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EUROPEAN COMMISSION FOR DEMOCRACY THROUGH LAW

(VENICE COMMISSION)

OPINION

ON

THE LAW ON POLITICAL PARTIES

OF THE RUSSIAN FEDERATION

Adopted by the Council for Democratic Elections
at its 40th meeting
(Venice, 15 March 2012)
and by the Venice Commission
at its 90th Plenary Session
(Venice, 16-17 March 2012)

on the basis of comments by

Mr James HAMILTON (Substitute Member, Ireland)
Mr Peter PACZOLAY (Member, Hungary)
Mr Kaarlo TUORI (Member, Finland)

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I. Introduction

1. The Venice Commission received a request from the Monitoring Committee of the Parliamentary Assembly of the Council of Europe (PACE) on 15 December 2011 asking it to give an opinion on the Federal Law on Political Parties, particularly in the light of "*the April 2011 judgment of the ECtHR, as well as the recent non-registration of the People's Freedom Party*". The PACE raised its concern on "*the restrictive character of this law which makes it difficult for parties to be registered*".

2. The Commission has therefore conducted an assessment focusing on the requirements to register a political party, as well as on the control of the activities of the political party and the grounds for its dissolution. This assessment has taken into account the Constitution of the Russian Federation, the Law on Political Parties (CDL-REF(2012)001), as well as the *Code of good practice in the field of political parties*, adopted by the Venice Commission at its 77th Plenary Session (Venice, December 2009, CDL-AD(2009)021) and the *Guidelines on political party regulation by OSCE/ODIHR and Venice Commission* , adopted by the Venice Commission in October 2010 (CDL-AD(2010)024), as well as the Guidelines on prohibition and dissolution of political parties and analogous measures (CDL-INF(2000)1), the Guidelines and explanatory report on legislation on political parties: some specific issues (CDL-AD(2004)007rev of 15 April 2004), the Report on the participation of political parties in elections (CDL-AD(2006)025, of 14 June 2006), the Report on the establishment, organisation and activities of political parties on the basis of the replies to the questionnaire on the establishment, organisation and activities of political parties (CDL-AD(2004)004, of 16 February 2004). Articles 10 and 11 of the European Convention on Human Rights and the case-law of the European Court of Human Rights have been given particular attention.

3. The Venice Commission invited Mr Tuori (member, Finland), Mr Paczolay (member, Hungary) and Mr Hamilton (substitute member, Ireland) to act as rapporteurs. On 16 and 17 February 2012, Mr Tuori and Mr Hamilton, as well as Mr Markert and Ms Ubeda de Torres, from the Secretariat of the Venice Commission, had meetings with the different authorities concerned, as well as with members of the civil society, political parties not represented in the *Duma* and associations which have tried to register as political parties and have not been successful. The present opinion is based on the comments by the members as well as on the input obtained in those meetings.

4. The Institute of Legislation and Comparative Law under the Russian Federation Government provided comments on the Federal Law on Political parties of the Russian Federation (CDL(2012)005), which were duly taken into account in the drafting of the opinion.

5. The present opinion was adopted by the Council for Democratic Elections at its 40th meeting (Venice, 15 March 2012) and by the Venice Commission at its 90th plenary session (Venice, 16 -17 March 2012).

II. General remarks

6. The last elections to the *Duma* took place in December 2011. In its report on the elections, the PACE observed that "*Interlocutors of all political parties told the Ad hoc committee that the rules on registration of new political parties restrict citizens' rights to create associations as protected by the Constitution and Articles 10 and 11 of the European Convention on Human Rights and should therefore be revised.*"[1] This has also been stated by the OSCE/ODHIR, present in the observation of all elections but the 2007-2008 one.

[1] Paragraph 19, Report published on 23 January 2012, doc 12833

7. The more specific and actual issues concern the registration and the requirements that have to be met by political parties in order to run in an election and to nominate candidates. Since the 2007 elections to the *Duma*, only one new political party, the Right Cause, obtained registration in 2009, and could run for the elections. However, others have been denied registration, as was the case with the People's Freedom Party or PARNAS, a party which was established after the dissolution of the Republican Party in 2007. The number of members' signatures required was 50.000 since the amendment to the Law on Political Parties in 2006, 45.000 in a further amendment and 40.000 since 1 January 2012 (after the legislative elections took place in December 2011). Among the reasons given for the denial of registration concerning PARNAS, the Minister of Justice stated that it was "*due to procedural violations, including the listing of minors and deceased citizens as party members and lack of provisions in the party's charter for the rotation of the leadership*" (OSCE/ODIHR Pre-Elections Assessment Report 2011, *Duma* elections).[2]

8. On 12 April 2011, the European Court of Human Rights issued a ruling on the dissolution of the Republican Party ordered by the Russian Supreme Court, and considered this decision to be in violation of Article 11 of the European Convention on Human Rights. This case has become final on 15 September 2011, after the ECtHR decided not to bring it to the Grand Chamber.

