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Code of good practice in the field of political parties

Report[1]
Committee on Political Affairs and Democracy
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Summary

Based on the experience of political parties in Council of Europe member states and taking into account both national legislation and practice in the field of regulation of activities of political parties and party statutes, the new code of good practice in the field of political parties offers political parties a systematic repertoire of best practices in Europe. Additionally, it offers public authorities and courts a yardstick to assess the practice of parties. It also promotes democratic principles such as equality, dialogue, co-operation, transparency and the fight against corruption.

The Political Affairs Committee, therefore, welcomes the adoption of the new code by the Venice Commission and proposes that the Parliamentary Assembly endorses it and forwards it to national delegations and parliaments asking them to disseminate it among their political parties.

1. Reference to committee: Bureau decision, Reference 3589 of 28 September 2009.

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A. Draft resolution[2]

1. The quality of today's representative democracy largely depends on the functioning of political parties, in particular their internal organisation, transparency, funding and quality of their political programmes. A large part of the challenges that current democratic systems face coincide with those faced nowadays by political parties.

2. This is why in its Resolution 1546 (2007) on the code of good practice for political parties, after recalling its own previous work in this field, as well as relevant work carried out by the European Commission for Democracy through Law (Venice Commission) and the Council of Europe Forum for the Future of Democracy, the Parliamentary Assembly invited the Venice Commission to elaborate a code of good practice in the field of political parties which would take into account the elements and principles enumerated in its Resolution.

3. The Assembly, therefore, welcomes the adoption of the code of good practice in the field of political parties by the Venice Commission and endorsed it. The new code, as requested by the Assembly, aims at reinforcing political parties' internal democracy and increasing their credibility in the eyes of citizens, thus ultimately contributing to the legitimacy of the democratic process and institutions as a whole and the development of democracy in Council of Europe member states.

4. Based on the experience of political parties in Council of Europe member states and taking into account both national legislation and practice in the field of regulation of activities of political parties and party statutes, the new code of good practice in the field of political parties offers political parties a systematic repertoire of best practices in Europe. Additionally, it offers public authorities and courts a yardstick to assess the practice of parties. It also promotes democratic principles such as equality, dialogue, co-operation, transparency and the fight against corruption.

5. In the light of the above considerations and in accordance with the procedure followed for the code of good practice in electoral matters and for the code of good practice on referendums, the Assembly decides to forward the code of good practice in the field of political parties to national delegations and parliaments and asks them to disseminate it among their political parties so that it can be applied in all Council of Europe member states.

2. Draft resolution unanimously adopted by the committee on 29 April 2010.

B. Explanatory memorandum by Mr Agramunt Font de Mora, rapporteur

1. Introduction and origin of the code

1. The quality of today's representative democracy largely depends on the functioning of political parties, in particular their internal organisation, transparency, funding and quality of their political programmes. A large part of the challenges current democratic systems face coincide with those faced nowadays by political parties.

2. Democracy being one of the three pillars of the Council of Europe, the Organisation has so far made substantial work on issues related to political parties. This work has in particular been carried out by the Parliamentary Assembly, through its Political Affairs Committee,[3] the European Commission for Democracy through Law (Venice Commission),[4] as well as the Forum for the Future of Democracy.[5]

3. The most recent Assembly report on the subject was prepared by former Assembly member Mr Van den Brande and debated by the Assembly in April 2007, leading to the adoption of Resolution 1546 (2007). In this resolution, the Assembly invited the Venice Commission to elaborate a code of good practice in the field of political parties which would set out the most important elements for their conduct. The aim of this code would be to collect and share ideas, experiences and strategies which strengthen the role of political parties in a democratic society and promote democratic principles such as equality, dialogue, co-operation, transparency and openness. The new code should contribute towards establishing common standards in the field of functioning of political parties and encourage a re-evaluation and possible review of their internal rules and practices.[6]

4. The former rapporteur, Mr Van den Brande, had in particular proposed that, once adopted by the Venice Commission, the new code should be endorsed by the Assembly which would then recommend its member states to comply with its provisions and refer to its examples of good practice. The Assembly should also ask the Committee of Ministers to endorse the new code. The same procedure had previously been followed for the adoption of the code of good practice in electoral matters in 2002 and for the code of good practice on referendums in 2007.

