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EUROPEAN COMMISSION FOR DEMOCRACY THROUGH LAW
(VENICE COMMISSION)

OSCE OFFICE FOR DEMOCRATIC INSTITUTIONS
AND HUMAN RIGHTS
(OSCE/ODIHR)

ARMENIA

DRAFT JOINT OPINION

**ON THE DRAFT CONSTITUTIONAL LAW
ON POLITICAL PARTIES**

on the basis of comments by

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I. Introduction

1. On 15 October 2016, the Minister of Justice of Armenia, Ms Arpine Hovhannisyan, requested the Venice Commission for an opinion on the draft constitutional law on political parties of Armenia (CDL-REF(2016)063). On 18 October 2016, the Venice Commission confirmed its readiness to prepare a Joint Opinion on the draft together with the OSCE Office for Democratic Institutions and Human Rights (hereinafter "OSCE/ODIHR"), given both organisations' previous co-operation in this field.
2. On 14-15 November, a delegation composed of Mr Barrett, Mr Darmanovic, Ms Granata-Menghini and Ms Ubeda de Torres, as well as Mr Knäbe from the OSCE/ODIHR, held several meetings in Yerevan with different stakeholders, including all factions in Parliament, the Central Electoral Commission, the Constitutional Court, the Minister of Justice, civil society, independent Members of Parliament, representatives of international institutions and diplomatic missions.
3. *The present Joint Opinion was adopted by the Council for Democratic Elections at its xxx meeting, Venice, xxx and by the Venice Commission at its xxx Plenary meeting, xxx.*

II. Scope of the Opinion

4. The scope of this draft Joint Opinion covers only the draft law, submitted for review. As such, the Joint Opinion does not constitute a comprehensive review of the entire legal and institutional framework governing the regulation and activities of political parties, or the conduct of elections and campaign financing.
5. The Joint Opinion raises key issues and indicates areas of concern. In the interest of conciseness, the joint opinion focuses on those provisions that require improvement and provides recommendations accordingly, rather than on the positive aspects of the draft legislation.
6. The Joint Opinion is based on an unofficial English translation of the draft law and errors from translation may therefore result.
7. In view of the above, the OSCE/ODIHR and the Venice Commission would like to make mention that this Joint Opinion does not prevent them from formulating additional written or oral recommendations or comments on the respective legal acts or related legislation that the OSCE/ODIHR and the Venice Commission may wish to make in the future.

III. General remarks

8. The draft law has been prepared following the adoption of a new Constitution in Armenia in December 2015. In Article 210.2 of the Constitution, the Law on Political Parties is listed among the constitutional laws which have to enter into force "prior to the opening day of the first session of the next convocation of the National Assembly" (around June 2017). There was therefore a constitutional mandate to adopt a new Law on Political Parties which will replace the 2002 Law currently in force. This draft is a Constitutional Law, which, based on Article 103.2 of the Constitution, requires a qualified majority of 3/5 of the deputies of the Assembly to be adopted.
9. There are 79 political parties registered in Armenia at present. No interlocutor expressed any concerns regarding the current requirements to register political parties. However, it was stressed that very few of these parties are active and that no more than ten of these registered habitually participate in elections. The authorities explained that the intention of the draft law was to further liberalise the establishment and operation of political parties and to include provisions concerning internal democracy within the parties themselves. Such liberalisation is a

positive step, which is in line with the Venice Commission and OSCE/ODIHR recommendations¹ in the field of political parties. At the same time, the draft law was received without an explanatory note that would provide more information on the implementation of the current legislation, and would have helped to assess the implementability of the draft law once adopted, also taking into account the large number of political parties already operating in Armenia.

10. This draft opinion examines the draft law in the light of Article 11 of the European Convention on Human Rights² (ECHR) and Article 25 of the International Covenant on Civil and Political Rights³ (ICCPR), OSCE commitments as enshrined inter alia in the Copenhagen Document⁴, as well as previous opinions, reports and recommendations of the Venice Commission and the OSCE/ODIHR, in particular:

- The Opinions on the new Constitution of Armenia, CDL-AD(2015)037 and CDL-AD(2015)038;
- The *Report on the method of nomination of candidates within political parties*, CDL-AD(2015)020; and the *Comparative table on the method of nomination of candidates within political parties*, CDL(2015)008;
- The Joint Guidelines on Political Party Regulation, by the OSCE/ODIHR and the Venice Commission, CDL-AD(2010)024;
- The Joint Opinions on the draft electoral code as of 18 April 2016, CDL-AD(2016)019; and the second Joint Opinion on the adopted Code as amended on 30 June 2016, CDL-AD(2016)031.

IV. Executive summary

11. At the outset, the Venice Commission and the OSCE/ODIHR welcome the draft law, which is generally clearly written, follows the constitutional mandate and, if adopted, would liberalise the formation and registration of political parties in Armenia. The need to reduce territorial and membership requirements was raised in the past and it is positive that relevant provisions have now been changed in the draft.

