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EUROPEAN COMMISSION FOR DEMOCRACY THROUGH LAW

(VENICE COMMISSION)

COMPILATION

OF VENICE COMMISSION OPINIONS AND REPORTS

CONCERNING GENDER EQUALITY [1]

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[1] This document will be updated regularly. This version contains all opinions and reports adopted up to and including the 125th Plenary Session (11-12 December 2020).

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I. Introduction

The present document is a compilation of extracts taken from opinions and reports/studies adopted by the Venice Commission on issues concerning gender equality. The scope of this compilation is to give an overview of the doctrine of the Venice Commission in this field.

This compilation is intended to serve as a source of references for drafters of constitutions and of legislation relating to gender equality, researchers as well as the Venice Commission's members, who are requested to prepare comments and opinions on such texts. However, it should not prevent members from introducing new points of view or diverge from earlier ones, if there is good reason for doing so. The present document merely provides a frame of reference.

This compilation is structured in a thematic manner in order to facilitate access to the topics dealt with by the Venice Commission over the years. It also takes into account the glossary elaborated by the Gender Equality Commission of the Council of Europe.[1]

Each opinion referred to in the present document relates to a specific country and any recommendation made has to be seen in the specific constitutional context of that country. This is not to say that such recommendation cannot be of relevance for other systems as well.

The Venice Commission's reports and studies quoted in this Compilation seek to present general standards for all member and observer states of the Venice Commission. Recommendations made in the reports and studies will therefore be of a more general application, although the specificity of national/local situations is an important factor and should be taken into account adequately.

Both the brief extracts from opinions and reports/studies presented here must be seen in the context of the original text adopted by the Venice Commission from which it has been taken. Each citation therefore has a reference that sets out its exact position in the opinion or report/study (paragraph number, page number for older opinions), which allows the reader to find it in the corresponding opinion or report/study.

The Venice Commission's position on a given topic may change or develop over time as new opinions are prepared and new experiences acquired. Therefore, in order to have a full understanding of the Venice Commission's position, it would be important to read the entire compilation under a particular theme. Please kindly inform the Venice Commission's Secretariat if you think that a quote is missing, superfluous or filed under an incorrect heading (venice@coe.int).

II. International standards on gender equality

"19. In CEDAW the term "discrimination against women" means "any distinction, exclusion or restriction made on the basis of sex which has the effect or purpose of impairing or nullifying the recognition, enjoyment or exercise by women, irrespective of their marital status, on a basis of equality of men and women, of human rights and fundamental freedoms in the political, economic, social, cultural, civil or any other field".

[1] Adopted in 2015, the glossary is accessible at: https://rm.coe.int/CoERMPublicCommonSearchServices/DisplayDCTMContent?documentId=090000 16805a1cb6 .

20. The UN General Assembly Declaration on the Elimination of Violence against Women[2] was agreed as a measure to assist in the effective implementation of CEDAW which, it wasrecognized, would contribute to the elimination of violence against women. The Declaration recognizes that some groups of women, including migrant and destitute women, "are especially vulnerable to violence" and that "violence against women in the family and society…had to be matched by urgent and effective steps to eliminate its incidence". Article 3 specifically refers to the fact that women are entitled to the equal enjoyment and protection of all human rights and that these include the "right to equal protection under the law". It recognizes that States should "…punish acts of violence against women, whether those acts are perpetrated by the State or by private persons" and that women are entitled to "just and effective remedies for the harm that they have suffered" (article 4)."

> CDL-AD(2005)006 Opinion on constitutional reforms relating to the disappearance and murder of a great number of women and girls in Mexico, adopted by the Venice Commission at Its 62nd Plenary Session (Venice, 11-12 March 2005) (paras. 19 and 20).

"1. The prohibition of discrimination is one of the most fundamental principles of current international human rights law. It is enshrined in a series of international instruments, including the 1948 Universal Declaration of Human Rights (Article 2), the 1966 International Covenant on Civil and Political Rights (Article 26), the 1965 International Convention on the Elimination of All Forms of Racial Discrimination (ICERD, Article 1) and the 1950 European Convention for the Protection of Human Rights and Fundamental Freedoms (Article 14 of the Convention and Protocol 12 to it). The prohibition cannot be derogated from even in time of public emergency (Article 4(1) of the ICCPR, Article 15 of the ECHR).

2. The ECHR, entered into force in BiH on 12 July 2002, states, in its *Article 14 - Prohibition of discrimination*: „*The enjoyment of the rights and freedoms set forth in this Convention shall be secured without discrimination on any ground such as sex, race, colour, language, religion, political or other opinion, national or social origin, association with a national minority, property, birth or other status.*"

3. Art 1 of Protocol No. 12 to the ECHR provides that "*the enjoyment of any right set forth by law shall be secured without discrimination on any ground such as sex, race, colour, language, religion, political or other opinion, national or social origin, association with a national minority, property, birth or other status". It further sets out in para 2 that "no one shall be discriminated against by any public authority on any ground such as those mentioned in paragraph 1*".

4. The European Convention prohibits discrimination without defining the term. The Strasbourg Court has however progressively developed a definition of discrimination in its case-law. Under it, discrimination means *"treating differently, without an objective and reasonable justification, persons in analogous, or relevantly similar, situations".*[3] Discrimination also occurs *"when States without an objective and reasonable justification fail to treat differently persons whose situations are significantly different"*[4] or if *"disproportionately prejudicial effects of a general policy or measure which, though couched in neutral terms, discriminates against a group"*."

> CDL-AD(2013)027 *Amicus curiae brief* on the compatibility with the non-discrimination principle of the selection of the Republic day of the Republika Srpska, adopted by the Venice Commission at its 96th Plenary Session (Venice, 11-12 October 2013) (paras. 7-12)

[2] General Assembly resolution 48/104 of 20 December 1993

[3] ECtHR, Willis v. the United Kingdom, Application No. 36042/97, 2002, par. 48; D.H. and Others v. the Czech Republic, Application No. 57325/00, 2007, par. 175; Burden v. the United Kingdom, Application No. 13378/05, 2008, par. 60; Kiyutin v. Russia, Application No. 2700/10, 2011, par. 59.

[4] ECtHR, Thlimmenos v. Greece, Application No. 34369/07, 2000, par. 44

”17. To achieve this aim, the Istanbul Convention builds on other international legal instruments, such as the European Convention on Human Rights (hereinafter, “ECHR”) as well as the case law of the European Court of Human Rights (hereinafter, “ECtHR”). Furthermore, it refers to and constitutes a development of standards enshrined in the Convention on the Elimination of All Forms of Discrimination against Women (hereinafter, “CEDAW”).16 Finally, the Istanbul Convention contains principles of the International Covenant on Civil and Political Rights (hereinafter, the “ICCPR”), the International Covenant on Economic, Social and Cultural Rights (hereinafter, the “ICESCR”) and the Convention against Torture and Other Cruel, Inhuman or Degrading Treatment or Punishment (hereinafter, the “UNCAT”).

18. The Istanbul Convention builds on these instruments, but it is focused specifically on violence against women and domestic violence, which are not explicitly addressed by the older instruments, despite the fact that they have been repeatedly identified as a serious and common human rights violation.17 It follows the example of the Inter-American Convention on the Prevention, Punishment, and Eradication of Violence against Women (1994 Convention of Belém do Pará)18, adopted under the aegis of the Organization of American States (hereinafter, the “OAS”) in 1994 as well as the Protocol to the African Charter on Human and Peoples’ Rights on the Rights of Women in Africa adopted in 2003, better known as the “Maputo Protocol”19.

19. States which have ratified the Istanbul Convention are not only obliged to punish criminal offences in relation to violence against women and domestic violence via legislative and other sanctions (Articles 29-48 of the Istanbul Convention). They also need to provide a comprehensive set of measures to protect all (possible) victims from any (future) acts of violence (Articles 18-28 of the Istanbul Convention). Furthermore, States Parties are obliged to raise awareness and inform the public about the prevention of domestic violence and violence against women as well as the enhancement of equality between men and women (Articles 12- 17 of the Istanbul Convention).
20. As mentioned above, the Istanbul Convention combats all forms of violence against women and domestic violence. Article 3(a) and (b) of this Convention provides a definition of “violence against women as well as of domestic violence” in order to promote a better understanding of the two terms and to distinguish them from one another.

21. The definition of “violence against women” in Article 3(a) of the Istanbul Convention refers to all acts of gender-based violence such as physical, sexual or psychological harm as well as coercion or arbitrary deprivation of liberty. The term emphasises that every act of violence against women constitutes a human rights violation and a form of discrimination.

22. The gendered nature of violence against women, as set out in the Istanbul Convention, results from the established fact that many forms of violence are directed against women because they are women, or because these acts affect women disproportionately. By “recognising the structural nature of violence against women as gender-based violence”, the Istanbul Convention is adopting the standard set out by the CEDAW Committee, which acknowledges that “gender-based violence against women constitutes discrimination against women under Article 1 (CEDAW) (…)”.24 In other words: the victim’s gender, i.e. being female, is the primary motive for committing acts of violence described under the Istanbul Convention and therefore constitutes a discrimination against women.

23. By defining the term gender in Article 3(c)26, the Istanbul Convention recognises that violence against women does not only originate from biological differences between men and women, i.e. sex, but mainly from “socially constructed roles, behaviours and attributes that a given society considers appropriate for women and men”. Such stereotyped gender roles contribute to the subordinate status of women in society and may result in making harmful practices and violence against women acceptable in the private and public spheres.

24. The prohibition of discrimination of women on the basis of sex and gender has been recognised by many human rights treaties. As a result, the term gender as well as the harm generated by gender stereotypes has been addressed by a number of UN treaty bodies as well as by the ECtHR.According to the CEDAW Committee, the term gender refers to "socially constructed identities, attributes and roles for women and men and society's social and cultural meaning for these biological differences resulting in hierarchical relationships between women and men and in the distribution of power and rights favouring men and disadvantaging women."

25. To combat harmful gender stereotypes, Article 5 CEDAW and – to a lesser extent – Article 2(f) CEDAW create explicit obligations for States Parties to take appropriate measures to eliminate such social and cultural patterns. Similarly, the Committee of Economic, Social and Cultural Rights (hereinafter, the "CESCR") has stressed that gender also "affects the equal right of men and women to the enjoyment of their rights".In the words of the CESCR, the notion of gender includes "cultural expectations and assumptions about the behavior, attitudes, personality traits, and physical and intellectual capacities of men and women, based solely on their identity as men or women."A similar approach is found in the Human Rights Committee's General Comment on Equality between Men and Women, in which it emphasises that "inequality in the enjoyment of rights by women throughout the world is deeply embedded in tradition, history and culture, including religious attitudes".

26. The ECtHR has found that a difference in treatment between men and women cannot be justified by reference to traditional distribution of gender roles in society.

27. In addition to the definition of the term violence against women, Article 3(b) of the Istanbul Convention also provides for a definition of the notion of domestic violence. Accordingly, domestic violence refers to "all acts of physical, sexual, psychological or economic violence that occur within the family or domestic unit or between former or current spouses or partners."36 The gender-neutral definition of domestic violence acknowledges that men, children and elderly people may be victims of domestic violence. However, it is generally recognised that the majority of victims affected by domestic violence are women. Therefore, domestic violence constitutes another form of violence which is distinctly gendered.

28. The Istanbul Convention combats domestic violence irrespective of the family or domestic setting in which it occurs. Domestic violence can result in intimate-partner violence between current or former spouses and cohabiting partners as well as in inter-generation violence between two or more family members of different generations. Since its aim is to address violence against women and domestic violence wherever it occurs, the Istanbul Convention does not limit its application to legally married partners, but extends it to all partners, married or not, whether these are of the same or different sex. No groups of victims are excluded from protection on the basis of their marital status or any of the other grounds of discrimination covered by the Convention.

> CDL-AD(2019)018 Armenia Opinion on the Constitutional implications of the ratification of the Council of Europe Convention on preventing and combating violence against women and domestic violence (Istanbul Convention), Adopted by the Venice Commission at its 120th Plenary Session (Venice, 11-12 October 2019) (paras 17-28)

III Principles recognised at the constitutional level

A. Principle of gender equality and parity of sexes

"24. If there is a specific constitutional basis, rules could be adopted guaranteeing some degree of balance between the two sexes in elected bodies, or even parity. In the absence of such a constitutional basis, such provisions could be considered contrary to the principle of equality and freedom of association."

CDL-AD(2002)023rev Code of Good Practice in Electoral Matters: Guidelines and Explanatory Report - Adopted by the Venice Commission at its 52nd session (Venice, 18-19 October 2002) (para. 24).

"24. The special advantages and privileges for women mentioned in the current Constitution have been abolished. This is in conformity with the new approaches to gender equality abstaining from granting women special privileges, especially if they are based on a traditional conception of the different roles of men and women. On the other hand the paternalistic prohibition of hazardous work for women is upheld in Art. 47. This is in line with ILO Conventions, especially Convention No. 45 concerning the employment of women in underground work in mines of all kinds. The European Court of Justice considers such an approach as discriminatory (ECJ C-203/03 (Commission v. Austria), Europäische Grundrechte Zeitschrift 2005, p. 124 et seq); but this need not be taken into consideration by Ukraine."

CDL-AD(2008)015 Opinion on the Draft Constitution of Ukraine, adopted by the Venice Commission at its 75th Plenary Session (Venice, 13-14 June 2008) (para. 24).

"50. The expression "*l'Etat veille à promouvoir activement l'élimination des entraves pouvant exister en matière d'égalité entre femmes et hommes*" (the State actively promotes the elimination of any obstacles to equality between women and men) is rather general. A phrase to the effect that the law may set out the requisite measures to achieve this goal would help flesh out the provision.

