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EUROPEAN COMMISSION FOR DEMOCRACY THROUGH LAW
(VENICE COMMISSION)

GUIDELINES ON ELECTIONS

**Adopted by the Venice Commission
at its 51st Plenary Session (Venice, 5-6 July 2002)**

Introduction

On 8 November 2001 the Standing Committee of the Parliamentary Assembly, acting on behalf of the Assembly, adopted Resolution 1264 (2001) inviting the Venice Commission:

- i. to set up a working group, comprising representatives of the Parliamentary Assembly, the CLRAE and possibly other organisations with experience in the matter, with the aim of discussing electoral issues on a regular basis;*
- ii. to devise a code of practice in electoral matters ...*
- iii. to compile a list of the underlying principles of European electoral systems ...*

The following text is a concrete response to the three aspects of this resolution. It has been adopted by the Council for Democratic Elections – joint working group provided for by the resolution of the Parliamentary Assembly – at its 2nd meeting (3 July 2002); it is based on the underlying principles of the European electoral heritage; it contains guidelines, core of a code of good practice in electoral matters.

This text takes account of the guidelines appended to the explanatory memorandum to the report on which the Assembly resolution was based (Doc. 9267). It also takes account of the work of the Venice Commission in the electoral field, as summarised in Document CDL (2002) 7.

I. Principles of Europe's electoral heritage

The five principles underlying Europe's electoral heritage are *universal, equal, free, secret and direct suffrage*. Furthermore, elections must be held at regular intervals.

1. Universal suffrage

a. Universal suffrage means in principle that all human beings have the right to vote and to stand for election. This right may, however, and indeed should, be subject to certain conditions:

aa. Age

- i. The right to vote and to be elected must be subject to a minimum age.
- ii. The right to vote must be acquired, at the latest, at the age of majority.
- iii. The right to stand for election should preferably be acquired at the same age as the right to vote and in any case not later than the age of 25, except where there are specific qualifying ages for certain offices (e.g. member of the upper house of parliament, Head of State).

bb. Nationality

- i. A nationality requirement may apply.
- ii. However, it would be advisable for foreigners to be allowed to vote in local elections after a certain period of residence.

cc. Residence

- i. A residence requirement may be imposed.
- ii. Residence in this case means habitual residence.
- iii. A length of residence requirement may be imposed on nationals solely for local or regional elections.
- iv. The requisite period of residence should not exceed six months; a longer period may be required only to protect national minorities.
- v. the right to vote and to be elected may be accorded to citizens residing abroad.

dd. Deprivation of the right to vote and to be elected

- i. Provision may be made for depriving individuals of their right to vote and to be elected, but only subject to the following cumulative conditions:
- ii. It must be provided for by law.
- iii. The proportionality principle must be observed; conditions for depriving individuals of the right to stand for election may be less strict than for disenfranchising them.
- iv. The deprivation must be based on mental incapacity or a criminal conviction for a serious offence.
- v. Furthermore, the withdrawal of political rights or finding of mental incapacity may only be imposed by express decision of a court of law.

b. Electoral registers

Fulfilment of the following criteria is essential if electoral registers are to be reliable:

- i. Electoral registers must be permanent.
- ii. There must be regular up-dates, at least once a year. Where voters are not registered automatically, registration must be possible over a relatively long period.
- iii. Electoral registers must be published.
- iv. There should be an administrative procedure - subject to judicial control - or a judicial procedure, allowing for the registration of the voter who was not registered; the registration should not take place at the polling station on election day.
- v. A similar procedure should allow the voter to have incorrect inscriptions amended.
- vi. A supplementary register may be a means of giving the vote to persons who have moved or reached statutory voting age since final publication of the register.

c. Submission of candidatures

- i. The presentation of individual candidates or lists of candidates may be made conditional on the collection of a minimum number of signatures.
- ii. The law should not require collection of the signatures of more than 1% of voters in the constituency concerned.
- iii. Checking of signatures must be governed by clear rules, particularly concerning deadlines.
- iv. The checking process must in principle cover all signatures; however, once it has been established beyond doubt that the requisite number of signatures has been collected, the remaining signatures need not be checked.
- v. Validation of signatures must be completed by the start of the election campaign.
- vi. If a deposit is required, it must be refundable should the candidate or party exceed a certain score; the sum and the score requested should not be excessive.