12. At the same time, the draft law would benefit from certain revisions and additions. Political parties are in most democracies understood and treated as an extra-constitutional category. Over-regulation in this field is always dangerous, and while a law may in some way create a legal backdrop for improving internal democracy, regulating intra-party organisation too much may not actually be useful for achieving greater intra-party democracy. In particular, the draft law contains provisions that extensively regulate the internal operation of political parties, but does not cover a number of aspects concerning the financing of political parties, nor does it promote and encourage intra-party gender equality.

1. Key recommendations

(a) To consider reducing the number of provisions on internal procedures and functioning of political parties especially with regard to governing bodies; to include the principle of freedom of political parties in Article 4 of the draft law.

(b) To improve the rules on donations to political parties.

¹ CDL-AD(2010)024, Guidelines on political party regulation by the OSCE/ODIHR and the Venice Commission, adopted by the Venice Commission at its 84 Plenary session (October 2010), paras. 76-77.

² The Council of Europe's Convention for the Protection of Human Rights and Fundamental Freedoms, entered into force on 3 September 1953.

³ The International Covenant on Civil and Political Rights (adopted by General Assembly resolution 2200A (XXI) on 16 December 1966). This Covenant was acceded to by Armenia on xxx.

⁴ Document of the Copenhagen Meeting of the Conference on the Human Dimension of the Conference on Security and Co-operation in Europe, 10 June 1990, <http://www.osce.org/odihr/elections/14304?download=true>

(c) To clarify the rules concerning the suspension of political parties, by strictly defining the meaning of “gross violation of the law” and by introducing a wider variety of proportionate sanctions that may be imposed;

(d) To consider including further measures to promote gender equality and diversity in general within internal party structures, following the rules included in the Electoral Code adopted in July 2016. In particular, Article 4 should also contain a reference to the principle of gender equality.

2. Additional recommendations

(e) To consider amending the draft law so that it clearly provides an opportunity for non-party candidates to be included in party lists.

(f) The institutional status of the role of the Audit and Oversight Service should also be further clarified.

13. The Venice Commission and the OSCE/ODIHR remain at the disposal of the Armenian authorities for any further assistance should the authorities deem this beneficial.

V. Analysis and recommendations

A. International standards

14. This Joint Opinion analyses the draft law from the viewpoint of its compatibility with international standards on political parties, as well as OSCE commitments. International standards relevant to political parties and election campaigns are found principally in Article 25 of the ICCPR and Article 11 of the ECHR, which both protect the right to freedom of association. The right to free elections guaranteed by Article 3 of the First Protocol to the ECHR is also of relevance. The Joint Opinion further takes into consideration OSCE commitments, as set out, among others, in the 1990 Copenhagen Document; in particular on the protection of the freedom of association (para 9.3), on the right of individuals and groups to establish political parties or other political organisations (para 7.6), on the need to conduct political campaigning in a fair and free atmosphere (para 7.6) and on unimpeded access to the media (para 7.8);

15. In addition, further standards in this area can be found in the recommendations of UN, Council of Europe and OSCE bodies and institutions. These include General Comment 25 of the UN Human Rights Committee on the right to participate in public affairs, voting rights and the right of equal access to public service,⁵ Council of Europe Committee of Ministers' Recommendation (2003)4 on Common Rules Against Corruption in the Funding of Political Parties and Electoral Campaigns,⁶ as well as the Joint *Guidelines on Political Party Regulation* issued by the OSCE/ODIHR and Venice Commission (hereinafter “*Guidelines*”)⁷. The Code of Good Practice in the field of Political Parties, adopted by the Venice Commission in 2008, and its Explanatory Report will also be used.⁸

⁵ UN Human Rights Committee General Comment 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, available at: <http://www.refworld.org/docid/453883fc22.html>.

⁶ Council of Europe Committee of Ministers Recommendation 2003 (4) on *Common Rules Against Corruption in the Funding of Political Parties and Electoral Campaigns*, available at: [http://www.coe.int/t/dghl/cooperation/economiccrime/cybercrime/cy%20activity%20interface2006/rec%202003%20\(4\)%20pol%20parties%20EN.pdf](http://www.coe.int/t/dghl/cooperation/economiccrime/cybercrime/cy%20activity%20interface2006/rec%202003%20(4)%20pol%20parties%20EN.pdf).

⁷ OSCE/ODIHR and Venice Commission *Guidelines on Political Party Regulation* (2010), available at: <http://www.osce.org/odihr/77812>.

