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EUROPEAN COMMISSION FOR DEMOCRACY THROUGH LAW

(VENICE COMMISSION)

O P I N I O N
ON THE LAW OF THE REPUBLIC OF ARMENIA ON POLITICAL PARTIES

Adopted by the Commission
at its 54th Plenary Session
(Venice, 14-15 March 2003)

1. In June 2002 Mr Kaarlo Tuori and Mr Hans-Heinrich Vogel submitted on behalf of the Commission comments on the draft Law of the Republic of Armenia on Parties (CDL(2002)90 and CDL(2002)89. Shortly thereafter, on 3 July 2002, the National Assembly adopted the text of the new Law on Parties. The new Law was then amended by the National Assembly on 4 December 2002.

2. During a discussion of the state of legal co-operation between Armenia and the Venice Commission in Strasbourg, the Vice Speaker of the National Assembly, Mr Tigran Torosyan, indicated that an opinion from the Venice Commission as to whether the law as adopted is in accordance with the main recommendations from the Venice Commission experts would be welcome. In his opinion Armenia should respect these recommendations. However, to amend the law again in the near future would be difficult. In his opinion, it seems not necessary to again amend the law very quickly.

3. The Commission welcomes that a large number of the suggestions by the rapporteurs have been implemented in the text of the law. In particular, the amendments adopted on 4 December 2002 have removed obstacles to the participation of foreigners in political parties. It is equally welcome that the provision on the Financial Reports of Parties no longer provides for the submission of consolidated accounts.

4. The Commission is however concerned that two provisions of key importance for the free activity of political parties remain unsatisfactory.

5. With respect to the registration of political parties, according to Art. 14.1 of the Law as amended, "The state registration of the party may be rejected if the Charter of the Party or provisions of the Program contradict to the Constitution and laws of the Republic of Armenia, or do not comply with the state registration requirements set forth in this Law." In their comments on a similar provision in the draft proposed to the second reading the rapporteurs of the Commission expressed concern that such a provision might be used to prevent registration of political parties aiming for peaceful change of the constitutional order. This concern remains valid with respect to the adopted text.

6. The Commission notes that according to information provided by Mr Torosyan no party has until now been denied registration because its charter or programme was deemed in contradiction with the constitution or the laws. It also notes that, following the entry into force of the revised Constitution, it will be possible to contest a denial of registration, following the exhaustion of ordinary remedies[1], before the Constitutional Court. Nevertheless the Commission is of the opinion that this provision is too broad and should be revised in the future.

7. The other concern relates to the dissolution of political parties. According to Art. 31.2 of the Law a party is "subject to liquidation" if it does either not participate in two subsequent parliamentary elections or does not receive at least one percent of the votes in either of two subsequent parliamentary elections. In case of liquidation, according to Art. 31.4 of the Law "title to property of the party is transferred to the state".

[1] According to Art. 14.3 "Rejection of state registration of the party may be appealed by court order". The Commission assumes that this not particularly clear translation does not imply that a court first has to enable a party by court order to present an appeal against the decision.

8. The Commission remains of the opinion, expressed by the rapporteurs in their comments on the earlier draft, that this provision is problematic and that a confiscation of party property under such circumstances would be unjustified. Unsuccessful parties should be able to continue to exist at least as non-governmental organisations without the special rights and privileges of political parties. It should be up to each party to determine in its Charter the fate of party property following liquidation or, failing a provision in the Charter, this should be up to a decision by the party conference.

9. The Commission notes that this provision will, according to the information provided by Mr Torosyan, not be applied retroactively taking into account elections which took place before the entry into force of the Law. It will therefore become applicable for the first time not following the next parliamentary scheduled for May 2003 but only following the subsequent parliamentary elections. It seems therefore sufficient to amend the Law during the term of the next parliament, which will be elected in May 2003.

10. In conclusion, the Commission is of the opinion that the Law should be amended in respect to these two provisions. Having regard to the fact that the Law was adopted only last year and already amended once since then, and that the provision on enforced dissolution will not become operative during the next legislature, a revision of the Law during the term of the parliament to be elected in May 2003 seems sufficient.