



Strasbourg, 9 October 2008

CDL-EL(2008)020*

Study no. 414 / 2006

Or. Engl.

EUROPEAN COMMISSION FOR DEMOCRACY THROUGH LAW
(VENICE COMMISSION)

**DRAFT CODE OF GOOD PRACTICE
IN THE FIELD OF POLITICAL PARTIES**

on the basis of comments by

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I. Introduction

1. On 17 April 2007, the Parliamentary Assembly of the Council of Europe (PACE) adopted Resolution 1546 (2007) inviting the Venice Commission to elaborate a Code of Good Practice in the field of Political Parties (15) which would set out the most important elements for their conduct.

2. The Venice Commission has the experience of elaborating the Code of Good Practice in Electoral Matters (CDL-AD(2002)023rev) and the Code of Good Practice on Referendums (CDL-AD(2007)008) which earned well deserved reputation and credibility. These codes addressed directly public authorities and this implies that these codes could be read as a compilation of norms and guidance for assessing national legislation. On the other hand, the experience and achievements of the Venice Commission on political parties are considerable both under the form of general instruments and specific opinions. Among the former:

- 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).

3. 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).

4. The proposed Code of Good Practice in the field of Political Parties has, in comparison with the former texts on political parties a number of specific features which introduce a new approach to the issue. Its explicit aim, as mandated in the PACE Resolution, is to reinforce political parties' internal democracy and increase their credibility in the eyes of citizens, thus contributing to the legitimacy of the democratic process and institutions as a whole and fostering participation in political life, as well as to promote democratic principles such as equality, dialogue, cooperation, transparency and the fight against corruption (10).

5. In order to achieve this, the Resolution first identifies the addressees of the Code: political parties (points 8, 9 and 10 of the Resolution) and it also reveals that public authorities are not considered to be the final addressee of the Code. Second, the object of the Code differs significantly from the object of former codes: it aims to offer a repertoire of "best practices" (i.e. not legal norms) for public agents (i.e. political parties and their members) who nevertheless are not, by any means, public authorities. In this context, the word "Code" must not be understood as a codification of norms, but as a systematic repertoire of good practices. The idea behind these "good practices" is to offer political parties guidelines stemming from the common and the best practice in Europe and, additionally, offering public authorities and jurisdictional bodies a yardstick to assess the practice of parties..

6. *On this basis, it is clear that the Code cannot have a mandatory character, it cannot prescribe rules, nor can it require enforcement from public authorities (apart from the specific cases in which there may exist precise norms). The only possible compulsory interpretation derives from what political parties and their members must do in following the law.*

7. *A strictly legalistic interpretation of the Code might see it as a superfluous instrument if it is not coercive. However, it is not superfluous, as the PACE Resolution says, the **Forum on the Future of Democracy in Europe** has emphasised the importance of good practices and high standards that political parties should meet for regaining the declining confidence that citizens have in political parties and the effects that defection may have in the working of democracy. Without renouncing to its humble position in this domain, the Venice Commission must live up to the new request that came from the Parliamentary Assembly and accept the challenge of going further than the usual (and safer) ground of a simple opinion on existing norms and propose sound guidelines that may contribute to enhance democratic processes. Although these guidelines lack the force of norms, they may empower actors to propose “best practices” and provide a strong backing for assessing national practices.*

8. *Accordingly, the wording of the recommendations in this Code take into account the existing background. Wherever they can be referred to in international rules or consistent national legal practices, the latter have been introduced as an obligation (i.e. parties must do). Where no explicit legal norms back a practice, but evidence of parties’ regulation present these as such, best practices are introduced as a moral imperative (i.e. parties should do).*

9. *The scope and contents of the Code were discussed in a number of meetings of the Council for Democratic Elections (CDE). On January 2007, the Secretariat drafted a Note on the possible elaboration of the Code (CDL-EL(2006)035rev). Based on this note and additional sources of PACE, such as Recommendation 1438 (2000) and Resolution 1344 (2003) on the threat posed to democracy by extremist parties and movements in Europe, Resolution 1308 (2002) on the restrictions on political parties in the Council of Europe member states, Recommendation 1516 (2001) on the financing of political parties, and Resolution 1264 (2001), Resolution 1320 (2003) and Recommendation 1595 (2003) on a Code of Good Practices in Electoral Matters and the discussion within the CDE in March 2007 in Venice, Mr Carlos Closa Montero, Member, Spain drafted a preliminary note on its elaboration. The latter, which contained the structure and methodology of the Code, was discussed by the CDE in June 2007. Following the methodological path set out in this Preliminary Note, Mr Carlos Closa Montero compiled a Draft Explanatory Report (CDL-EL(2008)014). A working meeting of the Rapporteurs was held in Paris on 21 May 2008 and, as result, a preliminary initial draft of the Code was submitted to the 75th Plenary Session of the Venice Commission (12-14 June 2008) (CDL-EL(2008)013rev). Following this presentation, a number of members presented their observations.*

