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**EUROPEAN COMMISSION FOR DEMOCRACY THROUGH LAW**  
**(VENICE COMMISSION)**

**GUIDELINES ON LEGISLATION ON POLITICAL PARTIES:  
PRELIMINARY REMARKS**

**By**

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1. The Venice Commission has dealt with different aspects of laws on political parties in quite 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. As 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)<sup>1</sup> 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 its results were a report adopted by the Commission at its 44th plenary meeting (Venice, 13–14 October 2000) and guidelines adopted at the 46th plenary meeting (Venice, 9–10 March 2001)<sup>2</sup>. A third study – on good practice in electoral matters – which touched upon some aspects of the law on political parties, was conducted as a response to a resolution of the Standing Committee of the Parliamentary Assembly; its result were guidelines and 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)<sup>3</sup>. Of matters, in which the Venice Commission took note of, endorsed or adopted opinions, four may be mentioned here as examples, namely on the

- law on financing of political parties in Romania,<sup>4</sup>
- law on political parties in Armenia,<sup>5</sup>
- legislation on political parties in Ukraine<sup>6</sup> and the
- law on political parties and socio-political organisations of the Republic of Moldova.<sup>7</sup>

2. It is well known that the approaches to the question how to regulate political parties differ vastly in the national laws of the member States of the Council of Europe. The already mentioned studies conducted by the Venice Commission on the prohibition of political parties and on their financing have for example shown that *registration* of political parties is not required in all legal systems of the member States. In some of them there are no registration requirements at all; in others political parties are not obliged to register, but certain formalities are required in order for them to participate in elections. Further divergences are found in the *legal level* – constitutional or legislative – at which questions concerning political parties are dealt with. Other divergences concern the choice and protection of the *name* of a party, the criteria for *creation or survival* of a political party, and the *formalities* to which the registration may be subjected. Even material restrictions on political party activities vary considerably from one country to another. In States where the *general legislation on associations* applies, *groups with unlawful or immoral aims* are denied legal status, steps may be taken against parties *endangering fundamental freedoms, fostering discrimination, hatred or violence, or threatening the existence or the independence of the state*. Restrictions based on *nationality* may apply when it comes to membership in political parties. Some states prohibit the creation of political parties around *regional or territorial issues*, or around *religious principles*; other states require political parties' internal structure

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<sup>1</sup> CDL-INF (2000) 1.

<sup>2</sup> CDL-INF (2001) 8.

<sup>3</sup> CDL-AD (2002) 23.

<sup>4</sup> Cf. CDL (2000) 76, CDL-PP (2000) 4.

<sup>5</sup> Cf. CDL (2001) 30, 43 and 45, CDL (2002) 88, 89 and 90.

<sup>6</sup> Cf. CDL-AD (2002) 17.

<sup>7</sup> Cf. CDL-AD (2002) 28.

and functioning to be democratic. It is obvious, that many of these regulations have deep roots in the political and historical experience of the country.

3. It will be of course both advisable and necessary to analyse again the information, which was collected for the previous work of the Commission. But in some respects the already collected information appears not to be sufficient for a study aiming at broader guidelines than the study on prohibition and dissolution was aiming at, and therefore the question has to be answered, how the necessary information can be collected. Some topics, on which the available information seems to be not altogether complete, are the following:

- a) Is there a legal definition of the term “political party”? Which are the elements of the definition? Is the law on associations applicable and to what extent?
- b) What are party organisations supposed or required to do?<sup>8</sup> Are they, for example,
  - preparing for and assisting in the running of election campaigns and do they have a legal or natural monopoly on presenting candidates;
  - sustaining the party organisation, membership, and other resources; and
  - devising new public policies and strategies for the party’s elected representatives in public offices? Are they required to do these things – maybe at least in principle – as a prerequisite for recognition as political party?
- c) Other questions concern 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? 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,<sup>9</sup> may make it essential not to adhere too rigidly to conventional legislative solutions.
- d) Which are the material and procedural requirements to establish a political party?
- e) Are there provisions about a party’s internal organisation? Who represents a party externally, especially in legal matters?
- f) Are there provisions about state control or supervision of political parties?

4. The aim of guidelines adopted earlier by the Venice Commission has been to establish common principles for all member States of the Council of Europe and other countries

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<sup>8</sup> Cf. Alan Ware: *Political Parties and Party Systems*. Oxford University Press, Oxford 1996 (reprinted 2001), ISBN 0-19-878077-X, p. 111.

<sup>9</sup> 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.

sharing the values, which are established and reflected in the European Convention on Human rights – this Convention being not only an instrument of international law, but also “a constitutional instrument of European public order”<sup>10</sup> as the European Court of Human Rights has observed. Therefore, on the legal level of the Council of Europe the obvious point of departure for systematic discussions and comments on general issues of the law of political parties should 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. Even other provisions – e.g. in Article 14 on prohibition of discrimination together with Protocol No. 12<sup>11</sup>, and in Article 16 on restrictions on political activity of aliens together with the Convention on the Participation of Foreigners in Public Life at Local Level<sup>12</sup> – should of course be taken into account.

