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EUROPEAN COMMISSION FOR DEMOCRACY THROUGH LAW

(VENICE COMMISSION)

**GUIDELINES
ON PROHIBITION AND DISSOLUTION
OF POLITICAL PARTIES
AND ANALOGOUS MEASURES
(DRAFT)**

prepared by

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and revised by the Secretariat

on the basis of comments by:

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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 and revised by the Secretariat on the basis of comments by Messrs K. Tuori and J. Said Pullicino in order to be discussed by the Sub-Commission on democratic institutions during its meeting on 17 June 1999.

Draft guidelines

The Venice Commission:

Being committed to the promotion of the fundamental principles of democracy, rule of law and protection of Human Rights, in a context of enhanced democratic security for all, throughout the entire Council of Europe area,

Taking into account the **essential** role of political parties in any democracy, considering that freedom of political opinion and freedom of association including political association represent fundamental **human rights** guaranteed by the European Convention on the Protection of Human Rights and are **primordial** elements of any genuine democracy as envisaged by the Statute of the Council of Europe,

Having particular regard to States practice in the field of guaranteeing (and of organising) the exercise of the rights to freedom of association and to freedom of expression,

Committed to the principle that these rights cannot be restricted other than by a decision of the competent jurisdiction in full respect of the rule of law and the right to a fair trial,

Recognising the need to further promote future standards in this field, based on the provisions of the European Convention for the Protection of Human Rights and on the values of the European legal heritage,

Has adopted the following guidelines:

1. States should recognise that everyone has the right to associate freely in political parties. This right shall include freedom to hold political opinions and to receive and impart information without interference by public authority and regardless of frontiers. **The requirement to register political parties will not in itself be considered to be in violation of this right.**

2. Any limitations to the exercise of the above-mentioned fundamental human rights through the activity of political parties shall be consistent with the relevant provisions of the European Convention for the Protection of Human Rights and other international treaties, in normal times as well as in cases of public emergencies.
3. Prohibition or enforced dissolution of political parties may only be justified in the case of parties which advocate the use of violence **or use violence** as a political means to overthrow the **democratic** constitutional order, thereby abolishing the rights and freedoms guaranteed by the constitution. The fact alone that a party advocates a peaceful change of the Constitution should not be sufficient for its prohibition or dissolution.
4. A political party as a whole can not be held responsible for the individual behaviour of its members not authorised by the party within the frame of political/public and party activities.
5. The prohibition or dissolution of political parties as a particularly far-reaching measure should be used with utmost restraint. Before asking the competent judicial body to prohibit or dissolve a party, governments or other state organs should assess, having regard to the situation of the country concerned, whether the party really represents a danger to the free and democratic political order or to the rights of individuals and whether other, less radical measures could prevent the said danger.
6. Legal measures directed to the prohibition or legally enforced dissolution of political parties shall be a consequence of a judicial finding of unconstitutionality and shall be deemed as of exceptional nature and ruled by the principle of proportionality. Any such measure must be based on sufficient evidence that the party itself and not only individual members pursue political objectives using or getting ready to use unconstitutional means.
7. The prohibition or dissolution of a political party should be reserved to the Constitutional court or other appropriate jurisdictions in a procedure offering all guarantees of due process, openness and fair trial.