II. General principles

1. Definition

a. A specific type of association¹

10. For the purpose of this Code a political party is an association² with the task of presenting candidates for elections in order to be represented in political institutions and to exercise political power on any level: national, regional and local or on all three levels.

11. Whilst a few countries lack specific legislation on political parties, most Member States of the Council of Europe do, and in virtually all these cases, legislation aims at differentiating between political parties and other associations, including those involved in politics. Legislation on political parties serves, in this way, for the recognition of their essential role in democratic politics.

b. Freedom of establishment

12. Political parties in democratic states are free associations. Whilst this means that citizens may freely decide to constitute political parties, national legislations limit this freedom in certain cases on the basis of principles consistent with the European Convention on Human Rights (hereinafter, the "ECHR") and the case law of the European Court of Human Rights. The Court has accepted that national legislations may ban or dissolve parties that advocate racial or religious hatred, totalitarianism, promotion of violence or usurpation of state power.

13. Political parties are not, in any Council of Europe member state, the creation of public organs. The guideline that can be deduced from this practice is that State bodies should abstain from participating in the establishment of political parties and should not limit the right to establish political parties on a national, regional and local level.

c. Legal framework

14. Wherever a legal regulation of political parties exists it must be consistent with the European Convention on Human Rights and the case law of the European Court of Human Rights. Parties must comply with these norms. When challenging a legal framework which is considered incompatible with higher norms, political parties must always take recourse to the use of legal means.

2. Guiding principles for political parties

15. The rule of law, democracy and human rights are three pillars of the European and the Council of Europe's constitutional heritage. Therefore, provisions on democracy, the rule of law and human rights' protection alongside norms regulating the political system and the separation of powers, stand among the basic principles of the Council of Europe's member States. Political parties are major actors in any democratic society, hence they enjoy the benefits of the guarantees of those principles by the State and, accordingly, they must also respect and promote these very same principles. The latter should be taken into account in

¹ During the first meetings of the Council for Democratic Elections it has been suggested by some of its members that the word "organisation" be used. This may be more suitable from an academic standpoint, but it emphasises the structural elements. "Association", on the other hand, is a legal concept, closely linked to the idea of free liaison among citizens. That is the reason for which this term is used in this Code.

² In some cases it is defined as an association of physical persons, citizens, etc.

the parties' organisation, functioning and financing.

a. Rule of law

16. Political parties must comply with the values expressed by international rules on the exercise of civil and political rights (UN Covenant and the ECHR). Parties must respect the Constitution and the law. However, nothing can prevent them from seeking to change both the Constitution and the legislation through lawful means.

b. Democracy

17. Parties are an integral part of a democracy, and their activities should ensure its good functioning. Hence, a commitment to internal democratic functioning reinforces this general function. Although few European states regulate in detail this requirement in detail, several countries require the party's internal structure and operation to be democratic.³ This positive experience could be shared between different Council of Europe Member States.

c. Non-discrimination

18. Political parties must promote the values of the ECHR and the principle of equality. Parties must not discriminate against individuals on the basis of any ground prohibited by the ECHR.

d. Transparency and openness

19. The parties should offer access to their programmatic and ideological documents and discussions, to decision-making procedures and to party accounts in order to enhance transparency and to be consistent with sound principles of good governance.

III. Internal organisation of political parties

1. Membership

20. Everyone must be free to choose to be a member of a political party or not and to choose which party to join. Whilst this principle is universally acknowledged, it is also very common among European parties that they have specific admission procedures. This serves to secure the necessary congruence between the views of the would-be member and the party. Best practices are those that clearly establish in party statutes the procedures and requirements for joining and which clearly state the criteria to be fulfilled to be members.

