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EUROPEAN COMMISSION FOR DEMOCRACY THROUGH LAW
(VENICE COMMISSION)

**PROPOSALS FOR THE CODE OF GOOD PRACTICE
IN THE FIELD OF POLITICAL PARTIES**

Prepared by the Secretariat of the Venice Commission

on the basis of comments by

Mr Carlos CLOSA MONTERO (Member, Spain)

Mr Jean-Claude COLLIARD (Member, France)

**This document has been classified restricted at the date of issue. Unless the Venice Commission decides otherwise, it will be declassified a year after its issue according to the rules set up in Resolution CM/Res(2001)6 on access to Council of Europe documents.*

I. Introduction

1. *On 17 April 2007, the Parliamentary Assembly of the Council of Europe approved a Resolution 1546 (2007) on The code of good practice on political parties that invited the Venice Commission to elaborate this code following the elements outlined in the Resolution.*
2. *The explicit aim of this code, as stated in the Resolution, is to reinforce parties' internal democracy and increasing their credibility in the eyes of citizens, thus contributing to greater participation in political life. Furthermore, the Code should promote concepts and strategies which enhance and strengthens the role, status and relevance of political parties in a democratic system.*
3. *The Parliamentary Assembly considered that good practices should promote the principles of equality, dialogue, co-operation, transparency and fight against corruption.*
4. *The report of the Parliamentary Assembly (doc. 11210 of 29 March 2007) recommends that the Code and its recommendations take into account the individual experiences of different Council of Europe member States. It is based on both the national legislation and practice in the field of regulation of activities of political parties and party statutes. Additional sources could be firstly the Parliamentary Assembly Resolutions (i.e. Recommendation 1438 (2000) and Resolution 1344 (2003) on the threat posed to democracy by extremist parties and movements in Europe; Resolution 1308 (2002) on the restrictions on political parties in the Council of Europe member States, Recommendation 1516 (2001) on the financing of political parties, and Resolution 1264 (2001), Resolution 1320 (2003) and Recommendation 1595 (2003) on a code of good practices in electoral matters) and the guidelines issued by the Venice Commission on the issue (the Guidelines on legislation on political parties (CDL-AD(2004)007rev), the Guidelines and Report on the financing of political parties (CDL-INF(2001)008), the Guidelines on prohibition and dissolution of political parties and analogous measures (CDL-INF(2000)001) and the Code of good practice in electoral matters (CDL-AD(2002)023rev), plus other international instruments and declarations. Finally, the Code would draw valuable information from the Reports of certain international organisations and foundations. In particular, International IDEA (International Institute for Democracy and Electoral Assistance) has recently published a report on Political Parties in Central and Eastern Europe in Search of Consolidation, 2007 which could provide valuable insights and information.*
5. *The present document prepared by the Secretariat on the basis of the report of the Parliamentary Assembly and individual comments of Messrs Closa Montero and Colliard is a first draft which includes some ideas and proposals responding to Resolution 1546 (2007) of the Parliamentary Assembly (See, additionally, its older and more particular report on Code of Conduct for Political Parties: Campaigning in Democratic Elections, 1999).*
6. *As for the different guidelines adopted earlier by the Venice Commission their aim is to establish common principles for all member States of the Council of Europe and other countries sharing common values established and reflected in the European Convention for the Protection of Human Rights and Fundamental Freedoms – this Convention being not only an instrument of international law, but also “a constitutional instrument of European public order” as the European Court of Human Rights has observed. Therefore, on the legal level of the Council of Europe the point of departure for systematic discussions and comments on general issues of the law of political parties must be the general rules, principles and standards, which are based on this Convention in general, and its Articles 11 on freedom of assembly and association and 10 on freedom of expression in particular. Other provisions – e.g. Article 14 on prohibition of discrimination together with Protocol no. 12 as well as Article 16 on restrictions on political activity of aliens together with the*

*Convention on the Participation of Foreigners in Public Life at Local Level*¹ – have to be taken into account.

II. Proposals for the major issues addressed by the Code²

1. Definition of a political party

7. The text of the future Code of good practice on political parties could try to define from the very beginning what type of association is considered as a political party compared to other forms of association of citizens. This definition should not be restrictive, however, it should underline some basic characteristics. It could be drafted taking into account the four main characteristics that any political party would in principle:

- be an association which intends to act in a long-term perspective (and not for a single election);
- should have an internal structure (at least a basic one);
- seek power (to have its representatives elected) and have a clear political message;
- seek the support of the voters.

