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The legal status of political parties in Ukraine: peculiarities and improvement

Abstract:

In the article on the basis of national legislation, international legal acts, legal positions of the Venice Commission and doctrinal sources the legal status of political parties in Ukraine was analyzed. The author investigates the legal aspects of the formation and registration of political parties, the problems of their organizational structure. Particular attention is devoted to one of the main principles of the activities of political parties in Ukraine - the principle of transparency and the problems of its implementation. The article highlights the peculiarities of membership in political parties. According to the results of the research, the author formulates suggestions for improving the legal regulation of political parties in Ukraine.

Key words: political party, legal status, democracy, civil society.

Status prawny partii politycznych na Ukrainie: cechy szczególne oraz propozycje zmian

Streszczenie:

Artykuł analizuje status prawny partii politycznych na Ukrainie na podstawie ustawodawstwa krajowego, międzynarodowych aktów prawnych, stanowisk prawnych Komisji Weneckiej i źródeł doktrynalnych. Autor bada prawne aspekty tworzenia i rejestracji partii politycznych, problemy ich struktury organizacyjnej. Szczególną uwagę przywiązuje się do jednej z głównych zasad działania partii politycznych na Ukrainie - zasady przejrzystości i problemów związanych z jej realizacją. Artykuł podkreśla szczególne cechy członkostwa w partiach politycznych. Zgodnie z wynikami badań autor formułuje propozycje poprawy regulacji prawnych partii politycznych na Ukrainie.

Słowa kluczowe: partia polityczna, status prawny, demokracja, społeczeństwo obywatelskie.

I. Introduction

The development of the political system in Ukraine raises the interest of the international community in connection with the introduction of the strategy of European integration and the implementation of a legal reform to achieve it. Elections of The President of Ukraine, and then the

upcoming parliamentary elections, are another reasons to carry out a scientific analysis of the legal status of political parties in Ukraine.

The formation of a civil society and the development of the political system is one of the aims of the constitutional reform that takes place in Ukraine. This is evidenced by the recent changes to the Ukrainian constitution in 2016, which mainly concerned the justice, but at the same time were aimed at eliminating political influence on the judiciary.

In 2019, next elections of the President of Ukraine will take place. And citizens of Ukraine have already experienced the oncoming of the electoral process. The pro-governing political parties make decisions in view of the upcoming elections and the desire to maintain power. It is during this period that the imperfection of the political system of the state, in particular, its legal regulation, is particularly clear. That is why the purpose of this article is to analyze the constitutional status of political parties in Ukraine, to identify problems of their legal status and ways of their solution.

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 views¹.

II. The definition of a political party

The Constitution of Ukraine does not contain legal definition of political party but defines the tasks of political parties: assisting in the formation and expression of the political will of citizens and to participate in elections².

The legal definition of a political party can be found in the article 2 of the Law on Political Parties³: 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. 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.

According to the Article 3 of the Law on Political Parties, political parties in Ukraine can be established and provide their activities *only on national level*. There is no possibility of registration of regional political parties. This provisions of the Law on Political Parties were criticized by the

¹ D. Kovryzhenko. Regulation of political parties of Ukraine: the current stay and direction for reform, Kyiv 2010, S.5.

² Constitution of Ukraine, 28 June 1996. Retrieved from <http://zakon5.rada.gov.ua/laws/show/254%D0%BA/96-%D0%B2%D1%80> [online, the date of access: 06.08.2018].

³ Law on Political parties 5 April 2001. Retrieved from <http://zakon3.rada.gov.ua/laws/show/2365-14> [online, the date of access: 06.08.2018].

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).”⁴

It is important to notice that there is provision of the Code of Good Practice in the Field of Political Parties according to which state bodies should not limit the right to establish political parties only at the national level, but also on regional and local levels⁵. To our opinion, in conditions of Russian aggression in Ukraine creating an opportunity for activity of regional political parties may lead to negative consequences to territorial integrity of Ukraine. It also must be said that many political parties mostly operate in certain regions where they have support of their political program by electorate. Those parties usually do not have mandates in parliament but have they representatives in bodies of self-government.

III. The registration of political parties

All political parties and their local organizations must be *registered* by the Ministry of Justice. The Register of political parties include the large number of political parties - 352 political parties in 2018. Information on names, dates of registration, numbers of certificates of registration, addresses of political parties, and names and surnames of parties' leaders can be found in the Register.

