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UKRAINE.
COUNTRY REPORT ON LEGISLATION AND
REGULATIONS PERTAINING TO
POLITICAL PARTIES

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Ukraine.

Country Report on Legislation and Regulations Pertaining to Political Parties

The multi-party system in Ukraine started to form in 1990 when the parliament repealed Article 6 of the Constitution of the USSR which proclaimed the Communist Party a “core” of political system and “leading and guiding force of the Soviet society”. Thus, parliamentary elections of 1990 were held on a competitive basis, since not only the representatives of the Communist Party participated in them, but also independent candidates. In 1990 the first party (the Ukrainian Republican Party) was officially recognised. During the next years political parties started to spring up like mushrooms: 7 parties were registered in 1991, 6 in 1992, 16 - in 1993. Before the start of parliamentary election campaign of 1994 30 parties had already been registered, and representatives of 14 of them were elected to the parliament. In subsequent years the number of political parties continued to increase, and as of April 2003 there were 123 registered political parties. In 2003 the Ministry of Justice of Ukraine carried out extensive inspection of all parties and, as a result, their quantity decreased to 98. As of May 19, 2010 there were 180 registered political parties in Ukraine¹.

The following factors had a key impact on development of 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 Supreme Council of independent Ukraine were held, among 4079 parliamentary candidates 2813 did not belong to any political party; and from 404 MPs elected (as of June 1996) 203 were independent and did not belong to any political party. According to the survey carried out in June 1995, only 31.2% of the respondents believed in necessity of building multi-party system in Ukraine, and the share of those who were ready to give power to political parties and movements was only 8%². The surveys conducted by the Razumkov’s Center from October 2001 till October 2009 revealed that the level of full confidence in political parties has never exceeded 5%, and the level of complete distrust has ranged from 48.9% to 20.6%³;

2) lack of effective mechanisms to influence the executive (up to 2005 when amendments to the Constitution entered into force). Constitution of 1996 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 be easily blocked by the head of the state with the help of veto, which had to be overridden by two-thirds majority of all MPs. The president could appoint the Prime Minister only with consent of the parliament, however, the parliament could not propose his own candidature of the Prime Minister, he could only agree or disagree to approve president's nominee. All members of the government had to be appointed by the President and the head of state had right to dismiss them whenever he wanted without parliamentary consent;

3) peculiarities of electoral systems which were applied during 1994, 1998 and 2002 parliamentary elections. These systems led to political defragmentation of the parliament by independent MPs, who declared themselves responsible only to their voters in respective constituencies⁴, representatives of small and pro-government parties. As a result, during 1990s stable majority within the parliament was absent (with few exception to this), MPs frequently changed their factions, the government could not rely on parliamentary support. In addition,

¹ Source: the website of the Ministry of Justice of Ukraine; <http://www.minjust.gov.ua/0/499>

² 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/>

³ 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

⁴ This understanding of the nature of deputy’s mandate is widespread among politicians and experts even now. This understanding comes from Soviet practice, as the legislation of the USSR fixed the imperative mandate.

majority system changed voters' electoral behaviour significantly, since they started to orient not on political programs but rather on individual virtues of the candidates;

4) weak financial potential of the most parties. Since parties did not enjoy significant voters' support, they could not expect substantial incomes from membership fees. At the same time the state did not provide direct financial support to the parties. Thus, the parties had no other choice but to receive funding from private sources, mainly from tycoons and big enterprises (the caps of donations from legal entities and individuals to political parties has never been introduced). This, in turn, increased risks of corruption in politics, weakened the links between parties and voters, entailed election of the representatives big business to the parliament.

Further development of party system in Ukraine was affected by three main factors: 1) amendments to the Constitution of Ukraine of 8.12.2004, which gave the parliament more powers to influence the government; 2) introduction of mandate administered by political party (which reduced the number of transitions from one faction to another, stabilised the factional structure of the parliament); 3) transition to proportional system for parliamentary and majority of local elections (which reduced political defragmentation of the parliament, led to increase of influence of party leaders within the parties, accelerated formation of local party organisations). However, amendments to the Constitution and electoral laws resolved some of the previous problems but at the same time gave rise to new ones. Problems of financial weakness of the parties, their dependence on leadership and oligarchs, weak confidence of voters in political parties were not tackled.

1. Definition of “political party”

a. Legal definition

i. Definition of “political party” (constitutional; statutory; common law/traditional); consistency of definition; legal meaning of the definition in the court of law

Statutory definition of political party was introduced in 1992 by the Law on Civic Associations (the Law was adopted June 16, 1992). The Constitution of Ukraine of 1996 contains no definition of political party and determines only the tasks of political parties – to promote the formation and expression of the political will of citizens and to participate in elections (Article 36). Statutory definition of political parties, introduced by the Law on Civic Associations of 1992, in 2001 was specified by the Law on Political Parties in Ukraine. According to Article 2 of this Law, political party is a legally *registered* voluntary association of citizens adhering to a certain national social development program, *aimed at assisting in the formation and expression of citizens' political will, participating in elections and other political events*. This definition is consistent – the Law on Civic Associations can be applied to political parties only in the part where the Law on Political Parties in Ukraine cannot be applied. The definition of political party bear legal meaning in the court of law in the sense that only legal entities legally registered as political parties may be considered as “political parties”.

ii) Differences in regulation of political parties and other associations

The Law on Civic Associations divides all civic associations into two groups: political parties and NGOs. The main differences in regulation are as following:

- Activities of political parties are governed by a separate law; the provision of the Law on Civic Associations could be applied to political parties only in the part that does not contradict the Law on Political Parties in Ukraine;
- The goals to be achieved by political parties and NGOs differ: a goal of political party is to assist in the formation and expression of political will of a citizen, as well as

participation in elections; a goal of NGO is to protect common interests of its members; also, according to the laws on elections, NGOs have no right to nominate candidates for elections; NGOs are not legally obliged to have their own program of goals and activities while parties must have programs;

- A party must be recognized at national level only, while NGO can be recognised at both national and local levels (the law also provides for registration of international NGOs in Ukraine);
- A political party can be founded only by the citizens of Ukraine, while NGO can be founded also by foreign citizens and by persons without citizenship;
- Certain categories of the citizens are not allowed to be members of political parties, restrictions on membership provided for NGOs are more ‘liberal’;
- Parties cannot be established by notification of foundation;
- Parties can be registered only by the Ministry of Justice of Ukraine, while certain types of NGOs (NGOs with local status) can be registered by local offices of the Ministry of Justice
- Economical activities of political parties and NGOs are regulated in a different way: 1) parties are not allowed to establish enterprises; 2) NGOs are not allowed to sell goods and services, while political parties can sell certain kinds of goods and services; 3) there is a broad list of restrictions on sources of financing of political parties;
- Sanctions which can be imposed on political parties and on NGOs are different; sanctions for political parties are warning, cancellation of registration and prohibition (ban on political party); sanctions for NGOs are warning, fines, suspension of certain types of activities, suspension of all activities, and dissolution.

More details of regulation of political parties and NGOs are presented in the Table below.

Table 1. The differences in regulation of political parties and NGOs

| | NGOs | Political parties |
|--|---|---|
| Tasks | To satisfy and to protect citizens' legitimate social, economic, creative, age, national, cultural, sports and other common interests | To assist in the formation and expression of citizens' <i>political will, to participate in elections and other political events</i> |
| Status | International, national and local | <i>National</i> |
| 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 <i>citizens of Ukraine with full legal capacity</i> |
| Membership | 1) Any person of at least 14 years of age can be member of NGO 2) No membership restrictions 3) Parties may not have fixed membership | 1) Only <i>Ukrainian citizens of 18 years of age</i> can be members of political parties 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 <i>can not be members of political parties</i> 3) Fixed membership is obligatory |
| Legalisation (official recognition) | Voluntary (obligatory for international NGOs only) | Obligatory – unregistered political parties are not allowed to operate. |
| Legalisation by notification of foundation | Allowed for local and national NGOs | Prohibited |
| State authority responsible for legalisation | 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. Within six months from the date of registration political party must secure the establishment and registration of its local |

| | | |
|--|---|--|
| | | organisations in the majority of regions (“oblasts”) of Ukraine |
| Programme | NGO is not obliged to have a programme | Party must have a programme. The programme of 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 the period of election campaign | No | Yes |
| Right to sell goods and services | No (with some exceptions) | Yes, for certain types of goods and services. For example, political parties can sell public-and-political literature, other agitation and propaganda materials, goods with their symbols, conduct festivals, exhibitions, lectures and other political actions and to 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 the election coalitions | There is no explicit prohibition | Yes |
| Sanctions | Warning, fine, suspension of certain types of activities, suspension of all activities, dissolution (termination) | Warning, cancellation of registration, prohibition (ban on political party) |

iii) Special rules for politically active organizations/associations other than parties

National legislation contains no provisions pertaining on politically active organizations other than parties. Political associations can be registered as NGOs, however in this case they will not have the rights of political parties (e.g. to nominate candidates for elections etc.)

iv) 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 laws of Ukraine. Hence, political parties are regulated only at the national level.

v) Possibility of recognition of regional (subnational) parties

According to the Article 3 of the Law on Political Parties in Ukraine, parties can be formed and can be active only when having national status. Thus, the law does not provide for possibility of registration and operation of regional (subnational) parties. Provisions of the Law on Political Parties in Ukraine which provide for the registration of only the parties with national status were criticized by the Venice Commission which stated that such a requirement “constitutes a legal impediment to forming parties which concentrate on matters concerning regional issues (for

example, the Autonomous Republic of the Crimea)”.⁵ Furthermore, in the 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 not only on a national level, but also on *regional and local level*⁶. In connection with the above it should be mentioned that in the majority of countries (e.g., Austria, Greece, Finland, France, Italy, Japan, Luxembourg, Malta, Spain and other countries) the *law does not distinguish between political parties on different levels of government, no matter whether the governmental system of the country is unitary, federal or other*. Of course, 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 on the provincial level. In *Germany* politically active associations on the local level do not fall within the concept of political party in the sense of the Basic Law and legislation on political parties⁷.

b. Official recognition or registration

i) Official party register

There are official registers of political parties and their local organisations. The Ministry of Justice keeps the register of political parties, and its local bodies keep the registers of party local organisations (there are separate registers for every region, city, district). The formats of the both registers were approved by the Order of the Ministry of Justice № 556/7 of July, 3 2001.

According to this Order, for every party the following information should be indicated in the register of political parties: 1) date of application for registration; 2) the name of political party; 3) the legal address of political party; 4) date of approval of the statute (charter) and the program of political party; 5) date of registration of political party and registration number; 6) main tasks of the political party; 7) information on the governing bodies of the political party; 8) information on changes in documents of political party; 9) information on payment of registration fee.

For every local party organisation the following information must be included in the relevant register of local organisations: 1) date of application for registration of local organisation; 2) name, registration number and the date of registration of political party; 3) name of the organisation of political party, date and number of the minutes of the constituent congress which established local organisation of the party; 4) address of the local organisation; 5) date of registration of the local organisation and registration number; 6) information on governing bodies of organisation; 7) information about changes in documents of the organisation; 8) information on whether organisation is a legal entity or not.

Part of the information from the register of political parties is available on the website of the Ministry of Justice of Ukraine (<http://www.minjust.gov.ua/0/499>), in particular the information about names, dates of registration and registration numbers of the parties, their addresses, names and surnames of their heads. Other information from the register is available upon request. The registers of local organisations of the political parties are not made public; in other words, information from these registers can be provided by the relevant local bodies of the Ministry of Justice only upon request.

ii) Possibility of sub-national registration/recognition of political parties

⁵ 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). – items 9, 15; [http://www.venice.coe.int/docs/2002/CDL-AD\(2002\)017-e.asp](http://www.venice.coe.int/docs/2002/CDL-AD(2002)017-e.asp)

⁶ 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). – item 14; [http://www.venice.coe.int/docs/2009/CDL-AD\(2009\)021-e.asp](http://www.venice.coe.int/docs/2009/CDL-AD(2009)021-e.asp)

⁷ Report on the establishment, organisation 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, organisation 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](http://www.venice.coe.int/docs/2004/CDL-AD(2004)004-e.asp)

According to Article 11 of the Law on Political Parties in Ukraine, parties are registered at national level by the Ministry of Justice of Ukraine. Regional (“oblast”), republican (in Autonomous Republic of Crimea), district (“rayon”) and city organisations of political parties are registered, respectively, by regional, republican, district and city bodies of the Ministry of Justice of Ukraine (section 7, Article 11 of the Law on Political Parties in Ukraine). These organisations can be registered only after the political party has been registered by the Ministry of Justice.

iii) The requirements entity must meet to be recognized/registered as a new party

In accordance with Article 10 of the Law on Political Parties in Ukraine, in order to be registered with the Ministry of Justice new party have to convoke the constituent assembly (congress). The assembly must make the following decisions: 1) on establishment of political party; 2) on adoption of the charter of political party; 3) on adoption of programme of a party; 4) on election of the governing and supervisory bodies of a party. Further, the decision on establishment of political party must be supported with signatures of 10 000 voters, collected in at least two thirds of districts of at least two thirds of the regions (‘oblasts’) of Ukraine, the cities of Kyiv and Sevastopol, and in the Autonomous Republic of Crimea.

If the above requirements are met, a party can file with the Ministry of Justice an application for registration and other documents, envisaged by Article 11 of the Law on Political Parties in Ukraine. In particular, the following documents must be submitted to the Ministry together with application for registration: 1) the charter and programme of political party; 2) the minutes of the constituent assembly of a political party, specifying the date, place of the congress and number of votes for establishment of a political party; 3) lists with signatures of 10 000 voters supporting the establishment of a political party, certified by the persons who collected them; 4) information about the composition of the governing bodies of a party; 5) the document confirming payment of a registration fee; 6) name and address of the bank with which the party intends to open accounts. All the submitted documents must comply with the legal requirements, otherwise the Ministry of Justice can refuse to register a political party.

Provisions of Articles 10 and 11 of the Law on Political Parties in Ukraine with respect to the procedure for foundation and registration of political parties could be subject to critical evaluation.

First of all, the Venice Commission emphasized that the requirements to found a political party are very elaborate; the threshold for founding new parties appears rather high. In opinion of the experts of the Venice Commission, the difficulties of the founding process could be an impediment to any challenge to the existing party system arising out of new political ideas⁸.

Secondly, 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 such as are prescribed by law and are necessary in a democratic society in 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. This assertion is based on judgements of the European Court of Human Rights, in particular in the case of *Koretskyy and others v. Ukraine*¹⁰. In its decision the ECHR emphasized that: 1) a 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 it must comply with Article 11.2 of the ECHR; 2) 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*

⁸ 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](http://www.venice.coe.int/docs/2002/CDL-AD(2002)017-e.asp)

⁹ Конвенція про захист прав людини і основоположних свобод зі змінами, внесеними Протоколом № 11. Офіційний переклад; http://zakon.rada.gov.ua/cgi-bin/laws/main.cgi?nreg=995_004&p=1268178034135029

¹⁰ 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>

a particular association may be registered; 3) the restrictions applied have to pursue a “*pressing social need*” and only *convincing and compelling reasons can justify restrictions on freedom of association*. It should be mentioned in connection with this that Articles 10 and 11 of the Law on Political Parties in Ukraine grant 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 any grounds, for example if charter of a party contains textual discrepancies with provisions of the law. Court practice (see Annex 3 for further information) shows that the Ministry of Justice, while deciding on registration, checks not only formal compliance of the documents submitted for the registration with legal requirements, but also *authenticity of the signatures* in support of establishment of political party (this examination, moreover, can be selective with respect to different parties and different signatures), *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 foundation of a political party, though complies it 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 number of parties operating temporarily (during election campaigns only), nor number of political parties pursuing narrow corporative interests¹¹. In the case *Koretsky and others v. Ukraine* 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 association “*would have used violent or undemocratic means to achieve its aims*”. Nevertheless, the authorities in this particular case “*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*”. At the same time the Law on Political Parties in Ukraine provide possibility to refuse to register political party even in the case if it pursues purely democratic aims and tasks, which does not correspond to the principle of “*pressing social need*”¹².

iv) Provisions requiring parties to conform to particular organisational rules

Statute of political party must define a *list of the statutory bodies* of the political party, *procedures of their establishment, their respective powers and term of office*; procedures of admission to the political party, suspension and termination of membership, etc.; *rights and obligations of the members*, grounds on which membership is suspended or terminated; *procedures of the establishment, general structure and competence of regional, city, and district organisations and cells of the political party*; *procedures of convening and holding party conventions, conferences, meetings, and other representative bodies of the political party* (Article 8 of the Law on Political Parties in Ukraine). If statute does not contain such provisions, party will not be registered by the Ministry of Justice.

v) Regulation of certain kinds of parties (parties of a linguistic minorities, parties

¹¹ Decision of the Constitutional Court of Ukraine as of June 12, 2007 № 2-пн/2007 in the case upon 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); ¹¹ <http://zakon1.rada.gov.ua/cgi-bin/laws/main.cgi?nreg=v002p710-07&p=1260610221550455>. See also Annex 3.

¹² A lot of countries impose on political parties an obligation to go through a registration process. However, deciding whether a particular party can be registered, a competent body only examines whether a party have submitted all required documents and whether the programme of the party complies with Constitution and laws of a particular country. For example, the body considers, whether charter of a party contains unacceptable provisions like aiming at changing a constitutional order by violent means, establishment of military and paramilitary formations, incitement to racial, religious of ethnic discrimination (Albania, Austria, Germany), propaganda of national-socialist or fascist ideology (Austria, Germany, Italy), advancement of “legal continuity with totalitarian regimes” (Czech Republic, Lithuania and Poland), involvement in terrorism (Spain, Turkey, the UK). In the context of Ukrainian experience it is interesting to mention that signatures attesting certain territorial representation are required only in a few countries (Moldova, Russian Federation, Turkey and Ukraine). *For more details see*: Report on the establishment, organisation 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, organisation 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](http://www.venice.coe.int/docs/2004/CDL-AD(2004)004-e.asp)

composed only of women/men, parties of a certain region of the country, etc.)

The Law on Political Parties in Ukraine is applied equally to all kinds of parties. Furthermore, parties can not be composed only of men, women, minorities, etc. (Article 7 of the Law on Civic Associations prohibits restrictions of membership in political parties based on ethnicity or gender).

vi) The requirements for a party to remain recognized/registered

In order to remain registered, a political party must: 1) submit truthful information while applying for registration (if within three years from the date of registration party is found to have submitted false information when applying for registration, its registration can be cancelled); 2) within 6 months from the date of its registration establish and secure registration of its local organisations in most regions (“oblasts”) of Ukraine; 3) within 10 years from the date of registration nominate candidates for presidential or parliamentary elections; 4) not transgress any of the requirements to the establishment and operation of political parties set forth in the Constitution and laws of Ukraine (Articles 11.6, 21, 24 of the Law on Political Parties in Ukraine).

Constitutionality of some of the above provisions was under consideration of the Constitutional Court of Ukraine. However, the Court came to a conclusion that they go in line with the provisions of the Constitution and do not infringe the right to freedom of association¹³. Provisions of the Law on Political Parties in Ukraine also were subject to expertise and critics of the Venice Commission. The experts of the Commission emphasized that the Law makes no distinction between minor and major infractions, and there is no taking into account of the character of the infraction, whether political or not, whether breaching criminal law or disregarding accounting provisions, etc. Hence, each and every transgression may under Article 19 of the Law on Political Parties in Ukraine lead to warning or prohibition of political party¹⁴. In connection with this conclusion it should be mentioned that Article 19 of the Law on Political Parties in Ukraine is interpreted by national courts narrowly, in other words a political party may be prohibited by the 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 in Ukraine.¹⁵ However, the above constitutional and legal provisions per se can be interpreted broadly, in particular as regards activities aimed at “liquidation of Ukrainian independence” „undermining state security”, „encroaching on human rights”, “encroaching on public health”. Possibility of broad interpretation of these wordings by the Ministry of Justice is confirmed by the Decision of the Supreme Court of Ukraine as of November 5, 2004 in the case upon a lawsuit filed by the Ministry of Justice of Ukraine seeking to prohibit the political party¹⁶. In this case the Ministry of Justice lodged a complaint with the Supreme Court of Ukraine seeking to prohibit one of the political parties 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 origin. The Supreme Court came to the conclusion that plaintiff failed to prove the existence of grounds for prohibition of

¹³ Decision of the Constitutional Court of Ukraine as of June 12, 2007 № 2-пр/2007 in the case upon 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>. For further information see Annex 3.

¹⁴ 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). – paragraph 26; [http://www.venice.coe.int/docs/2002/CDL-AD\(2002\)017-e.asp](http://www.venice.coe.int/docs/2002/CDL-AD(2002)017-e.asp)

¹⁵ Such an interpretation of the grounds for prohibition of political parties is reflected, in particular, in Resolution of the Kiev district administrative court as of March 18, 2008 in the case № 3/134 upon a 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 of Ukraine to lodge with the Supreme Court of Ukraine a lawsuit seeking to prohibit the Communist party of Ukraine (Renewed); <http://www.revestr.court.gov.ua/Review/1602531>. For further information on the case see also Annex 3.

¹⁶ Decision of the Supreme Court of Ukraine as of November 5, 2004 in the case upon a lawsuit filed by the Ministry of Justice of Ukraine seeking to prohibit the political party; <http://zakon1.rada.gov.ua/cgi-bin/laws/main.cgi?nreg=n0114700-04>. For further information see Annex 3.

political party and dismissed all the plaintiff's claims. Although since 2004 the Ministry of Justice has not initiated 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 restrict the possibility of broad interpretation thereof.*

The provisions of the Law on Political Parties as regards cancellation of registration of political parties give grounds for critical comments as well. In this context should be mentioned that: 1) the Ministry of Justice should be obliged to check correctness of information presented in documents for registration within the term for consideration of application for registration of a party, and should not have the right to sue party to cancel its registration if this term is expired; 2) requirement to register local party organisations in most regions of Ukraine should be considered as unjustified and unnecessary administrative impediment to activities of political parties (on the one hand, such a provision allows the MoJ to mop up irksome parties; on the other hand, the establishment of local party organisation does not necessarily mean that such organisation will carry out any activities - it can exist only on paper); 3) compliance with Article 11 of the ECHR of the provisions concerning grounds for cancellation of registration is questionable, in particular as regards such a criterion as "pressing social need"; 4) the attitude to dissolution of political parties of the Venice Commission¹⁷, as well as of number of European democracies, is that "prohibition or enforced dissolution of political parties may only be justified in the case of parties which 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 restraint¹⁸.

vii) The costs and benefits to a party of being registered/recognized

If the party is not registered, its operation is prohibited (Article 10 of the Law on Political Parties in Ukraine). The main benefit of registration are possibilities: 1) to nominate candidates for national and local elections (only registered not less than 365 days prior to the date of elections parties can nominate candidates for parliamentary elections, elections to the regional councils, the Supreme Council of the Autonomous Republic of Crimea, district councils, city councils, city district councils), to nominate official observers and members of electoral commissions, to have free of charge access to public media during election campaigns; 2) to acquire assets from sale of political literature, other campaign and propaganda materials, goods with parties' symbols, from carrying out festivals, exhibitions, lectures and other political actions (which is prohibited for NGOs).

viii) Provisions concerning the disposal of assets of/by the party

There are few restrictions on disposal of assets of political parties: 1) assets of political party can not be transferred to their members; 2) assets can only be used to achieve objectives defined by their statutes (Article 21 of the Law on Civic Associations); 3) assets of political parties being terminated can be transferred only to another political party or to the state budget (Article 7.11.11 of the Law on Corporate Income Tax).

ix) The consequences of losing recognition/registration

¹⁷ In some European states there are no legal provisions for prohibition or dissolution of political parties (Belgium, Greece, Austria, apart from the ban on national-socialist organisations). In Switzerland recourse to prohibition or dissolution of political party is impossible in 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 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](http://www.venice.coe.int/docs/2000/CDL-INF(2000)001-e.asp)

¹⁸ Guidelines on 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](http://www.venice.coe.int/docs/2000/CDL-INF(2000)001-e.asp)

Party may lose its registration through prohibition (ban on political party) and cancellation of registration.

Registration of political party may be cancelled on the following grounds:

- if a party failed to establish its local organisations in 14 regions of Ukraine within 6 months from the date of registration;
- if within 3 years from the date of registration the party is found to have submitted false information when applying for registration;
- if within 10 years from the date of registration party fails to nominate presidential and parliamentary candidates.

Party can be banned if it infringes provisions of Article 37 of the Constitution, Article 4 of the Law on Civic Associations or Article 5 of the Law on Political Parties, in particular if activities of political party are aimed at liquidating Ukrainian independence, forceful changing the constitutional order, violating Ukraine's sovereignty and territorial integrity, undermining national security, unlawfully seizing power, encroaching on human rights and freedoms, etc.

However, the consequences of ban on political party and cancellation of registration are just the same: termination of all party's activities, dissolution of its governing bodies, local organisations, party cells and other structural subdivisions, termination of membership in political party (Articles 23, 24 of the Law on Political Parties in Ukraine).

x) The agency with authority to make registration/de-registration decisions

Political parties are registered with the Ministry of Justice of Ukraine (Section 1 of Article 11 of the Law on Political Parties in Ukraine).

The authority to make de-registration decisions has the Kyiv district administrative court (Section 3, Article 19 of the Code of Administrative Court Procedure). The right to turn to the Kyiv district administrative court for de-registration (cancellation of the registration) of a political party has the Ministry of Justice of Ukraine (Article 24 of the Law on Political Parties in Ukraine).

xi) Assurance and definition of due process of registration/de-registration

The registration process is not properly assured, because: 1) the Ministry of Justice is not obliged by the law to specify the exhaustive list of grounds, on which the decision on refusal of registration was made (Article 16 of the Law on Civic Associations, Article 11 of the Law on Political Parties in Ukraine); 2) the laws on Political Parties in Ukraine, on Civic Associations, on Corporate Income Tax were adopted at different times and their provisions contradict each other, giving the Ministry possibility to refuse to register political party on the ground of nonconformity of submitted documents (in particular of the statute of political party) to one of the laws; 3) the margin of discretion of the MoJ in deciding whether to register a political party is wide, in particular with respect to consideration whether the submitted documents (the name of the party, lists with signatures and so forth) comply with legal requirements.