8. The definition could be even more detailed and include such aspects as non-profit character of activities of a political party (except for a certain range of operations aimed at raising funds), a clear link to the electorate through specific activities aimed at communicating its values and political programme, etc.

9. However, the text of the Code should make it clear that it gives a definition of a political party for the sole purpose of determining the type of association it is addressed to. No characteristic or definition in the text of the Code should be perceived by any State or its authority as a ground for restricting the right to associate in political parties or limit in any way the activities of political parties. Either the introductory part of the Code or after a definition of a political party the Code should recall the previous recommendations of different bodies of the Council of Europe in general and the Venice Commission in particular that activities of political parties can be restricted only if it is necessary for the safeguard of the democratic and human rights, that such measures should be proportionate and that any restriction has to be based on a court decision.

2. General principles for practices on political parties

- a. Respect for basic constitutional principles (rule of law and democracy) sanctioned in international and comparative legal standards

10. Since the Code is addressed to both the authorities and the political parties, it could stress the importance of the recognition by all political forces of the national constitutional guarantees. Most national constitutions in Council of Europe member States have provisions on the rule of law, democracy, separation of powers, human rights protection and refer to international standards. Provisions on the political system, interaction of different branches of power, organisation of state administration are also part of the basic law. Parties should respect the existing constitution. However, the Code should mention that seeking a change of constitution by peaceful means is a legitimate aim if so wished by any political party.

¹ Ets CETS No. 144. <http://conventions.coe.int>.

² This chapter aims at integrating the proposals of the Resolution and the suggestions of the rapporteurs as they appear in documents CDL-EL(2007)012 and 013 examined by the Council of Democratic Elections at its previous meetings.

b. Democracy

11. Trying to bring a political or even an institutional change is often the very purpose of action of a political party. At the same time the democratic character of a society based on the rule of law, respect for fundamental rights and freedoms should not be put into question. The Code could give a recommendation to political parties as political actors to measure their action to these fundamental issues and to take a clear obligation to measure their action and to use proportionate means to achieve their legitimate goals.

c. Equality

12. Political parties should promote the principle of equality as enshrined in different international instruments. They should set a good example both in their internal structure and in their action.

13. State authorities should remain neutral in dealing with the process of establishment, registration (where applied) and activities of political parties and refrain from any measures that could privilege some political forces and discriminate others. All political parties should be given equal opportunities to participate in elections. Ruling parties should not seek advantage from their position and create discriminatory conditions for other forces participating in political process.

d. Receptiveness, accountability and responsibility

14. Political parties should be ready to respond in a speedy way to the challenges faced by the society of their country. With a difference with the current situation in most of the Council of Europe countries there should be a closer link between parties and voters not only during the pre-electoral campaign but also in times between the elections. They could use a wide range of means put at their disposal by the modern means of communication.

15. This link can be also reinforced through an increased accountability of political parties. Governments in co-operation with national political parties could envisage specialised independent bodies (commissions, councils, boards) that could monitor and evaluate different aspects of party accountability. If these bodies enjoy the trust of parties they could also act as mediators in case of conflicts of interests or have the power to give recommendations to the competent State bodies in cases of violations of legislation committed by political parties or/and their representatives.

e. Transparency and openness

16. As a general rule, parties should make their activities as transparent as possible. If the general public is aware of the activities of parties, the overall trust of the society in different political forces will improve.

17. Parties should be opened to the dialogue with non-governmental organisations and associations in order to be closer to the civil society and be ready to respond to the expectations of their voters.

3. Legal regulation

18. Almost all countries protect and regulate core activities of political parties by means of constitutional provisions concerning the classical freedoms of assembly and opinion. Many countries explicitly recognise in constitutional documents political parties as associations with a special mandate.

19. Constitutional provisions – if any – give only basic guidance concerning everyday activities of political parties. More detailed provisions are found elsewhere, usually in other statutory provisions, i.e. organic laws, ordinary legislation, ordinances etc. The character and contents of these provisions differ considerably from country to country. In most countries national legislation gives an opportunity to political parties to have a large margin in regulating their activities and internal structure through their statutes and internal regulations.

a. Levels (state or international), scope, self-regulation

20. It is well known, that the constitutional history of the freedoms of association and opinion has been closely connected to the development of private law provisions on associations. For associations with political ambitions the possibility of public control brought with it the potential danger of restrictions and infringements of the fundamental freedoms of association and opinion. Political parties all over Europe have therefore been reluctant to accept the trade-off – clarification of legal status against acceptance of public control – which has been and is still essential for the straightforward and full applicability of the law on private associations in many European jurisdictions. To meet the obviously justified demands of political parties, however, a general pattern evolved in Europe either to modify application of the traditional law on private associations, when political parties were in question, or to enact separate legislation aimed only at them.