51. It would be logical to reverse the order of Articles 16 and 17 as equal rights in general should take precedence over gender equality. In parallel to the provision on non-discrimination, a constitutional provision on equal opportunities might be added, in view of the development of constitutional law on this point."

CDL-AD(2009)057 Interim Opinion on the Draft Constitutional Amendments of Luxembourg adopted by the Venice Commission at its 81st Plenary Session (Venice, 11-12 December 2009), (paras. 50-51).

"27. Article 7 lists the five principles of the European electoral heritage which are thus now protected at the constitutional level. This is to be welcomed. It would seem also important to add the principle of "parity of sexes", so that the electoral legislation may provide for legal rules requiring a minimum percentage of persons of each gender among candidates."

CDL-AD(2015)037 First Opinion on the draft amendments to the Constitution (Chapters 1 To 7 And 10) of the Republic of Armenia, endorsed by the Venice Commission at its 104th Plenary Session (Venice, 23-24 October 2015) (para. 27).

B. Principle of non-discrimination and equal access to rights

"71. With respect to the ECHR it has to be taken into account that Art. 14 ECHR provides that "*The enjoyment of the rights and freedoms set forth in this Convention shall be secured without discrimination on any ground such as sex, race, colour, language, religion, political or other opinion, national or social origin, association with a national minority, property, birth or other status."* A violation of this article can therefore only be assumed if the discrimination concerns a right guaranteed by the Convention. However, the ECHR does not guarantee the right to elect a President or be elected President. Article 3 of the (first) Protocol to the ECHR guarantees only the right to elect the legislature.

72. However, it has also to be taken into account that BiH has ratified Protocol No. 12 to the ECHR, which guarantees the enjoyment of any right set forth by law without discrimination.

This Protocol will enter into force soon, on 1 April 2005, and the prohibition of discrimination will thereby be extended to cover the right to elect a President or stand for election as President."

> CDL-AD(2005)004 Opinion on the constitutional situation in Bosnia and Herzegovina and the powers of the high representative, adopted by the Venice Commission at its 62nd plenary session (Venice, 11-12 march 2005) (paras. 71 et 72).

"11. At the constitutional level, at least three articles expressly ban discrimination: Article 21 of the Constitution adopted in 2006 offers a general prohibition of discrimination, while articles 50 and 76 of the Constitution prohibit discrimination in specific situations such as in relation to media activities and in the framework of minority protection."

> CDL-AD(2008)001 Opinion on the draft law on prohibiting discrimination of the Republic of Serbia, endorsed by the Venice Commission at its 73rd Plenary Session (Venice, 14-15 December 2007) (para. 11)

"16. The Constitution of Montenegro contains a specific provision on the prohibition of discrimination. It provides a general ban of direct and indirect discrimination.

17. In its opinion on the draft Constitution of Montenegro, the Venice Commission had already appreciated this wording since it reflects, "the concern previously expressed by the Venice Commission that special measures, such as those set out in Article 4 of the Framework Convention for the Protection of National Minorities, should not be seen as discrimination. The text is therefore now in conformity with the Framework Convention. It is also in conformity with ECRI Recommendation No. 7 (2002).

18. Apart from prohibiting "direct or indirect discrimination on any grounds" (Article 8(1)), the Constitution guarantees to everyone "equality before the law" (Article 17), "equal protection of the rights and liberties" (Article 19) as well as equality of women and men (Article 18). The Constitution also proclaims that during the state of war or emergency "there shall be no abolishment of the prohibition of …discrimination" (Article 25(3))."

> CDL-AD(2009)045 Opinion on the draft law on prohibition of discrimination of Montenegro, Adopted by the Venice Commission at its 80th Plenary Session (Venice, 9-10 October 2009) (paras. 16-18).

"44. Article 20 states that "all citizens, male and female alike, shall have equal rights and duties. They shall be equal before the law without any discrimination (…)". The explicit recognition of the principle of equality and non-discrimination is important and deserves to be welcomed. It will however be noted that the principle allowing for positive action to eliminate any discrimination is not expressly provided for.

45. The wording of Article 20 limits the principle of equality and non-discrimination to "all citizens" (male and female). In contrast to Article 20, Article 105 of the draft Constitution guarantees the right to a fair hearing to "everyone". This difference suggests that the principle of non-discrimination does not apply to persons who are on the territory of Tunisia but are not Tunisian citizens. This limitation of the principle of equality and non- discrimination does not conform to international standards: Article 2 of the Universal Declaration of Human Rights states that "Everyone is entitled to all the rights and freedoms set forth in this Declaration, without distinction of any kind, such as race, colour, sex, language, religion, political or other opinion, national or social origin, property, birth or other status" and Article 26 ICCPR states that "All persons are equal before the law and are entitled without any discrimination to the equal protection of the law. In this respect, the law shall prohibit any discrimination and guarantee to all persons equal and effective protection against discrimination on any ground such as race, colour,

sex, language, religion, political or other opinion, national or social origin, property, birth or other status." Accordingly, the words "all citizens" should be replaced by "all persons" or an equivalent expression.

46. Article 20 makes no reference to the specific and different forms of discrimination, namely discrimination on the grounds of sex, race, colour, language, religion, political opinion, national or social origin, affiliation to a national minority, wealth, birth or any other status. Although the expression "without any discrimination" is very broad, a reference in Article 20 to the different causes of discrimination would strengthen the impact and scope of the prohibition of discrimination. Still on this point, it is recommended that the text of Article 20 be harmonised with international instruments.

> CDL-AD(2013)032 Opinion on the final draft Constitution of the republic of Tunisia, adopted by the Venice Commission at its 96th Plenary Session (Venice, 11-12 October 2013) (paras. 44-46).

"15. According to Art II.1 of the Constitution of BiH, "Bosnia and Herzegovina and both Entities shall ensure the highest level of internationally recognized human rights and fundamental freedoms".

16. Art II.2 lays down that "the rights and freedoms set forth in the European Convention for the Protection of Human Rights and Fundamental Freedoms and its Protocols shall apply directly in BiH" and that "these shall have priority over all other law".

17. Art II.4 of the Constitution provides that "the enjoyment of the rights and freedoms provided for in this Article or in the international agreements listed in Annex I to this Constitution shall be secured to all persons in Bosnia and Herzegovina without discrimination on any ground such as sex, race, colour, language, religion, political or other opinion, national or social origin, association with a national minority, property, birth or other status".

> CDL-AD(2013)027, *Amicus curiae* brief on the compatibility with the non-discrimination principle of the selection of the Republic day of the Republika Srpska, adopted by the Venice Commission at its 96th Plenary Session (Venice, 11-12 October 2013) (paras. 15 and 17).

…" 69. Pluralism also ensures the representation of persons or groups who are under-represented in other official bodies and who would thus have particularly relevant experience and insights related to their needs. It is thus recommended to supplement the draft constitutional law by including, under Chapter 6, provisions to ensure gender balance and diversity at all levels of the Defender's staff.
70. In this regard, the SCA has also noted positively cases where NHRIs have adopted policies to promote greater gender equity, diversity and opportunities for advancement within the institutions. Chapter 6 of the draft constitutional law could be supplemented in this respect, by stating that the Defender adopts policies to promote greater gender equity, diversity and opportunities for advancement within his or her Office."

> CDL–AD(2016)033 Armenia Opinion on the Draft constitutional law on the human rights defender, adopted by the Venice Commission at its 109th Plenary Session (9-10 December 2016)

C. Equality of opportunity

"47. Article 45 provides that "the State shall ensure equality of opportunity between women and men in assuming different responsibilities (…)". This sentence is ambiguous and could be interpreted in a restrictive way, with equal opportunities being limited to certain responsibilities, whereas Article 20 provides for no limitation *ratione materiae* on the principle of equality. It would be preferable to delete the words "in assuming different responsibilities"."

CDL-AD(2013)032 Opinion on the final draft Constitution of the republic of Tunisia, adopted by the Venice Commission at its 96th Plenary Session (Venice, 11-12 October 2013) (para. 47).

"39. In discussions with the delegation of the Venice Commission, the authorities insisted that the exercise of discretion by the Prime Minister had ensured a gender balance in the appointments. However, the Venice Commission is of the opinion that achieving a gender balance and the prevention of discrimination are valid goals, but attributing discretion to the Prime Minister in judicial appointments is certainly not the appropriate way to achieve these goals."

CDL-AD(2018)014 Malta Opinion on the Draft Act amending the Constitution on the Draft on the human rights and equality Commission, and on the Draft Act on equality, Adopted by the Venice Commission at its 115th Plenary Session (Venice, 22-23 June 2018) (para 39)

D. Double discrimination

"59. The potential cumulative effects of discrimination must also be recognized. An individual may at times be impacted by several discriminatory factors. For instance, female ethnic minorities often find themselves doubly disadvantaged with regards to political and social rights. When several discriminatory grounds (such as gender, ethnicity, and age) intersect, they may produce new and unforeseen effects, inadequately addressed through measures aimed at addressing only one such ground. Therefore, legal and regulatory frameworks should give careful attention to the existence of such cumulative effects and potential preventative measures."

CDL-AD(2010)24 Guidelines on political party regulation, by OSCE/ODIHR and Venice Commission - adopted by the Venice Commission at its 84th Plenary Session, (Venice, 15- 16 October 2010) (para. 59).

E. Affirmative action

"20. The article does no longer contain a provision on affirmative action in favour of women. This is in conformity with new approaches to gender equality abstaining from granting women special privileges, especially if these are based on a traditional conception of the different roles of men and women."

CDL-AD(2009)024, Opinion on the Draft Law of Ukraine amending the Constitution presented by the President of Ukraine adopted by the Venice Commission at its 79th Plenary Session (Venice, 12-13 June 2009) (para. 20).

"37. With regard to affirmative action in favour of women, Article 16 (3), second paragraph, is the same as Article 11.1 of the current Constitution. The "Commentaire" does not indicate the possible scope of this provision; that might be advisable, especially if case-law exists in this area."

CDL-AD(2019)003 Luxemburg Opinion on the proposed Revision of the Constitution, Adopted by the Venice Commission at its 118th Plenary Session (Venice, 15-16 March 2019)

F. Gender stereotypes

"36. The reference to "childhood, fatherhood, motherhood" in the amended Article 1 should be reconsidered, and ideally even removed, to avoid a potential perpetuation of possible gender stereotypes including limiting women's roles to being wives and mothers. This is all the more important given the March 2015 Concluding Observations of the Committee on the Elimination of Discrimination against Women on Kyrgyzstan, which noted with concern "the persistence [of] deep-rooted patriarchal attitudes and stereotypes concerning the roles and responsibilities of women and men in the family and society".

"108. The new Article 36 par 5 provides that "a family is created upon voluntary union of a man and a woman who reached the age of consent and entry into marriage […, which] shall be registered by the state". This could imply that only the union of a man and a woman would be recognized by the state/public authorities as a "family". Such a provision may de facto limit access to certain state/public benefits which are dependent upon "family status"/official marriage (e.g., certain social security benefits, economic protection benefits, access to social housing, child and health benefits).This would also indirectly discriminate against unmarried couples, those in a de facto relationship or same-sex partners. In principle, any difference in treatment on the basis of marital or family status must be justified on reasonable and objective criteria, and be proportionate. As regards same-sex partners, they would be subject to intersecting forms of discrimination on the basis of both, their sexual orientation and their family status. While same-sex marriages are debated in many OSCE participating States and the practice varies greatly across the OSCE and the Council of Europe regions, the new provision could be problematic under the right to freedom from discrimination based on one's sexual orientation.It is thus recommended to retain the current wording of Article 36 par 5, while at the same time ensuring, as recommended by UN human rights monitoring bodies, that legislative measures necessary to protect the rights especially of women upon dissolution of unregistered marriages are also guaranteed."

> CDL-AD(2016)025 Kyrgyz Republic Joint Opinion on the Draft Law "On Introduction of Amendments and changes to the Constitution", Endorsed by the Venice Commission at its 108th Plenary Session (Venice, 14-15 October 2016)

III. General principles at the legislative level

A. Non-discrimination and equal access to rights

"101. In respect for the universal and regional instruments designed to ensure equality for women as well as general principles for non-discrimination, legislation should endeavor to ensure that women are able to participate fully in political parties as a fundamental means for the full enjoyment of their political rights. In accordance with CEDAW Article 4, special measures should be taken, which might include provisions such as the adoption of quotas for representation, requirements for gender-balance on boards tasked with selecting candidates, introduction of gender neutral selection criteria, or specialized training programs. Voluntary quotas which are not legally mandated but included in party constitutions have also proven effective to ensure the representation of women."

> CDL-AD(2010)24 Guidelines on political party regulation, by OSCE/ODIHR and Venice Commission, adopted by the Venice Commission at its 84th Plenary Session, (Venice, 15- 16 October 2010) (para. 101).

55. Women are likewise guaranteed equal protection of all rights by a number of international instruments. Article 3 of the United Nations Convention on the Elimination of All Forms of Discrimination against Women (CEDAW) requires that states take "all appropriate measures, including legislation, to ensure the full development and advancement of women, for the purpose of guaranteeing them the exercise and enjoyment of human rights and fundamental freedoms on a basis of equality with men." Further, Article 4 of CEDAW makes clear that special measures taken by states to ensure the de facto equality of women "shall not be considered discrimination…but shall in no way entail as a consequence the maintenance of unequal or separate standards." The Committee of Ministers of the Council of Europe, in Recommendation 2003(3), also calls upon member states to "support, by all appropriate measures, programmes aimed at stimulating a gender balance in political life and public decision making initiated by women's organisations and all organisations working for gender equality." The principle of equal participation of women and men in political life was reaffirmed

by the Council of Europe's Committee of Ministers in its Declaration "Making Gender Equality a Reality" (CM(2009)68), where members states are urged to " enable positive action or special measures to be adopted in order to achieve balanced participation, including representation, of women and men in decision-making in all sectors of society, in particular in the labour market and in economic life as well as in political and public decisionmaking." Even more recently, in Recommendation 1899(2010), entitled "Increasing women's representation in politics through the electoral system", the Committee of Ministers of the Council of Europe encourages the member states to increase women's representation by introducing quotas."

