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GUIDELINES ON POLITICAL PARTY REGULATION

BY OSCE/ODIHR AND VENICE COMMISSION

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I. FOREWORD

1. Political parties are a critical means by which citizens participate in their government and representative democracy is realized. While the role and importance of 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 the constitutions or other laws, the first instances of legislation aimed directly at political party regulation were not 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 the legal tradition and constitutional order. As a result, political parties are subject to a varying degree of regulation. Each country's historical development and unique cultural context naturally preclude the development of a universal, single set of regulations for political parties. However, basic tenets of a democratic society, as well as recognized human rights, allow for the development of some common principles applicable to any legal system for the regulation of political parties. It is these principles that are dealt with in the following guidelines.

II. INTRODUCTION

2. These *Guidelines on Political Parties* together with the Interpretative Notes were prepared by the Panel of Experts on Political Parties of the Office for Democratic Institutions and Human Rights (ODIHR) of the Organization for Security and Co-operation in Europe (OSCE) in consultation with the European Commission for Democracy through Law (the Venice Commission) of the Council of Europe. The Document takes into account comments received from members of the Venice Commission who were consulted on the draft of these Guidelines¹.

3. The following Guidelines on Political Party Legislation, aim to provide an overview of issues regarding the development and adoption of legislation for political parties in democracies. The Interpretative Notes constitute an integral part of the Guidelines, and should be read in concert with them to ensure full understanding and development of relevant issues.

4. 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 individuals' 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 approach to such regulation varies greatly across the OSCE region and in countries – members of the Venice Commission: from states that lack any particular legislation on political parties (regulating such bodies only under general laws governing associations) to the incorporation of provisions relating to the function of parties in an array of different laws (including specific political party laws, constitutions, general election laws, and laws relating to issues such as media and campaign financing). Recognizing these differences, as well as the great diversity of legal traditions (particularly in relation to democratic development, constitutional order, and the rule of law), the *Guidelines* and the notes are not intended to provide blanket solutions or to aid in the development of a single model law for use in all OSCE states. Rather, the *Guidelines* and the notes attached to them are intended to clarify key issues related to political party legislation and provide examples of potential good practices for states.

¹A Member of the Venice Commission (Mr Evgeny Tanchev of Bulgaria) and an expert of the Venice Commission (Mr Carlos Closa from Spain) participated in roundtables in 2009 – 2010 in Athens, Brussels and Munich where the Guidelines were discussed.

5. The *Guidelines* and interpretative notes are based on universal and regional treaties relating to the protection of human rights, evolving state practice (as reflected, *inter alia*, in judgments of domestic courts and the commitments of inter-governmental bodies), and the general principles of law recognized by the community of nations. In particular, the *Guidelines* reference relevant OSCE commitments related to democratic governance and to the guidelines and opinions of the Venice Commission on political parties in general and in concrete countries (in the form of opinions on the national legislation on political parties). The *Guidelines* offer a clear minimum baseline in relation to human rights obligations, thereby establishing a threshold that must be met by state authorities in their regulation of political parties. However, the *Guidelines* are intended not only as a reflection of existing obligations, but 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 text moves beyond a summary of existing obligations and provides a synopsis of exemplary practices related to the regulation and functioning of political parties. It is critical to a proper understanding of these *Guidelines* that they in no way should be construed as a means of imposing undue restrictions on political parties. The framework principle upon which these guidelines have been developed is that of the Copenhagen Document, paragraph 7.5 which 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." These guidelines are also based on several more pointed guidelines on political parties adopted by the Venice Commissions from 1999 to 2010². Notably, these guidelines are not intended to replace the said documents adopted by the Venice Commission in the past, but rather supplement and expand on them. In this way, the *Guidelines* should principally be seen as a means to protect the rights and freedoms of political parties while enacting only the minimum regulation necessary to ensure their proper functioning.

6. Political parties are private associations that play a critical role as political actors in the public sphere. Striking the appropriate balance between state regulation of parties as public actors and respect for the fundamental rights of party members as private citizens, including their right to association, requires well-crafted and narrowly tailored legislation. Such legislation should not interfere with 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 may not be 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 be most appropriate. The determination of the state's proper role in the regulation of political parties requires consultation with the individuals and groups affected by such regulation as an integral part of the law drafting process. While it is not necessary that political parties be governed under different legislation than for general associations, ideally legislation should be developed that recognizes the unique role that parties play in a democratic society. The development of legislation aimed at articulating the rights and protections specific to political parties is the subject of the *Guidelines*. Further, as it is the implementation of such regulations and the voluntary creation of rules for inter-party conduct which often most affects the role of political parties in democracies, these provisions are also intended to provide

² [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 (Venice, 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 Meeting (Venice, 9-10 March 2001)*, [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 (Venice, 12-13 March 2004)*, [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 (Venice, 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 (Venice, 16 March 2006) and the Venice Commission at its 67th Plenary Session (Venice, 9-10 June 2006) and CDL-AD (2009)021 Code of good practice in the field of political parties adopted by the Venice Commission at its 78th plenary session (Venice, 13 - 14 March 2009)*.

guidance to parties and electoral stakeholders regarding the practical implementation of legislation.

7. The guidelines on Political Party Regulation were examined by the Sub-Commissions on Democratic Institutions at its meeting on 14 October 2010 and were adopted by the Venice Commission at its 84th Plenary Session (Venice, 15-16 October 2010).

8. While Section A contains the *Guidelines*, Section B, the *Interpretative Notes*, is essential to a proper understanding and interpretation of the *Guidelines* as it expands upon the principles articulated in Section A and provides examples of good practice. Part I (Sections 1-4) of Section B emphasizes the importance of freedom of association as it relates to the development and regulation of political parties; sets out general principles for regulation; identifies legitimate grounds for, and types of, restrictions; and examines relevant procedural issues. Part II (Sections 5-7) focuses on intra-party functioning, including restrictions on party association for individuals, internal democracy and party functions. Part Three (Sections 8-10) deals with the role of parties in elections, including issues such as candidacy requirements and ballot access. Part Four (Sections 11-14) deals with the funding of political parties, while Part Five (Sections 15-17) examines the system for regulation of parties and judicial protection of their rights. 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 from the European Court of Human Rights. Annex C lists relevant Council of Europe (the Parliamentary Assembly and the Venice Commission) sources related to the proper functioning of political parties and Annex D provides examples of model political party codes of conduct.

III. DEFINITION OF 'POLITICAL PARTY'

9. For the purposes of these *Guidelines*, a political party is 'a free association of persons, one of the aims of which is to participate in the management of public affairs, including through the presentation of candidates to free and democratic elections.'

IV. THE IMPORTANCE OF POLITICAL PARTIES

10. Political parties are a collective platform for the expression of individuals' fundamental rights to association and expression and have been recognized by the European Court of Human Rights as integral players in the democratic process. Further, they are the most widely utilized means for political participation and exercise of related rights. Parties are foundational to a pluralist political society and play an active role in ensuring an informed and participative electorate. Additionally, parties often serve as a bridge between the executive and legislative branches of government and can serve to effectively prioritize the legislative agenda within a system of government.

V. FUNDAMENTAL RIGHTS GIVEN TO POLITICAL PARTIES

11. Freedom of association is the central right which governs the functioning of political parties. A set of recognized universal, European and other regional treaties has given the right to full exercise of free association, including for the formation of political associations, to all individuals.¹ The European Court of Human Rights has also recognized the inherent relationship between freedom of association and its inter-dependent rights of freedom of expression and opinion and assembly. Although applicable international, European and other regional treaties conceptualize such rights as relevant to the individual, it is the free exercise of association itself which allows these protections to be extended to parties as a representative body of protected individuals. As such, groups of individuals choosing to associate themselves as a political party must also be awarded full protection of related rights. The rights of free association, expression, and assembly may only be limited where necessary in a democratic society. A number of useful non-binding recommendations on how these fundamental rights

can be protected can be found in recommendations of the Parliamentary Assembly of the Council of Europe and guidelines and opinions adopted by the Venice Commission³

VI. SECTION A. GUIDELINES PERTAINING TO POLITICAL PARTIES

1. PRINCIPLES

12. The following principles provide overall guidance for the consideration of political party legislation. However, these principles must be read with the *Interpretative Notes* for a complete understanding and appreciation of the *Guidelines*. Further, these principles must be read together and no single principle should be applied to the exclusion of the remaining principles.

