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**EUROPEAN COMMISSION FOR DEMOCRACY THROUGH LAW**

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# COMMENTS

# ON THE DRAFT LAW ON POLITICAL PARTIES OF THE REPUBLIC OF ARMENIA, WORKED OUT BY THE PEOPLE'S PARTY OF ARMENIA, 1ST VERSION, AS OF 12 JANUARY 2000

**Prepared by**

**Mr Hans-Heinrich Vogel**

**(Substitute Member, Sweden)**

## 1. General Remarks

The terminology of the non-official English translation of the draft seems to be somewhat provisional, as the terminology and wording of the draft is not yet consistent or easily understandable. As an example the wording of Article 29.3 (4) may be mentioned. According to this provision "The following donations are impermissible: … 4) from legal entities registered 6 months before the donation; …" Does this provision prohibit only donations from those legal entities which were registered *exactly* six months before the donation or does it include entities registered either *less* or *more* that six months before – and which of these alternatives is applicable? To avoid unnecessary misunderstandings, the following brief comments therefore do not deal with the details of the draft.

## 2. Membership

According to the preamble and numerous articles of the draft the right to found and to join political parties and thus to exercise political rights within and through political parties is recognized only for citizens of the Republic of Armenia: Article 3.4 provides for example that a union whose by-laws allow the membership of foreign citizens or stateless persons cannot be recognized as a party; according to Article 21.2 only citizens of the Republic of Armenia can be party members, and Article 21.4 adds that foreign citizens and stateless persons cannot be party members.

Restrictions on political activities of foreign citizens and stateless persons are possible under international law. The reason usually given for this rule is the wish to avoid foreign policy conflicts. But can this reason justify the very far-reaching restrictions, which are outlined in the draft? The mentioned provisions make it difficult, if not impossible, for *all* foreign citizens and stateless persons to participate in the organized political life in the Republic of Armenia in general. This includes organized political activities on both the national and the local level, and no exception is made for those foreign citizens and stateless persons who have their permanent and legal residence in the country.

Provisions regarding political activities of foreign citizens and stateless persons, however, should take into account that even these individuals are included in guarantees for basic rights according to the human rights documents which are applicable in Europe. It may also be mentioned that the European Union has made it mandatory for the Member States to grant foreign citizens from EU-countries both voting rights and eligibility to public office in general elections on the local level. Some other European states go even further and extend voting rights and eligibility in local elections to non-EU-citizens and stateless persons with permanent and legal residence in the country.

A possible way to comply with the standards set by human rights documents could be to let everyone – citizens of the Republic of Armenia as well as foreign citizens and stateless persons – to the necessary extent participate in the political life of the country. A tool to achieve this could be:

1) to seek different solutions for:
   - eligibility to public office in general elections;
   - voting rights in general elections, and
   - membership in political parties, and
2) to distinguish between the:
   - national and

- local level of democratic government in the country.

At least membership in political parties should be made possible for foreign citizens and stateless persons. Further, it should be noted that foreign citizens and stateless persons in many European countries can vote in local elections and even can be elected to public office in such elections.

## 3. Founding procedure

The procedure to found a political party as outlined in Articles 11–18 of the draft is very elaborate. It is hard to imagine that it may be possible to fulfil all the necessary steps without an almost nationwide organization already in place. The threshold for founding a new party therefore is very high.

But is so high a threshold really reasonable in a modern pluralistic democracy? There are at least two main reasons why the answer hardly can be yes.

The first reason is that the difficulties of the founding process will be an impediment to any challenge to the existing party system arising out of new political ideas. But to raise such obstacles is no good reaction to challenges of this kind. These challenges should be met in political debate, not by administrative procedure.

The second reason is that the elaborate founding procedure appears to be based on the assumption that all political parties should be active *nationwide* – not only in a province of the country or locally. This assumption is difficult to accept. The democracies of Europe offer many examples of well established political parties with an agenda focused on and with support concentrated to some part of the country only; and there are even more examples of political parties, which are exclusively active on the local level and within the geographical borders of a local community or a province and play an important role for democratic life there.

