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EUROPEAN COMMISSION FOR DEMOCRACY THROUGH LAW

(VENICE COMMISSION)

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)

I. Introduction

At the request of the Secretary General of the Council of Europe, the European Commission for Democracy through Law conducted a survey on the prohibition of political parties and analogous measures.

Countries which co-operate with the Venice Commission were invited to answer a questionnaire on the prohibition of political parties, covering the existence of rules prohibiting political parties or providing for similar measures in order to study the situation existing in different countries. 40 countries contributed to the study.

The conclusions of the study highlighted the following issues:

- a. party activities everywhere are guaranteed by the principle of freedom of association;
- b. there is a possibility to sanction political parties that do not respect a certain set of rules, through prohibition and dissolution of political parties, in a number of countries which answered the questionnaire;
- c. the procedure regarding measures restricting the activities of the political parties show the authorities' concern to respect the principle of freedom of association.

The Commission adopted the report on prohibition of political parties and analogous measures (CDL-INF (98) 14) at its 35th plenary meeting in Venice, 12-13 June 1998. The study provided a good starting point for further analysis of the question. Considering the importance of the issue the Commission decided to continue its work with a view to drafting guidelines in this field.

The Sub-Commission on democratic institutions at its 6th meeting (Venice, 10 December 1998) appointed Rapporteurs to draw up preliminary draft guidelines on the prohibition of political parties and analogous measures for its first meeting in 1999.

The draft guidelines on the prohibition of political parties were discussed by the Sub-Commission on democratic institutions during its meeting on 17 June 1999. Members of the Sub-Commission introduced a number of changes in the text prepared by Mr Alexandru Farcas and revised by the Secretariat on the basis of comments by Messrs Kaarlo Tuori and Joseph Said Pullicino. In addition, the Secretariat was asked to prepare an explanatory memorandum to the guidelines.

The Sub-Commission on democratic institutions further discussed the draft guidelines on the prohibition of political parties and analogous measures and the explanatory report during its meeting in Venice on 9 December 1999 and decided to submit them to the plenary session. The Venice Commission adopted both documents and decided to forward them to the Parliamentary Assembly and the Secretary General (41st plenary meeting, Venice, 10 - 11 December 1999).

II. Guidelines on prohibition of political parties and

analogous measures

The Venice Commission:

Being committed to the promotion of the fundamental principles of democracy, the rule of law and the protection of human rights, in a context of enhanced democratic security for all, throughout the entire Council of Europe area,

Taking into account the essential role of political parties in any democracy, considering that freedom of political opinion and freedom of association, including political association, represent fundamental human rights guaranteed by the European Convention on the Protection of Human Rights and are primordial elements of any genuine democracy as envisaged by the Statute of the Council of Europe,

Having particular regard to States' practice in the field of protecting (and of organising) the exercise of the rights to freedom of association and to freedom of expression,

Committed to the principle that these rights cannot be restricted other than by a decision of a competent judicial body in full respect of the rule of law and the right to a fair trial,

Recognising the need to further promote future standards in this field, based on the provisions of the European Convention for the Protection of Human Rights and on the values of the European legal heritage,

Has adopted the following guidelines:

1. States should recognise that everyone has the right to associate freely in political parties. This right shall include freedom to hold political opinions and to receive and impart information without interference by a public authority and regardless of frontiers. The requirement to register political parties will not in itself be considered to be in violation of this right.
2. Any limitations to the exercise of the above-mentioned fundamental human rights through the activity of political parties shall be consistent with the relevant provisions of the European Convention for the Protection of Human Rights and other international treaties, in normal times as well as in cases of public emergencies.
3. 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, thereby undermining the rights and freedoms guaranteed by the constitution. The fact alone that a party advocates a peaceful change of the Constitution should not be sufficient for its prohibition or dissolution.
4. A political party as a whole can not be held responsible for the individual behaviour of its members not authorised by the party within the framework of political/public and party activities.
5. The prohibition or dissolution of political parties as a particularly far-reaching measure should be used with utmost restraint. Before asking the competent judicial body to prohibit or dissolve a party, governments or other state organs should assess, having regard to the situation of the country concerned, whether the party really represents a danger to the free and democratic political order or to the rights of individuals and whether other, less radical measures could prevent the said danger.
6. Legal measures directed to the prohibition or legally enforced dissolution of political parties shall be a consequence of a judicial finding of unconstitutionality and shall be deemed as of an exceptional nature and governed by the principle of proportionality. Any such measure must be based on sufficient evidence that the party itself and not only individual members pursue political objectives using or preparing to use unconstitutional means.
7. The prohibition or dissolution of a political party should be decided by the Constitutional court or other appropriate judicial body in a procedure offering all guarantees of due process, openness and a fair trial.