13. These principles recognise the important role that political parties have in a democratic society. The European Court of Human Rights has noted that political parties are a form of association essential to the proper functioning of democracy.² 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."³ The court has described political parties as holding an "essential role in ensuring pluralism and the proper functioning of democracy."⁴

a) Principle 1. Right of individuals to associate

14. The right of individuals to associate and form political parties should, to the greatest extent possible, be free from interference. Although there are limitations to the right of association, such limitations must be construed strictly and only convincing and compelling reasons can justify limitations on freedom of association. Limits must be prescribed by law, necessary in a democratic society, and proportional in measure. Association with political parties must be voluntary in nature and no individual should be forced to join or belong to any association against their will.⁵ The broad protection given to the right of individuals to associate requires that political parties also be free from unnecessary interference.

b) Principle 2. The state's duty to protect individual right of free association

15. It is the responsibility of the state to ensure that relevant legislation enacts necessary mechanisms and practices allowing the free exercise of the individual right to freely associate and form political parties with others, in practice. Further, the state has the responsibility to enact legislation to prohibit interference from non-state actors as well as refrain itself from such interference.⁶ Where violations of the right to free association occur, the state bears responsibility to provide reparation as appropriate and to ensure the cessation of the violation.⁷ As previously noted, limitations on the right to free association can be restricted only as prescribed by law and necessary in a democratic society.⁸ Any interference or limitation on the right of association is subject to the principle of proportionality, which is discussed later.

c) Principle 3. Legality

16. Any limitations imposed on the right of individuals to free association and expression should have their formal basis in the state's constitution or parliamentary acts. Such limitations should not be the result of partisan political activity but based on a legitimate aim necessary in a democratic society. Thus, frequent changes in political party legislation may be seen as the result of political whim instead of as satisfying a compelling public interest. A state's

³ See Annex C to this document.

constitution and parliamentary acts should respect the right of association found in relevant international and regional instruments. The law must be clear and precise, indicating to political parties both what activities are considered unlawful and what sanctions are available in cases of violations. Political party legislation should be adopted openly, following debate, and made widely available for public review to ensure individuals and political parties are aware of their rights and the limitations on such rights.

d) Principle 4. Proportionality

17. Any limitations imposed on the rights of political parties must be proportionate in nature and effective at achieving their specified purpose. Particularly in the case of political parties, given their fundamental role in the democratic process, proportionality should be carefully weighed and prohibitive measures narrowly applied. As stated above, the only restrictions imposed should be those that are necessary in a democratic society and prescribed by law. If restrictions do not meet such criteria, they cannot rightly be deemed as proportionate to the offence. The dissolution of political parties, or barring the establishment of a political party, is the most extreme sanction available and should never be imposed unless such measure is proportionate and necessary in a democratic society.

e) Principle 5. Non-discrimination

18. State regulations of political parties may not discriminate against any individual or group on any ground such as race, color, sex, language, religion, political or other opinion, national or social origin, property, birth, sexual orientation, or other status.⁹ The individual right to free association does not extend itself to require that a political party be required to accept members who do not share its core beliefs and values. However, the voluntary imposition of the principle of non-discrimination by political parties is welcome.

f) Principle 6. Equal Treatment

19. 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.¹⁰ No individual or group wishing to associate as a political party should be advantaged or disadvantaged in this endeavor by the state, and regulation of parties must be uniformly applied. In order to eliminate historical inequalities measures can be taken to ensure equal opportunities for women and minorities. Temporary special measures aimed at promoting de facto equality for women and ethnic, racial or other minorities subject to past discrimination may be enacted and should not be considered discriminatory.¹¹

g) Principle 7. Political Pluralism

20. Legislation regarding political parties should aim to facilitate a pluralistic political environment. The ability for citizens to receive a variety of political viewpoints, such as through the expression of political party platforms, is commonly recognized as 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 individuals are offered a real choice in their political associations and vote choices.¹² Regulations of political party functioning should be carefully considered to ensure they do not impinge upon the principle of political pluralism.

h) Principle 8. Good Administration of Legislation Pertaining to Political Parties

21. The implementation of legislation relevant to political parties must be undertaken by bodies that enjoy guaranteed impartiality both in law and in practice. The scope and authority of regulatory agencies should be explicitly determined by law. Legislation should also ensure that regulatory bodies are required to apply the law in an unbiased and non-arbitrary manner. Timeliness is one element of good administration. Decisions affecting the rights of political

parties must be made in an expeditious manner, particularly those decisions which related to time sensitive processes such as elections.

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

22. Political parties should have recourse to an effective remedy¹³ for all decisions affecting their fundamental rights, including those of association, expression and opinion, and assembly. While such rights are given to individuals, they can generally be enjoyed as a collective, requiring due recourse for allegations of violations brought not only by individuals but by the party as a whole. In the application of these rights, political parties should also enjoy full protection of the right to a fair and impartial hearing. Proper and effective redress should 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 are insufficient to satisfy the requirement that a remedy be effective.

j) Principle 10. Accountability

23. Political parties may obtain certain legal privileges, due to being registered as a political party, that are not available to other associations. This is particularly true in the area of political finance and access to media resources during election campaigns. As a result of having privileges not granted to other associations, it is appropriate to place certain obligations on political parties due to their acquired legal status. This may take the form of imposing reporting requirements or transparency in financial arrangements. Legislation should provide specific details on the relevant rights and responsibilities that accompany the obtainment of legal status as a political party.

VII. SECTION B. INTERPRETATIVE NOTES

1. INTRODUCTION

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

25. Part I (Sections 1-4) of Section B emphasizes the importance of freedom of association as it relates to the development and regulation of political parties; sets out general principles for regulation; identifies legitimate grounds for, and types of, restrictions; and examines relevant procedural issues. Part II (Sections 5-7) focuses on intra-party functioning, including restrictions on party association for individuals, internal democracy and party functions. Part Three (Sections 8-10) deals with the role of parties in elections, including issues such as candidacy requirements, appearance on ballots, and the effect of parties in different electoral systems. Part Four (Sections 11-14) deals with the funding of political parties, while Part Five (Sections 15-16) examines the system for regulation of parties and the restrictions on their dissolution. 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 party codes of conduct.

VIII. FREEDOM OF ASSOCIATION FOR POLITICAL PARTIES

1. THE REGULATION OF POLITICAL PARTIES

a) Principal Definition of Political Parties

26. For the purposes of these Guidelines, a political party is 'a free association of persons, one of the aims of which is to express the political will of citizens including through participation in the management of public affairs and the presentation of candidates to free and democratic elections.' This definition of parties includes associations at any level¹⁴ that function in order to present candidates for elections or exercise political authority through election to governmental institutions.

27. 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 general associations, at a minimum they still retain the basic rights provided to other associations.

b) Legal Framework

28. Legal regulations on political parties vary substantially among OSCE states and countries members of the Venice Commission. However, the role and function of political parties in a democratic system should ideally be defined in the highest legal order of the state 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 undertake to provide specific legislation dealing with the proper regulation and protection of political parties. Legal regulations that affect basic rights of political parties should be addressed by parliamentary legislation and not by regulations issued by an administrative authority.

29. A specific law for political parties is not a requirement for a functioning democracy. In fact, a report compiled by the Council of Europe's Venice Commission on different regulatory practices of OSCE 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.¹⁵ 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 ensuring the full protection of rights relevant to their proper functioning. While a specific law for political parties is not required, political parties must at a minimum retain the same basic rights afforded other associations as well as the rights to nominate candidates and participate in elections.

30. 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 through their ratification or adoption of international treaties.¹⁶

31. A set of identified universal and regional legal instruments form the basis for assessment of 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 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 states rule in ensuring gender equality with regards to political parties. Further, the rights and protections articulated in these legally binding documents are reiterated in International Customary Law through the Universal Declaration of Human Rights (UDHR). In addition, there are a number of political commitments persuasive upon OSCE states which are relevant to a full understanding of these issues. Such instruments include, most notably, the Document of the Copenhagen

Meeting of the Conference on the Human Dimension of the CSCE (Copenhagen Document).¹⁷ The Council of Europe (through both the Committee of Ministers and the Parliamentary Assembly), the European Commission on Democracy through Law (Venice Commission) and other bodies of the Council of Europe⁴ have also published a number of guiding documents which can provide an understanding of good practice with regards to legislation concerning political parties. A recent addition to this body of instruments is the United Nations Convention Against Corruption (UNCAC) and the 1999 Council of Europe Criminal Law Convention on Corruption⁵.

32. Relevant excerpts from the above documents, as well as selected other universal and regional instruments applicable to the discussion of political parties' role and function in democratic societies, can be found in Annex A to this document. Annex B further provides an illustrative list of relevant European Court of Human Rights case decisions, while Annex C provides a list of Council of Europe documents as referenced above.

2. RELEVANT RIGHTS AND LEGAL STATUS

33. The rights to free association and free expression and opinion are fundamental to the proper functioning of a democratic society. Political parties, as a collective instrument for political expression, must be able to fully enjoy such rights.

34. The right of political parties to free association should be accorded protection in a state's constitution or by parliamentary act. This protection should include both a statement of the right as well as the obligation for its defense as a fundamental precursor to the proper functioning of democracy.

