



Venice, 21 October 2005

Study no. 306 / 2004

Restricted
CDL-EL(2005)041rev
Or. Engl.

EUROPEAN COMMISSION FOR DEMOCRACY THROUGH LAW
(VENICE COMMISSION)

DRAFT OPINION
ON PARLIAMENTARY ASSEMBLY
RECOMMENDATION 1714 (2005)
ON THE ABOLITION OF RESTRICTIONS
ON THE RIGHT TO VOTE

on the basis of contributions by

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(Member, The “Former Yugoslav Republic of Macedonia”)
Mr Franz MATSCHER (Member, Austria)

I. General observations

1. The Venice Commission has studied the issue of the right to vote (both active and passive) on a number of occasions and reaffirmed on numerous occasions the importance of this right in any democracy. The Commission has studied this issue both as a general subject of interest to the Council of Europe Member States, as well as in the concrete case of the participation of minorities in public life. The right to vote was also subject to discussions and comments in the light of the Venice Commission's co-operation on constitutional matters with some countries.

2. The problem of restrictions to the right to vote was the subject of two reports by Mrs M. Lazarova Trajkovska and Mr F. Matscher (CDL-AD(2005)011 and 012) endorsed by the Venice Commission at its 61st Plenary session on 3 - 4 December 2004.

3. The right to vote as one of the fundamental political rights is also fundamental for the fulfilment of a number of civil and social rights. At the same time the principles of universality, equality, freedom and secret ballots are the four pillars of the European electoral heritage and they are introduced into the constitutions and electoral legislation of the member and observer states of the Council of Europe. In this respect the abolition of existing restrictions on the right to vote should be of interest to states and it should also serve as an issue for further activities of the Council of Europe and other international organisations.

4. In some member and observer states of the Council of Europe, the implementation of existing standards and general principles is deeply influenced by customs, and traditions, but most of all by the level of political culture. In a number of cases and situations in countries of Europe and elsewhere various norms and practices have been established which restrict the right to vote to certain categories of people. Such restrictions are problematic from a human rights perspective. European institutions and in this case the Parliamentary Assembly of the Council of Europe are working to overcome such restrictions.

5. This opinion has been drafted at the request of the Parliamentary Assembly, and its aim is to address Recommendation 1714 (2005) on the abolition of restrictions on the right to vote. The Recommendation refers to Resolution 1459 (2005) and should be analysed and discussed in the light of this document.

6. The Recommendation calls upon the Committee of Ministers to, firstly, appeal to member and observer states to consider this issue in the light of the latest developments in Europe; secondly, to invite the corresponding services of the Council of Europe, in particular the European Commission for Democracy through Law (Venice Commission) and its Council for Democratic Elections, to develop their activities aimed at improving the conditions for the effective exercise of election rights by groups facing special difficulties; and thirdly, to review existing instruments with a view to facilitating the exercise of electoral rights of expatriates.

II. Appeal to member and observer states

7. Referring to Resolution 1459 (2005) the Parliamentary Assembly calls upon the Committee of Ministers to appeal to member and observer states on two issues: in the first place to sign and ratify the 1992 Council of Europe Convention on the Participation of the Foreigners in Public Life at Local Level (ETS No. 144) granting active and passive electoral rights in local elections to all legal residents and, secondly to reconsider existing restrictions on the electoral rights of

prisoners and members of the military, with a view to abolishing all those which are no longer necessary and proportionate in the pursuit of a legitimate aim.

8. The appeal to member and observer states to sign and ratify the 1992 Council of Europe Convention on the Participation of Foreigners in Public Life at Local Level (ETS No. 144) with the idea of granting active and passive electoral rights in local elections to all legal residents is to be welcomed. This approach is in accordance with the Code of Good Practice in Electoral matters,¹ which in its point I.1.1.b.ii stipulates that “... *it would be advisable for foreigners to be allowed to vote in local elections after a certain period of residence.*” This right could be granted, for example, after 5 years of permanent residence.

9. The appeal to member and observer states to reconsider existing restrictions on the electoral rights of prisoners and members of the military, with a view to abolishing all those that are no longer necessary and proportionate in the pursuit of a legitimate aim, is of particular importance. In some countries, the voting rights of persons serving in the police force are subject to restrictions (not being allowed to vote or to be elected). This practice is against the more common approach which avoids the restriction of the voting rights of these people. This approach should also apply to such groups as residents of nursing homes, persons who have been convicted of a criminal offence, nomadic groups and those who are temporally absent.

III. Further activities of the Venice Commission and the Council for Democratic Elections

10. The Parliamentary Assembly invites the services of the Council of Europe, in particular the Venice Commission and its Council for Democratic Elections to develop their activities by improving the conditions for the effective exercise of election rights by groups facing special difficulties, such as expatriates, prison inmates, persons who have been convicted of a criminal offence, residents of nursing homes, soldiers or nomadic groups. We will add here national minorities and persons with dual nationality. In our opinion these two groups are also facing restrictions or are discriminated against.²

11. The Venice Commission and its Council for Democratic Elections are following the achievements in the area of democratic elections and in respect of voting rights as one of the basic human rights which will continue to influence improvements in international and national legislation through expert opinions, studies, consultative meetings and seminars. In this field it is of great importance to co-ordinate through the Council for Democratic Elections activities with other Council of Europe bodies, particularly with the Parliamentary Assembly, the Congress on Regional and Local Authorities, as well as with OSCE/ODIHR.

¹ *Code of Good Practice in Electoral Matters, adopted by the Venice Commission at its 52nd Plenary Session, CDL-AD(2002)023rev.*

² *See Report of the Venice Commission on the abolition of restrictions on the right to vote in general elections CDL-EL(2005)008.*