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(OSCE/ODIHR)

DRAFT GUIDELINES
ON POLITICAL PARTY REGULATION

**Provisional version*

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Foreword

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I. Introduction

1. Political parties are critical institutions by which citizens organize themselves, and through which they participate in parliament and, indirectly, in their government. They are vital to the realization of representative democracy. While the role and importance of political parties has long been established, specific legal regulation of parties is a relatively recent development. Although many states using 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 1940s. Even today, with the development of legal regulation of political parties, the degree of regulation in states varies significantly, due to differences in legal traditions and constitutional orders. As a result, political parties are subject to a varying degree of regulation. The historical development and unique politico-cultural context of different countries precludes the development of a single, universal code of regulations for political parties. However, basic tenets of democracy, as well as recognized human rights, allow for the formulation of at least some common principles for the regulation of political parties applicable to any legal system. These principles are not necessarily in harmony: to a certain extent they are derived from and based on at times conflicting sets of different values, between which a compromise must be reached. It is these principles that are dealt with in the following Guidelines.

2. This second edition of the *Guidelines on Political Party Regulation*, including the Principles and the Interpretative Notes, extend and elaborate on the themes of the first edition, and add to it by highlighting new developments and upcoming issues in the area of political party regulation. Like the first edition, which was published in 2011, the *Guidelines* were prepared by the Core Group of Experts on Political Parties of the Organization for Security and Co-operation in Europe's (OSCE) Office for Democratic Institutions and Human Rights (ODIHR), in consultation with the Council of Europe's (CoE) European Commission for Democracy through Law (Venice Commission) and the Group of States against Corruption (GRECO).

3. The *Guidelines on Political Party Regulation* were adopted by the Council for Democratic Elections at its meeting on xxx and by the Venice Commission at its Plenary Session, on xxx

4. The Guidelines are primarily, but not exclusively, intended as a set of hard and soft law standards, as well as an outline of good practices for legislators tasked with drafting laws that regulate political parties. In addition, the Guidelines serve other public authorities, the judiciary, legal practitioners, human rights defenders and others concerned with political party regulation, including political parties themselves, their leadership and members.

5. The legal regulation of political parties is a complex matter, requiring consideration of a wide range of issues. Political parties must be protected as an integral expression of the individual's right to freely form associations. However, given political parties' unique and vital roles in the 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. The type of electoral system and the model of democracy predominant in a country influence the legal and factual status of political parties.¹

6. In contemporary democracies, two main models can be discerned as to their status and functioning. The first – liberal or market – view gives primacy to the principle of freedom, under which political parties are accorded associational autonomy in their internal and external functioning. According to this principle, political parties are regarded as private associations that should be free to establish their own organisation and the rules for selecting party leaders and candidates, since this is regarded as integral to the concept of associational autonomy. The second – egalitarian-democratic – view is primarily based on the principles of equality and internal democracy, the rationale being that because political parties are essential for political participation, to a certain extent have a public function and should respect equality and democratic requirements within their internal organisation.

7. There can be tensions between the principle of party autonomy (associational freedom) on the one hand and the principles requiring equality and internal democracy on the other. It is not surprising that the influence of each principle differs in each system. Some countries stress respect for the freedom of political parties, while others place greater emphasis on compliance with internal democratic requirements by political parties. The tension between these two views could explain why there are different ways in which legal systems regulate the nomination of candidates within political parties. It is, however, important to note that the degree of tension between the principles depends on several factors. One factor is the concept of democracy chosen. A system primarily based on a formal notion of democracy – the liberal theory of a ‘free electoral market’ – is likely to emphasise party autonomy and to have only a few rules regulating political parties. A system 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’* - will probably have a more strongly regulated regime for political parties, including their internal party organisation. What system prevails in a particular country is basically determined by its history and current circumstances. Much also depends on more detailed specification of the principal factors set out. Thus, it cannot be assumed that attachment to the principle of associational autonomy precludes any regulation of internal party procedure, since such a conclusion is dependent on contestable normative assumptions as to the degree of autonomy and self-governance that flows from freedom of association. The same is true in relation to the principle of equality/internal democracy. It is not self-evident what demands flow from attachment to these principles without further inquiry as to the more particular precepts that constitute the democratic and equality principles.

8. The concrete balance between the various principles thus depends on the extent to which a country in its constitution and legislation adheres to one or the other view on democracy and the status of political parties. The way in which constitutions refer to political parties may have a significant impact on the legislation concerning them. For instance 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 only recognises the freedom of political parties, the legislator must be more respectful of the autonomy of parties and the proportionality principle. This does not imply that the law cannot rule on the internal functioning of political parties at all. Equality and democracy are, to a certain extent, also applicable to political parties, since these

¹ Paras. 6-10 are derived from 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 (19-20 June 2015).

entities are the main channels through which citizens participate in political life. It merely means that, in this case, the requirements for limiting freedom imposed by the proportionality test are more demanding, with the consequence that legislative intervention will, in relative terms, be more difficult to justify. This situation must be distinguished from a third situation in which the constitution makes no reference to political parties, which falls midway between the situation where the constitution imposes internal democracy and that in which it simply recognises the freedom of political parties. In this third scenario, it is open to the legislator, subject to the proportionality principle, to impose regulatory requirements concerning the nomination of candidates and it will, other things being equal, have greater latitude in this respect than where the constitution recognises the freedom of political parties.

9. Understanding the divergences between the formal/liberal model, based on the primacy of the freedom of association, and other models based on substantive notions of internal democracy and equality, can serve to understand better the way in which each democratic system addresses political parties in general and what underlying tendencies determine the developments in constitutional and statute law.² During the last decade, many countries have evolved from a liberal point of view towards increased regulation of political parties. The principle of non-intervention that prevailed across Western Europe from the very emergence of political parties seems no longer to be the dominant paradigm.³ Moreover, in many other countries, moving away from an authoritarian or totalitarian regime towards a pluralistic approach, there are frequent constitutional references to respect for democratic and equality principles.⁴

10. Nevertheless, there is still a wide discretion of states to opt for the concept of a *formal* or procedural democracy and a liberal theory on political parties, which does not interfere in the internal autonomy of political parties and hardly limits their external functioning and a *material* or substantive democracy which sets substantive requirements on their internal and external functioning. Recognizing these fundamental differences, the Guidelines do not favour one model over the other, nor are they otherwise intending to provide uniform solutions or to develop a single model law for the OSCE, Venice Commission and GRECO Member States. Rather, the Guidelines are intended to identify and clarify key existing international law standards related to political party legislation and to provide examples of good practices for states.

11. The present Guidelines are to a large extent based on several more specific documents relating to political parties, adopted by the Venice Commission from 1999 to 2017⁵. Notably,

² There is no law on political parties in Ireland.

³ Casal-Bértoa, F., Romée Piccio, D., Rashkova E. R., *Party Law in Comparative Perspective, Party Law in Modern Europe, The Legal Regulation of Political Parties in Post-War Europe*, Working Paper 16, March 2012.

⁴ Such as the Constitutions of Germany (Article 21), Spain (Article 6) and Portugal (Article 51.5).

⁵ [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); [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); 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); 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); [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); 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

these Guidelines are not intended to replace those documents adopted by the Venice Commission in the past, but rather to update them, supplement them, expand on them. The present Guidelines also complement the OSCE/ODIHR-Venice Commission Guidelines of Freedom of Association⁶, which serve as an “umbrella” document in the field of freedom of association.

12. The Principles and Interpretative Notes included in these Guidelines are based on universal and regional treaties and documents relating to the protection of human rights; on evolving state practice as reflected, *inter alia*, in domestic legislation and judgments of national and regional courts and the commitments of inter-governmental bodies; and on general principles of law recognized by the community of nations. The Guidelines also 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. So, on the one hand the Guidelines reflect an existing minimum baseline in relation to international standards, by referencing a threshold that must be met by state authorities in their regulation of political parties. At the same time, the Guidelines are intended not only as a reflection of existing legal obligations, but also as a document that exemplifies good practices - measures that have proven successful in a number of states or that have demonstrably helped ensure that political party regulation respects fundamental human rights. Therefore, the Guidelines extend beyond a summary of existing obligations, by providing a synopsis of exemplary practices related to the regulation and functioning of political parties. The terminology used in these Guidelines endeavours to indicate the legal or soft law character of their sources.

13. It is critical to a proper understanding of these Guidelines that they should not be construed as a means of imposing undue restrictions on political parties. In this regard, paragraph 7.5 of the OSCE Copenhagen Document requires that participating States will, “respect the right of citizens to seek political or public office, individually or as representatives of political parties or organizations, without discrimination” (see Annex A). In this way, the Guidelines should principally be seen as a means to protect the rights and freedoms of political parties, while at times, advocating for only minimum regulation necessary to ensure their proper functioning. Thus, the Guidelines do not discourage laws, customs or agreements offering more favourable conditions to political parties.

2005); [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); [CDL-AD\(2006\)025](#), Report on the Participation of Political Parties in Elections, adopted by the Council for Democratic Elections at its 16th meeting (16 March 2006) and the Venice Commission at its 67th Plenary Session (9-10 June 2006); 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); CDL-AD (2009)021, Code of Good Practice in the Field of Political Parties, adopted by the Venice Commission at its 78th plenary session (13–14 March 2009); ; 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); 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); and 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 (19-20 June 2015); The documents mentioned above are available on the website of the Venice Commission, <<http://www.venice.coe.int/webforms/events/>>.

⁶ OSCE/ODIHR and Venice Commission Guidelines on Freedom of Association (Warsaw: ODIHR 2015)

14. Political parties are associations that play a critical role in the political sphere as a means to facilitate and streamline public participation in a democratic society. Striking the appropriate balance between the two models just sketched in paras 6-10, between state regulation of parties as (more or less) 'public' actors on the one hand and on the other hand respect for the fundamental associational rights and freedoms of party members as private citizens and parties themselves as private organizations, requires well-crafted and often narrowly tailored legislation. As just has been stressed, such legislation should not unduly interfere with the general principles on freedom of association. Indeed, a survey of practices within the OSCE region and in countries that are members of the Venice Commission has indicated that extensive regulation is not always necessary for the proper functioning of democracy, signifying that regulations that minimize legal control of party functions and clearly establish the limits of state authority may at times be the most appropriate. However, while it is not necessary that political parties as such be governed under legislation that is different than that regulating general associations, additional - specific - legislation should ideally be developed on certain issues such as funding and oversight, to reflect the unique role that parties play in a democratic society.

15. While Section A contains the main Principles governing political party regulation, Section B 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 full understanding and development of relevant issues.

16. Annex A contains a list of selected universal and regional treaties and documents dealing with rights relevant to political party regulation. Annex B includes selected case citations from the European Court of Human Rights (ECtHR) and jurisprudence from the United Nations Human Rights Committee (UN HRC). Annex C lists relevant sources of the CoE, such as the Parliamentary Assembly and the Venice Commission, related to the proper functioning of political parties, and Annex D provides examples of model political party codes of conduct.

II. Political Parties and their Importance

17. 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 through the presentation of candidates in elections".

18. Political parties are collective platforms for the expression of individuals' fundamental rights to association and expression, as well as the right to elect and be elected. They have been recognized by the ECtHR as integral players in the democratic process. Although their position and legitimacy in society has been weakened, they are still the most widely utilized means for political participation and the exercise of related rights. They still are of particular importance in ensuring representation of large parts of society in political debate, including women, youth, persons with disabilities and minorities.⁷ Until now, no viable alternative has

⁷ There is no internationally accepted definition of the term "minority". In the guidelines, the terms "minority" and "national minority" are used interchangeably and refer to a group of persons who share a linguistic, ethnic, cultural or religious characteristics distinct from the majority and that usually not only seeks to maintain its identity but also tries to give stronger expression to that identity, see also OSCE High Commissioner for National Minorities <http://www.osce.org/hcnm/33317?download=true>. This is in line with the approach of the UN Office of the High Commissioner for Human Rights (OHCHR), see OHCHR "Minority Rights: International Standards and Guidance for Implementation" (New York and Geneva 2010 p. 2) and Article 27 of the International Covenant on Civil and Political Rights, which reads

developed. Parties therefore still constitute a very important basis for a pluralist political society and play an active role in ensuring an informed and participative electorate. Additionally, parties in general still serve as bridges between the executive and legislative branches of government and can help effectively prioritize certain issues on the legislative agenda within a system of government.

III. Fundamental Rights Given to Political Parties and Their Members

19. Freedom of association is the central right that governs the functioning of political parties. A set of recognized international and regional treaties ensures and protects the right to full exercise of free association, including the formation of political associations, by all individuals.⁸ The ECtHR and the UN HRC have also recognized the inherent relationship between freedom of association and its interdependent rights of freedom of expression, opinion and assembly. European and other regional treaties conceptualize such rights as relevant to the individual and it is the free exercise of association itself that allows these protections to be extended to parties as a representative body of protected individuals. As such, groups of individuals choosing to associate as a political party must also be awarded the full protection of related rights. The rights of free association, expression and assembly may only be limited by law, and where this is necessary in a democratic society, and done by proportionate means, as shown below in paragraph ### . A number of relevant recommendations on how these fundamental rights can be protected can be found in recommendations of the Parliamentary Assembly of the CoE and guidelines and opinions adopted by the Venice Commission and ODIHR, as well as in OSCE commitments.⁹

IV. SECTION A. Principles Pertaining to Political Parties

20. The following Principles provide overall guidance with respect to the preparation and implementation of political party legislation. However, these Principles must be read together with the ensuing Interpretative Notes, in order to gain a complete understanding and appreciation of the Guidelines. Further, these Principles must be seen as a whole, and no single Principle should be applied to the exclusion of the remaining Principles.

“In those States in which ethnic, religious or linguistic minorities exist, persons belonging to such minorities shall not be denied the right, in community with the other members of their group, to enjoy their own culture, to profess and practise their own religion, or to use their own language”.

⁸ See, Annex I for a selection of excerpts from relevant universal and regional treaties including; the International Covenant on Civil and Political Rights (adopted 16 December 1966, entered into force 23 March 1976), 999 UNTS 171 (ICCPR), available at <<http://www2.ohchr.org/english/law/ccpr.htm>>; the Universal Declaration of Human Rights (adopted 10 December 1948) UNGA Res 217A (III) (UDHR), available at <<http://www.un.org/en/documents/udhr/index.shtml>>; the Convention for the Protection of Human Rights and Fundamental Freedoms (European Convention on Human Rights) (adopted 4 November 1950, entered into force 3 September 1953, amended by Protocol No 11, European Treaty Series No. 155, entered into force on 1 November 1998, which replaced Protocols 2,3,4,5,8,9,10 and repealed Articles 25 and 46 of the Convention) (ECHR), available at <<http://conventions.coe.int/treaty/Commun/QueVoulezVous.asp?NT=005&CL=ENG>>; and the Document of the Copenhagen Meeting of the Conference on the Human Dimension of the CSCE (Copenhagen, 5 June - 29 July 1990) (Copenhagen Document), available at: <<http://www.osce.org/odihr/elections/14304>>.

⁹ See, Annex C to this document.

21. These Principles recognize the important role that political parties have in a democratic society. In this context, the ECtHR has noted that political parties are associations essential to the proper functioning of democracy.¹⁰ The Court has also noted:

It is in the nature of the role they play that political parties, the only bodies which can come to power, also have the capacity to influence the whole of the regime in their countries. By the proposals for an overall societal model which they put before the electorate and by their capacity to implement those proposals once they come to power, political parties differ from other organisations which intervene in the political arena.¹¹

The Court has further described political parties as holding an “essential role in ensuring pluralism and the proper functioning of democracy.”¹² The fundamental role that political parties play in pluralistic societies is also acknowledged in the Copenhagen Document of the OSCE.¹³

Principle 1. Right of Individuals to Associate and Presumption of Lawfulness

22. The right of individuals to associate and form political parties should, to the greatest extent possible, be free from interference. An individual’s association with political parties must be voluntary in nature, and nobody may be forced to join or belong to any association against their will.¹⁴ The broad protection given to the right of individuals to associate requires that political parties also be free from unnecessary and disproportionate interference. There should be a presumption in favour of the lawfulness of the establishment of political parties and of their objectives and activities, regardless of the formalities applicable for establishment. Although there are limitations to the right of association, such limitations must be construed strictly. Only convincing and compelling reasons can justify limitations on freedom of association. Any such limits must be prescribed by law, pursue a legitimate aim, be necessary in a democratic society, and be proportionate in measure and duration.

Principle 2. The State’s Duty to Respect, Protect and Facilitate the Exercise of the Right to Freedom of Association

23. The state shall not interfere with the right to freedom of association and shall respect the exercise of this right. It shall protect individuals and associations from interference by non-state actors, inter alia, by legislative means.¹⁵ The state shall also facilitate the exercise of freedom of association by creating an enabling environment in which associations can operate. It is the responsibility of the state to ensure that relevant general and specific legislation provides for the necessary mechanisms and practices that, in practice, allow the free exercise of the individual

¹⁰ *Refah Partisi (The Welfare Party) and Others v. Turkey* (40/1993/435/514) (ECtHR, February 13, 2003), paras. 87-89.

¹¹ *Ibid.*

¹² *Ibid.*

¹³ Copenhagen Document op.cit. par. 26.

¹⁴ See, the UDHR, *op. cit.*, note 3, Article 20.

¹⁵ See, the United Nations Human Right Committee, General Comment 31, Nature of the General Legal Obligation on States 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), (U.N. Doc. CCPR/C/21/Rev.1/Add.10) (2000), para. 31.

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.

Principle 3. Equal treatment and non-discrimination

24. All individuals and groups that seek to establish political parties must be able to do so on the basis of equal treatment before the law.¹⁶ No individual or group wishing to associate as a political party should be advantaged or disadvantaged in this endeavour by the state, and the regulation of parties must be uniformly applied. State regulations on political parties may not discriminate against any individual or group on any ground such as “race”, colour, gender, language, religion, political or other opinion, national or social origin, property, birth, sexual orientation or other status.¹⁷

25. Everyone’s individual right to free association does not imply, however, that a political party should be required to accept members who do not share its core beliefs and values. But the freedom of a political party has its limits. There would still need to be a reasonable justification for any difference in treatment of persons with regard to the formation or membership of a political party. In the case of “race”, colour, gender or sexual orientation, only very weighty reasons may justify such differential treatment.¹⁸ Moreover, in order to ensure equal access to political life and eliminate structural historical inequalities, temporary special measures aimed at promoting *de facto* equality for women, persons with disabilities and ethnic, “racial” or other minorities subjected to past discrimination may be enacted and should not be considered discriminatory.¹⁹ Overall, the voluntary imposition of the principle of non-discrimination by political parties in their statutes and activities is welcome.²⁰

Principle 4. Freedom of Expression and Opinion

¹⁶ The Copenhagen Document, *op. cit.*, note xxx, 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 organizations and provide such political parties and organizations 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.”

¹⁷ See, for example, the ICCPR, *op. cit.*, note 3, Articles 2, 26; the ECHR, *op. cit.*, note 3, Article 14 (understood in light of ECHR, Protocol 12).

¹⁸ See, for example, ECtHR, *Willis v. United Kingdom* (Application no. 36042/97, judgment of 11 June 2002), para. 48.

¹⁹ The Convention on the Elimination of all forms of Discrimination against Women, (signed 18 December 1979, entered into force 3 September 1981) 1249 UNTS 13 (CEDAW), Article 4(1); the International Convention on the Elimination of All Forms of Racial Discrimination (adopted 21 December 1965, entered into force 4 January 1969) (ICERD), Article 2(2); and the Framework Convention for the Protection of National Minorities, Council of Europe, European Treaty Series - No. 157, (Strasbourg, 1 February 1995), Article 4(2).

²⁰ ECtHR, *Staatkundig Gereformeerde Partij v. the Netherlands* (Application no. 58369/10, decision of 10 July 2012), para. 72, <[.](http://hudoc.echr.coe.int/sites/eng/pages/search.aspx?i=001-112340#{\)

26. Political parties shall have the right of freedom of expression and opinion through their objectives and activities, in addition to the right to free expression and opinion held by the individual member, founders and party functionaries. Given their role in the democratic process and public discourse, it is of paramount importance that political parties have the right to participate in matters of 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.