9. As, according to the Russian domestic legislation, the ruling of the European Court of Human Rights is considered as new evidence in court, a request for reopening the case of the Republican party was introduced at the Russian Supreme Court. On 23 January 2012, the Supreme Court changed its former decision and declared the dissolution illegal. Nevertheless, the ruling has been appealed, so the final decision of the Supreme Court is still pending.

10. A reform of the Law on Political parties was launched by President Medvedev on 23 December 2011. This reform proposes to liberalise and simplify the registration of political parties, lowering the minimum membership (which is proposed to drop from 40.000 to 500 members, but still requires representation in more than a half of the subjects of the Federation) and establishes the submission of financial reports to the Central Electoral Commission every three years, instead of annually. No particular number of members is required in each of the subjects, provided the overall number of 500 is attained. It was indicated by the Russian Ministry of Justice that as few as five or six persons could constitute a legally established branch.

III. The legislative framework for political parties in Russia

11. The rights to free association and free expression and opinion are fundamental to the proper functioning of a democratic society. Political parties, as a collective instrument for political expression, must be able to fully enjoy such rights. As summarised by the Venice Commission in its Guidelines with the OSCE/ODHIR:

> *"Parties have developed as the main vehicle for political participation and contestation by individuals, and have been recognized by the European Court of Human Rights as vital to the functioning of democracy. The Parliamentary Assembly of the Council of Europe has further recognized that political parties are "a key element of electoral competition, and a crucial linking mechanism between the individual and the state" by "integrating groups and individuals into the political process…" As required by the Copenhagen Document, paragraph 3, political*

[2] ROT FRONT and The other Russia were also denied registration for different reasons related with their symbols (first case) and the compatibility with the legislation (second case).

pluralism, as fostered by competition and opposition parties, is critical to the proper functioning of democracy."[3]

12. It is not necessary for a democracy to have a specific law on political parties. However, when such law exists, it should not "*unduly inhibit the activities or rights of political parties*" (*Guidelines*, paragraph 29). The law should, on the contrary, facilitate the role of political parties as crucial actors in a functioning democracy and ensure the full protection of their rights.

13. Under Article 13 of the Constitution in the Russian Federation, political diversity and multi-party system shall be recognised; otherwise, there is no further reference to political parties. The Federal Law on Political Parties, enacted in 2001, has 48 articles divided into ten Chapters: Chapter I contains general provisions; chapter II refers to the formation of a political party; chapter III concerns the registration procedure; chapter IV regulates the internal structure of the political party; chapter V enumerates its rights and obligations; chapter VI refers to the possible State support to parties; chapter VII regards the rules on financing; chapter VIII establishes the participation in elections and referendums; chapter IX regulates the suspension and dissolution of political parties and chapter X includes the closing and transitional provisions. The lengthy and detailed regulation in itself deserves scrutiny, as a detailed law on a fundamental right necessarily contains a number of limitations.

14. According to article 36.1 of the Law, "*A political party is the only form of public association that has the right to nominate candidates (lists of candidates) for deputies and for other elective positions in the government.".* By this is meant not only federal institutions, but bodies at all levels in the Russian Federation. However, the Venice Commission has been informed that, following a decision of the Constitutional Court of the Russian Federation, this does not include the local level[4]. Political parties can nominate candidates to the post of President of the Russian Federation (self-nominated candidates are also permitted in this case). Their role in Russia is therefore of paramount importance. The law in force is extremely detailed concerning not only the requirement and the process of registration, but also concerning the control over the activities of the political parties, as well as concerning their internal functioning and structure. The infringement of any of these rules can end in the suspension or liquidation of the political party. No specific reference to the respect of the principle of proportionality is required in the decision making and in this regard the law makes no distinction between serious and trivial breaches.

