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**(OSCE/ODIHR)**

**GUIDELINES**  
**ON POLITICAL PARTY REGULATION**  
**2ND EDITION**

**Approved by the Council of Democratic Elections at its 69th online meeting (7 October 2020)**

**and**

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**on the basis of comments by**

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## I. INTRODUCTION

1. Political parties are critical institutions through which citizens organize themselves to participate in public life, among which they choose at elections, and through which elected officials cooperate to build and maintain the coalitions that are the hallmark of democratic politics. They are vital to the realization of representative democracy. While the role and importance of political parties has long been recognised, specific legal regulation of political parties is a relatively recent development. Although many states with a party-based system of governance now refer to the role of political parties in their constitutions or other laws, the first instances of legislation aimed directly at political party regulation in Europe did not occur until the 1940's.<sup>1</sup> Even today, with the development of legal regulation of political parties, the degree of regulation in states varies significantly, due to differences in legal tradition and constitutional order, rooted in the political history of the specific country.
2. The unique historical development and politico-cultural context of each country precludes the development of a single, universal code of regulation for political parties. However, basic tenets of democracy, as well as recognised human rights, allow for the formulation of some common principles for the regulation of political parties applicable to the various legal systems of the Council of Europe and OSCE members. But these principles are not necessarily in harmony with each other. To a certain extent they are derived from and based on different, sometimes conflicting sets of values, among which a compromise must be reached. That compromise may differ, depending on the type of electoral system and the model of democracy that have developed in the particular country. It is these common principles that are dealt with in the Guidelines, further interpreted and explained in the Interpretative Notes.
3. This second edition of the *Guidelines on Political Party Regulation* – Principles and Interpretative Notes - extends and elaborates on the themes of the first edition and adds to it by highlighting new developments and upcoming issues in the area of political party regulation. Like the first version of the Guidelines<sup>2</sup>, adopted and published in 2011, the *Guidelines* were prepared by the Core Group of Experts on Political Parties of the Organisation for Security and Co-operation in Europe's (OSCE) Office for Democratic Institutions and Human Rights (ODIHR), together with the Council of Europe's (CoE) European Commission for Democracy through Law (Venice Commission) and the Group of States against Corruption (GRECO).
4. These *Guidelines on Political Party Regulation* were approved by the Council for Democratic Elections at its 69<sup>th</sup> online meeting (7 October 2020) and adopted by the Venice Commission at its 125<sup>th</sup> online Plenary Session (11-12 December 2020).
5. The Guidelines are primarily intended to illuminate a set of hard law and soft law standards, as well as to provide examples of good practices for *legislators* tasked with drafting laws that regulate political parties. However, the Guidelines may also serve other public authorities, the judiciary, legal practitioners, human rights defenders etc. concerned with political party regulation, including political parties themselves, their leadership and members. The present Guidelines also complement, among other OSCE and Venice Commission documents, the OSCE/ODIHR-Venice Commission

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<sup>1</sup> See Ingrid van Biezen, *Constitutionalizing Party Democracy: The Constitutive Codification of Political Parties in Post-war Europe*, (2012) *British Journal of Political Science* 42(1), pp. 187-212.

<sup>2</sup> CDL-AD(2010)024, Joint Guidelines of the Venice Commission and OSCE Office for Democratic Institutions and Human Rights (OSCE/ODIHR) on Political Party Regulation.

Guidelines on Freedom of Association<sup>3</sup>, which serve as an “umbrella” document in the field of freedom of association.

6. The Principles and Interpretative Notes in these Guidelines are based on universal and regional treaties and other documents relating to the protection of human rights. They are also based on evolving state practice as reflected, *inter alia*, in domestic legislation as well as judgments of national and regional courts and the commitments and views of inter-governmental bodies; and on general principles of law recognised by the community of nations. The Guidelines furthermore take into account relevant OSCE commitments related to democratic governance, as well as guidelines and opinions of ODIHR and the Venice Commission on political parties. One objective of the Guidelines is to articulate a minimum baseline in relation to international standards, by marking a threshold that must be met by states in their regulation of political parties. However, the Guidelines in combination with the Interpretative Notes are intended not only as a summary of the bare minimum of existing legal obligations. They also reflect legal developments at the international and domestic level and exemplify good practices.
7. It is critical that these Guidelines should not be construed as a justification for imposing undue restrictions on political parties as major players in pluralistic democracies. The Guidelines should principally be seen as a means to protect the rights and freedoms of political parties, while at times advocating for regulations necessary to ensure their proper functioning. Thus, the Guidelines do not discourage laws, customs or agreements offering more favorable conditions to political parties.
8. Chapter II gives a short introduction as to the relevance and functions of political parties, including the various dimensions and views pertaining to their nature and their regulation. The Principles (Chapter III) formulate the main generally recognised principles governing political party regulation. Chapter IV contains the Interpretative Notes, essential to a proper understanding and interpretation of the Guidelines, as they clarify and expand upon the Principles and, furthermore, provide examples of good practice. The Interpretative Notes constitute an integral part of the Guidelines and should be read in concert with the Principles in order to ensure their full understanding and promote the development of relevant issues.
9. These Guidelines do not substantively address issues concerning electoral systems and electoral processes including the issues of disinformation during election campaigns, election dispute resolution and the use of digital technologies in elections. In particular, concerning the use of digital technologies during elections and the required guarantees to prevent their possible abuses, the rapid developments in this complex field which poses new challenges to policymaking and requires very nuanced and specific attention, makes also impossible to cover this important field simply as one section in a set of guidelines that are primarily on political party regulations. For these reasons, the Venice Commission and the ODIHR have devoted various other documents that specifically address those issues.<sup>4</sup>

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<sup>3</sup> 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.

<sup>4</sup> CDL-AD(2019)016, Joint Report on Digital Technologies and Election; concerning the electoral systems; CDL-AD(2015)001 Proportional electoral systems: the allocation of seats inside the lists (open/closed lists); CDL-AD(2010)007 Report on thresholds and other futures of electoral systems which bar parties from access to parliament; CDL-AD(2008)037 Thresholds and other futures of electoral systems which bar parties from access to Parliament – comparative report; CDL-AD(2004)003 Electoral systems – overview of available solutions and selection criteria; CDL-AD(2020)025, Report on Election dispute resolution; CDL-AD(2020)037 Principles for a fundamental rights-compliant use of digital technologies in electoral processes; ODIHR Handbook for the Observation of Election Dispute Resolution -[https://www.osce.org/files/f/documents/9/7/429566\\_0.pdf](https://www.osce.org/files/f/documents/9/7/429566_0.pdf); ODIHR Handbook for the Observation of New Voting

10. There are several Annexes appended. Annex A contains a list of selected universal and regional treaties and documents dealing with rights relevant to political party regulation. Annex B includes case citations from the European Court of Human Rights judgments and jurisprudence from the United Nations Human Rights Committee. Annex C lists relevant sources of the Council of Europe, such as the Parliamentary Assembly and the Venice Commission, related to the proper functioning of political parties, Annex D provides examples of model political party codes of conduct.

## II. POLITICAL PARTIES: THEIR IMPORTANCE, FUNCTIONS AND REGULATION

### 1.The classification and importance of political parties and their functions

11. For the purposes of these Guidelines, **a political party** is “a free association of individuals, one of the aims of which is to express the political will of the people by seeking to participate in and influence the governing of the public life of a country, inter alia, through the presentation of candidates in elections”.<sup>5</sup>
12. Political parties are a subcategory of the broader class of associations, some of which seek to participate in and influence the governing of the public life of a country, inter alia, by supporting the candidates of one or more political parties, lobbying government officials, and engaging in propaganda campaigns in support of favored policy positions. Political parties are distinguished from the broader category of politically interested associations by their aspiration to themselves present candidates for public office, whether at national or more local level. Because they are distinguished by their aspirations and behaviour, it is not necessary that a political party identifies itself as such.<sup>6</sup>
13. Because political parties are distinguished from other associations that may undertake advocacy or political activities largely by intent or aspiration to present candidates, and because states have a large margin of appreciation, based on their electoral systems and particular circumstances, to establish criteria for actually being able to present candidates, a narrower category of **officially recognised political parties** can be further distinguished. Official recognition can be achieved through application or petition, resulting in the association’s inclusion on an official party register (**registered party** in those countries that have party registers) or by performing specified acts such as actually presenting candidates at elections without a formal process of registration. Officially recognised parties may be given special privileges in the governmental or electoral arenas.
14. Within the category of officially recognised political party, some states further distinguish between **major parties**, identified on the basis of their strength (for example, percentage of the vote in prior elections, representation in parliament, percentage of parliamentary seats contested) and other or minor parties. Major parties may be subject to more stringent regulations and may also be given additional privileges in comparison to minor parties.
15. Unless otherwise specified, the use of the terms “party” or “political party” in these

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Technologies - <https://www.osce.org/files/f/documents/0/6/104939.pdf>; ODIHR Handbook for the Observation of Campaign Finance - <https://www.osce.org/files/f/documents/f/8/135516.pdf>.

<sup>5</sup> CDL-AD(2010)024, Guidelines on Political Party Regulation, para. 9.

<sup>6</sup> Thus, the Italian Movimento 5 Stelle or the Alternative für Deutschland are themselves political parties, notwithstanding their self-image of ‘movements’ and notwithstanding their self-proclaimed hostility to what they identify as “political parties.”

Guidelines refers to the broad category defined in paragraph 10 regardless of whether the association is officially recognised as a party.

16. Politically interested associations, and political parties as a subcategory of politically interested associations, are mechanisms for the exercise of individuals' fundamental rights of association and expression. As collectivities/organisations, politically interested organisations and political parties themselves are also bearers of these rights.
17. Political parties are additionally platforms for the exercise of individuals' fundamental right to elect and be elected. They have been recognized by the European Court of Human Rights (hereinafter ECtHR) as integral players in the democratic process. Although their position and legitimacy in society have been weakened in recent years in various countries, they are still the most widely utilized vehicles for political participation and the exercise of related rights. Until now, no workable and legitimate alternative has developed.<sup>7</sup> Political parties still are of primary importance in ensuring representation of the various groups of society, including minorities, in political debate. They therefore continue to constitute a very important basis for a pluralist political society and play an active role in ensuring an informed and participative citizenry. Additionally, political parties provide an organizational mechanism to facilitate coordination between officials in the executive and legislative branches of government and can be effective in prioritizing certain issues on the legislative and political agendas within a system of government.
18. Political parties contribute to the performance of at least three vital functions in a democracy. *First*, they facilitate the cooperation and coordination of individuals in the exercise of their fundamental rights of association and expression. *Second*, they further the cooperation and coordination amongst the holders of public office, both within parliaments and across levels and institutions of government, thus facilitating the coherence and effective making and implementation of policy. *Third*, they provide a means to connect the organisations of citizens to the officeholders through the formulation of political programs between which voters can choose, the nomination and support of candidates in elections, and by taking collective responsibility for government in a way that would be impossible for officeholders individually. Particularly in parliamentary systems, parties and their leaders - either in parliament or in extra-parliamentary settings - negotiate with one another to form coalitions, determine coalition policy and agree on the individuals who will occupy ministerial offices. In order to appropriately support democracy, regulation of political parties may address and support each of these functions and should limit the potential for their abuse.

## 2. Three dimensions

19. Understandings of the status and functioning of political parties in contemporary democracies vary along three main dimensions. The *first* dimension concerns the fundamental nature of parties and the *internal relations* between party candidates and leaders, on the one hand, and party members or supporters, on the other hand. *At one end* of this dimension, parties are understood to be teams of politicians engaged in a competitive struggle for the people's votes, surrounded by a more or less formally organized penumbra of supporters. Decisions are made by the leaders, and if the supporters are dissatisfied, their proper recourse is to transfer their support to some

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<sup>7</sup> See, for instance, Nancy L. Rosenblum, *On the side of angels: an appreciation of parties and partisanship*, Princeton University Press, Princeton 2008; Matteo Bonotti, *Partisanship and political liberalism in diverse societies*, Oxford University Press, Oxford 2017.



other party. Associated with this understanding is the idea, that although democracy depends on a free and fair competition among a plurality of parties, this competition is independent of the way in which those parties are organized internally. In the words of Schattschneider: 'democracy is not to be found *in* the parties, but *between* the parties.'<sup>8</sup> *At the other end*, parties are understood to be associations of citizens working collaboratively to participate in and influence the governing of a country, inter alia, through the presentation of candidates in elections. Decisions are properly made by the members, who are the essence of the party, and if they are dissatisfied with the way in which their leaders or candidates act as the agents of the members, their proper recourse is to replace those leaders or candidates. This view is associated with the idea that democratic politics requires not only free and fair competition among parties, but also that parties be themselves internally democratic.

20. The *second* dimension concerns the status of *political parties vis-à-vis the state*. At one end, parties are understood to be fully private associations of individuals entitled to the fullest possible associational autonomy in their internal and external functioning. As private associations, political parties should be free to establish their own organisation and rules for selecting party leaders and candidates, since this is integral to the concept of associational autonomy. While some regulation may be necessary for the proper functioning of any association, the singling out of parties for special privileges or restrictions is inappropriate and potentially violating associational rights. *At the other end*, because of their importance in the democratic process, and especially if they are in receipt of significant public resources or legally assigned public responsibilities, parties are seen to be essentially semi-state agencies<sup>9</sup>, properly regulated in ways analogous to the regulation of other semi-public entities but without losing their independence as entities enjoying protection of Article 11 of the ECHR or Article 22 of ICCPR.<sup>10</sup>
21. The *third* dimension concerns the way regulations aim to structure the *competition among political parties*. *At one end* the objectives are non-interference in the right of parties to pursue their own interests in whatever way they think will be effective, and non-interference in the right of citizens (and perhaps others) to support their preferred party to whatever extent, and in whatever way, they choose. In maintaining free and fair elections, the emphasis is on freedom, identified in terms of negative rights - the right not to have one's freedoms limited. *At the other end*, the objective is fairness and a "level playing field." In this view, it is necessary for the state to intervene in order to redress, or at least to limit, the effects of disparities of resources in society, including regulatory limits on the deployment of private resources in support of a party.

### 3. Two models<sup>11</sup>

22. The legal regulation of political parties is a complex matter, requiring consideration of a wide range of issues, involving the three dimensions just sketched. Political parties must be protected as an integral expression of the right of individuals and groups to freely form associations. But, given the unique and vital role of political parties in the

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<sup>8</sup> See E. E. Schattschneider, *Party Government* (New York: Holt, Rinehart, and Winston, 1942), p. 60.

<sup>9</sup> For example, in *Smith v Allwright* (321 U.S. 649, 1944), the US Supreme Court ruled that Texas' "statutory system for the selection of party nominees for inclusion on the general election ballot makes the party . . . *an agency of the State*" (p. 663, italics added), and therefore subject to constitutional restrictions that would not apply to a purely private organization.

<sup>10</sup> According to the OSCE Copenhagen Document 1990, in order to strengthen respect for, and enjoyment of, human rights and fundamental freedoms, to develop human contacts and to resolve issues of a related humanitarian character, the participating States agree on the following: [...(5.4) - "a clear separation between the State and political parties;" in particular, political parties will not be merged with the State;".

<sup>11</sup> See, on the distinction between these two models – ideal types –, Venice Commission, CDL-AD(2015)020, Report on the method of nomination of candidates within political parties.

electoral process and democratic governance, it is commonly accepted for states to regulate their functioning insofar as is necessary to ensure effective, representative and fair democratic governance. However, the type of electoral system and the model of democracy predominant in a country to a large extent determine what the legal and factual status of political parties should be.

23. Necessarily there are tensions between the principles of party autonomy (a basic element of the freedom of association) and of free competition on the one hand and the principles requiring internal equality and democracy and fair competition on the other. The balance struck between them can vary across systems. A dichotomy of two main models can be discerned as to the status of political parties, their functioning, and the required amount of regulation - with different, even contradictory views on the three dimensions just sketched. The *liberal or free market model* in general gives primacy to a large associational freedom of political parties in their internal and external functioning. According to this principle of associational freedom, political parties are regarded as private associations that should be free to establish their own internal organisation and their rules for selecting party leaders and candidates and should not be hindered by external regulations which limit free competition and political pluralism.
24. The *egalitarian-democratic* model, on the other hand, is primarily based on principles of internal equality and democracy, and fair competition. The rationale of this model is that because political parties are vital for political participation, elections and the distribution of offices, and to a certain extent have a public function, they should respect equality and democracy in their internal organisation and should be given a fair and equal chance in electoral competitions. Often this model is combined with emancipatory ideals, supporting positive measures to enhance the role of minority groups within parties.
25. These models are ideal-typical, *theoretical constructs* forming the extremes of a conceptual continuum. But in fact, national systems do not completely fulfill the characteristics of just one ideal type at the expense of the other, and are located *in between* these two ideal types, combining traits of one model with those of the other model. Thus, in practice, political party systems are somewhere in between these two models, to a certain extent based on the principle of freedom of association and free competition, but in other aspects determined by principles of internal equality and democracy, and fair competition. Indeed, an adequate party system *should* rest upon some kind of compromise, a mixture between aspects of these two value-systems, in order to reach an adequate balance. However, in formulating that balance, states have a large margin of appreciation in opting (more) for one model or the other.
26. How to deal with the tensions between these dimensions, principles, models, and what balance between them is regarded as adequate, depends on various factors. The main factor is the *concept of democracy* which is *de iure* and *de facto* at the basis of the constitutional order, determining what a political party is (for) and what its legal status and autonomy should be. A system primarily based on a formal/procedural notion of democracy – the liberal theory of a ‘free electoral market’ – is likely to emphasize the internal autonomy of political parties, in conjunction with their character of private association, their right to associational freedom and their essential importance for a political pluralism reflecting the pluriformity in society. This implies having no specific rules, or only a few minimum rules, regulating political parties. A system that in essence is grounded on a substantive concept of democracy – based on the assumption of some fundamental values that democracy should adhere to, like for instance the German concept of a ‘wehrhafte Demokratie’ (a defensive or militant democracy<sup>12</sup>), will

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<sup>12</sup> See on this concept and its relevance for counteracting undemocratic parties: Svetlana Tyulikina, *Militant*

have a more strongly regulated regime for political parties, concerning their status and internal party organisation, as well as level playing field guarantees and constitutional constraints.

27. What system prevails in a particular country is basically determined by its political history and constitutional traditions, in the light of current-day circumstances. Much also depends on a more detailed specification of the principal factors set out. Thus, it cannot be assumed that attachment to the principle of associational autonomy precludes every regulation of internal party procedure or other limitations, since this depends on contestable normative assumptions as to an unbounded degree of autonomy and self-governance flowing from freedom of association. The same, however, is true in relation to the principles of equality and democracy. It is not self-evident what concrete demands flow from attachment to these principles without further inquiry as to the more specific precepts that constitute each of them.
28. The European Court of Human Rights, referring in its *Yabloko* judgment to this dichotomy between the egalitarian-democratic model and the liberal model, is sensitive to the legitimacy of both views.<sup>13</sup> On the one hand, the Court does not deny the competence of States to introduce some legislative requirements for the internal organisation and selection of candidates for elections, in the interest of democratic governance. On the other hand, state authorities should not interfere with the internal matters of political parties unless necessary: it is up to the parties themselves to determine manner in which way their conferences and decision procedures are organized. Likewise, it should primarily be up to the political party and its members and not the public authorities to ensure that the relevant formalities are observed in the manner specified in its articles of association. So, on the one hand, some kind of state regulation of the inner workings of political parties may be acceptable; on the other hand, state interference may suffice with formulating some “requirements for parties to be transparent in their decision-making and to seek input from their membership when determining party constitutions and candidates”.<sup>14</sup>
29. The actual balance between the various principles thus to a large measure depends on the extent to which a country in its constitution, legislation, history and practice adheres to the one or the other view on democracy and the status of political parties. For instance, the way in which constitutions refer to political parties, but also their actual interpretation or application may have a significant impact on the legislation concerning them. When the constitution imposes internal democracy, it mandates, or at least allows, the legislator to establish requirements and proceedings for candidate nomination, which bind all political parties. In this way, the constitution enables the law to limit political parties’ freedom in their internal functioning. When the constitution expressly recognizes the freedom of political parties, the legislator in principle must be more respectful of the autonomy of parties and the proportionality principle when imposing restrictions. This does not imply that the law cannot rule on the internal and external functioning of political parties at all<sup>15</sup>: it means in general that the conditions for limiting their freedom of association imposed by the proportionality test are more demanding, with the consequence that legislative restrictions will, in relative terms, be more difficult to justify. This must be distinguished from a third situation, in which the

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*Democratic political parties and beyond*, London and New York 2015.

<sup>13</sup> ECtHR, *Yabloko Russian United Democratic Party and Others v. Russia*, no. 18860/07, 8 November 2016, para. 79.

<sup>14</sup> ECtHR, *Yabloko Russian United Democratic Party and Others v. Russia*, no. 18860/07, 8 November 2016, para. 79. See also ECtHR, *Republican Party of Russia v. Russia*, no. 12976/07, 12 April 2011, para. 88, referring to para. 98 of the (2010) Guidelines on Political Party Regulation.

<sup>15</sup> It may be that the Constitution both subscribes to the principle of associational freedom and to the necessity of internal democracy, see for instance Article 21 of the German Grundgesetz.

constitution makes no reference to political parties at all. In that case, political parties probably will be protected by a general constitutional right to freedom of association, that can be restricted on the basis of a general limitation clause. It is then open to the legislator, subject to the proportionality principle in that clause, to impose regulatory requirements on political parties or to regulate them by means of a general law, applicable to all associations. But whether the legislator will have greater latitude in this respect than in case the constitution specifically recognizes the freedom of political parties is not self-evident. For instance, it may be that courts, or the legislature itself, relying on the liberal model, regard political parties as a privileged category, that should be left more internal and/or external freedom by the legislature than 'ordinary' associations. In sum: the actual meaning and functioning of constitutional and ordinary laws on political parties to a large extent depends on the model they are based upon.

30. Understanding the divergences between the formal/liberal model, based on the primacy of the freedom of association and free competition, and the alternative model, grounded in substantive notions such as internal party democracy and equality as well as fairness of competition, can serve to explain how a system addresses political parties in general, and what underlying tendencies determine the developments in constitutional and statutory law regarding the regulation of political parties. During the last decades, many countries have evolved from a liberal model towards increased regulation of political parties, introducing requirements as to internal democracy and equality, external accountability and (more) respect for the basic elements of the constitutional order. The principle of non-intervention, that has prevailed across Western Europe from the very emergence of political parties, is no longer the dominant paradigm. Moreover, in many other countries, having moved away from an authoritarian or totalitarian regime towards a pluralistic approach, there are frequent constitutional references to respect for democratic and equality principles, to be taken into account by political parties.
31. Nevertheless, there is still discretion for states to opt for the concept of a formal-procedural democracy and a liberal theory on political parties, which prescribes the state not to interfere in the internal autonomy of political parties and hardly allows limits on their external functioning, instead of a material democracy theory which sets substantive requirements on their internal and external functioning. Recognizing these fundamental differences, the Guidelines do not favor one model over the other, nor are they otherwise meant to provide uniform solutions or to develop a single model law for the OSCE participating States and Venice Commission Member States. Rather, the Guidelines are intended to identify and clarify key existing international law standards formulating minimum standards for political party legislation applicable in both models, as well as to provide examples of good practices for states. Political parties are associations that play a critical role in the political sphere as a means to facilitate public participation in a democratic society. Striking the appropriate balance between the various values and principles may require well-crafted and often narrowly tailored legislation. However, as stressed, such legislation should not unduly interfere with the general principles on freedom of association. The experience of several States within the OSCE and in countries that are members of the Venice Commission suggests that extensive regulation is not always necessary. But while it is not necessary that political parties as such be governed under legislation that is different from that regulating associations in general, additional - specific - legislation for political parties may be developed on certain issues such as funding and oversight, to reflect the unique role that parties play in a democratic society.

### III. PRINCIPLES

32. These Principles to a large extent are applicable independent of the prevalent model of democracy in a respective country and are intended to provide overall guidance with respect to the preparation, adoption and implementation of political party legislation. However, these Principles must be read together with the ensuing Interpretative Notes, for a further understanding and appreciation of the Guidelines.
33. Most Principles have a hard international law core and derive from various values and legal sources, the most important being the freedom of association as well as the freedom of expression and opinion, enshrined in the ECHR and the ICCPR (1-4). From these freedoms flow also requirements as to the legality and proportionality of restrictions on these freedoms, and as to legal remedies ensuring the effectiveness of these requirements (5-7). Furthermore, general provisions in the ECHR and the ICCPR, as well as specific treaties on the protection of minorities providing for equal treatment and non-discrimination, also play a fundamental role (8-9). The other Principles - concerning good administration and accountability of political parties (10-11) - although not containing hard law norms, formulate essential policy guidelines.
34. One basic rule is not listed as a normative Principle, because it is of a primarily pragmatic nature, although it formulates an important aim of political party regulation. A political party system must not only be in accordance with fundamental rights and good policy; it must also be *workable*, must serve *effective government*. Accordingly, party regulation also is a legitimate means to support effective democratic government and should not lessen that capacity. For instance, for this purpose, reasonable restrictions on political fragmentation such as electoral thresholds and minimum sizes of parliamentary groups could be introduced, provided that they are proportionate and necessary in a democratic society. Furthermore, limitations may be imposed on small parties in respect of the formation, ballot access, election, independent functioning within parliaments, and access to state resources in order to assure some coherence in the political space.

#### **Principle 1. Freedom of Association of Political Parties; Presumption of Lawfulness**

35. According to the freedom of association guaranteed in Article 11 ECHR and Article 22 ICCPR, the right of individuals to associate and form political parties should, to the greatest extent possible, be free from interference. Although there are limitations to the right of association, such limitations must be construed strictly, and only convincing and compelling reasons can justify limitations on freedom of association. Limits must be prescribed by law, necessary in a democratic society, and proportional in measure. An individual's association with a political party must be voluntary in nature, and nobody may be forced to join or belong to any association against their will.<sup>16</sup>
36. However, the main subject of these Guidelines is not the individual right to freedom of association, although it will be touched upon here and there. The Guidelines concentrate on the collective dimension of the freedom of association (and related rights), specifically the freedom of association of a particular type, the political party. The freedom of association requires that political parties must be free from

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<sup>16</sup> Article 20(2) of the Universal Declaration of Human Rights: "No one may be compelled to belong to an association. This is also implied in the freedom of association, Article 11 ECHR. See also Guidelines on Freedom of Association, Principle 3 on freedom of establishment and membership (par 28), where it is underlined that "No one shall be compelled to belong to an association". See also paras. 80 and 81 of the Guidelines on Freedom of Association; see also *Gauthier v. Canada* (Communication no. 633/95). See also ECtHR, *Wilson, National Union of Journalists and Others v. the United Kingdom*, nos. 30668/96 and 2 others, 2 July 2002.

unnecessary and disproportionate interference. There should be a presumption in favor of the lawfulness of their establishment, objectives and activities, regardless of the formalities applicable for establishment or official recognition. Only convincing and compelling reasons can justify limitations on the freedom of association of political parties, and such limitations must be construed strictly. Any such limitations must be prescribed by law, pursue a legitimate aim recognized by international standards, necessary in a democratic society, and proportionate in measure and duration (see Principles 5 and 6).

37. The right to freedom of association and the inter-dependent rights to freedom of expression, opinion and assembly (Principle 3) should, insofar as possible, be enjoyed free from state regulation and restriction. Any activities regarding the formation of new political parties and their internal and external functioning that are not expressly forbidden by law, should, therefore, be considered permissible. As specified in paragraph 7.6 of the OSCE Copenhagen Document, the right to establish and participate in and through political parties shall in principle be open to all, free from requirements or undue regulation. States should enact and implement legislation respecting the general presumption in favor of their formation, functioning and protection. States that choose not to enact specific legislation on certain aspects of political party regulation should ensure that the rights of political parties are adequately protected through general constitutional provisions on the freedom of association and regulations applicable to associations.
38. As political parties are integral and essential vehicles for political activity and expression, their formation and functioning should not be limited, nor their dissolution allowed, except in cases as prescribed by law and necessary in a democratic society (cf. Principles 5 and 6). Legal provisions to such effect shall be interpreted narrowly by courts and authorities, and the state shall put in place adequate measures to ensure that the above rights can be enjoyed in practice. In particular, the law should not forbid a political party from advocating a change to the constitutional order of the state, as long as the means used to that end are legal and democratic, and the change proposed is in itself compatible with fundamental democratic principles.<sup>17</sup>
39. While states have a wide margin of appreciation in setting the criteria for an officially recognised party, failure to meet these criteria, including failure to acquire or maintain party registration, by itself is never adequate grounds for banning or dissolution of a party as defined in paragraph 10.

## **Principle 2. Duty to Respect, Protect and Facilitate**

40. The state shall not only (passively) respect the exercise of the freedom of association, but shall also actively protect and facilitate this exercise.<sup>18</sup> The state shall protect political parties and individuals in their freedom of association from interference by non-state actors, *inter alia* by legislative means.<sup>19</sup> The state must ensure that there is

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<sup>17</sup> ECtHR, *Socialist Party and Others v. Turkey*, no. 21237/93, 25 May 1998, para. 41, states that “(n)otwithstanding its autonomous role and particular sphere of application, Article 11 must also be considered in the light of Article 10. The protection of opinions and freedom to express them is one of the objectives of the freedoms of assembly and association as enshrined in Article 11. That applies all the more in relation to political parties in view of their essential role in ensuring pluralism and the proper functioning of democracy.” The requirement that political parties be granted freedom of expression clearly infers their right to freely solicit opinions, including those on constitutional change, to the electorate. See ECtHR, *Yazar and Others v. Turkey*, nos. 22723/93 and 2 others, 9 April 2002, para. 49; *Socialist Party and Others v. Turkey*, no. 21237/93, 25 May 1998, para. 45; ECtHR, *Freedom and Democracy Party (ÖZDEP) v. Turkey* [GC], no. 23885/94, 8 December 1999, para. 40.

<sup>18</sup> See also Principle 2 of the Guidelines on Freedom of Association “The state’s duty to respect, protect and facilitate the exercise of the right to freedom of association”.

<sup>19</sup> United Nations Human Right Committee, General Comment 31, Nature of the General Legal Obligation on States

adequate protection against violence for candidates and supporters of political parties. While other groups, associations or individuals must have the right to criticize political parties and/or their opinions and demonstrate against them, violence or threats of violence are not permissible.<sup>20</sup> As stated by the ECtHR “*it is incumbent upon public authorities to guarantee the proper functioning of an association or political party, even when they annoy or give offence to persons opposed to the lawful ideas or claims that they are seeking to promote. Their members must be able to hold meetings without having to fear that they will be subjected to physical violence by their opponents. Such a fear would be liable to deter other associations or political parties from openly expressing their opinions on highly controversial issues affecting the community.*”<sup>21</sup>

41. Furthermore, it is the responsibility of the state to ensure that relevant general and specific legislation provides for the necessary mechanisms that, in practice, allow the exercise of the right to freely associate and form political parties with others. Other means of facilitating the right to freedom of association may include simplifying regulatory requirements, ensuring that those requirements are not unduly burdensome, facilitating access to resources and taking positive measures to overcome specific challenges confronting disadvantaged or vulnerable persons or groups. Where violations of the right to free association occur, the state bears the responsibility to provide reparation, as appropriate, and to ensure the cessation of the violation.
42. The state’s duty to protect the freedom of association of political parties extends to cases where a party espouses ideas that do not enjoy the support of the majority of society, as long as the promotion of such ideas does not involve or advocate the use of violence or is not aimed at the destruction of democracy.<sup>22</sup> Parties and their supporters shall be able to assemble freely and communicate the party views, and their opinions shall not be summarily blocked from receiving balanced media coverage, especially by state-run media. Further, under paragraph 7.6 of the Copenhagen Document, OSCE participating States have committed themselves to ensure that all parties, including those that present unpopular ideas, are able to compete with one another on an equal footing under law. As such, states may not deny these parties equal opportunities to compete in elections or receive legally prescribed funding.<sup>23</sup>

### **Principle 3. Freedom of Expression and Opinion**

43. Political parties shall have the right of freedom of expression and opinion (Articles 10 ECHR and 19 ICCPR) in order to, pursue their objectives and activities, in addition to the right to free expression and opinion held by the individual member, founders and party functionaries. It is of paramount importance that political parties and their members have the right to participate in political and public debate, regardless of whether the position taken by them is in line with government policy or advocates for legal or societal change or is unpopular or offensive to some groups.

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Parties to the Covenant, (U.N. Doc. CCPR/C/21/Rev.1/Add.13) (2004), para. 8; and General Comment 28, Equality of rights between men and women (article 3), para. 31.

