

## **Ready, steady... political parties likely to continue running ahead of the train**

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General trends in efforts to find a legal solution to the whole host of issues of political parties in Ukraine have repeatedly demonstrated the presence of radically different partisan interests and confrontation of engaged perspectives on political party-building.

Yet, there has been a substantial number of actors motivated to ensure an adequate legal framework for the entire set of party questions.

In Ukraine's contemporary history, the process of party building started in 1990, with the abolition of Article 6 of the Soviet constitution that prescribed the leading role in the society and the state to the Communist party. Shortly afterwards, a variety of political parties and movements emerged in this country. While some of them were kind of sofa parties, or hobby clubs, some other entities developed into really strong partisan structures.

The process of uninterrupted party-building continues. To date, the Ministry of Justice of Ukraine has registered over 106 political parties, and this seems to be far from the end of the process. Apparently, the active politically-minded part of the Ukrainian society makes almost weekly use of Article 36 of the Constitution, according to which citizens of Ukraine have the freedom of uniting in political parties and civic organizations for enjoying and protecting their rights and liberties and fulfilling political, economic, social, cultural and other interests...

The Ukrainian political arena is full of political parties, from the left and the right. There is no vacant space to be seen in the center either. However, the situation with legal regulation of political party-building in Ukraine remains illogical. In a way, it resembles running ahead of a train that goes in an unknown, mysterious direction. Though, for some Ukrainian political parties, direction is not an issue... Ironically, notwithstanding the lack of the political party law the recent parliamentary elections in March 1998 were organized under a mixed, majoritarian - proportionate system, and resulted in election of nine political parties to the state's supreme legislature. All in all, over 30 political entities took part in the race.

Currently birth certificates for Ukrainian political parties are issued by the Ministry of Justice. The order of establishment and operation of political parties is regulated by the Law of Ukraine On Associations of Citizens which, among other things, defines a political party as an association of citizens - supporters of a certain general national program of societal development, whose principle goal is to take part in development of public policy, formation of bodies of power, local and regional self-governance, and representation in them. Given this definition, it would be logical to assume there is a certain general national program of societal development, followed by a variety of political parties of Ukraine from different sectors of the political spectrum, but nothing of the kind seems to be available today.

The Resolution No.140 of the Cabinet of Ministers of Ukraine On Adoption of the Regulation on the Order of Legalization of Associations of Citizens provided for relatively simple steps towards registration of political parties. On the one hand, the process looked rather democratic. Theoretically, anybody could create a party of his or her own. In order to do that, all one had to do was to submit a certain collection of statute documents to the Ministry of Justice, select a name for the party, organize a party session and collect signatures of 1,000 supporters. As a result, a new political party was born. Actually, there was a certain problem: registration procedures for political parties were specified in the law On Associations of Citizens (1992) that did not give clear provisions for specific features of activities of political entities. The lack of clear regulations, in fact, allowed to create political parties without too much trouble and time, but many of such parties lacked voter support and tended to remain artificial bodies aiming rather at fulfilling their leaders' ambitions than contributing to real processes of societal restructuring.

On March 15, 2000, the majority of the Ukrainian parliament, the Verkhovna Rada of Ukraine, approved the very unlucky bill on political parties in Ukraine. However, although MPs showed remarkable unanimity and consolidation (some articles received approval of 360 MPs), it is the President of Ukraine who will have the final say regarding the new law's contents and future. Although the parliament did accept, in one way or another, most of the President's recommendations, there are doubts that the President will sign the new bill into law.

The critical document that could have contributed to creation of genuinely strong and influential political parties is among recognized champions in touring the parliamentary committees' desks. Hence, the bill was introduced to the Second (or 13th, under the old style ) parliament (1994-1998); it migrated to the Third (14th) parliament, having experienced substantial losses and accumulated some improvements on its three-year way.

For the first time, the need for a legal framework that would define the status of political parties and their activities became clearly pronounced in the context of the recent majoritarian-proportionate parliamentary elections. The increasing attention to the issue was quite natural and rational, since it was practically the first case in the contemporary Ukrainian history when political parties could take part in the elections as independent election actors. In July 1996, then deputy chief of staff of the Presidential Administration Volodymyr Lytvyn stressed the urgent need to approve a political party law in order to clearly define their rights, duties and responsibilities (Vseukrainskie Vedomosti, 26 July 1996). Shortly before the parliamentary elections which were expected to be organized under the mixed system, those considerations were straight to the point.