To be registered the constituent assembly of a political party should adopt the following decisions:

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

⁴ Opinion on the Ukrainian Legislation on Political Parties, adopted by the Venice Commission at its 51st Plenary Session (Venice, 5-6 July 2002). Retrieved from [http://www.venice.coe.int/webforms/documents/default.aspx?pdffile=CDL-AD\(2016\)018-e](http://www.venice.coe.int/webforms/documents/default.aspx?pdffile=CDL-AD(2016)018-e) [online, the date of access: 06.08.2018].

⁵ 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). Retrieved from <http://www.venice.coe.int/webforms/documents/default.aspx?pdffile=CDL-AD%282009%29002-e> [online, the date of access: 06.08.2018].

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 Crimea⁶.

A party should submit to the Ministry of Justice the package of documents, which must comply with the legal requirements. Otherwise, the Ministry of Justice may refuse to register the political party.

The Venice Commission highlighted that the requirements for establishing a political party are very complex. The difficulties in the establishment process could be an impediment to any challenge to the existing party system arising out of new political ideas⁷.

However, the trend towards an increase in the number of registered political parties seems to argue against such an interpretation. Nevertheless, 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 introduced⁸.

Convention for the Protection of Human Rights and Fundamental Freedoms 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 protection of health or morals, or for the protection of the rights and freedoms of others⁹.

In the decision of the European Court of Human Rights in the case of *Koretsky and others v. Ukraine*¹⁰ the Court 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; 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; the restrictions applied must be based

⁶ *Law on Political parties* 5 April 2001. Retrieved from <http://zakon3.rada.gov.ua/laws/show/2365-14> [online, the date of access: 06.08.2018].

⁷ Opinion on the Ukrainian Legislation on Political Parties, adopted by the Venice Commission at its 51st Plenary Session (Venice, 5-6 July 2002). Retrieved from [http://www.venice.coe.int/webforms/documents/default.aspx?pdffile=CDL-AD\(2016\)018-e](http://www.venice.coe.int/webforms/documents/default.aspx?pdffile=CDL-AD(2016)018-e) [online, the date of access: 06.08.2018].

⁸ D. Kovryzhenko. Regulation of political parties of Ukraine: the current stay and direction for reform, Kyiv 2010, S.24.

⁹ *Convention for the Protection of Human Rights and Fundamental Freedoms*. as amended by Protocols No.11 and No. 14. Retrieved from <https://www.coe.int/en/web/conventions/full-list/-/conventions/rms/0900001680063765> [online, the date of access: 06.08.2018].

¹⁰ Judgement of the European Court on Human rights in the case of *Koretsky and others v. Ukraine* No 40269/02, § 47, 3 April 2008. Retrieved from [https://hudoc.echr.coe.int/eng#{%22fulltext%22:\[%22Koretsky%22\],%22itemid%22:\[%22001-85679%22\]}](https://hudoc.echr.coe.int/eng#{%22fulltext%22:[%22Koretsky%22],%22itemid%22:[%22001-85679%22]}) [online, the date of access: 06.08.2018].

on a “pressing social need” and only convincing and compelling reasons can justify restrictions on freedom of association.

The Law on Political Parties in Ukraine gives to the Ministry of Justice of Ukraine many possibilities to refuse to register a political party. 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. 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 law¹¹.

The statutory bodies of the political party, the procedures for their establishment, their powers; 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 other units of a political party; and the procedures for conventions, party assemblies, conferences, meetings, and other representative bodies of a political party must be prescribed in the political charter of the political party. Otherwise, the Ministry of Justice will refuse to register a party.

IV. The membership in a political party

Only a citizen of Ukraine entitled to vote in national elections can be a member of a political party. The legislation of Ukraine provides for the principle of political neutrality of the public service, which cannot be fully implemented due to public servants’ engagement in political activities.

Foreign citizens and stateless persons are forbidden from being members of political parties. Experts from the Venice Commission have drawn attention to the fact that 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. The Venice Commission recommended that foreign citizens and stateless persons be allowed to participate to some extent in

¹¹ Law on Political parties 5 April 2001. Retrieved from <http://zakon3.rada.gov.ua/laws/show/2365-14> [online, the date of access: 06.08.2018].

the political life of Ukraine, and at the very least through the possibility of membership in political parties.¹²

In a number of European states, foreign citizens can even vote in local elections and be elected to local public office.¹³

Taking into consideration the fact that national legislation does not provide for the establishment of local and regional parties, we do not support the idea of granting the right to membership in political parties to foreign citizens and stateless persons.