21. All member countries or observers co-operating in the framework of the Council of Europe agree on the fact that political parties are essential in a democratic society. The right of an individual or a group of individuals to create an association with an aim to participate in political life of the country is an integral part of human rights list protected by the European Convention of Human Rights (ECHR), the UN Convent on Civil and Political Rights of 1966 and other international instruments ratified by the Council of Europe member States.

22. Statutes and internal regulations of political parties should not only be respectful of the national legislation but should also make reference to and promote the values as enshrined in the international instruments mentioned above.

b. Registration

23. Some countries impose on political parties an obligation to go through a registration process. The study on the establishment, organisation and activities of political parties conducted in 2003 by the Venice Commission (CDL-AD(2004)004) has shown that many countries view registration as a necessary step for recognition of an association as a political party, for participation in general elections or for public financing.

24. This practice – as the Venice Commission has stated before in its *Guidelines on Prohibition and Dissolution of Political Parties* (CDL-INF(2000)001) – even if it were regarded as a restriction of the right to freedom of association and freedom of expression, would not *per se* amount to a violation of rights protected under Articles 11 and 10 of the European Convention on Human Rights. The requirements for registration, however, differ from one country to another. Registration may be considered as a measure to inform the authorities about the establishment of the party as well as about its intention to participate in elections and, as a consequence, benefit from advantages given to political parties as a specific type of association. Far-reaching requirements, however, can raise the threshold for registration to an unreasonable level, which may be inconsistent with the Convention. Any provisions in relation to registration must be such as are necessary in a democratic society and proportionate to the objective sought to be achieved by the measures in question.

c. Prohibition or dissolution

25. The prohibition or dissolution of a political party is an exceptional measure in a democratic society. If relevant state bodies take a decision to seize the judicial body on the question of prohibition of a political party they should have sufficient evidence that there is a real threat to the constitutional order or citizens' fundamental rights and freedoms.

26. Regardless of the judicial authority competent in this field the first stage should be to find unconstitutionality in the activities of a political party. The court should examine the evidence presented against a political party and define whether the latter has committed a serious offence against the constitutional order. If this is the case, the competent judicial authority should decide on the prohibition or dissolution in a procedure offering all guarantees of due process, openness and fair trial and in respect of the standards established by the European Convention on Human Rights.³

d. Funding

27. If the democratic process is to function well, it is necessary both to limit, as far as possible, expenditure by political parties and at the same time to safeguard the principle of equality between parties, which often appears to be jeopardised in favour of mainstream parties, which - because they obtain the highest scores and the largest number of seats - are allocated considerable public subsidies.

28. National legislation differ on possible sources of financing of political parties. Funding can be public, private in certain countries and can also come from party's specific activities (for example, publishing). Whatever the source, the financing procedures should be as transparent as possible and parties should be accountable for their assets or funds.

29. If national legislation foresees public funding the procedures of allocation of funds and refusal or suspension of such funding should be clear and transparent.⁴

4. Internal organisation and functioning

30. Political parties are integral parts of democratic systems. In some countries they are therefore required by law to observe democratic principles in their decision-making and activities. In most countries the major parties lay varying stress upon the extent of internal democracy, considering that this is a matter of each party's own traditions and that there is no general law applying to all parties.

a. Membership (and its restrictions)

31. Not only national legislation but Party Statutes as well should prohibit expressly any restrictions on membership on the grounds of race, skin colour, language, sex, religion, national, ethnic and social origin, property or place of residence.

32. General exclusion of foreign citizens and stateless persons from membership in political parties is not justified. Foreign citizens and stateless persons should to some extent be permitted to participate in the political life of their country of residence, at least as far as they can take part in the elections. At the very least, the country of residence should make membership in political parties possible for these persons. In dealing with issues of participation

³ See also the Guidelines on prohibition and dissolution of political parties and analogous measures (CDL-INF(2000)001).