The issue of legal regulation of political party life has been addressed time and again since then. For instance, in February 1997 President Leonid Kuchma argued that laws on political parties and on parliamentary elections should be approved before the 1998 parliamentary race (Nezavisimost, 18 February 1997). Yet, the predictions and hopes remained unfulfilled, and the bills continued to develop separately. After severe parliamentary battles, political collisions and passions, the President finally signed the revamped Law On Elections of The Verkhovna Rada of Ukraine on October 22, 1997.

The prospects for adoption of the political party law remained unclear. The 2nd parliament (1994-1998) tried to address the issue for almost two years. Yet, in February 1999 the 3rd Verkhovna Rada effectively challenged the fruit of their predecessors' work in that direction. The law-makers could not agree on a number of sensitive issues, primarily those of funding and registration of political parties. They also found it difficult to provide clear regulations concerning reasons for suspending or prohibiting a political party, etc.

The issue of creating legislation to regulate political parties' activities was addressed again in the context of Ukraine's commitments pursuant to its membership in the Council of Europe. The new wave of interest to the political party bill, unexpectedly coincided in time with the challenges to Ukraine's membership in that international organization. When Ukraine joined the Council of Europe, one of its commitments was to adopt a political party law. Gradually, the lack of legal regulation of the whole complex of political party issues became increasingly acute. Sensing the need to address the problem, leader of Ukraine's parliamentary delegation at the Council's of Europe Parliamentary Assembly Borys Oliynyk stressed at the PA assembly on April 26-30, 1999, that the political party law should be adopted shortly. According to members of the Ukrainian delegation, the bill was to be approved in July 1999. Yet, again, the expectations never became reality. On July 8, 1999, the parliament debated the political party bill in the third reading for the forth time, but did not approve either individual articles or the bill in general. Again, MPs failed to come to terms on a number of critical issues, including an article on establishing grounds for banning a political party, an article on conditions for joining a political party, maintaining records of party membership and imitations on membership, and an article on some transitional provisions. During the presidential election race, the politically disturbed and highly polarized parliament proved to be unable to approve the partisan bill. At that time the forecast for positive solution of the political party organizational dilemma was unfavorable. It was expected that the issue of setting a legal framework for political party life would be addressed again after the end of the presidential race. The assumptions were correct: at the end of December 1999 the Verkhovna Rada approved the Law On Political Parties in Ukraine . Yet, a number of issues remained unresolved. A few days after the law was approved by the parliament, Presidential chief of staff Volodymyr Lytvyn announced that the President who was expected either to sign the bill into law or to veto it was in a difficult situation for, on the one hand, the adoption of the law was demanded by the Council of Europe, and, on the other hand, the document did not correspond with the President's own vision. Specifically, according to the Presidential chief of staff, the law did not clearly outline rights and duties of political opposition and did not assist the societal restructuring process (Molod Ukrainy, 30 December 1999). Hence, the issues remained open. According to most analysts representing different perspectives, the bill, approved at the end of December 1999, did not provide any mechanisms that would stimulate consolidation and growth of political parties. Similarly, it did not create mechanisms for ensuring transparency of financial support, provided to political parties, and it did not set clear rules for public funding of political parties' activities. Therefore, on January 17, 2000 President Kuchma used his right of veto and presented the law-makers with 37 proposed changes to the political party bill, approved by the parliament. The parliamentary Committee for Legal Policy that was in charge of facilitating the adoption of the bill, proposed to accept only 16 of the President's recommendations, and

to reject the other 21. The bill was finally approved by the parliament in full on March 15, 2000, but a few days after the President announced he would not sign the new version either and that a new political party law was needed.

Will the situation change when (and if) the political party bill is finally approved? Although the current bill has caused broad criticism, the mere fact of adopting such a document is a clearly positive step towards building a civil society in this state. The bill seeks to provide equal, transparent rules of the game for political parties that would be instrumental in assisting to place political party-building and activities of Ukrainian political parties into a civilized legal framework, and generally contribute to development of political structure of the society. However, it is still unclear how well the adopted bill - this one or a modified one - can contribute to reaching that goal. To date, observations and analysis suggest that many questions related to the party life have a chance to remain unanswered.