<sup>20</sup> See, *mutatis mutandis*, ECtHR, *Plattform “Ärzte für das Leben” v. Austria*, no. 10126/82, 21 June 1988, para. 32.

<sup>21</sup> ECtHR, *Ouranio Toxo and Others v. Greece*, no. 74989/01, 20 October 2005, para. 37.

<sup>22</sup> See for instance ECtHR, *Yazar and Others v. Turkey*, nos. 22723/93 and 2 others, 9 April 2002, para. 49; ECtHR, *Refah Partisi (the Welfare Party) and Others v. Turkey* [GC], nos. 41340/98 and 3 others, 13 February 2003, para. 99; ECtHR, *Kalifatstaat v. Germany* (dec.), no. 13828/04, 11 December 2006.

<sup>23</sup> The Copenhagen Document, para. 7.6, states that participating States will “respect the right of individuals and groups to establish, in full freedom, their own political parties or other political organisations and provide such political parties and organisations with the necessary legal guarantees to enable them to compete with each other on a basis of equal treatment before the law and by the authorities”.

44. The case law of the ECtHR has elaborated on the relationship between the right to freedom of association and the freedom of expression and opinion in a number of judgments by stating that “protection of opinions and the freedom to express them within the meaning of Article 10 of the Convention is one of the objectives of the freedoms of assembly and association as enshrined in Article 11. That applies all the more in relation to political parties in view of their essential role in ensuring pluralism and the proper functioning of democracy”.<sup>24</sup>
45. The freedom of expression and opinion is dependent upon free association in cases in which individuals want to exercise that freedom collectively via an association. As such, guaranteeing freedom of association also ensures that all individuals who wish to exercise their right to freedom of expression and opinion through an association, are able to do so, whether in a collective or individual manner.

#### **Principle 4. Political Pluralism**

46. Legislation regulating political parties should aim to facilitate a pluralistic political environment. The ability of individuals to seek, obtain and promote a variety of political viewpoints, including via political party platforms, is commonly recognised as a critical element of a robust democratic society. As evidenced by ECtHR judgments as well as the Copenhagen Document and other OSCE commitments, pluralism – inherent in the fundamental Convention freedoms as well as Article 3 of Protocol No. 1 ECHR and equivalent ICCPR rights - is necessary to ensure that individuals are offered a real choice among political parties.<sup>25</sup> Regulations on political parties should be carefully considered to ensure that they do not impinge upon the principle of political pluralism.
47. Political pluralism is critical to ensuring effective democratic governance and providing citizens with a genuine opportunity to choose how they will be governed.<sup>26</sup> Legislation regarding political parties should promote pluralism as a means of guaranteeing participation by all persons and groups, including minorities, in public life, which should also allow for the expression of opposition viewpoints and for democratic transitions of power.<sup>27</sup>

#### **Principle 5. Legality and Legitimacy of Restrictions**

48. Any limitation imposed on the right of individuals to freedom of association and on the fundamental rights of associations such as political parties shall be in compliance with international standards. In particular, any restriction must be prescribed by law and must have a legitimate aim recognized by international standards. Furthermore, the law concerned must be precise, certain and foreseeable, in particular in the case of provisions that grant discretion to state authorities, and must be formulated in terms that provide a reasonable indication as to how these provisions will be interpreted and

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<sup>24</sup> ECtHR, *Refah Partisi (the Welfare Party) and Others v. Turkey* [GC], nos. 41340/98 and 3 others, 13 February 2003, para. 88; see also ECtHR, *United Communist Party of Turkey and Others v. Turkey*, no. 19392/92, 30 January 1998, para. 42; ECtHR, *Socialist Party and Others v. Turkey*, no. 21237/93, 25 May 1998, para. 41; ECtHR, *Freedom and Democracy Party (ÖZDEP) v. Turkey* [GC], no. 23885/94, 8 December 1999, para. 44.

<sup>25</sup> See the OSCE Document of the Moscow Meeting of the Conference on the Human Dimension of the CSCE (1991), para. 18, which states that “The participating States again reaffirm that democracy is an inherent element in the rule of law and that pluralism is important in regard to political organisations.”

<sup>26</sup> See, ECtHR, *Refah Partisi (the Welfare Party) and Others v. Turkey* [GC], nos. 41340/98 and 3 others, 13 February 2003, para. 89; ECtHR, *Socialist Party and Others v. Turkey*, no. 21237/93, 25 May 1998, para. 41; ECtHR, *Freedom and Democracy Party (ÖZDEP) v. Turkey* [GC], no. 23885/94, 8 December 1999, para. 37, all stating that there can be no democracy without pluralism.

<sup>27</sup> See, among others, ECtHR, *United Communist Party of Turkey and Others v. Turkey*, no. 19392/92, 30 January 1998, para. 43.



applied.<sup>28</sup> Therefore, the restrictions must be clear, easy to comprehend, and uniformly applicable to ensure that all individual members and political parties are able to understand them, and anticipate what the consequences will be in case they breach these rules. Full protection of rights must be assumed in all cases lacking specific restrictions; if such protection is not granted, then states will be in violation of their obligations under international human rights law. To ensure that restrictions are not unduly applied and that remedies of review are effective (see Principle 7), legislation must be carefully constructed to be neither too detailed nor too vague.<sup>29</sup> Legislation shall be adopted through a democratic process that ensures public participation and review, and shall be made widely accessible so that individuals and political parties are aware of their rights and are able to keep their conduct and activities in conformity with the law.

49. Any limitations on political parties that restrict their right and their members' right to free association must be justified by the specific aims pursued by the authorities in line with Article 11(2) of the ECHR (namely, "in the interests of national security or public safety, for the prevention of disorder or crime, for the protection of health or morals or for the protection of the rights and freedoms of others"). Article 22(2) of the ICCPR contains a similar provision. This list of aims is exhaustive. Pursuant to these provisions, as well as Article 18 of the ECHR, states shall not apply other restrictions on the right to freedom of association than those that are based in these clauses. The scope of these legitimate aims shall be narrowly interpreted.<sup>30</sup>

#### **Principle 6. Necessity and Proportionality of Restrictions**

50. According to Article 11 ECHR and Article 22 ICCPR, any limitation imposed on the rights of political parties must be necessary in a democratic society, proportionate in nature and time, and effective in achieving its specified purpose. The need for restrictions shall be carefully weighed. The limitation chosen shall be proportionate and the least intrusive means to achieve the respective objective. Particularly in the case of political parties, given their fundamental role in the democratic process, prohibitive measures shall be narrowly applied and shall never completely extinguish the right or encroach on its essence. For instance, prohibiting the establishment of a political party or dissolving a political party are sanctions of last resort and shall only be imposed in exceptional cases under strict conditions.

51. Any action taken to achieve a legitimate aim must be necessary in a democratic society. The state needs to prove the existence of a "pressing social need" and of "relevant and sufficient" reasons. Regulations of political parties should be introduced and implemented with restraint, acknowledging that permissible limitations to the right of free association for political parties have been narrowly interpreted by the ECtHR: 'the exceptions to freedom of association are to be construed strictly and only convincing and compelling reasons can justify restrictions on that freedom.'<sup>31</sup>

52. Moreover, any limitation on the formation or regulation of the activities of political parties must be proportionate in nature.<sup>32</sup> For instance, dissolution shall only be applied

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<sup>28</sup> ECtHR, *Cumhuriyet Halk Partisi v. Turkey*, no. 19920/13, 26 April 2016, para. 106.

<sup>29</sup> See also, CDL-AD(2014)046, Joint Guidelines on Freedom of Association, paras. 20 *et seq.*

<sup>30</sup> ECtHR, *Refah Partisi (the Welfare Party) and Others v. Turkey* [GC], nos. 41340/98 and 3 others, 13 February 2003, para. 100.

<sup>31</sup> ECtHR, *Gorzelik and Others v. Poland*, no. 44158/98, 20 December 2001, para. 95; ECtHR, *Sidiropoulos and Others v. Greece*, no. 26695/95, 10 July 1998, para. 40; ECtHR, *Tebieti Mühaffize Cemiyeti and Israfilov v. Azerbaijan*, no. 37083/03, 8 October 2009, para. 78.

<sup>32</sup> ECtHR, *Sürek v. Turkey* (no. 1) [GC], no. 26682/95, 8 July 1999, para. 58; ECtHR, *Refah Partisi (the Welfare Party) and Others v. Turkey* [GC], nos. 41340/98 and 3 others, 13 February 2003, para. 133. Cf. paragraph 24 of

as an instrument of last resort, that is when the legitimate aim cannot be reached using less restrictive means of regulation. It is the most severe sanction available and should be considered proportionate only when imposed in extreme cases of the most grave violations.<sup>33</sup> In Resolution 1308 (2002) of the Parliamentary Assembly of the CoE (PACE), the PACE stated in paragraph 11 that “a political party should be banned or dissolved only as a last resort” and “in accordance with the procedures which provide all the necessary guarantees to a fair trial”.

### Principle 7. Effective Remedy

53. The ECHR generally guarantees the availability at national level of a remedy to enforce the substance of the Convention rights and freedoms in whatever form they may happen to be secured in the domestic legal order. The effect of this principle, according to the case-law concerning Article 13 ECHR, is therefore to require the provision of a domestic remedy to deal with the substance of the Convention rights and to grant appropriate relief.<sup>34</sup> Moreover, the “authority” referred to in Article 13 ECHR does not necessarily have to be a judicial authority; but if it is not, its powers and the guarantees which it affords are relevant in determining whether the remedy before it is effective.<sup>35</sup> In addition, in its case-law, the ECtHR has not yet expanded the protection of Article 6(1) to cases concerning the dissolution of a political party, as they concern a political right, not a civil right.<sup>36</sup> An exception was recognised only where the proceedings also concerned the transfer of assets following dissolution; in this situation, the party’s or members’ ownership rights were affected.<sup>37</sup> However, the Venice Commission and the OSCE/ODIHR take the view that, given the importance of political parties as vital instruments of the freedom of association and fundamental for the democratic process and the important consequences that the restrictions imposed on political parties may have, any restriction on political party freedoms must be capable of being submitted to review by an independent and impartial court, at least in the final instance. Moreover, the prohibition/dissolution of a political party must always be decided by an independent court.<sup>38</sup> To ensure an effective remedy, it is imperative for the procedure, before the tribunal, including appeal and review, to be in accordance with fair trial standards. The procedure shall be clear and affordable. Proper, timely and effective redress shall be available to parties if a violation is found to have occurred. The principle of effectiveness requires that some remedies be granted expeditiously. Remedies that are not provided in a timely fashion may not satisfy the requirement that a remedy be effective.

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the OSCE Copenhagen Document.

<sup>33</sup> ECtHR, *Socialist Party and Others v. Turkey*, no. 21237/93, 25 May 1998, para. 51; ECtHR, *Refah Partisi (the Welfare Party) and Others v. Turkey* [GC], nos. 41340/98 and 3 others, 13 February 2003, para. 132: measures of such severity might be applied only in the most serious cases... the nature and severity of the interference are also factors to be taken into account when assessing its proportionality”.

<sup>34</sup> See e.g. ECtHR, *Nationaldemokratische Partei Deutschlands (NPD) v. Germany* (dec.), no. 55977/13, 4 October 2016, para. 23.

<sup>35</sup> See, *mutatis mutandis*, ECtHR, *Čonka v. Belgium*, no. 51564/99, 5 February 2002, para. 75.

<sup>36</sup> ECtHR, *HADEP and Demir v. Turkey*, no. 28003/03, 14 December 2010, para. 87.

<sup>37</sup> ECtHR, *Refah Partisi (the Welfare Party) and Others v. Turkey* (dec.), nos. 41340/98 and 3 others, 3 October 2000. See also, ECtHR, *Yazar and Others v. Turkey*, nos. 22723/93 and 2 others, 9 April 2002, para. 66, and, more recently, ECtHR, *HADEP and Demir v. Turkey*, no. 28003/03, 14 December 2010, para. 87. In the case of ECtHR, *Cumhuriyet Halk Partisi v. Turkey*, no. 19920/13, 26 April 2016, which concerns the confiscation of a substantial part of the assets of the applicant political party by the Constitutional Court following an inspection of its accounts for the years 2007 to 2009, the Court did not find it necessary to rule on the applicability of Article 6 ECHR since the complaint was in any event inadmissible for reasons regarding the substance of the complaint in the field of Article 6 ECHR.

<sup>38</sup> See, CDL-AD(2014)046, Joint Guidelines on Freedom of Association, para. 256.

## **Principle 8. Equal Treatment of political parties**

54. All individuals and groups that seek to establish a political party must be able to do so on the basis of equal treatment before the law.<sup>39</sup> No individual or group wishing to associate as a political party shall be advantaged or disadvantaged in this endeavour by the state. In particular, state regulations on political parties may not discriminate against individuals or groups on any ground such as sex, race, color, language, religion, political or other opinion, national or social origin, association with a national minority, property, birth or other status.<sup>40</sup>
55. The state shall not discriminate among political parties on the basis of their political programs or membership. However, some kinds of differentiation can be justified, based on objective grounds. It is permissible, for instance, to require that parties demonstrate a well identified level of support before receiving specific benefits accruing from the status of being a “party”. And it is also permissible to tailor both the stringency of enforcement of regulations and the penalties for violations to the size and resources of parties, so as not to unduly burden new or small parties while still having sufficient punitive or deterrent impact on larger parties.
56. State authorities shall treat political parties on an equal basis and, as such, remain impartial with regard to the establishment, registration and activities of political parties. Authorities should refrain from any measures that could be seen as intended to privilege some favored political parties and disadvantage others. This holds good insofar as these parties are in similar positions with respect to size and influence. Thus, parties that are already in parliament may receive higher levels of state support than parties that are not (yet) in parliament, but may then also be subjected to stricter reporting obligations (see also para. 136). All political parties should be given opportunities to participate in elections free from distinction or unequal treatment by authorities.
57. While states have broad freedom to establish criteria for entry into the category of officially recognised party, and for distinguishing between major parties and other official recognised parties, these criteria must be objective, and applied neutrally to all political parties.
58. Within the political realm, requirements for equality may be interpreted to be absolute or may be made on a proportional or “equitable” basis (they may, for instance, be determined by the number of seats a party holds in parliament). Such difference in treatment should not be considered discriminatory as long as it is based on objective and reasonable grounds.

## **Principle 9. Equal Treatment by and within Political Parties, Special Measures, Internal Democracy**

59. The right to freedom of association generally entitles those forming an association or belonging to one to choose with whom they form an association or whom to admit as members. A political party therefore is not required to accept individuals as members or candidates who do not share its core beliefs and values.<sup>41</sup> However, this freedom of

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<sup>39</sup> The Copenhagen Document, para. 7.6, states that “*Participating States will respect the right of individuals and groups to establish, in full freedom, their own political parties or other political organisations and provide such political parties and organisations with the necessary legal guarantees to enable them to compete with each other on a basis of equal treatment before the law and by the authorities.*”

<sup>40</sup> See Articles 2 and 26 of the ICCPR and Article 14 and Protocol 12 of the ECHR.

<sup>41</sup> ECtHR, *Associated Society of Locomotive Engineers and Firemen (ASLEF) v. the United Kingdom*, no. 11002/05, 27 February 2007, para. 39.

choice is not unlimited as this aspect of the right to association is also subject to the prohibition on discrimination, so that any differential treatment of persons with respect to the formation or membership of an association that is based on a personal characteristic or status must have a reasonable and objective justification.<sup>42</sup> When the distinction in question operates on grounds such as colour or ethnic origin, or in the intimate sphere of an individual's private life – for example, where a difference of treatment is based on sex or sexual orientation – particularly “weighty reasons” need to be advanced to justify the measure.<sup>43</sup> Political parties may justify the use of restrictive membership criteria where the objective of the association is to tackle discrimination faced by its members or to seek to redress specific instances of historical exclusion and oppression by the majority, for example, for endangered indigenous groups or marginalized groups.

60. The principle of equal treatment by and within political parties does not exclude that, in order to ensure equal access to political life and eliminate structural historical inequalities, temporary special measures are introduced aimed at promoting *de facto* equality within political parties for women, persons with disabilities and ethnic, racial or other minorities subjected to past discrimination.<sup>44</sup> Furthermore, because political parties contribute to the expression of political opinions and are dominant in the process of presentation of candidates in elections, some kind of regulation of internal party activities might be considered necessary for the proper functioning of a democratic society.

### **Principle 10. Good Administration**

61. The implementation of legislation, policies and practices relevant to political parties shall be undertaken by competent state authorities, including government bodies and courts, that act in an impartial manner and are free from partisan influence, both in law and in practice. Such authorities shall also ensure that political parties, as well as the public at large, have relevant information as to their procedures and functioning, which shall be easy to understand and comply with. The scope of the powers of the competent authorities shall be clearly and foreseeably defined in law, and all staff employed by them should be appropriately qualified and properly supervised. The decisions and acts of public authorities shall be open to independent review. The staff of public authorities shall perform their tasks diligently, and any failings shall be rectified, and abuses sanctioned. Also, timeliness is an important element of good administration. Decisions affecting the rights of political parties shall be made in an expeditious manner, particularly where they relate to time-sensitive processes, such as elections.

### **Principle 11. Accountability**

62. Political parties may obtain certain legal privileges that are not available to other associations due to their participation in elections and government. While this is particularly common in the areas of political finance and with respect to access to media resources during election campaigns, these are not the only areas in which political parties may have a privileged status. As a consequence of having privileges

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<sup>42</sup> See for example ECtHR, *Willis v. the United Kingdom*, no. 36042/97, 11 June 2002, para. 48.

<sup>43</sup> See for example (gender discrimination), ECtHR, *Staatkundig Gereformeerde Partij v. the Netherlands* (dec.), no. 58369/10, 10 July 2012, para. 73. See also ECtHR, *Genderdoc-M v. Moldova*, no. 9106/06, 12 June 2012, para. 50. See also the HCNM Ljubljana Guidelines on Integration of Diverse Societies & Explanatory Note (2012) state that “While parties might have an objective to promote and protect the rights and interests of one particular group, they should not refuse membership based on ethnic affiliation” (p 35).

<sup>44</sup> See Article 4(1) of the Convention on the Elimination of all Forms of Discrimination against Women (CEDAW); Article 1(4) and 2(2) of the International Covenant on the Elimination of Racial Discrimination (ICERD); Article 5(4) of the Convention on the Rights of Persons with Disabilities (CRPD). That Article 5(4) CRPD does not speak of *temporary* measures is self-evident.

not granted to other associations, and due to the role that they play in the public discourse, and may play as a result of elections, it is appropriate to place certain special obligations on political parties. These may take the form of reporting requirements, transparency in financial arrangements, restrictions on the use of special media access or regulations to ensure equal opportunities for the participation of certain underrepresented groups. In each case, the additional obligations imposed shall be directly related and proportional to the special privileges of political parties, and legislation shall provide specific details on the relevant rights and responsibilities that accompany the establishment of a political party and its participation in elections. For instance, political parties, when benefiting from their granted privileges, may be required to act in light of the obligations imposed by international human rights instruments, including those pertaining to the political representation of women, national minorities and persons with disabilities.

## IV INTERPRETATIVE NOTES

### PART I FREEDOM OF POLITICAL PARTIES, REGULATION, RESTRICTIONS

These Interpretative Notes are essential to a full understanding of the Principles and should be read in concert with them. They not only expand upon and provide an essential interpretation of the Principles, but also provide examples of good practices aimed at ensuring the proper functioning of legislation and regulations for political parties.

#### 1. Political Parties; Legal Framework

63. The primary focus of this chapter - *Part I* - is on the *external* functioning of political parties in relation to the state and to individuals aspiring to be party members/representatives. The *internal* functioning of political parties will be dealt extensively in *Part II*. More detailed treatment of specific vital issues will be dealt with separately: Political parties in elections (*Part III*), Funding of political parties (*Part IV*) and Oversight of political parties (*Part V*).

##### a. Definition of Political Party

64. For the purposes of these Guidelines, a political party is “a free association of individuals, one of the aims of which is to express the political will of the people, by seeking to participate in and influence the governing of a country, inter alia, through the presentation of candidates in elections”. This definition includes associations at all levels of governance<sup>45</sup> whose purpose is the presentation of candidates for elections and exercising political authority through elections to governmental institutions.

65. Political parties have developed as the main vehicle for political participation and debate, and have been recognised by the ECtHR as vitally important for democracy: “political parties are a form of association essential to the proper functioning of democracy ... By relaying [a] range of opinions, not only within political institutions but also – with the help of the media – at all levels of social life, political parties make an irreplaceable contribution to political debate, which is at the very core of the concept of a democratic society.”<sup>46</sup> In that same vein, paragraph 3 of the OSCE Copenhagen

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<sup>45</sup> Applicable to parties at the national, regional and local levels. Parties also exist at an intra-state level, such as European Union parties. However, as these guidelines are intended to inform about national legislation, such parties are not discussed at length here.

<sup>46</sup> ECtHR, *United Communist Party of Turkey and Others v. Turkey*, no. 19392/92, 30 January 1998, paras. 25 and

Document states that political pluralism, fostered by the existence of a variety of political parties, with different priorities and programs, is critical to the proper functioning of democracy. The Parliamentary Assembly of the Council of Europe has also recognised that political parties are “a key element of electoral competition, and a crucial linking mechanism between the individual and the state”, by “integrating groups and individuals into the political process”.<sup>47</sup> In addition to furthering popular participation and debate, political parties have also developed as the principle avenue of representation of the people in parliament and government.

66. Although the legal capacity and standing of a political party may vary from state to state, political parties have rights and responsibilities regardless of their legal status. While political parties may be governed under laws separate from those that govern associations, they must, at a minimum, have the same basic rights provided to other associations. However, political parties are a specific category of associations, given that their purpose and function is to take part in elections and constitute the elected body of government of a country. For this reason, many states provide political parties with more rights, coupled with more stringent limitations, e.g. with respect to permissible sources of funding, accountability and transparency.<sup>48</sup>

## **b. Legal Framework**

67. The role and function of political parties in a democratic system is often defined in laws belonging to the highest legal order of the state, i.e. constitutions, to ensure the stability and relative permanence of these provisions. In addition to, or instead of, constitutional provisions that are general in nature and may provide broad discretion for implementation, many states have developed specific legislation dealing with regulation and protection of political parties. The importance of political parties requires that legislation that affects basic rights and obligations of political parties should at least have the status of parliamentary legislation, and not that of regulation issued by an administrative authority.

68. However, having a specific law for political parties is not a requirement for a functioning democracy. In fact, a report compiled by the Venice Commission on the different regulatory practices of Venice Commission member states in the realm of political parties concluded that such legislation is not necessary for the proper functioning of democracy, and may be most effective when quite minimal in its scope.<sup>49</sup> Where specific regulations are enacted, they should not unduly inhibit the activities or rights of political parties. Instead, legislation should focus on facilitating the role of parties as potentially critical actors in a democratic society and ensure the full protection of their rights relevant to their proper functioning.

69. A set of international – universal as well as regional - instruments form a fundamental basis for a state’s obligations relevant to the functioning of political parties. The European Convention for the Protection of Human Rights and Fundamental Freedoms (ECHR) and the International Covenant on Civil and Political Rights (ICCPR) are the two main treaties in this regard, protecting the freedom of association as well as other interconnected fundamental rights such as the freedom of expression and opinion and the freedom of peaceful assembly. These treaties also give some guidance as to the electoral rights of the people.

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<sup>47</sup> Resolution 1308 (2002), Parliamentary Assembly of the Council of Europe, “Restrictions on Political Parties in the Council of Europe Member States”.

<sup>48</sup> See also CDL-AD(2014)046, Joint Guidelines on Freedom of Association, paras. 32, 57, 226.

<sup>49</sup> Venice Commission, CDL-INF(1998)014, Report on the Prohibition of Political Parties and Analogous Measures. See also, Venice Commission, CDL-AD(2009)006, Opinion on the Constitutional and Legal Provisions Relevant to the Prohibition of Political Parties in Turkey.

70. Furthermore, these treaties also contain general provisions on equality and non-discrimination which are relevant to the functioning of political parties. In addition, there are treaties formulating more detailed norms on equality and non-discrimination as well as positive action with regard to specific groups, such as the Convention on the Elimination of all Forms of Discrimination against Women (CEDAW), the Framework Convention for the Protection of National Minorities (FCNM), the International Covenant on the Elimination of Racial Discrimination (ICERD) and the Convention on the Rights of Persons with Disabilities (CRPD).<sup>50</sup>
71. Other relevant instruments are the United Nations Convention against Corruption and the CoE Criminal Law Convention on Corruption as well as the OSCE Copenhagen Document.
72. Excerpts from the above documents, as well as other selected universal and regional instruments applicable to the regulation of political parties' roles and functions in democratic societies, can be found in Annex A to this document. Annex B further provides an illustrative list of relevant ECtHR judgments and other relevant jurisprudence, while Annex C provides a list of selected reference documents and Annex D contains model codes in the field of political parties.

### **c. Legal Status**

73. The framework regulating political parties should clearly define the legal status of political parties. Parties should have, or be able to acquire, legal personality in order to operate effectively in society in their own capacity and to bring lawsuits alleging a violation of their rights. In cases of violations of the rights of a local-level party branch, it may be permissible for the national-level party to initiate legal proceedings in the name of the party as a whole.
74. Some OSCE states have established a status of "registered party" or "active party", for which requirements beyond those inherent in the respective national definition of political party *per se* may be imposed. For instance, in a number of European democracies such as Finland, the Netherlands and Norway political parties are required, before being able to register as parties, to first have obtained association status and/or legal personality.<sup>51</sup>
75. Party members should have recourse to civil courts against abuse of a party's contractual obligations towards its members - if such exist -- but only after exhausting internal dispute-resolution mechanisms, where such mechanisms exist. Such recourse may be in addition to the development of internal party structures for the adjudication of intra-party disputes. However, as political parties are private associations, the legal regulation of intra-party disputes must not infringe upon the free functioning of political parties with regard to their internal decision-making procedures or policies.

### **d. Relevant rights**

76. The rights to free association, peaceful assembly, expression, opinion, and elections are fundamental to the proper functioning of a democratic society. Political parties, as collective instruments for political expression, as well as their members, shall fully enjoy such rights.

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<sup>50</sup> See also paragraphs 5.4 and 7.6 of the Copenhagen Document.

<sup>51</sup> N. Bolleyer (2018) *The State and Civil Society – Regulating Interest Groups, Parties and Public Benefit Organisations in Contemporary Democracies*. Oxford: Oxford UP, Chapter 3, Table 3.5.

77. Freedom of association should be protected in a state's constitution. This protection should include a statement of the right, and preferably also the obligation for its defense, as a fundamental precursor to the proper functioning of democracy.
78. The right to free association has been expressly extended to political parties by the ECtHR.<sup>52</sup> Article 11 of the ECHR and Article 22 of the ICCPR protect the right to associate in political parties as part of the general freedom of assembly and association, which requires that everyone has the right to freedom of association with others without restrictions other than those that are prescribed by law and are necessary in a democratic society.
79. Freedom of expression and opinion (Article 10 of the ECHR and Article 19 of the ICCPR) is dependent upon free association, when individuals want to exercise their right to freedom of expression collectively via an association such as a political party. So, freedom of association must also be guaranteed as a tool to ensure that all individuals are able to fully enjoy their rights to freedom of expression and opinion, whether practiced collectively via an association or individually.
80. One function of political parties is to present candidates in elections. Thus, it is vital for the effective functioning of political parties that legislation protects the rights to elect and be elected, which rights are provided for by international instruments (Article 3 of Protocol no. 1 ECHR and Article 25b ICCPR).
81. The right to freedom of association, as well as the rights of freedom of expression and opinion, are not unlimited. Article 11(2) and 10(2) of the ECHR and the corresponding provisions in the ICCPR allows for proportional restrictions, based on the aims/goals in the restriction clauses. Article 11(2) ECHR also allows for further limitations of the freedom of association with regard to persons fulfilling specific functions within the state organisation. Furthermore, the ECHR provides that the state is allowed to take even more measures restricting these rights in case of emergency (Article 15 ECHR). Also, the ECHR allows the state to restrict (further) the political activity of aliens (Article 16 ECHR). In cases where these rights are abused to destroy other protected rights – such as incitement of violence or hatred of minorities or the denial of the Holocaust – the protection of these rights may be withheld (Article 17).
82. These Guidelines do not deal with the situation of a state of emergency (Article 15 ECHR, Article 4 ICCPR), allowing derogations from and greater restrictions than Articles 10(2) and 11(2) ECHR and Articles 19 and 22 of ICCPR provide for. Articles 16 and 17 ECHR will be dealt with in paras. 120 and 148.

## **2. Freedom of Political Parties; Legitimate Means of Regulation and Restriction**

83. It must be recalled that the ECtHR has consistently ruled that, due to their important role in the functioning of democracy, limitations on the formation of political parties should be used with restraint and only when necessary in a democratic society. A state may not hinder the establishment of a political party, not even if its expressed goals are the (peaceful) change to the constitutional order or the promotion of self-determination for a specific people, as long as it seeks to achieve these goals by means that are legal and compatible with fundamental democratic principles. Given the requirements of proportionality, it must further be proven that any limitation is the least restrictive way for achieving a legitimate regulatory aim.

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<sup>52</sup> ECtHR, *United Communist Party of Turkey and Others v. Turkey*, no. 19392/92, 30 January 1998.



84. Some OSCE participating States, Venice Commission or GRECO member states do not prescribe any requirements for political party registration or regulation of party activities. However, in view of possible administrative necessities related to the functioning of the democratic process, it nevertheless may be justified for a state to enact regulations - in general only procedural in nature - for political party registration and formation.

#### **a. Registration**

85. The ECtHR has consistently ruled that requirements for registration do not, in themselves, represent a violation of the right to free association. It is reasonable to require the registration of political parties with a state authority for certain purposes, e.g. to acquire legal personality, to allow parties to participate in elections, and to receive certain forms of state funding.

86. Where registration as a political party is required in order to take part in elections or to obtain certain benefits, substantive registration requirements and procedural steps for registration should be reasonable. In those countries where such registration requirements exist, they should be carefully drafted to achieve legitimate aims in line with Article 11(2) ECHR and Article 22(2) ICCPR, read in the light of Article 3 Protocol 1 ECHR.

87. Grounds for denying party registration must be clearly stated in law and based on objective criteria. Where parties can be denied registration for administrative reasons, such as the failure to meet a deadline, such administrative requirements must be reasonable and well known to parties. Moreover, in case of technical omissions or minor infringements of registration requirements, the political party should be given reasonable time in which to rectify the failure. Clearly established deadlines and procedures for registration are necessary to minimize the negative impact on pluralism of denials of party registration for purely administrative reasons. Minor administrative breaches of a party to present certain documents should not lead to denial of registration. Further, where existing registration requirements are changed, such changes should not result in the revocation of the registration status of a political party. Parties registered under previous registration legislation should remain in the state register and be given the opportunity, within a reasonable deadline, to supplement their registration documents.

88. Deadlines for deciding registration applications should be reasonably short, to ensure the effective realization of the right of individuals to associate. Decisions on registration should be taken in a politically neutral way; at the very least, political parties should have the right to appeal adverse decisions before a judicial body. Expedient decisions on registration applications are particularly important for parties seeking to present candidates in elections. Deadlines that are overly long constitute unreasonable barriers to party registration and participation. Therefore, if the competent state authority does not decide within the deadline provided, applications for establishment and registration should be seen as approved.

89. It is reasonable that legislation on political party registration requires that the state be provided with basic practical information regarding the political party. For example, such regulations may require information on the party's permanent address and the registration of party names and symbols to limit possible confusion on the part of voters and other individuals. Some states prohibit the use of names, insignia and symbols associated with national or religious institutions or those used by already prohibited parties. These types of registration requirements are reasonable, if the respective legal provisions are formulated with sufficient precision and clearly identify the prohibited

symbols, names and terms.<sup>53</sup> The regulation of party names and symbols to avoid confusion, especially with other parties, is also an important means to enable the state to ensure a duly informed electorate that is able to exercise a free and conscious choice.

