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**EUROPEAN COMMISSION FOR DEMOCRACY THROUGH LAW**  
(VENICE COMMISSION)

**PRELIMINARY DRAFT GUIDELINES  
ON ELECTIONS**

**Prepared by the Secretariat of the Commission**

## I. Principles of Europe's electoral heritage

The five principles underlying Europe's electoral heritage are *universal, equal, free, secret and direct suffrage*. Furthermore, elections must be held at regular intervals.

### 1. Universal suffrage

a. Universal suffrage means in principle that all human beings have the right to vote and to stand for election. This right may, however, and indeed should, be subject to certain conditions:

#### aa. Age

- i. The right to vote and to be elected must be subject to a minimum age.
- ii. The right to vote must be acquired, at the latest, at the age of majority.
- iii. The right to stand for election should preferably be acquired at the same age as the right to vote and in any case not later than the age of 25, except where there are specific qualifying ages for certain offices (e.g. member of the upper house of parliament, Head of State).

#### bb. Nationality

- i. A nationality requirement may apply.
- ii. Foreigners should preferably, however, be allowed to vote in local elections after a certain period of residence.
- [iii. The right to vote and to be elected should not be granted to persons residing abroad on the basis of their belonging to an ethnic group which is dominant on the territory of a state.]

#### cc. Residence

- i. A residence requirement may be imposed.
- ii. Residence here means habitual residence.
- [iii. Persons displaced by force should have the right, for a period of at least five years and, in the case of internally displaced persons, not exceeding 15 years, to be considered as residing in their former place of residence.]
- iv. A length of residence requirement may be imposed on nationals solely for local or regional elections.
- v. The requisite period of residence should not exceed six months; a longer period may be required only to protect national minorities.

#### dd. Deprivation of the right to vote and to be elected

- i. Provision may be made for depriving individuals of their right to vote and to be elected, but only subject to the following cumulative conditions:
- ii. It must be provided for by law.
- iii. The proportionality principle must be observed; conditions for depriving individuals of the right to stand for election may be less strict than for disenfranchising them.
- iv. The provision must be based on mental incapacity or a criminal conviction for a serious offence.
- v. Furthermore, the withdrawal of political rights or finding of mental incapacity may only be imposed by express decision of a court of law.

vi. Provision may be made for removal from office, other than by constitutionally provided political procedures, subject to the same conditions as ineligibility.

b. Electoral registers

Fulfilment of the following criteria is essential if electoral registers are to be reliable:

- i. Electoral registers must be permanent.
- ii. There must be regular annual updates, at clearly defined times. Where voters are not registered automatically, registration must be possible over a relatively long period.
- iii. Electoral registers must be published.
- iv. There should be an administrative procedure allowing for the registration of the voter who, by mistake, was not registered.
- v. A supplementary register may be a means of giving the vote to persons who have moved or reached statutory voting age since final publication of the register. The registration of voters on election day itself should be possible only by decision of a court of law.

c. Submission of candidatures

- i. The presentation of individual candidates or lists of candidates may be made conditional on the collection of a minimum number of signatures.
- ii. The law should not require collection of the signatures of more than 1% of voters in the constituency concerned.
- iii. Checking of signatures must be governed by clear rules, particularly concerning deadlines.
- iv. The checking process must cover all signatures; however, once it has been established beyond doubt that the requisite number of signatures has been collected, the remaining signatures need not be checked.
- v. Validation of signatures must be completed by the start of the election campaign.
- vi. If a deposit is required, it must be refundable should the candidate or party exceed a certain score; the sum and the score requested should not be excessive.

2. Equal suffrage

This entails:

a. Equal voting rights: each voter has in principle one vote; where the electoral system provides voters with more than one vote, each voter has the same number of votes.

b. Equal voting power: seats must be evenly distributed between the constituencies.

