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2. Political Questions

2.4 Freedom of association

Thematic monitoring report presented by the Secretary General and decisions on follow-up action taken by the Committee of Ministers

PART III – Conclusions and proposals for follow-up action

Explanatory note

The present report is the first one to be presented under the new thematic monitoring procedure adopted by the Committee of Ministers in July 2004. It thus provides "*an analysis of major issues within the scope of the theme [...] based on the work undertaken by existing Council of Europe monitoring mechanisms*" to "*serve as a basis for debate*" and includes "*decisions on follow-up action by the Committee of Ministers*".

The starting point for defining the scope of the report has been the explanatory note presented by the Delegation of the United Kingdom which proposed the theme: "*Freedom of association is a basic fundamental human right, as stated in Article 11 of the European Convention on Human Rights and should form the basis of any pluralist democracy. All groups in society should therefore have the freedom to participate in associative life as this contributes towards the development of a strong democratic civil society*" (see doc. [CM/Monitor\(2004\)8](#)).

The report follows a thematic approach and is divided into three parts, published in three separate volumes:

The first part (Volume I) provides an overview of the work carried out by the Council of Europe (CoE) on the major issues within the scope of the theme. The core legal instruments of relevance to the subject are presented in the first section, namely the European Convention on Human Rights and the case-law of the Strasbourg Court (under A), as well as the European Social Charter and the conclusions of the European Committee of Social Rights (under B). The second section provides a brief overview of work carried out in specific fields with references allowing the reader to look further into certain issues if he/she wishes.

The second part (Volume II) provides examples of legislation and practice in member states with reference to CoE principles and standards, putting emphasis on good practices. The first section deals with freedom of association in the political and work spheres, namely political parties (under A) and trade unions (under B), while the second one is devoted to the civil society, namely non-governmental organisations (NGOs) and foundations (under A), as well as more generally the role of civil society in the democratic process in the member states (under B). Issues linked to religious associations have been deliberately left outside since they have been dealt with in a previous thematic monitoring report on the freedom of religion (CM/Monitor(2003)10).

The third part (Volume III) presents conclusions by the Secretary General and decisions on follow-up action taken by the Committee of Ministers with respect to the Organisation's Programme of Activities. These decisions, always in accordance with the new procedure, include instructions or invitations "*to competent Council of Europe mechanisms - in particular Steering Committees - to work*" on areas in which "*gaps*" were revealed.

¹ This document has been classified confidential at the date of issue. It was declassified at the 943rd meeting of the Ministers' Deputies (19 October 2005) (see CM/Del/Dec(2005)943/2.4).

I. CONCLUSIONS PRESENTED BY THE SECRETARY GENERAL

1. As underlined in the Warsaw Declaration, adopted at the Third Summit of Heads of State and Government of the CoE member states, on 16-17 May 2005, "*democracy and good governance can only be achieved through the active involvement of citizens and civil society.*"
2. In this context, the work of the *CoE Forum for the Future of Democracy*,² to be established as part of the Action Plan adopted at the Warsaw Summit, will be of utmost relevance to the question of freedom of association in general and the participation of civil society in the democratic process more specifically. Through an "*exchange of ideas, information and examples of best practices*", when created, the Forum will allow for addressing new challenges, such as the role of civil society and its organised part - the NGOs - in policy-making, the question of "participatory democracy" and the future of "Quadrilogue".
3. Moreover, in the Action Plan adopted at the Warsaw Summit, the Heads of State and Government of member states decided to "*enhance the participation of NGOs in CoE activities as an essential element of civil society's contribution to the transparency and accountability of democratic government*". They have further decided "*to intensify [their] efforts to empower young people to actively participate in democratic processes so that they can contribute to the promotion of [CoE] core values.*"
4. As regards standard-setting and the situation in the member states in the field of freedom of association at present, the report reveals that on the issues mainly dealt with, i.e. political parties, trade unions, NGOs and civil society participation in the decision-making process, both legislation and practice of member states differ substantially. A large number of examples of good practices have been put into light, alongside with *lacunae* either in member states' legislation or in its implementation. Member states and other partners concerned, mainly NGOs, should be encouraged to make full use of the co-operation projects proposed by the Programme of Activities of the Organisation in the field of freedom of association and civil society in order, *inter alia*, to address issues raised in the present report.
5. At the same time the report shows that, although at present there is no special body responsible for promoting freedom of association within the CoE, important work undertaken with respect to different aspects of this freedom by various bodies and institutions has led to the elaboration of standards and principles to guide member states in drafting and applying relevant legislation.
6. Firstly, the case-law of the European Court of Human Rights (ECtHR) on Article 11 of the European Convention of Human Rights (ECHR) offers a set of standards as regards freedom of association in general and political parties in particular. The Venice Commission has elaborated three sets of *Guidelines* in this area, namely *on the prohibition and dissolution of political parties and analogous measures, on financing and on legislation on political parties*. The Committee of Ministers (CM) has further contributed to standard-setting in this area with its Recommendation (2003)⁴ *on common rules against corruption in the funding of political parties and electoral campaigns*. Member states should be encouraged to take due account of all these standards when drafting, amending or applying legislation related to political parties.
7. The European Social Charter (ESC) provides standards with respect to the freedom to form and to join (or not to join) trade unions. The collective complaints procedure introduced by the 1995 Protocol has contributed to the reinforcement of freedom of association by allowing a number of associations to lodge collective complaints against member states.
8. ECRI has also largely contributed to standard-setting in the area of freedom of association, through both its country reports and its General Policy Recommendations, namely its Recommendation No. 7 *on national legislation to combat racism and racial discrimination*. A decision to disseminate widely the General Policy Recommendations of ECRI was taken in the Action Plan adopted at the Warsaw Summit.

