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EUROPEAN COMMISSION FOR DEMOCRACY THROUGH LAW

(VENICE COMMISSION)

OPINION ON

THE DRAFT AMENDMENTS TO THE LAW ON POLITICAL PARTIES OF BULGARIA[1]

Adopted by the Venice Commission at its 77th Plenary Session (Venice, 12-13 December 2008)

on the basis of comments by

Mr Hans-Heinrich VOGEL (Member, Sweden)
Mr Carlos CLOSA MONTERO (Member, Spain)

[1] Promulgated (State Gazette No. 28/1.04.2005) effective 1.04.2005 as well as amended and supplemented as of 2007, together with draft amendments 2008.

I. Introduction

1. In November 2008 the authorities of Bulgaria requested the Venice Commission to provide an opinion on the Bulgarian Political Parties Act promulgated (State Gazette No. 28/1.04.2005) effective 1.04.2005 as well as amended and supplemented as of 2007 together with draft amendments 2008.

2. The Commission asked Messrs Hans-Heinrich Vogel and Carlos Closa Montero to comment the draft amendments to the law on Political Parties (CDL(2008)126). The present opinion was drafted on the basis of their comments (CDL(2008)127) and was adopted by the Commission at its 77th Plenary Session (Venice, 12-13 December 2008).

II. General remarks

3. The Political Parties Act promulgated (State Gazette No. 28/1.04.2005) effective 1.04.2005 as well as amended and supplemented as of 2007 together with draft amendments 2008 is a relatively clear and straightforward piece of legislation. In general terms the Political Parties Act of 2005 is modern, ambitious and well drafted, however there are some provisions that might raise certain concerns.

4. This opinion is based on a number of previous documents of the Venice Commission on political parties, notably:

a. CDL-INF(2000)001 - Guidelines on prohibition and dissolution of political parties and analogous measures adopted by the Venice Commission at its 41st Plenary Session (Venice, 10–11 December, 1999);
b. CDL-INF(2001)007 - Guidelines and Report on the Financing of Political Parties adopted by the Venice Commission at its 46th Plenary Meeting (Venice, 9-10 March 2001);
c. CDL-AD(2004)007rev - Guidelines and Explanatory Report on Legislation on Political Parties: some specific issues, adopted by the Venice Commission at its 58th Plenary Session (Venice, 12-13 March 2004);
d. CDL-AD(2006)025 - Report on the Participation of Political Parties in Elections adopted by the Venice Commission at its 67th plenary session (Venice, 9-10 June 2006);
e. CDL-AD(2006)014 - Opinion on the Prohibition of Financial Contributions to Political Parties from Foreign Sources adopted by the Venice Commission at its 66th Plenary Session (Venice, 17-18 March 2006);
f. Opinions on legislation on political parties in Armenia (CDL-AD(2003)005), Azerbaijan (CDL-AD(2004)025), Moldova (CDL-AD(2003)008), and Ukraine (CDL-AD(2002)017).

III. Detailed observations

A. Definition of political parties

> Article 2(1) of the Act defines political parties as "voluntary associations of Bulgarian citizens holding electoral rights."

5. A literal reading of this provision may lead to the interpretation that non Bulgarian citizens are barred from being members of political parties or to the least radical interpretation that political parties which do not have Bulgarian citizens are barred. Both interpretations of the same provision contradict international norms and standards. Firstly, Article 11 of the European Convention on Human Rights (ECHR) and Article 3 of the (First) Protocol to this Convention establishes that not only nationals but also others may be politically active – which

includes the right to be active within political parties. The definition contained in Article 2(1) provides ground for justifying eventual distinctions based on nationality. Secondly, Article 19 of the Treaty establishing the European Community grants to citizens of the European Union member states residing in Bulgaria have the right both to vote and to stand as candidates at municipal elections and at elections to the European Parliament. Whereas these rights are slightly different to the right of "being a party", provision in Article 2(1) may be interpreted as an eventual restriction for political participation of EU citizens other than Bulgarian nationals.