15. The laws regulating political parties should be developed in conformity with international human rights standards and relevant jurisprudence. Restrictions on political parties are possible, but only where they can be considered to be necessary in a democratic society in the sense of articles 10 and 11 of the European Convention of Human Rights..

16. Taking into account the above considerations, the observations made in this opinion should be read together with the opinion on the Law on the election of deputies to the State *Duma* (CDL-AD(2012)002).

IV. The conditions required for registration of political parties

17. The general requirements that a political party must meet are laid down in Article 3 of the Law on Political Parties. The main requirements, which were introduced by the 2001 law, concern territorial representation and minimum membership. The law also sets out quite detailed rules concerning the functioning of parties, including, for example, when they must hold congresses, rules for elections and requirements for the rotation of party officers. Political parties and their regional branches are subject to registration in accordance with the general

[3] VC and OSCE/ODHIR *Guidelines on political party regulations*, CDL-AD(2010)024, paragraph 24.
[4] Constitutional Court of the Russia Federation, ruling (*opredelenie*) of 6 July 2010.

provisions of the Federal Law on State Registration of Legal Entities and Individual Entrepreneurs and the specific provisions of Chapter III of the Law on Political Parties. There are also other types of requirements added to the minimum membership and the territorial representation.

A. Territorial representation

18. According to Article 3.2.a, a political party must have regional branches in more than half of the subjects of the Russian Federation, requiring at least 400 members or more (it was 500 beforehand). The other regional branches must have at least 150 members. (Article 3.2.b) of the Law on Political Parties). The rationale for this rule was, according to the ruling of the Russian Constitutional Court of 1 February 2005 (on the *Baltic Republican Party*, a regional party dissolved for not satisfying with the requirements established by the law on territorial representation and minimum membership), to prevent the establishment, functioning and participation in elections of regional parties.

19. Requirements for registration do not, in themselves, represent a breach of freedom of association according to the European Court of Human Rights.[5] However, the *Guidelines on political parties regulations* (CDL-AD(2010)024) state that "*requirements for registration (of political parties) are not necessary for a democratic society*" (quoting the 1998 report on dissolution and prohibition of political parties, paragraph 65). When domestic legislation establishes that registration is required, substantive registration requirements and procedural steps should be reasonable and based on objective criteria:

> *"Countries applying registration procedures to political parties should refrain from imposing excessive requirements for territorial representation of political parties as well as for minimum membership. The democratic or non-democratic character of the party organisation should not in principle be a ground for denying registration of a political party. Registration of political parties should be denied only in cases clearly indicated in the Guidelines on prohibition of political parties and analogous measures, i.e. when the use of violence is advocated or used 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 peaceful change of the Constitution is advocated should not be sufficient for denial of registration."*[6]

20. The Commission has also added that:

> *"80. Provisions regarding the limitation of political parties which represent a geographic area should generally be removed from relevant legislation. Requirements barring contestation for parties with only regional support potentially discriminate against parties that enjoy a strong public following but whose support is limited to a particular area of the country. Such provisions may also have discriminatory adverse effects on small parties and parties representing national minorities.*
> *81. A requirement for geographic distribution of party members can also potentially represent a severe restriction of political participation at the local and regional levels*

[5] According to the *Comparative study in the report on the establishment, organisation and activities of political parties on the basis of the replies to the questionnaire on the establishment, organisation and activities of political parties* (CDL-AD (2004)004), para 23,
Some countries impose on political parties an obligation to go through a registration process... This process is justified by the need of formal recognition of an association as a political party. Some of these additional requirements can differ from one country to another:
d) minimum membership (Azerbaijan, Bosnia and Herzegovina, Canada, Croatia, Czech Republic, Estonia, Georgia, Germany, Greece, Kyrgyzstan, Latvia, Lithuania, Russian Federation, Slovakia and Turkey);
i) signatures attesting certain territorial representation (Moldova, Russian Federation, Turkey and Ukraine);

[6] CDL-AD(2004)007rev, *Guidelines and explanatory report on political parties: some specific issues*, adopted by the Venice Commission at its 57th Plenary session (March 2004). .

incompatible with the right to free association. As such, geographic considerations should not be a requirement for political party formation. Nor should a political party based on a regional or local level be prohibited."[7]