Principle 5. Political Pluralism

27. Legislation regulating political parties should aim to facilitate a pluralistic political environment. The ability of individuals to seek and obtain a variety of political viewpoints, including via political party platforms, is commonly recognized as a critical element of a robust democratic society. As evidenced by paragraph 3 of the Copenhagen Document and other OSCE commitments, pluralism is necessary to ensure that individuals are offered a real choice in their political associations and voting options.²¹ Regulations on political parties should be carefully considered to ensure that they do not impinge upon the principle of political pluralism.

Principle 6. Legality and Legitimacy of Restrictions

28. Any limitation imposed on the right of individuals to freedom of association and on the rights of associations shall be in compliance with international standards. In particular, any restriction must be prescribed by law and must have a legitimate aim. 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 applied.²² 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. The only legitimate aims recognized by international standards for restrictions are national security or public safety, public order (*ordre public*), the protection of public health or morals and the protection of the rights and freedoms of others. The scope of these legitimate aims shall be narrowly interpreted.

Principle 7. Necessity and Proportionality

29. Any limitations imposed on the rights of political parties must be necessary in a democratic society, proportionate in nature and effective in achieving their specified purpose. The need for restrictions shall be carefully weighed and shall be based on compelling evidence. The limitation chosen should constitute 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 should be narrowly applied and shall never completely extinguish the right or encroach on its essence. Prohibiting the establishment of a political party, or dissolving an existing political party are the most extreme sanctions available and shall only be imposed in extreme cases under the strictest conditions.

Principle 8. Good Administration of Legislation Pertaining to Political Parties

²¹ 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 organizations.”

²² *Cumhuriyet Halk Partisi v. Turkey*, app. no. 19920/13, judgment of 26 April 2016, par 106.

30. The implementation of legislation, policies and practises relevant to political parties is 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 should be made in an expeditious manner, particularly where they relate to time-sensitive processes, such as elections.

Principle 9. Right to an Effective Remedy for Violation of Rights

31. Political parties, their founders, functionaries and members, shall have recourse to an effective remedy²³, including the right to an independent and impartial tribunal, for all decisions affecting their rights, including those of association, expression and opinion, and assembly. While such rights are protected for individuals, they can also generally be enjoyed as part of a collective, requiring due recourse for allegations of violations, including appeals, brought not only by individuals but by the party as a whole. To ensure an effective remedy, it is imperative for the judicial procedures, including appeal and review, to be in accordance with fair trial standards. The procedure should 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.

Principle 10. Accountability

32. Political parties may obtain certain legal privileges that are not available to other associations, mainly due to their participation in elections. 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 result of having privileges 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 certain 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 such as women, persons with disabilities, national minorities or youth. In each case, the additional obligations imposed should be directly related, and proportional to, the special privileges of political parties, and legislation should provide specific details on the relevant rights and responsibilities that accompany the establishment of a political party and its participation in elections. Political parties, when benefiting from their granted privileges, should 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.

Principle 11. Effective Government

²³ See, the ECHR, *op. cit.*, note 3, Article 13; the ICCPR, *op. cit.*, note 3, Article 2(3); and the UDHR, *op. cit.*, note 3, Article 8.

33. Party regulation should aim to enhance effective government. For this purpose, reasonable restrictions on political pluralism such as electoral thresholds and minimum sizes of parliamentary groups could be introduced, provided that they are proportionate and necessary in a democratic society.

V. SECTION B. Interpretative Notes

Introduction

34. These Interpretative Notes are vital 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.

35. Part I of Section B emphasizes the importance of freedom of association as it relates to the development and regulation of political parties, and sets out general principles for the regulation of political parties. It also identifies legitimate grounds for and types of restrictions, and examines relevant procedural issues pertaining, in particular, to the registration of political parties. This Part also deals with the prohibition and dissolution of political parties.

36. Part II of this Section focuses on intra-party functioning, internal democracy and party functions. Part III, on the other hand, deals with the role of parties in elections, including issues such as the roles of candidates and parties, candidacy requirements, access to elections, the role of parties in election administration and the impact of parties in different electoral systems. Part IV deals with the funding of political parties through private and public means and the regulation of party and campaign finances, while Part V examines the system of oversight of political parties, the establishment of regulatory bodies and the rights of political parties to an effective remedy and a fair hearing by an impartial tribunal. Part VI highlights the emerging issue of political parties and new technologies.

37. Finally, Parts VI-VII of Section B contain annexes and references. Annex A contains a list of selected universal and regional treaties dealing with rights relevant to political party regulation. Annex B includes selected case citations, while Appendix C provides examples of other relevant European guidelines on political parties, and Annex D lists selected examples of model codes concerning political parties and their work.

Part I Freedom of Association for Political Parties

1. The Regulation of Political Parties

a) Principal Definition of Political Parties

38. 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 through the presentation of candidates in elections”. This definition includes associations at all levels of governance²⁴ whose purpose includes presenting candidates for elections or exercising political authority through election to governmental institutions.

²⁴ 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.

39. 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 governing general associations, they still, at a minimum, retain the basic rights provided to other associations. At the same time, political parties are a specific category of associations, given that one of their purposes is to take part in elections and constitute, or at least take part in the 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.²⁵

b) Legal Framework

40. Legislation on political parties varies substantially among OSCE participating States and countries that are members of the Venice Commission. However, the role and function of political parties in a democratic system should ideally be 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. Additionally, as constitutional provisions are often general in nature and may provide overly broad discretion for implementation, many states also have specific legislation dealing with the proper regulation and protection of political parties. Legislation that affects basic rights of political parties should be addressed by parliamentary legislation and not by regulations issued by an administrative authority.

41. At the same time, 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 determined that such legislation is not necessary for the proper functioning of democracy, and may be most effective when quite minimal in its scope.²⁶ Where 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 rights relevant to their proper functioning. Political parties must at a minimum retain the same basic rights afforded to other associations, and have the rights to nominate candidates and participate in elections.

42. Parliamentary laws regulating political parties should be developed in conformity with both international human rights obligations and relevant jurisprudence. States commit themselves to such obligations by ratifying or acceding to international treaties.²⁷

43. A set of universal and regional legal instruments form the basis for a state's obligations relevant to the functioning of political parties. The International Covenant on Civil and Political Rights (ICCPR) and the European Convention for the Protection of Human Rights and

²⁵ See also OSCE/ODIHR and Venice Commission Guidelines on Freedom of Association (Warsaw: ODIHR 2015) pars. xxx

²⁶ CDL-INF(1998)014, Prohibition of Political Parties and Analogous Measures – Report, adopted by the Venice Commission at its 35th plenary meeting (12-13 June 1998). See also CDL-AD(2009)006, Opinion on the Constitutional and Legal Provisions Relevant to the Prohibition of Political Parties in Turkey, adopted by the Venice Commission at its 78th Plenary Session (13-14th March 2009).

²⁷ Both the ICCPR, *op. cit.*, note 3, Article 2(2), and the Copenhagen Document, *op. cit.*, note 3, para. 5.7, require states to undertake a process of domestication to ensure that international human rights are reflected in domestic legislation. Para. 5.7 states that “Human rights and fundamental freedoms will be guaranteed by law and in accordance with their obligations under international law.”

Fundamental Freedoms (ECHR) are the two main legally binding instruments applicable to states in this regard. In addition, the Convention on the Elimination of all Forms of Discrimination against Women (CEDAW) is integral to understanding the state's role in ensuring gender equality with regard to political parties. Furthermore, the Convention on the Rights of Persons with Disabilities (CRPD)²⁸ similarly governs, inter alia, the right of person with disabilities to participate in the conduct of public affairs, including through political parties.²⁹ Further, the rights and protections articulated in the above legally binding documents are already to be found in the Universal Declaration of Human Rights (UDHR), which has acquired the status of customary international law. In addition to the documents mentioned under par. 4 above, other relevant instruments are the 2003 United Nations Convention against Corruption³⁰ and the 1999 CoE Criminal Law Convention on Corruption³¹.

44. Excerpts from the above documents, as well as other selected universal and regional instruments applicable to the discussion on 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.

2. Relevant Rights and Legal Status

45. The rights to free association, expression and opinion, as well as the right to free elections are fundamental to the proper functioning of a democratic society. Political parties, as collective instruments for political expression, as well as their members, must be able to fully enjoy such rights.

46. Political parties' right to freedom of association should be expressly or indirectly protected in a state's constitution and/or by act of parliament. This protection should include both a statement of the right as well as the obligation for its defence, as a fundamental precursor to the proper functioning of democracy.

47. The right to free association has been expressly extended to political parties by the ECtHR.³² Article 11 of the ECHR (same as Article 22 of the ICCPR) protects 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".

²⁸ Convention on the Rights of Persons with Disabilities (adopted on 13 December 2006, entered into force 3 May 2008, available at <<http://www.osce.org/mc/40710?download=true>>.

²⁹ See also CoE [CM/Rec\(2011\)14](#) on the participation of persons with disabilities in political and public life

³⁰ Entry-into-force

³¹ Signed in Strasbourg on 27 January 1999, entered into force on 1 December 2009, ETS No. 173.

³² *United Communist Party of Turkey and Others v. Turkey* (133/1996/752/951) (ECtHR, January 30, 1998).

48. The case law of the ECtHR has further established the relationship between the right to freedom of association and that to free 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”.*³³

49. Freedom of expression and opinion (Article 10 of the ECHR and Article 19 of the ICCPR) is dependent upon free association in cases in which individuals want to exercise their right to freedom of expression collectively via an association. As such, freedom of association must also be guaranteed as a tool to ensure that all citizens are able to fully enjoy their rights to free expression and opinion, whether practiced collectively via an association or individually.

50. One function of political parties is to present candidates in elections. Thus, it is necessary that legislation protects the rights to elect and be elected, which are provided for by both international instruments (e.g. Article 25b of the ICCPR and Article 3 of Protocol 1 to the ECHR).

At the same time, the ECHR also states that under certain circumstances, some of the above rights (notably those to freedom of expression and association/assembly) may be restricted, notably for aliens (Article 16), in cases where they are abused to destroy other protected rights (Article 17) and where states declare a state of emergency (Article 15).

51. The regulatory framework should clearly define the legal status of political parties. Parties should have legal personality to be able to operate in society and to bring law suits alleging a violation of their protected rights at any stage of party formation. For instance, in cases of violations against 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.

52. As political parties are legal entities with a set of specific rights and obligations, party members should also have recourse to civil courts against abuse of a party's contractual obligations to 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 (although they play an important role in public life), 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.

53. Some OSCE states have established a status of “registered party” or “active party”, for which requirements beyond those inherent in the definition of political party *per se* may be imposed. Parties that satisfy these requirements may be accorded privileges beyond those afforded to other political parties, and may consequently also have additional obligations imposed on them. These may include an obligation for the party to regularly or periodically present candidates for election. While it may be permissible to grant such parties greater privileges, the requirements for this special status must be reasonable and may not unduly limit political pluralism or violate freedom of association standards. In particular, this should not lead

³³ Refah Partisi v Turkey, par 88.

to a situation where only those parties with sufficient funds and electoral success benefit from state support.

3. The Importance of Political Parties as Unique Associations

54. Parties have been developed as the main vehicle for political participation and debate, and have been recognized by the ECtHR as vital to the proper functioning of democracy.³⁴ Similarly, paragraph 3 of the OSCE Copenhagen Document states that political pluralism, as fostered by a wide array of different parties, with different priorities and programmes, is critical to the proper functioning of democracy. The Parliamentary Assembly of the CoE has also recognized 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 ...”.³⁵

4. General Freedoms

a) Right to Associate and Presumption of Lawfulness

55. As fundamental rights, freedom of association and the inter-dependent right to freedom of expression should, insofar as possible, be enjoyed free from regulation. Any activities regarding association within and the formation of political parties that are not expressly forbidden by law should, therefore, be considered permissible. In particular, the law should not forbid a political party from advocating a change to the constitutional order of the state.³⁶ As specified in paragraph 7.6 of the OSCE Copenhagen Document, the right to establish and participate in political parties should be open to all individuals, free from requirements or undue regulation (though States may limit at least the establishment of parties to citizens, if they so wish). States should enact and implement legislation respecting the general presumption in favour of the formation, functioning and protection from dissolution of political parties. 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 in regulations applicable to associations in general.

56. As political parties are integral and essential vehicles for political activity and expression, their formation and functioning should not be limited, or their dissolution allowed, except in extreme cases as prescribed by law and necessary in a democratic society. Such limits should be interpreted narrowly by national courts or authorities, and the state should put in place adequate measures to ensure that the above rights can be enjoyed in practice.

b) The State's Duty to Respect, Protect and Facilitate Free Association for Political Parties

³⁴ *Ibid.*

³⁵ Resolution 1308 (2002), Parliamentary Assembly of the Council of Europe, "Restrictions on Political Parties in the Council of Europe Member States", available at <<http://assembly.coe.int/Main.asp?link=/Documents/AdoptedText/ta02/ERES1308.htm>>.

³⁶ *Socialist Party and Others v. Turkey* (20/1997/804/1007) (ECtHR, May 25, 1998), para. 41, states that “Notwithstanding 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.

57. As determined by Article 11 of the ECHR (and Article 22 of the ICCPR), OSCE participating States and Council of Europe member States have a duty to protect the rights of individuals to associate by freely forming and participating in political parties (though according to Article 16 of the ECHR, this right may be restricted to citizens). The right to form a political organization is also specifically granted under paragraph 7.6 of the OSCE Copenhagen Document.³⁷

58. The state's duty to protect free association for 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. Parties and their supporters should be able to assemble freely and communicate party views and their opinions should not be summarily blocked from receiving balanced media coverage, especially by state-run media. Pursuant to Article 18 of the ECHR, states shall not apply restrictions to the said rights and freedoms permitted under the ECHR for any purposes other than those for which they have been prescribed. Further, under paragraph 7.6 of the Copenhagen Document, OSCE participating States have committed 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.³⁸

c) Commitment to non-violence

59. The state must ensure that there is adequate protection against violence for candidates and supporters of political parties. While other groups, associations or individuals must have the right to criticise political parties and/or their opinions and demonstrate against them, violence or threats of violence are not permissible.³⁹ As stated by the ECtHR in *Ouranio Toxo and Others v. Greece*, para. 37:

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.

d) Legality and Legitimacy of Restrictions

³⁷ All OSCE participating States have committed to the tenets of OSCE commitments, including the Copenhagen Document. A number of OSCE participating States, and Venice Commission member States have also signed and ratified, or adhered to the ECHR. Ratification of the ECHR creates a legal obligation for a state to uphold its articles, while OSCE commitments serve as political commitments persuasive upon OSCE participating States.

³⁸ The Copenhagen Document, *op. cit.*, note 3, 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 organizations and provide such political parties and organizations 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”.

³⁹ See, *Plattform “Ärzte für das Leben” v. Austria* (Application no. 10126/82), (ECtHR, June 21, 1988), para. 32 *mutatis mutandis*.

60. Any limitations on political parties that restrict their and their members' right to free association must be construed so as to meet the specific aim pursued by the authorities in line with Article 11 par 2 of the ECHR which states "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 aim must be legitimate, meaning that it must be one of the aims provided for exhaustively in the respective international and/or regional instruments.

61. Moreover, any restrictions on free association must have their basis in law, namely in the state constitution and/or act of parliament, and must in turn conform to relevant international instruments. Such restrictions must be clear, easy to comprehend, and uniformly applicable to ensure that all individuals and parties are able to understand them, and what the consequences will be in case they breach these rules. Full protection of rights must be assumed in all cases lacking specific restriction; 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, legislation must be carefully constructed to be neither too detailed nor too vague.

e) Necessity and Proportionality

62. The aim of any restriction on the right to freedom of association must be objective, and the respective action taken to achieve it must be necessary in a democratic society. The state needs to prove that limitations promote a general public interest that cannot be fulfilled without such limitation. Regulations of political parties should be implemented with restraint, acknowledging that the permissible limitations to the right of free association for political parties have been narrowly interpreted by the ECtHR.⁴⁰

63. Moreover, any limitation on the formation or regulation of the activities of political parties must be proportionate in nature. Dissolution or the refusal of registration should only be applied if the legitimate aim cannot be reached using less restrictive means of regulation. Dissolution is the most severe sanction available and should be considered proportionate only in cases of the most grave violations. 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".

64. Regarding proportionality, paragraph 24 of the OSCE Copenhagen Document states that:

The participating States will ensure that the exercise of all the human rights and fundamental freedoms set out above will not be subject to any restrictions except those which are provided by law and are consistent with their obligations under international law, in particular the International Covenant on Civil and Political Rights, and with their international commitments, in particular the Universal Declaration of Human Rights. These restrictions have the character of exceptions. The participating States will ensure that these restrictions are not abused and are not applied in an arbitrary manner, but in such a way that the effective exercise of these rights is ensured. Any restriction on rights and freedoms

⁴⁰ Include ECtHR case law!

must, in a democratic society, relate to one of the objectives of the applicable law and be strictly proportionate to the aim of that law.

65. Generally, considerations of proportionality should be based on a number of factors,⁴¹ including:

- The nature of the right in question;
- The purpose of the proposed restriction;
- The nature, extent and duration of the proposed restriction;
- The relationship (relevancy) between the nature of the restriction and its purpose;
- Whether there are any less restrictive means available for the fulfilment of the stated purpose in light of the facts.

f) Equal Treatment and Non-discrimination

66. Freedom of association and freedom of expression, including the formation and functioning of political parties, are individual rights that must be respected without discrimination, in particular as regards the participation of politically under-represented groups. The principle that fundamental human rights are applicable to all within a state's jurisdiction, free from discrimination, is essential to ensuring the full enjoyment and protection of such rights. Non-discrimination is defined in Articles 2 and 26 of the ICCPR and Article 14 of the ECHR, as well as in a number of other universal and regional instruments.⁴² Notably, however, Article 14 of the ECHR defines discrimination to be unlawful only in the enjoyment of any right protected within convention. It is Protocol 12 of the ECHR that broadens the principle of non-discrimination, developing a fundamental and free-standing obligation that:

The enjoyment of any right set forth by law shall be secured without discrimination on any ground such as sex, race, colour, language, religion, political or other opinion, national or social origin, association with a national minority, property, birth or other status.

67. Similarly, state authorities should treat political parties on an equal basis and, as such, remain neutral with regard to the establishment, registration - when applicable -- and activities of political parties. Authorities should refrain from any measures that could privilege some political parties and discriminate against others, at least insofar as these parties are in similar positions with respect to size and influence (e.g. parties who are already in parliament may receive different levels of state support than smaller or less known parties, but may then also be subjected to stricter reporting obligations, see also par 64 *infra*). All political parties should be given opportunities to participate in elections free from distinction or unequal treatment by authorities.

⁴¹ Proportionality is discussed in the case of *Sürek v. Turkey* (No. 1) (Application no. 26682/95) (ECtHR, July 8, 1999), para. 58, which states that "In particular, it [the Court] must determine whether the interference in issue was 'proportionate to the legitimate aims pursued' and whether the reasons adduced by the national authorities to justify it are 'relevant and sufficient'. In doing so, the Court has to satisfy itself that the national authorities applied standards which were in conformity with the principles embodied in Article 10 and, moreover, that they based themselves on an acceptable assessment of the relevant facts." Further, in *Refah Partisi (The Welfare Party) And Others v. Turkey*, *op. cit.*, note 5, the Court states that it "considers in that connection that the nature and severity of the interference are also factors to be taken into account when assessing its proportionality."

⁴² See, the ICERD, *op. cit.*, note 14, the CEDAW, *op. cit.*, note 14, and the Convention on the Rights of Persons with Disabilities (adopted on 13 December 2006, entered into force 3 May 2008), available at <<http://www.osce.org/mc/40710?download=true>>, as well as the Copenhagen Document, *op. cit.*, note 3.

68. Non-discrimination includes the prohibition of both direct and indirect discrimination, requiring that all persons receive equal protection of the law (Article 26 of the ICCPR). While direct discrimination refers to acts or regulations that clearly foster inequality, indirect discrimination includes acts or laws that, while seemingly applicable to everybody equally, in practice affect certain persons or groups in a way which leads to unequal treatment or results. Such discrimination is often more pervasive and more difficult to prevent than its direct counterpart. Therefore, in relation to the establishment and activities of political parties, all regulatory decisions should advance equal outcomes and results. Laws and regulations must be applied without discrimination and political parties shall help ensure this by applying special measures, if necessary. Temporary special measures, including those introduced to accelerate *de facto* equality between men and women, shall not be considered discrimination.⁴³

69. The right to freedom of association generally entitles those forming an association, including political parties, or belonging to one to choose whom they wish to form an association with or whom to admit as members. However, this aspect of the right to association is also subject to the prohibition of discrimination, meaning that any differential treatment of persons based on a personal characteristic must have a reasonable and objective justification.⁴⁴ When the distinction in question operates on grounds such as colour or ethnic origin, or is based on sex or sexual orientation – particularly “weighty reasons” need to be advanced to justify the measure.⁴⁵

70. 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.

