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EUROPEAN COMMISSION FOR DEMOCRACY THROUGH LAW

(VENICE COMMISSION)

GUIDELINES ON LEGISLATION ON POLITICAL PARTIES: SOME SPECIFIC ISSUES

Based on comments by

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GUIDELINES
adopted by the Venice Commission
at its 58th Plenary Meeting (Venice, 12 – 13 March 2004)

The Venice Commission

Being engaged in the promotion of fundamental principles of democracy, of the rule of law and the protection of human rights, and in the context of improving democratic security for all;

Taking into account the essential role of political parties within a democracy;

Recognising that national legislation and practice related to political parties and their participation in public life differs considerably from one country to another and that specific constitutional or statutory regulations depend on variety of factors, such as the country's constitutional history and democratic traditions;

Acknowledging that new democracies, where democratic traditions are quite recent, might need more specific regulations related to political parties than established constitutional democracies;

Considering that the European Convention for the Protection of Human Rights and Fundamental Freedoms protects as fundamental rights in Article 11, the freedom of assembly and association, and in Article 10, the freedom of expression and that the right to associate in political parties is protected as part of the general freedom of assembly and association;

Considering the case law of the European Court of Human Rights requiring that interference with the exercise of rights and freedoms enshrined in Articles 10 and 11 of the Convention must be assessed by the yardstick of what is 'necessary in a democratic society';

Considering that the European Convention on Human Rights and Fundamental Freedoms in Article 14 prohibits discrimination;

Taking into account that the European Convention on Human Rights and Fundamental Freedoms in Article 16 permits certain restrictions on political activities of aliens;

Taking into account the European Convention on the Participation of Foreigners in Public Life at Local Level;

Reaffirming the principles stated and recommendations made by the Venice Commission in its previous guidelines on prohibition of political parties and analogous measures and on financing of political parties;

Recognising the need to further promote standards in the field of legislation on political parties on the basis of the values of European legal heritage;

Has adopted the following guidelines:

A. For the purpose of these guidelines, a political party is an association of persons, one of the aims of which is to participate in the management of public affairs by the presentation of candidates to free and democratic elections.

B. Registration as a necessary step for recognition of an association as a political party, for a party's participation in general elections or for public financing of a party does not *per se* amount to a violation of rights protected under Articles 11 and 10 of the European Convention on Human Rights. Any requirements in relation to registration, however, must be such as are 'necessary in a democratic society' and proportionate to the objective sought to be achieved by the measures in question. Countries applying registration procedures to political parties should refrain from imposing excessive requirements for territorial representation of political parties as well as for minimum membership. Matters of internal organisation of political parties, in principle, should not be subject to control by public authorities. Apart from cases, clearly indicated in the Guidelines on prohibition of political parties and analogous measures[1], i.e. when parties advocate unconstitutional activities or promote violence, registration of political parties should not be denied.

C. Any activity requirements for political parties, as a prerequisite for maintaining status as a political party and their control and supervision, have to be assessed by the same yardstick of what is 'necessary in a democratic society'. Public authorities should refrain from exercising excessive control over internal organisation of parties, such as membership, number and frequency of party congresses and meetings, operation of territorial branches and subdivisions.

D. State authorities should remain neutral in dealing with the process of establishment, registration (where applied) and activities of political parties and refrain from any measures that could privilege some political forces and discriminate others. All political parties should be given equal opportunities to participate in elections.

E. Any interference of public authorities with the activities of political parties, such as, for example, denial of registration, loss of the status of a political party if a given party has not succeeded to obtain representation in the legislative bodies (where applied), should be motivated, and legislation should provide for an opportunity for the party to challenge such decision or action in a court of law.

F. Although such concern as the unity of the country can be taken into consideration, Member States should not impose unnecessary restrictions on the establishment and activities of political unions and associations on regional and local levels.

G. When national legislation provides that parties lose their status of a political party if they do not succeed to take part in elections or to obtain representation in legislative bodies, they should be allowed to continue their existence and activities under the general law on associations.