21. In the *Republican Party* ruling, the European Court of Human Rights emphasised that:

"There can be no justification for hindering a public association or political party solely because it seeks to debate in public the situation of part of the State's population, or even advocates separatist ideas by calling for autonomy or requesting secession of part of the country's territory. In a democratic society based on the rule of law, political ideas which challenge the existing order without putting into question the tenets of democracy, and whose realisation is advocated by peaceful means, must be afforded a proper opportunity of expression through, inter alia, participation in the political process. However shocking and unacceptable the statements of an association's leaders and members may appear to the authorities or the majority of the population and however illegitimate their demands may be, they do not appear to warrant the association's dissolution. A fundamental aspect of democracy is that it must allow diverse political programmes to be proposed and debated, even where they call into question the way a State is currently organised, provided that they do not harm democracy itself" (paragraph 123)."

22. The Court further noted that a different approach was possible if justified in special historical and political circumstances. However, although the government raised the newly established political system "*facing serious challenges from separatist, nationalist and terrorist forces,*"[8] the Court acknowledged that even if this could have been a justification for a strict legislation on political parties in 1991, in 2001, 10 years after the beginning of the democratic transition of Russia, these arguments were unpersuasive and unconvincing.

23. From a more practical point of view, not all Russian regions are of equal size and accessibility. Failure of a party to win support in every region is therefore not always necessarily due to regional considerations. In most political systems, support for most parties will not be evenly distributed throughout the country. As the Court pointed out in the *Republican party* judgment:

"The present case is illustrative of a potential for miscarriages inherent in the indiscriminate banning of regional parties, which is moreover based on a calculation of the number of a party's regional branches. The applicant, an all-Russian political party which never advocated regional interests or separatist views, whose articles of association stated specifically that one of its aims was promotion of the unity of the country and of the peaceful coexistence of its multi-ethnic population (…) and which was never accused of any attempts to undermine Russia's territorial integrity, was dissolved on the purely formal ground of having an insufficient number of regional branches (paragraph 130)."

24. Therefore, the requirements concerning territorial representation appear too burdensome and should be reduced or abandoned. The Law as it stands now, read in combination with the electoral legislation and especially with the minimum threshold required to obtain representation, has an important impact in the electoral field. The limitations imposed by the law appear to constitute a serious interference with the electorate's right to make a free choice in elections and with the citizens' right to take part in political life. A pluralist party system, fulfilling its essential role in a democratic polity, can only emerge if facilitated by a

[7] 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 (October 2010).
[8] ECtHR, *Republican Party* v. Russia, paragraph 55.

stable legislation which does not impose unjustifiable requirements for registration, nor intrusive controlling mechanisms. Restrictions to political party formation based on regional, linguistic or ethnic grounds may lead to the creation of separatist movements, which may resort to non peaceful means if the democratic path is forbidden.

B. The membership threshold

25. The required minimum membership applied in Russia has been amended at least three times since the enactment of the law on political parties in 2001. The required number of members was increased in 2004 from 10 000 to 50 000, but has since been gradually dropping, first, to 45 000, and then, starting from 1 January 2012, to 40 000 (Article 3.2.b) of the Law). The new reform proposes a revision of these figures to as little as 500.

26. The law on political parties fails, as it is now, to respect the rights of freedom of association of citizens by requiring such a large number of members as a precondition for the registration of political parties. As stated by the Venice Commission in its *report on the participation of political parties in elections*:

> *"The very concept of the political party is based on the aim of participating "in the management of public affairs by the presentation of candidates to free and democratic elections". They are thus a specific kind of association, which in many countries is submitted to registration for participation in elections or for public financing. This 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. And requirements for registration are very different from one country to another: they may include, for instance, organizational conditions, requirement for minimum political activity, of standing for elections, of reaching a certain threshold of votes... However, some pre-conditions for registration of political parties existing in several Council of Europe Member States requiring a certain territorial representation and a minimal number of members for their registration could be problematic in the light of the principle of free association in political parties."*[9]

27. The rationale for this requirement, according to the government, is "*the necessity to strengthen political parties and limit their number in order to avoid disproportionate expenditure from the budget during electoral campaigns and prevent excessive parliamentary fragmentation and, in so doing, promote stability of the political system.*"[10] The Court, however, dismissed that submission as follows:

> *"The Court is not convinced by those arguments. It notes that in Russia political parties do not have an unconditional entitlement to benefit from public funding...only those political parties that...obtained more than 3% of the votes cast are entitled to public financing...The existence of a certain number of minor political parties supported by relatively small portions of the population does not therefore represent a considerable financial burden on the State treasury. In the Court's view, financial considerations cannot serve as a justification for limiting the number of political parties and allowing the survival of large, popular parties only.*
> *As to the second argument, related to the prevention of excessive parliamentary fragmentation, the Court notes that this is achieved in Russia through the introduction of a 7% electoral threshold...which is one of the highest in Europe...It is also relevant in this connection that a political party's right to participate in elections is not automatic. Only those political parties that have seats in the State Duma or have submitted a certain number of signatures to show that they have wide popular*

[9] CDL-AD(2006)025, paragraph 15.
[10] ECtHR, *Republican party v. Russia*, paragraph 111.

support (200,000 at the relevant time, recently decreased to 150,000 signatures) may nominate candidates for elections...In such circumstances the Court is not persuaded that to avoid excessive parliamentary fragmentation it was necessary to impose additional restrictions, such as a high minimum membership requirement, to limit the number of political parties entitled to participate in elections.'(paras. 112 and 113)."

28. The Court considered therefore that the change in the law had had an impact on the registration of political parties, which drastically decreased from 48 political parties to 15 in 2007. It saw "*little doubt that all those measures had an evident impact on the opportunities for various political forces to participate effectively in the political process and thus affected pluralism*" and alluded, in particular, to "*the fact that only fifteen political parties out of forty-eight were able to meet the increased minimum membership requirement*" (para 117). Only 7 political parties ran for the *Duma* elections in 2011.

29. A further consideration, which has not been discussed in the Court's judgment, is that such an onerous membership requirement makes the organic growth of a new party difficult. A political movement which cannot contest elections may be strangled at birth. More dangerously its supporters may be tempted in frustration to resort to undemocratic means. This may be a particular risk where the representation of ethnic, cultural, linguistic or religious groups is denied. Secondly, the argument that small groups need not be permitted to contest elections because they have no hope is both self-fulfilling and circular. Past performance is not necessarily a guide to the future. There are plenty of examples in history of large and successful political parties which suffered sudden and catastrophic decline. In other cases small parties which barely survived for years have experienced sudden and rapid growth or, in other cases gradual growth from a low base.

30. The argument that a multiplicity of small parties weakens democracy is not justified. Weak parties tend to disappear naturally and there is no need for an artificial rule to prevent them from seeking a mandate. The argument that weak parties must be suppressed because they present a threat to democracy is even less convincing. There is a risk that such arguments are used to justify the exclusion of unwelcome competitors rather than to safeguard democracy. Other means can be used, to prevent excessive parliamentary fragmentation and, to this end, a 7% electoral threshold was already introduced. The Venice Commission has on several occasions indicated that it considers thresholds above 5% as being problematic.[11] The recent reform in the electoral legislation has lowered the threshold to 5%, which is to be applied in 2016. The Venice Commission regrets that this was not applied to the 2011 elections.

31. Furthermore, a political party's right to participate in elections is not automatic, but, according to the Law, only those political parties that are represented in the *Duma* or have submitted a certain number of signatures may nominate candidates for elections. It is therefore excessive to add additional registration requirements to avoid fragmentation.

32. Finally, a political party can also be denied registration (or, at a later stage, suspended or dissolved) on the basis of excessive bureaucratic requirements related to the signatures. The Minister of Justice, in the exercise of its supervisory powers, which can be exercised on an annual basis (Article 38.1), can require certain documents (see *infra*, chapter V). According to the Minister of Justice, for example, if, in the list of signatures provided by the political party, there are more than the minimum number required, but one of the forms accompanying the signature does not contain accurate information on the members, they can request the denial of registration or even the suspension or dissolution of the party by the court.

33. The requirements of minimum membership and territorial representation, do not therefore meet the applicable European standards, based on Article 11 of the ECHR and specified in the

[11] See, for ex., CDL-AD(2006)37.

case law of the European Court of Human rights, as well as the guidelines adopted by the Venice Commission and the OSCE/ODIHR. The minimum membership requirement and territorial representation should be considerably lowered. What requirement can be considered justifiable should be decided taking into account provisions establishing the right to nominate candidates for elections and the electoral threshold. As it has been stated, President Medvedev has proposed draft amendments to the law on Political parties on 23 December 2011 in order to liberalise the requirements concerning the minimum membership. The draft seems a step in the right direction, but it has come too late to influence forthcoming elections and is yet at the stage of draft amendments. There should be enough guarantees for the existence of political parties.

