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## Political Affairs Committee

*“Every human being you know and for whom your action may have consequences, is a person towards whom you have obligations. This is nothing else than a basic idea of morality. The challenge today is to equip a way of thinking and feeling which has been developed over thousands of years in the lives of small local groups with ideas and institutions which allow us to live together in the global tribe which we have become”.*

Kwame Anthony Appiah *Cosmopolitanism, Ethics in the world of strangers*, WW. Norton and Company, NY and London 2006, *courtesy translation from German*

## The State of Democracy in Europe

### Specific Challenges facing European democracies: the case of diversity and migration

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- A. Preliminary Draft Resolution**
- B. Preliminary Draft Recommendation**
- C. Draft explanatory memorandum**

**Part I - Evaluation of the quality of European democracies**

**Part II - Specific Challenges to contemporary democratic systems in Europe: Diversity and Migration**

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## A. PRELIMINARY DRAFT RESOLUTION

1. The Assembly recalls and reaffirms its Resolution 1547 (2007) and Recommendation 1791 (2007) on the State of Democracy in Europe as well as Recommendation 1500 (2001) on the Participation of Immigrants and Foreign Residents in Political Life in Council of Europe member States.
2. The Assembly considers that diversity is a permanent feature of contemporary democratic societies and an inevitable result of modernisation, globalisation and liberalisation of economies and changing demography. The process of diversification is constantly changing.
3. Migration is one of the factors that contributes the most to the diversification of European societies. According to reliable estimates, there are 64.1 million migrants in Europe, which amounts to 8.8% of the total population and this figure is increasing. All Council of Europe member States are concerned.
4. Diversity constitutes a challenge for our democracies. Most of them were originally designed for more homogenous societies. Today they are not always able to accommodate and seize the opportunities arising from the more diverse societies. These shortcomings of democracies which, in extreme cases, can result in violence, should be tackled and remedied without further delay.
5. The Assembly is aware of the important challenge facing European democracies in reconciling respect for diversity in society and the inclusiveness of the democratic polity and process, while ensuring full respect for the human rights of all human beings in a country.
6. It welcomes the considerable progress that has been achieved in this respect, and the fact that the situation of migrants, as regards the exercise of their political rights, has generally improved in a significant way in recent years. The Assembly hopes that the inclusiveness of democracies will continue to improve.
7. At the same time, the Assembly recalls that the essence of democracy is that all those concerned by a decision are directly or indirectly part of the decision-making process. That is why its representativeness is of crucial importance and is unacceptable that large groups of the population are excluded from the democratic process. This situation must be remedied by facilitating access to citizenship<sup>1</sup> or extending political rights, including voting rights, to non-citizens. All those concerned by decisions taken within a democratic process should have the opportunity to be a part of that process. Otherwise the dignity of a person is not respected.
8. Moreover, the Assembly fails to see any justification for different treatment between long-term migrants who are lawfully resident in a country solely on the basis of their country of origin. At the very least, there should be no differentiation between migrants who are citizens of Council of Europe member States irrespective of whether their country of origin is or is not a member of the European Union.
9. One of the ultimate objectives of every democratic system should be equal opportunities for the exercise of political rights and therefore the elimination of political advantages linked to the status of citizen as compared to non-citizens.
10. Further concerns relate to the effective exercise of rights where they have been granted. Low participation and representation of migrants and people of migrant origin in political life must raise questions about the barriers to their more active involvement in the democratic process.
11. Striking the right balance between the respect of diversity and the need for integration is essential for the proper functioning of democracy. Integration, which is basically aimed at eliminating exclusion and segregation of the society, has to go hand in hand with respect for diversity, different cultures, languages and religions, in full respect for human rights. Assimilation is not to be confused with integration and would undermine it.
12. At the same time, however, integration does imply a degree of involvement in the society as a whole, including knowledge of the language(s) of the country of residence and respect for the constitutional values in that country, in particular respect for the principles of human rights, democracy and the rule of law.

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<sup>1</sup> The term "citizenship" refers to national affiliation

13. Integration is both a necessary condition as well as criterion for evaluating the quality of democracy.

14. Furthermore, the Assembly notes that democracy also represents a substantial opportunity to achieve a fair distribution of life chances and opportunities for all. The way democracy is practised at present means that it cannot entirely deliver its promises. The way to overcome the shortcomings of today's democratic polity is to enlarge it to the transnational level.

15. The Assembly recognises that various historical, geographical, social and cultural circumstances may have influenced the shape of democracies in different countries and may therefore have influenced its present-day picture. This needs to be taken into account when assessing the quality of democracy.

16. With a view to improving the inclusiveness of the democratic process and the quality of democracy, the Assembly calls on the Council of Europe member States to:

*As regards access to citizenship.*

16.1 facilitate access to citizenship by easing regularisation requirements where such requirements are too restrictive;

16.2 remove restrictions on dual citizenship where such restrictions exist in national legislation;

16.3 in cases where dual citizenship is not possible, remove restrictions placed on citizens who renounce their citizenship where such restrictions exist in national legislation;

16.4 Sign and/or ratify the European Convention on Nationality where they have not already done so.

*As regards voting rights*

16.5 grant the right to vote and to stand in elections at local and regional level, at least to citizens of Council of Europe member States who are lawfully resident in the country as the first step before granting such rights to all lawfully resident foreigners irrespective of their country of origin, as well as to persons who may have lost their citizenship involuntarily;

16.6 In order to ensure maximum representativity within elected bodies, refrain from introducing thresholds higher than 3% in electoral laws;

*As regards other political rights*

16.7 remove restrictions on the exercise of individual freedoms of migrants who are lawful foreign residents concerning, in particular, the freedom of association, and other restrictions even in cases where they may be in conformity with Article 16 of the European Convention on Human Rights, where such restrictions exist in national legislation;

16.8 support the deletion from the European Convention on Human Rights of Article 16 allowing restrictions on the political activity of aliens;

16.9 Sign and/or ratify the Council of Europe Convention on the Participation of Foreigners in Public Life at Local Level if they have not already done so.

*As regards registration of migrants*

16.10 ensure that there are no impediments placed on the registration of migrants and the granting of long-term residence status where applicable;

16.11 contribute to the establishment, at European level, of a harmonised system of collection of statistical data on migrants

17. The Assembly calls on the member states of the European Union to reconsider and address the differential treatment of third-country immigrants in comparison to immigrants from other European Union countries as regards the exercise of political rights;

18. The Assembly encourages the Congress of Local and Regional Authorities of the Council of Europe to pursue its activities in the field of participation of foreigners in local and regional democracy and to examine the question of their effective political participation, including their representation at local and regional levels of power

19. The Assembly invites the relevant committees of national parliaments to examine the 2008 report on the state of democracy in Europe with a view to ensuring relevant follow-up in the framework of national legislation and policies.

## **B. PRELIMINARY DRAFT RECOMMENDATION**

1. The Parliamentary Assembly refers to its Resolution ... It also recalls its previous resolutions and recommendations addressing the question of democracy, migration and political participation of migrants.
2. The Assembly recommends that the Committee of Ministers calls on member states to give appropriate follow-up to the issues raised in Resolution ... (2007), and take the necessary measures aimed at increasing the inclusiveness of democratic processes in their respective countries.
3. The Assembly recommends that the Committee of Ministers, taking advantage of its unique position as a forum for pan-European co-operation, initiate the following activities:
  - 3.1 harmonisation among Council of Europe member States of systems for collecting and processing data on migrants;
  - 3.2 elaboration of guidelines on registration and status of long-term foreigners lawfully residing in Council of Europe member States;
  - 3.3 promotion of less restrictive access to citizenship and harmonisation of naturalisation systems, in particular regarding the length of required residence so as to make the situation more equitable across the member states, as well as the criteria for defining of the degree of integration of a person concerned;
  - 3.4 promotion of harmonisation of rules regarding voting and political rights of foreigners across the member States;
  - 3.5 abolition of Article 16 of the European Convention on Human Rights;
  - 3.6 promotion of decentralisation of integration policies regarding especially schooling, culture and local administration.
  - 3.7 research on political participation of migrants and people of migrant origin at different levels of political representation and the decision-making process;
  - 3.8 encouraging governments to follow the example of the Dutch Government and to carry out a self-evaluation of the quality of democracy in their states according to the guidelines elaborated by the International Institute for Democracy and Electoral Assistance (IDEA).
4. Moreover, the Assembly calls on the Committee of Ministers to provide the necessary resources and make full use – in co-operation with other partners – of the Forum for the Future of Democracy as a tool for the further development of democracy in Europe, and to devote one of its future sessions to the challenge which migration poses to democratic systems.