H. General exclusion of foreign citizens and stateless persons from membership in political parties is not justified. Foreign citizens and stateless persons should to some extent be permitted to participate in the political life of their country of residence. At the very least, the country of residence should make membership in political parties possible for these persons. In dealing with issues of participation of foreign nationals in public life

[1] Guidelines on prohibition of political parties and analogous measures adopted by the Venice Commissions at its 41st plenary session (Venice, 10 – 11 December 1999), Doc. CDL-INF (2000) 1.

of their country of residence, Member States are invited to apply to the largest possible extent the provisions of the European Convention on the Participation of Foreigners in Public Life at Local Level[2]. Additional measures further extending the guarantees provided for by the provisions of this Convention would be most welcomed.

I. These guidelines should be regarded as complementary to the recommendations made by the Guidelines on the prohibition of political parties and analogous measures[3] and the Guidelines on financing of political parties[4] adopted by the Venice Commission in 1999 and 2001.

[2] European Treaties Series (ETS) no. 144.
[3] Idem.
[4] Doc. CDL (2001) 8, adopted by the Venice Commission at its 46th Plenary Meeting (Venice, 8 – 9 March 2001).

EXPLANATORY REPORT

GENERAL REMARKS

1. The Venice Commission has dealt with different aspects of laws on political parties in a number of guidelines, reports, opinions and comments. Between 1997 and 1999 – originally at the request of the Secretary General of the Council of Europe – the Venice Commission conducted a study on the prohibition of political parties. The final result of this study, Guidelines on the Prohibition of Political Parties and Analogous Measures, together with an explanatory report, were adopted at the 41st plenary meeting of the Commission (Venice, 10–11 December 1999)[5] and forwarded to the Parliamentary Assembly and the Secretary General of the Council of Europe. Another study, conducted in 1999 and 2000, analysed the financing of political parties, and resulted in a report adopted by the Commission at its 44th plenary meeting (Venice, 13–14 October 2000) as well as guidelines adopted at the 46th plenary meeting (Venice, 9–10 March 2001)[6]. A third study – on good practice in electoral matters – which touched upon some aspects of the law on political parties, was conducted in response to a resolution of the Standing Committee of the Parliamentary Assembly; and resulted in a set of guidelines and an explanatory report, which under the title of Code of Good Practice in Electoral Matters were adopted by the Commission at its 51st and 52nd plenary meetings (Venice, 5–6 July and 18–19 October 2002)[7]. In matters which the Venice Commission took note of, endorsed or adopted opinions, four may be mentioned here as examples, namely on:
   - the law on political parties in Armenia,[8]
   - legislation on political parties in Ukraine,[9]
   - the law on political parties and socio-political organisations of the Republic of Moldova[10] and
   - a draft law on prohibition of extremist organisations and unions in Georgia.[11]

2. Finally, in 2003 the Sub-Commission on Democratic Institutions conducted a study on the establishment, organisation and activities of political parties. For this purpose a questionnaire to the member states was adopted by the Sub-Commission on Democratic Institutions (Venice, 13 March 2003)[12]. The replies to this questionnaire were compiled,[13] and the Venice Commission adopted a report summarising the replies at its 57 plenary session (Venice, 12-13 December 2003**)**.[14]

3. The aim of guidelines adopted earlier by the Venice Commission[15] was to establish common principles for all member States of the Council of Europe and other countries sharing common values established and reflected in the European Convention for the Protection of Human Rights and Fundamental Freedoms – this Convention being not only an instrument

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5 CDL-INF (2000) 1.
6 CDL-INF (2001) 8.
7 CDL-AD (2002) 23.
8 Cf. CDL (2001) 30, 43 and 45, CDL (2002) 88, 89 and 90.
9 Cf. CDL-AD (2002) 17.
10 Cf. CDL-AD (2002) 28.
11 CDL-AD (2003) 11rev.
12 CDL-DEM (2003) 1rev.
13 CDL-DEM (2003) 2rev.
14 CDL-DEM(2003) 3 rev.
15 Cf. CDL-INF (2000) 1, Explanatory report.

of international law, but also "a constitutional instrument of European public order"[16] as the European Court of Human Rights has observed. Therefore, on the legal level of the Council of Europe the point of departure for systematic discussions and comments on general issues of the law of political parties must be the general rules, principles and standards, which are based on this Convention in general, and its Articles 11 on freedom of assembly and association and 10 on freedom of expression in particular. Other provisions – e.g. Article 14 on prohibition of discrimination together with Protocol no. 12[17] as well as Article 16 on restrictions on political activity of aliens together with the Convention on the Participation of Foreigners in Public Life at Local Level[18] – have to be taken into account.