71. The potentially cumulative effects of discrimination must also be recognized. An individual may at times be impacted by several discriminatory factors. For instance, female members of ethnic minorities often find themselves doubly disadvantaged with regard to political and social rights. This has been acknowledged, for example, in OSCE Ministerial Council Decision No. 7/09⁴⁶ and in Article 6 of the UNCRPD.⁴⁷ When several discriminatory grounds, such as gender, ethnicity, disability and age, intersect, they may produce new and unforeseen effects, inadequately addressed through measures aimed at addressing only one such ground. Therefore, legal and regulatory frameworks should pay careful attention to the existence of such cumulative effects and potential preventative measures.

aa) National Minorities

⁴³ See Art. 4 par. 1 Convention on the Elimination of All Forms of Discrimination against Women, Article 4 (adopted on 18 December 1979), available at <http://www.un.org/womenwatch/daw/cedaw/text/econvention.htm>.

⁴⁴ See, for example, ECtHR, *Willis v. United Kingdom* (Application no. 36042/97, judgment of 11 June 2002), para. 48.

⁴⁵ See for example (gender discrimination), ECtHR, *Staatkundig Gereformeerde Partij v. the Netherlands* (Application no. 58369/10, decision of 10 July 2012), para. 73. See also ECtHR, *Genderdoc-M v. Moldova* (Application no. 9106/06, judgment of 12 June 2012), para. 50.

⁴⁶ OSCE Ministerial Council Decision 7/09 on women’s participation in political and public life of 2 December 2009.

⁴⁷ Article 6 par 1 states that “States Parties recognize that women and girls with disabilities are subject to multiple discrimination, and in this regard shall take measures to ensure the full and equal enjoyment by them of all human rights and fundamental freedoms.

72. Article 7 of the 1995 CoE Framework Convention on National Minorities⁴⁸ 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 “[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 minority groups within a country’s jurisdiction. Temporary special measures to increase minority political participation are in line with Article 1 par 4 of the 1965 International Convention on the Elimination of All Forms of Racial Discrimination⁴⁹ (CERD).

73. Pursuant to Article 2 par 2 (1) of CERD, circumstances exist where State parties are legally obliged to adopt such special measures.⁵⁰ 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 proportionality, and be temporary”⁵¹ 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 disfavoured groups”.⁵²

74. Freedom of association and the principle of non-discrimination, preclude the prohibition of parties formed on ethnic, racial, linguistic or religious grounds.⁵³ More specifically, this means that such parties may retain control over their membership, provided that the requirements adopted for members have an objective and rational basis. Associations, including political parties, may justify the use of restrictive membership criteria in certain cases 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 indigenous or otherwise marginalized groups. However, any discrimination for

⁴⁸ [Entry into force]

⁴⁹ Entry-into force: 4 January 1969; 88 signatories and 177 parties.

⁵⁰ 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

⁵¹ 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.

⁵² 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.

⁵³ See also 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) par. 22

reasons unrelated to the purposes of the association should be prohibited in all cases.⁵⁴

75. As part of their obligation to facilitate and protect the right to associate of all persons, states should ensure that the representation of minorities through political parties based on ethnic, racial, religious or linguistic grounds is not impeded by electoral rules, or by legislation requiring a certain regional representation for the establishment of political parties and imposing a high threshold of minimum percentage of seats for entering the parliament.

bb) Gender Equality and Non-Discrimination on the basis of Gender, Sexual Orientation and Gender Identity

76. Women are likewise guaranteed equal protection of all rights by a number of international instruments. 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 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 Life⁵⁵ and Recommendation No. 25 of the CEDAW Committee on Temporary Special Measures.⁵⁶ 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.⁵⁷

77. 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 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.⁵⁸

⁵⁴ See OSCE/ODIHR-Venice Commission Guidelines on Freedom of Association, par 131

⁵⁵ CEDAW Committee Recommendation No. 23: “Political and Public Life” (1997) GAOR 52nd Session Supp 38, Rev. 1, 61.

⁵⁶ CEDAW Committee Recommendation No. 25: “Temporary Special Measures” (2004) GAOR 59th Session Supp 38, Rev. 1, 79.

⁵⁷ 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 15 September 1995, Fourth World Conference on Women), available at <http://www.un.org/womenwatch/daw/beijing/pdf/BDPfA%20E.pdf>.

⁵⁸ 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

78. With respect to sexual orientation and gender identity, Article 26 of the ICCPR has been interpreted to include a requirement for non-discrimination on the basis of these grounds as well.⁵⁹ In addition, discrimination on the basis of sexual orientation is prohibited by the European Union Charter of Fundamental Rights (Article 21(2)). In light of this, states should understand that sexual orientation and gender identity are also categories protected by the principle of non-discrimination. In particular, where a difference of treatment is based on sex or sexual orientation, particularly “weighty reasons” need to be advanced to justify the measure.⁶⁰

cc) Persons with Disabilities

In the 2006 UNCRPD States 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, “[e]nsure 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”. Through various measures ensuring accessibility and representation,⁶¹ States shall, as far as possible, furthermore undertake to promote the participation of persons with disabilities “in the activities and administration of political parties”.⁶² In addition, the Convention and General Comment No.1 of the Committee on the Rights of Persons with Disabilities (CRPD Committee) recognize multiple and intersecting forms of discrimination against women and girls with disabilities,⁶³ including with regard to “the ability to participate politically.”⁶⁴

79. Additionally, other regional documents emphasise the importance of non-

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 labour 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.

⁵⁹ *Nicholas Toonen v. Australia*, Communication No. 488/1992, U.N. Doc CCPR/C/50/D/488/1992 (1994) (United Nations Human Rights Committee, March 31, 2004), para. 8.7; United Nations Human Rights Committee “Concluding Observations on Ireland” (2008) UN Doc CCPR/C/IRL/CO/3, para. 8..

⁶⁰ See also Freedom of Association Guidelines, par 131

⁶¹ Convention on the Rights of Persons with Disabilities (adopted on 13 December 2006, entered into force 3 May 2008, available at <<http://www.osce.org/mc/40710?download=true>>.

⁶² Article 29 (b) (i) of the Convention on the Rights of Persons with Disabilities.

⁶³ Article 6 (1) of the Convention on the Rights of Persons with Disabilities

⁶⁴ UN Committee on the Rights of Persons with Disabilities, General Comment No 3 (2 September 2016), para 2 available at: <<http://www.ohchr.org/EN/HRBodies/CRPD/Pages/GC.aspx>>.

discrimination and equal political participation of persons with disabilities. For example, the Council of Europe Recommendation (2011)¹⁴ invites member 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.”⁶⁵ At the same time, in paragraph 41 of the Document of the Moscow Meeting of the Conference on the Human Dimension of the CSCE (“Moscow Document”), OSCE participating States commit to protect the human rights of persons with disabilities, including in decision-making.⁶⁶

80. More specifically, the UNCRPD notes that “[s]pecific measures which are necessary to accelerate or achieve de facto equality of persons with disabilities shall not be considered discrimination.”⁶⁷ Ensuring accessibility and providing the necessary support are the preconditions for persons with disabilities to be able to participate in public life.⁶⁸ Hence, Article 9 of the Convention requires States Parties to “take appropriate measures to ensure to persons with disabilities access, on an equal basis with others, to the physical environment, to transportation, to information and communications, including information and communications technologies and systems, and to other facilities and services open or provided to the public, both in urban and in rural areas.”⁶⁹

81. 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 discrimination⁷⁰ and places a duty upon State Parties to “take appropriate steps to ensure that reasonable accommodation is provided.”⁷¹ 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. This can 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. Under no circumstances should political parties be de-registered or dissolved, for the failure to accommodate persons with disabilities; 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, but these should not exceed administrative fines, or the denial of special funding or other advantages previously granted for this purpose.⁷²

⁶⁵ 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, available at: <<https://wcd.coe.int/ViewDoc.jsp?p=&Ref=CM/Rec%282011%2914&Language=lanEnglish&Ver=original&Site=COE&BackColorInternet=DBDCF2&BackColorIntranet=FDC864&BackColorLogged=FDC864&direct=true>>

⁶⁶ Document of the Moscow Meeting of the Conference on the Human Dimension of the CSCE (1991), available at <<http://www.osce.org/odihr/elections/14310?download=true>>.

⁶⁷ Article 5 (4) of the Convention on the Rights of Persons with Disabilities.

⁶⁸ Annual Report of the Special Rapporteur on the Rights of Persons with Disabilities (12 January 2016), para 75, available at: <<http://www.ohchr.org/EN/Issues/Disability/SRDisabilities/Pages/Reports.aspx>>.

⁶⁹ Article 9 (1) of the Convention on the Rights of Persons with Disabilities

⁷⁰ Article 2 of the Convention on the Rights of Persons with Disabilities.

⁷¹ Article 5 (3) of the Convention on the Rights of Persons with Disabilities.

⁷² 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

82. With respect to persons suffering from mental or intellectual impairments, the Convention states that, as far as possible, also these individuals shall be able to take part in political and public life. Full political participation is, however, not possible if a person's legal capacity is restricted.⁷³ In this regard, while such restrictions are possible in exceptional cases, following an individual expert assessment and a relevant court decision, they should nevertheless not unduly curtail the exercise of a person's political will. Moreover, the Convention obliges the States to ensure that measures relating to legal capacity provide appropriate and effective safeguards to prevent abuse. Thus, such measures shall "respect the rights, will and preferences of the person, [be] free of conflict of interest and undue influence, [be] proportional and tailored to the person's circumstances, apply for the shortest time possible and [be] subject to regular review by a competent, independent and impartial authority or judicial body". Safeguards shall be proportional to the degree in which such measures affect the respective person's rights and interests."⁷⁴

83. In this context, General Comment No.1 of the CRPD Committee notes that "[u]nder article 12 of the Convention perceived or actual deficits in mental capacity must not be used as justification for denying legal capacity."⁷⁵ Denial of legal capacity with respect to the right to vote, including a restriction pursuant to an individualized assessment, has been recognized by the Committee as "discrimination on the basis of disability, within the meaning of article 2 of the Convention."⁷⁶ By contrast, the ECtHR, in its judgment of *Alajos Kiss v. Hungary*, permitted such restrictions based on individualized court decisions, but not based on blanket bans.⁷⁷ Recently, the PACE adopted a resolution on the rights of person with disabilities, and reiterated that in this regard, supported decision-making (assisting persons with disabilities in taking decisions) was preferable to substituted decision-making (taking decisions for them).⁷⁸

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."

⁷³ Annual Report of the Special Rapporteur on the Rights of Persons with Disabilities (12 January 2016), para 20, available at: <http://www.ohchr.org/EN/Issues/Disability/SRDisabilities/Pages/Reports.aspx>.

⁷⁴ Article 12 (4) of the Convention on the Rights of Persons with Disabilities.

⁷⁵ UN Committee on the Rights of Persons with Disabilities, General Comment No 1 (19 May 2014), para 13 available at: <http://www.ohchr.org/EN/HRBodies/CRPD/Pages/GC.aspx>.

⁷⁶ [2013 CRPD Committee's Communication No. 4/2011](#), *Zsold Bujdosó and five others v. Hungary*.

⁷⁷ See *Alajos Kiss v. Hungary*, Judgment, 20 May 2010 (Application no. 38832/06), par 44. See also the Revised interpretative declaration to the Code of Good Practice in Electoral Matters on the participation of people with disabilities in election of the Venice Commission, CDL-AD(2011)045, adopted by the Council for Democratic Elections at its 39th meeting (Venice, 15 December 2011) and by the Venice Commission at its 89th plenary session (Venice, 16-17 December 2011). and the OSCE/ODIHR Handbook on Observing and Promoting the Electoral Participation of Persons with Disabilities, issued on 12 September 2017, pp. 23-27

⁷⁸ March 2017, PACE Resolution 2155(2017) on "The political rights of persons with disabilities: a democratic issue", based on a report prepared by its Committee on Equality and Non-Discrimination. For an overview of relevant regional instruments and standards, see the OSCE/ODIHR Handbook on Observing and Promoting the Electoral Participation of Persons with Disabilities, issued on 12 September 2017, pp. 23-27.

dd) Non-Nationals

84. While generally Article 16 of the ECHR allows states to restrict certain rights, including freedom of association, to citizens, some States have, in certain circumstances, allowed non-nationals living on their territory to join political parties, vote, or stand as candidates in municipal⁷⁹ or supranational elections, such as elections for the European Parliament.

85. Overall, states may consider granting participatory rights, or facilitate the acquisition of citizenship for refugees or stateless persons who have lived in the host country for an extended period of time.

g) Internal Party Functions

86. Although not required by law, it is recognized as good practice that the internal functions and procedures of political parties should respect the principles of non-discrimination, equality, and transparency.⁸⁰ Such principles may include measures 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 fully transparent and provide for the equal participation of women, persons with disabilities and minorities. Such steps take into account the fact that women, persons with disabilities and minorities have been subject to historical inequalities that require redress in the OSCE, Venice Commission and GRECO regions and globally. Transparency and democracy of internal party structures and functions and their clear institutionalization expands participation and creates an environment that facilitates the participation of all, including women, persons with disabilities and minorities. In some states, political parties have introduced voluntary temporary special measures for key governance structures and processes in order to ensure greater representation of women in decision-making structures of the respective party.

Some parties have separate “disability branches” or disability rights committees. For example, the Green Party of Finland has established a separate “disability branch” Vihreat Vaivaiset, which aims to strengthen political participation of persons with disabilities in the party and in Finland in general (<http://www.vihreatvaivaiset.fi/>).

The Liberal Party of Canada has developed a plan in accordance with the *Accessibility for Ontarians with Disabilities Act* to ensure that the services offered by the Party are done in an inclusive way in accordance with the Act (<https://www.liberal.ca/essential-accessibility/>).

87. 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.

⁷⁹ See the European Convention on the Participation of Foreigners in Public Life at the Local Level, which entered into force on 1 May 1997.

⁸⁰ See, Principle 5. Non-discrimination, in para. 18 of this document.

5. Regulation of Political Parties

a) Legitimate Means of Regulating Political Parties

88. Some OSCE participating States, Venice Commission or GRECO states do not prescribe any requirements for political party registration or regulation of party activities. However, given administrative necessities related to the functioning of democracy, it is fully justified for a state to enact regulations, often only procedural in nature, for political party registration and formation.

89. Any limitations on the substantive exercise of free association and expression through the activities and formation of political parties must however be consistent with relevant provisions in international and regional instruments, including the ICCPR and ECHR. The set of legitimate grounds under which freedom of association may be limited is restricted to:

*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.*⁸¹

90. Further, it is 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 extreme restraint and only when necessary in a democratic society. A state may not hinder the establishment of a political party whose expressed goals are 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.

b) Political Party Registration

91. There are states in the OSCE and Council of Europe region that do not require the registration of political parties. The proper functioning of democracy in many such states illustrates that requirements for registration are not necessary for a democratic society.⁸² At the same time, 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 allow parties to participate in elections, and receive certain forms of state funding.

92. Where registration as a political party is required, 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 necessary in a democratic society.

93. 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. Clearly established deadlines and procedures for registration are necessary to minimize the negative impact of denials of party registration for purely administrative

⁸¹ The ECHR, *op. cit.*, note 3, Article 11(2).

⁸² Prohibition of Political Parties and Analogous Measures – Report, *op. cit.*, note 18.

reasons. Where a missed deadline or the failure of a party to present certain documents leads to denial of registration, the party should first be given the opportunity to fulfil the requirements within a new, perhaps shorter, deadline. 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.

94. Deadlines for deciding registration applications should be reasonably short, to ensure the realization of the right of individuals to associate. Decisions on registration should be taken by an independent and impartial body; at the very least, political parties should have access to such a body on appeal. 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. On the other hand, if the competent state authority does not decide within the deadline provided, applications for establishment and registration should be seen as approved.

95. It is reasonable that legislation on political party registration requires that the state be provided with basic 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 prescribe the prohibited symbols, names and terms.⁸³ The regulation of party names and symbols to avoid confusion is also an important means to enable the state to ensure a duly informed electorate that is able to exercise free choice.

96. Some states require political parties to publicly file a 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 Welfare Party) and Others v. Turkey*, the ECtHR noted that Article 10 of the ECHR extends protection "not only to 'information' or 'ideas' that are favourably received or regarded as inoffensive or as a matter of indifference, but also to those that offend, shock or disturb". 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 propagates democratic and peaceful change.⁸⁴

97. 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.

98. 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 gain access to the ballot during elections. While in some countries,

⁸³ See also 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) CDL-AD(2015) 041.

⁸⁴ *Herri Batasuna and Batasuna v. Spain* (Applications Nos. 25803/04 and 25817/04) (ECtHR, June 30, 2009); *HADEP and Demir v Turkey* (Application no. 28003/03) (December 14, 2010).

it is sufficient to register as an association, other countries require registration as a political party for the acquisition of legal personality on the part of a party,⁸⁵ which in some states is needed to open bank accounts or hold property. 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 there is equal opportunity to register as a political party.

c) Registration Fees

99. The payment of reasonable registration fees for the establishment of a political party is an acceptable requirement. However, registration fees should not be used to restrict party formation. For instance, in many states where registration is only a formality and does not provide distinct privileges or require the provision of state resources to a political party, the imposition of registration fees may appear unnecessary.

100. Registration fees should never be of such an amount as to prevent the registration of legitimate parties. Registration fees that are excessive may be deemed discriminatory, 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 waiving fees for parties, which are not able to bear the costs. States should also provide for non-monetary methods of registration, 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 provided based on a minimum level of support and not financial status.⁸⁶
[Possibly include a reference to ECtHR, Sukhovetsky-Ukraine]

d) Minimum Support

101. Many OSCE participating States require proof of minimum levels of support, on the basis of the collection of signatures or 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 not so burdensome as to restrict the political activities of small parties or to discriminate against parties representing minorities. In order to reduce administrative burdens for parties and facilitate the collection of signatures, such expressions of minimum support could also be gathered online, by way of new technologies.

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 to establish support be determined, at least at the local and regional level, not as an absolute number but, rather, as a reasonable percentage

⁸⁵ See Section 1 par 4 of the Austrian Political Parties Act

⁸⁶ See the judgment of the Canada Supreme Court in the case of *Figuroa v. Canada*, 2003 SCC 37, of 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 favoured 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.

of the total voting population within a particular constituency.⁸⁷ 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 an inference 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.

102. Where the collection of signatures is required to illustrate 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 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 to them. 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. In order to enhance pluralism and freedom of association, and since it should be possible to support the registration of more than one party, 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, who in good faith believed that they had fulfilled the requirements for registration.

103. 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 even more 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”⁸⁸ 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.⁸⁹ At the same time, the de-registration of parties with consistently low or merely formal support over a longer period of time could help states put order into their party registers and election procedures, though this would only be required in cases involving defunct parties, if newly created parties wish to use the same or similar name. De-registration should then be done in a transparent manner following pre-determined criteria, bearing in mind the principle of equality of treatment of all political parties; the respective party should also have the right to be heard prior to a decision being taken on de-registration.

e) Geographic Representation

104. Provisions regarding the limitation of political parties that represent a geographic area

⁸⁷ 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, Draft Opinion on the Draft Law on Amendments to the Law on Political Parties of the Republic of Azerbaijan (14 October 2014) CDL(2001)103 par. 16.

⁸⁸ *Republican Party of Russia v. Russia* (2011) (Application no. 12976/07) par.119.

⁸⁹ *Republican Party of Russia v. Russia* (2011) (Application no. 12976/07).

should generally be removed from relevant legislation, as should provisions requiring a party to be represented in a certain minimum number of districts.⁹⁰ 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.

105. 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

106. 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 clearly requires that associations, including political parties, should be able to communicate freely and co-operate with similar associations at the international level, including, as appropriate, through the provision of financial assistance.⁹¹ 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.⁹²

107. 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.