5. 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.”

6. 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.”

And in the case law of the European Court of Human Rights it is well established that:

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<sup>10</sup> European Court of Human Rights, Case of *Loizidou v. Turkey* (Preliminary Objections), Application no. 15318/89, Judgment 23 March 1995, para. 75.

<sup>11</sup> ETS no. 177.

<sup>12</sup> ETS no. 144.

“... notwithstanding its autonomous role and particular sphere of application, Article 11 must also be considered in the light of Article 10. The protection of opinions and the freedom to express them is one of the objectives of the freedoms of assembly and association as 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.”<sup>13</sup>

To this the Court has added

“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 ... The fact that their activities form part of a collective exercise of the freedom of expression in itself entitles political parties to seek the protection of Articles 10 and 11 of the Convention.”<sup>14</sup>

Furthermore, the Court, as to the links between democracy and the Convention, has observed:<sup>15</sup>

“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.”

7. These observations have been made in cases concerning the prohibition of political parties. However, there is no obvious reason not to apply the law as stated by the Court on regulation of political parties in general.

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<sup>13</sup> Case of Refah Partisi (The Welfare Party) and Others v. Turkey, Applications no. 41340/98 et al., 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.

<sup>14</sup> Case of Refah Partisi, para 44.

<sup>15</sup> Case of Refah Partisi, para 45, quoting its observations in the Case of United Communist Party of Turkey, para. 45.

8. The Venice Commission in its *Guidelines on Prohibition and Dissolution of Political Parties* has stated that, whereas freedom of association, including freedom to form political parties, must be regarded as one of the corner stones of pluralist democracy, restrictions to this right may be justified in a democratic society, in accordance with para. 2 of Article 11. Moreover, Article 17 of the European Convention on Human Rights allows a state to impose a restraint upon a programme a political party might pursue. It provides:

“Nothing in this Convention may be interpreted as implying for any State, group or person any right to engage in any activity or perform any act aimed at the destruction of any of the rights and freedoms set forth herein or at their limitation to a greater extent than is provided for in the Convention.”

9. Therefore – as the Venice Commission stated in its *Guidelines* – prohibition of political parties may be justified under the European Convention on Human rights and the same may clearly be the case when it comes to regulate them. Further – as the Venice Commission also stated in same *Guidelines* – the usual practice in a number of European States requiring registration 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. On the other hand – as it is observed in the *Guidelines* – any restriction must be in conformity with principles of *legality* and *proportionality*.<sup>16</sup>

10. No State can impose limitations based only on its internal legislation, ignoring its international obligations. This rule should be applied in normal times as well as in cases of public emergencies. This approach is confirmed by the practice of the European Court of Human Rights.<sup>17</sup>

11. As mentioned before the European Court of Human Rights upheld on several occasions in its jurisprudence that political parties are a form of association essential to the proper functioning of democracy and that in view of the importance of democracy in the European Convention on Human Rights system, an association, including a political party, is not excluded from the protection afforded by the Convention simply because its activities are regarded by the national authorities as undermining the constitutional structures of the State and calling for the imposition of restrictions.<sup>18</sup> This should be a guiding principle not only when it comes to prohibition of a political party, but also when regulation in general of the organisation and the activities of political parties is in question.

12. Any derogation from the European Convention on Human Rights should be made in respect of the provisions of Article 15 of the European Convention on Human Rights on derogation in time of emergency, that provides that they should not be in breach of other international obligations of the State (para. 1) and should be of a temporary duration (para. 3).<sup>19</sup>

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<sup>16</sup> Guidelines on Prohibition and Dissolution of Political Parties and Analogous Measures, CDL-INF (2000) 1, III. Explanatory report, para. 6.

<sup>17</sup> *Idem*, para. 7, with reference to Case of the Socialist Party and Others v. Turkey, 20/1997/804/1007, Judgment 25 May 1998, para. 50.

<sup>18</sup> Cf. Guidelines on Prohibition and Dissolution of Political Parties and Analogous Measures, CDL-INF (2000) 1, III. Explanatory report, para. 8.

<sup>19</sup> Cf. *idem* para. 9.

13. A party that aims at a peaceful change of the constitutional order through lawful means cannot – as the Venice Commission has observed in its *Guidelines* – be prohibited or dissolved on the basis of freedom of opinion. The same should apply to other regulating measures. As the Commission has pointed out: Merely challenging the established order in itself is not considered as a punishable offence in a liberal and democratic state. Any democratic society has other mechanisms to protect democracy and fundamental freedoms through such instruments as free elections and in some countries through referendums when attitudes to any proposal to change the constitutional order in the country can be expressed.<sup>20</sup>

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<sup>20</sup> Idem, para. 12.