III. Explanatory report to guidelines on the prohibition of political parties and analogous measures

The Venice Commission report on the prohibition of political parties and analogous measures (CDL-INF(98)14) revealed that there is a wide variety of approaches to this issue in different States. The aim of the guidelines on the prohibition of political parties and analogous measures is to establish a set of common principles for all member States of the Council of Europe and other countries sharing the same values, which are reflected in the European Convention on Human Rights. The European Convention on Human Rights is not only an effective instrument of international law but also "a constitutional instrument of the European public order". Therefore, the best way to explain certain provisions of the guidelines is by reference to the relevant articles of this particular Convention.

1. The right to associate freely in political parties forms an integral part of the freedom of association protected under Article 11 of the European Convention on Human Rights in the following terms:

"1. Everyone has the right to freedom of peaceful assembly and to freedom of association with others [...]

2. No restrictions shall be placed on the exercise of these rights other than such as are prescribed by law and are necessary in a democratic society in the interests of national security or public safety, for the prevention of disorder or crime, for the protection of health or morals or for the protection of the rights and freedoms of others. This Article shall not prevent the imposition of lawful restrictions on the exercise of these rights by members of the armed forces, of the police or the administration of the State."

2. Although this Article does not mention specifically freedom to form political parties but freedom of association in general, the European Court of Human Rights has repeatedly applied this provision in cases directly related to freedom of association within the framework of political parties.

3. The right to receive and impart information without interference by public authority and regardless of frontiers is rooted in Article 10 of the European Convention on Human Rights providing that:

"1. Everyone has the right to freedom of expression. This right shall include freedom to hold opinions and to receive and impart information and ideas without interference by public authority and regardless of frontiers. This article shall not prevent States from requiring the licensing of broadcasting, television or cinema enterprises.

2 The exercise of these freedoms, since it carries with it duties and responsibilities, may be subject to such formalities, conditions, restrictions or penalties as are prescribed by law and are necessary in a democratic society, in the interests of national security, territorial integrity or public safety, for the prevention of disorder or crime, for the protection of health or morals, for the protection of the reputation or rights of others, for preventing the disclosure of information received in confidence, or for maintaining the authority and impartiality of the judiciary".

4. At present the right of freedom of association in the context of the Convention is interpreted, in most cases, together with Article 10. In its case law the European Court of Human Rights established that:

"Notwithstanding its autonomous role and particular sphere of application, Article 11 must also be considered in the light of Article 10. The protection of opinions and freedom to express them is one of the objectives of the freedoms of assembly and association as enshrined in Article 11. That applies all the more in relation to political parties in view of their essential role in ensuring pluralism and the proper functioning of democracy".

5. Whereas freedom of association, including freedom to form political parties, must be regarded as one of the corner stones of pluralist democracy, restrictions to this right may be justified in a democratic society, in accordance with para. 2 of Article 11. Moreover, Article 17 of the European Convention on Human Rights allows a state to impose a restraint upon a programme a political party might pursue. It provides:

"Nothing in this Convention may be interpreted as implying for any State, group or person any right to engage in any activity or perform any act aimed at the destruction of any of the rights and freedoms set forth herein or at their limitation to a greater extent than is provided for in the Convention".

6. Therefore, the usual practice in a number of European States requiring registration of political parties, even if it were regarded as a restriction of the right to freedom of association and freedom of expression, would not *per se* amount to a violation of rights protected under Articles 11 and 10. On the other hand any restriction must be in conformity with principles of *legality* and *proportionality*.

II

7. No State can impose limitations based only on its internal legislation, ignoring its international obligations. This rule should be applied in normal times as well as in cases of public emergencies. This approach is confirmed by the practice of the European Court of Human Rights.

8. The European Court of Human Rights upheld on several occasions in its jurisprudence that political parties are a form of association essential to the proper functioning of democracy and that in view of the importance of democracy in the European Convention on Human Rights system, an association, including a political party, is not excluded from the protection afforded by the Convention simply because its activities are regarded by the national authorities as undermining the constitutional structures of the State and calling for the imposition of restrictions.

9. Any derogation from the European Convention on Human Rights should be made in respect of the provisions of Article 15 of the European Convention on Human Rights, that provides that they should not be in breach of other international obligations of the State (para.1) and should be of a temporary duration (para.3).

III

10. As mentioned in the previous paragraph, prohibition or dissolution of political parties can be envisaged only if it is necessary in a democratic society and if there is concrete evidence that a party is engaged in activities threatening democracy and fundamental freedoms. This could include any party that advocates violence in all forms as part of its political programme or any party aiming to overthrow the existing constitutional order through armed struggle, terrorism or the organisation of any subversive activity.

11. Most contemporary constitutions establish mechanisms for the protection of democracy and fundamental freedoms. In numerous states the general ban on the creation of para-military formations, parties that are a threat to the existence of the state or its independence, is expressly included in legislation on political parties or in the constitution.