> CDL-AD(2010)24 Guidelines on political party regulation, by OSCE/ODIHR and Venice Commission - adopted by the Venice Commission at its 84th Plenary Session, (Venice, 15- 16 October 2010) (para. 55).

B. Gender equality

"34. There seems to be no sanction if the obligation under the third paragraph to take care of the principle of gender equality in composing the states is not met. In fact, during the 2001 local elections the requirement was not implemented in several instances (CLRAE draft Report at p.12; ODIHR Final Report at p. 18)."

> CDL-AD(2002)003 Consolidated Opinion on the Law on the Election of Members of the Representative Bodies of Local and Regional Self-Government Units of Croatia: adopted by the Venice Commission at its 50th Plenary Meeting (Venice, 8-9 March 2002) (para. 34).

"35. There is no provision in Article 12, identical to that of Article 11, stipulating that the proponents of an independent state shall be obliged to take care of the principle of gender equality. This difference does not seem to be justified."

> CDL-AD(2002)003 Consolidated Opinion on the Law on the Election of Members of the Representative Bodies of Local and Regional Self-Government Units of Croatia: adopted by the Venice Commission at its 50th Plenary Meeting (Venice, 8-9 March 2002) (para. 35).

"36. Participation by both men and women is a key cornerstone of good governance. Participation could be either direct or through legitimate intermediate institutions or representatives. It is important to point out that representative democracy does not necessarily mean that the concerns of the most vulnerable in society would be taken into consideration in decision making. Participation needs to be informed and organized. This means freedom of association and expression on the one hand and an organized civil society on the other hand."

> CDL-AD(2011)009 Stocktaking on the notions of "good governance" and "good administration" (para. 36).

"10. As to the gender equality dimension, although the Albanian civil and family law recognize women's equal right to land and property, only a small percentage of women, 8 per cent, own land, because the laws are not implemented and women continue to be marginalized in matters of inheritance. When it comes to informal settlements, properties are often registered under the name of the "head of household", a role reserved for men, effectively leaving women out. Women also lack information and awareness about their property rights."

> CDL-AD(2019)023 Albania opinion on the Draft Law on the finalization of transitional ownership processes, Adopted by the Venice Commission on its 120th Plenary Session (Venice, 11-12 October 2019) (para 10)

C. Affirmative measures and positive action

"48. Article 6 contains four definitions of "affirmative measures", "marginalized groups", "sexual orientation" and "sexual harassment". Whereas the intention of the drafters to define the concepts used in this draft law should be welcomed in principle, the current wording and position in the draft could be subject of improvement.

49. With regard to the notion of positive action, the Venice Commission would propose devoting Article 6 to the sole definition of the important concept of positive action which is currently only referred to as " affirmative measures and positive discrimination" under Article 6 and as an exception under Article 15.2 of the current draft. The definition could be modeled on ECRI Recommendations and the EC directives.

50. Moreover, according to ECRI's policy, the use of the term or notion of "positive discrimination" as it is used in the present draft should be avoided.

51. The definition could also recall specifically that "affirmative measures" are not contrary to the principle of equality as long as they are temporary and aim to overcome an existing discrimination.

52. With regard to the other definitions, since the next section, on "Forms of discrimination", also contains a number of definitions, the Venice Commission would suggest to better harmonize these parts."

> CDL-AD(2008)042 Opinion on the draft law on protection against discrimination of "the former Yugoslav Republic of Macedonia", adopted by the Venice Commission at its 77th Plenary Session (Venice, 12-13 December 2008).

"49. With regard to the notion of positive action, the Venice Commission would propose devoting Article 6 to the sole definition of the important concept of positive action which is currently only referred to as "affirmative measures and positive discrimination" under Article6 and as an exception under Article 15.2 of the current draft. The definition could be modeled on ECRI Recommendations and the EC directives.

50. Moreover, according to ECRI's policy, the use of the term or notion of "positive discrimination" as it is used in the present draft should be avoided.[5]

51. The definition could also recall specifically that "affirmative measures" are not contrary to the principle of equality as long as they are temporary and aim to overcome an existing discrimination."

> CDL-AD(2008)042 Opinion on the draft law on protection against discrimination of "the former Yugoslav Republic of Macedonia", adopted by the Venice Commission at its 77th Plenary Session (Venice, 12-13 December 2008) (paras. 49, 50 and 51).

[5] ECRI never refers to the term or notion of "positive discrimination" as it is used in the present draft. There are two main reasons for this: first, legally, "positive discrimination" does not make sense. According to the case-law of the European Court of Human Rights, discrimination is unjustified differential treatment. Thus, if differential treatment is justified (as positive action always is) there cannot be discrimination. Secondly, politically, the term "positive discrimination" sends the wrong message: when defined as discrimination, positive action is automatically discredited in the eyes of the public.

IV. Bodies specialised in the fight against discrimination

"9. The amendment proposed to Article 9 provides for a division of labour between the deputy protectors. The deputies would have *"special functions for the protection of persons deprived of liberty, protection of people belonging to minority nations and other minority national communities, protection of the rights of child, protection of gender equality, protection of disabled persons and protection form discrimination*". The specialisation of the deputies is welcomed because it allows the deputies to deal efficiently with the issues attributed to them whereas the general mandate of the Protector provides for coherence between these Specialised areas."

> CDL-AD(2009)043 Opinion on the draft amendments to the law on the Protector of Human Rights and Freedoms of Montenegro, adopted by the Venice Commission at its 80th Plenary Session (Venice, 9-10 October 2009), (para. 9).

"35. Concerning the specialisation within the Ombudsman institution, the Venice Commission has stated previously that when the Ombudsman is "*in a stage of consolidation and development*", it is possible "*to organise the functions for the specialised ombudsperson within the overall institution of the national Ombudsman, by way of establishing a special department and/or appointing a deputy ombudsman for the special field*" (CDL- AD(2007)020, *Opinion on the possible reform of the Ombudsman institution in Kazakhstan,* adopted by the Venice Commission at its 71 Plenary session, June 2007). Although "*the alternative of appointing regional or local ombudspersons who are not subordinated to the national Ombudsman is preferred in many countries and has its advantages of its own*" (*ibidem*, para. 29), the size and population of the country can also be taken into consideration to establish the specialised departments under the monitoring of the national Ombudsperson. Concerning the Human Rights Protector in Montenegro, the Venice Commission stated in 2009 that the specialisation of the deputies (on people deprived of liberty, people belonging to minorities, the rights of the child, gender equality, disabled and discrimination) "*is welcome because it allows the deputies to deal efficiently with the issues attributed to them whereas the general mandate of the Protector provides for coherence between these specialised areas*" (CDL-AD(2009)043, para. 14).

36. In the opinion concerning the Draft Law on Prohibition of Discrimination of Montenegro, the Venice Commission further stated that "*whereas the creation of a specialised body is Considered as the best solution, transferring the same competences to an already existing institution, which would benefit from the competencies described above [the ones detailed by the ECRI General Policy Recommendation No. 7] would be equally adequate*" (CDL- AD(2009)045, para. 38). Article 9 par 3 of the Law established that one of the Deputies will dealspecially with discrimination issues".

> CDL-AD(2011)034 Joint opinion on the protector of human rights and freedoms of Montenegro adopted by the Venice Commission at its 88th Plenary Session (Venice, 14-15 October 2010) (paras. 35 and 36).

"39. The draft does not provide for the establishment of a specialised anti-discrimination body as it has been widely advocated by ECRI. Instead, the draft law grants enforcement powers to the Protector of Human Rights and Freedoms (Ombudsman). However, Article 26 of the draft law that envisages these powers is rather short and vague. It only provides that complaints of alleged discrimination may be lodged with the Ombudsman as stipulated in the Law on the Protector of Human Rights and Freedoms (CDL(2009)114). Neither this law, nor the draft amendments to the law (CDL(2009)110) submitted to the Venice Commission for opinion gives full powers to the Ombudsman for the implementation of the anti-discrimination provisions. The current draft also fails to give the Ombudsman the powers and means the fight against discrimination implies.

40. The Ombudsman has no powers in respect of private persons, which he or she would

need to combat discrimination. The wording of the present draft and the Law on the Protector of Human Rights imply that the area of competencies of the Protector is limited to the public sphere. However, according the ECRI's Recommendation, the institution in charge of the protection of and fight against discrimination should cover the private sphere as well.

Moreover, neither the current draft nor the law or the amendments to the law on the Protector describe or confer to this institution sufficient powers to fulfill its tasks to combat discrimination, like assistance to victims, investigations powers, right to initiate and participate in courts proceedings, for instance as are recommended in ECRI Recommendation No. 7.

41. Furthermore, the current law does not empower the Ombudsman to seek an amicable settlement through conciliation, whereas this procedure can be effectively used for the prevention of discrimination, particularly in such areas as employment.

42. Finally, yet importantly, neither the current draft nor any other proposed legal instrument foresees the necessary supplementary human resources, specialised training in discrimination and financial means for the protection against discrimination that would be necessary for the Office of the Protector of Human Rights.
43. Consequently, neither the general current legal framework nor the current draft offer sufficient legal guaranties and means for a genuine protection against discrimination by the Protector of Human Rights."

> CDL-AD(2009)045 Opinion on the draft Law on Prohibition of Discrimination of Montenegro, adopted by the Venice Commission at its 80th Plenary Session (Venice, 9-10 October 2009), (paras. 39-43).

V. Specific laws on non-discrimination

"6. In 2004, the Human Rights Committee recommended that "the State party should enact comprehensive non-discrimination legislation, in order to combat ethnic and other discrimination in all fields of social life and to provide effective remedies to victims of discrimination."

7. Moreover, in the Council Decision 2006/56/EC of 30 January 2006 on the principles, priorities and conditions contained in the European Partnership with Serbia and Montenegro, the European Council declared the adoption of the legislation against discrimination as a shortand medium-term priority."

(…)
9. The present assessment of the draft law on prohibiting discrimination has been conducted in the light of Council of Europe standards, especially Article 14 of the European Convention on Human Rights (ECHR), its Protocol 12, the European Social Charter, EU directives against discrimination and with specific attention to ECRI's materials (Recommendation no.
6 of 2002) regarding the National Legislation on the Fight Against Racism and Racial Discrimination.

10. The draft law prepared by the Serbian authorities constitutes undeniably an important and valuable step in improving the normative protection against discrimination in Serbia."

> CDL-AD(2008)001 Opinion on the draft law on prohibiting discrimination of the Republic of Serbia, endorsed by the Venice Commission at its 73rd Plenary Session (Venice, 14-15 December 2007) (paras. 6-10).

“10. The Committee of Ministers invited Montenegro to adopt the Law on non-Discrimination, in line with CoE standards, by the next reporting period in its monitoring of Montenegro’s progress in relation to its accession commitments and obligations.

11. Identically, the request for adoption of a “comprehensive anti-discrimination legislation” can be found in the short-term priorities of the Council Decision of 22 January 2007 on theprinciples, priorities, and conditions contained in the European Partnership with Montenegro (2007/49/EC)[3]. The authorities have consequently presented the draft law as part of the national programme for European Union integration.

15. The present opinion on the draft law on prohibition of discrimination is formulated in the light of the Council of Europe standards, especially Article 14 of the European Convention on Human Rights (ECHR), its Protocol 12, the European Social Charter, EU directives against discrimination (in particular, Council Directive 2000/43/EC implementing the principle of equal treatment between persons irrespective of racial or ethnic origin and Council Directive 2000/78/EC establishing a general framework for equal treatment in employment and occupation) and with specific attention to documents of the European Commission against Racism and Intolerance (ECRI) and its Recommendation No. 7 of 2002 regarding the National Legislation on the Fight Against Racism and Racial Discrimination.

19. The present draft for a specific law concerning the prohibition of discrimination constitutes a further important step in the fight against discrimination and has to be welcomed.”

> CDL-AD(2009)045 Opinion on the draft law on prohibition of discrimination of Montenegro, Adopted by the Venice Commission at its 80th Plenary Session (Venice, 9-10 October 2009) (paras. 10-19).

“16. As opposed to the Constitution, a number of laws, such as the LPPD (Article 3) and the Law on Equal Opportunities for Women and Men (Article 3 § 6), contain larger and open ended lists of grounds for discrimination.

17. In addition to the LPPD, anti-discrimination provisions may be found in a considerable number of laws, such as the Law on Equal Opportunities for Women and Men, the Law on the Committee for Relations between the Communities, the Law on the Promotion and Protection of the Members of Communities that are less than 20% of the Population, the Criminal Code, the Law on Labour Relations, the Law on Social Protection, the Law on the Protection of the Rights of Patients, the Law on Public Health, the Law on the Use of Languages, the Law on Local Self-Government, the Law on the Legal Status of a Church, Religious Community and Religious Group, etc.

25. The addition of “sexual orientation” and “gender identity” to the grounds for discrimination, and the change of denomination from “political belonging” to “political conviction” are to be welcomed. It is also welcomed that the ground which is worded in the current law as “any other grounds established by the law or by ratified international agreements” is changed to “any other grounds”.

60. The last paragraph of Article 17 lays down the rule that “Commission Members should reflect the composition of society as a whole and in the election of Commission Members, the principle of adequate and equitable representation of community members and gender-balanced participation shall apply”. The inclusion of a “gender-balanced participation” is particularly welcomed.