90. Some states require political parties to publicly file their party constitution or statute upon registration. While such a requirement is not inherently illegitimate, states must ensure that it is not used to unfairly disadvantage or discriminate against any political party. In particular, such a requirement cannot be used to discriminate against the formation of parties that espouse unpopular ideas. In *Refah Partisi* the ECtHR noted that Article 10 of the ECHR extends protection “not only to ‘information’ or ‘ideas’ that are favorably received or regarded as inoffensive or as a matter of indifference, but also to those that offend, shock or disturb”.<sup>54</sup> Thus, a party’s application for registration should not be denied on the basis of a party constitution that espouses ideas which are unpopular or offensive, as long as it promotes democratic and peaceful procedures and means.<sup>55</sup>
91. It is a legitimate requirement that political parties provide information on the persons within the party who shall be responsible for the receipt of communications from the state and for the operational oversight of certain activities, such as elections.
92. In many states, the registration of political parties presents a number of advantages for parties. For example, registration may be required to receive state funding, ensure the provision of public media airtime, or to present candidates during elections. An additional advantage of such registration may be the protection provided for party names and logos (which may even be granted provisionally once the application for registration is received). Advantages given to registered parties are not discriminatory, as long as these advantages serve a legitimate purpose and are proportional, and there is equal opportunity to register as a political party.

## **b. Registration Fees**

93. The payment of reasonable registration fees for the establishment of a political party is an acceptable requirement. Registration fees should never be so high as to prevent the registration of legitimate parties. Registration fees that are excessive may amount to indirect discrimination, as they limit the rights of citizens without adequate resources to associate and stand for election as protected under human rights instruments. As with other regulations on political parties, the requirement to pay registration fees must be applied objectively to all parties. At the same time, consideration could be given to keeping fees to the bare minimum necessary to cover the administrative costs of registration. States may also provide for non-monetary alternatives to registration fees, such as the expression of minimum support through the collection of signatures, or the recruitment of members. It is important to make these alternative non-monetary methods available, as registration should be based on a minimum level of support and

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<sup>53</sup> See also Venice Commission, CDL-AD (2015) 041, Joint Interim Opinion on the Law of Ukraine on the Condemnation of the Communist and National Socialist (Nazi) Regimes and Prohibition of Propaganda of their Symbols (21 December 2015).

<sup>54</sup> ECtHR, *Refah Partisi (the Welfare Party) and Others v. Turkey* [GC], nos. 41340/98 and 3 others, 13 February 2003, para. 89.

<sup>55</sup> ECtHR, *Herri Batasuna and Batasuna v. Spain*, nos. 25803/04 and 25817/04, 30 June 2009; ECtHR, *HADEP and Demir v. Turkey*, no. 28003/03, 14 December 2010. In the case of ECtHR, *Linkov v. the Czech Republic*, no. 10504/03, 7 December 2006, concerning the Refusal to register a political party on the ground that one of its aims was anti-constitutional, the ECtHR held that as the PL had not advocated any policy that could have undermined the democratic regime in the country and had not urged or sought to justify the use of force for political ends, the refusal to register it had not been necessary in a democratic society (violation of Article 11 ECHR).

not on financial status.<sup>56</sup>

### c. Minimum Support

94. Many OSCE participating States and Venice Commission member States require proof of minimum levels of support, on the basis of the collection of signatures or on that of membership, prior to forming and registering a political party. Minimum requirements vary greatly among states. Although requirements based on minimum support established through the collection of signatures are legitimate, the state must ensure that they are reasonable and democratically justifiable and not so burdensome as to restrict the political activities of small parties or to discriminate against parties representing minorities.<sup>57</sup>
95. Thresholds should be outlined clearly in the law and must be proportionate. If thresholds result in an infringement of the principle of political pluralism, they should not be considered justified. Given variances in the size and nature of states throughout the OSCE region, it is generally preferable that the minimum number of persons required to establish support be determined, at least at the local and regional level, not as an absolute number, but rather as a reasonable percentage of the total voting population within a particular constituency.<sup>58</sup> Some states have a lower numerical requirement for a political party formed by a parliamentarian, as his/her obtainment of elected office may serve as evidence of support. This may, however, raise issues with regard to the equal treatment of political parties. In any event, legislation should clearly state the means by which support must be established.
96. Where the collection of signatures is required to demonstrate a minimum level of citizen support, parties must be provided with a clear timeframe, including deadlines and a reasonable amount of time for the collection of such signatures. They should also be given the opportunity to submit additional signatures and correct erroneous information if necessary, before the deadline expires, while online means to do so should be considered. While lists of signatures can be checked for verification purposes, experience has shown that this practice can also be abused. These types of processes should thus be carefully regulated, should foresee the publication of lists and specify who has standing to challenge them and on what grounds. If legislation includes verification processes, the law should clearly state the different steps of the process and ensure that it is fairly and equally applied to all parties and feasible in terms of implementation. Such processes should also follow a clear methodology, may not be too burdensome (e.g. by requiring a disproportionately high number of signatures), and should be implemented in a consistent manner. It should be possible to support the registration of more than one party, and legislation should not limit a citizen or other individual to signing a supporting list for only one party. Any limitation of this right is too easily abused and can lead to the disqualification of parties that in good faith believed that they had fulfilled the requirements for sufficient signatures.

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<sup>56</sup> See the judgment of the Canada Supreme Court in the case of *Figuroa v. Canada*, 2003 SCC 37, 27 June 2003, where the Court struck down legislation requiring parties to nominate candidates in 50 electoral districts in order to be registered as political parties. The Supreme Court felt that the existing law favored parties with sufficient resources and decreased the capacity of the members and supporters of the disadvantaged parties to introduce ideas and opinions into the open dialogue and debate related to elections.

<sup>57</sup> ECtHR, *Republican Party of Russia v. Russia*, no. 12976/07, 12 April 2011, paras. 110-119; Venice Commission, CDL-AD(2008)034, Opinion on the Draft Amendments to the Law on Political Parties of Bulgaria, paras. 14-19.

<sup>58</sup> E.g., the Venice Commission has stated that, in a country of eight million inhabitants, a minimum requirement of 1,000 party members is reasonable, whereas 5,000 party members would be a disproportionate requirement which is not necessary in a democratic society and therefore a violation of Article 11 of the ECHR, see, Venice Commission, CDL-AD(2011) 046, Opinion on the Draft Law on Amendments to the Law on Political Parties of the Republic of Azerbaijan, para. 18.

97. Minimum levels of support may also be established on the basis of party membership, as opposed to the collection of signatures. However, when party membership is the criterion upon which support is based, it is critical that the minimum number of members required to establish a party is reasonable and not overly burdensome. Verification of party signature-support lists may be necessary to determine their accuracy but should be designed to ensure equality and fairness in application. The forced dissolution of a “long-established and law-abiding”<sup>59</sup> party based on a formal ground, such as the failure to comply with minimum membership requirements, has been held to be a disproportionate measure by the ECtHR.<sup>60</sup> De-registration should be done in a transparent manner following pre-determined criteria, bearing in mind the principle of equality of treatment of all political parties as well as the principle of pluralism; the respective party should also have the right to be heard prior to a decision being taken on de-registration.
98. While de-registration may legitimately result in the loss of official recognition and of some privileges such as state funding or privileged ballot access, de-registration should not result in the dissolution of the party.

#### **d. Requirements for Retention of Registration**

99. Once party registration is approved, requirements for retaining it should be minimal. However, the requirements for continuing to receive certain benefits from the state, such as public financing or ballot access in elections, may be higher than requirements for maintaining registration as a political party. Loss of registration, as opposed to the loss of state benefits, should be limited to cases of serious legal violations and carried out according to clearly defined procedures, including review by and/or appeal to an impartial and independent body. Where legislation provides for the loss of registration status, it should also state clear procedures and requirements for parties to re-register.
100. It is good practice that states also provide an avenue by which political parties may make minor changes to their registration information, such as the primary office address or name of their official contact, through a simple process of notification, rather than requiring them to re-register. Online means may be used to simplify such processes.
101. In some states, a political party that does not meet a minimum-results threshold in an election loses its status as a registered political party. If a party originally met all requirements for registration, it should be able to continue party activities outside of elections and to prepare for the next elections. In any case, parties that do not receive adequate voters support in an election should be able to at least continue their association under the laws governing associations in general. Such parties may validly be excluded from benefits associated with being an active political party (for example, state subsidies) but should not lose the basic rights (i.e., freedom of peaceful assembly and association) awarded to all associations. On the other hand, parties that do not meet minimum thresholds in elections may be deprived of special additional benefits and privileges reserved for these categories of parties (which will, however, not affect their registration status nor their continued existence as an association).

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<sup>59</sup> ECtHR, *Republican Party of Russia v. Russia*, no. 12976/07, 12 April 2011, para. 119.

<sup>60</sup> *Ibid.*, para. 131.

### **e. Geographic Representation**

102. Provisions regarding the limitation of political parties purely on the grounds that they represent a limited geographic area should generally be removed from relevant legislation.<sup>61</sup> Requirements barring contestation for parties with only regional support potentially discriminate against parties that enjoy a strong public following only in a particular area of the country. Such provisions may also have discriminatory effects against small parties and parties representing national minorities.
103. A quota requirement based on the geographic distribution of party members can also potentially represent a severe restriction of political participation at the local and regional levels that would be incompatible with the right to free association. Geographic considerations should not be included in the requirements for the formation of a political party, nor should a political party based at a regional or local level only be prohibited.

### **f. International Communication and Co-operation of Parties**

104. Limitations on the interaction and functioning of political parties at an inter-state level are unjustifiable and should be avoided in all relevant legislation. The OSCE Copenhagen Document (1990, par 10.4) clearly requires that associations, including political parties, should be able to communicate freely and co-operate with similar associations at the international level. This open communication and relationship between parties at an inter-state level is further supported by the Venice Commission, which has stated that “the practice of international co-operation among parties sharing the same ideology is a widespread one. Some parties have projected further their international dimension by assisting sister parties in third countries. In the past, these practices assisted, for instance, the democratic consolidation in a number of European countries. Whenever this assistance is compatible with national legislation and in line with ECHR principles and European standards, it must be welcomed as a good practice, since it contributes to creating solid democratic party systems.”<sup>62</sup>
105. As legislation that precludes free interaction between international branches of political parties is contrary to good practice and obligations to protect the right to free association, political parties should be free to enjoy communication with others who share their ideals at the national and international levels. Thus, this type of support to political parties should be permissible and should not fall under otherwise legitimate potential restrictions or bans on the receipt of foreign funding. It should also not provoke surveillance measures to be taken against a party, nor should its lines of communications through new technologies be shut-down or restricted in any way as this would contravene the developing standards of exercising the “same rights online, as offline”.<sup>63</sup>

## **3. Prohibition and Dissolution of Political Parties**

### **a. Legality and subsidiarity**

106. Some states require all political parties to register. In these instances, de-

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<sup>61</sup> *Ibid.*, para. 130; see also Venice Commission, CDL-AD(2012)003, Opinion on the Law on Political Parties of the Russian Federation, para. 24.

<sup>62</sup> Venice Commission, CDL-AD(2009)021, Code of Good Practice in the Field of Political Parties and Explanatory Report.

<sup>63</sup> See, CDL-AD(2014)046, Joint Guidelines on Freedom of Association, para. 261 and Recommendation of the Committee of Ministers to member States on Internet freedom of 13 April, 2016, paragraph 3 of the Annex Recommendation CM/Rec(2016)5.

registration (loss of registered status) may amount to or may have an effect very similar to dissolution of political parties, and failure by state authorities to accept a party's registration may be the equivalent of banning the party.<sup>64</sup> In most cases, however, prohibition or dissolution of a political party is a more serious interference than de-registration or denial of previous benefits, as this essentially means that the party, as an association, is prohibited or ceases to exist. In paragraph 11 of Resolution 1308(2002), on "Restrictions on political parties in the Council of Europe's member States", the Parliamentary Assembly has stated that "restrictions on or dissolution of political parties should be regarded as exceptional measures to be applied in cases where the party concerned uses violence or threatens civil peace and the democratic constitutional order of the country;" and that "as far as possible, less radical measures than dissolution should be used"<sup>65</sup> PACE referred in that context to the view held by the ECtHR that "political parties are a form of association essential to the proper functioning of democracy".<sup>66</sup> The Court also held that, "[i]n view of the role played by political parties, any measure taken against them affects both freedom of association and, consequently democracy in the State concerned".<sup>67</sup> This has led the Court to conclude that "the exceptions set out in Article 11 [of the ECHR] are, where political parties are concerned, to be construed strictly; only convincing and compelling reasons can justify restrictions on such parties' freedom of association".<sup>68</sup> Thus, the competence of state authorities to dissolve a political party or prohibit one from being formed should concern exceptional circumstances, must be narrowly tailored and should be applied only in extreme cases. Such a high level of protection is appropriate, given the fundamental role of political parties in the democratic process,<sup>69</sup> that also requires a stricter level of scrutiny in comparison with other associations than political parties.<sup>70</sup>

107. There is even a clear common European approach in that political parties in principle are *not* prohibited and dissolved. Even in states with *prima facie* wide rules on party closure there is "extreme restraint" in how these rules are applied. The threshold for actually applying (or even invoking) these rules is extremely high. For instance, there is a common practice for allowing parties which advocate fundamental changes in the form of government, or which advocate opinions that the majority finds unacceptable. Political opinions are not censored by way of prohibition and dissolution of the party concerned, while illegal activities by party members are sanctioned through the ordinary criminal law system. This even holds good for those constitutional systems which formally adhere to a principle of "militant democracy", such as the German one, which on closer analysis is rather liberal and tolerant.<sup>71</sup>

108. Of course, universal and regional human rights instruments do recognize that there are valid reasons for restrictions on the freedom of association such as national security and public safety (including measures intended to counter terrorism and extremism), the prevention of disorder or crime and the protection of the rights and freedoms of others.<sup>72</sup> Such measures must be objective and necessary in a democratic society and permitted restrictions may not be applied for any purpose other than those for which they have been prescribed<sup>73</sup>.

<sup>64</sup> ECtHR, *Linkov v. the Czech Republic*, no. 10504/03, 7 December 2006.

<sup>65</sup> Parliamentary Assembly, Resolution 1308 (2002), 18 November 2002, para. 11.

<sup>66</sup> ECtHR, *United Communist Party of Turkey and Others v. Turkey*, no. 19392/92, 30 January 1998, para. 25.

<sup>67</sup> ECtHR, *Cumhuriyet Halk Partisi v. Turkey*, no. 19920/13, 26 April 2016, para. 64.

<sup>68</sup> ECtHR, *Socialist Party and Others v. Turkey*, no. 21237/93, 25 May 1998, para. 46.

<sup>69</sup> ECtHR, *United Communist Party of Turkey and Others v. Turkey*, no. 19392/92, 30 January 1998.

<sup>70</sup> ECtHR, *Vona v. Hungary*, no. 35943/10, 9 July 2013, paras. 56-58.

<sup>71</sup> Venice Commission, CDL-AD (2009)006, Opinion on the Constitutional and Legal Provisions Relevant to the Prohibition of political parties in Turkey, paras. 18-20.

<sup>72</sup> Article 11(2) ECHR, Article 21 ICCPR.

<sup>73</sup> See Article 18 ECHR.

109. Legislation should specify narrowly formulated criteria, describing the extreme cases in which prohibition and dissolution of political parties is allowed. Even where such reasons for prohibition or dissolution are listed in legislation, it is important to note that prohibition is only justified if it meets the strict standards for legality, subsidiarity and proportionality. As the most severe of available restrictions, the prohibition and the dissolution should only be deemed justified when all less restrictive measures have been considered to be inadequate. Furthermore, legislation should regulate the consequences of prohibition and dissolution of political parties, in particular what happens to the assets and property of a party. In cases where the party is prohibited and dissolved due to the non-compliance of its objectives and activities with international standards or with legislation that is consistent with such standards, laws may provide that funds or assets concerned shall pass to the state. Any such measures should always be based on a court order, comply with the minimum requirements and safeguards provided in the ECHR and thus, be proportional.<sup>74</sup>

## b. Proportionality

110. Strict considerations of proportionality must be applied when determining whether the prohibition or dissolution of a party is justified. This requirement is not merely dictated by the seriousness of the restriction of the freedom of association which such measures imply, but also by the democratic principle of pluralism, of which the state is the ultimate guarantor.<sup>75</sup> Indeed, as the ECtHR has held, “there can be no democracy without pluralism”.<sup>76</sup> As PACE has noted, “as far as possible, less radical measures than dissolution should be used”.<sup>77</sup> Thus, it must be shown by the state that no less restrictive means would suffice. In particular, the dissolution of an existing party for allegedly not having sufficient support, based on a failure to comply with minimum membership or geographic representation requirements, has been held to be disproportionate by the ECtHR even when this measure has been taken in the interests of national security, the prevention of disorder or crime, and the protection of the rights and freedoms of others.<sup>78</sup> In determining whether a necessity within the meaning of Article 11, paragraph 2 exists, the state concerned has only a limited margin of appreciation,<sup>79</sup> which goes hand in hand with rigorous European supervision embracing both the law and the decisions applying it, including those by independent courts. Such scrutiny is all the more necessary where an entire political party is dissolved.<sup>80</sup> In that context the ECtHR is prepared to take into account the general background of the case before it, in particular the difficulties associated with the fight against terrorism, but only to the extent that there is evidence that the party concerned bears any responsibility for the problems posed by terrorism.<sup>81</sup>

111. In its Resolution 1308 (2002) PACE stated the following: “*The question of restrictions on political parties reflects the dilemma facing all democracies: on the one*

<sup>74</sup> ECtHR, *Association for European Integration and Human Rights and Ekimdzhiiev v. Bulgaria*, no. 62540/00, 28 June 2007, paras. 76, 85 and 87-88. See also ECtHR, *Uzun v. Germany*, no. 35623/05, 2 September 2010, para. 63. For more information on minimum requirements and safeguards, see OSCE/ODIHR, Opinion on the Draft Law of Ukraine on Combating Cybercrime, 22 August 2014, paras. 44-47.

<sup>75</sup> ECtHR, *United Communist Party of Turkey and Others v. Turkey*, no. 19392/92, 30 January 1998, para. 44.

<sup>76</sup> ECtHR, *Socialist Party and Others v. Turkey*, no. 21237/93, 25 May 1998, para. 41.

<sup>77</sup> Resolution 1308 (2002), Parliamentary Assembly of the Council of Europe, *op. cit.*, note 25, para. 11; see also Venice Commission, CDL-INF(2000)001, Guidelines on prohibition and dissolution of political parties and analogous measures.

<sup>78</sup> ECtHR, *Republican Party of Russia v. Russia*, no. 12976/07, 12 April 2011.

<sup>79</sup> ECtHR, *Refah Partisi (the Welfare Party) and Others v. Turkey* [GC], nos. 41340/98 and 3 others, 13 February 2003, para. 100.

<sup>80</sup> ECtHR, *United Communist Party of Turkey and Others v. Turkey*, no. 19392/92, 30 January 1998, para. 46.

<sup>81</sup> *Idem*, para. 59. See also ECtHR, *HADEP and Demir v. Turkey*, no. 28003/03, 14 December 2010, para. 80.

*hand, the ideology of certain extremist parties runs counter to democratic principles and human rights, and on the other hand, every democratic regime must provide maximum guarantees of freedom of expression and freedom of assembly and association. Democracies must therefore strike a balance by assessing the level of threat to the democratic order in the country represented by such parties and by providing safeguards.”<sup>82</sup>*

112. As noted above, the possibility to dissolve or prohibit a political party should be exceptionally narrowly tailored and applied only in extreme cases. Whether this requirement has been met is ultimately under the review of the ECtHR concerning the member states of the Council of Europe. When the Court carries out its scrutiny, it does not have to confine itself to ascertaining whether the state concerned exercised its discretion reasonably, carefully and in good faith, but must look at the interference complained of in the light of the case as a whole and determine whether it was proportionate to the legitimate aim pursued and whether the reasons adduced by the national authorities to justify it are relevant and sufficient.<sup>83</sup>

113. That restrictions to the freedom of association of political parties should be strictly proportional implies that “as far as possible, less radical measures than dissolution should be used”.<sup>84</sup> Thus, it must be shown by the state that no less restrictive means would suffice. Political parties should never be dissolved for minor administrative or operational breaches of conduct, nor for the mere reason of the name chosen, in the absence of other relevant and sufficient circumstances.<sup>85</sup> Lesser sanctions must be applied in such cases. Failure to maintain a required level of membership, breaches of administrative requirements, or failure to present any candidates over a specified period may be grounds for denial of registered party status, but only in cases in which denial of party registration is not tantamount to dissolution.

### **c. Legitimacy of Aims and Means**

114. A political party should not be prohibited or dissolved because it is a regional, religious or minority party, or promotes a related identity,<sup>86</sup> nor because its ideas are unfavorable, unpopular or offensive.<sup>87</sup> Since democracy thrives on freedom of expression, “there can be no justification for hindering a political group solely because it seeks to debate in public the situation of part of the State’s population”.<sup>88</sup> If the party concerned does not use or call for violence and does not threaten civil peace or fundamental democratic principles, then neither prohibition nor dissolution is justified.<sup>89</sup>

115. Consequently, the mere fact that a party criticizes government actions,<sup>90</sup> advocates a peaceful change of the constitutional order,<sup>91</sup> or promotes self-determination of a specific people<sup>92</sup> is not sufficient per se to justify a party’s prohibition

<sup>82</sup> Resolution 1308 (2002), 18 November 2002, para. 3.

<sup>83</sup> ECtHR, *United Communist Party of Turkey and Others v. Turkey*, no. 19392/92, 30 January 1998, para. 47.

<sup>84</sup> Resolution 1308 (2002), Parliamentary Assembly of the Council of Europe, *op. cit.*, note 105 para. 11; see also Venice Commission, CDL-INF(2000)001, Guidelines on prohibition and dissolution of political parties and analogous measures.

<sup>85</sup> ECtHR, *United Communist Party of Turkey and Others v. Turkey*, no. 19392/92, 30 January 1998, para. 54.

<sup>86</sup> ECtHR, *Stankov and the United Macedonian Organisation Ilinden v. Bulgaria*, nos. 29221/95 and 29225/95, 2 October 2001, para. 89.

<sup>87</sup> ECtHR, *United Communist Party of Turkey and Others v. Turkey*, no. 19392/92, 30 January 1998, para. 43.

<sup>88</sup> ECtHR, *Socialist Party and Others v. Turkey*, no. 21237/93, 25 May 1998, para. 45.

<sup>89</sup> ECtHR, *Herri Batasuna and Batasuna v. Spain*, nos. 25803/04 and 25817/04, 30 June 2009, para. 79.

<sup>90</sup> ECtHR, *Yazar and Others v. Turkey*, nos. 22723/93 and 2 others, 9 April 2002, para. 59; see also ECtHR, *HADEP and Demir v. Turkey*, no. 28003/03, 14 December 2010, para. 70.

<sup>91</sup> ECtHR, *Partidul Comunistilor (Nepeceristi) and Ungureanu v. Romania*, no 46626/99, 3 February 2005, para. 52.

<sup>92</sup> See ECtHR, *HADEP and Demir v. Turkey*, no. 28003/03, 14 December 2010.



or dissolution. The ECtHR has noted that party programs may be incompatible with the current principles and structures of a given state, but may still be compatible with the rules of democracy, as it is “the essence of democracy to allow diverse political programmes to be proposed and debated, even those that call into question the way a State is currently organised, provided that they do not harm democracy itself”.<sup>93</sup>

116. Therefore, a political party must be able to promote a change in the law or the legal or constitutional structures of the State, on two conditions: firstly, the means used to that end must be legal and democratic; secondly, the change proposed must be compatible with fundamental democratic principles.<sup>94</sup> It necessarily follows that a political party whose leaders incite violence or put forward a policy which fails to respect democracy or which is aimed at the destruction of democracy cannot lay claim to the Convention’s protection against penalties imposed on those grounds”.<sup>95</sup> Continued action and speeches supportive of violence and destruction of democracy, and a refusal of party leaders and members to distance themselves from terrorist acts and beliefs may, in specific cases, justify dissolution.<sup>96</sup> In the case of *Refah Partisi v. Turkey*, the ECtHR took the position that a party may be banned if it pursues a policy “which fails to respect democracy or is aimed at the destruction of democracy and the flouting of rights and freedoms recognised in a democracy”, even where the party uses legal means to pursue its goals.<sup>97</sup>

#### **d. Limited Effects, Incidental Activities**

117. Some states stop short of banning parties even where the parties’ statutes and programmatic activities have been found to violate fundamental democratic principles, if the influence wielded by such parties is marginal, and it is unlikely that they would win an election; they thus were not considered to constitute an imminent threat to democratic principles and values.<sup>98</sup> Likewise, although dissolution on the ground that a party had not openly distanced itself from acts and speeches of its members or leaders that could be interpreted as indirect support for terrorism could be held to meet a ‘pressing social need’, having regard to the limited political impact on public order or the protection of the rights and freedoms of others, such a sanction in the specific case was held to be unjustified.<sup>99</sup>

118. Dissolution of political parties which is merely based on the incidental activities of party members as individuals is incompatible with the protection awarded to parties

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<sup>93</sup> See ECtHR, *Socialist Party and Others v. Turkey*, no. 21237/93) 25 May 1998, para. 47, and ECtHR, *Freedom and Democracy Party (ÖZDEP) v. Turkey* [GC], no. 23885/94 8 December 1999, para. 41.

<sup>94</sup> ECtHR, *Refah Partisi (the Welfare Party) and Others v. Turkey* [GC], nos. 41340/98 and 3 others, 13 February 2003.

<sup>95</sup> ECtHR, *Yazar and Others v. Turkey*, nos. 22723/93 and 2 others, 9 April 2002, para. 49.

<sup>96</sup> *Ibid*, paras. 88-91. In the case of ECtHR, *Refah Partisi (the Welfare Party) and Others v. Turkey* [GC], nos. 41340/98 and 3 others, 13 February 2003, para. 131, the Court considered that “While it is true that [Refah’s] leaders did not, in government documents, call for the use of force and violence as a political weapon, they did not take prompt practical steps to distance themselves from those members of [Refah] who had publicly referred with approval to the possibility of using force against politicians who opposed them. Consequently, Refah’s leaders did not dispel the ambiguity of these statements about the possibility of having recourse to violent methods in order to gain power and retain it”.

<sup>97</sup> ECtHR, *Refah Partisi (the Welfare Party) and Others v. Turkey* [GC], nos. 41340/98 and 3 others, 13 February 2003, para. 115.

<sup>98</sup> See the judgment of the German Federal Constitutional Court of 17 January 2017 in the case concerning the banning of the National Democratic Party, where the Court confirmed the party’s unconstitutionality, but decided not to ban it because there were no indications that the party would succeed in its anti-constitutional aims (no specific and weighty indications that would at least make it appear possible that the party’s activities will be successful (potentiality)).

<sup>99</sup> ECtHR, *Party for a Democratic Society (DTP) and Others v. Turkey*, nos. 3840/10 and 6 others, 12 January 2016, paras. 97-100 and 109.

as associations. This incompatibility extends to individual actions of party leadership, except where these persons can be proven to act as representatives of the party as a whole.<sup>100</sup> For dissolution to be justified, it must be shown that it was the party's statutory body (not individual members) that set objectives and undertook activities requiring such dissolution.<sup>101</sup> A party cannot be held responsible for its members' isolated actions, especially if such action is contrary to the party constitution or party activities.<sup>102</sup> Thus, actions undertaken or words expressed online or offline by particular individuals within a party, while not officially representing the party, should be attributed only to those individuals. The same applies for the individual behavior of members that is not authorized by the party within the framework of political/public and party activities.<sup>103</sup> In such cases, appropriate civil and criminal sanctions may be enacted against such individuals.

119. However, that the official programme of a political party is not incompatible with Convention standards is not the sole criterion for determining its objectives and intentions. The past has shown that political parties having such aims contrary to the fundamental principles often do not reveal these in their official publications until after seizing power. So, the content of the programme must be compared with the actions of the party's leaders and the positions they defend, which taken together may disclose the actual aims and intentions of the party and may justify its dissolution.<sup>104</sup>

#### e. Serious, Imminent Threat

120. Finally, it must be observed that it is not necessary that a political party has seized power and is in the process to implement its policy incompatible with the standards of the Convention and democracy, even though the danger of that policy for democracy is sufficiently established and imminent. The Court "accepts that where the presence of such a danger has been established by the national courts, after detailed scrutiny subjected to rigorous European supervision, a State may reasonably forestall the execution of such a policy, which is incompatible with the Convention's provisions, before an attempt made to implement it through concrete steps that might prejudice civil peace and the country's democratic regime." In sum, the overall examination of whether prohibition or dissolution of a political party is justified 'must concentrate on the following points: (i) whether there was plausible evidence that the risk to democracy, supposing it had been proved to exist, was sufficiently imminent; (ii) whether the act and speeches of the leaders and members of the political party formed a whole which gave a clear picture of a model of society conceived and advocated by the party which was incompatible with the concept of "a democratic society".<sup>105</sup>

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<sup>100</sup> The acts and speeches of a political party's leaders were considered as capable of being imputed to the whole party in the particular circumstances examined in ECtHR, *Refah Partisi (the Welfare Party) and Others v. Turkey* [GC], nos. 41340/98 and 3 others, 13 February 2003, paras. 101-103. See also ECtHR, *Party for a Democratic Society (DTP) and Others v. Turkey*, nos. 3840/10 and 6 others, 12 January 2016, para. 85, where the Court noted that in this context, the role of a party leader, often an emblematic figure of a party, differed from that of a simply party member.

<sup>101</sup> Guidelines on Prohibition and Dissolution of Political Parties and Analogous Measures, *op. cit.*, note 2, para. 51.

<sup>102</sup> *Ibid.* The ECtHR held dissolution to be disproportionate where this was based on remarks of a political party's former leader (ECtHR, *Dicle for the Democratic Party (DEP) of Turkey v. Turkey*, no. 25141/94, 10 December 2002, para. 64).

<sup>103</sup> Guidelines on Prohibition and Dissolution of Political Parties and Analogous Measures, *op. cit.*, note 2.

<sup>104</sup> ECtHR, *Refah Partisi (the Welfare Party) and Others v. Turkey* [GC], nos. 41340/98 and 3 others, 13 February 2003, para. 101.

<sup>105</sup> *Ibid.*, para. 104.

## f. Article 17 ECHR (the ‘Abuse Clause’)

121. In addition to Article 11(2) ECHR, Article 17 of the Convention<sup>106</sup> – often referred to as the ‘abuse clause’ – contains a special limitation clause that might be applied to political parties. It prevents groups and individuals from successfully invoking the Convention to justify acts aimed at the destruction of Convention rights and freedoms of others or restrict them further than the Convention provides for.<sup>107</sup> Its objective is to protect democracy and the fundamental rights of all against its enemies, and thus reflects the concept of a militant democracy (*wehrhafte Demokratie*). The concept as such, that the Convention rights may not be used to destroy democracy and other’s Convention rights, forms the backbone of several Court judgments.<sup>108</sup> But although this provision has a symbolic value, its practical value as concerns political parties is nearly nil. It may be applied only “on an exceptional basis and in extreme cases”<sup>109</sup>. Furthermore, whenever destructive activities of a political party would justify its prohibition under Article 17 ECHR, these are also covered by the restriction clause of Article 11(2) ECHR. The European Commission in Human Rights has applied Article 17 only in two cases concerning a prohibition of political parties;<sup>110</sup> the Court until now has never done so.<sup>111</sup>

## 4. Regulation of Political Parties in Parliament

### a. Functions and Guarantees

122. While in many constitutions in the OSCE and Council of Europe region, members of parliament are seen as autonomous in their decision-making and their autonomous status may be expressly regulated, most of them nevertheless represent a specific political party, and usually act in accordance with their party’s aims and programmes. In that perspective, members of parliament play a dual role, as public officials serving the public interest and as representatives of their political parties. The statutes of many parties explicitly identify their parliamentary party groups as elements of the party itself. While the constitutions of many countries recognize that MPs legally possess a free mandate, MPs ordinarily act as members of their parliamentary party groups, and the standing orders or practices of parliaments generally recognize those parliamentary party groups as an important basis for parliamentary organisation and the allocation of resources.<sup>112</sup>

123. Political parties thus play a vital role in parliaments with regard to law making, oversight, and channeling public debate. Political parties, especially if they are in the opposition, need to be protected in order to fulfil those functions effectively. Due to their unique position within the parliamentary context, it is also necessary to regulate their functioning in a way that helps promote transparency and minimizes the risk of

<sup>106</sup> Article 5(1) ICCPR contains a similar provision.

<sup>107</sup> ECtHR, *Ždanoka v. Latvia* [GC], no. 58278/00, 16 March 2006, para. 109: Article 17 aims “to prevent totalitarian or extremist groups from justifying their activities by referring to the Convention.”

<sup>108</sup> See for instance ECtHR, *Refah Partisi (the Welfare Party) and Others v. Turkey* [GC], nos. 41340/98 and 3 others, 13 February 2003, paras. 98-99; ECtHR, *Ždanoka v. Latvia* [GC], no. 58278/00, 16 March 2006, paras. 98-101.