⁹⁰ Republican Party v. Russia (2011), par 130; see also Venice Commission opinion on the Law on Political Parties of the Russian Federation, CDL-AD(2012)003, adopted at the Venice Commission at its 90th plenary session (16-17 March 2012), par 24

⁹¹ Par. 10.4 of the Copenhagen Document, *op. cit.*, note 3, states that participating States should commit to “allow members of such groups and organizations to have unhindered access to and communication with similar bodies within and outside their countries and with international organizations, to engage in exchanges, contacts and co-operation with such groups and organizations 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”.

⁹² CDL-AD(2009)021, Code of Good Practice in the Field of Political Parties and Explanatory Report, adopted by the Venice Commission at its 77th and 78th Plenary Sessions (12-13 December 2008 and 13-14 March 2009).

g) Regulatory Measures to Ensure Non-Discrimination

108. Legislation on political parties may also create incentives that help promote the full participation and representation of women, persons with disabilities, and minorities in the political process. A state may, for instance, allow parties representing national minorities to be formed with less citizen support than usually required. Such measures would then not be considered discriminatory, as they are compatible with international and regional instruments allowing for special measures aimed at achieving *de facto* equality and support the full participation of women, persons with disabilities and minorities in public life.⁹³

A number of countries have introduced legislative measures aimed at promoting gender parity in elections and in political parties in recent years,⁹⁴ while voluntary party measures have been applied in many others. Many member states of the CoE and participating States of the OSCE have introduced mandatory legal quotas for parliamentary elections.⁹⁵ Voluntary party measures for advancing gender equality can be found in political parties across the OSCE region, and 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".⁹⁶ All of these measures aim to ensure that women and men can participate on an equal footing in the decision-making processes within political parties and beyond.

109. 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 for⁹⁷ or specific places within the order of party lists.⁹⁸ In about 30 CoE member states, one or more

⁹³ CEDAW, *op. cit.*, note 14, Articles 3-4, UNCRPD, *op. cit.*, note Article 5 (4), Framework Convention on National Minorities, *op. cit.*, note 14 Article 4(2); *Nicholas Toonen v. Australia*, *op. cit.*, note 32.

⁹⁴ See 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:

1. Reserved seats (constitutional and/or legislative)
2. Legal candidate quotas (constitutional and/or legislative)
3. Political party quotas (voluntary). See also Mc Dec 7/09, Art 2.

⁹⁵ E.g. Albania, Belgium, Bosnia and Herzegovina, France, Ireland, Armenia, the Former Yugoslav Republic of Macedonia, Serbia, Poland, Portugal, Slovenia and Spain.

⁹⁶ *Handbook on Promoting Women's Participation in Political Parties*, OSCE/ODIHR, 2014, p. 70.

⁹⁷ 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.

⁹⁸ In Serbia, for instance, for every three candidates on the electoral list, there shall be at least one candidate of the under-represented sex; in Bosnia and Herzegovina there must be one candidate from the under-represented sex among the first two positions on the list, two among the first five, and three among the first eight; and in Belgium, the top two positions on party lists may not be filled by candidates of the same gender.

political parties have adopted voluntary temporary special measures in order to guarantee that a minimum proportion of their candidates are women.⁹⁹

110. There is also a practice of introducing voluntary or even mandatory temporary special measures for women candidates for local government elections alongside temporary special measures for elections to national parliaments. However, it is also important to acknowledge that legislative measures only work if they are effectively implemented. Effective quota laws require a high percentage of female candidate to be nominated by political parties; placement mandates to regulate the order in which candidates are put on an electoral list; effective and dissuasive sanctions for non-compliance; and compliance monitoring by independent bodies.¹⁰⁰

h) Requirements for Retention of Party Registration

111. 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.

112. 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.

113. 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. This practice is far from ideal and should not be included in relevant legislation. If a party originally met all requirements for registration, it should be able to continue party activities outside of elections. In any case, parties that do not receive adequate support in an election should be able to at least continue their association under the laws governing general associations. 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 assembly and association) awarded to all public 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).

6. Prohibition or Dissolution of Political Parties

a) Legality

114. Prohibition or dissolution of a political party is a more serious interference than de-registration (loss of registered status) or denial of previous benefits, as this essentially means that the party, as an association, is prohibited or ceases to exist (though there are

⁹⁹ See, also CDL-AD (2009)029, Report on the Impact of Electoral Systems on Women's Representation in Politics, adopted by the Council for Democratic Elections at its 28th meeting (14 March 2009) and the Venice Commission at its 79th plenary session (12-13 June 2009), para. 89.

¹⁰⁰ OSCE Gender Equality in Elected Office, p. 33 – 34, <http://www.osce.org/odihr/78432>.

states where all parties are required to register – in these instances, de-registration may be the same, or very similar to dissolution). In paragraph 11 of Resolution 1308(2002), on “Restrictions on political parties in the CoE’s member States”, PACE 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.” Thus, the opportunity for a state to dissolve a political party or prohibit one from being formed should be exceptional and narrowly tailored and applied only in extreme cases. This high level of protection has been deemed appropriate by the ECtHR, given political parties’ fundamental role in the democratic process.¹⁰¹

115. International and regional human rights instruments recognize valid reasons for restrictions on the freedom of association, including those of public order, public safety, protection of health and morals¹⁰² of the society, national security (including measures intended to counter terrorism and extremism),¹⁰³ and the protection of the rights and freedoms of others. In all cases, 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 prescribed¹⁰⁴. Moreover, as the most severe of available restrictions, the prohibition or dissolution of political parties is only deemed justified when all less restrictive measures have been deemed inadequate (see further under par xxx below).

b) Proportionality

116. Strict considerations of proportionality must be applied when determining whether the prohibition or dissolution of a party is justified. As the PACE has noted, “as far as possible, less radical measures than dissolution should be used”.¹⁰⁵ Thus, it must be shown by the

¹⁰¹ *United Communist Party of Turkey and Others v. Turkey*, *op.cit.*, note 23.

¹⁰² The concept of “morals” has the potential to be given too broad a scope. In particular, any such restrictions made on the basis of sexual orientation are clearly discriminatory. See, the Charter on Fundamental Rights of the European Union (2000/C 364/01) (entered into force 1 December 2009), and ECtHR cases, including *Salgueiro da Silva Mouta v. Portugal*, (Application no. 33290/96) (March 21, 2000) and *E.B. vs. France*, (Application no. 43546/02) (January 22, 2008); see also Yogyakarta Principles on the application of international human rights law in relation to sexual orientation and gender identity helps (26 March 2007, Principle 20, <http://www.yogyakartaprinciples.org/principles_en.htm) Principle 20 states (among others): “Everyone has the right to freedom of peaceful assembly and association, [...], regardless of sexual orientation or gender identity. [...] States shall: a) Take all necessary legislative, administrative and other measures to ensure the rights to peacefully organise, associate, assemble and advocate around issues of sexual orientation and gender identity, and to obtain legal recognition

for such associations and groups, without discrimination on the basis of sexual orientation or gender identity; b) Ensure in particular that notions of public order, public morality, public health and public security are not employed to restrict any exercise of the rights to peaceful assembly and association solely on the basis that it affirms diverse sexual orientations or gender identities; [...]”

¹⁰³ The ECHR, *op. cit.*, note 3, Article 11(2)

¹⁰⁴ See Article 18 ECHR.

¹⁰⁵ Resolution 1308 (2002), Parliamentary Assembly of the Council of Europe, *op. cit.*, note 25 para. 11; see also 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)

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.¹⁰⁶

c) Restrictions on Prohibition or Dissolution [this vital topic deserves much more attention, including a full treatment of ECtHR case law]

117. As noted above, the possibility to dissolve or prohibit a political party from forming should be exceptionally narrowly tailored and applied only in extreme cases. Political parties should never be dissolved for minor administrative or operational breaches of conduct, e.g. if the name of the party violates domestic legislation.¹⁰⁷ Lesser sanctions must be applied in such cases. Moreover, under no condition should the State have the right to dissolve a party simply because it failed, or was not able to present candidates for election for several years at a stretch. Nor should a political party be prohibited or dissolved because it is a regional, religious or minority party, or promotes a related identity,¹⁰⁸ or because its ideas are unfavourable, unpopular or offensive. 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.¹⁰⁹ On the other hand, continued supportive action and speeches, and a refusal of party leaders and members to distance themselves from terrorist acts and beliefs may, in individual cases, justify dissolution.¹¹⁰

118. At the same time, the fact that a party criticised government actions,¹¹¹ advocates a peaceful change of the constitutional order¹¹² or promotes self-determination of a specific people¹¹³ is not sufficient per se to justify a party's prohibition or dissolution. The ECtHR has noted that party programmes may be incompatible with the current principles and structures of

¹⁰⁶ See, *Republican Party of Russia v. Russia* (Application no. 12976/07) (ECtHR, April 12, 2011).

¹⁰⁷ *United Communist Party of Turkey v Turkey* XXX

¹⁰⁸ See the case of *Stankov and the United Macedonian Organization Ilinden* (application nos 29221/95 and 29225/95), judgment of 2 October 2001, par 89.

¹⁰⁹ See, *Herri Batasuna v. Spain*, (Applications nos. 25803/04 and 25817/04) (ECtHR, June 30, 2009).

¹¹⁰ *Ibid*, pars 88-91. See also the case of the *Party for a Democratic Society (DTP) and Others v Turkey*, where the Court noted that despite the fact that the party leaders had not distanced themselves from speeches of other party members that could be interpreted as indirect support for terrorism (which could be seen as constituting a pressing social need), these omissions had a relatively limited impact on public order or the rights and freedoms of others. The Court thus did not feel that a sanction as severe as the dissolution of a party was justified (application nos 3840/10, 3870/10, 3878/10, 15616/10, 21919/10, 39118/10 et 37272/10, judgment of 12 January 2016, pars 97-100 and 109).

¹¹¹ *Yazar and others v Turkey* (application nos 22723/93, 22724/93 and 22725/93), judgment of 9 April 2002, par 59; see also *HADEP and Demir v Turkey* (application no 28003/03), judgment of 14 December 2010, par 70.

¹¹² *Partidul Comunistilor (Nepeceristi) and Ungureanu v Romania* (application no 46626/99), judgment of 3 February 2005, par 52.

¹¹³ See, *HADEP and Demir v Turkey* (Application no. 28003/03) (ECtHR, December 14, 2010).

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”.¹¹⁴ Political parties must be able to promote a change in the law or the legal or constitutional structures of the state, provided that the means used for this promotion are legal and compatible with fundamental democratic principles. At the same time, in the case of *Refah Partisi v. Turkey*, the ECtHR has noted 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 recognized in a democracy’, even where the party uses legal means to pursue its goals. By contrast, some states stop short of banning parties even where their 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.¹¹⁵

119. The dissolution of political parties based on the incidental activities of party members as individuals is incompatible with the protection awarded to parties as associations. This incompatibility extends to the individual actions of party leadership, except where these persons can be proven to act as representatives of the party as a whole.¹¹⁶ For dissolution to be applicable, it must be shown that it was the party’s statutory body (not individual members) that set objectives and undertook activities requiring such dissolution.¹¹⁷ A party cannot be held responsible for its members’ isolated actions, especially if such action is contrary to the party constitution or party activities.¹¹⁸ Thus, actions undertaken by particular individuals within a party, when not officially representing the party, should be attributed only to those individuals. The same applies for the individual behaviour of members that is not authorised by the party within the framework of political/public and party activities.¹¹⁹ In such cases, appropriate civil and criminal sanctions may be enacted against such individuals.

¹¹⁴ See *Socialist Party and others v Turkey* (application no 21237/93) judgment of 25 May 1998, par 47, and *Freedom and Democratic Party (ÖZDEP) v Turkey* (application no 23885/94), GC judgment of 8 December 1999, par 41.

¹¹⁵ 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)).

¹¹⁶ 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] (Application nos. 41340/98, 41342/98, 41343/98 and 41344/98, judgment of 13 February 2003), paras. 101-103. See also the case of the Party for a Democratic Society (DTP) and *Others v Turkey*, 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 (application nos 3840/10, 3870/10, 3878/10, 15616/10, 21919/10, 39118/10 et 37272/10, judgment of 12 January 2016, par 85) .

¹¹⁷ Guidelines on Prohibition and Dissolution of Political Parties and Analogous Measures, *op. cit.*, note 2, para. 51.

¹¹⁸ *Ibid.* The ECtHR held dissolution to be disproportionate where this was based on remarks of a political party’s former leader in ECtHR, *Dicle on behalf of the DEP (Democratic Party) v. Turkey* (Application no. 25141/94, judgment of 10 December 2002), para. 64.

¹¹⁹ Guidelines on Prohibition and Dissolution of Political Parties and Analogous Measures, *op. cit.*, note 2, Guideline 4.

120. Based on a survey of national legislation relating to the regulation of political parties, the Venice Commission has found that, where allowed at all, prohibition and dissolution are applicable only in extreme cases, including the following: posing a threat to the existence and/or sovereignty of the state or to the basic democratic order; violence threatening the territorial integrity of the state; incitement of ethnic, social or religious hatred; and using or threatening the use of violence as has been elaborated above.¹²⁰ 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 and proportionality discussed above. It is good practice to ensure that the decision to ban or dissolve a political party is made by a constitutional court or supreme court.¹²¹ If the decision is taken by a lower court or other, non-judicial body, political parties should have a right to appeal to a higher court.

121. Finally, legislation should specify 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.

7. Regulation of Political Parties in Parliament

122. While in many constitutions in the OSCE and Council of Europe region, members of parliament are seen as autonomous in their decision-making, most of them nevertheless represent a specific political party, and usually act in accordance with their party's aims and programmes. Members of parliament therefore 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 organization and the allocation of resources. Nonetheless, MPs remain free to leave their parliamentary party groups, and these groups in turn remain free to expel individual MPs, which will merely result in the loss of party membership, but not in the loss of the MP's parliamentary mandate.

123. Political parties thus de facto play a vital role in parliaments with regard to law making, oversight, and channelling 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 of power within the parliamentary context, it is also necessary to regulate them in a way that helps promote transparency and minimizes the risk of corruption and abuse of power.

¹²⁰ CDL-AD(2009)006, Opinion on the Constitutional and Legal Provisions Relevant to the Prohibition of Political Parties in Turkey, *op.cit.*, note 18.

¹²¹ E.g. in Bulgaria, political parties are dissolved by the Constitutional Court and, in exceptional cases defined by law, also by the Sofia City Court. In cases of dissolution by the Sofia city court, parties have recourse to appeal to the Supreme Court of Cassation (law of 2009). See also Germany, Article 21 par 4 stating that the Federal Constitutional Court shall determine whether a political party breaches the Basic Law or not; according to Section 46 par 3 of the Act on the Federal Constitutional Court, the finding that a party has violated the Basic Law will lead to its dissolution and a ban on establishing a substitute organization. In Spain, a Special Chamber of the Constitutional Court will decide on the dissolution of a party (Article 11 par 2 of the 2015 Organic Law on Political Parties).

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. When drafting rules regarding parliamentary parties, a balance has to be struck between four important objectives.

125. First: responsible participation in overseeing the government. This means that those parties that are in parliament (both majority and opposition parties) must act responsibly when overseeing and seeking to 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, these parties still need to be heard and protected, so as to complement the role of the majority in Parliament, and ensure proper oversight. Third: the opportunities for corruption specifically within parties in the parliamentary context should be limited; these may take the form of bribery or other payoffs to MPs or their parties, abuse of privilege, for example by leaking confidential information, channelling of favors or the adoption of special interest legislation. 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.¹²² 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 favourable 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.

a) 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. Those 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/they 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 sufficient control over the parliamentary agenda to ensure that its proposals are adequately taken into consideration.

b) Rights of Parliamentary Opposition Parties

127. Rights of smaller and opposition parties have to be effectively protected in parliament. In order to do so, it might sometimes be permissible or even advisable to provide additional

¹²² See, albeit with regard to ineligibility to be elected and loss of mandate: Venice Commission, Report on Exclusion of Offenders from Parliament (2015), 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) pars 18-29; see also Venice Commission Report on the Scope and Lifting of Parliamentary Immunities (2014), 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).

resources or rights to opposition parties. 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 strength in parliament. This rule should not, however, apply in the same way for 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. It is good practice to allocate to opposition parties a share of committee chairmanships and award to them certain other intra-parliamentary functions.

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.

Article 74 par 6 of the Constitution of Greece provides that once a month bills originating from the opposition are debated in priority over pending governmental bills

c) 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.¹²³ 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. Codes of conduct related to ethical behaviour of parliamentarians could help raise awareness of adequate behaviour with respect to the use of funds. Parliamentary party groups and individual members have to be held accountable for misuse of public resources and corruption by ways of exposure and, in serious cases, criminal prosecution.

d) Fluidity of Party Members and Groups

130. There should be no imperative mandate, meaning that a member of parliament should not be bound by his/her electorate's or party's instructions when debating or voting on a particular issue.¹²⁴ According to a generally accepted principle in modern democracies, the parliamentary mandate belongs to an individual MP, because he/she receives it from voters via universal suffrage and not from a political party.¹²⁵ Parties, given that they are 'instruments, not owners of the social contract between the electors and the parliament', should thus not have

¹²³ See also ODIHR Background Study: Professional and Ethical Standards for Parliamentarians (2012) available at < <https://www.osce.org/odihr/98924?download=true> > p. 49-51.

¹²⁴ See eg. [CDL-AD\(2016\)018-e Opinion on the Amendments to the Law on Elections Regarding the Exclusion of Candidates of Ukraine \(13 June 2016\) pars 12-15.](#)

¹²⁵ ECtHR, Paunović and Milivojević v. Serbia, Application no. 41683/06, Judgment of 24 May 2016, para.63."

the power to retroactively annul an MP's electoral appointment.¹²⁶ 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.¹²⁷ An MP should also keep the funds that he/she received as a result of his/her parliamentary mandate, but legislation and/or by-laws should specify what happens to funds received on behalf of the respective parliamentary group.

Part II Internal Functioning of Political Parties

1. Regulation of Internal Party Structures and Activities

131. Due to the important role that parties play as actors in a democracy, some OSCE participating States require that certain internal party functions be democratic in nature. Regulation of internal party functions, where applied, must be narrowly construed so as not to unduly interfere with the right of parties as free associations to manage their own internal affairs and respect the principle of party autonomy.

132. 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”.¹²⁸ 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 considered acceptable to ensure the proper functioning of a democratic society,¹²⁹ though not all countries adhere to this approach. If imposed, such measures should be proportionate, in other words countries should choose those measures which place the least burden on political parties’ freedom while effectively reflecting democratic principles.

133. Within the last decade, many countries have increasingly shifted towards the imposition of requirements for internal structures and functioning of political parties.¹³⁰ The most commonly accepted regulations are rules pertaining to the 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

¹²⁶ See CDL-AD(2009)027 Venice Commission Report on the Imperative Mandate and Similar Practices, paragraph 34; see also [CDL-AD\(2016\)018-e Opinion on the Amendments to the Law on Elections Regarding the Exclusion of Candidates of Ukraine \(13 June 2016\) pars 12-15](#).

¹²⁷ See e.e. 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), pars 48-52.

¹²⁸ Venice Commission Explanatory Report to the Code of Good Practice in the Field of Political Parties, CDL-AD(2009)002 par. 101.

¹²⁹ CDL-DEM(2003)2rev, Replies to the Questionnaire on the Establishment, Organisation and Activities of Political Parties, prepared by Hans Heinrich Vogel, 10 October 2003, section 3.5.

¹³⁰ See, Venice Commission, Report on the Method of Nomination of Candidates within Political Parties (2015), available at [http://www.venice.coe.int/webforms/documents/default.aspx?pdffile=CDL-AD\(2015\)020-e](http://www.venice.coe.int/webforms/documents/default.aspx?pdffile=CDL-AD(2015)020-e).

regard to the freedom to select candidates, a growing number of states require parties to introduce temporary 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 parties should also be encouraged (see more in detail in pars xxx). In systems where political parties have undergone difficulties, due to financial scandals or other internal problems, requiring participation or public debates can help restore public confidence.¹³¹ In other cases, however, such requirements may jeopardise the stability of political parties. Generally, it is important to strike a balance to ensure adequate transparency and participation on the one hand, and ensure effective decision-making powers within a party on the other.