106. Compared to the Law on Prevention and Protection against Discrimination currently in force, the draft law has a number of positive aspects. It provides for a shared burden of proof in discrimination cases, professionalisation of the Commission with full time employed members,

financial independence of the Commission, and addition of new responsibilities and competences for the Commission. Furthermore, it deletes the considerable number of treatments enumerated in Articles 14 and 15 which are not deemed to involve discrimination, lays down the condition of a "gender-balanced participation" for the selection of the members of the Commission, establishes an administrative office for the Commission, allows courts more latitude to impose effective, proportionate and dissuasive sanctions, mentions expressly sexual orientation and gender identity as grounds for discrimination, empowers the relevant associations and other organisations to initiate proceedings on behalf or in support of victims of discrimination even if a specific victim is not referred to, exempts court proceedings in discrimination cases from court fees, etc."

CDL-AD(2018)001 "*The former Yugoslav Republic of Macedonia" Opinion on the draft Law on prevention and protection against discrimination", Adopted by the Venice Commission at its 114 Plenary Session(Venice, 16-17 March 2018) (paras 16,17,25,60 and 106)*

VI. Women and participation in public life

A. Balanced participation of women and men in public and political life

"Item I.2.5 of the Code of the Code of Good Practice in Electoral Matters provides as follows: Legal rules requiring a minimum percentage of persons of each gender among candidates should not be considered as contrary to the principle of equal suffrage if they have a constitutional basis."

The following completes this principle:

"a. Implementation of the parity principle may lead to admit:

1. Elections by a list system

- The obligation to ensure a composition of the candidates' lists alternating men and women
- The refusal to register lists which do not respect such an alternating composition

2. Elections in single-member constituencies

- The obligation to ensure a balanced percentage of women and men amongst candidates of the same party

- Dissuasive sanctions in case of non-respect of this obligation

b. Suffrage should be individual and secret, which excludes any form of "family voting", whether committed in the form of group voting (where a [male] family member accompanies one or more [women] relatives into a polling booth), in the form of open voting (when family groups vote together in the open), or in the form of proxy voting (where a [male] family member collects ballot papers belonging to one or more [women] relatives and marks those papers as he sees fit)."

CDL-AD(2006)020 Declaration on women's participation in elections, adopted by the Venice Commission at its 67th Plenary Session, (Venice, 9-10 June 2006).

B. Gender equality in public bodies

"24. If there is a specific constitutional basis, rules could be adopted guaranteeing some degree of balance between the two sexes in elected bodies, or even parity. In the absence of

such a constitutional basis, such provisions could be considered contrary to the principle of equality and freedom of association.

Moreover, the scope of these rules depends on the electoral system. In a fixed party list system, parity is imposed if the number of men and women who are eligible is the same. However, if preferential voting or cross-voting is possible, voters will not necessarily choose candidates from both sexes, and this may result in an unbalanced composition of the elected body, chosen by voters."

> CDL-AD(2002)023rev Code of Good Practice in Electoral Matters: Guidelines and Explanatory Report, adopted by the Venice Commission at its 52nd session (Venice, 18-19 October 2002) (paras. 24-25).

"25. […] Recognizing that candidate selection and determination of ranking order on electoral lists is often dominated by closed entities and old networks of established politicians, clear and transparent criteria for candidate selection is needed, in order for new members (including women, and minorities) to get access to decision-making positions. Gender-balanced composition of selecting bodies should also be commended."

> CDL-AD(2010)24 Guidelines on political party regulation, by OSCE/ODIHR and Venice Commission, adopted by the Venice Commission at its 84th Plenary Session, (Venice, 15- 16 October 2010) (para. 113).

"67. […] The Venice Commission and the OSCE/ODIHR recommend that the law provides a mechanism for ensuring that women are represented in the election administration, including in senior decision-making roles."

> CDL-AD(2014)019 Joint Opinion the Venice Commission and OSCE Office for Democratic Institutions and Human Rights (OSCE/ODIHR) on the draft Election Law of the Kyrgyz Republic adopted by the Council for Democratic Elections at its 48th meeting (Venice, 12 June 2014) and by the Venice Commission at its 99th plenary session (Venice, 13-14 June 2014) (para. 67).

C. Allocation of funds to enhance participation of women in public life

"32. An allocation of funds based on party support for women candidates is not considered discriminatory and should be considered in light of the requirements for special measures to be adopted by states according to the UN Convention on the Elimination of All Forms of Discrimination Against Women."

> CDL-AD(2010)048 Joint opinion on the draft law on financing political activities of the Republic of Serbia by the Venice Commission and the OSCE/ODIHR, adopted by the Venice Commission at its 85th plenary session (Venice, 17-18 December 2010) (para. 32).

"204. State funding and access to public resources is also capable of promoting the role of women and minority groups in public and political life by, for example, providing financial support to those associations that take positive measures to ensure equality of representation, promote the position of women in society for the purpose of gender equality or enhance the public and political participation of minorities. International and regional standards provide that states should ensure that financial support is provided to associations working on certain issues. This includes associations that: provide education to women about their rights and assistance in seeking remedies; work to prevent and combat violence against women and domestic violence (including by providing shelters and rehabilitation support); work with women victims of trafficking to facilitate their rehabilitation and reintegration; and facilitate women's access to justice, including through the provision of legal aid. In additions, the state may consider introducing legislative incentives aimed at supporting associations that

work on these issues. Equally, state support for organizations working with marginalized or minority groups should also be considered.

208. The criteria for determining the level of public funds available for each association must be objective and non-discriminatory, and clearly stated in laws and/or regulations that are publicly available and accessible. State financing and support may be limited to assistance provided to associations that fall into certain categories, such as women and minority groups; in such cases, the basis for preferential treatment of certain groups must be determined in a transparent manner."

> CDL-AD(2014)046 Joint Guidelines of the Venice Commission and OSCE Office for Democratic Institutions and Human Rights (OSCE/ODIHR) on Freedom of Association, adopted by the Commission at its 101st Plenary Session (Venice, 12-13 December 2014) (paras. 204 and 208).

"35. The 2017 reform inserted a new provision in Article 41(22) of the EC which introduces financial incentives for political parties that register at least 40% of women candidates running in the uninominal constituencies (as required by law). Such parties would benefit from an increase of budgetary support of at least 10% of the amount allocated for the budgetary year to the respective party and a multiplication coefficient for every woman elected in the uninominal constituency according to the LPP. This amendment is to be welcomed as a response to the 2017 Joint Opinion, which noted that the draft legislation did not include measures aimed at enhancing the representation of women and was likely to affect it negatively, and which recommended giving further consideration to the matter.24 That said, the practical effects of the amendment need to be kept under review, and the authorities are encouraged to consider the introduction of additional measures; for example, some public funding could be ear-marked for gender equality initiatives such as training of women candidates, programmes related to women's empowerment and funds to support the functioning of women's sections.25 In any case, the Venice Commission and the OSCE/ODIHR recommend that the multiplication coefficient for women elected (Article 41(22) of the EC) be determined by law."

> CDL-AD(2017)027 European Commission for the Democracy through Law (Venice Commission) OSCE Office for democratic institutions and human rights(OSCE/ODIHR) Republic of Moldova Joint opinion on the Legal Framework of the Republic of Moldova governing the Funding of political Parties and electoral campaigns, Adopted by the Council for Democratic Elections at its 60th meeting (Venice, 7 December 2017)

VII. Women and political parties

A. General principles

"99. The small number of women in politics remains a critical issue which undermines the full functioning of democratic processes. In many states women still represent a single-digit minority in parliament and the European average is only 18%. Specific measures to ensure women have an adequate opportunity to compete in elections (…) and be represented in elected bodies should be considered for internal party rules. This would be consistent with Recommendation 1899(2010), entitled "Increasing women's representation in politics through the electoral system", in which the Committee of Ministers of the Council of Europe encourages the member states to increase women's representation by introducing quotas.

100. The creation of a specific 'women's section' or 'gender division' of a party is sometimes used as a tool to promote greater gender equality. Such sections or divisions can make great strides in ensuring women's participation by allowing women an opportunity to discuss issues of common concern as well as a forum for expertise building activities. While the OSCE/ODIHR has recognized that these bodies can at times work against the interest of women by marginalizing or sidelining women within the party, their creation should generally be considered a positive

measure to ensure women's equal participation and gender knowledge.

101. In respect for the universal and regional instruments designed to ensure equality for women as well as general principles for non-discrimination, legislation should endeavor to ensure that women are able to participate fully in political parties as a fundamental means for the full enjoyment of their political rights. In accordance with CEDAW Article 4, special measures should be taken, which might include provisions such as the adoption of quotas for representation, requirements for gender-balance on boards tasked with selecting candidates, introduction of gender neutral selection criteria, or specialized training programs. Voluntary quotas which are not legally mandated but included in party constitutions have also proven effective to ensure the representation of women.

103. Where applicable, special measures may also include training and capacity building programs developed for female candidates prior to their selection to ensure they have an equal opportunity to serve as candidates and to be elected. These training programs may include a system of mentoring for inexperienced new members (including women and minorities) as well as gender-sensitive training courses for new members to promote non- discriminatory working relations and respect for diversity in work and management style.47 Similar programs and specific measures to ensure minority participation should also be enacted. Legislation may require such trainings as a measure to ensure de facto equality for women and to minimize the effect of historical inequalities in the political life.

104. Special measures for women may also include the adoption, implementation and evaluation of gender equality strategies, plans and programmes at different levels, including specific actions plans to achieve balanced participation and representation of women and men both in internal political party offices. Moreover, the establishment of target groups, time frames and benchmarks for the effective implementation of gender equality plans, including specific action plans, may also be included.

105. The participation of women in political party activities can be enhanced by recognizing and considering the family responsibilities of party members. Family responsibilities may be a deterrent for some members to participate in party activities. Efforts to avoid party meetings that conflict with members' family responsibilities and the provision of child care facilities may facilitate participation in party activities."

CDL-AD(2010)24 Guidelines on political party regulation, by OSCE/ODIHR and Venice Commission, adopted by the Venice Commission at its 84th Plenary Session, (Venice, 15- 16 October 2010) (paras. 99-105).

"15. Political parties are also associations, and have been recognized as integral players in the democratic process and as "foundational to a pluralist political society". In particular, legislation on political parties can promote and support the full participation and representation of women and minorities in political processes and in public life."

> CDL-AD(2014)046 Joint Guidelines of the Venice Commission and OSCE Office for Democratic Institutions and Human Rights (OSCE/ODIHR) on Freedom of Association, adopted by the Commission at its 101st Plenary Session (Venice, 12-13 December 2014) (para. 15).

"Legislation on political parties should ensure that women and men have an equal chance to be candidates and to be elected. In addition to the measures discussed earlier to ensure equality in candidacy (voluntary party quotas, gender balanced selection committees, and training for female candidates as well as gender equality action plans and clear and transparent rules for candidate selection), parties must respect all other measures enacted by

the state to ensure gender equality in elections, including provisions regarding gender equality in candidacy and party lists."

> CDL-AD(2010)24 Guidelines on political party regulation, by OSCE/ODIHR and Venice Commission, adopted by the Venice Commission at its 84th Plenary Session, (Venice, 15- 16 October 2010) (para. 131).

B. Placement in winnable positions

"120. The Draft Code contained a provision, similar to that in the previous Parliamentary Election Law, requiring that each gender have at least 30% of the places on candidate lists. The Draft also added a requirement that this percentage would apply to both the "lower and upper part" of such lists. The previous Venice Commission-ODIHR Opinion proposed an alternative approach, under which it could be required that out of every three candidates in order on a list, each gender would be represented by at least one. This proposal was adopted in the Code as enacted."

> CDL-AD(2006)022 Joint Opinion on the Electoral Code of "the former Yugoslav Republic of Macedonia", adopted by the Venice Commission at its 67th Plenary Session, (Venice, 9-10 June 2006) (para. 120).

"16. Article 4.19 of the Election Law requires that every list of candidates shall contain a certain number of minority gender candidates.[6] Article 4.19 is intended to increase the number of women candidates at the top of every candidates list and, thereby, increase the number of women elected. Reaching this goal, however, is made difficult by the present system of open list voting (Articles 9.9, 10.7, 11.7, and 13.5), which allows voters to ignore the order of candidates on the list. This fact was specifically observed in the 2006 elections, where more than 30 women lost seats to men who had been placed lower on the lists of candidates.[7] As none of the amendments address this issue, it is *recommended* that consideration be given to introducing a system ensuring a minimal percentage of each gender in the elected body to achieve the goal of Article 4.19."

> CDL-AD(2008)012 Joint Opinion on amendments to the Election Law of Bosnia And Herzegovina adopted by the Council for Democratic Elections at its 24th Meeting (Venice, 15 March 2008) and by the Venice Commission at its 75th Plenary Session (Venice, 13-14 June 2008) (para. 16).

"135. Being placed on an electoral list as a candidate is no guarantee of women's representation. Pervasive cultural and historical factors create inequalities which are not easily combated by quotas and list requirements alone. For instance, domestic responsibilities are usually identified as the most important deterrent for women to enter politics. Party meetings at inconvenient times, as well as a lack of child care facilities, deter many candidates with family responsibilities. Moreover, women often receive less support and funding from their parties throughout the campaign period, or are even expected to give up their mandates to male counterparts after the election. States should take necessary measures to ensure such practices are prevented, as well as enacting positive measures to help promote the candidacy of women."