4. Article 11 of the European Convention on Human Rights protects the right to associate in political parties as part of the general freedom of assembly and association:

"*1. Everyone has the right to freedom of peaceful assembly and to freedom of association with others, including the right to form and to join trade unions for the protection of his interests.*

2. No restrictions shall be placed on the exercise of these rights 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 others. This article shall not prevent the imposition of lawful restrictions on the exercise of these rights by members of the armed forces, of the police or of the administration of the State."

5. The right of freedom of association in the context of the Convention is in the case law of the European Court of Human Rights usually interpreted together with Article 10 on freedom of expression. Article 10 of the Convention provides:

"*1. Everyone has the right to freedom of expression. This right shall include freedom to hold opinions and to receive and impart information and ideas without interference by public authority and regardless of frontiers. This article shall not prevent States from requiring the licensing of broadcasting, television or cinema enterprises.*

2. The exercise of these freedoms, since it carries with it duties and responsibilities, may be subject to such formalities, conditions, restrictions or penalties as are prescribed by law and are necessary in a democratic society, in the interests of national security, territorial integrity or public safety, for the prevention of disorder or crime, for the protection of health or morals, for the protection of the reputation or rights of others, for preventing the disclosure of information received in confidence, or for maintaining the authority and impartiality of the judiciary."

6. And in its case law the European Court of Human Rights has ruled

"… that protection of opinions and the freedom to express them within the meaning of Article 10 of the Convention is one of the objectives of the freedoms of assembly and association as

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[16] European Court of Human Rights, Case of Loizidou v. Turkey (Preliminary Objections), Application no. 15318/89, Judgment 23 March 1995, para 75.

[17] ETS no. 177.

[18] ETS no. 144.

enshrined in Article 11. That applies all the more in relation to political parties in view of their essential role in ensuring pluralism and the proper functioning of democracy."[19]

7. To this the Court has added that it

"*considers that there can be no democracy without pluralism. It is for that reason that freedom of expression as enshrined in Article 10 is applicable, subject to paragraph 2, not only to "information" or "ideas" that are favourably received or regarded as inoffensive or as a matter of indifference, but also to those that offend, shock or disturb … Inasmuch as their activities form part of a collective exercise of the freedom of expression, political parties are also entitled to seek the protection of Articles 10 of the Convention.*"[20]

8. Furthermore, the Court, as to the links between democracy and the Convention, has observed:[21]

"*Democracy is without doubt a fundamental feature of the 'European public order'... That is apparent, firstly, from the Preamble to the Convention, which establishes a very clear connection between the Convention and democracy by stating that the maintenance and further realisation of human rights and fundamental freedoms are best ensured on the one hand by an effective political democracy and on the other by a common understanding and observance of human rights ... The Preamble goes on to affirm that European countries have a common heritage of political tradition, ideals, freedom and the rule of law. The Court has observed that in that common heritage are to be found the underlying values of the Convention ...; it has pointed out several times that the Convention was designed to maintain and promote the ideals and values of a democratic society ...*

In addition, Articles 8, 9, 10 and 11 of the Convention require that interference with the exercise of the rights they enshrine must be assessed by the yardstick of what is 'necessary in a democratic society'. The only type of necessity capable of justifying an interference with any of those rights is, therefore, one which may claim to spring from 'democratic society'. Democracy thus appears to be the only political model contemplated by the Convention and, accordingly, the only one compatible with it."

