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**THE VENICE COMMISSION**  
**AND THE CODE OF GOOD PRACTICE ON REFERENDUMS**  
**AS AN INTERNATIONAL STANDARD**

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***The Venice Commission and  
Code of Good Practice on Referendums  
as an international standard***

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**Venice Commission**

There have been many European organizations called 'the European Commission', 'the Council of the European Union', 'the European Council', 'the Council of Europe' 'the European Union', 'the European Community, and etc. It makes some confusion to the others than European people. Nowadays, the European Union which is an economic and political union of 27 member states committed to regional integration and the Council of Europe which is the oldest organisation working towards European integration, are the main two organizations in Europe.

The Council of Europe is based on three pillars: democracy, human rights and the rule of law.<sup>1</sup> The issue of democracy, representative or direct, is therefore crucial for this organisation. This led to the creation of the Venice Commission, the official name is 'European Commission for Democracy through Law', which is the Council of Europe's advisory body in constitutional matters that are understood broadly, including electoral matters and constitutional justice.

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<sup>1</sup> See in particular Article 1 of the Statute of the Council of Europe.

But the Venice Commission is not a strictly European organisation, since it is open to non-European countries (9 of them have acceded up to now). Korea was one of the first non-European states to accede to the Venice Commission in 2006 after years of fruitful co-operation.

After the fall of Soviet Union, the Eastern European countries wanted to build new democracies and the Venice Commission has been assisting those countries' democratic transition by defining tracks to be followed, in order to ensure coherence. This leads to the definition of European standards, which may be called the European constitutional heritage. Adopted standards by the Venice Commission are the results of independent and impartial study and research by eminent academics and lawyers and wise politicians. The standards apply not only to new democracies but also old democracies in Europe and furthermore it could be applied to all democratic countries in the world. Improvements are possible and even necessary everywhere.

The Code of Good Practice in Electoral Matters<sup>2</sup> and the Code of Good Practice on Referendums,<sup>3</sup> on which the present contribution will focus are among those standards.

## **The Code of Good Practice on Referendums**

The Code of Good Practice on Referendums is divided into three parts, entitled "Referendums and Europe's electoral heritage" – "Conditions for implementing these principles" and "Specific rules".

In its *first part* dedicated to *referendums and Europe's electoral heritage*, the Code defines the fundamental norms of the European electoral heritage, as they have to be applied to referendums. These norms are universal, equal, free and secret suffrage. Whereas everybody seems to agree with these principles at first view, it is different when one looks more in detail at what they should actually mean in order to be really effective. The best example is free suffrage: it includes not only freedom of

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<sup>2</sup> CDL-AD(2002)023rev.

<sup>3</sup> CDL-AD(2007)008rev.



voters to express their wishes, but also freedom of voters to form an opinion; in its turn, freedom of voters to form an opinion includes the neutrality of authorities and, in particular, of public media – which is not yet common practice.<sup>4</sup> Equality of opportunity has a specific meaning for referendums: instead of applying to parties and candidates like for elections, it concerns supporters and opponents of the project. Therefore, it is advisable that, in public radio and television broadcasts on the referendum campaign, equality be ensured between the proposal's supporters and opponents. Equality between the proposal's supporters and opponents is also advisable in terms of public subsidies and other forms of backing.

The clarity of the question is a crucial aspect of voters' freedom to form an opinion. The question must not be misleading; it must not suggest an answer, particularly by mentioning the presumed consequences of approving or rejecting the proposal; voters must be able to answer the questions asked solely by yes, no or a blank vote; and it must not ask an open question necessitating a more detailed answer. Lastly, electors must be informed of the impact of their votes, and thus of the effects of the referendum (is it legally binding or consultative? does a positive outcome lead to the adoption or repeal of a measure, or is it just one stage in a longer procedure?)<sup>5</sup>

The *second part* of the Code defines *the framework conditions necessary for the organisation of referendums conform to the principles mentioned above*. These are:

- Respect for human rights, in particular freedom of expression and of the press, freedom of movement inside the country, freedom of assembly and freedom of association for political purposes, including freedom to set up political parties.<sup>6</sup>
- Organisation of elections by an impartial body.<sup>7</sup>
- An effective system of appeal.<sup>8</sup>
- Stability of legislation must be ensured in order to avoid any manipulation.

The *third part* of the Code of Good Practice on Referendums focuses on specific rules applicable to referendums and not to elections.

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<sup>4</sup> CDL-AD(2007)008, I.3.1.

<sup>5</sup> CDL-AD(2007)008, I.3.1 and par. 12 ff of the explanatory memorandum.

<sup>6</sup> CDL-AD(2007)008, II.1.

<sup>7</sup> CDL-AD(2007)008, II.3.1 and par. 21 of the explanatory memorandum.