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[6] Article 4.19 provides: "Every candidates list shall include candidates of male and female gender. The minority gender candidates shall be distributed on the candidates list in the following manner. At least one (1) minority gender candidate amongst the first two (2) candidates, two (2) minority gender candidates amongst the first five
(5) candidates, and three (3) minority gender candidates amongst the first eight (8) candidates et seq. The number of minority gender candidates shall be at least equal to the total number of candidates on the list, divided by three (3) rounded up to the highest integer."

[7] Final Report of the OSCE/ODIHR Election Observation Mission for the 1st October 2006 General Elections (Warsaw, 6 February 2007), page 18. Democratic Elections at its 37th meeting (Venice, 16 June 2011) and by the Venice Commission at its 87th plenary session (Venice, 17-18 June 2011) (para. 21).

CDL-AD(2010)24 Guidelines on political party regulation, by OSCE/ODIHR and Venice Commission, adopted by the Venice Commission at its 84th Plenary Session, (Venice, 15- 16 October 2010) (para. 135).

"21. Article 31 of the draft law provides that, for the purpose of exercising the gender equality principle, there shall be no less than 20 per cent of candidates of the less represented gender on the candidate list. This is a positive measure. However, in order to be effective, this provision should require that candidates of each gender be ranked high enough on the list to have a realistic opportunity for being allocated a mandate. For example, the law could stipulate that every fifth candidate on the list of candidates should be of different gender."

CDL-AD(2011)011 Joint opinion on the draft law on amendments to the law on election of councillors and members of Parliament of Montenegro endorsed by the Council for

"58. The OSCE/ODIHR noted in its election report on the 2010 parliamentary elections: "women do not feature prominently in politics and are under-represented in decision-making positions". As a result, previous recommendations of the OSCE/ODIHR have included: (1) considering the extension of gender distribution requirements on candidate lists so that they apply to the final candidate lists; (2) requiring political parties to replace any withdrawn candidate with a member of the same gender; (3) positioning women higher on candidate lists; (4) political parties voluntarily providing female candidates opportunities which are equal to those of their male colleagues, such as addressing the public at rallies and being featured in party campaign materials and advertisements; and (5) political parties voluntarily providing for leadership advancement of female party members. As noted in the discussion on the electoral system for parliamentary elections, the draft law, which presents no new provisions that will result in strengthening the participation of women in elections, will not facilitate the effective participation of women in elections."

CDL-AD(2014)019 Joint Opinion the Venice Commission and OSCE Office for Democratic Institutions and Human Rights (OSCE/ODIHR) on the draft Election Law of the Kyrgyz Republic adopted by the Council for Democratic Elections at its 48th meeting (Venice, 12 June 2014) and by the Venice Commission at its 99th plenary session (Venice, 13-14 June 2014) (para. 58).

VIII. Women and elections

A. Barriers for women

"35. For women to get elected to parliament they need to pass several barriers: first, they need to have the right to be elected; second, they need be willing to stand for elections; third, they need to be chosen as candidates by the parties; and, fourth, they need to be elected by voters.

36. At present, almost all countries in the world have granted women the right to vote and to stand for election. […]

37. However, there are still more men than women willing to stand for elections. Thus, it is an important aim to increase the number of potential female candidates. In general, women's willingness to run for elections is fostered by a friendly socio-economic, cultural and political environment and by the backing of political parties and the civil society, particularly women's movements. From a rational perspective, the personal ambition of women to stand for elections may also be dependent on the prospects to be nominated and to be elected. The electoral system and gender quotas may influence such prospects and, thus, the decision of women to stand for elections.

38. The stage at which parties nominate their candidates for elections is most critical for women's access to parliament. Who will be elected is mostly pre-decided by the nomination committees of the parties since they choose the candidates and may place them in prominent positions on the party lists or in "safe" constituencies. Depending on which nomination procedures are used, national or regional party leaders, a broader set of party officials, or party members play the gatekeeper role.

39. The candidates' selection is governed by different political considerations. From a competitive perspective, however, the party gatekeepers select candidates who are expected to strengthen the parties' chances of winning votes. As far as electoral systems allow for ticket balancing strategies, the design of the electoral system may favour women's representation. Furthermore, compulsory or voluntary quotas have a direct impact on the nomination process. However, data, if available, shows that in general women are under- represented already at the nomination level.

40. Finally, female candidates need to be elected to parliament by voters. Studies of national elections in various established democracies suggest that women, once nominated, tend to do as well as men in parliamentary elections. This is partly due to the fact that in countries which have developed party systems, the voters vote primarily for the party label rather than for individual candidates. Nevertheless, electoral systems differ on the voters' possibilities to choose not only between political parties, but between individual candidates as well. This may have an impact on the election of women. Furthermore, gender quotas may play an important role for women being elected to parliament if they contain provisions for the ranking order on the parties' lists."

CDL-AD(2009)029 Report on the Impact of Electoral Systems on Women's Representation in Politics adopted by the Council for Democratic Elections at its 28th meeting (Venice, 14 March 2009) and the Venice Commission at its 79th plenary session (Venice, 12-13 June 2009) (paras. 35-40).

B. Gender quotas in party lists

1. Concept of gender quotas

"19. Gender quotas aim to improve the gender balance in politics. They specify the minimum percentages of female candidates for elections, usually on party lists. Additionally, there might be provisions for the ranking order on the list.

20. Gender quotas might be legally imposed ("legal quotas", "compulsory quotas" or "mandatory quotas") or they might be adopted voluntarily by political parties ("voluntary quotas" or "party quotas"). Legal quotas are compulsory for all parties presenting candidates to parliament, while party quotas have only self-binding character for the respective party. Both types of quotas can play a prominent role in the electoral process.

21. By the end of 2008, twelve member states of the Council of Europe had adopted legal quotas for national elections. Greece is using them only for local and regional elections. However, these quotas differ considerably both in the required minimum percentages of female candidates on the lists as well as in the possible ranking-order provisions for the lists. Provisions on legal sanctions for non-compliance differ, too. Still more common are voluntary quotas: In the majority of Council of Europe member states at least one parliamentary party has adopted voluntary party quotas.

22. Reserved seats for women in parliament are a special type of quota, strongly related to the electoral system. According to such results-based quotas, a certain number of parliamentary seats are reserved for women. This can be done, for example, by special lists or electoral districts for women only. Reserved seats for women are applied e.g. in Afghanistan, Burundi, Rwanda,

Tanzania, and Uganda as well as, to a lesser extent, in Sudan and Pakistan. Some other countries, like Bangladesh, Jordan and Kenya, have reserved a few seats for women.

23. Previously, reserved seats for women were also used in former communist states in Central and Eastern Europe. However, there are no provisions for reserved seats for women in Europe at the moment. Since the introduction of reserved seats for women is not being especially demanded in the Council of Europe member states, such an option will not be discussed in the present study."

> CDL-AD(2009)029 Report on the impact of Electoral Systems on Women's representation in politics, adopted by the Council for Democratic Elections at its 28th meeting (Venice, 14 March 2009)and the Venice Commission at its 79th plenary session (Venice, 12-13 June 2009) (paras. 19-23).

I. 2. Use of gender quotas

"180. Furthermore, there might be gender quotas for the composition of or the candidacies for Parliament. According to the Code of Good Practice in Electoral Matters, legal rules requiring a minimum percentage of persons of each gender among candidates should not be considered as contrary to the principle of equal suffrage (CDL-AD(2002)023rev, I.2.5). In a number of Council of Europe member states, such a minimum percentage of women in the list of candidates is required by law. In the 2004 municipal elections in Kosovo, for example, a third of the candidates had to be women, otherwise political entities would have been disqualified (see CG/BUR (11) 74). In Armenia, the required minimum percentage of women in a list of candidates has recently been increased from 5% to 15% (CDL-AD(2005)027, para. 16). In addition a minimum gender balance, the election law may also stipulate a detailed order to ensure balance throughout the list (as for Bosnia and Herzegovina, see CG/CP (11) 13). A composition of the candidates' lists with alternating men and women might be considered. Even with elections in single-member constituencies, a minimal percentage of members of each gender among candidates might be possible (see CDL- EL(2005)031)."

> CDL-AD(2006)018 Report on electoral law and electoral administration in Europe, adopted by the Venice Commission at its 67th Plenary Session, (Venice, 9-10 June 2006) (para. 180).

"37. According to international regulation and practice, parties must comply with the principle of non-discrimination on the basis of gender both for party office and election candidatures. Several national legislations and practices of several European parties have gone a step further to introduce quotas to either improve gender balance or, more directly, achieve equal representation of women and men in the elected body. Whilst these practices are country and party specific, the introduction of measures for gender equality is progressively becoming the dominant trend. On the contrary, continued and repeated situations of gender unequal representation cannot, by any means, be considered proof of good practice."

> CDL-AD(2009)002 Code of good practice in the field of Political Parties adopted by the Venice Commission at its 77th Plenary Session (Venice, 12-13 December 2008) (para. 37).

"19. Gender quotas aim to improve the gender balance in politics. They specify the minimum percentages of female candidates for elections, usually on party lists. Additionally, there might be provisions for the ranking order on the list.

20. Gender quotas might be legally imposed ("legal quotas", "compulsory quotas" or "mandatory quotas") or they might be adopted voluntarily by political parties ("voluntary quotas" or "party quotas"). Legal quotas are compulsory for all parties presenting candidates to parliament, while party quotas have only self-binding character for the respective party. Both types of quotas can play a prominent role in the electoral process."

CDL-AD(2009)029 Report on the Impact of Electoral Systems on Women's Representation in Politics adopted by the Council for Democratic Elections at its 28th meeting (Venice, 14 March 2009) and the Venice Commission at its 79th plenary session (Venice, 12-13 June 2009) (paras. 19-20).

"85. A number of countries have introduced electoral gender quotas in recent years, and in many more countries political parties apply voluntary gender quotas. For instance, as noted in the Venice Commission Report on the Impact of Electoral Systems on Women's Representation in Politics, CDL-AD(2009)029, ten Council of Europe member states (that are also participating States of the OSCE) have introduced mandatory, legal quotas for national parliaments (Belgium, Bosnia and Herzegovina, France, Armenia, the Former Yugoslav Republic of Macedonia, Serbia, Portugal, Slovenia, Spain and Albania). These quotas differ considerably with regard to the minimum percentage of each sex required among the candidatures, ranging from 15% to 50% minimum required of both sexes. A few countries also provide for ranking order on the list. For instance, in Serbia every fourth position must be filled with the under-represented sex; in Bosnia and Herzegovina there must be one candidate of the under-represented sex among the first two positions on the list, two candidates among the first five, and three among the first eight; and in Belgium, the top two positions must not be filled by candidates of the same sex. In about 30 Council of Europe member states, one or more political parties have adopted voluntary quotas in order to guarantee the nomination of a certain proportion of women."

CDL-AD(2010)24 Guidelines on political party regulation, by OSCE/ODIHR and Venice Commission, adopted by the Venice Commission at its 84th Plenary Session, (Venice, 15- 16 October 2010) (para. 85).

"102. According to the Venice Commission and the Committee of Ministers of the Council of Europe, electoral gender quotas can be considered an appropriate and legitimate measure to increase women's parliamentary representation. In the Committee of Minister's 2009 Declaration "Making Gender Equality a Reality", member states are urged to enable positive action or special measures to be adopted in order to achieve balanced representation in political and public decision-making. Similarly, in accordance with OSCE Decision No. 7/09 on Women's Participation in Political and Public Life, the Ministerial Council calls on the participating States to "consider possible legislative measures, which would facilitate a more balanced participation of women and men in political and public life and especially in decision-making", and to "encourage all political actors to promote equal participation of women and men in political parties, with a view to achieving better gender-balance representation in elected public offices at all levels of decision-making." All such steps are considered good practice.

CDL-AD(2010)24 Guidelines on political party regulation, by OSCE/ODIHR and Venice Commission - adopted by the Venice Commission at its 84th Plenary Session, (Venice, 15- 16 October 2010) (para. 102).

"132. Article 4 of the Convention on the Elimination of All Forms of Discrimination against Women (CEDAW) makes clear that "[a]doption by States Parties of temporary special measures aimed at accelerating de facto equality between men and women shall not be considered discrimination…" As such, and in light of the historical inequalities suffered by women throughout the OSCE region and globally, states may legislate particular requirements or impose other measures aimed at ensuring women's equal participation in political life and as candidates.

133. Quotas are one such measure that may be adopted by states. In Recommendation 1899(2010), entitled "Increasing women's representation in politics through the electoral system", the Parliamentary Assembly encourages the member states of the Council of Europe to increase women's representation by introducing quotas. Countries with a proportional representation list system are encouraged to (consider) introduce a mandatory quota which provides not only for a

high proportion of female candidates (ideally at least 40%), but also for a strict rank order rule, for example, a "zipper" system of alternating male/female candidates or that every group of three candidates on the list (1-3, 4-6, 7-9, et sec) consists of at least one candidate of the less represented sex. With rank order rules, such as these, women candidates do not risk being placed too low on the list to have a real chance to be elected. Countries with majority or plurality systems are encouraged to introduce the principle of each party choosing a candidate amongst at least one female and one male nominee in each party district or find other ways of ensuring increased representation of women in politics.

134. Where quotas are mandated, concerns exist that these quotas will in essence create a ceiling to gender advancement by requiring parties to retain women in low-level seats to ensure compliance. It is important to ensure such quotas effectively allow women the ability to progress to positions of leadership rather than creating de facto restrictions on their progression. It is a good practice to periodically review quotas to assess whether they should be maintained at the same level or whether their number should be increased, particularly at low-levels of governance."

> CDL-AD(2010)24 Guidelines on political party regulation, by OSCE/ODIHR and Venice Commission, adopted by the Venice Commission at its 84th Plenary Session, (Venice, 15- 16 October 2010) (paras. 132-134).