On the other hand, Law on Political Parties in Ukraine provides for some mechanisms aiming to ensure due process of registration of political parties: 1) the list of documents to be submitted to the Ministry of Justice for registration of political party can not be extended and is defined by law (Section 2 of Article 11 of the Law on Political Parties in Ukraine); 2) refusal of registration can not prevent political party from applying for registration again; 3) deadline for making decision granting or refusing registration of political party is defined by law (30 days from the date of application for registration) and may not be extended to more than 45 days from the date of receipt of the documents for registration; 4) a failure to make a decision granting or refusing registration of political party or decision refusing registration may be appealed to a court of law.

Due process of de-registration of political party is assured by making de-registration decisions by the administrative courts only.

xii) Appeals against registration/de-registration decisions

Decisions of the Ministry of Justice on registration or on refusal of registration of political party, as well as failure to make such decisions, may be appealed to the local administrative court at the plaintiff's location (Section 2, Article 19 of the Code of Administrative Court Procedure).

Kyiv district administrative court decision on cancellation of political party can be appealed to Kyiv administrative court of appeal (Section 2, Article 20 of the Code of Administrative Court Procedure).

xiii) 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 in Ukraine the right to lodge a lawsuit seeking to cancel registration of political party can be exercised only by the Ministry of Justice of Ukraine. However, court practice shows that suits lodged with courts by individuals seeking to cancel registration of political party can also be acceptable in the case when the plaintiff believes that the decision on registration of political party infringed his personal rights or freedoms.

The most striking example of such practice is the case № 3/134 that was considered on 18 March 2008 by the Kiev district administrative court upon a 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 of Ukraine to lodge with the Supreme Court of Ukraine a lawsuit seeking to prohibit the Communist party of Ukraine (Renewed)¹⁹. The plaintiff turned to court with the claim to cancel MoJ decision on registration of the Communist Party of Ukraine (Renewed). The lawsuit alleged that: 1) registration of political party, whose activities were aimed at illegal seizure of state power, and achievement of statutory goals of which was based on discriminating methods, jeopardized "constitutional rights and freedoms of millions of people", including those of the plaintiff and his family; 2) the plaintiff had found out that CPU (R) did not have local organisations in the majority of the regions of Ukraine; therefore, the provisions of Article 11 of the Law on political parties in Ukraine were violated by the respondent and by the MoJ which failed to exercise proper control over observance of the Law on political parties of Ukraine by the CPU (R); 3) some provisions of the Charter of the CPU (R) did not comply with requirements of the Constitution and Law on political parties in Ukraine. The court, however, dismissed all the claims of the plaintiff on the grounds that: 1) all provisions of the CPU (R) Charter were in line with requirements of law, 2) the Ministry of Justice exercised control over activities of the political party, that was proved by presenting requests for information about local party organisations in respective regions addressed to local branches of the MoJ; 3) the plaintiff failed to provide the court with evidence that his rights, freedoms or interests were infringed by decision on registration; 4) at the moment of lodging lawsuit with the court the term for suing for protection of infringed rights (i.e., 1 year after violation) had already expired.

xiv) Equality of treatment for different political parties, the parties which are given a more privileged position with respect to other parties

Article 4 of the Law on Political Parties in Ukraine states that all parties are equal before the law. However, some parties are "more equal than others". For example, on national and local elections only parties registered *365 days prior to the date of elections* can establish coalitions and nominate candidates for elections (Article 44 of the Law on presidential election, Article 10 of the Law on parliamentary elections, Article 33 of the Law on local elections). On parliamentary elections the persons, nominated by parties *with parliamentary representation*, have prior right to

¹⁹ <http://www.reyestr.court.gov.ua/Review/1602531> See Annex 3 for further information

be appointed on positions of the members of district and polling electoral commissions (Articles 27, 28 of the Law on parliamentary elections).

c. Protection against state intrusion

i) Legally enforceable rights of political parties and their standing as organizations which can 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 Ukraine. In particular, Article 20 of the Law on Civic Associations provides for the rights to participate in civil relations, to acquire property and non-property rights, to present and defend lawful interests of political parties and legal interests of their members in state and civic bodies, to participate in political activities, to provide ideological, organisational and financial support to other civic associations, to obtain information, to establish mass media, to popularize ideas and objectives, to participate in preparation of draft decisions of public authorities on gender equality issues, to delegate representatives to consultative and advisory bodies for enforcement of equal opportunities for men and women, to monitor implementation of gender policy decisions etc. These rights are not only of parties but civil society organisations as well. 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 organisations, to participate in state policy development, 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 sue to enforce their rights.* The respective procedures are defined by the Code of Civil Procedure, Code of Administrative Court Procedure and other procedural codes.

ii) Legal privileges/protections of political parties beyond those afforded to other kinds of associations

Parties have some specific rights which are not afforded to other kinds of associations (right to nominate candidates for elections, to use public media during election campaigns, to nominate members for district and polling commissions, to acquire property from sale of certain types of goods and services). *Parties do not have specific privileges or protections in relations with state authorities and courts.*

iii) Grounds for banning (shutting down) a political party, possibility of shutting down through bankruptcy

Political party can be terminated: 1) by reorganisation or liquidation (self-dissolution) on the basis of decision of party's congress (convention); 2) when banned; 3) if its registration is cancelled (Article 23 of the Law on Political Parties in Ukraine, Article 110 of the Civil Code of Ukraine).

Kyiv district administrative court may rule *to ban* a political party upon complaint of the Ministry of Justice of Ukraine or Prosecutor General in case it violates the requirements to the establishment and operation of political parties set forth in the Constitution and Laws of Ukraine (Article 21 of the Law on Political Parties in Ukraine, Article 19 of the Code of Administrative Court Procedure). In particular, Law prohibits establishment and operation of political parties, programme objectives or activities of which are aimed at liquidating Ukrainian independence, forcefully changing the constitutional order, violating Ukraine's sovereignty and territorial integrity, undermining national security, unlawfully seizing power, propagandising war and violence, inciting interethnic, racial or religious animosity, encroaching on human rights and freedoms, encroaching on public health, establishment of military (quasi-military) units (formations) (Article 5 of the Law on Political Parties in Ukraine). Article 4 of the Law on Civic Associations prohibits establishment

and operation of political parties, whose governing bodies or structural units are situated outside Ukraine, as well as establishment or operation of structural units of political parties at the executive bodies, courts, the Armed Forces, the State Frontier Service, the State Special Service for Transport, in state enterprises, institutions and organisations, state educational institutions.

According to the Law on Restoration of Debtor's Solvency or Recognition of Debtor's Bankruptcy, only entities which may conduct entrepreneurial activities can be recognised bankrupts. *Since parties and other civic organisations are not allowed to conduct any entrepreneurial activity, they can not be recognised bankrupts* (Article 1 of the Law on Restoration of Debtor's Solvency or Recognition of Debtor's Bankruptcy).

iv) 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, period of application of the consequences

Programmes of political parties must not provide for objectives aiming at liquidating Ukrainian independence, forceful changing the constitutional order, violating Ukraine's sovereignty and territorial integrity, undermining national security, unlawfully seizing power, propagandising war and violence, inciting interethnic, racial or religious animosity, encroaching on human rights and freedoms, encroaching on public health, establishment of military (quasi-military) units (formations), etc.

If these restrictions are violated, Ministry of Justice of Ukraine has a right to refuse to register political party on the ground of nonconformity of submitted documents to Article 5 of the Law on Political Parties in Ukraine (Article 11 of the Law on Political Parties in Ukraine). If restrictions are violated after registration of political party, Ministry of Justice or Prosecutor General has a right to turn to the Kyiv district administrative court for prohibition of such party.

In case of refusal of registration, political party, after making appropriate changes to its programme, can apply for registration again (Article 11 of the Law on Political Parties in Ukraine). Ban on political party entails termination of party's activities, dissolution of its bodies, structural units and local organisations, termination of its membership and termination of the party (Articles 21, 23 of the Law on Political Parties in Ukraine). *The Law does not provide for consequences of banning political party for its members (other than termination of their membership in such party), party's officials and elected office-holders.*

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

The first one is concerned with constitutionality of the Decrees of the 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. The first of the already mentioned decrees provided for termination of the activity of the CPU, sealing off premises of party committees, prohibition of 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. The second Decree, dated 30 August 1991, prohibited the activity of the Communist Party of Ukraine. The Constitutional Court in its decision, dated 27 December 2001, in the case on the Decrees of the Presidium of the Supreme Council of Ukraine on the Communist Party of Ukraine, registered on July 22, 1991²⁰, emphasized that: 1) the Communist Party of Ukraine as 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 time of 1991 Moscow coup d'état attempt did not contravene provisions of the Constitution, relating to principles of foundation and activities of political parties (which was confirmed by the results of investigation carried out by Prosecutor General's Office); 2) according to the Constitution of the USSR, Constitution of the Ukrainian SSR, Law of the USSR on civic associations of 1990, civic associations could be terminated only upon decision of the court of law; having prohibited the activities of the CPU, the Supreme Council of Ukraine undertook the powers

²⁰ <http://zakon1.rada.gov.ua/cgi-bin/laws/main.cgi?nreg=v020p710-01&p=1260610221550455>

of investigating and judicial bodies, which contradicted the principle of division of power into legislative, executive and judicial; 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 unconstitutional²¹.

The second case relating to prohibition of political parties has been considered by the Supreme Court of Ukraine upon a lawsuit filed by the Ministry of Justice of Ukraine seeking to prohibit the political party “The Ukrainian National Assembly”²². In October 2004 the Ministry of Justice of Ukraine lodged a complaint with the Supreme Court of Ukraine that sought to prohibit political party “The Ukrainian National Assembly”. Lawsuit alleged that political party violated articles 21, 24, 37 of the Constitution of Ukraine and article 5 of the Law on Political Parties in Ukraine. In particular, lawsuit claimed that the party had organised several demonstrations which were accompanied by distribution of agitation materials and leaflets inciting hatred on account of nationality and ethnicity and offending citizens of Russian and Jewish origin. Information on party website, as well as its press-releases, also contained information which could be considered as 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 party activities were aimed at incitement of hatred or encroachment on human rights and freedoms. The Court also acknowledged that press-releases, information on party’s website, leaflets and other documents presented to the Court by the Ministry of Justice, contained no information which could be considered as incitement to hatred or encroachment on human rights and freedoms. Expressions which contained in provided documents were considered by the Court as a form of political debates and discussions of public life, critics 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 plaintiff failed to prove the existence of grounds for prohibition of political party and dismissed all the plaintiff’s claims.

v) Provisions pertaining to re-registration of political parties and their implementation/enforcement

Current legislation *does not provide re-registration of political parties*, it provides for *registration of changes to statutory documents of political party*, submitted at its initial registration. Article 11 of the Law on Political Parties in Ukraine obliges parties to inform in written the Ministry of Justice of any changes to the name, programme, statute, governing bodies of the party, their addresses within a week after making decisions on such changes. In this case political party must submit to the Ministry of Justice the following documents: 1) application for registration of changes to statutory documents, signed by authorised representative of a political party; 2) minutes of the congress (convention) of the party with resolution to make changes to statutory documents; 3) 2 copies of the statute with changes; 4) certificate of registration of political party and its statute (both in original); 5) documents certifying the change of legal address of political party (when legal address has been changed). In case of making changes to the name of political party, its legal address or objectives, the Ministry of Justice issues new certificate of registration of such political party (para. 12 of the Resolution of the Cabinet of Ministers of Ukraine № 140 of 26.02.1993). Within 30 days from the date of receipt of the documents the Ministry of Justice determines whether to grant or to refuse of registration of changes to statutory documents of political party (the Ministry may refuse to register changes if submitted documents do not comply with the Constitution or laws of Ukraine). In practice, the registration of changes in statutory documents is usual formality and none of the parties faced problems with such registration.

²¹ For further information on the cases see Annex 3.

²² <http://zakon1.rada.gov.ua/cgi-bin/laws/main.cgi?nreg=n0114700-04>

d. Recognition in parliamentary rules or standing orders

i) The requirements for recognition of a party/group within the parliament

In order to be recognised within the Parliament, faction must comply with three requirements:

- it must be formed on the basis of political party or coalition, which met electoral threshold;
- it must include at least 15 MPs;
- it must be registered with the Secretariat of the Supreme Council of Ukraine.

To be registered as a faction, 15 MPs have to sign and send to the Secretariat written notification of their decision to establish parliamentary faction, in which they have to indicate the name of the faction, its composition and party affiliation of the respective MPs, surnames of the head and deputy heads (not more than one deputy head for every 15 members) of the faction. Full name of the faction and its abbreviation must correspond to the name of the party or coalition, which forms the faction (Articles 58-60 of the Rules of Procedure of the Supreme Council of Ukraine).

ii) The benefits, privileges, obligations of recognition as an independent group

Until the Law № 2157-VI of April 27, 2010 has come into force, independent groups could not be recognized in the Parliament of Ukraine. Following the adoption of this Law, the above restrictions have been lifted – under the new wording of Article 59 of the Rules of Procedure, the MPs who are not members of any faction have a right to join into independent groups²³. There are no requirements on minimum number of members in an independent group, however if a group consists of not less than 15 MPs, it can be granted with some rights of a faction, in particular²⁴:

- the right to participate in the sittings of the Conciliation Board (which decides on parliamentary agenda) and to participate in making decisions of the Board;
- the right to submit proposals on composition of temporary special committees and of inquiry committees;
- the right of a representative of a group to have a speech in the parliamentary sitting on any issue included into the parliamentary agenda.

iii) Rules in the Rules of Procedure of Parliament that may affect political parties

There are no provisions in the Rules of Procedure of Parliament that may affect political parties.

iv) Restrictions concerning formation, dissolution, merger, split of groups during the parliamentary term, restrictions regarding party switching by individual members

Parliamentary faction can be *dissolved* if the number of its members reduced to less than 15 MPs. In this case the Speaker in the plenary announces dissolution of the faction within 15 days from the date when the number of faction's members reduced to 14 or less MPs. There are no restrictions on *merger* of the factions during the parliamentary term. Rules of Procedure do not allow to *split* the factions once they were formed. All factions are *formed* during the first session of the Parliament before the elections of the Speaker. An MP can not switch his faction on his own will – in this case his office will be terminated (since in 2004 party administered mandate was

²³ Independent group is considered to be established after announcement of its establishing by the head or coordinator of the group. In other words, the procedure of establishment of independent groups is rather simple if compared to the procedure of establishment of the factions.

²⁴ If an independent group consists of less than 15 MPs, such group does not have any additional rights, including those of the factions.

introduced through amendments to the Constitution)²⁵. The only possibility for 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 expelled, he can remain “independent” or join with other independent MPs into independent group, or join any other faction.

v) Options/alternatives available for MPs who are not members of parties or groups that reach the threshold for official recognition

MPs who lost their membership in factions in general have the same rights and obligations as the other MPs, but in practice “factional” MPs are in more privileged position compared with MPs who are not members of any faction. For example, during discussion of the bill in accelerated procedure (Article 31 of the Rules of Procedure) the right to participate in discussion is given only to the representatives of the factions.

e. Changes in the regulatory framework

i) Quantity 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 in Ukraine was amended 4 times.

6.07.2005 Law on Amendments to the Law on Political Parties in Ukraine prohibited membership in political parties for officials of state tax authorities. Also this Law introduced accelerated and simplified procedure of legalisation of parties’ primary cells without legal entity status (such cells could legalise their operation by written notification of the local body of the Ministry of Justice of their establishment; the respective body of the Ministry was obliged to issue certificate of their legalisation within 3 hours after receiving notification).

The Law on State Budget of Ukraine for 2007 (adopted 19.12.2006) suspended the provisions of the Law on Political Parties in Ukraine which introduced public financing of political parties. In 2007 all provisions of the Law on Political Parties in Ukraine, providing direct public financing of political parties and reimbursement of parties’ expenditures on election campaigns, were repealed by the Law on State Budget for 2008. Constitutional Court of Ukraine recognised respective provisions of the Law on State Budget for 2008 unconstitutional, but since Court’s decisions have no retroactive effect, the Law on Political Parties in Ukraine remained unamended, and currently it

²⁵ Introduction of “party administered mandate” was criticized by the Venice Commission. In its Opinion on the Amendments to the Constitution of Ukraine the Commission mentioned that amendments to the Constitution which envisaged 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, give 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 opinion of the experts of the Commission, linking a mandate of a national deputy to membership of a parliamentary faction or bloc is also inconsistent with the other constitutional provisions (in particular, with 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” also has shown that their 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 Similiar Practices the Venice Commission emphasized that 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](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](http://www.venice.coe.int/docs/2005/CDL-AD(2005)015-e.asp); Report on the Imperative Mandate and Similiar 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](http://www.venice.coe.int/docs/2009/CDL-AD(2009)027-e.asp)

does not contain provisions on public financing of parties and on reimbursement of electoral expenditures.

Finally, in April 2009 the Law on Political Parties was once more amended in order to prohibit membership of staff of the State Penal Service in political parties.

2. Parties as Organizations

a. Membership

i) Regulation of the rights and obligations of membership

The Law on Political Parties in Ukraine and the Law on Civic Associations do not contain provisions, which regulate rights and obligations of membership of political parties. According to Article 8 (paragraph 4, section 1) of the Law on Political Parties in Ukraine, *rights and obligations of party members must be defined by party statute.*

ii) The requirements for party membership (e.g., age, citizenship, ideological tests, profession, race/ethnicity, gender)

Only a citizen of Ukraine with a right to vote (i.e. who is 18 years old and not incapacitated) can be eligible as member of political party (Article 6 of the Law on Political Parties in Ukraine). The Law on Political Parties in Ukraine determines certain kinds of activities incompatible with membership in political party. For example, the following persons are not eligible as members: judges, officials of public prosecutor's office, officials of the Interior, officials of Security Service of Ukraine, military servicemen, officials of the State Tax Service, staff of the State Penal Service. However, the above list is not exhaustive and is being broadened by other laws of Ukraine. At the same time, there is no unified approach to determination of the list of persons who can't be members of political parties. For example, the Law on Public Service does not contain explicitly states that civil servants can't be members of any political party. The absence of such a restriction entails engagement of civil servants into political activities. The Law on Political Parties in Ukraine also prohibits simultaneous membership of one and the same person in different political parties. However, it is difficult to control how this restriction is implemented in practice since political parties do not exchange information regarding to their members and do not submit the relevant information to the Ministry of Justice.

As regards requirements for party membership based upon race, ethnicity, sex and other criteria, it should be mentioned that possibility of their introduction in law or party rules is restricted by Article 24.2 of the Constitution and by Articles 6 and 7 of the Law on Civic Associations, which prohibit the privileges or restrictions based upon race, colour of skin, political, religious and other beliefs, sex, ethnical or social origin, language, place of residence and on other criteria.

With respect to the above provisions regarding party membership, the experts of the Venice Commission emphasized that stateless persons and foreign citizens cannot be party members. Although restrictions on 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 of from membership in political parties foreign citizens and stateless persons, who have their permanent and legal residence in the country, do not comply with good European practices and can hardly be justified in the light of the 1992 Convention on the Participation of Foreigners in Public Life at Local Level. The experts of the Venice Commission mentioned that in order to bring the relevant legal provisions in compliance with European standards, the foreign citizens and stateless persons should be allowed to some extent participate in the political life of Ukraine, at the very least through possibility to be members of political parties²⁶, especially if taking into

²⁶ At the same time, many countries restrict membership in political parties to national citizens only; this is the case of Albania, Bulgaria, Canada, Croatia, Czech Republic, Estonia, Georgia, Greece, Lithuania, "the former Yugoslav Republic of Macedonia",

consideration that in many European democracies foreign citizens can even vote in local elections and be elected to local public office in such elections²⁷.

It should be noted in this connection that Ukraine is not a signatory to the 1992 Convention on the Participation of Foreigners in Public Life at Local Level. Also, as evidenced by discussion of this report during the focus groups, experts and politicians do not agree with the idea of granting the right to membership in political parties to foreign citizens and stateless persons, especially if taking into consideration the fact that national legislation does not provide for the establishment of local and regional parties. Experts believe that deeper involvement of foreigners and stateless persons in participation in public life at local level could be achieved through amendments to the Law on local elections and not through legislation pertaining to political parties. For example, by securing the right to vote in local elections for foreigners or stateless residing in the relevant territory for a certain period. However, such kinds of amendments to legislation on local elections, experts said, could hardly be considered as a high priority of the reforms in the field of political parties.

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

Membership in a party must be *individual* and *direct (fixed)*. Corporate membership is allowed only in NGOs (Section 4, Article 12 of the Law on Civic Associations).

A person, who wants to be a member of political party, have to submit a written statement expressing the will to become a member of the party (Article 6 of the Law on Political Parties in Ukraine). *None of the statutes of political parties*, which met electoral threshold (including parties-members of electoral coalitions, which overpassed threshold), *do not envisage classes and levels of membership*, all members of the parties are equal in their rights (the principle of equality of all member of the party is also enshrined in Article 6 of the Law on Civic Associations).

Necessity of restriction of party membership to fixed as provided for by the Law on Political Parties in Ukraine, is questionable, especially if to take into consideration the fact that the Ministry of Justice has no authority to exercise any control over admission or expelling members of political parties and the courts are not authorized to consider the cases relating to internal party activities. Also it might be mentioned that restriction of membership only to fixed membership does not allow parties to introduce classes or levels of membership, for example level of “sympathizers” and “members”. Introduction of different classes and levels of membership could allow citizens to decide on the degree to which they want to be involved in the party, and could allow parties to provide special “bonuses” for those who are engaged in party activities more actively. In the light of the mentioned above it should be said that in European countries most of the parties distinguish different levels of membership or types of association to and participation in the tasks of the party, encompassing different rights and obligations. For example, Socialist Party and Reform Movement of Belgium distinguish levels of “adherents” and “associates”, the same distinction can be found also in People’s Party and Spanish Socialist Workers Party in Spain, in Christian Democratic Union of Germany (“members” and “guests”)²⁸.

iv) Legal constraints on parties with regard to membership criteria, subscriptions, other obligations of membership, capacity to refuse/expel members

Russian Federation and Turkey. However, in a number of states aliens are also admitted as members, for example in Germany, the Netherlands, Slovenia, Finland, Spain and some other countries. For further information see: Report on the establishment, organisation 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, organisation 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](http://www.venice.coe.int/docs/2004/CDL-AD(2004)004-e.asp)

²⁷ 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](http://www.venice.coe.int/docs/2002/CDL-AD(2002)017-e.asp)

²⁸ 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](http://www.venice.coe.int/docs/2009/CDL-AD(2009)021-e.asp)

There are several restrictions on membership in political parties, envisaged by legislation, which should be taken into consideration by political parties: 1) nationality (only a citizen of Ukraine can be a member of political party); 2) age (only 18 years old citizen is eligible as member); 3) capability (incapacitated persons can not be members of political parties); 4) profession (persons who hold certain positions in public authorities are not eligible as members); 5) membership in other parties (one person can not be a member of two political parties at a time); 6) individual fixed membership (only individuals can be members of political parties; a person who wants to be a member, have to submit a written statement to the party); 7) prohibition of restrictions of membership based upon gender, ethnicity or other criteria (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). *Membership criteria approved by political parties should not contradict to abovementioned provisions of the laws. Parties are not legally constrained with regard to subscriptions, rights or obligations of membership, capacity to refuse or expel members, to suspend membership etc.*; these issues are considered by parties themselves on the basis of their statutes (Article 6 of the Law on Political Parties in Ukraine).

v) Possibility to be a member of two (or more) political parties simultaneously

Article 6 of the Law on Political Parties in Ukraine, as well as statutes of all “parliamentary” political parties, *prohibits the possibility to be a member of more than one 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.

vi) Rights and/or obligations of members (in contrast to mere supporters), minimum period of membership for full exercise of the rights of membership

The minimum period of membership for full exercise of the rights of membership is not required by the statutes of parties, represented in the Parliament. In other words, every member can exercise all the rights envisaged by party’s statute upon obtaining membership. At the same time, statutes of some political parties (namely, of the Party “Forward, Ukraine!”) provides for candidacy for membership: the person can be admitted to membership only when certain period from submission of written application for membership have passed (in “Forward, Ukraine!” – 6 months; paragraph 2.2. of the Statute of the Party “Forward, Ukraine!”).

The general list of rights of the members includes the following:

- to elect and to be elected to the governing bodies of the party²⁹;
- to participate in the sittings of the statutory bodies, to which the member was elected³⁰;
- to submit proposals to the governing bodies concerning party policy, and to express (or defend) own point of view during consideration of such proposals, to propose amendments to the statute or to the programme of the party³¹;

²⁹ para. 3.5. of the Statute of All-Ukrainian Association „Motherland”; para. 2.5. of the Statute of the Ukrainian Social Democratic Party; para. 3.3. of the Statute of the Party “Reforms and Order”; para. 4.5.1. of the Statute of the “People’s Union Our Ukraine”; para. 17 of the Statute of the People’s Movement of Ukraine; para 2.2. of the Statute of Ukrainian People’s Party; para. 3.6. of the Statute of the Christian Democratic Union; para. 4.5.1. of the Statute of the European Party of Ukraine; para. 3.10.2. of the statute of the “Pora”; para. 4.1. of the Statute of the Motherland’s Defenders Party; para 2.3. of the Statute of the Communist Party; Article 6 of the Statute of the People’s Party; para. 4.1. of the Statute of the Party of Regions

³⁰ para. 3.5. of the Statute of All-Ukrainian Association „Motherland”; para 2.5. of the Statute of the Ukrainian Social Democratic Party; para. 3.6. of the Statute of the Christian Democratic Union; para. 4.1. of the Statute of the Motherland’s Defenders Party

³¹ para. 3.5. of the Statute of All-Ukrainian Association „Motherland”; para. 2.5. of the Statute of the Ukrainian Social Democratic Party; para. 3.3. of the Statute of the Party “Reforms and Order”; para. 4.5.1. of the Statute of the “People’s

- to have access to the information on party activities³²;
- to propose candidatures for nomination for elections by the party³³;
- to criticize activities or behaviour of other members, as well as activities of the statutory bodies or officials of the party³⁴;
- to participate in implementation of programmes and projects of the party, in activities of the party³⁵;
- to provide party with material or financial support³⁶;
- to stop the membership in the party³⁷.