- i. This must at least apply to elections to lower houses of parliament and regional and local elections:
- ii. It entails balanced distribution of seats among constituencies on the basis of one of the following allocation criteria: population, number of resident nationals (including minors), number of registered voters, and possibly the number of people actually voting.
- iii. The geographical criterion and administrative, or possibly even historical, boundaries may be taken into consideration to a certain extent.

iv. The permissible departure from the norm should not, if possible, be more than 10%, and should certainly not exceed 15% except in special circumstances (protection of a concentrated minority, sparsely populated administrative entity).

v. In order to guarantee equal voting power, the distribution of seats must be reviewed at least every ten years, preferably outside election periods.

vi. With multi-member constituencies, seats should preferably be redistributed without redefining constituency boundaries, which should, where possible, coincide with administrative boundaries.

vii. When constituency boundaries are redefined – which they must be in a single-member system – it must be done:

- impartially;
- without detriment to national minorities;
- on the basis of a decision by a committee, the majority of whose members are independent; this committee should preferably include a geographer, a sociologist and party representatives.

c. Equality of opportunity

aa. Equality of opportunity must be guaranteed for parties and candidates alike. This entails a neutral attitude by state authorities, in particular with regard to:

- i. the election campaign;
- ii. coverage by the publicly owned media;
- iii. public funding of parties and campaigns.

bb. Depending on the subject matter, equality may be strict or proportional. If it is strict, political parties are treated on an equal footing irrespective of their current parliamentary strength or support among the electorate. If it is proportional, radio and television air-time, public funds and other forms of backing are distributed according to results achieved in the elections.

cc. Furthermore, legal provision must be made to ensure that the privately owned media maintain a certain equilibrium between the different political tendencies in the election campaign, both in political news coverage and in advertising.

dd. Financial transparency must be guaranteed:

- i. in respect of campaign accounts;
- ii. and concerning the personal finances of candidates and elected persons.

ee. Political party and election campaign funding must be transparent.

ff. It is acceptable to limit political party spending, especially on advertising.

d. Representation of minorities

aa. Parties representing minorities must be permitted.

bb. Special rules guaranteeing minorities reserved seats or providing for exceptions to the normal seat allocation criteria for parties representing minorities (for instance, exemption from a quorum requirement) do not run counter to the principle of equal suffrage.

cc. Neither candidates nor voters must find themselves obliged to reveal their membership of a minority.

e. Equal representation of the sexes

Rules requiring a minimum percentage of persons of each gender among candidates should not be considered as contrary to the principle of equal suffrage.

3. Free suffrage

a. Freedom of voters to form an opinion

aa. State authorities must observe their duty of neutrality. In particular, this concerns:

- i. access to the public media;
- ii. billposting;
- iii. the right to demonstrate;
- iv. funding of parties and candidates.

bb. The state has a number of positive obligations. Inter alia, it must:

- i. submit the candidatures it has received to the electorate;
- ii. enable voters to know the lists and candidates standing for election, for example through appropriate posting.
- iii. The above information must be available in the languages of the national minorities.

cc. Furthermore, the state must punish:

- i. breaches of the authorities' duty of neutrality (cf. point I.2.c);
- ii. interference by individuals with voters' freedom to form an opinion (for instance through vote buying);
- iii. violations of the secrecy of the ballot.

b. Freedom of voters to express their wishes and action to combat electoral fraud

i. Voting procedures must be simple.

ii. Voters should always have the possibility of voting in a polling station. Other means of voting are acceptable under the following conditions:

iii. Postal voting should be allowed only where the postal service is reliable and the risk of fraud is limited; the right to vote using postal votes may be confined to people who are hospitalised or imprisoned or to persons with reduced mobility.

iv. Electronic voting should be used only if it is safe and reliable; in particular, voters should be able to obtain a confirmation of their votes and to correct them.

v. Very strict rules must apply to voting by proxy; the number of proxies a single voter may hold must be limited.

vi. Mobile ballot boxes should be forbidden.

vii. Only two criteria should be used to assess the accuracy of the outcome of the ballot: the number of signatures on the electoral register and the number of voting slips placed in the ballot box.

viii. Voting slips must not be tampered with or marked in any way by polling station officials.

ix. Unused voting slips must never leave the polling station.

- x. Polling stations must include representatives of a number of parties, and the presence of observers appointed by the candidates must be permitted during voting and counting.
- xi. Military personnel should vote at their place of residence whenever possible. Otherwise, it is advisable that they be registered to vote at the polling station nearest to their duty station.
- xii. Counting should preferably take place in polling stations.
- xiii. Counting must be transparent. It is preferable that it be open to the public. Failing that, observers, candidates' representatives and the media must be allowed to be present. These persons must also have access to the records.
- xiv. Results must be transmitted to the higher level in an open manner.
- xv. The state must punish electoral fraud.