"33. The draft Code does not establish any requirements that candidate lists or membership in election administration reserve a minimum number of positions for women. Although neither the Council of Europe nor OSCE require gender quotas, both recognise that legislative measures are effective mechanisms for promoting women's participation in political and public life. Further, Article 4 of the Convention on the Elimination of all Forms of Discrimination Against Women emphasises that "adoption by States Parties of temporary special measures aimed at accelerating de facto equality between men and women shall not be considered discrimination".

35. There are several areas where the draft Code could be improved to facilitate the participation of women in public life and the elimination of discrimination against women. The Venice Commission and OSCE/ODIHR make the following recommendations in this regard:

- The electoral system could be revised, either through the use of quotas or other recognised methods for facilitating the election of women candidates, so that current percentages of women who are elected is increased substantially;
- Minimum representation for both sexes in election administration, including in leadership positions, could be guaranteed;
- Some portion of public funding for political parties could be linked to the proportion of women nominated as candidates by political parties and/or included on party lists".

> CDL-AD(2011)043 Joint opinion on the draft election code of Georgia adopted by the Council for Democratic Elections at its 39th meeting (Venice, 15 December 2011) and by the Venice Commission at its 89th plenary session (Venice, 16-17 December 2011) (paras. 33-35).

"60. The draft Act does not contain provisions on the promotion of gender equality within internal party structures or in the wider electoral process. According to the Guidelines, in respecting universal and regional instruments designed to ensure equality for women, as well as general principles for non-discrimination, legislation should endeavour to ensure that women are able to participate fully in political parties as a fundamental means for the full enjoyment of their political rights. There are a number of ways of achieving this goal, some of which are related to internal party regulations, whilst others may be contained in legislation. Gender equality may be promoted through the creation of a "women's section" or "gender division" within political parties; by introducing electoral gender quotas that could increase

women's parliamentary representation, by providing training and capacity-building programmes developed for female members and potential candidates prior to their selection, by adopting, implementing or evaluating gender-equality strategies, plans and programmes at different levels, including specific action plans to achieve balanced participation and representation of women and men in internal political party offices, or by recognizing and considering the family responsibilities of party members. It is recommended to consider including specific provisions to promote gender equality in the draft Act, and in particular, to ensure greater gender balance in electoral lists."

> CDL-AD(2014)035 Joint Opinion on the Draft Act to regulate the formation, the inner structures, functioning and financing of political parties and their participation in elections of Malta, adopted by the Venice Commission at its 100th Plenary Session (Rome, 10-11 October 2014) (para. 60).

"118. The draft code increases the previously used gender quota. While the former system provided for a 20 per cent quota within brackets, but starting from bracket 2-6, the new one introduces a 25 per cent quota, starting from bracket 1-4. However, it might have limited impact. Indeed, it is only imposed on the first part of the national electoral lists for the National Assembly, which are closed lists, starting from the top of the list (Article 83.4). For the district lists, the requirement is that not more than 75 per cent of the total number of candidates can be of the same gender (Article 83.10), but there is no requirement concerning the placement on the list since the lists are open. As such, it is likely that every party passing the threshold will have at least one woman elected from the national list, but there is no such guarantee concerning district lists. In a positive step, Article 100.3 assures that, when filling vacancies in the first part of the national list, the underrepresented gender should get the seat if the gender in that party would otherwise be less than 20 per cent.

119. Article 130.2 has the same requirement for gender balance for the councils of elders of Yerevan, Gyumri and Vanadzor as there is for the National Assembly. In addition, Article 141.5 guarantees that every party will not have all its seats filled by candidates of the same gender. Since the rule is applied to all the seats in the council, the balance may be better than in the parliament. It is again positive that Article 141.7 assures that when filling vacancies, the underrepresented gender should get the seat if the share of the gender of that party would otherwise be less than 20 per cent.

120. For candidates to council of elders, other than Yerevan, Gyumri and Vanadzor there are no gender requirements.

121. The Venice Commission and the OSCE/ODIHR have stated, on several occasions, that "the small number of women in politics remains a critical issue which undermines the full functioning of democratic processes". In line with the Convention on the Elimination of all Forms of Discrimination Against Women (CEDAW),50 the Report on the Method of Nomination of Candidates within Political Parties, electoral quotas are regarded as temporary special measures that can act as an "appropriate and legitimate measure to increase women's parliamentary representation51. It is for each country to decide how to improve gender equality. However, the Venice Commission considers that, if legislative quotas are imposed, they "should provide for at least 30 per cent of women on party lists, while 40 or 50 is preferable", in order to be effective.

122. It is therefore recommended that the draft code provide a more effective quota for women's representation on candidate lists, such as placing women among every two or three candidates. The draft code should also ensure that the chosen quota is effective not only for the registration of the candidate list, but also when distributing mandates.

> CDL-AD(2016)019 *Armenia Joint Opinion on the Draft electoral code as of 18 APRIL 2016, Endorsed by the Council of Democratic Elections at its 55th meeting (Venice, 9 June 2016) and by the Venice Commission at its 107th Plenary Session (Venice, 10-11 June 2016)*

“34. It will also be noted that Article 25 of the draft law encourages political parties to respect gender parity and ensure participation by young people and people with disabilities; the Venice Commission has recommended corresponding measures in several opinions. Nevertheless, it would be preferable to indicate in the article that it does not include a general, non-temporary requirement for absolute gender equality in all party structures. It is doubtful whether such a requirement would be proportionate to the legitimate aim pursued; reference may be made here to international standards according to which “temporary special measures” aimed at promoting de facto equality for women and minorities may be enacted. “

> CDL-AD(2018)025 *Tunisia Opinion on the Draft Institutional Law on the organization of Political parties and their funding, Adopted by the Venice Commission at its 116th Plenary Session (Venice, 19-20 October 2018)* (para 34)

24. Regarding the gender balance issue, as raised in the 2011 opinion, “each gender has to be ranked high enough on the list to have a realistic opportunity for being allocated a mandate. For example, the law could stipulate that every fifth candidate on the list of candidates should be of different gender” (para. 21). The present law already goes beyond this recommendation and Article 59 of the draft law still goes further, addressing Council of Europe recommendations by introducing changes into the electoral list gender quotas, raising them from 30 per cent to 40 per cent, while maintaining the zipper system11 aiming to ensure equal gender representation. Article 59 requires that at least one candidate in each three positions on the list be from the less represented gender, as opposed to the current requirement of one in four. This formulation is welcome in that it will help further boost the representation of women on candidate lists, including in winnable positions, and in the elected parliament.

> CDL-AD(2020)026 *Venice Commission/ODIHR Montenegro - urgent joint opinion on the draft law on elections on elections of members of Parliament and councilors, Endorsed by the Venice Commission on 8 October 2020 at its 124th online Plenary Session*

3. Types of gender quotas

“43. The most demanding requirements on the selection of candidates by political parties are those aimed to ensure equal gender representation. The Guidelines on Political Parties Regulation recognise that “the small number of women in politics remains a critical issue which undermines the full functioning of democratic process”. Hence, “electoral gender quotas can be considered an appropriate and legitimate measure to increase women’s parliamentary representation”.

1. There are various socio-economic, cultural and political factors that can hamper women’s access to the political arena. Structural obstacles in society limiting the political representation of women are not easy to remove and fundamental changes will require much time and effort. Thus, changing the electoral system, for instance, by introducing quota rules, may offer a viable alternative to increase female representation. The Venice Commission, in its Code of Good Practice in Electoral Matters, considered that the legal rules requiring a minimum percentage of persons of each gender among candidates should not be considered contrary to the principle of equal suffrage, if they have a constitutional basis.

The analysis of the electoral gender quota systems and their implementation in Europe shows that some type of electoral gender quotas for public elections is in use in 35 countries. Thirteen countries (Albania, Belgium, Bosnia and Herzegovina, France, Greece, Ireland, Montenegro, Poland, Portugal, Serbia, Slovenia, Spain and “the former Yugoslav Republic of Macedonia”) have introduced legislated quotas that are binding for all political parties. Voluntary party quotas have been implemented in 22 countries, meaning that at least one of the political

parties represented in parliament has written electoral gender quotas into its statutes. In six countries, no gender quotas are in use for national elections.

Legislated quotas are more respectful of political parties' freedom when they only impose a certain percentage of female candidates in the electoral list. When the proportion of women must be respected in groups of seats, the restriction placed on political parties is higher. The most demanding system is the zipper list, because in this case men and women must alternate. However, this kind of list seems to be the most effective for securing the representation of women.

It should, in any event, be noted that according to the European experience, although gender quotas are an effective tool for increasing women's presence in political bodies, they do not automatically result in an equal representation of women and men. Quotas must include rules about rank order and sanctions for non-compliance. […]"

> CDL-AD(2015)020 Report on the method of nomination of candidates within political parties, adopted by the Council for Democratic Elections at its 51th meeting (Venice, 18 June 2015) and by the Venice Commission at its 103rd Plenary Session (Venice, 19-20 June 2015) (paras. 43-50).

4. Sanctions

"63. It could be considered to provide for the inadmissibility of a list (whether the proponents' list or the list drafted by the "authorised commission") which would not contain representatives of both genders."

> CDL-AD(2008)001 Opinion on the Draft Law on Prohibiting Discrimination of the Republic of Serbia, endorsed by the Venice Commission at its 73rd Plenary Session, (Venice, 14-15 December 2007) (para. 63).

"21. For local government elections, Article 67 states that "one in every three names on the list should be from each sex". Although this appears to be a stronger requirement than is required for Assembly elections, Article 67(6) allows a political party to purchase an exemption for the requirement by paying a fine to the CEC. The Venice Commission and the OSCE/ODIHR recommend that Article 67(6) be amended so that a political party cannot purchase an exemption from the law. A political party list of candidates that does not meet legal requirements should not be registered."

> CDL-AD(2009)005 Joint Opinion on the Electoral Code of the Republic of Albania by the Venice Commission and the OSCE/ODIHR adopted by the Venice Commission at its 78th plenary session (Venice, 13-14 March 2009) (para. 21).

"136. There should be a variety of sanctions available when parties do not comply with legal measures aimed to ensure gender equality. Sanctions may range from financial sanctions, such as the denial or reduction of public funding, to stronger legal sanctions, such as removal of the party's electoral list from the ballot. In all cases, sanctions should be proportionate to the nature of the violation."

> CDL-AD(2010)24 Guidelines on political party regulation, by OSCE/ODIHR and Venice Commission, adopted by the Venice Commission at its 84th Plenary Session, (Venice, 15- 16 October 2010) (para. 136).

"51. Furthermore, the effectiveness of quota provisions depends on the existence of institutional bodies that supervise the application of quotas and impose sanctions for non-compliance."

CDL-AD(2015)020 Report on the method of nomination of candidates within political parties, adopted by the Council for Democratic Elections at its 51th meeting (Venice, 18 June 2015) and by the Venice Commission at its 103rd Plenary Session (Venice, 19-20 June 2015) (para. 51).

"82. In addition, the draft Election Code does not stipulate what action should be taken in case the legal quota is not met and does not include any incentives or penalties. ODIHR and the Venice Commission recommend that proportionate sanctions be included in the law to ensure compliance. These may include financial measures, such as a reduction or denial of public funding, or stronger measures, such as denial or cancelation of list registration.71

83. The Venice Commission's Code of Good Practice in Electoral Matters and the related Declaration on women's participation in elections are clear in this respect. The Code of Good Practice states that "Legal rules requiring a minimum percentage of persons of each gender among candidates should not be considered as contrary to the principle of equal suffrage if they have a constitutional basis". The Declaration complements this point by stating that the parity principle may lead to admit:

"1. Elections by a list system
- The obligation to ensure a composition of the candidates' lists alternating men and women
- The refusal to register lists which do not respect such an alternating composition
2. Elections in single-member constituencies
- The obligation to ensure a balanced percentage of women and men amongst candidates of the same party
- Dissuasive sanctions in case of non-respect of this obligation"."

CDL-AD(2018)027 Venice Commission/ODIHR Uzbekistan - Opinion on the Draft Election Code, Adopted by the Council for Democratic Elections at its 63rd meeting (Venice, 18 October 2018) and by the Venice Commission at its 116th Plenary Session (Venice, 19-20 October 2018) (Paras 82-83)

C. Influence of electoral systems on women's representation

"46. The submitted draft does not take into consideration provisions of ensuring women's representation under the proposed electoral system. The number of women MPs in the Moldovan Parliament is very low. In the parliamentary elections of 2010, only 19 women were elected out of the 101 mandates.26 Until now, Moldova has not followed the recommendations of the Parliamentary Assembly of the Council of Europe to increase women's representation in politics.27 The new electoral proposal does not improve gender equality, and could further limit women's representation in parliament. As the European Parliament stated more than fifteen years ago, the countries with majority or plurality electoral systems in one-member constituencies have the lowest level of female political representation. In single-member constituencies, political forces often prefer male candidates because, in such a way, they expect better electoral results than when selecting women."

CDL-AD(2014)003 Joint Opinion on the draft Law amending the electoral legislation of Moldova, adopted by the Council for Democratic Elections at its 47th meeting (Venice, 20 March 2014) and by the Venice Commission at its 98th plenary session (Venice, 21-22 March 2014) (para. 46).

