

IFES Comment

Analysis of Recent Legislation on Banning Political Parties

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Background

On May 3, the Verkhovna Rada, Ukraine's Parliament, adopted the Law of Ukraine "On Amendments to Certain Legislative Acts of Ukraine on the Ban of Political Parties" (Law Number 7172-1). The Law broadens the grounds for banning a political party and clarifies the procedure. The Law was supported by all factions and groups with 330 "yes" votes from Members of Parliament. On May 14, the Law was signed by President Zelenskyy.

The grounds for banning political parties had been amended twice by the Parliament in March.¹

The March and May parliamentary initiatives were triggered by the perception of political actors and the general public that one of the supporting factors behind Russia's full-scale invasion of Ukraine is the engagement of domestic, seemingly pro-Russian political parties.² These parties are considered by the Ukrainian political actors and general population to be involved in both open and covert cooperation with Russia and coordinating actions inside Ukraine for the benefit of the Russian Federation's leadership.

An additional reason behind the adoption of the legislation is to improve the existing mechanism for banning political parties which stems from the view that it has become ineffective. One example is the ban of the Communist Party in Ukraine which the Ministry of Justice has been litigating in court since the summer of 2014. Only in mid-May 2022, the appeal court finally confirmed the initial court decision to ban the party, leading to the ban going into effect.

International Standards and Compliance Analysis

The European Convention for the Protection of Human Rights and Fundamental Freedoms (ECHR), the practice of the European Court of Human Rights (ECtHR), and the Guidelines on prohibition and dissolution of political parties and analogous measures – the Guidelines – establish standards on freedom of association and require the party banning procedure comply with clear criteria.

The Guidelines' Section II states: "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

¹ Parliament adopted the Laws of Ukraine "On Amendments to Certain Legislative Acts of Ukraine on Ensuring Liability of Individuals Engaged in Collaborative Activities" (Law Number 2107-IX) and "On Amendments to Certain Laws of Ukraine on Prohibiting Production and Distribution of Information Propagating Actions of the Aggressor State" (Law Number 2109-IX).

² The political parties temporarily suspended by the NSDC's decision include "Opposition Platform — For Life," "Shariy Party," "Nashi," "Opposition Bloc," "Left Opposition," "Union of Left Forces," "Derzhava," "Progressive Socialist Party of Ukraine," "Socialist Party of Ukraine," "Socialists," and "Volodymyr Szaldo Bloc."

a political means to overthrow the democratic constitutional order, thereby undermining the rights and freedoms guaranteed by the constitution.”

In Ukraine, grounds and procedures for banning political parties are set by the Constitution and the Law "On Political Parties in Ukraine", or the Law on Political Parties. Article 37 of the Constitution prohibits the establishment and activities of political parties if their program goals or actions are:

- Liquidating Ukraine's independence;
- Changing the constitutional order by force;
- Violating the sovereignty and territorial integrity of the state;
- Undermining national security;
- Unlawful seizure of state power;
- Propaganda of war;
- Propaganda of violence;
- Instigation of inter-ethnic, racial, or religious hatred;
- Infringement of human rights and freedoms; and,
- Infringement of the population's health.

The Constitution also prohibits political parties from possessing paramilitary formations.

The Law on Political Parties reinforces provisions of the Constitution regarding grounds for banning parties and also contains another clause – the propaganda of Communist and/or National Socialist (Nazi) totalitarian regimes and their symbols.

New Laws:

The Law "On Amendments to Certain Laws of Ukraine on Prohibiting Production and Distribution of Information Propagating Actions of the Aggressor State", adopted in March, added two grounds for prohibiting political parties, including actions of a political party which:

- Violate citizens' equality based on race, gender, ethnic origin, social origin, property status, political and religious beliefs, place of residence, and linguistic capability; and,
- Disseminate information justifying, legitimatizing, or denying Russia's war against Ukraine.

Law Number 7172-1, adopted in May, supplemented the list with two new grounds:

- Justifying war against Ukraine, including by representing it as an internal conflict or civil war, and/or denying the temporary occupation of part of Ukrainian territory; and,
- Justifying actions of individuals and entities involved in the war against Ukraine by designating them as "rebels", "insurgents", "militia" or "polite people".

In addition, Law Number 7172-1 introduced another reason for banning a political party, including its collaboration with political parties or non-governmental organizations representing the aggressor and occupant state and directed against the independence, sovereignty, and territorial integrity of Ukraine. The Security Service of Ukraine is entrusted with launching and maintaining a registry of such parties and NGOs within six months from coming into force of Law Number 7172-1.

