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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

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A. The Council of Europe and democratic standards.

1. The essential *raison d'être* of the Council of Europe has been and continues to be, in addition to the pursuit of peace, the consolidation of democracy, the rule of law and the strengthening of the safeguards of Human Rights. Looking back towards the last fifty-five years one cannot but express satisfaction at the fact that great strides forward towards the realisation of these ideals have been made by the member States. Moreover the Council itself has been an instrument fostering these ideals and has also performed a monitoring function, at times intervening with discreet diplomacy to diffuse potentially dangerous tensions within member States, and, also, happily very rarely, suspending countries which had definitely broken with the core values. These considerations do not however justify any complacency. Peace, democracy, the rule of law and the safeguard of Human Rights are susceptible of further strengthening and improvement, as much as they are ever under threat. Moreover the standards should also now be set higher and insufficient levels should be raised.

2. There is a notable diversity in the levels attained in the various member states, not only between the long standing members and the newer ones but also between those in either group. These differences reflect historical and social developments. It is always difficult to compare standards and this task would be extremely envious. This said, one should not shirk from trying to define what is acceptable and what is not, or from aiming at giving these standards greater depth and substance.

3. The Member States with a longer history of democratic development can assist other States in achieving better standards. Indeed it is not only an imperative of solidarity between the member state, it is a matter of collective interest. Freedom, peace, democracy, rule of law and Human Rights do not only involve and interest a particular state, internally and individually. In a sense they are indivisible: their denial in one state puts all Europe in peril. Thus the development of democratic standards and assistance in their implementation is a priority sector for the Council of Europe's activities.

B. The Culture of Democracy

4. Though Democracy, one would think, is obviously the most natural way of governance of any given community, Democracy has been contested from its first formal adoption in ancient Greece up till the present day. Some saw it as inefficient, some as fragile, voluble and unreliable. Still today many are suspicious of its real value, and even some of those who work through its institutions and in States where it has become the basis of the citizens' consensus, will instinctively try to manipulate the machinery of government to ensure the prevalence of certain imposed ideas. It is therefore extremely important to foster the culture of democracy:

- i. the culture of its essential response to human dignity;
- ii. the culture of its practical advantages and utility;
- iii. the culture of its proven superiority over other systems, thus excluding other alternatives.

5. Democracy as a method of choosing those who would exercise State power and as a method of deciding upon the most important and paramount issues facing the community, should therefore be considered a matter of education in the schools, as an initiation into good

citizenship. Perhaps one would expect that other, less formal, vehicles for the transfer of knowledge and accumulated wisdom, would concur in the dissemination of this culture.

6. Education into Democracy as much as its defence should not be uncritical. No greater enemy of democracy can be posited than exaggerated claims made on its behalf, thus engendering hopes which cannot be sustained. Democracy should be seen as it is, warts and all. And *semper reformanda* as well as subject to *renovatio*. However it has to be sharply distinguished from other systems which made use of the description "democratic" but lacked the characteristic ingredients of freedom and rule of law. We should not delude ourselves by imagining that with the overthrow of the Fascist and Nazi regimes and ideology, and with the fall of Communism in Russia and its former satellite states in Europe all philosophical opposition to democracy as we know it, has vanished. There are nostalgic aspirations for return of the Communist system, especially, and this is, perhaps, the most galling, where it failed miserably. There is also a return to Marxist thought, albeit with the qualification, that socialism in the Marxist sense can be realised without the loss of liberty.

7. Parties with this ideological stance are taking part in elections and being returned to the parliaments of many European States. It is not suggested that a cultural battle should be waged against these perfectly legitimate parties, but calling for a further clarification of their position with regard to liberty, free speech and a transcendent rule of law, would not be a useless exercise. One should not underestimate the disillusion with the present "democratic" but improvident State and the nostalgia for regimes, which though undemocratic, paid their pensions, supplied health care and provided for sound technical and scientific education. Nor can one discount the association between the corruption which has become rampant in many ex-communist country with the re-introduction of the capitalist economy.