## C. EXPLANATORY MEMORANDUM

### PART I - EVALUATION OF THE QUALITY OF DEMOCRACY

#### A. Introduction

1. In April 2007, the Parliamentary Assembly of the Council of Europe held a debate on the state of human rights and democracy in Council of Europe member states. The full-day discussions were based on three reports, including two thematic reports, on the state of human rights prepared by the Committee on Legal Affairs and Human Rights, on the state of democracy prepared by the Political Affairs Committee, and a report dealing with both issues on a country-by-country approach prepared by the Monitoring Committee. Other Assembly committees were invited to contribute to the three main reports, completing them in their respective field of competence.

2. From the outset, the debate was conceived as a periodical exercise. Experience gained during the first debate held in April 2007, followed by discussions in relevant committees and in the Assembly's Bureau, led to the conclusion that it should be held on a yearly basis and devoted alternately to human rights and democracy. It was also agreed that it should focus on specific questions.

3. As Rapporteur of the Political Affairs Committee for the 2007 debate, and being aware of the fact that it was the first in the series of planned reports in this field, I decided to adopt a normative approach. I thought it was essential in the first place to identify and define the normative basis of democracies which would serve as criteria for the evaluation of the state of democracy in European countries, its main challenges and the remedies which might be proposed.

4. As a result, in my 2007 report on the state of democracy in Europe, I defined constituent dimensions of democracy and their relevance at the level of the individual, political organisations and governmental institutions. As democracy is an ongoing, never accomplished process, I also proposed sets of standards which could be applied to different stages of democracy – from basic to strong democracy. The establishment of these criteria enabled me to examine the application of standards of democracy in Council of Europe member states and thus identify shortcomings of the democratic process in some countries. I refer all those interested to Doc. 11203, as well as Recommendation 1791 (2007) and Resolution 1547 (2007)

5. This year, the Political Affairs Committee decided that the report should focus on one of the challenges facing democracy today, namely on migration. Democratic systems in our countries are increasingly confronted with the enormous multi-dimensional diversity of their own societies. I will illustrate the scope of this phenomenon further on. The big challenge for all states today is to bring together the respect for the diversity in society and the respect for human rights and integrity based on a common democratic policy.

6. Yet democratic institutions in our countries do not sufficiently take this into account, and the democratic process to a large extent overlooks those who are not citizens. Furthermore, frequently even citizens of migrant origin are not sufficiently involved in the democratic process for a number of reasons which I will try to identify.

7. A process of modernisation inevitably implies diversification of communities of which society is composed. The challenge of diversity, to which migration contributes along with other factors, imposes the need for reconsideration of the analytical framework for the evaluation of the quality of democracy.

8. International migration in Europe is playing an increasing role along with the process of globalisation, liberalisation of economies and changing demography. This is equally true for western and eastern European countries including the Russian Federation. There is also growing awareness that the demography of immigrants is an important element in future population developments in Europe.

9. One of the ultimate objectives of every democratic system should be the elimination of political advantages linked to the status of citizen as compared to non-citizens. Moreover, there should be no major differences between citizens of different origins or cultural communities in exercising their involvement in the democratic process. The essence of democracy is that all those concerned by decisions taken within a democratic process should be a part of the decision-taking process.

## **B. Main conclusions of the 2007 debate on the state of democracy in Europe**

10. The full-day debate on the state of human rights and democracy in Europe, which the Assembly held in April 2007, proved to be useful and fruitful. Firstly, we all agreed that it is impossible to identify a perfect model of democracy<sup>2</sup>. Even if there is a general consensus on the main principles of democracy, there is no unique and perfect way to implement them.

11. There are too many variables, including geography, history, tradition, culture, the state of development of the country, the way in which the values and beliefs have shaped democracy and the way in which democracy has come about. The latter, in my opinion, is particularly important and I will devote more attention to it in this report. As Mr Riester pointed out in the debate: we should study the history of different countries before we assess the state of democracy in them.

12. As it is well-nigh impossible to present an ideal model of democracy, it is even more important to elaborate criteria for the evaluation of democracy. Secondly, as we all agreed that democracy is an ongoing process, in permanent development, I proposed to establish four sets of criteria which could be applied to different stages of democracy: basic, developed, stable and strong democracy.

13. As my proposal met with a positive reception, I intend to develop it further in this report, also in the context of one of the most important challenges that our democratic systems are confronted with at present, namely a considerable increase in migration. Indeed, the standards and stages of democratic systems that I identified in the previous report, are verified by practice and experience on a daily basis in our countries, and it is essential that we react to new developments and changing situations.

14. Thirdly, we all agreed too that there is no single democracy in our member states which would be spared by crisis<sup>3</sup>. As one of the speakers last year correctly pointed out, in these times of general education, economic and technological progress and the globalisation of information, markets and society, democracy is no longer simply a form for organising political society based on the guarantee of civil liberties and regular, free and fair elections. Democracy is not just about the ballot for members of parliament or the president. Democracy is about how we live our daily lives. As Mr Bonnici said: "With regard to the rule of law, laws alone do not make a democracy; one must have something else: good laws".

15. Democracy is also a substantial promise to produce a fair distribution of life chances and opportunities for all. The way in which democracy is exercised at present it cannot deliver these promises.

16. The result of the imbalance between economy and democracy is that important decisions are increasingly taken outside parliaments under the influence of various lobby groups. Citizens have doubts about democracy because they feel unable to influence the political process of decision-making.

17. Furthermore, if we want to overcome the crisis of democracy, we must think about constituting democracy on a transnational level in a EU Treaty. The recent developments regarding the European Constitution have clearly shown that the task is extremely difficult. Moreover, I would like to draw attention to another report under preparation in the Political Affairs Committee on the UN reform, which will also tackle this question.

18. I fully agree with many participants of last year's debate that we have to discuss these questions openly, persist in attempts to identify shortcomings and continue to come up with reform proposals. In order to be able to do this, we have to examine the functioning of democracy in our respective countries; we need the courage to name concrete deficiencies in order to be able to propose concrete remedies. For that reason, I will not hesitate to illustrate my present report with concrete examples of good and bad practices in the member States.

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<sup>2</sup> See: Pierre Rosanvallon *L'universalisme démocratique: histoire et problèmes* in : Esprit, January 2008 where he states : "In order to think well about democracy you have to leave the idea that there is a model and replace it by experiences".

<sup>3</sup> My very respected colleague, former British Minister, Denis MacShane was so kind as to send to me a three page letter after the first reading of this memorandum in the Committee in mid-April 2008. In his letter, he suggests that we should not say that our democracies are in crisis. He makes the point that never in the past were so many people living in democracies as compared to the present times. This is a fact that I already mentioned in my report last year, but I described it as a paradox of today's democracies that although never in the past have so many people lived in democracies, never were so many people disappointed with the quality of the democracy they lived in. This is what I see as a crisis in our contemporary democracies and I believe that this is an opportunity to investigate all means to strengthen, develop and improve our democracies.

19. In particular, I draw your attention to the excellent idea made by Mr Kox, who proposed that the reports discussed during the debate on the state of human rights and democracy should be taken back to national parliaments and examined by relevant committees. Unfortunately, last year it was too late formally to ask national parliaments to ensure follow-up to our texts. This time I will include an appropriate recommendation in a draft text which will hopefully be adopted by the Assembly. We need to involve national parliaments! We need to encourage national awareness and promote national debates on this essential issue!

20. This is why it is so important that we elaborate measures which enable us to assess the quality of democracy. One of the following chapters will attempt to develop an improved framework for further analysis.

### **C. Further illustrations for the ongoing “crisis of democracy” and the fragility of the citizen in our countries today.**

21. Since our debate in April 2007, many different intellectuals, academics, as well as journalists, have further developed some of our hypothesis which we launched in our first report. I would like to quote some of them in order to illustrate the evidence of our work and enable us to widen our reflexion.

22. One of the leading German journalists, Heribert Prantl, chief editor for German politics in the daily *Süddeutsche Zeitung* wrote under the title ‘The Autumn of the State’<sup>4</sup> : If the State gets rid of its duties like a tree gets rid of leaves in Autumn, and if the State makes itself smaller and smaller, then the field in which citizens might have an influence gets smaller and smaller too. Too much “détatisation” begins to be a threat to democracy. (...)“

23. “If the State retires itself there will be less space for democratic decision-making. We need to democratically determine the important question: in what kind of society do we want to live? Shouldn’t it be a society in which all those who live there feel as if they are at home? Shouldn’t it be a society which is aware of what democracy is all about, a society where the future is made by all those who live there? With this aim, it is inconceivable that yet more people are excluded. Citizens of a democracy, in order to be able to be citizens, need to live a basically safe life. They need to be free of existential fears. This would be a real integration and the integration is the contrary of exclusion.”

24. The French Professor, Guy Hermet, wrote in his book about the “critical state of democracy”. He thinks that today we live in “confusion” between the “extension” of democracy and its “depth”. Hermet’s diagnosis: “there is at the same time a triumph of democracy on the surface and a loss of the substance of democracy in the depth”.<sup>5</sup> For many democracy does not mean anything anymore.