⁸ Venice Commission, *Code of Good Practice in the field of Political Parties*, adopted at its 77th Plenary Session (Venice, 12-13 December 2008) and *Explanatory Report*, adopted at its 78th Plenary Session (Venice, 13-14 March 2009), available at: [http://www.venice.coe.int/webforms/documents/?pdf=CDL-AD\(2009\)021-e](http://www.venice.coe.int/webforms/documents/?pdf=CDL-AD(2009)021-e)

B. Definition, principles and rights of political parties

16. The role of political parties is central to a functioning democracy, as parties are a means to promote pluralism in public life. The Venice Commission and the OSCE/ODIHR have highlighted the importance of political parties on many occasions. For example, the *Guidelines* state that “political parties are private associations that play a critical role as political actors in the public sphere”.⁹ In this regard, they are key in the formation of the popular will. Furthermore, the European Court on Human Rights (ECtHR) has stressed in its case law that political parties are a form of association included in the protection afforded by Article 11 of the ECHR.¹⁰

17. Article 2 of the draft law defines political parties. It refers to a union of citizens. Article 12.2 of the draft law complements this provision, stating that only citizens of Armenia may join a political party, while other persons with the right to suffrage – a term that is not defined - are allowed to become members with limited capacities. The Venice Commission and the OSCE/ODIHR acknowledge that Article 28 of the Constitution provides for the same link between citizenship and party membership. Consideration may be given, however, to rethinking this approach, as also non-citizens may have an interest in participating in the political life of a country, especially if they have lived there for some time. Thus, the *Guidelines*¹¹, referring to the Council of Europe Convention on the Participation of Foreigners in Public Life at the Local Level¹², state that a “[g]eneral exclusion of foreign citizens and stateless persons from membership in political parties is not justified. Foreign citizens and stateless persons should to some extent be permitted to participate in the political life of their country of residence, at least as far as they can take part in the elections. At the very least, the country of residence should make membership in political parties possible for these persons”.¹³

18. Article 4 of the draft law enumerates the principles regarding political parties. In this context, *it is recommended, in order to meet international standards on political party legislation*,¹⁴ *to include two key principles.* The first such principle is that of the freedom of political parties. This provision exists in the 2002 Law that is currently in force, stating that “parties are free to decide on their internal structure, aims, ways, methods, and forms of their activity, with the exception of cases envisaged by this Law”. This *freedom of political parties should therefore be re-introduced in Article 4 of the draft law.* The second key principle concerns the promotion and encouragement of gender equality and inclusiveness in general, which would also incorporate persons with disabilities. This concept will be developed further below (see paras. 36 and 54).

19. The draft law also provides in its Article 21 that only political parties can put forward candidates for election to the National Assembly. The Electoral Code contains the same provision. In their first opinion on the draft Electoral Code, the Venice Commission and the OSCE/ODIHR regretted “that there was no possibility for candidates to stand individually in the parliamentary elections and in elections for the councils of elders of Yerevan, Gyumri and Vanadzor.”¹⁵ It further stated that “this limitation is not remedied by allowing non-party members to be included in political party lists (Article 83.4 of the Electoral Code), as that decision is ultimately in the hands of the political party.”¹⁶ While Article 22.4 of the draft law allows non-members to be nominated as candidates for the positions of head of community and member of the Council of Elders, the remainder of this Article should be modified to reflect the wording of Article 83.4 of the Electoral Code. *Also, as already stated in the first Joint*

⁹ CDL-AD (2010)024 para 6.

¹⁰ *Guidelines on Prohibition and Dissolution of Political Parties and analogous Measures. Explanatory report.* CDL-INF (2000)001, para 8.

¹¹ CDL-AD(2010)024, Guidelines on political party regulation by the OSCE/ODIHR and the Venice Commission, adopted by the Venice Commission at its 84 Plenary session (October 2010), para 120

¹² 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>>.

¹³ CDL-AD (2004)007rev, Guidelines on Legislation on political parties: Some Specific Issues, item “H”.

¹⁴ CDL-AD(2010)024, Guidelines on political party regulation by the OSCE/ODIHR and the Venice Commission, adopted by the Venice Commission at its 84 Plenary session (October 2010), paras. 61 and 97 and ff.

¹⁵ CDL-AD(2016)019, para. 50.

¹⁶ *Ibid*, para. 51.

Opinion on the draft Electoral Code, *consideration should be given to allowing nomination of candidate lists not only by political parties but also by groups of citizens.*

20. The draft law also provides that a person cannot be a member of more than one political party (Article 12.4). This should not be specifically prohibited in law, but rather be left to the individual parties, which should decide whether they see membership in their party as exclusive. The respective provision could, however, require instead that a person cannot be a founding member of more than one political party (as long as both parties are registered and functioning). *It is recommended to reformulate the respective paragraph accordingly.*

21. As Article 23.2 of the draft law refers to political parties running in elections, it should be clarified whether running in elections, e.g. in certain intervals that are to be defined, would be seen as a further requirement in order to be recognised as a political party.

