

**VENICE COMMISSION STANDARDS  
ON POLITICAL PARTIES AND ELECTIONS**

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**Introductory Remarks**

This report does not analyse the whole range of implications of parties and elections relationship and impact on political representation and constitutional government but concentrates on comparative constitutional and paraconstitutional interrelationship between parties and elections and of the international standards on the role of parties and elections to the representative government as provided in mainly the Venice commission documents.

Legal issues on registration, prohibition, financing and oversight of political financing of parties, elections and electoral marketing are omitted not because underestimation or assumed to be of less significance but for the simple reason that they would be approached in the other reports and panels by my respected colleagues and participants in this conference.

To avoid redundancy by repetition and the situation when my comparison attempts of the emerging national models and best practices would be tantamount of bringing water into a well I will limit my which should be considered as a part of the whole treatment of the issue by the speakers of the present panel.

My report is based on the international and especially European standards established mostly in the soft law instruments of the Venice Commission of the Council of Europe and OCSE ODIHR. Without any doubt issues of parties and elections relationship and its impact on political pluralism, inter party and intraparty democracy in comparative perspective deserve special attention but for the present purposes and fear from excessive length I will limit myself. In a few words from historical prospective pluralist representative democracy based on parties and competitive elections has aimed to prevent oligarchical trends that had been a long time tradition in the history represented by despotic one man rule, few party leaders' decisions in a smoked room or caucuses, well depicted by Moisei Ostrogorsky or Robert

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Michels iron law of oligarchy (Organization tantamounts oligarchy) or as Max Weber's treated parties as formations fighting for rulership with a trend to adopt authoritarian structure for themselves.<sup>2</sup>

Last but not least in the present paper the intraparty democracy aspects (inherent in the structure, functioning, organization within a party) and interparty democracy as one of the cornerstones of democratic constitutional governance founded on free, pluralist, competitive elections are treated from prospective of the Venice Commission documents and standards.<sup>3</sup>

### **I. Legal Regulation of the Functioning of Political Parties and the Issue of Intraparty Democracy**

Though political parties have been described by ancient historians especially in Greece and Rome and through the middle ages they have been strangers to ancient laws, constitutions and parliamentary statutes for a period of three centuries since the emergence of the modern nation states after the Westphalian peace treaty of 1648. It was only after the World War II that some of the constitutions<sup>4</sup> mentioned and legislation addressed the issue of Political parties.<sup>5</sup>

There are two basic models of regulation of issues of party internal democracy according to the degree of legal intervention in the political parties' life and activities.

Liberal approach - US or Anglo-Saxon gradual institutionalization leaving maximum open door to the autonomous party regulation based on the gradual evolution of the political and party systems in those countries, where parties appeared and disappeared without undermining the robust competitive interparty democracy.

Regulatory approach might be observed mostly in Europe and of which Germany and Austria are most typical examples striving for meticulous completeness and entering into detail regulation partly but not alone reactive to their past experience. Different countries follow one

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<sup>2</sup> K. von Beyme, *Political Parties in Western Democracies*, Gower, Aldershot, 1985, 232.

<sup>3</sup> See clearcut differentiation between these categories in K. Janda, *Political Parties and Democracy in Theoretical and Practical Perspectives*, 2002, NDI, p.21, [www.ndi.org](http://www.ndi.org).

<sup>4</sup> Among the first constitutional references on political parties have been the 1944 Island constitution and 1946 Guatemala contrary to the widely circulated facts that the first constitutions were 1946 Italian one and 1949 German Grundgesetz.

<sup>5</sup> For extensive treatment of legal regulation evolution in the world see Biezen, Ingrid van and Gabriela Borz (2009) 'The Place of Political Parties in National Constitutions: A European Overview', Working Paper Series on the Legal Regulation of Political Parties, No. 1. 2009, <http://www.partylaw.leidenuniv.nl/uploads/wp0109.pdf>.

of these patterns or mixture between them but the selected type does not determine the level of intraparty democracy in particular party.

Today three levels of regulation of parties elections interrelationship might be distinguished with the first two of them being legal (national and supranational) and the other one, though most extensive layer of norms belonging to the area of party autonomous regulations, constitutional conventions and democratic traditions. I will leave aside national constitutional and paraconstitutional level of regulation of political parties.

## **II. International Standards on Political Parties**

*In the preparation of its opinions and reports/studies related to political parties, the Venice Commission takes into account a number of international standards concerning in particular the freedom of association, the freedom of expression, and the prohibition of discrimination as set out, among others, in the International Covenant on Civil and Political Rights (ICCPR) and the European Convention for the Protection of Human Rights and Fundamental Freedoms (ECHR).*

“At the international level, the provisions of two basic instruments must be taken into account. The International Covenant on Civil and Political Rights (1966), developing the rights of this nature proclaimed by the Universal Declaration of Human Rights (1948), recognises the right to hold opinions and the right to freedom of expression (Article 19) alongside with the right to freedom of association (Article 22), notwithstanding the possibility of establishing legal restrictions to their exercise due to the special duties and responsibilities that these rights imply”.