The grounds for prohibiting political parties proposed in the new laws supplement current provisions of Article 37 in the Constitution.

While the new law includes more reasons for banning parties (questioned by some who consider the clauses in the Constitution sufficient), it leaves open **a number of ambiguities**, namely:

- whether a political party can be banned if its individual members commit actions that constitute a ban;
- what constitutes ‘engagement in activities’ by the party;
- who exactly is associated with the actions of a political party - whether it is only persons entitled to represent the political party according to its statutory documents or other party representatives such as MPs, local council members nominated by the party, or heads of the party’s local branches.

International standards as communicated through the Guidelines state that, “A political party as a whole cannot be held responsible for the individual behavior of its members not authorized by the party within the framework of political/public and party activities.” Moreover, any restrictive measure taken against a political party on the basis of behavior of its members should be supported by evidence that he or she acted with the support of the party or that the behavior is the result of the party’s program and political objectives.

The Guidelines stress that the program of a political party is not the only criterion to define its goals and intentions; the content of the party program must be supplemented by the party leaders’ actions and advocacy. Altogether, actions and positions may be relevant when considering a case to ban a political party since they may reveal its actual goals and intentions.³

The new laws **do not change the procedure** for banning political parties. The activity of a party can be prohibited only by a court decision and the Ministry of Justice remains the only state body in Ukraine entitled to take such legal action. According to Law Number 7172-1, the Ministry must appeal to a court with an administrative lawsuit to ban a political party once it discovers facts about the party’s illegal activities. However, the new laws do not answer how the Ministry should establish facts and provide evidence. The Ministry is not a law enforcement agency and has neither investigative powers nor the capacity to enforce.

Section III of the Guidelines requires that state authorities when applying to a court for banning a political party, must **have sufficient evidence** that the party has been engaged in activities threatening the constitutional order or the rights and freedoms of citizens. Even with the newly adopted amendments, the current legal framework lacks a clear mechanism for prohibiting political parties. **The Law on Political Parties should provide a clearer legal instrument for banning parties, or the powers of the Ministry of Justice should be strengthened.**

Law Number 7172-1 introduces elements regarding jurisdiction of cases and the procedure for their judicial review. The cases will be under **jurisdiction** of the Sixth Administrative Court of Appeal in Kyiv in ordinary conditions; but, under jurisdiction of the Eighth Administrative Court of Appeal in Lviv during martial law. The Supreme Court will be the court of final appeal. However, since both the court of the first instance and the court of final appeal will consider these cases in a collegial manner, there should be sufficient guarantees of due process.

Provisions of Law Number 7172-1 **shorten the legal timeframe** to one month for dealing with cases of banning political parties after the opening of proceedings. While it is understandable that lawmakers aspire to provide for a speedy resolution, a reasonable and realistic timeframe

³ See cases *Refah Partisi (The Welfare Party) and Others v. Turkey* [GC]; *Herri Batasuna and Batasuna v. Spain*.

in such cases should be maintained to ensure the court has sufficient time to evaluate all evidence and make a reasoned decision in these important trials. For this category of cases, the amendments also provide that all court decisions, summonses, and information about court hearings must be posted on the official websites of the Ministry of Justice and the Ukrainian Parliament. The requirement of website postings **increases trial transparency**.

Conclusions

The Parliament's intent to safeguard Ukraine by prohibiting certain political parties under martial law is understandable and can be viewed as an appropriate good-faith response to the current situation. However, it is important that expansion of the grounds for banning political parties is not arbitrary and does not create additional legal uncertainty. In addition, the banning procedure established by law should be clear and implementable in practice and address if the conditions, actions, and statements of political party representatives constitute sufficient grounds for the party's prohibition.

To address issues that have not been settled by the adoption of Law Number 7172-1, MPs should incorporate international standards and the practice of the ECtHR. In particular, the parliament can improve the legal framework for prohibition of political parties by:

- clarifying the procedure of party banning, especially who and how should collect evidence confirming party illegal activity and submit this evidence to court;
- providing the Ministry of Justice with additional capacities to identify illegal activities of political parties or transfer this function to another state institution;
- establishing under which circumstances actions of party representatives constitute grounds for prohibition of a party and which exactly party representatives can be associated with party activities;
- eliminating the additional grounds for prohibition on parties that go beyond the provisions of the Constitution;
- extending the timeframe for the consideration of party banning cases to allow courts enough time to evaluate all collected evidence and make an informed decision.

IFES reiterates that, in order to establish an effective and democratic procedure for banning political parties, the parliament should ensure that the adoption of respective legal changes follows a transparent and inclusive discussion engaging all relevant stakeholders, including state institutions, CSOs, and academia.

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