5. The Assembly approved the proposals made by the former rapporteur, including on the procedure to be followed, and the Council of Democratic Elections of the Venice Commission was seized on the subject matter.

6. After having been examined by the Council for Democratic Elections, the code of good practice in the field of political parties was adopted by the Venice Commission at its 77th Plenary Session in December 2008. The explanatory report was adopted by the Council for Democratic Elections at the same time, in December 2008, and by the Venice Commission a few months later, in March 2009.[7]

7. In September 2009, the Bureau of the Assembly referred the new code to the Political Affairs Committee for report. I was appointed rapporteur in January 2010.

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3. See 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; Resolution 1264 (2001), Resolution 1320 (2003) and Recommendation 1595 (2003) on a code of good practice in electoral matters; see also the report I am preparing on the fight against extremism: achievements, shortcomings and failures.

4. See the following documents: CDL-INF(2000)001, Guidelines on prohibition and dissolution of political parties and analogous measures adopted by the Venice Commission in December 1999; CDL-INF(2001)008, Guidelines and report on the financing of political parties adopted by the Venice Commission in March 2001; CDL-AD(2004)007rev, Guidelines and explanatory report on legislation on political parties: some specific issues, adopted by the Venice Commission in March 2004; CDL-AD(2006)014, Opinion on the prohibition of financial contributions to political parties from foreign sources adopted by the Venice Commission in March 2006; CDL-AD(2006)025, Report on the participation of political parties in elections adopted by the Council for Democratic Elections in March 2006 and the Venice Commission in June 2006.

5. In fact, the motion for a recommendation on the establishment of a code of good practice for political parties was tabled just after the first meeting of the forum, held in Warsaw in November 2005. The second meeting of the forum, held in Moscow in October 2006, was entirely devoted to the "role of political parties in the building of democracy". Issues related to political parties were also discussed in the last session of the forum, held in Kiev in October 2009, on "electoral systems: strengthening democracy in the 21st century".

6. See Doc. 11210.

7. See document CDL-AD(2009)021 (www.venice.coe.int/docs/2009/CDL-AD(2009)021-e.asp).

2. Specificities of the code

8. The new code of good practice in the field of political parties introduces a new approach to the issue in comparison with former texts on political parties.

2.1. Its aim

9. Its explicit aim, as requested by our own Resolution 1547 (2007), 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, co-operation, transparency and the fight against corruption.

2.2. Its addressees

10. Always in accordance with the Assembly request, the new code is addressed to political parties while public authorities are not considered to be the final addressees of the code.

2.3. Its object and nature

11. The object of the new code differs significantly from the object of former codes: despite the use of the word "code", it must not be understood as a codification of norms, but as a systematic "repertoire of best practices" (not legal norms) addressed to public agents, such as political parties and their members (and not to public authorities). The idea is to offer political parties guidelines stemming from the common and best practices in Europe and, additionally, offer public authorities and courts a yardstick to assess the practice of parties.

12. It is thus clear that its nature is not mandatory; the code cannot prescribe rules, nor can it require enforcement by public authorities (apart from the specific cases in which there may exist precise norms).

2.4. Its sources

13. As requested by the Assembly, the new code of good practice in the field of political parties is based on the experience of political parties in Council of Europe member states and drawn from existing good practices, taking into account both national legislation and practice in the field of regulation of activities of political parties and party statutes.

14. Additional sources have been texts adopted by the Assembly and the Venice Commission previously.[8] Finally, the code has also drawn valuable information from the reports of certain international organisations and foundations.

3. Structure and highlights

15. The code of good practice in the field of political parties, in its first section on general principles, starts by defining a political party as a specific type of association which enjoys the guarantees of Article 11 of the European Convention on Human Rights. It thus underlines that prohibition or enforced dissolution of political parties may only be justified in the case of parties which advocate the use of violence or use violence as a political means to overthrow the democratic constitutional order.[9] It then recalls the guiding principles for political parties: rule of law, democracy, non-discrimination, transparency and openness. The parties should in particular offer access to their programmatic and ideological documents and discussions, to decision-making procedures and to party accounts.