“With a regional scope and for the purpose of advancing the collective enforcement of certain of the rights stated in the Universal Declaration, the European Convention for the Protection of Human Rights and Fundamental Freedoms (ECHR), agreed by the Council of Europe Member States, likewise recognises the rights to freedom of expression (Article 10) and to associate in political parties as part of the general freedom of assembly and association (Article 11)”.

“Other significant provisions of the ECHR include the prohibition of discrimination with regard to the enjoyment of the rights and freedoms set therein (Article 14) and the admission of restrictions on the political activity of aliens (Article 16). The case law of the ECtHR has

accordingly developed a consistent interpretation of the non-discrimination principle, making clear that not every distinction or difference of treatment amounts to discrimination. Protocol no. 12 to the ECHR, establishing a general clause of non-discrimination, and the Convention on the Participation of Foreigners in Public Life at Local Level (1992) are also relevant”.<sup>6</sup>

“The International Covenant on Civil and Political Rights (ICCPR) and the European Convention for the Protection of Human Rights and Fundamental Freedoms (ECHR) are the two main legally binding instruments applicable to states in this regard. In addition, the Convention on the Elimination of all forms of Discrimination against Women (CEDAW) is integral to understanding the states rule in ensuring gender equality with regards to political parties. Further, the rights and protections articulated in these legally binding documents are reiterated in International Customary Law through the Universal Declaration of Human Rights (UDHR). In addition, there are a number of political commitments persuasive upon OSCE states which are relevant to a full understanding of these issues. Such instruments include, most notably, the Document of the Copenhagen

Meeting of the Conference on the Human Dimension of the OSCE (Copenhagen Document). The Council of Europe (through both the Committee of Ministers and the Parliamentary Assembly), the European Commission on Democracy through Law (Venice Commission) and other bodies of the Council of Europe have also published a number of guiding documents which can provide an understanding of good practice with regards to legislation concerning political parties. A recent addition to this body of instruments is the United Nations Convention against Corruption (UNCAC) and the 1999 Council of Europe Criminal Law Convention on Corruption”.<sup>7</sup>

“The International Covenant on Civil and Political Rights and the European Convention on Human rights represent legal obligations upon states, having undergone a process of ratification. While the Universal Declaration of Human Rights and the Copenhagen

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<sup>6</sup> CDL-AD(2009)021 Code of Good Practice in the field of Political Parties, adopted by the Venice Commission at its 77th Plenary Session (12-13 December 2008) and Explanatory Report, adopted by the Venice Commission at its 78th Plenary Session (Venice, 13-14 March 2009), §§87-88-89.

<sup>7</sup> CDL-AD(2010)024 Guidelines on Political Party Regulation by OSCE/ODIHR and Venice Commission adopted by the Venice Commission at its 84th Plenary Session (Venice, 15-16 October 2010), §31.

Document do not have the force of binding law, the nature of these political commitments makes them persuasive upon signatory states”.<sup>8</sup>

CDL-AD(2010)024 Guidelines on Political Party Regulation by OSCE/ODIHR and Venice Commission adopted by the Venice Commission at its 84th Plenary Session (Venice, 15-16 October 2010), Annex A.

**A. International Conventions, United Nations and UN Specialized Agencies**

- International Covenant on Civil and Political Rights (1966) (ICCPR) Articles 2, 14, 19 and 22.

- Convention on the Elimination of All Forms of Discrimination against Women (CEDAW) Articles 3, 4 and 7.

- International Convention on the Elimination of Racial discrimination Articles 2 and 5.

- United Nations Convention against Corruption Article 7 (3).

- Universal Declaration of Human Rights Articles 19 and 20.

**B. Council of Europe**

- European Convention for the Protection of Human Rights and Fundamental Freedoms (ECHR) Articles 10, 11 and 14.

- European Convention for the Protection of Human Rights and Fundamental Freedoms-Protocol 12, Article 1.

- Framework Convention for the Protection of National Minorities Articles 4 and 7 - Convention on the Participation of Foreigners in Public Life at the Local Level Article 3.

- Decisions of the European Court of Human Rights.

- Recommendation and Resolutions adopted by the Parliamentary Assembly of the Council of Europe, in particular, Resolution 1308 (2002) Restrictions on political parties in the Council of Europe member states, Resolution 1344(2003) Threat posed to democracy by extremist parties and movements in Europe, Resolution 1546 (2007) The code of good practice for political parties.

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<sup>8</sup> Ibid, Annex A.

- Recommendations and Resolutions adopted by the Committee of Ministers of the Council of Europe, in particular, Recommendation (2003)4 on common rules against corruption in the funding of political parties and electoral campaigns.

- Council of Europe, Group of States against Corruption – GRECO, Evaluation Reports.

### **C. European Union**

- Charter of the Fundamental Rights of the European Union Articles 12, 21 and 23.

### **D. OSCE**

- Document of the Copenhagen Meeting of the Conference on the Human Dimension of the Conference on Security and Co-operation in Europe (CSCE) Articles 5.4, 5.9, 7.5, 7.6, 9.1, 9.2, 9.3 and 9.4.

A short overview of the regulation sources would certainly include Council of Europe Parliamentary Assembly Resolutions like 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).