<sup>109</sup> ECtHR, *Perinçek v. Switzerland* [GC], no. 27510/08, 15 October 2015, para. 114.

<sup>110</sup> EComHR, *German Communist Party v. Germany* (dec.), no. 250/57, 20 July 1957; EComHR, *Glimmerveen and Hagenbeek v. the Netherlands* (dec.), nos. 8348/78 and 8406/79, 11 October 1979.

<sup>111</sup> The Court has however applied this provision in the case of *Hizb Ut-Tharir and Others v. Germany* (dec.), no. 31098/08, 12 June 2012, concerning an association in Germany advocating violent destruction of Israel and defending suicide attacks.

<sup>112</sup> Nonetheless, MPs remain free to leave their parliamentary party groups, and these groups in turn remain free to expel individual MPs, which in most countries will merely result in the loss of party membership, but not in the loss of the MP’s parliamentary mandate. See sub e, on the free mandate.

corruption and abuse of power.

124. Both the protection of the rights of parliamentary parties and regulations on their activities and members may be included in the standing orders of parliaments themselves, but they may also be included in other statutes or even in the national constitution.<sup>113</sup> When drafting rules regarding parliamentary parties, a balance has to be struck among four important objectives.

125. First: responsible participation in overseeing the government (see also Principle 12). This means that those parties that are represented in parliament (both majority and opposition parties) must act responsibly when overseeing and seeking to have an impact on the government's course of action. Second: the rights of the opposition must be protected against transgressions by either the executive or the parliamentary majority. While the opposition should not have an unbridled right to prevent the majority from implementing its priorities, it still needs to be heard and protected, so as to complement the role of the majority in Parliament, and ensure proper oversight and effective debates and as a way of informing the public of alternative viewpoints.<sup>114</sup> Third: the opportunities for corruption specifically within parties in the parliamentary context should be limited if not excluded. Corrupt members of parliament or parties should be held to account, both through public exposure and, in serious cases, through criminal prosecution, while observing the functional immunity of parliament and of its members, and the principle of proportionality.<sup>115</sup> The fourth objective is connected to the fact that democratic pluralism is often about building and rebuilding cooperation, such as formal or informal parliamentary groups or coalitions, or cross-party committees, which will be composed of representatives from a variety of political parties. In order to be effective, the system in place should be favorable to any form of cooperation, whether permanent or temporary, and should include the provision of resources to members of such parliamentary groups. At the same time, allowances should be made for the possible fusion or splitting of parliamentary party groups or for possible changes of allegiance between different parties on the part of individual members of parliament.

## **b. Majority Rule**

126. While MPs will not always vote in accordance with party lines and programmes, they still tend to do so in the vast majority of cases. The party or parties commanding a majority in parliament are, depending on the extent of the majority that they have, able to influence the course of parliamentary action. To facilitate the work of the parliament, it should be able to decide on ordinary questions of legislation or procedure by simple majority. Qualified majorities, such as actions or decisions requiring two-thirds of the votes of all MPs, may be required for issues of extraordinary importance, such as constitutional amendments or changes to the standing order of the parliament. Parliamentary committees with the power to block the passage of ordinary legislation should be composed in such a way that parties commanding a majority in the plenum also have a majority in the committee. The parliamentary majority should have

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<sup>113</sup> For example, Article 82 of the Italian Constitution requires that parliamentary committees of enquiry be constituted "so as to represent the proportionality of existing Parliamentary Groups." See also the Swedish Riksdag Act; French Constitution art. 51(1).

<sup>114</sup> See Venice Commission, CDL-AD(2019)015, Parameters on the Relationship between the Parliamentary Majority and the Opposition in a Democracy: A Checklist.

<sup>115</sup> See, albeit with regard to ineligibility to be elected and loss of mandate: Venice Commission, CDL-AD(2015)036, Report on Exclusion of Offenders from Parliament, available at [http://www.venice.coe.int/webforms/documents/default.aspx?pdffile=CDL-AD\(2015\)036-e](http://www.venice.coe.int/webforms/documents/default.aspx?pdffile=CDL-AD(2015)036-e) paras. 18-29; see also Venice Commission, CDL-AD(2014)011, Report on the Scope and Lifting of Parliamentary Immunities. Available at [http://www.venice.coe.int/webforms/documents/default.aspx?pdffile=CDL-AD\(2014\)011-e](http://www.venice.coe.int/webforms/documents/default.aspx?pdffile=CDL-AD(2014)011-e).

sufficient control over the parliamentary agenda to ensure that its proposals are adequately considered.

### **c. Rights of Parliamentary Opposition Parties<sup>116</sup>**

127. The rights of opposition parties have to be effectively protected in parliament. Of course, all individual MPs should have the same individual rights irrespective of whether they belong to the ruling majority or to the opposition.<sup>117</sup> Furthermore, it might sometimes be permissible or even advisable to provide additional resources or rights to opposition parties.<sup>118</sup> At a minimum, all opposition party groups and their individual members should be given adequate resources to perform their functions. Such resources include, but are not limited to, access to government documents, control over a reasonable share of parliamentary time and support from parliamentary assistants. Each party in parliament should have the opportunity to be represented on committees in rough proportion to its number in parliament. This rule should not, however, apply in the same way for (ad hoc) investigative committees reviewing actions of the government or of the majority party, as otherwise these committees would not be sufficiently independent to conduct their work effectively. While some countries allocate a share of committee chairmanships to opposition parties, others assign all such positions to members of the parliamentary majority.

128. Opposition parties should have the ability to sometimes set the parliamentary agenda, hold public hearings, be involved in budget discussions, and conduct investigations without the assent of the executive or parties supporting the executive, in order to strengthen the control function of the opposition.<sup>119</sup>

### **d. Use of Public Resources**

129. Parliamentary party groups and individual members of parliament may be required to account for all public resources allocated to them.<sup>120</sup> The use of public resources for the performance of parliamentary duties may be limited or suspended in proximity to elections to minimize the structural advantages of incumbency and the appearance of a self-protecting cartel of parties in parliament. Ethical codes of conduct related to parliamentarians could help raise awareness of appropriate behavior with respect to the use of funds.

130. In order to avoid any misuse of public resources during electoral processes by the incumbents which might create an inequality particularly between the government party/parties and the opposition party/parties, but even more for those having no representation in parliament, the legislation on public grants to political parties should be based on the principle of equality and should provide mechanisms for a certain public inspection and auditing of the economic conditions of the parties.<sup>121</sup>

### **e. Free Mandate**

131. There should be no imperative mandate, that is a member of parliament should not be legally bound by his/her electorate's or party's instructions when debating or

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<sup>116</sup> See in more detail: Venice Commission, CDL-AD(2019)015, Parameters on the Relationship between the Parliamentary Majority and the Opposition in a Democracy: A Checklist.

<sup>117</sup> *Ibid.*, para. 40-42.

<sup>118</sup> *Ibid.*, para. 122 ff.

<sup>119</sup> *Ibid.*, para. 94-101.

<sup>120</sup> See also ODIHR Background Study: Professional and Ethical Standards for Parliamentarians (2012), p. 49-51.

<sup>121</sup> See, Venice Commission, CDL-AD(2013)033, Report on the misuse of administrative resources during electoral process (2013), paras. 127-132.

voting on a particular issue.<sup>122</sup> According to a generally accepted democratic principle, the parliamentary mandate belongs to an individual MP, because he/she receives it from voters via universal suffrage and not from a political party.<sup>123</sup> Parties, given that they are ‘instruments, not owners of the social contract between the electors and the parliament’, should thus not have the power to retroactively annul an MP’s electoral appointment.<sup>124</sup> At the same time, parliamentary parties should be free to expel any member of parliament from the party group, while taking into account the principle of non-discrimination, and to deprive an expelled parliamentarian of any committee position or public resources allocated to the party. However, the expulsion of a member of parliament from his/her parliamentary group should not result in the loss of the parliamentary mandate, nor should party/coalition leadership have any say as to the loss of an individual parliamentary mandate.<sup>125</sup> Although in some states there is such legislation, the Venice Commission has argued that “the basic constitutional principle which prohibits imperative mandate or any other form of politically depriving representatives of their mandates must prevail as a cornerstone of European democratic constitutionalism.”<sup>126</sup> An MP should also keep the funds that he/she received as a result of his/her parliamentary mandate, but legislation and/or standing orders should specify what happens to funds received on behalf of the respective parliamentary group.

132. Some parties have adopted voluntary measures to respond to changes in political affiliation, such as multiparty codes of conduct that oblige parties to refuse membership to elected officials attempting to change affiliation. It is the right of a political party to refuse membership in a case where it believes a person does not fundamentally uphold the party’s values, and on the other hand it has the right to accept elected officials as new members if this is deemed warranted and desired.

## 5. Equal Treatment of Political Parties

133. The norms of equality and non-discrimination operate at various levels. A first level is that of equal treatment by the state of *political parties*, including as concerns the formation of political parties. A second level concerns the equal treatment *by political parties* of individuals seeking to become members of that party (*external* relation between a political party and individuals, dealt with in Part I.7). A third level is the equal treatment *by political parties of their own individual members* (*internal* relation between a political party and its individual members, to be discussed in Part II.3 - Choosing Party Leadership and Candidates).

134. Individuals and groups that seek to establish a political party must be able to do so on the basis of equal treatment before the law.<sup>127</sup> No one wishing to associate as a political party shall be advantaged or disadvantaged in this endeavour. In

<sup>122</sup> See e.g., Venice Commission, CDL-AD(2016)018, Opinion on the Amendments to the Law on Elections Regarding the Exclusion of Candidates of Ukraine, paras. 12-15.

<sup>123</sup> ECtHR, *Paunović and Milivojević v. Serbia*, no. 41683/06, 24 May 2016, para. 63.

<sup>124</sup> Venice Commission, CDL-AD(2009)027, Report on the Imperative Mandate and Similar Practices, para. 34 and CDL-AD(2016)018, Opinion on the Amendments to the Law on Elections Regarding the Exclusion of Candidates of Ukraine, paras. 12-15.

<sup>125</sup> See ODIHR Venice Commission Joint Opinion on the Draft Law “On Introduction of Changes and Amendments to the Constitution” of the Kyrgyz Republic (19-20 June 2015), paras. 48-52. See also 7.9 Copenhagen Document (1990); Parameters, paras. 51-55.

<sup>126</sup> See Venice Commission, CDL-AD(2009)027, Report on the Imperative Mandate and Similar Practices, para. 39.

<sup>127</sup> The Copenhagen Document, para. 7.6, states that “Participating States will respect the right of individuals and groups to establish, in full freedom, their own political parties or other political organisations and provide such political parties and organisations with the necessary legal guarantees to enable them to compete with each other on a basis of equal treatment before the law and by the authorities.”

particular, state regulations on establishment of political parties may not discriminate on any ground such as race, colour, gender, language, religion or belief, political or other opinion, national or social origin, property, birth, sexual orientation or other status of those who want to establish a political party.<sup>128</sup> On the other hand, states have considerable latitude to establish the conditions for participation in elections which vary in accordance with historical and political factors.<sup>129</sup> In principle, equality requires that parties representing national minorities should be permitted.<sup>130</sup> However, States may prohibit the establishment or registration of a political party based exclusively on ethnic affiliation and advocating the promotion of that particular ethnic majority, when it would be perilous in the prevailing political context to foster electoral competition between political parties based on ethnic or religious affiliation. However, a blanket ban on the establishment of political parties with religious or ethnic attributes would, as a rule, be disproportionate.

135. The state shall not discriminate between political parties on the basis of their political programs or membership. It is permissible however to condition state support, notably financial, on respect by the party of non-discrimination, equality and public order obligations (when dissolution is not applicable). It is also permissible to require that parties demonstrate an adequately identified level of support before receiving specific benefits accruing from the status of “party”. It is also permissible to tailor both the stringency of enforcement of regulations and the penalties for violations to the size and resources of parties, so as not to unduly burden new or small parties.

136. State authorities shall treat political parties on an equal basis and, as such, remain neutral with regard to the establishment, registration and activities of political parties. Authorities should refrain from measures that could privilege some political parties and disadvantage others. This holds good insofar as these parties are in similar positions with respect to size and influence. Thus, parties that are already in parliament may receive higher levels of state support than parties that are not (yet) in parliament, but may then also be subjected to stricter reporting obligations (see para. 56 *infra*). All political parties should be given opportunities to participate in elections free from distinction or unequal treatment by authorities.

137. Within the political realm, requirements for equality may be interpreted to be absolute (for instance: every party in parliament is treated the same way) or may be made on a proportional or “equitable” basis (they may, for instance, be determined by the number of seats a party holds in parliament). Both ways of treatment (absolute/strict resp. proportional equality) should not be considered discriminatory, as long as they are based on objective and reasonable grounds.

138. As part of their obligation to facilitate and protect the right to associate of all persons, states may ensure that the representation of minority groups through political parties based on grounds of ethnicity, gender or religion<sup>131</sup> is not impeded by electoral rules, nor by legislation requiring a certain regional representation for the establishment of political parties, nor by imposing a high vote threshold or a minimum percentage of seats for entering the parliament.

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<sup>128</sup> See, for example, Articles 2 and 26 of the ICCPR; Article 14 and Protocol 12 of the ECHR.

<sup>129</sup> ECtHR, *Artyomov v. Russia* (dec.), 17582/05, 7 December 2006.

<sup>130</sup> Code of Good Practice in Electoral matters, I.2.4 (equality and national minorities).

<sup>131</sup> ECtHR, *Staatkundig Gereformeerde Partij v. The Netherlands* (dec.), no. 58369/10, 12 July 2012, paras. 70-77. where the principle of gender equality was allowed to overrule the religious convictions of a Calvinist political party, which believed that women should not be allowed to stand for election as its candidate.

## 6. Equal Treatment *by* Political Parties: Admission, Restrictions

139. The right to freedom of association generally entitles those forming an association to choose whomever they wish to form that association with and who afterwards to admit as members. Although every individual has a right to freely associate, that does not imply that a political party, itself bearer of the freedom of association, should be required to accept individuals as members who do not share its own core beliefs and values. As the Court has stated, “*Article 11 cannot be interpreted as imposing an obligation on associations or organisations to admit whosoever wishes to join. Where associations are formed by people, who, espousing particular values or ideals, intend to pursue common goals, it would run counter to the very effectiveness of the freedom at stake if they had no control over their membership.*”<sup>132</sup> It is therefore evident that a political party on the basis of the freedom of association may exclude membership for those who do not share (or are indifferent to) the political ideology, religion, belief or socio-economic principles the party is based upon.

140. The freedom of a political party to establish its own criteria for membership is not unlimited, and to a certain extent the principles of equality and non-discrimination may be applicable. However, in the case of political parties formed on ethnic grounds, linguistic criteria or a religious ideology it seems permissible for them to maintain control over their membership based on such grounds, provided that the membership requirements have some objective and rational basis. While it is permissible (see para. 132) and more rational to require allegiance to the aims of a party rather than to impose restrictions based on belonging to the specific category of persons whose interests the party seeks to promote, that party could argue that the use of restrictive membership criteria in cases where the aim is to tackle structural discrimination faced by its members is justified in order to seek to redress specific instances of historical exclusion and oppression by the majority for their indigenous or otherwise marginalized members, or to protect their minority religion or culture. Indeed, Article 7 of the Framework Convention for the Protection of National Minorities (FCNM) requires that “[State p]arties shall ensure respect for the right of every person belonging to a national minority to freedom of peaceful assembly, freedom of association, freedom of expression...”. Further, the United Nations Declaration of the Rights of Persons Belonging to National or Ethnic, Religious and Linguistic Minorities states that “persons belonging to minorities may exercise their rights... individually as well as in community with other members of their group, without any discrimination” (Article 3(1)). Such instruments guarantee these minority groups the right to form their own political parties, and to base their admission policy on specific criteria in order to maintain the cohesion of their membership and political aims. It might be assumed that other minorities protected by treaties allowing for special favorable measures aiming at achieving *de facto* equality also qualify for having their ‘own’ political parties.<sup>133</sup>

## 7. Freedom of the Individual; Restrictions

### a. Freedom of the Individual

141. It is vital to note that associations of individuals with political parties must be voluntary in nature. As indicated by the definition of political parties provided in this text and as enshrined in the Universal Declaration of Human Rights (Article 20), all individuals must be free to belong to or abstain from joining associations as is their preference. Membership should be an expression of an individual’s free choice to

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<sup>132</sup> ECtHR, *Associated Society of Locomotive Engineers and Firemen (ASLEF) v. the United Kingdom*, no. 11002/05, 27 February 2007, para. 39.

<sup>133</sup> See on these treaties, paras. 68 *et seq.*



utilize the collective means of a political party for the full enjoyment of his/her individual right to freedom of expression and opinion and the right to vote and stand for election.

142. The freedom of association not only includes the *positive* right to establish associations – like political parties – and to become member of such associations. In this freedom is also contained the *negative* right, implied in Article 11 ECHR and Article 21 ICCPR and explicitly recognised in Article 20(2) UDHR, not to participate and not to become a member. The case law of the ECtHR concerning the right not to join a trade union is equally applicable to the right not to become a member of a political party.<sup>134</sup>
143. Members of political parties therefore must also be able to cancel their membership at any time. Cancellation of membership is a key element of the voluntary nature of association and should occur without fine or penalty. In particular, in the case of party mergers, splinter groups or the formation of new platforms, party members should be allowed the freedom to continue or terminate their membership activity as they see fit.
144. On the other hand, as already observed in paras. 138 *et seq.*, individuals are not guaranteed membership in any association based on a common ideology or belief to which they do not subscribe. It is justifiable for parties to withhold or withdraw membership from an applicant or member who rejects the values they uphold, or who acts against the values and ideas of the party.

#### **b. Restrictions on Civil Servants, Police, Armed Forces, Members of State Administration (Article 11(2) ECHR)**

145. The requirement to give up membership of a legal political party is a restriction of the freedom of association, that has to be justifiable under Article 11(2) of the Convention. For instance in the *Vogt* case the Court ruled that the dismissal of a civil servant because she refused to dissociate herself from the DKP (German Communist Party) was disproportionate in the light of Article 11(2) of the ECHR.<sup>135</sup> And in *Redfearn* the Court also concluded that there was a violation of Article 11, in the case of a bus driver in a private company that provided services to the local authority, with an impeccable record, who was fired after his election as a member of the municipal council for the British National Party.<sup>136</sup>
146. The last sentence of Article 11(2) ECHR and Article 22(2) ICCPR allow for further limitations to be placed by states on the free association of three categories of persons: police, members of the armed forces and members of the administration of the state.<sup>137</sup> The ECtHR has recognised this provision as justifying restrictions on the political activities of these categories of persons, to ensure their impartiality and the proper functioning of their non-partisan public offices.<sup>138</sup> Therefore, partisan political participation and party membership of state administrative officials may be regulated

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<sup>134</sup> ECtHR, *Young, James and Webster v. the United Kingdom*, nos. 7601/76 and 7806/77, 13 August 1981, para. 56; ECtHR, *Sigurður A. Sigurjónsson v. Iceland*, no. 16130/90, 30 June 1993, para. 35: 'Article 11 must be viewed as encompassing a negative right of association'; ECtHR, *Sørensen and Rasmussen v. Denmark* [GC], nos. 52562/99 and 52620/99, 11 January 2006, para. 56.

<sup>135</sup> ECtHR, *Vogt v. Germany*, no. 17851/91, 26 September 1995, paras. 64-65.

<sup>136</sup> ECtHR, *Redfearn v. the United Kingdom*, no. 47335/06, 6 November 2012.

<sup>137</sup> Article 22(2) of the ICCPR states that "This article shall not prevent the imposition of lawful restrictions on members of the armed forces and of the police in their exercise of this right".

<sup>138</sup> See ECtHR, *Rekvenyi v. Hungary*, no. 25390/94, 20 May 1999, para. 41, with respect to police officers, and ECtHR, *Ahmed and Others v. the United Kingdom*, no. 65/1997/849/1056, 2 September 1998, para. 53, with respect to senior government. While both cases relate to freedom of expression, they do concern political activities of the applicants.

or denied in order to ensure that such persons are able to fulfil their public functions free from any conflict of interest.

147. Various states also limit the partisan political activity of judges (and in some cases of their spouses as well) in order to maintain confidence in their impartiality and independence. Opinion no. 3 of the Consultative Council of European Judges (CCJE 2002), while recognizing the importance of impartiality and advising restraint on the part of judges, recognizes that “judges remain citizens and should be allowed to exercise the political rights enjoyed by all citizens.”
148. Restrictions on the free political association of public officials have also been deemed legitimate and necessary in a democratic society as a means of ensuring the rights and freedoms of others, particularly the right to representative governance. In *Ahmed v. United Kingdom*,<sup>139</sup> the ECtHR found no violation with respect to the United Kingdom’s decision to restrict certain classes of public-office holders in their political activities, in cases that could imply bias. In *Strzelecki v. Poland* the prohibition against police officers becoming members of a political party and participating in political activities was upheld, because of the legitimate aims of maintaining the neutrality and impartiality of the police and the confidence of the public on the police.<sup>140</sup> Although generally legitimate, such restrictions may be considered undue infringements if they are applied in an overly broad manner, e.g. to all persons in government service.<sup>141</sup>

### c. Restrictions on Aliens (Article 16 ECHR)

149. Article 16 of the ECHR enables states to restrict aliens further than nationals in relation to their political activities under Articles 10 and 11 ECHR, such as establishing of and participating in political parties. This provision allows for restrictions on political activities without the need to be justified under Articles 10(2) and 11(2). The Grand Chamber has argued that Article 16 reflects an outdated understanding of international law<sup>142</sup>, and that an ‘*unbridled reliance on [this provision] to restrain the possibility for aliens to exercise their right freedom of expression would run counter against the Court’s rulings in cases in which aliens have been found entitled to this right without any suggestion that it could be curtailed by reference to Article 16*’.<sup>143</sup> These considerations were made in the specific context of the *Perinçek* case which concerned the right to freedom of expression guaranteed under Article 10 ECHR “regardless of frontiers”. At the same time, the Court also held that Article 16 should be construed as only capable of authorising restrictions on “activities” that *directly* affect the political process. Therefore, taking also into account the recommendation of the Parliamentary Assembly that the restrictions at present authorised by Article 16 with respect to political activity by aliens are excluded<sup>144</sup>, the Commission and the OSCE/ODIHR take the view that only the possibility of aliens to establish political parties can be restricted under Article 16. Nevertheless, the latter provision should not be applied in order to restrict the membership of aliens to political parties. Furthermore, it should be underscored that according to Articles 39 and 40 of the EU Charter of Fundamental Rights of the European Union, every citizen of the Union has the right to vote and to stand as a candidate at elections to the European Parliament and at municipal elections in the member states in which he/she resides.

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<sup>139</sup> ECtHR, *Ahmed and Others v. the United Kingdom*, no. 65/1997/849/1056, 2 September 1998.

<sup>140</sup> ECtHR, *Strzelecki v. Poland*, no. 26648/03, 10 April 2012.

<sup>141</sup> See, for example the case of *Vogt v. Germany*, no. 17851/91, 26 September 1995, where the Court found that the dismissal of a public teacher on the basis of her membership in a political party was an infringement of her rights as set out in Articles 10 and 11 of the ECHR.

<sup>142</sup> The ICCPR does not contain an exceptional provision such as Article 16 ECHR.

<sup>143</sup> ECtHR, *Perinçek v. Switzerland* [GC], no. 27510/08, 15 October 2015, para. 121.

<sup>144</sup> Recommendation 799 (1977) on the political rights and position of aliens.

#### **d. Restrictions on Multiple Membership**

150. Although simultaneous membership in multiple political parties has historically been discouraged, free association is a fundamental individual right that should not generally be limited by legislative requirements obliging an individual to only associate with a single organisation. Therefore, laws that limit party membership to only one political party must show compelling reasons for doing so. Such legislation should thus be assessed carefully and only maintained if compatible with the ECHR. In particular, in states with sub-national party structures that allow parties to compete at only the regional or local level, the ability to participate in multiple parties is fundamental to any person's free expression of will. At the same time, individual parties' internal rules may allow for termination of membership of any of their members who join or participate in other political parties.

### **PART II. INTERNAL FUNCTIONING OF POLITICAL PARTIES**

#### **1. Regulation of Internal Party Structures and Activities; Internal Party Democracy**

151. The internal functions and processes of political parties should generally be free from state interference. Internal political party functions are best regulated through the party constitutions or voluntary codes of conduct elaborated and agreed on by the parties themselves. Legal regulation of internal party functions, where applied, must be narrowly construed so as to respect the principle of party autonomy and not to unduly interfere with the right of parties as free associations to manage their own internal affairs. Several CoE/OSCE participating States require that certain internal party functions be democratic in nature. Such measures may help to ensure that internal party processes, such as party qualifications for membership, candidacy, access to decision-making, internal promotion, access to party resources and party activities, are transparent and provide for equal participation.

152. In some contexts, internal party democracy "fulfils the citizens' legitimate expectation that parties, which receive public funding and effectively determine who will be elected to public office, 'practice what they preach', conforming to democratic principles within their own organisations".<sup>145</sup> As parties contribute to the expression of political opinion and are vital for political participation, some regulation of internal party activities and governance may be appropriate to ensure the proper functioning of a democratic society. However, not all countries adhere to this approach, and leave it to parties to determine their level of internal democracy. If imposed, such measures should be proportionate, and states should choose those measures which place the least burden on political parties' freedom while effectively reflecting democratic principles.

153. In the last decades many countries have increasingly shifted towards the imposition of requirements concerning the internal structures and functioning of political parties.<sup>146</sup> The most commonly accepted regulations are rules pertaining to membership (essentially the right to join or leave a party, including appeals mechanisms), the body nominating candidates, the freedom to select candidates, transparency requirements for parties' decision-making and recording of actions and the roles played by their members when determining party constitutions. With regard

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<sup>145</sup> Venice Commission, CDL-AD(2009)002, Explanatory Report to the Code of Good Practice in the Field of Political Parties, para. 101.

<sup>146</sup> Venice Commission, CDL-AD(2015)020, Report on the Method of Nomination of Candidates within Political Parties.

to the freedom to select candidates, a growing number of states require parties to introduce special measures with respect to the candidate lists or in the form of reserved seats. In general, the more democratic and transparent internal party regulations are, the greater the opportunities for various groups of society to participate in public and party life. Greater diversity within and among parties may thus be encouraged (see in more detail para. 3 in this Part). However, such requirements may also jeopardise the stability of political parties' decision-making, and may impair parties to formulate their specific ideology or philosophy and select their candidates based on their views, thus potentially limiting political pluralism and diversity. Generally, it is important to strike a balance between transparency and participation on the one hand, and to ensure party autonomy and effective decision-making powers on the other.

154. Overall, state control over political parties should remain at a minimum, and should be limited to what is necessary in a democratic society. In particular, political parties should control their own internal procedures; extensive state monitoring or judicial review of the internal functioning of a political party, including the requirement for the party to provide the state with lists of its members, would appear to be an overly intrusive measure that is not compatible with the principles of necessity and proportionality.<sup>147</sup> In sum, any political or other excessive state control over activities of political parties, such as membership, number and frequency of party congresses and meetings, operation of territorial branches and subdivisions should be avoided.<sup>148</sup>

155. In sum, how the balance between external regulation to create a minimum of democratic and equal participation within parties on the one hand and internal autonomy of parties on the other hand must be struck, to a large extent depends on the dominant view on the status and functions of political parties. The Court, referring in the *Yabloko* judgment to the dichotomy between the egalitarian-democratic model and the liberal model, is sensitive to both views.<sup>149</sup> On the one hand it does not deny the competence of states to introduce some legislative requirements for the internal organisation and the selection of candidates for elections, in the interest of democratic governance. On the other hand, state authorities should not interfere too much with the internal matters of political parties: it is up to the parties themselves to determine in which way their conferences and decision procedures are organized. Likewise, it should primarily be up to the political party and its members and not to the public authorities to ensure that the relevant formalities are observed in the manner specified in its articles of association. So, on the one hand, some kind of state regulation of the inner workings of political parties may be acceptable. But, on the other hand, it is in principle acceptable that state interference is limited to "requirements for parties to be transparent in their decision-making and to seek input from their membership when determining party constitutions and candidates"<sup>150</sup>

## 2. Internal Party Rules

156. Legislation regarding political parties does not always require the formulation or publication of party statutes or other founding documents. However, even when not required, such party constitutions can be an important step in ensuring a party's

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<sup>147</sup> Venice Commission, CDL-AD(2012)003, Opinion on the Law on Political Parties of the Russian Federation, paras. 43 and 53.

<sup>148</sup> *Ibid.* See also Venice Commission, CDL-AD(2004)007, Guidelines and Explanatory Report on Legislation on Political Parties, Guideline C.

<sup>149</sup> ECtHR, *Republican Party of Russia v. Russia*, no. 12976/07, 12 April 2011, para. 88; ECtHR, *Yabloko Russian United Democratic Party and Others v. Russia*, no. 18860/07, 8 November 2016, para. 79.

<sup>150</sup> ECtHR, *Republican Party of Russia v. Russia*, no. 12976/07, 12 April 2011, para. 88; ECtHR, *Yabloko Russian United Democratic Party and Others*, no. 18860/07, 8 November 2016, para. 79, referring to para. 98 of the (2010) Guidelines on Political Party Regulation.

commitment to democratic governance, transparency and regularity of its functioning as well as to equal opportunities. Not all parties are structured as internally democratic associations of their members. In various parties, members are understood to be supporters, rather than decision-makers. There even are political parties that are not membership-based, formally and/or in fact consisting only of a leader and possibly a few colleagues<sup>151</sup> (see para. 14).

157. If a party is to be internally democratic, either by choice or in response to requirements of the law, a party statute can also help ensure that members are informed about their rights and responsibilities. In these cases, the party statute and its amendments should ideally be approved following a participatory process, such as a party congress or following an internal debate. While the text of the statute may be drafted by party leadership, it usually should be adopted or rejected in a vote of the party members. The final text of the party statute should then be made widely available.

158. Party statutes generally define the rights and duties of party members and organisations, as well as procedures for decision-making. These documents may also define the responsibilities of parties at the local, regional and national levels, as well as the relationships between these different levels. The interpretation of party statutes, and of whether a party is meeting the requirements set out therein, rests initially with the political party itself, although in some cases party members may be able to turn to civil courts to enforce their rights as specified in the party statute.

159. Party statutes may ideally provide members, who believe that the party's statute has been violated in respect of them, with internal avenues of redress. Regulations that allow access to civil courts should only provide such access following the exhaustion of these internal avenues of redress, which may include internal tribunals or similar bodies.

160. Many parties in OSCE participating States and CoE member States have explicitly introduced the possibility or even the duty to introduce special measures to ensure equal opportunities for women and men to participate in party processes. These special measures are not to be regarded as discriminatory.<sup>152</sup> Political parties can for instance introduce provisions in their statutes to promote gender equality. These could include, for example, a minimum representation of each sex or women's sections in decision-making structures, electoral lists, nominations and appointments. Moreover, gender equality could be mentioned as a basic value in party statutes, policies and programmes.<sup>153</sup> Internal party rules and documents also can thus enhance the political participation of persons with disabilities and persons belonging to national minorities. The next paragraph deals with the issue of nomination of party leaders and candidates in more detail.

### **3. Choosing Party Leadership and Candidates; Equality, Non-Discrimination**

161. Political parties must be able to select party officers and candidates free of government interference. Where party leaders or candidates are chosen through intra-party ballots, they may need to follow legitimate party regulations, such as limits on

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<sup>151</sup> The second largest Dutch party in the Second Chamber of Parliament, the Partij voor de Vrijheid (PVV) formally is an association with only one member, its leader Geert Wilders.

<sup>152</sup> CEDAW Committee, General recommendation No. 23: Political and public life (1997), A/52/38/Rev.1, para. 47, which states that the obligation to eliminate all forms of discrimination in all areas of public and political life include such measures designed to: "Encourage non-governmental organizations and public and political associations to adopt strategies that encourage women's representation and participation in their work."

<sup>153</sup> The Beijing Declaration and Platform for Action, art. 191-192 (adopted 15 September 1995, Fourth World Conference on Women).

expenditure or donations and disclosure obligations, so that rules relating to transparency, equality and integrity are not circumvented at the intra-party level.