25. The former Labour Secretary in the first Clinton Administration and the Political Science Professor in Berkeley, Robert Reich, develops a systematic approach and shows two dilemmas which address each citizen: systematically Robert Reich thinks that “Capitalism might be most probably a condition for democracy, but democracy is as we see it in the US not a necessary consequence of capitalism”<sup>6</sup>.

26. The expression of this dilemma in Reich’s words: “ The influence of business in politics has grown in a way that democracy is being strangled. In the 1970s when I first came to Washington, there were about 7 000 lobbyists there. Today we have in Washington more than 36 000 lobbyists and 70 000 lawyers who defend the interests of the economy against the Congress. This power shift has a lot to do with a strong erosion of trust of many citizens in politics.”

27. Robert Reich’s second dilemma addresses the citizens directly: “not only we Americans, we all have two faces: on one side we are consumers, on the other side we are citizens. As consumers we all want cheaper goods, we all want to use all advantages of globalization and want to have the newest technologies. As investors we want to make the highest profits independently from the way in which they have been realised. This means increased pressure on the companies. But as citizens we complain that these companies lowered the costs, diminished the salaries and transferred jobs into foreign countries (...).”

<sup>4</sup> Der Herbst des Staates, In Kursbuch (der Zeit) nr 168 (December 2007), pages 74-78

<sup>5</sup> L’Hiver de la Démocratie, Sept. 2007, Paris, Armand-Colen

<sup>6</sup> See the big interview in a Zurich daily Tages –Anzeiger of 4 January 2008, based on Reich’s new book “Supercapitalism. The transformation of business, democracy and every day life” Sept. 2007

28. “The problem begins in our head. Most of us are not aware of this contradiction. The negative social effects of our economic systems are the logical consequences of the increased competition which wants to offer the consumers and investors the better deals(...). The only way in which we can come back as citizens is with laws that for instance help the employees to organize themselves and which increase the taxes for those who earn most. (...)”

29. “All democracies have been weakened and eroded by the pressure of the companies who hired with more money more lobbyists in order to buy legal advantages. The increased competition reveals itself ironically to be the bait for democracy.”

30. Concerning our hypothesis that there is no model for democracy which might be followed by all, the leading French academic of the history of democracy, Pierre Rosanvallon, says: “To think well about democracy we have to leave the idea of a model and instead we have to think in the category of different experiences”<sup>7</sup>.

31. Concerning the need to constitute democracy at a transnational level in order to empower the people to balance the transnational economy, the last months did not really produce much hope or progress. The failure of the second attempt at elaborating the European Constitution after 2001 will end next year in a European Treaty which is substantially very close to the constitutional draft which was rejected in 2005 by the French and Dutch citizens without the latter having a new opportunity to reconsider it. This experience leads the chief editor of “Le Monde Diplomatique”, Serge Alimi, to speak about “simplified democracy”<sup>8</sup>.

32. The Irish correspondent of the Swiss weekly ‘Neues Züricher Zeitung am Sonntag’, Martin Alioth, concludes “that the reason for this confusion is not a question of better organisation but the lack of political will and missing imagination. It would not be too difficult a job to draft a European Constitution on five pages that would be accepted in a European-wide referendum. The neglect which European citizens face today, allows the scepticism of the citizens to grow towards Europe”<sup>9</sup>. And towards democracy, too.

33. The Italian parliamentary election of 13-14 April 2008 serves what the British Professor Colin Crouch calls another evidence of “Post-democracy”<sup>10</sup>. In his view, contemporary democracies illustrate two trends: “the social – economic under-classes of the post-industrial societies are hardly able anymore to articulate their political interests in the autonomous way - especially when you compare them to the old industrial labour movement. The economic elites share clear aims (maximalisation of the share holder value) as well as the strong ideology (neoliberalism). Because supranationally active co-operations are able to play the governments against each other and exercise many steering functions in the world economy without any participation of state or governments, these economic elite have a great political power”.

34. “This is the reason why all large political parties prioritise the interest of global co-operations (...) The leaders of all parties left, right or center have distanced themselves from ordinary citizens and addressed them only by means of mass communication with methods which stem from the consumer industry”.

#### **D. Improved framework for further analysis**

##### *Conceptual dimension*

35. In my report last year, I proposed, for the purpose of evaluation of the quality of democracy, to establish its five constituent dimensions and to consider them at the levels of the individual, political organisations and governmental institutions. This allowed specific achievements and shortcomings of democracies in Europe to be assessed and the four stages of democracy, identified on the basis of sets of criteria, to be defined.

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<sup>7</sup> “L’universalisme démocratique: histoire et problèmes” in Esprit, January 2008

<sup>8</sup> Serge Halimi “La démocratie simplifiée”, Le Monde diplomatique Mars 2008, page 1

<sup>9</sup> Martin Alioth, NZZ am Sonntag opinion page, 30 March 2008.

<sup>10</sup> Colin Crouch, Yes, in Europe the age of Post-democracy has started in: “Die Zeit”, Hamburg, 24 April 2008, page

36. During the preparation of the present report, I realised that the question of diversity and integration was not properly reflected in the framework proposed last year. As I have already pointed out, diversity is a sign of modernisation of our societies. It is an inevitable process which certainly constitutes a challenge for democratic systems and which has to be given an appropriate response. It cannot be ignored when assessing the quality of democracy.

37. In my view, what is essential for the proper functioning of democracy is the right balance between diversity and integration. Integration, which is basically aimed at eliminating exclusion and segregation of society, has to go along with respect for diversity, different cultures, languages and religions.

38. Integration, as the Turkish Prime Minister, Mr Erdogan, has recently rightly pointed out in his speech in Koln, is something incompatible with assimilation; its purpose is not to suffocate diversity. On the contrary, people should be allowed and be given the opportunity to learn and study in their native languages, to develop their own culture and to cultivate their habits and traditions.

39. On the other hand, integration must imply a certain degree of involvement in the society as a whole. In the first place, it means the knowledge of a language of the country of residence. It also means the respect for values predominant in this country and expressed in its constitution, in particular for human rights, democracy and the rule of law.

40. Certainly, it is a matter of controversy to determine the border between respect for diversity and the need for integration and there is no universal model to be followed. Different countries have taken different approaches towards the immigrant population and its integration, ranging from integration in a multiculturalist manner based on wide tolerance and accommodation of cultural and religious diversity, to integration based on republican principles where access to citizenship implies restricted expression of religious or other traits in the public sphere. The UK and France respectively exemplify opposite extremes of these approaches.

41. The key to integrate new and old cultural minorities and newcomers is the ability of the society to deliver to them the sense of belonging.<sup>11</sup> This does not mean to destroy old feelings of belonging to the culture of origin, but to enable the immigrant to become an active member of the new society. This means the ability to speak the dominant language, to make a living out of work, to become a part of the community and to feel that there is an encouraging perspective for the family and oneself too.

42. That said, I would like to propose to complete the table on the principles of democracy and their expression at three different levels – which is a useful tool for the evaluation of the quality of democracy in our member States – so that it includes another dimension which was overlooked in last year's report: diversity and integration.

#### PRINCIPLES OF DEMOCRACY AND THEIR EXPRESSION AT THREE DIFFERENT LEVELS<sup>12</sup>

<i>Levels</i> <i>Principles</i>	<i>Micro-level</i> <i>Individual / Citizen</i>	<i>Medium-level</i> <i>Social groups / political organisations (parties, NGOs)</i>	<i>Macro-level</i> <i>System of governance, governmental institutions</i>
<i>1. Fundamental Human Rights</i>	Individual rights, legal protection, freedom of speech	Freedom of association, protection of minorities	Limitation of State power, constitution based on rule of law, independent judiciary
<i>2. Openness of the power structure</i>	Access to political communication and political power / right to control power	Pluralism of associations / elites / independent media	Separation of power, limitation of terms of office, political competition, control of power
<i>3. Political equality</i>	Universal suffrage, more equal participatory rights	Equal opportunities to organisational resources and to	Equal opportunities in the electoral systems and decision making

<sup>11</sup> Compare, for instance, the article "Tales of belonging" in the Guardian 7 April 2008, where they follow the integration into British Society of 9 immigrants from Poland, Jamaica, Pakistan, China, Uganda, Ireland, Australia, Somalia and Bulgaria from 1940 until today.

