



Strasbourg, 5 March 2004

Opinion no. 282 / 2004

Restricted
CDL(2004)024
Engl. only

EUROPEAN COMMISSION FOR DEMOCRACY THROUGH LAW
(VENICE COMMISSION)

DRAFT OPINION

**ON THE POSSIBLE FOLLOW-UP TO
PARLIAMENTARY ASSEMBLY
RECOMMENDATION 1629 (2003)
ON “FUTURE OF DEMOCRACY:
STRENGTHENING DEMOCRATIC INSTITUTIONS”**

on the basis of comments by

Mr Ugo MIFSUD BONNICI (Member, Malta)
Mr Kaarlo TUORI (Member, Finland)

Introduction

1. By a letter dated 29 January 2004, the Secretariat of the Committee of Ministers asked the Venice Commission to give its comments on Parliamentary Assembly Recommendation 1629 (2003) – *Future of democracy: strengthening democratic institutions*.

2. The Commission appointed Messrs Kaarlo Tuori and Ugo Mifsud Bonnici as rapporteurs on this issue. The present opinion, which was drafted on the basis of their comments, was adopted by the Commission at its ... Plenary Session (Venice, ... 2004).

I. Background

3. The essential *raison d'être* of the Council of Europe has been and continues to be, in addition to the pursuit of peace, promotion of pluralist democracy, and respect for human rights and freedoms and the rule of law. During the last fifty-five years, and in particular since 1990, great strides forward towards the realisation of these objectives have been made by the member States. Indeed, never before have so many countries undertaken fundamental changes aiming at introducing democracy in their systems of government. The Council of Europe and the Venice Commission have fostered this process and performed an important monitoring function, at times intervening with discreet diplomacy to diffuse potentially dangerous tensions within member States.

4. The Venice Commission has gained extensive experience in assessing draft constitutions and draft constitutional amendments, as well as other aspects of the democratisation process, such as judicial reform, electoral legislation, and laws on the protection of national minorities, 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 human rights and democracy. The main standards with respect to human rights are formulated in the European Convention on Human Rights and its Additional Protocols. Human rights do not, of course, exhaust the constitutional problematics of democracy. However, 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 pertinent Council of Europe's instruments on specific aspects, such as the European Charter on Local Self Government.

5. It is today widely recognised that such action in support of political changes in member states significantly contributed to the preservation and strengthening of democracy in the European continent. This consideration does not however justify any complacency. Democracy, the rule of law and respect for human rights are susceptible of further strengthening and improvement, as much as they are faced with important challenges.

6. Democracy is sometimes considered as inefficient and fragile, and it does not always meet the expectations of the population. There is a widespread feeling of dissatisfaction with the existing institutional structures and political class in the older as well as the newer democracies. As regards the institutions themselves, one can see some obsolescence or incipient anachronism. As to the political class, there seems to exist a generalised consensus of lack of trust. Rampant crime, unmanaged immigration, the seeming permanence of deficiencies in the services provided by the state in the field of education, health and justice, the recurring budget deficits and unemployment, are ever present reminders of the difficulties the successive governments encounter in finding solutions and tackling important problems that trouble the daily life of every man and woman. A certain lack of information and

knowledge on the part of the electorate can also be observed, adding to the perception that perhaps it is useless to vote, participate in party politics or in popular movements for change. The remedies for administrative injustice are often seen as slow or ineffective.

7. Yet, democracy, the rule of law and respect for human rights do not only involve and interest a particular state, internally and individually. Assisting member countries in achieving better standards is not only an imperative of solidarity between states; it is a matter of collective interest. Peace and security depend on the consolidation of democracy. Development of democratic standards and assistance in their implementation is therefore, with no doubt, a priority sector for the Council of Europe's activities.

II. Codifying democratic standards

8. The formulation of general democratic standards that could guide democratic assistance activities of the Council of Europe and its bodies would not be an easy task.

9. It is widely recognized that democracy is *the* mode of government allowing to ensure lasting solutions to the political, economic and social problems that our societies face. However, it is also acknowledged that there is no universal recipe for democracy, as this can take different forms in different countries. The choices to be made are affected by the political and constitutional tradition and the state of political and legal culture of the country in question.

10. 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.

11. Should expressly formulated democratic standards be developed within the Council of Europe, they should not exceed the scope of the *minimum* constitutional standards.

III. Enhancing democracy

12. Democracy represents more than well-structured and well-functioning institutions. 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.

13. While the exact formulation of such social and cultural prerequisites for democracy is perhaps even more difficult than the definition of democratic constitutional standards, it is possible to give a few indications. One important way of making democracy inextricably bound to the very fabric of society could be to see its practice not only in state institutions but also in all the spontaneous aggregations, be they cultural, social, religious, sport or political. The practice of democracy in all these groupings necessarily strengthens democracy, as it initiates the youth and trains citizens of all ages in the democratic method, hopefully as ingrained in all private and state institutions.

14. A number of fairly traditional democracy-promotion activities and mechanisms could also be reinforced such as:

- co-operating in devising educational programmes for the schools;
- producing films and features illustrating the basic concepts of democracy in a convincing and maybe entertaining way;
- offering fellowships for youth leader from the new democracies, and developing assistance programmes aimed at NGOs and youth organisations.

15. Other lines of approach could also be followed:

- bringing together representatives from the academic and political sphere through the organisation of open-ended conferences on topics dealing with challenges democracy is faced with;
- making fuller use of the Venice Commission's expertise also with regard to the functioning of the democratic institutions in the older CoE's member states;
- subjecting administrative methods in the various member states to a check of compatibility with democratic standards;
- elaborating a Code of Good Practice providing for the voluntary discovery/publication of politicians' assets before and after having served in the public administration;
- developing stronger monitoring functions for the Steering Committee on Local and Regional Democracy over the functioning of the subsidiary organs of government in the member states, in co-operation with monitoring institutions within national governments.

IV. Conclusions

16. It is the Venice Commission's opinion that reflexion within the Council of Europe regarding future action in strengthening democratic institutions and ensuring renewal of democracy in Europe should be continued.

17. Developing common guidelines on democratic standards could contribute to further legitimize international support and action in promoting and strengthening democracy in Europe. In order to ensure a widespread consensus, such common guidelines should take fully into account diversity among nations and differences in cultural and political traditions. The highest prominence should also be given to the essential role played by civil society.

18. The Commission remains at the disposal of the organs of the Council of Europe to assist in this endeavour if requested.