### **III. *Political Parties and Elections in the Venice Commission Soft Law Comparative Studies and Opinions***

1) **CDL-AD(2010)024** Guidelines on political party regulation, by OSCE/ODIHR and Venice Commission - Adopted by the Venice Commission at its 84th Plenary Session, (Venice, 15-16 October 2010)

2) **CDL-AD(2009)002** Code of good practice in the field of Political Parties adopted by the Venice Commission at its 77th Plenary Session (Venice, 12-13 December 2008)

3) **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)

4) **CDL-AD(2002)** *The Code of Good Practice in Electoral Matters* 5) **CDL(2012)025** Comments of the Institute of Legislation and Comparative Law under the

Russian Federation government on the Federal Law of the Russian Federation on political parties

6) **CDL-AD(2011)046** Opinion on the draft law on amendments to the law on political parties of the Republic of Azerbaijan adopted by the Venice Commission at its 89th Plenary Session (Venice, 16-17 December 2011)

7) **CDL-AD(2011)006** Joint Opinion on the revised draft law on financing political activities of the Republic of Serbia by the Venice Commission and the OSCE/ODIHR - Adopted by the Venice Commission at its 86th Plenary Session (Venice, 25-26 March 2011)

8) **CDL (2013) 045 Compilation of Venice Commission Opinions and Reports Concerning Political Parties**

*As a specific type of “free association of persons”, the central importance of political parties in the functioning of a democracy, their foundational character to a pluralist political society and their fundamental role in the formation of the will of people have been constantly stressed by the Venice Commission in its opinions, reports, studies and guidelines on political parties. They are primordial to the forming parliaments and when the president is directly elected in the selection of the head of state and the bridge executive legislative relationships in the nation states members of the Council of Europe.*

**Political parties and elections relationship has been present in the definition of Political parties as their main function in constitutional democracies.** “A political party is ‘a free association of persons, one of the aims of which is to express the political will of citizens including through participation in the management of public affairs and the presentation of candidates to free and democratic elections.’ This definition of parties includes associations at any level that function in order to present candidates for elections or exercise political authority through election to governmental institutions.”<sup>9</sup>

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<sup>9</sup> CDL-AD(2010)024 Guidelines on Political Party Regulation by OSCE/ODIHR and Venice Commission, adopted by the Venice Commission at its 84th Plenary Session (Venice, 15-16 October 2010), §26.

“A political party is an association 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.<sup>10</sup>

Political pluralism, toleration and interchangeability of parties in governance and opposition (democratic alternation in power) based on the voters free will expressed in competitive and fair elections has been axiomatic to constitutional democracy. In principle it is difficult to imagine that an authoritarian or even more a totalitarian party might initiate, support and adhere to constitutional democracy requirements and principles. From another prospective it would be hardly possible for a party enforcing democratic values and principles to survive and compete for power when the governmental system rules out democratic values. Though intraparty democracy obviously does not coincide with interparty democracy both of them are closely interconnected and functionally related and sine qua non to constitutional democracies.

#### **IV. Logistics of Parties Participation in Elections**

Venice Commission guidelines and opinions on legislation on political parties underline the essential role of political parties in the electoral process and highlight the existence of some issues of great importance in the practical implementation of the right to free and fair elections.<sup>11</sup> They are the main players in the electoral process, the ground and rules of which are defined mainly by electoral laws, laws on political parties and political parties' regulation as charters and other normative party instruments. Consequently, the understanding of elections as one of the main reasons for the existence of political parties as basic elements of the 'electoral game'. National diversity due to specific –historical, cultural, political, social - national factors was reflected and laws often a reaction to national problems and experiences.

Parties are important throughout the whole electoral process. Issues in the electoral campaign may be grouped considering the phases which can be observed in any election.

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<sup>10</sup> CDL(2013)045 at 9, CDL-AD(2009)002 Code of Good Practice in the Field of Political Parties, adopted by the Venice Commission at its 77th Plenary Session (Venice, 12-13 December 2008), §§10-11.

<sup>11</sup> For this review I have relied on the comments provided by Messrs A. Sanchez-Navarro and H.-H Vogel, as well as on some remarks provided by the members of the Council for Democratic Elections. This report was adopted at the 16th meeting of the Council for Democratic Elections(Venice, 16 March 2006) and the 67th Plenary session of the Venice Commission (Venice, 9–10 June 2006).

