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EUROPEAN COMMISSION FOR DEMOCRACY THROUGH LAW
(VENICE COMMISSION)

GUIDELINES

**ON PROHIBITION OF POLITICAL PARTIES
AND ANALOGOUS MEASURES**

WORKING DOCUMENT

prepared by

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Guidelines on Prohibition of Political Parties and Analogous Measures

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Introduction.

At the request of the Secretary General of the Council of Europe, the European Commission for Democracy through Law conducted a survey on the prohibition of political parties and analogous measures (CDL-PP (98) 3).

Considering the importance of the issue the Commission has decided to continue the study of this problem with a view to drafting guidelines in this field.

The Sub-Commission on democratic institutions which held its 6th meeting in Venice, 10 December 1998 decided to have the first draft of guidelines on the prohibition of political parties and analogous measures for its first meeting in 1999.

The following text, which presents the main ideas to be developed in the guidelines, was prepared by Mr A. Farcas in order to be discussed by rapporteurs who are involved in this study.

Draft guidelines:

- 1.- reiteration of the principles of freedom of association and of freedom of expression as fundamental legal rules guaranteeing essential values of European democracy and public life – in this context the broad concept of the Council of Europe on “democratic security” (with all its implications as to the rule of law, internal stability of states, good neighbourly relations between states, responsibility within the country and outside it for dialogue through peaceful means only) should be also reiterated;
- 2.- recognition of the primordial role of the responsibility of the individual persons as a basis of the criminalisation of their behaviour – especially employment of and advocacy of violent means – within the frame of political/public and party activities;
- 3.- restatement of the exceptional nature of the legal measures directed to the prohibition or legally enforced dissolution of political parties – which are to be seen as “collective” sanctions to a group of individuals persons, identified by criteria of political party affiliation and joint actions or intentions aimed at the denial or abolition of the basic democratic values common to all European states governed by the rule of law; the prevailing principle for public authorities starting any kind of above-mentioned procedures should be that of proportionality;

4.- recommendation of establishment or consolidation of special procedures for dealing with the question of prohibition or enforced legal dissolution of a political party, that should be necessarily placed under the supervision of a court of justice with a special power of jurisdiction such as the Constitutional Court;

5.- avoidance of confusion between the prohibition or enforced dissolution of a political party and such formalities as the registration of political parties, the meeting of certain criteria for candidates in elections etc., which are to be seen as legitimate measures of organising the exercise of the right to freedom of association in conjunction with the general public interest in a democratic society. The sanctions for non-observance of such formalities should be individualised and proportional, resulting thus in certain limitations of possibilities of action for the given political party – e.g. the need to renounce to candidates in elections that do not meet the criteria established by law – that are not to affect the very existence of the political party itself nor its overall political responsibility.