Generally, the Law on Political Parties states following requirements for party *membership* criteria:

- citizenship (only citizens of Ukraine);
- age (only people over 18 years old can be members of political parties);
- capacity (incapacitated persons are forbidden from being members of political parties);
- profession (people employed by certain public authorities, for example judges, officials of the public prosecutor's office; officials of bodies of the Interior; employees of the Security Service of Ukraine; military personnel etc., cannot be members of political parties);
- 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).

Membership in a party is individual and direct only. 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. The restriction of party membership to only fixed membership does not allow parties to introduce different classes and levels of membership. To opinion of expert D. Kovryzhenko, 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. 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 members¹⁴.

¹² Opinion on the Ukrainian Legislation on Political Parties, adopted by the Venice Commission at its 51st Plenary Session (Venice, 5-6 July 2002). Retrieved from [http://www.venice.coe.int/webforms/documents/default.aspx?pdffile=CDL-AD\(2016\)018-e](http://www.venice.coe.int/webforms/documents/default.aspx?pdffile=CDL-AD(2016)018-e) [online, the date of access: 06.08.2018].

¹³ D. Kovryzhenko. *Regulation of political parties of Ukraine: the current stay and direction for reform*, Kyiv 2010, s. 42.

¹⁴ D. Kovryzhenko. *Regulation of political parties of Ukraine: the current stay and direction for reform*, Kyiv 2010, s. 44.

V. Organizational structure of political parties

Another important element of political parties' legal status is their organizational structure, which 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 and bodies of internal control. Charters of political parties may also provide for the establishment in their organizational structures any other bodies or units¹⁵.

One of the main principles of political parties' activities is *transparency*. 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.

But the activities of majority of political parties in Ukraine are less transparent since not all registered 352 political parties have their own websites; on parties' websites, only general information on their activities can be found; decisions of the congresses and other important internal rules, information on income, expenditures, and property of the party and its local organizations, as a general rule, are not available on party websites.

VI. The responsibility of political parties

Violation of the law by political party can lead to the following types of sanctions:

- announcement of a warning by the Ministry of Justice of Ukraine;
- prohibition of the political party;
- cancellation of the registration of a political party;
- 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).

It is important to mention that national 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.

In the report on the political parties development in Ukraine such problems of political systems were shown: domination by Financial Industrial Groups, excessive personalization of parties,

¹⁵ Law on Political parties 5 April 2001. Retrieved from <http://zakon3.rada.gov.ua/laws/show/2365-14> [online, the date of access: 06.08.2018].

weakness of grassroots organizations, limited ideological or programmatic coherence and regionalized basis of electoral support¹⁶.

Some of those problems were analyzed by Ukrainian and foreign experts. O. Rybiy focuses on the poor incentives for party institutionalisation due to the design and instability of the institutional rules of the game and electoral volatility¹⁷. M. Bader pays attention to institutional factors such as the lack of incentives for party building in presidential political systems and extensive use of state administrative resources by regime-supported parties, the dominance of party leaders at the expense of internal party democracy¹⁸. S. Matuszak describes the influence of various Financial Industrial Groups on parties' formation, operation, decision-making, legislative activity and voting records in parliament increased during 2004-2014¹⁹.

VII. Conclusions

Thus, the legal status of political parties in Ukraine need to be improved. Firstly, the procedure of political party formation and registration is very complex. Secondly, there are problems with organizational structure and internal democracy within political parties. Thirdly, there is weak representation of each gender in political parties' governing bodies. Also experts pay attention to the problem of transparency of political parties activity. It can be said that many political parties do not provide required activity, this problem can be solved by the establishment of independent external control over political parties.

Bibliography

1. D. Kovryzhenko. *Regulation of political parties of Ukraine: the current stay and direction for reform*, Kyiv 2010, S.162.

¹⁶ S. Whitmore. *Political party development in Ukraine*. GSDRC Helpdesk Research Report 1146. Birmingham, UK, 2014. University of Birmingham.

¹⁷ Rybiy, O. (2013). *Party system institutionalisation in Ukraine*. *Demokratizatsiya*, 21, 3 (Fall), 401-23.