34. It should be further noted that changing frequently the rules affecting the electoral process, especially before the elections, undermines the stability of the electoral process. Thus the frequent changes in the minimum membership requirements might have the same negative effect. As stated by the Venice Commission in the *Explanatory Report of the Code of Good Practice in Electoral matters*:

> *"63. Stability of the law is crucial to credibility of the electoral process, which is itself vital to consolidating democracy. Rules which change frequently – and especially rules which are complicated – may confuse voters. Above all, voters may conclude, rightly or wrongly, that electoral law is simply a tool in the hands of the powerful, and that their own votes have little weight in deciding the results of elections."*

C. The other requirements

35. There are other requirements for political parties registration and also to avoid suspension and dissolution. Some of them raise special concern.

36. Regarding the individual membership, according to Article 2 of the Law on political parties, only citizens of the Russian Federation can join a political party. No foreigners, stateless persons as well as "citizens unfit to plead" can be members of a political party (article 23.1). The meaning of this last expression is not very clear in the text, but the Venice Commission was informed that it refers to persons serving prison sentences. This provision is problematic. It should be recalled that, according to the Venice Commission and OSCE/ODHIR guidelines on political party regulations:

> *"Freedom of association and freedom of expression, including in the formation and functioning of political parties, are individual rights that must be respected without discrimination. The principle that fundamental human rights are applicable to all within a state's jurisdiction, free from discrimination, is essential to ensuring the full enjoyment and protection of such rights. Non-discrimination is defined in Articles 2 and 26 of the ICCPR and Article 14 of the ECHR as well as a number of other universal and regional instruments such as CEDAW. Notably, however Article 14 of the ECHR defines discrimination to be unlawful only in the enjoyment of any right protected within convention. (paragraph 53)."*

37. Political parties must also respect certain legal and constitutional conditions. They have to submit to the Minister of Justice for registration their Charter and Program. Although Article 20.3 establishes that "inaccuracies" in the program can not serve as grounds for refusal of registration, article 9 states that "*it is prohibited the formation and activity of political parties whose aims or actions are directed toward carrying out extremist activities*". The creation of political parties on the grounds of professional, racial, national, ethnic or religious affiliation is also prohibited. To prohibit political parties on these grounds can be a dangerous solution, which may foster the resort to undemocratic means to those who can not find democratic representation of their ideas.

38. All these requirements for registration of political parties are excessive and very difficult for many political party to overcome. If the reform announced in December 2011 aims at liberalising certain requirements, others stay in the legislation. The Venice Commission has stated at several occasions that:

> *"Political parties are, as some Constitutions and the European Court of Human Rights have expressly admitted, essential instruments for democratic participation. In fact, the very concept of the political party is based on the aim of participating "in the management of public affairs by the presentation of candidates to free and democratic elections". They are thus a specific kind of association, which in many countries is submitted to registration for participation in elections or for public financing. This 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."*[12]

V. The control over the internal affairs of the political parties registered

39. The Law on Political Parties also goes into considerable detail on how political parties conduct their affairs covering procedural issues relating to meetings, how programmes and policies are to be adopted, the relationship between the central and regional authorities and many other matters. This relates to the activities that the political party can develop once it has been registered.

40. Parties are required to provide an important amount of material to the authorities, including lists of members with their addresses (the list of documents required is listed in Article 16 of the Law). However, the law does not allow for the possibility that a political party might grow slowly and organically from a small beginning. According to Articles 11.2 and 14 of the Law on Political Parties, the founding congress of a political party will be considered "competent" only if it was attended by delegates representing more than half of the subjects of the Russian Federation and residing therein.