Good practice examples

134. 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 of every aspect of the life 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 hardly compatible with the principles of necessity and proportionality.¹³² 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.¹³³

135. At the same time, any regulation of internal party activities needs to be consistent with the respective national electoral system. In systems where electoral lists are open, voters already have a certain choice between several candidates presented by the same party. In these instances, regulation should be drafted with particular restraint. If systems provide for closed lists, where voters do not have the possibility to change the order previously decided by the party, a higher degree of regulation could be warranted.¹³⁴ “[A]ny measure imposing requirements on the selection of candidates which also affects the decision-making process of political parties has to be preceded by a broad public discussion and should be taken, if possible, by consensus”.¹³⁵ Such measures should be subject to internal party control mechanisms, and also supervised by an independent state body.

a) Gender Equality

¹³¹ See VC report (CDL-AD(2015)020), par 68.

¹³² CDL-AD(2012)003, Opinion on the Law on Political Parties of the Russian Federation, pars 43 and 53.

¹³³ CDL-AD(2012)003, Opinion on the Law on Political Parties of the Russian Federation, pars 43 and 53: see also Venice Commission, Guidelines and Explanatory Report on Legislation on Political Parties, CDL- AD(2004)007, Guideline C.

¹³⁴ See, Venice Commission, Report on the Method of Nomination of Candidates within Political Parties (2015), available at [http://www.venice.coe.int/webforms/documents/default.aspx?pdffile=CDL-AD\(2015\)020-e](http://www.venice.coe.int/webforms/documents/default.aspx?pdffile=CDL-AD(2015)020-e), par. 70.

¹³⁵ See, Venice Commission, Report on the Method of Nomination of Candidates within Political Parties (2015), available at [http://www.venice.coe.int/webforms/documents/default.aspx?pdffile=CDL-AD\(2015\)020-e](http://www.venice.coe.int/webforms/documents/default.aspx?pdffile=CDL-AD(2015)020-e), par. 71.

136. The small number of women in politics, especially in the higher echelons of party leadership, remains a critical issue that undermines the full functioning of democratic processes. In many states, the percentage of seats that women occupy in parliament is in single digits, and the average in OSCE participating States is only at around 26.4 per cent.¹³⁶ Specific measures to ensure that women have equal opportunities to compete in elections (see section III) and be nominated for elected bodies, as well as internal party bodies, should be considered for internal party rules. This would be consistent with Article 3 of OSCE Ministerial Council Decision 7/09, which encourages “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;” and PACE Recommendation 1899(2010), on “Increasing Women’s Representation in Politics Through the Electoral System”, in which the Committee of Ministers of the CoE encouraged the member states to seek to increase women’s representation by introducing temporary special measures.

137. The creation of a specific “women’s section”, “gender division” or “women’s wing” of a party is sometimes used as a tool to promote greater gender equality, to provide solidarity amongst women and opportunities for political development and networking. Women’s wings can be organized in different ways and take on different functions. They may be a formal part of the party linked to decision-making, a separate organization with a board (including members, membership fees, statutes, budget, etc. of their own), or they may be of an informal nature, acting more as a support network for female party members.¹³⁷ Such sections or divisions can make great strides in ensuring women’s participation, by providing women in parties with an opportunity to discuss issues of common concern, and serving as a forum for capacity-building activities. They also help promote women leadership throughout the party, and at all levels, lobby and oversee internal party reform to enhance gender equality, and help mobilize women voters and people’s support during elections. Such bodies should ideally be representative of all women within a political party, and should avoid marginalizing or side-lining certain groups. Generally, the creation and effective financing of such bodies is considered to be a positive measure to ensure women’s participation, representation and influence that are on par with that of their male colleagues.¹³⁸ To enhance this effect, it is good practice for the chairperson of the women’s wing to have a seat and vote on the party’s governing body, and for women’s wings to have autonomy over their resources.¹³⁹

138. To ensure that women are able to participate fully in political parties and in accordance with Article 4 of the CEDAW, special measures may be taken. These may include temporary

¹³⁶ See, Inter-Parliamentary Union “Women in National Parliaments”, available at <<http://www.ipu.org/wmn-e/world.htm>>; see also for detailed statistics on gender representation for Council of Europe States.

¹³⁷ *Compendium of good practice for advancing women’s political participation in the OSCE region*, OSCE/ODIHR 2016.

¹³⁸ See, OSCE Office for Democratic Institutions and Human Rights, *Handbook for Monitoring Women’s Participation in Elections* (Warsaw: OSCE/ODIHR, 2004), available at <<http://www.osce.org/odihr/elections/13938>>.

¹³⁹ In Finland, 10% of the party subsidy needs to be allocated to the women’s wing of the party. With this support, women’s wings are able to maintain central offices, produce materials for elections, and possibly also give financial support to women candidates. The women’s wings have autonomy over these resources, but the authorities audit the use of the money as with all party funding. [To add source (law)?]

special measures for representatives, requirements for gender-balanced boards tasked with selecting candidates, the introduction of gender-neutral selection criteria, or specialized training programmes. Voluntary temporary special measures that are not legally mandated but included in party constitutions have also proven effective in ensuring women's representation. Moreover, the Venice Commission and the Committee of Ministers of the CoE see electoral gender quotas as an appropriate and legitimate measure to increase women's parliamentary representation.¹⁴⁰ Training and capacity-building programmes may be developed for female members and potential candidates prior to their selection, to ensure that they have equal opportunities to serve as candidates and to be elected.¹⁴¹ These trainings shall be supplemented with trainings on gender equality for all members of political parties, male and female, and particularly those in decision-making positions.

139. Special measures for women may also include the adoption, implementation and evaluation of gender-equality strategies, gender action plans and programmes at different levels, including specific action plans to achieve balanced participation and representation of women and men in political party offices, ideally with appropriate targets, timeframes and benchmarks.

Five Finnish political parties have stipulations in their party bylaws concerning gender equality: at least 40 % of members of the executive board and/or other party committees have to be of one gender.

The Swedish Green Party has two leaders, who are called spokespersons of the party. One of them is a woman and one of them is a man. Same goes for the European Greens which has two co-chairs, one woman and one man.

Such action plans and strategies should also bear in mind family responsibilities of party members, and include measures that avoid conflicts of party meetings and activities with members' family responsibilities and that propose support such as childcare facilities.

¹⁴⁰ See CoE Committee of Ministers, Balanced participation of women and men in political and public decision-making; Recommendation Rec (2003) 3 and explanatory memorandum (Strasbourg, 12 March 2003), available at <http://www.hrol.org/uploads/soft/121219/1-121219222359.pdf>; 1.

Consequently, in its 2009 Declaration "Making Gender Equality a Reality", the Committee of Ministers urged member states to enable positive action or special measures to be adopted in order to achieve balanced representation in political and public decision-making. In OSCE Ministerial Council Decision No. 7/09, "Women's Participation in Political and Public Life", the participating States are called on to "consider possible legislative measures, which would facilitate a more balanced participation of women and men in political and public life and especially in decision-making", and to "encourage all political actors to promote equal participation of women and men in political parties, with a view to achieving better gender-balance representation in elected public offices at all levels of decision-making". All these steps should be considered good practice.

VC, *Report on the Impact of Electoral Systems on Women's Representation In Politics Study*, No. 482 / 2008 (Venice, 14 March 2009), available at <[http://www.venice.coe.int/webforms/documents/default.aspx?pdffile=CDL-AD\(2009\)029-e](http://www.venice.coe.int/webforms/documents/default.aspx?pdffile=CDL-AD(2009)029-e)>

¹⁴¹ Beijing Declaration and Platform for Action, *op. cit.*, note 20; these training programs may include a system of mentoring for inexperienced new members (including women and minorities) as well as gender-sensitive training courses for new members to promote non-discriminatory working relations and respect for diversity in work and management styles.

140. Another important element that could contribute to increasing the participation of women is financial support that may be set out in political finance legislation to level the playing field by making the allocation of public funding dependent on fulfilling certain gender equality requirements.¹⁴² In particular, being selected to stand as a candidate may require substantive financial means. Systems where candidates need financial support to get selected mean that candidates from poorer socio-economic groups and, in many cases, women, could be disadvantaged. Some parties try to level the playing field between candidates by introducing spending limits¹⁴³. Another option could be to create special funds to allow women to run in elections.¹⁴⁴ Fair allocation of financial resources to women and men candidates should go beyond campaign funds, to also cover access to party property or free media time, which are crucial to the success of any electoral candidate.

“Some states have recently adopted ‘gender-targeted’ laws, such as innovative practices to channel more funds to women candidates for election. Overall, 27 states make the allocation of public funding dependent on fulfilling certain gender equality requirements, including recent reforms in Bosnia and Herzegovina, Croatia, Ireland and Mexico that link political finance allocation to promoting women’s participation in decision making. Legislation can also be targeted at other innovative practices, such as earmarking funds for gender-equality initiatives within political parties such as capacity building or supporting the women’s wing.” (International IDEA Funding of Political Parties and Election Campaigns – A Handbook on Political Finance)

In Finland, 10% of the public subsidy to the party must be allocated to the women’s wing of the party.

b) Role of Minorities

141. In accordance with Articles 4(2) and 15 of the CoE’s Framework Convention on the Protection of National Minorities, legislation may oblige state authorities to allow for the full and equal participation of minorities in political life. As a good practice, political parties should voluntarily endeavour to ensure the presentation of issues relevant to national minorities in party programs, and consider special outreach activities for this purpose, if necessary also in minority languages.

142. The adoption of specific initiatives aimed at the promotion of minority participation is

¹⁴² IDEA: Funding of Political Parties and Election Campaigns, A Handbook on Political Finance, p. 309: “Some states have recently adopted ‘gender-targeted’ laws, such as innovative practices to channel more funds to women candidates for election. Overall, 27 states make the allocation of public funding dependent on fulfilling certain gender equality requirements, including recent reforms in Bosnia and Herzegovina, Croatia, Ireland and Mexico that link political finance allocation to promoting women’s participation in decision making. Legislation can also be targeted at other innovative practices, such as earmarking funds for gender-equality initiatives within political parties such as capacity building or supporting the women’s wing.”

¹⁴³ *Compendium of good practice for advancing women’s political participation in the OSCE region*, OSCE/ODIHR 2016.

¹⁴⁴ See IDEA Handbook on political finance, Chapter 9 on Women’s participation and political finance, with numerous examples. (<http://www.idea.int/sites/default/files/publications/funding-of-political-parties-and-election-campaigns.pdf>); see also International IDEA Funding of Political Parties and Election Campaigns – A Handbook on Political Finance (Stockholm 2014) p 309

crucial to ensuring that requirements for equal representation of minorities are more than theoretical.¹⁴⁵ Internal party measures designed to foster the representation of minorities may serve as the basis for particular legislative incentives that would be consistent with the Framework Convention for the Protection of National Minorities.

143. Political parties may consider taking a variety of measures to support minority participation, including the creation of advisory committees on minority issues, training and recruitment programmes focused on national minorities, and legal provisions requiring minority membership on internal party committees and candidate lists. All such steps are considered good practice.¹⁴⁶

c) Inclusion of persons with disabilities

144. While it is difficult to assess the actual level of engagement of persons with disabilities in political parties due to the lack of data, available research suggests that their representation in political parties, national parliaments and public offices remains low across the OSCE region.¹⁴⁷ This data is supported by the CRPD Committee's reports, in which it expresses concern over the under-representation of persons with disabilities as candidates in elections¹⁴⁸ and in executive and public bodies.¹⁴⁹

145. Various challenges limit the engagement of persons with disabilities in political life, including existing discriminatory laws and practices, poverty, institutional segregation, and a lack of accessibility of infrastructure and environment (including physical, linguistic, i.e. absence of sign language interpretation and access to information/media and communication systems). Additionally, there are often limited support and funds for participation, legal and administrative barriers (including restrictions on legal capacity and lack of mechanisms for supported decision-making), low awareness of the actual abilities and possible contributions of persons with disabilities and prevailing stereotypes in society.

146. To ensure broader participation, the CRPD Committee recommends that states shall facilitate assistance for persons with disabilities to be candidates in national as well as local elections and in representative and executive bodies.¹⁵⁰ To all persons with disabilities who are elected to a public position, states should, as far as possible, provide all required support,

¹⁴⁵ see e.g. Section IV B of the Venice Commission report on intra-party democracy ((CDL-AD(2015)020), par. 59.

¹⁴⁶ See, also the following documents of the Venice Commission: Participation of minorities in public life, *Science and technique of democracy series*, No 45; CDL-AD(2008)013, Report on Dual Voting for Persons Belonging to National Minorities, adopted by the Council for Democratic Elections at its 25th Meeting (12 June 2008) and the Venice Commission at its 75th Plenary Session (13-14 June 2008) and CDL-INF(2001)019, Report on the Preferential Treatment of Kin-Minorities by their Kin-State, adopted by the Venice Commission at its 48th Plenary Meeting (19-20 October 2001).

¹⁴⁷ See for example, CoE PACE report: *"The political rights of persons with disabilities: a democratic issue"*, adopted on 25 January 2017, available at: <http://www.assembly.coe.int/nw/xml/XRef/Xref-DocDetails-EN.asp?fileid=22226&lang=EN>

¹⁴⁸ Turkmenistan (CRPD/C/TKM/CO/1), Sweden (CRPD/C/SWE/CO/1)

¹⁴⁹ Croatia (CRPD/C/HRV/CO/1), Azerbaijan (CRPD/C/AZE/CO/1)

¹⁵⁰ Croatia (CRPD/C/HRV/CO/1), Turkmenistan (CRPD/C/TKM/CO/1)

including personal assistants.¹⁵¹ Council of Europe Recommendation (2011)14 notes that the failure to comply with the obligation to implement reasonable accommodation for persons with disabilities, when participating in elections, exercising their mandates and/or being active in political parties, constitutes discrimination.¹⁵²

In 2012 the UK announced the launch of the Access to Elected Office for Disabled People Fund to cover additional costs that persons with disabilities may face in standing for election, compared to non-disabled persons. The Fund was later extended to cover the period up to 31 March 2015 and offered individual grants of between £250 and £40,000 to disabled people who were planning to stand for election. The money was provided to help with additional costs, such as extra transport or sign-language interpreters, that a disabled candidate may be faced with when standing for election as a local parish or town councillor.¹

147. Accessibility is a precondition for persons with disabilities to participate fully in political and public life, on an equal basis with other people. This includes access to the physical environment in which a party operates (e.g. meeting rooms), to transportation, to information and communication, including information and communication technologies and systems, and to other facilities and services open or provided to the public.¹⁵³ Similarly, providing political party programmes, manifestos and other information in accessible formats¹⁵⁴ is the first step to ensuring that persons with various types of disabilities will have equal opportunities to follow and engage in such political parties. The ability to provide this type of support will, however, also depend on the political party itself, its size and resources; this type of accommodation needs to be reasonable, and may not impose a disproportionate and undue burden on the respective party. At the same time, whilst political parties might not be familiar with the best ways of ensuring accessibility of their materials, co-operation with organizations representing persons with disabilities may facilitate this task. [ADD REFERENCE TO pars xxx above]

The organisation United Response, a charity working across England and in Wales supporting people with learning disabilities, mental health needs or physical disabilities, ran a three year project from 2007 called "Every Vote Counts" with funding from the Electoral Commission. The project produced guidance on accessibility to encourage politicians and other people in politics to make information easy to read and accessible for people with learning disabilities. United Response published their Easy News Party Manifesto Special, outlining the highlights of the manifestos of the different political parties before the 2015 general election.

¹⁵¹ Sweden (CRPD/C/SWE/CO/1)

¹⁵² 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 3, accessible at: <https://wcd.coe.int/ViewDoc.jsp?p=&Ref=CM/Rec%282011%2914&Language=lanEnglish&Ver=original&Site=COE&BackColorInternet=DBDCF2&BackColorIntranet=FDC864&BackColorLogged=FDC864&direct=true>; see also Report of the Special Rapporteur on the Rights of Persons with Disabilities (12 January 2016) A/HRC/31/62 par. 49: "Pursuant to their obligations under the Convention on the Rights of Persons with Disabilities, States should strengthen the capacity of representative organizations of persons with disabilities to participate in policymaking, by providing capacity-building and training on a rights-based approach to disability"

¹⁵³ UN Committee on the Rights of Persons with Disabilities, General Comment No 2 (22 May 2014), para 1, available at: <<http://www.ohchr.org/EN/HRBodies/CRPD/Pages/GC.aspx>>.

¹⁵⁴ This would, for example, include providing information in easy-to-read formats to make it accessible for persons with disabilities, adopting websites to the needs of persons with visual impairments and providing sign language interpretation during meetings.

148. Engagement of persons with disabilities in political parties can be further promoted through awareness raising, including educational activities on democratic participation.¹⁵⁵ Acknowledging the existing stereotypes and prevailing paternalistic approaches, defining persons with disabilities as someone in need of protection, awareness raising initiatives targeting the general public, as well as initiatives specifically tailored for political parties and national parliaments are of utmost importance to ensure the efficient political participation of persons with disabilities.

149. Moreover, to ensure stronger cooperation between persons with disabilities, some parties have separate “disability branches” or disability rights committees.

For example, the Green Party of Finland has established a separate “disability branch” Vihreat Vaivaiset, which aims to strengthen the political participation of persons with disabilities in the party and in Finland in general. Likewise, the Liberal Party of Canada has developed a plan in accordance with the *Accessibility for Ontarians with Disabilities Act* to ensure that services are offered by the party in an inclusive manner, in accordance with the Act.

150. Finally, any initiatives that promote participation of persons with disabilities in political parties should be implemented in close consultation with the affected persons through their representative organizations. in line with Article 4 (3) of the UNCRPD and the underlying principle of the global disability movement, “nothing about us without us.” Such consultations will ensure that the initiatives undertaken will correspond to the priorities and identified needs of person with disabilities and will ensure that these can participate in the matters which affect them directly.

2. Internal Party Rules

151. Legislation regarding political parties does not always require the creation or publication of party statutes or other founding documents. However, in those OSCE participating States where such constitutions are legally required, they can be an important step in ensuring a party’s commitment to transparency and internal democracy, as well as equality and non-discrimination.

152. Party statutes can also help ensure that party members are informed about their rights and responsibilities. As such, party statutes and their amendments should ideally be approved following a participatory process, such as a party congress or following an internal debate. The final decision on the contents of the statute will, however, usually be taken by party leadership; the final text of the party statute should then be made widely available to party members. In this respect, digital technologies can be used to ensure that the adoption of a party’s statute or amendments thereof are embedded in a participatory process and to enable party members to participate in this process remotely as well.

153. Party statutes generally define the rights and duties of party members and organizations, 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

¹⁵⁵ 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 5, accessible at: <https://wcd.coe.int/ViewDoc.jsp?p=&Ref=CM/Rec%282011%2914&Language=lanEnglish&Ver=original&Site=COE&BackColorInternet=DBDCF2&BackColorIntranet=FDC864&BackColorLogged=FDC864&direct=true>

relationships between these different levels. The interpretation of party statutes, and of whether a party is meeting the requirements set out therein, rests solely with the political party itself.

154. Party statutes should ideally provide members, who believe that the party's statute has been violated, 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.

155. As elaborated above,¹⁵⁶ some OSCE participating States and CoE member States include voluntary temporary special measures in their party statutes to ensure equal opportunities for women and men to participate in party processes. Parties can also introduce other 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, nominated and appointed positions as well as special processes and activities. In line with the Beijing Platform for Action recommendation to political parties on incorporating gender issues in their political agenda, gender equality could be mentioned as a basic party value in party statutes, policies and programmes.¹⁵⁷ Internal party rules and documents can also further enhance the political participation of persons with disabilities and persons belonging to national minorities.

3. Choosing Party Leadership and Candidates

156. Parties must be able to select party officers and candidates free of government interference. The selection of party leadership should be done in a transparent, inclusive and consensual manner. In countries where candidates are chosen through intra-party ballots, they may also need to follow legitimate party regulations, such as limits on expenditure or donations and disclosure obligations, so that rules relating to transparency and equality are not circumvented at the intra-party level.

157. Recognizing that candidate selection and the determination of ranking on electoral lists is often dominated by closed entities and networks of established politicians, clear and transparent criteria for candidate selection are needed that should be accessible to all members, so that also new members (including women, persons with disabilities and minorities) may gain access to decision-making positions. As mentioned earlier, many parties have moved to using more transparent selection processes and other pro-active measures to ensure equal opportunities in the selection of candidates. A diverse and gender-balanced composition of selection bodies and other decision-making structures is also recommended.

