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EUROPEAN COMMISSION FOR DEMOCRACY THROUGH LAW

(VENICE COMMISSION)

COMMENTS

ON THE CONFORMITY OF THE LAW ON POLITICAL PARTIES OF THE REPUBLIC OF ARMENIA WITH INTERNATIONAL STANDARDS

(*AMICUS CURIAE* OPINION AT THE REQUEST OF THE CONSTITUTIONAL COURT OF ARMENIA)

by

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I. *Introduction*

1. On 19th September 2006, the Armenian Constitutional Court asked the Venice Commission for an Amicus Curiae Opinion about the conformity of the Law on Political Parties of the Republic of Armenia with international standards in the following terms:

> *"The constitutionality of the RA Law "On Political Parties": The RA Ombudsman contests the constitutionality of the provisions of the law, according to which the political parties disintegrate if they do not participate in the parliament elections twice or in the case of participation gain less than one per cent of votes. The Ombudsman considers that Paragraphs 2 and 3 of Article 31 of the RA Law "On Parties" contradict Paragraph 2 of Article 28 and Paragraph 1 of Article 43 of the RA Constitution."*

2. The Constitutional Court of the Republic of Armenia asked whether the Venice Commission has already formed a definite position on this issue and how the approach is in the international practice of constitutional legislation. For responding this question, these comments review, firstly, the European Convention on Human Rights and the ECoHR case law. Secondly, the general position of the Venice Commission on the issue is assessed in general terms and, thirdly, it reviews the former Venice Commission position on the Law on Political Parties of Armenia. As the review will show, there is a large and consistent acquis on the issue and, hence, the opinion comes to a conclusion that is contrary to the provisions contained in article 31 of the Republic of Armenia Law on Political Parties.

II. The overall European framework of norms

1. The European Convention of Human Rights

3. The European Convention on Human Rights protects the right of freedom of expression (Art. 10) and the freedom of assembly and association (Art. 11). The European Court of Human Rights has held in several occasions that political parties and their activities are within the scope of both articles. In the case *United Communist Party of Turkey and Others v. Turkey* (133/1996/752/951), the Court based its judgement in the importance of democracy in the Convention system to place political parties within the reach of Article 11 (§ 25). After this judgement, the Court has consolidated this case law in a number of judgements.[1]

4. Placing political parties within the reach of provisions on freedom of assembly and association does not afford them unlimited protection nor grants them an unlimited right. On the contrary, they are subject to the eventual restrictions that Article 11 of the ECHR identifies: restrictions to these freedoms are permissible if they are necessary in a democratic society in the interest of national security, territorial integrity or public safety, for the prevention of disorder or crime, for the protection of health or morals, for the protection of the reputation or rights of others, for the prevention of the disclosure of information received in confidence, or for maintaining the authority and impartiality of the judiciary (Art. 11.2).

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[1] *Socialist Party and others v. Turkey* (21237/93), Judgment of 25 May 1998; *Freedom and Democracy Party (ÖZVEP) v. Turkey* (Application No. 23885/94), Judgment of 8 December 1999; *Yazar and others v. Turkey* (22723/93, 22724/93 and 22725/93), Judgment of 9 April 2002; *Dicle for the Democratic Party (DEP) of Turkey v. Turkey* (25141/94) Judgment of 10 December 2002; *Refah Partisi (The Welfare Party) and others v. Turkey* (Applications No. 41340/98, 41342/98, 413343/98 and 41344/98), Grand Chamber, Judgment of 13 February 2003; *The United Macedonian Organisation Ilinden – Pirin and others v. Bulgaria* (Application no. 59489/00), Judgment of 20 October 2005.

5. Specifically, Article 17 of the ECHR permits the state to create burdens on and to restraint political parties whose programme or activities aim at "*the destruction of any of the rights and freedoms set forth herein or at their limitation to a greater extent than is provided for in the Convention*". The Court has already indicated that the general purpose of article 17 was to prevent totalitarian groups from exploiting in their own interest the principles enunciated by the Convention: it prevents from reliance on these with the purpose of subversive activities.[2]

2. The ECoHR Case Law

6. The European Court of Human Rights has examined several cases that question the compliance of a measure of prohibition or dissolution imposed by national authorities with the European Convention on Human Rights. In general, the constitutional court of the state involved imposed these measures. The European Court examines if the judgment of the constitutional court fulfils the requirements for imposing a restriction on Art. 11. In concrete, it examines whether there has been interference to the exercise of Art. 11, and whether the interference was justified. The interference is justified if it's a) prescribed by law, b) pursues a legitimate aim, and c) is necessary in a democratic society. (This is the judgment structure since *United Communist Party of Turkey and Others v. Turkey* (133/1996/752/951), Judgment of 30 January 1998. See § 35 ff.)