41. According to Article 21.1.b) of the Law, among the many obligations of political parties, they also have to submit annual reports on the members of each regional branch, their activities, subdivisions, etc. Article 38, under the title "control over activity of political party", establishes that:

> *"Competent authorities shall monitor the compliance of political parties, their regional branches and other structural units with Laws of the Russian Federation as well as compliance of political party, its regional branches and other structural units with provisions, aims and objectives provided in the charters of political parties." (…) Such authorities have a right:*
> *a) not more than once a year to get acquainted with the documents of political parties and their regional branches confirming the presence of regional branches, the number of political party members and the number of members of each regional branch of a political party;*
> *(Rev. Federal Law dd. 20.12.2004 N 168-FL)*
> *b) to send representatives to participate in the ongoing public events (including congresses, conferences or general assemblies) of political party, its regional branches and other structural subdivisions in respect to adoption of the charter and program of a political party, changes and additions thereto, election of governing and supervisory-auditing bodies of political party, nomination of candidates for deputies and other elective offices in the state government bodies and local governments, as well as to liquidation of*

[12] *Report on the participation of the political parties in the elections* (CDL-AD(2006)025), paragraph 15.

political party and its regional branches;
c) to issue to a political party, its regional branch or other registered structural unit a written warning (stating the specific grounds for such warning) in case of exercising activities contrary to the provisions, aims and objectives stipulated by the charter of a political party. Such warnings may be appealed in court by political party, its regional branch or other registered structural units. In case of warning the regional branch or other registered structural unit of political party, the territorial authority shall immediately notify the federal authority and the governing body of political party;
(Rev. Federal Law dd. 21.03.2002 N 31-FL)
d) to petition in court for suspension of activity or liquidation of a political party, its regional branch or other registered structural units in accordance with paragraph 3 of Article 39, paragraph 3 of Article 41 and paragraph 3 of Article 42 hereof."

42. The European Court of Human Rights raised particular concern that political parties not only had to show their membership situation at registration but had to submit annual reports and be liable to inspections by the authorities under threat of dissolution, which would be done by the Supreme Court (Article 41.3, particularly point d). The European Court stated in the *Republican Party* case:

> *"The Court is unable to discern any justification for such intrusive measures subjecting political parties to frequent and comprehensive checks and a constant threat of dissolution on formal grounds. If these annual inspections are aimed at verifying whether the party has genuine support among the population, election results would be the best measure of such support."*

43. This over-prescriptive legislation appears to be unnecessarily and unjustifiably intrusive into the internal affairs of political parties. This question was previously considered by the Venice Commission in its *Guidelines and explanatory report on legislation on political parties: some specific issues*:

> *"Any activity requirements for political parties, as a prerequisite for maintaining the status as a political party and their control and supervision, have to be assessed by the same yardstick of what is 'necessary in a democratic society'. Public authorities should refrain from any political or other excessive control over activities of political parties, such as membership, number and frequency of party congresses and meetings, operation of territorial branches and subdivisions*."[13]

44. Political parties have also to report on their financial activities once a year to the Central Electoral Commission, although in the new reform in progress, it is announced that the financial reports on the funding of political parties will take place in the future, if the draft law is adopted, once every three years. However, according to the Central Electoral Commission and to the Minister of Justice, there have been more dissolutions and refusal of registrations based on the lack of documentation concerning the signatures, not achieving the minimum membership, as well as on the respect of the Constitution and legislation, than concerning financial aspects. In fact, the rapporteurs were informed that there had been no dissolutions or refusals of registration for financial reasons. No respect of the principle of proportionality is required nor there is a distinction made between trivial infringements and more serious offences in the application of these rules.

45. The bureaucratic control over the political parties, as well as the submission of documents including details about every member of the political party to the Minister of Justice, may have a chilling effect on individual membership and on the registration of political parties. In the light of the above considerations, bureaucratic control over political parties should be reduced and any

[13] CDL-AD(2004)007rev., guideline C.

supervisory powers should be given to an independent authority not part of the executive branch, in order to ensure transparency and build institutional trust.

VI. On the consequences for political parties of the non compliance with the requirements

46. The consequences of non compliance with the model described in the Law are severe. Non-compliance with any aspect of the rules can result in a decision not to register a party and hence to exclude it from the political process. A failure in continued compliance with the rules can lead to the dissolution of the party.

47. While a party unable to continue compliance with the rules may continue as a public association, it may not participate in elections. As the European Court raised in the *Republican party* case, "*it has already found it unacceptable that an association should be forced to take a legal shape its founders and members did not seek, finding that such an approach, if adopted, would reduce the freedom of association of the founders and members so as to render it either non-existent or of no practical value (…). It is significant that in Russia political parties are the only actors in the political process capable of nominating candidates for election at the federal and regional levels. A reorganisation into a public association would therefore have deprived the applicant of an opportunity to stand for election* (paras. 105 and 107).