35. The right of free association has been expressly extended to political parties by the European Court of Human Rights¹⁸. Article 11 of the European Convention on Human Rights (mirrored by 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 which are "prescribed by law and are necessary in a democratic society."

36. The case law of the European Court of Human Rights has further established the relationship between freedom of association and that of free expression and opinion in a number of judgments (*see Refah Partisi (The Welfare Party) and Others v. Turkey, United Communist Party of Turkey and Others v. Turkey*) in which it states 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."

⁴ See also GRECO. The Group of States against Corruption (GRECO) of the Council of Europe is devoting its Third Evaluation Round (which started in 2007) i.a. to monitoring the implementation of the rules on transparency, supervision and sanctions contained in *Recommendation Rec(2003)4 on Common Rules against Corruption in the Funding of Political Parties and Electoral Campaigns*. The individual country reports published on GRECO's website (www.coe.int/greco) contain recommendations for improvements and they are thus a valuable source of information for the reader on best practices and common insufficiencies. A partial horizontal overview is available in the study "Political Financing: GRECO's first 22 evaluations", by Mr Yves-Marie Doublet (France). Reports and information on all 47 Council of Europe member states and the United States of America will be available once the Third Evaluation Round is complete (end 2011).

⁵ Signed in Strasbourg on 27 January 1999, entered into force on 1 December 2009, ETS N° 173.

37. Freedom of expression and opinion (Article 10 of the ECHR and Article 19 of the ICCPR) is partially dependent upon free association. As such, freedom of association must also be guaranteed as a tool to ensure all citizens are able to fully enjoy their rights of expression and opinion, whether practiced collectively or individually.

38. 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 and regional instruments.

39. The regulatory framework should clearly define the legal status of political parties and grant them legal status as a unique form of association.

40. Parties should be given legal standing to present suits at law in cases alleging a violation of protected rights at any level of party formation. For instance, in cases of violations against the rights of a local level party branch, it may be allowable for the national level party to initiate legal proceedings in the name of the party as a whole.

41. As legal entities, with a set of specific rights and obligations, party members should also have recourse within the civil law system for abuse of the parties contractual obligations to members (as such exist), but only after exhausting internal dispute resolution mechanisms. Such recourse may be in addition to the development of internal party structures for adjudication of intra-party disputes. However, as private associations (although they play an important role in public life) legal regulation of intra-party disputes must not infringe upon the free functioning of political parties in regards to their decision making procedures or policies.

3. THE IMPORTANCE OF POLITICAL PARTIES AS UNIQUE ASSOCIATIONS

42. Parties have developed as the main vehicle for political participation and contestation by individuals, and have been recognized by the European Court of Human Rights as vital to the functioning of democracy.¹⁹ The Parliamentary Assembly of the Council of Europe has further 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...”²⁰ As required by the Copenhagen Document, paragraph 3, political pluralism, as fostered by competition and opposition parties, is critical to the proper functioning of democracy.

4. GENERAL PRINCIPLES

a) Presumption in Favor of Political Party Formation and Non-dissolution

43. As basic and fundamental rights, freedom of association and the inter-dependent right of freedom of expression should, insofar as possible, be enjoyed free from regulation. Any activities regarding association with and formation of political parties which are not expressly forbidden by law should therefore be considered permissible. The law should not forbid a political party from advocating a change to the constitutional order of the state.²¹ As protected in paragraph 7.6 of the Copenhagen Document, the right to establish and participate in political parties should be available to all individuals free from requirements or undue regulation. States should enact and implement legislation respecting the general presumption in favor of political party formation, functioning, and protection from dissolution. In states which choose not to enact specific legislation regarding political parties, it should be ensured that such rights are adequately protected in regulations applicable to general associations.

44. As an integral vehicle for political activity and expression, the formation and functioning of political parties should not be limited, nor dissolution allowed, except in extreme cases as prescribed by law and necessary in a democratic society. Such limits should be interpreted

narrowly by domestic courts or authorities, and the state should put in place adequate measures to ensure such rights can be enjoyed in practice.

b) State's Duty to Protect Free Association for Political Parties

45. As determined by Article 11 of the ECHR (and Article 22 of the ICCPR), OSCE states have a duty to protect the right of individuals to associate with, and freely form, political parties. The right to form a political organization is also specifically granted under The Copenhagen Document paragraph 7.6.²².

46. The state's duty to protect free association for political parties extends to cases where a party espouses ideas which are unpopular. Further, paragraph 7.6 of the Copenhagen Document commits states to ensure that all parties, including those which present unpopular ideas, are able to compete with one another on an equal basis in law. As such, states may not deny such parties an equal opportunity to compete in elections or receive legally prescribed funding.²³.

c) Commitment to Non-Violence

47. Parties in democratic systems must reject the use of violence as a political tool and should not advocate or resort to violence, maintain their own militias or use hate speech as a political tool. Parties should not seek to disrupt meetings of rival parties, nor should they hinder the free speech rights of those with opposing views. Parties which make a commitment to non-violence in politics have a right to expect the same from others, and to expect that state authorities will protect them if this commitment is not respected. In addition, parties have the right to expect that their supporters will be able to assemble freely, that they will be able to communicate party views in non-violent ways, and that these opinions will not be summarily blocked from receiving proportionate media coverage, especially by the state-run media. The state must ensure there is adequate protection against violence for candidates and supporters of political parties.

48. Freedom of association should be protected even with regards to the relationships between individuals and associations. In a democracy, the right to counter-demonstrate cannot extend to inhibiting the exercise of the right of association.²⁴ As stated by the European Court of Human Rights in the case of *Ouranio Toxo et autres c. Grèce*, 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

49. Any restrictions on free association must have their basis in law of the state constitution or parliamentary act, rather than subordinate regulations, and must in turn conform to relevant international instruments. Such restrictions must be clear, easy to understand, and uniformly applicable to ensure that all individuals and parties are able to understand the consequences of breaching them. Restrictions must be necessary in a democratic society, and full protection of rights must be assumed in all cases lacking specific restriction. To ensure restrictions are not unduly applied, legislation must be carefully constructed to be neither too detailed nor too vague.

e) Proportionality

50. Any limitations on political parties which restrict their right to free association must be constructed to meet the specific aim pursued by authorities. Further, this aim must be objective and necessary in a democratic society. The state has the burden of establishing that limitations promote a general public interest unable to be fulfilled absent the limitation. Regulation of political parties should be implemented with restraint, acknowledging that the allowable limitations to the right of free association for political parties have been narrowly interpreted by the European Court of Human Rights.

51. Any limitation on the formation or regulation of the activities of political parties must be proportionate in nature. Dissolution or refusal of registration should only be applied if no less restrictive means of regulation can be found. Dissolution is the most severe sanction available and should not be considered proportionate except in cases of the most significant violations. In the Parliamentary Assembly of the Council of Europe (PACE) Resolution 1308 (2002), 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”.

52. Paragraph 24 of the OSCE Copenhagen Document states, regarding proportionality:

“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 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.”

Proportionality should be considered on the basis of a number of factors²⁵, including:

- The nature of the right in question
- The purpose of the proposed restriction
- The nature and extent 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 fulfillment of the stated purpose in light of the facts.

f) Non-discrimination

53. Freedom of association and freedom of expression, including in the formation and functioning of political parties, are individual rights that must be respected without discrimination. 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 a number of other universal and regional instruments such as CEDAW.²⁶ 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 which 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.”

54. Article 7 of the Council of Europe Framework Convention on National Minorities 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.

55. Women are likewise guaranteed equal protection of all rights by a number of international instruments. Article 3 of the United Nations Convention on the Elimination of All Forms of Discrimination against Women (CEDAW) requires that states take “all appropriate measures, including legislation, to ensure the full development and advancement of women, for the purpose of guaranteeing them the exercise and enjoyment of human rights and fundamental freedoms on a basis of equality with men.” Further, Article 4 of CEDAW makes clear that special measures taken by states to ensure the de facto equality of women “shall not be considered discrimination...but shall in no way entail as a consequence the maintenance of unequal or separate standards.” The Committee of Ministers of the Council of Europe, in Recommendation 2003(3), also calls upon member states to “support, by all appropriate measures, programmes aimed at stimulating a gender balance in political life and public decision making initiated by women’s organisations and all organisations working for gender equality.” The principle of equal participation of women and men in political life was reaffirmed by the Council of Europe’s Committee of Ministers in its Declaration “Making Gender Equality a Reality” (CM(2009)68), where members states are urged to “enable positive action or special measures to be adopted in order to achieve balanced participation, including representation, of women and men in decision-making in all sectors of society, in particular in the labour market and in economic life as well as in political and public decision-making.” Even more recently, in Recommendation 1899(2010), entitled “Increasing women’s representation in politics through the electoral system”, the Committee of Ministers of the Council of Europe encourages the member states to increase women’s representation by introducing quotas.

