting (Venice, 15 December 2005) and the Venice Commission at its 65th plenary session (Venice, 16-17 December 2005) on the basis of comments by Messrs Jessie Pilgrim and Josef Middleton (Experts, ODIHR), Mr. Angel Sanchez Navarro (Substitute Member, Spain), Mr. Taavi Annus (Former Member, Estonia); http://www.venice.coe.int/docs/2006/CDL-AD(2006)002-e.asp

7. Opinion on the Amendments to the Constitution of Ukraine adopted on 8.12.2004, adopted by the Venice Commission at its 63rd Plenary Session (Venice, 10-11 June 2005) on the basis of comments by Mr. Kaarlo Tuori (Member, Finland), Mr. Sergio Bartole (Substitute Member, Italy), Ms. Finola Flanagan (Member, Ireland); http://www.venice.coe.int/docs/2005/CDL-AD(2005)015-e.asp

8. Ukraine. Presidential Election 31 October, 21 November and 26 December 2004. OSCE/ODIHR Election Observation Mission Final Report. – Warsaw, 11 May 2005; http://www.osce.org/documents/odihr/2005/05/14224_en.pdf

9. 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 (Romania); http://www.venice.coe.int/docs/2002/CDL-AD(2002)017-e.asp

The reform of political parties legislation and regulation can act as a platform from which to consider a wide array of crucial issues in the development of a stable and lasting democratic party system. These include, *inter alia*, political party financing, internal party democracy, the participation of women, registration and monitoring of political parties.

In partnership with the OSCE's Office for Democratic Institutions and Human Rights (ODIHR) and with the financial support of the European Union, Denys Kovryzhenko and his colleagues at the Agency for Legislative Initiatives (ALI), led an in-depth consultative process with key stakeholders in Ukraine on the issue of political party legislation reform, raising problems and proposing possible solutions.

The result is *Regulation of Political Parties in Ukraine: the Current State and Direction of Reforms*, a comprehensive report which thoroughly analyses the particular problems and issues in Ukraine's legislative and regulatory framework for political parties. Looking forward, and based on the results ofthe consultations, the report proposes an agenda for reform based on international and European standards and best practice.

**The Agency for Legislative Initiatives (ALI)** is one of the leading Ukrainian think tanks. ALI has a 10-year experience in implementing projects aiming at the introduction of policy dialogue practices into the law-making process, ensuring public participation in the legislative process, monitoring ofthe activities of the parliament, studying the principles and problems of Ukrainian parliamentarism, and conducting comparative studies on a variety of subjects, such as election legislation, political parties, and the fight against corruption. The Agency has also been successfully conducting leadership development programmes and education projects in Ukraine and neighbouring countries.

For more information, please visit **http://www.parliament.org.ua**

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