8. Precisely this point would seem to need further elucidation: that though Democracy would entail freedom of enterprise and consequently a free market economy, it is by no means equivalent to unbridled capitalism. In fact unbridled capitalism has flourished under autocratic and very undemocratic regimes. Democracy is most consistent with a state of fact in which the people's elected representatives and their democratic institutions can control the excesses of plutocratic power. It would therefore be useful for the future of democracy that the distinction should be made and that the so called "reformist" stances of the parties on the right of the political spectrum should not be driven to mean a "deregulation" from the Rule of Law in the conduct of economic activity.

9. There is a great role for the media in convincing people, young and old as to the ultimate choices available. Although the liberty of the media rests on the foundations provided by democracy, the rule of law and the safeguard of Human Rights, this is not always realised by some of the operators working within them. Reminding their audiences or readers of this basic fact can be a very useful exercise on their part.

10. Democracy is not only a creed: it is a practice. Perhaps one of the most important ways of making democracy inextricably bound to the very fabric of society is to see its practice not only in state institutions but also in all the spontaneous aggregations, of what is known as civil society. We are living in an era of voluntary associations: cultural, social, religious, sport, political. The practice of democracy in all these groupings necessarily strengthens democracy, in that it initiates the young and trains people of all ages in the democratic method, hopefully as ingrained in all private and state institutions.

C. Dissatisfaction and disillusionment.

11. There is a feel of widespread dissatisfaction in the older democracies, which can be surmised through diminishing voter participation in elections, national and local, and is evident whenever the average citizen can express himself on the media, especially in the press as well as in conversation in the usual meeting places, shops, streets and other rendezvous. Political institutions are not seen as functioning properly, whilst the political milieu is looked down upon, especially but not exclusively, by the bourgeois. Today an anti-political stance is not only populist, it has become popular.

12. There are various reasons for this negative view of the political realities in most of the older democracies in Europe. *As regards the institutions themselves one can see some obsolescence or incipient anachronism.* The institutions were constructed for quite a different kind of society than that we have to-day: 1. There is also some inherent lack of logic in the prevalent form of parliamentary government: it works but it also creaks. The members of parliament are elected to form part of a sovereign legislative body, but then also as supporters of a possible executive organ of government. One elects a good constituency deputy, and finds that this deputy is then selected to perform in positions for which he may not be suited or prepared. Others are elected for their perceived ability to lead, administer, or manage, and then are relegated for years into the role of followers of political guidelines established away from the voters. 2. The “club” rules of many parliaments are not understood by the people at large. There is no explanation for the empty chambers, the idiosyncrasies, the apparently illogical procedures, the sheer undisciplined loss of time. 3. The legislative and the executive process is not easily decipherable by the electorates. *As regards the political class, one can feel a generalised consensus of lack of trust.* There is first of all: 1. A lack of deference. Whilst society has moved on and the educational profile of the mass of people in all the older as well as the new democracies, has changed considerably, no parallel uplifting of the competence, ability and indeed marked excellence has happened in the ranks of politicians. In the earlier scenario an “intellectual” or other type of elite was seen as endowed with the qualifications of representation and wise government, today the perceptions show politicians as being thrown into roles for which they are not singularly endowed. 2. A deficit of moral trustworthiness. Politicians may not be worse specimen of humanity than the electors who vote for them. However, with notable individual exceptions, many politicians are now seen as possibly corrupt, prone to lying, bereft of ideals. The profit motive, has, by osmosis, it seems, invaded the political realm, so that the politician is seen as engaging in this activity not as a man for others but for his own private interest, or in the best of judgments, for his vanity.

13. Part of this erosion of trust was the result of the actions and inaction or the operations of the institutions in themselves or of the politicians. Another factor was less self-induced. There has been a trend of subtracting, very purposely, from the authority of Governments or state organs, and indeed of politics in general. in the (to me mistaken) belief that the command of politics acts as an unbearable obstacle to the exercise of economic activity. One can observe an emphasis on the failings of institutions and politicians, which is not merely attention to reality but an instructional underlining of certain instances of incompetence, corruption or inefficiency so as to show all politics in a negative way.