162. Recognizing that candidate selection and the determination of ranking on electoral lists is often dominated by closed entities and networks of established politicians, parties that aspire to internal party democracy should adopt clear and transparent criteria that are accessible to all members for candidate selection. Many parties have moved to using more transparent selection processes and other proactive measures to ensure equal opportunities in the selection of candidates. Often they have increased direct member participation in the selection of leaders and candidates by introducing one-member-one-vote selection processes, although often requiring either pre-vote selection or approval by party leaders of those who will appear on the member ballot or requiring post-vote ratification by the party's leadership. While direct member votes may increase the internal democracy of the party, they may also disadvantage women, members of minority groups, or persons with disabilities unless some sort of correction mechanism has been provided for.
163. Legislation on political parties may create incentives that help promote the full participation and representation of national and ethnic minorities, women and persons with disabilities in the political process. A state may allow or even dictate – in line with the international and regional instruments mentioned hereafter – temporary special measures aimed at achieving *de facto* equality and thus support full participation of national minorities, women, persons with disabilities and minorities in public life.<sup>154</sup>

#### **a. National and Ethnic Minorities**

164. Article 7 of the Framework Convention on National Minorities requires that State parties “shall ensure respect for the right of every person belonging to a national minority to freedom of peaceful assembly, freedom of association, freedom of expression...”. Further, the United Nations Declaration of the Rights of Persons Belonging to National or Ethnic, Religious and Linguistic Minorities states that “[p]ersons belonging to minorities may exercise their rights... individually as well as in community with other members of their group, without any discrimination” (Article 3(1)). Such instruments fully guarantee the right to form and associate with political parties to all members of these types of minority groups within a country's jurisdiction. Temporary special measures to increase minority political participation are not considered to constitute discrimination: they are explicitly allowed according to Article 1(4) of the International Convention on the Elimination of All Forms of Racial Discrimination (CERD).
165. Pursuant to Article 2 (1) of CERD, circumstances even may exist where State parties are legally obliged to adopt such special measures.<sup>155</sup> In this context, regard should be paid to General Recommendation No. 32 of the UN Committee on the Elimination of Racial Discrimination (CERD Committee), which states that “[s]pecial measures should be appropriate to the situation to be remedied, be legitimate, necessary in a democratic society, respect the principles of fairness and

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<sup>154</sup> Framework Convention on National Minorities, Article 4(2); CEDAW, Articles 3 and 4; CRPD, Article 5(4), UN Human Rights Committee, *Nicholas Toonen v. Australia*.

<sup>155</sup> The provision in question reads: “States Parties shall, when the circumstances so warrant, take, in the social, economic, cultural and other fields, special and concrete measures to ensure the adequate development and protection of certain racial groups or individuals belonging to them, for the purpose of guaranteeing them the full and equal enjoyment of human rights and fundamental freedoms”. Further detail on the mandatory nature of special measures in the context of the ICERD can be found in CERD Committee's General Recommendation No. 32 on the meaning and scope of special measures in the ICERD (2009) UN Doc CERD/C/GC/32 par. 30

proportionality, and be temporary”<sup>156</sup> and that measures “include the full span of legislative, executive, administrative, budgetary and regulatory instruments, at every level in the State apparatus, as well as plans, policies, programmes and preferential regimes in areas such as (...) participation in public life for disfavored groups”.<sup>157</sup>

## b. Gender

166. Women are guaranteed equal protection of all fundamental rights by a number of international instruments. Article 7(c) of the Convention on the Elimination of All Forms of Discrimination Against Women (CEDAW) prescribes that states shall take all appropriate measures to eliminate discrimination against women in the political and public life of the country and in particular ensure to women on equal terms with men the right to participate in non-governmental organisations and associations concerned with the political life of the country.<sup>158</sup> Article 3 of the 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 the CEDAW makes clear that temporary 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”. These requirements are further specified in General Recommendation No. 23 of the CEDAW Committee on Political and Public Life<sup>159</sup> and Recommendation No. 25 of the CEDAW Committee on Temporary Special Measures.<sup>160</sup> The Beijing Platform for Action encourages political parties to consider a set of specific measures to ensure women's equal access to and full participation in power structures and decision-making including examining party structures and procedures, developing specific initiatives, and incorporating gender issues into political agendas.<sup>161</sup>

167. Moreover, various OSCE and Council of Europe documents and recommendations have, over the last decade, called upon states to counteract the continued under-representation of women in decision-making structures in the OSCE

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<sup>156</sup> CERD Committee General Recommendation No. 32 on the meaning and scope of special measures in the International Convention on the Elimination of All Forms of Racial Discrimination (2009) UN Doc CERD/C/GC/32 par. 16.

<sup>157</sup> CERD Committee General Recommendation No. 32 on the meaning and scope of special measures in the International Convention on the Elimination of All Forms of Racial Discrimination (2009) UN Doc CERD/C/GC/32 par. 13.

<sup>158</sup> In 2010 the Dutch Court of Cassation dealt with a case concerning a strict Orthodox-Calvinist party that for religious reasons did not allow women to stand as candidates for his party in elections. The Court ruled that in spite of these reasons the state was allowed to take measures against this party (without specifying what kind of measures), because this policy violated *inter alia* Article 7c CEDAW. Although no woman had expressed the wish to stand for election as a candidate for this party, The Strasbourg Court concurred with this judgment, on the basis of Article 14 in conjunction with Article 3 Protocol 1 of the ECHR. It sufficed to mention the advancement of the equality of the sexes as a major goal of the Council of Europe, without an explicit balancing of the non-discrimination principle with the political party's rights under Article 11 in combination with Article 9 of the ECHR: ECtHR, *Staatkundige Gereformeerde Partij v. the Netherlands* (dec.), no. 58369/10, 10 July 2012, paras. 70-77.

<sup>159</sup> CEDAW Committee Recommendation No. 23: “Political and Public Life” (1997) GAOR 52<sup>nd</sup> Session Supp 38, Rev. 1, 61.

<sup>160</sup> CEDAW Committee Recommendation No. 25: “Temporary Special Measures” (2004) GAOR 59th Session Supp 38, Rev. 1, 79.

<sup>161</sup> Through the Beijing Platform for Action, in addition to governments, political parties shall: “(a) Consider examining party structures and procedures to remove all barriers that directly or indirectly discriminate against the participation of women; (b) Consider developing initiatives that allow women to participate fully in all internal policy-making structures and appointive and electoral nominating processes; (c) Consider incorporating gender issues in their political agenda, taking measures to ensure that women can participate in the leadership of political parties on an equal basis with men.” The Beijing Declaration and Platform for Action, Articles 191 and 192 (adopted on 15 September 1995, Fourth World Conference on Women).

and Council of Europe regions by, among others, supporting programmes aimed at enhancing gender balance in relevant bodies, and enabling or adopting positive action or special measures for this purpose.<sup>162</sup>

168. A number of countries have introduced legislative measures aimed at promoting gender parity in elections and in political parties in recent years.<sup>163</sup> Several member states of the CoE and OSCE participating States have introduced mandatory gender quotas for parliamentary elections and also at the local level.<sup>164</sup> Mandatory electoral quotas vary according to the electoral system in question, ranging from 15 per cent to 50 per cent. Some countries provide for percentages for the less represented gender<sup>165</sup> or specific places within the order of party lists.
169. However, it is also important to acknowledge that legislative measures only work if they are effectively implemented. For instance, effective quota laws require a high percentage of female candidates to be nominated by political parties; placement mandates to regulate the order in which candidates are put on an electoral list; dissuasive sanctions for non-compliance; and compliance monitoring by independent bodies.<sup>166</sup>
170. Furthermore, in many Venice Commission member states and OSCE participating states, political parties have adopted voluntary special measures in order to guarantee that a minimum proportion of their candidates are women.<sup>167</sup> Such measures include minimum thresholds for women's representation in party congresses and conferences, quotas for women's representation in candidate-nomination boards, as well as quotas for the participation of women in party governance structures, such as party executive boards".<sup>168</sup> All of these measures aim to ensure that women and

<sup>162</sup> Decision No 7/09 of the OSCE Ministerial Council on women's participation in political and public life calls upon participating States to implement a number of concrete recommendations in light of the "continued under-representation of women in the OSCE area in decision-making structures within the legislative, executive, including police services, and judicial branches". The Committee of Ministers of the CoE, 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 CoE's Committee of Ministers in its Declaration "Making Gender Equality a Reality" (CM(2009)68), in which member 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 labor market and in economic life as well as in political and public decision-making". In Recommendation 1899(2010), entitled "Increasing women's representation in politics through the electoral system", the Parliamentary Assembly of the CoE likewise encourages the member states to increase women's representation by introducing temporary special measures. See also in Resolution 2111 (2016) of the Council of Europe's Parliamentary Assembly, 15.115.5.4.

<sup>163</sup> See [www.quotaproject.org](http://www.quotaproject.org) for information on temporary special measures for women in parliament worldwide. This web site distinguishes between three types of gender quotas used in politics:

Reserved seats (constitutional and/or legislative)

Legal candidate quotas (constitutional and/or legislative)

Political party quotas (voluntary). See also Mc Dec 7/09, Art 2.

<sup>164</sup> E.g. Albania, Armenia, Belgium, Bosnia and Herzegovina, France, Ireland, Armenia, North Macedonia, Poland, Portugal, Serbia, Slovenia and Spain.

<sup>165</sup> Article 43 of the Slovenian Electoral Law states that 'In a list of candidates, no gender shall be represented by less than 35% of the actual total number of women and male candidates on that list. The provision of the preceding paragraph shall not apply to a list of candidates containing three male or three female candidates, since a list of candidates containing three candidates must contain at least one representative of the opposite sex.

<sup>166</sup> OSCE Gender Equality in Elected Office, p. 33 – 34, <http://www.osce.org/odihr/78432>. Resolution 2111 (2016) of the Council of Europe's Parliamentary Assembly, which states most of these principles; See also, ECtHR, *Zevnik and Others v. Slovenia* (dec.), no. 54893/18, 12 November 2019, paras. 32-40, where the Court held that the rejection of the lists of candidates not respecting the gender quota was not considered disproportionate.

<sup>167</sup> See, also Venice Commission, CDL-AD (2009)029, Report on the Impact of Electoral Systems on Women's Representation in Politics, para. 89.

<sup>168</sup> Resolution 2111 (2016) of the Council of Europe's Parliamentary Assembly on assessing the impact of measures to improve women's political representation, para. 15.2.5. See also *Handbook on Promoting Women's*



men can participate on an equal footing in the decision-making processes within political parties and beyond.

### c. Persons with Disabilities

171. In the Convention on the Rights of Persons with Disabilities (CRPD) State Parties commit to actively promoting “an environment in which persons with disabilities can effectively and fully participate in the conduct of public affairs, without discrimination and on an equal basis with others, and encourage their participation in public affairs”. Pursuant to Article 29(a), State Parties to the Convention have to, *inter alia*, ensure equal chances for participation for persons with disabilities in both political and public life, which may take place directly or via representatives, and includes the right to vote and be elected. Through various measures ensuring accessibility and representation, States shall, as far as possible, furthermore undertake to “promote actively” the participation of persons with disabilities “in the activities and administration of political parties” (Article 29 (b) (i) of the CRPD. Additionally, and more specifically, Council of Europe Recommendation (2011)<sup>169</sup> invites members states to enable persons with disabilities “freely and without discrimination, particularly of a legal, environmental and/or financial nature to [...] meet, join or found political parties.”<sup>169</sup> At the same time, relevant OSCE commitments also involve protection of the human rights of persons with disabilities, including in decision-making.<sup>170</sup>
172. The CRPD states in Article 5(4) that “specific measures which are necessary to accelerate or achieve de facto equality of persons with disabilities shall not be considered discrimination.” Ensuring accessibility and providing the necessary support are the preconditions for persons with disabilities to be able to participate in public life.<sup>171</sup>
173. At the same time, the Convention only requires states to pass laws and undertake action that are reasonable in terms of effort and funding. The Convention defines denial of any such reasonable accommodation as a form of discrimination<sup>172</sup> and places a duty upon State Parties to “take appropriate steps to ensure that reasonable accommodation is provided.”<sup>173</sup> Generally, while it is up to the State to ensure that persons with disabilities are able to exercise their rights in full, they may require, or, through financial and other incentives, encourage political parties to take further measures to facilitate public participation for this category of persons.<sup>174</sup> However, political parties should not be de-registered or dissolved for the failure to accommodate persons with disabilities: that would be disproportional. If a thorough analysis concludes that such accommodation would have been reasonable, and not unduly burdensome on the respective party, then proportionate sanctions may be imposed. As a rule, these should not exceed administrative fines, or the denial of special funding or other advantages previously granted for this purpose.<sup>175</sup>

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*Participation in Political Parties*, OSCE/ODIHR, 2014, p. 70.

<sup>169</sup> Council of Europe, Recommendation CM/Rec(2011)14 of the Committee of Ministers to member states on the participation of persons with disabilities in political and public life, point 1.

<sup>170</sup> Document of the Moscow Meeting of the Conference on the Human Dimension of the CSCE (1991).

<sup>171</sup> Annual Report of the Special Rapporteur on the Rights of Persons with Disabilities (12 January 2016), para. 75.

<sup>172</sup> Article 2 of the Convention on the Rights of Persons with Disabilities.

<sup>173</sup> Article 5 (3) of the Convention on the Rights of Persons with Disabilities.

<sup>174</sup> This could be achieved, *inter alia*, by employing assistive technologies, like screen readers, voice browsers and others, insofar as this would not impose a disproportionate and undue burden on the state, or on individual political parties.

<sup>175</sup> In this context, the 2011 CoE Council of Ministers recommendation notes that Council of Europe member States should require political parties and other parties receiving public funds, to be accountable “for active measures adopted to ensure that persons with disabilities have access to information on political debates, campaigns and events which fall within their field of action.”

174. With respect to persons suffering from mental or intellectual impairments, Article 29 (a) of the CRPD states that, as far as possible, these individuals shall be able to take part in political and public life. According to this provision, states Parties shall guarantee to persons with disabilities political rights and the opportunity to enjoy them on an equal basis with others, and shall undertake to ensure that persons with disabilities can effectively and fully participate in political and public life on an equal basis with others, directly or through freely chosen representatives, including the right and opportunity for persons with disabilities to vote and be elected.<sup>176</sup> They also undertake to promote actively an environment in which persons with disabilities can effectively and fully participate in the conduct of public affairs, without discrimination and on an equal basis with others, and encourage their participation in public affairs, including participation in the activities and administration of political parties.

#### 4. Freedom of Association and Non-Discrimination

175. It may be concluded that in order to ensure equal access to political life and to eliminate structural historical inequalities, special temporary measures are introduced aimed at promoting *de facto* equality within political parties for women, persons with disabilities and ethnic or other minorities subjected to past discrimination. Such special measures may also apply to the selection procedures within political parties concerning party leadership and candidates in elections. Though in general not mandated by international law, such steps are seen as good practice and should not be considered discriminatory.<sup>177</sup> The voluntary imposition of the principle of non-discrimination and schemes for positive action by political parties in their statutes and activities could be an effective way to further the objectives of the relevant international agreements. Moreover, it is in general not incompatible with the freedom of association in Article 11 of the ECHR if states legislate particular temporary requirements or impose other special measures aimed at ensuring *de facto* equal participation of historically disadvantaged groups in political parties, including as candidates in elections (cf. also Part III, para. 5).

176. Whether a state actually introduces such legislation largely depends on the underlying principles of its political party system. A system primarily based on the democratic-egalitarian model (internal democracy, equality) will be open to such regulation, whereas a system based on the liberal model (party autonomy, pluralism) will not. According to the first model, political parties to a certain extent fulfil a public function, and therefore should accept some degree of internal democracy and prohibition of certain distinctions. On the other hand, from the perspective of the liberal model, regulation of the internal life of political parties is very problematic and may result in unduly state interference with the autonomy of parties as free associations. However, the ECtHR does not deny the competence of States to introduce some legislative requirements for the internal organization and the selection of candidates for elections, in the interest of democratic governance and equal treatment of minorities or disadvantaged groups. On the other hand, the State authorities should not interfere too much with the internal matters of political parties: it is up to the parties themselves to determine the manner in which way their conferences and decision procedures are organized. Likewise, it should primarily be up to the political party and its members and not to the public authorities to ensure that the relevant formalities are observed in the manner specified in its articles of association. So, on the one hand, some kind of state

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<sup>176</sup> Cf. OSCE/ODIHR, Handbook on Observing and Promoting the Electoral Participation of Persons with Disabilities, 2017, p. 11.

<sup>177</sup> CEDAW, Article 4(1); ICERD, Article 2(2); Framework Convention for the Protection of National Minorities, Article 4(2).

regulation of the inner workings of political parties, for instance, may be acceptable; but, on the other hand, in the wording of the European Court of Human Rights, state interference in principle should be limited to ‘requirements for parties to be transparent in their decision-making and to seek input from their membership when determining party constitutions and candidates’.<sup>178</sup>

## **PART III PARTIES IN ELECTIONS**

### **1. Variety of Electoral Systems; Margin of Appreciation**

177. OSCE participating and CoE member States exhibit a great variety of electoral and party systems. The choice of one system over another depends on the historical, political and cultural development of each state.<sup>179</sup> As the Court observed, ‘*there are numerous ways of organizing and running electoral systems and a wealth of differences, inter alia, in historical development, cultural diversity and political thought within Europe, which it is for each Contracting State to mould into its own democratic vision.*’<sup>180</sup> Any guidelines for political party legislation must be cognizant of this variety and understand that it precludes the recommendation of any blanket solutions or regulations on many issues. A country’s choice of a particular electoral system should in principle be respected, as long as it upholds a minimum standard for democratic elections. As countries enjoy a wide margin of appreciation in the selection of electoral systems, it is important to recognize the impact that different electoral systems may have in this area. The variety of ways in which political parties are affected by different electoral systems means that the development of legislation related to political parties requires careful consideration of individual states’ systems of governance.

### **2. Political Pluralism**

178. Generally, measures to limit to a certain extent the number of political parties able to contest an election are considered compatible with international standards and can be seen as reasonable in aiding the administration of elections and the formation of governments. However, legislation should avoid restricting the number of parties through overly burdensome requirements for registration or expressions of minimum support. Not only do such restrictions inherently reduce the free function of political pluralism, they can easily be manipulated to silence parties or candidates who express opinions unpopular to those in power.

179. Many OSCE countries require that parties achieve a specified threshold of electoral support to win seats in parliament. Although the ECtHR has accepted a threshold as high as 10%<sup>181</sup>, the PACE calls upon Council of Europe member States to “consider decreasing legal thresholds that are higher than 3%”<sup>182</sup> Electoral thresholds for electoral coalitions of parties may be higher than what is required for individual parties, to avoid excessive fragmentation, and facilitate government formation or stability, but should not be so high as to undermine the principle of fair

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<sup>178</sup> ECtHR, *Republican Party of Russia v. Russia*, no. 12976/07, 12 April 2011, para. 88; ECtHR, *Yabloko Russian United Democratic Party and Others v. Russia*, no. 18860/07, 8 November 2016, para. 79, referring to para. 98 of the (2010) Guidelines on Political Party Regulation.

<sup>179</sup> OSCE Ministerial Council, Decision No 5/03, “Elections”, Maastricht, 1 and 2 December 2003, in which OSCE participating States acknowledge that “democratic elections can be conducted under a variety of different electoral systems and laws”. See also UN HRC General Comment 25 to the ICCPR, par. 21: “Although the Covenant does not impose any particular electoral system, any system operating in a State party must be compatible with the rights protected by article 25 and must guarantee and give effect to the free expression of the will of the electors.”

<sup>180</sup> ECtHR, *Scoppola v. Italy* (no. 3) [GC], no. 126/05, 22 May 2012, para. 83.

<sup>181</sup> ECtHR, *Yumak and Sadak v. Turkey* [GC], no. 10226/03, 8 July 2008.

<sup>182</sup> PACE Resolution 1705 (2010) par. 22.3.

representation.

### 3. Partisan Candidates

180. A major function of political parties is the presentation of candidates for elections. Parties choose candidates to be representatives of party ideals. However, candidacy is also an expression of an individual's right to be elected and, as such, the legal regulations on candidates must ensure a citizen's individual right to stand for election.<sup>183</sup>

181. The individual ability to stand in elections, including as independent candidate, may be affected by three sets of rules: 1) those imposed by the state for registration as a candidate; 2) those imposed internally by the party for selecting candidates; and 3) admissible restrictions on eligibility rights, such as age, residency or citizenship requirements. While the first set must not unduly limit the right of free expression and association for parties, it is good practice that the second set also respects the need to ensure that candidates are chosen with the support of the party at large. But state interference (except for special measures in favor of minority candidates, see paras. 186 *et seq.*) should be limited to transparency requirements and ensuring some kind of input from party members.

182. During elections, political parties often provide support, funding and campaign resources for their candidates. Legislation regulating party activities must allow for the free exercise of such support as long as it does not disturb a minimum "level playing field" among candidates and among parties. While funding and campaign contributions can be regulated by the state, such regulations must respect the fundamental right enjoyed by individuals in a party to participate in political life, including through offering support to a candidate of their choice.

183. In closed-list electoral systems, parties are able to assign or define the order of their candidates on an electoral list. While this is generally acceptable, parties should be prohibited from replacing or changing the order of candidates within an electoral list after an established deadline prior to election day, or after voting has commenced.<sup>184</sup> However, this restriction does not apply if a candidate dies or steps down of his or her own accord on short notice.

184. Some countries ban the entry into coalitions before elections (such as pre-election blocks or coalitions). Others require a declaration of intent to form a coalition. Both pose issues with regard to the freedom of association.

### 4. Non-Partisan (Independent) Candidates

185. The OSCE Copenhagen Document specifically requires the participating States to "respect the right of citizens to seek political or public office, individually or as representatives of political parties or organisations, without discrimination."<sup>185</sup> This commitment prohibits discrimination in the exercise of the right to stand for public office, between candidates who are affiliated to political parties and candidates who are not. Independent candidates should therefore be permitted to run for elections

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<sup>183</sup> See Article 25b of the ICCPR and Article 3 of Protocol 1 to the ECHR; see also paras. 6 and 7.7 of the Copenhagen Document.

<sup>184</sup> Venice Commission, CDL-AD(2016)018 Opinion on the Amendments to the Law on Elections Regarding the Exclusion of Candidates of Ukraine.

<sup>185</sup> See the Copenhagen Document, para. 7.5. See also, UN HRC 'General Comment No 25: The Right to Participate in Public Affairs, Voting Rights and the Right of Equal Access to Public Service.

according to the same conditions applicable to candidates nominated by political parties. In particular, regulations regarding ballot access and fees, as well as candidacy restrictions for parties should not discriminate against independent candidates or establish unjustified privileges for parties, for example being at such a high level that they are achievable only by parties and not by independent candidates. Where political parties are provided with state support, such as the provision of public media airtime or campaign finance, there should also be a system of support for independent candidates to ensure that they are awarded equitable treatment in the allocation of state resources.

## **5. Minority Candidates**

### **a. National and Ethnic Minorities**

186. The ability for representatives of national minorities to be elected is, likewise, an important area for possible regulation. Structural inequalities often hinder full and meaningful participation of national minorities in political and public affairs, given that such candidates may be faced with discrimination, stigma and socioeconomic inequality.<sup>186</sup> Special measures may be put in place to ensure that all segments of society are able to influence agenda-setting and decision-making.<sup>187</sup> In accordance with the Framework Convention on National Minorities and para. 35 of the Copenhagen Document, states should promote the free exercise of all political rights for national minorities. Measures should be taken within the electoral framework and process, therefore, to ensure that national minorities have an effective opportunity to be elected and represented in parliament.

187. Measures to help promote adequate national minority representation might include reserving a set number of parliamentary seats for specific minorities, waiving the threshold for the number of votes received so that parties representing national minorities may be represented in parliament and the provision of electoral material, including ballot papers, as well as voter education and campaign materials in minority languages.

### **b. Gender**

188. Legislation on political parties may be adopted to promote the objective that women and men actually have an equal chance to be candidates and to be elected. Countries with an electoral system based on proportional representation and party lists may introduce temporary special measures that would promote not only a high proportion of women candidates, but also a rank-order rule, such as a "zipper" system, where male and female candidates alternate, or where one of every three candidates through the list is from the less represented gender. Rank-order rules of this type remove the risk that women will be placed too low on party lists to have a genuine chance of being elected. It is also advisable to promote that if a female candidate withdraws her candidature, she is replaced with another woman.

189. Countries with a majoritarian electoral system are recommended to introduce

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<sup>186</sup> See, more on structural inequalities: United Nations Human Rights Council, Report of the Office of the United Nations High Commissioner for Human Rights, Promotion, protection and implementation of the right to participate in public affairs in the context of the existing human rights law: best practices, experiences, challenges and ways to overcome them (U.N. Doc. A/HRC/30/26) paras. 19-22.

<sup>187</sup> United Nations Human Rights Council, Report of the Office of the United Nations High Commissioner for Human Rights, Promotion, protection and implementation of the right to participate in public affairs in the context of the existing human rights law: best practices, experiences, challenges and ways to overcome them (U.N. Doc. A/HRC/30/26) para. 21.

provisions that promote systems whereby each party chooses a candidate from among at least one female and one male nominee in each district, or to find other ways to promote increased representation of women in elected politics.

190. Overall, the 1995 Beijing Platform for Action encourages governments to “review the differential impact of electoral systems on the political representation of women in elected bodies and consider, where appropriate, the adjustment or reform of those systems”. It is a good practice for political parties to maintain sex-disaggregated data of their members, as well as on the composition of their decision-making bodies.

### **c. Persons with Disabilities**

191. Persons with disabilities shall not be excluded from electoral processes, and their right to participate in elections (as candidates and voters) must be respected and protected on an equal basis with others.<sup>188</sup>
192. According to CoE Recommendation CM/Rec(2011)14 states should ensure the prohibition of discrimination against persons with disabilities “in all fields of political and public life, namely wherever it is a question of voting, standing for election, exercising a mandate and/or being active in political parties or non-governmental organisations, or exercising public duties.”<sup>189</sup>

### **d. Thresholds**

193. Electoral legislation may establish minimum vote thresholds for candidates to be elected to parliament. In such cases, this minimum threshold must be met by the political party as a whole in order for individual candidates of the party to be eligible to hold seats in parliament. Minimum thresholds should not be considered illegitimate or discriminatory, as long as they are applied objectively and equally, and allow for the candidacy of independent candidates. However, such thresholds must be enacted at a level low enough so as not to preclude political pluralism or threaten the representative nature of the legislature.<sup>190</sup> In addition, legislation regarding political parties may make specific exceptions to minimum thresholds to ensure representation from parties representing minorities. In such cases, legislation must give a clear definition of what constitutes a “minority party.”

## **6. Access to Elections**

### **a. Ballot Access for Political Parties**

194. States may require parties to meet certain obligations in order to be placed on a ballot in elections. These requirements may apply to each separate electoral contest and may apply anew for each electoral cycle. Such requirements usually include one or more of the following: payment of a monetary deposit (refundable if a party receives a predetermined percentage of votes or a seat in parliament); the demonstration of a minimum level of support, as indicated by the collection of voters’ signatures; or the

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<sup>188</sup> See para. 160.

<sup>189</sup> Recommendation CM/Rec(2011)14 of the Committee of Ministers to member states on the participation of persons with disabilities in political and public life.

<sup>190</sup> See e.g. Venice Commission, CDL(2010)030; PACE Recommendation 1898(2010) on the “Thresholds and other features of electoral systems which have an impact on representativity of Parliaments in Council of Europe Member States” - Venice Commission Comments in view of the reply of the Committee of Ministers; CDL-AD(2008)037, Comparative Report on thresholds and other features of electoral systems which bar parties from access to Parliament.

attainment of a mandate or a minimum percentage of votes in the previous election. A party that is already represented in parliament (or at the local level) might be not required to pay a deposit or demonstrate minimum levels of support, as support for this party is already evidenced.

195. The ability for parties to gain access to a place on the ballot should be transparent, equal and free from discrimination. While monetary deposits may be required, depositary obligations that are excessive may be deemed discriminatory. Particularly if the deposit is paid by the individual candidate or his or her campaign organisation rather than by his or her party, it limits the right of citizens without adequate financial resources to stand for election as protected under human rights instruments<sup>191</sup>. As with other regulations on political parties, such fees must be applied objectively and equally to all parties or candidates, unless this obligation is waived, e.g. for parties already in parliament. States may consider providing additionally or instead for non-monetary requirements for registration in elections, such as the demonstration of minimum support through the collection of voter's signatures.<sup>192</sup>

196. When parties are required to show minimum levels of support, they should be given adequate time to collect and submit signatures. It is good practice that the number of required signatures does not exceed one per cent of the total number of registered voters in a constituency.<sup>193</sup> The system for the verification of signatures should be clearly defined in law and not overly technical, so as to avoid the possibility of abuse. In particular, a requirement that a citizen be allowed to sign in support of only one party should be avoided, as such a regulation would affect his/her right to freedom of association and could easily disqualify parties despite their attempts in good faith to fulfil this requirement.

197. The system for ballot access should not discriminate against new parties. While parties that won mandates or a minimum percentage of votes in the previous election may be automatically eligible to be placed on the ballot, there must also be fair, clear and objective criteria for the inclusion of new parties.

198. Individual candidates should have an equal opportunity to access the ballot as those running as candidates for political parties. However, legislation commonly exempts candidates of parties from particular requirements for ballot access that have already been fulfilled by the party. For example, party candidates may be exempt from the collection of signatures to show support if the party has previously collected signatures to gain recognition as a party. In such cases, independent candidates may still be required to fulfil the signature-support requirement. Such systems are not necessarily discriminatory, but legislation must clearly outline which exemptions are applicable and shall ensure that requirements placed upon independent candidates are not more restrictive than those placed on parties. In all cases, it is a good practice that the number of required signatures does not exceed one percent of the total number of registered voters in a constituency.<sup>194</sup>

## **b. Media Access**

199. The allocation of media airtime is integral to ensuring that all political parties, including small parties, are able to present their programs to the electorate, both before

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<sup>191</sup> ECtHR, *Sukhovetskyy v. Ukraine*, no. 13716/02, 28 March 2006.

<sup>192</sup> Canadian case law gives a strong preference to signatures instead of monetary deposits, see e.g. *Frank de Jong v. Attorney General of Ontario*, Ontario Superior Court of Justice, case file 07-CV-333814PD1.

<sup>193</sup> Cf. the Code of Good Practice in Electoral Matters, adopted by the Venice Commission at its 52<sup>nd</sup> session (18-19 October 2002), 1.3 (ii).

<sup>194</sup> Venice Commission, CDL-AD (2002) 23 rev, Code of Good Practice in Electoral Matters, 1.3 (ii) p 6.

and in between elections. While the allocation of free airtime on public media is not mandated through international law, such a provision can be a critical means of ensuring an informed electorate. Where the State allocates media space, the regulation concerned should provide that free airtime and print space be allocated to all parties on a reasonable basis, consistent with the principle of equal treatment before the law.

200. The principle of equal treatment before the law with regard to the media refers not only to the airtime given to parties and candidates, but also to the timing and location of such space. Legislation should set out requirements for equitable access – which may mean either strict equality of access, or access in proportion to some measure of party strength, such as votes in the last election or number of seats in parliament - ensuring there are no discrepancies in the allotment of access, such as prime viewing times going to particular parties and late-night or off-peak slots going to others.
201. While the fulfilment of party-registration requirements may constitute a prerequisite for being granted free media access, such a system of allocation cannot be used to discriminate against new electoral groups or independent candidates. It is recognised, however, that specific rules regarding the methods of state sponsored allocation of free media time and space may benefit parties that have undergone the process of registration; states should seek to avoid this potentially discriminatory practice.
202. Whereas there are no obligations to regulate private media as strictly as public media, private outlets may still play a fundamental role in the public process of elections, providing a platform for contestants to present their ideas and for the media to offer information and assessment of the political actors. Consequently, some form of regulation may be justified. Some OSCE participating States and CoE member States, for example, impose regulations stating that airtime offered on private media must be offered to all parties at the same price or place limitations on the use of paid advertising.

### **c. Freedom of Assembly**

203. All political parties and their members should be able to fully exercise the right to peaceful assembly, particularly during the election period, in line with Article 21 ICCPR and Article 11 ECHR. Freedom of assembly should only be limited on the basis of legitimate and objective grounds, and as necessary in a democratic society, namely in the interests of national security or public safety, for the prevention of disorder or crime, for the protection of health or morals or for the protection of the rights and freedoms of others. The *ODIHR – Venice Commission Guidelines on Freedom of Peaceful Assembly*<sup>195</sup> provide an overview of appropriate regulations and recommendations regarding the right of freedom of peaceful assembly which should be observed when developing legislation relevant to political parties.