12. A party that aims at a peaceful change of the constitutional order through lawful means cannot be prohibited or dissolved on the basis of freedom of opinion. Merely challenging the established order in itself is not considered as a punishable offence in a liberal and democratic state. Any democratic society has other mechanisms to protect democracy and fundamental freedoms through such instruments as free elections and in some countries through referendums when attitudes to any proposal to change the constitutional order in the country can be expressed.

IV

13. No political party should be held responsible for the behaviour of its members. Any restrictive measure taken against a political party on the basis of the behaviour of its members should be supported by evidence that he or she acted with the support of the party in question or that such behaviour was the result of the party's programme or political aims. Where these links are missing or cannot be established the responsibility should fall entirely on the party member.

V

14. The prohibition or dissolution of a political party is an exceptional measure in a democratic society. If relevant state bodies take a decision to seize the judicial body on the question of prohibition of a political party they should have sufficient evidence that there is a real threat to the constitutional order or citizens' fundamental rights and freedoms.

15. As was indicated in part III of this report the competent bodies should have sufficient evidence that the political party in question is advocating violence (including such specific demonstrations of it such as racism, xenophobia and intolerance), or is clearly involved in terrorist or other subversive activities.

State authorities should also evaluate the level of threat to the democratic order in the country and whether other measures, such as fines, other administrative measures or bringing individual members of the political party involved in such activities to justice, could remedy the situation.

16. Obviously, the general situation in the country is an important factor in such an evaluation. At the same time, standards of the developing European democratic practice must also be taken into consideration as already observed in previous paragraphs. Even in the case of a state of emergency, international obligations of the State should be observed and any measures of exceptional character should have a clearly defined temporary effect in compliance with Article 15 of the European Convention on Human Rights.

VI

17. Both points 6 and 7 of the guidelines deal with the role of the judiciary in the prohibition or dissolution of political parties, therefore they can be treated together.

18. The role of the judiciary is essential in the prohibition or dissolution of political parties. As is clear from the Venice Commission report, there can be different judicial bodies competent in this field. In some states it lies within the sole competence of Constitutional courts whereas in others it is within the sphere of ordinary courts.

19. Regardless of the judicial authority competent in this field the first stage should be to find unconstitutionality in the activities of a political party. The court should examine the evidence presented against a political party and define whether the latter has committed a serious offence against the constitutional order. If this is the case, the competent judicial authority should decide on the prohibition or dissolution in a procedure offering all guarantees of due process, openness and fair trial and in respect of the standards established by the European Convention on Human Rights.

APPENDIX I

PROHIBITION OF POLITICAL PARTIES
AND ANALOGOUS MEASURES

REPORT

adopted by the Commission

at its 35th plenary meeting

Venice, 12-13 June 1998

Introduction

A. Background

At the request of the Secretary General of the Council of Europe, the European Commission for Democracy through Law conducted a survey on the prohibition of political parties and analogous measures.

It was urgent to take a closer look at this issue because of the importance of political parties in cementing the foundations of democracy, particularly in states governed until recently by authoritarian regimes. Elections, which are the very foundation stone of democracy, are inconceivable without the active participation of freely constituted political parties. And freedom of political association is the political form of the broader fundamental freedom of association.

This comparative survey of the legislation and practice in the states participating in the Venice Commission's work identifies common values in the European constitutional heritage in this field, with a view to improving information on the subject and, where appropriate, learning from solutions implemented abroad. It is based on replies to a questionnaire (document CDL-PP_(98)_1) on the prohibition of political parties, covering both the existence of rules prohibiting political parties or providing for similar measures and the extent to which they are applied.

Responses were received from the following countries: Albania, Argentina, Austria, Azerbaijan, Belarus, Belgium, Bosnia and Herzegovina, Bulgaria, Canada, Croatia, the Czech Republic, Denmark, Estonia, Finland, France, Georgia, Germany, Greece, Hungary, Ireland, Italy, Japan, Kyrgyzstan, Latvia, Liechtenstein, Lithuania, Moldova, Netherlands, Norway, Poland, Portugal, Romania, Russia, Slovakia, Spain, Slovenia, Sweden, Switzerland, Turkey, Ukraine, Uruguay (see document CDL-PP_(98)_2).

B. General

The legal approach to political parties varies considerably from one state to another.

Registration of political parties, for example, is not required in all legal systems. There are no registration requirements in *Germany*, *Greece* or *Switzerland*, for example. In *Denmark* and *The Netherlands*, political parties are not obliged to register, but certain formalities are required in order for them to participate in elections. In *Ireland*, registration simply enables a party to post its name alongside those of its candidates, while in *Sweden* it protects the party's exclusive right to use the name.