4. Regulation of the Right to Associate or not with Political Parties

a) Nature of Association

158. It is vital to note that association within 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 citizens 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 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. Legislation should explicitly mandate that no person may be obliged

¹⁵⁶ [Under Footnote ##]

¹⁵⁷ The Beijing Declaration and Platform for Action, art. 191-192 (adopted 15 September 1995, Fourth World Conference on Women), available at <http://www.un.org/womenwatch/daw/beijing/pdf/BDPfA%20E.pdf>.

against their free choice to associate with a political party or to abstain from doing so.

159. Members of political parties 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 cease their membership activity as they see fit.

160. Individuals are not guaranteed membership in any association supporting beliefs or values that they do not believe in.¹⁵⁸ It is thus justifiable for parties to withhold membership from or exclude persons from parties if these persons reject the values that the respective political parties uphold, or act against the values and ideas of the parties. However, such restrictions of membership should be carefully constructed so as not to be discriminatory in nature, and need to strike a careful balance between the principle of non-discrimination and the need for political associations to be based on collective beliefs. In fact, many parties in the OSCE region have included preambular or other provisions in their party constitutions stating that membership is open to all persons who are in agreement with the party's fundamental values, irrespective of other conditions.¹⁵⁹ Such party constitutions are exemplary in ensuring that party membership is inclusive and non-discriminatory.

161. That being said, not all political parties are membership-based – indeed, some parties are created as a union of several groups or associations, and in others, key decisions are open to debate and approval by the electorate as a whole. Especially in the latter cases, it is essential that decision-making processes are clearly outlined in the respective party statute.

b) Reasonable State Restrictions on Free Association for Public Officials

162. Article 11.2 of the ECHR allows lawful restrictions to be placed by states on the free association of three categories of persons: police, members of the armed forces and members of the state administration. The ECtHR has recognized Article 11.2 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.¹⁶⁰ Therefore, the partisan political participation and party membership of public officials may be regulated or denied in order to ensure that such persons are able to fulfil their public functions free from any conflict of interest.

163. 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*

¹⁵⁸ The European Court of Human Rights has established the right of general associations to deny membership to persons who do not agree with an association's fundamental beliefs. See, *Associated Society of Locomotive Engineers and Firemen v. the United Kingdom*, (Application No. 11002/05) (May 27, 2007).

¹⁵⁹ Code of Good Practice in the Field of Political Parties and Explanatory Report, *op. cit.*, note 40. See, for example, party constitutions of the Austrian, Swedish and German Social Democratic parties, the Liberal Democrats in the United Kingdom, and the United Left Party in Spain.

¹⁶⁰ See *Rekvenyi v Hungary* (no. 25390/94), par 41, with respect to police officers, and *Ahmed and others v UK* (no.22954/93), par 53 with respect to senior government. While both cases relate to freedom of expression, they do concern political activities of the applicants.

Kingdom,¹⁶¹ 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. The Hatch Act, passed in 1939 in the United States, is another example of such a legitimate restriction. The Act states that "no officer or employee in the executive branch of the Federal government, or in any agency or department thereof, shall take any active part in political management or in political campaigns." 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.¹⁶²

c) Unreasonable State Restrictions on Free Association

164. While membership in multiple political parties simultaneously has historically been discouraged, free association is a fundamental right that should not generally be limited by legislative requirements obliging an individual to only associate with a single organization. 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 retained 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 prohibit their own members from joining or participating in other political parties.

d) Foreign Nationals or Aliens

165. International obligations recognize nationality and citizenship as reasonable considerations when restricting the rights of political participation (see for example Article 16 of the ECHR). Some states allow non-citizens to vote, under certain circumstances, and may also allow political parties to grant membership to non-citizens (though they are not obliged to do so). Further, in the particular context of elections, the European Convention on the Participation of Foreigners in Public Life at the Local Level¹⁶³ entered into force in 1997, and there is a growing trend within many European countries to allow foreign residents to vote and stand in local elections. In such cases, it would be consistent for these states to also allow foreign residents to participate in political party life.

Part III. Parties in Elections

1. Role of Candidates and Parties

a) Electoral Systems

166. OSCE participating States exhibit a great variety of electoral and party systems.¹⁶⁴ The choice of one system over another often depends on the historical and cultural development of

¹⁶¹ *Ahmed and Others v. The United Kingdom*, (65/1997/849/1056) (ECtHR, September 2, 1998).

¹⁶² See, for example the case of *Vogt v. Germany*, (Application No. 17851/91) (ECtHR, September 2, 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.

¹⁶³ Council of Europe Convention on the Participation of Foreigners in Public Life at the Local Level (entered into force May 1, 1997). 5.II.1992, CETS-No. 144, available at <<http://conventions.coe.int/Treaty/en/Treaties/html/144.htm>>.

¹⁶⁴ OSCE Ministerial Council, Decision No 5/03, "Elections", Maastricht, 1 and 2 December 2003, available at <<http://www.osce.org/mc/40533>>, in which OSCE participating States acknowledge that "democratic elections can be conducted under a variety of different electoral systems and laws".

the specific states. Any guidelines for political party legislation must be cognizant of this variety and understand that it precludes the enactment of any blanket solutions or regulations. A country's choice of electoral system should be respected, as long as it upholds a minimum standard for free and democratic elections. As countries enjoy wide latitude in the development of electoral systems, it is important to recognize the impact that different electoral systems 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.

b) Political Pluralism

167. Political pluralism is critical to ensuring effective democratic governance and providing citizens with a real say in choosing how they will be governed.¹⁶⁵ 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 allow for the expression of opposition viewpoints and ensure democratic transitions of power.¹⁶⁶

168. Generally, measures to limit the number of political parties able to contest in an election are not considered incompatible 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 minimize the free function of political pluralism in society, they can easily be manipulated to silence parties or candidates who express opinions unpopular to those in power.

169. On the other hand, some OSCE countries require that parties achieve a specified threshold level of electoral support in order to win seats in parliament (e.g. Germany: *Sperrklausel*, requiring a 5 per cent threshold for federal and state elections). At the same time, the PACE calls upon Council of Europe member States to "consider decreasing legal thresholds that are higher than 3%"¹⁶⁷ For electoral coalitions of parties, electoral thresholds may be the same as what is required for individual parties, to avoid excessive fragmentation, and facilitate government formation or stability. Even if a coalition threshold is higher than that of individual parties, it should in general not be more than double the threshold for an individual party.

170. As another measure to ensure pluralism, the legal framework must provide equal treatment for all political parties and candidates, including women, persons with disabilities and minority groups. This includes protection of their right to present candidates, as well as their eligibility to receive political financing, necessary assistance and public support.

c) Partisan Candidates

171. A major function of political parties is the presentation of candidates for elections, in an effort to gain and exercise political authority. Candidates are chosen by parties as representatives of party ideals. However, candidacy is also an expression of an individual's

¹⁶⁵ See *Refah Partisi judgment (41340/98)*, par 89, *Socialist Party and others . v. Turkey*, No. 21237/93 par 41, *Freedom and Democracy Party v. Turkey*, No. 23885/94, par 37, all stating that there can be no democracy without pluralism.

¹⁶⁶

¹⁶⁷ PACE Resolution 1705 (2010) par. 22.3.

right to be elected and, as such, the legal regulations on candidates must ensure a citizen's individual right to stand for election.¹⁶⁸

172. The individual right to stand in elections 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 itself for selecting candidates; and 3) admissible restrictions, 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 (and one that does not necessary need to be regulated through law) that the second set also respect the need to ensure that candidates are chosen with the support of the party at large. Internal party rules for the selection of candidates should not be subject to regulation by the state except to ensure that selection is consistent with the political party's constitution and that it adheres to democratic and non-discrimination principles. On the other hand, the state may consider supporting in particular smaller political parties to ensure that the selection of candidates for elections within parties is conducted in an inclusive, transparent and fair manner; the acceptance of such additional state support should however be voluntary, and up to the respective political party.

173. During elections, political parties often provide support, funding and campaign resources for their chosen candidates. Legislation regulating party activities must allow for the free exercise of such support. 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.

174. 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 right before elections, or after voting has commenced.¹⁶⁹ On the other hand, this does not apply if a candidate steps down of his/her own accord on short notice.

175. 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. This poses issues with regard to the freedom of association.

Use as box – various forms of coalitions, states should allow a variety of coalition agreements, should not restrict by narrowly prescribing what types of agreements parties may enter into. Strict review of legislation to ensure equality/proportionality.

d) Non-Partisan (Independent) Candidates

176. The right of individual candidates to run for office without being affiliated with a political party is specifically protected by the OSCE Copenhagen Document, which guarantees the "right of citizens to seek political or public office, individually or as representatives of political

¹⁶⁸ See Article 25b of the ICCPR and Article 3 of Protocol 1 to the ECHR

¹⁶⁹ [CDL-AD\(2016\)018-e Opinion on the Amendments to the Law on Elections Regarding the Exclusion of Candidates of Ukraine \(13 June 2016\)](#).

parties or organizations, without discrimination”.¹⁷⁰ While parties are seen as central actors in elections, their role cannot be to exclude or undermine an individual’s right to stand for office. As such, current legislation in the OSCE and CoE regions that bans independent candidates from standing in elections should be revised, and legislation regarding political parties in elections should include specific mention of the rights of independent candidates to run for election as well. 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. Ballot-access rules and fees cannot be at such a high level that they are achievable only for parties and not for independent candidates. Where registered political parties are provided with state support, such as the provision of public media airtime, 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.

e) Gender Equality in the Selection of Candidates

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

178. Article 4 of the CEDAW makes clear that the “[a]doption by States Parties of temporary special measures aimed at accelerating *de facto* equality between men and women shall not be considered discrimination...” As such, and to address historical inequalities suffered by women throughout the OSCE region and globally, states may legislate particular requirements or impose other measures aimed at ensuring women’s equal participation in political life, including as candidates.

179. Temporary special measures may be adopted by states for this purpose. In Recommendation 1899(2010), on "Increasing women's representation in politics through the electoral system", the Parliamentary Assembly of the CoE encourages member states to increase women's representation by introducing temporary special measures. Countries with a system based on proportional representation and party lists are encouraged to consider introducing mandatory temporary special measures that provide not only for a high proportion of female candidates (ideally, at least 40 per cent), but also for a strict rank-order rule, such as a "zipper" system, where male and female candidates alternate, or where sets of three candidates in a row on the list (i.e., the first through the third, fourth through sixth, seventh through ninth, and so on) 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 real chance of being elected. It is also advisable to put in place safeguards ensuring that if a female candidate withdraws her candidature, she is replaced with another woman. Countries with majority or plurality systems are encouraged to introduce a system whereby each party chooses a candidate from among at least one female and one male nominee in each party district, or to find other ways of ensuring increased representation of women in politics.

180. Most of the above measures are, however, voluntary. Where temporary special measures are mandated, concerns exist that these measures will, in essence, create a ceiling

¹⁷⁰ The Copenhagen Document, *op. cit.*, note 3, 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

to gender advancement, as parties may retain women in low-level seats just to ensure compliance. It is important to see to it that such temporary special measures will effectively allow women to eventually acquire positions of leadership, rather than create *de facto* restrictions on their progression. It is good practice to periodically review temporary special measures to assess whether they should be changed, or maintained at the same level, or whether their number should be increased, particularly at lower levels of government.

181. Ensuring places for women as candidates on electoral lists is no guarantee for an increase in women's representation. Pervasive cultural and historical factors create inequalities that are not easily combated by temporary special measures and list requirements alone. Domestic responsibilities, for instance, are usually identified as the most important deterrent for women to enter politics. Party meetings at inconvenient times, as well as a lack of childcare facilities, deter many candidates with family responsibilities from becoming candidates. Moreover, women often receive less support and funding from their parties throughout the campaign period, or are even expected to surrender their mandates to male counterparts after the election. States should take necessary measures to avoid such practices, as well as enact positive measures to help promote the candidacy of women.

182. When parties do not comply with legal measures aimed at ensuring gender equality, a variety of sanctions should be available. Sanctions may range from financial measures, such as the denial or reduction of public funding, to stronger, legal measures, such as the rejection of the party's electoral list. In all cases, sanctions should be proportionate to the nature of the violation.

183. To monitor the above, international election observation missions increasingly draw the attention of national stakeholders to the need to ensure the collection of sex-disaggregated data on political parties, also outside the period of election. 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.

184. 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".

The research on limitations and benefits of different electoral systems on women's representation indicates that women's representation in parliaments in the world is higher in countries with proportional representation electoral systems, than in countries that use majority/plurality electoral systems. However, electoral systems by themselves cannot ensure gender equality and additional measures; both legislative and at the policy level remain necessary [SOURCE].

f) Minority Candidates

185. 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 minorities in political and public affairs, given that such candidates may be faced with discrimination, stigma and socioeconomic inequality.¹⁷¹ Processes need to be put in place

¹⁷¹ 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

to ensure that all segments of society are able to influence agenda-setting and decision-making.¹⁷² In accordance with the Framework Convention on National Minorities, states should ensure 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 equal opportunity to be elected and represented in parliament.

186. Measures to help ensure adequate 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 or practices such as mandated multi-ethnic lists, which require parties to include candidates from different ethnicities in their electoral lists.¹⁷³ Where applicable, such measures should be adopted into legislation to help ensure that candidates from minority groups are able to be elected on an equal basis with other candidates. At the same time, such measures need to be reviewed on a regular basis, to assess whether they are effective, and ensure that they do not institutionalize distinctions between these and other parties.

g) Candidates with Disabilities

187. Persons with disabilities should not be excluded from electoral processes, and their right to participate in elections (as candidates and voters) should be respected and protected on an equal basis with others.

188. "Member states should ensure that discrimination based on disability is prohibited 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. These discriminatory acts include the failure to comply with the obligation to implement reasonable accommodations (see point 2 above, "Accessibility") for persons with disabilities so that they can fully enjoy their political rights."¹⁷⁴

h) Regulations on Candidacy

189. Occasionally, candidates elected from a party list renounce their party membership, change parties or are expelled during their term in office. In some states, legislation terminates the mandate of an elected holder of office in the event of a change in party affiliation. Such regulation is overly restrictive and potentially open to abuse by political party leaders. Elected officials are elected by votes cast by citizens. Legislation should not transfer control of the mandate bestowed by the voters to a political party. Thus, an elected holder of office should be

practices, experiences, challenges and ways to overcome them (U.N. Doc. A/HRC/30/26) paras. 19-22.

¹⁷² 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.

¹⁷³ See eg [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)

¹⁷⁴ 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.

free to change parties without losing his/her mandate.¹⁷⁵ The Venice Commission has specifically addressed this issue in its Report on the Imperative Mandate and Similar Practices and 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”¹⁷⁶

190. 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.

191. 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 from 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 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.¹⁷⁷ 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.”

i) Lobbying

192. Lobbying is the attempt to influence legislation, policy or administrative decisions, by whichever means are hoped to be most successful.¹⁷⁸ This type of influencing is highly relevant in the context of parties and candidates in elections. In countries where lobbying is regulated, relevant legislation should be carefully drafted in order not to violate the freedom of expression of individuals or groups. While lobbying is permissible, attempts to unduly influence electoral candidates, the work of political parties or of public policy, including via blackmail, threats or bribery, are not. Countries and institutions which seek to regulate lobbying in order to enhance transparency, equality and accountability of stakeholders in the field of lobbying do so by registering lobbyists or by developing codes of conduct. Moreover, some OSCE participating States and CoE member States impose registration and/or reporting obligations onto lobbyists

¹⁷⁵ See also 7.9 Copenhagen Document (1990.)

¹⁷⁶ See CDL-AD(2009)027, Report on the Imperative Mandate and Similar Practices (16 June 2009) par 39.

¹⁷⁷ See eg 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); [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).

¹⁷⁸ See also Venice Commission Report on the Role of Extra-Institutional Actors in the Democratic System (Lobbying) (CDL-AD(2013)011) par. 12; see also The OECD, Recommendation of the Council on Principles for Transparency and Integrity in Lobbying of 18 Feb. 2010 – C (2010)16.

which are enforced by way of fines or, in the most severe violations, criminal sanctions.¹⁷⁹ Another way to regulate lobbying is to prescribe a “cooling off” period; this means that a former office-holder may not approach former colleagues as a lobbyist immediately upon leaving office or join a lobbying company, but needs to wait a certain time.

2. Access to Elections

a) Ballot Access for Political Parties

193. 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 attainment of a mandate or a minimum percentage of votes in the previous election. A party that is already represented in parliament should not be required to pay a deposit or demonstrate minimum levels of support, as support for this party is already evidenced by it having been elected into parliament previously.

194. The ability for all parties to gain access to a place on the ballot should be transparent, equal and free from discrimination on any grounds. While monetary deposits may be required, depositary obligations that are excessive may be deemed discriminatory, as they limit the right of citizens without adequate financial resources to stand for election as protected under human rights instruments. As with other regulations on political parties, such fees must be applied objectively to all parties, unless this obligation is waived, e.g. for parties already in parliament. States may consider also providing for non-monetary requirements for registration in elections, such as the demonstration of minimum support through the collection of signatures.

195. When parties are required to show minimum levels of support, they should be given adequate time to collect and submit signatures. The system for the verification of signatures should be clearly defined in law, 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.

196. 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.

197. 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

¹⁷⁹ See Venice Commission Report on the Role of Extra-Institutional Actors in the Democratic System (Lobbying) (CDL-AD(2013)011) par. 58 which quotes the OECD’s call for more transparency and integrity in lobbying; the same report includes examples from low, medium and highly regulated systems within the OSCE and CoE areas, such as Lithuania, Hungary, Canada or the USA (see pars. 73-75)

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.

b) Media Access for Political Parties

198. The allocation of free media airtime is integral to ensuring that all political parties, including small parties, are able to present their programmes to the electorate at large, both before and in between elections. While the allocation of free airtime on state-owned media is not mandated through international law, it is strongly recommended that such a provision be included in relevant legislation as a critical means of ensuring an informed electorate. When made available, free airtime must be allocated to all parties on a reasonable basis, consistent with the principle of equal treatment before the law.

199. Mass media access is one of the main resources sought by parties in the campaign period. In order to ensure equal opportunities, legislation regarding access of parties and candidates to public media should be non-discriminatory and provide for equal access.

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 equal access, 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 pre-requisite for being granted free media access, such a system of allocation cannot be used to discriminate against non-registered (where they are allowed free media access) or independent candidates. It is recognized, however that specific rules regarding the methods of allocation may intrinsically benefit parties that have undergone the process of registration; states should seek to avoid this as much as possible, e.g. by amending the methods of allocation accordingly.

202. At the same time, private media cannot be regulated as strictly as publicly owned media. However, private media outlets may play a fundamental role in the public process of elections. Some OSCE participating States and CoE member States impose regulations stating that airtime offered on private media must be offered to all parties at the same price. Moreover, states should seek to prevent abuse of digital platforms and social media, e.g. cases where one party spreads misinformation about another.

203. A key role of the media in any election is to ensure that the public has sufficient information on all candidates to make an informed choice (including taking additional measures to ensure sufficient access to information for minorities and persons with different types of disabilities). As such, it is a good practice to ensure that women and minority candidates, as well as candidates with disabilities, all of whom often receive less funding or support than other candidates, are ensured an equal and unbiased share of media coverage.¹⁸⁰

¹⁸⁰ 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 states "Member states should require political parties, associations, broadcasting corporations and other bodies in receipt of state subsidies or funding to be accountable for the 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."

d) Freedom of Assembly for Political Parties

204. 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. For example, a silence period in the immediate pre-election period (generally 48 hours or less) is an accepted restriction of campaign activities, limiting public party assemblies during this time. The *ODIHR – Venice Commission Guidelines on Freedom of Peaceful Assembly*¹⁸¹ provide an overview of appropriate regulations and recommendations regarding the right of freedom of assembly, and should be observed when developing legislation relevant to political parties.

205. Parties should enjoy a right to organize and participate in public rallies and legitimate campaigning free from undue restriction. As noted in the *ODIHR – Venice Commission Guidelines on Freedom of Peaceful Assembly*,¹⁸² this right extends to access to any place intended or suited for public use.