The above list, of course, is not complete, statutes of some parties provide for additional rights, such as right “to be protected by the party from prosecution for political beliefs and opinions” (paragraph 3.5. of the Statute of All-Ukrainian Civic Association “Motherland”; paragraph 2.3. of the Statute of the Communist Party of Ukraine,), “to apply in the case of violations of member’s rights by body of the party to the Control Commission of the relevant regional organisation, 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 member’s work” (paragraph 3.3. of the Statute of the “Reforms and Order” Party); “to join any faction, formed by other parties, if the faction of the own party was not formed” (Article 6 of the Statute of the People’s Party).

Only some of these rights can be exercised solely by members of a party, namely: the right to be a delegate for party convention, right to participate in establishment of primary cells (since primary cells according to statutes of political parties can be established only by members of the party), right to elect to the governing bodies (if these bodies are formed by congresses of members) and, of course, to stop membership in the party. The other rights, for example, the right to be nominated as a candidate for elections, to be elected to the governing bodies of the party, to obtain information on party activities, to provide financial support to the party, to criticize activities of the

Union Our Ukraine”; para. 17 of the Statute of the People’s Movement of Ukraine; para 2.2. of the Statute of Ukrainian People’s Party; para. 3.6. of the Statute of the Christian Democratic Union; para. 4.5.1. of the Statute of the European Party; para. 2.3. of the Statute of the Communist Party of Ukraine; Article 6 of the Statute of the People’s Party; para. 4.1. of the Statute of the Party of Regions

³² para. 3.5. of the Statute of All-Ukrainian Association „Motherland”; para. 2.5. of the Statute of the Ukrainian Social Democratic Party; para. 3.3. of the Statute of the Party “Reforms and Order”; para. 4.5.1. of the Statute of the “People’s Union Our Ukraine”; para. 17 of the Statute of the People’s Movement of Ukraine; para 2.2. of the Statute of Ukrainian People’s Party; para. 3.6. of the Statute of the Christian Democratic Union; para. 4.5.1. of the Statute of the European Party of Ukraine; para. 3.10.2. of the Statute of the “Pora”; para. 4.1. of the Statute of the Motherland’s Defenders Party; para 2.3. of the Statute of the Communist Party; para. 4.1. of the Statute of the Party of Regions

³³ para. 3.5. of the Statute of All-Ukrainian Association „Motherland”; para. 3.3. of the Statute of the Party “Reforms and Order”; para. 4.5.1. of the Statute of the “People’s Union Our Ukraine”; para. 3.6. of the Statute of the Christian Democratic Union; para. 4.5.1. of the Statute of the European Party of Ukraine; para. 3.10.4. of the Statute of the “Pora”; Article 6 of the Statute of the People’s Party; para. 4.1. of the Statute of the Party of Regions

³⁴ para. 3.6. of the Statute of the Christian Democratic Union; para. 2.3. of the Statute of the Communist Party of Ukraine; para. 4.1. of the Statute of the Party of Regions

³⁵ para. 3.5. of the Statute of All-Ukrainian Association „Motherland”; para. 2.5. of the Statute of the Ukrainian Social Democratic Party; para. 3.3. of the Statute of the Party “Reforms and Order”; para. 4.5.1. of the Statute of the “People’s Union Our Ukraine”; para. 17 of the Statute of the People’s Movement of Ukraine; para 2.2. of the Statute of Ukrainian People’s Party; para. 4.5.1. of the Statute of the European Party of Ukraine; para. 3.10.13. of the Statute of the “Pora”; para. 4.1. of the Statute of the Motherland’s Defenders Party; Article 6 of the Statute of the People’s Party; para. 4.1. of the Statute of the Party of Regions

³⁶ para. 3.3. of the Statute of the Party “Reforms and Order”; para. 3.10.9. of the Statute of the “Pora”; Article 6 of the Statute of the People’s Party; para. 4.1. of the Statute of the Party of Regions

³⁷ para. 3.5. of the Statute of All-Ukrainian Association „Motherland”; para. 2.5. of the Statute of the Ukrainian Social Democratic Party; para. 3.3. of the Statute of the Party “Reforms and Order”; para. 4.5.1. of the Statute of the “People’s Union Our Ukraine”; para. 17 of the Statute of the People’s Movement of Ukraine; para 2.2. of the Statute of Ukrainian People’s Party; para. 3.6. of the Statute of the Christian Democratic Union; para. 4.5.1. of the Statute of the European Party of Ukraine; para. 3.10.15. of the statute of the “Pora”; para. 4.1. of the Statute of the Motherland’s Defenders Party; para 2.3. of the Statute of the Communist Party; Article 6 of the Statute of the People’s Party; para. 4.1. of the Statute of the Party of Regions

members of the party or its governing bodies etc., can be exercised not only by party members, but, theoretically (since there are no restrictions in law and statutes in this regard), also by other persons even if they are not party supporters.

The obligations of the members can be exercised, of course, only by members themselves, since party authority can not spread outside the party. The common list of members' obligations, typical for all parliamentary parties, includes the following obligations: 1) to act in accordance with the statute and programme of the party, to avoid engagement in activities which discredit the party; 2) to promote ideas and ideology of the party, to attract new members to the party; 3) to implement decisions of the governing bodies of the party; 4) to participate in sittings or activities of the bodies of the party, to which the member was elected, to participate in activities of the party or its organisation (cell); 5) to provide information on changes in data submitted to obtain membership in the party; 6) to support candidates for elections, nominated or supported by the party; 7) to pay membership fees. Statutes of some political parties (People's Party, "People's Union – Our Ukraine" Party, "Reforms and Order" Party) oblige members to join the party's faction in case of being elected, to report on their activities to society (Article 7 of the Statute of the People's Party) etc.

vii) Possibility of internal regulation of party statutes

The Law on Political Parties in Ukraine (Article 10 of the Law) states that statutes of the political parties can be approved by parties' constituent congresses only. *Party statutes are regulated internally* (Section 3 of Article 13 of the Law on Civic Associations), *but they must comply with the requirements of legal acts of Ukraine* (Section 4 of Article 13 of the Law on Civic Associations). In particular, the Law on Political Parties in Ukraine (Article 8) and the Law on Civic Associations (Article 13) determine the list of *minimum requirements to the information, which party statutes 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 political party, procedures of their formation, powers and term of office; procedures of admission to the party, suspension and termination of membership; rights and obligations of the membership, grounds on which membership is suspended or terminated; procedures of the formation, general structure, and competence of regional, city, and district organisations and cells of the political party; procedures of introducing changes in and amendments to the statute and programme of the political party; procedures of convening and holding party conventions, conferences, meetings, and other representative bodies of the political party; sources of financing and the procedures of use of property and funds of political party; procedures of reporting, monitoring, conduction of economic activity of the party; procedures of liquidation (self-dissolution) and reorganisation of the political party, and use of funds and property left after its liquidation (self-dissolution). *If the statute does not contain this information, the party will not be registered with the Ministry of Justice of Ukraine.*

b. Organisational structure

i) Legal constraints on party organizational structure

Framework of organisational structure of political parties is outlined by the Civil Code of Ukraine, Article 97 of which stipulates that non-profit partnership (party is a type of non-profit partnership) is managed by general meeting of its participants (members) and by executive body, formed by general meeting of the participants (members). In the case of political parties *this means that parties are managed by their congresses (conventions) and executive bodies, formed by congresses (conventions)*. The Law on Political Parties in Ukraine provides for inclusion into the organisational structure of the party such elements as regional ("oblast"), city, district organisations and primary cells (Article 8 of the Law), controlling bodies of the party (Article 10 of the Law). *Party convention (congress), executive body, primary cells, local and regional organisations,*

controlling bodies are mandatory elements of the organisational structure of any party, however, statutes of political parties may provide for existence of other organisational units and bodies within the party's organisational structure (Articles 8, 9 of the Law on Political Parties in Ukraine).

ii) The organizational structure of the parties, principal party organs and procedure of their creation

The organizational structure of the parties includes central and local levels. The central level is represented by party's national congress, the primary executive body of the party, which operates between congresses (the political council), the secondary executive body which operates between sittings of the political council (the presidium of the political council), secretariat (which provides technical, analytical, information and other support to the executive body, political council, presidium of the political council and local organisations of the party), central controlling authority of the party. The political council and the presidium of the political council are headed by party leader. The local level of all political parties is represented by primary cells (in villages, towns, districts in cities), local party organisations in cities and districts, regional party organisations in the Autonomous Republic of Crimea, regions ("oblasts"), cities of Kyiv and Sevastopol (which in Ukraine have regional status).

The highest governing body of any political party is its ***national congress (convention)***. The delegates for the congress are elected by the conferences (general meetings) of respective regional party organisations in accordance with quotas of representation, determined by the political council of the party. As a general rule, such quotas are determined by the political councils at their own discretion. Statutes of only some parties define the principles of determination of the quotas. For example, the Statute of the Party of Regions stipulates that quota of representation of regional delegates at the party congress depends on quantity of members of the party in respective regions. Statute of the Party "People's Union "Our Ukraine" states that all regional organisations have equal representation at the national party congress (para. 7.2.5. of the Statute).

Statutes of all parliamentary parties stipulate that national congresses have to be convened by the political council of the party at least once in every two years (once in every five years – only in "Forward, Ukraine!" Party and in the Party of Motherland Defenders).

Political council of a party is the principle governing body of the party in period between congresses. However, this body in different parties may be called differently: main council – in the "Reforms and Order" Party, the central leadership – in the People's Movement of Ukraine and in the Ukrainian People's Party, Central Committee – in the Communist Party of Ukraine, central council – in the Party of Motherland Defenders and in the Civil Party "PORA". In all parliamentary parties members of political councils are elected by the national congresses.

The statutes of the most parties define the list of persons who are the members of the political councils ex officio. For example, according to the Statute of the Party of Regions (para. 6.3.) ex officio members of the political council of the party are the head of the party, his deputies, head of the party's faction in the parliament and his deputies, heads of regional organisations of the party, the head of the Central controlling commission of the party. In the "Reforms and Order" Party ex officio members of the main council are the head of the party and his deputies, the head of the executive committee of the party, leaders of regional organisations and MPs, who are the members of the party (para. 5.7. of the Statute of the "Reforms and Order" Party). The political council of the "People's Union "Our Ukraine" includes of the following ex officio members: heads of regional organisations, MPs, members of the Government, the Head of the Supreme Council of the Autonomous Republic of Crimea, heads of regional councils, mayors of the capitals of the regions, cities of Kyiv and Sevastopol, heads of regional state administrations (para. 7.3.3. of the Statute of the "People's Union "Our Ukraine"). In the Party "Forward, Ukraine!" the head of the party is the only ex officio member of the political council; the others, including representatives of regional organisations, are to be elected by the national congress of the party (para. 4.10 of the Statute of the "Forward, Ukraine!" Party). In People's Movement of Ukraine the central leadership of the party

must include the head of the party and his deputies, members of political council, heads of regional organisations (para. 79 of the Statute). Ex officio members of the central leadership of the Ukrainian People's Party are the head, deputy heads, heads of regional organisations (para. 3.6.7. of the Statute), the same list of ex officio members of political council is envisaged by the Statute of the Labour Party of Ukraine (para. 8.3.1.). The head, deputy heads and the chief of staff are ex officio members of the political council of the People's Party (Article 33 of the Statute of the People's Party). In Civil Party "PORA" central council of the party must include the heads of the political councils of the regional organisations of the party, in the Party of Motherland Defenders – the head of the party, honorary chairman of the party, head of the Secretariat of the party, the head of the board of Crimean republican organisation (para. 6.6. of the Statute of the Party of Motherland Defenders).

In period between the sittings of political council (in most parties statutes stipulate that sittings of political councils are held at least once in 2-6 months) the party is managed by the **presidium of the political council**. This organ in different parties is called in a different way: the secretariat – in the Party "Reforms and Order" and in the Party of Motherland Defenders, the political council – in the People's Movement of Ukraine and in "PORA"; the board – in the Ukrainian People's Party; the political executive committee – in "Forward, Ukraine!", Labour Party of Ukraine, People's Party; the presidium of the Central Committee – in the Communist Party of Ukraine. In some parties (the Party of Regions, the People's Union "Our Ukraine", the Ukrainian People's Party, "Forward, Ukraine!", the Communist Party) this body is formed by political council; in other parties – by national congress (the People's Party, the Labour Party of Ukraine, the People's Movement of Ukraine). *In most cases, the statutes of political parties define ex officio members of the presidium*. They are: the head, deputy heads, head of the party's faction in the parliament, the head of the Central commission – in the Party of Regions (para. 6.5. of the Statute); the head, deputy heads and the head of the executive committee of the party – in the Party "Reforms and Order" (para. 5.13 of the Statute) and in People's Union "Our Ukraine" (para. 7.4.2. of the Statute); the head and deputy heads – in People's Movement of Ukraine, Ukrainian People's Party and Labour Party of Ukraine. In the People's Party ex officio members of the political executive committee are the head, deputy heads and the chief of staff of the party.

In almost all parliamentary parties the heads of the parties are elected for the certain term by the national congresses. The only exception to this rule is "PORA", the head of which is elected by the political council (in "PORA" political council is the analogue of the presidium of political council in other parties). The deputy heads can be elected by the national congress (People's Movement of Ukraine, Party "Reforms and Order", Labour Party of Ukraine, European Party of Ukraine) or by the political council of the party (People's Union "Our Ukraine", "Forward, Ukraine!", Party of Motherland Defenders, "PORA"). Nevertheless, in both cases statutes of the parties provide that deputy heads are elected only on proposal of the head of the party.

The secretariat of the party (the executive committee – in the Party "Reforms and Order" and in "PORA", central executive committee – in the "People's Union "Our Ukraine", the apparatus of the central leadership – in the People's Movement of Ukraine, the apparatus – in the Labour Party of Ukraine and in People's Party, the apparatus of the Central Committee – in the Communist Party of Ukraine) provides information, analytical, legal, technical and other support to the party and its governing bodies, party's regional and local organisations. As a general rule the head of the secretariat is appointed by the political council of the party (in particular, in the Party "Reforms and Order", in "People's Union "Our Ukraine", in "Forward, Ukraine!", in People's Movement of Ukraine, in Ukrainian People's Party). In the Labour Party of Ukraine the head of the apparatus is appointed by the head of the party, in the People's Party – by the political executive committee, in "PORA" – by the political council of the party (in "PORA" the political council is the analogue of the presidium of the political party in other parties)

Supervision over the implementation of statute and programme of the party, over party's internal discipline, financial activities of the party, activities of the controlling bodies of local organisations of the party is exercised by the **central controlling commission of the party**. In all

parliamentary parties the members of this commission are elected by their national congresses.

iii) Authority over the use of the party's name, nominations, finance, the party program, membership, changes to the party's rules

The use of party's name

In all parties the right to use of party's name belongs to the head of the party who can exercise it without any prior authorisation. In many parties the right to use the name of the party belongs to representative and/or executive central bodies of the party. For example, in the Party of Regions – to the presidium of the political council, in Ukrainian Social Democratic Party – to the political council, in the People's Movement of Ukraine – to the national congress, central leadership and political council; in the Ukrainian People's Party – to the political council; in the Christian Democratic Union – to the political council, in the European Party of Ukraine – to the national congress and council of the party; in CP "PORA" – to the political council, in the Party of Motherland Defenders – to the central council, in the People's Party – to the political council and political executive committee; in the Labour Party of Ukraine – to the national congress and political executive committee.

Statutes of the majority of political parties do not define the procedure of the use of party's name by the heads of primary cells, local and regional organisations (AUCA "Motherland", "Reforms and Order", People's Union "Our Ukraine", "Forward, Ukraine!", the People's Movement of Ukraine, Ukrainian People's Party, "PORA", the Party of Motherland Defenders, the Communist Party of Ukraine). As the a general rule, heads of primary, local and regional organisations can act only on behalf of the respective organisations (i.e. not on behalf of the party). In the Labour Party of Ukraine the heads of local organisations can speak only on behalf of their organisations. In the European Party of Ukraine executive bodies of the local and regional organisations have the right to use party's name in their political statements without prior consent of the central bodies of the party. In the Christian Democratic Union and in the Labour party heads of local and regional offices may make political statements on behalf of the party only with prior consent of the head of the party or of the executive body of the party. The least democratic in this respect is the Statute of the Ukrainian Social Democratic Party, which stipulates that political statements even on behalf of the local or regional organisations of the party must be authorised by the head of the party.

Nominations

As a general rule, every member of the political party can nominate himself or other member(s) of the party for election or appointment to any governing body of the party, of party primary, local or regional organisation. Statutes of most parties do not regulate the procedure for nomination to the positions in primary, local and regional party organisations.

It should be mentioned that *in the majority of parliamentary parties party leader has exclusive right to nominate candidates for certain positions in the executive body of the party and, in some cases, in the central controlling body*. The only exception to this rule is the Labour Party of Ukraine, statute of which does not outline the procedure for nominations at all, and only defines the bodies authorised to appoint and dismiss party officials. In all parties right to nominate candidates for deputy heads has only the head of the party. In some parties members or head of the central controlling commission also can be nominated only by the head of the party (members – in the Party of Regions, the head of the controlling commission – in the Party of Motherland Defenders and in the People's Party). The head of the party often have exclusive right to nominate members of the executive bodies of the party (in AUCA "Motherland", in Ukrainian Social Democratic Party, in the People's Movement of Ukraine, in the Ukrainian People's Party, in the Party of Motherland Defenders – the members of political council, members of the presidium (board) of the political

council; in the Party “Reforms and Order”, in “Forward, Ukraine!”, in the European Party of Ukraine – the members of the executive committee of the party, etc.).

The right to nominate candidates for presidential and parliamentary elections belongs to the national congress of the party, the right to nominate candidates for local elections – to respective representative bodies (conventions, meetings, conferences, etc.) of regional and local organisations of the party.

Finance

The right to use the funds and property of the party belongs to the executive body of the party. The latter is also authorised to determine the procedure of the use of party’s funds and property by party regional and local organisations. Executive bodies of regional and local organisations with the status of legal entity can at their own discretion dispose of finances and property obtained independently of parties. Disposal of the property and finances, received from parties, can be exercised by executive bodies of regional and local organisations only after prior authorisation by the executive body of the party. The use of party finances and property is supervised by controlling commissions of regional organisations and by central controlling commission of the party.

Party programme

Since party programmes are adopted by the national congresses of the respective parties, they can be changed only by decisions of the respective national congresses.

Membership

It is a common practice in most parliamentary parties that decisions on admission to the membership can be passed by the conference of local organisation, by the governing body of the organisation of a higher level (local or regional) or by the governing body of the party (political council, executive committee, etc.). In most cases (for example, in the People’s Movement of Ukraine, Ukrainian People’s Party, European Party, “PORA”, Communist Party) the decision of the primary cell on admission to party membership comes into force only if approved by the governing body of organisation of a higher level (local or regional). In the People’s Party admission to the membership is the exclusive prerogative of the local organisation of the party, in the Party “Reforms and Order” – of the governing body of regional organisation or of the secretariat of the party. Right to terminate membership in the party has the body authorised to accept to membership or the executive body of party organisation of higher level (in all parties represented in the Parliament).

Changes to the party’s rules

There are several types of party’s rules. The tasks, principles and procedures of operation of the party are determined by party’s statute. Only the national congress has a right to approve, to introduce changes or amendments to the statute of the party. The other rules, for example, rules which regulate current party activities in most parties can be approved by the executive body of the party (i.e. by political council, executive committee, etc.).

iv) The territorial structure of a party

The territorial structure of any party includes **basic level** (represented by primary cells), **local level** (represented by local party organisations which unite several primary cells), **regional level** (represented by regional party organisations in regions (“oblasts”), cities of Kyiv and Sevastopol and the Autonomous Republic of Crimea).

Primary cell of the party can be established by the decision of the constituent assembly

(conference, meeting, etc.) of the primary cell. Establishment of the primary cell requires authorisation or recognition by the party organisation of local level. Statutes of some parties provide for recognition of primary cells even by regional party organisations (the Party “Reforms and Order”, “People’s Union “Our Ukraine”). Primary cells may unite at least 3 members of the party (in the “People’s Union “Our Ukraine”, in the European Party – at least 5 members). As the matter of fact, primary cell can not obtain the status of legal entity. Organisational structure of primary cell includes the meeting of its members (or conference), sole or collegial executive body, headed by the head of a primary cell (who is elected by the conference for a term, specified in the statute of the party). In some parties (namely, in the Christian Democratic Union, in the Party of Motherland Defenders) the executive body can be collegial only. In other parties it can be collegial only if quantity of the members of the party exceeds certain threshold (for example, 50 members in the Party of Regions and in Labour Party, 15 members – in the Ukrainian Social Democratic Party and in the Communist Party of Ukraine). Along with these bodies, statutes of some political parties (the Labour Party of Ukraine, the People’s Party, the Communist Party of Ukraine, “PORA”) provide for the formation in primary cells of controlling commissions, authorised to consider complaints and proposals of the members of the cell and to supervise over finances of the primary cell. Statutes of most political parties stipulate that primary cell may be terminated by resolution of the conference of the primary cell or by decision of the executive body of party organisation of a higher level (local or regional). Such decision, as a general rule, can be adopted by the the sole discretion of the respective organisation.

The **local party organisation** unites several primary organizations and may acquire status of legal entity upon the decision of the executive body of the regional party organization. The governing bodies of the local party organisation are its conference and executive body, headed by the head of local organisation (the head is elected by the conference for a certain term). The executive body manages the local organisation in period between the conferences. Statutes of most parties provide for the formation in the organisational structure of local organisation of additional executive body which manage local organisation activities in between meetings of primary executive body. The primary and secondary executive bodies are headed by the head of the local organisation of the party. Statutes of some political parties (the Labour Party of Ukraine, the People’s Party, the Communist Party of Ukraine, “PORA”) provide for the formation in local organisations of controlling commissions, authorised to consider complaints and proposals of the members of the party and to supervise over finances of the local organisation. In other parties these powers are exercised by controlling commissions of the regional organisations. The local organisation, as a general rule, can be terminated by the decision of the executive body of the regional organisations or by the decision of the political council of the party.

Regional party organisations unite all local party organisations in particular region – in “oblast”, in the city of Kyiv or Sevastopol, or in the Autonomous Republic of Crimea. Decisions on their establishment must be authorised by the executive body (i.e. by political council or by the presidium) of political party. Regional organisations after their registration with the respective regional offices of the Ministry of Justice obtain the status of legal entities. The governing bodies of the regional organisation are the conference, the primary executive body (the council), which ensures functioning of the organisation in between conferences, and the secondary executive body (eg., the executive committee, the members of which are elected by the council), which carries the current management of the organization. Both the executive bodies are headed by the head of the organization, elected by the conference for a certain term of office. In all parties regional conference is authorised to form controlling commission of the regional organisation and to elect its members. Controlling commission of the regional organisation monitors compliance of the decisions of the bodies of regional and local organisations with the statute, implementation of the party’s programme, the use of party funds, observance of party discipline and ethics, resolves conflicts in party organizations. The regional organisation of the party can be terminated by the decision of the political council of the party.

v) Requirements of transparency of activities of political parties (public disclosure of records, the names of party officials/members, etc.)

Section 1 of Article 6 of the Law on Civic Associations states that transparency is one of the basic principles of functioning of the political parties. The same Article of the Law stipulates that political parties are obliged to make public on regular basis their principal documents, composition of the leadership, 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 and (in the national mass-media, also on annually basis) their financial reports on revenues and expenditures, reports on property. *Ukrainian legislation provides no other legal requirements to the parties, aiming at enhancing transparency of the parties' activities.*

Proper implementation of the abovementioned legal provisions faces several problems: 1) the laws do not define which parties' documents should be considered as "principal"; 2) laws do not define who exactly can be considered as party's "leadership" – only the head, deputy heads of the party, party's accountant, or also the members of the executive bodies, members of controlling commission of the party, etc.; 3) legal acts do not set clear requirements to the scope of information, which have to be presented in financial reports, reports on property, in data on sources of financing and expenditures of the parties; 4) legal acts do not provide for the deadline of publication of the reports, "principal" documents, composition of the "leadership", etc.; 5) there are no sanctions for violations by the parties of the legal provisions on publication of information and reports.

vi) Officials (bodies) required to be included by party in its organizational structure

Party is legally required to include in its organisational structure the following bodies: *representative body* (party's conference, congress, convention, etc.), *governing (executive) and controlling bodies* (Article 97 of the Civil Code of Ukraine, Articles 8, 10 of the Law on Political Parties in Ukraine).

c. Internal democracy

i) Legal provisions regarding internal democracy and legal definition of 'internal democracy'

The law does not define "internal democracy". The Law on Civic Associations only provides for some principles of functioning of political parties, aiming at enhancing internal democracy. For example, according to Article 6 of this Law, parties have to run on the basis of equality of all members, lawfulness and transparency; all main issues of the political party activities must be settled at meetings of all members of political party or their representatives. Article 7 of the Law on Civic Associations prohibits not to except or expell member from a political party because of his/her sex or ethnicity. Articles 98 and 99 of the Civil Code of Ukraine also envisage some principles of internal democracy within the political parties: 1) the representative body of the party can make decisions on all issues of the political party activities, including the issues referred by the representative body to the competence of the executive body; 2) the decisions of the representative body may be adopted by the simple majority of the members present unless otherwise provided by law or by the statute of the political party; 3) the decisions on changes to the statute of the party, on disposal of assets worth 50% of total assets of the party, on termination of the party must be adopted by not less than 3/4 of all members of the political party (unless otherwise provided by law); 4) the decision of the representative body can be a subject of appeal to the court of law; 5) the competence and the composition of the executive body of the political party have to be defined by the representative body, the latter is also authorised to elect the members of the executive body.

ii) Enforcement of party rules and the right to bring an enforcement action

According to Article 17 of the Code of Administrative Court Procedure, competence of the administrative courts do not apply to public legal affairs, which according to the statute of the party are referred to party's internal activities or competence. Party rules can be a subject to the court appeal only in one case - if they violate provisions of the Constitution or of the laws, including provisions which stipulate the rights of individuals.

