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EUROPEAN COMMISSION FOR DEMOCRACY THROUGH LAW
(VENICE COMMISSION)

LEGISLATION ON POLITICAL PARTIES

**GENERAL REMARKS
WITH REGARD TO THE PROJECTS
CONCERNING ARMENIAN AND UKRAINIAN DRAFTS**

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1. On the legal level of the Council of Europe the obvious point of departure for systematic discussions and comments should be the general rules, principles and standards, which are based on the European Convention for the Protection of Human Rights and Fundamental Freedoms in general, and its Articles 10 (freedom of expression), 11 (freedom of assembly and association), 14 (prohibition of discrimination), and 16 (restrictions on political activity of aliens) in particular. Article 14, however, should be viewed together with Protocol No. 12 (ETS no. 177) and Article 16 together with the Convention on the Participation of Foreigners in Public Life at Local Level (ETS no. 144).

2. A second obvious point of departure on this level should be the rich case law of the European Court of Human Rights. Important examples from later years are the four famous Turkish cases concerning alleged violations of the freedom of assembly and association:

– United Communist Party of Turkey and others v. Turkey, 30.01.1998,

– Socialist Party and others v. Turkey, 25.05.1998, and

– Freedom and Democracy Party (ÖZDEP) v. Turkey, 08.12.1999, in which the Court found that the dissolution of political parties violated Article 11, and

– Refah Partisi (Welfare Party) and others v. Turkey, 31.07.2001, in which the Court found that Article 11 had not been violated. Important are also cases concerning Article 10 as for example

– Vogt v. Germany, 26.09.1995, in which the Court found that the dismissal of a teacher from the civil service on account of her political activities on behalf of the German Communist Party (DKP) violated both Article 10 and Article 11, and

– Ahmed and others v. UK, 02.09.1998, in which the Court found that restrictions on the involvement of senior local government officers in certain types of political activities did not infringe the right to freedom of expression according to Article 10.

3. Other important sources may be the many Conventions of the Council of Europe as for example the European Charter of Self Government (ETS no. 122) and the already mentioned Convention on the Participation of Foreigners in Public Life at Local Level (ETS no. 144).

4. Evidently important as points of departure are also the resolutions, recommendations etc. of the Committee of Ministers and the Parliamentary Assembly.

5. When it comes to the national level of the Member states of the Council of Europe, it is more difficult to establish, which principles and standards may be guiding as part of a *Corpus juris Europae*. Obviously, there is considerable diversity in national solutions in the field of legislation on political parties both in the Constitution and in ordinary legislation. Some of these solutions are frequent and others rare. Whether and to which extent any of these solutions – or combinations of solutions in one area (e.g. concerning general elections) with solutions in another (e.g. a party's right to nominate candidates) – could claim to be setting a standard, which could or should be followed by other Member states, has to be analysed very carefully. If solutions can be identified as setting a standard, however, this cannot necessarily imply that Member states, which do not follow this standard, should be required to implement it in future legislation. Constitutions represent the accumulated and condensed political

experience of peoples. The experiences of the peoples of Europe differ greatly and have to be respected. Therefore, there has to be a very considerable margin of appreciation, if it is considered to give advice on a suitable standard, which in some respect could give guidance.

6. Other aspects, which may be taken into account, are belonging more to the domain of political science than to the law. One could for example ask the question what party organisations do and are supposed to do. As an answer, three main kinds of activities are often mentioned:¹

- preparing for and assisting in the running of election campaigns;
- sustaining the party organisation, membership, and other resources; and
- devising new public policies and strategies for the party’s elected representatives in public offices.

Evidently not all parties fully engage in all these activities. But should every party be required to do so – at least in principle – as a prerequisite for recognition as political party? Another question concerns membership. It has often been pointed out that membership in political parties of Western Europe has fallen drastically, and that the preferences of the electorate are increasingly unstable. The huge mass party with an extensive and nationwide bureaucracy now has to compete not only with similar competitors, but also with parties with much smaller membership, very different organisational structures and not necessarily a national agenda, but instead or additionally one or more regional or local agendas. These changing patterns, which to a large extent also can be observed in the new democracies of Central and Eastern Europe,² make it essential not to adhere too rigidly to conventional legislative solutions.

7. From these points of departure, the following (and many other) topics and questions could be discussed, when enacted legislation or proposals to legislate on political parties have to be analysed. All questions hereafter are at this stage put deliberately broadly with the aim to identify the general areas, which must be covered in the cases of both Armenia and the Ukraine, and, eventually, in other cases in the future. In a later stage, they should be broken down into more detailed questions depending on the specifics of the political and legislative situation.

8. Sources of regulation. Which legal sources – e.g. constitutional laws or ordinary acts on political parties or on associations – contain provisions concerning political parties? Are these provisions technically comprehensive and coherent?

9. Definition. Is there a legal definition of the term “political party”? Which are the elements of the definition? Are there distinctions made

¹ Cf. Alan Ware: *Political Parties and Party Systems*. Oxford University Press, Oxford 1996 (reprinted 2001), ISBN 0-19-878077-X, p. 111.

² Cf. Attila Ágh: *The Politics of Central Europe*. Sage Publications, London, Thousand Oaks, New Delhi 1998. ISBN 0-7619-5032-X. Paul G. Lewis: *Political Parties in Post-Communist Eastern Europe*. Routledge, London and New York 2000, ISBN 0-415-20182-9. Alan J. Day (ed.): *Political Parties of the World*. 5th ed. John Harper Publishing, London 2002. ISBN 0-9536278-7-X.

- between associations and political parties,
- between political parties which are active nationwide (and possibly regionally and locally), and parties, which are active only regionally or locally, or
- between political parties which are represented in elected assemblies (e.g. in parliament or in regional or local assemblies) and parties which are not represented in such assemblies?

10. Establishment. Which are the material and procedural requirements to establish a political party?

11. Equality of treatment. Is there equality of treatment of all political parties?

11. Membership. Who can join a political party and who is excluded from membership? Are there citizenship or residence requirements? Which are the rights and obligations of party members? Can a party member be disciplined and which procedural rules are applicable in such situations? How can membership be terminated?

12. Organisation. Are there provisions about a party's internal organisation? Who represents a party externally, especially in legal matters?

13. Financing. Are there provisions about the financing of political parties and the reporting and disclosure obligations of political parties in financial matters?³

14. Supervision. Are there provisions about state control or supervision of political parties?

15. Dissolution. When and how can political parties be disbanded or banned or plainly dissolved?⁴

³ Cf. *the Venice Commission Guidelines and Report on the Financing of Political Parties*, CDL-INF (2001)8.

⁴ Cf. *the Venice Commission Guidelines on Prohibition and Dissolution of Political Parties and Analogous Measures*, CDL-INF (2000)1.