#### 4. Secret suffrage

- a. For the voter, secrecy of voting is not only a right but also a duty, non-compliance with which must be punishable by disqualification of any ballot paper whose content is disclosed.
- b. Voting must be individual. Family voting and any other form of control by one voter over the vote of another must be prohibited.
- c. The list of persons actually voting should not be published.

#### 5. Direct suffrage

The following must be elected by direct suffrage:

- i. the lower house of the national parliament;
- ii. sub-national legislative bodies;
- iii. local councils.

#### 6. Frequency of elections

Elections must be held at regular intervals; a legislative assembly's term of office must not exceed five years.

## **II. Conditions for implementing these principles**

### 1. Respect for fundamental rights

- a. Democratic elections are not possible without respect for human rights, in particular freedom of expression and of the press, freedom of circulation inside the country, freedom of assembly and freedom of association for political purposes, including the creation of political parties.
- b. Restrictions of these freedoms must have a basis in law, be in the public interest and comply with the principle of proportionality.

### 2. Regulatory levels and stability of electoral law

- a. Apart from technical and detail rules – which may be included in regulations of the executive –, rules of electoral law must have at least the rank of a statute.

b. The fundamental elements of electoral law, in particular those governing the electoral system proper, membership of electoral commissions and the drawing of constituency boundaries, must not be open to amendment less than one year before an election, or must be written in the constitution or at a level higher than ordinary law.

3. Procedural guarantees

a. Electoral commissions

aa. An impartial body must be in charge of applying electoral law.

bb. Where there is no longstanding tradition of administrative authorities' independence from those holding political power, independent, impartial electoral commissions must be set up at all levels, from the national level to polling station level.

cc. The central electoral commission must be permanent in nature.

dd. It must include:

i. at least one member of the judiciary;

ii. representatives of parties already in parliament or having scored at least a given percentage of the vote; these persons must be qualified in electoral matters.

iii. It may include a representative of the Ministry of the Interior.

ee. Political parties must be equally represented on electoral commissions. Equality may be construed strictly or on a proportional basis (see point I.2.c.bb).

ff. The bodies appointing members of electoral commissions must not be free to dismiss them at will.

gg. Members of electoral commissions must receive standard training.

hh. It is desirable that electoral commissions take decisions by a qualified majority or by consensus.

b. Observation of elections

aa. Both national and international observers should be given the widest possible opportunity to participate in an election observation exercise.

bb. Observation must not be confined to election day itself, but must make it possible to determine whether irregularities occurred before, during or after the elections. It must always be possible during vote counting.

cc. The places where observers are not entitled to be present should be clearly specified by law.

c. An effective system of appeal

- aa. The appeal body in electoral matters should be either an electoral commission or a court. For elections to Parliament, an appeal to Parliament may be provided for in first instance. In any case, final appeal to a court must be possible.
- bb. The procedure must be simple and devoid of formalism, in particular concerning the admissibility of appeals.
- cc. The appeal procedure and, in particular, the powers and responsibilities of the various bodies should be clearly regulated by law, so as to avoid conflicts of jurisdiction (whether positive or negative). Neither the appellants nor the authorities should be able to choose the appeal body.
- dd. The appeal body must have authority in particular over such matters as the right to vote – including electoral registers – and eligibility, the validity of candidatures, proper observance of election campaign rules and the outcome of the elections.
- ee. The appeal body must have authority to annul elections where irregularities may have affected the outcome. It must be possible to annul the entire election or merely the results for one constituency or one polling station. In the event of annulment, a new election must be called in the area concerned.
- ff. All candidates and all voters registered in the constituency concerned must be entitled to appeal. A quorum may be imposed for appeals by voters on the results of elections.
- gg. Time-limits for lodging and deciding appeals must be short (three to five days for each at first instance).
- hh. The applicant's right to a hearing involving both parties must be protected.
- ii. Where the appeal body is a higher electoral commission, it must be able *ex officio* to rectify or set aside decisions taken by lower electoral commissions.