7. Several judgments on dissolution or banning of political parties by the Turkish government have reached the ECoHR. Both the government and the constitutional court considered that the political parties dissolved or banned undermined the territorial integrity of the State and the unity of the nation, or sought political activities similar to that of terrorist organisations, or were a centre of activities contrary to the principle of secularism and incompatible, then, with the democratic regime. In some of these cases, the Court held that there had been a violation of Article 11 of the Convention, since the interference by the government in the right to freedom of association had not been justified according to the parameters derived from the Convention and fixed by the Court. A further line of reasoning in these judgments has been the opinion of the Court that not every change of the political system by political parties must be considered contrary to the legal order. Political parties may campaign for a change in law or in legal and constitutional structures of the state by peaceful means, if they respect legal and democratic principles and if the change itself is compatible with these fundamental principles. But where the political activities and programs of the party undermine the rules of democracy and, thus, the democratic regime, the state has the right to adopt restrictive measures and to follow the procedure before the constitutional court to obtain the dissolution of the party.

8. The European Court has interpreted them in a cautionary manner. Although the Court has ruled that the banning of a political party is not incompatible with the ECHR,[3] its case-

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[2] Lawless v. Ireland, judgement 01.07.1961 Series A, Nos. 1-3 (1979-1980) 1 ECHR 1, §§ 6 and 7. In similar terms, the CdE (PACE) has referred to the rise of non-democratic extremist parties and movements as a threat to the fundamental values that the Council of Europe sets out to defend. PACE Recommendation 1438 (2000), Threat posed to democracy by extremist parties and movements in Europe, Text adopted by the Assembly on 25 January 2000 (2nd Sitting); and PACE Resolution 1344 (2003), Threat posed to democracy by extremist parties and movements in Europe, Text adopted by the Assembly on 29 September 2003 (26th Sitting).

[3] *Refah Partisi (The Welfare Party) and others v. Turkey* (Applications No. 41430/98, 41342/98, 413443/98 and 41344/98), Grand Chamber, Judgment of 13 February 2003. Paragraph 96 states that *The freedoms guaranteed by Article 11, and by Articles 9 and 10 of the Convention, cannot deprive the authorities of a State in which an association, through its activities, jeopardises that State's institutions, of the right to protect those institutions. In this connection, the Court points out that it has previously held that some compromise between the requirements of defending democratic society and individual rights is inherent in the Convention system. For there to be a compromise of that sort any intervention by the authorities must be in accordance with paragraph 2 of Article 11*.

law has established that any restrictions and eventual prohibition and measures to dissolve political parties must fulfil the following requirements:

- Exceptionality: it must be an exceptional case. Prohibition or dissolution is as an extreme measure which is justifiable only in case of advocating the use of violence and put in danger the democratic political order or citizen's fundamental rights.[4]

- Proportionality: the measure must be proportionate to the aim pursued.[5] The Court has consistently advocated in favour of alternative measures, for instance, the use of a legal threshold of votes for granting access to Parliament.

- Procedural guarantees: the procedure for prohibition or dissolution must be a judicial one that guarantees fair trial, due process and openness. Article 6 of the ECHR protects the right to a fair trial, which consists in the requirement of public hearing, within a reasonable time, and before an independent and impartial tribunal established by law. The general rulings on due process and fair trial dictated by the Court apply to the cases of dissolution of political parties. Nevertheless, in the latter the Court has, in most cases, resolved on substantial violations to Articles 10 and 11 of the Convention. When the applicant alleges violation of Article 6, the Court analyse if there has been a violation only if it considers it necessary, that is, if there has been no substantial violation of Article 11.[6] In a different case referred to freedom of expression of a political party, the Court judged that there had been violations both of Articles 6 and 10 of the Convention.[7]