In some states where political parties are required to register this is merely a formality, as in *Austria*,

Spain, Uruguay or Norway, where the only condition is to produce 5000 signatures. In other countries, however, the authorities make sure that the party fulfils the material requisites applicable to political party activities (this is the case, for example, in the *Czech Republic, Latvia, Poland and Russia*).

Further divergences are found in the *legal level* - constitutional or legislative - at which questions concerning political parties are dealt with. While they all guarantee *freedom of association*, the basis of political party activities, constitutions differ greatly in the degree of detail in which they address the subject. Several constitutions make no specific mention of political parties (eg *Albania, Finland, Ireland, Switzerland*). In most cases, however, having guaranteed freedom of association and mentioned political parties, constitutions explicitly list the main cases in which restrictions may be placed on their activities. The *German* constitution, for example, provides for the prohibition of parties which, in their aims or through the behaviour of their members, are likely to disrupt the free democratic constitutional order or to cause its downfall. The constitution of *Georgia* prohibits the formation of political parties whose purpose is to destroy the constitutional order, to violate the country's independence and/or its territorial integrity, to spread war and violence or foster ethnic or religious hatred or social unrest, and bans the creation of military forces by political parties, while parties based on geographical or regional criteria are prohibited under the State Authorities Act. In *Slovakia*, on the other hand, the constitution contains a general clause restricting freedom of association, in cases justified by law, where this is necessary, in a democratic society, to protect national security and public order, to prevent crime and protect the rights and freedoms of others, and to uphold the principle of the separation of parties and state; the ordinary law defines the exact circumstances under which parties may be banned. Among those constitutions which do address the question of political parties, *Portugal's* seems to adopt the most detailed approach, circumscribing the scope of freedom of association, especially in the political sphere, and listing most of the restrictions on political parties' activities, including their internal organisation. In *Austria* certain aspects of the law on political parties have a constitutional character.

The measures envisaged in the questionnaire were either *preventive* - ban on forming a political party or refusal to register it - or *repressive* - dissolution of the party. The fourth type of measure envisaged, prohibiting a party from standing for election, is not applied as such, at least in the states which answered the questionnaire, but may be a consequence of one of the other measures. Rather than examine these different measures separately, we shall break down our survey as follows.

The *first* and most detailed section will examine restrictions on political activities provided for in the legislation of the different states which answered the questionnaire. In the main, such restrictions are connected with the activities or purposes of political parties and their membership or structure, tangible characteristics which will be examined in the second chapter of the first part of this report. The first chapter of this part, shorter in length, will be devoted to restrictions of a formal nature, concerning such characteristics as name, number of members and registration procedures.

Following this look at legal provisions, the *second section* will examine the relevant case law, for in order to appreciate the actual impact of measures restricting political parties' activities, it is essential to establish just how often they are applied.

Finally, a *third section* will take a brief look at the bodies competent in the matter.

I. Restrictions on political party activities in national law

A. Formal restrictions

These mainly concern the registration of parties and therefore those states where registration is actually required.

Regulations in this field frequently concern the *name* of the party. The idea is to avoid any risk of confusion. In *Lithuania*, for example, the legislation provides for the registration only of parties or organisations whose names or symbols differ from those of existing political parties and organisations. In *Estonia* a party may be denied registration if their name resembles that of an existing party or one which existed in the past. Under *Canadian* law the name of a party, its abridged or abbreviated form or its logo must not be a source of confusion with those of a registered party or one whose application for registration is currently being processed. Where a name has not been registered, ordinary civil legislation on the names of legal persons precludes the use of names likely to cause confusion. The *Portuguese* constitution expressly prohibits the use by political parties of emblems likely to be confused with national or religious symbols. In *Slovenia* the names, abbreviations or symbols of political parties must not resemble those of state or regional institutions.

Some states have more restrictive rules on party names. In *Canada*, for example, party names may not include the word "independent". In *Portugal*, parties may not use names containing direct references to religions or churches "without prejudice to the philosophies or ideologies underlying their programmes". In *Slovenia* party names must not include the names of foreign states, parties or natural or legal persons. In *Argentina* political party names may not contain personal names or the words Argentine, national, international or derivatives thereof. These restrictions have no direct effect on the programmes and activities of the political parties concerned, and are therefore essentially formal restrictions. This is not the case when names are banned because they might affect the country's international relations, or because they are the expression or a potential cause of racial, class or religious unrest.