C. Establishment and registration of political parties

22. During the visit to Armenia, the authorities emphasised that the draft law is meant to liberalise the requirements to establish a political party. Compared to the legislation in force, this has been accomplished in two ways.

23. First, the number of founders that need to attend the founding congress has been reduced from 200 to 100 in Articles 7.2 and 8.2 of the draft law. Further, based on Article 9.2, at the moment of state registration, a political party must have at least 1000 members instead of the 2000 that are currently required, at the same time, the time period for registration has been reduced from 6 to 3 months (Article 9.5).

24. Second, the territorial requirement has been reduced. In the Law in force, political parties have to be represented in all marzes (regions). According to Article 9.2 of the draft law, “at the moment of state registration, the political party must have not less than 1 000 founders representing either the city of Yerevan or at least one third of the Marzes [Regions] of the Republic of Armenia, or at least one third of the city of Yerevan and the Marzes of the Republic of Armenia, as well as territorial subdivisions either in the city of Yerevan or at least in one third of the Marzes of the Republic of Armenia, or in at least one third of the city of Yerevan and the Marzes of the Republic of Armenia”. The provision is not very clear, possibly because of inaccurate translation, but implies that political parties have to be represented in at least one third of the marzes and in Yerevan. Additionally, while the English translation uses the word “or”, it was explained during meetings with interlocutors that this requirement is to be fulfilled cumulatively; the wording should be reviewed to ensure that this is clear. Also, the term “founders” should be replaced with the term “members”, as also clarified during the meetings. This would help avoid confusion with Article 7 par 2 of the draft law, which states that political parties shall be founded by a congress made up of at least 100 founders.

25. The Venice Commission and the OSCE/ODIHR generally welcome these steps to reduce the conditions established for forming a political party. Concerning the territorial requirement, the Venice Commission and the OSCE/ODIHR have stated that “[a] requirement for geographic distribution of party members can also potentially represent a severe restriction of political participation at the local and regional levels incompatible with the right to free association”.¹⁷ Moreover, the current impossibility to establish parties operating only at the local level, “may further reduce political diversity”.¹⁸ The ECtHR has raised similar concerns with regard to the need for territorial representation of political parties in its case law.¹⁹ However, none of the interlocutors were concerned by this. Most pointed out the size of Armenia and considered that requiring a party to be represented in one third of the territory

¹⁷ CDL-AD(2010)024, Guidelines on Political Party Regulation by the OSCE/ODIHR and the Venice Commission, adopted by the Venice Commission at its 84 Plenary session (October 2010), para. 81. See, in this context, the 2011 ECtHR Judgment in the Case of the Republican Party of Russia v. Russia of 12 April 2011, no. 12976/07, paras 124- 131.

¹⁸ CDL-AD(2016)019, para. 106.

¹⁹ See, in this context, the 2011 ECtHR Judgment in the Case of the Republican Party of Russia v. Russia of 12 April 2011, no. 12976/07, paras 124- 131.

was a reasonable expectation. Therefore, even though the Venice Commission and the OSCE/ODIHR have recommended in the past to avoid any territorial requirement, the registration requirements appear not to be too burdensome in the current context.

26. Based on Article 5.2 of the draft law, political parties shall not be established in “other state organisations, pre-school, school and other educational institutions”. This wording should be clarified to specify that political parties cannot be established in educational institutions alone, e.g. to avoid a situation where such parties would solely cater to the needs of the respective institution. At the same time, such scenarios would normally already be prevented by the territorial distribution requirement.

27. Pursuant to Article 8.2 of the draft law, the decisions on the establishment, approval of the programme and the statute, formation of governing and supervisory bodies shall be adopted by a unanimous decision of 100 founders attending the founding congress. *The unanimous rule requirement seems excessive. It is thus recommended to replace unanimity by a majority rule, as used in the 2002 Law that is currently in force.*

28. Furthermore, the draft law refers in its Article 9.3 to the “authorised state administration body of the Government”, which will carry out the registration. While it became clear during the meetings that this body will be the Ministry of Justice, this is not apparent from the current wording of the provision. *This reference to the Ministry of Justice should thus be made more explicit.*

29. Finally, it is noted that under Article 10.2 of the draft law, the three months’ time limit for concluding the registration continues to run even in cases where an application for registration needs to be re-submitted due to inaccuracies. This may be problematic in cases where an initial application for registration is submitted close to the end of the three months’ period, as the time period could then run out before the application can be resubmitted. Article 10.2 of the draft law should be revised to allow for an interruption of the time period in cases where the authorised body sends back applications due to inaccuracies.

D. Freedom and internal democracy

30. Under international standards, political parties, as associations, are granted a certain level of autonomy in their internal and external functioning. According to this principle, political parties 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.²⁰ Moreover, as stressed by the *Report on the method of nomination of candidates within political parties*, internal democracy is a key element for the functioning of political parties²¹. The principle of democracy applies not only regarding their external functioning, but also in their internal structure and in internal decision making processes.