3. Council of Europe Resolutions and Reports

9. The ECHR and the Court case law have inspired ulterior instruments. In general terms, the international instruments reiterate the interpretation that links prohibition with protection of human rights and democracy. The Parliamentary Assembly of the Council of Europe (PACE) approved a *Resolution on Restrictions on political parties in the Council of Europe member states* (Resolution 1308 (2002))[8] which considers the banning of a political party an exceptional measure only legitimate if the existence of this party threatens the democratic order of the country. The Resolution specified a number of principles that must be complied with:

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4 The Court has held in several judgments that *the exceptions set out in Article 11 are, where political parties are concerned, to be construed strictly; only convincing and compelling reasons can justify restrictions on such parties' freedom of association. In determining whether a necessity within the meaning of Article 11 § 2 exists, the Contracting States have only a limited margin of appreciation, which goes hand in hand with rigorous European supervision embracing both the law and the decisions applying it, including those given by independent courts. United Communist Party of Turkey and others v. Turkey* (133/196/752/951), Judgment of 30 January 1998, § 46. See also *Gorzelik & others v. Poland* (Application No. 44158/98), Judgment of 20 December 2001, § 58; *The United Macedonian Organisation Ilinden and others v. Bulgaria*, (Application No. 59491/00), Judgment of 19 January 2006, § 61.

5 See *Sürek v. Turkey (no. 1)* (Application No. 26682/95), Judgment of 8 July 1999, § 64, where the Court states that *nature and severity of the penalty imposed are factors to be taken into account when assessing the proportionality of the interference*. The Court has held that the interference in issue must be proportionate to the legitimate aims pursued. *Refah Partisi (The Welfare Party) and others v. Turkey* (Applications No. 41430/98, 41342/98, 413443/98 and 41344/98), Grand Chamber, Judgment of 13 February 2003, § 133 ff.

6 *Socialist Party and Others v. Turkey* (21237/93), Judgment of 25 May 1998; and *Sadak and Others v. Turkey (No. 2)*. (Applications Nos. 25144/94, 26149/95 to 26154/95, 27100/95 and 27101/95), Judgment of 6 November 2002.

7 *Incal v. Turkey*, (41/1997/825/1031), Judgment of 9 June 1998.

8 See also Doc. 9526, *Restrictions on political parties in the Council of Europe member states*, Report of the Political Affairs Committee, rapporteur: Mr Dreyfus–Schmidt, 17 July 2002.

- exceptional measure
- less radical measures should be used if possible
- a party cannot be held responsible for the action of its individual members if contrary to its statutes
- dissolution is the last resort and only after fair trial
- it cannot be used in an arbitrary form

10. These principles can be re-directed to the three requirements enounced by the Court and mentioned above: the measures must be exceptional, of last resort and less radical measures should be used (proportionality); they cannot be used in arbitrary form and fair trial should be afforded (principle of jurisdictional guarantee) and a party cannot be responsible for the action of individual members if they violate its statutes (though this could be revised at the light of the *Refah* case).

11. On April 2006, the Secretary General of the Council of Europe produced a Thematic Report on "Freedom of Association"[9] which takes stock of the different norms, cases and Venice Commission Opinions in the line discussed above.

4. National legislations on the prohibition/dissolution of political parties

12. In comparative terms, none of the members of the Council of Europe enacts a provision that links prohibition and dissolution of political parties to their effective participation in elections and/or their share of votes. The comparative analysis shows that the prohibition or dissolution measures is a penalty that always require a violation of fundamental rights, constitutional provisions, national security, or democratic values.[10] That means that, without this sort of infringements the restrictions to freedom of association cannot be justified.