56. Article 26 of the ICCPR has been interpreted to include a requirement for non-discrimination on the basis of sexual orientation on the grounds of ‘sex’.²⁷ 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 is also a category protected by the principle of non-discrimination.

57. Non-discrimination includes a prohibition of both direct and indirect discrimination, requiring that all persons receive equal protection of the law (ICCPR Article 26). While direct discrimination refers to acts or regulations that clearly foster inequality, indirect discrimination includes acts or laws that, while not discriminatory on their face, lead 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 must ensure equal treatment and be based upon the same laws and regulations equally applied in all cases.

58. Within the political realm requirements for equality may be interpreted to be absolute (equal) or made on a proportional or “equitable” basis (for instance determined by the number of seats a party holds in parliament). This secondary definition should not be considered discriminatory as long as it is based on objective and reasonable grounds.

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

60. Similarly, state authorities should treat political parties on an equal basis and as such, remain neutral with regards to the establishment, registering (when applicable), and activities of political parties. Authorities should refrain from any measures which could privilege some political parties and discriminate against others. All political parties should be given opportunities to participate in elections free from distinction or unequal treatment by authorities.

g) Internal Party Functions

61. Although not required by law, it is recognised as good practice that the internal functions of political parties respect the principles of non-discrimination and equality.²⁸ Such principles may include measures to ensure party qualifications for membership, candidacy, and party activities that provide for the equal participation of women and minorities. While not legally mandated, such steps are seen as good practice given that both women and minorities have been subject to historical inequalities in the OSCE region and globally, which requires redress.

62. The internal functions 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 to by the parties themselves.

5. REGULATION OF POLITICAL PARTIES

a) Legitimate Means of Regulating Political Parties

63. Any limitations on the exercise of free association and expression through the activities and formation of political parties must be consistent with relevant provisions in the international and regional instruments, including the ICCPR and ECHR. The set of legitimate grounds under which freedom of association may be limited are 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.”²⁹

64. Further, the European Court of Human Rights 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. Given the requirements of proportionality, it must further be proved that any limitation is the least restrictive way of achieving a legitimate regulatory aim. Some OSCE 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.

b) Political Party Registration

65. There are states in the OSCE 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.³⁰ However, the European Court of Human Rights has consistently ruled that requirements for registration do not, in themselves, represent a violation of the right to free association. As political parties may obtain certain legal privileges, based on their legal status, that are not available to other associations, it is reasonable to require the registration of political parties with a state authority.

66. While registration as a political party is required, substantive registration requirements and procedural steps for registration should be reasonable. Where such registration requirements exist, they should be carefully drafted to achieve legitimate aims necessary in a democratic society.

67. A case study of different registration requirements of OSCE participating states previously conducted by the Venice Commission illustrates the points above, indicating that:

“There are no registration requirements in Germany, Greece or Switzerland... In Denmark and The Netherlands, political parties are not obliged to register, but certain formalities are required in order for them to participate in elections. In Ireland, registration simply enables a party to post its name alongside those of its candidates, while in Sweden it protects the party's exclusive right to use the name.

In some states where political parties are required to register this is merely a formality, as in Austria, Spain, Uruguay or Norway, where the only condition is to produce 5000 signatures. In other countries, however, the authorities make sure that the party fulfils the material requisites applicable to political party activities (this is the case, for example, in the Czech Republic, Latvia, Poland and Russia).”³¹

68. Grounds for rejection of party registration must be clearly stated in law and based on objective criteria. Where parties can be denied registration for administrative reasons, such 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 reasons. 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 be able to maintain their status as political parties and given a reasonable opportunity to supplement their registration documents.

69. Deadlines for deciding registration applications should be reasonably short to ensure realisation of the right of individuals to associate. Expedious decisions on registration applications are particularly important for new parties seeking to present candidates in elections. Deadlines which are overly long constitute unreasonable barriers to party registration and participation.

70. It is reasonable that legislation regarding political party registration require that the state be provided with basic information regarding the political party. For example, such regulations may require a statement of the party's permanent address and the registration of party names and symbols to limit possible confusion on the part of voters and citizens. Some states prohibit the use of names and symbols associated with national or religious institutions. These types of

registration requirements are reasonable. Regulation of party names and symbols to avoid confusion is also important for the state to be able to ensure a duly informed electorate able to exercise their free choice.

71. In many states the registration of political parties presents a number of advantages to parties. For example, registration may be required to receive state funding, ensure provision of public airtime, or for access to the ballot during elections. Registration may also be required for the acquisition of legal identity on the part of a party, which may be a requirement in some states to open bank accounts or hold property. An additional advantage of such registration may be the protection provided for party names and logos. Advantages given to registered parties are not discriminatory as long as there is equal opportunity to register as a political party.

72. Some states require political parties to publicly file a party constitution upon registration. While such a requirement is not inherently illegitimate, states must ensure that this requirement is not used to unfairly disadvantage or discriminate against any political party. Such a requirement cannot be used to discriminate against the formation of parties which espouse unpopular ideas. In *Refah Partisi (The Welfare Party) and Others v. Turkey*, the European Court of Human Rights found Article 10 of the ECHR protects “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.

73. It is a legitimate requirement that political parties provide basic information with their application for registration defining their organizational structure. This is necessary given the need for responsible persons to be identified within the party for the receipt of communications from the state and for the operational oversight of certain activities such as elections.

c) Registration Fees

74. The payment of reasonable registration fees for the establishment of a political party is an acceptable requirement. However, registration fees should not be enacted 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.

75. Registration fees should never be of such an amount as to prevent the registration of legitimate parties. Registration fees which are excessive may be deemed discriminatory as they limit the right of citizens without adequate resources to associate and stand for election as protected under human rights instruments. As with other regulations on political parties, registration fees must be applied objectively to all parties. States should also provide for non-monetary methods for registration, such as expression of minimum support through the collection of signatures. Alternative non-monetary methods should be available as registration should be determined based on a minimum level of support as opposed to financial status.

d) Minimum Support

76. Many OSCE states require proof of minimum levels of support, on the basis of the collection of signatures, prior to registering as a political party. Minimum requirements vary greatly among states, but are usually determined as a percentage of the population.³² Although limitations based on minimum support established through the collection of signatures are legitimate, the state must ensure they are not overly burdensome as to restrict the political activities of small parties or to discriminate against parties representing minorities. Given

variances in the size and nature of states throughout the OSCE region, it is generally best that the minimum number to establish support be determined, at least at the local and regional level, not as an absolute number but rather a reasonable percentage of the total voting population within a particular constituency. Some states provide a lower numerical requirement for a political party formed by a parliamentarian, as their obtainment of elected office may serve as an inference of support. Minimum support for a party may be established either through active party membership or through an expression of support such as the collection of signatures. Legislation should clearly state the means by which support must be evidenced.

77. Where the collection of signatures is required to illustrate a minimum level of citizen support, parties must be allowed clear deadlines and a reasonable amount of time for the collection of such signatures, as well as an opportunity to submit additional signatures if necessary. While lists of signatures can be checked for verification purposes, this practice can be abused and as such should be carefully regulated, including concerning the publication of lists and who has standing to present challenges to them. If verification is deemed necessary, the law should clearly state the process for such verification and ensure it is fairly and equally applied to all parties. In order to enhance pluralism and freedom of association, legislation should not limit a citizen to signing a supporting list of only one party. Such a limitation is too easily abused and can lead to the disqualification of parties who in good faith believed they had fulfilled the requirements for registration.

78. 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 required members 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 the equality and fairness in application.

79. The Council of Europe's Venice Commission has emphasized the need for striking a balance in the regulation of the collection and verification of signatures to establish a sufficient level of minimum support.³³ The privacy of supporters should be taken into consideration and balanced against the need to verify the accuracy of the support signatures.

e) Geographic Location

80. Provisions regarding the limitation of political parties which represent a geographic area should generally be removed from relevant legislation. Requirements barring contestation for parties with only regional support potentially discriminate against parties that enjoy a strong public following but whose support is limited to a particular area of the country. Such provisions may also have discriminatory adverse effects on small parties and parties representing national minorities.