31. There are two main factors to take into account in this regard: on the one hand, the freedom of political parties has to be ensured; on the other, internal democracy is key to their work.²² In this context, there are two models in Europe concerning the regulation of political parties. Some states have a liberal view and do not enact detailed rules on political parties. Other states tend to regulate the functioning of political parties, and sometimes go into great detail. In the latter case, states should find a proper balance between freedom of political parties and the requirement for internal democracy.

32. As stated in the *Venice Commission Report on the Method of Nomination of Candidates within Political Parties*, “[t]he requirement of compliance to democracy is twofold. Not only political parties’ speech and action ad extra must formally endorse the democratic principles and rule of law contained in constitutional and legal provisions of the country but their internal organisation and functioning must also substantially abide by the principles of democracy and

²⁰ *Report on the Method of Nomination of Candidates within Political Parties* (CDL-AD(2015)020), para. 5.

²¹ Para 5.

²² See Article 8 of the Constitution.

legality. The basic tenets of democracy are not satisfied with mere formal adherence or lip service paid by the statutes of the party but require substantial application of them ad intra.²³ In addition, the *Guidelines* provide that the regulation of internal party functions, where applied, must be narrowly constructed so as to not unduly interfere with the right of parties as free associations to manage their own internal affairs²⁴. Most of the Member States of the Council of Europe and participating States of the OSCE leave it to political parties to interpret the constitutional mandate of the need to conform to democratic principles.²⁵

33. The draft law generally respects this criterion and the Armenian interlocutors expressed their approval of stipulating these basic principles regarding the functioning of political parties as a starting point, to ensure more internal democracy. In this context, it is noted that the limitations imposed on the freedom of political parties by some articles in the draft law do not appear to be necessary. A law on political parties should regulate the process of foundation, registration, financial auditing and possibly banning political parties, but it should only include basic provisions on the internal functioning of political parties. Bearing this in mind, the Armenian authorities should reconsider Articles 18 and 19 of the draft law, as they regulate rules and activities that should, by definition, be left to the leadership and members of political parties themselves, including the frequency of convening party congresses, and the decision-making processes within political parties. These are matters that should not be regulated by the state. The Minister of Justice explained during the meeting that these rules reflect the requirements contained in the Electoral Code (for example, the decision to join an alliance must be adopted by the congress of the party according to Article 81.4 of the Electoral Code). However, the draft law appears to go beyond certain issues that are regulated in the Electoral Code. As a case in point, the provision in Article 17 of the draft law requiring the programme of a party to set out how to fulfil the party's goals and objectives is unduly specific. *It is therefore recommended to limit as much as possible the rules on the internal functioning of political parties contained in those articles and to leave those matters to the internal decision-making process of individual political parties.*

E. Measures intended to improve women's political participation

34. The draft law does not contain provisions on the promotion of gender equality within internal party structures. At present, only 14 MPs out of a total of 131 members of parliament are women, equivalent to a representation of 10.7 per cent. This is well below the OSCE average of 25.7 per cent.²⁶

35. In this regard, it is important to recall that OSCE Ministerial Council Decision No. 07/09 Women's Participation in Political and Public Life²⁷ "encourage(s) 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." The Beijing Platform for Action²⁸ also calls on political parties to consider removing all barriers that directly or indirectly discriminate against the participation of women, and develop initiatives that allow women to participate fully in all internal policy-making and nominating processes. It also refers to the incorporation of gender equality considerations in parties' political agendas. Resolution 1898(2012) of the Parliamentary Assembly of the

²³ *Report on the Method of Nomination of Candidates within Political Parties* (CDL-AD(2015)020), para. 12, p. 4,

²⁴ *Guidelines*, para. 97.

²⁵ One of the exceptions is Germany, with a detailed regulation on internal party governance contained in the Law on Political Parties.

²⁶ Compendium of Good Practices for Advancing Women's Political Participation in the OSCE Region <http://www.osce.org/odihr/224206?download=true>

²⁷ MC.DEC/7/09, 2 December 2009, <http://www.osce.org/mc/40710?download=true>

²⁸ In 1995, the Fourth World Conference on Women in Beijing reported little progress made in achieving the ECOSOC target of having 30 per cent women in positions at decision-making levels by 1995. In the Beijing Platform for Action adopted at the Conference, the governments committed to aim to establish the goal of gender balance in government and public administration, as well as in the judiciary, inter alia, by setting specific targets and implementing appropriate measures to substantially increase the number of women in these offices, if necessary through positive action (OSCE/ODIHR Opinion on Draft Amendments to Ensure Equal Rights and Opportunities for Women and Men in Political Appointments in Ukraine, 19 December 2013, GEND-UKR/242/2013 (AIC).