Thus, party rules are enforced by parties themselves. In every party the right to supervise over implementation of the party rules belongs to the controlling commission of regional organisations and to the controlling commission of the party. However, these commissions are not authorised to cancel decisions, which contradict to the decisions of statutory bodies of the party, to the statute and programme of political party, they can only inform executive bodies of the party on violations of internal party rules. Statutes of all parliamentary parties stipulate that executive body of organisation of higher level is authorised to repeal decisions of statutory bodies of the organisation of lower level (i.e., the council of local organisation may cancel decisions of primary cells, the executive body of regional organisation is authorised to cancel decisions of the bodies of local organisations, primary cells, etc.). In the Ukrainian Social Democratic Party the right to cancel decisions of statutory bodies of regional and local organisations belong only to the board of political council of the party.

Representative bodies at basic (primary), local and regional levels have right to cancel decisions of the executive bodies of the organisations of respective level (including decisions of the head of the organisation). In period between congresses (conventions, general meetings, conferences) primary executive bodies of local and regional organisations may cancel the decisions of the secondary executive bodies (executive committees, boards, presidia, etc.)

iii) Legal requirements on establishing internal control mechanisms to control behaviour and/or resolve internal disputes

The Law does not require that parties have to establish internal mechanisms to control behaviour and to resolve internal disputes. However, statutes of all political parties which are represented in the parliament introduce such mechanisms.

iv) Provisions in party rules regarding internal democracy (direct/representative) in the selection of party leaders, candidates, programs

Statutes of the parliamentary parties do not regulate the procedure of selection of party leaders. All statutes declare that each member of the party can nominate himself or other member(s) of the party on positions in statutory bodies at local, regional and central levels of the party organisation. All primary, local and regional organisations can submit to the organisations of higher level proposals on selection of party leader, candidates for respective elections, changes to programme or to the statute of the party. However, statutes do not provide effective mechanisms of implementation of abovementioned rights, proposals, etc., since all decisions in this regard have to be passed by the representative body of the party or its local or regional organisation.

Right to appoint party leader, to nominate candidates for national elections and to change the programme of the party belongs to the national congress of the party (the only exception to this rule is "PORA" where the head of the party is elected by the collegial executive body of the party which, in turn, is formed by the party's national congress). National congress is representative body: political council of the party determines quota of regional representation at the congress and regional conferences elect delegates for the congress. Right to submit proposals on delegates belongs to members of regional and local organisations, however, statutes do not regulate the procedure of nomination. The same nature have the regional and local conferences of the party, i.e. the executive body of organisation of higher level determines quota for delegates from

organisations of a lower level and the latter (on their conferences) elect delegates for the conference of higher level. Direct democracy exists only at the level of primary cells since members of primary cell can directly elect the head of cell, to pass decisions relating to the activities of the cell.

In most parties internal democracy is restricted: 1) quota for representation of lower level organisations at the local, regional or national conference (congress) in all parties is determined by the executive bodies of the higher level, which can, thus, ensure presence at the conference of “loyal” party members; 2) as the matter of fact, all decisions (except relating to changes to the statute, party name, termination of the party, etc.) can be passed by the representative body of the party or of its local (regional) organisation by the simple majority of members present (in presence of absolute or qualified majority of all delegates), which allows not to take into consideration the position of minority; 3) in some parties the exclusive right to nominate candidates for national elections belongs to the executive body of the party (for example, in Ukrainian Social Democratic Party, in “People’s Union “Our Ukraine”, in Ukrainian People’s Party, in the Communist Party of Ukraine, in the People’s Party); 4) in some parties (in the Party “Reforms and Order”, in the European Party of Ukraine, in the Communist Party of Ukraine, in the People’s Party, in the Labour Party of Ukraine) candidates for local elections, nominated by party organisations of lower level, have to be approved by the executive body of the party organisation of higher level.

v) Procedure for making/changing party rules

The statute of the party can be adopted, amended or changed only by the national congress of the party. In all parties amendments to the statute (as well as to the programme of the party) require qualified majority of votes of 2/3 members present at the national congress. The rules which regulate current party activities in most parties can be approved, changed or amended by the executive body of the party (i.e. by political council, executive committee, etc.) by absolute majority of votes of the members of the body.

vi) The extent of limitation of participation (to formal members as opposed to supporters, contributors, or casual “members”)

Right to participate in representative bodies of the party or its regional, local, primary organisations is limited to party members only.

vii) Gender and other quotas in party rules/law concerning party positions/committees

In party rules and in the law there are no provisions on gender or other similar quotas for party positions, membership in the internal bodies of the parties, etc.

viii) Legal requirement for political parties to be “democratic”, definition of the term “democratic”, its interpretation by courts and understanding of “democratic” in practice

The legal framework does not set a requirement for political parties to be “democratic”, it provides only basic requirements, aiming at enhancing democracy within the political parties, i.e. parties have to act on the basis of equality of all members, lawfulness and transparency; all main issues of the political party activities must be settled at congresses (meetings, conventions, etc.) of all members of political party. Since relations within the party are outside the competence of the courts, the term “democratic” has never been interpreted by courts. In practice “democracy” within the party is understood as the possibility of not only the leaders of the party, but “ordinary” members as well, to influence party policy, nominations of candidates for elections, decision-making processes at local and central levels of party organisation, as freedom of discussion and criticising of party policy, decisions of the governing bodies of a party.

d. Restrictions on party activities, including non-political or business activities

i) Restrictions on certain formations (ie., based on ideology, non-democratic activity, personality based)

There are no personality based restrictions on parties in Ukraine. Law prohibits establishment and operation of political parties and other civic associations, programme objectives or activities of which are aimed at liquidating Ukrainian independence, forceful changing the constitutional order, violating Ukraine's sovereignty and territorial integrity, undermining national security, unlawfully seizing power, propagandising war and violence, inciting interethnic, racial or religious animosity, encroaching on human rights and freedoms, encroaching on public health, establishment of military (quasi-military) units (formations) (Article 5 of the Law on Political Parties in Ukraine). Article 4 of the Law on Civic Associations prohibits establishment and operation of political parties, whose governing bodies or structural units are situated outside Ukraine, as well as establishment or operation of structural units of political parties in executive bodies, courts, Armed Forces, State Frontier Service, State Special Service for Transport, in state enterprises, institutions and organisations, state educational institutions.

ii) Restrictions on parties establishing military of quasi-military groups

Parties establishing military or quasi-military units are prohibited. The Criminal Code of Ukraine (Article 260) provides criminal liability for establishing illegal military and quasi-military units. According to data of the State Register of Court Decisions, the provisions of Article 260 of the Criminal Code has never been applied in practice (at least since 2008, when the data from the Register became publicly available).

3. Parties in Elections

a. Ballot access and format

i) The procedure to be followed by recognized/registered party to assure a place on the ballot

In order to assure a place on the ballot in the **parliamentary**³⁸ elections party must meet the following requirements: **1)** it must be registered 365 days prior to the day of elections³⁹; **2)** not later than 90 days prior to the day of election it have to hold a congress to nominate candidates for elections; and not less than 200 delegates must participate in this congress; **3)** the party must nominate not less than 18 and not more than 450 candidates in single nationwide multi-member constituency; **4)** the party must notify the Central Electoral Commission of the date and venue of the congress 5 days before the congress; **5)** the party must nominate list of candidates with indication of the priority of candidates in the list; **6)** not later than 85 days before the date of the parliamentary elections (75 days – in the case if CEC refuses to register candidates nominated by the party) party must submit to the CEC all documents required for registration of the candidates from the party: a) application for registration of candidates; b) a copy of the certificate of registration of the party and of the party's statute, certified free of charge by the Ministry of Justice; c) an excerpt from the minutes of the congress relating to consideration (voting) on the nomination

³⁸ 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>

³⁹ The vast majority of politicians and experts tends to think that restrictions on participation of new political parties in elections should remain in future. The basis for this opinion is that in practice there was a number of cases when some parliamentary parties used newly established ones (or so called “technical parties”) as a tool for achieving majority in the polling and district commissions, for campaigning against their competitors.

of the candidates; d) list of candidates nominated by the party; e) written statement of each candidate included into the party list, certifying agreement to be party candidate, obligation in case of election to stop activities which are incompatible with the mandate, consent to the publication of biographical information, obligation within the month after official announcement of election results to transfer enterprises and assets into management of another person; f) autobiography of every candidate; g) election program of the party in Ukrainian; h) declaration of property and income of each candidate nominated by the party; i) deposit in amount of 2000 minimum wages (EUR 151 790 as on the 1st January 2010); j) photographs of each candidate in number and size, determined by the CEC.

In addition to the parties right to nominate candidates for parliamentary elections also have electoral coalitions (blocs). All parties that want to unite into coalition have to be registered 365 days before the day of election⁴⁰, otherwise the coalition will not have right to nominate candidates for parliamentary elections. In order to form coalition each party have to hold a congress, which have to decide on the formation of the coalition. These congresses should be held not later than 90 days before the day of elections. The leaders of the parties or parties' authorised representatives have to sign an agreement on formation of a coalition. Full name of the coalition should include the names of all parties – members of a coalition and should not contain the names of the parties which are not the members of a coalition or names of famous persons if they are not candidates nominated by the coalition, or if their names are not used in official names of at least one party-member of a coalition⁴¹.

Generally speaking, nomination of the candidates by electoral coalition, as well as registration of such candidates by the CEC, is conducted in the same way as nomination and registration of parties' candidates. At the same time, electoral coalitions must submit to the CEC additional documents, namely decisions of parties congresses on formation of electoral coalition, excerpts from the minutes of the congresses of the party on formation of electoral coalition and agreement on the formation of electoral coalition⁴². All submitted documents must be signed by the leaders of all parties who are the members of electoral coalition and attested by seals of these parties. *The party that is the member of electoral coalition has no right to nominate candidates (independently of the coalition) and can be the member of only one coalition.* The party which is the member of the electoral coalition, not later than 35 days prior to the day of elections may decide to terminate its membership in the coalition. In this case, if membership was terminated not later than 90 days before the elections, the respective party can nominate its own candidates for elections, otherwise it loses the status of electoral subject and the right to nominate candidates for parliamentary elections. According to Article 63 of the Law on Elections of People's Deputies of Ukraine, all parties-members of electoral coalition not later than 35 days before elections may decide to dissolve the electoral coalition. In this case all such parties, as well as electoral coalition, lose the right to nominate own candidates for parliamentary elections and can not longer be considered as electoral subjects.

In order to assure the place on a ballot in the **presidential** election⁴³, party must meet the following requirements: **1)** it must be registered 365 days prior to the day of elections; **2)** not later than 71 day prior to the day of election it have to hold a congress to nominate candidate for election; and not less than 200 delegates must participate in this congress; **3)** the party must nominate only one candidate in single nationwide constituency; **4)** the party must notify the Central Electoral Commission of the date and venue of the congress not later than 2 days before the congress; **5)** not later than 68 days prior to the day of the presidential election party must submit to the CEC all

⁴⁰ Article 10.2. of the Law on Parliamentary Elections; <http://zakon1.rada.gov.ua/cgi-bin/laws/main.cgi?nreg=1665-15&p=1270074647320297>

⁴¹ Article 56 of the Law on Parliamentary Elections; <http://zakon1.rada.gov.ua/cgi-bin/laws/main.cgi?nreg=1665-15&p=1270074647320297>

⁴² Article 58 of the Law on Parliamentary Elections; <http://zakon1.rada.gov.ua/cgi-bin/laws/main.cgi?nreg=1665-15&p=1270074647320297>

⁴³ Articles 44 – 52 of the Law on Presidential Election; <http://zakon1.rada.gov.ua/cgi-bin/laws/main.cgi?nreg=474-14&p=1270074647320297>

documents required for registration of the presidential candidate: a) an application for registration of the candidate; b) copy of the certificate of registration of the party and of the party's statute, certified free of charge by the Ministry of Justice before the start of election campaign; c) excerpt from the minutes of the congress at which the candidate was nominated; d) excerpt from the minutes of the congresses of the parties with the decision to form coalition to nominate candidate for election and agreement to form the coalition (these excerpts and agreement should be submitted by coalitions only); e) the excerpt from the minutes of the congress (inter-party congress), which have to certify the nomination of the candidate by the party (coalition); f) written statement of a presidential candidate on agreement to be nominated by the party (coalition), which must certify the obligation within a month after official announcement of election results to transfer enterprises and assets into management of another person and to stop all activities which are incompatible with the presidency, consent to the disclosure of his biographical information and of his declaration of property and income; g) autobiography of the candidate; h) election program in Ukrainian; i) deposit in amount of UAH 2 500 000 (EUR 217 580)⁴⁴; j) candidate's declaration of property and income; 6) photographs in size and quantity defined by the CEC.

In order to assure the place on a ballot on **local elections**⁴⁵, local organisation of the party must meet the following requirements: **1)** it must be registered (legalised) by the respective regional or local body of the Ministry of Justice of Ukraine; **2)** it must represent the party registered by the Ministry of Justice not later than 365 days before local elections; **3)** not later than 40 days before elections it have to hold the meeting (conference, etc.) to nominate the candidates for elections (in contrast to the parliamentary elections minimum number of participants of the conference is not required); the quantity of candidates nominated must not exceed quantity of members of respective local or regional council (in contrast to the parliamentary elections minimum quantity of the candidates to be nominated is not determined for local elections); **4)** local organisation must notify territorial electoral commission in written of the date and venue of the conference not later than 5 days before the congress; **5)** in case of elections to the councils which are formed on the basis of system of proportional representation, the local organisation of the party have to nominate candidates with identification of their priority (numbers) in the list of candidates; **6)** in 40 days before the local elections (if local elections are held in the multi-mandate constituency) local organisation have to submit all documents required for registration of the candidates: a) application for registration; b) copy of registration (legalisation) certificate of the local/regional organisation of the party, excerpt from the minutes of the conference for nomination of the candidates for elections; c) the list of candidates nominated by local/regional party organisation; d) statement of each candidate on his consent to be nominated by party organisation, on obligation in the case of election to stop activities which are incompatible with the deputy's mandate, on consent on publication of his biographical information; e) autobiography of every candidate; f) election program in Ukrainian; g) the declaration of assets and revenues of every candidate included into the party's list; h) list with voters' signatures for support of nomination of the candidates by respective organisation of the party (from 200 to 1 000 of signatures, depending on type of the local election held).

Election coalitions which nominate candidates for local elections⁴⁶ must consist of the *registered* organisations of the parties which, in turn, must be *registered not later than 365 days*

⁴⁴ In opinion of the experts of the Venice Commission and of 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 contest the elections as independent candidates. Therefore, the experts 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). – Paragraph 17; [http://www.venice.coe.int/docs/2009/CDL-AD\(2009\)040-e.asp](http://www.venice.coe.int/docs/2009/CDL-AD(2009)040-e.asp)

⁴⁵ Articles 33 – 47 of the Law on Local Elections; <http://zakon1.rada.gov.ua/cgi-bin/laws/main.cgi?nreg=1667-15&p=1270074647320297>

⁴⁶ Article 35 of the Law on Local Elections; <http://zakon1.rada.gov.ua/cgi-bin/laws/main.cgi?nreg=1667-15&p=1270074647320297>

before the day of local elections. Election coalition for nomination of the candidates for local elections can be formed at either national or local level. In the first case coalition's right to nominate candidates can be exercised both at the national, regional and local levels (if the respective decision was passed by inter-party congress of the parties which formed the coalition). If the coalition was formed at regional or local level, it can consist of two organisations of appropriate level (i.e. regional coalition may consist of regional organisations, local coalition – of local organisations, etc.). Entering into agreement to form coalition must be allowed by executive bodies of parties' organisations of higher level. The name of the coalition must not include the names of the parties which are not the members of coalition. The decision to form the coalition have to be passed by conferences of respective local organisations; territorial election commission should be notified of the formation of the coalition not later than 45 days before the elections. Local organisation of the party which is the member of electoral coalition has no right to nominate own candidates independently of the coalition, and may be the member of only one coalition at the same time. To assure the place on a ballot coalition have to submit to the territorial electoral commission the following documents (additionally to the documents submitted by the local or regional organisations of the parties): 1) the copy of the agreement to form the coalition (if the candidates for local elections are nominated by coalition formed at national level); 2) excerpts from the minutes of the conference of the party organisation certifying the decision to enter into the coalition (if the coalition is formed at regional or local level). The organisation which is the member of the coalition may at any time terminate its membership in the coalition. If this happens 40 days prior to the day of elections, the party has the right to nominate own candidates for elections, otherwise it loses the status of electoral subject. If all organisations decided to terminate their membership in coalition, they all lose the status of electoral subjects as well as the right to nominate own candidates for respective local elections.

ii) The procedure to be followed by unregistered party to assure a place on the ballot

Unregistered parties are not allowed to participate in national and local elections. New parties (i.e. registered later than 365 days prior to the day of elections) have no right to nominate candidates for presidential, parliamentary and local elections.

iii) The procedure to be followed by independent candidates (candidates or lists of candidates) who are not presenting themselves as the candidates of a political party to secure a place on the ballot

Independent candidates can nominate themselves only for presidential, mayoral elections and elections to the village and town councils (Articles 2, 33 of the Law on Elections of the deputies of the Supreme Council of the Autonomous Republic of Crimea, local councils and village, town and city mayors). The right to nominate candidates for parliamentary elections, for elections to the Supreme Council of the Autonomous Republic of Crimea, to the regional (“oblast”), city, district and city district councils can be exercised only by electoral coalitions, parties (in national elections), regional and local organisations of the parties⁴⁷.

To secure a place on the ballot in **presidential elections** independent candidate not later than 68 days before the elections should submit to the CEC the following documents: 1) application for registration which must certify the obligation within a month after official announcement of election results to transfer enterprises and assets into management of another person and to stop all activities which are incompatible with the presidency, consent to the disclosure of his biographical information and declaration of property and income; 2) autobiography of the candidate; 3) election

⁴⁷ OSCE/ODIHR Election Observation Missions repeatedly recommended to amend the Law on Parliamentary Election in order to allow individual independent candidates to stand for elections. See, for example: Ukraine. Pre-Term Parliamentary Elections 30 September 2007. OSCE/ODIHR Election Observation Mission Report. – Warsaw, 20 December 2007. – Recommendation 2; 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; http://www.osce.org/documents/odihr/2006/06/19631_en.pdf

program in Ukrainian; 4) deposit in amount of UAH 2 500 000 (EUR 217 580); 5) candidate's declaration of property and income; 6) photographs in size and quantity defined by the CEC.

In order to assure a place on the ballot in **local elections** independent candidate not later than 40 days before the elections has to submit to the respective territorial electoral commission the following documents: 1) passport or temporary certificate of the citizen of Ukraine; 2) application for registration with undertaking to stop in the case of being elected all activities which are incompatible with the mandate or position he nominates for, and consent to the disclosure of his biographical information; 3) autobiography; 4) election program; 5) declaration of assets and revenues for the previous year; 6) photographs in size and quantity defined by the territorial election commission; 7) lists with voters' signatures for support of his nomination (from 10 to 300 signatures depending on the type of elections).

iv) The requirements to be met by individual candidates to appear on the ballot (e.g., requirement of ratification by central party of local choices of candidates, etc.), possibility of representation of a party by candidate without the party's consent.

There is no ratification of local choices of candidates in parliamentary and presidential elections since all candidates are nominated in nationwide constituency by national congresses (inter-party national congresses) of political parties and coalitions.

The laws on national and local elections prohibit the dissemination of deliberately false information on parties, coalitions and candidates. According to the Law on Civic Associations, party has exclusive right to use its name. Thus, the candidates are not allowed to claim themselves as representing a party without respective party's (coalition's) consent, if, in fact, they are independent candidates or were nominated by the party or coalition, other than the party (coalition) which candidate claims to represent.

To appear on the ballot in **parliamentary** elections individual candidate must meet the following requirements: 1) candidate must have right to stand for parliamentary elections, i.e. he must be citizen of Ukraine of at least 21 years of age, residing in Ukraine for at least 5 years before the parliamentary elections and must not be incapacitated or convicted for committing an intentional crime (if the criminal record was cleared or settled, the person cannot be considered as convicted for committing crime); 2) a candidate must be nominated by political party or electoral coalition. The CEC cancels registration of a candidate for elections if he submits to the CEC a statement of refusal to stand for elections; if the party or coalition had cancelled decision to nominate him as candidate and applied to the CEC for cancellation of his registration not later than 15 days before the elections; if a candidate lost his right to be elected to the Parliament; if the party or coalition that had nominated the candidate lost the status of electoral subject; if the candidate was included into the lists of several parties or coalitions upon his written consent; if a candidate repeatedly committed offense for which the CEC announced him warning.

The right to stand for **presidential elections** has every citizen of Ukraine of at least 35 years of age, who has a right to vote in parliamentary elections, speaks Ukrainian and residing in Ukraine for at least 10 years before elections. Every citizen who meets these requirements, can be self-nominated or nominated by political party (by electoral coalition). The registration of a candidate with the CEC can be cancelled if a candidate submits to the CEC a statement of refusal of candidacy (not later than 5 days before a presidential election), if the party or coalition which nominated a candidate lost the status of electoral subject or if a candidate lost the right to be elected as the President of Ukraine.

The right to stand for **local elections** has every citizen of Ukraine of at least 18 years of age, who is not incapacitated and have no criminal record for committing an intentional crime if the record was not cleared or settled. Everybody who meets these requirements, can nominate himself as a candidate for election of mayor or for election of deputies of village and town councils, or can be nominated by respective local (regional) organisation of the party or by electoral coalition. Territorial electoral commission cancels the registration of a candidate if he/she: submits to the TEC

a statement of refusal to stand for elections not later than 5 days before the elections; lost the right to stand for local elections; had been nominated by the regional or local organisation of the party and the registration of this organisation was cancelled with the respective regional or local body of the Ministry of Justice or if the organisation or coalition which had nominated candidate lost the status of electoral subject; if he/she committed certain offences (abused of his position in local or state authorities for the purposes of election campaign, directly or indirectly bribed voters, exceeded the limit of expenditures for election campaign, used sources for financing of election campaign other than sources of electoral fund, repeatedly committed the same offense for which TEC announced him/her warning).

v) Party designations in the ballot, rules/laws governing them and ballot structure (e.g., structuring in a way that favors some parties over others or over independent candidacies)

In **parliamentary** elections the names of the parties and coalitions appear in the ballot paper according to the order determined by lot, which is held by the CEC before approval of the form and the text of the ballot. The ballot paper includes number of each party or coalition determined by lot, its full name and (under the text with the name of the party or coalition) names, surnames and patronimics 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 (Article 78 of the Law on parliamentary elections).

In the **presidential** elections the candidates appear in the ballot in accordance with alphabetical order of the surnames of the candidates. For each candidate the following information should be indicated: name, surname, patronimic, 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 coalition which nominated the candidate* (or indication that candidate nominated himself as a candidate). The text of the ballot can be printed only on the one side of the ballot paper (Article 71 of the Law on the presidential election).

In the **local elections in the multi-member constituencies** the names of the local (regional) organisations of the parties and names of the coalitions appear in the ballot paper in accordance with the order determined by lot, which is held by the territorial electoral commission not later than 26 days before the elections. The ballot paper includes number of each organisation of the party or coalition determined by lot, its full name, names, surnames and patronimics of the first five candidates nominated by party organisation or coalition. The text of the ballot can be printed only on the one side of the ballot paper (Article 63 of the Law on local elections).

In the **local election in the single member constituencies** candidates appear in the ballot in alphabetical order of their surnames with indication their names, surnames, patronimics, education, place of employment, *party membership*, name of the party organisation or coalition which nominated candidate (if a candidate was nominated by party organisation or coalition). The text of the ballot can be printed only on the one side of the ballot paper (Article 63 of the Law on local elections).

vi) Restriction of electoral participation to [registered] political parties

The right to nominate candidates for the **parliamentary** elections belongs to the *registered* political parties and coalitions of registered political parties. In order to participate in parliamentary elections party (every party that participates in coalition) must be registered with the Ministry of Justice not later than 365 days before the parliamentary elections.

In the **presidential** elections candidates can nominate themselves or can be nominated by registered political parties or by coalitions of registered political parties. The party can nominate presidential candidate only if being registered with the Ministry of Justice not later than 365 days before election. The same applies to all parties which form the coalition to nominate presidential candidate.