## 4. Financing

The numerous provisions of the draft concerning financing of political parties seem to comply roughly with the guidelines on financing of political parties, which recently were adopted by the Venice Commission. However it is especially in these parts of the draft that the English text is not very elucidating and it is impossible to say whether this difficulty has its roots in the source text or in the wording of the translation. For example Article 31.1 (1) provides that “parties get equal opportunity to use the mass media …”. But what does the terms “mass media” and “equal opportunity” imply? Does it include all three traditional mass media radio, television and daily newspapers, and does it, maybe, include even electronic media? Does “equal opportunity” mean that broadcasting time and possibly even space in newspapers has to be allocated each and every party regardless of its membership or support in an election? Similar ambiguities can be found in Articles 31.1 (2) and 32.5 and, indirectly, as well in Articles 31.1 (4) and 32.6 insofar as these articles refer to other articles with ambiguous wording.

According to Article 32.3 a party is entitled to receive state funds if not less than a certain percentage of voters in parliamentary or presidential elections have voted for the party; mentioned as necessary are 2 %, with options 3 % or 5 %. These thresholds appear to be high

and – if enacted – would be in favor of established parties. But without further analysis of the electoral system of Armenia and voting patterns in the country it is not really possible to say which of the three options – if any – would be the most reasonable. However, it should be avoided to erect artificial barriers by means of threshold provisions against newcomer parties which would be unacceptable for a pluralistic, ever changing democracy.

**5. Dissolution**

According to Articles 36.2 and 40 a party's failure to submit a list of candidates for parliamentary elections will lead to the dissolution of the party, and according to articles 5 and 40 dissolution will occur as well, if a party's membership does not reach the levels indicated in the law.

It is quite obvious that a party, which does not have a sufficient number of supporters any longer, should lose state support. But is it necessary to go further and to dissolve an ailing party because *membership* goes down? To disclose one's membership in a political party may be a very sensitive issue for any individual, because this disclosure may permit conclusions concerning one's very personal political beliefs and opinions which not necessarily should be made public by other persons than the individual himself. If an administrative authority or a law court has to investigate the membership of a political party, even those individual members will have to be identified who have not publicly declared their political beliefs for example by presenting themselves as candidates in general elections for the party and who want to keep their beliefs confidential. Any such identification may lead to public disclosure against the will of the individual, and the question has to be asked whether that is necessary. It may be the case, if the investigation is conducted to enforce criminal law. But it is different, when there are purely administrative reasons – as would be the case, if the investigation has the only goal to establish, whether membership is lower than the threshold according to the law. In such cases it is often considered to be sufficient not to let an ailing party receive state funds any more, if the party is not any longer supported by sufficient numbers of voters in general elections – a requirement, which is much easier to check than membership numbers. This hands-off attitude towards avoidable investigations into the membership of political parties leads to the broader question, whether, why and in which situations it may be necessary for state authorities to passively monitor or actively control the activities of political parties – or, asked in a different way, how far political parties should be granted autonomy. The Armenian answer to that question appears to be somewhat restrictive and is not entirely convincing.

**6. Mandate**

According to Article 43 there is a tight connection between the mandate of an elected parliamentarian and his or her party: The credentials of the parliamentarian who is elected by means of being put on a party list will become invalid, if the party is prohibited, dissolved or reorganized.

Connections between party support and party lists on the one hand and the mandate of the individual parliamentarian on the other is obvious everywhere in European democracies. At the same time, however, one has to recognize that there are limits for the influence of political parties on candidates listed by them. With some simplification one may say that a common view is that parliamentarians elected by the people in general elections derive their legitimacy from the electorate, not from their parties, and thus represent the electorate, their constituency. This understanding of parliamentary democracy puts restrictions on the

relationship between the parliamentarian and his party, and that should mean that prohibition, dissolution or reorganization of the party not *automatically* should affect the mandate of any parliamentarian who had been elected by appearing on the party's list of candidates.