### ***1. Registration of Political Parties and Candidates in the Election***

The *Code of Good Practice in Electoral Matters* considers universal suffrage as the first of the principles underlying Europe's electoral heritage which "means in principle that all human beings have the right to vote and to stand for election". However, this right may be subject to certain conditions, usually concerning age and nationality, providing electoral deposit.<sup>12</sup> The individual right to stand for election may be affected by two different sets of rules: first, by the national legislation concerning all parties and candidates to run in an election and, second, by rules adopted by the parties for nominating their candidates. Legal regulation has to comply with the European Court of Human Rights jurisprudence political pluralism as a precondition to democracy. Standards monitoring has to ascertain that additional requirements imposed on parties and candidates registration are not so heavy to hurt the social pluralism.<sup>13</sup>

The concept and basic function of political party has been to participate in the management of public affairs by the presentation of candidates to free and democratic election in an effort to gain and exercise political authority.<sup>14</sup> Political parties are, as some Constitutions and the European Court of Human Rights have expressly admitted, essential instruments for democratic participation and are entitled to register themselves and register their candidates in election. The requirement of registration has been accepted, considering it as not *per se* contrary to the freedom of association, provided that conditions for registration are not too burdensome. Requirements for registration of political parties are very different from one country to another: they may include, for instance, organisational conditions, requirement for minimum political activity, of standing for elections of reaching a certain threshold of votes, certain territorial representation, and minimal number of members for party registration. Generally, measures to limit the number of political parties able to contest in an election are not considered as incompatible and could be seen as reasonable for administration of elections

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<sup>12</sup> The Code of Good Practice in Electoral Matters (CDL-AD(2002)023rev), I, 1.a. See also Report on the abolition of restrictions on the right to vote in general elections endorsed by the Venice Commission at its 61st Plenary Session (Venice, 3-4 December 2004) (CDL-AD(2005)012).

<sup>13</sup> Some countries require the fulfilment of some additional conditions for applications to be presented. In particular, they may consist of a number of signatures (200 persons eligible to vote in the constituency, in Germany; one per cent of the voters registered in the constituency, in Spain), or of the deposit of certain amounts of money. While Albania, Latvia, "The Former Yugoslav Republic of Macedonia" or Slovakia, amongst others), 5 only parties are allowed to participate in elections. In most of the others, parties do enjoy a more advantageous position than independent or non-party candidates with respect to matters such as requisites for presenting candidates, access to public mass media.

<sup>14</sup> CDL-AD(2010)024 Guidelines on political party regulation, by OSCE/ODIHR and Venice Commission - Adopted by the Venice Commission at its 84th Plenary Session, (Venice, 15-16 October 2010), 126

and to prevent fragmentation. However, legislation should avoid restricting the number of parties through overly burdensome requirements for registration or expressions of minimum support. Not only do such restrictions inherently minimize the free functioning of political pluralism in society, they can easily be manipulated to silence parties or candidates who express opinions unpopular to those in power.<sup>15</sup>

The ability for all parties to access the ballot should be equal and free from discrimination on any grounds.<sup>16</sup>

In closed-list electoral systems, parties are able to assign or define the order of their candidates on an electoral list. This is acceptable, but parties should on the contrary be prohibited from changing the order of candidates within an electoral list after voting has commenced.<sup>17</sup>

## ***2. Nomination of Candidates for Election by Political Parties***

Venice Commission standards are extrapolated from the best practices established in countries member states of Council of Europe after extensive and in depth comparative studies. Due to time constraints this premise would be exemplified only on the process of selection and

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<sup>15</sup> **CDL-AD(2010)024** Guidelines on political party regulation, by OSCE/ODIHR and Venice Commission - Adopted by the Venice Commission at its 84th Plenary Session, (Venice, 15-16 October 2010),124

<sup>16</sup> While monetary deposits may be required, monetary deposits which are excessive may be deemed discriminatory as they limit the right of citizens without adequate resources to stand for election as protected under human rights instruments. As with other regulations on political parties, such fees must be applied objectively to all parties. States are recommended to also provide for non-monetary methods for registration in elections, such as expression of minimum support through the collection of signatures. Alternative non-monetary methods should be available just as registration should be determined based on a minimum level of support as opposed to financial status. When parties are required to show minimum support levels, they should be given adequate time to collect and file signatures. The system for the verification of signatures should be clearly defined in law so as to avoid the possibility of misuse. Particularly, requirements that a citizen only be able to sign for support of one party should be avoided as such a regulation could easily disqualify parties who attempted in good faith to fulfil this requirement. The system for ballot access should not discriminate against new parties. While parties who won mandates or a minimum percentage of votes in the previous election may be automatically eligible to be placed on the ballot, there must also be fair, clear, and objective criteria for the inclusion of new parties. Individual candidates should have an equal opportunity as those running as a political party candidates to access the ballot. However, legislation commonly allows candidates of parties to be exempt from particular requirements for ballot access which have already been fulfilled by the party. For example, party candidates may be exempt from the collection of signatures to show support if the party has previously collected signatures to gain recognition as a party. In such cases independent candidates may still be required to fulfil the signature support requirement. Such systems are not necessarily discriminatory; however, legislation must clearly outline what exemptions are applicable and ensure that requirements placed upon independent candidates are not more restrictive than those previously fulfilled by the party., **CDL-AD(2010)024** Guidelines on political party regulation, by OSCE/ODIHR and Venice Commission - Adopted by the Venice Commission at its 84th Plenary Session, (Venice, 15-16 October 2010),142-146

<sup>17</sup> **CDL-AD(2010)024** Guidelines on political party regulation, by OSCE/ODIHR and Venice Commission - Adopted by the Venice Commission at its 84th Plenary Session, (Venice, 15-16 October 2010), 129.