81. 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. As such, geographic considerations should not be a requirement for political party formation. Nor should a political party based on a regional or local level be prohibited.

f) Regulation of Inter-State Parties

82. 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 Copenhagen Document clearly espouses a requirement that associations, including political parties, be able to communicate freely and cooperate with similar associations at the international level, including as appropriate through the provision of financial assistance.³⁴ This open communication and

relationship between parties at an inter-state level is further supported by the Council of Europe – Venice Commission, which states 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.”³⁵

83. Therefore, legislation which precludes free interaction between international branches of political parties is contrary to good practice and obligations to protect the right to free association. Therefore, political parties should be free to enjoy communication with others who share their ideals at the national and international level.

g) Regulatory Measures to Ensure Non-Discrimination

84. Legislation can regulate, through the establishment of enticements, political parties to ensure the full participation and representation of women and minorities in the political process. For instance, a state may allow lower levels of citizen support for parties of national minorities. Such measures are not to be considered discriminatory as they are compatible with international and regional instruments allowing for special measures to be taken to ensure de facto equality and support the full participation of women and minorities in public life.³⁶

85. A number of countries have introduced electoral gender quotas in recent years, and in many more countries political parties apply voluntary gender quotas. For instance, as noted in the Venice Commission Report on the Impact of Electoral Systems on Women’s Representation in Politics, CDL-AD(2009)029, ten Council of Europe member states (that are also participating States of the OSCE) have introduced mandatory, legal quotas for national parliaments (Belgium, Bosnia and Herzegovina, France, Armenia, the Former Yugoslav Republic of Macedonia, Serbia, Portugal, Slovenia, Spain and Albania). These quotas differ considerably with regard to the minimum percentage of each sex required among the candidatures, ranging from 15% to 50% minimum required of both sexes. A few countries also provide for ranking order on the list. For instance, in Serbia every fourth position must be filled with the under-represented sex; in Bosnia and Herzegovina there must be one candidate of the under-represented sex among the first two positions on the list, two candidates among the first five, and three among the first eight; and in Belgium, the top two positions must not be filled by candidates of the same sex. In about 30 Council of Europe member states, one or more political parties have adopted voluntary quotas in order to guarantee the nomination of a certain proportion of women⁶.

⁶ See also document CDL-AD (2009)029 Report on the Impact of Electoral Systems on Women’s Representation in Politics adopted by the Council for Democratic Elections at its 28th meeting (Venice, 14 March 2009) and the Venice Commission at its 79th plenary session (Venice, 12-13 June 2009), par 89.

h) Requirements for Retention of Party Registration

86. Once party registration is approved, requirements for retaining registration should be minimal. However, requirements for continuing to receive certain benefits from the state, such as public financing or ballot access in elections, may be higher than the requirements for maintaining registration status as a political party. Loss of registration status, as opposed to the loss of state benefits, due to failure to submit financial forms or other required reports or forms should be limited to cases of serious legal violations and according to clearly defined procedures. Where legislation provides for the loss of registration status, it should also state clear procedures on the ability and requirements for parties to re-register.

87. 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 official contact, only through a process of notification rather than requiring re-registration.

88. 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, then it should be able to continue party activities outside of elections. At a very minimum, rather than losing their rights as a formal association, parties which did not receive adequate support in an election should be able to continue their association under the laws governing general associations. Such parties may validly be excluded from benefits associated with being an active political party (i.e. state subsidies) but should not lose the basic rights (i.e. freedom of assembly and association) awarded to all public associations.

6. PROHIBITION OR DISSOLUTION OF POLITICAL PARTIES

a) Legality

89. Prohibition or dissolution of a political party is a more serious interference than de-registration (loss of registered status). Prohibition or dissolution is a complete ban on the party's existence. In the Parliamentary Assembly of the Council of Europe (PACE) Resolution 1308(2002) on Restrictions on political parties in the Council of Europe's member states, the PACE stated in paragraph 11 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, opportunity for a state to dissolve or prohibit a political party from forming should be exceptionally narrowly tailored and applied only in extreme cases. Such a high level of protection has been deemed appropriate by the European Court of Human Rights given political parties' fundamental role in the democratic process.³⁷ Such protections are granted in the light of parties' critical role in a democratic society.

90. Universal and regional human rights instruments recognize valid reasons for restrictions to be placed on the freedom of association, including those of public order, public safety, protection of health and morals³⁸ of the society, national security (including measures intended to counter terrorism and extremism)³⁹ and the protection of the rights and freedoms of others. In all cases, such measures must be objective and necessary in a democratic society. However, the prohibition or dissolution of political parties is the most severe of available restrictions on political parties and is only applicable when all less restrictive measures have been deemed inadequate.

b) Proportionality

91. Strict considerations of proportionality must be applied in determining if 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”.⁴⁰ Thus, the proportionality principle applies and it must be shown by the state that no lesser restrictive means would suffice.

c) Restrictions on Prohibition or Dissolution

92. 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. Lesser sanctions must be applied in such cases. Nor should a political party be prohibited or dissolved because its ideas are unfavorable, unpopular, or offensive. If the party concerned does not use violence and does not threaten civil peace nor the democratic constitutional order of the country, then prohibition or dissolution are not justified⁷.

93. The fact alone that a party advocates a peaceful change of the constitutional order is not sufficient to justify its prohibition or dissolution. 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.

94. Dissolution of political parties based on the activities of party members as individuals is incompatible with the protections awarded to parties as associations. This incompatibility extends to the individual actions of party leadership, except cases in which they can be proven to act as a representative of the party as a whole. For dissolution to be applicable it must be shown that it was the party’s statutory body (not individual members) who undertook objectives and activities requiring such dissolution.⁴¹ A party cannot be held responsible for the action taken by its members if such action is contrary to the party constitution or party activities.⁴²

95. Actions undertaken by particular individuals within a party membership, when not officially representing the party, should be attributed to the individual only. In such cases, appropriate civil and criminal sanctions may be enacted against the individual.

96. The Venice Commission has found, upon completing a survey of national legislation relating to the regulation of political parties, that where allowed at all, prohibition and dissolution are applicable only in extreme cases including the following : threat to the existence and/or sovereignty of the state, threat to the basic democratic order, violence which threatens the territorial integrity of the state, inciting of ethnic, social, or religious hatred, and the use or threat of violence.⁴³ Even where such reasons for prohibition or dissolution are listed in legislation it is important to note that prohibition must meet the strict standards for legality and proportionality discussed above in order to be justified.

⁷ See *Batasuna v. Spain* (ECtHR, judgment of 30-06-2009).

IX. INTERNAL FUNCTIONING OF POLITICAL PARTIES

1. INTERNAL PARTY DEMOCRACY

97. Due to the important role that parties play as actors in a democracy, some OSCE states have legislated requirements that certain internal party functions be democratic in nature. The basis and applicability of such legislation must be carefully considered. Regulation of internal party functions, where applied, must be narrowly constructed as to not unduly interfere with the right of parties as free associations to manage their own internal affairs.

98. However, as parties contribute to the expression of political opinion and are instruments for the presentation of candidates in elections, some regulation of internal party activities can be considered necessary to ensure the proper functioning of a democratic society.⁴⁴ The most commonly accepted regulations are limited to requirements for parties to be transparent concerning their decision making and to seek input from membership when determining party constitutions and candidates.

a) Gender Equality

99. The small number of women in politics remains a critical issue which undermines the full functioning of democratic processes. In many states women still represent a single-digit minority in parliament and the European average is only 18%.⁴⁵ Specific measures to ensure women have an adequate opportunity to compete in elections (see section III) and be represented in elected bodies should be considered for internal party rules. This would be consistent with Recommendation 1899(2010), entitled "Increasing women's representation in politics through the electoral system", in which the Committee of Ministers of the Council of Europe encourages the member states to increase women's representation by introducing quotas.

100. The creation of a specific 'women's section' or 'gender division' of a party is sometimes used as a tool to promote greater gender equality. Such sections or divisions can make great strides in ensuring women's participation by allowing women an opportunity to discuss issues of common concern as well as a forum for expertise building activities. While the OSCE/ODIHR has recognized that these bodies can at times work against the interest of women by marginalizing or sidelining women within the party, their creation should generally be considered a positive measure to ensure women's equal participation and gender knowledge.⁴⁶

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

102. According to the Venice Commission and the Committee of Ministers of the Council of Europe, electoral gender quotas can be considered an appropriate and legitimate measure to increase women's parliamentary representation. In the Committee of Minister's 2009 Declaration "Making Gender Equality a Reality", member states are urged to enable positive action or special measures to be adopted in order to achieve balanced representation in political and public decision-making. Similarly, in accordance with OSCE Decision No. 7/09 on Women's Participation in Political and Public Life, the Ministerial Council calls on the

participating States to “consider possible legislative measures, which would facilitate a more balanced participation of women and men in political and public life and especially in decision-making”, and to “encourage all political actors to promote equal participation of women and men in political parties, with a view to achieving better gender-balance representation in elected public offices at all levels of decision-making.” All such steps are considered good practice.