14. There has been a cleavage between academe and politics and at least in countries, such as France and Italy, between the judicature and politics. Whilst no one will bewail the time when academicians, judges and politicians felt they belonged to one social class and clung to some kind of class solidarity, yet it is surely not to the public good that there should be a

feeling of permanent antagonism. In the eyes of many university professors, lecturers and students, politics is seen as a dirty game, at times a matter of some interest for dissecting in anthropology, sociology, politology or ethnographic studies. Politicians in turn look at academicians as people who are spending public money with very little economic return for the nation. There is an eloquent dissonance between the judicature and government in many countries which demonstrates an increasing divergence in essential values. The Rule of Law suffers.

15. In the newer democracies the hoped for transformation of society and the promise of a more efficient and just conduct of public affairs as a result of the freedom ushered in by the fall of Communism, has not been completely realised. The same people under new mantles, the state apparatus staffed by the same people, could not perform the miraculous metamorphosis of their countries so quickly, and the benefits of free democracy are too slow in arrival.

D. Inability and impotence

16. Another source of disaffection with democracy is the apparent inability or lack of capacity to deal with the problems of government. Rampant crime, unmanaged immigration, the seeming permanence of deficiencies in the services provided by the state in education, health and justice, the recurring budget deficits, unemployment, are ever present reminders of the helpless inability of successive governments to find solutions and tackle grave problems which trouble the daily life of everyman and woman. Governments are seen as either weak or insensible. The weakness is sometimes attributed to lack of stability where coalition governments are the rule, or to lack of determination in taking decisions, for fear of repercussions in most other cases. Sometimes the sheer incompetence of the people in government or their advisors is seen as the explanation for the alleged intractability of these problems.

17. Whilst the daily, if superficial, recital of the difficulties in any given democracy, is brought to the notice of the public, through the media and the press, discussion in depth of the issues involved and the alternative solutions possible, rarely reaches the average citizen. Politicians seem to have no patience to explain, and the media see such an exercise as drab and not audience enticing. Even television debates in the build up to elections, although attracting some attention do not appear to have been given the right format so as to present the issues in addition to the merits and demerits of the individual candidates.

18. In addition to the possible innate difficulties, to the objective induced impotence, native incompetence of the politicians, one does observe a certain lack of information or gross ignorance of matters on the part of the electorate, in turn adding to the perception that perhaps it is useless to vote, participate in party politics or in popular movements for change. The citizen is tempted to live his own individual private life, and defend his own patch without hope or fear of change. An attitude which would not endear him to democracy but make him a political agnostic.

19. The democratic method is also seen, perhaps correctly, as not having permeated most of the administrative structures of Government. Decisions are taken which affect the life prospects of an individual citizen for which justification is not provided and perhaps does not really exist. So that many people in democracies not only view their governments as impotent, but also very much themselves. The remedies for administrative injustice are seen as slow at times or completely ineffective.

20. The electoral process is seen in many countries as not affording enough scope for protest, choice and change. Especially when the alternatives: of a party in government to whom to renew a mandate and an opposition to be tried as the next government, are not available as clear cut choices, the citizen may feel that his vote does not really provide him with a politically effective tool. So that the clear choice of an alternative government should be of the essence of an electoral consultation.

21. Where the judiciary is itself not completely free from entanglements with the political establishment or from suspicion of corruption, one of the institutional correctives to abuse of power and corruption by politicians is missing and the sense of potency is further compounded. Although corruption is the result of a complexity of situations and events, and one cannot hope that a State solves its corruption problems by simply adhering to Conventions, yet failure of particular States to subscribe to a Convention such as the Council of Europe's Agreement establishing the Group of States against Corruption (GRECO) might be a signal of resignation or lack of resolve which further increases the feeling of impotence.