In the **elections to the Supreme Council of the Autonomous Republic of Crimea, regional**

councils, district councils, city district councils, city councils electoral participation is limited to registered (legalised) local or regional organisations of political parties which, in turn, must be registered with the Ministry of Justice not later than 365 days prior to the day of respective elections, and to coalitions of registered local or regional organisations of political parties (such parties also have to be registered 365 days before the elections). In the **elections of city, town and village mayors, deputies of village and town councils** candidates can nominate themselves or can be nominated by registered organisations of political parties and coalitions of registered organisations of political parties (in the case of nomination by coalition or by organisation of the party, the latter have to be registered with the Ministry of Justice not later than 365 days before the elections).

vii) Possibility of joint sponsorship of candidates by parties (fusion, panachage, apparentement), possibility of nomination of more than one list of party candidates in a single district

Parties can not jointly sponsor the candidates since this possibility is excluded by electoral systems for parliamentary and local elections. Party can not nominate more than one list of candidates in a single constituency.

viii) Possibility of being a candidate for more than one office, in more than one district, on the list of more than one party

If parliamentary elections are not held simultaneously with the other elections, individual can not be a candidate of two parties or electoral coalitions at the same time. Since parliamentary elections are held in single nationwide constituency, possibility to be 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 which are not held simultaneously with national elections, individual can be a candidate for more than one office (for example, he can stand for mayoral elections, elections to any local council at the same time). Individual can not be a candidate in more than one district if the elections are held in single member districts (for example, to the town or village council). In all types of local elections which are held simultaneously, individual can be nominated by only one party (i.e. local organisation of the party) or electoral coalition (Article 33 of the Law on local elections).

If different types of elections (presidential, parliamentary, local) are held simultaneously, 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 the party “A”, for the presidential – by the party “B”, for local elections – by the party “C”).

ix) “Write-in” candidacies

Write-in candidacies are prohibited in all elections.

x) Type of list system (open/closed), legal constraints on determination of list order, system of intraparty preference voting in open list systems, mechanisms which allow parties to influence the order of election in system of preference voting

Parliamentary elections, elections to the local councils (except elections of deputies of town and village councils) are held on proportional system with closed lists and in single multi-member constituencies, where all members of the parliament or local councils are elected. *The order of the candidates in lists is determined by national congresses of the the parties* (in local elections – by regional or local conventions (conferences, etc.) of party organisations at regional and local levels)

and it is not constrained by law.

b. Parties in campaigns

i) Regulation of party activities in the context of campaigns and types of activities which are regulated

Party activities in the context of campaigns are regulated by electoral laws, in particular, by the Law on the Elections of People's deputies of Ukraine (the Law on parliamentary elections), Law on the Election of the President of Ukraine (the Law on presidential elections), Law on the Elections of the Deputies of the Supreme Council of the Autonomous Republic of Crimea, Deputies of the Local Councils and Mayors of the Cities, Towns and Villages (the Law on local elections). All these laws were adopted in different time and do not go in line with each other. *The Law on Political Parties in Ukraine does not apply to the activities of political parties during election campaigns.*

In accordance with electoral laws, *parties, electoral coalitions and candidates may start campaigning after their registration as electoral subjects with the CEC (in national elections) and respective territorial election commissions (in local elections). The election campaign must be stopped at 24 hours of the last Friday before the day of elections.* This period is considered as period of election campaign, and the laws prohibit any campaigning outside the frames of this period. However, in practice this restriction is easily circumvented – most parties and coalitions start campaigning even before appointment of the elections. This is because the laws do not restrict political advertising before the start of the campaign period; the parties and candidates obtain status of electoral subjects only after they are registered with the CEC or TEC (in local elections) and therefore cannot be brought to account for illegal activities that took place before they acquired the status of electoral subjects.

Electoral laws contain general definition of “election campaigning”⁴⁸. An election campaigning is defined as any activity aimed to urge the voters to vote for or against particular electoral subject. Election campaigning includes, inter alia, the following activities: meetings with voters, rallies, demonstrations, pickets, holding public debates, discussions, round tables, press conferences on election programs and/or activities of the electoral subjects; political advertising, interviews, videos; distribution of printed campaign materials; political outdoor advertising; concerts, sport competitions with the support of parties, coalitions or candidates; public appeals to vote for or against political parties, coalitions, candidates, etc. (the list of activities is not exhaustive) (see, for example, Article 66 of the Law on parliamentary elections).

Private financing of election campaigns can only be made at the expense of electoral funds. In the presidential election and local elections in single member constituencies (where independent individual candidates may be nominated through self-nomination) the right to form electoral funds belongs only to individual candidates. In the parliamentary elections and local elections in multi-member constituencies, unlike presidential and local elections in single member constituencies, the electoral funds can be created only by parties and coalitions, not by individual candidates. The limit of expenditures is set up for local elections only. In other words, during presidential and parliamentary election campaigns candidates (in presidential election), parties and coalitions (in parliamentary elections) may spend on elections as much as they want.

The laws on elections provide equal opportunities for campaigning for all candidates (parties and coalitions). For example, if private broadcasting company provided a candidate with paid airtime for placement of political advertisements, it must provide other candidates (parties or

⁴⁸ In 2007 OSCE/ODIHR Election Observation Mission recommended to make 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 law by the media, including fines, 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

coalitions) with the same time and under the same conditions (price, etc.) for political advertising. The same applies to public broadcasting, print media, premises for campaign activities.

Election laws set a number of requirements election campaigning must comply with: 1) election campaign in penal institutions and military units is restricted; 2) the law forbids election campaign in the premises of state authorities and self-governmental bodies; 3) placing of political advertisements on buildings and premises of the executive and self-governmental bodies is prohibited; 4) political advertisements and other election materials must not contain calls for liquidation of Ukrainian independence, for violent change 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, incitement of ethnical, racial, national or religious hatred, violations of human rights and freedoms, etc.; 5) it is prohibited to distribute of knowingly false or defamatory information about candidates, parties and coalitions⁴⁹; 6) campaigning should not be accompanied by direct or indirect bribery of voters; 7) campaigning in foreign media operating in the territory of Ukraine or campaigning in the media registered in Ukraine, in which the share of foreign property exceeds 50%, is also prohibited⁵⁰; 8) placement of campaign materials on the cultural heritage is not allowed; 9) candidates who occupy positions in executive bodies or bodies of local self-government have no right to engage in campaign activities subordinated persons, to use official transport, communications, premises; 10) it is prohibited to distribute printed campaign materials without indication of the publisher, circulation, persons responsible for the publication.

The electoral laws stipulate for financing of certain campaign activities from the state budget of Ukraine or local budgets. For example, in **parliamentary elections** the following activities are financed from the state budget of Ukraine: **1)** publication of election program of every party and coalition in official newspapers “Voice of Ukraine”, “Governmental Courier” and in one regional printed media (Article 70 of the Law on the parliamentary elections); **2)** provision of airtime for election campaigning for each party and coalition (for each party: 60 minutes on national public television, 60 minutes on national public radio, 20 minutes on regional TV channels in every region, 20 minutes on regional radio channels in every region) (Article 69 of the Law on the parliamentary elections); **3)** publication of information posters of parties and coalitions 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 coalition for every polling commission) (Article 67 of the Law on the parliamentary elections)⁵¹. In **presidential election** the state pays for: **1)** publication of information posters of presidential candidates which have to include full programs of candidates, general information about candidates and their photographs (5 copies of a poster of every candidate for every polling commission) (Article 59 of the Law on presidential election); **2)** provision of airtime for election campaigning for every candidate (30 minutes on national public TV channel, 45 minutes on national public radio channel, 30 minutes on regional TV channels in each region, 20 minutes on regional radio channels in each region) (Article 61 of the Law on presidential election); **3)** provision of airtime for debates between presidential candidates (at least 60 minutes for every

⁴⁹ In 2006 OSCE/ODIHR Election Observation Mission recommended to review 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

⁵⁰ The relevant provision of the Law on Presidential Election was criticized by OSCE/ODIHR Election Observation Mission in 2004. The Mission stressed, in particular, that it violates the principle that citizens have the right to receive and impart information regardless of frontiers as set out in paragraph 26.1 of the OSCE Moscow Document. However, the relevant provision still exists in both Law on Presidential Election and in 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

⁵¹ In connection with this OSCE/ODIHR Election Observation Mission came to the conclusion that one poster per polling commission informing the voters about the parties present on the ballot should be enough and information posters printed by state separately for every party are not necessary. The task of informing voters about candidates should fall on parties and not on the 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

two candidates before the first round of election and at least 100 minutes for the two candidates participating in the second round of the election – before the second round) (Article 62 of the Law on presidential election); **4)** publication of election program of every presidential candidate in official newspapers “Voice of Ukraine”, “Governmental Courier” and in regional printed media (Article 63 of the Law on presidential election). In **local elections** the following campaign activities are financed from local budgets: **1)** publication of information posters of candidates for local elections which should include full programs of candidates (full election programs of local organisations of the parties or coalitions which nominated candidates in multi-member constituency), general information about the candidates and their photographs (in single member constituencies), full lists of candidates (in multi-member constituencies) (2 copies of a poster of every candidate (local party organisation or coalition) for every polling commission) (Article 52 of the Law on local elections); **2)** publication of election program of each candidate in single member constituency, publication of election program of each local organisation of the party or coalition (in multi-member constituency) in local or regional printed media (Article 54 of the Law on local elections); **3)** provision of airtime for election campaigning for every candidate in single member constituency, for every local organisation of the party and coalition in multi-member constituency (amount of airtime for electoral subjects depends on funds provided from the local budget) (Article 55 of the Law on local elections).

ii) Regulation of candidate activities in the context of campaigns

Legal provisions governing election activities of the parties apply to candidates unless otherwise provided by law. In particular, candidates have to campaign within the time limits specified by laws, and to follow the other restrictions on campaign activities stipulated by laws. During election campaign candidates can campaign for themselves, for or against other candidates, parties and electoral coalitions. In cases where the law gives the right to nominate candidates only to political parties or coalitions, candidates are not allowed to form their own electoral funds and are required to finance their participation in election campaign from the electoral fund of the party or coalition that nominated them. If the law provides for possibility of self-nomination of candidates (for example, in presidential and some local elections), the opposite rule applies: electoral funds can be formed only by candidates; parties and coalitions are not allowed to form their own electoral funds (they can only transfer money to the electoral funds of the candidates nominated by them). The electoral laws do not contain any provisions aiming at restriction of competition between candidates from the same party or coalition in the same electoral district. In other words, the candidate is free to criticise another candidate from the same party in the same constituency. If this happens, the conflicts between candidates are resolved by party or coalition which nominated them.

iii) Mode of regulation of parties and candidates (joint/separate), differences in regulations/limitations for party and non-party candidates

In electoral laws there are no separate provisions to regulate campaign activities of the parties (coalitions, local party organisations) separately from the activities of candidates in elections. Peculiarities of regulation of campaign activities of parties and candidates depend only on whether the law provides for possibility of self-nomination. If such possibility provided, rules on regulation of campaign activities apply mainly to the candidates which in this case are the main objects of regulation. This means, for example, that individual candidates, not parties, form electoral funds, have access to the media for campaigning, submit reports on the use of electoral funds, etc. Nevertheless, in this case restrictions on campaigning apply to both candidates and parties (local party organisations in local elections, coalitions). If possibility of self-nomination is not provided, parties (local organisations of the parties in local elections) and coalitions, not the candidates, are the main objects of legislative regulation (parties form electoral funds to finance campaign activities of their candidates, are provided with free or paid airtime on TV and radio, submit reports on the

use of electoral funds, etc.).

Laws on elections uphold the principle of equality of all electoral subjects in carrying out of campaign activities (Article 3 of the Law on presidential elections, Article 3 of the Law on parliamentary elections, Article 11 of the Law on local elections). The only deviation from this principle is that party and independent candidates (where possibility of their nomination is provided) have unequal access to financial resources for campaigning. For example, electoral funds of party candidates can be formed from the party funds, while to electoral funds of independent (self-nominated) candidates parties are not allowed to donate. Restrictions on campaign activities, provisions on access to media apply equally to both party and independent candidates.

iv) Rules regarding mass media access (equality/proportionality of access, provision of free time, complete bans, etc.)

Outdoor political advertising, political advertising on radio, TV and in print media *are allowed both inside and outside of time frames for election campaigning*. During electoral process electoral subjects have *access to both private and public media*. *Certain types of campaigning in public media are free of charge for the candidates, parties and coalitions*. *The cost of respective election campaign activities in public media is reimbursed to public broadcasting companies and public printed media from the state budget* (in the national elections) or local budgets (in the local elections). Local budgets receive state budget subvention for the respective purposes. Access to public media during local and national elections is based on the *principle of equality of access*. The following types of access to public media are granted: **1) in parliamentary elections** - *publication of election program* of every party and coalition in official newspapers “Voice of Ukraine”, “Governmental Courier” and in one regional print media; *provision of airtime for election campaigning* for every party and coalition (for every party: 60 minutes on national public television, 60 minutes on national public radio, 20 minutes on regional TV channels in every region, 20 minutes on regional radio channels in every region); **2) in presidential election** - *publication of election program* of every presidential candidate in official newspapers “Voice of Ukraine”, “Governmental Courier” and in regional print media; *provision of airtime for election campaigning* for every candidate (30 minutes on national public TV channel, 45 minutes on national public radio channel, 30 minutes on regional TV channels in every region, 20 minutes on regional radio channels in every region) (Article 61 of the Law on presidential election); *provision of airtime for debates* between presidential candidates (at least 60 minutes for every two candidates before the first round of election and at least 100 minutes for the two candidates participating in the second round of the election – before the second round); **3) in local elections** - *publication of election program* of every candidate in single member constituency, publication of election program of every local organisation of the party or coalition (in multi-member constituency) in local or regional print media; *provision of airtime for election campaigning* for every candidate in single member constituency, every local organisation of the party and coalition in multi-member constituency.

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

The laws on elections (articles 68-70 of the Law on parliamentary elections, articles 60-61, 63 of the Law on presidential election, articles 53-55 of the Law on local elections) provide for number of mechanisms aimed at ensuring equal opportunities of access to private and public media during election campaign period⁵²: **1)** at the very beginning of election campaign broadcasting companies and printed media are obliged to publish in the printed media cost rates for airtime and print space (laws on elections also provide some mechanisms to prevent overvaluation of the cost of political

⁵² Ukrainian legislation on elections overregulates activities of the private media during election campaigns. It should be mentioned in connection with this that in 2004 OSCE/ODIHR Election Observation Mission stressed that: 1) the media-related provisions of the Election Law fail to clearly distinguish between state and private media; 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

advertising with respect to commercial advertising); **2)** airtime or print space at the expense of electoral funds may be granted only upon signing of the contract between media and manager of the account of the electoral fund and only on condition of payment in advance for air time and print space; **3)** only electoral subject can be the customer of political advertising on radio, TV and printed media during period for campaigning; **4)** printed or audiovisual media (both private and public), which provided electoral subject with airtime or print space, are required to grant airtime or print space under the same conditions to another electoral subject (this requirement does not apply to media, founded by political parties which obtained the status of electoral subjects); **5)** candidates, parties and coalitions have the right to reply (refute) information which they consider to be “*inadequate*” (media are *obliged* to ensure possibility of exercising the right to reply).

The Law on Advertising from July 3, 1996 (articles 13, 14) *sets quotas on political advertising in print and audiovisual media*. Broadcasting time for political advertising during election campaign may not exceed 25% of total broadcasting time within one hour and 20% of broadcasting time within 24 hours (unlike many other countries, in Ukraine quota for political advertising includes 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 the media may refuse to place political advertising under the pretext of possibility of exceeding the quota on political advertising.*

v) Restrictions on third party campaigning

Participation of third parties in the election campaigns is restricted by several mechanisms: 1) financing of election campaign of candidate, party or coalition from the sources other than sources of electoral funds and budgetary funds (allocated for certain purposes like free access to media, etc.) is strictly prohibited (see, for example, Article 48 of the Law on parliamentary elections); 2) in turn, the right to make donations to the electoral funds of the electoral subjects have only parties (they may donate to their own electoral funds, funds of the candidates nominated by them and to electoral funds of electoral coalitions in which they are participating), candidates (they can donate to electoral fund of the party or coalition which nominated them, or to own electoral funds in the case of self-nomination) and private individuals (who can donate to any party, coalition or to the candidate in single member constituency); 3) certain categories of individuals are not allowed to participate in campaigning (members of electoral commissions, foreigners, the stateless, public officials of the executive, self-governmental bodies, law enforcement agencies, courts); 4) only electoral subjects can be customers of political advertising in the media. *At the same time, the regulation of third party participation in election campaigns is controversial.* For example, if campaign activities are carried out free of charge and without direct use of mass media, they are not prohibited by law. Third person also can participate in election campaigns by indirection, through men of straw (since individuals are not restricted in participation in campaign activities), who can campaign for or against electoral subjects in their own names. Third party can also donate to the electoral funds through straw persons, or, directly, to political parties since restrictions on financing of political parties and election campaigns are in conflict with each other. *Thus, de jure, the participation of third party in election campaign is prohibited, but de facto, third person can easily circumvent the restrictions and can be actively involved in campaigning.*

c. Women in parties and election

i) Party rules/laws on representation of women/minority groups within party governing bodies

There are no laws concerning the representation of (representatives of) women within governing bodies of political parties. None of the statutes of the parties represented in the Supreme

Council of Ukraine contain relevant provisions as well.

As results of the discussion of this Report in focus groups show, the idea of supplementing current legislation with provisions that would encourage women's representation in the governing bodies of political parties is not supported by most of the representatives of political parties. The arguments are as follow:

- direct methods aimed at encouraging women's representation (for example, the introduction of quotas), according to participants of the focus groups, would mean state interference in internal party activities, which is contrary to Article 11 of the ECHR;
- indirect methods aimed at encouraging representation of women in governing bodies of political parties, in the opinion of focus groups participants, in mid-term perspective may be an argument for the same treatment for other social groups (for example, on the basis of sexual orientation, profession, ethnicity, education etc.)
- those women who seek to influence party policy, could be elected or appointed to the bodies/offices without any additional legal incentives; attempts to encourage women representation in governing bodies of political parties through "artificial" legal mechanisms may entail priority of women representation over professionalism, which is thought to be unjustified;
- there are more than 100 political parties in Ukraine and, respectively, women have a possibility to chose among them those in which their chances to be elected to the governing bodies are higher than in other parties, in particular – one of three women parties ("Women of Ukraine", "Solidarity of Women of Ukraine", All-Ukrainian political association "Women for Future").

Hence, the results of focus groups suggest that the issue of encouraging women's representation in governing bodies of political parties is the issue of mid-term priority rather than urgent necessity.

ii) Party rules/laws on representation of women/minority groups among party nominees for public office, the effect of the rules/laws (e.g., guarantee of election, guarantee of an opportunity to compete)

The OSCE/ODIHR Election Observation Mission in its final Report on 2010 Presidential Election emphasized that women are underrepresented in the legislature, with only 8 per cent female representation in the current parliament. The Mission also stressed in this connection that Ukraine has committed itself under the UN Millennium Development Goals to achieve a minimum 30 per cent of either gender represented in legislative and executive bodies by 2015⁵³.

Ukrainian legislation on representation of women and minorities among parties nominees for public office can be characterised as declarative, incomplete and impossible to implement in practice. For example, on 8th September 2005 the Parliament adopted the Law on ensuring equal rights and opportunities for women and men. According to Article 15 of this Law, political parties and electoral coalitions nominating candidates for *parliamentary elections* have to provide for representation of men and women in the lists of candidates for elections. However, the Law on parliamentary elections does not contain any provisions aimed at specification and implementation of the provisions of Article 15 of the abovementioned Law⁵⁴. The absence of men or women in the list cannot be considered as a cause for refusal of registration of candidates nominated by party or coalition. The same applies to Article 9 of the Law on National Minorities in Ukraine - it declares

⁵³ 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

⁵⁴ In 2007 OSCE/ODIHR Election Observation Mission recommended to to undertake significant efforts to effectively enhance participation of women as candidates and increase the representation of women in Parliament and Government. The Mission also recommended to bring the Laws on Political Parties in Ukraine and 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

the right of minorities to be elected, but does not suggest any idea on how to implement this provision in practice. *Thus, laws only provide an opportunity to compete.*

None of the statutes of the parties represented in the parliament contain provisions on nomination of women or minorities for elections.

The results of discussion of this Report in focus groups shows that:

- encouraging representation of women on party lists is not seen as a priority of electoral reform; the most important goal of this reform today is to reduce the influence of party leadership on nomination candidates for elections;
- direct mechanisms aimed at ensuring gender balance in party lists (in particular, quotas) were assessed critically (such criticism was based mainly on Article 24 of the Constitution of Ukraine which ensures equality of citizens before the law regardless of gender);

This implies that: 1) encouragement of representation of either gender in party lists is likely to be considered as a mid-term objective; 2) gender balance within party lists should be achieved indirect mechanisms, that is - without establishing quotas of minimum representation. There is also a need in official interpretation of Article 24 of the Constitution by the Constitutional Court of Ukraine, in particular the Constitutional Court should give clear answer to the question of whether introduction of quotas or other similar mechanisms goes in line with provisions of Article 24 of the Constitution in terms of equality before the law regardless gender, ethnicity, etc. The necessity in such interpretation also follows from the opinion of the Venice Commission that “legal rules requiring a minimum percentage of each gender among candidates should not be considered as contrary to the principle of equal suffrage if they have a constitutional basis⁵⁵”.

Table 2. Mechanisms to promote representation of women in representative bodies

| Mechanisms | Examples |
|------------------------|---|
| Statutory quotas | Albania, Armenia, Belgium, Bosnia and Herzegovina, Greece, Spain, FYR Macedonia, Portugal, Serbia, Slovenia, France |
| Reserved seats | Afghanistan, Burundi, Egypt, Jordan, Kyrgyzstan, Sudan, Tanzania, Uganda |
| “Zipper” or “zebra” | France |
| Public financing | Croatia |
| Voluntary party quotas | 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, etc. By 2000, among 76 European parties, with at least ten members in the lower house, almost half (35 parties) used gender quotas |

- Source:**
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](http://www.venice.coe.int/docs/2009/CDL-AD(2009)021-e.asp)

iii) Additional direct/indirect benefits/privileges conferred by the state/public funds to political parties for promotion of women

The state does not confer any benefits to political parties for women promotion.

⁵⁵ Declaration on Women’s Participation in Elections, adopted by the Venice Commission at its 67th plenary session (Venice, 9-10 June 2006) on the basis of contributions by Mr Francois Luchaire (Member, Andorra), Ms Hanna Suchocka (Member, Poland). – p. 2; [http://www.venice.coe.int/docs/2006/CDL-AD\(2006\)020-e.asp](http://www.venice.coe.int/docs/2006/CDL-AD(2006)020-e.asp)

iv) Enforcement of rules and regulations on representation of women, sanctions for violations

Since legislation regarding women representation is purely declarative, it can not be effectively enforced.

The law provides liability only for gender discrimination. According to Article 161 of the Criminal Code of Ukraine, *direct or indirect restriction of personal rights* (including the right to elect or to be elected) *or awarding privileges based on sex is punished by fine* (UAH 3400 – 8500 or EUR 300 - 751), by restriction of freedom for up to 5 years with or without prohibition to hold certain positions or to conduct certain kinds of activities for up to 3 years. The same actions combined with violence, fraud or threats or committed by official are punished by fine (UAH 8500 – 17000 or EUR 751 - 1503) or by deprivation of liberty for from 2 to 5 years with or without prohibition to hold certain positions or to conduct certain kinds of activities for up to 3 years.

d. Representation of minorities in political parties

i) Legal definition of “minorities”

The definition of national minorities is enshrined in the Law on National Minorities in Ukraine from June 25, 1992. According to Article 3 of this Law, minorities are the *citizens* of Ukraine who *are not Ukrainians by ethnicity* and express a sense of national consciousness and commonality with each other. The law do not provide for recognition of minorities by the state (everybody who considers him/herself as minority belongs to the minorities).

ii) Party rules/laws on representation of (representatives of) minorities within party governing bodies

There are no laws concerning the representation of (representatives of) minorities within governing bodies of political parties. Statutes of parliamentary parties also do not contain relevant provisions.

iii) Party rules/laws on representation of (representatives of) minorities among party nominees for public office, the effect of the rules/laws (e.g., guarantee of election, guarantee of an opportunity to compete)

Article 9 of the Law on National Minorities in Ukraine declares the right of minorities “to be elected or to be appointed on an equal basis to any position in the legislative, executive and judicial, local and regional self-governmental bodies, in the army, enterprises, institutions and organisations”. At the same time, the law does not provide any mechanisms to implement these provisions in practice. Statutes of political parties represented in the Parliament do not contain provisions on representation of (representatives of) minorities among party nominees for public office. Thus, party rules and legislative provisions provide for opportunity to compete, but do not give an electoral advantage⁵⁶.

4. Party funding

a. Public subventions

⁵⁶ In order to secure effective representation of national minorities in elected bodies, OSCE/ODIHR Election Observation Mission recommended in 2007: 1) to consult with national minorities on issues which concern them when amending electoral legislation; 2) 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. 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

i) Public financing of political parties/party-affiliated organisations (amounts; conditions, constraints, purposes, criteria, allocation rules, timing)

Currently there is no direct public funding of political parties in Ukraine. The state supports parties only indirectly (through tax exemptions for political parties, tax deductions and credits for donors' contributions, provision of free access to public media during national and local elections for parties, coalitions and candidates).

On 27 November 2003, the parliament amended a number of legislative acts of Ukraine due to the introduction of state funding of political parties. Among other, a new section was introduced also into the Law on Political Parties in Ukraine alongside with a number of other provisions related to the state funding of political parties. Actually, these amendments had to come into force in 2006 (in the part related to reimbursement of electoral expenses) an 2007 (in the part related to direct state financing of statutory activities of political parties), but 2007 Law on State Budget suspended them for 2007, and State Budget Law for 2008 cancelled these amendments at all. On 22.05.2008 the Constitutional Court declared respective provisions of the 2008 State Budget Law unconstitutional⁵⁷, but since Constitutional Court's decisions do not have retroactive effect, the validity of the respective provisions of the Law on Political Parties in Ukraine was not restituted.

