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(VENICE COMMISSION)

COMMENTS ON

THE DRAFT AMENDMENTS TO THE LAW ON POLITICAL PARTIES OF BULGARIA[1]

by

Mr Hans-Heinrich VOGEL (Member, Sweden)

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1. In general terms the Political Parties Act of 2005 is modern, ambitious and well drafted. There are, however, provisions enacted in the Act or proposed in draft amendments which should be reconsidered.

2. Bulgarian citizenship is mentioned in a number of provisions as a precondition or requirement:

- Article 2(1) of the Act defines political parties as "voluntary associations of Bulgarian citizens holding electoral rights."
- Article 8(1) provides that "[a] Bulgarian citizen may participate in the constituent meeting of a political party only if he or she is not a member of another party" and Article 8(2) adds that "[a]ny Bulgarian citizen, who is also a citizen of another State, may participate in the establishment of a political party under the terms established by Paragraph (1)."
- According to Article 10(1) a "political party shall be established on the initiative of not fewer than fifty Bulgarian citizens holding electoral rights, who shall constitute a Steering Committee".
- Article 11(1) provides that "[e]very Bulgarian citizen holding electoral rights may join the signature collection" which the Steering Committee has to organise.
- According to Article 12(2) for "the valid transaction of business at the Constituent Meeting of a political party, not fewer than five hundred Bulgarian citizens, who have signed a declaration referred to in Article 11 herein, shall have to be present thereat."
- For the purpose of registration of a political party at the Sofia City Court, it is provided in Article 15(3) para. 4 that a list has to be submitted to the Court "containing the forename, patronymic and surname, the Standard Public Registry Personal Number and a manual signature of each of not fewer than five hundred founding members of the party who are Bulgarian citizens holding electoral rights".

With regard to these provisions it has to be recalled that according to Article 19 of the Treaty establishing the European Community not only Bulgarian citizens but also citizens of the European Union without Bulgarian citizenship, if residing in Bulgaria, may have the right both to vote and to stand as candidates at municipal elections and at elections to the European Parliament. EU citizens without Bulgarian citizenship cannot fully exercise these rights, if they are barred from activities with regard to political parties by the means of additional requirements of Bulgarian citizenship. Further, it must be remembered that under Article 11 of the European Convention on Human Rights (ECHR) and Article 3 of the (First) Protocol to this Convention not only nationals but also others may be politically active – which includes the right to be active within political parties. EC Treaty and ECHR complement each other in this respect, and with regard to that it should be reconsidered whether Bulgarian citizenship should be a precondition or requirement in the provisions mentioned above.

3. Some of the provisions quoted above and two other provisions prescribe that a certain number of individuals must be acting to validate certain measures:

- According to Article 10(1) "not fewer than fifty Bulgarian citizens" shall take the initiative to establish a political party and "constitute a Steering Committee".
- Five hundred citizens must be present for the valid transaction of business at the founding meeting of a political party (Article 12(2)), and the same number of citizens is necessary to adopt a statute of the party at the meeting (Article 13(1)).
- Further, in one of the two lists, which must be submitted together with the application for registration of a political party, not fewer than five hundred *founding* members have to be listed (Article 15(3) para. 4), and

- finally, in the second list which has to be submitted, not fewer than five thousand *[simple]* members have to be listed (Article 15(3) para. 7),
- and both these lists have to contain "forename, patronymic and surname, the Standard Public Registry Personal Number and a manual signature" of each founding or ordinary member.

At first glance the sequence of thresholds of not fewer than 50, 500 and 5000 individuals may appear as good as any other. However, closer inspection reveals, that these thresholds will be obstacles which would be very difficult or simply impossible to overcome.

Ordinary citizens, who want to found a new party – maybe at first for political work in a municipality and later development into a nationwide active political party –, cannot be expected to overcome these obstacles without active support of an existing organisation with ample administrative resources. If the goal is to found a party taking part in politics on the level of a municipality there may not even be 5000 inhabitants in the municipality, in which the future political party is supposed to be active.

The thresholds of 50 and 500 should also be related to the number of individuals, which are necessary to found an association or similar legal person; founding a political party should not be more difficult than founding an ordinary association or company.

In this context the question could be asked, whether and to which extent there will be public support for a newly founded political party. But to find an answer to this question, should not be a matter for a court of law in registration proceedings. Instead it should be left to the electorate to decide, whether public support is forthcoming.

Therefore, thresholds of not fewer than 50, 500 and 5,000 individuals are questionable. Probably they are far too high and should be reconsidered.

4. Another threshold for participation in elections – i.e. any election, municipal, as well as nationwide and EU-wide – is proposed in draft Article 20a, according to which participation requires that the political party "has established regional structures on the territory of at least half of the municipalities in the country". This threshold would make it virtually impossible to found a political party which aims for participation in politics in one or a few municipalities or regions only. But such limited activities are protected by Article 11 ECHR and Article 3 of the Protocol as well as political work nationwide. Draft Article 20a should therefore be reconsidered; a threshold of this kind should not be enacted at all.

