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Should there be a 'right to democracy' ?

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Democracy as a cornerstone of the Council of Europe

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Introduction

For the Council of Europe democracy is a core value whose principles its member states committed themselves to realise in the founding Statute of 1949. Membership of the Council of Europe helps consolidate democracy through participation in its expert bodies (particularly the Venice Commission) and the monitoring mechanisms established by the Parliamentary Assembly and the Congress of Local and Regional Authorities. The Fundamental Rights that are an integral part of a democratic society are safeguarded through the European Convention on Human Rights (ECHR).

Democracy has underpinned the political, social, cultural and economic development of the Council of Europe's member states. The Heads of State and Government of the member states reaffirmed their commitment to democracy in the 2005 Warsaw Declaration. They stated that "The Council of Europe shall pursue its core objective of preserving and promoting human rights, democracy and the rule of law. All its activities must contribute to this fundamental objective. We commit ourselves to developing those principles, with a view to ensuring their effective implementation by all member states."

In the light of the foregoing, the answer to the question of whether there should be a right to democracy in Europe seems obvious. But to reach that conclusion it is necessary to ask what the member states mean by "democracy" and the "principles of democracy" that they have committed themselves to implement effectively. The bibliography of the Council's *acquis* on the principles of democracy represents a kaleidoscopic view of best practice in public life in Europe. The documents contain most, if not all, of the issues mentioned in this paper, but they do not seem to the author to offer a concise, cohesive statement on the meaning of democracy or democratic principles that the intelligent, informed citizen could use to assess how well his or her member state respects this right. For this, it is necessary to look in other places where member states are active.

What is democracy?

Democracy as a universal value

Though democratic systems may vary in forms and shape, democracy has evolved into a universal value. The 1948 UN Universal Declaration of Human Rights[1] first recognised the right of everyone to take part in the government of his country, directly or through freely chosen representatives. The UN Summit Outcome document of 2005 stated[2]

"We reaffirm that democracy is a universal value based on the freely expressed will of people to determine their own political, economic, social and cultural system and their full participation in all aspects of their lives. We also reaffirm that while democracies share common features, there is no single model of democracy, that it does not belong to any country or region, and reaffirm the necessity of due respect for sovereignty and the right of self-determination. We stress that democracy, development and respect for all human rights and fundamental freedoms are interdependent and mutually reinforcing."

No single model of democracy

The Council of Europe consists of 47 Member States, each with their own form of democracy, shaped by history, culture and circumstance (although all, to varying degrees, are parliamentary democracies). All are equally valid, and their individual characteristics enrich democracy in Europe. The same is true for democracies in other parts of the world. Hence there is no single model of democracy, but can one identify shared principles for what constitutes democracy?

Many forms, but common elements…

Set out below are common elements of democracy (not in any order of priority) that can be derived from various internationally agreed documents, including regional democracy charters. They include the UN Universal Declaration of Human Rights (UDHR), the UN International Covenant of Civil and Political Rights (ICCPR), United Nations General Assembly (UNGA) Resolution 55/96 on Promoting and Consolidating Democracy, the European Convention on Human Rights, the Inter-American Democratic Charter (IADC); the African Charter on Democracy, Elections and Governance (ACDEG), as well as various recommendations of the Council of Europe's Committee of Ministers and PACE resolutions.

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[1] Article 21
[2] Para. 135

- All citizens have the right to vote freely in elections, according to their judgement and conscience without interference, to run for public office[3], and to participate in decisions about their development.[4] Elected representatives are chosen in periodical, free and fair elections, with secret ballots.[5]

- The rule of law prevails, so that no one is above the law and all are equal before the law.6 This involves among others that public institutions exercise their powers through transparent and accountable public officials,[7] and that there is an independent and impartial judiciary that provides redress for official actions, which affect individuals adversely. This includes courts, ombudsman's offices and disciplinary tribunals.[8]

- Elected representatives have effective control over state armed and security forces.[9]