3. Parties in Election Administration

a) Partisan Election-Management Bodies

206. There are different models for election-management bodies that meet requirements of balance, impartiality and competence. While some election-management bodies have no partisan component, other states have adopted the practice of having some or all of the members of such bodies nominated by the major political parties. In such cases, high-level positions within the body must be divided among parties to ensure proper balance.¹⁸³

207. The inclusion of partisan persons on election management bodies should be carefully considered by the state when developing legislation. If such a system is chosen, it must clearly state the required qualifications for nominees, the procedures whereby political parties may nominate members to election-management bodies and restrictions on the possibility of removing members.¹⁸⁴

¹⁸¹ CDL-AD(2010)020, OSCE/ODIHR Guidelines on Freedom of Peaceful Assembly, Strasbourg - Warsaw, 1616 March 2012, available at <<http://www.legislationline.org/>>

¹⁸² *Ibid.*

¹⁸³ See, CDL-AD(2002)023rev, Code of Good Practice in Electoral Matters, adopted by the Venice Commission at its 52nd Session (18-19 October 2002) par 75 which states “As a general rule, the commission should consist of: a judge or law officer: where a judicial body is responsible for administering the elections, its independence must be ensured through transparent proceedings. Judicial appointees should not come under the authority of those standing for office; - representatives of parties already represented in parliament or which have won more than a certain percentage of the vote. Political parties should be represented equally in the central electoral commission; “equally” may be interpreted strictly or proportionally, that is to say, taking or not taking account of the parties’ relative electoral strengths.³⁶ Moreover, party delegates should be qualified in electoral matters and should be prohibited from campaigning.”

¹⁸⁴ [CDL-AD\(2011\)042 Venice Commission-ODIHR Joint Opinion on the Electoral Law and the Electoral Practice of Albania \(19 December 2011\), available at http://www.venice.coe.int/webforms/documents/default.aspx?pdffile=CDL-AD\(2011\)042-e par 50.](http://www.venice.coe.int/webforms/documents/default.aspx?pdffile=CDL-AD(2011)042-e par 50)

b) Parties as Observers

208. Paragraph 8 of the OSCE Copenhagen Document affirms the importance of both domestic and international observers to elections. As part of domestic observation, it is particularly important that political parties have the right to have observers present on election day.¹⁸⁵ While it will be inherently easier for parties than independent candidates to exercise this right (given the pre-existence of party membership networks and communication tools), such a right should explicitly be made available in legislation to all political contestants. Observers should have the right to monitor all aspects of the voting process, to express concerns if such arise, and to report problems to their respective parties throughout the day. It is good practice for electoral legislation to include a provision allowing party observers to obtain copies of the voting results at the polling station and all levels of election administration, to increase the credibility of the process.

209. In particular, all parties should be able to fully exercise their right to have observers present throughout the voting, counting and certification processes. Legislation must award to all parties due standing before bodies tasked with electoral-dispute resolution to ensure effective redress for any alleged violations against the rights of parties and their candidates. Such practices should be protected by legislation as positive measures that can increase the credibility of electoral results.

Part IV. Funding of Political Parties and Election Campaigns

1. Campaign and Political Party Funding

210. Political parties need appropriate funding to fulfil their core functions, both during and between election periods. The regulation of political party 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.

211. OSCE participating States and member states of the Council of Europe may adopt 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, labour contracts, transportation, employees etc; see also par. xxx);
- 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; and
- Independent regulatory mechanisms and appropriate sanctions for legal violations.

¹⁸⁵ See also CDL-AD (2009)021, Code of Good Practice in the Field of Political Parties, adopted by the Venice Commission at its 78th plenary session (13–14 March 2009) pars 86 ff; [CDL-AD\(2009\)059](#), Guidelines on an internationally recognised status of election observers adopted by the Council for Democratic Elections at its 31st meeting (10 December 2009) and by the Venice Commission at its 81st plenary session (11-12 December 2009).

212. The funding of political parties includes both to the way in which parties fund their routine activities and campaign finance, which refers specifically to funds allocated by a party during the election process. 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 considered 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.

213. Many OSCE participating States and member states of the Council of Europe provide public support to parties at all times, rendering the distinction between political and campaign finance largely moot. However, if relevant legislation distinguishes between party 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 still required outside of electoral periods (employee salaries or the rental of party headquarters, for example). If funds are earmarked only 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 will enable political parties and candidates to spend money outside the official electoral campaign period.

2. Sources of Funding

a) Private Funding

aa) Membership fees

214. 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, the permissible amount of membership fees should be explicitly defined in legislation. Another manner to avoid such abuse is to treat membership fees as donations.

215. 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 limited to the wealthy. 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.

bb) Donations

216. 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 should 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 publicised.

217. In practice, legislation may allow parties and candidates to also 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 becomes a form of donation.

cc) Foreign Funding

218. Donations from foreign sources 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, 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 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.¹⁸⁶

¹⁸⁶ CDL-AD(2009)021, Venice Commission Code of Good Practice in the field of Political Parties and its Explanatory Report, par 160, which refers to the conclusion of CDL-AD(2006)014 Venice Commission Opinion on the Prohibition of Financial Contributions to Political Parties from Foreign Sources, par 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.

219. 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, cannot be restricted if, on the other hand, they are allowed to participate in elections at home¹⁸⁷ (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). The case is different for non-citizens with ethnic or emotional ties to a certain country, who cannot be treated in the same way as citizens, and will underlie the respective country's legislation on foreign funding. With respect to migrant workers, Article 41 par 1 of the International Convention on the Protection of All Migrant Workers and Their Families¹⁸⁸ of 1990 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."¹⁸⁹ At the same time, states may have special regulations for foreign nationals permanently living in their host country. The Venice Commission has advocated that these persons must not be totally prohibited from participating in political processes.

220. 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).⁶⁰ 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 organizations promoting human rights and fundamental freedoms. Similar exceptions can be made for donations from international organizations for the purposes of party-building and education, as long as it is ensured that these contributions are not used to fund electoral campaigns. 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 should be recognized that the implementation of this nuanced approach to foreign funding may be difficult, and legislation should carefully weigh the protection of national interests against the rights of individuals, groups and associations to co-operate and share information, and the principle of political pluralism in general.

¹⁸⁷ 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, pars 6 and 10.

¹⁸⁸ Entry into force: 1 July 2003

¹⁸⁹ 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>; pursuant to Article 2 para. 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".

221. Limits have historically also been placed on domestic funding, in an attempt to limit the ability of particular 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, not to wealthy special-interest groups. As such, a number of reasonable limitations on funding have been developed. These include limitations on donations from businesses and private organizations, including state-owned/controlled companies and anonymous donors.

222. 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.

223. 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 minimizing the possibility of corruption or the purchase of political influence. Legislation mandating donation limits should be carefully balanced between ensuring that there is no distortion in the political process in favour of wealthy interests and 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.

224. 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 or whether legal personalities made up of one self-employed individual also count. Moreover, donations from fully or partly state-owned companies should always be prohibited, unless the state's shares in the respective party amount to less than 10%; in this case, it may be assumed that the influence of the state in decision-making processes (including decisions on funding) is negligible.

225. Moreover, legislation should address sponsoring by large corporations, which may often help political parties meet the costs of events such as congresses, rallies, etc. Conditions under which sponsoring by corporations is permissible for the benefit of political parties need to be clarified in legislation as well, as this is a further channel for political funding from companies.

226. In addition to regulating financial donations, legislation should regulate in-kind support by private donors, both by individuals and by legal persons. Generally, this type of support should follow the same rules and be subject to the same limitations as financial donations, and should also be listed in funding reports.

227. Furthermore, relevant legislation should seek to avoid the possibility of loop-holes – in certain countries where (domestic and/or international) companies may not make donations, individuals may pool their resources and thereby circumvent bans covering legal persons. Clear wording in legal provisions can help prevent such abuses.

dd) Funding through Third Parties

228. In many states, associations connected to or favouring 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 this area, which should be regulated by legislators. Weak party and campaign financing rules are among the most problematic issues, and constitute a particularly high-risk area for corruption when it comes to the involvement of third parties in the sphere of political activities. Measures taken to regulate third-party involvement should be proportionate and take into account the overall goal of creating a level playing field for all political party actors.

229. 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 independently of a specific party. Third party funding can be used to circumvent political regulations, which often include spending limits and 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. As has been shown in the context of gender equality above, undisclosed spending and fundraising generally lower the level of transparency of the entire system of political party financing. In order to avoid the creation of loopholes through which unlimited funding can be channelled and financial transactions can be veiled, laws should limit 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.¹⁹⁰ At the same time, this should only apply in cases where third parties and their actions benefit specific political parties, either in general or during campaigns. In no way should the above paragraph be interpreted to mean that NGOs and other associations should generally be treated the same as political 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. Digital technologies can also contribute to increasing transparency in the involvement of third parties in the sphere of political activities

230. Political foundations, which are private-law corporations, are generally considered to 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 can play “a key role to play in articulating the voices of citizens”¹⁹¹, 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 documenting 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.

¹⁹⁰ Spending and other limits should be proportionate in line with *-Bowman v. The United Kingdom* (1998) (Application No. 24839/94).

¹⁹¹ 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).

231. ff) Other Sources of Non-State Funding Political parties may levy “taxes” from their sitting parliamentarians. 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.¹⁹² Such contributions are thus subject to laws on donations, to ensure that they do not contravene statutory donation limits.

232. Legislation should generally allow political parties at the national level to 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. At the same time, parties should, in the interests of transparency, report their internal distribution of funds. 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.

233. 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. All transparency, disclosure and contribution requirements should apply, as appropriate, while such sales and transactions should not be otherwise limited by relevant legislation.

234. 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.¹⁹³

235. 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 is 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 and require the disclosure of such contributions.

236. 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 elections (but not in local elections). Unintentional errors in disclosure reports should not, however, be used as a basis for denial of candidacy.

¹⁹² 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.

¹⁹³ 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.

b) Public Funding

237. 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 prevent corruption, support political parties in the important role they play, and remove undue reliance on private donors. Such systems of funding should aim to ensure that all parties, including opposition 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.¹⁹⁴ In no case should the allocation of public funding limit or interfere with a political party's independence.¹⁹⁵

238. 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 further private contributions are not made superfluous or that the impact of individual donations is not 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."¹⁹⁶ 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.

239. Legislation should explicitly allow financial support for political parties from the state. The allocation of public money to political parties is often considered essential for demonstrating respect for the principle of equal opportunities for all 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 criteria to determine the amount of such funding, and who the recipients should be. Public funds should be allocated to recipients in an objective and unbiased manner. The possibility of receiving funding from state-owned companies should also be regulated, to ensure that they are seen separately from private companies (see par 228 above).

240. In addition to direct funding, the state may offer support to parties in a variety of other ways, including tax exemptions for party activities, equal 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 (including women, persons with disabilities and minorities). 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.

¹⁹⁴ 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.

¹⁹⁵ 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.

¹⁹⁶ 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.

241. A good practice is to provide tax credits for individuals and corporations who make in-kind contributions, whether in the form of labour 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 CoE Committee of Ministers Recommendation (2003)4, it is best that legislation limit such tax benefits

242. The system 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.

243. When developing allocation systems, careful consideration should be given to pre-election funding systems, as opposed to post-election reimbursement, which 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. Thus, systems of allocating funds in the post-election period may negatively impact political pluralism. 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.

244. 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”). 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.¹⁹⁷ 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.

245. 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. However, these schemes can disadvantage parties whose supporters predominantly belong to less wealthy segments of the population. At a minimum, such systems require strong 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.

246. 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. The allocation formula should also prevent the two largest political parties from monopolizing the receipt of public funding.

¹⁹⁷ Fernando Casal Bértoa, and Maria Spirova (2017): “Parties between Thresholds: State Subsidies and Party Behavior in Post-communist Democracies.

247. At a minimum, some degree of public funding should be available to all parties represented in parliament. 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.¹⁹⁸ 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.¹⁹⁹

248. 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.

249. Allocation of funds based on party support for women candidates may not be considered discriminatory and should be considered in light of the requirement for 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.²⁰⁰ 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.

There are several countries in the OSCE region that link the provision of direct public funding to gender equality, these include 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 3/4 of this difference.

250. 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 status and political program to set them apart from other associations);
- Proof of a minimum level of support;
- Diverse and Gender-balanced representation;²⁰¹

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¹⁹⁹ *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>

²⁰⁰ Examples of such a requirement are found in the legislation #add more specifics?# of Croatia and Slovenia.

²⁰¹ 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)-(4), states that: "Member states should consider adopting legislative reforms to introduce parity thresholds for candidates in elections at local, regional,

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

3. Campaign Expenditure

a) Spending Limits

251. 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, “[r]easonable 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.”²⁰² 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.²⁰³

252. 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, as done in the UK.²⁰⁴

253. It is reasonable for a state to determine the criteria for electoral spending and a maximum spending limit for parties in elections, in order to achieve the legitimate aim of securing equality between 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 voting population of the

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.”

²⁰² 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.

²⁰³ 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.

²⁰⁴

electorate. Whichever system is adopted, such limits should be clearly defined in law. Legislation on the inspection of expenditure should likewise be clear and foreseeable; failure to couch relevant provisions in terms that provide a reasonable indication of how the law will be interpreted and applied may constitute a violation of the respective parties' right to freedom of association.²⁰⁵

254. 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

255. 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".²⁰⁶

256. Cases of misuse of public resources are often related to the lack of separation between activities of public bodies and governing parties. While there is a natural and unavoidable incumbency advantage, legislation on campaign 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, labour 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.²⁰⁷

257. To allow for the effective regulation of the use of state resources, legislation should clearly define 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 are a misuse of this free resource.

²⁰⁵ See *Cumhuriyet Halk Partisi v Turkey*, application no 19920/13, judgment of 26 April 2016.

²⁰⁶ 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

²⁰⁷ 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 835th 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".

Legislation must address such abuses.

258. 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 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.²⁰⁸ Such practices should be expressly and universally banned by law. Digital technologies can also facilitate public exposure of corrupt politicians, misuse of public resources, illegal campaign financing and favouritism.

259. Public employees (civil servants) should not be required by a political party to make payments to it or to attend campaign rallies (see also pars xxx).²⁰⁹ In 1976, the US Supreme court ruled that patronage dismissals violate the US constitution.²¹⁰

c) Third-party involvement

260. 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 organizations may try to influence policy and decision-making generally with the aim of obtaining some desired results from government authorities or elected representatives. Within the sphere of electoral regulation, the term “third party” refers both to individuals and to organizations that are not legally tied to any office holder or political party, but which nonetheless act with the aim of influencing the electoral result.

261. 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. They may also try to influence policy and decision-making generally, with a view to obtaining some specific results from government authorities and elected representatives. To level the playing field, and avoid situations where third parties are used to circumvent campaign finance regulations, third parties should be subjected to the same rules on donations and spending as political parties.

d) Other Issues

²⁰⁸ OSCE/OHCHR Handbook for the Observation of Campaign Finance (2015) p. 22.

²⁰⁹ See also OSCE/ODIHR Handbook on the Observation of Campaign Finance p. 23.

²¹⁰ *Elrod v. Burns* 427 U.S. 347 (1976).

262. To support women's participation in elections, the state may also consider measures such as the general provision of free child-care or the implementation of funding mechanisms to support candidates with family duties. Such non-traditional forms of in-kind contributions may be necessary to allow for the full participation of women in political life. Other such contributions to support the participation of female or disadvantaged candidates, e.g. persons with disabilities or national minorities, may be considered in light of obligations to ensure access and participation in public life and to rectify historical inequalities in political life.²¹¹

263. The allocation of free airtime to candidates running for elections is one of the easiest and most effective 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 carefully consider adopting a requirement for the allocation of airtime to eligible 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.²¹²

4. Reporting and Disclosure

a) Campaign Finance Reporting Requirements

264. 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).²¹³ 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 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.

265. Reports on campaign financing should be submitted to the proper authorities after elections in a timely manner, but within 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. The law should define the format and contents of the reports to ensure that parties disclose all categories of required 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

²¹¹ See, e.g. the ICERD, *op. cit.*, note 14, and the CEDAW, *op. cit.*, note 14.

²¹² See, Code of Good Practice in Electoral Matters, *op. cit.*, note 68, para. 2.2.v.

²¹³ ODIHR-Venice Commission Joint Opinion on Ukraine, par 27

an extended period of time.²¹⁴

b) Political Party Finance Reporting Requirements

266. 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, 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, expenditure, assets and debts need to be accounted for in a comprehensive manner. Loans should be explicitly identified – in certain 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.

267. Reports should include (where applicable) both general party and campaign finance. Reports must also clearly identify which expenditures were used for the benefit of the party and which for that of an individual candidate.

268. 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 (see also par. xxx). 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 income and expenditures for such activities during this time should be 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.

269. 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. 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

²¹⁴ See OSCE/ODIHR Opinion on Laws Regulating the Funding of Political Parties in Spain (30 October 2017), available at xxx par 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), available at <http://www.osce.org/odihr/123753?download=true> par 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), available at <http://www.legislationline.org/documents/id/19359>, par 38; and op. cit. footnote 38, par 60 (OSCE/ODIHR-Venice Commission Joint Opinion on the Draft Amendments to some Legislative Acts Concerning Prevention of and Fight against Political Corruption of Ukraine) .)

270. 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.

271. 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 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.²¹⁵ 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.²¹⁶ While 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.²¹⁷

Part V. Oversight of Political Parties

1. Establishment of Relevant State Bodies

a) Impartiality and Neutrality in Regulation

272. State authorities must remain impartial, non-discriminatory and objective in dealing with the process of political party registration (where applicable), political party finance, and the regulation of party activities. All parties should be subject to the same regulatory provisions and be provided equal treatment in the implementation of regulations.

b) Scope and Mandate of Relevant State Bodies

273. 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

²¹⁵ 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), available at <http://www.osce.org/odihr/123753?download=true> par 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), available at <http://www.legislationline.org/documents/id/19359>, par 38; OSCE/ODIHR-Venice Commission Joint Opinion on the Draft Amendments to some Legislative Acts Concerning Prevention of and Fight against Political Corruption of Ukraine (26 October 2015), available at <http://www.legislationline.org/documents/id/19868>, par 60 and OSCE/ODIHR Opinion on Laws Regulating the Funding of Political Parties in Spain (30 October 2017) available at http://legislationline.org/download/action/download/id/7479/file/310_POLIT_ESP_30October2017_en.pdf par 55.

²¹⁶ See also OSCE/ODIHR Handbook for the Observation of Campaign Finance, pp. 21, 41.

²¹⁷ Ibid.

state ministry or a judicial body. Whichever body is tasked with registration 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;²¹⁸ authorities should in all cases be held accountable for their decisions.

274. 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.

275. Additionally, legislation should 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 should 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.

276. In order to ensure transparency and to increase their independence, legislation should 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 to either be appointed for life or be limited to a single term. This helps ensure that they will remain free from political influence. Whatever the case, the law should set out clear criteria not only for the appointment of members of such bodies, but also for their dismissal.

277. The timeline for decisions regarding the regulation of political party activities or their formation should be stated clearly in law and the process as a whole should 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 analyse 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 should ensure that time limits regulating different processes in different laws are consistent and complementary.

c) Sanctions against Political Parties for Non-Compliance with Laws

278. 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

²¹⁸ 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 Rules against Corruption in the Funding of Political Parties and Electoral Campaigns, *op. cit.*, note 21, Appendix, Article 3.

on such extreme circumstances is the most severe form of holding parties accountable for legal violations and should only be done 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 behaviour, 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.

279. 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 yet serious enough to lead to prohibition or dissolution of a party may include:

- 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;²¹⁹
- 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 or party substantially infringed the rules on electoral campaign finance;
- Rejection of the party's electoral list, removal from the electoral ballot or reduced public funding in case a party does not fulfil gender equality requirements as stipulated by law;
- 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.

280. 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.

281. 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

²¹⁹ OSCE/ODIHR Opinion on Laws Regulating the Funding of Political Parties in Spain (30 October 2017) available at http://legislationline.org/download/action/download/id/7479/file/310_POLIT_ESP_30October2017_en.pdf par 67.

the facts giving rise to the legal violation and the particular sanction imposed on the political party.

2. Monitoring of Funding Violations and Sanctions

282. 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.

283. Monitoring can be undertaken by a variety of different bodies, and may include an internal independent auditing of party accounts by certified experts and 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.²²⁰ 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.

284. Legislation should 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 should also specify the types and scope of violations requiring sanctions, and provide clear guidance on the process for appeal against regulatory decisions.

285. 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) should 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.

286. 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

²²⁰ See OSCE/ODIHR-Venice Commission Joint Opinion on the Draft Amendments to some Legislative Acts Concerning Prevention of and Fight against Political Corruption of Ukraine (26 October 2015), available at <http://www.legislationline.org/documents/id/19868,pars 38-39>.