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: 1) funding of those statutory activities of political parties which were not related to their participation in elections to the public authorities and local self-governmental bodies; 2) reimbursement of the electoral expenses from electoral funds of the parties, including those that were part of coalitions. The right to direct state funding had to be given to those political parties that met 3% election threshold either independently or within electoral coalitions. The same rule had to apply to reimbursement of electoral expenditures. Article 17-2 of the Law on Political Parties in Ukraine (also repealed) established the cap amount for the annual state funding of the statutory activities of political parties which was defined by multiplying 1% of the established minimum monthly wage (as of 1 January of the year preceding the one when the funds had to be provided) by the number of the voters included into the voter lists used in the most recent regular parliamentary elections. This amount had to be divided by the Ministry of Justice between the political parties and coalitions that have managed to overcome the election threshold in proportion to the votes that they received in such elections. Election coalitions had to divide such state funding in accordance with the procedure established by the parties that have formed the relevant coalition. The cap that could be received by each political party or coalition as a reimbursement for its parliamentary campaign expenses was established by Article 98 of the Law on parliamentary elections (also repealed) according to which the political parties and coalitions that had met election threshold were entitled to the reimbursement of their actual expenses, but not more than 100,000 minimum monthly wages for every party/coalition. Parties that formed electoral coalition were authorised to divide the state funding on agreement between them.

Before Article 98 of the Law on Parliamentary Elections was repealed, the Central Election Commission two times (in 2006 and 2007) had passed decisions on reimbursement of electoral expenses of political parties which met the election threshold. The amounts of reimbursement are presented in the Table below.

Table 3. Reimbursement of election expenditures to political parties in 2006 and 2007

⁵⁷ The decision of the Constitutional Court was not itself concerned with public financing of political parties. While considering the case the Court decided on whether the Law on State budget of Ukraine can suspend or abrogate provisions of other laws actively in force, in particular of those which determine 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, suspend or abrogate other laws, because such a possibility leads to discrepancies in laws and, therefore, entails restrictions of the existing rights and freedoms, enshrined in the Constitution. See also (in Ukrainian): Decision of the Constitutional Court of Ukraine as of May 22, 2008 № 10-пн/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>

| Name of the Party (bloc) | 2006 | 2007 |
|--------------------------------|----------------------------------|----------------------------------|
| | Reimbursement | Reimbursement |
| The Party of Regions | 35 000 000 | 44 000 000 |
| Bloc of Yulia Tymoshenko | 13 500 885 | 44 000 000 |
| Our Ukraine | 35 000 000 | 44 000 000 |
| The Socialist Party | 35 000 000 | 0 (failed to meet the threshold) |
| The Communist Party of Ukraine | 8 352 358 | 14 836 862 |
| Lytvyn's Bloc | 0 (failed to meet the threshold) | 39 147 393 |
| TOTAL | 126 853 243 | 185 984 255 |

- Джерело:
- 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>

ii) Public financing of party groups in parliament as equivalent of party support (amounts, conditions, constraints)

Factions in the Parliament do not receive money directly. Their activities are supported by the Secretariat of the Supreme Council of Ukraine, which provides necessary documents, analytics, premises for sittings, equipment, communications, etc. Employees of faction secretariat are public servants and receive salaries directly from the state budget. Total amount of direct support of factions' operation cannot be evaluated because parliamentary expense items are classified.

iii) 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 with non-cash support only.

iv) Non-cash benefits/support/"tax expenditures" given to parties/candidates (e.g., tax-deductions, credits for contributions, free or reduced cost broadcasting time, free or reduced cost use of public buildings for meetings, public bill-board space)

Political **parties** enjoy *nonprofit status*. This means that as a general rule they do not pay taxes, including corporate income tax on the certain revenues (Article 7.11.3 of the Law on Corporate Income Tax). The list of incomes *exempted from corporate income 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 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 agitation and propaganda materials, goods with party symbols, conducting festivals, exhibitions, lectures and other political actions). Also, according to Article 5.3.2 of the Law on Private Income Tax, an *individual may include the tax credit for the year under report the amount of funds or the value of the property donated to non-profit organisations (including political parties), in the amount that exceeds 2%, but is not more than 5% of the total taxed revenue for the year under report*. Article 5.2.2 of the Law on Corporate Income Tax sets that the *gross expenses of the taxpayer shall include the funds or the value of the goods (works or services) voluntarily transferred during the year under report to non-profit organisations (including to political parties) in the amount that exceeds 2% but is not more than 5% of the taxed profit received in the previous year*. *The other forms of indirect state support to parties are not provided*.

Candidates, parties and coalitions as electoral subjects in elections do not pay taxes as well. Another form of state non-cash support is publication of electoral posters and provision of free airtime on public radio and TV as well as publication of electoral programs of electoral subjects.

In **parliamentary elections** the following activities are financed from the state budget of

Ukraine: **1)** publication of election program of every party and coalition in official newspapers “Voice of Ukraine”, “Governmental Courier” and in one regional print media; **2)** provision of airtime for election campaigning for every party and coalition (for every party: 60 minutes on national public television, 60 minutes on national public radio, 20 minutes on regional TV channels in every region, 20 minutes on regional radio channels in every region); **3)** publication of information posters of parties and coalitions with full programs, complete lists of candidates and photographs of the first five candidates of the lists (2 copies of a poster of one party or coalition for every polling commission). In **presidential** election the state finances: **1)** publication of information posters of presidential candidates which should include full programs of the candidates, general information about the candidates and their photographs (5 copies of a poster of every candidate for every polling commission); **2)** provision of airtime for election campaigning for every candidate (30 minutes on national public TV channel, 45 minutes on national public radio channel, 30 minutes on regional TV channels in every region, 20 minutes on regional radio channels in every region); **3)** provision of airtime for debates between presidential candidates (at least 60 minutes for every two candidates before the first round of election and at least 100 minutes for the two candidates participating in the second round of the election – before the second round); **4)** publication of election program of every presidential candidate in official newspapers “Voice of Ukraine”, “Governmental Courier” and in regional printed media. In **local elections** the following campaign activities are financed from local budgets: **1)** publication of information posters of candidates for local elections which should include full programs of the candidates (full election programs of local organisations of the parties or coalitions which nominated candidates in multi-member constituency), general information about the candidates and their photographs, full lists of candidates (in multi-member constituencies) (2 copies of a poster of every candidate (local party organisation or coalition) for every polling commission); **2)** publication of election program of every candidate in single member constituency, publication of election program of every local organisation of the party or coalition (in multi-member constituency) in local or regional print media; **3)** provision of airtime for election campaigning for every candidate in single member constituency, every local organisation of the party and coalition in multi-member constituency (amount of airtime for electoral subjects depends on funds provided from the local budget).

**v) Definition of “fairness” as a criterion (proportionality/equality/other standard).
Restrictions on unauthorised use of state resources**

Fairness is defined as equality – all parties enjoy the same status, all electoral subjects have equal access to public resources during relevant election campaigns. Unauthorised use of state resources by candidate in elections who occupies position in state or local self-governmental body can entail cancellation of his registration and can be subject to criminal or administrative prosecution.

b. Fund-raising/contribution limits

i) Permitted/forbidden sources of financing of political parties and candidates

According Article 21 of the Law on Civic Associations, political parties **can use** the following sources of finance: 1) funds and property passed over by the *founders and members* of the political party; 2) funds and property purchased at the expense of membership fees and from the *own funds* of the political party; 3) funds and property donated by *citizens, companies, institutions, and organisations*; 4) the property purchased from *own business activities*, i.e. from *the sale of the social and political materials, other propaganda materials, products with the symbols of the party, organisation of festivals, celebrations, exhibitions, lectures, and other political events*. Hence, the list of the allowed sources is limited only to those proceeds that are not prohibited by law.

The **prohibited sources** of financing of political parties are defined by Article 14 of the Law on Political Parties and by Article 22 of the Law on Civic Associations. Parties can not be financed by: **1)** public authorities or local self-government bodies; **2)** state- or community-owned companies, institutions, and organisations, as well as the legal entities with the state or community shares or shares owned by non-residents; **3)** companies where the foreign-owned share exceeds 20%; **4)** foreign states and their citizens, stateless persons, foreign companies, institutions, and organisations; **5)** anonymous persons or under a pseudonym; **6)** charitable and religious associations and organisations; **7)** political parties which are not part of the electoral coalition; and **8)** non-legalised civic associations. Article 22 of the Law on Civic Associations prohibits political parties to *receive incomes from shares and other securities*. Unlike non-governmental organizations, political parties *are prohibited to found companies, excluding mass media* (Article 24 of the Law on Civic Associations), as well as to *perform business activities*, excluding the sale of social and political publications, other campaigning and promotion materials, products with political party symbols, conduct of festivals, celebrations, exhibitions, lectures, and other political events.

The electoral 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 the political party that have formed a coalition which has nominated a candidate, as well as from *private donations* (Article 43 of the Law on presidential elections).

According to Article 53 of the Law on **parliamentary** elections, the electoral fund of a political party/electoral coalition is formed from *own funds of the political party* (or the parties that have established a coalition) and from *private donations*.

The sources of election funds for **local elections** are defined by Article 86 of the Law on local elections, according to which the election fund of a local political party organisation/coalition that nominated candidates in multi-member constituency, is formed from the funds of such an *organisation* (local party organisation that have formed the coalition), as well as *private donations*; the election fund of **mayoral and other candidates in single member constituency** is formed from their *own funds*, the funds of the *political party* (the funds of local party organisation that have formed the coalition) that has nominated such a candidate, and *private donations*.

Foreigners, stateless persons and anonyms are **not allowed** to make donations to electoral funds of parties, coalitions and candidates in both national and local elections (Article 43 of the Law on presidential election, Article 53 of the Law on parliamentary elections and Article 86 of the Law on local elections).

ii) Restrictions on anonymous contributions to parties

Anonymous donations to parties are not allowed (Article 14 of the Law on Political Parties in Ukraine). Anonymous donations to electoral funds of political parties, coalitions and candidates are prohibited as well (Article 43 of the Law on presidential election, Article 53 of the Law on parliamentary elections and Article 86 of the Law on local elections).

iii) Limits on the amounts of allowable contributions from various categories of donors (unions, corporations, government contractors, public or semi-public agencies, non-profit, tax-exempt, other “special” organizations)

Current legislation does not limit the value of donation to political party from any permitted donor. Prohibited donors (public authorities or local self-government bodies; state- or community-owned companies, institutions, and organisations; legal entities with the state or community shares or shares owned by non-residents; companies where the foreign-owned share exceeds 20%; foreign states and their citizens, stateless persons, foreign companies, institutions, and organisations; anonymous persons or under a pseudonym; charitable and religious associations and organisations; political parties which are not part of the electoral coalition; non-legalised civic associations) *are not allowed to donate to political parties at all*.

In **presidential** election there is no limit set for amount that can be contributed by a presidential candidate or by the party (coalition) which nominated him, to the electoral fund of a presidential candidate. Donation from individual to the electoral fund of a presidential candidate should not exceed 400 minimum wages (UAH 347 600 or EUR 30 734).

In **parliamentary** elections, like with the presidential election, there is no limit on the amount and number of donations from political party to its own electoral fund or to the fund of electoral coalition in which party participates. Donation from individual to the electoral fund of a party or coalition should not exceed 400 minimum wages (UAH 347 600 or EUR 30 734).

In **local elections** donations from local party organisation to their own electoral funds, electoral fund of the coalition which local party organisation formed, or to the electoral funds of the candidates nominated by party in single member constituencies are not restricted in amount and number. In single member constituency donations from the candidates to their electoral funds are not subjects to any restriction as well. Donation from individual to any electoral fund in any local elections cannot exceed 3 minimum wages (UAH 2607 or EUR 231).

iv) Regulation of loans to parties

A political party may obtain loans from any person who is allowed to make donations to political parties. The value of loan from one person is not limited. According to the Law on Corporate Profit Tax, loan is a kind of irrevocable financial aid and, like donation, is exempted from corporate profit tax (Article 22 of the Law on Civic Associations, Articles 1.22.1 and 7.11.3 of the Law on Corporate Income Tax).

In elections individual candidates and parties can finance their campaign activities at the expense of loans only if the latter have been transferred by them to their electoral funds.

v) Regulation of in-kind contributions

The definition of donation to political party includes only donations, which were directly received by the party in the form of property (assets) or financial resources. Thus, the Law on Political Parties in Ukraine cannot be applied to in-kind donations. Party can receive them from any source; the amount of in-kind donation(s) from the same source during certain period is not restricted; parties are not legally required to include such donations in their financial reports; the law does not provide for the procedure of estimation of the value of such donations (for example, on the basis of common prices in the market for analogous types of goods, services, etc.).

Laws on elections contain some provisions aimed at restriction of in-kind donations to electoral subjects: 1) media are not allowed to set discounts or surcharges to the payment for airtime or print space; 2) 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, everybody who wants to finance campaign activities can do it only through electoral funds); 3) campaigning in the media is allowed only if the respective contract between electoral subject and media was signed and only if airtime or printing space was prepaid; the right to place political advertisements in the media is of electoral subjects only; 4) if the owner of the premises provided premises to any electoral subject, he is obliged to provide them to any other electoral subject under the same conditions (for the same price, etc.); the same rule applies to printed and audiovisual media; 5) the candidates who hold positions in public authorities, state- and community-owned enterprises, organisations and institutions, are forbidden to engage in campaign activities their subordinates, official transport, communications, premises.

At the same time laws on elections indirectly allow to make in-kind donations to electoral subjects: 1) any individual is free to campaign free of charge for or against party, coalition or candidate; 2) the use of premises and media owned by electoral subjects (parties and coalitions in multi-member constituencies; individual candidates in single member constituencies) is not subject to any restrictions or regulations; 3) anyone (including legal entities) can perform campaign

activities *free of charge*; campaigning for free is not restricted or regulated.

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

Intra-party transfers of funds are regulated by statutes of parties and are not restricted by law (Article 16 of the Law on Political Parties in Ukraine). During election campaigns only one restriction should be taken by party into consideration: right to make “internal” donations to electoral fund belongs to the electoral subject which nominated the candidate for respective elections. This means, for example, that party cannot transfer funds directly to the electoral funds of the local candidates who were nominated by party local organisation or to electoral fund of its local organisation which participates in local elections. In this case party have to transfer funds to its local organisation at first, and local organisation, respectively, will transfer money to its own electoral fund or to electoral fund of the candidate nominated by this organisation in single member district, or to electoral fund of “local” coalition which organisation formed, etc.

vii) The role of party membership fees and/or other direct payments by formal members in party finance

At present the share of membership fees in parties budgets is unknown. This is concerned with the fact that ammount of membership fees in financial statements of political parties, according to tax regulations of the State Tax Administration, must be included in total ammount of all incomes from all sources of financing (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 nonprofit organisations and on the procedure of its fill up). These statements are published by some parties on yearly basis and currently they are the most reliable source of information on financing of political parties (although party financial statement does not include financial statements of all party local organisations – local organisations with the status of legal entities prepare and present to tax authorities their own financial statements). The legislation does not oblige parties to publish statements on membership fees separetely from financial statement, and parties, in turn, are not getting a move on with their publication on their own initiative. The information on membership fees is also inaccessible on parties’ websites. Some experts believe that the ammount of membership fees in total financing of political parties is negligible. Probably, the only exception to this rule is the Communist Party of Ukraine, however, even this party can finance at the expense of membership fees only from 10% to 50% of the needs of its local organisations⁵⁸.

viii) 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 regulated at all (only sources of fiancing of political parties are restricted by law). A party can finance activities provided for by its statute, for example, it can provide other nonprofit oraganisations with financial support. The same rule applies to other organisations – they can provide party with financial aid if this is not contrary to the statutory provisions of organisation and organisation is allowed to donate to political party.

During election campaigns legal entities (not including parties and their local organisations which nominated candidates) are forbidden to finance election campaign activities directly.

ix) Regulation of party’s engagement in normal business activities as a way of raising funds, differences in regulation of parties and other businesses

As a general rule, parties are not allowed to perform any business activities. The only

⁵⁸ According to the information provided by the Committee of Voters of Ukraine; <http://www.pravda.com.ua/news/4b1a9c7532f13/>

exception to this rule is the sale of social and political publications, other campaigning and promotion materials, products with political party symbols, conduct of festivals, celebrations, exhibitions, lectures, and other political events (Article 21 of the Law on Civic Associations, Articles 7.11.11. and 7.11.13 of the Law on Corporate Income Tax). Revenues received from these activities are exempted from corporate income tax under Article 7.11.3 of the Law on Corporate Income Tax. Political parties cannot receive incomes from shares and other securities and found companies, excluding mass media.

x) Period of application of the restrictions (at all times/only in the context of elections), the definition of the electoral period

Restrictions on financing of political parties apply at all times. Restrictions on financing of political parties as electoral subjects are applied only during election process and to electoral subjects only. This means that, for example, legal entities are not allowed to donate to electoral funds of the parties, but they can donate to political parties and the parties may transfer obtained funds to their electoral funds (since donations to electoral funds by parties are not restricted in amount or number).

There is no clear definition of electoral period in the laws on elections. Since restrictions stipulated by laws can be applied to electoral subjects only, *electoral period coincides with a period of campaigning.* In the **parliamentary** elections period of campaigning starts *at the moment of adoption* by the CEC decision on registration of candidate(s) nominated by party or coalition and comes to the end at 24:00 last Friday before the day of parliamentary elections (Article 65 of the Law on parliamentary elections). In the **presidential** election period of campaigning starts *the next day* after adoption by the CEC decision on registration of a presidential candidate and ends at 24:00 last Friday before the day of election. Before the second round of election campaigning period starts the next day after adoption by the CEC decision on appointment of the second round and comes to the end at 24:00 last Friday before the day of second round voting (Article 57 of the Law on presidential election). In the **local elections** period of campaigning starts at the moment of adoption by territorial election commission decision on registration of candidate(s) and ends at 24:00 last Friday before the day of elections (Article 50 of the Law on local elections).

c. Spending limits

i) Limits on the allowable amounts of party/candidate spending (in total and/or for particular purposes)

The Law on Political Parties in Ukraine does not set any restrictions on amounts of party spending. Like other legal entities, parties are allowed to spend funds only on statutory objectives and activities.

In **presidential and parliamentary** elections there are *no restrictions* on amounts of spending from electoral funds of parties/coalitions (in parliamentary elections) and presidential candidates⁵⁹. *These restrictions do exist in local elections.* The amount of expenses from electoral funds in local elections is not fixed and is defined by the number of voters in the relevant constituency (from UAH 20 000 to 1 000 000 (EUR 1768 – 88 417) for the local organisation of political party or coalition; not more than half of the above amount for the mayoral candidates; 50 minimum wages (EUR 3842) for the candidates nominated in single member constituency).

⁵⁹ The Venice Commission and the OSCE/ODIHR recommended consideration of reinstating a spending limit which could help ensure a level playing field while being sufficiently high to allow for the free conduct of campaigning. 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). – Paragraph 49; [http://www.venice.coe.int/docs/2009/CDL-AD\(2009\)040-e.asp](http://www.venice.coe.int/docs/2009/CDL-AD(2009)040-e.asp)

As a general rule, money from electoral funds in all elections can be spent only on the purposes relating to carrying out of *campaign activities* in relevant elections and relevant constituencies (this means, for example, that funds may not be transferred to the electoral funds of the other electoral subjects (in the same elections); funds formed to finance parliamentary elections cannot be used to finance local or presidential elections and vice versa). The definition of *campaign activities* is very broad and includes inter alia production of campaigning materials, the use of mass media, other 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, communications services), as well as “other campaign activities” (See, for example, 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).

ii) Restrictions on the object of party/candidate spending (e.g., limitations on broadcast advertising)

Party can spend funds only on *statutory objectives and activities*. Electoral subjects (parties, coalitions, individual candidates in single member constituencies) may spend electoral funds on *campaign activities* in relevant elections and in constituencies where they have been registered as electoral subjects. There are no other restrictions on the objects of spending.

iii) Restrictions on third party spending

In general, third parties can finance election campaigns only through electoral funds of respective electoral subjects (since direct financing of campaign activities by third parties is prohibited). If they finance campaign through electoral funds, restrictions on permissible sources of financing and on amounts of donations are applied. This prohibition does not apply to cases where third party carries out campaign for free, without evident involvement of funds into relevant campaign activities. For example, any passer-by or “sympathetic” employees of any legal entity may “free of charge” campaign for or against electoral subject. Campaigning for free is not subject to any restrictions.

iv) Period of application of the restrictions (at all times/only in the context of elections)

Spending limits and other restrictions for parties apply at all times, spending limits and other restrictions set for electoral subjects – during campaigning period only.

d. Regulatory authority and reporting requirements

i) General reporting requirements (who, what, to whom, when)

Political parties are required to prepare *three types* of statements: 1) incomes and expenses statement; 2) the property statement; 3) the statement on the use of funds as nonprofit organisation (Article 17 of the Law on political Parties in Ukraine, State Tax Authority Order № 23 of 11.07.1997 on approval of the form of financial statement on the use of funds by nonprofit organisations and on the procedure of its fill up). The Law, however, establishes *no requirements to the form and content of income and expenses statement and property statement* or a minimal list of information to be reflected in them. No such requirements can be found also in by-laws. Party *is not required to submit incomes and expenses statement and property statement to any state body*, it is required just to publish them *annually* in one of national printed media (Section 1 of the Article 17 of the Law on Political Parties in Ukraine).

Statement on the use of funds as nonprofit organisation should be submitted *quarterly* to respective *local tax authority*. According to STA Order № 23 of 11.07.1997, the statement (first

part) should refer only to the taxable or tax-exempted sums (property value) received by the party over the period under report, in particular irretrievable financial aid or voluntary donations, proceeds from the sale of social and political publications, passive incomes, grants, and subsidies. The second part of the statement shall indicate the taxable incomes, profits, tax liabilities, and the tax amount to be paid. It is not required to provide in this report any information on how party have used its funds, just like on individuals or legal entities that have provided their irretrievable financial aid to the party. In other words, the main purpose of this statement seems to be not to ensure the transparency of financial activities of a political party, but rather correct calculation of tax liabilities.

All **election** laws require that *electoral fund managers (managers of the accumulative accounts of electoral funds)* submit financial statements on *the receipt and use of electoral fund resources* to the *Central Electoral Commission* (in national elections) or the relevant *territorial electoral commission* (in local elections).

According to Article 52 of the Law on parliamentary elections, the manager of the current account of the electoral fund shall, not later than on the 7th day after the ballot, provide the manager of the accumulative account of the electoral fund a financial report on the use of the funds from the current account. The manager of the accumulative account shall, not later than on the 15th day after the ballot, provide the CEC with a statement on the receipt and use of the electoral fund resources. The same procedure is established by Article 42 of the Law on the presidential election. Article 85 of the Law on local elections requires that managers of the electoral funds of electoral subjects not later than on the 5th day after the ballot submit the financial statements prepared in the form set by the CEC to the relevant territorial election commissions. *Laws do not require that electoral funds managers submit interim statements before the elections. Parties are not required to submit any reports to the CEC other than reports on the receipt and use of electoral funds. Third parties (including individuals, media, political parties without status of electoral subject) are not required to report to any state authority during or after the election campaign.*

Forms of the statements on the receipt and use of the electoral funds resources are established by the CEC within the dates envisaged by the relevant election laws before the election date. Such statements shall include: 1) a report on the *donations* to electoral fund (in two sections: receipt of donations by the accumulative account of the election fund and the transfer of funds from the accumulative account), 2) a consolidated report on the receipt of funds from accumulative account by the current account and their *use*, and 3) the reports on the transfer of the outstanding remainder. Each statement shall be supplemented with details of each transaction on the election fund accounts. The statement shall also be submitted together with an explanatory note.

ii) Individual identification and reporting on individual contributions and expenditures [over a set limit]

All donations (including source and value of each donation) to **political parties** and their expenditures (including information on value, recipient and purpose) *must be registered in books of accounts, but are not required to be reported* since statement on the use of funds as nonprofit organisation must contain only aggregate amount of *incomes* (separately for money incomes and property) of certain types (separately for: a) irretrievable financial aid or voluntary donations, b) proceeds from the sale of social and political publications, c) passive incomes, d) grants, and subsidies) and aggregate amount of expenses.

In all elections each individual donation to the electoral fund and each expenditure must be individually identified and reported.

In the **presidential elections** managers of accumulative accounts of electoral funds of presidential candidates in statements on the receipt and use of electoral fund resources must present the following information for *each private donation*: 1) date of donation; 2) number of payment order; 3) *name, surname, patronimic of donor*; 4) *date of birth of the donor*; 5) *place of residence and address of the donor*; 6) amount of donation. For donations of political parties to the electoral

funds of presidential candidates nominated by parties or coalitions, and for donations of self-nominated candidates to their own electoral funds the following information should be indicated: 1) date of payment, 2) number of payment order, and 3) amount of payment. *For each expenditure* from the current account of the electoral fund of the presidential candidate the following information have to be presented: date of payment, number of payment order, *beneficiary* (full name of beneficiary, his code in the State registry of enterprises and organisations of Ukraine or in the State registry of individual tax-payers), *purpose of payment*, *amount of expenditure* (Resolution of the CEC № 148 of 9.10.2009 on the procedure of preparation and on form of financial statements on the receipt and use of the electoral funds of presidential candidates). *The same procedure of identification and reporting on private donations and electoral expenses is introduced in parliamentary elections* (Resolution of the CEC № 72 of 5.01.2006 on the procedure of preparation of financial statements on the receipt and use of the electoral funds of parties and electoral coalitions, parliamentary candidates of which were registered with the Central Electoral Commission) and **in local elections** (Resolution of the CEC № 323 of 29.12.2005 on procedure of preparation of financial statements on the receipt and use of the electoral funds of local party organisations, electoral coalitions, mayoral candidates and candidates in single member constituency).

iii) Audit and publication of financial reports (who, when, conditions, constraints)

The law does not provide for compulsory audit of party incomes and expenses statement, the property statement and the statement on the use of funds as nonprofit organisation. Financial statements on the receipt and use of electoral fund resources are not audited as well. The sole responsibility for completeness, reliability and timeliness of the “electoral” reports lays on managers of accumulative accounts of electoral funds (managers of electoral funds).