## **PART IV. FUNDING OF POLITICAL PARTIES AND ELECTION CAMPAIGNS**

### **1. Funding**

204. Political parties need appropriate funding to fulfil their core functions, both during and between election periods. At the same time, the regulation of political party

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<sup>195</sup> Venice Commission, OSCE/ODIHR, CDL-AD(2019)017, Joint Guidelines on Freedom of Peaceful Assembly (3rd edition), Strasbourg/Warsaw 2020.



funding is essential to guarantee parties' independence from undue influence of private donors, as well as state and public bodies, to ensure that parties have the opportunity to compete in accordance with the principle of equal opportunity, and to provide for transparency in political financing. Funding political parties through private contributions is also a form of political participation. Thus, legislation should attempt to achieve a balance between encouraging moderate contributions and limiting unduly large contributions.

205. OSCE participating States and member states of the Council of Europe may follow several important guidelines for political finance systems in the development of legislation. These include:

- Restrictions and limits on private contributions;
- Balance between private and public funding;
- Restrictions on the use of state resources (materials, labor contracts, transportation, employees etc.; see also paras. 249 *et seq.*);
- Fair criteria for the allocation of public financial support;
- Spending limits for electoral campaigns;
- Requirements that increase the transparency of party funding and credibility of financial reporting;
- Independent regulatory mechanisms and appropriate sanctions for legal violations; and
- Prohibition or restriction of foreign funding

206. The funding of political parties includes both the way in which parties fund their routine activities and campaign finance, which refers specifically to funds allocated by a party for election purposes. To ensure a transparent and fair financing system, and to avoid the possibility of circumventing relevant rules, both routine party funding and campaign finance must be addressed in legislation relevant to political parties and electoral campaigns in the same manner. Many issues, such as limits on the permitted sources of funding, apply to both types of financing, while others, such as the provision of free airtime, may apply only during the election period. Many OSCE participating States and member states of the Council of Europe provide general public support to parties, rendering the distinction between political and campaign finance largely moot. However, if relevant legislation distinguishes between party support and campaign financing, it should include clear and precise rules and guidelines for the appropriate use and allocation of funds for these different purposes. For example, if regulations define general public financial support that may be used for any party function as separate from money received specifically for campaign purposes, the definition of what constitutes a "campaign purpose" and any related restrictions must be laid out clearly. Guidance should also be given on how to classify expenses that are necessary for a campaign but remain required outside of electoral periods (employee salaries or the rental of party headquarters, for example). If funds are earmarked for use during the campaign period, the beginning, duration and end of such a period must be clearly and reasonably defined in law, to ensure accurate and comprehensive records of the financial activity of political parties and candidates. If the duration of the electoral campaign is too short, then this might lead to political parties and candidates trying to circumvent the regulations by spending money outside the official electoral campaign period.

## **2. Private and Foreign Funding**

### **a. Membership fees**

207. Political parties may require the payment of a membership fee. While such fees should not be so high as to unduly restrict membership, they are a legitimate source of political party funding. To ensure that membership fees are not used to circumvent donation limits for individuals, membership fees may be qualified as donations.

208. The charging of membership fees is not inherently at odds with the principle of free association. At the same time, any membership fee should be of a reasonable amount. The inclusion of a waiver of the fee requirement in cases of financial hardship should be encouraged, to ensure that political party membership is not unduly restricted. This waiver could also be based on a sliding scale, so as to take into consideration the specifics of each individual case. At a minimum, where fees are required, the creation of a distinct level of membership for those unable to pay a membership fee would allow such persons to still associate with or participate in the party's functions.

### **b. Donations**

209. Funding of political parties is a form of political participation, and it is appropriate for parties to seek private financial contributions, i.e. donations. In fact, legislation might require that all political parties be financed, at least in part, through private means, as an expression of minimum support. With the exception of sources of funding that are banned by relevant legislation, all individuals should have the right to freely express their support for a political party of their choice through financial and in-kind contributions. However, reasonable limits on the total amount of contributions may be imposed and the receipt of donations should be transparent.

210. Legislation also may allow parties and candidates to take out loans to finance (part of) their campaign or activities. It is important that rules on transparency deal consistently with such resources, as well as with credits and debts, so as to avoid the circumvention of limits on private donations and the ensuing exercise of undue influence. Taking out a loan normally requires that steps be taken by the creditor and debtor well in advance, even before the beginning of the campaign. Repayment normally takes some time after the end of the campaign. There is a risk, therefore, that the value of loans might not be reflected properly in the financial reports of parties and candidates. This is all the more important since, depending on the specific case and subject to legislation permitting donations and support from commercial entities, loans that are granted at advantageous conditions or even written off by the creditor should be treated as a form of in-kind or financial donation. A loan might also be repaid not by the party or the individual candidate, but by a third person, in which case the loan also has the character of a donation.<sup>196</sup>

211. Limits have historically been placed on funding, in an attempt to limit the ability of particular categories of persons or groups to gain political influence and influence the decision-making process through financial advantages. It is a central characteristic of systems of democratic governance that parties and candidates are accountable to the citizenry at large, not to wealthy special-interest groups in particular. As such, a

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<sup>196</sup> Unsecured loans are a particular problem. If a party takes out an unsecured loan, perhaps in anticipation of increased donations after a successful campaign, and those increases do not materialize, the party may default with no real recourse by the lender. And of course, even if the loan is secured (a mortgage for example) the lender may choose not to insist on prompt repayment – or repayment at all. It is fine to say that these will be regarded as donations, but that is only clear after the passage of some time – when it is too late with regard to fairness in the by-then-already-over election. Given this, States may want to consider banning unsecured loans, although this may work to the disadvantage of new and small parties.

number of reasonable limitations on funding have been developed. These include limitations on donations from businesses and private organisations, including state-owned/controlled companies and anonymous donors.

212. Anonymous donations should be strictly regulated, including through a limit on the aggregate allowable amount of all anonymous donations. Legislation should limit the aggregate maximum amount to a reasonable level designed to ensure that anonymous donors cannot wield undue influence. Another means to avoid undue influence from unknown sources is to state in relevant legislation that donations above a certain (low) amount shall be made through bank transfer, bank check or bank credit card, to ensure their traceability in terms of amount and sources.
213. Reasonable limitations on private donations may include the determination of a maximum amount that may be contributed by a single donor. Such limitations have been shown to be effective in reducing the possibility of corruption or the purchase of political influence. Legislation mandating donation limits should be carefully balanced between, on the one hand, ensuring that there is no distortion in the political process in favor of wealthy interests and, on the other hand, encouraging political participation, including by allowing individuals to contribute to the parties of their choice. It is best if donation limits are designed to account for inflation, based on, for example, some form of indexation, such as a minimum salary value, rather than absolute amounts.
214. Often, laws have different donation limits in place for individuals on the one hand, and legal persons on the other. Increasingly, states ban donations from companies to political parties and election candidates. In such cases, these types of bans should also cover donations to legal structures connected to election campaigns and political parties. The types of companies that fall under such bans need to be delineated clearly, e.g. whether they cover all companies regardless of size and whether legal personalities made up of one self-employed individual also count. Moreover, states should prohibit legal entities under the control of the state or of other public authorities from making donations to political parties.<sup>197</sup>
215. Moreover, legislation should address sponsorship, which may help political parties meet the costs of events such as congresses, rallies, etc. For many activities, such as cultural or sporting events, sponsorship may be regarded at least in part as a legitimate corporate business expense for public relations. Where political parties are the beneficiaries of sponsorship, however, this can become a channel for political funding intended to evade contribution limits. To avoid this danger, it would be good practice to account all sponsorships as contributions, subject to the same limitations or bans as other contributions.
216. In addition to regulating financial donations, legislation should regulate in-kind support by private donors, both by individuals and by legal persons. In-kind donations may be defined as “all gifts, services, or property provided free of charge or accounted for at a price below market value”.<sup>198</sup> Generally, this type of support should follow the same rules and be subject to the same restrictions as financial donations. For that purpose, the monetary value of in-kind donations should be determined based on market price and should be listed in funding reports.
217. A distinction might be drawn between services for which a volunteer would not be paid in the regular course of his or her business and those for which the volunteer would be paid if the service were provided to other clients. While services provided

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<sup>197</sup> CM Recommendation Rec(2003)4 Article 5c.

<sup>198</sup> OSCE/ODIHR Handbook for the Observation of Campaign Finance (2015) p 20.

gratis or at a sub-market price by individuals or legal persons for which the donor would expect to be paid by other clients should be counted as donations at their normal market value. Services voluntarily provided by those who would not normally expect to be paid might be regarded as individual political activity rather than as political contributions.

### c. Funding through Third Parties

218. Regulation of political party finance is complicated by the fact that parties are not the only actors capable of spending money with the aim of influencing elections. Within the sphere of electoral regulation, such other actors are identified as “third parties,” referring both to individuals and to organisations who are not legally tied to, or acting in coordination with, any candidate or political party, but who nonetheless act with the aim of influencing the electoral result. Third-party financing in relation to election campaigns has been defined as “[c]ampaign expenditures made independently of a candidate or party with the aim of promoting or opposing a candidate or party, either directly or indirectly.”<sup>199</sup> In accordance with the ECtHR ruling in *Bowman v. The United Kingdom* (1998) (Application No. 24839/94), such expenditures may not be banned, but they may be subject to reasonable and proportionate limitations.
219. In some states, associations connected to or favoring specific political parties may receive large donations from individuals and interest groups, which are then spent on activities for this party. Even though the involvement of third parties as an expression of political pluralism and citizen involvement is not generally a negative phenomenon, it can create loopholes in the area of political and campaign finance, which should be regulated by legislators. Weak party and campaign financing and transparency rules are the most problematic and constitute a particularly high-risk area for corruption when it comes to the involvement of third parties in the sphere of political activities, yet measures taken to regulate third-party involvement should be necessary and proportionate. Moreover, regulators should take care to distinguish third parties that do not campaign in communication and collaboration with any of the contestants from affiliated persons or entities that are nominally separate from a party but in fact are related, directly or indirectly, to a political party or are otherwise under the control of a political party.<sup>200</sup>
220. More specifically, third-party funding and involvement in political activities often takes place via in-kind contributions and “independent” expenditures, which can be defined as expenses paid without any coordination with a specific party. Third party funding can be used to circumvent financial regulations, which often include contribution and spending limits, as well as disclosure requirements. Setting a ceiling for donations to parties is not likely to be effective if, at the same time, other groups such as interest or support groups, trade unions and associations can spend unlimited amounts of money to support or oppose a particular political party or candidate. In order to avoid the creation of loopholes through which unlimited funding can be channeled and financial transactions can be veiled, laws should set proportionate and

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<sup>199</sup> *Ibid.*

<sup>200</sup> See Council of Europe Committee of Ministers Recommendation Rec(2003)4 Article 6. Rules concerning donations to political parties (...) should also apply, as appropriate, to all entities which are related, directly or indirectly, to a political party or are otherwise under the control of a political party

reasonable limits to the amount that third parties can spend on promoting candidates or parties, ideally by applying existing ceilings for donations to political parties to these actors as well.<sup>201</sup>

221. At the same time, these limits should only apply in cases where third parties and their actions are intended to benefit specific political parties, either in general or during campaigns. This should not prevent NGOs and other interest groups from debating issues of public interest during the campaigns, without undermining the level playing field for the electoral contestants. NGOs and other associations engaging in democracy promotion or general issue advocacy are not acting as third parties in the context of elections, and should not generally be treated in the same way as political parties and true electoral third parties, in particular in the area of access to resources and reporting obligations; in this area, the transparency requirements for political parties are incomparably higher, given their special role in elections, and the fact that one of their aims is to eventually take part in a State's government.

222. Political foundations, which are private-law entities, may generally be separate from political parties, even though, in reality, many of them are closely connected to parties, their activities and aims. Indeed, it is sometimes difficult to distinguish between activities carried out by foundations and those conducted by political parties. While foundations may have "a key role to play in articulating the voices of citizens",<sup>202</sup> regulations on financing of political parties and electoral campaigns usually do not provide for practices and rules of record-keeping, financial reports and supporting documents concerning turnover and expenditure of foundations affiliated with political parties. This opens up the possibility for foundations to be used to circumvent rules on political party funding as channels for funding of party activities and campaigns. If political foundations exist in the respective state, they should be included within the same supervisory legislation and be bound by those requirements to which political parties must adhere.<sup>203</sup>

#### **d. Other Sources of Non-State Funding**

223. Political parties may levy "taxes" from their sitting elected officials. This is a wide-spread practice in many democratic states, where such regular contributions are legally qualified as voluntary individual donations, given that parliamentarians are contributing a part of their private salaries to their parties.<sup>204</sup> Such contributions should thus be subject to laws on donations, to ensure that they do not contravene statutory donation limits.<sup>205</sup>

224. Legislation should generally allow political parties at the national level to

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<sup>201</sup> See paragraph 256 below concerning expenditures by third parties involved in election campaigns. Spending and other limits should be proportionate in line with *Bowman v. the United Kingdom*, no. 24839/94, 19 February 1998. UN Human Rights Committee General Comment 25, (1996), para. 19, provides that reasonable limitations on campaign expenditure may be justified where this is necessary to ensure that the free choice of voters is not undermined or the democratic process distorted by the disproportionate expenditure on behalf of any candidate or party.

<sup>202</sup> See Regulation (EU, Euratom) No 1141/2014 of the European Parliament and of the Council of 22 October 2014 on the statute and funding of European political parties and European political foundations (4).

<sup>203</sup> Article 6 of Recommendation Rec(2003)4 of the Committee of Ministers of the Council of Europe "On common rules against corruption in the funding of political parties and electoral campaigns" recommends that "rules concerning donations to political parties [...] should also apply, as appropriate, to all entities which are related directly or indirectly to a political party or are otherwise under the control of a political party".

<sup>204</sup> See N. Bolleyer and S. Trumm, From Parliamentary Pay to Public Funding: The Acceptability of Informal Institutions in Advanced Democracies, *European Journal of Political Research*, vol. 53, no. 4, 2014, pp. 784-802.

<sup>205</sup> See e.g. OSCE/ODIHR Opinion on Laws Regulating the Funding of Political Parties in Spain (30 October 2017), available at <http://www.osce.org/odihr/356416?download=true> paras. 37-40;

financially support their regional and local offices, and vice versa. Such support should be considered an internal party function and generally not be limited through legislation. In addition, legislation should ensure that total spending for an electoral contest, including funds allocated by different party branches, is in compliance with relevant spending limits.

225. Parties that generate income through the sale of merchandise or party-related materials should be able to utilize these funds for their campaigns and operations. Care should be taken to prevent the charging of excessive prices from being used as a device to circumvent donation limits. All transparency, disclosure and contribution requirements, including donation caps, should apply, as appropriate, while such sales and transactions should not be otherwise limited by relevant legislation.

226. Candidates may utilize personal resources in their election campaigns, including loans. However, the origin of such funds should likewise be transparent. Within a party system, such personal contributions may be used in addition to the party funds allocated to a candidate's campaign. Overall, the rules regarding funding of political parties apply *mutatis mutandis* to the funding of electoral campaigns of candidates for elections.<sup>206</sup>

227. Although a candidate's own contributions are often perceived to be free from concerns over possible corruption or undue influence, unlimited funding of one's own campaign carries the risk that a few wealthy individuals are able to spend unlimited amounts in campaigning for public office. This may lead to a situation where societal interests are not always properly represented and could jeopardize the creation of a level playing field for political participation. This may be especially relevant for women and minority candidates, or candidates with disabilities, who often have more limited funds at their disposal. Therefore, legislation may limit such contributions as part of the total spending limit during the campaign period or set reasonable caps for individual candidate's contributions and require the disclosure of such contributions.

228. It may also be appropriate to require that candidates, similar to political parties and elected representatives, file a public disclosure of assets and liabilities, at least in presidential and parliamentary elections, even though the current practice varies greatly from one country to another. Unintentional errors in disclosure reports should not, however, be used as a basis for denial of candidacy.

#### **e. Foreign Funding**

229. Donations from foreign sources to political parties may be prohibited by domestic legislation. This is consistent with Article 7 of CoE Committee of Ministers Recommendation (2003)4, on common rules against corruption in the funding of political parties and electoral campaigns<sup>207</sup>, which provides that "States should specifically limit, prohibit or otherwise regulate donations from foreign donors." This restriction aims to avoid undue influence by foreign interests, including foreign governments, in domestic political affairs, and strengthens the independence of political parties. Also, here, it is important to consider possible loopholes, such as loans. Additionally, donations made by foreign companies through national subsidiaries need to be examined closely, and legislation should provide guidance on whether to count such donations as foreign funding or not. In order to establish whether

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<sup>206</sup> Article 8 of Recommendation Rec(2003)4 of the CoE Committee of Ministers to member states on common rules against corruption in the funding of political parties and electoral campaigns, adopted by the Committee of Ministers on 8 April 2003 at the 835th meeting of the Ministers' deputies.

<sup>207</sup> See also Venice Commission, CDL-AD(2019)002 Report on Funding of Associations, para. 77.

the prohibition of financing from abroad is problematic (disproportionate) in the light of Article 11 of the ECHR, every individual case has to be considered separately in the context of the general legislation on financing of parties.<sup>208</sup>

230. Similar concerns may arise with respect to the right of parties to receive funding from out of country residents, i.e. citizens and nationals of a country residing elsewhere. In principle, donations from citizens, regardless of their place of residence, should not be restricted if they are allowed to participate in elections at home<sup>209</sup> (though certain countries may not grant citizens residing abroad the right to vote in all elections, or may require citizens with long-term residence in another country to submit a special application in order to be allowed to vote). With respect to migrant workers, Article 41(1) of the International Convention on the Protection of All Migrant Workers and Their Families<sup>210</sup> states that “migrant workers and members of their families shall have the right to participate in public affairs of their State of origin and to vote and to be elected at elections of that State, in accordance with its legislation.”<sup>211</sup> As to the non-citizens who do not reside in the country, they should be treated in the same way as any other foreign person, without exception based on emotional ties, ethnicity, or family history. At the same time, states may have special regulations for foreign nationals permanently living in their host country. The Venice Commission and the OSCE/ODIHR encourage the States that such persons be allowed to financially contribute to political parties in their host countries.
231. Generally, foreign funding of political parties is an area that should be regulated carefully to avoid the infringement of free association in the case of political parties active at an international level. Such careful regulation may be particularly important in light of the growing role of European Union Political parties, as set out in the Charter of Fundamental Rights of the European Union, Article 12(2). Additionally, this type of regulation might permit some support from a foreign chapter of a political party, in line with the intent of paragraphs 10.4 and 26 of the OSCE Copenhagen Document, which envision external co-operation and support for individuals, groups and organisations promoting human rights and fundamental freedoms. Similar special provisions can be made for donations from international organisations for the purposes of party-building and education, as long as it is ensured that these contributions are not used to fund electoral campaigns or to advantage some parties at the expense of others. Depending on the regulation of national branches of international associations, financial support from such bodies may not necessitate the same level of restriction. Overall, it has to be recognised that the implementation of this nuanced approach to foreign funding may be difficult, and legislation should carefully weigh the protection of national

<sup>208</sup> Venice Commission, CDL-AD(2009)021, Code of Good Practice in the field of Political Parties and its Explanatory Report, para. 160, which refers to the conclusion of CDL-AD(2006)014 Opinion on the Prohibition of Financial Contributions to Political Parties from Foreign Sources, para. 34. The European Court of Human Rights stated in this connection “that this matter falls within the residual margin of appreciation afforded to the Contracting States, which remain free to determine which sources of foreign funding may be received by political parties”; that said, it needs to be determined in practical terms whether the measure is proportionate to the aim pursued: see the judgment in the case of Parti Nationaliste Basque – *Organisation Régionale d’Iparralde v. France*, application no. 71251/01, 7 June 2007.

<sup>209</sup> Pursuant to the following Venice Commission documents, the ban on donations from foreign states or enterprises should generally not prevent financial donations from citizens living abroad: CDL-AD(2009)021, Venice Commission Code of Good Practice in the field of Political Parties and its Explanatory Report, par 160; CDL-INF (2001) 8, Venice Commission Guidelines and Report on the Financing of Political Parties, paras. 6 and 10; ODIHR and Venice Commission Joint Opinion on the legal framework governing the funding of political parties and electoral campaigns (11 December 2017) paras. 52-55.

<sup>210</sup> International Convention on the Protection of the Rights of All Migrant Workers and Members of Their Families (adopted 18 December 1990, entered into force 1 July 2003), available at <http://www.ohchr.org/EN/ProfessionalInterest/Pages/CMW.aspx>

<sup>211</sup> *Ibid.* According to Article 2(2) of this Convention, the “term ‘migrant worker’ refers to a person who is to be engaged, is engaged or has been engaged in a remunerated activity in a State of which he or she is not a national”.



interests against the rights of individuals, groups and associations to co-operate and share information, and the principles of party autonomy and political pluralism in general.

### 3. Public Funding

232. Public funding and its requisite regulations, including those related to spending limits, disclosure, and impartial enforcement, have been designed and adopted in many states as a potential means to support political parties in the important role they play, prevent corruption, and remove undue reliance on private donors. Such systems of funding should also aim to ensure that all parties, including opposition parties, small parties and new parties, are able to compete in elections in accordance with the principle of equal opportunities, thereby strengthening political pluralism and helping to ensure the proper functioning of democratic institutions. Generally, legislation should attempt to create a balance between public and private contributions as sources of funding for political parties.<sup>212</sup> In no case should the allocation of public funding limit or interfere with a political party's independence.<sup>213</sup>

233. The amount of public funding awarded to parties must be carefully designed to guarantee the utility of such funding, while at the same time ensuring that private contributions are not made superfluous or their impact nullified. While the nature of elections and campaigning in different states makes it impossible to identify a universally applicable level of funding, legislation should also put in place effective review mechanisms aimed at periodically determining the impact of current public financing and, as needed, altering the amount of funding allocated. Such funding shall be "allocated in a non-partisan way, based on fair and reasonable criteria".<sup>214</sup> Generally, subsidies should be set at a meaningful level to fulfil the objective of providing support, but should not be the only source of income or create conditions for over-dependency on state support.

234. If the state financially supports political parties, it should do so on the basis of a clear and explicit legal authorization. The allocation of public money to political parties is often considered essential for demonstrating respect for the principle of equal opportunities for all parties and candidates, particularly where the funding mechanism includes special provisions for women, persons with disabilities and minorities. Where financial support is provided to parties, relevant legislation should develop clear eligibility and allocation criteria. Public funds should be allocated to recipients in an objective and unbiased manner.

235. In addition to direct funding, the state may offer support to parties in a variety of other ways, including tax exemptions for party activities, equitable access to free media airtime (including where there are limitations on paid advertising during electoral campaigns), free postage for publications or the free use of public meeting halls for party activities. In all such cases, both financial and in-kind support must be provided on the basis of equality of opportunity to all parties. While "equality" may not be absolute in nature, a system for determining the proportional (or equitable) distribution of financial or in-kind state support must be objective, fair and reasonable.

236. A good practice is to provide tax credits or tax deductions for individuals and

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<sup>212</sup> Article 1 of Recommendation Rec(2003)4 of the CoE Committee of Ministers to member states on common rules against corruption in the funding of political parties and electoral campaigns, adopted by the Committee of Ministers on 8 April 2003 at the 835th meeting of the Ministers' deputies.

<sup>213</sup> *Ibid.*

<sup>214</sup> *Ibid.*



corporations who contribute to parties, including for those who make in-kind contributions, whether in the form of labor or goods and services. Legislation may provide for such contributions, including in-kind contributions to political parties, to be tax deductible. However, in accordance with Article 4 CoE Committee of Ministers Recommendation (2003)4, it is best that legislation limit such tax benefits.

237. The timing for allocating public support to political parties should be determined by relevant legislation. Some systems allocate money prior to an election, based on the results of the previous election (including seats gained in parliament) or proof of minimum levels of support. Others provide payment after an election, based on the final results or as partial reimbursement for actual expenses incurred.

238. When developing allocation systems, careful consideration should be given to pre-election funding systems, as opposed to post-election reimbursement, as the latter can perpetuate the inability of small, new or less wealthy parties to compete effectively. A post-election funding system may not provide the minimum initial financial resources necessary to fund a political campaign. Further, allocation should occur early enough in the electoral process to ensure equal opportunities throughout the period of campaigning. Delaying the distribution of public funding until late in the campaign or after election day can undermine electoral campaign equality by working against less affluent political parties.

239. The allocation of funding may either be fully equal (“absolute equality”) or proportionate in nature based on a party’s election results or proven level of support (“equitable”).<sup>215</sup> There is no universally prescribed system for determining the distribution of public funding. Legislation governing public funding that calls for distribution based on a combination of absolute equality and equitability approaches might be most effective at achieving political pluralism and equal opportunity. Where minimum thresholds of support are required for funding, an unreasonably high threshold may be detrimental to political pluralism and the opportunities of small political parties.<sup>216</sup> It is in the interest of political pluralism to condition the provision of public support on attaining a lower threshold than the electoral threshold for the allocation of a mandate in parliament.<sup>217</sup>

240. Legislation determining allocation systems may also include incentives to foster political participation. For instance, matching grants, in which the state provides an equal amount of funding to that donated to the party by supporters, may foster increased political engagement by the public.<sup>218</sup> In order for these schemes not to disadvantage parties whose supporters predominantly belong to less wealthy segments of the population, legislators could introduce matching grants for small donations up to a certain maximum. At a minimum, such systems require strong

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<sup>215</sup> See, *Conseil Constitutionnel*, Décision No. 89-271 DC du 11 Janvier 1990, concerning the conditions of granting state funding to political parties based on their results in the National Assembly elections, paras. 13 *et seq*, available at: <https://www.conseil-constitutionnel.fr/decision/1990/89271DC.htm>.

<sup>216</sup> Fernando Casal Bértoa, and Maria Spirova (2017): “Parties between Thresholds: State Subsidies and Party Behavior in Post-communist Democracies. In the case of *Özgürlük ve Dayanışma Partisi (ÖDP) v. Turkey* (10 May 2012, No. 7819/03), the ECtHR considered that the condition of minimum level of electoral support which political parties claiming public funding must obtain in Turkey (namely, 7% of the vote in the preceding parliamentary election), although was the highest in Europe, was not in breach with Article 14 of the Convention taken in conjunction with Article 3 of Protocol No. 1, paras. 43-49.

<sup>217</sup> In Germany, public funding is granted to the political parties that received 0.5 percent of the votes in the latest national or European election, or 1 percent in the latest state election in one of the German states. In its decision of 3 December 1968 (BVerfG, 03.12.1968 - 2 BvE 1/67; 2 BvE 3/67; 2 BvE 5/67), the German Federal Constitutional Court considered that the possibility for public authorities to treat the political parties differently according to their importance when granting public services does not violate the principle of equal opportunities. Available at: <https://opiniojuris.de/entscheidung/1572>.

<sup>218</sup> See e.g. the Matching Funds Program of New York City <http://www.nycffb.info/program>.

oversight to ensure that reported donation amounts are not inflated and that all private donations are made with due respect to the regulatory framework governing them.

241. Additionally, legislation should ensure that the formula for the allocation of public funding does not provide one political party with a monopoly position, or with a disproportionately high amount of funding.
242. At a minimum, some degree of public funding should be available to all parties represented in parliament.<sup>219</sup> However, to promote political pluralism, some funding should also be extended beyond those parties represented in parliament, to include all parties putting forth candidates for an election and enjoying a minimum level of citizen support. This is particularly important in the case of new parties, which must be given a fair opportunity to compete with existing parties. It is good practice to enact clear guidelines on how new parties may become eligible for funding and to extend public funding beyond parties represented in parliament. A generous system for the determination of eligibility should be considered, to ensure that voters are given the political alternatives necessary for a real choice. Limiting public funding to a high threshold of votes, and to political parties represented in parliament would hinder the free flow of ideas and opinions.<sup>220</sup>
243. The level of available public funding should be clearly defined in the relevant legislation. The rights and duties of the body with legal authority to set and revise the maximum level of financial support should also be clearly set out. Public funding of political parties must be accompanied by supervision of the parties' accounts, including requirements for regular billing, by specific public oversight bodies.
244. Allocation of public funds based on party support for women candidates may not be considered discriminatory and should be considered in light of "special measures" as defined by Article 4 of the CEDAW. As articulated in CoE Committee of Ministers Recommendation (2003)3 on balanced participation of women and men in political and public decision making, allocation of public funds can be contingent on compliance with requirements for women's participation.<sup>221</sup> While it is important to respect the free internal functioning of parties in candidacy selection and platform choices, public funding may reasonably be restricted based on compliance with a set of basic obligations.
245. It is reasonable for states to legislate minimum requirements that must be satisfied before parties may receive public funding. Such requirements may include:
- Registration as a political party (involving a statute and political program to set them apart from other associations);
  - Proof of a minimum level of support;
  - Diverse and gender-balanced representation;<sup>222</sup>

<sup>219</sup> Venice Commission, CDL-AD(2002)023rev2-cor, Code of Good Practice in Electoral Matters, para. 111.

<sup>220</sup> *Figueroa v Canada (Attorney General)* [2003] 1 S.C.R. 912, 2003 SCC 37 paras 28-36, available at <https://scc-csc.lexum.com/scc-csc/scc-csc/en/item/2069/index.do>

<sup>221</sup> Resolution 2111 (2016) of the Council of Europe's Parliamentary Assembly, para. 15.3.4. "ensure that part of the public funding of political parties, when applicable, is reserved for activities aimed at promoting women's participation and political representation and guarantee transparency in the use of the funds". See further Table 9.1 in *International IDEA Handbook on Political Finance*, Stockholm, International IDEA, 2014, p. 310. There are several countries in the OSCE/CoE region that link the provision of direct public funding to gender equality, for example Bosnia and Herzegovina, Croatia, France, Italy, Portugal, Romania and Serbia. France reduces public funding for parties which do not meet the quotas. If the gender difference among candidates is larger than 2%, public funding is reduced by  $\frac{3}{4}$  of this difference.

<sup>222</sup> A requirement for gender balance can be enacted with regards to political finance, as public financial support is not a right of political parties but an advantage or privilege offered to them. Recommendation on Balanced Participation of Women and Men in Political and Public Decision Making, *op. cit.*, note 55, Appendix, paras. A(3)-

- Proper completion of financial reports as required (including for the previous election); and
- Compliance with relevant accounting and auditing standards.

#### 4. Expenditures, Campaigns

##### a. Campaign Spending Limits

246. The regulation of party and campaign finance, including spending limits, is necessary to protect the democratic process where appropriate. As noted by the United Nations Human Rights Committee in General Comment No. 25, “reasonable limitations on campaign expenditure may be justified where this is necessary to ensure that the free choice of voters is not undermined or the democratic process distorted by the disproportionate expenditure on behalf of any candidate or party. The results of genuine elections should be respected and implemented.”<sup>223</sup> One of the key components of such a framework is the requirement for transparency. All systems for financial allocation and reporting, both during and outside of official campaign periods, should be designed to ensure transparency, consistent with the principles of the United Nations Convention against Corruption and the CoE’s Recommendation on Common Rules against Corruption in the Funding of Political Parties and Electoral Campaigns.<sup>224</sup>
247. Transparency in party and campaign finance, as noted above, is important to protect the rights of voters, prevent corruption and keep the wider public informed. Voters must have relevant information as to the financial support given to political parties, as this influences decision making and is a means of holding parties accountable. One way to enhance transparency is to require all support and expenditures to pass through election agents in charge of receiving donations for political parties and candidates and paying election expenses or have in place provisions requiring all financial transactions to go through a single bank account.
248. It is reasonable for a state to determine the criteria for electoral spending and a maximum spending limit for participants in elections, in order to achieve the legitimate aim of securing equity among candidates and political parties. Parties will also need to distinguish between electoral expenses and other party expenditures. The legitimate aim of such restrictions must, however, be balanced with the equally legitimate need to protect other rights, such as those of free association and expression. This requires that spending limits be carefully constructed so that they are not overly burdensome. The maximum spending limit usually consists of an absolute or relative sum determined by factors such as the voting population in a particular constituency and the costs for campaign materials and services. The CoE Committee of Ministers has expressed support for the latter option, with maximum expenditure limits determined - regardless of which system is adopted - in relation to the size of the electorate. Whichever system is adopted, such limits should be clearly defined in law.

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(4), states that: “Member states should consider adopting legislative reforms to introduce parity thresholds for candidates in elections at local, regional, national and supra-national levels. Where proportional lists exist, consider the introduction of zipper systems; consider action through the public funding of political parties in order to encourage them to promote gender equality.”

<sup>223</sup> United Nations Human Rights Committee General Comment 25, Article 25: The right to participate in public affairs, voting rights and the right of equal access to public service, (UN Doc.\_CCPR/C/21/Rev.1/Add.7) (1996), para. 19.