The creation or survival of a political party is sometimes subject to criteria concerning its *importance*. A party's importance may be measured in terms of its membership: under *Estonian* law a party must in principle have at least 1000 members; in *Latvia*, *Lithuania* and *Belarus* the minimum number of founders is fixed at 200, 400 and 500 respectively. In *Canada* parties which do not present candidates in at least 50 constituencies are struck off the register, but this obviously does not prevent members of these organisations from standing on an individual basis. In *Romania*, at the request of the Attorney General's department, the municipal court of Bucharest may dissolve a party for inactivity if it fails to present candidates in at least 10 constituencies, alone or as part of an alliance, in two successive election campaigns, or if it has held no general assembly for five years. In *Croatia* a party ceases to exist when it ceases its activities, or if the time lapse between two meetings of its governing body is twice as long as that provided for in its statutes. In *Hungary* a party may be dissolved if it has not functioned for at least a year and the number of its members has constantly been below the legal minimum.

Numerous national legislations regulate the *financing* of political parties, particularly where there are contributions from the public coffers. In the very great majority of states, however, failure to abide by these rules does not lead to the dissolution of the party concerned or to analogous measures. In *Albania* a party may be banned for failing to publish its financial resources or to submit them for inspection. In *Ukraine* systematic violation of the rules on party financing may lead to the dissolution of the party concerned. These rules are particularly strict; for example, political parties do not have the right to receive funds from foreign states or their citizens, international organisations, stateless persons or firms in which the state holds more than a 20% stake. Elsewhere, financial sanctions are applied: in *Argentina*, for example, the penalty is a fine twice the size of the illegal contribution.

Registration of political parties may be subjected to other formalities. In *Estonia*, for example, applications for registration must contain the party statute, the names, addresses and telephone numbers of party leaders, the political programme, a list of party members with their names and addresses and, where appropriate, the party emblem; *Canadian* legislation requires applications for registration to be signed by the party leader and to state the full name of the party, the name and address of the party leader, the address of its bureau, the names and addresses of the party executives and the names, addresses and signatures of 100 member voters.

B. Material restrictions

a. The material restrictions on political party activities, particularly those which may lead to prohibition of a party or the like, vary considerably from one country to another.

In some countries there is simply no legislation providing for such measures. *Belgium* is one example. In *Greece*, while the constitution stipulates that party organisation and activities must serve the free functioning of the democratic system, no sanctions are taken in the event of failure to comply with this requirement. In *Austria* there is no provision for prohibiting or dissolving political parties, with the exception of the ban on the revival of the national socialist party and its organisations.

b. In numerous countries, legislation provides for sanctions against parties which pursue certain *aims* or adopt certain *behaviours*.

1. As we saw earlier, for example, the law may require parties actually to be active. In *Ireland* effective political activity is required: in order to be registered a party must be "a genuine political party, organised in the State or a part thereof" in order to contest a Dail election, a European election or a local election. According to the case law of the Supreme Court, the purpose of this rule is to avoid the proliferation of "bogus political parties with aims and objects far removed from the political sphere". It should also be remembered that the only consequence of registration of a political party is that its name may then appear alongside those of its candidates in national and European elections.

2. In those countries where the *general legislation on associations* applies, *groups with unlawful or immoral aims* are denied legal status, or may be disbanded by the judicial authorities, as in *Switzerland, Liechtenstein* or *Finland*, where an association may also be dissolved if it is in contradiction with its statutory aim. *Estonian* law provides for associations to be dissolved by a court if their aims or activities are in contradiction with constitutional order, the law, morality or the declared aims of the association, and also for carrying on profit-making activities, and in the event of bankruptcy. In *Spain* a political party may be dissolved for being a criminal association under the code of criminal law, particularly when its purpose is to commit or help to commit a crime or if it is an armed group or a terrorist group or organisation. In *Azerbaijan* the constitution authorises the courts to put a stop to the activities of associations which violate the constitution and the law. Associations may also be disbanded for committing offences: such a provision exists in *Russian* law, but, in accordance with the principle of proportionality, it is applied only in the event of serious or repeated offences.

3. When parties do carry on political activities, these may be subjected to certain restrictions. Steps may be taken against parties endangering fundamental freedoms. In *Albania* parties whose programmes or activities are anti-popular, anti-democratic or totalitarian are banned, as are those whose aims or activities are in contradiction with the fundamental principles of the rule of law and democracy, the sovereignty of the people, pluralism and equality of political parties, the separation of powers and the independence of the judiciary. Both the *Czech Republic* and *Slovakia* ban parties which try to use the constitution to prevent other parties from rising to power by constitutional means or which undermine equality between citizens. In *Germany*, when a party's aim or the behaviour of its members threaten to disrupt or overthrow the free, democratic constitutional order, it may be banned. Under the *French* constitution, political parties are required to respect democracy. In *Turkey* parties are not allowed to manoeuvre to bring a dictator to power. In *Italy* parties must employ democratic methods in their public activities and their dealings with other parties and movements. There is no requirement, however, for their political programmes to be democratic, although the Constitution prohibits the revival of the Fascist Party. In *Moldova* the law bans the formation and activity of parties which foster the use of authoritarian and totalitarian methods of government.

