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**EUROPEAN COMMISSION FOR DEMOCRACY THROUGH LAW**

**(VENICE COMMISSION)**

**COMMENTS**

**ON POSSIBLE FOLLOW-UP TO  
THE PARLEMENTARY ASSEMBLY  
RECOMMENDATION 1629 (2003)**

**ON THE FUTURE OF DEMOCRACY:  
STRENGTHENING DEMOCRATIC INSTITUTIONS**

by

**Mr Kaarlo TUORI (Member, Finland)**

1. The Venice Commission has gained extensive experience in assessing draft constitutions and draft constitutional amendments especially of the new member states of the Council of Europe. In its opinions, the Venice Commission has particularly appraised whether the proposals meet European standards concerning a) human rights and b) democracy. The main standards with respect to human rights are formulated in the European Convention on Human Rights and its Additional Protocols. As regards the requirement of democracy, there is no corresponding single document defining the standards to be employed in constitutional evaluation. Reference can, though, be made to the European Convention on Local Self-Governance as well as complementary documents adopted by the Congress of Local and Regional Authorities.
2. Human rights, of course, are relevant also for safeguarding democracy. This holds not only for such political or participatory rights as electoral right and the freedoms of assembly, association and expression but even for the system of human rights as whole. Human rights do not, however, exhaust the constitutional problematics of democracy. It is also a question of the organisational part of the constitution, i.e. the provisions on the main state organs, their mutual relations and their respective powers.
3. The formulation of general democratic standards that could be applied in constitutional designing and evaluation is a difficult task because of the large variety of alternative solutions in the organisational part of a constitution and because of the fact that the choices to be made are also affected by the political and constitutional tradition and the state of political and legal culture of the country in question. The Venice Commission has, for instance, repeatedly stated that the choice between a presidential, a semi-presidential and a parliamentary system is a political choice, to be made by the political forces of the country in question. At the same time, the Commission has stressed that certain minimum requirements of a democratic *Rechtsstaat* must always be respected in constitutional reforms, such as the separation of powers, especially the independence of the judiciary, the position of the parliament as the main legislative body and having at its disposal sufficient means for controlling the use of executive power (even if the principal choice is for a semi-presidential or a presidential system), as well as constitutional guarantees for local self-governance.
4. If, within the Council of Europe, expressly formulated democratic standards are to be developed, they should not exceed the scope of such minimum standards.
5. The comments above concern democratic *constitutional* standards. Democracy, however, is not only a constitutional issue. The reality of democracy depends on various social and cultural factors, such as the existence of an active and pluralist civil society and public sphere, as well as a political and legal culture supportive of constitutional regulations. The exact formulation of such social and cultural prerequisites for democracy is even more difficult than the definition of democratic constitutional standards.
6. It can be doubted whether it is advisable to enlarge the terms of reference of the Steering Committee on Local and Regional Democracy to cover democratic standards at all levels of government. Issues concerning local and regional self-governance and democracy have their specific features, which require specific organisational solutions. The Steering Committee may also lack the constitutional expertise and knowledge which is necessary for dealing with problems of democracy on the national (and supra-national) level.

7. If a new body is created within the Council of Europe for developing democratic standards and assisting in their implementation by member states, the expertise and experience of the Venice Commission in constitutional designing and evaluation should be taken advantage of. The composition of the body should also ensure the necessary expertise on the extra-constitutional, i.e. social and cultural prerequisites of democracy.