



COUNCIL OF EUROPE CONSEIL DE L'EUROPE

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EUROPEAN COMMISSION FOR DEMOCRACY THROUGH LAW
(VENICE COMMISSION)

PACE RECOMMENDATION 1791(2007)
ON
THE “STATE OF HUMAN RIGHTS AND DEMOCRACY IN EUROPE”
VENICE COMMISSION’S COMMENTS
IN VIEW OF THE REPLY OF THE COMMITTEE OF MINISTERS

On the basis of comments by
Mr Ugo MIFSUD BONNICI (Member, Malta)

I. Introduction

1. On 7 May 2007, the Committee of Ministers asked the Venice Commission to provide comments on PACE Recommendation 1791 (2007) on "the State of Human Rights and Democracy in Europe".

2. These comments were prepared by Mr Ugo Mifsud Bonnici (CDL(2007)086). The Commission took note of them at its 72nd Plenary Session (Venice, 19-20 October 2007).

II. Comments

3. In Recommendation 1791(2007) (hereinafter: the Recommendation), the Parliamentary Assembly recommends that the Committee of Ministers draw up guidelines in several constitutional fields.

4. The Venice Commission considers that this Recommendation is an important contribution to the debate on human rights and democracy in Europe.

5. A detailed examination of the Recommendation, however, would go beyond the object of these brief comments.

6. The Assembly's requests cover several different areas, while one of them, contained in point 17.19, covers them all (if the term "constitutional" is interpreted in a broad manner): "examine whether the current constitutional arrangements are democratically appropriate".

7. It is up to the Committee of Ministers to decide which issues are appropriate for recommendations at the intergovernmental level.

8. The Venice Commission has worked on most of these issues upon the request and in co-operation with many European States.

9. In addition to this bilateral work, the Venice Commission also adopted a number of general recommendations (e.g.: on emergency powers; constitutional foundations of foreign policy; democratic oversight of security services; nationality and state succession; prohibition and dissolution of political parties and analogous measures; financing of political parties). These texts of course do not claim to have a binding legal character, though they might serve as guidelines or indications for constitutional legislation in member states.

10. The Venice Commission has been particularly active in the electoral field, which is addressed under point 17 of the Recommendation. In particular, it adopted the Code of Good Practice in Electoral Matters, which was approved by the Parliamentary Assembly and the Congress of Local and Regional Authorities of the Council of Europe and which the Committee of Ministers supported in a Declaration adopted at the ministerial level. The Venice Commission also adopted the Code of good practice on referendums.

11. The Venice Commission would be ready to examine these issues more in detail, in line with the above-mentioned Codes of good practice.

12. Concerning the issue of a possible legally-binding instrument in the field of democratic elections, as mentioned in point 18.5.2 of the Recommendation, the Venice Commission is aware of the position of the Committee of Ministers taken in 2003. According to this position, for the Convention to have any added value, its standards would have to be no less exacting than those contained in the Code of good practice in electoral matters and it would be premature to initiate work on the transformation of the Code into a legally binding instrument. It also recalls that the Parliamentary Assembly asked for the Code of good practice in electoral matters to be the basis for such a Convention (Recommendation (1595) 2003, point 7.i).

13. The Venice Commission is ready to pursue both its bilateral co-operation and its general codification work and would of course take up any topic considered by the Committee of Ministers to constitute a priority.

14. As concerns bilateral co-operation, in most cases the Venice Commission's assistance was requested by member states, mostly "new" democracies, though "older" democracies such as Luxembourg, Finland and Switzerland, also asked for opinions. The Venice Commission would also regard it as profitable for all European States, individually or in their collective organisations, to discuss constitutional issues, taking into account international experience and expertise.