Council of Europe further states that political parties, as key protagonists in pluralist democracies, “have a decisive role to play in enhancing women’s political representation: in addition to ensuring strict compliance with electoral legislation, including on legislated quotas, and introducing voluntary measures, they are well placed to promote a change of culture conducive to gender equality in politics and in society at large” (para. 5).

36. Reflecting the Convention on the Elimination of All Forms of Discrimination against Women (CEDAW)²⁹, similar principles are reflected in the *Guidelines*, which state that legislation should endeavour to ensure that women are able to participate fully in political parties as a fundamental means for the full enjoyment of their political rights.³⁰ There are a number of ways of achieving this goal, either through internal party regulations, and/or through legislation. Gender equality may be promoted by creating a “women’s section” or “gender division” within political parties;³¹ by introducing gender quotas that could increase women’s parliamentary representation,³² by providing training and capacity-building programmes for female members and potential candidates prior to their selection,³³ and/or by adopting, implementing or evaluating gender-equality strategies, plans and programmes at different levels. These may include specific action plans to achieve balanced participation and representation of women and men in internal political party offices,³⁴ or by recognising and considering the family responsibilities of party members.³⁵ It is also recommended to consider providing additional public funding for political parties that promote the participation of women at the central and at the local levels.³⁶

37. In sum, it is recommended to consider including specific provisions in the draft law to promote gender equality. The provisions on gender equality contained in the Electoral Code may provide useful guidance in this respect.³⁷ *It is recommended that the draft law include in its Article 4.2 a general principle that a gender balanced representation will be encouraged.* Article 12 of the draft law could also be supplemented by adding a reference to the need to ensure a gender balanced composition of political parties’ governing bodies.

F. Financing of political parties

38. The draft law provides for some rules on the financing of political parties. These regulations are a welcome effort; in this context, it is essential that all different aspects, including the prevention of corruption,³⁸ relating to financing of political parties are considered. Otherwise, the impact of specific regulations limiting expenditures of political parties, their assessment and the transparency requirements would be weakened in practice.

39. The draft law contains a specific provision on donations to political parties, namely Article 25, notably establishing a cap on donations. This provision makes no references to loans, credits, or debts as less obvious forms of party donations. *Consideration should be given to specifying that these represent types of donations covered by Article 25, to ensure that they are not used as ‘donations in disguise’ to sidestep existing caps on donations.*

²⁹ UN Convention on the Elimination of All Forms of Discrimination against Women (hereinafter “CEDAW”), adopted by General Assembly resolution 34/180 on 18 December 1979. The Republic of Armenia ratified CEDAW on 13 September 1993.

³⁰ Guidelines, para. 101.

³¹ Guidelines, para. 100.

³² Guidelines, para. 102.

³³ Guidelines, para. 103.

³⁴ Guidelines, para. 104.

³⁵ Guidelines, para. 105.

³⁶ Joint Venice Commission and the OSCE/ODIHR Opinion on the Draft Amendments to some Legislative Acts Concerning Prevention of and Fight Against Political Corruption of Ukraine, CDL-AD(2015)025, par 63.

³⁷ *First Joint Opinion on the Armenian Draft Electoral Code* (CDL-AD(2016)019), par. 122.

³⁸ Cf. as enshrined in the United Nations Convention Against Corruption, Armenia has ratified on 8 Mar 2007, https://www.unodc.org/documents/brussels/UN_Convention_Against_Corruption.pdf. See also the Civil Law Convention on Corruption of the Council of Europe, ratified by Armenia in 2005, and the Criminal Law Convention on Corruption of the Council of Europe, ratified by Armenia in 2005.

40. Moreover, Article 24.2(1) of the draft law does not specify a cap for membership or entry fees. In this respect, caution should be exercised; if these fees are left to the discretion of parties and members, this may lead to a circumvention of maximum limits on donations. This was also recognised in the *Guidelines*, according to which such abuse can be avoided if membership fees are treated as contributions³⁹. Accordingly, Article 24 of the draft law could be amended by specifying that individual donations, and the cap provided for them, include entry and membership fees.

41. The annual cap on donations is one million-fold of the minimum salary prescribed by law. According to the information received during the meetings, the minimum salary for the purposes of calculation is 1000 Drams (equivalent to less than 2 Euros). The annual cap would thus lie at around 2 million Euros, which seems reasonable taking into account Armenia's size and circumstances.

42. Banning donations from charitable or religious organisations, "as well as organisations with participation thereof", as stated in Article 25.4(1) of the draft law, appears to be overly restrictive. It is not clear whether this provision bans donations from all organisations having a stake in charitable or religious organisations or from all organisations in which charitable or religious organisations participate, or both. In any case, *it should be revised*. Similarly, banning donations from legal persons registered less than six months before making a donation, as laid down in Article 25.4(5) of the draft law, would require further explanations.

