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Democracy and the limitation of mandates

Information report[1]
Committee on Political Affairs and Democracy
Rapporteur: Mr Mike HANCOCK, United Kingdom, Alliance of Liberals and Democrats for Europe

Summary

The report refers to a study on "Democracy, limitation of mandates and incompatibility of political functions" prepared by the Venice Commission at the request of the Committee on Political Affairs and Democracy.

The committee concludes that this study is a valuable source of information on the constitutional and legal arrangements with regard to limitations on the number of terms in office for presidents which exist in Europe and in some other countries.

It recommends the study to national, observer and partner for democracy delegations to the Parliamentary Assembly of the Council of Europe, and to their respective parliaments, as food for thought for their work aimed at improving democracy.

At the same time, taking into account the variety of constitutional and legislative set-ups across Europe, the report concludes that it would not be appropriate to submit a draft resolution on this matter.

1. Reference to the committee: Doc. 11863, Reference 3596 of 28 September 2009. Information report approved by the committee on 25 April 2013.

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1. Introduction

1. A motion entitled "Democracy and the limitation of mandates" was tabled by Mr João Bosco Mota Amaral in April 2009. The motion pointed out cases where elected political leaders in power sought to abrogate, by referenda, constitutional provisions imposing a limitation on the number of terms of office which one person may serve in a high executive position.

2. According to the signatories of the motion:

> *"The limitation of mandates for top presidential or governmental positions is an effective tool against the concentration of power in the hands of one person and his group or political party and therefore should be considered a guaranty for democracy.*
>
> *The abolition of any constitutional provision with that content should be considered as a threat to democracy, strongly against the principles and values of the Council of Europe.*
>
> *The Assembly needs to discuss this subject and take appropriate measures in order to prevent that kind of damage to democracy – which is expanding in Third World countries – in the member-countries of the Council of Europe."*

3. The motion was referred to the Committee on Political Affairs and Democracy, which appointed Mr Hendrik Daems (Belgium, ALDE) as rapporteur in October 2009. When doing so, the committee took note of the rapporteur's intention to go beyond the narrow scope set out by the motion, namely the limitation of consecutive terms of office for the highest officials of the executive branch, and also to cover any similar limitations for elected representatives at various levels, as well as the limitation of the possibility to simultaneously hold mandates at different levels of power.

4. In November 2010, Mr Daems left the Assembly. I was appointed as new rapporteur in January 2011. In October 2011, the committee held a preliminary exchange of views on the issue and agreed that the European Commission for Democracy through Law (Venice Commission) should be consulted on this matter.

5. In December 2012, the Venice Commission adopted a report on "Democracy, limitation of mandates and incompatibility of political functions".[2] In March 2013, the Committee on Political Affairs and Democracy heard an oral presentation of the main findings of the report by Mr Thomas Markert, Secretary of the Venice Commission, and considered an option to present an information report.

2. Overview of the Venice Commission's report

6. The report adopted by the Venice Commission provides general notions on democracy and representation (Section II), and a theoretical reference to the limitation of mandates and the right to re-election of the holders of political functions (Section III). It also traces the historical evolution of the limitation of mandates (Section IV).

7. In Section V, the report provides a comparative overview of the constitutional and legal aspects of the limitation of presidential mandates in a number of Council of Europe member States, as well as in some non-European countries (for example Brazil, Israel, Korea, Mexico, the United States, etc.). Section VI mentions the main arguments both in favour and against the limitation of the mandates of the holders of political functions.

8. Sections VII to IX deal with various aspects of the limitation of the possibility to simultaneously hold different political functions or offices. Reference is made to the constitutional and legal provisions of a number of countries.

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2. Document CDL-AD(2012)027rev, Study No. 646/2011: www.venice.coe.int/WebForms/documents/?pdf=CDL-AD(2012)027rev-e.

9. Finally, Section X seeks to sum up the variety of situations across Europe, and draw some conclusions from the data collected. It states (paragraph 119) that "[s]een from the constitutional prism of most of the Council of Europe member countries, the limitation of the mandate of the president of state is closely linked to the right to only two consecutive mandates".

10. The report further concludes (same paragraph 119) that "[w]hen it comes to the function of members of parliament, however, the situation is very different, since there are in general no constitutional limitations here, not in the Council of Europe states, nor beyond, with regard to the right to (re)election, like there are for the presidential function".

11. With respect to the incompatibility of political functions, the report also finds that constitutional practice is quite diverse (paragraph 120).

12. In general, the report concludes (paragraph 122) that "[t]he limitation of mandates aims at strengthening democracy as does the incompatibility principle between different political functions".

13. This conclusion, however, needs to be read in conjunction with the observation (paragraph 117) that "[t]he effects of the principles of limitation of mandates and incompatibility of political functions in a given country widely depend not only on their constitutional and legal dimension but mainly on the model of separation of powers in that country".

3. Conclusions

14. The Committee on Political Affairs and Democracy is of the opinion that the comparative study prepared by the Venice Commission is a valuable source of information on the constitutional and legal arrangements with regard to limitations on the number of terms in office for presidents which exist in Europe and in some other countries.

15. It therefore recommends the study to national, observer and partner for democracy delegations to the Parliamentary Assembly of the Council of Europe, and to their respective parliaments, as food for thought for their work aimed at improving democracy.

16. At the same time, the committee does not find it appropriate to submit to the Assembly, at this stage, a draft resolution on this matter. Indeed, the study clearly shows that there are no best practices in the fields covered which would be applicable to all Council of Europe member States. Further discussions are needed to find out to what extent common standards would be possible, feasible and useful.

17. Under these circumstances, and also taking into account the variety of constitutional and legislative set-ups across Europe, it does not seem likely that a one-fits-all Assembly resolution would be of any practical use.

18. In addition, the committee believes that recent tendencies in a number of Council of Europe member States towards the limitation of the number of terms of office for parliamentarians need to be carefully analysed. The regular Assembly debates on the state of democracy in Europe could offer an appropriate framework for this.

19. The committee thanks the Venice Commission for its valuable contribution and looks forward to further co-operation with it.