According to Article 22 of the Law on Civic Associations, **political parties** shall *publish their budgets for the general public*. The Law, however, *does not describe the method and terms for the publication of such budgets or their form*. Article 26 of the same Law requires that, on the basis of financial declarations, the official newspaper “Voice of Ukraine” publishes the *lists of individuals or entities whose donations to political parties exceed the level established by the parliament*. However, the parliament has established neither the limit of donation that would require disclosure of the information on the donor, nor the list of information on individuals to be disclosed. This means that the above provision of Article 26 of the Law on Civic Associations is just an empty declaration. Article 17 of the Law on Political Parties in Ukraine obliges political parties to make public two types of statements (both should be published on an annual basis and in a national mass medium) - financial statement on incomes and expenses, and property statement. *The dates, content requirements and the procedure for the publication of these two reports are not established by the legislation*. In practice some parties publish these reports, but since there are no requirements to their content, these reports are very general (they contain information only on aggregate amount of income and expenses over period under report, and, respectively, on book value of property on the date of publication of property statement). *Party statements on the use of funds as nonprofit organisation are not required to be published*.

The Law on **parliamentary** elections *does not* oblige the CEC to publish statements on the receipt and use of electoral funds of parties and coalitions. Parties and managers of the accumulative accounts do not publish them as well⁶⁰.

Article 43 of the Law on **presidential** elections sets that the information on the size of election funds and financial statements on their use shall be published by the CEC in the official

⁶⁰ In connection with this 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 their publication in the media. See also: 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

newspapers “Voice of Ukraine” and “Governmental Courier” not later than on the 18th day after the ballot. In practice only general information is published (1) aggregate amount of all private donations, 2) aggregate donations from self-nominated candidate (to his own electoral fund) or party (to its own electoral fund or to the fund of coalition which nominated presidential candidate), 3) aggregate amount of expenditures on certain purposes).

According to Article 86 of the Law on **local elections**, the territorial electoral commissions shall publish statements on the receipt and use of electoral funds of the local political party organisations, coalitions, mayoral candidates and candidates nominated in single member constituencies in the local media within five days upon their receipt. These reports, like presidential reports published by the CEC, contain only general information on aggregated incomes and expenses.

iv) The regulatory authority: constitution (with regard to potential partisanship), procedure of making decisions (majority requirements), the scope of powers (initiation of investigations/responding to complaints), authority to lodge complaints; staff resources

The state control over observation by **political parties** of legal requirements on reporting on their incomes and expenditures *as nonprofit organisations* (and on correctness and completeness of presented data) is performed by *local tax authority*. The State Tax Administration is the executive body, its head is appointed and dismissed by the Cabinet of Ministers of Ukraine on 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 (Article 5 of the Law on State Tax Service in Ukraine; para. 8 of the Government Regulation № 778 of 26.05.2007 on approval of the Statute of the State Tax Administration of Ukraine). Head of local state authority, in turn, takes inspectors (who are responsible for examination of the reports of nonprofit organisations, including parties) on the staff. The STA and its local branches are operating on the basis of undivided authority (decisions are made by the head of the local tax authority). The STA and its local officials 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 report in time, if the report contains incorrect information, etc.). Any person may lodge complaint to the local tax authority on violation of laws on financing of nonprofit organisations and reporting by political party, but in this case complaint must contain evidence that can be verified. Local tax authorities have staff to conduct investigations (controllers, inspectors, tax police officers, etc.)

The state oversight of observation by **electoral subjects** of legal requirements on reporting on the receipt and use of electoral funds is performed by *the CEC* (in national elections) and by the *territorial electoral commissions* (in local elections).

The CEC consists of 15 members. They are appointed and dismissed by the Supreme Council of Ukraine upon proposal of the President of Ukraine. The member of the CEC is appointed for a 7-year term. According to Article 31-1 of the Law on Central Electoral Commission powers of all members of the Commission can be simultaneously terminated by the Parliament (2/3 of votes of all members of the Parliament are required) on the proposal of the President. The CEC elects out of its ranks the head, deputy heads and the secretary of the Commission. Membership in the CEC is incompatible with any representative mandate, membership in other electoral commissions, entrepreneurship, part-time job (except for teaching, research and creative work), taking up the posts in executive bodies of business institutions and enterprises, positions of the representatives of authorised persons of the electoral subjects. Since the member of the CEC is public servant, he cannot be a member of any political party. The main form of operation of the CEC is its sitting which is legitimate only if 10 members of the CEC are present. The decision of the CEC is adopted if it receives absolute majority of votes of the CEC members (i.e. 8 votes of members). 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 Commission became aware of violations of election laws or electoral

rights). Right to submit *request* has any person (for example, in this way individual may inform the CEC on violations of electoral rights of other persons, breach of the law on elections, etc.). Right to lodge a *complaint* in case of violation of legal provisions on financing of electoral subjects and their reporting obligations has any electoral commission, candidate (party, coalition) and the voter (if personally his rights have been violated). Control over financing of elections and fulfilling reporting obligations is performed by the CEC members themselves and by special department of the CEC Secretariat.

Territorial electoral commissions in local elections are formed by regional and local councils upon proposals of the governing bodies of local party organisations and coalitions. The TEC consists of from 8 to 15 members. Each local party organisation or coalition can propose only one nominee. If quantity of proposed candidatures exceeds 15, the members of TEC are elected by lot which is casted according to the procedure defined by the CEC. The head, deputy head and the secretary of the commission are elected by lot as well (which is casted by regional or local council). Each member of the TEC is politically dependent, since he can be at any time recalled by the local party organisation or coalition that have nominated him (Article 28 of the Law on local elections). The main form of activities of the TEC is its sitting which is legitimate only if 2/3 of all members are present (when setting election election results – if the absolute majority of all members are present). The decision of the TEC is adopted if it receives absolute majority of votes of all TEC members (Article 26 of the Law on local elections). Like the CEC, TEC may consider all matters related to its authority on the basis of complaints or requests, or on its own initiative. Right to lodge a *complaint* in case of violation of legal provisions on financing of electoral subjects and their reporting obligations has any electoral commission (in this case complaint should be lodged by the TEC to the court), candidate (party, coalition, local party organisation) and the voter (if personally his rights have been violated). Each TEC can recruit specialists for examination of the financial reports of electoral subjects, however capacity of the TECs, especially at the local level (villages, towns, small cities etc.) to conduct investigations (in particular, independent investigations) gives rise to doubt, taking into consideration that TECs are obliged to publish financial reports within 5 days upon receipt (Section 16 of Article 86 of the Law on local elections).

v) Sanctions for violations and their application

Failure to make public the financial statement on incomes and expenses, property statement, and budget of the party can be punished only by announcement of warning by the Ministry of Justice of Ukraine (Articles 19, 20 of the Law on Political Parties). *In fact, however, the warning for these violations has never been issued by the Ministry of Justice.*

If the party failed to submit to the local state authority its statement on the use of funds as nonprofit organisation, this party can be deprived of nonprofit status and excluded from the Registry of nonprofit organisations and institutions (para. 5.1. of the STA Regulations of 11.07.1997 № 232 on the State registry of nonprofit organisations and institutions). Since respective decisions of local tax authorities are not subject to publication, it is impossible to estimate how this sanction is applied in practice.

Neither the election laws, nor the Code of Administrative Offences, the Criminal Code establish any liability for the election fund managers as concerns the failure to submit the statements on the formation and use of electoral funds.

5. Enforcement

a. Regulatory authority

i) 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* (as concerns observation of the Constitution of Ukraine, Law on Political Parties in Ukraine, Law on Civic Associations and the statutes of political parties) and by the *Central Electoral Commission of Ukraine* (as concerns observation of the procedure established for the participation in elections). In addition to these controllers, certain oversight is also done by the *State Tax Administration of Ukraine* through its local tax authorities (as concerns the observation of the requirements established by the tax legislation for the non-profit organisations (sources and scope of funds received, the correctness of calculation and timely payment of taxes should the party perform any taxable activities).

ii) Regulatory agency: constitution (with regard to potential partisanship), responsibility/accountability (appointments, funding), requirement of reporting and making public the report(s)

Ministry of Justice is the central body of the executive; the minister is appointed by the Parliament upon submission of proposal of the Prime Minister. The Minister can be dismissed by the Parliament on its own initiative. The Minister is responsible to the Cabinet of Ministers and to the Supreme Council of Ukraine. The Ministry 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 Supreme Council of Ukraine (mainly during “Government Question Hour”). Written reports on the activities of the Ministry are not prepared; its activities are made public on its website.

The CEC consists of 15 members who are appointed for a 7-year term and dismissed by the Supreme Council of Ukraine upon proposal of the President of Ukraine. According to Article 31-1 of the Law on Central Electoral Commission powers of all members of the Commission can be simultaneously terminated by the Parliament (2/3 of votes of all members of the Parliament are required) on the proposal of the President. The CEC elects out of its ranks the head, deputy heads and the secretary of the Commission. Operation of the Commission and its Secretariat is financed from the State budget of Ukraine (Article 36 of the Law on Central Electoral Commission). The Law on Central Electoral Commission defines the CEC as independent state authority and it is not obliged to report to anyone on its activities. However, by tradition the head of CEC has never refused to report to the Supreme Council upon request. These reports have never been published, but can be easily found in the transcripts of the plenary sittings of the Parliament (transcripts are available on the parliamentary website).

iii) Independence of the agency and the mechanisms for ensuring its independence

The Ministry of Justice cannot be considered as independent body since the minister is a politician appointed by the Parliament, the Ministry itself belongs to the executive, staff is appointed and dismissed by the Minister; there is no clear separation between political and administrative positions within central executive authorities.

There are some mechanisms in place to ensure independence of the CEC from political influence: 1) the members are appointed and dismissed jointly by the President and the Parliament; 2) the term of office of the member of the CEC is defined by law; 3) the head, deputy heads and the secretary of the CEC are elected by members of the Commission from their own ranks; 4) restrictions on incompatibility of membership with political and business activities are in place; 5) the grounds for pre-term dismissal of the member of the CEC are clearly and exhaustively defined by law; all members of the commission can be dismissed at once only upon proposal of the president and by consent of 2/3 of all MPs; 6) interference in Commission’s operation is forbidden. In practice, however, the CEC is not completely independent since: 1) it is financed from the state budget and the government (and parliament as well) can influence on its operation; 2) the appointments of the members can be a result of political consensus between the head of the state and parliamentary majority.

b. Responsibility

i) Party members' right to call party/its officials to account for unauthorized actions (i.e., without authorisation by the party)

Party is responsible for actions of its governing bodies and officials.

c. Transparency

i) Rules, regulations, information on transparency of political parties

Section 1 of Article 6 of the Law on Civic Associations states that transparency is one of the basic principles of functioning of the political parties. The same Article of the Law stipulates that political parties are obliged to make public on regular basis their “principal” documents, composition of the “leadership”, 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 and (in the national mass-media, also on annually basis) their financial reports on revenues and expenditures, reports on property. *Ukrainian legislation provides no other legal requirements to the parties, aiming at enhancing transparency of the parties' activities.*

There are no any requirements in place to the content of these documents, to deadlines of their publication, to the media in which they should be published (for example, party can publish its report in private national media with 1% audience share), etc. The only sanction applied for violation of the requirements on publication of financial statements and budgets is *announcement of warning* by the Ministry of Justice of Ukraine; and this sanction can hardly be considered as proportionate, effective and dissuasive. Parties are not obliged to publish their election financial reports – the CEC and territorial electoral commissions do it instead of them.

d. Specific limitations/regulations

i) Restrictions/sanctions which can be imposed for undertaking professional, military, civil service while retaining membership of a political party (patronage)

Judges, officials of public prosecutor's office, officials of the Interior, officials of the Security Service of Ukraine, military servicemen, officials of the State Tax Service, staff of the State Penal Service are not allowed to be members of political parties (Article 6 of the Law on Political Parties in Ukraine). *The only sanction that may be imposed on party member for retaining membership of political party while in office is discharge from office. The only sanction that may be imposed on party for violation of provisions on restriction of membership in political parties is announcement of warning to the party by the Ministry of Justice of Ukraine.*

ii) Sanctions for abuse of state resources

Parties cannot directly abuse state resources since they are not directly financed by the state. During elections they are provided with free airtime, printed space, etc., but such resources are allocated by the CEC.

If any person abuses state resources in the interest of political party, this person can be a subject to criminal liability under Article 364 of the Criminal Code of Ukraine. This Article establishes criminal penalties for abuse of power, i.e., intentional use by public official of power or official position against the interests of service in the interests of third parties or own interests. The person can be brought to account under Article 364 only if abuse of power entailed “significant

damage” to the rights, freedoms and interests of citizens, state or public interests, interests of legal entities. “Significant damage” is defined as damage in the amount of UAH 1 700 (EUR 150) and more. The penalties that can be imposed are: correction works 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 on performance of certain activities within 3 years. If abuse of state resources is committed by law-enforcement agency official or the crime entails “hard damage” (damage in amount of UAH 4250 (EUR 376), 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 the term of 3 years).

Article 184-1 of the Code on Administrative Offences provides for administrative liability for use by public official in own interests or interests of other persons of public funds, official premises, transport or communications or other state resources. The person can be brought to account if abuse of state resources caused the damage in amount of not more than UAH 85 (EUR 7.5). In this case fine in the amount of UAH 42.5 – 85 (EUR 3.7 – 7.5) can be imposed. In other cases the only available sanction for abuse of state resources is discharge from office.

Sanctions for abuse of state resources by election candidates are also envisaged by laws on elections. For example, in **local elections** if the court establishes that a candidate on local elections holding positions in state or self-governmental authorities, state- or community-owned enterprises, institutions or organisations has involved in campaign activities his subordinates, official transport, communications, equipment, premises, etc., territorial electoral commission will cancel registration of the candidate as electoral subject (Article 48 of the Law on local elections). Unlike the local elections, in the context of **parliamentary** elections law provides less strict liability for abuse of state resources. If parliamentary candidate abuses state resources, he will be just warned by the CEC. If he repeatedly commits the same offence, the CEC cancels his registration. However, parties and coalitions that nominated parliamentary candidates are not subject to any liability, even if offences have been committed by their candidates on party’s (coalition’s) initiative (article 64 of the Law on parliamentary elections). The Law on presidential election is the most tolerant in this context: if a **presidential** candidate abuses state resources, the only sanction which can be imposed is announcement of warning to the respective candidate. Thus, in fact, the presidential candidate can permanently abuse state resources, and each time he will be “punished” just by warning.

e. Sanctions

i) Sanctions which may be imposed for violations (e.g., fines, forfeiture or suspension of public funding, loss of illegally obtained funds, loss of political party registration, imprisonment of a responsible party member)

*The following sanctions may be imposed on political parties for transgressions: 1) announcement of warning by the Ministry of Justice of Ukraine (Articles 19, 20 of the Law on Political Parties in Ukraine); 2) prohibition of political party (Article 21 of the Law on Political Parties in Ukraine); 3) cancellation of registration of political party (Article 24 of the Law on Political Parties in Ukraine); 4) loss of funds obtained from illegal sources (Article 15 of the Law on Political Parties in Ukraine); 5) deprivation of nonprofit status and exclusion from the Registry of nonprofit organisations and institutions (para. 5.1. of the STA Regulations of 11.07.1997 № 232 on the State registry of nonprofit organisations and institutions); 6) fines (only for violations of tax legislation (Article 17 of the Law on Procedure of Extinction of Obligations of Taxpayers Before Budgets and State Funds). *Other sanctions for violations of the laws by political parties are not envisaged.**

Warning is announced for violations of any legal provisions unless these violations entail imposition of other sanctions. In practice, however, almost all violations of law are “punished” by announcement of warning (since grounds for prohibition and cancellation of registration are exhaustively listed in laws and no other sanctions for violations of the Law on Political Parties in

Ukraine may be applied to parties).

Party can be prohibited for violations of requirements to the establishment and operation of political parties set forth in the Constitution and laws of Ukraine. These requirements are exhaustively listed in Article 5 of the Law on Political Parties in Ukraine and Article 4 of the Law on Civic Associations. According to them, parties must not carry out activities aimed at liquidating Ukrainian independence, forceful changing the constitutional order, violating Ukraine's sovereignty and territorial integrity, undermining national security, unlawfully seizing power, propagandising war and violence, inciting interethnic, racial or religious animosity, encroaching on human rights and freedoms, encroaching on public health, establishment of military (quasi-military) units (formations). Article 4 of the Law on Civic Associations prohibits establishment and operation of political parties, whose governing bodies or structural units are situated outside Ukraine, as well as establishment or operation of structural units of political parties in executive bodies, courts, Armed Forces, State Frontier Service, State Special Service for Transport, in state enterprises, institutions and organisations, state educational institutions.

Registration of the party can be cancelled in three cases: 1) if within 6 months from the date of registration the party do not secure formation and registration of its local organisations in the most regions of Ukraine; 2) if within 3 years from the date of registration the party is found to have submitted false information when applying for registration; 3) if within 10 years from the date of registration party fails to nominate presidential and parliamentary candidates.

If the party receives financing from prohibited sources, it must transfer 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 nonprofit organisations by political parties may result in deprivation of nonprofit status and exclusion of a party from the Registry of nonprofit organisations and institutions.

If the party fails to submit to the local tax authority its statement on the use of funds as nonprofit organisation, such party may be deprived of nonprofit status and, in any case, have to pay *fine* in amount of UAH 170 (EUR 15) for each non-submission or untimely submission of the statement. If a political party uses its nonprofit status for the purposes contrary to law, it must pay corporate income tax for the period during which violations occurred (but not more than for 3 years) and a fine in amount of 200% of the amount of corporate income tax (Article 17.1.6-1 of the Law on on Procedure of Extinction of Obligations of Taxpayers Before Budgets and State Funds).

Members and officials of political parties can be brought to account only for violations committed by them as by individuals or officials. Sanctions for such violations are stipulated by the Criminal Code of Ukraine (for example, Article 161 of the CCU provides criminal liability for inciting hatred, discrimination on the ground of ethnicity, gender, religion, etc.), by the Code of Administrative Offences. *Sanctions envisaged by the Criminal Code and Code of Administrative Offences can not be applied to any legal entity, including parties.*

ii) Application of sanctions (party/individual members/both)

Current legislation provides a clear separation between sanctions which can be applied only to parties and sanctions which can be applied only to party members, officials, candidates. To parties only sanctions envisaged specially for political parties can be applied; to party members, officials, party candidates for elections, respectively, only sanctions for individuals, officials of legal entities and candidates in elections (for example, sanctions envisaged by the Criminal Code of Ukraine, the Code of Administrative Offences, etc.)

iii) Application of sanctions in practice (the number of investigations, prosecutions and convictions, types of cases)

Since 2001 when Law on Political Parties in Ukraine was adopted none of the political parties

has been prohibited. During 2003 Ministry of Justice carried out extensive check of political parties aimed at finding of inconsistencies between legal requirements to political parties and parties' actual operation. According to the results of examination, 46 parties violated legal requirements and the Ministry turned to the Supreme Court of Ukraine for cancellation of registration of 37 parties. The list of the most widespread violations included absence of the party at the legal address, absence of local organisations in most regions of Ukraine, failure to inform the Ministry of Justice on changes in governing bodies, party's charter⁶¹. However, the grounds for cancellation of registration were interpreted narrowly – the position of the Supreme Court of Ukraine was that registration of political parties can be cancelled only in three cases provided for by the Law on Political Parties in Ukraine. The Supreme Court of Ukraine cancelled registration of only those parties, which failed to secure registration of local organisations in most regions of Ukraine (28 parties). Since 2003 only spot checks of political parties have been carried out by the Ministry. For example, in 2008 it checked 4 parties (all of them were warned), in 2009 – 20 registered parties (the Ministry turned to Kyiv administrative court for cancellation of registration of 8 parties. All available court decisions⁶² in these cases are included into the Table in Annex II.

⁶¹ http://www.kmu.gov.ua/control/publish/article?art_id=852636

⁶² Some of the decisions are not available due to improper functioning of the Register of Court Decisions. However, the the grounds for the decisions are one and the same in all cases (failure to comply with requirements of Article 11.6 of the Law on Political Parties in Ukraine).

6. Recommendations

1. To unify regulation of political parties
2. To create conditions for further development (strengthening) of party system in Ukraine, in particular:
 - to establish mechanisms aiming at encouraging participation of political parties in elections independently of each other (not in electoral blocs)
 - to introduce alternative to “party administered mandate” mechanisms aiming at preventing MPs from crossing the floor
 - to grant the right to nominate candidates for local elections only to those party organisations which carry out their activities in the territory where elections are held
 - to change electoral systems for parliamentary and local elections in a way that would provide a voter with the possibility to vote for candidate rather than list
 - to allow independent candidates to stand for elections; in a medium-term perspective – for elections to city councils and district councils of the cities, in long-term perspective – for all other elections
 - if the electoral system for parliamentary election is changed, candidates should be granted the right to establish own election funds for campaigning in elections
3. To improve the regulation of establishment and termination of activities of political parties:
 - review provisions requiring parties to submit, when applying for registration, lists with 10 000 signatures of the voters
 - clearly define the scope of authority of the MoJ as regards registration of political parties
 - to determine directly in the Law on Political Parties in Ukraine procedure of termination of activities of local party organisations
 - to narrow the list of grounds for cancellation of registration of political parties, in long-term perspective – to repeal provisions which provide for cancellation of registration of political party
 - to determine directly in the Law on Political Parties in Ukraine procedure for reorganization of political parties and disposal of assets during reorganization
4. To improve regulation of control over activities of political parties, to expand the list of sanctions that can be imposed on political parties:
 - clearly define powers of the MoJ with regard to control over activities of political parties ;
 - to narrow the list of grounds for warning political parties; to introduce alternative sanctions which can be imposed on political parties (fines)
5. To enhance transparency of political parties:
 - to unite register of political parties and all registers of local party organisations into a single register, to make data from the register publicly available
 - to provide for mandatory disclosure of key documents pertaining to activities of political parties (charter, program, leadership, financial reports, etc.) by the registered political parties and their organisations at regional level

- 6. In medium-term and long-term perspective consider the possibility of introducing mechanisms aiming at promotion of women representation in representative bodies; in the territories where minorities constitute significant part of population - mechanisms aiming at promotion of representation of minorities in local representative bodies**
- 7. Provide for the mechanisms aiming at preventing abuse of state resources for political purposes, including elections**
- 8. To bring the regulation of financing of political parties into correspondence with European standards in the field of fight against corruption in financing of political parties and election campaigns:**
 - to introduce direct public funding of political parties which, inter alia, would encourage internal development of political parties**
 - to restrict private funding of political parties in terms of value of donations and sources of financing**
 - to unify regulation of financing of political parties and election campaigns**
 - to empower the CEC to exercise effective control over financing of political parties and national election campaigns**
 - to consider consolidation of financial reports of political parties and their local organisations**
 - to ensure transparency of financing of political parties and election campaigns**
 - to envisage effective, proportionate and dissuasive sanctions for violations in the field of financing of political parties and election campaigns**

Court decisions relating to registration, prohibition and cancellation of registration of political parties and their local organisations**a) List of key court decisions in the field of political parties**

- Judgement of the ECHR in the case of *Koretskyy and others v. Ukraine* № 40269/02, § 47, 3 April 2008.
- Decision of the Constitutional Court of Ukraine as of June 12, 2007 № 2-рп/2007 in the case upon 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).
- Decision of the Constitutional Court of Ukraine as of October 16, 2007 № 9-рп/2007 in the case upon 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 in Ukraine (case on establishment and registration of party organisations).
- Decision of the Constitutional Court of Ukraine as of December 27, 2001 № 20-рп/2001 in the case upon 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).
- Decision of the Supreme Court of Ukraine as of November 5, 2004 in the case upon a lawsuit filed by the Ministry of Justice of Ukraine seeking to prohibit the political party.
- Decision of the Supreme Court of Ukraine as of June 25, 2003 in the case upon a lawsuit filed by the Ministry of Justice of Ukraine seeking to cancel registration of the Party of the Communists (bolsheviks) of Ukraine.
- Ruling of the Chamber on Civil Cases of the Supreme Court of Ukraine as of July 30, 2000 upon an appeal in cassation of the Head of the regional office of the Ministry of Justice of Ukraine in Lviv Region concerning cancellation of registration of regional (oblast) party organisation of the Communist Party of Ukraine.
- Ruling of the Higher Administrative Court of Ukraine as of February 12, 2008 in the case № κ-27912/06 upon appeal against inactivity of the Ministry of Justice related to registration of the political party "The Party of the Humanists of Ukraine", upon appeal in cassation filed by the representative of the Ministry of Justice of Ukraine against Resolution of the Pechersk district Court of the city of Kiev dated January 11, 2006, and against Ruling of the Kiev Court of Appeal dated July 11, 2006.