<sup>12</sup> Extract taken from article Principles and criteria for qualification of democracy, Author Theo SCHILLER, published in Dirk Berg-Schlosser, Perspectives of Democracy, Frankfurt, 1999 (courtesy translation from Germany) modified by the Rapporteur (modifications in bold).

		exercise influence	process
<b>4. Diversity and integration</b>	<b>Equality in political, economic and social rights; opportunity to develop own language, culture and traditions in full respect for human rights and democratic values; multiply opportunities for integration, and fulfill obligations in particular: learning of the host country's language</b>	<b>Respect for diversity, financial public support and organisational resources, involvement in the decision- making process concerning their interests</b>	<b>Equal opportunities for migrants and minorities in the electoral system and decision- making process. The design of politics should serve this aim</b>
<b>5. Transparency and rationality</b>	Pluralism of sources of information, different opportunities for political education/competence, efficiency of individual participation	Pluralism in the media, controversial and critical public sphere, plurality of interests	Transparent decision-making procedures competence by differentiation of responsibilities. Efficiency and procedures based on dialogue
<b>6. Political efficiency capacity to act and direct society</b>	Political interest motivation to participate, readiness to take over responsibilities, critical capacities, readiness to accept decisions	Aggregation of interests, mobilisation of political support	Majority rules, capacity to make compromises, resources to implement decisions (Rights, money etc), trust in institutions and systems
<b>7. Culture of citizenship</b>	<b>Trust, sense of belonging, sense of political ownership</b>	<b>Recognition and support of associations, civic organisations and NGO's</b>	<b>Citizen participation on all levels</b>

43. The addition of a new principle to the framework for the evaluation of the quality of democracy will have an impact on the established classification of four categories of democracy-building proposed in my previous report. Integration and diversity should be included in the standards of "developed" democracy.

#### *Historical dimension*

44. I would like now to come back to Mr Riester's proposal, expressed during the last debate on democracy, to study the history of different countries before we assess the state of democracy in them.

45. Democracy has come about as a result of various historical, social and economic processes in different countries. These specific conditions have inevitably influenced the outcome of the process and its present result. It is particularly obvious when we compare so-called "old", well established democracies and new democracies transformed after the collapse of the communist regimes. This is by no means to say that the former are "better" democracies, with fewer problems or concerns.

46. The question of diversity and integration illustrates this issue well. The countries which have recently emerged from the totalitarian past seem to encounter specific problems and concerns as regards individual rights as we witness in Latvia or the Russian Federation.

47. But, on the other hand, in Switzerland, where democracy has been a long-standing process in which political institutions have been shaped and improved gradually, still too many Swiss people seem to consider democracy as a privilege reserved for themselves and not as a human right for all those who are living in the country.

48. You may learn from the Swiss experience that there is no reason not to share the power with the citizens and to deny them the right to participate in all important decisions which concern them. The Swiss society was already diverse in the beginning of the XIXth century. Its integration in the XXth century was essentially achieved by an ongoing participation in all important public and political decisions. The Swiss

democracy still has two deficits. Firstly, the Swiss exclude too many of those who are concerned by the results of a decision-making process, because the obstacles to obtain citizenship are too high and in most parts of the country the democratic rights of the foreigners are underdeveloped. Secondly: the Swiss democracy still lacks public funding and depends too much on private money and rich people.<sup>13</sup> The fairness of the public opinion-making process has still to be improved. Otherwise, the legitimacy of the results would be undermined.<sup>14</sup>

49. In what was called in Western Europe, before the end of the cold war, “East Europe”, we find today different dynamics of the process of democratisation. There is no such entity as a homogenous “eastern European sphere”<sup>15</sup>. In none of these countries is democracy put into question, but there are different kinds of democracies in the making and each of them is confronted with specific problems.

50. For Charles Rupnik there cannot be any doubt that, in those Central European countries which joined the EU in 2004, we are confronted with a “serious crisis of democracy which needs to be carefully analysed without any wishful thinking”. In Poland, Rupnik states, you might understand that the “policy of frustration and resentment” of the former government is an indication of the widely spread disappointment in democracy. In the same way, he explains the indifference he observes in the Czech Republic towards the more moderate policies.

51. The French Professor sees in the new Central European member states “a trend of a tiredness towards democracy” which has to be a concern for us, but which we should not overstate either. This trend puts into question a general expectation in many Central European countries that there will be a continued progress from liberalisation to the change of the system and the change of democracy.

52. Under the term “consolidation of democracy”, one should understand much more than the acceptance of those who are in power, a general modernisation, good governance or the integration in the EU. The recent developments towards populism in those countries illustrate the importance of a “culture of citizenship”, that which Tocqueville named “the habits of the heart” for strengthening democracy. Rupnik: “Without such a political culture the legibility and stability of democratic institutions will always be put into question”.

53. Finally, when assessing democracies, we have to remember that, although violence related to diversity is a clear sign of shortcomings in democracy, it is not diversity which constitutes the problem – it is the way that diversity is handled that is at the origin of the problem.

#### *Case studies: Norway, France and the Netherlands*

54. Towards the end of the XXth century, the Norwegian parliament initiated a “Study of Power and Democracy” in Norway, “a democracy that is among the most robust of contemporary democracies”<sup>16</sup>. Between 1998 and August 2003, a committee of 5 professors led a research project, which produced 50 books, 77 other reports and many more articles by more than 100 authors. The result of this remarkable effort is hardly known to anybody outside Norway. The conclusion of this study, in the words of Oxford based Norwegian professor of sociology, Stein Ringen: “the democratic chain of command in which governance is under the control of voters has burst, and the fabric of rule by popular consent is disintegrating before our eyes.”

55. Stein Ringen: “If we measure quality of democracy not only in its constitutional procedures but also in the underlying social structures, the question is whether this is a population of increasing or decreasing equity in autonomy and dignity. Are ordinary people experiencing empowerment? Are previously excluded groups emancipated? In some respects the answer to these questions is in the affirmative. The situation of the old minorities (the Sami population, Jews, Gypsies, Travellers/tinkers and Finns) is radically transformed. In the case of the Sami, this is institutionalised in group rights being written into the Constitution, a Sami parliament elected by a Sami population and with some legislative authority,

<sup>13</sup> See Jürgen Habermas, *Ach, Europa*, Frankfurt 2008 where he states that “the design of the constitution has to guarantee the functioning of a political public sphere to which the citizens and the civil society have an access and where the constitution prevents the public sphere from being occupied by political, social or economic interests”.

<sup>14</sup> See a report of the OSCE/ODHiR election observers of the Swiss parliamentary elections in Autumn 2007 published in March 2008.

<sup>15</sup> I refer to the article by Charles Rupnik, Tiredness with democracy and populism in new member States, in “Lettre Nationale”, Winter 2007/2008, page 25-28, German edition

<sup>16</sup> Stein Ringen, *What Democracy is For*, Princetown University Press 2007, appendix B “How good is the kindest democracy?”, page 256-268

and their important recognition as an aboriginal people. The political situation of women is transformed, women having attained practical citizenship on a par with men”.

56. “The trend in social relations is not universally democratic - there is the notable exception of an emerging immigrant underclass. But by and large, this is a society in which rights and powers of self-determination are being dispersed in the population and not reined in.”

57. “Both politic and economic power is increasingly exercised above and outside the nation state, that is, beyond the reach of national democratic institutions; while within the nation state, the chain of command from below is weakening, outside the nation state a new chain of command is emerging from above that limits and directs national legislation but over which citizens and their representatives have virtually no say or control.”

58. “The conclusion that democracy is in decline in spite of social cohesion is remarkable. The message of the study is that the decline in a quality of a representative democracy is found, with some international pressure aside, in the constitutional procedures and institutions themselves: in the demise of local government, in election and party systems, in the lack of accountability of the welfare state, in the courts and judicial review. This is fortuitous for the practical business of protecting and improving democracy. It means that the best way to repair democracy is to repair democracy. We do not need to wait with democracy until we have repaired the society and capitalism. We can take on democracy directly.”

59. I understand the centrality of the project of participatory democracy in the French election of Spring 2007 as an illustration of the accuracy of the Norwegian conclusion. This might be indicated by many books which have been published since then in France about the need for the more participatory democracy. One example is Loïc Blondiaux “Le nouvel esprit de la démocratie” (Actualité de la démocratie participative, Paris 2008). «The contemporary democracies are looking for a new spirit, new basis. The classical forms of political representation will survive but their legitimacy decreases and their efficiency declines. The power of representative institutions is reduced everywhere, their authority is shaken and their capacity to impose solutions from above erodes strongly (...) This weakening of the traditional structures of the representative democracy does not at all announce the death of democracy itself ” Participatory democracy offers itself as a political alternative but it is never a monopoly of a candidate or a party, however it is very timely. It means that until today it is still only a programme which has to be carefully elaborated and developed.”<sup>17</sup>

60. I would like to mention here an excellent report prepared by the Ministry of the Interior and Kingdom Relations of the Netherlands entitled “The state of our democracy 2006” which is a result of a public debate on the functioning of the Dutch democracy. The report, which examines in detail and assesses different aspects of democratic system including legislation, its implementation, practice, role of different political actors and interactions between them, is aimed at identifying measures to guarantee, reinforce and – where necessary – renew democracy.