6. More specifically, the Venice Commission stated in its "Guidelines on legislation on political parties"[2] that general exclusion of foreign citizens and stateless persons from membership in political parties is not justified. According to the guidelines, "foreign citizens and stateless persons should to some extent be permitted to participate in the political life of their country of residence, at least as far as they can take part in elections. At the very least, the country of residence should make membership in political parties possible for these persons. In dealing with issues of the participation of foreign nationals in the public life of their country of residence, the Member States are invited to apply to the largest possible extent the provisions of the European Convention on the Participation of Foreigners in Public Life at Local Level.[3]

7. Finally, the Venice Commission Code of Good Practice for Political Parties (CDL-EL(2008)020rev) refers to associations of citizens, (not nationals). Furthermore, the same code (par. 22) states that European best practices and legal frameworks share the principle of non discrimination. Hence, parties' adherence to this principle must be taken as proof of good practices, which have a number of specific applications.

8. Hence, the Venice Commission strongly recommends a more neutral wording that refers to individuals, rather than to Bulgarian nationals exclusively.

B. Establishment of political parties

9. The issue of the legislative provisions on the establishment of political parties has been treated by the Venice Commission in a number of texts and opinions. The following comments are based on the conclusions and comparative examples of different countries used by the Commission in the documents listed in paragraph 4 of this opinion, notably "Guidelines and Explanatory Report on Legislation on Political Parties"[4] and opinions on political parties' legislation in concrete countries. As for the comments on the examined draft, they will mostly concentrate on such issues as citizenship requirement and registration of parties.

- Citizenship requirement

10. Bulgarian citizenship is mentioned in a number of provisions as a precondition or requirement:

- Article 2(1) of the Act defines political parties as "voluntary associations of Bulgarian citizens holding electoral rights."
- Article 8(1) provides that "[a] Bulgarian citizen may participate in the constituent meeting of a political party only if he or she is not a member of another party" and Article 8(2) adds that "any Bulgarian citizen, who is also a citizen of another State,

[2] See CDL-AD(2004)007rev, Guidelines and Explanatory Report on Legislation on Political Parties: some specific issues, adopted by the Venice Commission at its 58th Plenary Session (Venice, 12-13 March 2004).

[3] The Council of Europe Convention on the Participation of Foreigners in Public Life at Local Level (ETS no. 144).

[4] See CDL-AD(2004)007rev, Guidelines and Explanatory Report on Legislation on Political Parties: some specific issues, adopted by the Venice Commission at its 58th Plenary Session (Venice, 12-13 March 2004).

may participate in the establishment of a political party under the terms established by Paragraph (1)."

- According to Article 10(1) a "political party shall be established on the initiative of not fewer than fifty Bulgarian citizens holding electoral rights, who shall constitute a Steering Committee".
- Article 11(1) provides that "[e]very Bulgarian citizen holding electoral rights may join the signature collection" which the Steering Committee has to organise.
- According to Article 12(2) for "the valid transaction of business at the Constituent Meeting of a political party, not fewer than five hundred Bulgarian citizens, who have signed a declaration referred to in Article 11 herein, shall have to be present thereat."
- For the purpose of registration of a political party at the Sofia City Court, it is provided in Article 15(3) para. 4 that a list has to be submitted to the Court "containing the forename, patronymic and surname, the Standard Public Registry Personal Number and a manual signature of each of not fewer than five hundred founding members of the party who are Bulgarian citizens holding electoral rights".

11. With regard to these provisions it has to be recalled again that according to Article 19 of the Treaty establishing the European Community not only Bulgarian citizens but also citizens of the European Union without Bulgarian citizenship, if residing in Bulgaria, may have the right both to vote and to stand as candidates at municipal elections and at elections to the European Parliament.

- Formal requirement for registering a party

12. Article 8.1 provides that "Bulgarian citizen may participate in the constituent meeting of a political party only if he or she is not a member of another party". It is questionable if such requirement is necessary and it is not clear how it can be implemented. Who will check if a citizen is not member of another party. It should be rather an issue dealt with by parties themselves on internal level.

13. Some of the provisions of the Act prescribe that a certain number of individuals must be acting to create a party by fulfilling a number of formal conditions:

- According to Article 10(1) "not fewer than fifty Bulgarian citizens" shall take the initiative to establish a political party and "constitute a Steering Committee".
- Five hundred citizens must be present for the valid transaction of business at the founding meeting of a political party (Article 12(2)), and the same number of citizens is necessary to adopt a statute of the party at the meeting (Article 13(1)).
- Further, in one of the two lists, which must be submitted together with the application for registration of a political party, not fewer than five hundred *founding* members have to be listed (Article 15(3) para. 4), and
- Finally, in the second list which has to be submitted, not fewer than five thousand *[simple]* members have to be listed (Article 15(3) para. 7),
- and both these lists have to contain "forename, patronymic and surname, the Standard Public Registry Personal Number and a manual signature" of each founding or ordinary member.