“effective, proportionate and dissuasive sanctions” for violations of political party funding laws.²²¹ Sanctions for violations of law are discussed more fully below, in par xxx. The competent election management 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.²²²

287. As also noted below in par xxx, 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.

288. While criminal sanctions are reserved for serious violations that undermine public integrity, 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 par. Xxx, but also for individual wrongdoing.

3. Rights to an Effective Remedy and Fair Hearing by an Independent and Impartial Tribunal

a) Right to an Effective Remedy

289. 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 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.

b) Right to a Fair and Public Hearing by an Independent and Impartial Tribunal

290. 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. 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, and to equality of arms. 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.

291. 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

²²¹ Recommendation on Common Rules against Corruption in the Funding of Political Parties and Electoral Campaigns, *op. cit.*, note 21, Appendix, Article 16.

²²² See ODIHR-Venice Commission Joint Opinion on Ukraine (2015), pars 25-26.

parties and their leadership or members, or a criminal charge against them. The ECtHR has found that procedures concerning the dissolution of a political party do not fall under Article 6, as they concern a political right (namely the right of the party to continue its activities), not a civil right. An exception was recognized where the court proceedings also concerned the transfer of assets following dissolution; in this situation, the party's or members' ownership rights were affected.²²³

292. 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.²²⁴ 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.

Part VI. Political Parties and New Technologies

1. General State Obligations in the Area of Political Party Regulation and New Technologies

293. The use of new technologies has greatly enhanced the ability of individuals to form, join and participate in all forms of associations, including political parties. This applies particularly to the provision of increased access to the Internet, which allows persons sharing political ideas and beliefs to come together and pursue a common platform online. Many activities undertaken by political parties, such as registration, gathering signatures for support, fundraising or making donations can now also be conducted online and allowing political parties to apply new technologies for these purposes, may be considered good practice.²²⁵

294. The use of new technologies offers opportunities to political parties in a variety of areas. Namely, these tools help increase transparency and accessibility, facilitate inclusion and interaction with the electorate and reduce the burden of monitoring and oversight. At the same time, new technologies pose unique challenges in terms of data protection, manipulation of elections and other processes and results, the spreading of propaganda, and the exclusion of certain groups of persons, among others.

295. State authorities must also keep in mind that any restrictions on the online exercise of freedom of expression or freedom of association, by, for example, constricting the online space in which political parties function, may amount to a disproportionate interference with the exercise of these rights. Generally, limitations relating to the online activities of political parties or other forms of associations are subject to the same principles of proportionality and legality as any other limitations. States should thus be wary of stifling the exercise of these rights by passing laws that permit restricting Internet access or by using new technologies and media to reprimand, target or punish those who exercise their rights. Moreover, States are under a positive obligation to ensure that third parties do not interfere with the exercise of persons to form and participate in political parties, as well as with the rights of parties themselves, both

²²³ Refah Partisi admissibility decision 2000. See also HEP case (par 66) and, more recently, Hadepe and Demir (judgment of 2010), par 87.

²²⁴ United Nations Human Rights Committee, General Comment 32, *op. cit.*, note 75, para. 27.

²²⁵ See CoE Explanatory Memorandum to Recommendation to Recommendation CM/Rec(2009)1 which states "Stakeholders should encourage the use of ICT by politicians, citizens, civil society and its organisations and political parties for the purposes of democratic debate, e-activism and e-campaigning, ..." p 19

online and offline.

296. The use of new technologies also raises the question of surveillance, which is conducted by states primarily with the aim of fighting crime and protecting national security;²²⁶ surveillance has been facilitated greatly by online tools. While the afore-mentioned aims are acceptable per se, surveillance measures may nonetheless amount to undue limitations on the rights to freedom of association and the right to privacy of associations, including political parties, and their members; as such, any interference must be proportionate. In particular, electronic surveillance measures need to also comply with the minimum requirements and safeguards provided for in the case law of the ECHR.²²⁷ In this respect, while noting that it is crucial for the principle of legality to include the state's surveillance powers in public legislation, the UN Special Rapporteur on the promotion and protection of human rights and fundamental freedoms while countering terrorism noted that the existence of primary legislation regulating such matters is not in itself sufficient to ensure compatibility with human rights law; rather, it needs to be based on the principles of necessity, proportionality and non-discrimination, and contain safeguards against arbitrariness, independent oversight and routes for redress.²²⁸ The UN Special Rapporteur on Freedom of Opinion and Expression also noted how important it was for states to be transparent about the use and scope of communications surveillance techniques and powers, particularly when using internet service providers for this purpose.²²⁹

297. In the absence of a court order supported by objective evidence, it should not be possible to compel internet service providers to share with authorities information exchanged online or via other electronic technologies between members of political parties or between political parties or any type of other associations themselves. Legislation may also not force internet service providers to retain data relating to such communications. Any measures requiring such providers to share data with authorities should, besides adhering to the usual requirements set out by the ECHR with regard to interferences, be limited in its material as well as its personal scope. Substantive and procedural safeguards in legislation need to ensure that public authorities will access and use such data only when necessary, such as in the context of an ongoing criminal investigation, and only within the required time period.

2. Chances and Challenges of New Technologies for Political Parties and State Authorities

²²⁶ See [CDL-AD\(2016\)007](#), Rule of Law Checklist, adopted by the Venice Commission at its 106th Plenary Session (11-12 March 2016) pp 31-33.

²²⁷ ECtHR, *Association for European Integration and Human Rights and Ekimdzhiiev v. Bulgaria* (Application no. 62540/00, judgment of 28 June 2007), paras. 76, 85 and 87-88. See also ECtHR, *Uzun v. Germany* (Application no. 35623/05, judgment of 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, <http://www.legislationline.org/download/action/download/id/5594/file/255_CRIM_UKR_22Aug2014_en.pdf>.

²²⁸ See UN Special Rapporteur on the promotion and protection of human rights and fundamental freedoms while countering terrorism, Report to the Human Rights Council A/HRC/34/61, (21 February 2017), para. 36.

²²⁹ UN Special Rapporteur on Freedom of Opinion and Expression, Report to the Human Rights Council, A/HRC/23/40, 17 April 2013, paras. 91-92, <http://www.ohchr.org/Documents/HRBodies/HRCouncil/RegularSession/Session23/A.HRC.23.40_EN.pdf>.

298. Digital technologies pose a variety of chances and challenges for political parties as well as for the NGOs and state bodies monitoring them. Digital technologies can be used to increase inclusion, e.g. of persons with disabilities, of persons belonging to minority groups, of women or, more generally, for persons disengaged from political participation. In particular, accessibility to information and political participation for persons with disabilities can be increased by using assistive technologies such as screen readers and voice browsers. E-learning platforms, online trainings and mobile technology can provide information and/or mentoring specifically tailored to particular groups. Through the Internet, information can also more easily be provided for rural populations. At the same time, digital technologies may also exclude persons who do not have the required skills or access to the Internet or other necessary technology from political participation.²³⁰

In Cambodia, the Women Empowerment for Social Change Program aims at empowering women through the training and strategic use of ICT and raising awareness on how ICT can help gender equality.

The Canadian platform “Canadians for a New Partnership” was created to foster unity and support for building a new partnership between Indigenous and non-Indigenous people in Canada.

299. Social media constitutes a “unprecedented platform for the exercise of freedom of expression”²³¹ is emerging as an efficient and inexpensive way to facilitate communication between the government, political parties or their candidates on the one side and citizens or the electorate. Social media constitute an important channel for the dissemination of information, particularly as they can be used to reach youth or groups generally more disengaged from political participation. Online deliberation tools, such as tools for sharing and collaboratively editing digital documents, chat tools, online discussion forums, and online message boards can facilitate and increase citizen participation. Additionally, online deliberation tools can be combined with online decision-making tools including e-polls and e-voting systems.

The US Federal Election Commission provides links to relevant statutes, regulations, Commission actions and court cases, contains information on campaign finance data and helps candidates and committees by clarifying dates and deadlines, providing forms and trainings (<https://www.fec.gov/>).

300. Political parties can benefit from digitalizing their membership processes by adopting electronic membership management systems. Such systems can circulate information, ensure transparency and make it easier for individuals to join and leave a party. By storing its

²³⁰ Digital technologies can facilitate women’s political participation, e.g. by monitoring the fulfilment of minimum thresholds for women representation in party congresses, quotas for women representation in candidate-nomination boards, as well as quotas for the participation of women in party governance structures. Such technologies also help promote and support all activities designed by political parties’ women sections, including the delivery of gender-sensitive training courses and training for female candidates, or mentoring programmes. Generally, this helps ensure a more balanced participation of women and men in political and public life and in decision-making, and has created new approaches to conducting party meetings.

²³¹ Delfi AS v. Estonia, GC, no. 64569/09, 16 June, 2015, para 110; see also OSCE Representative on Freedom of the Media *Media Freedom and the Internet: An OSCE Guidebook* (2016) available at <http://www.osce.org/netfreedom-guidebook?download=true> p 12.

members' data, a party can better reach its audience and recognize their preferences. Such services can include publishing information about the party's internal composition, leadership and governance structure; the procedure for nominating candidates for elections; its political platform, special wings and sections; news and activities; party finances; party contact details; etc. Similar services can also be used by state authorities, which can publish information about, among others, political party regulations, and other information of relevance to political parties and citizens. At the same time, while increased transparency and facilitated information-sharing are positive, states, and the political parties themselves, need to ensure that such systems are compatible with the privacy rights of the respective members – thus, members should be aware of how their private data will be used, and also consent to this beforehand.

301. The costs of complying with political party regulations tend to increase with more data being requested to track the impact of regulations and policy decisions, and to adapt responses to local settings. Some areas where digital technologies can contribute to reducing administrative burdens include the means of expressing support to help establish a party, implementing regulations on internal party activities, such as nominating and selecting candidates; transparency requirements for internal party decision-making; roles played by party members when determining party constitutions; and external reporting requirements. Digitizing information and making it available to the public and the regulatory authority can facilitate automatic oversight and therefore help deregulate paper-based procedures.

Digital technologies offer several strategies for reducing administrative burdens on political parties and citizens, including Personalization, Once Only, Proactive Delivery, and Digital by Default strategies.

- The Personalization strategy entails that a citizen can express his or her preference, e.g. the communication channel, for interacting with a political party, which then applies such preferences in all future communications.
- The Once Only strategy states that no part of the state authority can request information from a political party that any other part of the authority previously received from this party; the same applies to the interactions between a political party and its members.
- The Proactive Delivery strategy entails utilizing the knowledge that the relevant state authority possesses about a political party, as well as the knowledge that political parties possess about their members in order to deliver services based on such knowledge proactively.
- Digital by Default means that citizens interact with political parties, and political parties interact with state authorities using digital channels unless there are reasons to not do so. Enabling digital space for political activity can be helpful to increase the political participation of, e.g. persons with limited mobility, and party members located in remote areas.

302. Information about internal party processes, including qualifications for membership, candidacy, access to decision-making, internal promotion, access to party resources and party activities, as well as data about participation of women, persons with disabilities, and minorities can be digitalized and disseminated through the party website, mobile channels and social media for the state authority and the public at large.

303. Off-the-shelf and customized software can also facilitate the automatic monitoring of compliance with political party regulations. Customized software tools can monitor compliance with different types of political party regulations, for instance by analyzing diversity measures implemented by political parties, based on digitized information on the measures and data provided by electronic membership management system; diversity compliance by requiring online platforms for citizens to declare any type of discrimination allegedly faced while

interacting with political parties; and compliance with internal party statutes by digitizing and publishing online information about party statutes, structure, activities, decision-making processes, etc. In addition, digital tools can enable party members to trace amendments to party statutes.

304. A key area for transparency is the funding of political parties. Through digital technologies, political parties can publish and disseminate digital information about private contributions and report on the fulfilment of restrictions and limits; describe the balance between private and public funding; and set out mechanisms for funding campaigns and party activities, including contributions and donors as well as credits, loans and other debts. Such technologies can also inform about the way in which the party uses state resources and fulfils the restrictions about such usage; about the allocation of the public support received; about expenditures, campaign spending and explanations about the achievement of the campaign spending limits; and about support to enhance the credibility of financial reporting. In addition, digital technologies could provide software system support for managing and tracking financial allocations and for timely and automatic reporting to oversight authorities, civil society and the wider public on party finances during and outside the official campaign periods. The oversight authority can also ensure its own transparency by publishing online information about the procedures for appointing its members in fulfilment of its own regulation.

305. The usage of digital technologies depends on the capacities, the digital infrastructure and the digital literacy of a given country and has to be adapted to the national context. Digitalization in order to foster transparency can only work in circumstances in which transparent work processes are already in place and online information is regularly updated. As such, while digitalization is a way to facilitate already established good work processes, it is no guarantor for better processes by itself.

Political parties could adopt similar practices as promoted by the Open Government Partnership and become “open political parties”. This requires political parties to publish online data of interest to the public, including data related to party finances, decision-making processes, etc. proactively. The published information should be recorded in open formats and included in open documents. Expected benefits from adopting this approach include enhancing transparency, increasing citizen trust in political parties, and promoting political engagement through informed and trusted citizens. <https://www.opengovpartnership.org/>

306. However, digital technologies also bring about a plurality of challenges and risks unique to their use in the process of political participation. First, while one of the advantages to political parties in using new technologies is the dissemination of information tailored to specific segments of the electorate, this poses the risks of establishing filter bubbles and echo chambers in which individuals are no longer confronted with opinions that differ from their own. This can impact negatively on the quality and quantity of public discourse and contribute to the polarization of communities. Recently, digital technologies have also been used to manipulate public sentiment and, ultimately, elections, by spreading fake news aimed at swaying voters with wrong or misleading information. While both traditional and digital media can be manipulated, with new computational techniques and vast amounts of data available about citizen’s political preferences, digital media can reach entirely different levels of manipulation and targeting of groups and individuals.

307. More directly, fraud, phishing, use of malicious software, fraudulent votes, or manipulation of elections due to challenges in e-voting systems or cyberattacks are examples

of the forms of cybercrime that can occur when employing digital technologies to boost political participation. Additionally, various issues of privacy protection, including mass surveillance, stolen digital identity, mining personal data from social media to learn about voters, using targeted advertisements on the web pages visited by voters have to be taken into account. As more and more actions and processes related to political parties and political participation are conducted online, the need for ensuring their safety from hackers, leaks and other activities which can jeopardize these actions and processes is also growing.

308. Thus, while political parties are encouraged to use new technologies for increased transparency (within parties and with the general public), communication and outreach, party statutes need to also take into account the risks related to the use of these new tools. Already at the party level, care must be taken to deal responsibly with the privacy rights of members and/or potential members, by ensuring that these persons are aware of the use that their data will be put to, and also agree to such use. Parties that use e-systems extensively for various aspects of communicating with members and decision-making should invest in security programmes to protect themselves and their members against cyberattacks and malicious software.

309. The State, on the other hand, should oversee the use of new technologies by political parties, and see to it that new electronic opportunities are not abused to violate individuals' rights and freedoms. Legislation will need to be drafted with care, so as not to unduly restrict the many positive aspects of new technologies, but at the same time ensure proper defence of people's rights. Blanket bans on the use of new technologies in certain areas or in certain periods are certainly not an adequate response, as they would lead to disproportionate violations of people's and political parties' rights to freedom of expression and association. However, state legislation should offer adequate, including criminal and administrative remedies for members and other individuals who feel that their privacy and other rights have been abused by a political party, or by a third party (e.g. technological company) hired by a party for this purpose.

310. At the same time, when overseeing the use of new technologies, states should also remain within the margin of what is necessary and proportionate to protect the rights and freedoms of individuals. Thus, surveillance activities should never go so far as to monitor and oversee a party's online communication and discussions, and electronic database (including the receipt and allocation of funds), especially not for a longer period of time; this should only be possible in case there is a reasonable suspicion of criminal activities or similar wrongdoing, and should only be undertaken following a properly reasoned court order. Technological companies hired for this purpose should likewise be held to follow these general rules.

ANNEXES

Annex A – Selected International and Regional Instruments

This section include 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 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)²³²

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 recognized 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 recognized in the present Covenant.

3. Each State Party to the present Covenant undertakes:

(a) To ensure that any person whose rights or freedoms as herein recognized 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.

²³² ICCPR, *op. cit.*, note 3.

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 Women²³³

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;

²³³ CEDAW, *op. cit.*, note 14.

(c) To participate in non-governmental organizations and associations concerned with the public and political life of the country.

International Convention on the Elimination of Racial Discrimination²³⁴

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 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 Disabilities²³⁵

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 assistive 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 organizations and associations concerned with the public and political life of the country, and in the activities and administration of political parties;

²³⁴ ICERD, *op. cit.*, note 14.

²³⁵

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

United Nations Convention against Corruption²³⁶

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 Rights²³⁷

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 organizations, 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 organizations 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 Action²³⁸

Article 13.

²³⁶ UNCAC *op. cit.*, note 73. ▫

²³⁷ UDHR, *op. cit.*, note 3..

²³⁸ Beijing Declaration and Platform for Action, *op. cit.*, note 20.

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 organizations 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;
- (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 Life²³⁹

Recommendations on Article 7 and Article 8 on the Convention on the Elimination of All Forms of Discrimination against Women

Recommendations Articles 7 and 8

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 organizations 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 analyse factors contributing to, the underrepresentation of women as members and officials of political parties, trade unions, employers' organizations and professional associations.

Committee on the Elimination of all Forms of Discrimination against Women, General Comment No. 25: Temporary Special Measures²⁴⁰

²³⁹ CEDAW Committee Recommendation No 23: "Political and Public Life" (1997) GAOR 52nd Session Supp 38, Rev. 1, 61.

²⁴⁰ CEDAW Committee Recommendations 25: "Temporary Special Measures" (2004) GAOR 59th Session Supp 38, Rev. 1, 79.

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 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 organizations, 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, organizations, institutions and political parties.

Committee on the Rights of Persons with Disabilities²⁴¹

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 organizations that can represent their needs as women, children and persons with disabilities.

Charter of the Fundamental Rights of the European Union²⁴²

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

²⁴¹ Available at <http://www.ohchr.org/EN/HRBodies/CRPD/Pages/GC.aspx>.

²⁴² Charter on Fundamental Rights of the European Union *op cit.*, note 44.

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 favour of the under-represented sex.

European Convention for the Protection of Human Rights and Fundamental Freedoms **(European Convention on Human Rights)**²⁴³

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.

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.

²⁴³ ECHR, *op. cit.*, note 3.

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 Minorities²⁴⁴

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 Level²⁴⁵

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:

²⁴⁴ Framework Convention for the Protection of National Minorities *op. cit.*, note 14.

²⁴⁵ Convention on the Participation of Foreigners in Public Life at the Local Level, Council of Europe, European Treaty Series - No.144. (Strasbourg, 5 February 1992).

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)²⁴⁶

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 organizations, without discrimination;

(7.6) - respect the right of individuals and groups to establish, in full freedom, their own political parties or other political organizations and provide such political parties and organizations 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

²⁴⁶ *Ibid.*

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 organizations to have unhindered access to and communication with similar bodies within and outside their countries and with international organizations, to engage in exchanges, contacts and co-operation with such groups and organizations 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)²⁴⁷

(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 favourable 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 endeavours and the sharing of information, ideas and expertise among themselves and by direct contacts and co-operation between individuals, groups and organizations 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

Annex B –Selected Cases

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

- *Abdulkadir Aydin and others v. Turkey* (2005) (Application No. 53909/00)
- *Ahmed and Others v. The United Kingdom* (1998) (Application No. 65/1997/849/1056)
- *Associated Society of Locomotive Engineers and Firemen v. The United Kingdom* (2007) (Application No. 11002/05)
- *Bowman v. The United Kingdom* (1998) (Application No. 24839/94)
- *Church of Scientology Moscow v. Russia*. (2007) (Application No. 18147/02)
- *Cyprus v. Turkey* (2001) (Application No. 25781/94)
- *Demir and the Democracy Party v. Turkey* (2005) (Application Nos. 39210/98 and 39974/98)
- *Democracy Party (DEP) v. Turkey* (2002) (Application No. 25141/94)
- *Emek Partisi and Şenol v. Turkey* (2005) (Nş 39434/98)
- *Freedom and Democracy Party (Özdep) v. Turkey* (1999) (Application No. 23885/94)
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Annex C – Selected Reference Documents

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Annex D – Model Codes

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Endnotes