⁴ See also the Guidelines and Report on the financing of political parties (CDL-INF(2001)008).

of foreign nationals in public life of their country of residence, member States are invited to apply to the largest possible extent the provisions of the European Convention on the Participation of Foreigners in Public Life at Local Level. National parties should be encouraged to make their membership requirements as inclusive as possible.

b. Gender

33. Parties should promote gender equality both on the level of their statutory bodies and on the level of candidates they present for elections. If the party has the right to choose which candidates from the list will take seats in the elected body issues of gender balance should be taken into account.⁵

c. Minorities

34. National parties should seek mechanisms that will be as inclusive as possible for representatives of national minorities. Where applicable special attention should be paid to representation of populations from overseas and isolated territories.

d. Young people

35. Any policy or action designed to promote youth participation must ensure that the cultural environment is one of respect for young people and must also take into account the diverse needs, circumstances and aspirations of young people. Getting youth involved in the political life is vital for the future prospects of democracy.

36. Party authorities, particularly at local and regional level, should promote the active participation of young people in statutory bodies, encourage the candidature of young people at all levels and elections, provide support and training in youth participation, envisage a specific budget for supporting youth organisations.

e. Elderly

37. Parties should envisage facilities for the active participation of senior members of political parties. They should be fairly represented in elected party bodies at all levels.

f. Internal democratic mechanism (selection of organs and candidates)

38. Political parties are integral parts of democratic systems. In some countries they are therefore required by law to observe democratic principles in their decision-making and activities. This good practice could be taken into account by countries which do not have such provisions.

39. Parties are a specific kind of association. Their status is thus guaranteed under the right of freedom of association, and they can only be subject to restrictions prescribed by law. Therefore, internal party procedures for decision-making should be presided by the principle of self-governing, and in many countries these rules are only set in the Party Statutes. Nevertheless, their relevance for the working of the whole system implies that the Constitution or the law may set up some rules, usually requiring parties to respect democratic principles in their internal organisation and working.

⁵ See also the Declaration on Women's participation in elections adopted by the Venice Commission at its 67th Plenary Session (Venice, 9-10 June 2006) (CDL-AD(2006)020).

40. Political parties need to adopt or strengthen practices, such as evaluation and monitoring, which fight against corruption and improve internal accountability. They should recommend internal procedures involving consultation of members on policy or on important decisions for the party (electoral coalitions, government agreements etc).

39. Another crucial question for intra-party democracy is the selection and nomination of candidates for electoral posts. During recent decades primaries have been introduced in a number of European parties. However, there have not been parallel moves to weaken or even eliminate the vetoes over this process held by central party elites, ensuring that the leadership retains the ability to exclude unwanted nominees.

g. Internal structure (recommendation of local level and connection with society)

41. The internal hierarchy of a party should be clear and transparent, and have a direct flow of information between various levels of party hierarchy.

42. The internal rules of political parties should be guided by clarity, transparency, accountability and independence, as well as by effective links between party leadership and local and regional levels of the organisation. Their interaction with society should be based on dialogue, interdependence and co-operation. Parties have to use open conditions for membership and list the members' rights.

43. Mechanisms to enhance party ethics should include strict eligibility requirements for party candidates and officials including signed codes of conduct to hold party candidates accountable, monitored and implemented by the party committee on the Code of Conduct.

h. Disciplinary measures

44. Parties should establish in their Statutes or internal regulations rules for accountability of their leaders.

45. Parties should also consider, if they have not done it so far, the idea of establishing an independent disciplinary committee to investigate and punish corruption within the party. This could be done by the creation of internal structures to monitor party operations and finances which should operate at all levels of party structures: national, provincial, district, branch etc.

46. Respect by party members of their pre-electoral and internal party obligations is a serious challenge to any political party. Parties could consider the possibility of obliging all party members who hold public office (MPs, ministers, provincial governors) to sign a contract before accepting their appointment engaging them to resign voluntarily from their position if they violate provisions in the contract relating to ethical conduct and job performance (e.g. conflict of interests).⁶

47. Party statutes and internal regulation should pay special attention to issues of parliamentary mandates of party members. Representatives of the party elected to the parliament have to be responsible before the party which they represent in the parliament. Parties on their internal level should have a possibility to sanction their members who do not respect internal discipline, however, there should be a clear and efficient procedure for appealing any such disciplinary decision.