21. Parties may withhold membership from any applicant who rejects the values they uphold or whose conduct goes against the values and ideals of the party. Best practice requires the existence of disciplinary bodies and clear procedures for reasoned decisions. Parties must ensure that their members comply with the legal order.

22. 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. In some cases, such as gender discrimination, national and international legislation plainly prohibit these. In particular, discrimination on the

³ See art. 26 of the Andorran constitution; art. 21 of the German constitution; art. 51.5 of the Portuguese constitution; art. 6 of the Spanish constitution. Similar provisions may be found in Albania, Armenia, the Czech Republic, Finland, Slovakia and Turkey. On a different level, the principle is reflected on EU regulation 2004/2003 on funding of political parties.

basis of sex, race, colour, language, national or social origin, association with a national minority, property or birth should be avoided (cf. Article 14 ECHR).

23. Political parties must comply with any domestic legislation prohibiting affiliation to a party by specified officials (for instance, in cases of members of the army and police).

24. It is not unusual that parties establish different forms of involvement of individuals in their activities such as members, recognised sympathisers, collaborators, campaigners, etc. These statuses mark different thresholds of personal commitment. Hence, in order to identify the kind of commitments and to respect personal choices, a good practice is that party statutes clearly spell out the different rights and duties of each situation. Any person must be able to define freely his or her personal form of relationship with a party.

25. There is a well established practice among most European states, under the Council of Europe norms to grant voting rights, at least in local elections, to some or all their foreign residents.⁴ It is therefore fully in line with this development that, unless prohibited by domestic law, parties accept the accession of non nationals, who share their values. Nationality is not a solid ground on which to restrict the membership of non nationals, and the law should make this clear.⁵

26. Whilst some parties may aim at promoting the interests of specific age groups (for instance, retired persons), no national legislation accepts membership discrimination based on age (except what is referred to the legal voting age). On the contrary, inclusive practices that successfully include all age groups can be deemed an example of good practice. Moreover, it is a fairly common practice that parties create specific structures (for instance, for young people, particularly for those under the legal voting age) and develop specific programmes for integrating experienced members.

27. Transnational parties existing in the framework of the European Union are organised as federations of national parties. In most cases, this excludes direct membership. Direct membership does not erode democratic principles, and may reinforce the legitimacy of transnational parties.

2. Organisation

28. The general principles that inspire this Code also apply to the organisation of a political party. In particular:

- Representativeness and receptiveness. Applied within a party, these principles mean that the structure of the party and its procedures should represent the opinion of the members and they should be receptive towards these. Although this commitment may not entail a legally expressed obligation, their breach runs against the basic intuitive concept of democratic organisation.
- Responsibility and accountability. Organs (both collective and individual) should be

⁴ Recommendation 1500 (2001) "Participation of immigrants and foreign residents in political life in the Council of Europe member states". It declares: democratic legitimacy requires equal participation by all groups of society in the political process, and that the contribution of legally resident non-citizens to a country's prosperity further justifies their right to influence political decisions in the country concerned" (para. 4). In this connection the PACE "urges the governments of member states to grant the right to vote and stand in local elections to all migrants legally established for at least three years irrespective of their origin."

⁵ In a number of its opinions the Venice Commission has expressed its view that foreigners should have the right to participate in local political life. See also the European Convention on participation of Foreigners in Political Life.

held accountable and responsible to party members. Procedures should secure internal (and external) responsibility and rendering account of actions and policies. Although this commitment may not entail a legally expressed obligation, their breach runs against the basic intuitive concept of democratic organisation.

- Transparency. Parties should make public their statutes and their programme. Publishing financial reports improves transparency and public confidence in political parties. Even though this commitment may not entail a legally expressed obligation, their breach runs against the basic intuitive concept of democratic organisation.

29. The existence of party statutes is a legal requirement for recognising and/or registering them in several countries of the Council of Europe. Statutes must comply with constitutional and legal regulations and reflect the international rules contained in the ECHR. The lack of compliance with party statutes constitutes, in some legal systems, a violation that can be legally challenged in extra-party jurisdictions. To the extent that compliance may be legally required, legal force may be deduced from party statutes.