E. Ethnic minorities and immigration.

22. Democratic institutions and the democratic method should transcend ethnic and cultural diversities within a State, as equality and non-discrimination are basic requirements of a democracy. One realises however that the situations brought about by the existence of "different" people living within a territory mostly inhabited by a majority group, cannot simply be ironed out by laws, Constitutions and Conventions. There has to be a cultural "acceptance" of the diversity, both and most emphatically, by the majority as well as by the minority or minorities. Most European nation states have had minorities or are acquiring ones. Finland has them, Spain has them, Italy has them, France has them, not to mention the Balkan and the Baltic States. Immigration is increasing every day the number of people from alien or different cultures. Politico-legal provisions have to be adopted, and when they are sensible and just, perhaps even generous to the minority, may form the basis of peaceful co-habitation (cf the DeGasperi-Gruber settlement in the Sud-Tyrol). The laws of a Constitutional nature now being enacted in the new democracies of eastern Europe are needed to guarantee equal rights, but there has to be a strengthening of the culture of equality and an affirmative acceptance of the added value of diversity. In the older democracies a cultural acceptance of the alien (mostly Moslem but also Hindi, Buddhist and other), together with a better management of the material (welfare, accommodation, etc) needs of the immigrant, are tasks which should be tackled. To my mind not through "forced" integration or assimilation, but through the glorious "launder" of freedom and tolerance, and some attention to real needs.

23. Unresolved attitudes stemming from a different position in an "imperial" past (Moslems in the ex-Ottoman territories in Europe, Russian speakers in the Baltic States, perhaps Protestants in Northern Ireland) present delicate problems of a psychological, as well as economic nature, which require expert and high minded methods of approach.

24. Immigration has a great economic dimension, which should be better known and understood. The benefits should be illustrated with the same thoroughness as the burthens.

25. The key to integration lies in education in democratic values and the safeguard of respect for the personal dignity of every human being.

F. Conclusion:

26. The Council of Europe has an institutional challenge in the development of democratic standards and assisting in their implementation in member States;

27. The Council of Europe can develop democratic standards in many ways, of which some fairly traditional : (1) by devising educational programmes (possibly with model text books) for the schools of all member countries; through the production of films and features illustrating the basic concepts of democracy in a convincing, and maybe entertaining way, translatable into the languages of the COE member states and easily available for transmission on their media; (2) by making available some bursaries for youth leader from the new democracies to visit other countries and observe democratic institutions in the older democracies at work; (3) through assistance programmes aimed at NGOs and youth organisations, so that democracy is practiced within these organisations;

28. Other lines of approach can also be followed: (1) Bridging the gap between academicians and practicing politicians through the organisation of meetings for the open discussion of themes such as those of possible lines of Constitutional reform or reflection on the structural deficiencies of European Democratic institutions (one possible theme being the structural engineering needed in the systems so as to provide alternative choices at general elections and a Government-Opposition format at intervening times), the economic and social impact of immigration in today's Europe; (2) making fuller use of the Venice Commission to analyse and comment upon not only the Constitutional problems of the new democracies (which is already being done very satisfactorily) but also the problems in the area of Law, the administration of Justice as impinging on the very essence of the Rule of Law in the older democracies; (3) subject administrative methods in the various member states to a test for a democratic audit; (4) elaborate Codes of Good Practice for the voluntary discovery/ publication of politicians' assets before and after having served in public office.

29. COE could exercise a greater monitoring function through the Steering Committee on Local and Regional Democracy on the real functioning of the subsidiary organs of government in the member states, in parallel with surveillance institutions in National Governments.

30. COE could "own" more the results of the Election Codes as elaborated by the Venice Commission to provide greater monitoring guidance as well as prompt reforms, in the direction of easier access, more balance and transparency to the electoral process in all countries, and give wider recognition to the work done on Minority Rights Laws

31. COE could in addition to calling upon the member States who have not signed to accede to the Agreement establishing GRECO, explore further ways of collaboration in the fight against corruption in political life, as well as in the funding of political parties.