For instance, according to a new norm introduced at the recommendation of the President, a decision on establishing a political party should be endorsed by at least 10,000 Ukrainian citizens (the previous version of the bill and the Law On Associations of Citizens required 1,000 signatures). Valid signatures should be collected in at least 2/3 of districts of at least 2/3 of regions of Ukraine, the city of Kyiv, and at least 2/3 of the Crimean districts. Commenting on the new norm and its implications for improving registration procedures, secretary of the parliamentary Committee for Legal Policy Oleksandr Lavrynovych expressed doubt that the increase in the number of signatures, required for creation of a new political party, would have any noticeable impact on the political parties' growth rate and numbers. He also added that ten thousand is an absolutely subjective figure. If approved, it will not influence anything. We witnessed how a political party having 2 thousand members gathered one million signatures (Den, 16 March 2000). As the reality of signature-collection campaign has proved, Mr. Lavrynovych's comments are straight to the point, and that norm would create no mechanism able to assist the emergence of stronger political parties.

The parliament rejected the President's proposal under which every political party, in order to be registered, had to have local branches in two thirds of the country's regions. According to MPs, they rejected the proposal because it would be natural to create party branches after the legal registration of the political party.

Once again, the parliament addressed the issue of membership in a political party. Under the current law, political party membership is open for citizens of Ukraine who are eligible to vote under the Constitution. The parliament rejected the President's proposal to deny the right to join political parties to prisoners, arguing that a mechanism that would prevent imprisoned criminals from running in elections was provided by Article 76 of the Constitution, under which a citizen sentenced for having committed a premeditated crime, if the sentence is not cleared and not lifted in the order specified by the law, may not be elected to the Verkhovna Rada of Ukraine .

The most recent version of the political party law specified conditions for banning a political party. In addition to the traditional list of possible wrongdoings that may lead to abolishing of a political party, there is a stipulation that a party may be banned if its program goals or actions infringe on public health .

Especially heated debates concerned the sensitive and topical issue (given the recent public initiatives to ban the Communist party) of conditions under which a political party can be banned. Generally, Article 37 of the Constitution lists actions that cause abolition of a political party, including establishment and activities of political parties and public organizations program goals or actions of which aim at liquidation of Ukraine's independence, changing the constitutional order by force, violation of sovereignty and territorial integrity of the state, undermining its security, illegitimate capture of the state power, propaganda of war, violence, at fueling interethnic, racial, religious animosity, infringement on human right and liberties, public health. Under the Constitution, activities of an association of citizens, political parties included, could only be banned by the judgement of a court. The new approved law specified that a political party could be banned if it used funding or material resources of foreign states, legal entities or individuals. According to a new regulation, supported by the majority of members of the parliament, Ukrainian banks must inform the Office of Attorney General and the Ministry of Justice about any funds transferred to political parties' accounts by foreign governments, legal entities or individuals. If any amount of the illegal money is found, the party may face serious challenges that will be considered by the court.

The norm that the first court to judge a case on banning a political party is the Supreme Court of Ukraine remains in force, contrary to the President's proposal to hear such cases in general courts. The parliament supported the President's proposal to ensure that MPs, elected through political party lists, could not refuse to implement the party's agenda or leave their party's faction. Automatic cancellation of membership in the parliament was introduced as the penalty for party list MPs who refused to abide by the rule. Yet, according to some MPs, this provision contradicts Article 81 of the

Constitution that clearly outlines reasons for termination of an MP's term in the legislature. The list of reasons did not include termination of an MP's powers after he or she left the faction. Hence, many analysts and politicians believe this norm can be challenged at the Constitutional Court, while Oleksandr Lavrynovych argues the Speaker might have trouble with implementing the new norm as soon as the first case of unsanctioned migration occurs (Ukraina Moloda, 18 March 2000).

Certain doubts were caused by the President's recommendations regarding the bill, approved by the parliament, designed to determine the status of political opposition. According to Oleksandr Lavrynovych, the status of political opposition should rather be defined by the whole set of political documentation, down from the Constitution of Ukraine, and not just by an individual law (Den, 16 March 2000).

Hence, the political party law has been adopted again, but many of its problems remain unresolved. It is still hard to say how successful the set rules of the game for political parties will be, how well they meet the requirements of political parties themselves, and how adequately they respond to the societal demand for political party-building. The unresolved issues left in the new bill suggest that new presidential recommendations and proposals are likely to follow and seek changes to specific provisions of the bill. The most likely candidates are the paragraphs regulating political party financing and activities of the opposition. Therefore, it is the President of Ukraine who will have the final say on the future of the ill-fated document, and then it will be political practice that will demonstrate the viability of the political party law.