- People have the right to express themselves peacefully on political, social, and economic matters, defined broadly, without the risk of state punishment[10] and people have the right to seek out diverse sources of information, such as the media, and such sources enjoy legal protection from improper interference.[11]

- People have the right to form independent associations and organisations, including independent political parties and interest groups.[12]

- People enjoy their civil, political, economic, social and cultural human rights without any discrimination as to race, colour, sex, language, religion, political or other opinion, national or social origin, property, birth or other status.[13]

 …and key ingredients

Following on from the above, the following features are generally accepted as key ingredients of democracy, and feature in the Council of Europe's *acquis*:

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[3] Art. 25 ICCPR; Art. 3(7) & 4(2) ACDEG; Art. 3 IADC, Para. 1(d)(i) UNGA
[4] Art. 21(1) UDHR; Art. 3(7) ACDEG; Art. 6 (IADC); Para. 1(a) & (e)(iv) UNGA
[5] Art. 21(3) UDHR; Art. 25 ICCPR; Art. 2(3) & (4) ACDEG; Art. 3 IADC; Para. 1(d)(ii) UNGA
[6] Art. 7 UDHR; Art. 26 ICCPR; Art. 4 ACDEG; Art.3 IADC; Para 1(c)(ii) UNGA
[7] Art. 15(3) ACDEG; Art. 4 IADC; Para. 1(f)(i) UNGA
[8] Art. 10 UDHR; Art. 2(5) ACDEG; Art. 4 IADC; Para. 1(c)(v) & (vii) UNGA
[9] Art. 14(1) ACDEG; Art. 4 IADC; Para. 1(c)(ix) UNGA
[10] Art. 19 UDHR; Art.19 ICCPR; Art.10 ECHR; Art. 6 ACDEG; Art.4 IADC; Para. 1(b)(i) UNGA
[11] Art. 19 UDHR; Art.19 ICCPR; Art.2(10) ACDEG; Art.4 IADC; Para.1(e)(i) & (f) UNGA
[12] Art. 20 UDHR; Art. 22 ICCPR; Art.11 ECHR; Art. 3(ii) ACDEG; Art. 5 IADC
[13] Art. 2 UDHR; Art. 2(1) ICCPR; Art. 8 ACDEG; Art. 9 IADC; Para. 1(b)(ii-vi) UNGA

Democracy, equality and non-discrimination

Concepts of equality and non-discrimination are fundamental to human rights and democracy. Two of the greatest challenges to building democracy are ensuring the participation of women and of minorities in democratic life. Throughout the Council of Europe area women have legal equality, but in few of them do women enjoy equal levels of participation in public life.

By definition, minorities will rarely achieve positions of power in societies where there is majority rule. Hence, minorities need the equal protection of human rights, and a democratic system that enables them to participate fully in society, for example through systems of voting or decentralised government. A fair and impartial system for resolving disputes is also a necessary part of ensuring equality and non-discrimination.

Democracy and elected representatives

Elected representatives, whether they support or oppose the government, need the authority and resources to debate and approve legislation and national budgets, to hold government to account for the conduct of public administration and the use of public funds, and to examine the operation of laws and regulations.

Democracy and political parties

Democracy requires a pluralistic environment that has a range of political views and interests. This is most commonly organised through political parties whose operations are free from interference by government and executive officials. The registration and regulation of political parties ensures consistency in structure, as well as other aspects such as internal democracy, and a unique name and/or symbol. But regulations on membership, financing, organisation and minimum thresholds for election should be reasonable, applied equally to all parties and be subject to the possibility of legal challenge.

Democracy and the media

 An independent and diverse media is essential for ensuring that a wide range of opinion and viewpoints are expressed and communicated to the public. In most democracies, politicians and political parties rely on mass media to get their message across and so enable the public to make informed choices. Media are also a major means for ensuring transparency and accountability in public life, without which democracy cannot function. The media necessarily enjoys considerable power and this entails responsibility to ensure that coverage, particularly of elections, is fair, balanced and impartial. Restrictions on the media should be proportional and necessary to serve the wider interests of a democratic society, in accordance with international human rights norms, in particular Article 10 of the ECHR. But the media must be able to challenge the imposition of any such restrictions through impartial legal proceedings.

