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Abolition of restrictions on the right to vote

Recommendation 1714 (2005)

Reply from the Committee of Ministers

adopted at the 958th meeting of the Ministers' Deputies (15 March 2006)

1. The Committee of Ministers welcomes the Parliamentary Assembly's Recommendation 1714 (2005) and Resolution 1459 (2005) on abolition of restrictions on the right to vote, which it has transmitted for opinions, *inter alia*, to the European Commission for Democracy through Law (Venice Commission) and to the Steering Committee on Local and Regional Democracy (CDLR) (see Appendices 1 and 2 to the reply).
2. As the Venice Commission rightly points out, the right to vote is a fundamental political right and the principles of universality, equality, freedom and secret ballots are the four pillars of the European electoral heritage, introduced into the constitutions and electoral legislation of the member and observer states of the Council of Europe. It follows that the abolition of existing restrictions on the right to vote should be the subject of further activities of the Council of Europe.
3. The Committee of Ministers observes that the 14th Session of the Conference of European Ministers responsible for Local and Regional Government in Budapest (February 2005) identified, in the field of democratic citizenship and participation at local and regional level, as one of the challenges to be addressed: "broadening the scope for participation by foreign residents in public life at local level". They agreed "to seek to overcome any obstacles to acceding to the Convention on the Participation of Foreigners in Public Life at Local Level and to seek to ratify it as soon as possible". The Committee notes that the CDLR holds an annual *tour de table* to take stock of developments, and recalls that the idea of granting active and passive electoral rights in local elections to all legal residents is in accordance with the Venice Commission's Code of Good Practice in Electoral Matters.¹
4. The Committee of Ministers attaches importance to the fact that the Assembly urges the countries concerned to implement the recommendations made by the Council of Europe Commissioner for Human Rights on granting the right to vote in local elections to residents with special status of "non-citizens".
5. The Committee of Ministers considers that member and observer states should reconsider existing restrictions on the electoral rights of prisoners and members of the military, with a view to abolishing all those that are no longer necessary and proportionate in the pursuit of a legitimate aim. In this respect it again refers to the Code of Good Conduct in Electoral Matters, which lays down a number of cumulative conditions for the deprivation of the right to vote and to stand for election.² It notes that in some countries, the voting

¹ This code elaborated by the Venice Commission has been given political support by the Committee of Ministers by way of a Declaration on the Code of Good Practice in Electoral Matters adopted on 13 May 2004 at its 114th Session. The Code provides that: "it would be advisable for foreigners to be allowed to vote in local elections after a certain period of residence" (point I.1.bb.ii). This right could be granted, for example, after 5 years of permanent residence.

² These conditions are:

- ii. It must be provided for by law;
- iii. The proportionality principle must be observed; conditions for depriving individuals of the right to stand for election may be less strict than for disenfranchising them;
- iv. The deprivation must be based on mental incapacity or a criminal conviction for a serious offence;
- v. Furthermore, the withdrawal of political rights or finding of mental incapacity may only be imposed by express decision of a court of law (point I.1.dd.ii-v.).

rights of persons serving in the police force are subject to restrictions (not being allowed to vote or to be elected), but that the more common approach in member states is not to restrict their voting rights. It furthermore agrees with the Venice Commission that restrictions applying to such groups as residents of nursing homes, nomadic groups and temporally absent persons, should be reconsidered. It also notes that the Venice Commission refers to national minorities and persons with dual nationality as two other groups facing restrictions or discrimination in this respect.

6. The Parliamentary Assembly invites the services of the Council of Europe, in particular the Venice Commission and its Council for Democratic Elections, to develop their activities by improving the conditions for the effective exercise of election rights by groups facing special difficulties. In this respect, the Committee of Ministers underlines that these two bodies are following the achievements in the area of democratic elections and in respect of voting rights through expert opinions, studies, consultative meetings and seminars. It agrees with the Venice Commission that it is important in this field to co-ordinate, through the Council for Democratic Elections, activities with other Council of Europe bodies, particularly with the Parliamentary Assembly, the Congress on Regional and Local Authorities of the Council of Europe and the CDLR, as well as with the OSCE/ODIHR.