61. The report is also considered as a baseline measurement. On the basis of similar inquiries, changes to the democratic quality of the Dutch political system will become perceptible. It also points out those concerns which require vigilance or further investigation.

62. The report was composed according to the guidelines of the International Institute for Democracy and Electoral Assistance (IDEA)<sup>18</sup>. The methodology of “democracy assessment” provides for 56 angles of approach which are dealt with in respect to their content. The answers to every sub-question are formulated, as far as possible, on four different levels: existing legislation, the actual implementation, positive and negative indicators (statistics) and, where possible, opinions.

63. Among the conclusions of the report, different statements leave us with food for further thought. The report states: “The responsiveness of government leaves much to be desired. Thus 83% of people feel that the government pays little attention to the problem of citizens, 90% feel that the government scarcely involves citizens in the policy-making and 79% feel that the government is not sufficiently accountable for its performance”.

64. I strongly recommend getting acquainted with this extremely interesting initiative which should indeed, be followed by other member States. I intend to call on our governments to pursue this example.

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<sup>17</sup> See also Marc Crépon et Bernard Stiegler, *De la démocratie participative, Fondements et limites*, Paris 2007

<sup>18</sup> D.Beetham, S.Bracking, I.Kearton, *Handbook on democracy assessment* Kluwer Law International, the Hague 2002

## **PART II: SPECIFIC CHALLENGES TO CONTEMPORARY DEMOCRATIC SYSTEMS IN EUROPE: DIVERSITY AND MIGRATION**

### **E. Diversity of the population in CoE member States**

65. Modern societies are characterised by considerable ethnic diversity. This is also true for Council of Europe member States. Indeed, among its 47 members, there is hardly a single country anymore which would be composed of an ethnically homogenous population.

66. The presence of so-called traditional minorities has been a long standing feature in many European countries. Being mainly a result of changing borders, this problem has been handled at the national and the European level along with the process of democratisation and integration. The Council of Europe has largely contributed to setting models for good practices in this field and its Convention on the protection of national minorities has had an important impact on the improvement of the situation of minorities in member States.

67. In general, insofar as these traditional minorities enjoy the rights of citizens in their country of residence, and their concerns relate rather to specific rights of minorities, they will not be dealt with in this report. However, I will look closer at the specific situation of certain groups of people who have become minorities as a result of changes in the border over recent decades and have no citizenship of a country of their residence. This is particularly the case of large groups of people scattered over the territories of different states emerging after the collapse of the Soviet Union.

68. Over the last decades, practically all European countries have been increasingly confronted with a phenomenon of so-called new minorities – long-term migrants settling in a host country in search of better economic opportunities. This phenomenon, which in some Council of Europe members States has reached a considerable size, is an inevitable consequence of globalisation and will certainly continue.

69. Furthermore, as I have already mentioned above, considerably growing movements of population between European countries are the result of the enlargement of the EU and the process of economic globalisation.

70. In many countries, this has resulted in the establishment of large communities of foreign residents deprived of the rights linked to citizenship and living in the margins of the democratic process. Access to citizenship here is a major, although not the only concern and I will look closer at this question in my report. I will also examine to what extent the long-term residents with foreign passports are given an opportunity to be involved in the democratic process in their country of residence.

71. Furthermore, in some countries a new category of citizen of migrant origin has emerged. Although these people, descendants of migrants or foreigners who have acquired citizenship of a country of residence, formally enjoy all rights, in practice they are often not included in the democratic process. I will illustrate cases of marginalisation which are a consequence of shortcomings in the functioning of democratic institutions. I will leave the task to Mr Greenway, Rapporteur of the Committee on Migration, Refugees and Population, to identify possible measures which might improve this situation.

72. In my report, I will not deal with illegal migrants. This important and urgent question is being tackled in a number of reports prepared by the Committee on Migration, Refugees and Population.

73. Nor will I examine the situation in conflict areas. These issues are also the subjects of specific reports.

### **F. Scope of diversity**

74. I do not intend to present here exhaustive information on numbers of foreigners or citizens of foreign origin in Council of Europe member States. I would like, however, to illustrate with several examples, the scope of the problem. This will, hopefully, make the reader realise how urgent the issue is.

75. At the outset, I should point out that the provision of statistical data is still highly unsatisfactory despite the fact that it has improved considerably over the last few years. The main concerns are the incompatibility of sources as well as conceptual and definition problems. Differences in national laws on data protection, as well as information processing in CoE member States, also result in considerable

variations in the statistics available. Last but not least, methods of collection, particularly in Eastern Europe are still inadequate and there is a lack of well-developed statistical systems. Instead of further developing this question, I refer those interested to the work of the European Commission against Racism and Intolerance (ECRI) and, in particular, to the document entitled "Ethnic statistics and data protection in the Council of Europe countries".<sup>19</sup>

76. Despite all these problems, it remains beyond any doubt that migrants and people of migrant origin constitute an important proportion of CoE's societies and that the phenomenon is on the rise.

77. The total recorded stock of foreign national population living in Council of Europe member states in 2004 stood at around 64.1 million people<sup>20</sup>. This means that foreign citizens constituted approximately 8.8% of the population in Europe. The distribution of this foreign stock was not equal between different countries: the greater part was resident in Western Europe.

78. In the countries of Western Europe, the foreign population accounted for 42 million people (over 10%). This figure has increased by over 30% since 1995.

79. In 2004, in Central and Eastern Europe, including the Russian Federation, there were some 22 million foreigners recorded as residents, representing about 9% of a total population of over 242 million. However, I wish to stress again that information on stocks of foreign population in these countries, and in particular in the Russian Federation, is incomplete, derives from a variety of sources and its collection is unsatisfactory. One can assume with a high degree of probability that real numbers are much higher.

80. The proportion of foreigners in the total population varies considerably from country to country. In 2004, Luxembourg had by far the largest percentage: 38.6% of the total population, followed by Switzerland (22%), Austria (9%), with Germany and Belgium slightly behind and then Ireland and Spain. In another group of countries – Denmark, France, the Netherlands, Norway and the UK – it was around 4-5%.

81. One should acknowledge the specific nature of the situation in the Baltic states, to which I will refer later in more detail. The majority of the foreign population in Estonia and Latvia is of ethnic Russian origin. These Russians had settled as internal migrants during the Soviet era and changed their status to "international migrants" only after the collapse of the Soviet Union.

82. Latvia, proportionally, has a large share of non-citizens. The resident population in Latvia is composed of two major ethnic groups of whom the Latvians represent 58.9% and Russians 28,6%. In 2005, out of a total population of 2.29 million inhabitants, 1,9 (or 79,6%) were Latvian citizens and 432,896 (or 18,8%) were non-citizens without any citizenship at all.

83. Another indicator which seems of importance for the purpose of this report is the size of the foreign-born population in European countries. This category, obviously much more numerous than the previous one, includes both residents with foreign passports as well as former foreign nationals who have been naturalised.<sup>21</sup> Obviously, this category is not homogenous and both groups face different problems as regards participation in the democratic process. I refer to them because I think they are quite revealing and they illustrate the diversity of our societies very well.

84. In 2006, in Western Europe, people born abroad constituted between 7 and 15% of the total population.<sup>22</sup> In absolute terms this means that in the EU/EEA and Switzerland (which means in 31 out of 47 CoE member States) out of 474 million people, some 42 million were born outside their country of residence. Germany had by far the largest foreign-born population (10.1 million), followed by France (6.4 million), the UK (5.8 million), Spain (4.8 million), Italy (2.5 million), Switzerland (1.7 million), and the Netherlands (1.6 million).

85. In relation to population size, two of Europe's smallest countries have the largest stock of immigrants: Luxembourg 37,4% and Liechtenstein 33,9%. They are followed by Switzerland (22,9%), Latvia (19,5%), Estonia (15,4%), Austria (15,1%), Ireland (14, 1%), Cyprus (13,9%), Sweden (12,4%), and Germany (12,3%).

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<sup>19</sup> By Patrick Simon, Institut d'Etudes Démographiques, Strasbourg, 2007

<sup>20</sup> Source: IOM, 2005

<sup>21</sup> In addition this figure includes citizens of the country which may have been born abroad, but their number is limited.

<sup>22</sup> All statistics regarding the EU/EEA and Switzerland come from Eurostat, Statistics in focus, Population and social conditions, 8/2006

86. Furthermore, the evolution in figures is a matter of particular importance. Thus, one should observe that, in 1996, immigrants accounted for three-quarters of the population growth of the EU.

87. As regards the Russian Federation, in terms of numbers of immigrants, it is second only to the USA in the world. In 2000, the number of international migrants was 13 million<sup>23</sup> (over 10 % of population). According to the Russian census of 2002, 11 million had immigrated to Russia since the previous census in 1989. 99,5% were from former Soviet Union countries, mostly repatriating ethnic Russians.