43. Subparagraphs (5) and (6) of Article 2.4 of the draft law prohibit receiving donations from foreign sources, which seems to be in line with international standards. However, these provisions should specify whether this prohibition also applies to the international co-operation between parties, as for such cases an exception should be possible. Furthermore, this provision may contradict Article 30 of the draft law, as it may be difficult to differentiate between donations and co-operation with/receiving support from international organisations in practice.

44. Finally, anonymous donations are prohibited under Article 25.4(8) of the draft law. While this is not contrary to international standards per se, allowing anonymous donations up to a certain amount could help encourage individuals to support political parties (this will mainly help smaller parties). As Article 25.8 allows for cash transfer of donations below 100-fold of the minimum salary, which is equivalent to 200 euros, *it may be consistent to impose the same cap for anonymous donations (which could, by their very nature, only be done by cash payment)*.

45. There are many different ways to supervise and enforce political party and campaign finance provisions, and it is in principle up to the state to determine which body or bodies to charge with this task. At the same time, the *Guidelines* state that "[w]hichever body is tasked with regulation should be nonpartisan in nature and meet requirements of independence and impartiality"⁴⁰. The draft law places the Oversight and Audit Service of the Electoral Commission at the heart of the supervision over financial activities of political parties.⁴¹ However, it is noted that the Electoral Code (Article 29) does not clearly define the status of the Oversight and Audit Service (OAS). The Venice Commission and the OSCE/ODIHR have previously emphasised the advantage of independent institutional oversight over campaign financing and recommended *to clarify in the Electoral Code the institutional status of the OAS*.⁴² In this regard, it is important to recall the 2012 Final Report for the OSCE/ODIHR Election Observation Mission to Armenia, recommending that the "Oversight and Audit Service could have a more proactive approach in order to ensure transparent reporting by all contestants. The nomination of auditors by political parties should be mandatory; the costs could be covered from the state budget"⁴³. *Consideration may also be*

³⁹ *Guidelines*, par. 163.

⁴⁰ *Guidelines*, par. 219; Human Rights Committee General Comment 25, para. 20.

⁴¹ Venice Commission and the OSCE/ODIHR, CDL-AD(2010)048, Joint Opinion on the draft law on Financing Political Activities of the Republic of Serbia, 20 December 2010, paras 5 and 40, [http://www.venice.coe.int/webforms/documents/default.aspx?pdffile=CDL-AD\(2010\)048-e](http://www.venice.coe.int/webforms/documents/default.aspx?pdffile=CDL-AD(2010)048-e)

⁴² First Opinion on the Electoral Code, para. 77; Second Opinion on the Electoral Code, para. 56.

⁴³ Republic of Armenia, Parliamentary Elections, 6 May 2012, OSCE/ODIHR Election Observation Mission Final Report, Recommendation 14, p. 26.

given to, in Article 31, equipping the oversight body with a number of additional powers in this area, such as, for example, the power to call witnesses under oath, and the power to ask other governmental institutions (tax authorities, anti-corruption authorities, etc.) for assistance in carrying out its work, including through the provision of information or expertise.

46. Furthermore, the sequencing in Article 29.3 of the draft law should be changed. Political parties should first be required to comply with their reporting obligations, and should only then be entitled to receive public funding. Furthermore, this provision does not provide for deadlines for the publication of statements. *It is recommended to rephrase Article 29.3 accordingly and to stipulate reporting deadlines.*

47. Finally, the total amount of funds provided by the state budget and mentioned in Article 27 of the draft law appears to be quite low, if not non-existent. The period for which this limit is defined (e.g. year, month, legislature, etc.) is not defined. While there is no uniform approach to such matters across the Council of Europe and OSCE areas, it should be noted that public funding can be a valuable tool to further, in particular, smaller political parties. Generally, the allocation of public funding in a clear, objective and fair manner is an essential tool in the fight against corruption, and reduces the dependency of political parties on wealthy individuals.⁴⁴ As such, public funding of political parties also enhances public participation and contributes to a level playing field for all political parties.⁴⁵ As stated above, public funding can likewise be a tool to promote gender equality, for example where allocation of public funds is not only made contingent on compliance with requirements for women's participation, but also used to promote gender-related political education. *Consideration should therefore be given to increasing the state funding available.*

G. Suspension and prohibition of political parties

48. Articles 32 to 34 of the draft law regulate the procedure for prohibition or suspension of political parties. Only the National Assembly and the Government are entitled to make an application to this effect to the Constitutional Court, which reflects Articles 168 and 169 of the Constitution. It should be pointed out that during the visit to Yerevan and the meeting with the Constitutional Court, the delegation was informed that no political party has ever been suspended or prohibited in Armenia.

49. Article 33 of the draft law enumerates the grounds for suspending political parties. The suspension of activities is a strong interference with the activity of a political party. Indeed, Article 33.3 establishes that, during the period of suspension, a political party shall be prohibited to carry out any activities, except those which are necessary for eliminating violations or fulfilling other pending obligations.