² See also the Green Paper on "*The Future of Democracy in Europe*", Trends, analyses and reforms, CoE Integrated project "Making Democratic Institutions Work", CoE Publishing, 2004.

9. In referring to the work of both the ECRI and the Advisory Committee of the Framework Convention for the Protection of National Minorities, the report underlines the role played by associations of national minorities in ensuring their effective participation in public affairs and “*foster inter-cultural and inter-religious dialogue*”, in the terms of the Warsaw Summit Declaration. In looking into the issue of consultative bodies of national minorities, the Committee of Experts on Issues relating to the Protection of National Minorities (DH-MIN), recently re-established under the Steering Committee of Human Rights (CDDH), could further develop guidelines and share good practices in this area.

10. The CM Recommendation (2001)19 *on the participation of citizens in local public life* sets the basic principles of a local democratic participation policy. CLRAE has further contributed to the promotion of such a policy through a number of Recommendations and Resolutions aimed at enhancing participation in the local public life of citizens, foreigners and young people, as well as promoting partnership between local and regional authorities and NGOs.

11. Reinforcing the freedom of association of legally residing foreigners and promoting their participation in public life at all levels in the countries of residence appears to be one of the challenges for the future if “*further progress*” is to be achieved in “*building a Europe without dividing lines*” (Warsaw Declaration).

12. Increased professionalisation of the armed forces nowadays puts into question restrictions imposed by both the ECHR and the ESC on the freedom of association of their staff. PACE has repeatedly advocated in favour of enhancing the right to association of the professional staff of the armed forces. However, this position is not shared by all governments of member states. The CoE Commissioner for Human Rights, for his part, is also carrying out important work on the issue of human rights and the armed forces. The conclusions to be drawn from this work could be further studied by the CDDH in due course.

13. As regards NGOs, the report presents the evolution of their relations with the CoE having led to the introduction of a participatory status for INGOs and partnership status for national NGOs. The possibility for NGOs to intervene before the ECtHR as a third party is also of particular importance.

14. However, despite the increasingly important role recognised by the CoE to NGOs as partners in promoting its core values, there seems to be a gap as regards relevant legal instruments elaborated within the Organisation. The “*Fundamental Principles on the Status of NGOs*”, which serve in the present report as a point of reference for presenting examples of legislation and practice in the member states, are not a legal instrument. At the same time, the CoE Convention on Recognition of the Legal Personality of International NGOs (ETS No. 124), the only international standard-setting instrument related to NGOs, has a limited scope merely regulating the acquisition of legal personality by international NGOs and does not deal with the issues raised in the present report such as: the acquisition of legal personality and registration of national NGOs, the right to consultation by public authorities and their financial viability, with particular reference to tax treatment and fund-raising possibilities. The Convention ETS No. 124 has, moreover, a disappointing record of ratifications and repeated efforts to analyse the reasons for this and promote its ratification have led to no fruitful results.

15. It seems thus that there could indeed be room for the elaboration of a (non-binding) legal instrument on NGOs which, inspired by the Fundamental Principles and good practices in member states, could develop standards and guidelines to enhance the sustainability of civil society and assist member states in their policy-making and elaboration of national legislation in the field. Since a proposal to this extent has already been tabled with the European Committee on Legal Co-operation (CDCJ),³ this committee could be instructed to further pursue and finalise its relevant work in the light also of the present report.

³ See paragraphs 99 and 100 in Part I with reference to PACE [Opinion 246 \(2003\)](#) and doc. [CDCJ \(2005\) 6](#).

II. DECISIONS ON FOLLOW-UP ACTION TAKEN BY THE COMMITTEE OF MINISTERS

16. In the light of the report and discussions, the Committee of Ministers, at its 931st meeting (*in camera*) of 4 July 2005, took a number of decisions in order to ensure concrete follow-up action. The Deputies:

“1. invited member states to make full use of Council of Europe co-operation programmes in the field of freedom of association and civil society and disseminate information on possibilities available to other interested partners, such as mainly NGOs and instructed the Secretariat to consider ways of enhancing freedom of association in elaborating the draft programme of activities and different country-specific programmes;

2. instructed the European Committee on Legal Co-operation (CDCJ), in consultation with the Steering Committee for Human Rights (CDDH) and the Conference of INGOs enjoying participatory status with the Council of Europe, to pursue its examination of the proposal to elaborate a non-binding legal instrument in the form of a Recommendation on NGOs, taking into account the “Fundamental Principles on the Status of NGOs in Europe” and the present thematic report on “freedom of association”;

3. invited member states, when drafting, amending or applying relevant legislation, to take due account of:

i. the European Court of Human Rights’ case-law on Article 11 of the ECHR;

ii. Recommendation Rec(2003)4 of the Committee of Ministers on common rules against corruption in the funding of political parties and electoral campaigns; and

iii. the Venice Commission Guidelines on prohibition and dissolution of political parties and analogous measures (CDL-INF(2000)1), on financing of political parties (CDL-INF(2001)8) and on legislation on political parties (CDL-AD(2004)7 rev.);

4. decided to ensure wide dissemination among different state bodies and political parties:

i. of the standards and principles on freedom of association enshrined in the European Convention on Human Rights and of the related case-law of the European Court of Human Rights;

ii. of the relevant standards and principles on freedom of association contained in the European Social Charter and of the conclusions of the European Committee of Social Rights.”