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EUROPEAN COMMISSION FOR DEMOCRACY THROUGH LAW

(VENICE COMMISSION)

DRAFT LAW OF THE REPUBLIC OF ARMENIA ON POLITICAL PARTIES

SECOND READING

Comments by Mr Kaarlo Tuori, Member, Finland

1. The Armenian Constitution includes some provisions on political parties which are relevant in the assessment of the draft law. In the following, I will take as my point of departure the draft revised Constitution (CDL (2001) 61). According to Art. 7 ideological pluralism and multipartyism are recognized in the Republic of Armenia. Parties are formed freely and promote the formulation and expression of the political will of the people. Their activities may not contravene the Constitution and the laws, nor may their practice contravene the principles of democracy. Parties shall ensure the openness of their financial activities.

Art. 28 guarantees for everyone the right to form associations with other persons. In addition, every citizen is entitled to form political parties with other citizens and join such parties. These rights may be restricted through law persons serving in the armed forces or civil service. No one shall be forced to join a political party or association. The activities of associations, including parties, may be suspended or prohibited in cases prescribed by law and by court procedure.

Finally Art.47 states that everyone shall uphold the Constitution and the laws, and respect the rights, freedoms and dignity of others. The exercise of rights and freedoms shall not serve toward the violent overthrow of the Constitutional order, for the instigation of national, racial, or religious hatred or for the incitement to violence and war.

2. It is not clear whether there is a general law on associations and whether even the parties are subject to that law. If such a law exists, the relation of the two laws should be clarified. Some of the more detailed and technical provisions, especially in Chapters II and III, could perhaps also be removed from the law on parties and the issues left to be regulated by the general law on associations.

3. Articles 1-2 mention only certain aspects of the freedom of association with respect to political parties. The negative aspect of this freedom – the rights not to join a party not to participate in its activities and to resign from its membership – are not explicitly mentioned. The negative aspect could also be explicitly stated, although it can already be derived from constitutional provisions (esp. Art. 28).

4. The Constitution reserves the right to establish and to join political parties only to Armenian citizens (Art. 28 of the draft revised of the Draft Revised Constitution). Such a restriction is allowed by Art. 16 of the European Convention on Human Rights. Accordingly, Art. 3 (3.a.) and Art. 17(2) of the draft law on parties restrict the membership in political parties to Armenian citizens, with the exception stated in the latter provision. This exception concerns persons vested with the right to vote. It can still be asked whether the restrictions concerning non-citizens' rights are too strict.

5. The formal requirements for founding a party have been loosened in the new draft. In their new form, these requirements cannot be regarded as an obstacle to exercising the freedom of association.

6. The meaning of the prohibition for parties to intervene in the activity of "state and local self-governing bodies" (Art. 10(1)) is unclear. If the expression refers to representative bodies, such a prohibition also contradicts the very definition of a party in Art. 3(1). The corresponding unclarity extends to the provision in Art. 5(2) where the activity of party organizations in "state and local self-governing bodies" is prohibited.

7. The restrictions on the formation and the activity of parties in Art. 9 are in harmony with Art. 11(2) of the European Convention on Human Rights, as well as with Art. 47 of the Armenian Constitution.

8. Art. 10(3) contains a list of persons who cannot be members of a political party. The provision is in harmony with Art. 11(2) of the European Convention on Human Rights, as well as the Constitution (Art. 28(3) of the Draft Revised Constitution).

9. Art. 14(1) of the draft law regulates the grounds on which the registration of a party can be rejected. According to par. a), this would be the case if the provisions of the charter of the party contradict the Constitution. However, it is difficult to see what other contradictions could arise in addition to the cases mentioned in par. b) of the same article. The provision in par. a) can be detrimental to the freedom of party formation if it for example is interpreted in such a way that political parties may not aim at changing the Constitution. In order to avoid the possibility of such an interpretation, it can be recommended that the provision be deleted.

10. Art. 19(4) of the draft law regulates the procedure for nominating candidates in the party list for the elections to the National Assembly. The procedure could be left to be regulated in the charter of the party.

11. According to Art.31 a party is ”liquidated”, if in two subsequent elections, its voting list has received less than one per cent of votes. In that case the property of the party is transferred to the state. However, a distinction should be made between the removal of the party from the party register and its existence as legal subject, i.e. as an association under the general law on associations (if such a law exists). The removal of the party from the party register should not automatically lead to its dissolution as such an association. If a party which has been removed from the party register continues its existence as an ordinary association, it should also retain its property.

A former party which have been removed from party register, should have the right to re-register, perhaps after the elapse of a certain period of time. Such a right also presupposes that the former party is allowed to continue its activities as an ordinary association.

12. Article 32 should make it clear that a party can be dissolved only on the grounds and in the procedure laid down in Art. 9. It would be more appropriate to use the term “dissolution” (”liquidation”) of the decision in question: as Art. 32(3) explicitly states, the prohibition of the activity of the party is equal to its dissolution. Another issue is whether there should also be the possibility of temporarily prohibiting the activity of the party without at the same time dissolving it. Such a temporary prohibition could raise the threshold of resorting to dissolution.

The Constitutional Court is the appropriate body for making the decision on the dissolution of a party. By contrast, it can be questioned whether the President should have the initiative in the procedure. Because of the fact that initiating such a procedure also involves gathering and presenting evidence and because of the often politically charged nature of the procedure, another executive body, such as the Ministry of Justice, would be preferable.

13. According to Art, 33(2) of the draft law, the party’s property would be transferred to the state even in the case it dissolves itself through its own decision.

The parties, like other associations, should be free to decide on the transferral of their property to a purpose corresponding to their aims in case of a self-dissolution.

14. It is to be noted that some of the problematic provisions included in the previous draft have now been deleted. This concerns the provision on limitations in emergency situations (Art. 9(2) in the previous draft) and the provision according to which parliamentarians elected from a party list would have automatically lost their mandate in case of the prohibition, dissolution, self-dissolution and reorganisation of the party in question (Art. 43 in the previous draft).