103. Where applicable, special measures may also include training and capacity building programs developed for female candidates prior to their selection to ensure they have an equal opportunity to serve as candidates and to be elected. These training programs may include a system of mentoring for inexperienced new members (including women and minorities) as well as gender-sensitive training courses for new members to promote non-discriminatory working relations and respect for diversity in work and management style.⁴⁷ Similar programs and specific measures to ensure minority participation should also be enacted. Legislation may require such trainings as a measure to ensure *de facto* equality for women and to minimize the effect of historical inequalities in the political life.⁴⁸

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

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

b) Role of Minorities

106. In accordance with Article 4(2) and Article 15 of the Framework Convention on the Protection of National Minorities, legislation may require state authorities to fulfill an obligation to allow for the full and equal participation of minorities in political life. As a good practice, political parties should voluntarily endeavor to ensure the presentation of issues relevant to national minorities in party programs.

107. The adoption of specific initiatives aimed at the promotion of minority participation is crucial to ensuring that requirements for equal representation of minorities are more than theoretical. Internal party measures designed to foster the representation of minorities may serve as the basis for receipt of particular legislative incentives, which would be consistent with the Council of Europe Framework Convention for the Protection of National Minorities.

108. 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 programs focused on national minorities, and provisions requiring minority membership on internal party committees and candidates' lists. All such steps are considered good practice⁸.

⁸ See also the following documents of the Venice Commission: Participation of minorities in public life (“Science and technique of democracy” series, N° 45); Dual voting for persons belonging to national minorities (cdl-AD (2008) 013) and Preferential treatment of kin-minorities by their kin-state (CDL-INF (2001) 019).

X. PARTY STRUCTURE AND ACTIVITIES

1. INTERNAL PARTY RULES

109. Legislation regarding political parties does not necessarily have to include the requirement for creation or publication of party constitutions. However, such constitutions are legally required in some OSCE states and can be an important step in ensuring a party's commitment to equality and non-discrimination. Party constitutions in some OSCE states include voluntary quotas to ensure equal opportunity for women. The adoption of voluntary quotas is an exemplary effort on the part of such parties and should be viewed positively.

110. Party constitutions can also be important to ensure party membership is informed of their rights and responsibilities. As such, party constitutions should be approved through a participatory process, such as party congresses, rather than by a party leader individually, and made widely available to party membership.

111. Party constitutions generally define the rights and duties of political party members, party organization, and procedures for the making of decisions. Party constitutions may also (where applicable) define the responsibilities of parties at the local, regional, and national levels, as well as the relationship between these different bodies.

112. Party constitutions ideally should provide members who believe that the party's constitution has been violated with internal avenues of redress. When the law allows access to civil courts, this should only be allowed after internal avenues of redress have been exhausted.

2. CHOOSING PARTY LEADERSHIP AND CANDIDATES

113. Parties must have the ability to determine party officers and candidates, free from government interference. Recognizing that candidate selection and determination of ranking order on electoral lists is often dominated by closed entities and old networks of established politicians, clear and transparent criteria for candidate selection is needed, in order for new members (including women, and minorities) to get access to decision-making positions. Gender-balanced composition of selecting bodies should also be commended.

3. REGULATION OF THE RIGHT TO ASSOCIATE WITH POLITICAL PARTIES

a) Voluntary Nature of Association

114. 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 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 their individual right to expression and opinion. Legislation should explicitly mandate that no person may be obliged against their free choice to associate with a political party.

115. 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, splinters, or the expression of new platforms, party members should be allowed freedom to continue or cease their membership activity as they see fit.

116. Individuals are not guaranteed membership in any association based on a common belief to which they do not subscribe.⁴⁹ It is justifiable for parties to withhold membership from any applicant who rejects the values they uphold, or who acts against the values and ideas of the party. Such restrictions of membership should ideally, however, be carefully constructed as to

not be discriminatory in nature, striking a careful balance between the need for political associations to be based on collective beliefs and principles of non-discrimination. In fact, many parties in the OSCE region have included in their party constitutions notice that membership is open to all persons in agreement with the party's fundamental values irrespective of other conditions.⁵⁰ Such party constitutions are exemplary in ensuring party membership is inclusive and non-discriminatory.

b) Reasonable State Restriction on Free Association for Public Officials

117. Article 11.2 of the ECHR allows restrictions to be placed by states on the free association of three categories of persons: police and armed forces. Further, the European Court of Human Rights has recognized Article 11.2 to justify restrictions on the political activities of such categories of persons to ensure their impartiality and the proper functioning of their non-partisan public offices. 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 fulfill their public functions free from a conflict of interest.

118. Restrictions on the free political association of public officials have been deemed legitimate and necessary in a democratic society as a means of ensuring the rights and freedoms of others, in particular the right to representative governance. In *Ahmed v. United Kingdom*⁵¹ the European Court of Human Rights found that no violation occurred when the United Kingdom restricted certain classes of public office holders from engaging in political activities which may imply partiality. The 1939 Hatch Act 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, however, such restrictions may be considered an undue infringement if they are applied in an overly broad manner, such as to all persons in government service.⁵²

c) Unreasonable State Restrictions on Free Association

119. Membership in multiple political parties at the same time has historically been discouraged. Free association is a fundamental right which should not be limited by requirements to only associate with a single organisation. Laws which limit party membership (rather than candidacy) to only one political party, must show compelling reasons for doing so. Legislation which limits a person to membership in only one political party should be assessed carefully and only maintained if compatible with the ECHR. In particular, in states with sub-national party structures that allow parties to compete at only the regional or local level, the ability to support multiple parties is fundamental to the free expression of a voter's will.

d) Foreign Nationals or Aliens

120. International obligations recognise nationality and citizenship as a reasonable restriction on the rights of political participation (see for example ECHR Article 16). However, human rights instruments applicable in the OSCE region provide foreign nationals and stateless persons with the same general protection of rights as they do citizens. Further, in the particular context of elections, in 1997 the European Convention on the Participation of Foreigners in Public Life at the Local Level⁵³ entered into force, and there is a growing trend within many European countries to allow foreign residents to vote and stand in local elections.

XI. PARTIES IN ELECTIONS

1. ROLE OF CANDIDATES AND PARTIES

a) Electoral Systems

121. OSCE states show great variety in the choice of electoral and party systems⁹. Such choices often depend on the historical and cultural development of specific states. Any guidelines for political party legislation must be cognizant of this variety and understand that it precludes any blanket solutions or regulations to be enacted.

122. A country's choice of electoral system should be respected as long as it upholds a minimum standard for democratic elections. As countries enjoy wide latitude in the development of an electoral system, guidelines for legislation regarding political parties must recognize the impact that different electoral systems have on political parties. The variety of ways in which political parties are affected by different electoral systems requires careful consideration of a state's political development and system of governance when developing legislation relating to political parties.

b) Political Pluralism

123. Political pluralism is critical to ensure the effectiveness of democratic governance and provide citizens with a real say in their choice of governance. Legislation regarding political parties should promote pluralism as a means of guaranteeing the ability for an expression of opposition viewpoints and democratic transitions of power.

124. Generally, measures to limit the number of political parties able to contest in an election are not considered as incompatible and could be seen as reasonable for administration of elections and to prevent fragmentation. 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 functioning of political pluralism in society, they can easily be manipulated to silence parties or candidates who express opinions unpopular to those in power.

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

c) Partisan Candidates

126. 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 the party as a representative of party ideals. However, candidacy is an expression of an individual's right to be elected and as such the legal regulations on candidates must ensure a citizen's individual right to be a candidate in elections.

127. The individual right to stand for elections may be affected by three sets of rules, those imposed by the state for registration as a candidate, those imposed internally by the party itself for selecting candidates and admissible restrictions such as age, residency or citizenship requirements. While the first set of rules must not unduly limit the right of free expression and association for parties, it is good practice (although not required by law) that the second set also respect the need to ensure 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

⁹ OSCE Ministerial Decision No 5/03 on Elections, in which OSCE participating States acknowledge that "democratic elections can be conducted under a variety of different electoral systems and laws"

state except for ensuring that selection is consistent with the political party's constitution.

128. Political parties during elections 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.

129. In closed-list electoral systems, parties are able to assign or define the order of their candidates on an electoral list. This is acceptable, but parties should on the contrary be prohibited from changing the order of candidates within an electoral list after voting has commenced.

d) Non-partisan (Independent) Candidates

130. The right of individual candidates to run for office free from political party association is specifically protected by the Copenhagen Document which guarantees the "right of citizens to seek political or public office, individually or as representatives of political parties or organizations, without discrimination."²⁴ While parties are seen as central actors in elections, their role cannot be at the exclusion or undermining of an individual's right to stand for office. As such, current legislation in the OSCE region which bans the candidacy of independent candidates 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. Regulations for parties regarding ballot access, fees, and candidacy restrictions should be the same for independent candidates. These ballot access rules and fees however, cannot be at a level which is unachievable for independent candidates compared with parties. Where registered political parties are provided state support, such as the provision of public airtime, there should be a system of support for independent candidates to ensure they are awarded equitable treatment in the allocation of state resources.

e) Gender Equality in the Selection of Candidates

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

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

133. Quotas are one such measure that may be adopted by states. In Recommendation 1899(2010), entitled "Increasing women's representation in politics through the electoral system", the Parliamentary Assembly encourages the member states of the Council of Europe to increase women's representation by introducing quotas. Countries with a proportional representation list system are encouraged to (consider) introduce a mandatory quota which provides not only for a high proportion of female candidates (ideally at least 40%), but also for a strict rank order rule, for example, a "zipper" system of alternating male/female candidates or that every group of three candidates on the list (1-3, 4-6, 7-9, et

sec) consists of at least one candidate of the less represented sex. With rank order rules, such as these, women candidates do not risk being placed too low on the list to have a real chance to be elected. Countries with majority or plurality systems are encouraged to introduce the principle of each party choosing a candidate amongst at least one female and one male nominee in each party district or find other ways of ensuring increased representation of women in politics.