14. It is true that minimal membership requirements do exist in a number of States (*Azerbaijan, Bosnia and Herzegovina, Canada, Croatia, Czech Republic, Estonia, Georgia, Germany, Greece, Kyrgyzstan, Latvia, Lithuania, Moldova, Russian Federation, Slovakia* and *Turkey*).[5] At first glance the sequence of thresholds of not fewer than 50, 500 and 5000 individuals may appear as good as any other. However, closer inspection reveals, that these thresholds will be obstacles which would be very difficult or simply impossible to overcome.

15. Ordinary citizens, who want to found a new party – maybe at first for political work in a municipality and later development into a nationwide active political party –, cannot be expected to overcome these obstacles without active support of an existing organisation with ample administrative resources. If the goal is to found a party for political on the level of a municipality there may not even be 5000 inhabitants in the municipality, in which the future political party is supposed to be active.

16. The thresholds of 50 and 500 should also be related to the number of individuals, which are necessary to found an association or similar legal person; founding a political party should not be more difficult than founding an ordinary association or company.

17. In this context the question could be asked, whether and to which extent there will be public support for a newly founded political party. But to find an answer to this question, should not be a matter for a court of law in registration proceedings. Instead it should be left to the electorate to decide, whether public support is forthcoming.

18. Therefore, thresholds of not fewer than 50, 500 and 5000 individuals are questionable. Probably they are far too high and should be reconsidered.

19. In some of its previous opinions the Venice Commission has expressed doubts as to the necessity to establish minimal membership for parties. In its opinion on the Law on political parties in Moldova the Commission considers that: "*A State may be entitled to insist on certain minimum standards of size, organization and democratic standards as a condition of registering a party but it seems to me doubtful that it can be regarded as necessary in a democratic society to prescribe the precise manner in which a political party is to be founded once the party's programme does not represent a danger to the free and democratic order or to the rights of individuals.*"[6]

- Participation in elections

20. Article 3 establishes that "Organizations that are not political parties may not participate in elections".

21. Article 20a proposes a threshold for participation in elections – i.e. any election, municipal, as well as nationwide and EU-wide – according to which participation requires that the political party "has established regional structures on the territory of at least half of the municipalities in the country". This threshold would make it virtually impossible to found a political party which aims for participation in politics in one or a few municipalities or regions only. But such limited activities are protected by Article 11 ECHR and Article 3 of the Protocol as well as political work nationwide. Draft Article 20a should therefore be reconsidered; a threshold of this kind should not be enacted at all.[7]

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[5] See CDL-AD(2004)007rev Guidelines and Explanatory Report on Legislation on Political Parties: some specific issues, adopted by the Venice Commission at its 58th Plenary Session (Venice, 12-13 March 2004).

[6] See CDL-AD(2003)008 Opinion on the Draft law on political parties in Moldova.

[7] In its opinion on the Draft law on political parties in Moldova adopted in 2003 (CDL-AD(2003)008), the Venice Commission considered that: "[…] the requirements as to organisation in more than half of the country will make it impossible to organize regionally based parties. While there may be a case for this in relation to national

- Financing of political parties

22. Article 22 (1) of the Act provides that "Political parties may not carry out any economic activities". This provision could be completed in order to make it clear what is considered as an economic activity forbidden by this article. The same can be said about 24 (1) – it might be useful to specify what is considered as an anonymous donation.

23. Article 22(2) prohibits political parties "to hold participating interests in any commercial corporations and cooperatives". Article 23(1) para. 5 provides that revenue from own sources of political parties shall be any proceeds accruing from "… securities provided this does not contradict Article 22." These provisions seem to be drafted with the intention to draw a clear line between political activities of political parties on the one hand and their economic and financial activities on the other. They would probably be acceptable as such. However, the wording of Articles 22 and 23 – and maybe it is only a matter of translation of the Bulgarian text into English – is not helpful with regard to reasonable financial investment techniques; nor facilitates it solutions when it comes to legally acceptable activities which to some extent are commercially motivated and may be taxable. An example would be ownership of real estate which partly is used by a political party for its political work, while the remaining part is rented by a third party for solely commercial purposes. In such cases generally accepted solutions combined with transparency requirements directed to the participating political party seem to be preferable to prohibitions and unrealistic and artificial solutions, which are necessitated only by the fact that one of the participants in the arrangement is a political party.