2. Equal suffrage

This entails:

a. Equal voting rights: each voter has in principle one vote; where the electoral system provides voters with more than one vote, each voter has the same number of votes.

b. Equal voting power: seats must be evenly distributed between the constituencies.

i. This must at least apply to elections to lower houses of parliament and regional and local elections:

ii. It entails a clear and balanced distribution of seats among constituencies on the basis of one of the following allocation criteria: population, number of resident nationals (including minors), number of registered voters, and possibly the number of people actually voting. An appropriate combination of these criteria may be envisaged.

iii. The geographical criterion and administrative, or possibly even historical, boundaries may be taken into consideration.

iv. The permissible departure from the norm should not be more than 10%, and should certainly not exceed 15% except in special circumstances (protection of a concentrated minority, sparsely populated administrative entity).

v. In order to guarantee equal voting power, the distribution of seats must be reviewed at least every ten years, preferably outside election periods.

vi. With multi-member constituencies, seats should preferably be redistributed without redefining constituency boundaries, which should, where possible, coincide with administrative boundaries.

vii. When constituency boundaries are redefined – which they must be in a single-member system – it must be done:

- impartially;
- without detriment to national minorities;
- taking account of the opinion of a committee, the majority of whose members are independent; this committee should preferably include a geographer, a sociologist and a balanced representation of the parties and, if necessary, representatives of national minorities.

c. Equality of opportunity

aa. Equality of opportunity must be guaranteed for parties and candidates alike. This entails a neutral attitude by state authorities, in particular with regard to:

- i. the election campaign;
- ii. coverage by the media, in particular by the publicly owned media;
- iii. public funding of parties and campaigns.

bb. Depending on the subject matter, equality may be strict or proportional. If it is strict, political parties are treated on an equal footing irrespective of their current parliamentary strength or support among the electorate. If it is proportional, political parties must be treated according to the results achieved in the elections. Equality of opportunity applies in particular to radio and television air-time, public funds and other forms of backing.

cc. In conformity with freedom of expression, legal provision should be made to ensure that there is a minimum access to privately owned audiovisual media, with regard to the election campaign and to advertising, for all participants in elections.

dd. Political party, candidates and election campaign funding must be transparent.

ee. The principle of equality of opportunity can, in certain cases, lead to a limitation of political party spending, especially on advertising.

d. Representation of national minorities

aa. Parties representing national minorities must be permitted.

bb. Special rules guaranteeing national minorities reserved seats or providing for exceptions to the normal seat allocation criteria for parties representing national minorities (for instance, exemption from a quorum requirement) do not in principle run counter to equal suffrage.

cc. Neither candidates nor voters must find themselves obliged to reveal their membership of a national minority.

e. Equal representation of the sexes

Legal rules requiring a minimum percentage of persons of each gender among candidates should not be considered as contrary to the principle of equal suffrage if they have a constitutional basis.

3. Free suffrage

a. Freedom of voters to form an opinion

aa. State authorities must observe their duty of neutrality. In particular, this concerns:

- i. media;
- ii. billposting;
- iii. the right to demonstrate;
- iv. funding of parties and candidates.

bb. The public authorities have a number of positive obligations; inter alia, they must:

- i. submit the candidatures received to the electorate;
- ii. enable voters to know the lists and candidates standing for election, for example through appropriate posting.
- iii. The above information must also be available in the languages of the national minorities.

cc. Sanctions must be imposed in the case of breaches of duty of neutrality and voters' freedom to form an opinion.

b. Freedom of voters to express their wishes and action to combat electoral fraud

- i. Voting procedures must be simple.
- ii. Voters should always have the possibility of voting in a polling station. Other means of voting are acceptable under the following conditions:
- iii. Postal voting should be allowed only where the postal service is safe and reliable; the right to vote using postal votes may be confined to people who are in hospital or imprisoned or to persons with reduced mobility or to electors residing abroad; fraud and intimidation must not be possible.
- iv. Electronic voting should be used only if it is safe and reliable; in particular, voters should be able to obtain a confirmation of their votes and to correct them, if necessary, respecting secret suffrage; the system must be transparent.
- v. Very strict rules must apply to voting by proxy; the number of proxies a single voter may hold must be limited.
- vi. Mobile ballot boxes should only be allowed under strict conditions, avoiding all risks of fraud.
- vii. Two criteria should be at least used to assess the accuracy of the outcome of the ballot: the number of votes cast and the number of voting slips placed in the ballot box.
- viii. Voting slips must not be tampered with or marked in any way by polling station officials.
- ix. Unused voting slips must never leave the polling station.
- x. Polling stations must include representatives of a number of parties, and the presence of observers appointed by the candidates must be permitted during voting and counting.
- xi. Military personnel should vote at their place of residence whenever possible. Otherwise, it is advisable that they be registered to vote at the polling station nearest to their duty station.
- xii. Counting should preferably take place in polling stations.
- xiii. Counting must be transparent. Observers, candidates' representatives and the media must be allowed to be present. These persons must also have access to the records.
- xiv. Results must be transmitted to the higher level in an open manner.
- xv. The state must punish any kind of electoral fraud.