50. In light of the international standards contained in the ICCPR and the ECHR, and reflected in relevant GRECO reports⁴⁶, the grounds for suspension established in the draft law lack the necessary precision insofar as they refer to a "gross violation". This is defined as "any violation concerning the donations of the publication of the annual statement of a political party, and the violation of any of the rules related to the foundation and registration of political parties". This definition is quite vague, as it refers to a wide array of actions, without differentiating between, e.g., minor and more serious violations. The suspension of a political party is a particularly invasive and exceptional measure, and should only be imposed in the most serious cases involving particularly grave violations of the rules on donations or on reporting, if other less invasive measures have proven ineffective. The term "gross nature of the violation of the law"

⁴⁴ *Guidelines*, para. 170.

⁴⁵ Joint Venice Commission-OSCE/ODIHR Opinion on the Draft Amendments To Some Legislative Acts Concerning Prevention Of And Fight Against Political Corruption Of Ukraine, CDL-AD(2015)025, par 22.

⁴⁶ Council of Europe, Second Compliance Report on Armenia, Incriminations (ETS 173 and 191, GPC 2)", "Transparency of Party Funding", Greco RC-III (2014) 26E, 12 December 2014, [http://www.coe.int/t/dghl/monitoring/greco/evaluations/round3/GrecoRC3\(2014\)26_Second_Armenia_EN.pdf](http://www.coe.int/t/dghl/monitoring/greco/evaluations/round3/GrecoRC3(2014)26_Second_Armenia_EN.pdf); Council of Europe, Compliance Report on Armenia, "Incriminations (ETS 173 and 191, GPC 2)", Transparency of Party Funding, Greco RC-III (2012) 21E, 7 December 2012, [http://www.coe.int/t/dghl/monitoring/greco/evaluations/round3/GrecoRC3\(2012\)21_Armenia_EN.pdf](http://www.coe.int/t/dghl/monitoring/greco/evaluations/round3/GrecoRC3(2012)21_Armenia_EN.pdf)

should reflect the gravity of the violation, while paying due regard to the proportionality principle as outlined in the Venice Commission and the OSCE/ODIHR Second Joint Opinion on the Electoral Code⁴⁷. *It is recommended to restrict the definitions in Article 33.2 of the draft law explicitly to these types of violations.*

51. Moreover, as Article 33.7 of the draft law provides that the Constitutional Court may continue the suspension as long as the violation is not redressed, the vague definition of “gross violation” could lead to an indefinite suspension, amounting to a *de facto* prohibition. Other ways to compel political parties to respect the law (such as the imposition of fines) should be envisaged as an alternative in order to put an end to the suspension. In this regard the *Guidelines* provide for examples of a wide array of possible sanctions, including administrative fines or loss of public funding.⁴⁸

52. Article 34 of the draft law on the prohibition of activities of a political party must be read in connection with Article 80 of the Law on the Constitutional Court, which provides clear grounds for debating and deciding on the prohibition of a political party. Thus, the grounds for prohibiting political parties seem to meet the standards stated by the Venice Commission in the *Guidelines on prohibition and dissolution of political parties and analogous measures*.⁴⁹ According to their para. 3, “prohibition or enforced dissolution of political parties may only be justified in the case of parties which advocate or use violence as a political means to overthrow the democratic constitutional order, thereby undermining the rights and freedoms guaranteed by the constitution”. This is also in line with the Opinion issued by the Venice Commission on the Constitution of Armenia.⁵⁰

H. Other issues

53. Article 22 of the draft law refers to equal and non-discriminatory access to mass media. It would be helpful to include in the Article a reference to other laws, mainly to the Law on Radio and Television and how access is regulated for individual parties, party alliances etc.

54. The draft law, as well as the Electoral Code, as stated in the First Joint Opinion on the Electoral Code, should encourage general inclusiveness within political parties, also e.g. for persons with disabilities, as demanded in Article 29 of the UN Convention on the Rights of Persons with Disabilities.⁵¹

55. Article 13 of the draft law prohibits certain persons holding public office from joining a political party, but the cases described herein appear to differ from the cases enumerated in the Constitution. Article 28 of the Constitution makes a difference between two groups of persons: persons who are prohibited from joining a political party and persons for which the law may restrict political activities. *It is recommended to amend Article 13 accordingly, also to ensure that the draft law uses the same terminology as the Constitution.*

⁴⁷ Paras 54 et seq on page 11 of CDL-AD(2016)031 (<http://www.osce.org/odihr/elections/armenia/275511?download=true>)

⁴⁸ Guidelines, paras 224 et seq.

⁴⁹ CDL-INF(2000) 1.

⁵⁰ CDL-AD(2015)037, para. 51.

⁵¹ Armenia has ratified the UN Convention on the Rights of Persons with Disabilities in 2010.