13. Spain has enacted a Law on Political parties (Ley orgánica 6/2002, de 27 de junio, de Partidos Políticos) that permits the declaration of illegality of a political party if it supports ***terrorist activities.*** The Law foresees a judicial procedure, according to which the Supreme Court declared in 2003 the illegality of the Basque political groups *Herri Batasuna* (HB), *Euskal Herritarrok* (EH) y *Batasuna* (STS, Sentencia del Tribunal Supremo, i.e. Supreme Court Ruling, Sala de lo Sala especial del Art. 61 de la LOPJ; de 27 marzo 2003). The Spanish constitutional court rejected the *recurso de amparo* presented by Batasuna (STC 5/2004, de 16 de enero). In 2004, the ECHR dismissed a first complaint by the Basque government on formal grounds. A second one is still pending.[11]

III. The position of the Venice Commission on the prohibition of political parties

14. The position of the Venice Commission is fully coherent with the overall European framework and, in fact, some of the materials produced by the Commission have shaped some of the European norms (as it is the case of the PACE Resolution and the Secretariat General's Thematic Report) and other European standards have influenced the

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9 *Secretary General's Thematic Report on Freedom of Association* (CJ-S-ONG (2006)CM Monitor, 06 April 2006).

10 Doc. CDL-INF(2000)1, Appendix I: Prohibition of Political Parties and Analogous Measures. Report adopted by the Commission at its 35th plenary meeting (Venice, 12-13 June 1998). The Report of the Secretary General, on the other hand, has identified four types of main grounds for the restriction on the establishment or dissolution of political parties in the national legislations: 1. discrimination on racial or religious grounds; 2. the extremist nature of the political parties; 3. promotion of racial hatred or violence; 4. in the case of parties seeking violent usurpation of power. *Secretary General's Thematic Report on Freedom of Association* (CJ-S-ONG (2006)CM Monitor, 06 April 2006), para. 23-27.

11 ECHR: Herri Batasuna - Spain (No. 25803/04); Batasuna - Spain (No. 25817/04).

Commission's. In this, a perfect compenetration could be observed. This position has been established in Guidelines and several opinions.

1. The Guidelines of the Venice Commission

15. The most important source for the position of the Commission of Venice on the issue are the 1999 *Guidelines on prohibition and dissolution of political parties and analogous measures* (CDL-INF (2000) 1), adopted at its 41st Plenary Session on 10-11 December 1999.

16. These guidelines establish, on the one hand, the basic parameter for limitations to the activity of political parties. Guideline number 2 states: *Any limitation to the exercise of the above mentioned fundamental human rights (i.e. association, freedom to hold political opinions and receive information) through the activity of political parties shall be inconsistent with the relevant provisions of the European Convention of Human Rights and other international treaties, in normal times as in case of public emergencies*.

17. Guideline 3 identifies the only possible grounds. *Prohibition or enforced dissolution of political parties may only be justified in the case of parties which advocate the use of violence or use violence as a political means to overthrow the democratic constitutional order, thereby undermining the rights and freedoms guaranteed by the Constitution. The fact alone that a party advocates a peaceful change of the Constitution should not be sufficient for its prohibition or dissolution*.[12]

18. The exceptional character of the measures of prohibition or dissolution of political parties is stressed in Guideline 5, when it is considered a *far-reaching measure (which) should be used with utmost restraint.* Guideline 6 establishes that *Legal measures directed to the prohibition or legally enforced dissolution of political parties shall be a consequence of a judicial finding of unconstitutionality and shall be deemed as of an exceptional nature and governed by the principle of proportionality*.[13] And the Guideline 7 reinforce this requirement stating that *The prohibition or dissolution of a political party should be decided by the Constitutional court or other appropriate judicial body in a procedure offering all guarantees of due process, openness and a fair trial*.[14]

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[12] Commenting on this guideline, the Venice Commission Member, Mr James Hamilton, has suggested that it may be needed to be revisited in the light of the ECHR *Refah* decision, since that case envisages circumstances where a party which seeks to overthrow fundamental democratic principles may be suppressed even though it does not advocate the use of violence. (Report by James Hamilton "The Suppression of Political Parties" (CDL-JU(2006)002), in the framework of the Conference on "The protection of electoral rights and the right to political associations by the Constitutional Court", Tbilisi, Georgia, 10–11 February 2006). However, an attitude of restraint on this point is advisable: A dissident opinion in this case expressed serious concerns about the proportionality of the measures that could be adopted on these grounds. Judge Ress (joined by Judge Rozakis) argued that *whether the failure to respect this or that rule of democracy justifies dissolution or whether a less drastic measure is the only appropriate and adequate one is (again) a question that has to be judged with regard to the principle of proportionality*. (This argument was held in the concurrent opinion, particularly in the part referred to paragraph 98 of the judgment of the Court in the case *Refah Partisi (The Welfare Party) and others v. Turkey* (Applications No. 41430/98, 41342/98, 413443/98 and 41344/98, Judgment of 13 February 2003).