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

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

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

f) Minority Candidates

137. The ability for national minorities to be elected is likewise an important area for possible regulation. In accordance with the Framework Convention on National Minorities, states should ensure the free exercise of all political rights to national minorities. Within the electoral process measures should therefore be taken to ensure national minorities have an equal opportunity to be elected and represented in parliament.⁵⁵

138. Measures to aid in minority representation often include practices such as the reservation of a set number of parliamentary seats for specific minorities, or the practice of waiving the minimum votes threshold for representation in parliament in the cases of parties representing national minorities. Where applicable, such measures should be adopted into legislation by states to help ensure minorities are able to be elected on an equal basis with other candidates.

g) Regulations on Candidacy

139. There are instances where candidates elected from a party list renounce their party membership or change parties during their term in office. Some states have legislation which terminates the mandate of an elected office holder due to a change in party affiliation. Such regulation is overly restrictive and potentially subject to abuse by political party leaders. Elected officials are elected by votes cast by citizens. Political party legislation should not transfer control of the voter bestowed mandate to a political party. The Venice Commission of the Council of Europe has stated concerning the control of a mandate:

“In European countries, on the other side, the theory of the free mandate of representatives is generally and widely accepted. According to this theory, members of Parliament are regarded as representatives of the whole people and are responsible only to their conscience. As a consequence, they should abide only by the rules and no other orders or instructions can be binding on them. Several constitutions even prohibit the possibility of giving instructions to deputies (Belgium, France, Germany, Italy, Switzerland). Outside Europe, the imperative mandate exists in countries like China, India, Nigeria, South Africa, Cuba, Vietnam or North Korea.”⁵⁶

140. Some parties have adopted voluntary measures to respond to changes in political affiliation such as multi-party codes of conduct which obligate parties to refuse membership to elected officials attempting to change affiliation. It is the right of a political party to refuse membership in the case of a person it believes does not fundamentally uphold the party's values, as it is the right of other parties to accept the new membership of elected officials if it is deemed warranted and desired.

141. Electoral legislation may enact 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 non-partisan (independent candidates). However, such thresholds must be enacted at a level low enough to not preclude political plurality or threaten the representativeness of the legislature. 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' in relation to eligibility for a waiver of the threshold.

2. ACCESS TO ELECTIONS

a) Ballot Access for Political Parties

142. States may require parties to meet certain obligations to be placed on a ballot in elections. These requirements may apply to each separate electoral contest and may apply anew to 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), a show of minimum 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.

143. The ability for all parties to access the ballot should be equal and free from discrimination on any grounds. While monetary deposits may be required, monetary deposits which are excessive may be deemed discriminatory as they limit the right of citizens without adequate 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. States are recommended to also provide for non-monetary methods for registration in elections, such as expression of minimum support through the collection of signatures. Alternative non-monetary methods should be available just as registration should be determined based on a minimum level of support as opposed to financial status.

144. When parties are required to show minimum support levels, they should be given adequate time to collect and file signatures. The system for the verification of signatures should be clearly defined in law so as to avoid the possibility of misuse. Particularly, requirements that a citizen only be able to sign for support of one party should be avoided as such a regulation could easily disqualify parties who attempted in good faith to fulfill this requirement.

145. The system for ballot access should not discriminate against new parties. While parties who 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.

146. Individual candidates should have an equal opportunity as those running as a political party candidates to access the ballot. However, legislation commonly allows candidates of parties to be exempt from particular requirements for ballot access which have already been fulfilled by the party. For example, party candidates may be exempt from the collection of signatures to show support if the party has previously collected signatures to gain recognition as a party. In such cases independent candidates may still be required to fulfill the signature support requirement. Such systems are not necessarily discriminatory; however, legislation must clearly outline what exemptions are applicable and ensure that requirements placed upon independent candidates are not more restrictive than those previously fulfilled by the party.

b) Media Access for Political Parties

147. The allocation of free airtime is integral to ensuring all parties, including small parties, are able to present their programs to the electorate at large. While the allocation of free airtime on state-owned media is not legally 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 and consistent with the principle of equal treatment before the law.

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

149. The principle of equal treatment before the law with regard to the media refers not only to the time given to parties and candidates but also to the timing and location of such space. Legislation should set out requirements for equal treatment, ensuring there are no discrepancies between parties through the allotment of prime viewing times to particular parties and late-night or off-peak slots to other parties.

150. While the fulfillment of party registration requirements may be taken into account as a prerequisite for being granted free media access, such a system of allocation cannot be used as a discriminatory way against non-registered (where allowed) or independent candidates. However, it is recognized that specific rules regarding the methods of allocation may intrinsically benefit parties which have undergone a process of registration.

151. Private media cannot always 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 states impose a regulation that if airtime is offered on private media, then it must be offered to all parties at the same monetary rate.

152. 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. As such, it is a good practice to ensure that women and minority candidates, who often receive less funding or support than their male counterparts, are ensured a fair and unbiased share of media coverage.

c) Freedom of Assembly for Political Parties

153. All political parties should be able to fully exercise the right to peaceful assembly, particularly during the election period. Freedom of assembly should only be limited on the basis of legitimate and objective grounds necessary in a democratic society including, public order,

public safety, protection of health and morals, protection of the rights and freedoms of others, and national security. For example, a silence period in the immediate pre-election period (generally 48 hours or less) is an accepted restriction on campaign activities which necessitates a limit on public party assemblies during this time. The *OSCE/ODIHR – Venice Commission Guidelines for Freedom of Peaceful Assembly*⁵⁷ 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.

154. Parties should enjoy a right to organize and participate in public rallies and legitimate campaigning free from undue restriction. As noted in the *OSCE/ODIHR – Venice Commission Guidelines for Freedom of Peaceful Assembly*⁵⁸, this right may extend to access to any place or service intended for public use.

3. PARTIES IN ELECTION ADMINISTRATION

a) Partisan Election Management Bodies

155. There are different models of election management bodies (EMBs) which meet the requirements that such a body be balanced, impartial, and competent. While some election management bodies have no partisan component, other states have adopted the practice of forming election management bodies with some or all members nominated by the major political parties. In such cases, high-level positions within the body must be dispersed among parties to ensure balance.ⁱ

156. 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 and the procedures for political parties to nominate members to EMBs.

b) Parties as Observers

157. Paragraph 8 of the OSCE Copenhagen Document states the importance of both domestic and international observers in elections. As a part of domestic observation, it is particularly important that political parties have the right to have observers present on election day. While it will be inherently easier for parties to exercise this right than independent candidates (given the pre-existence of party membership networks and communication tools), such a right should be explicitly made available to all political contestants equally in legislation. Observers should have a right to see 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 that electoral legislation includes a provision which allows party observers to obtain copies of the voting results at the polling station and all levels of election administration. Such a practice can greatly increase the credibility of the process.

158. All parties should be able to fully exercise their right to have observers present throughout the voting, counting, and certification processes. Legislation must award 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 which can increase the credibility of electoral results.

XII. FUNDING OF POLITICAL PARTIES

1. CAMPAIGN AND POLITICAL FINANCE

a) Definition and Guidelines of Campaign and Political Finance

159. Political parties need appropriate funding to fulfill their core functions, both during and between election periods. The regulation of political party funding is essential to guarantee parties independence from undue influence created by donors and to ensure the opportunity for all parties to compete in accordance with the principle of equal opportunity and to provide for transparency in political finance. Funding of 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.

160. In the development of legislation OSCE states might adopt several important guidelines for political finance systems. These include :

- Restrictions and limits on private contributions
- Balance between private and public funding
- Restrictions on the use of state resources
- Fair criteria for the allocation of public financial support
- Spending limits for campaigns
- Requirements that increase transparency of party funding and credibility of financial reporting
- Independent regulatory mechanisms and appropriate sanctions for legal violations.

161. The funding of political parties refers 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. Both routine party funding and campaign finance must be considered in legislation relevant to political parties to ensure a transparent and fair financing system. Many issues (such as limits on the allowable sources of funding) apply to both types of financing and others (such as the provision of free media time) may apply only during the election period.