16. In its second section dealing with the internal organisation of political parties, the code underlines that everyone must be free to choose whether to be a member of a political party or not and which party to join. European best practices and legislation share the principle of non discrimination (for instance based on gender). Unless prohibited by domestic legislation, it is in line with developments in Europe that parties accept membership of non-nationals who share their values (so that non-nationals can for instance participate at least in local political life). Inclusive practices that successfully include all age groups can be deemed an example of good practice.

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8. See above footnotes 3 and 4.
9. See also CDL-INF(2000)001, Guidelines on prohibition and dissolution of political parties and analogous measures adopted by the Venice Commission in December 1999.

17. The organisation of political parties should be subject to the main principles of representativeness and receptiveness, responsibility and accountability, as well as transparency. In best practices, exclusion procedures need to be submitted to disciplinary bodies and there must be clear procedures for reasoned decisions.

18. Party leaders must be democratically elected at any given level. 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.[10]

19. In its third section on party funding, the code specifies that such funding must comply with the principles of accountability and transparency.[11] By no means may parties interpret private donations as granting any possibility to influence and/or alter the party programme and/or party policies. Minimum requirements for access to public funding, when foreseen, must be reasonable and non-discriminatory. Party statutes should include mechanisms for audits of party accounts at the national level and for supervising accounting on regional and local levels. Parties must also be subject to state authorities' audit, especially in the field of financing.

20. Finally, in its fourth and last section dealing with political functions, it is underlined that one of the most important functions of political parties is the elaboration of a programme. Programmes lead party action when the party is in power. Party programmes are not legally binding contracts (but sort of "soft contracts" or moral commitments between parties and voters) and cannot be legally enforced. All European states rely on the principle of representative democracy, which excludes the imperative mandate. In best practices, party programmes are the result of the internal debate of party members and they are approved according to established procedures.

21. The electoral system itself exercises an influence on the party's internal structure. For instance, in a candidate-based, first-past-the-post electoral system, parties are only involved in candidates' political backing and contribution to the campaign financing, whereas in a proportional system with closed party lists a party has very important prerogatives, including in defining the place of each given candidate on the list.

22. The code makes it clear that the general principles that form its basis apply both to performance in office and to situations where parties are in opposition. Party members should clearly make a distinction between their allegiance to the party and their office duties. Mechanisms for the prevention of political corruption, such as ethical codes for party members in public offices are welcome. The exclusion from office of candidatures and from party membership of persons convicted for corruption is fully coherent with basic democratic principles.

23. Last but not least, the practice of international co-operation among parties sharing the same ideology and even of assistance to sister parties in third countries, provided that the latter is compatible with national legislation and in line with the European Convention on Human Rights' principles and European standards, is to be welcomed since it contributes to creating solid democratic party systems.

4. Conclusions

24. Like my predecessor, Mr Van den Brande, I am convinced that the new code of good practice in the field of political parties, as adopted by the Venice Commission on the basis of the elements provided by the Assembly in its Resolution 1546 (2007), will significantly contribute to reinforcing political parties' internal democracy and increase their credibility in the eyes of citizens, thus contributing to the legitimacy of the democratic process and the development of democracy in all Council of Europe member states.

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10. See also CDL-AD(2009)029, Report on the Impact of Electoral Systems on Women's Representation in Politics adopted by the Council for Democratic Elections at its 28th meeting (Venice, 14 March 2009) and the Venice Commission at its 79th plenary session (Venice, 12-13 June 2009)

11. See also CDL-INF(2001)008, Guidelines and report on the financing of political parties adopted by the Venice Commission in March 2001.

25. I therefore propose, in accordance with the procedure already agreed by the Political Affairs Committee when adopting the 2007 report, that the Assembly endorses the code of good practice in the field of political parties by recommending that national parliaments disseminate it among political parties so that it can be applied throughout member states.