<sup>224</sup> See, United Nations Convention against Corruption (signed 9 December 2003, entered into force 14 December 2005) (1249 UNTS 13) (UNCAC), Article 7(3). See also, Recommendation on Common Rules against Corruption in the Funding of Political Parties and Electoral Campaigns, *op. cit.*, note 21, Appendix, Article 3.

Legislation on the inspection of expenditure should likewise be precise, clear and foreseeable; political parties need to be provided with “a reasonable indication as to how those provisions will be interpreted and applied”.<sup>225</sup>

249. In addition, the state body charged with developing and reviewing such limits should be clearly defined and the scope of its authority specifically determined in relevant legislation. Limits should be realistic, to ensure that all parties are able to run an effective campaign, recognizing the high expense of today’s electoral campaigns. It is best if limits are designed to account for inflation. This requires that legal limits are based on a form of indexation rather than absolute amounts.

## **b. Abuse of State Resources**

250. The abuse of state resources is universally condemned by international norms, such as Article 9 of the United Nations Convention against Corruption. State resources, or administrative resources, are defined as “human, financial, material, *in natura* and other immaterial resources enjoyed by both incumbents and civil servants in elections, deriving from their control over public sector staff, finances and allocations, access to public facilities as well as resources enjoyed in the form of prestige or public presence that stem from their position as elected or public officers and which may turn into political endorsements or other forms of support”.<sup>226</sup>

251. Cases of misuse of public resources are often related to the lack of separation between activities of public officials and governing parties. While there is a natural and unavoidable incumbency advantage, legislation on political finance must be careful to not perpetuate or enhance such advantages. Incumbent candidates and parties must not use state funds or resources (i.e., materials, labor contracts, transportation, employees, etc.) to their own advantage. In this regard, par. 5.4 of the OSCE Copenhagen Document provides that participating States have to maintain “a clear separation between the State and political parties; in particular, political parties will not be merged with the State”. Moreover, Article 5 of the CoE Committee of Ministers Recommendation (2003) 4 prohibits legal entities under the control of the State or other public authorities from making donations to political parties.<sup>227</sup>

252. To allow for the effective regulation of the use of state resources, legislation should clearly define what is permissible use and what is considered an abuse. For instance, while incumbents are often given free use of postal systems to communicate their acts of governance to the public, mailings including party propaganda or candidate platforms prior to elections can be considered a misuse of this free resource.

253. The abuse of state resources often includes the use of public premises, office equipment, or public employees for the promotion of the programme and actions of the governing party before and during elections. The same applies when government resources are used to slander and denigrate opposition parties, regardless of whether

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<sup>225</sup> See ECtHR, *Cumhuriyet Halk Partisi v. Turkey*, no. 19920/13, 26 April 2016, para. 106.

<sup>226</sup> Venice Commission and OSCE/ODIHR Joint Guidelines for Preventing and Responding to the Misuse of Administrative Resources during Electoral Processes (11-12 March 2016) p. 4; see also CG31(2016)07 Congress of Local and Regional Authorities The misuse of administrative resources during electoral processes: the role of local and regional elected representatives and public officials par 5; see also par 5.4 of the 1990 OSCE Copenhagen Document and OSCE/ODIHR Handbook for the Observation of Campaign Finance (2015) p. 22

<sup>227</sup> Article 5 of Recommendation Rec(2003)4 of the CoE Committee of Ministers to member states on common rules against corruption in the funding of political parties and electoral campaigns, adopted by the Committee of Ministers on 8 April 2003 at the 835<sup>th</sup> meeting of the Ministers’ deputies. See also the recommendation of the Assembly of the Council of Europe from 2001 (1516): European countries should maintain: “a ban on donations from States enterprises under State control or firms which provide goods or services to the public administration sector”.

this happens in the context of or outside of elections. Moreover, where public authorities (not individual government officials) are involved in campaign announcements and advertising (and perhaps even obtain billboards and other equipment for free, or below the market price), or the use of subsidies for party donations, they are abusing public funds allocated to govern a country. Another well-known form of abuse of state resources is the manipulation or intimidation of public employees. It is not unheard of for a government to require employees working in state institutions to attend a pro-government rally or otherwise to campaign for governing parties, including during office hours.<sup>228</sup> Such practices should be expressly and universally banned by law.

254. Public employees (civil servants) should not be required by a political party to make payments to it or to attend campaign rallies.<sup>229</sup>

### **c. Third-party involvement**

255. Certain individuals and organizations that are not legally tied to any candidate or political party campaign for or against candidates or political parties, or on specific issues, and are usually known as “third parties” or “non-party campaigners”. People may participate in public life either as individuals or as members of a variety of associations, of which political parties are generally the most prominent, but not the only example. Individuals and members of non-party organisations may try to influence policy and decision-making generally with the aim of obtaining some desired results from government authorities or elected representatives. Particularly within the sphere of electoral regulation, associations that do not have candidates who are themselves contesting the election are identified as “third parties” (see also pars 217-221).

256. In the course of elections, third parties may campaign in support of or against certain candidates or political parties or concentrate on other areas of political life such as political education. Third parties should be free to fundraise and express views on political issues as a means of free expression, and their activity should not be unconditionally prohibited. However, it is important that some forms of regulation, with comparable obligations and restrictions as apply to parties and party candidates, be extended to third parties that are involved in the campaign, to ensure transparency and accountability.<sup>230</sup> Third parties should be subjected to similar rules on donations and spending as political parties to avoid situations where third parties can be used to circumvent campaign finance regulations.

### **d. Free Airtime**

257. The allocation of free airtime to parties or candidates running for elections is an easy and important means of providing state support and can help the state meet its responsibility to ensure an informed electorate. As such, any system of public funding should consider adopting a requirement for the allocation of airtime to eligible parties and candidates. Where available, such airtime must be provided on the basis of equal treatment before the law and in accessible formats for persons with various types of disabilities. Thus, the distribution may reasonably be made either on the basis of absolute equality or equitably, i.e., dependent on proven levels of support. Equality refers both to the amount of time given and the timing and nature of such allocations.<sup>231</sup>

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<sup>228</sup> OSCE/ODIHR Handbook for the Observation of Campaign Finance (2015) p. 22.

<sup>229</sup> *Ibid.*, p. 23.

<sup>230</sup> *Ibid.*, p. 37.

<sup>231</sup> See, Code of Good Practice in Electoral Matters, para. 2.2.v; a limited number of OSCE participating States and CoE member States have introduced special public campaign financing for national minority political parties, with criteria based on parliamentary representation, electoral results, or the number of registered minority voters

## 5. Reporting and Disclosure

### a. Campaign Finance Reporting Requirements

258. States should require political parties as well as independent candidates to keep records of all direct and in-kind contributions received in a campaign period. The law should set out precisely what kind of reporting is required, including the timeframe and method of public disclosure. In cases where there are different deadlines for different obligations, the relevant legislation should ensure that these complement each other (e.g. deadlines for reimbursement of campaign expenses should bear in mind the existing auditing and analysis deadlines for the respective financial reports).<sup>232</sup> Parties and independent candidates should also be required to file basic information with the appropriate state authority (generally an election-management body or predetermined regulatory oversight authority) prior to the beginning of their campaign. Such information should include the party's bank account information and the personal information of those persons accountable for the party's finances. Generally, reporting requirements should be such that also smaller parties can fulfil them, and should not hinder such parties' participation in political life. Digitalizing information and submitting it to the regulatory body in its digitalized, easily searchable and reusable form can facilitate oversight and therefore minimize the need for paper-based procedures.

259. Reports on campaign financing should be submitted to the proper authorities after elections in a timely manner, but with a reasonable deadline that allows parties to compile data, invoices, information on reimbursements of loans, etc. Such reports should be required not only for the party as a whole but for independent candidates and individual candidates as well, when they have received public funding or individual donations above a certain threshold. The law should define the format and contents of the reports to ensure that parties and candidates disclose essential information. This also helps make sure that information received from the different parties is easily searchable and can be compared. In an effort to support transparency and provide civil society and other interested stakeholders with the possibility of reviewing parties' campaign finances, it is good practice for such financial reports to be made available on publicly available resources in a coherent, comprehensive and timely manner over an extended period of time.<sup>233</sup>

### b. Political Party Finance Reporting Requirements

260. Reports should clearly distinguish between income and expenditures. Further, reporting formats should include the itemization of donations into standardized categories as defined by relevant regulations and should be easily accessible and user-friendly and not overly burdensome, while also allowing the relevant data to be processed electronically afterwards. The nature and value of all donations received by a political party should be identified in financial reports. Overall, a party's income,

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(Serbia, Romania and Hungary, respectively). In 2014, for the first and only time, public subsidies were provided for prospective candidates with disabilities in the UK.

<sup>232</sup> Venice Commission, CDL-AD(2015)025 Joint Opinion on the Draft Amendments to some Legislative Acts Concerning Prevention of and Fight against Political Corruption of Ukraine, para. 27.

<sup>233</sup> See OSCE/ODIHR Opinion on Laws Regulating the Funding of Political Parties in Spain (30 October 2017), para. 55; OSCE/ODIHR Opinion on Draft Amendments to some Legislative Acts of Ukraine concerning Transparency of Financing of Political Parties and Election Campaigns (14 September 2014), para. 25; OSCE/ODIHR-Venice Commission 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 (14 October 2014), para. 38; OSCE/ODIHR-Venice Commission, CDL-AD(2015)025 Joint Opinion on the Draft Amendments to some Legislative Acts Concerning Prevention of and Fight against Political Corruption of Ukraine, para. 38.

expenditure, assets and debts need to be accounted for in a comprehensive manner. Loans should be explicitly identified. In some states, political parties are required to provide information concerning outstanding loans, the corresponding awarding entity, the amount granted, the interest rate, and the period of repayment. In such countries, specific measures were also taken to ensure that the reimbursement of loans complies with the terms with which they have been granted.

261. Reports should include (where applicable) both general party and campaign finance. Reports must also clearly identify, to the extent possible, which expenditures were used for the benefit of the party and which for that of an individual candidate. The law should set out precisely what reporting is required, the timeframe and the method of public disclosure. It is good practice to require the following reports:

- Initial reports before the campaign begins, to ensure that accounts are properly opened (if applicable). Such reports should include the party or candidate's bank account information and the name and function of the persons accountable for the party or candidate's campaign finances;
- Reports providing oversight bodies and the public with preliminary information on campaign incomes and expenses of parties and candidates several days before election day;
- Final reports after the election and certification of results, to provide a complete and comprehensive account of all campaign financing. The deadline for submitting the final report to the oversight body should be precisely defined in the law. It is critical that the timeframe be sufficient, yet not too long, to allow those with reporting obligations, time to assemble the information, and to allow the oversight body to undertake a thorough and expedient auditing and, where necessary, initiate proportionate and timely sanctions.

262. A party may attempt to circumvent campaign finance regulations by conducting activities during a "pre-electoral" period or by utilizing other entities or persons as conduits for funds or services. To limit this abuse, strong systems for financial reporting by political parties outside of elections must be enacted. Legislation should provide clear rules and guidelines regarding which activities are not allowed during the pre-election campaign, and what income and expenditures for such activities during this time should be regarded as campaign resources subject to proper review and sanction. Legislation should clearly state whom political party funds may be released to in the pre-election period and the limitations upon their use by third parties not directly associated with the party. Goods and services granted for election campaigns at discount prices need to be properly identified and accounted for at their market value.

263. Transparency in reporting requires the timely publication of parties' financial reports; the reports need to remain public for an appropriate amount of time, to allow for proper public scrutiny. The fulfilment of this requirement means that reports need to contain enough details to be useful and understandable for the general public and can be facilitated through digitalization of the process. While the publication of financial reports is crucial to establishing public confidence in the functions of a party, reporting requirements must also strike a balance between necessary disclosure and exceptionally pressing privacy concerns of individual donors in cases of a reasonable probability of threats, harassment or reprisals, or where disclosure could result in serious political repercussions.

### **c. Disclosure**



264. Article 7(3) of the United Nations Convention against Corruption obliges signatory states to make good-faith efforts to improve transparency in election-candidate and political party financing. Disclosure requirements for political financing are the main policy instruments for achieving such transparency. While other forms of regulation can be used to control the role of money in the political process, such as spending limits, bans on certain forms of income, and the provision of public funding, effective disclosure is required for other regulations to be implemented properly. Moreover, political parties receiving public funding also need to disclose how they spend these funds to the state and the public.
265. Political parties should be required to submit disclosure reports to the appropriate regulatory authority at least on an annual basis in the non-campaign period. These reports should involve the disclosure of contributions and an explanation of all expenditures. Records as well as the oversight body's findings and conclusions should be available for public review for an extended period of time to allow for proper public scrutiny, possibly even in a central state database.<sup>234</sup> While transparency may be increased by requirements to report the identities of donors, legislation should also balance this requirement with exceptionally pressing privacy concerns of individual donors in cases where there is a reasonable probability of threats, harassment or reprisals. Some states require the publication of names and addresses of all donors, others only ask for the identity of donors surpassing a certain monetary threshold. Disclosure thresholds should not be too high, as this may circumvent the prohibition of anonymous donation and increase cash donations (where possible). Certain states, on the other hand, choose not to require the disclosure of the identity of certain types of donors, when this may place them at risk of physical harm.<sup>235</sup>

## **PART V. OVERSIGHT OF POLITICAL PARTIES; EFFECTIVE LEGAL REMEDY**

### **1. Scope and Mandate of the Relevant State Bodies**

266. State authorities must act impartially, non-discriminatorily and objectively in dealing with the process of political party registration (where applicable), political party finance, and the regulation of party activities. In principle, all parties should be subject to the same regulatory provisions and be provided equal treatment in the implementation of regulations, although both requirements and enforcement might be less strict for small parties.
267. There should be a clear delineation of which bodies are responsible for different aspects of implementing regulations on political parties, as well as clear guidelines establishing their functions and the limits of their authority. Generally, registration is completed by a competent state ministry or a judicial body. Whichever body is tasked with registration, it should be non-partisan in nature and meet requirements of independence and impartiality. Parties should have the right to appeal decisions by relevant state bodies to a competent, independent and impartial tribunal;<sup>236</sup> authorities

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<sup>234</sup> OSCE/ODIHR Opinion on Draft Amendments to some Legislative Acts of Ukraine concerning Transparency of Financing of Political Parties and Election Campaigns (14 September 2014), para. 25; OSCE/ODIHR-Venice Commission, 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 (14 October 2014), para. 38; OSCE/ODIHR-Venice Commission, CDL-AD(2015)025, Joint Opinion on the Draft Amendments to some Legislative Acts Concerning Prevention of and Fight against Political Corruption of Ukraine, para. 60 and OSCE/ODIHR Opinion on Laws Regulating the Funding of Political Parties in Spain (30 October 2017), para. 55; see e.g. Elections Canada for a detailed database that allows for public scrutiny ([www.elections.ca](http://www.elections.ca)).

<sup>235</sup> See OSCE/ODIHR Handbook for the Observation of Campaign Finance, pp. 21, 41.

<sup>236</sup> United Nations Human Rights Committee General Comment 32, Article 14: Right to equality before courts and tribunals and to a fair trial, (UN Doc. CCPR/C/GC/32) (2007), paras. 18-19. See also Recommendation on Common



should in all cases be held accountable for their decisions.

268. Legislation shall include guidelines on how the violation of key legislation may be brought to the attention of the relevant supervisory bodies, what powers of investigation are granted to such bodies, and the range of applicable sanctions. Generally, legislation should grant oversight agencies the ability to investigate and pursue potential violations. Without such investigative powers, agencies are unlikely to have the ability to effectively implement their mandate. Adequate financing and resources are also necessary to ensure the proper functioning and operation of the oversight body.
269. Additionally, legislation shall define the decision-making process for all relevant bodies, and be clearly understandable, also to the public. Bodies charged with the supervision of political parties shall refrain from exerting excessive control over party activities and limit their investigations to cases where there has been an indication of wrongdoing of an individual party.
270. In order to ensure transparency and to increase their independence, legislation shall specifically define how relevant state oversight bodies are appointed. Overall, such bodies function best if appointments are made on a staggered basis and separate from the electoral cycle. In addition, it is generally good practice for the competent officials conducting financial oversight to be appointed for a single term free from political influence. The law shall set out clear criteria not only for the appointment of members of such bodies, but also for their dismissal.
271. The timeline for decisions regarding the regulation of political party activities or their formation shall be stated clearly in law and the process as a whole shall be transparent. This is particularly important given the sensitivity and time-bound nature of the electoral process. For example, 30 days appears to be a reasonable maximum deadline for decisions by state authorities about party establishment and registration. Any deadlines that the respective authority is obliged to adhere to need to be drafted in a such a way as to provide this body with enough time to substantively monitor and analyze reports submitted by political parties. The law should also allow for the correction and resubmission of registration papers to rectify minor deficiencies in a party's registration materials within a reasonable amount of time after initial rejection. Finally, states shall ensure that time limits regulating different processes in different laws are consistent and complementary.

## **2. Sanctions for Non-Compliance**

272. Sanctions should be applied against political parties found to be in violation of relevant laws and regulations and should be dissuasive in nature. Moreover, in addition to being enforceable, sanctions must at all times be objective, effective, and proportionate to the specific violation. The use of sanctions to hold political parties accountable for their actions should not be confused with prohibition and dissolution based on a party's use of violence or threats to civil peace or fundamental democratic principles. Prohibition and dissolution based on such extreme circumstances is the most severe form of holding parties accountable for legal violations and should only be applied as a measure of last resort where this is necessary in a democratic society. Where a party is a habitual offender with regard to legal provisions and makes no effort to correct its behavior, the loss of registration status might be appropriate, depending on the rights and benefits attached to such status. In particular, loss of registration status may be significant where it involves state financial support for parties.

273. There should be a spectrum of sanctions available when addressing non-compliance with laws and regulations. As noted above, sanctions must bear a relationship to the violation and respect the principle of proportionality. Such sanctions for violations that are not of such a serious character to lead to prohibition or dissolution of a party may include:

274. Administrative fines, the amount of which should be determined according to the nature of the violation – including whether the violation is recurring; it is best if fines are designed to account for inflation, based on, for example, some form of indexation, such as a minimum salary value, rather than absolute amounts. If absolute amounts are included in the legislation, they should be regularly re-evaluated in order to ensure that they remain effective, proportionate and dissuasive.<sup>237</sup> There should be a variety of sanctions available in addressing non-compliance. Sanctions could include:

- Partial or total suspension or loss of public funding and other forms of public support for a set period of time;
- Ineligibility for state support for a set period of time;
- Partial or total suspension or loss of reimbursement for campaign expenses, which will affect a party's general financial status;
- Forfeiture to the state treasury of undue financial support previously transferred to or accepted by a party;
- Ineligibility to present candidates/run for elections for a set period of time in cases where a candidate severely violated substantial rules of electoral campaigns or rules on electoral campaign finance;
- Rejection of the party's electoral list or individual candidates, removal from the electoral ballot;
- In cases involving significant violations, criminal sanctions against the party members responsible for the violation(s);
- Annulment of a candidate's election to office, but only as determined by a court of law, in compliance with due process and only if the legal violation is likely to have impacted the electoral result; and
- Loss of registration status for the party.

275. Sanctions should generally be directed at the respective party, or segment/branch of the party where the violation occurred. However, where local branches of a party are found to have acted in the name of the statutory board of a national party, sanctions may be brought against the party at the national level. Sanctions should always be compatible with the principle of proportionality. Prior to the enactment of any sanction, the competent oversight authority should carefully consider the sanction's aim, balanced against its possible detrimental effect on political pluralism or the enjoyment of protected rights. When sanctions are imposed, the public should be informed of the facts giving rise to the legal violation and the particular sanction imposed on the political party.

### **3. Monitoring of Funding Violations and Sanctions**

As stated in Article 14 of CoE Committee of Ministers Recommendation 2003(4), "States should provide for independent monitoring in respect of the funding of political parties and electoral campaigns. The independent monitoring should include supervision over the accounts of political parties and the expenses involved in election campaigns as well as their presentation and publication".

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<sup>237</sup> OSCE/ODIHR Opinion on Laws Regulating the Funding of Political Parties in Spain, (30 October 2017), para. 67.

276. Monitoring can be undertaken by a variety of different bodies and may include an internal independent auditing of party accounts by certified experts or a single public supervision body with a clear mandate, appropriate authority and adequate resources. To ensure substantive supervision, monitoring should be conducted at the central and local levels. In cases where there are several monitoring bodies, the relevant legislation should clearly outline their various differing competences and mandates and ensure that they complement one another.<sup>238</sup> In this context, it is essential that the funding of campaign and party finances is overseen by the same body, to ensure consistency. Whichever body is tasked to review the party's financial reports, effective measures should be taken in legislation and in practice to ensure the respective body's independence from political pressure and commitment to impartiality. Such independence and impartiality are fundamental to its proper functioning.
277. Legislation shall define the procedure for appointing members to the regulatory body and clearly delineate their powers and activities. The respective appointment procedure needs to be carefully drafted to avoid political influence over members. Legislation shall also specify the types and scope of violations requiring sanctions and provide clear guidance on the process for appeal against regulatory decisions.
278. The supervisory authority should be given the power to monitor accounts and conduct audits of financial reports submitted by parties and candidates. Financial regulation is an area that is often susceptible to discriminatory or biased treatment by regulatory bodies. To avoid this, legislation should clearly outline the different steps of the audit process. Audits should be non-discriminatory and objective in their application to all cases. At the same time, parties which do not receive public funding and do not engage in significant financial activities (e.g., cash flow in and out of their accounts) might be exempted from auditing, unless there are indications that they have violated key regulations, as auditing obligations can overstretch the personal and financial resources of very small or newly formed parties. Legislation should then specify which categories of parties are excluded from audits. Such an approach would also help reduce the workload of the supervisory authority, which could then focus on larger parties with more funds at their disposal. The supervisory authority should report suspected offences to the relevant law enforcement authorities.
279. Irregularities in financial reporting, non-compliance with financial-reporting regulations or the improper use of public funds should result in the loss of all or part of such funds for the party. Other available sanctions may include the imposition of administrative fines on the party. As the CoE Committee of Ministers has stated, political parties should be subject to "effective, proportionate and dissuasive sanctions" for violations of political party funding laws.<sup>239</sup> Sanctions for violations of law are discussed more fully above, in paras. 271 *et seq.* The relevant bodies should be able to suspend reimbursement of campaign expenses in cases where the audit and analysis of a party's financial statements reveal them to be incomplete, until further clarification has been received.<sup>240</sup>
280. As also noted above, all sanctions must be flexible and proportionate in nature. In the area of finance violations, this should include a consideration of the amount of money involved, whether there were attempts to hide the violation, and whether the violation is of a recurring nature.

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<sup>238</sup> See Venice Commission, CDL-AD(2015)025 Joint Opinion on the Draft Amendments to some Legislative Acts Concerning Prevention of and Fight against Political Corruption of Ukraine (26 October 2015), paras. 38-39.

<sup>239</sup> Recommendation on Common Rules against Corruption in the Funding of Political Parties and Electoral Campaigns, Appendix, Article 16.

<sup>240</sup> See ODIHR-Venice Commission, CDL-AD(2015)025, paras. 25-26.

281. While criminal sanctions are reserved for serious violations that undermine public integrity or may threaten national security (e.g. in the case of foreign funding), there should be a range of administrative sanctions available not only for the improper acquisition or use of funds by parties, as referred to in para. 278, but also for individual wrongdoing.

#### 4. Right to an Effective Remedy

282. Article 13 of the ECHR provides that “[e]veryone whose rights and freedoms as set forth in this Convention are violated shall have an effective remedy before a national authority notwithstanding that the violation has been committed by persons acting in an official capacity.” Similar provisions establishing the right to an effective remedy are found in Article 8 of the UDHR, Article 2 of the ICCPR and Article 5 of the International Convention on the Elimination of All Forms of Racial Discrimination. Thus, state legislation should provide an effective remedy for any violation of the fundamental rights of political parties and their members, in particular the right to freedom of association and expression. The remedy may be provided by a competent administrative, legislative or judicial authority, but must be available for all violations of fundamental rights affirmed by international and regional instruments. Remedies must be provided expeditiously in order to be effective, as a remedy that is granted too late is of little remedial benefit. Legislation should likewise extend the right of judicial review of such decisions to persons or other parties that are affected by the decision in any of their civil rights.

283. Article 6 of the ECHR provides that “[i]n the determination of his civil rights and obligations or of any criminal charge against him, everyone is entitled to a fair and public hearing within a reasonable time by an independent and impartial tribunal established by law.” Similar provisions are found in Article 10 of the UDHR and Article 14 of the ICCPR. Para 5.10 of the 1990 OSCE Copenhagen Document commits participating states to ensure that “everyone will have an effective means of redress against administrative decisions, so as to guarantee respect for fundamental rights and ensure legal integrity”. This includes the right to have one’s case heard publicly and expeditiously by an independent and impartial tribunal, as well as the right to equal access to judicial proceedings. The right to a fair and public hearing, coupled with the right to an effective remedy, also ensures an adequate means of redress for the violation of fundamental rights and freedoms.

284. In order for relevant court proceedings to fall within the purview of Article 6 of the ECHR, they need to involve the determination of the civil rights and obligations of political parties and their leadership or members, or a criminal charge against them.<sup>241</sup> The ECtHR has found that the majority of the Convention rights – including the freedom of association<sup>242</sup> are “civil rights” and fall under Article 6(1) of the Convention.<sup>243</sup> However, until now the Court has not expanded the protection of Article 6(1) to cases concerning the dissolution of a political party, as they concern a political right, not a civil right.<sup>244</sup> An exception was recognised where the court proceedings also concerned the transfer of assets following dissolution; in this situation, the party’s or members’ ownership rights were affected.<sup>245</sup>

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<sup>241</sup> ECtHR, *AB Kurt Kellerman v. Sweden* (dec.), no. 41579/98, 1 July 2003; ECtHR, *Shapovalov v. Ukraine*, no. 45835/05, 31 July 2012, para. 45.

<sup>242</sup> ECtHR, *AB Kurt Kellerman v. Sweden* (dec.), no. 41579/98, 1 July 2003; ECtHR, *Shapovalov v. Ukraine*, no. 45835/05, 31 July 2012, para. 45.

<sup>243</sup> ECtHR, *Athanassoglou and Others v. Switzerland* [GC], no. 27644/95, 6 April 2000, para. 55.

<sup>244</sup> ECtHR, *HADEP and Demir v. Turkey*, no. 28003/03, 14 December 2010, para. 87.

<sup>245</sup> ECtHR, *Refah Partisi (the Welfare Party) and Others v. Turkey* (dec.), nos. 41340/98 and 3 others, 3 October

285. The Venice Commission and OSCE/ODIHR take the view, that because of the fundamental importance of political parties as instruments of the freedom of association and the democratic process any restriction on parties must be capable of being submitted to an independent court, at least in final instance. Furthermore, prohibition/dissolution of a political party is of such a radical nature that it must always be decided by a court.

286. In court proceedings, it is important that such cases are heard within a reasonable time. Proceedings cannot be delayed without risking the infringement of the right to a fair trial.<sup>246</sup> Legislation should thus define reasonable deadlines by which applications should be filed and decisions granted, with due respect to any special considerations arising from the substantive nature of the decision.

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2000. See also *Yazar and Others v. Turkey*, nos. 22723/93 and 2 others, 9 April 2002, para. 66, and, more recently, ECtHR, *HADEP and Demir v. Turkey*, no. 28003/03, 14 December 2010, para. 87.

<sup>246</sup> United Nations Human Rights Committee, General Comment 32, *op. cit.*, note 75, para. 27.

## ANNEXES

### Annex A – Selected International and Regional Instruments

This section includes a selection of excerpts from relevant international and regional instruments critical to the regulation and functioning of political parties in the OSCE region and discussed in this document. The ICCPR and the ECHR represent legal obligations upon states, having undergone a process of ratification. While documents like the Universal Declaration of Human Rights and the Copenhagen Document do not have the force of binding law, the nature of these political commitments make them persuasive upon signatory states.

#### International Covenant on Civil and Political Rights (ICCPR)

##### Article 2

1. Each State Party to the present Covenant undertakes to respect and to ensure to all individuals within its territory and subject to its jurisdiction the rights recognised in the present Covenant, 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.

2. Where not already provided for by existing legislative or other measures, each State Party to the present Covenant undertakes to take the necessary steps, in accordance with its constitutional processes and with the provisions of the present Covenant, to adopt such legislative or other measures as may be necessary to give effect to the rights recognised in the present Covenant.

Each State Party to the present Covenant undertakes:

(a) To ensure that any person whose rights or freedoms as herein recognised are violated shall have an effective remedy, notwithstanding that the violation has been committed by persons acting in an official capacity;

(b) To ensure that any person claiming such a remedy shall have his right thereto determined by competent judicial, administrative or legislative authorities, or by any other competent authority provided for by the legal system of the State, and to develop the possibilities of judicial remedy;

(c) To ensure that the competent authorities shall enforce such remedies when granted.

##### Article 14

1. All persons shall be equal before the courts and tribunals. In the determination of any criminal charge against him, or of his rights and obligations in a suit at law, everyone shall be entitled to a fair and public hearing by a competent, independent and impartial tribunal established by law. The press and the public may be excluded from all or part of a trial for reasons of morals, public order (*ordre public*) or national security in a democratic society, or when the interest of the private lives of the parties so requires, or to the extent strictly necessary in the opinion of the court in special circumstances where publicity would prejudice the interests of justice; but any judgment rendered in a criminal case or in a suit at law shall be made public except where the interest of juvenile persons otherwise requires or the proceedings concern matrimonial disputes or the guardianship of children.

##### Article 19

1. Everyone shall have the right to hold opinions without interference.

2. Everyone shall have the right to freedom of expression; this right shall include freedom to seek, receive and impart information and ideas of all kinds, regardless of frontiers, either orally, in writing or in print, in the form of art, or through any other media of his choice.

3. The exercise of the rights provided for in paragraph 2 of this article carries with it special duties and responsibilities. It may therefore be subject to certain restrictions, but these shall only be such as are provided by law and are necessary:

(a) For respect of the rights or reputations of others;

(b) For the protection of national security or of public order (*ordre public*), or of public health or morals.

#### **Article 22**

1. Everyone shall have the right to freedom of association with others, including the right to form and join trade unions for the protection of his interests.
2. No restrictions may be placed on the exercise of this right other than those which are prescribed by law and which are necessary in a democratic society in the interests of national security or public safety, public order (*ordre public*), the protection of public health or morals or the protection of the rights and freedoms of others. This article shall not prevent the imposition of lawful restrictions on members of the armed forces and of the police in their exercise of this right.
3. Nothing in this article shall authorize States Parties to the International Labour Organisation Convention of 1948 concerning Freedom of Association and Protection of the Right to Organize to take legislative measures which would prejudice, or to apply the law in such a manner as to prejudice, the guarantees provided for in that Convention.

#### **Article 26**

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.

### **Convention on the Elimination of All Forms of Discrimination against Women**

#### **Article 3**

States Parties shall take in all fields, in particular in the political, social, economic and cultural fields, 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.

#### **Article 4**

1. Adoption by States Parties of temporary special measures aimed at accelerating *de facto* equality between men and women shall not be considered discrimination as defined in the present Convention, but shall in no way entail as a consequence the maintenance of unequal or separate standards; these measures shall be discontinued when the objectives of equality of opportunity and treatment have been achieved.

#### **Article 7**

States Parties shall take all appropriate measures to eliminate discrimination against women in the political and public life of the country and, in particular, shall ensure to women, on equal terms with men, the right:

- (a) To vote in all elections and public referenda and to be eligible for election to all publicly elected bodies;
- (b) To participate in the formulation of government policy and the implementation thereof and to hold public office and perform all public functions at all levels of government;
- (c) To participate in non-governmental organisations and associations concerned with the public and political life of the country.

### **International Convention on the Elimination of Racial Discrimination**<sup>247</sup>

#### **Article 2(2)**

States Parties shall, when the circumstances so warrant, take, in the social, economic, cultural and other fields, special and concrete measures to ensure the adequate development and protection of certain racial groups or individuals belonging to them, for the purpose of guaranteeing them the full and equal enjoyment of human rights and fundamental freedoms. These measures shall in no case entail as a consequence the maintenance of unequal or

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<sup>247</sup> ICERD, *op. cit.*, note 14.

separate rights for different racial groups after the objectives for which they were taken have been achieved.

#### **Article 5**

In compliance with the fundamental obligations laid down in article 2 of this Convention, States Parties undertake to prohibit and to eliminate racial discrimination in all its forms and to guarantee the right of everyone, without distinction as to race, colour, or national or ethnic origin, to equality before the law, notably in the enjoyment of the following rights: ...