5. Article 22(2) prohibits political parties "to hold participating interests in any commercial corporations and cooperatives". Article 23(1) para. 5 provides that revenue from own sources of political parties shall be any proceeds accruing from "… securities provided this does not contradict Article 22." These provisions seem to be drafted with the intention to draw a clear line between political activities of political parties on the one hand and their economic and financial activities on the other. They would probably be acceptable as such. However, the wording of Articles 22 and 23 – and maybe it is only a matter of translation of the Bulgarian text into English – is not helpful with regard to reasonable financial investment techniques; nor does it facilitate solutions when it comes to legally acceptable activities which to some extent are commercially motivated and may be taxable. An example would be ownership of real estate which partly is used by a political party for its political work, while the remaining part is rented by a third party for solely commercial purposes. In such cases generally accepted solutions combined with transparency requirements directed to the participating political party seem to be preferable to prohibitions and unrealistic and artificial solutions, which are necessitated only by the fact that one of the participants in the arrangement is a political party.

6. Article 28(1) provides for payment of the annual state subsidy in quarterly instalments, while Article 28(2) seems to prohibit that future payments are pledged as collateral for debt to a third party (however, the English translation of the Bulgarian text is not clear in this respect). In this context the obvious fact has to be recalled that any political party will have to meet foreseeable future obligations, e.g. payment of monthly salaries to employees, in between the scheduled quarterly instalments. Meeting such obligations requires short term cash reserves and their proper management. It must also be recalled that no political party can be sure about the outcome of the next election; it therefore has to make arrangements for the potentially difficult situation that there will be a substantial loss of votes in the future followed by a corresponding loss of state subsidies. This requires arrangements to meet even medium and long term obligations by accumulating corresponding financial reserves and to properly manage these reserves. Professional management of any reserves – short, medium or long term – usually requires and includes a limited use of short term credit facilities (cf. Article 23(3)), which have to be secured by pledging assets as collateral. One such asset would be future instalments with a solid base in enacted legislation. It is not clear whether traditional financial management of this kind is taken into account in the wording of Article 28 and would be compliant with this Article.

7. Draft Article 29(2) requests any political party to establish and keep a public register in which – among other information – according to para. 5 the full names and addresses of the party members are recorded. It is obviously reasonable that a political party keeps a register with the full names and addresses of the party members. But any requirement to make this information public has to take into account the transparency requirements which the party has to meet on the one hand and on the other hand reasonable demands of the members of the party for protection of their private life; simple membership in a political party does not lead to the member becoming a public person. It is not clear that the draft provision is sufficiently balanced in this respect. It should therefore be reconsidered.

8. According to draft Article 37 political parties shall publish financial statements in a national daily paper. It should be considered to require Internet publication either instead of publication in a national daily paper or additionally to such publication.

9. According to Article 38 a political party can be dissolved by decision of the Constitutional Court to declare the political party being unconstitutional. This is (and should be) the standard when involuntary dissolution is in question. However, Article 38 para. 5 provides also for involuntary dissolution of a political party by judgment of the Sofia City Court. The requirements for such a judgment are spelled out in Article 40(1). They include cases of “systemic violations of the requirements established by” the Political Parties Act, further, activities of the political party “in conflict with the provisions of the Constitution” and, finally, non-participation “in elections of National Representatives, of President and Vice President, or of Municipal Councillors and Mayors, during more than five years after the latest court registration thereof”. Additional requirements are listed in five new draft sections to be added to Article 40 and in § 4(4) of the transitional and final provisions. Public prosecutors seem to be the only persons who may apply for a court decision to dissolve a political party.

10. With regard to these provisions it has to be recalled that political parties are citizens’ associations which are active at the very centre of democracy where political discussion can be very intense. In this environment disputes can occur which cannot be solved in debate or by vote and which therefore have to be referred to a constitutional court or similar institution for arbitration. If there is such a court in a country, this court should decide even in matters – i.e. all matters – concerning involuntary dissolution of political parties; such dissolution of a political party should not be a matter for ordinary or administrative courts. Nor should the initiative to apply for involuntary dissolution of a political party be a matter for a public prosecutor. With regard to potential repercussions for the democratic system of the country the right and obligation to apply for dissolution or at least the obligation to provide guidance in matters of this

kind should be entrusted to a suitable institution with political legitimacy. Chapter 5 of the Act, with Articles 38 to 42, should therefore be reconsidered.

11. Finally, with regard to Article 6 ECHR, there should be a clear and comprehensive system of remedies against any judicial and administrative decisions and other acts which in substance are adversary to political parties. For example, according to Articles 16 and 18(2) judgments are to be rendered within 14 days. But which remedy is available, if the Court does not render its decision in time? Additionally, there should be a provision that any court judgment must contain clear and comprehensive reasons.