30. Party statutes normally regulate the rights and duties of their members, and the organs, organisation and procedures for decision making of the parties. In certain national legal systems, there is a legal requirement that party statutes must establish a procedure for changing them. When this legal requirement is further enriched with the explicit involvement of members aimed at seeking their support through voting procedures, it comes closer to being a paradigm of good practice.

31. As an internal norm, the statutes also have the very important function of setting disciplinary procedures that may affect the rights of members. In cases of failure to comply with these requirements or of serious infringements of party rules, disciplinary measures may be adopted, the severest measure being expulsion from the party. The measures must be governed by a procedure set out in the party statutes, with respect to the rights of the defence. In order to eliminate any impression of arbitrariness, the existence of redress mechanisms is an important element.

32. Wherever required by law, parties must define their national, regional or local organisation in their statutes. Wherever this is not required by law, these specifications contribute to enhance the good governance principles identified above. At each of these levels, bodies involving all members or their representatives, meeting on regular basis, must take the major decisions. Ideally, the supreme body (National congress or assembly) should meet at least once for each legislative term. In the interim periods the governing boards are usually responsible for decision-making. These boards, which are usually made up of members elected by the party membership, must be elected in accordance with the procedures set out in the party statutes.

33. The procedures for decision-making should be clearly specified in the statutes. When possible (i.e. on the local level), members should take decisions directly; otherwise, decisions should be taken on the basis of democratic delegation.

34. Party operational procedures should enable the opinions of grassroots members to be heard by party leaders.

3. Appointment of leaders and candidates for election

35. Whether directly or indirectly party leaders must be democratically chosen at any given level (local, regional, national and European). This means that members must be able to vote for their selection. Bottom-up practices for the selection of nominees and candidates are a healthy expression of internal democracy which is very positively perceived by citizens.

36. Equally, whether directly or indirectly, candidates must be democratically chosen for elections at any level (local, regional, national and European).

37. According to international regulation and practice, parties must comply with the principle of non discrimination on the basis of gender both for party office and election candidatures. Several national legislations and practices of several European parties have gone a step further to introduce quotas to either improve gender balance or, more directly, achieve equal representation of women and men in the elected body. Whilst these practices are country and party specific, the introduction of measures for gender equality is progressively becoming the dominant trend. On the contrary, continued and repeated situations of gender unequal representation cannot by any means be considered proof of good practice.

IV. Funding

38. Party funding must comply with the principles of accountability and transparency. The Venice Commission has extensively dealt with the issue of party financing in its Guidelines on financing of political parties.⁶

1. Sources

39. A political party may ask its members to pay dues, the amount of which it is free to fix, although the latter must not be discriminatory in nature. Non payment of dues may constitute grounds for expulsion from the party.

40. A party may receive donations within the limits of domestic law, which may prohibit donations from certain sources. By no means may parties interpret private donations as granting any right to influence and/or alter the party programme and/or party policies. Parties must adhere to laws that require disclosing the origin of private donations to parties.

41. Where legislation foresees public funding, political parties must have access to it subject to possible minimum requirements. The latter must be reasonable and non-discriminatory. Apart from different forms of funding provided for by law, any party must refrain from receiving assistance, financial or in kind, from any public authorities, particularly those directed by its members.

2. Restrictions

42. No party may receive clandestine or fraudulently obtained financial aid.

43. For the purposes of financing electoral campaigns, parties must make sure that their candidates comply with current regulations, particularly where there is a ceiling on electoral expenditure.

⁶ See also Guidelines and Report on financing of political parties (CDL-INF(2001)008).

3. Supervisory mechanisms

44. Every political party should include in its statutes mechanisms for audits of its accounts at the national level and for supervising accounting on any regional and local levels. It must be also subject to State authorities' audit, especially in the field of financing.

V. Political functions

1. Programme

45. One of the most important functions of political parties is the elaboration of a programme which in best practice results from the internal debate of party members and its approval according to established procedures. Programmes lead party action when the party is in power.

46. Party programmes are not legally binding contracts, their enforcement can not be legally demanded and all European states rely on the principle of representative democracy which excludes the imperative mandate. Nevertheless, the programme provides guidelines for citizens to understand and identify the party policies on given issues. In this way, programmes do not only serve to enlighten citizens but they also reflect a sort of "soft contract" or moral commitment between parties and voters. Hence, the publication of the programme not only satisfies the principle of transparency but it also serves to further promote accountability. Moreover, its permanent availability through the electoral mandate serves to check the adherence to the electoral promises.