4. In a similar vein a number of states have bans on *extremist parties*. The *Portuguese* constitution, for example, prohibits fascist or racist parties. In *Poland* the parties banned are those with programmes based on the totalitarian methods and procedures of nazism, fascism and communism, and those whose programmes or activities are based on racial or nationalistic hatred. In *Austria*, where the national socialist party and its organisations were dissolved by a special law, they may not be revived.

5. *Fostering discrimination, hatred or violence* may also lead to the prohibition of a party. Examples abound. In *France* parties may be banned for fostering discrimination, hatred or violence towards a person or group of persons because of their origins or the fact that they do not belong to a particular ethnic group, nation, race or religion, or for spreading ideas or theories which justify or encourage such discrimination, hatred or violence. The situation in *Spain* is similar, but, in addition to race and creed, sex, sexual leaning, family situation, illness and disabilities are also taken into consideration. Political parties which foster *racial hatred* are also prohibited, for example, by the constitutions of *Belarus* and *Ukraine*, while in *Azerbaijan* the legislation highlights racial, national and religious conflict. Under *Bulgarian* law parties may be prohibited both for pursuing fascist ideals and for fomenting racial, national, religious or ethnic unrest. The *Russian* constitution prohibits the creation and activities of social associations whose aims or deeds stir up social, racial, ethnic and religious discord.

6. The *Danish* and *Portuguese* constitutions, for example, permit the prohibition of parties which resort to or encourage *violence*, even if it is not subversive or racist. In *Albania* the law prohibits parties which draw attention to their aims and attempt to achieve them through violence, the use of weapons and other anti-democratic methods. The ban on *war-like propaganda* (*Belarus, Ukraine*) pursues a similar goal. In *Georgia* and *Latvia* parties may be prohibited for fostering violence through propaganda. We have already seen that several states can abolish parties for fostering hatred, particularly racial hatred; the purpose of such measures is notably to prevent acts of violence. In *Belarus* the constitution prohibits parties which foster social unrest.

7. In some countries the law prohibits political parties which are a threat to the *existence* (*Germany*) or the *independence* (*Ukraine*) of the state. The *French* constitution requires parties to respect national sovereignty. Other, more restrictive texts merely protect the *territorial integrity* of the state (*Bosnia and Herzegovina, Bulgaria, France, Moldova, Russia, Slovakia, Turkey*). In *Albania* parties are not allowed to support an *anti-national programme or anti-national activities*; the exact scope of this rule is, of course, difficult to define. In *Argentina* party names with meanings which might affect the country's international relations are prohibited.

8. Legislation to protect the institutions sometimes goes beyond protecting the territorial inviolability of the nation and combating parties that place fundamental freedoms at risk. Merely challenging the established order in itself is not considered as a punishable offence in a liberal and democratic state. The type of *subversive activity* which is prohibited is essentially recourse to *violent means to overthrow the authorities in place* (this is the case in *Azerbaijan, Bulgaria, Estonia and Ukraine*, for example). In *Liechtenstein* the courts may disband organisations whose aims or methods are a danger to the state. The *Swiss* constitution provides for the prohibition of parties which are a danger to the state; it is generally agreed, however, that such extreme action should be taken only in times of war. The *Russian* and *Ukrainian* constitutions also prohibit political parties from jeopardising the security of the state. An added restriction in the *Belarus* constitution prohibits parties or other organisations whose purpose is to change the country's constitutional system.

9. The *Turkish* constitution, like the legislation of *Bosnia and Herzegovina*, provides in a general way for the dissolution of parties which encourage crime. Under the *Portuguese* constitution, associations may be formed provided that their aims are not in conflict with the country's criminal law.

10. In some of the former Soviet states the legislation is designed to avoid any confusion between a political party and the state. In *Slovakia*, for example, parties are refused registration when their statutes provide for them to carry on activities which are the exclusive preserve of the state authorities. In *Kyrgyzstan*, the constitution expressly forbids the merging of political parties and state bodies and submitting the activities of the state to the programmes and decisions of a party. The *Hungarian* constitution prohibits political parties from exercising political power directly or controlling an organ of the state; party members or leaders may not hold public office. In *Armenia*, political parties may not take over public authorities.

11. Certain states ban political party activities in specific social areas. In *Slovakia* the legislation is highly restrictive: it is possible, for example, to deny registration to a party which wants to carry on a political activity within the armed forces, or, more generally, in the work-place. Similar legislation exists in *Slovenia*. In *Azerbaijan* and *Kyrgyzstan* party activities are prohibited within the organs of the state. And in *Kyrgyzstan* members of the armed forces and people working in the national security and justice fields are not allowed to be members of political parties or even to make statements in support of political parties. In *Ukraine* this rule applies to the public sector in general.