"20. Under Articles 4 and 7 of the Convention for the Elimination of Discrimination Against Women, a state has a positive obligation to take special, temporary measures to ensure the de facto equality of men and women, including in political and public life. In addition, the Albanian Parliament adopted in July 2008 a Law on Gender Equality, which aims at establishing equal women representation in State institutions. The Code attempts to take effective measures for women. Article 67(5) requires that in Assembly elections, for each electoral zone, "at least thirty percent of the multi-name list and/or one of the first three names in the multi-name list should be from each sex".However, this provision might be subject to

different interpretations. Arguably, this provision gives the list presenter one of two options: (1) one woman in the top three candidates or (2) thirty percent (30%) of the candidates must be women, who can appear anywhere on the list, including being placed as the very last names on the bottom of the list. Thus, as written, this article might not be equivalent to an "effective measure" promoting the representation of women in the Assembly. The Venice Commission and the OSCE/ODIHR recommend that the "and/or" text in Article 67 be changed to "and". It is further recommended that Article 67 be reviewed to provide more efficient mechanisms to promote women representation in parliament.

> CDL-AD(2009)005 Joint Opinion on the Electoral Code of the Republic of Albania by the Venice Commission and the OSCE/ODIHR adopted by the Venice Commission at its 78th plenary session (Venice, 13-14 March 2009) (para. 20).

"54. The number of women MPs in the Moldovan Parliament remains very low. The proposed draft does not include measures aimed at enhancing the representation of women and is likely to affect it negatively. As previously noted, "somewhat larger numbers of women tend to be elected under proportional systems than under "first-past-the-post" majority or plurality systems, or under mixed systems." In particular, majoritarian systems in single-member constituencies have a low level of female representation.

55. The draft maintains the provision of the current Electoral Code, which requires that each gender be represented with a minimum of 40% of candidates on candidate lists.38 It also stipulates that modifications to candidate lists shall be carried out by observing the provisions of the Law on Ensuring Equal Chances for Women and Men. However, given that these measures will apply only to half of the seats in the Parliament (those elected from the proportional contest), the provisions would not serve to improve the low representation of women, on the contrary. It is recommended that this issue be given further consideration, including additional temporary special measures to encourage political parties to present a gender-balanced representation of candidates across constituencies, or imposing that a representative number of women be placed in winnable positions in candidate lists in the proportional component."

> CDL-AD(2017)012 *Venice Commission/ODIHR – Republic of Moldova Joint opinion on the Draft Laws on amending and completing certain legislative acts (Electoral system for the Election of the Parliament), Adopted by the Council for Democratic Elections at its 59th meeting (Venice, 15 June 2017) and by the Venice Commission at its 111th Plenary Session (Venice, 16-17 June 2017)*

"46. Article 163(5) makes an exception in the distribution of mandates according to the number of preference votes in case the candidate with fewer votes belongs to the least represented gender. This system of guaranteeing gender parity in Parliament in the distribution of mandates goes beyond the Code of Good Practice in Electoral Matters and its 2006 interpretative declaration, which only accepts the implementation of the parity principle among candidates.[17] The position taken during the elaboration of the Code gave priority to free suffrage over parity, based on the opinion that, should the voter be given a full choice between candidates, provisions on gender parity could go against it. According to the revised Electoral Code, the voters' choice has only a limited impact on the determination of which candidates on a list are elected; under these circumstances, the guarantee of a gender-balanced representation does not pose a problem, but should, on the contrary, be praised."

> *CDL-AD(2020)036 Venice Commission /ODHIR – Albania Joint Opinion on the Amendments to the Constitution of 30 July 2020 and to the Electoral Code of 5 October 2020, Approved by the Council for Democratic Elections at its 70th meeting (online, 10 December 2020) and adopted by the Venice Commission at its 125th Plenary Session (online, 11-12 December 2020)*

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II. Single member vs multi-member constituencies

“51. As for women’s parliamentary representation, a crucial factor is whether the electoral system has single-member districts (SMDs) where only one parliamentarian is elected per constituency, or multi-member districts (MMDs) where several members of parliaments are elected per constituency.

52. Among the Council of Europe member states, only the plurality system in the United Kingdom and in Azerbaijan and the Two-Round system in France use SMDs throughout the country for elections to the lower or single houses of national parliament.

53. With combined systems, some of the representatives are elected in SMDs. This is the case with the parallel systems in Armenia, Georgia, Lithuania and “the former Yugoslav Republic of Macedonia”, as well as with the different Mixed Member Proportional systems in Albania (until the recent electoral reform), Hungary and Germany.

54. With the exception of some countries (e.g. Slovenia and Switzerland), where very few SMDs still co-exist with PR in MMDs, in most Council of Europe member states representatives are elected exclusively by proportional representation in multi-member constituencies at the local, regional and/or national level.

55. Usually, SMDs are considered to be less conducive to female nomination and representation than MMDs. Even with mixed member proportional systems, SMDs tend to disfavour women. In single-member districts each party can only nominate one person per district, and only the candidate with the plurality or majority of the votes will be elected there. The challenge for potential female candidates is, first, to be nominated by her party and, second, to be elected by the voters. Thus, women must compete against men in their own party (for nomination) and against men of other parties (to be elected).

56. It is not seldom the case that the nomination of women is hindered by the aspirations of powerful male politicians of the same party. Moreover, party gatekeepers may perceive women as being less capable of winning a face-to-face competition against a male candidate of another party, especially if the nomination of a woman requires the de-selection of a male incumbent. Since parties are reluctant to deselect incumbents in the interest of parity, male incumbency is an additional barrier for women to be nominated. However, where women have already gained parliamentary seats, they can also benefit from the incumbents’ bonus.

57. Moreover, party leaders’ concern about presenting a female candidate, who might not appeal to voters in the same way as men in SMDs, are based predominantly on perception rather than facts. There is no theoretical reason why or empirical evidence that women can not do as well as men in single-member districts. Unfortunately comparative data on women’s success rates is lacking, namely the difference between the numbers of nominated and elected female candidates. However, experiences from various countries show that women, contrary to party official claims, have good records, if they compete under similar conditions as men.

58. This is particularly true in well-established democracies with highly institutionalized party systems where voters vote primarily for the party rather than for the individual candidates, even in SMDs (which are more candidate-oriented than PR system with closed lists in MMDs). This means that with developed party systems usually the party label is more important than the gender of the candidate, not only with PR lists, but also in SMDs. In such cases, the success of female candidates in SMDs depends largely on whether they are nominated and supported by strong parties which are capable of winning the seat in the respective districts.

59. Only in countries with rather fluid party systems and/or those which still attach considerable importance to independent candidates, the individual features of candidates may have a stronger impact on voting behaviour, especially in SMDs. If traditional gender roles are prevalent in such countries, this may be disfavouring to women.

60. Contrary to SMDs, multi-member districts allow for balancing the party ticket since several candidates will be elected there and, consequently, nominated on the parties' lists. Party gatekeepers, thus, may have good reasons for introducing women on their lists: It may not only be seen as a strategy for attracting female voters, but also as a mechanism to represent various internal party interests and, thus, to strengthen the party's coherence. Moreover, integrating women on the party list may be considered as a matter of equity, particularly if there is an active women's branch inside the party and a strong women's movement in the civil society.

III. District magnitude in multi-member constituencies

61. While multi-member districts are expected to be more advantageous for women than SMDs, they may differ considerably in their magnitude, that is, the number of seats to be elected per district. In the Council of Europe member states there are, for example, PR systems in predominantly small or medium-sized districts, PR systems in rather large districts, as well as PR systems in a nation-wide district. Moreover, there are also multi-tier PR systems with districts of different sizes at various levels. Finally, with combined systems at least some of the parliamentarians are elected on PR lists.

62. It is often expected that the larger the district magnitude, the more women will be nominated and elected. As it has shown, this assumption is based on the dynamics of party nominating processes and parties' strategies for balancing their ticket. Several studies seem to prove such an assessment, but there is also some debate as to whether this argument is empirically valid.

63. Recent empirical research suggests that it is not so much district magnitude as "party magnitude" that matters. While district magnitude is defined by the number of seats to be elected in a district, party magnitude describes the number of seats a party wins (or expects to win) in a district. Only if a party anticipates that it wins several seats in a constituency will ticket balancing come into effect.

64. If parties are expected to win only one or two seats, however, the effect will be rather limited or non-existent. Taking into account that in many PR systems men are the first on the list, the probability for women to be elected is low, when party magnitude is one. This is even true in countries with electoral gender quotas, as the Latin American experiences show.

65. Evidently district magnitude and party magnitude are interrelated. For example, in small constituencies of about three to five seats even strong parties are expected to win only a few mandates. Small parties without regional strongholds run the risk of getting not even one seat in the respective district, given the effective (mathematical) threshold of representation.

66. With medium-sized or large constituencies, strong parties can expect to gain several seats, making strategies for ticket-balancing effective. Smaller parties, however, may even battle to gain a few seats there.

67. In a nation-wide district, the number of parties which are expected to win several seats is likely to increase. Even then, however, there are small parties entering parliament with only a few seats, if not excluded by legal thresholds (see below).

68. In summary, the larger the districts and party magnitudes, the greater the likelihood of women being nominated and elected. Thus, medium-sized, large or nation-wide districts within PR systems appear to be more advantageous for women than small constituencies or even single-member districts. If many seats are distributed per constituency, the number of parties which expect to win several seats there is likely to increase.

69. Of course, high district and party magnitudes alone do not guarantee high female representation levels, but at least they allow for effectively applying ticket balancing strategies, if politically wanted. Interestingly, the Polish electoral reform of 2001, creating larger MMDs within the PR system, led to an increased number of women being placed on candidate lists.

70. In contrast, because of the few elected candidates, large parties in small constituencies and small parties in larger constituencies experience difficulties in applying ticket balancing strategies. If a PR system is used only in small districts, as it is the case of Ireland, it can be just as disadvantageous to women as SMDs (see also Rec(2003)3, Explanatory memorandum, III A, 49). Also Chile's binominal constituencies are blamed for contributing to low levels of women's representation.

71. However, in countries where well-designed gender quotas with strict placement mandates exist (see below), the differences between the various district and party magnitudes are not necessarily significant, as long as the party magnitude is larger than one seat. Recent research on Latin America seems to confirm this assessment.

IV.

V. Legal thresholds

72. Legal thresholds define a minimum vote share a party needs to be awarded seats. Parties which get less than this percentage of the vote are excluded from parliamentary representation by legal provisions.

73. Intuitively, legal thresholds do not appear to favour female representation. They aim to exclude small parties from access to parliament. This may prevent the fragmentation of the parliamentary party system, but does not favour the overall representativeness of the electoral system. Indeed small parties which may represent minorities' or women's interests are excluded from parliamentary representation.

74. However, the exclusion of small parties is not automatically associated with a lower representation of women in parliament. If we consider party magnitude as an important factor for stimulating (gender) ticket-balancing, legal thresholds are more likely to have the opposite effect: They exclude small parties, which would gain only a few seats, from parliamentary representation. At the same time, those parties which pass the threshold gain enough seats in order to make ticket-balancing meaningful. Thanks to the legal threshold, therefore, only parties with a relatively high party magnitude enter parliament. They even profit from the exclusion of small parties. Since they have more room on the ticket to nominate women, it is more likely that women will be among the mandate-holders.

75. Due to the effect of party magnitude women will theoretically be helped by both the combination of high electoral district magnitudes *and* high legal thresholds. According to the dynamics of ticket-balancing, the combination of PR in large or even nation-wide districts with legal thresholds appears to be advantageous for women's nomination and representation. However, even this combination alone does not guarantee a high women's representation, as the different national experiences in Europe show.

76. Nevertheless, simulations from Costa Rica and Sweden, which both use electoral thresholds, indicate that without thresholds very small parties would have won representation. With thresholds, however, the smaller parties are excluded from parliamentary representation. At the same time, more women are elected from the larger parties. This means that there is a "trade-off" between representing the voters of small parties and increasing women's parliamentary representation by having more female representatives from the larger parties.

VI. Closed versus open or free lists

77. While in plurality/majority systems in SMDs, only individual (party) candidatures are possible, in PR systems different list forms are applied. Such lists may be closed, open or free. With closed lists the political parties determine the ranking order of candidates on the electoral ballot, and the voter endorses the entire list without any possibility of changing the order in which the seats are allocated to the candidates. In contrast, with open lists the voter may express a preference for particular candidates by casting a certain number of preference votes, thus changing the ranking order of the list. With free lists, the voter may even choose between candidates from different lists.

(…)

79. With closed party lists, it is of crucial importance that women, when nominated, are placed on winnable list positions. Thus, it depends largely on the party gatekeepers if they put women on prominent positions on the parties' lists. If they do so, women's representation can be effectively favoured. If they refuse to do so, women are likely to be under- represented in parliament.

80. With open or free lists, voters may alter the ranking order of the list. If preference voting or cross-voting is possible, however, voters will not necessarily choose candidates from both sexes, and this may result in an unbalanced composition of the parliament, chosen by voters (CDL-AD (2002)023rev, Explanatory report, par. 25). Instead, open lists may work to the advantage of well-known male candidates. Thus, there is an inherent danger that the introduction of open lists may result in the election of fewer women.

81. However, open lists need not hamper women's representation. To the degree that women organise themselves and actively campaign for voting female candidates, preference voting may not work against women. Instead it may also result in stronger women's representation. In Denmark both the opportunity of voters to cast preference votes and parties' nomination practices are favouring high levels of women's representation. Another case in point is Peru, where voters actively use preference voting to elect women, most recently in the 2006 elections.

82. As for the list form, therefore, general recommendations can hardly be given. Being a woman can be an advantage or a disadvantage with each form of party list. As a leading expert put it: "The crucial question is whether it is easier to convince voters to actively vote for women candidates, or to convince party gate-keepers that including more women on the party list in prominent positions is both fair and, more importantly, strategically wise" (Matland 2005: 104). The answer varies from country to country. In some cases, it is possible to convince both party gatekeepers and voters, like in the above-mentioned examples of Denmark and Peru.