- Resolution of the Kiev district administrative court № 15/390 as of April 23, 2009 in the case upon a lawsuit against the Ministry of Justice of Ukraine seeking to cancel the Order № 1619/5 of the Ministry of Justice of Ukraine of 24.09.2008 on refusal of registration of the Socialist party of regions, and to oblige the Ministry of Justice to register the political party “The Socialist party of regions”⁶³.

b) Types, circumstances of the cases and content of court decisions

| Date | Type of the case | Court decision/ruling/resolution | Circumstances of the case and content of the court decision |
|------------|--|--|---|
| 30.08.2000 | Cancellation of registration of local party organisation | Ruling of the Chamber on Civil Cases of the Supreme Court of Ukraine as of July 30, 2000 upon an appeal in cassation of the Head of the regional office of the Ministry of Justice of Ukraine in Lviv Region concerning cancellation of registration of regional (oblast) party organisation of the Communist Party of Ukraine ⁶⁴ | On January 6, 1999 Lviv regional office of the Ministry of Justice of Ukraine registered Lviv regional organisation of the Communist Party of Ukraine. The certificate of registration was signed by the head of regional office of the MoJ, who had been already discharged from office. On December 8, 1999 Lviv regional council made a decision № 222 on consideration of the issue regarding to activities of regional organisation of the Communist Party of Ukraine and, soon after that, 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 organisations in Ukraine. On the basis of these decisions and on the grounds that certificate of registration of regional party organisation was signed by the head of 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 regional office of the MoJ by its decision dated 17.01.2000 annuled an entry in the registry of public associations regarding to registration of regional party organisation. Consequently, on 18 February 2000 the head of regional office of the MoJ cancelled registration of regional organisation of the CPU. Founders of regional party organisation sued office of the MoJ at Volyn regional court in order to cancel 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 regional office of the MoJ to restore an entry in the register of civic associations relating to registration of regional party organisation. The head of regional office of the MoJ lodged an appeal in cassation at the Supreme Court of Ukraine in order to cancel decision of Volyn regional court. The Chamber on Civil Cases of the Supreme Court of Ukraine dismissed the claims on the grounds that: 1) decisions of the board and head of the regional office of the MoJ did not comply with law since the only ground for annulment of an entry in the register was termination of organisation; however Lviv regional party organisation had never been terminated; 2) decision on cancellation of registration of regional party organisation infringed the rights of the founders of organisation, enshrined in Article 36 of the Constitution, in particular freedom of association, 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; |

⁶³ See the table below for further information

⁶⁴ <http://zakon.rada.gov.ua/cgi-bin/laws/main.cgi?nreg=n0117700-00&p=1268178034135029>

| Date | Type of the case | Court decision/ruling/resolution | Circumstances of the case and content of the court decision |
|------------|---|--|---|
| 27.12.2001 | Prohibition of political party | Decision of the Constitutional Court of Ukraine as of December 27, 2001 № 20-пн/2001 in the case upon 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) ⁶⁵ | <p>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, and to prohibit them.</p> <p>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 Ukraine. The decree provided for termination of the activity of the CPU, sealing off premises of party committees, prohibition of 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 constitutional petition at the Constitutional Court of Ukraine seeking to consider constitutionality of the above decrees.</p> <p>The Constitutional Court of Ukraine in its decision emphasized that: 1) the Communist Party of Ukraine as 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 time of 1991 Moscow coup d'etat attempt did not contravene provisions of the Constitution, relating to principles of foundation and activities of political parties (which was confirmed by the results of investigation carried out by Prosecutor General's Office); 2) according to the Constitution of the USSR, Constitution of the Ukrainian SSR, Law of the USSR on civic associations of 1990, civic associations could be terminated only upon decision of the 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; 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 special status of the core of political system, guiding and directing force of Soviet society. Thus, the Communist Party of Ukraine, registered as civic association in 1991, could not be considered as legal successor of the CPSU and of the Communist Party of Ukraine as a branch of the CPSU. Hence, unconstitutionality of the decrees did not entail restitution of property of the CPSU to the Communist Party of Ukraine.</p> |
| 25.06.2003 | Cancellation of registration of political party | Decision of the Supreme Court of Ukraine as of June 25, 2003 in the case upon a lawsuit filed by the Ministry of Justice of Ukraine seeking to cancel | On July 16, 2003 the Ministry of Justice of Ukraine filed a lawsuit that sought to cancel 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 organisations in most regions of Ukraine, as |

⁶⁵ <http://zakon1.rada.gov.ua/cgi-bin/laws/main.cgi?nreg=v020p710-01&p=1260610221550455>

| Date | Type of the case | Court decision/ruling/resolution | Circumstances of the case and content of the court decision |
|------------|--|---|---|
| | | registration of the Party of the Communists (bolsheviks) of Ukraine ⁶⁶ | required by Section 6 Article 11 of the Law on Political Parties in Ukraine. According to Article 24 of the Law on Political Parties in Ukraine, failure to secure foundation and registration of local party organisations in most regions of Ukraine within 6 months after registration of a party is a ground for cancellation of registration of political party. Taking this into consideration, the Supreme Court of Ukraine cancelled registration of the party. |
| 5.11.2004 | Prohibition of political party | Decision of the Supreme Court of Ukraine as of November 5, 2004 in the case upon a lawsuit filed by the Ministry of Justice of Ukraine seeking to prohibit the political party ⁶⁷ | 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 political party violated articles 21, 24, 37 of the Constitution of Ukraine and article 5 of the Law on Political Parties in Ukraine. In particular, lawsuit claimed that the party had organised several demonstrations which were accompanied by distribution of agitation materials and leaflets inciting hatred on account of nationality and ethnicity and offending citizens of Russian and Jewish origin. Information on party website, as well as its press-releases, also contained information which could be considered as 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 party activities were aimed at incitement of hatred or encroachment on human rights and freedoms. The Court also acknowledged that press-releases, information on party website, leaflets and other documents presented to the Court by the Ministry of Justice contained no information which could be considered as incitement to hatred or encroachment on human rights and freedoms. Expressions which contained in provided documents were considered by the Court as a form of political debates and discussions of public life, critics 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 plaintiff failed to prove the existence of grounds for prohibition of political party and dismissed all the plaintiff’s claims. |
| 25.01.2007 | Termination of local party organisation as legal entity on the ground of non-submission of financial reports to tax authority | Decision of the Donetsk regional commercial court as of January 25, 2007 in the case № 31/445ПН upon a lawsuit lodged by the state tax inspectorate of Kalinin district of the city of Donetsk against Zhovtnevy district organisation of the Party “The Reforms and Order” of the city of Mariupol ⁶⁸ | Zhovtnevy district organisation of the Party “The Reforms and Order” of the city of Mariupol was registered as legal entity on May 16, 2001. Since 13.05.2002 organisation did not submit to the local tax inspectorate statements on the use of funds as nonprofit organisation. 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 legal entity on the basis of the decision of the court. Hence, the state tax inspectorate filed a lawsuit which sought to terminate local party organisation as 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 |

⁶⁶ <http://www.scourt.gov.ua/clients/vs.nsf/0/6BB42A927D21E4B3C2256D7B003E673A?OpenDocument&CollapseView&RestrictToCategory=6BB42A927D21E4B3C2256D7B003E673A&Count=500&>

⁶⁷ <http://zakon1.rada.gov.ua/cgi-bin/laws/main.cgi?nreg=n0114700-04>

⁶⁸ <http://www.reyestr.court.gov.ua/Review/385364>

| Date | Type of the case | Court decision/ruling/resolution | Circumstances of the case and content of the court decision |
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| | | | individual entrepreneurs. In this regard the court considered that the terms “local party organisation” and “party” are one and the same in their nature, hence, local party organisations must be terminated on the grounds and in accordance with the procedure established for political parties. Since tax authorities have no right to initiate prohibition or cancellation of political party, they do not have right to turn to court in order to have party registration cancelled. Accordingly, the court dismissed all the plaintiff’s claims |
| 12.06.2007 | Constitutionality of the Law on Political Parties in Ukraine | Decision of the Constitutional Court of Ukraine as of June 12, 2007 № 2-пн/2007 in the case upon 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) ⁶⁹ | 70 People’s deputies of Ukraine lodged at the Constitutional Court of Ukraine constitutional petition that sought to declare some provisions of the Law on political parties in Ukraine unconstitutional. 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 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, legal requirements concerning collecting 10 000 signatures of voters in support of registration of political party in two thirds of districts of two thirds of regions of Ukraine (with exception to the Autonomous Republic of Crimea), as provided for by Article 10 of the Law on political parties in Ukraine, comply with the Constitution of Ukraine; 3) on the same grounds Article 11 of the Law on political parties in Ukraine, which requires to secure foundation and registration of party organisations in most of the regions of Ukraine (with exception to 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 from registration of political parties which would operate on short term basis (e.g., during election campaigns only) or pursue narrow corporative interests; requirements of these articles do not infringe 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, go 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) registration fee does not restrict the right to freedom of association; 7) since, according to the Constitution of Ukraine, the primary role of political parties is to promote expression of political will of citizens and participation in elections, 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 |

⁶⁹ <http://zakon1.rada.gov.ua/cgi-bin/laws/main.cgi?nreg=v002p710-07&p=1260610221550455>

| Date | Type of the case | Court decision/ruling/resolution | Circumstances of the case and content of the court decision |
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| | | | annual party reports in national media and requirements on bringing party statutes into correspondence with the Law have to be considered as restrictions admissible in democratic society, and there are no reasons to declare them unconstitutional; 9) on the basis of Constitution and international laws, ratified by Ukraine, the parliament is empowered to regulate political parties, however, respective legal provisions can not restrict the scope of 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 Kiev 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 organisations 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. |
| 16.10.2007 | Official interpretation of the Law on Political Parties in Ukraine | Decision of the Constitutional Court of Ukraine as of October 16, 2007 № 9-пн/2007 in the case upon 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 in Ukraine (case on establishment and registration of party organisations) ⁷⁰ | The Ministry of Justice of Ukraine filed a constitutional petition at 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 its registration must secure foundation and registration of its regional (oblast), district and city organisations in most of the regions (oblast), in cities of Kiev 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 Kiev 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 organisations in at least 14 administrative units of Ukraine of regional level; 3) if a party failed to secure establishment and registration of its regional organisations in at least 14 regions of Ukraine, registration of political party can be cancelled; 4) the issue regarding number of party organisations of district level, which party must establish within 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. |
| 12.02.2008 | Appeals against inactivity of Ministry of Justice related to registration of a political party; violation of the term | Ruling of the Higher Administrative Court of Ukraine as of February 12, 2008 in the case № κ-27912/06 upon appeal against inactivity of the Ministry of Justice related to registration of the political party “The Party of the Humanists of Ukraine”, upon appeal in | The Ministry of Justice of Ukraine violated time limit requirements for consideration of application for registration of political party “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 political party with their signatures, were absent at the place of their factual residence. This, according to the MoJ, indicated that some signatures of voters were falsified. Hence, these signatures were excluded by the Ministry from the lists and, as a result, party failed to get required number of voters’ |

⁷⁰ <http://zakon1.rada.gov.ua/cgi-bin/laws/main.cgi?nreg=v0a9p710-07&p=1260610221550455>

| Date | Type of the case | Court decision/ruling/resolution | Circumstances of the case and content of the court decision |
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| | of registration of political party | cassation filed by the representative of the Ministry of Justice of Ukraine against Resolution of the Pechersk district Court of the city of Kiev dated January 11, 2006, and against Ruling of the Kiev Court of Appeal dated July 11, 2006 ⁷¹ | signatures in support of its establishment. The Party lodged lawsuit against MoJ with Pechersk district court of the city of Kiev. 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. Court decision was upheld by the Kiev court of appeal 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 to refuse of registration of political party in term determined by Article 11 of the Law on Political Parties in Ukraine and failed to prove that signatures of voters in lists were falsified. Hence, the Court upheld all previous court decisions in the case and dismissed the claims of the representative of the Ministry. |
| 18.03.2008 | Appeals against decision on registration of political party | Resolution of the Kiev district administrative court as of March 18, 2008 in the case № 3/134 upon a 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 of Ukraine to lodge with the Supreme Court of Ukraine a lawsuit seeking to prohibit the Communist party of Ukraine (Renewed) ⁷² | The Communist Party of Ukraine (Renewed) was registered with the Ministry of Justice on 9 November 2000. The plaintiff turned to court with the claim to cancel MoJ decision on registration of the party. The lawsuit alleged that: 1) registration of political party, whose activities are aimed at illegal seizure of state power, and achievement of statutory goals of which is based on discriminating methods, jeopardized “constitutional rights and freedoms of millions of people”, including those of the plaintiff and his family; 2) the plaintiff had found out that CPU (R) did not have local organisations in the majority of the regions of Ukraine, therefore the provisions of Article 11 of the Law on political parties in Ukraine were violated by the respondent and the MoJ which failed to exercise proper control over 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 requirements of 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 requirements of law, 2) the Ministry of Justice exercised control over activities of the political party, that was proved by presenting requests for information about local party organisations in respective regions addressed to local branches of the MoJ; 3) the plaintiff failed to provide the court with evidence that his rights, freedoms or interests were infringed by decision on registration; 4) at the moment of lodging lawsuit with the court the term for suing for protection of infringed rights (i.e., 1 year after violation) had already expired. |
| 03.04.2008 | Appeals against refusal of registration of civic association/political party | Judgement of the ECHR in the case of Koretskyy and others v. Ukraine No 40269/02, § 47, 3 April 2008 ⁷³ | On 7 June 2000 the 6 persons founded an association named “Civic Committee for the Preservation of Wild (Indigenous) Natural Areas in Bereznyaky” (the “Civic Committee”). Mr. Koretskyy was elected as the Civic Committee’s head. On 27 July 2000 the applicants filed an application for the 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 |

⁷¹ <http://www.reyestr.court.gov.ua/Review/2713229>

⁷² <http://www.reyestr.court.gov.ua/Review/1602531>

⁷³ <http://cmiskp.echr.coe.int/tkp197/view.asp?action=html&documentId=830484&portal=hbkm&source=externalbydocnumber&table=F69A27FD8FB86142BF01C1166DEA398649>

| Date | Type of the case | Court decision/ruling/resolution | Circumstances of the case and content of the court decision |
|------|------------------|----------------------------------|--|
| | | | <p>association were returned to the applicants and they were advised to make changes to the text, which were noted down by the City Department in the same documents.</p> <p>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; <i>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 Kyiv; the articles listed two aims of the organisation 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.</i> Finally, the applicants had not taken into account all the corrections made to the text of the articles of association and they had submitted a copy of the document showing that they had paid registration fees, while the original was required.</p> <p>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 Appeal 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 <i>contained textual discrepancies with the relevant provisions of the domestic legislation.</i> 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.</p> <p>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 Cases Chamber of the Supreme Court. On 7 July 2002 the applicants decided to liquidate the Civic Committee and discontinued 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.</p> |

| Date | Type of the case | Court decision/ruling/resolution | Circumstances of the case and content of the court decision |
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| | | | <p>In its judgement 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 the Civic Committee could have carried out its activities without the State registration, <i>the Civic Committee's ability to function properly without legal entity status would have been impeded;</i> 2) the expression "prescribed by law" in the second paragraph of Article 11 of the Convention does not only require 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 jeopardise 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.</p> |
| 11.06.2008 | Cancellation of registration of political party | Ruling of the Kiev Administrative Court of Appeal in as of June 11, 2008, the case № 22-a-2571/08 upon the appeal lodged by political party "The Party of Law" against Resolution of the Pechersk district court of the city of Kiev in the case upon a suit filed by the Ministry of Justice of Ukraine seeking to cancel registration of political party "The Party of Law" ⁷⁴ | On May 30, 2007 Pechersk district court of the city of Kiev cancelled registration of political party "The Party of Law" on the grounds that party failed to comply with requirements of Section 6 Article 11 of the Law on political parties in Ukraine. 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 organisations. The Ministry of Justice sued the party and party registration was cancelled by court decision. "The Party of Law" lodged an appeal against court decision, however, Kiev administrative court of appeal upheld the previous court decision in the case. |

⁷⁴ <http://www.reyestr.court.gov.ua/Review/1874624>

| Date | Type of the case | Court decision/ruling/resolution | Circumstances of the case and content of the court decision |
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| 14.01.2009 | Termination of local party organisation as legal entity on the ground of non-submission of financial reports to tax authority | Resolution of the Snigurivsk district court of Mykolaiv region (oblast) as of January 14, 2009, in the case № 2-a-18/2009 upon a lawsuit lodged by Snigurivsk interdistrict state tax inspectorate against Snigurivsk district organisation of the Party “Reforms and Order” seeking to terminate local party organisation as legal entity ⁷⁵ | Snigurivsk district organisation of the Party “Reforms and Order” was registered on February 12, 2005. After registration party did not submit to Snigurivsk interdistrict state tax inspectorate statements on the use of funds as nonprofit organisation. The state tax inspectorate lodged a suit to have the organisation terminated. Article 38 of the Law on state registration of legal entities and individual entrepreneurs stipulates that failure of legal entity to submit statements and financial reports to local tax authorities within one year after its registration entails termination of legal entity on the basis of decision of the court. The court took this into consideration and upheld the claims of state tax inspectorate on termination of local party organisation as legal entity. |
| 14.04.2009 | Termination of local party organisation as legal entity on the ground of non-submission of financial reports to tax authority | Resolution of Odessa district administrative court as of April 14, 2009 in the case № 2-a-13401/08/1570 upon a lawsuit lodged by the Kotovsk united state tax inspectorate against Kotovsk district organisation of the Political Party “Forward, Ukraine!” seeking to terminate local party organisation as legal entity ⁷⁶ | Kotovsk district organisation of the Political Party “Forward, Ukraine!” was registered on July 30, 2007. On the 17 th of October 2008 the head of Kotovsk united state tax inspectorate decided to de-register all the tax payers, which were registered with the inspectorate and did not submit required statements and reports. On December 2, 2008 inspectors established that after 2007 Kotovsk district organisation of the Political Party “Forward, Ukraine!” did not submit any statements on the use of funds as nonprofit organisation. 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 of legal entity entails termination of legal entity. Therefore, state tax inspectorate lodged an appeal to Odessa district administrative court to have party organisation terminated. The court agreed with claims of the plaintiff. |
| 23.04.2009 | Appeal against refusal of registration of political party; use of the name of political party | Resolution of the Kiev district administrative court № 15/390 as of April 23, 2009 in the case upon a lawsuit against the Ministry of Justice of Ukraine seeking to cancel the Order № 1619/5 of the Ministry of Justice of Ukraine of 24.09.2008 on refusal of registration of the Socialist party of regions, and to oblige the Ministry of Justice to register the political party “The Socialist party of regions” ⁷⁷ | On July 25 th the Head of 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 Party of Regions and Socialist Party of Ukraine, which already had been registered with the Ministry. During court proceedings it was found out that Ministry of Justice of Ukraine did not take into consideration conclusions of the Institute of Linguistics named after O.Potebnia, to which the Ministry had applied for a conclusion, which stated 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 on refusal of 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 on refusal of registration was groundless, overturned it and obliged the Ministry of Justice to consider an application for registration of political party once again. |
| 07.07.2009 | Termination of local party organisation as legal entity on the | Resolution of the Mykolaiv district administrative court as of July 7, 2009 in the case № 2a-2075/09/1470 upon a | Pervomaisk city organisation of the Party „Renaissance” was registered on April 3, 2003. On 10 September 2007 it was found out that organisation is absent at the legal address, that, according to Article 38 of the Law on state registration of legal entities and individual |

⁷⁵ <http://www.reyestr.court.gov.ua/Review/2729950>

⁷⁶ <http://www.reyestr.court.gov.ua/Review/4585721>

⁷⁷ <http://www.reyestr.court.gov.ua/Review/3612860>

| Date | Type of the case | Court decision/ruling/resolution | Circumstances of the case and content of the court decision |
|------------|--|---|---|
| | the ground of its absence at the legal address | lawsuit lodged by Pervomaisk united state tax inspectorate against Pervomaisk city organisation of the Party „Renascence” seeking to terminate local party organisation as legal entity ⁷⁸ | entrepreneurs, is a ground for termination of legal entity. Therefore, the Pervomaisk united state tax inspectorate sued local party organisation to terminate it as legal entity. The Mykolaiv district administrative court emphasized in its resolution that <i>the Law on political parties in Ukraine determines the procedure for termination only of political parties, but not of local party organisations. In this connection, general legislation must be applied to the procedure for termination of local party organisations</i> (i.e., Article 38 of the Law on state registration of legal entities and individual entrepreneurs). Since Article 38 of the Law stipulates that absence of legal entity at the legal address can entail termination of legal entity, the court ruled that local party organisation is to be terminated as legal entity. ⁷⁹ |
| 20.07.2009 | Termination of local party organisation as legal entity on the ground of non-submission of financial reports to tax authority | Resolution of the Zhytomyr district administrative court as of July 20, 2009 in the case № 2a-2025/09/0670 upon a lawsuit lodged by Olevsk district state tax inspectorate against Olevsk district organisation of the Socialist Party of Ukraine seeking to terminate local party organisation as legal entity ⁸⁰ | Olevsk district organisation of the Socialist Party of Ukraine was registered as legal entity on January 23, 2006. In December of 2009 Olevsk district state tax inspectorate sued in Zhytomyr district administrative court to terminate Olevsk district organisation of the Socialist Party of Ukraine on the grounds that party organisation did not submit any financial statements within a year. The court emphasized in its decision that: 1) <i>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 entitled with non-profitable status; therefore, the state tax inspectorate has no right to sue against local party organisation 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 in Ukraine determines exhaustive list of state bodies which have the right to initiate prohibition of political party or cancellation of its registration, and tax authorities are not included into this list.</i> On these grounds the court dismissed all the plaintiff's claims. |
| 20.08.2009 | Termination of local party organisation as legal entity on the ground of non-submission of financial reports to tax authority | Resolution of 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 organisation of political party “All-Ukrainian Association “Motherland” seeking to terminate local party organisation as legal entity ⁸¹ | Oleksandrivsk district organisation of political party “All-Ukrainian Association “Motherland” was registered on May 3, 2001. On March 31 Dobropilsk united state tax inspectorate found out that party organisation had not submitted required financial statements, that resulted in lodging a lawsuit against party organisation to terminate it as a legal entity. In its resolution the court stated that: 1) the procedure of state registration and termination of political parties is determined by special laws, in particular by the Law on political parties in Ukraine; 2) 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 observance of legal requirements by political parties is exercised only by the Ministry of Justice. Hence, the court |

⁷⁸ <http://www.reyestr.court.gov.ua/Review/4885046>

⁷⁹ 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 organisation 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 organisation of the Agrarian Party of Ukraine (07.07.2009); <http://www.reyestr.court.gov.ua/Review/4885045>

⁸⁰ <http://www.reyestr.court.gov.ua/Review/4821258>

⁸¹ <http://www.reyestr.court.gov.ua/Review/4820190>

| Date | Type of the case | Court decision/ruling/resolution | Circumstances of the case and content of the court decision |
|------------|--|--|---|
| | | | ruled that the plaintiff did not have a right to sue local party organisation in order to terminate it as legal entity ⁸² . |
| 29.09.2009 | Cancellation of registration of political party | Resolution of the Kiev district administrative court as of September 29, 2009 in the case № 2a-10344/09/2670 upon a lawsuit lodged by the Ministry of Justice of Ukraine against political party “People’s Freedom” seeking to cancel registration of political party (registration certificate № 155-п.п. dated 2.10.2008) ⁸³ | Political party “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 organisations. Hence, the party violated Section 6 Article 11 of the Law on political parties in Ukraine, which required securing registration of local party organisations in at least 14 regions of Ukraine. The Ministry of Justice lodged a lawsuit at Kiev district administrative court sought to cancel registration of political party. The court upheld the plaintiff’s claims. |
| 30.11.2009 | Cancellation of registration of political party | Resolution of the Kiev 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 “Civic Movement of Ukraine” seeking to cancel registration of political party (registration certificate № 161-п.п. dated 28.10.2008) ⁸⁴ | 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 foundation and registration of only 3 local organisations. This does not go in line with Section 6 Article 11 of the Law on political parties in Ukraine and can result in cancellation of registration of political party. The Ministry of Justice of filed a lawsuit at Kiev district administrative court against “Civic Movement of Ukraine”, seeking to cancel it registration. However, in court sitting the representative of political party presented to the court certificates of registration of local party organisations in 18 regions of Ukraine. The Kiev district administrative court in its resolution stated that violation of the term for securing registration of local party organisations can not be considered as unconditional ground for cancellation of party registration, since the party secured registration of its local organisations before the start of court proceedings. On these grounds the court dismissed all the claims of the MoJ and came to conclusion that there were no grounds for cancellation of registration of political party. |

⁸² The same decisions (rulings, resolutions) in the cases upon lawsuits lodged by state tax inspectorates were handed down by other courts (however, in general, court decisions with regard to termination of local party organisations are controversial: in some cases courts upheld the claims of state tax inspectorates and terminated local party organisations, while in the other cases the same arguments of tax authorities were declared unsubstantiated and their claims were denied by the courts; see other decisions on termination of local party organisations, reflected in the Table). *See, e.g.*: Decision of the Dnipropetrovsk district administrative court as of October 13, 2009 in the case № 2-a-6486/09/0470 upon a lawsuit lodged by state tax inspectorate in Babushkin district of the city of Dnipropetrovsk against Dnipropetrovsk regional organisation of the Political Party “The Pragmatic Choice” seeking to terminate regional party organisation as legal entity; <http://www.reyestr.court.gov.ua/Review/5468938>; Resolution of the Volynsk district administrative court as of May 13, 2009 in the case № 2a-14447/09/0370 upon a lawsuit of Ratnivsk interdistrict state tax inspectorate against Starovyzhivsk district organisation of the political party “The Democratic Union” seeking to terminate local party organisation as legal entity; <http://www.reyestr.court.gov.ua/Review/3944645>; Decision of the Kharkiv regional commercial court as of July 13, 2007 in the case № 56/97-07 upon a lawsuit lodged on behalf of the State represented by Krasnokutsk district state tax inspectorate by public prosecutor of Krasnokutsk district of Kharkiv region (oblast) against Krasnokutsk district organisation of political party seeking to terminate local party organisation as legal entity; <http://www.reyestr.court.gov.ua/Review/1031096>; Decision of the Donetsk regional commercial court as of January 25, 2007 in the case № 31/438пп upon a lawsuit lodged by state tax inspectorate in Kalininsk district of Donetsk against Mariupol city organisation of the Ukrainian Republican Party seeking to terminate local party organisation as legal entity; <http://www.reyestr.court.gov.ua/Review/1301584>

⁸³ <http://www.reyestr.court.gov.ua/Review/5067360>

⁸⁴ <http://www.reyestr.court.gov.ua/Review/6902316>

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 2010. OSCE/ODIHR Election Observation Mission Post-Election Interim Report; http://www.osce.org/documents/odihr/2010/02/42816_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](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](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](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](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](http://www.venice.coe.int/docs/2002/CDL-AD(2002)017-e.asp)