nomination of party candidates in the elections. European standards on nomination of candidates by parties in the elections do not prescribe particular method neither they attribute any method particular preference over the other devices. At the same time in the Guidelines of political party regulation some principles are emphasized “Parties must have the ability to determine party officers and candidates, free from government interference. Recognizing that candidate selection and determination of ranking order on electoral lists is often dominated by closed entities and old networks of established politicians, clear and transparent criteria for candidate selection is needed, in order for new members (including women, and minorities) to get access to decision-making positions. Gender-balanced composition of selecting bodies should also be commended.”<sup>18</sup> Selection of the party officers and candidates for public mandate, parties must also comply with the principle of non-discrimination on the basis of gender. The individual right to stand for elections may be affected by three sets of rules, those imposed by the state for registration as a candidate, those imposed internally by the party itself for selecting candidates and admissible restrictions such as age, residency or citizenship requirements. While the first set of rules must not unduly limit the right of free expression and association for parties, it is good practice (although not required by law) that the second set also respect the need to ensure candidates are chosen with the support of the party at large. Internal party rules for the selection of candidates should not be subject to regulation by the state except for ensuring that selection is consistent with the political party constitution.<sup>19</sup>

The selection of party officers and candidates for public mandate is critical for assessing the degree of intra-party democracy, which depends on different relevant features of the regulation of these procedures: regarding the selection of party officers, the main aspects to be taken into account are the selection device (party assembly, membership ballot, combined mechanisms) and the party units entitled to be selectors; concerning the selection of electoral candidates, the requirements for eligibility to vote and be nominated and voted must be considered together with possible party rules conferring pre-nomination or veto rights to the party leadership. The general rule has been that active and passive suffrage for party office and for the selection of candidates for public mandate has been attributed to party members.

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<sup>18</sup> CDL-AD(2010)024 Guidelines on political party regulation by OSCE/ODIHR and the Venice Commission, adopted by the Venice Commission at its 84th Plenary Session (Venice, 15-16 October 2010), §113.

<sup>19</sup> CDL-AD(2010)024 Guidelines on political party regulation, by OSCE/ODIHR and Venice Commission - Adopted by the Venice Commission at its 84th Plenary Session, (Venice, 15-16 October 2010), 127.

Nevertheless, their rights are actually limited by the specific regulation for the provision of each party body and electoral candidates' list, introducing formal requirements of seniority, membership of other bodies within the party or in public institutions, or support by certain bodies or critical masses from their members. Different levels of the party intervene in the selection of party officers and candidates for public mandate, depending on the party post or public office for which they are being elected. With regard to the selection of candidates for public mandate, the practices of the political parties are quite inclusive, opening the selection of prospective elected representatives to the participation of party members. Democratization of nomination processes has been marked by the widening of the selecting bodies within the parties. For a development lasting more than a century methods for nomination evolved from monopoly of a caucus, cabal or party oligarchy, to the highest representative party organs and to direct participation by party members or electorate in open or closed primaries. Some restrictive practices still subsist, securing pre-selection or veto rights in favour of central party elites to ensure that they retain the ability to include certain nominees and exclude the unwanted ones.<sup>20</sup>

In Central and Eastern European region, political parties have been strongly centralised and dependent on their leadership after the fall of communism. In this context, the prevailing trend is that inner leadership or the leader himself controls the selection of candidates at all levels and country-wide ballots, in particular, are dominated by the central authority, with the leader at the top, closely followed by the inner leadership. Even where the local party organisation has attained certain autonomy, the central party leadership maintains a veto right over local or regional ballots.<sup>21</sup>

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<sup>20</sup> However, examples of inclusive procedures have been developed by the Labour Party and the Liberal Democrats in the United Kingdom, where members of the relevant electoral area are invited to participate in the process of short-listing and final selection of candidates through direct ballot. The Social Democratic Party in Sweden admits proposals of candidates by any individual member and other party constituencies though final selection corresponds to an assembly of delegates (election conference) unless one third of the present delegates call for a general vote among members, who will then be able to draw up the ballot paper by ranking candidates according to their preferences. So-called primaries may be conducted by United Left in Spain for the selection of the presidential candidate for internal elections. Primaries are thoroughly regulated by the Spanish Socialist Workers' Party, admitting proposals for candidates by party members (10 per cent of them for the particular case of the presidential candidate) and submitting the final selection to a party-wide ballot.

<sup>21</sup> The exchange of money for nominations of the sponsors at the forefront of candidates' lists, thus securing a seat for them in parliament, has become a common practice in some of these countries. However, different features of the democratic transition and institutional path of some other countries (like the division of the state into multiple constituencies in the Czech Republic) have favoured a certain degree of independence for regional and local levels of party organisation.

Nomination processes are deemed democratic or not according on degree of centralization, that is to say, how much power is given to regional, district or local bodies in the process of selection. Secondly, the scale of participation in the nomination is also considered: The more people that are involved in the selection, the more democratic the procedure is. Finally, also the scope of decision-making - number of candidates vying for nomination - is important. The nomination process is governed by law only in a few countries. In most legal systems parties are entitled to decide themselves upon the most appropriate processes and internal regulations.

