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EUROPEAN COMMISSION FOR DEMOCRACY THROUGH LAW
(VENICE COMMISSION)

**NOTE OF THE SECRETARIAT
ON THE POSSIBLE ELABORATION OF
A CODE OF GOOD PRACTICE
IN THE FIELD OF POLITICAL PARTIES**

The question of political parties has been of interest to the Venice Commission for a number of years. Moreover, this issue was discussed at the meeting of the Forum for the future of democracy which took place in Moscow on 18-19 October 2006, and in which the Venice Commission is taking part.

The Parliamentary Assembly of the Council of Europe asked Mr Elo (Finland) to work on a recommendation for the Committee of Ministers to adopt a Code of good practice in the field of political parties. The Venice Commission could be entrusted with the task of drafting this Code. This document should resume the most important documents of the Commission in the field, in order to make up a harmonised *corpus*.

The main studies of the Venice Commission in the field of political parties are as follows:

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)

CDL-INF(2001)008 [Guidelines and Report on the Financing of Political Parties: adopted by the Venice Commission at its 46th Plenary Meeting, \(Venice, 9-10 March 2001\)](#)

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 \(Venice, 12-13 March 2004\)](#)

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 \(Venice, 17-18 March 2006\)](#)

CDL-AD(2006)025 [Report on the Participation of Political Parties in Elections adopted by the Council for Democratic Elections at its 16th meeting \(Venice, 16 March 2006\) and the Venice Commission at its 67th plenary session \(Venice, 9-10 June 2006\).](#)

The Venice Commission has also adopted a number of opinions on legislation on political parties in countries such as Armenia (CDL-AD(2003)005), Azerbaijan (CDL-AD(2004)025), Moldova (CDL-AD(2003)008), and Ukraine (CDL-AD(2002)017).

The principles to be found in these various documents could, where appropriate, be resumed, developed or summarised in a Code of good practice in the field of political parties. In this framework, the diversity of national legislation on political parties should be taken into account.

There are several problems which could be addressed by the Code of good practice in the field of political parties. The important challenges faced by most countries in the field of political parties include:

- 1) financing of parties;
- 2) participation of political parties in elections;
- 3) prohibition or dissolution of political parties;
- 4) restrictions on membership in political parties;
- 5) registration procedures for political parties;
- 6) equal gender representation of party candidates during elections.

1. *Financing of parties*

1 Problem: *complex procedures for public financing.* Financing of political parties from public sources is subject to detailed legislation in most countries. In most States only parties participating in general elections, which attain a certain threshold can receive public funding.

Related issue : How to respect the *principle of equality* when distributing *public funding*? If the results of previous elections are taken into account, how to deal with splitter parties?

2 Problem: *prohibition of financing from foreign sources might be harmful for cooperation between parties on the European level.* Financing of political parties from foreign sources is an issue which is currently debated in a number of European countries. Traditionally, financing of political activity from abroad was strictly forbidden. However, in some countries, the situation is currently changing because of integration into the EU.

3 Problem: *fight against corruption.* In recent years several European countries witnessed judicial cases involving misuse of funds by different political parties. Leadership of some major political parties faced charges of financial fraud and embezzlement.

2. *Participation in elections*

4 Problem: *parties can be prevented from running in elections because they have omitted to fulfil some formal preconditions established by administrative bodies which are difficult to appeal against before the elections.* In some countries an extensive legislation on nomination of candidates for elections, pre-election campaign, nomination of observers is completed through by-laws which are not always clear. In certain cases the decision of a judicial body is taken after the vote has been held.

5 Problem: *use of administrative resources by parties in power.* In some of the Council of Europe Member States political forces in power use State resources for supporting their electoral campaigns. Unfortunately, most complaints against such practices go to justice only if such political forces lose an election.

6 Problem: *internal structure of parties.* In proportional systems with closed party lists a party has very important prerogatives in defining, among other issues, the place of each given candidate in the list. The lack of transparency in the process of establishment of party lists might be problematic in the case of certain political parties.

3. *Prohibition or dissolution of political parties*

7 Problem: *in some countries parties can be dissolved for not fulfilling some formal requirements,* as for example, minimal territorial representation, or a number of members. This could be in contradiction with the principle of freedom of association in political parties.

8 Problem: *prohibition of parties which want to bring constitutional changes by peaceful means.* In recent years some political parties were banned solely on the grounds that they were advocating constitutional changes.

4. *Restrictions on membership*

9. Problem: *In many countries, constitutional or legislative provisions restrict membership in political parties to national citizens only.* Permanent residents might be entitled to participate in the activities of parties at least on the local level (since some countries allow non-nationals to participate in local elections).

It is obvious that the right to membership in political parties is closely related to the right to vote in elections and the right to be a candidate in elections – both rights which were and in many countries still are reserved to nationals only. The development since the 1980s to admit foreign citizens and stateless persons to some participation in the political life of their country of residence has changed that, and by the Maastricht Treaty the concept of EU citizenship was introduced for the Member States of the European Union.

5. *Registration procedures for political parties*

10 Problem: *some countries impose on political parties an obligation to go through a registration.* Although a registration procedure is not per se a violation of the right of association in political parties, some additional preconditions for a registration might be in contradiction with European standards:

- 1) territorial representation requirement;
- 2) minimal number of members;
- 3) re-confirmation of registration on a yearly basis, etc.

6. *Equal gender representation*

11 Problem: *parity between men and women*

Even in those states, where political parties agreed to include the proper proportion of women on the ballot, experience has shown that that did not ultimately translate into the same proportion in the elected representative bodies.