24. Article 28(1) provides for payment of the annual state subsidy in quarterly instalments, while Article 28(2) seems to prohibit that future payments are pledged as collateral for debt to a third party (however, the English translation of the Bulgarian text is not clear in this respect). In this context the obvious fact has to be recalled that any political party will have to meet foreseeable future obligations, e.g. payment of monthly salaries to employees, in between the scheduled quarterly instalments. Meeting such obligations requires short term cash reserves and their proper management. It must also be recalled that no political party can be sure about the outcome of the next election; it therefore has to make arrangements for the potentially difficult situation that there will be a substantial loss of votes in the future followed by a corresponding loss of state subsidies. This requires arrangements to meet even medium and long term obligations by accumulating corresponding financial reserves and to properly manage these reserves. Professional management of any reserves – short, medium or long term – usually requires and includes a limited use of short term credit facilities (cf. Article 23(3)), which have to be secured by pledging assets as collateral. One such asset would be future instalments with a solid base in enacted legislation. It is not clear whether traditional financial management of this kind is taken into account in the wording of Article 28 and would be compliant with this Article.

25. Draft Article 29(2) requests any political party to establish and keep a public register in which – among other information – according to para. 5 the full names and addresses of the party members are recorded. There is a difference between the register of donations received and a register of party members. A register of donations could and probably should be public. It is obviously reasonable that a political party keeps a register with the full names and addresses of the party members. But any requirement to make this information public has to take into account the transparency requirements which the party has to meet on the one hand and on the other hand reasonable demands of the members of the party for protection of their private life; simple membership in a political does not lead to the member becoming a public person. It

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elections this can hardly be justified at local level. It will also make it impossible for a party to be formed with the intention of representing a minority interest. […]. This does not appear to me to be in accordance with the right of freedom of association or to be necessary in a democratic society…"

is not clear that the draft provision is sufficiently balanced in this respect. It should therefore be reconsidered.

26. The transparent and clear procedure foreseen in article 32 a 2 is a very positive and useful addition to the text.

27. According to draft Article 37 political parties shall publish financial statements in a national daily paper. It should be considered to require Internet publication either instead of publication in a national daily paper or additionally to such publication.

- Dissolution of political parties and complaints and appeals procedure

28. According to Article 38 a political party can be dissolved by decision of the Constitutional Court if it declares the political party being unconstitutional. This is (and should be) the standard when involuntary dissolution is in question. However, in para. 5, Article 38 provides also for involuntary dissolution of a political party by judgment of the Sofia City Court. The requirements for such a judgment are spelled out in Article 40(1). They include cases of "systemic violations of the requirements established by" the Political Parties Act, further, activities of the political party "in conflict with the provisions of the Constitution" and, finally, non-participation "in elections of National Representatives, of President and Vice President, or of Municipal Councillors and Mayors, during more than five years after the latest court registration thereof". Additional requirements are listed in five new draft sections to be added to Article 40 and in § 4(4) of the transitional and final provisions. Public prosecutors seem to be the only persons who may apply for a court decision to dissolve a political party.

29. With regard to these provisions it has to be recalled that political parties are citizens' associations which are active at the very centre of democracy where political discussion can be very intense. In this environment disputes can occur which cannot be solved in debate or by vote and which therefore have to be referred to a constitutional court or similar institution for arbitration. If there is such a court in a country, this court should decide even in matters – i.e. all matters – concerning involuntary dissolution of political parties; such dissolution of a political party should not be a matter for ordinary or administrative courts. Nor should the initiative to apply for involuntary dissolution of a political party be a matter for a public prosecutor. With regard to potential repercussions for the democratic system of the country the right and obligation to apply for dissolution or at least the obligation to provide guidance in matters of this kind should be entrusted a suitable institution with political legitimacy.[8] Chapter 5 of the Act, with Articles 38 to 42, should therefore be reconsidered.

30. Finally, with regard to Article 6 ECHR, there should be a clear and comprehensive system of remedies against any judicial and administrative decisions and other acts which in substance are adversary to political parties. For example, according to Articles 16 and 18(2) judgments are to be rendered within 14 days. But which remedy is available, if the Court does not render its decision in time? Additionally, there should be a provision that any court judgment must contain clear and comprehensive reasons.

[8] See CDL-INF(2001)001, Guidelines on prohibition and dissolution of political parties and analogous measures adopted by the Venice Commission at its 41st plenary session (Venice, 10–11 December, 1999), p. 5.