48. It should be emphasised that Chapter IX of the law, in dealing with the consequences of non-compliance with the law, fails to make any distinction between the trivial and the essential. As noted in the above paragraphs, nothing in the rule suggests that any principle of proportionality is to be respected. Indeed, the underlying legal philosophy of Article 39.3 appears to be that after two warnings, the political party may be suspended, which seems to give a great scope for the use of the Law based on politically motivated actions. It was precisely on the basis of such strict controls that the Republican Party was dissolved by the Russian Supreme Court.

49. Dissolution of a political party is a very serious interference and should be regarded as an exceptional measure. As the Venice Commission has affirmed, the dissolution of political parties is the "most severe of available restrictions on political parties and is only applicable when all less restrictive measures have been deemed inadequate."[14]

50. Political parties should also be given clear and effective procedural safeguards to contest the decisions on denial of registration, suspension or dissolution. Election related complaints can be lodged either at the election administration or at the courts. It is not very clear where the division of competences lies and whether respect of the political parties electoral rights is fully guaranteed. As said in the *Guidelines on political party regulations*:

> *"232. Expedited consideration is an important element to the fairness of a hearing. Proceedings cannot be delayed without risking usurpation of the right to a fair hearing.67 Legislation should define reasonable deadlines by which applications should be filed and decision granted, with due respect to any special considerations arising from the substantive nature of the decision.*
> *233. Legislation should specify the procedures for initiating judicial review (appeal) of a decision affecting the rights of a political party. Legislation should also extend the right of judicial review of such decisions to persons or other parties that are affected by the decision."*[15]

[14] CDL-AD(2010)024, paragraph 90.
[15] CDL-AD(2010)024.

51. It should be noted that the final decision on the dissolution of the Republican party after the European Court declared it to be in breach of the European Convention on Human Rights in April 2011 is still pending at the Russian Supreme Court.

VII. Conclusions

52. The Law on Political Parties is a very detailed piece of legislation, which regulates the requirements and conditions concerning the registration and the existence of political parties, their internal working and regulation, the possibilities of suspension and the dissolution of political parties. The law, as it stands now, establishes important obstacles to the very existence of political parties. The drastic reduction of the number of registered political parties and the limited number of parties participating in the *Duma* elections in December 2011 (seven political parties ran) confirm the negative impact of the law on the existence and functioning of political parties in the Russian Federation. This is not in line with European standards and, particularly, articles 10 and 11 of the European Convention on Human Rights.

53. The main concerns in the Law on political parties which need to be addressed relate to:

a) *The registration of political parties*: A registration requirement *per se* does not contradict European standards. However, the Law on Political Parties does not meet the applicable European standards, based on Article 11 of the ECHR and the case law of the European Court of Human rights, as well as the Guidelines adopted by the Venice Commission and the OSCE/ODIHR. Particularly,
   - The minimum membership requirement, if applied at all, it should be considerably lowered and intrusive control mechanisms in the context of initial registration reduced, with (prospective) parties having the opportunity to complement the required documents in case they have been found deficient.
   - The general requirement on regional representation should be at least reduced, if not abolished.
   - The restrictions on individual membership in political parties are also problematic and should be revised in order to be in conformity with the European standards.

b) *The internal control of political parties by the State authorities*
   - The parties should be able to control their own internal procedures, with appeals to courts where appropriate, but it should not be a function of the state to monitor every aspect of the life of a political party and be regularly provided with a list of party members, as is the case in this Law.
   - The Venice Commission recommends that any supervisory powers and control of political parties should be given to an independent authority and not to part of the executive branch in order to ensure transparency and build institutional trust.

54. The Venice Commission is aware of the process of reform launched in December 2011, which proposes the liberalisation of important aspects of the Law on Political Parties, particularly concerning the requirements for the registration of political parties. The draft amendments are pending for adoption at the *Duma*, where they were discussed in the first reading on 28 February 2012. This reform is welcome, in particular since it drastically lowers the number of members' signatures required for the registration of a political party and the requirements for membership in the regional branches of parties. To be effective, the reform will, however, also have to reduce the level of bureaucratic control on the establishment and functioning of political parties. The possibility of dissolution or refusal of registration because of breach of the rules will continue to create a problem even after the number of members required to establish a political party is reduced. The Venice Commission is ready to assist the authorities in their reform efforts.