47. A measure of good governance is if a party alters its programme after coming to power, it should explain why changes in the original programme have been introduced.

2. Training

48. Parties should provide civic and political training for their members. To that end the party may set up a training institute, which may receive specific aid in addition to that earmarked for the party itself.

3. Elections

49. The Council of Europe member States have different approaches to the regulation of political parties' activities and their participation in political life, notably in elections. Specific issues related to participation of political parties were treated in the report of the Venice Commission on the participation of political parties in elections⁷. In fact, political parties precisely aim to participate in the political process, mainly presenting candidates to elections. Of course, parties are important throughout the whole electoral process. But once the voters come directly into the scene, the fact of political representation loses part of its relevance. Once the elections have been held, and even during the election day, all the constitutional or legal rules (and, most particularly, those relating to the system of appeals and complaints) are based on specific circumstances, in which all candidates and citizens must receive equal treatment.

⁷ 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) .

50. It is widely acknowledged that the electoral system itself exercises an influence on the party's internal structure. For example, a candidate-based first past the post electoral systems hardly requires any party involvement in other issues than candidate's political backing and contribution to the campaign financing. On the contrary, in proportional systems with closed party lists, a party has very important prerogatives in defining, among other issues, the place of each given candidate on the list.

4. Performance in office and opposition

51. The general principles inspiring this Code apply also to performance in office and to situations where parties are in opposition

52. Party members should clearly distinguish between their allegiance to the party and their office duties. Implementation of the party programme is inherent to the notion of democratic election, but this must always be framed within the existing legislation concerning the exercise of public offices. Normally, national regulations prohibit public officers from abusing or seeking advantage of their ruling position to create discriminatory conditions for other political forces. But even when these obligations are not explicitly spelt out, their respect is consistent with the principles of this Code and their breach may be considered illegal.

53. Normally, the legal requirements of the function of opposition is lower than that for government or even non-existent. Opposition function implies scrupulous control, scrutiny and checks on authorities and officials behaviour and policies. However, good governance advises that parties in opposition (as well as ruling parties) refrain from practices that may erode the democratic debate and which, could eventually undermine the trust of citizens in politicians and parties.

54. Political corruption is generally considered to be a type of crime by all European legislations. Parties must therefore aim to fight corruption not only because of its criminal dimension, but also because widespread political corruption erodes the trust of citizens in parties in general. This threatens the whole democratic process⁸. Hence, mechanisms for the prevention of political corruption, such as ethical codes for party members in public offices, are welcome. Additionally, when the membership of a person who has been condemned on corruption charges is maintained, will lead citizens to believe that the whole party is corrupt (and they may even extend this view to apply to all parties) and contributes to questioning the fairness of politics in general. Therefore, the exclusion from office of candidatures and from party membership of persons condemned of corruption is fully coherent with basic democratic principles.

55. Representative mandate makes a representative independent from his or her party once it has been elected. This allows him or her to change party once in office. In some specific cases, there may be reasons that justify this (for instance, disappearance of political parties). In other cases, however, these practices may respond mainly to personal private interests or are a result of corruption. These erode the party system and undermine the trust of citizens in the electoral and political game. Even when the legal rules protect representatives, parties should be vigilant that these practices are not used in a fraudulent and counter-democratic way. Practices such as inter-party agreements to reject the inclusion of representatives elected on other party's lists have to be welcomed.

⁸ See also the Recommendation Rec(2003)4 of the Committee of Ministers of the Council of Europe to member states on common rules against corruption in the funding of political parties and electoral campaigns.

56. Parties should inform the civil society and voters about their action and adopt any possible measures and practices that would increase transparency, offer grounds for constructive criticism and provide a yardstick for measuring achievements.

5. International co-operation⁹

57. The practice of international co-operation among parties sharing the same ideology is a widespread one. Some parties have projected further their international dimension by assisting sister parties in third countries. In the past, these practices assisted, for instance, the democratic consolidation in a number of European countries. Whenever this assistance is compatible with national legislation and in line with ECHR principles and European standards, it must be welcomed as a good practice, since it contributes to creating solid democratic party systems.

⁹ *The rapporteurs might present an up-dated text of part 5 during the meeting of the Council for Democratic Elections on 18 October 2008.*