(ix) The right to freedom of peaceful assembly and association

### **Convention on the Rights of Persons with Disabilities**

#### **Article 29**

Participation in political and public life

States Parties shall guarantee to persons with disabilities political rights and the opportunity to enjoy them on an equal basis with others, and shall undertake:

(a) To ensure that persons with disabilities can effectively and fully participate in political and public life on an equal basis with others, directly or through freely chosen representatives, including the right and opportunity for persons with disabilities to vote and be elected, inter alia, by:

(i) Ensuring that voting processes, facilities and materials are appropriate, accessible and easy to understand and use

(ii) Protecting the right of person with disabilities to vote by secret ballot in elections and public referendums without intimidation, and to stand for elections, to effectively hold office and perform all public functions at all levels of government, facilitating the use of assertive and new technologies where appropriate;

(iii) Guaranteeing the free expression of the will of persons with disabilities as electors and to this end, where necessary, at their request, allowing assistance in voting by a person of their own choice;

(b) To promote actively an environment in which persons with disabilities can effectively and fully participate in the conduct of public affairs, without discrimination and on an equal basis with others, and encourage their participation in public affairs, including:

(i) Participation in non-governmental organisations and associations concerned with the public and political life of the country, and in the activities and administration of political parties;

(ii) Forming and joining organisations of persons with disabilities to represent persons with disabilities at international, national, regional and local levels.

### **United Nations Convention against Corruption**

#### **Article 7(3)**

Each State Party shall also consider taking appropriate legislative and administrative measures, consistent with the objectives of this Convention and in accordance with the fundamental principles of its domestic law, to enhance transparency in the funding of candidatures for elected public office and, where applicable, the funding of political parties.

### **Universal Declaration of Human Rights**

#### **Article 19**

Everyone has the right to freedom of opinion and expression; this right includes freedom to hold opinions without interference and to seek, receive and impart information and ideas through any media and regardless of frontiers.

#### **Article 20**

1. Everyone has the right to freedom of peaceful assembly and association.
2. No one may be compelled to belong to an association.

### **UN HRC 'General Comment No 25: The Right to Participate in Public Affairs, Voting Rights and the Right of Equal Access to Public Service (Art. 25)'**



12 July 1996) GAOR 51st Session Supp 40 vol 1, 98:

25. In order to ensure the full enjoyment of rights protected by article 25, the free communication of information and ideas about public and political issues between citizens, candidates and elected representatives is essential. This implies a free press and other media able to comment on public issues without censorship or restraint and to inform public opinion. It requires the full enjoyment and respect for the rights guaranteed in articles 19, 21 and 22 of the Covenant, including freedom to engage in political activity individually or through political parties and other organisations, freedom to debate public affairs, to hold peaceful demonstrations and meetings, to criticize and oppose, to publish political material, to campaign for election and to advertise political ideas.

26. The right to freedom of association, including the right to form and join organisations and associations concerned with political and public affairs, is an essential adjunct to the rights protected by article 25. Political parties and membership in parties play a significant role in the conduct of public affairs and the election process. States should ensure that, in their internal management, political parties respect the applicable provisions.

### **Beijing Declaration and Platform for Action<sup>248</sup>**

#### **Article 13**

Women's empowerment and their full participation on the basis of equality in all spheres of society, including participation in the decision-making process and access to power, are fundamental for the achievement of equality, development and peace.

#### **Article 24**

Take all necessary measures to eliminate all forms of discrimination against women and the girl child and remove all obstacles to gender equality and the advancement and empowerment of women;

#### **Article 32**

Intensify efforts to ensure equal enjoyment of all human rights and fundamental freedoms for all women and girls who face multiple barriers to their empowerment and advancement because of such factors as their race, age, language, ethnicity, culture, religion, or disability, or because they are indigenous people.

#### **Platform for Action Actions to be taken by Governments:**

Take measures, including where appropriate, in electoral systems that encourage political parties to integrate women in elective and non-elective public positions in the same proportion and levels as men.

#### **By political parties:**

(a) Consider examining party structures and procedures to remove all barriers that directly or indirectly discriminate against the participation of women;

(b) Consider developing initiatives that allow women to participate fully in all internal policy-making structures and appointive and electoral nominating processes;

(c) Consider incorporating gender issues in their political agenda taking measures to ensure that women can participate in the leadership of political parties on an equal basis with men.

**By Governments,** national bodies, the private sector, political parties, trade unions, employers' organizations, subregional and regional bodies, non-governmental and international organisations and educational institution;

(a) Provide leadership and self-esteem training to assist women and girls, particularly those with special needs, women with disabilities and women belonging to racial and ethnic minorities to strengthen their self-esteem and to encourage them to take decision-making positions;

(b) Have transparent criteria for decision-making positions and ensure that the selecting bodies have a gender-balanced composition;

(c) Create a system of mentoring for inexperienced women and, in particular, offer training, including training in leadership and decision-making, public speaking and self-assertion, as well as in political campaigning;

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<sup>248</sup> Beijing Declaration and Platform for Action, *op. cit.*, note 20.

- (d) Provide gender-sensitive training for women and men to promote non-discriminatory working relationships and respect for diversity in work and management styles;
- (e) Develop mechanisms and training to encourage women to participate in the electoral process, political activities and other leadership areas.

**Committee on the Elimination of all Forms of Discrimination against Women, General Comment No. 23: Political and Public Life<sup>249</sup>**

States parties should ensure that their constitutions and legislation comply with the principles of the Convention, and in particular with articles 7 and 8. States parties are under an obligation to take all appropriate measures, including the enactment of appropriate legislation that complies with their Constitution, to ensure that organisations such as political parties and trade unions, which may not be subject directly to obligations under the Convention, do not discriminate against women and respect the principles contained in articles 7 and 8. States parties should identify and implement temporary special measures to ensure the equal representation of women in all fields covered by articles 7 and 8. States parties should explain the reason for, and effect of, any reservations to articles 7 or 8 and indicate where the reservations reflect traditional, customary or stereotyped attitudes towards women's roles in society, as well as the steps being taken by the States parties to change those attitudes. States parties should keep the necessity for such reservations under close review and in their reports include a timetable for their removal.

**Recommendations Article 7**

Measures that should be identified, implemented and monitored for effectiveness include, under article 7, paragraph (a), those designed to:

- (a) Achieve a balance between women and men holding publicly elected positions;
- (b) Ensure that women understand their right to vote, the importance of this right and how to exercise it;
- (c) Ensure that barriers to equality are overcome, including those resulting from illiteracy, language, poverty and impediments to women's freedom of movement;
- (d) Assist women experiencing such disadvantages to exercise their right to vote and to be elected.

(...)

When reporting under article 7, States parties should:

- (h) Provide information concerning, and analyze factors contributing to, the underrepresentation of women as members and officials of political parties, trade unions, employers' organisations and professional associations.

**Committee on the Elimination of all Forms of Discrimination against Women, General Comment No. 25: Temporary Special Measures<sup>250</sup>**

**Para. 18**

Measures taken under article 4, paragraph 1, by States parties should aim to accelerate the equal participation of women in the political, economic, social, cultural, civil or any other field. The Committee views the application of these measures not as an exception to the norm of non-discrimination, but rather as an emphasis that temporary special measures are part of a necessary strategy by States parties directed towards the achievement of de facto or substantive equality of women with men in the enjoyment of their human rights and fundamental freedoms. While the application of temporary special measures often remedies the effects of past discrimination against women, the obligation of States parties under the Convention to improve the position of women to one of de facto or substantive equality with

<sup>249</sup> CEDAW Committee Recommendation No 23: "Political and Public Life" (1997) GAOR 52<sup>nd</sup> Session Supp 38, Rev. 1, 61.

<sup>250</sup> CEDAW Committee Recommendations 25: "Temporary Special Measures" (2004) GAOR 59<sup>th</sup> Session Supp 38, Rev. 1, 79.

men exists irrespective of any proof of past discrimination. The Committee considers that States parties that adopt and implement such measures under the Convention do not discriminate against men.

**Para. 23**

The adoption and implementation of temporary special measures may lead to a discussion of qualifications and merit of the group or individuals so targeted, and an argument against preferences for allegedly lesser-qualified women over men in areas such as politics, education and employment. As temporary special measures aim at accelerating achievement of de facto or substantive equality, questions of qualification and merit, in particular in the area of employment in the public and private sectors, need to be reviewed carefully for gender bias as they are normatively and culturally determined. For appointment, selection or election to public and political office, factors other than qualification and merit, including the application of the principles of democratic fairness and electoral choice, may also have to play a role.

**Para. 29**

States parties should provide adequate explanations with regard to any failure to adopt temporary special measures. Such failures may not be justified simply by averring powerlessness, or by explaining inaction through predominant market or political forces, such as those inherent in the private sector, private organisations, or political parties. States parties are reminded that article 2 of the Convention, which needs to be read in conjunction with all other articles, imposes accountability on the State party for action by these actors.

**Para. 32**

The Committee draws the attention of States parties to the fact that temporary special measures may also be based on decrees, policy directives and/or administrative guidelines formulated and adopted by national, regional or local executive branches of government to cover the public employment and education sectors. Such temporary special measures may include the civil service, the political sphere and the private education and employment sectors. The Committee further draws the attention of States parties to the fact that such measures may also be negotiated between social partners of the public or private employment sector or be applied on a voluntary basis by public or private enterprises, organisations, institutions and political parties.

**Committee on the Rights of Persons with Disabilities**

**General Comment No. 1 on Article 12: Equal recognition before the Law**

48. Denial or restriction of legal capacity has been used to deny political participation, especially the right to vote, to certain persons with disabilities. In order to fully realize the equal recognition of legal capacity in all aspects of life, it is important to recognize the legal capacity of persons with disabilities in public and political life (art. 29). This means that a person's decision-making ability cannot be a justification for any exclusion of persons with disabilities from exercising their political rights, including the right to vote, the right to stand for election and the right to serve as a member of a jury.

49. States parties have an obligation to protect and promote the right of persons with disabilities to access the support of their choice in voting by secret ballot, and to participate in all elections and referendums without discrimination. The Committee further recommends that States parties guarantee the right of persons with disabilities to stand for election, to hold office effectively and to perform all public functions at all levels of government, with reasonable accommodation and support, where desired, in the exercise of their legal capacity.

**General Comment No. 2 on Article 9: Accessibility**

43. Article 29 of the Convention guarantees persons with disabilities the right to participate in political and public life, and to take part in running public affairs. Persons with disabilities would be unable to exercise those rights equally and effectively if States parties failed to ensure that voting procedures, facilities and materials were appropriate, accessible and easy to understand and use. It is also important that political meetings and materials used and produced by political parties or individual candidates participating in public elections are

accessible. If not, persons with disabilities are deprived of their right to participate in the political process in an equal manner. Persons with disabilities who are elected to public office must have equal opportunities to carry out their mandate in a fully accessible manner.

### **General Comment No. 3 on Women and Girls with Disabilities**

60. The voices of women and girls with disabilities have historically been silenced, which is why they are disproportionately underrepresented in public decision-making. Owing to power imbalances and multiple discrimination, they have had fewer opportunities to establish or join organisations that can represent their needs as women, children and persons with disabilities.

## **Charter of the Fundamental Rights of the European Union**

### **Article 12**

1. Everyone has the right to freedom of peaceful assembly and to freedom of association at all levels, in particular in political, trade union and civic matters, which implies the right of everyone to form and to join trade unions for the protection of his or her interests.

2. Political parties at Union level contribute to expressing the political will of the citizens of the Union.

### **Article 21**

1. Any discrimination based on any ground such as sex, race, colour, ethnic or social origin, genetic features, language, religion or belief, political or any other opinion, membership of a national minority, property, birth, disability, age or sexual orientation shall be prohibited.

2. Within the scope of application of the Treaty establishing the European Community and of the Treaty on European Union, and without prejudice to the special provisions of those Treaties, any discrimination on grounds of nationality shall be prohibited.

### **Article 23**

Equality between men and women must be ensured in all areas, including employment, work and pay. The principle of equality shall not prevent the maintenance or adoption of measures providing for specific advantages in favor of the under-represented sex.

## **European Convention for the Protection of Human Rights and Fundamental Freedoms (European Convention on Human Rights)**

### **Article 10**

1. Everyone has the right to freedom of expression. This right shall include freedom to hold opinions and to receive and impart information and ideas without interference by public authority and regardless of frontiers. This article shall not prevent States from requiring the licensing of broadcasting, television or cinema enterprises.

2. The exercise of these freedoms, since it carries with it duties and responsibilities, may be subject to such formalities, conditions, restrictions or penalties as are prescribed by law and are necessary in a democratic society, in the interests of national security, territorial integrity or public safety, for the prevention of disorder or crime, for the protection of health or morals, for the protection of the reputation or rights of others, for preventing the disclosure of information received in confidence, or for maintaining the authority and impartiality of the judiciary.

### **Article 11**

1. Everyone has the right to freedom of peaceful assembly and to freedom of association with others, including the right to form and to join trade unions for the protection of his interests.

2. No restrictions shall be placed on the exercise of these rights other than such as are prescribed by law and are necessary in a democratic society in the interests of national security or public safety, for the prevention of disorder or crime, for the protection of health or morals or for the protection of the rights and freedoms of others. This article shall not prevent the imposition of lawful restrictions on the exercise of these rights by members of the armed forces, of the police or of the administration of the State.

### **Article 14**

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.

**Article 16**

Nothing in Articles 10, 11 and 14 shall be regarded as preventing the High Contracting Parties from imposing restrictions on the political activity of aliens.

**European Convention for the Protection of Human Rights and Fundamental Freedoms (European Convention on Human Rights) – Protocol 12**

**Article 1**

1. 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.

2. No one shall be discriminated against by any public authority on any ground such as those mentioned in paragraph 1.

**Framework Convention for the Protection of National Minorities**

**Article 4**

1. The Parties undertake to guarantee to persons belonging to national minorities the right of equality before the law and of equal protection of the law. In this respect, any discrimination based on belonging to a national minority shall be prohibited.

2. The Parties undertake to adopt, where necessary, adequate measures in order to promote, in all areas of economic, social, political and cultural life, full and effective equality between persons belonging to a national minority and those belonging to the majority. In this respect, they shall take due account of the specific conditions of the persons belonging to national minorities.

3. The measures adopted in accordance with paragraph 2 shall not be considered to be an act of discrimination.

**Article 7**

The Parties shall ensure respect for the right of every person belonging to a national minority to freedom of peaceful assembly, freedom of association, freedom of expression, and freedom of thought, conscience and religion.

**Convention on the Participation of Foreigners in Public Life at the Local Level**

**Article 3**

Each Party undertakes, subject to the provisions of Article 9, to guarantee to foreign residents, on the same terms as to its own nationals:

(a) the right to freedom of expression; this right shall include freedom to hold opinions and to receive and impart information and ideas without interference by public authority and regardless of frontiers. This article shall not prevent States from requiring the licensing of broadcasting, television or cinema enterprises;

(b) the right to freedom of peaceful assembly and to freedom of association with others, including the right to form and to join trade unions for the protection of their interests. In particular, the right to freedom of association shall imply the right of foreign residents to form local associations of their own for purposes of mutual assistance, maintenance and expression of their cultural identity or defense of their interests in relation to matters falling within the province of the local authority, as well as the right to join any association.

**OSCE Ministerial Council Decision 7/09**

The Ministerial Council  
(...)

Calls on the participating States to:

1. Consider providing for specific measures to achieve the goal of gender balance in all legislative, judicial and executive bodies, including security services, such as police services;
2. 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;
3. Encourage all political actors to promote equal participation of women and men in political parties, with a view to achieving better gender-balanced representation in elected public offices at all levels of decision-making;
4. Consider taking measures to create equal opportunities within the security services, including the armed forces, where relevant, to allow for balanced recruitment, retention and promotion of men and women;
5. Develop and introduce where necessary open and participatory processes that enhance participation of women and men in all phases of developing legislation, programmes and policies;
6. Allow for the equal contribution of women and men to peace-building initiatives;
7. Take necessary steps to establish, where appropriate, effective national mechanisms for measuring women's equal participation and representation;
8. Support, as appropriate, non-governmental and research bodies in producing targeted studies and awareness-raising initiatives for identifying specific challenges in women's participation in political and public life and, in promoting equality of opportunities between women and men;
9. Encourage shared work and parental responsibilities between women and men in order to facilitate women's equal opportunities to participate effectively in political and public life.

### **Document of the Copenhagen Meeting of the Conference on the Human Dimension of the CSCE (Copenhagen Document)**

#### **Paragraph 7**

To ensure that the will of the people serves as the basis of the authority of government, the participating States will...

(7.5) - respect the right of citizens to seek political or public office, individually or as representatives of political parties or organisations, without discrimination;

(7.6) - respect the right of individuals and groups to establish, in full freedom, their own political parties or other political organisations and provide such political parties and organisations with the necessary legal guarantees to enable them to compete with each other on a basis of equal treatment before the law and by the authorities;

(7.7) - ensure that law and public policy work to permit political campaigning to be conducted in a fair and free atmosphere in which neither administrative action, violence nor intimidation bars the parties and the candidates from freely presenting their views and qualifications, or prevents the voters from learning and discussing them or from casting their vote free of fear of retribution;

(7.8) - provide that no legal or administrative obstacle stands in the way of unimpeded access to the media on a non-discriminatory basis for all political groupings and individuals wishing to participate in the electoral process;

#### **Paragraph 9**

The participating States reaffirm that:

(9.1) - everyone will have the right to freedom of expression including the right to communication. This right will include freedom to hold opinions and to receive and impart information and ideas without interference by public authority and regardless of frontiers. The exercise of this right may be subject only to such restrictions as are prescribed by law and are consistent with international standards. In particular, no limitation will be imposed on access to, and use of, means of reproducing documents of any kind, while respecting, however, rights relating to intellectual property, including copyright

(9.3) - the right of association will be guaranteed. The right to form and subject to the general right of a trade union to determine its own membership freely to join a trade union will be guaranteed. These rights will exclude any prior control. Freedom of association for workers, including the freedom to strike, will be guaranteed, subject to limitations prescribed by law and consistent with international standards.

#### **Paragraph 10**

In reaffirming their commitment to ensure effectively the rights of the individual to know and act upon human rights and fundamental freedoms, and to contribute actively, individually or in association with others, to their promotion and protection, the participating States express their commitment to:

(10.4) - allow members of such groups and organisations to have unhindered access to and communication with similar bodies within and outside their countries and with international organisations, to engage in exchanges, contacts and co-operation with such groups and organisations and to solicit, receive and utilize for the purpose of promoting and protecting human rights and fundamental freedoms voluntary financial contributions from national and international sources as provided for by law.

#### **Document of the Moscow Meeting of the Conference of the Human Dimension of the OSCE (Moscow Document)**

(41) The participating States decide

(41.1) - to ensure protection of the human rights of persons with disabilities;

(41.2) - to take steps to ensure the equal opportunity of such persons to participate fully in the life of their society;

(41.3) - to promote the appropriate participation of such persons in decision-making in fields concerning them;

(41.4) - to encourage services and training of social workers for the vocational and social rehabilitation of persons with disabilities;

(41.5) - to encourage favorable conditions for the access of persons with disabilities to public buildings and services, housing, transport, and cultural and recreational activities.

#### **Paragraph 26**

The participating States recognize that vigorous democracy depends on the existence as an integral part of national life of democratic values and practices as well as an extensive range of democratic institutions. They will therefore encourage, facilitate and, where appropriate, support practical co-operative endeavors and the sharing of information, ideas and expertise among themselves and by direct contacts and co-operation between individuals, groups and organisations in areas including the following:

-Developing political parties and their role in pluralistic societies

#### **OSCE/HCNM Handbook on Observing and Promoting the Participation of National Minorities in Electoral Processes – Specific Provisions**

#### **OSCE/HCNM Lund Recommendations on the Effective Participation of National Minorities in Public Life – Specific Provisions**

#### **OSCE/ODIHR Guidelines on Promoting the Political Participation of Persons with Disabilities Warsaw 2019**

**Annex B –Selected Cases**

Below is a selection of ECtHR relevant to the discussion of political party formation and the right to free association.

*AB Kurt Kellerman v. Sweden* (dec.), no. 41579/98, 1 July 2003

*Abdulkadir Aydin and Others v. Turkey*, no. 53909/00, 20 September 2005

*Ahmed and Others v. the United Kingdom*, no. 65/1997/849/1056, 2 September 1998

*Artyomov v. Russia* (dec.), 17582/05, 7 December 2006

*Associated Society of Locomotive Engineers and Firemen (ASLEF) v. the United Kingdom*, no. 11002/05, 27 February 2007

*Association for European Integration and Human Rights and Ekimdzhiev v. Bulgaria*, no. 62540/00, 28 June 2007

*Athanassoglou and Others v. Switzerland* [GC], no. 27644/95, 6 April 2000

*Bowman v. the United Kingdom*, no. 24839/94, 19 February 1998

*Church of Scientology Moscow v. Russia*, no. 18147/02, 5 April 2007

*Čonka v. Belgium*, no. 51564/99, 5 February 2002

*Cumhuriyet Halk Partisi v. Turkey*, no. 19920/13, 26 April 2016

*Cyprus v. Turkey* [GC], no. 25781/94, 12 May 2014

*Democracy and Change Party and Others v. Turkey*, nos. 39210/98 and 39974/98, 26 April 2005

*Dicle for the Democratic Party (DEP) of Turkey v. Turkey*, no. 25141/94, 10 December 2002

*Emek Partisi and Şenol v. Turkey*, no. 39434/98, 31 May 2005

*Freedom and Democracy Party (ÖZDEP) v. Turkey* [GC], no. 23885/94, 8 December 1999

*Genderdoc-M v. Moldova*, no. 9106/06, 12 June 2012

*Gorzelik and Others v. Poland*, no. 44158/98, 20 December 2001

*Güneri and Others v. Turkey*, nos. 42853/98 and 2 others, 12 July 2005

*German Communist Party v. Germany* (dec.), no. 250/57, 20 July 1957

*Glimmerveen and Hagenbeek v. the Netherlands* (dec.), nos. 8348/78 and 8406/79, 11 October 1979

*HADEP and Demir v. Turkey*, no. 28003/03, December 14, 2010

*Herri Batasuna and Batasuna v. Spain*, nos. 25803/04 and 25817/04, 30 June 2009



*Hizb Ut-Tharir and Others v. Germany* (dec.), no. 31098/08, 12 June 2012

*Kalifatstaat v. Germany* (dec.), no. 13828/04, 11 December 2006

*Linkov v. the Czech Republic*, no. 10504/03, 7 December 2006

*Loizidou v. Turkey* (preliminary objections), no. 15318/89, 23 March 1995

*Moscow Branch of the Salvation Army v. Russia*, no. 72881/01, 5 October 2006

*Nationaldemokratische Partei Deutschlands (NPD) v. Germany* (dec.), no. 55977/13, 4 October 2016

*Ouranio Toxo and Others v. Greece*, no. 74989/01, 20 October 2005

*Özgürlük ve Dayanışma Partisi (ÖDP) v. Turkey*, No. 7819/03, 10 May 2012

*Partidul Comunistilor (Nepeceristi) and Ungureanu v. Romania*, no. 46626/99, 3 February 2005

*Party for a Democratic Society (DTP) and Others v. Turkey*, nos. 3840/10 and 6 others, 12 January 2016

*Parti Nationaliste Basque – Organisation Régionale d'Iparralde v. France*, application no. 71251/01, 7 June 2007

*Paunović and Milivojević v. Serbia*, no. 41683/06, 24 May 2016

*Perinçek v. Switzerland* [GC], no. 27510/08, 15 October 2015

*Plattform "Ärzte für das Leben" v. Austria*, no. 10126/82, 21 June 1988

*Presidential Party of Mordovia v. Russia*, no. 65659/01, 5 October 2004

*Redfearn v. the United Kingdom*, no. 47335/06, 6 November 2012

*Refah Partisi (the Welfare Party) and Others v. Turkey* [GC], nos. 41340/98 and 3 others, 13 February 2003

*Refah Partisi (the Welfare Party) and Others v. Turkey* (dec.), nos. 41340/98 and 3 others, 3 October 2000

*Rekvenyi v. Hungary*, no. 25390/94, 20 May 1999

*Republican Party of Russia v. Russia*, no. 12976/07, 12 April 2011

*Scoppola v. Italy* (no. 3) [GC], no. 126/05, 22 May 2012

*Shapovalov v. Ukraine*, no. 45835/05, 31 July 2012

*Sidiropoulos and Others v. Greece*, no. 26695/95, 10 July 1998

*Sigurður A. Sigurjónsson v. Iceland*, no. 16130/90, 30 June 1993

*Socialist Party and Others v. Turkey*, no. 26482/95, 25 May 1998

*Socialist Party of Turkey (STP) and Others v. Turkey*, no. 26482/95, 12 November 2003

*Sørensen and Rasmussen v. Denmark* [GC], nos. 52562/99 and 52620/99, 11 January 2006

*Staatkundig Gereformeerde Partij v. the Netherlands* (dec.), no. 58369/10, 10 July 2012

*Stankov and the United Macedonian Organisation Ilinden v. Bulgaria*, nos. 29221/95 and 29225/95, 2 October 2001

*Strzelecki v. Poland*, no. 26648/03, 10 April 2012

*Sukhovetsky v. Ukraine*, no. 13716/02, 28 March 2006

*Sürek v. Turkey* (no. 1) [GC], no. 26682/95, 8 July 1999

*Tebieti Mühaffize Cemiyetti and Israfilov v. Azerbaijan*, no. 37083/03, 8 October 2009

*United Communist Party of Turkey and Others v. Turkey*, no. 19392/92, 30 January 1998

*Uzun v. Germany*, no. 35623/05, 2 September 2010

*Vogt v. Germany*, no. 17851/91, 26 September 1995

*Vona v. Hungary*, no. 35943/10, 9 July 2013

*Willis v. the United Kingdom*, no. 36042/97, 11 June 2002

*Wilson, National Union of Journalists and Others v. the United Kingdom*, nos. 30668/96 and 2 others, 2 July 2002

*Yabloko Russian United Democratic Party and Others v. Russia*, no. 18860/07, 8 November 2016

*Yazar and Others v. Turkey*, nos. 22723/93 and 2 others, 9 April 2002

*Young, James and Webster v. the United Kingdom*, nos. 7601/76 and 7806/77, 13 August 1981

*Yumak and Sadak v. Turkey* [GC], no. 10226/03, 8 July 2008

*Ždanoka v. Latvia* [GC], no. 58278/00, 16 March 2006

*Zevnik and Others v. Slovenia* (dec.), no. 54893/18, 12 November 2019

#### Selected Jurisprudence by the Inter-American Court of Human Rights

*Manuel Cepeda Vargas v. Colombia*, 26 May 2010

#### Selected Jurisprudence by the United Nations Human Rights Committee

*Arenz v. Germany* (1138/2002), A/59/40 vol. II (24 March 2004) 548

*Bwalya v. Zambia* (314/1988), ICCPR, A/48/40 vol. II (14 July 1993) 52 (CCPR/C/48/D/314/1988)

*Dergachev v. Belarus* (921/2000) ICCPR, A/57/40 vol. II (2 April 2002) 252 (CCPR/C/74/D/921/2000)

Selected Jurisprudence by national courts:

U.S. Supreme Court, *Smith v Allwright* (321 U.S. 649, 1944),

Supreme Court of Canada:

*Frank de Jong v. Attorney General of Ontario*, Ontario Superior Court of Justice, case file 07-CV-333814PD1.

*Figueroa v Canada v. Attorney General* [2003] 1 S.C.R. 912, 2003 SCC 37

French *Conseil Constitutionnel*, Décision No. 89-271 DC du 11 Janvier 1990

the German Federal Constitutional Court, BVerfG, 03.12.1968 - 2 BvE 1/67; 2 BvE 3/67; 2 BvE 5/67).

**Annex C – Selected Reference Documents**

Council of Europe Committee of Ministers Recommendation (2003)4 on Common Rules against Corruption in the Funding of Political Parties and Electoral Campaigns

Parliamentary Assembly of the Council of Europe

Resolution 1736 (2010), Code of good practice in the field of political parties

Resolution 1601(2008), Procedural guidelines on the rights and responsibilities of the opposition in a democratic parliament

Resolution 1546 (2007), The code of good practice for political parties

Recommendation 1438 (2000) and Resolution 1344 (2003), The threat posed to democracy by extremist parties and movements in Europe

Resolution 1308 (2002), Restrictions on political parties in the Council of Europe member states

Recommendation 1516 (2001), Financing of political parties

Resolution 1264 (2001), Resolution 1320 (2003) and Recommendation 1595 (2003), Code of good practice in electoral matters

Report on financing of political parties, Doc. 9077 (2001)

Report on restrictions on political parties in the Council of Europe member states, Doc. 9526 (2002)

Report on incompatibility of banning democratically elected political parties with Council of Europe standards, Doc. 8467 (1999)

European Commission for Democracy through Law (Venice Commission)

Venice Commission, CDL-INF(2000)001, Guidelines on prohibition and dissolution of political parties and analogous measures, adopted by the Venice Commission at its 41st plenary session (10–11 December, 1999)

Venice Commission, CDL-INF(2001)008, Guidelines and Report on the Financing of Political Parties, adopted by the Venice Commission at its 46th Plenary Session (9-10 March 2001)

Venice Commission, CDL-AD (2002) 23 rev, Code of Good Practice in Electoral Matters, adopted by the Venice Commission at its 52nd session (18-19 October 2002)

Venice Commission, CDL-AD(2004)007rev, Guidelines and Explanatory Report on Legislation

on Political Parties: some specific issues, adopted by the Venice Commission at its 58th Plenary Session (12-13 March 2004)

Venice Commission, CDL-AD(2005)009, Report on Electoral Rules and Affirmative Action for National Minorities' Participation in decision-making process in European countries adopted by the Council for Democratic Elections at its 12th meeting (10 March 2005) and the Venice Commission at its 62th Plenary Session (11-12 March 2005)

Venice Commission, CDL-AD(2006)014, Opinion on the Prohibition of Financial Contributions to Political Parties from Foreign Sources, adopted by the Venice Commission at its 66th Plenary Session (17-18 March 2006)

Venice Commission, CDL-AD(2006)025, Report on the Participation of Political Parties in Elections, adopted by the Council for Democratic Elections at its 16th meeting (Venice, 16 March 2006) and the Venice Commission at its 67th plenary session (9-10 June 2006)

Venice Commission, CDL-AD(2004)004, Report on the Establishment, Organisation and Activities of Political Parties on the basis of the replies to the questionnaire on the establishment, organisation and activities of political parties, adopted by the Venice Commission at its 57th Plenary Session (12-13 December 2003)

Venice Commission, CDL-AD(2008)037, Comparative Report on thresholds and other features of electoral systems which bar parties from access to Parliament adopted by the Council for Democratic Elections at its 26th meeting (18 October 2008) and the Venice Commission at its 77th plenary session (12-13 December 2008)

Venice Commission, CDL-AD(2009)021, Code of Good Practice in the field of Political Parties adopted by the Venice Commission at its 77th Plenary Session (12-13 December 2008) and Explanatory Report adopted by the Venice Commission at its 78th Plenary Session (13-14 March 2009)

Venice Commission, CDL(2010)030, PACE Recommendation 1898(2010) on the "Thresholds and other features of electoral systems which have an impact on representativity of Parliaments in Council of Europe Member States" - Venice Commission Comments in view of the reply of the Committee of Ministers adopted by the Council for Democratic Elections at its 32nd meeting (11 March 2010) and by the Venice Commission at its 82nd plenary session (12-13 March 2010)

Venice Commission, CDL-AD(2013)011, Report on the Role of Extra-Institutional Actors in the Democratic System (Lobbying), adopted by the Venice Commission at its 94th Plenary Session (8-9 March 2013)

Venice Commission, 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)

Venice Commission, CDL-AD(2019)02, Report on Funding of Associations, adopted by the Venice Commission at its 118<sup>th</sup> Plenary Session (15-16 March 2019).

#### United Nations Human Rights Council

Report of the Office of the United Nations High Commissioner for Human Rights, Promotion, protection and implementation of the right to participate in public affairs in the context of the existing human rights law: best practices, experiences, challenges and ways to overcome them (U.N. Doc. A/HRC/30/26).

#### **Annex D – Model Codes**

*Code of Conduct for Political Parties: Campaigning in Democratic Elections* (Stockholm: International Institute for Democracy and Electoral Assistance, 2009).

*Code of Good Practice in the Field of Political Parties* (Venice: European Commission for Democracy Through Law, 2008).

*Minimum Standards for the Democratic Functioning of Political Parties* (Washington: National Democratic Institute for International Affairs, 2008).