### ***3. Parties and Election Management Bodies***

There are different approaches in the Council of Europe Member States to the composition of the electoral management bodies and to the procedure of nomination of their members. However, the electoral management bodies should be composed in a way to ensure the trust of all forces taking part in elections and individual voters in their impartiality and professionalism for their top function is to guarantee the fairness of the electoral process.<sup>22</sup> This aim may be reached by different means although composition of election management bodies greatly differs from country to country. Venice commission recognizes these differences and does not look, as some comparative academics engaged on social engineering would appeal for unification built on convergence of peculiar systems, attempt to provide a single example of electoral managing bodies' structure, composition and functions for all the states. Role of political parties during the process of formation of these bodies ranges from minimal to extremely significant in the countries member states of the Council of Europe.<sup>23</sup>

Different models of election management bodies should meet the requirements that such a body should be balanced, impartial, and competent. While some election management bodies have no partisan component, other states have adopted the practice of forming election management bodies with some or all members nominated by the major political parties. In

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<sup>22</sup> See *The Code of Good Practice in Electoral Matters* (CDL-AD(2002)23rev), Part II, item 3.1 para 71.

<sup>23</sup> In some countries, such as Germany, the electoral law does not specify whether the assessors appointed to form the Electoral Committees have any partisan component. In Spain, Higher Electoral Committees are mainly composed of judges, with a number of experts who have to be jointly nominated by parties with seats in the Lower Chamber, whilst Polling Station Committees are formed by drawing lots among voters registered in each Polling Station, and by the observers that all parties can nominate (although, in practice, only major parties are able to have representatives in most of the Polling Stations). Other countries, such as Ukraine, Bulgaria etc. foresee Election Commissions formed by representatives of concurrent parties, with the offices of president, deputy president and secretary proportionally distributed among parties on their proposals to the forming institutions.

such cases, high-level positions within the body must be dispersed among parties to ensure balance.<sup>24</sup> However, national electoral management should be in line with the democratic constitutional values and principles based on the European constitutional heritage. In this respect, different elements should be considered. For instance, the different kinds of election management bodies, their size, and the way their members are nominated, or which parties have the right to participate in this process. It could be argued that the lower Committees have to deal with the working of the voting process, solving problems as fast as possible, and so they have to be functional and—really and apparently—trustworthy, in political terms. That implies that they possibly should not include too many members, and that their working should not be submitted to politically-oriented criteria. In this sense, bodies, mainly or totally composed of politically-nominated members, sometimes do not seem to be a practical option.<sup>25</sup> On the other side, higher bodies mainly have to deal with complaints or particular problems which have to be solved with more general criteria, in an almost-judiciary function. In this case, the number of people is possibly less important, and of course the confidence of the concurrent parties must be assured, be it because of their independence and technical expertise of their members, or because the parties (all or just the main ones? In fact, the guarantee of pluralism does not require that all parties participate in every sphere of the electoral organisation. The mutual control among some of the main ones may be enough) have a role in their nomination process.

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<sup>24</sup> The inclusion of partisan persons on election management bodies should be carefully considered by the state when developing legislation. If such a system is chosen, it must clearly state the required qualifications for nominees and the procedures for political parties to nominate members to EMBs., **CDLAD(2010)024** Guidelines on political party regulation, by OSCE/ODIHR and Venice Commission - Adopted by the Venice Commission at its 84th Plenary Session, (Venice, 15-16 October 2010), 155,156

<sup>25</sup> See the Venice Commission and OSCE/ODIHR adopted the *Preliminary Joint Opinion on the Revised Draft Amendments to the Electoral Code of Armenia* (CDL-AD(2005)008) which underlines the “strong partisan interest” of the members of the Central Electoral Commission, and states that “the rule of having the commissions constituted only by parliamentary appointments... without any non-partisan based appointments... that the commissions cannot be regarded as being sufficiently pluralistic and providing an adequate balance of overall impartiality and independence”, highlighting the importance of “inclusiveness of political *and civil* interests in order for there to be a sufficient level of public confidence in the election processes and results” (emphasis added). Similarly, the already mentioned *Joint Recommendations on the Electoral Law and the Electoral Administration in Albania* (CDL-AD(2004)017) express a “major concern” about “provisions regulating formation of electoral commissions... [which] have given an extremely dominant role to each of the two main political parties at every level of the election administration”, establishing a “highly politicized environment”.

#### ***4. Political Parties and Observers***

During the electoral process, party observers and representatives must have the same opportunities for defending their interests in any sphere of political activity. It does not necessarily follow that all parties do have to take part in every organ of the electoral administration, but it implies that all concurring parties must have the right to be heard in the decision-making process and to complain against any legally ungrounded decision. It is important that representatives of the political parties keep their observer status not just until the voting is over but up to the date when the last disputes concerning election results are settled. This could have a positive impact on the credibility of the results.

