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EUROPEAN COMMISSION FOR DEMOCRACY THROUGH LAW
(VENICE COMMISSION)

PRELIMINARY DRAFT GUIDELINES

Prepared by the Secretariat of the Commission

I. Principles of Europe's electoral heritage

The five principles underlying Europe's electoral heritage are *universal, equal, free, secret and direct suffrage*.

1. Universal suffrage

a. The rights to vote and to stand for election may be subject to the following conditions:

1) Age

- The right to vote must be acquired at the age of majority.
- The right to stand for election should preferably be acquired at the same age 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, President).

2) Nationality

- This should not be an absolute requirement for local elections.

3) Residence

- A length of residence requirement may be imposed solely for local and regional elections and should not exceed six months.

4) Deprivation of rights

- Deprivation of civic rights must be based on grounds of medical incapacity or a criminal conviction or sentence.
- 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.

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 annual updates, at clearly defined times. Where voters are not registered automatically, registration must be possible over a relatively long period.

iii. Electoral registers must be published.

iv. 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. Polling stations must not be permitted to register voters on election day itself.

c. Submission of candidatures

- The law should not require collection of the signatures of more than 1% of voters in the constituency concerned.
- Checking of signatures must be governed by clear rules and cover all signatures.
- Checking of signatures must take place before the start of the election campaign.
- If a deposit is to be lodged, it must be refundable should the candidate or party exceed a certain score.

2. Equal suffrage

This entails:

a. Equal voting rights: one voter, one vote.

b. Equal voting power:

- This must systematically apply to elections to lower houses of parliament and regional and local elections.
 - It entails 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.
 - The geographical criterion and administrative, or possibly even historical, boundaries may be taken into consideration to a certain extent.
 - The permissible departure from the norm should not be more than 10%, and should not exceed 15% except in special circumstances.
- Drawing of constituency boundaries should:
- be unbiased;
 - take place at least once every ten years, preferably outside election periods;
 - be carried out by an independent commission, including a geographer, a sociologist and party representatives.

c. Equality of opportunity

This entails a neutral attitude by state authorities. It applies to:

- the election campaign;
- media coverage;
- public funding of parties and campaigns.

Equality may be strict (political parties are treated on an equal footing irrespective of their current parliamentary strength or support among the electorate) or proportional, which means that radio and television air-time, public funds and other forms of backing are distributed according to the results achieved in the elections.

d. Representation of minorities

Parties representing minorities must be permitted.

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

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

e. Equal representation of the sexes

Rules requiring a minimum percentage of persons of each gender among candidates or on an elected body do not run counter to the principle of equal suffrage.

3. Free suffrage

a. Freedom of voters to form an opinion

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

- access to the media;
- billposting;
- the right to demonstrate;
- funding of parties and candidates.

The state has a number of positive obligations. Inter alia, it must:

- submit the candidatures it has received to the electorate;
- enable voters to know the lists and candidates standing for election, for example through appropriate publicity;
- punish:
 - any breach of the authorities' duty of neutrality (cf. point I.2.c);
 - interference by individuals with voters' freedom to form an opinion (for instance through vote buying).

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

- Voting procedure must be simple.
- Only two criteria should be used to assess the accuracy of the outcome of the ballot: the number of signatures on the electoral register and the number of voting slips placed in the ballot box.
- Voting slips must not be tampered with or marked in any way by polling station officials.
- Unused voting slips must never leave the polling station.
- Polling stations must be manned by representatives of a number of parties, and the presence of observers appointed by the candidates must be permitted during voting and counting.
- Postal voting should be allowed only where the postal service is reliable and the risk of fraud is limited; the right to vote using postal votes may be confined to people who are hospitalised or imprisoned or to persons with reduced mobility.
- Very strict rules must apply to voting by proxy.
- 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.

- Counting should preferably take place in polling stations.
- Counting must be transparent. It is preferable that it be open to the public. Failing that, observers, candidates' representatives and the media must be allowed to be present. These persons must also have access to the records.
- Results must be transmitted to the higher level in an open manner.
- The state must punish electoral fraud.

4. Secret suffrage

For the elector, 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.

The list of persons actually voting should not be published.

5. Direct suffrage

The following must be elected by direct suffrage:

- the lower house of the national parliament;
- sub- and supra-national legislative bodies;
- local councils.

6. Frequency of elections

Elections must be held at regular intervals; it is preferable that a term of office should not exceed five years.

II. Conditions for implementing these principles

1. Respect for fundamental rights

Democratic elections are not possible without respect for human rights, in particular freedom of expression and of the press, freedom of assembly and freedom of association for political purposes.

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

2. Stability of electoral law

The fundamental elements of electoral law, in particular those governing the electoral system proper, membership of electoral commissions and the drawing of constituency boundaries, must:

- either be written in the constitution;
- or not be open to amendment less than one year before an election.

3. Procedural guarantees

a. 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.

The central electoral commission must be permanent in nature.

It must include:

- at least one member of the judiciary;
- 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;
- possibly, a representative of the Ministry of the Interior.

Political parties must be equally represented on electoral commissions. Equality may be construed strictly or on a proportional basis (see point I.2.a).

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

Members of electoral commissions must receive standard training.

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

b. Funding

Public funding should be made available in accordance with the principle of equality (strict or proportional, see point I.2.c).

Transparency in financial matters must be guaranteed as regards:

- campaign accounts;
- the personal finances of elected officials before and after their election.

c. Observation of elections

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

- Observation must not be confined to election day itself, but must make it possible to determine whether irregularities occurred before, during or after the elections.

- The places where observers are entitled to be present should be clearly specified by law.

d. An effective system of appeal

- The appeal body in electoral matters should be either an electoral commission or a court, but final appeal to a court must be possible.

- The procedure must be simple and devoid of formalism.

- 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.
- 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.
- All candidates and all voters registered in the constituency concerned are entitled to appeal.
- Time-limits for lodging and deciding appeals must be short (three to five days for each at first instance).
- Where the appeal body is a higher electoral commission, it should be able *ex officio* to rectify or set aside decisions taken by lower electoral commissions.