88. Labour migration to Russia, mostly from CIS countries, is a very important phenomenon, which is severely under-represented in official statistics. The law on entry and exit passed in 1996 had a substantial negative effect on both internal and external migration registration due to a quite artificial division into permanent and temporary migration categories. As a consequence, temporary migrants (many of whom have stayed or intend to stay for a long period) were left out of the reach of official statistics. Further amendments in 2000 and 2003 increased the cost of obtaining either a permanent or temporary residence permit, to the extent that many foreigners have decided to remain undocumented.

89. For these reasons, it is difficult to compare the data for Russia with those for the EU countries, and to give exact figures on the scope of diversity. But even these imperfect figures illustrate well the scope of the problem with which the democratic institutions in the Russian Federations are confronted.

90. There are important differences in the national composition of foreign populations both between Western and Central and Eastern Europe, as well as between individual countries. The distinction between migrants who are EU citizens and other Europeans and non-Europeans is fully justified for the purpose of this report as their situation – as regards political rights and integration – is very different. I will look closer at this question in due course in my report.

91. In Western Europe, the composition of the foreign population is a reflection of successive arrivals of labour migration and, more recently, family reunion, as well as of flights of refugees from within and outside Europe. Thus, the dominant foreign groups in each of these countries originate from the countries from which the labour force was recruited in the 50s, 60s and 70s, as well as former colonies if the host countries had owned them, and are often completed by nationals from former Yugoslavia and war-torn areas from Asia and Africa.

92. In order to give the overall idea of the proportion of European and non-European migrants, I draw your attention to the following data: within the EU as a whole, 12.45 million were European. Africans amounted to 3.66 million and Asians to 2.51 million.

93. However, if we look at the numbers of lawful residents and naturalised citizens, the number of migrants from outside Europe in European countries amounts to nearly 30 million and is made up as follows: Turks: approx. 5 million, mostly in Germany, France, the Netherlands and Austria; North Africans: approx. 5 million, mostly in France, the Netherlands and Sweden; Africans: approx. 5 million, mostly in the UK, France, the Netherlands and Germany; Latin Americans: approx. 2.2 million, with the largest groups in Spain and Italy; South Asians: approx. 4 million, mostly in the UK; Pakistanis: approx. 1 million, mostly in the UK; Kurds: approx. 1.5 million, mostly in Germany; Chinese: approx. 1 million, mostly in France, the UK and the Netherlands; Filipinos: approx. 500,000, mostly in the UK, France and Germany, and Japanese: approx. 100,000, mostly in the UK.

94. Of almost 50 million foreigners resident in EU states, about 5.51 million (11,2%) were citizens of other member States.

95. Most recently, as I mentioned before, there have been massive movements within the EU. Following the enlargement of the EU in 2004 and 2007, the migration within Europe has increased considerably. Most immigrants come from Eastern states to the Western European states. For example, since 2004, an estimated number of 750,000 Poles have migrated to the UK and to Ireland.

96. What does seem to be emerging is a transnational European economic space characterised by a highly mobile labour force. There is now a widespread circulation of people in informal and short-term movements but there are also some remarkable parallels with the situation of the “guestworker phase” in the decades after World War II. The recent enlargements of the EU have implied a redistribution of

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<sup>23</sup> Source : IOM, 2003

population as the economies of the Union have become more integrated. Substantial westward movement from the new members (where policies have allowed).

97. Also European emigration towards Southern Europe is a fairly new phenomenon. Citizens from the European Union, particularly from the UK and Germany, make up a growing proportion of immigrants in Spain. The population of UK citizens living in Spain amounts to about 1 million, about 800,000 being permanent residents. Since 2000, Spain has absorbed around 4 million immigrants, adding 10% to its population.

98. These statistical data may be completed by growing concerns about the prospective changes to labour supply and demand. Issues raised include demography, ageing societies, labour demand and supply.

99. There is no doubt that the diversification of our societies will continue along with their modernisation. If we turn a blind eye to this process, if we do not try to include these large groups of people in our democratic systems, we put in danger the very principle of democracy in our countries.

**G. Standards of democracy as defined in the 2007 report on the state of democracy which may be affected (challenged) by the high diversity of societies in European countries**

100. In my last report, I proposed a number of criteria by which one can assess the quality of democracy and determine its stage. A number of requirements are a precondition for any democratic system. I called this stage "basic democracy". Among requirements for basic democracy there are individual freedoms (freedom of media, association and political rights); free and fair elections; real representation and effective parliamentary democracy.

101. In this report, I would like to examine to which extent migrants who, as I showed before make up a large proportion of our societies, may enjoy the rights which result from these requirements. The reply also has an impact on the assessment of the quality of democracy in our countries as it implies representation and participation in a political decision-making process.

102. Before I come to detailed considerations, I should recall that which I have already indicated, i.e. that in general, as regards the European Union (EU) area, the situation of migrants originating from the countries which are members of the EU is much better than the situation of citizens originating from non-member countries.

103. Another general observation concerns the considerable progress achieved over recent years towards involving migrants, both EU nationals and non-EU nationals, in the democratic process. This is partly as a result of a growing awareness within societies. In the 50s and 60s "guest workers" were considered as temporary migrants and subject to legal restrictions such as a lack of basic freedom of movement, assembly or association (for example in France or Belgium). During the 70s, when restrictions on numbers were imposed, many European governments passed laws extending a range of citizens' rights including basic freedoms, education, health care and social security to migrants already in the country. In some countries, they were completed by political rights. Unfortunately, a number of countries, in particular new countries of destination, have not followed this path.

104. A democratic country, confronted with the situation in which a large number of its population is excluded from the democratic process, has in principle two possible ways to remedy it: it can either include migrants into the group of citizens by means of naturalisation or it can grant political rights to non-citizens. One solution does not exclude the other; they can be complementary. The measures adopted by different CoE member states vary considerably. I will now examine them.

*Access to citizenship*

105. As regards access to citizenship, it is clear from statistical data that this solution cannot be treated as the main remedy to the exclusion of migrants and it can only be complementary to other measures. The percentage of foreign population acquiring citizenship in their country of residence is comparable in different CoE member states and has been rather stable over recent years (with the exception of Germany and Latvia, see below). It amounted for 2-3,5 % yearly.

106. Major concerns regarding acquisition of citizenship may be illustrated by the situation in Germany. The public debates in this country have been widely followed as Germany has had huge numbers of migrants and very low rates of naturalisation. In 1989, nearly 5 million people, mainly from Turkey, had lived in Germany for 20-30 years without citizenship rights for themselves and their children who were born in this country. In 1999, legislation liberating procedures for long-term migrant residents to acquire citizenship have been introduced allowing for third generation and, in some cases, second generation immigrants to benefit from *jus soli*.

107. The situation in Latvia has also raised some concern. As a result of the historical background of the country, at the time of the proclamation of independence in 1991, some 730 000 residents did not have citizenship links with pre-war Latvia and therefore did not qualify for automatic citizenship on the basis of *jus sanguinis*. The naturalisation process started only in 1995 after the adoption (in 1994) of the Citizenship Law – and this delay harmed the smoothness of the naturalisation process. As a result of the naturalisation process spanning ten years, the overall number of non-citizens has decreased by a third, from 29% of the population to 18,8%. The process accelerated after the accession of Latvia to the EU. In 2004, for the first time, the citizens of Russian origin outnumbered the non-citizens of Russian origin<sup>24</sup>. However, considering that more than 432 000 residents still remain non-citizens, the problem is certainly not resolved yet.

108. Another major concern is in regard to the Russian Federation. According to estimates, between 600 000 and 1.4 million people live on the territory of the Russian Federation without any legal status<sup>25</sup>. Apart from illegal migration, the problem concerns deprivation of legal status of a large number of former Soviet citizens who previously resided in the Russian Federation and have been considered illegal migrants since the entry into force, in 2002, of the Federal Law on Russian Citizenship and on the Legal Status of Foreign Citizens in the Russian Federation. Thus, many citizens of the former USSR who did not obtain Russian citizenship live in the country under a temporary registration or even without registration.

109. Requirements for naturalisation differ from one country to another. Numerous combinations of *jus soli* and *jus sanguinis* result in more or less restrictive laws. There is no doubt that there is need for harmonisation throughout Europe, preferably according to more generous models.

110. Facilitating access to naturalisation is, however, only a part of the problem. And it is not always merely the restrictive law in countries of residence which prevents foreign citizens from applying for naturalisation. Sometimes, even those who are eligible, are not interested in obtaining it because of restrictive laws in their countries of origin. Some states consider renunciation of citizenship as grounds for losing more than political rights. For example, until 1995, Turks who renounced their Turkish citizenship could not own or inherit land in Turkey. On the other hand, some States prohibit the renunciation of citizenship by emigrants attempting to naturalise in another state until they pay for the education they received and complete the requisite military service (for example Greece).