Paragraph 8 of the OSCE Copenhagen Document states the importance of both domestic and international observers in elections. As a part of domestic observation, it is particularly important that political parties have the right to have observers present on Election Day. While it will be inherently easier for parties to exercise this right than independent candidates (given the pre-existence of party membership networks and communication tools), such a right should be explicitly made available to all political contestants equally in legislation. Observers should have a right to see all aspects of the voting process, to express concerns if such arise, and to report problems to their respective parties throughout the day. It is good practice that electoral legislation includes a provision which allows party observers to obtain copies of the voting results at the polling station and all levels of election administration. Such a practice can greatly increase the credibility of the process. All parties should be able to fully exercise their right to have observers present throughout the voting, counting, and certification processes. Legislation must award all parties due standing before bodies tasked with electoral dispute resolution to ensure effective redress for any alleged violations against the rights of parties and their candidates. Such practices should be protected by legislation as positive measures which can increase the credibility of electoral results.

#### ***5. Financial Issues of the electoral campaign***

Financial issues including the equality principle and the use of public (State) resources .The Venice Commission has already established guidelines on the financing of electoral campaign expenses, which differs from regular financing. Due to a special report of Mr. Hamilton I will not deal with this issue.

**6. Parties and Access to (public and private) media**

Access to mass media is the best instrument for parties to transmit their message to electors. Therefore, that is possibly the main resource that parties may seek. And the access to publicly-owned media is, at the same time, the least expensive of the aids that the State authorities may offer, so that there is a clear interest from both sides. Of course, problems will arise when deciding the details of that access (time provided to the different parties and/or lists, presence of the campaign in the news, etc.). In this respect, the existence of a model of party registration may also be taken into account, giving some advantages to registered parties, but it cannot be used as a discriminatory instrument, depriving other social sectors of any opportunity to defend<sup>26</sup> their positions in a fair campaign. The Code of good practice in electoral matters provides that: *“Equality of opportunity must be guaranteed for parties and candidates alike. This entails a neutral attitude by the state authorities, in particular with regard to: the election campaign and the coverage by the media, in particular by the publicly owned media [...]”*

The allocation of free airtime is integral to ensuring all parties, including small ones, are able to present their programs to the electorate at large. While the allocation of free airtime on state-owned media is not legally mandated through international law, it is strongly recommended that such a provision be included in relevant legislation as a critical means of ensuring an informed electorate. When made available, free airtime must be allocated to all parties on a reasonable basis and consistent with the principle of equal treatment before the law. This principle with regard to the media refers not only to the time given to parties and candidates but also to the timing and location of such space. Legislation should set out requirements for equal treatment, ensuring there are no discrepancies between parties through the allotment of prime viewing times to particular parties and late-night or off-peak slots to other parties.

In the field of private media, problems are clearly different. The principle of fair elections must be compatible with that of free elections: if all parties and/or candidates have the right to campaign, and to address their messages to all citizens, it is also true that many private media have clear social, ideological and political orientations, which may be considered when

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<sup>26</sup> Code of Good Practice in Electoral Matters (CDL-AD(2002)23rev), I.2.3.a.,1.2.3.c.

defining a right to access to all mass media. This cannot justify the definition of different economic conditions for the different parties' publicity, but it might even support claims to deny the access of some parties to some media.

Private media cannot always be regulated as strictly as publicly owned media. However, private media outlets may play a fundamental role in the public process of elections. Some OSCE states impose a regulation that if airtime is offered on private media, then it must be offered to all parties at the same monetary rate.

A key role of the media in any election is to ensure that the public has sufficient information on all candidates to make an informed choice. As such, it is a good practice to ensure that women and minority candidates, who often receive less funding or support than their male counterparts, are ensured a fair and unbiased share of media coverage.<sup>27</sup>

#### ***6. Freedom of Assembly for Political Parties***

All political parties should be able to fully exercise the right to peaceful assembly, particularly during the election period. Freedom of assembly should only be limited on the basis of legitimate and objective grounds necessary in a democratic society including, public order, public safety, protection of health and morals, protection of the rights and freedoms of others, and national security. For example, a silence period in the immediate pre-election period (generally 48 hours or less) is an accepted restriction on campaign activities which necessitates a limit on public party assemblies during this time. The *OSCE/ODIHR " Venice Commission Guidelines for Freedom of Peaceful Assembly* provide an overview of appropriate regulations and recommendations regarding the right of freedom of assembly, and should be observed when developing legislation relevant to political parties. Parties should enjoy a right to organize and participate in public rallies and legitimate campaigning free from undue restriction.<sup>28</sup>

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<sup>27</sup> CDLAD(2010)024 Guidelines on political party regulation, by OSCE/ODIHR and Venice Commission - Adopted by the Venice Commission at its 84th Plenary Session, (Venice, 15-16 October 2010), 149,151, 152.

<sup>28</sup> As noted in the OSCE/ODIHR Venice Commission Guidelines for Freedom of Peaceful Assembly p.5, this right may extend to access to any place or service intended for public use.

### **7. *Parties and Issues on the Election Day***

#### a) Role of party observers

It is particularly important to guarantee the possibility of all parties and candidates to have observers during the Election Day.<sup>29</sup> In this respect, it is evident that parties have some elements –permanent organization, membership, and so on- which help them in this task, and that are much more difficult to dispose of for other non-partisan candidates. The observers must have the right to control all the spheres of the voting process (polling boxes, election committees at all levels), to intervene – at least, to be heard- in the resolution of possible conflicts which may arise, and to inform the parties which they represent about the problems during the observation so that the latter could lodge appeals against any decision not grounded in legal terms.