12. Furthermore, the general ban on the creation of private military or para-military formations is sometimes expressly included in legislation on political parties (*Albania, Czech Republic, Estonia, Georgia, Slovakia, Ukraine*), or in the constitution (*Portugal*). In *Estonia* the mere fact that an organisation possesses weapons precludes it from acting as a political party.

c. Other restrictions which certain states place on political parties include:

1. Restrictions based on *nationality*. In *Latvia* political parties may operate only if at least half their members are Latvian nationals. Some states prohibit foreign political parties, i.e. parties set up by foreign citizens (*Moldova*), or which have their headquarters in foreign countries (*Azerbaijan, Belarus, Kyrgyzstan*). *Lithuania* and *Slovenia* also require party leadership bodies to be based on the national soil. The *Armenian* law that prohibits political parties from being run by political parties located in another State in practice prevents the *Armenian draspna* from controlling the political parties of the Republic of Armenia.

2. Some states prohibit the creation of parties around *regional or territorial issues* (*Georgia*), or parties whose names or programmes hinge on regional issues (*Portugal*).

3. In *Kyrgyzstan* the law does not permit the existence of parties founded on religious principles, while in *Bulgaria* the constitution proscribes not only parties founded on religious principles, but also those founded on ethnic or racial principles.

4. In certain countries, such as *Hungary*, only natural persons may be members of political parties.

d. Finally, prohibition or analogous measures may also be based on the *form of organisation* of the party.

1. First of all, several states require the party's *internal structure and functioning to be democratic* (*Finland, Spain, Armenia*). In the *Czech Republic* and *Slovakia* party statutes must be democratic and

their organs must be democratically established. In *Albania* freedom of expression must also be guaranteed within the party, as well as people's right to join and leave the party as they please. The *Portuguese* constitution requires political parties to be run according to the principles of transparency, democratic organisation and management and participation by all their members. In *Argentina* parties must be democratic, in so far as their bodies and the candidates they present for election must be periodically elected; a party organisational structure on which minorities were not represented, for example, would be anti-democratic.

2. Finally, *secret* organisations may be prohibited by the constitution (*Latvia, Moldova, Romania*) or by law (*Albania, Poland*).

II. Implementation of restrictive measures concerning political parties

The above information shows that there are numerous legal means of prohibiting the activities of political parties. What we now have to establish is how these means are used in practice. In so doing, we shall refer only to laws which, to all intents and purposes, are actually in force today, not to those which have been repealed.

In many states no legal restrictions whatsoever on the activities of political parties have been applied in the recent past, and in those cases where sanctions were envisaged, they were never actually applied. This goes without saying in states where there are no legal provisions for dissolution or prohibition (eg *Belgium, Greece, and Austria*, apart from this country's ban on national-socialist organisations). In other states a liberal interpretation of constitutional provisions designed to protect freedom of association makes recourse to such drastic measures virtually impossible in peace time (*Switzerland*). Various other long-standing democracies have not had to apply such measures for several decades: *Finland*, since the 1930s, *Liechtenstein*, since 1945, *Denmark*, since 1953, *Germany*, since 1956, and *Japan*. The two cases which arose in *Germany* concerned an extreme right-wing party (in 1953) and the former Communist Party (in 1956).

In a number of other states parties have been denied registration, but mainly for failure to comply with formal criteria. This has happened in *Ireland* and *Canada*, where parties cannot be penalised for substantive reasons: in *Canada*, for example, one party was struck off the register for failing to present at least fifty candidates in a general election. In *Latvia* one organisation was denied registration for violating the foundation procedure, eight were struck off the register for having insufficient members, and one party was suspended for failing to submit a financial report, but the suspension was lifted when it subsequently submitted its report. In *Lithuania* the only case of denial of registration was the result of failure to observe the registration procedure; in *Croatia* too there has been just one case of non-registration, for formal reasons. In *Spain* parties have incurred sanctions only for using names likely to be confused with existing names, but no political party has ever been banned, in spite of the relatively large number of grounds for dissolution provided for in the legislation.

Where parties have been prohibited or dissolved for substantive reasons in the relatively recent past, they were generally extremist movements with few members (*France, Italy*). In *Slovenia*, however, one party which campaigned for the return of people who emigrated from the Slovene part of Istria after the second world war was considered unconstitutional for violating the principle of equality and treating people differently according to the region from which they had emigrated. The highly criticised suspension of the *Armenian* Revolutionary Federation (*Dachnaksoutioun*) on the basis that it was run by foreigners was lifted following a court decision. Finally, *Turkey* reported that several political parties had been disbanded because they were a threat to national security and territorial integrity or to the secularity of the state. The most prominent recent case was the dissolution of the "Prosperity" party.

As a general rule, therefore, the small number of cases where measures as extreme as the prohibition or dissolution of a political party have been taken shows the importance attached to the principle of freedom of association, and consequently to the proportionality of the sanctions imposed on political parties, which are considered as an essential cog in the democratic machine.