7. The Committee of Ministers agrees with the Parliamentary Assembly that member states should take measures to facilitate the exercise of voting rights of citizens living abroad, for example through postal, consular or e-voting. It is pleased to see that the Assembly refers to its Recommendation Rec(2004)11 on legal, operational and technical standards for e-voting. However, it does not see any pressing need at this moment to elaborate a convention to improve international co-operation on this issue.

Appendix 1 to the reply

Opinion by the European Commission for Democracy through Law (Venice Commission)

I. General observations

1. The Venice Commission has studied the issue of the right to vote (both active and passive) on a number of occasions and reaffirmed on numerous occasions the importance of this right in any democracy. The Commission has studied this issue both as a general subject of interest to the Council of Europe member states, as well as in the concrete case of the participation of minorities in public life. The right to vote was also subject to discussions and comments in the light of the Venice Commission's co-operation on constitutional matters with some countries.

2. The problem of restrictions to the right to vote was the subject of two reports by Mrs M. Lazarova Trajkovska and Mr F. Matscher (CDL-AD(2005)011 and 012) endorsed by the Venice Commission at its 61st plenary session on 3 and 4 December 2004.

3. The right to vote as one of the fundamental political rights is also fundamental for the fulfilment of a number of civil and social rights. At the same time the principles of universality, equality, freedom and secret ballots are the four pillars of the European electoral heritage and they are introduced into the constitutions and electoral legislation of the member and observer states of the Council of Europe. In this respect the abolition of existing restrictions on the right to vote should be of interest to states and it should also serve as an issue for further activities of the Council of Europe and other international organisations.

4. In some member and observer states of the Council of Europe, the implementation of existing standards and general principles is deeply influenced by customs, and traditions, but most of all by the level of political culture. In a number of cases and situations in countries of Europe and elsewhere various norms and practices have been established which restrict the right to vote to certain categories of people. Such restrictions are problematic from a human rights perspective. European institutions and in this case the Parliamentary Assembly of the Council of Europe are working to overcome such restrictions.

5. This opinion has been drafted at the request of the Parliamentary Assembly, and its aim is to address Recommendation 1714 (2005) on the abolition of restrictions on the right to vote. The recommendation refers to Resolution 1459 (2005) and should be analysed and discussed in the light of this document.

6. The recommendation calls upon the Committee of Ministers to, firstly, appeal to member and observer states to consider this issue in the light of the latest developments in Europe; secondly, to invite the corresponding services of the Council of Europe, in particular the European Commission for Democracy

through Law (Venice Commission) and its Council for Democratic Elections, to develop their activities aimed at improving the conditions for the effective exercise of election rights by groups facing special difficulties; and thirdly, to review existing instruments with a view to facilitating the exercise of electoral rights of expatriates.

7. The present opinion, which was prepared on the basis of comments by Mrs M. Lazarova Tradjkovska and Mr F. Matscher, was adopted by the Council for Democratic Elections at its 14th meeting (Venice, 20 October 2005) and by the Venice Commission at its 64th plenary session (Venice, 21-22 October 2005).

II. Appeal to member and observer states

8. Referring to Resolution 1459 (2005), the Parliamentary Assembly calls upon the Committee of Ministers to appeal to member and observer states on two issues: in the first place to sign and ratify the 1992 Council of Europe Convention on the Participation of the Foreigners in Public Life at Local Level (ETS No. 144) granting active and passive electoral rights in local elections to all legal residents and, secondly to reconsider existing restrictions on the electoral rights of prisoners and members of the military, with a view to abolishing all those which are no longer necessary and proportionate in the pursuit of a legitimate aim.

9. The appeal to member and observer states to sign and ratify the 1992 Council of Europe Convention on the Participation of Foreigners in Public Life at Local Level (ETS No. 144) with the idea of granting active and passive electoral rights in local elections to all legal residents is to be welcomed. This approach is in accordance with the Code of Good Practice in Electoral matters,³ which in its point I.1.1.b.ii stipulates that "... it would be advisable for foreigners to be allowed to vote in local elections after a certain period of residence". This right could be granted, for example, after 5 years of permanent residence.

