

Trial on the ban imposed to the Communist Ukrainian Party – Kiev Court hearing of July 5th, 2017

Introduction. As a member of the Italian Democratic Lawyers Association, I, Elena Esposito from Torino Bar Association participated, jointly with two members of the Hellenic Union of Progressive Lawyers, a member of Greek Parliament and a representative of the Czech Communist party, to a mission of international observation at the Court hearing scheduled for the 5th of July 2017 of trial concerning the Ban of the Communist party from Ukraine. The mission is part of the broader international observation activities carried out by the Italian Democratic Lawyers Association in a series of trials where respect of fundamental principles of fair trial and human rights is at stake. The Italian delegation was also representing the European Association of Lawyers for Democracy and World Human Rights.

Background Information. The Ministry of Justice released an order to ban the Communist Party of Ukraine (CPU) on the 23rd of July 2015 due to the alleged violation of the Law of Ukraine «*On condemning the communist and national-socialist (Nazi) totalitarian regimes In Ukraine and the prohibition of propaganda of their symbols*», the so called Decommunization Laws currently in force at national level. The Ministry of Justice motivated the ban on the mere fact that the word communism or a derivative is contained in the name of the party itself.

Representatives of the Communist party appealed against the banning order in front of the administrative Court. The first instance grade ended with a refusal to execute the Ministry order. It was observed with concern the lack of evidences and motivation on the alleged violations which was expected, if not from the Ministry of Justice, at least from the Judges of the Court.

Nonetheless, after the first grade decision a new appeal was presented against the decision of the first judge and the trial moved on before the Administrative Court of Appeal of Kiev.

Court hearing of July, 5th, 2017. The hearing was scheduled for the final debate of the second instance phase. It started at 10.30 a.m. The Court firstly asked to the international observers to express their requests and expectations on the final decision on the case. International observers replied with their observations and submitted a written paper requesting the Court to apply the relevant articles of the European Convention on Human Rights (among which, in particular, art. 6 on fair trial, art. 9 and 10 on the right to free opinion and freedom of expression, art. 11 on freedom of association, art. 14 on prohibition of discrimination) and to grant the appeal submitted by the CPU defense by overruling the first grade decision and cancelling the ban.

After the international observers, the word was given to the CPU attorney which called on the judges to remember the importance of applying, before the dispositions of the Decommunization Laws, the fundamental principles of the Constitution of Ukraine, in accordance to which the law itself is not legitimate. As a consequence, the ban of the party is not legitimate because it is based on a law which is not in line with the sources of law hierarchically above it, such as the Constitution itself.

Few CPU representatives also intervened during the hearing requesting the judges to grant fundamental freedoms and rights of the Communist party and not to create a dangerous precedent in Ukrainian history in banning arbitrarily a political legitimate organization.

The attitude of judges during the speech of political party members was found denigrating and not serious by international observers (i.e. openly laughing to the speeches given in front of them).

At 12.30 p.m., judges took a break and rescheduled the hearing at 16.30 to hear the final observations of the Ministry of Justice. The defense of the Ministry asked the Court to confirm the first grade decision. No possibility to reply was given to the CPU attorney and the reading of the decision was scheduled for the day after.

I left on the 6th July morning and was informed that, unexpectedly, the judges decided to wait for the decision of the Ukrainian Constitutional Court on the aforementioned Decommunization Laws. This result is to be evaluated rather positively and no doubts represents a result of the action of international pressure physically represented by the presence of international observers inside the trial.

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