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EUROPEAN COMMISSION FOR DEMOCRACY THROUGH LAW

(VENICE COMMISSION)

**COMMENTS ON THE
DRAFT LAW
OF THE CHECHEN REPUBLIC
ON ELECTIONS TO THE PARLIAMENT
OF THE CHECHEN REPUBLIC**

**AS SUBMITTED TO REFERENDUM
ON 23 MARCH 2003**

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I. General Remarks

This comment is limited, due to time constraints, to an analysis of only five of the fifteen chapters of the Draft Chechen Parliamentary Election Legislation (Chapters 1, 7, 8, 9, and 10). It cannot therefore claim to represent a complete analysis of the legislation.

The provisions of the Draft legislation are rather detailed. The system is quite heavily regulated. This is particularly clear when it comes to the far-reaching supervisory competences of the Election Commissions.

The rules concerning the financing of the elections are in many cases not objectionable *per se*. Their complexity, however, can give rise to unintended violations of the electoral law. Articles 56 (12) and 53 (17) (3) empower the Election Commission to take drastic measures which may impede a free election campaign.

The complex regulations concerning detailed financial reporting and transfer money within certain time-limits requires a substantial demand on accounting resources which smaller parties may not be able to cope with. This leads to a *de facto* discrimination of smaller parties. It is therefore suggested to simplify these rules.

In some cases the importance of the right to freedom of expression should be taken into account and underlined.

II. Chapter 1 – General Rules

Article 2 (1) should list all five general principles of election law which are contained in the Election Guidelines of the Venice Commission

Article 3 (2): The rules concerning the elections of the Council of the Republic should also list all five general principles of election law.

Article 3 (3): This provision should also either state that all five general principles of election law apply or at least contain a reference to them.

Article 4: The complicated procedure to determine the date of the elections should be simplified. It is not clear why there are so many alternatives.

Article 4 (7): There should be a time limit within which the Supreme Court should determine the holding and the date of elections.

Article 4 (8): This provision is too complicated and should be simplified by giving clear deadlines.

Article 4 (10): The rule according to which elections to the Chechen Parliament must take place three months after the end of a public emergency or of a warlike situation should be limited to such situations which have taken place on the territory of the Chechen Republic.

Article 5 (1): It should be made clear that the right to freedom of expression is not unduly restricted by this provision. According to Article 10 of the European Convention of Human Rights all persons have the right to freedom of expression, also in times of elections. This

also implies that the right to express their opinion cannot be limited to persons below the age of 18 either.

Article 5 (4): Due to the principle of proportionality, this rule should only apply to those prisoners who have been convicted of grave crimes.

Article 5 (6): The right to be elected should be limited, as it is the case for the right to vote, to those persons who have their residence in Chechnya (or who have been displaced from there).

Article 5 (7): It should be made clear that foreigners and stateless persons have the rights under Articles 10 and 11 ECHR, but subject to the possibility of special restrictions under Article 16 ECHR, and that they can, within these rights and these limits, influence the electoral campaign.

III. Chapter 7: Status of Candidates

Article 41 (1): The possibilities to limit the equal rights of candidates should be spelled out explicitly in this law. A reference to another (unspecified) law leaves the legal situation unclear.

Article 42 (2): The question of continuance of pay should be dealt with here on a non-discriminatory basis between private and public employers.

Article 42 (6): This provision goes too far. It infringes the freedom of expression and the free exercise of the profession of the persons concerned.

Article 43 (1): This provision discriminates against candidates who are employed in the private sector.

Article 45 (1) and (2): The provision according to which a candidate may renounce his candidature can have problematical effects. It should be made clear that a candidate may withdraw his renunciation if he (or she) was forced to declare his (or her) renunciation.

Article 45: The possibility to withdraw a list of candidates when 25% of the candidates have left the list should not be accepted because it should be up to the voter whether he or she considers the list to be a good electoral choice.

IV. Chapter 8: Information of Voters

Article 49 (2): The requirement to demonstrate the method of opinion poll is too imprecise and therefore cannot be easily complied with.

V. Chapter 9: Election Propaganda

Article 50 (1): This provision gives the right to participate in the election campaign to all citizens of the Russian Federation. It should be made clear, however, that Articles 10 and 11 of the European Convention for Human Rights gives the right to freedom of expression to all persons, subject to the possibility of special restrictions under Article 16 ECHR.

Article 50 (5) (a): This provision should state unambiguously that the election campaign can be conducted by way of state and private mass media.

Article 50 (6) (e): It should be made clear that foreigners and stateless persons have the rights under Articles 10 and 11 ECHR, but subject to the possibility of special restrictions under Article 16 ECHR, and that they can, within these rights and these limits, influence the electoral campaign.

Article 51 (1): The beginning of the election campaign period should be more clearly specified.

Article 51 (2): The airing of electoral propaganda should not only be possible on workdays but also on weekends. Certain important holidays may be excluded.

Article 52 (5): The right of private TV and radio stations to accord airing time should not depend on the date of their establishment.

Article 53 (17) (3rd sentence) and (19): These provisions are disproportionate.

Article 56 (12): This provision is too imprecise. The possible consequences of violations against Article 56 (4-8) and 10-11) should be calculable. The rule according to which the Election Commission takes the necessary measures is insufficient. In addition, only a court should be competent to put an end to illegal election campaign methods.

Article 57 (1) (1) should contain a reference to the effect that the freedom of expression is not curtailed. This would make it clear that even provocative and politically delicate utterances during an election campaign are protected by the freedom of expression, as long as they do not call for a arrogation of power or change of the constitution by force or if they constitute a call to violently destroy the unity of the Russian Federation.

Article 57 (2): The provision should make it clear that smaller presents, such as stickers or pens, which have a direct connection with the election campaign, are not prohibited.

VI. Chapter 10: Financing of Elections

The provisions are very complicated and would seem to require some manpower to fulfill them. This might lead to a difficult situation for smaller parties.

Article 58 (4): This provision should provide for mechanisms which would enable the Election Commission to provide for the timely and complete financing of the electoral process by the Chechen Republic.

Article 59 (2) (b) and (3): This provision should make clear that the State Election Commission is responsible for the continued payment of the salaries of those members of the Election Commissions who are temporarily liberated from their regular work.

Article 60 (3): The Election Commission should be responsible for the continued payment of the salaries, not the private employer.

Article 60 (5) (b): The Election Code should contain rules concerning data protection.

Article 62 (6): Why should financial operations with respect to the electoral campaign not be possible anymore after the election day? This seems impracticable.

Article 65 (2): The obligation to make such detailed financial reports towards the Election Commission requires much expertise and manpower and would seem to burden smaller parties in particular.