[13] The Explanatory Report, para. 6 states: "Therefore, the usual practice in a number of European States requiring registration of political parties, even if it were regarded as a restriction of the right to freedom of association and freedom of expression, would not *per se* amount to a violation of rights protected under Articles 11 and 10. On the other hand any restriction must be in conformity with principles of *legality* and *proportionality*."

[14] The Venice Commission considers that *In general, judicial control over the parties should be preferred over executive control.* Doc. CDL-AD(2002)017, Opinion on the Ukrainian Legislation on Political Parties adopted by the Venice Commission at its 51st Plenary Session (Venice, 5-6 July 2002), § 24.

19. The Venice Commission has provided further indication of its standing on the issue in its *Guidelines and explanatory report on legislation on political parties: some specific issues* (Doc. CDL (2004) 007 adopted by the Venice Commission at its 58th Plenary Session (Venice, 12-13 March 2004). Guideline C argues that *Any activity requirements for political parties, as a prerequisite for maintaining the status as a political party and their control and supervision, have to be assessed by the same yardstick of what is 'necessary in a democratic society'. Public authorities should refrain from any political or other excessive control over activities of political parties, such as membership, number and frequency of party congresses and meetings, operation of territorial branches and subdivisions*. The wording is not very precise because the (not excessive) limits set transform the usual principle of proportionality in a much more vague concept. Moreover, the criteria of what is "necessary in a democratic society" opens the door to an endless discussion about the models of democratic society and the role of political parties. In this way, it does not provide a clear guideline for action.

20. Two other guidelines are relevant: Guideline E establishes that *Any interference of public authorities with the activities of political parties, such as, for example, denial of registration, loss of the status of a political party if a given party has not succeeded in obtaining representation in the legislative bodies (where applied), should be motivated, and legislation should provide for an opportunity for the party to challenge such decision or action in a court of law*. Guideline F states that *Although such concern as the unity of the country can be taken into consideration, Member States should not impose restrictions which are not "necessary in a democratic society" on the establishment and activities of political unions and associations on regional and local levels*. Finally, Guideline G states that *When national legislation provides that parties lose their status of a political party if they do not succeed to take part in elections or to obtain representation in legislative bodies, they should be allowed to continue their existence and activities under the general law on associations*.

21. Although it does not have a direct relationship with the issue scrutinised here, it must be underlined that the Venice Commission has abstained, so far, to make any mention to internal democracy of political parties. This could be an issue to be considered in the future.

2. The Venice Commission Opinions on the issue (Ukraine, Azerbaijan and Moldova)

22. The Venice Commission has consistently applied these arguments in later opinions on Moldova (2003) and Azerbaijan (2004) apart from the earlier opinion on Armenia (2002) (which is referred below). An opinion on Ukraine contained arguments that could be used in this context too.

23. The proposed amendments on the Law on Parties and other Socio-Political Organisations of the Republic of Moldova, for example, state that *In the event the number of political party's members decreases under the limit established under Article 11 para. 2 of the present law, the permanent steering body of the party shall initiate the voluntary liquidation procedure (self-dissolution) of the party* (Art. 16(6)). These thresholds were considered a *serious barrier to the maintenance of political parties*, and incompatible with the provisions of the ECHR and the Guidelines.[15]

24. The Azerbaijan law contained a provision (Article 16) that provided for *dissolution* of a political party if it commits acts banned by Article 4 § 4 of the same law: violating territorial integrity or perpetrating acts contrary to the constitutional order. The Venice Commission

[15] CDL-AD(2003)8, § 16, and SG/Inf(2002)34 / 11 September 2002, *Opinion on the Proposed Amendment to the Law on Parties and other Socio-Political Organisations of the Republic of Moldova*, adopted by the Venice Commission at its Plenary Session (Venice, 14-15 March 2003) on the basis of comments by Mr James Hamilton).

expressed concern that this provision (Article 16) could provide grounds for the suppression of a political party that sought fundamental constitutional change by peaceful means. It must be noticed that the Azerbaijan law applies a judicial procedure.