111. As long as dual citizenship is impossible, naturalisation is an insufficient measure because it may result in a problem of loyalty for the second and third generation towards their parents and grandparents.

112. The remedy for this could be dual citizenship. However, this solution also has certain disadvantages: it may happen that people are liable for military service in both countries or, in the case of certain countries, be subject to double taxation. The main problem, however, is that many countries do not allow for dual citizenship.

113. The CoE has evolved in its position on this question. In 1963 it elaborated a Convention aimed at reducing multiple citizenship. Only 11 countries had ratified this convention up until 1990. In 1977, two CoE Resolutions<sup>26</sup> supported dual citizenship for children at least until they came of age, and for spouses of different nationalities. In 1997, the Council of Europe elaborated a European Convention on Nationality, which recognised the rights of the states to determine their own procedure for acquiring citizenship and leaves to them the decision on allowing dual citizenship or not.

114. At present, a number of CoE member states, including Germany, Estonia, Latvia, Lithuania, Austria and Denmark, do not allow for dual citizenship. On the other hand, a number of countries, including Switzerland in 1990 and the Netherlands in 1991, have introduced such a possibility into their

<sup>24</sup> See Doc As/mon(2005)39rev: Post-monitoring dialogue with Latvia

<sup>25</sup> See Doc 10568 : Honouring of obligations and commitments by the Russian Federation

<sup>26</sup> Res(77)13E on the citizenship of children born in wedlock and Res(77)12E on the citizenship of spouses of different nationalities

national legislation. I hope that the Assembly will agree on the need to call on governments of our member states to introduce, if they have not done so, the notion of dual citizenship in their national legislations.

### *Voting rights*

115. It is clear that naturalisation is not a sufficient response to the challenge of exclusion of migrants from the democratic system and cannot remedy the situation in a considerable way. While encouraging governments to facilitate access to naturalisation, the Assembly should call on them to grant some political rights without citizenship.

116. Here I should refer to my earlier observation about the different treatment received by EU citizens and non-EU citizens in the 27 EU Member States. European citizenship, introduced by the Treaty of Maastricht (1992/3) and confirmed by the Amsterdam Treaty (1995/6), granted all citizens of EU member states the right to vote and eligibility to stand in the elections at local level and to the European Parliament (EP), irrespective of their country of residence within the EU. This principle, based on reciprocity required that all member states introduce relevant laws in their national legislation. This has been done and the relevant provisions also apply to new member states.

117. However, these voting rights are granted only to citizens of EU member states. Foreigners from third countries, whatever the length of their legal residence within the EU, are not beneficiaries of this provision.

118. As regards the voting rights of EU citizens in European countries outside the EU, their situation is no different from the situation of all other foreign residents.

119. For the time being, there is no debate on the possible granting to EU citizens of voting rights at the national level in their country of residence.

120. Concerning voting rights of non-EU citizens in the EU or other CoE member states, the situation varies depending on the country of residence. Every country (including member states of the EU) is free to allow for the political participation of foreigners at different levels (with the exception for the election to the EP).

121. So far, eleven European countries have granted voting rights to foreign residents irrespective of their citizenship, on the condition of a required period of residence. In Ireland, since 1963, all foreigners who reside in the country for at least 6 months can vote and stand for local elections. In Sweden (since 1975) and Denmark (since 1991), the minimal required period of residence amounts to 3 years. The Netherlands, in 1985, granted voting rights at local level to all foreign residents who have stayed in the country for 5 years. In Finland, the required period is 4 years. In Estonia, Lithuania and Slovenia (since 2002), as well as in Slovakia (since 2003) and in Belgium (since 2004), the required period is 5 years.

122. The United Kingdom, Spain, Portugal and the Czech Republic provide for reciprocity. In addition, the UK grants resident citizens from Commonwealth countries political rights, including the right to vote in national elections.

123. In Switzerland, where the cantons are sovereign to grant citizenship and voting rights, it is especially the French speaking cantons of the Jura, Neuchâtel, Geneva and Vaud that are more progressive and grant voting rights in local and cantonal affairs to foreigners after 5 years of residence. In the canton of the Jura these foreigners may even participate in the election of the two Jura senators, that means the election of representatives of the canton in the second chamber of the national parliament.

124. In contrast, proposals on local voting rights were stymied in France and Germany. Other countries, members of the CoE which are not listed above, do not grant any voting rights, to foreign residents.

125. In some areas in CoE member States, foreign residents who are deprived of voting rights constitute the majority of the population.

126. In 1992, the CoE opened for signature the Convention on the Participation of Foreigners in Public Life at Local Level (ETS Nr 144). Its purpose is to improve the integration and participation of foreign nationals lawfully residing in Council of Europe member states by, inter alia, granting them voting rights at the local level. Regrettably, so far, the Convention has been signed by only 13 states and ratified by 8 states. It came into force in 1997.

127. The Parliamentary Assembly has on several occasions expressed its concern as regards the political participation of foreigners, in particular in Recommendation 1500(2001) on the participation of immigrants and foreign residents in political life in the Council of Europe member states<sup>27</sup>, and in Recommendation 1650 (2004) on the links between Europeans Living Abroad and their country of origin.<sup>28</sup>

128. Moreover, the Congress on Local and Regional Authorities of the CoE has also taken position on this question, supporting the idea of granting voting rights to foreign residents lawfully residing in CoE member states for a certain period of time, irrespective of their country of origin.<sup>29</sup>

129. I fully share the position of the above-mentioned bodies of the CoE, and propose that we reiterate our call to member states. Voting rights for all people are, no doubt, essential for the proper functioning of democracy.

130. Another important question to which I would like to draw attention without dwelling on it, as it will be the subject of a separate report under preparation in the Political Affairs Committee, is the question of thresholds in electoral systems. As it is closely linked to representation, and it is important in the case of migrants, I would like to reiterate my position that a 3% threshold is sufficient to prevent a parliament from being paralysed by a large number of groups.

#### *Other political rights*

131. Voting rights are essential but they are not the only possible way to ensure political participation of migrants. During the 70s and 80s, there was an expansion of organisations, in some cases fostered by the state, which represented migrants' interests, assisted integration and which offered various social activities. Many European states were quicker to extend civil and social rights than political rights to resident aliens. The report of the Committee on Migration, Refugees and Democracy will examine in more detail different forms of integration of migrants into the decision-making process by means of consultative bodies or systematic consultations with NGOs. These are precious initiatives. They cannot however replace genuine representation.<sup>30</sup>

132. I would like to point out that several Council of Europe member states continue to impose certain restrictions on individual freedoms of foreign residents. These concern particularly the freedom of association (in the Czech Republic), and/or the right to join a political party (Estonia, Latvia, Lithuania, Slovakia and Slovenia). Even if this may be in conformity with the European Convention on Human Rights (Article 16), it is difficult to justify, and it is certainly contrary to the spirit of democracy. I propose to firmly call on all States to review their national legislation with a view to granting lawful foreign residents all basic freedoms and political rights which are enjoyed by citizens. I am also of the opinion that Article 16 has no more justification in modern societies and should be abolished.

133. As numerous examples quoted above attest, States may increase their democratic inclusiveness while not changing their principles on citizenship, by extending voting and political rights and individual freedoms to non-nationals. Regrettably, a number of Council of Europe member States which are restrictive on access to naturalisation have at the same time restrictive policies on political rights for non-nationals.

#### *Case study: Canada*

134. In Canada, the question of integration, given high numbers of migrants and people of migrant origin is particularly important. Each year, a number of immigrants corresponding to 1% of the population is admitted to the territory. In some areas, for example in Quebec, up to 10% of residents are born abroad. This is also true for almost half of the population of the capital of Ontario, the economic centre of Canada.

135. Launched in 1988, the Canadian model of "multiculturalism" is in complete opposition to "assimilation". It was enshrined by the federal law, which imposed the principle of racial and cultural equality and which encourages diverse cultural groups to maintain and develop their identity and

<sup>27</sup> See also Doc 8916

<sup>28</sup> See also Doc 10072

<sup>29</sup> See Rec 153 (2004) on a pact for the integration and participation of people of immigrants origin in Europe's towns, cities and regions.

<sup>30</sup> Here again I agree with the point mentioned in the above quoted letter from Mr MacShane. NGOs' work has to be respected but they can never replace the role and legitimacy that political parties have in a democracy.

traditions, in parallel to promoting their involvement into the Canadian society. The Law on official languages (1985) while recognising English and French as official languages, provides linguistic minorities with protection and means for the development of their languages.

136. This model, also called “society of diversity and inclusion”, is based on a “moral contract” between the host society and a particular cultural community aimed at full integration while preserving its own culture. The implementing policies include facilities for settling and learning the language of the country and assistance in searching for a job and other social services. On the other hand, the cultural communities are provided by local authorities with financial and organisational resources to preserve and develop their culture.