III. Competent authorities

Although the questionnaire did not directly address questions of procedure, the responses received provided some interesting information about the bodies empowered to take the kind of measures envisaged in this study. In spite of the differences in legislation from one country to another, the questionnaire revealed one thing they had in common: the prohibition of political parties and analogous measures are the responsibility of the *judicial authorities*. Generally speaking such matters are dealt

with directly by the courts, the authority of the judge being essential to avoid interference with party activities for purely political motives.

Where cases are referred, in the first instance, to non-judicial authorities, they usually concern registration of parties. In *Albania*, for example, the competent authority is the Ministry of Justice, while in the *Czech Republic* and in *Slovakia* it is the Ministry of the Interior, in *Canada* the Director General of Elections, and in *Ireland* the Clerk of the Dail. Rulings denying registration in Ireland may be appealed before a special commission made up of a High Court Judge, the President of the Dail and the President of the Seanad or Senate; the partly political composition of this body is explained by the fact that the registration of political parties in Ireland is a pure formality, and refusal to grant registration does not really affect freedom of association. In *Croatia* the Ministry of Public Administration is empowered to certify that a party has ceased its activities.

In many states, however, the registration authority is a court. In *Bulgaria*, it is the Sofia City Court; in *Estonia*, the ordinary courts; in *Poland*, the Warsaw Provincial Court, although in the event of doubt as to the conformity of a party's aims or principles with the constitution, this court must ask the constitutional court for an opinion, which is binding.

The dissolution or prohibition of a party may be the exclusive prerogative of the constitutional court, its decision being final. This is the case in *Azerbaijan*, *Croatia*, *Portugal*, *Slovenia* and *Turkey*. In some states there is co-operation between the ordinary courts and the constitutional court: examples are *Poland*, as we have already seen with respect to registration, and *Bulgaria*, where the Supreme Court is empowered to order the dissolution of a party at the suggestion of the Attorney General, while the constitutional court deals with litigation concerning the constitutionality of the parties. In *Slovakia* the Supreme Court rules in the first instance, at the request of the Attorney General, subject to appeal before the constitutional court. In the *Czech Republic* as well as in *Belarus* and *Kyrgyzstan*, the competent court is the Supreme Court. In other states the ordinary courts decide, and there are several levels of jurisdiction (eg: the federal courts in *Argentina*, the administrative courts in *Estonia* and *Liechtenstein*, or the ordinary courts in *Switzerland*).

Temporary suspension measures are sometimes taken by the government (in *Denmark*) or the Ministry of Justice (in *Kyrgyzstan*, and also in *Lithuania*, except during election campaigns, when a decision of the Vilnius District Court is required), but needless to say such measures are subject to appeal in court. In *France* the dissolution of a political party is pronounced by decree of the President of the Republic adopted in a meeting with the Cabinet, and subject to appeal in the courts.

Conclusion

The diversity of the legal provisions governing party activities in the countries which answered the questionnaire makes it difficult to define a European standard. A number of common features do stand out, however:

- a. Party activities everywhere are guaranteed by the principle of freedom of association.
- b. The fact that certain measures are lacking in many, if not most, of the states concerned leads us to conclude that they are not essential to the smooth functioning of democracy. Examples include:
 - registration of political parties: no registration is required, even as a formality; this does not mean, however, that candidates for elective office do not have to meet certain formal requirements;
 - sanctions, including prohibition and dissolution, against political parties which fail to abide by certain rules. This does not, of course, preclude the punishment of criminal behaviour by individuals in the context of political activities.
- c. Even in those states, which do provide for sanctions against political parties, there is still considerable diversity. The same situations are not sanctioned in the same way or with the same severity in the different states.
- d. The fact that it is so difficult - perhaps even impossible - to define behaviours which would generally

warrant such serious sanctions as the prohibition or dissolution of a political party highlights the need to apply the principle of *proportionality* when enforcing legislation restricting freedom of association.

The way in which the often vast legal arsenal governing the activities of political parties is actually applied in practice reflects a genuine determination to respect this principle. There are very few democratic states in which the sanctions covered by the questionnaire have actually been imposed on political parties in the recent past other than for formal reasons.

With the exception of restrictions of form, particularly those designed to avoid confusion between party names, measures designed to prevent the activities of political parties - which do not exist at all in certain states and are reserved in others to wartime situations - should be permitted only in exceptional circumstances. The extreme restraint shown by the vast majority of national authorities confirms this.

e. Finally, a recurrent feature in the national legislations studied was the guarantee of being heard by an independent and impartial judicial authority or tribunal. This is a clear sign of concern to keep something as politically important as the fate of political parties out of the control of the executive or administrative authorities, whose impartiality is often open to doubt.