25. The Azerbaijan law contained also provisions (Articles 15.3, 16.2 and 16.3) for the *liquidation* of a political party if it commits an act that deviates from the aims and tasks determined in its charter or runs counter to the existing legislation. The procedure established is an initial warning by the Ministry of Justice followed by an application of the Ministry of Justice to the Court to liquidate the party. The Venice Commission welcomed the necessity of a court decision but it criticised the absence of any other sanction other than liquidation (appealing implicitly again to the principle of proportionality). A careful observer may think that the Venice Commission has been too complacent and it has avoided a critical reading of the substantive content of the provision. A political party may deviate from the aims and tasks determined in its statutes but this does not necessarily amount to a crime, offence or an act that endangers democracy and human rights in a given country. On the other hand, the second criterion (i.e. running counter the existing legislation) covers a too broad scope that includes *facie covers* all kind of norms. For instance, administrative norms may be covered. This grants, on paper, a broad margin for discretion to national authorities.

26. Finally, the Venice Commission applied also a criterion of proportionality according to which it criticised the Law on Political Parties of Azerbaijan because the only sanction available was the liquidation by a court of justice and this sanction could be invoked even for minor breaches of the party's charter or legislation.[16] The Venice Commission concluded that the major concern is whether the conditions in Article 4 which require a party not to perpetrate acts contrary to the constitutional order could be used to refuse recognition to or to suppress a party which sought fundamental constitutional change by peaceful means.[17]

27. As for Ukraine, under Article 19 of the *Law on Political Parties*, a political party can be warned or banned if transgressing the Constitution of Ukraine or other laws of Ukraine. The Venice Commission argued that no distinction was made between major and minor infraction. The Venice Commission held that so wide discretion was not easily compatible with generally accepted democratic standards.[18]

IV. The position of the Venice Commission regarding prohibition of political parties in Armenia

28. The Venice Commission has reviewed both the Constitution of the Republic of Armenia and the Law on Political Parties. Article 28 of the Constitution of the Republic of Armenia

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16 *Secretary General's Thematic Report on Freedom of Association* (CJ-S-ONG (2006)CM Monitor, 06 April 2006), § 27.

17 Doc. CDL-AD(2004)025, *Opinion on the Law on Political Parties of The Republic of Azerbaijan*, adopted by the Venice Commission at its 59th Plenary Session (Venice, 18-19 June 2004), § 28. See also CDL(2004)045, *Comments on the Law on Political Parties of the Republic of Azerbaijan (adopted on 3 June 1992; amended by the Laws of 25 June 1992, 5 November 1996, 5 October 2001, 2 July 2002 and 30 December 2003)* by H.-H. Vogel. Article 4 of the Law on Political Parties of the Republic of Azerbaijan (adopted on 3 June 1992; amended by the Laws of 25 June 1992, 5 November 1996, 5 October 2001, 2 July 2002 and 30 December 2003) Conditions for the establishment of political parties. Paragraph 4:

> "*The establishment and functioning of the political parties, which purpose or the method of operation is to overthrow or change forcibly the constitutional order of the Republic of Azerbaijan or to violate its territorial integrity, to advocate for war, violence and brutality, to instigate racial, national and religious hatred, to perpetrate other acts contradictory to the constitutional order of the Republic of Azerbaijan and incompatible with its international legal obligations, shall be prohibited."*

18 Doc. CDL-AD(2002)017, *Opinion on the Ukrainian Legislation on Political Parties,* adopted by the Venice Commission at its 51st Plenary Session (Venice, 5-6 July 2002), paragraphs 25-27.

states that *Every citizen shall have a right to form political parties with other citizens and to join such parties* (paragraph 2). Paragraph 5 says that *the activities of associations can be suspended or prohibited only through judicial procedure and in cases prescribed by the law* (paragraph 5). Article 43.1 of the same constitution states that freedom of association *may be temporarily restricted only by the law if it is necessary in a democratic society in the interests of national security, public order, crime prevention, protection of public health and morality, constitutional rights and freedoms, as well as honour and reputation of others*). In its opinion on the Armenian Constitution, the Venice Commission did not raise any objection against these provisions[19] and this can be interpreted as an indicator that they are fully compatible with international standards and best practice. Or, in other words, Articles 28 and 43.1 are consistent with Article 11 of the ECHR.