9. The Court has made these observations in cases concerning the prohibition of political parties. However, the Venice Commission takes the view that there is no reason not to apply the law as stated by the Court on matters concerning regulation of political parties in general. Any regulation concerning political parties, therefore, has to take into account that limitations imposed on political parties and their members must comply with the law as stated by the Court as well as be in conformity with the principles of *legality* and *proportionality.*[22]

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[19] Case of Refah Partisi (The Welfare Party) and Others v. Turkey, Applications no. 41340/98 et al., Judgment 13 February 2003, para 88, and Judgment 31 July 2001, para 44, reiterating what the ECHR had stated earlier; cf. Case of United Communist Party of Turkey and Others v. Turkey, 133/1996/752/951, Judgment 30 January 1998, para 42 (quoting among other even earlier authorities the Case of Vogt v. Germany, Application no. 17851/91, Judgment 26 September 1995, para 64), Case of the Socialist Party and Others v. Turkey, 20/1997/804/1007, Judgment 25 May 1998, para 41, and Case of Freedom and Democracy Party (ÖZDEP) v. Turkey, Application no. 23885/94. Judgment 8 December 1999, para 37.

[20] Case of Refah Partisi, Judgment 13 February 2003 para 89; cf. Judgment 31 July 2001, para 44.

[21] Case of Refah Partisi, Judgment 13 February 2003, para 86, and Judgment 31 July 2001, para 45, quoting its observations in the Case of United Communist Party of Turkey, para 45.

[22] CDL-INF (2000) 1, para 6.

SPECIFIC QUESTIONS

a. Registration of political parties

10. The already mentioned study on the establishment, organisation and activities of political parties conducted in 2003 by the Sub-Commission on Democratic Institutions has shown that many countries view registration as a necessary step for recognition of an association as a political party, for participation in general elections or for public financing. This practice – as the Venice Commission has stated before in its *Guidelines on Prohibition and Dissolution of Political Parties* – even if it were regarded as a restriction of the right to freedom of association and freedom of expression, would not *per se* amount to a violation of rights protected under Articles 11 and 10 of the European Convention on Human Rights. The requirements for registration, however, differ from one country to another. Registration may be considered as a measure to inform the authorities about the establishment of the party as well as about its intention to participate in elections and, as a consequence, benefit from advantages given to political parties as a specific type of association.. Far reaching requirements, however, can raise the threshold for registration to an unreasonable level, which may be inconsistent with the Convention. Any provisions in relation to registration must be such as are necessary in a democratic society and proportionate to the object sought to be achieved by the measures in question.[23]

b. Activity requirements for political parties and their control and supervision

11. Similar caution must be applied when it comes to activity requirements for political parties as a prerequisite for maintaining status as a political party and their control and supervision. Far reaching autonomy of political parties is a cornerstone of the freedoms of assembly and association and the freedom of expression as protected by the European Convention on Human Rights. As the European Court of Human Rights has stated, the Convention requires that interference with the exercise of these rights must be assessed by the yardstick of what is 'necessary in a democratic society'. The only type of necessity capable of justifying an interference with any of those rights is, therefore, one which may claim to spring from 'democratic society'.[24] In particular, control over the statute or charter of a party should be primarily internal, i.e. should be exercised by the members of the party. As regards external control, the members of a party should have access to a court in case they consider that a decision of a party organ violates its statute. In general, judicial control over the parties should be preferred over executive control.[25]

12. Another important aspect is that of equal treatment of parties by public authorities. In the case of registration procedure (if it is foreseen by national legislation) the State should proceed carefully in order to avoid any possible discrimination of political forces which might be considered as representing an opposition to the ruling party. In any case, clear and simple procedures should exist to challenge any decision and/or act of any registration authority in a court of law.

c. Membership

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[23] CDL-INF (2000) 1, III. Explanatory report, para 6, and CDL-AD (2003) 8, para 12.

[24] Case of Refah Partisi, Judgment 13 February 2003, para 86, quoting its observations in the Case of United Communist Party of Turkey, para 45.

[25] CDL-AD (2002) 17, para 24.