¹⁸ Bader M. *Party Politics in Georgia and Ukraine and the failure of Western Assistance*. *Democratization*, 2010, 17(6). Retrieved from <https://www.tandfonline.com/doi/full/10.1080/13510347.2010.525857> [online, the date of access: 06.08.2018].

¹⁹ Matuszak, S. (2012). *The Oligarchic Democracy: The Influence of Business Groups on Ukrainian Politics*. *OSW Studies*, 42, September 2012. http://www.osw.waw.pl/sites/default/files/prace_42_en.pdf

2. *Opinion on the Ukrainian Legislation on Political Parties*, adopted by the Venice Commission at its 51st Plenary Session (Venice, 5-6 July 2002). Retrieved from [http://www.venice.coe.int/webforms/documents/default.aspx?pdffile=CDL-AD\(2016\)018-e](http://www.venice.coe.int/webforms/documents/default.aspx?pdffile=CDL-AD(2016)018-e) [online, the date of access: 06.08.2018].
3. *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). Retrieved from <http://www.venice.coe.int/webforms/documents/default.aspx?pdffile=CDL-AD%282009%29002-e> [online, the date of access: 06.08.2018].
4. *Convention for the Protection of Human Rights and Fundamental Freedoms*. as amended by Protocols No.11 and No. 14. Retrieved from <https://www.coe.int/en/web/conventions/full-list/-/conventions/rms/0900001680063765> [online, the date of access: 06.08.2018].
5. *Judgement of the European Court on Human rights in the case of Koretsky and others v. Ukraine* No 40269/02, § 47, 3 April 2008. Retrieved from <https://hudoc.echr.coe.int/eng#%7B%22fulltext%22:%5B%22Koretsky%22%5D,%22itemid%22:%5B%22001-85679%22%5D%7D> [online, the date of access: 06.08.2018].
6. S. Whitmore. *Political party development in Ukraine*. GSDRC Helpdesk Research Report 1146. Birmingham, UK, 2014, S. 13.
8. Rybiy O. *Party system institutionalisation in Ukraine*. *Demokratizatsiya*, 2013, 3 (Fall), S.23.
9. Bader M. *Party Politics in Georgia and Ukraine and the failure of Western Assistance*. *Democratization*, 2010, 17(6). Retrieved from <https://www.tandfonline.com/doi/full/10.1080/13510347.2010.525857> [online, the date of access: 06.08.2018].
10. Matuszak S. *The Oligarchic Democracy: The Influence of Business Groups on Ukrainian Politics*. *OSW Studies*, 42, September 2012. Retrieved from http://www.osw.waw.pl/sites/default/files/prace_42_en.pdf [online, the date of access: 06.08.2018].
11. *Opinion on the Amendments to the Constitution of Ukraine* adopted on 8.12.2004, by the Venice Commission at its 63rd Plenary Session (Venice, 10-11 June 2005). Retrieved from [http://www.venice.coe.int/webforms/documents/default.aspx?pdffile=CDL-AD\(2005\)015-e](http://www.venice.coe.int/webforms/documents/default.aspx?pdffile=CDL-AD(2005)015-e) [online, the date of access: 06.08.2018].
12. *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). Retrieved from

[http://www.venice.coe.int/webforms/documents/default.aspx?pdffile=CDL-AD\(2006\)002rev-e](http://www.venice.coe.int/webforms/documents/default.aspx?pdffile=CDL-AD(2006)002rev-e)

[online, the date of access: 06.08.2018].

13. *Political Parties in Interaction with Public Institutions (in Ukrainian)*. Retrieved from

<http://www.analitik.org.ua/publications/joint/3dd12dea/3dd13f15/> [online, the date of access:

06.08.2018].

14. *Constitution of Ukraine*, 28 June 1996. Retrieved from

<http://zakon5.rada.gov.ua/laws/show/254%D0%BA/96-%D0%B2%D1%80> [online, the date of

access: 06.08.2018].

15. *Law on Political parties* 5 April 2001. Retrieved from

<http://zakon3.rada.gov.ua/laws/show/2365-14> [online, the date of access: 06.08.2018].

16. *The Law on civil Associations*, 22 March 2012. Retrieved from

<http://zakon2.rada.gov.ua/laws/show/4572-17> [online, the date of access: 06.08.2018].