29. Thus, the Law on Political Parties faces a double test: that posed by the Constitution of the Republic of Armenia and the one posed by the ECHR. Article 31 of the Law on Political Parties of the Republic of Armenia contains the following provision:

Article 31. Liquidation of the Party

1. The party may terminate its activity by the decision of the Conference of the party, in compliance with the procedure established by Article 19.2 of this Law.
2. The party is subject to liquidation, if it has not participated in the two recent elections to the National Assembly, or at any of the recent two elections to the National Assembly, its voting list has received less than one per cent of the sum of the total number of votes in favor of voting lists of all parties having participated in the elections and the amount of inaccuracies.
3. In case of prohibition of the activity of the party by the decision of the Constitutional Court, the party shall be subject to liquidation.
4. In case of liquidation of the party, title to property of the party is transferred to the state.

30. Article 31.2 states explicitly that a political party is subject to termination if it either does not participate in two subsequent parliamentary elections or does not receive at least one percent (1%) of the votes in either of two subsequent elections. In case of liquidation (*sic*) and according to article 31.4 of the Law, the title of property of the party is transferred to the state.

31. The position on the issue of the Venice Commission was made express in a previous opinion on the Law of the Republic of Armenia on political parties (CDL-AD(2003)005). This opinion expressed concern on two sets of provisions. The first one was the registration of political parties (which is not discussed here) and the second one, precisely, was the provisions referring to the dissolution of political parties (Art. 31.2).

32. The Venice Commission opposed this provision and the rapporteur argued that *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.*[20]

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[19] Doc. CDL-AD (2005)025, *Final Opinion on Constitutional Reform in the Republic of Armenia,* adopted by the Venice Commission at its 64th Plenary Session (Venice, 21-22 October 2005). Previous opinions on other constitutional issues are CDL(2000)102rev., CDL-INF(2001)017, CDL-AD(2004)044 and CDL-AD(2005)016.

[20] Draft Law of the Republic of Armenia on Political Parties. Second Reading (CDL(2002)90) Comments by Mr Kaarlo Tuori, Member, Finland.

33. Moreover, the Commission of Venice considered that the confiscation of party property was unjustified. It should be up to each party to determine in its Charter the fate of party property following liquidation or, failing a provision in the Charter, this should be up to a decision by the party conference.

34. The Opinion was very critical on the lack of procedural guarantees. In its point 12, it stated that Article 32 should make it clear that a party can be dissolved only on the grounds and following 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.

35. This Opinion argued that *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.*[21]

V. Conclusions

36. In the light of the host of provisions and documents discussed, the Venice Commission concludes that Article 28 of the Armenian Constitution is in line with the ECHR.

37. On the other hand, Article 31.2 of the Law on Political parties of the Republic of Armenia regulates situations (i.e. non participation in elections and/or not obtaining a certain threshold of votes) that are not contemplated at all by the Guidelines, international recommendations, nor international best practice. Moreover, these situations cannot interpreted at all as implying advocating the use of violence or using effectively violence that are the only permissible ground for prohibition and dissolution.

38. The law does not comply with international norms, international recommendations and international best practices. Moreover, Art. 31.2 and 31.3 of the RA Law on Political Parties may be against Art. 10 and 11 of the European Convention of Human Rights, because the restriction on freedom of association does not fulfil the requirements of these articles defined by the European Court: the measure of dissolution does not pursue a legitimate aim and is not necessary in a democratic society. Moreover, the aim that this measure pursues is not clear or self-evident at all.

39. Further, the law violates the Guidelines of the Venice Commission on this issue, because it does not stand as an exceptional measure that needs to be proportionate to the legitimate aim pursued.

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[21] Draft Law of the Republic of Armenia on Political Parties. Second Reading (CDL(2002)90) Comments by Mr Kaarlo Tuori, Member, Finland, point 12. In an previous report, this same idea was expressed as follows:*...the guarantee of being heard by an independent and impartial judicial authority or tribunal -...- is a clear sign of concern to keep something as politically important as the fate of political parties out of the control of the executive or administrative authorities, whose impartiality is often open to doubt.* Doc. CDL-INF(2000)1, Appendix I: Prohibition of Political Parties and Analogous Measures. Report adopted by the Commission at its 35th plenary meeting (Venice, 12-13 June 1998). The Report of the Political Affairs Committee has held in this respect that *a common feature of all democracies is that the prohibition of political parties is the responsibility of the judicial authorities*. Doc. 9526, *Restrictions on political parties in the Council of Europe member states*, rapporteur: Mr Dreyfus–Schmidt, 17 July 2002, para. 8.