⁶ However, this issue is to be considered in the light of the Venice Commission's position on imperative mandate.

i. Use of public office by party members

48. In order to ensure proper accountability, parties should periodically monitor and report on the results achieved by their representatives in public institutions. Reports could be available on the party website and campaigns at local level could be carried out.

5. Political functions

49. The main purpose of the existence of a political party as a specific form of association is participation in political life of the country with the ultimate objective of obtaining a decision making power. In general, political activities of parties are covered by national legislation in a very general way.

a. Elections

50. Elections are essential for the fulfilment of the task of participation in public life of the country; therefore the principle of equality between parties is of outmost importance in any democratic society.⁷

51. Electoral legislation and laws on political parties differ from one country to another. It is usually accepted that electoral systems, and party systems, greatly depend on specific – historical, cultural, political, social - national factors.

52. Good practices in selecting and nominating candidates should promote democratic principles and practices at all levels including national, regional and local. The process has to be initiated from the bottom-up with great respect for the local party level. The specific problem of one national list in parliamentary elections and the threat of abuse of power by party leaders should be addressed by party statutes and internal regulations. The effective implementation of such provisions implies full transparency, equality and free access of party members and the civil society to this information.

53. An electoral campaign itself provides numerous opportunities for abuse on the part of political parties competing sometimes for votes without mercy over their rival parties. Some of these unfair actions are not necessarily foreseen or prevented by national legislation and need other forms of regulations.

54. The Code of good practice in electoral matters of the Venice Commission gives an extensive set of recommendations that could be implemented not only by the authorities but also by different participants of the electoral process, including political parties.

b. Role as opposition

55. The aim of political parties is to reach a position of decision-making power within the public sector. However, being at one moment or another in the opposition is part of the political process. Acting as an opposition party allows to reform and to prepare for the next elections.

56. While enjoying a number of freedoms in conducting their activities aimed at reaching the position of decision-making power the opposition parties should act in a responsible and constructive way.

⁷ CDL-AD(2002)023rev Code of Good Practice in Electoral Matters: Guidelines and Explanatory Report adopted by the Venice Commission at its 52nd Plenary Session (Venice, 18-19 October 2002) I.2.

c. External and institutional accountability to civil society

57. Citizens should be kept informed of the fulfilment of electoral promises by the political parties. Some time before the next national elections, parties should provide the public with an assessment of the party programme and indicate to what extent it has been translated into public policies. Knowing that the party programme will be scrutinised, parties would have greater incentives to present responsible and feasible electoral platforms.

d. Education function

58. Activities for education for democratic citizenship have a beneficial effect on the role of political parties. At local level, party authorities should facilitate access by citizens to information concerning local affairs, inform them about all forms of participation in local public life and set up administrative offices to facilitate contacts between local authorities and citizens. Education activities organised directly by parties or in co-operation with public authorities of different levels could include the organisation of open-ended conferences, civic fora or focus groups on topics related to the rights and responsibilities of a citizen in a democracy, the constitution, political parties, elections, or the role of civil society.

e. Media and information

59. Contemporary societies are mainly “information” societies: elections are fought in a very particular context, so that access to mass media is possibly the best instrument for parties to transmit their message to electors. Therefore, that is possibly the main resource that parties may seek. And the access to publicly-owned media is, at the same time, the least expensive of the aids that the State authorities may offer, so that there is a clear interest from both sides. Of course, problems will arise when deciding the details of that access (time provided to the different parties and/or lists, presence of the campaign in the news, etc.). In this respect, the existence of a model of party registration may also be taken into account, giving some advantages to registered parties, but it cannot be used as a discriminatory instrument, depriving other social sectors of any opportunity to defend their positions in a fair campaign.⁸

60. Party communication is often seen as one-way, from parties to the public. In a democracy, however, parties should also seek to learn more about the public’s policy concerns, priority issues, and political preferences. New information and communication technologies give new opportunities to develop European democracies through a greater participation of people in democratic debates and decision-making processes. The Internet and E-democracy in particular, can contribute to attracting young people to political life and parties should use them for the purpose of efficient dialogue with the society.

6. Other issues

International and regional co-operation.

61. Following the accession of new member States to the European Union, regulations on political parties could be up-dated in the sense of giving more opportunities to parties to co-operate with partner organisations in other countries.

⁸ See also CDL-AD(2002)023rev Code of Good Practice in Electoral Matters: Guidelines and Explanatory Report adopted by the Venice Commission at its 52nd Plenary Session (Venice, 18-19 October 2002) para 2.3.