4. Secret suffrage

- a. For the voter, secrecy of voting is not only a right but also a duty, non-compliance with which must be punishable by disqualification of any ballot paper whose content is disclosed.
- b. Voting must be individual. Family voting and any other form of control by one voter over the vote of another must be prohibited.
- c. The list of persons actually voting should not be published.
- d. The violation of secret suffrage should be sanctioned.

5. Direct suffrage

The following must be elected by direct suffrage:

- i. at least one chamber of the national parliament;
- ii. sub-national legislative bodies;
- iii. local councils.

6. Frequency of elections

Elections must be held at regular intervals; a legislative assembly's term of office must not exceed five years.

7. Electoral system

Within the respect of the above-mentioned principles, any electoral system may be chosen.

II. Conditions for implementing these principles

1. Respect for fundamental rights

a. Democratic elections are not possible without respect for human rights, in particular freedom of expression and of the press, freedom of circulation inside the country, freedom of assembly and freedom of association for political purposes, including the creation of political parties.

b. Restrictions of these freedoms must have a basis in law, be in the public interest and comply with the principle of proportionality.

2. Regulatory levels and stability of electoral law

a. Apart from technical and detail rules – which may be included in regulations of the executive –, rules of electoral law must have at least the rank of a statute.

b. The fundamental elements of electoral law, in particular the electoral system proper, membership of electoral commissions and the drawing of constituency boundaries, should not be open to amendment less than one year before an election, or should be written in the constitution or at a level higher than ordinary law.

3. Procedural guarantees

a. Electoral commissions

aa. An impartial body must be in charge of applying electoral law.

bb. Where there is no longstanding tradition of administrative authorities' independence from those holding political power, independent, impartial electoral commissions must be set up at all levels, from the national level to polling station level.

cc. The central electoral commission must be permanent in nature.

dd. It should include:

i. at least one member of the judiciary;

ii. representatives of parties already in parliament or having scored at least a given percentage of the vote; these persons must be qualified in electoral matters.

It may include:

iii. a representative of the Ministry of the Interior;

iv. representatives of national minorities.

ee. Political parties must be equally represented on electoral commissions or must be able to observe the work of the impartial body. Equality may be construed strictly or on a proportional basis (see point I.2.c.bb).

ff. The bodies appointing members of electoral commissions must not be free to dismiss them at will.

gg. Members of electoral commissions must receive standard training.

hh. It is desirable that electoral commissions take decisions by a qualified majority or by consensus.

b. Observation of elections

aa. Both national and international observers should be given the widest possible opportunity to participate in an election observation exercise.

bb. Observation must not be confined to election day itself, but must include the registration period of candidates and, if necessary, of electors, as well as the electoral campaign. It must make it possible to determine whether irregularities occurred before, during or after the elections. It must always be possible during vote counting.

cc. The places where observers are not entitled to be present should be clearly specified by law.

dd. Observation should cover the respect by the authorities of their duty of neutrality.

c. An effective system of appeal

aa. The appeal body in electoral matters should be either an electoral commission or a court. For elections to Parliament, an appeal to Parliament may be provided for in first instance. In any case, final appeal to a court must be possible.

bb. The procedure must be simple and devoid of formalism, in particular concerning the admissibility of appeals.

cc. The appeal procedure and, in particular, the powers and responsibilities of the various bodies should be clearly regulated by law, so as to avoid conflicts of jurisdiction (whether positive or negative). Neither the appellants nor the authorities should be able to choose the appeal body.

dd. The appeal body must have authority in particular over such matters as the right to vote – including electoral registers – and eligibility, the validity of candidatures, proper observance of election campaign rules and the outcome of the elections.

ee. The appeal body must have authority to annul elections where irregularities may have affected the outcome. It must be possible to annul the entire election or merely the results for one constituency or one polling station. In the event of annulment, a new election must be called in the area concerned.

ff. All candidates and all voters registered in the constituency concerned must be entitled to appeal. A reasonable quorum may be imposed for appeals by voters on the results of elections.

gg. Time-limits for lodging and deciding appeals must be short (three to five days for each at first instance).

hh. The applicant's right to a hearing involving both parties must be protected.

ii. Where the appeal body is a higher electoral commission, it must be able *ex officio* to rectify or set aside decisions taken by lower electoral commissions.