13. The above-mentioned study of the Sub-Commission has also shown that in many countries, constitutional or legislative provisions restrict membership in political parties to national citizens only.

14. Restrictions on political activities of foreign citizens and stateless persons are possible under international law. The reason usually given for this rule is the wish to avoid foreign policy conflicts. But this can hardly justify a general exclusion of foreign citizens and stateless persons from membership in political parties. Provisions regarding political activities of foreign citizens and stateless persons should take into account the fact that even these individuals are covered by the guarantees for basic rights according to the human rights documents applicable in Europe. In 1992, the European Convention on the Participation of Foreigners in Public Life at Local Level[26] was opened for signature by the member States of the Council of Europe, and in 1997 it entered into force. In the light of this Convention, an absolute ban on non-citizens' membership in political parties can be considered unjustified. The Congress of Local and Regional authorities of Europe indicated in its Recommendation 115 (2002)[27] "on the participation of foreign residents in local public life: consultative bodies", that "*there can be no true local democracy without participation by all residents of the community, and that consequently foreign residents who are legally and lastingly settled in the territory of European states ought not to be excluded from local public life, whatever their country of origin*".

15. One reasonable way to comply with European standards in this respect could be to let foreign citizens and stateless persons participate to some extent in the political life of their country of residence. At the very least, the country of residence could make membership in political parties possible for foreign citizens and stateless persons; however, it should also be noted that foreign citizens and stateless persons in many European countries can vote in local elections and can even be elected to local public office in such elections.

d. Political parties and elections.

16. The main objective of political parties is participation in public life of their country. Elections are essential for fulfilment of this task; therefore the principle of equality between parties is of outmost importance. In recent years some new democracies claim that the stability of government and the good functioning of the parliament can be achieved through limiting the number of parties participating in elections. This suggestion seems to be in contradiction with European standards applied to electoral process.

17. Article 3 of the First protocol to the European Convention on Human Rights protecting the right to free elections provides that:

"*The High Contracting Parties undertake to hold free elections at reasonable intervals by secret ballot, under conditions which will ensure the free expression of the opinion of the people in the choice of the legislature*".

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[26] ETS no. 144.

[27] http://www.coe.int/T/E/Clrae/_5._Texts/2._Adopted_texts/1._Recommendations/2002/Rec_115_2002_E.asp
Debated and approved by the Chamber of Local Authorities on 5 June 2002 and adopted by the Standing Committee of the Congress on 6 June 2002 (see Doc. CPL (9) 5, draft recommendation presented by Mrs V. Dirksen and Mr W. Schuster, rapporteurs).

18. In recent years the role of a multitude of political parties as associations expressing the will of many different parts of the society is being reconsidered in a positive way. The Code of good practice in Electoral matters adopted by the Venice Commission in 2002 recognises that:

"*Preventing an excessive number of parties through the electoral system would seem to be the most effective and least objectionable method as far as political rights are concerned. The general trend is to avoid restricting the number of parties by tinkering with the terms and conditions governing registration, because refusal to register a party is often a convenient way for the authorities to get rid of a competitor who is irksome rather than insignificant"*[28]

19. In some Member States parties can lose their status of "political party" if they do not have any candidates elected in national elections. If the provisions of Articles 10 and 11 are to be applied with due regard to what is 'necessary in a democratic society', they should be allowed to continue their activities under the general law on associations.

e. Parties on local and regional level.

20. Member states should not restrict the right of association in a political party to the national level. There should be a possibility to create parties on regional and local levels since some groups of citizens might want to associate in groups limiting their action to local and regional levels and to local and regional elections. However, certain new democracies consider such extensive approach to the freedom of association premature in the light of their effort to preserve the unity of the State. Such concern can be understood, but before any restrictions are imposed, the principle of proportionality and the yardstick of what is 'necessary in a democratic society' should be considered thoroughly.

[28] CDL-AD(2002) 023 Code of Good Practice in Electoral Matters: Guidelines and Explanatory Report - Adopted by the Venice Commission at its 51st and 52nd sessions (Venice, 5-6 July and 18-19 October 2002).