10. The appeal to member and observer states to reconsider existing restrictions on the electoral rights of prisoners and members of the military, with a view to abolishing all those that are no longer necessary and proportionate in the pursuit of a legitimate aim, is of particular importance. In some countries, the voting rights of persons serving in the police force are subject to restrictions (not being allowed to vote or to be elected). This practice is against the more common approach which avoids the restriction of the voting rights of these people. This approach should also apply to such groups as residents of nursing homes, persons who have been convicted of a criminal offence, nomadic groups and those who are temporally absent.

III. Further activities of the Venice Commission and the Council for Democratic Elections

11. The Parliamentary Assembly invites the services of the Council of Europe, in particular the Venice Commission and its Council for Democratic Elections to develop their activities by improving the conditions for the effective exercise of election rights by groups facing special difficulties, such as expatriates, prison inmates, persons who have been convicted of a criminal offence, residents of nursing homes, soldiers or nomadic groups. We will add here national minorities and persons with dual nationality. In our opinion these two groups are also facing restrictions or are discriminated against.⁴

12. The Venice Commission and its Council for Democratic Elections are following the achievements in the area of democratic elections and in respect of voting rights as one of the basic human rights which will continue to influence improvements in international and national legislation through expert opinions, studies, consultative meetings and seminars. In this field it is of great importance to co-ordinate through the Council for Democratic Elections activities with other Council of Europe bodies, particularly with the Parliamentary Assembly, the Congress on Regional and Local Authorities of the Council of Europe, as well as with OSCE/ODIHR.

Appendix 2 to the reply

Opinion by the Steering Committee on Local and Regional Democracy (CDLR)

The CDLR has read with great interest Parliamentary Assembly Recommendation 1714 (2005) on the abolition of restrictions on the right to vote. Its comments follow the order in which they appear in the text.

³ Code of Good Practice in Electoral Matters, adopted by the Venice Commission at its 52nd Plenary Session, CDL-AD(2002)023rev.

⁴ See Report of the Venice Commission on the abolition of restrictions on the right to vote in general elections CDL-EL(2005)008.

As for the recommendation that the Committee of Ministers appeal to member states to sign and ratify the European Convention on the Participation of Foreigners in Public Life at Local Level, the CDLR recalls that the 14th Session of the Conference of European Ministers responsible for Local and Regional Government in Budapest (February 2005) identified, in the field of democratic citizenship and participation at local and regional level, as one of the challenges to be addressed: "broadening the scope for participation by foreign residents in public life at local level". On that basis, they agreed "to seek to overcome any obstacles to acceding to the Convention on the Participation of Foreigners in Public Life at Local Level and to seek to ratify it as soon as possible". Consequently the CDLR holds an annual *tour de table* to take stock of developments, most recently at its meeting in November 2005. The results of this stock-taking appear in Appendix 11 to the meeting report. The Committee of Ministers may wish to communicate them to the Parliamentary Assembly.

As for the item asking member states to re-consider existing restrictions on electoral rights, the CDLR, with its remit for local and regional democracy, is reluctant to express an opinion, given that this raises several issues outside of its terms of reference. However, as in other such cases, the CDLR is ready and willing to take part in any exercise involving other competent bodies within the Council of Europe.

Similarly, the CDLR is ready to contribute to any development of activities aimed at improving the conditions for the effective exercise of election rights by groups facing special difficulties. The CDLR particularly recalls that Recommendation Rec(2001)19 on the participation of citizens in local public life contains a range of recommendations to encourage categories of citizens who, for various reasons, have greater difficulty in participating (Appendix II, parts B and D).

As for the third main element of the Recommendation, a possible Council of Europe Convention to improve international co-operation with a view to facilitating the exercise of electoral rights of expatriates, the CDLR refrains from expressing a view as it considers this would concern mainly elections at national level.