83. However, if gender quotas are effectively implemented and ensure the inclusion of women on prominent positions on the list (see below), closed lists may in certain cases guarantee women's representation . Interestingly, the elections in Bosnia and Herzegovina since 2002, using gender quotas and open lists, have seen a dramatic reduction in the number of elected women, compared to the elections of 1998, when quotas were applied together with closed lists. Also experiences from Latin America show that quotas work better with closed lists than with open list, but the differences are not as significant there as one would expect by conventional wisdom."

> CDL-AD(2009)029 Report on the Impact of Electoral Systems on Women's Representation in Politics adopted by the Council for Democratic Elections at its 28th meeting (Venice, 14 March 2009) and the Venice Commission at its 79th plenary session (Venice, 12-13 June 2009) (paras. 51-83).

IX. Women and the media

A. General principles

"83. Other aspects of the media campaign coverage can also be usefully measured:

- Number of mentions received by each political actor (such as a candidate or other politician);
- Length of time or amount of space given to each political actor;
- Positive, negative, or neutral references to each actor;
- Time or space given to direct speech or interviews with each political actor;
- References to different topics;
- Order of placement of news items on different candidates, parties, or topics;
- Gender balance of media coverage of candidates."

CDL-AD(2009)031 Guidelines on Media Analysis during Election Observation Missions by the OSCE Office for Democratic Institutions and Human Rights (OSCE/ODIHR) and the Venice Commission adopted by the Council for Democratic Elections at its 29th meeting (Venice, 11 June 2009) and the Venice Commission at its 79th plenary session (Venice, 12- 13 June 2009) (para. 83).

"101. The definition of the variables describing the relevant actor: The media analyst decides how many variables are to be used to describe relevant actors. Three kinds of information will always be considered in describing relevant actors in order to produce the necessary occurrences and statistics: political affiliation, candidacy, and gender. These variables allow the monitoring team to determine the distribution of CDL-AD(2009)031 coverage among political parties or among the candidates running for election. They will also enable the production of data related to gender balance. It may be useful to add other variables. It may be of interest, for example, to know how frequently candidates from minority groups are reported or cited. This could be added to the list."

> CDL-AD(2009)031 Guidelines on Media Analysis during Election Observation Missions by the OSCE Office for Democratic Institutions and Human Rights (OSCE/ODIHR) and the Venice Commission adopted by the Council for Democratic Elections at its 29th meeting (Venice, 11 June 2009) and the Venice Commission at its 79th plenary session (Venice, 12- 13 June 2009) (para. 101).

B. On the use of disaggregated data

"86. It is important to remember that this quantitative data serves a larger purpose; these elements are not counted simply because they can be counted, but because an analysis of the data, within the context of the media landscape and the political situation surrounding a particular campaign, can help the media answer many of the questions set out in Chapter 3 about the role of the media in the electoral process, and it gives the media analyst the information needed to assess the media's performance during the campaign.

87. But this sort of analysis clearly has its limits. There may be a valid explanation for why one candidate is given more time than another. The quantitative measure is objective, but alone it may not be wholly indicative of bias. For example, if we count the number of times women candidates are quoted, will this tell us whether the media have a gender bias? Not necessarily. If women's voices are under-reported, there are several possible explanations for this. It might be media bias, but it might equally be that parties are not giving their women candidates a prominent voice in the campaign. On the other hand, identifying that the incumbent president always appeared before the opposition candidate in a news bulletin would be a valid indication of imbalance on the part of the broadcaster."

> CDL-AD(2009)031 Guidelines on Media Analysis during Election Observation Missions by the OSCE Office for Democratic Institutions and Human Rights (OSCE/ODIHR) and the Venice

Commission adopted by the Council for Democratic Elections at its 29th meeting (Venice, 11 June 2009) and the Venice Commission at its 79th plenary session (Venice, 12- 13 June 2009) (paras. 86-87).

C. Avoiding stereotypes concerning women in the media

"165. The OSCE/ODIHR guidelines apply the content rule to all media to avoid stereotyping women or portraying national minorities' political representatives and issues within stereotypes that may negatively affect their credibility and importance to voters.

166. The media is a powerful institution in society in shaping public opinion. Where the media practises inequality this has a silencing effect on large sections of society with contingent consequences for the political process. Negative portrayal such as stereotyping women affects the way men understand women and how women perceive themselves and the same goes for other minority groups. It discredits them in their own eyes as political beings. This type of media behaviour is hardly contested in a court of law – unless it elicits a response, which may be punishable and draws attention to what provoked it in the first place. De facto equality requires that media practices of this kind be eliminated but not necessarily by content regulation. The prohibition of using certain speech based on sex, race, ethnicity or opinion is impossible, impractical and even undesirable. There are many wolves wrapped in the cloth of freedom of the press principles. One is that prohibiting pornography, racism, much debated – in particular in U.S. jurisprudence – may lead down the 'slippery slope' where once there is regulation of some speech there is no end to it. Given the danger of going down the regulatory road it is safer never to begin. This view accentuates that the answer to speech that may have harmful real-world effects is more speech rather than content regulation. In principle this argument is loaded with common sense. It must, however, be taken into account that economic and social disparities exclude the 'defenceless' from combating the effects of injurious speech by additional speech."

CDL-AD(2004)047 Report on Media Monitoring during Election Observation Missions adopted by the Council for Democratic Elections at its 10th meeting (Venice, 9 October 2004) and the Venice Commission at its 61st plenary session (Venice, 3-4 December 2004) (paras. 165-166).

"181. Furthermore, the media – as well as all communication systems - plays a crucial role in combating gender stereotypes. It contributes to presenting a realistic picture of the skills and potential of male and female candidates, as well as to the portraying of men and men in a non-stereotypical, diverse and balanced manner. As such, any system of public funding should carefully consider adopting a requirement for the allocation of airtime to eligible candidates. Where available, such airtime must be given on the basis of equal treatment before the law (distribution may reasonably be made either on the basis of absolute equality or equitably, dependent on proven level of support). Equality refers both to the amount of time given and the timing and nature of such allocations."

CDL-AD(2010)24 Guidelines on political party regulation, by OSCE/ODIHR and Venice Commission - adopted by the Venice Commission at its 84th Plenary Session, (Venice, 15- 16 October 2010) (para. 181).

X. Sexism in language

"7. Since the term "Ombudsman" is derived from the Swedish terminology and does not imply any connotation to the male gender, for reasons of uniformity of terminology in the European States the term "Ombudsman" is to be preferred over that of "Ombudsperson". However, it is acknowledged that the institution has been called ombudsperson since its creation, and that for reasons of continuity it might be advisable to maintain this term."

CDL-AD(2007)024 Opinion on the draft law on the people's Advocate of Kosovo, adopted by the Venice Commission at its 71st Plenary Meeting, (Venice, 1-2 June 2007) (para. 7).

"61. It is also noted that the draft Act is not drafted in a gender-neutral manner, as it refers at times to individuals using the masculine personal pronoun (see e.g. Article 28 (b)). This is not in line with general international practice, which normally requires legislation to be drafted in a gender-neutral manner, thereby applying to both genders equally. It is recommended to phrase all provisions of the draft Act in a gender-neutral manner."

CDL-AD(2014)035 Joint Opinion on the Draft Act to regulate the formation, the inner structures, functioning and financing of political parties and their participation in elections of Malta, adopted by the Venice Commission at its 100th Plenary Session (Rome, 10-11 October 2014) (para. 61).

"117. It is noted positively that overall, the Draft Amendments uses gender neutral drafting. However, on some occurrences, certain provisions still use only the male gender. This is not in line with general international practice, which requires legislation to be drafted in a gender neutral manner. It is recommended to review the respective provisions and avoid the use of the male gender (such as reference to "он"/he or "его/ему"/his) by replacing relevant wording with, as appropriate, the plural or other gender-neutral formulation."

CDL-AD(2016)025 *Kyrgyz Republic Joint opinion on the Draft Law "On Introduction of Amendments and changes to the Constitution", Endorsed by the Venice Commission at its 108th Plenary Session (Venice, 14-15 October 2016)* (Para 38, 108 and 117)

XI. Reference documents

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CDL-AD(2002)023rev Code of Good Practice in Electoral Matters: Guidelines and Explanatory Report, adopted by the Venice Commission at its 52nd session (Venice, 18-19 October 2002)

CDL-AD(2004)047 Report on Media Monitoring during Election Observation Missions adopted by the Council for Democratic Elections at its 10th meeting (Venice, 9 October 2004) and the Venice Commission at its 61st plenary session (Venice, 3-4 December 2004)

CDL-AD(2005)004 Opinion on the constitutional situation in Bosnia and Herzegovina and the powers of the high representative, adopted by the Venice Commission at its 62nd plenary session (Venice, 11-12 march 2005)

CDL-AD(2006)018 Report on electoral law and electoral administration in Europe, adopted by the Venice Commission at its 67th Plenary Session, (Venice, 9-10 June 2006)

CDL-AD(2006)020 Declaration on women's participation in elections, adopted by the Venice Commission at its 67th Plenary Session, (Venice, 9-10 June 2006)

CDL-AD(2006)022 Joint Opinion on the Electoral Code of "the former Yugoslav Republic of Macedonia", adopted by the Venice Commission at its 67th Plenary Session, (Venice, 9-10 June 2006)

CDL-AD(2007)024 Opinion on the draft law on the people's Advocate of Kosovo, adopted by the Venice Commission at its 71st Plenary Meeting, (Venice, 1-2 June 2007)

CDL-AD(2008)001, Opinion on the Draft Law on Prohibiting Discrimination of the Republic of Serbia, endorsed by the Venice Commission at its 73rd Plenary Session, (Venice, 14-15 December 2007)

CDL-AD(2008)012 Joint Opinion on amendments to the Election Law of Bosnia And Herzegovina adopted by the Council for Democratic Elections at its 24th Meeting (Venice, 15 March 2008) and by the Venice Commission at its 75th Plenary Session (Venice, 13-14 June 2008)

CDL-AD(2008)015 Opinion on the Draft Constitution of Ukraine, adopted by the Venice Commission at its 75th Plenary Session (Venice, 13-14 June 2008)

CDL-AD(2008)042 Opinion on the draft law on protection against discrimination of "the former Yugoslav Republic of Macedonia", adopted by the Venice Commission at its 77th Plenary Session (Venice, 12-13 December 2008)

CDL-AD(2009)002 Code of good practice in the field of Political Parties adopted by the Venice Commission at its 77th Plenary Session (Venice, 12-13 December 2008)
CDL-AD(2009)005 Joint Opinion on the Electoral Code of the Republic of Albania by the Venice Commission and the OSCE/ODIHR adopted by the Venice Commission at its 78th plenary session (Venice, 13-14 March 2009)

CDL-AD(2009)024 Opinion on the Draft Law of Ukraine amending the Constitution presented by the President of Ukraine adopted by the Venice Commission at its 79th Plenary Session (Venice, 12-13 June 2009)

CDL-AD(2009)029 Report on the Impact of Electoral Systems on Women's Representation in Politics adopted by the Council for Democratic Elections at its 28th meeting (Venice, 14 March 2009) and the Venice Commission at its 79th plenary session (Venice, 12-13 June 2009)

CDL-AD(2009)031 Guidelines on Media Analysis during Election Observation Missions by the OSCE Office for Democratic Institutions and Human Rights (OSCE/ODIHR) and the Venice Commission adopted by the Council for Democratic Elections at its 29th meeting (Venice, 11 June 2009) and the Venice Commission at its 79th plenary session (Venice, 12- 13 June 2009)

CDL-AD(2009)045 Opinion on the draft law on prohibition of discrimination of Montenegro, Adopted by the Venice Commission at its 80th Plenary Session (Venice, 9-10 October 2009)

CDL-AD(2009)057 Interim Opinion on the Draft Constitutional Amendments of Luxembourg adopted by the Venice Commission at its 81st Plenary Session (Venice, 11-12 December 2009)

CDL-AD(2010)024 Guidelines on political party regulation, by OSCE/ODIHR and Venice Commission - adopted by the Venice Commission at its 84th Plenary Session, (Venice, 15-16 October 2010)

CDL-AD(2010)048 Joint opinion on the draft law on financing political activities of the Republic of Serbia by the Venice Commission and the OSCE/ODIHR, adopted by the Venice Commission at its 85th plenary session (Venice, 17-18 December 2010) (para. 32)

CDL-AD(2011)009 Stocktaking on the notions of "good governance" and "good administration"

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CDL-AD(2011)034, Joint opinion on the protector of human rights and freedoms of Montenegro adopted by the Venice Commission at its 88th Plenary Session (Venice, 14-15 October 2010)

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CDL – AD(2016)033 Armenia Opinion on the Draft constitutional law on the human rights defender, adopted by the Venice Commission at its 109th Plenary Session (9-10 December 2016)

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CDL-AD(2017)012 European Commission for Democracy through Law (Venice Commission) OSCE Office for Democratic Institutions and Human Rights (OSCE:ODIHR) – Republic of Moldova Joint opinion on the Draft Laws on amending and completing certain legislative acts (Electoral system for the Election of the Parliament), Adopted by the Council for Democratic Elections at its 59th meeting (Venice, 15 June 2017) and by the Venice Commission at its 111th Plenary Session (Venice, 16-17 June 2017)

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CDL-AD(2018)014 Malta Opinion on the Draft Act amending the Constitution on the Draft on the human rights and equality Commission, and on the Draft Act on equality, Adopted by the Venice Commission at its 115th Plenary Session (Venice, 22-23 June 2018) (para 39)

CDL-AD(2018)001 "The former Yugoslav Republic of Macedonia" Opinion on the draft Law on prevention and protection against discrimination", Adopted by the Venice Commission at its 114 Plenary Session(Venice, 16-17 March 2018) (paras 16,17,25,60 and 106)

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