#### b) Complaints procedures

The *Code of Good Practice in Electoral Matters* insists in the importance of “an effective system of appeal.” And, as has just been pointed out, that requirement has to be applied to the whole system, including of course the appeals which can be posed on Election Day by individual citizens or by any other subject. In the context of elections, an effective system of appeal would mean that any decision by any state authority can be challenged and that a decision by a competent body is taken immediately. Any delay in complaints and appeals procedures can seriously compromise the credibility of an election.

### **8. *Contesting Electoral Results***

a) Contesting electoral results. There is a list of persons who enjoy the right to act as the **authorised proxy** of the claimant (plaintiff, accuser, or appellant) and the respondent (defendant). As well as the issue of respondent (defendant) the aspect of **representatives** of relevant parties is very topical in terms of practicality.

Challenging electoral results and dispute resolution in the elections in the Council of Europe member states substantially or formally varies quite a lot so the common denominators and best practices should be extrapolated after conducting in depth analytical comparative

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<sup>29</sup> The Code of Good Practice in Electoral Matters (CDL-AD(2002)23rev), Part II, item 3.2., item 3.3.

studies.<sup>30</sup> Complaints procedure follows different paths and not and it is necessary to be addressed contextually and not as a legal scripture alone by nomothetic approach.<sup>31</sup>

The “deadlines for taking decisions on complaints and appeals”, including of course the decision of contesting electoral results, have to be “realistic”. This is obviously an important element of the whole system of appeal, but the precise timeframe must vary not only from one country to another (depending on multiple factors, such as the systems of ballot-counting and of transmitting results), but also from case to case (different elections, which may be held in different contexts: uninominal districts or national constituencies, for instance; different chambers...). It does not seem easy to draw general conclusions about what deadlines should be admitted or not, and it will greatly depend on the circumstances.

### III. Conclusion

The Council of Europe Member States have different approaches to the regulation of political parties' activities in elections. However, there are some common trends and concerns as to the equality of different forces seeking political representation, financing of parties and issues related to the internal operation of parties.

A set of common standards has been developed already and for certain number of fields is in the process of drafting. In the areas of equal treatment of different parties and individual candidates competing in elections, possibility to have observers during the elections until the last complaints are dealt with by the competent bodies, transparency in campaign financing

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<sup>30</sup>A good example is the report of Serhii Kalchenko, Comparative Analysis of the European Standards on Electoral Complaints and Appeals in the Council of Europe, and Practices in the Member States, Strasbourg, 29 October 2012.

<sup>31</sup> For example, article 66.4 of the Electoral Code of the Republic of Moldova contains the only specific provision regarding a complaint lodged on behalf of an electoral competitor by its authorised *proxy*, who is registered by the relevant election management body, or whose authority is certified by a power of attorney according to the *general* rules of the legislation. Under article 133.4 of the Electoral Code of the Republic of Albania, parties are entitled to be *represented* during administrative proceedings by their authorised representatives or by making a declaration in the plenary session. When electoral subjects are represented at the Central Election Commission, this is usually done by their *accredited* representatives to this Commission. Article 178 of the Code of Administrative Adjudication of Ukraine provides for regulation similar to the Moldovan Electoral Code, stating that authorised representatives of political parties and proxies of candidates registered by the relevant election commission enjoy the right to *represent*, correspondingly the party and candidate *without* any power of attorney. At the same time, the general norms establishing the rules of representation of parties, envisaged by article 56 of this Code, may also be applied. This article provides for the possibility to represent a party on a power of attorney issued according to the general requirements of the civil legislation. In addition, it is envisaged by article 108.1 of the Law of Ukraine on Parliamentary Election that a proxy shall be given the right to lodge a complaint to the relevant election commission on behalf of the candidate concerned. A party agent is also entitled to lodge a complaint on behalf of the political party concerned.

and accountability of parties for the resources used, equal access to mass media etc. standards were gradually developed and established during the last decade.

Regarding the rules for the nomination of candidates for different elections effective complaints and appeals system, a speedy procedure for settlement of different electoral dispute resolution during the whole electoral process, respect of the principle of proportionality in case of sanctions and etc. preparation of standards is under way.

## **СТАНДАРТИ НА ВЕНЕЦИАНСКАТА КОМИСИЯ ЗА ПОЛИТИЧЕСКИТЕ ПАРТИИ И ИЗБОРИТЕ**

*Евгени Танчев<sup>1</sup>*

### **РЕЗЮМЕ**

Статията проследява и анализира стандартите на Венецианската комисия за демокрация чрез право към Съвета на Европа относно ролята и участието на политическите партии в изборите. Те се основават на мекото право, обобщено в кодексите на добрите практики за партиите и изборите, както и на насоките за правно регулиране на политическите партии, приети съвместно с Организацията за сигурност и сътрудничество в Европа.

Разгледана е ролята на партиите в регистрацията и издигането на кандидати, и определянето на наблюдатели в избори.

Особен интерес представлява решаването на споровете в изборите и участието на политическите партии и кандидатите в тях.

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