137. The results of this approach seem to be particularly encouraging and should be examined in Europe. Simultaneous integration and recognition of different cultures, a patchwork of nationalities developing their cultures while at the same time contributing to the development of the common society leads to greater participation and involvement of citizens, and ultimately, to the better functioning of democracy.

138. I think that the Canadian experience is most useful to inspire those European countries, who still find it difficult to admit that in the last decades they have become immigrant countries, to find the right balance between the fact that their societies have become more and more diverse and the need to integrate the society by careful political, social and economic policies.

## **H. Concerns regarding the representativeness of democratic systems**

139. A formal right to participate in elections at different levels is obviously a precondition for effective participation in the democratic system but, as the experience shows, it does not result automatically in high participation. Even in those countries where migrants can vote (for example in local elections in Sweden), the levels of their participation as candidates and voters raise justified concern.

140. Although varying substantially in level, immigrant participation is generally lower than participation of natives. For example, in 2006, during the vote in three Swiss cantons which have granted voting rights to foreigners, the participation rate of foreign residents was respectively 23%, 26,5% and 41% as compared to 32%, 41% and 59% of the Swiss population.

141. What is even more worrying is that political participation of groups not belonging to the majority group in the country, in Europe, has declined over the last few decades. Shrinking voting figures concern also citizens, but the drop in turnout among natives has been much lower in comparison to migrants. For example, in Sweden, the decline of the entire population voting in local elections was from 90% to 84% between 1976 and 1994. Over the same period of time, voting among immigrants decreased from 60% to 40%.

142. Low levels of involvement in the political process inevitably result in low representation at different levels of power. Migrants are beyond any question under-represented at all levels of power. To illustrate this problem suffice it to say that there were only 4 mayors of foreign origin in France between 1995-2001. The situation has improved since then, but it still remains a matter of concern. In Luxembourg, in the local elections in 2005, foreign residents who constituted 39% of the population represented 10% of voters, 5,9% of candidates and 1,2% of elected representatives.

143. Those who are entitled to vote at the national level (ie naturalised foreigners or citizens of migrant origin) are under-represented in parliaments. For example, in Norway during the last three elections (in 1997, 2001 and 2005), only 4 citizens of migrant origin were elected. In the Netherlands, this figure amounts to 10 since 1998. In Germany, following the national elections in 2005, five deputies of Turkish origin represent some 600 000 voters of Turkish origin. Moreover, there are two other deputies of foreign origin in the Bundestag. In the United Kingdom, during the period 1997-2008, there were 19 citizens of migrant origin in the House of Commons. In France, in 1997-2002 only one person of foreign origin was a member of the National Assembly. Following the most recent elections in 2007, there are 5 deputies in the National Assembly.

144. The problem starts with the under-representation in political parties. Even in those countries where migrants can enjoy political rights, they are, generally speaking, less active in political participation than nationals. In the next chapter I will try to explain this phenomenon. Here I draw attention to different aspects of the problem.

145. It is commonly acknowledged that migrants are rarely selected and nominated within the political parties as candidates in the election process. This serious problem has been addressed in the Assembly's Resolution on the Code of good practice for political parties<sup>31</sup>. I am confident that the Commission for Democracy Through Law (The Venice Commission), which is now elaborating the Code, will carefully consider the possible measures which could be proposed in order to remedy this situation.

146. The experience of some parties is certainly worth sharing. I will mention here "Black sections" in the British Labour Party and the emergence at local level of activists of Indo-Pakistani origin.

147. Immigrant participation is sometimes questioned as to whether its consequence may be disintegrative rather than integrative and whether immigrant organisations may contribute to the formation of separate "parallel societies". This concerns particularly muslim communities, and the problem should not be ignored. In this respect, I draw your attention to the report prepared by the Political Affairs Committee on "European muslim communities confronted with extremism". (Doc. 11540)

148. Finally, when speaking about political participation of migrants, it cannot be considered in isolation from serious problems which touch our contemporary societies: racism and intolerance. In order to overcome these problems, we have to engage our societies in a process of education, promotion of democratic values and tolerance.

## **I. Barriers to better representativeness and participation**

149. There has been relatively little research on the reasons for the low level of participation of migrants in political life. However, it is commonly acknowledged that in general persons with a higher socio-economic status are much more likely to be active than disadvantaged persons. Insofar as migrants and people of migrant origin, on average, are predominantly in the low-income, low-status section of societies, they can be expected, statistically, to be less active than the native population.

150. Migrants are often at a disadvantage as regards determinants of political integration: language proficiency, education, employment, trade union or other association membership.

151. Language skills are crucial for integration as a whole and I insist on my earlier observation regarding the need for knowledge of the local language. This should not prevent migrants from cultivating their own languages and they should be provided with adequate means (schools and associations) to this effect. The task of providing migrants with opportunities to learn the local language should be left to local authorities which are better placed to handle it.

152. Participation in associations, ethnic organisations and trade unions creates social involvement which spills over into political activity and higher political participation. Moreover, ethnic associational life is not only in the interest of migrants, but it is also an investment in the quality of democracy.

153. There is a positive correlation between the acquisition of citizenship and the level of political participation.

154. Social exclusion obviously has a negative effect on political participation. People need acceptance, confidence and support in order to be politically active.

155. More generally, serious problems with integration concern migrant communities which are characterised by a combination and accumulation of the following elements, which differentiate them from local surroundings: different culture, different religion, different languages, lower social position and unemployment.

156. Some observers, who point to low numbers of politicians and civil servants from immigrant backgrounds, call for affirmative action measures to increase the representation of foreigners in political parties and positions of responsibility. Creating a department or ministry for immigration issues would help to put immigrant issues higher on the political agenda. Political parties should be encouraged to list ethnic minority candidates.

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<sup>31</sup> Res 1546(2007)

157. The report presented by Mr Greenway on behalf of the Committee on Migration, Refugees and Population will seek to identify in a more systematic way those measures which would contribute to the improvement of political participation of migrants.

## **J. Conclusions**

158. The more diverse our societies become, the more national conservative parties try to exploit fears and doing so they contribute to increasing xenophobic attitudes. This might help us to explain the paradox that, although we live in very secure times as compared to the last two centuries, more and more people feel unsafe.<sup>32</sup>

159. A way to overcome this feeling of insecurity by many, especially non-privileged people, is both economic (safe jobs, decent standards of living and social security) and social (establish a feeling of belonging to the society, opportunity to improve one's own position within society). Finding a way to guarantee such a security in a globalised economy is a major challenge of contemporary democracies in Europe today.

160. The idea of sharing power is a basic element of democracy, but it is only natural that people do not feel inclined to share their wealth if they feel they possess too little. Poverty and a feeling of shortcomings may turn into aggression in extreme cases as we have witnessed in some of our member States.

161. I believe that the main conclusion of this report is that we should take diversity as a basic element into account when assessing our democracies. Integration is an essential precondition and criterion for evaluation of the quality of democracy.

162. And I stress again: the diversity of our societies should be considered in a much broader sense than just an outcome of migration. One can say that every single individual may feel in a way a foreigner in a country in which she or he resides. This is not a matter of citizenship but of economic, social or political situation.

163. Thus, conflicts which are the result of freedom and diversity are inevitable in every society. What makes the difference between a democratic and undemocratic system is how these conflicts are dealt with. If they are handled effectively, within the constitutional framework of a fine-tuned democracy, it proves that democracy in the country is functioning properly. If, on the contrary, they result in violence, this is a clear indication that democracy has failed because a democracy is not only a process but also a promise.

164. Another conclusion of this report concerns integration. The main challenge of political integration is social integration. Indeed, most problems resulting from migration have a social and economic background.

165. Integration as opposed to assimilation is beneficial for the society as a whole. However, respect for multicultural diversity should be reciprocal and based on acceptance of certain universal values. It should also imply readiness to become a fully-fledged member of a society speaking the language of the country and respecting its principles.

166. Political participation is only one of many dimensions of an individual's active participation in society; however, it has considerable importance because of its association with political identity and expression of norms, values etc. Political exclusion of immigrants negatively affects social cohesion and social justice; this exclusion compromises the democratic quality of representation and participation in receiving societies.

167. Against this background, the challenges of immigration-related diversity, social and economic exclusion, as well as of perceptions of xenophobia and insecurity require policies that promote an economic development which allows everyone to live dignified lives, a participatory democracy which does not exclude those who were not born in the country and a culture of pluralism and mutual respect. This is the way that diverse societies can be integrated.

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<sup>32</sup> See : Zygmunt Bauman, *The State, Democracy and How to Deal with Fears*, in : *Flüchtige Zeitung, Leben in der Ungewissheit*, Hamburg 2008

168. Integration of foreigners and people of migrant origin and their inclusion in the democratic process is a shared responsibility that requires national and European efforts and solidarity.