<sup>8</sup> CDL-AD(2007)008, II.3.3.

Whereas the need for an electoral process to respect scrupulously a detailed set of rules is never contested, there may be a trend towards admitting the result of a referendum without checking whether the process complies with the legal system as a whole, and especially with the procedural rules. However, in a state based on the *rule of law*, the holding, procedure and effects of a referendum should respect law, like any other activity.<sup>9</sup> This implies also that the substance of texts put to the vote must be in conformity with superior national law and with international law.<sup>10</sup>

The Code puts also the emphasis on the necessity to ensure the *procedural validity* of texts submitted to a referendum, through the principles of unity of form, unity of content and unity of hierarchical level.<sup>11</sup>

More detailed provisions are dedicated to referendums held at the request of a section of the electorate (optional referendums) and to *popular initiatives*.<sup>12</sup> For example, the Code states that all signatures should be checked – and not only a sample – and that payment for the collection of signatures is not suitable.

In order to avoid having to declare a vote totally invalid, a popular initiative – or a request for a referendum – should be declared partially invalid where it is possible to modify the proposed text, without distorting it, so that it complies with the law.

When the referendum is legally binding, the authorities must *respect the people's decision*. The guidelines provide, for instance, that for a certain period of time (a few years at the most) a text rejected in a referendum may not be adopted by a procedure without referendum. A similar rule applies to the revision of a provision approved in a referendum. It is also advisable for constitutional rules relating to referendum to be put to a (possibly optional) referendum.<sup>13</sup>

The Code considers that *quorums* are not suitable. This is particularly true for turnout quorums, which encourage opponents to abstain in order to prevent the quorum to be reached.<sup>14</sup>

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<sup>9</sup> CDL-AD(2007)008, III.1.

<sup>10</sup> CDL-AD(2007)008, III.3 and par. 32 ff of the explanatory memorandum.

<sup>11</sup> CDL-AD(2007)008, III.2.

<sup>12</sup> See CDL-AD(2007)008, III.4.

<sup>13</sup> CDL-AD(2007)008, III.5 and par. 41 ff of the explanatory memorandum.

<sup>14</sup> CDL-AD(2007)008, III.7.



Finally, the effects of referendums (legally-binding or consultative) must be clearly specified in the Constitution or by law.<sup>15</sup>

## **Korean Laws on Referendums**

In Korea, there are 2 Acts relating to the referendums.

**The National Referendum Act** provides the compulsory referendum for the amendment of the Constitutional and optional referendum for the important national policies submitted by the President. The Act also provides the suffrage age, nationality condition, electoral registers, restrictions on campaign methods, voting and ballot counting procedures and appeal procedure.

**The Local Referendum Act** provides that questions submitted to the referendum are important local policies giving heavy burden or serious impact to the local people and the national policies concerning abolishment, division or annexation of local government, change of jurisdiction, establishment of important facilities and etc.

The referendum can be held by the popular initiative, by the decision of local assembly or the chief of local government. Central government can demand the referendum to the local government concerning above mentioned national policies.

The Act also provides the suffrage age, nationality condition, campaign methods and other procedures.

There are some insufficiencies to the Code of Good Practice on Referendums and in Electoral Matters. **The National Referendum Act** provides some restrictions on campaign methods (although it is rather softer than the restrictions provided in **The Election of Public Official Act** which is the basic election law and the one of the most restrictive acts concerning campaign methods in the democratic countries). **The National Referendum Act** prohibits the false or distorting propaganda by broadcasting or publication that could harm the fairness of the referendum. **The Local Referendum Act** prohibits the false propaganda to influence the referendum result..These clauses could violate the Codes.

But, in a broad sense, Korean referendum acts are generally in conformity with the Code of Good Practice on Referendums. The people's rights of universal, equal, free

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<sup>15</sup> CDL-AD(2007)008, III.8.a.

and secret suffrage are well guaranteed. The Central and local election committees which are the institutions historically trusted by the people are responsible for the administration of the referendums. The bitter experience of election fraud in 1960 presidential election that eventually toppled the government by student's uprising have made the following elections comparatively free and fair although some elections were marred by money.

However those clauses of heavy restrictions in **The Election of Public Official Act** and **The National Referendum Act** should be revised.

## **Conclusion**

The Venice Commission, through the Code of Good Practice in Electoral Matters, defined the standards on democracy and elections in a systematic way. The same need was felt in the field of referendums, where practice was less developed and the risk for abuses stronger. This led to the drafting of the Code of Good Practice on Referendums, which includes provisions similar to those applicable to elections, as well as provisions which apply specifically to referendums. In that way, problems which are often forgotten are settled.

The Code of Good Practice on Referendums has to be disseminated, explained and applied. This is the role of all of us, of all citizens interested in direct democracy.