Democracy and civil society

Civil society is a vital building block of a well functioning democracy. The role of civil society organisations in modern democracies is closely linked to the right to freedom of association. Belonging to an association is another way for individuals to participate actively in society, in addition to involvement in political parties or through elections. Civil society organisations are the principal structures of society outside of government and the public administration and are deeply rooted in democratic culture.[14]

Devolved democracy and the principle of subsidiarity

Within Council of Europe member states, democracy is embedded through many layers – international, national, regional and local. The objective is to devolve power to democratic organs at the most appropriate level to ensure that people exercise control over their own lives and that public policies are carried out efficiently. Such devolution requires real power and resources to be made available to the different tiers of governance. The Council of Europe's European Charter of Local Self-Government and the Twelve Principles of Good Democratic Governance at Local Level provide models for local democracy.

Democracy and property

The right to own and use private property, subject to reasonable and necessary legal restrictions in the wider public interest, is a feature of all democratic societies. Apart from its economic impact, this right enables individuals to support civil society, political parties and pluralistic media, as well as to obtain access to legal and other redress when they consider that their human rights, or democratic principles, have been violated. Where the State exercises overwhelming control over property (used in its widest sense), it exercises corresponding control over individuals and legal personalities. This may undermine the operation of democratic principles.

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[14] The term 'civil society organisation' refers to a range of organisations which include: the labour-market players (i.e. trade unions and employers federations); organisations representing social and other economic players (such as consumer organisations); NGOs (non-governmental organisations), which bring people together in a common cause, such as environmental organisations, human rights organisations, charitable organisations, educational and training organisations, etc.; community-based organisations, i.e. organisations set up within society at grassroots level which pursue member-oriented objectives, e.g. youth organisations, family associations and all organisations through which citizens participate in local and municipal life; and religious communities.

Democracy and good governance

The presence of these common principles of democracy does not in itself guarantee a democracy in which all citizens are able to participate, or ensure stability, security and development. Matters like corruption, abuse of power, poor administration, lack of accountability, human rights violations and misuse of law, also occur in democracies. However, the presence of good governance principles help to sustain democracy and underpin democratic principles and determine their successful implementation. These include:

• **Equity**, which involves giving everyone an equal opportunity to participate in public life and services. This means providing practical help to overcome obstacles of status and/or condition, and taking account of these in devising public policies and their implementation.

• **Informed Participation**, which involves supporting structures of government that enable all citizens to have a say in the running of their lives, including those who are disadvantaged by age, gender, ethnic or other status. It also involves educating people about democracy.

• **Transparency**, which involves the public having access to reliable information, in a language and form that is comprehensible, on how those who exercise public power use it, especially how they use public resources.

• **Accountability (both** horizontally and vertically), which involves those who exercise powers of government and administration being answerable to elected representatives and citizens for their actions, as well as being responsible before the law.

Points for discussion

- Do the political statements from Council of Europe countries, within the Council of Europe and in other fora, together with the ECHR case-law on specific democratic rights, such as freedom of expression in Art. 10 justify the assertion that there is a right to democracy?

- If so, is there sufficient substantive material in the right to be able to monitor its observance?

- Should it include issues like culture, social cohesion and a sustainable environment, or are these concepts too inchoate to allow the development of common measurable criteria?

- Does the right need to be justiciable, or are the Council of Europe's current monitoring mechanisms sufficient – or sufficiently adaptable – to be able to secure its observance?

- Would the Council of Europe's commitment to democracy be more visible, comprehensible and easier to monitor by European citizens and their representatives if it adopted a European Charter on Democracy, similar to the American or African Charters, or the Council's own Local Self -Government Charter?