40. Additionally, the law may violate Art. 28 and 43 of the Constitution of Armenia, because the limitations on freedom of association derived form the measure of dissolution imply a restriction of this freedom that the Constitution does not seem to permit. Moreover, the law might contravene the legal obligations that the Constitution created of observing international treaties subscribed by the Republic of Armenia. Several articles of the Constitution of Armenia stress that Armenian legal order must be, and Armenian authorities must act, in conformity with principles and norms of international law, especially those protecting human rights.[22]

41. Finally, it is not clear how the liquidation procedure operates in practice. Constitutional provisions (Art. 100(9)) require the Court to prohibit a party in the legal cases. On the other hand, the Law on the Constitutional Court (Art. 80.1) refers to prohibition or termination of the ***activities*** of the party.[23] Although the wording is close, termination of activities is not the same than liquidation. In fact, liquidation is constructed by the Law on Political Parties as the result of four different situations[24] with two of these relevant to the issue discussed here: liquidation after a decision by the Constitutional Court (Art. 31.3) and in the cases of Article 31.2. Hence, it may be concluded that *liquidation is the consequence of a decision of prohibition*. On the other hand, it may also be concluded that the law suggests that, by listing them separately from § 3, cases under Article 31.2 do not follow from a decision by the Constitutional Court and, rather, they are automatic. If that is the case, it would seem that the procedural guarantees constructed for prohibition or termination of activities, are not fully deployed for situations under Article 31.2.

42. The former opinion recommended to amend the law during the term of the parliament elected in 2003 and, hence, before the election of 2007. So far, this recommendation has not been addressed.

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[22] These articles are: Article 3 paragraph 2: "The state shall ensure the protection of fundamental human and civil rights in conformity with the principles and norms of the international law"; Article 6 paragraph 4: "The international treaties shall come into force only after being ratified or approved. The international treaties are a constituent part of the legal system of the Republic of Armenia. If a ratified international treaty stipulates norms other than those stipulated in the laws, the norms of the treaty shall prevail. The international treaties not complying with the Constitution can not be ratified"; Article 18 paragraph 4: "Everyone shall in conformity with the international treaties of the Republic of Armenia be entitled to apply to the international institutions protecting human rights and freedoms with a request to protect his/her rights and freedoms"; Article 43 paragraph 2: "Limitations on fundamental human and civil rights and freedoms may not exceed the scope defined by the international commitments assumed by the Republic of Armenia."

[23] Previous judgment is required, however, in the case of prohibition of political parties. Art. 9, 30 and 31.3 of the Law of the Republic of Armenia on Political Parties. Article 100 of the Constitution of Armenia stipulates that *The Constitutional Court shall, in conformity with the procedure defined by law: 9) in cases prescribed by the law adopt a decision on suspending or prohibiting the activities of a political party.* The Law of the Republic of Armenia on the Constitutional Court adopted on 1 June 2006 states in Art. 80.1 the following: *The Constitutional Court may decide to suspend or terminate the activities of a political party if violations of the Constitution or the requirements of the relevant Law on the political parties have been detected in the activities of that party* (this disposition was included also in the prior Law, adopted by the National Assembly on December 9, 1997, Art. 63 para.4).

[24] In the RA Law on Political Parties, political parties are subjected to liquidation in the following four cases:

1) self-liquidation (Art. 19.2 and 31.1);

2) after the decision of prohibition adopted by the Constitutional Court (Art. 31.3);

3) when they fail to notify the authorised body, in terms of Art. 33.3;

4) in the cases of Art. 31.2.

43. In the opinion of the Venice Commission, the Armenian authorities should address the recommendation contained in its former opinion to amend the law during the term of the parliament elected in 2003 and, hence, before the election of 2007. Otherwise, the Republic of Armenia will not only be contradicting the international standards; it may be breaching the obligations under the European Convention on Human Rights.