162. Many OSCE states provide public support to parties at all times, making 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 guidelines for the appropriate use and allocation of funds for these different reasons. For example, if regulations define general public support which may be used for any party function as separate from money appropriated specifically for campaign purposes, the definition and restriction on what constitutes a 'campaign purpose' must be clearly laid out. Guidance should also be given with regards to how to classify expenses which are necessary for a campaign but still required outside of electoral periods (for instance the rental of party headquarters or employee salaries). If funds are earmarked only for use during the campaign period, the beginning, duration, and end of such a period must be clearly defined in law and reasonable.

2. PRIVATE FUNDING

a) Membership Fees

163. Political parties may require the payment of a membership fee. While such fees should not be of such a high level as to restrict membership unduly, they are a legitimate source of political party funding. Legislation should ensure that membership fees are not used to circumvent contribution limits. This can be accomplished by treating membership fees as contributions.

164. Membership fees are not inherently counter to the principles of free association. Any membership fee should be of a reasonable amount. It should be encouraged that any

membership fee requirement include a waiver provision in case of financial hardship should be used to ensure that political party membership is not unduly limited to the wealthy. This waiver could also be based on a sliding scale to take into consideration the factors of each individual case. At a minimum, where fees are required, the creation of a distinct level of membership for those unwilling or unable to pay a membership fee would allow such persons to still associate with or participate in the party's functions on a limited basis.

165. While parties may enact "taxes" from their sitting parliamentarians, such 'taxes' must be subject to contribution laws to ensure they do not contravene contribution limits. Further, such "funding" can create the impression that elected parliamentarians have "purchased" the mandate from the party or paid for a higher position on the electoral list.

b) Intra-Party Contributions and Income

166. Legislation should generally allow political parties at the national level to provide support for their regional and local offices and vice versa. Such support should be considered an internal party function and generally not be limited through legislation. However, parties can be reasonably expected to 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.

167. Parties that produce an income through the sale of merchandise or party-related materials should be able to utilize these proceeds for their campaigns and operations. While the use of such proceeds must respect disclosure and spending requirements, it should not be otherwise limited by relevant legislation

c) Candidate's Personal Resources

168. Candidates may apply personal resources to their election campaigns. Within a party system, such personal contributions may be added to the party funds allocated to a candidate's campaign.

169. Although a candidate's own contributions are often perceived to be free from the negative impact of possible corruption or undue influence, legislation may limit such contributions as part of the total spending limit during the campaign period and require the disclosure of such contributions. It is also appropriate to require that candidates file a public disclosure of assets and liabilities. However, errors in disclosure reports should not be used as a basis for denial of candidacy.

d) Private Contributions

170. Funding of political parties is a form of political participation and it is appropriate for parties to seek private financial contributions. 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 which are banned by relevant legislation, all individuals should have the right to freely express their support of a political party of their choice through financial and in-kind contributions. However, reasonable limits on the total amount of contributions may be imposed.

171. In practice, parties and candidates may be allowed by legislation to also take a loan to finance (part of) their campaign or activities. It is important that rules on transparency deal consistently with this form of resources. Taking a (bank) loan normally requires that steps be taken by the creditor and debtor well in advance, before the beginning of the campaign. The repayment takes normally some time after the end of the campaign. Thus, there is a risk that loans may not be reflected well enough in the financial reports of parties and candidates. This is all the more important since loans which are granted at particularly advantageous

conditions or even possibly written-off by the creditor should in principle be treated as a form of in-kind or financial contribution, depending on the case and subject to legislation permitting donations and support from commercial entities. It may also happen that a loan is not reimbursed (partly or in whole) by the party or candidate themselves, but by a third person, in which case the loan also becomes a form of contribution.

e) Contribution Limits

172. Contributions from foreign sources are generally prohibited. This is consistent with the Council of Europe's Committee of Ministers Recommendation to member states on common rules against corruption in the funding of political parties and electoral campaigns, (Rec(2003)4), which provides that "States should specifically limit, prohibit or otherwise regulate donations from foreign donors". This restriction, practiced in many OSCE states, is in the interest of avoiding undue influence of foreign interests in domestic political affairs. However, this is an area that should be regulated carefully to avoid 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 on the Fundamental Rights for the European Union, Article 12(2).⁶⁰ Additionally, such a regulation might allow some support from the funds of a foreign chapter of a political party, in line with the intent of paragraphs 10.4 and 26 of the Copenhagen Document, which envision external cooperation and support for individuals, groups and organizations promoting human rights and fundamental freedoms. Dependent on the regulation of national branches of international associations, financial support from such bodies may not necessitate the same level of restriction. However, 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 rights of individuals, groups, and associations to cooperate and share information.

173. Limits have historically also been placed on domestic funding in an attempt to limit the ability of particular groups to gain political influence through monetary advantages. It is central to a system 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 state owned/controlled companies and anonymous donors.

174. Anonymous contributions should be strictly regulated, including a limit on the aggregate amount of all anonymous contributions. Legislation should limit the aggregate maximum amount to a reasonable level designed to ensure anonymous donors cannot wield undue influence free from public scrutiny.

175. Reasonable limitations on private contributions may include the determination of a maximum level that may be contributed by a donor. Such limitations have been shown to be effective in minimizing the possibility of corruption or the purchasing of political influence. Legislation mandating contribution limits should be carefully balanced between ensuring that there is no distortion in the political process in favour of wealthy interests and in encouraging political participation, including through contributing to the parties of their choice. It is best that contribution limits are designed against inflation, for example based on a form of indexation such as minimum salary rather than absolute amounts.

3. PUBLIC FUNDING

a) Importance of Public Funding

176. Public funding and its requisite regulations (including spending limits, disclosure, and impartial enforcement) has been designed and adopted throughout the globe as a potential means of preventing corruption, to support the important role played by political parties and to remove undue reliance on private donors. Such systems of funding are aimed at ensuring that all parties are able to compete for elections in accordance with the principle of equal opportunity, thus 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 the source for political party funding. In no case should the allocation of public funding limit or interfere with the independence of a political party.

177. The amount of public funding awarded to parties must be carefully designed to ensure the utility of such funding while not eradicating the need for private contributions or nullifying the impact of individual donations. While the nature of elections and campaigning in different states makes it impossible to identify a universally applicable amount of funding, legislation should put in place review mechanisms aimed at periodically determining the impact of public finance systems and the need (as such exists) to alter financial allocation amounts. Generally, subsidies should be set at a meaningful level to fulfill the objective of support, but should not be the only source of income and should not create conditions for over-dependency on state support.

b) Financial Support

178. Legislation should explicitly allow that state support for political parties may be financial. The allocation of public money to political parties is often considered integral to respect the principle of equal opportunity for all candidates, in particular where the state's funding mechanism includes special provisions for women and minorities. Where financial support is awarded to parties, relevant legislation should develop clear guidelines to determine the amount of such funding, which should be allocated to recipients in an objective and unbiased manner.

c) Other Forms of Public Support

179. In addition to direct funding, the state may offer support to parties in a variety of other ways, including tax exemptions for party activities, the allocation of free media time, or the free use of public meeting halls for the purposes of campaign activities. In all such cases, both financial and in-kind support must be given on the basis of equality of opportunity to all parties and candidates (including women and minorities). While 'equality' may not be absolute in nature, a system for determining the proportional (or equitable) distribution of state support (whether financial or in-kind) must be objective, fair and reasonable.

180. To support women's participation in elections, the state may also consider the provision of free child-care or similar measures and 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 aimed at supporting female or disadvantaged candidates may be considered in light of obligations to rectify historical inequalities in political life.⁶⁰

181. The allocation of free airtime to candidates running for elections is one of the easiest and most effective means of state support available. In addition, airtime on mass media can help to ensure a state meets its requirements to provide for an informed electorate. Furthermore, the media – as well as all communication systems - plays a crucial role in combating gender

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

182. A good practice is to provide tax credits for individuals who give in-kind contributions, whether in the form of labour or goods and services. State legislation may allow tax deductibility of such contributions, including in-kind contributions to political parties. However, in accordance with the Council of Europe's Committee of Ministers Recommendation to member states on common rules against corruption in the funding of political parties and electoral campaigns, Rec(2003)4, it is best that legislation appropriately limit such tax deductibility.

d) Allocation of Funding

183. 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 or proof of minimum levels of support. Other systems provide payment after an election based on the final results. Generally, a pre-election disbursement of funds, or a percentage of funding, best ensures the ability of parties to compete on the basis of equal opportunity.

184. When developing allocation systems, careful consideration should be given to pre-election funding systems, as opposed to post-election reimbursement which can often perpetuate the inability of small, new, or poor parties to compete effectively. A post-election funding system may not provide the minimum initial funding needed 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 an equal opportunity throughout the period of campaigning. Delaying the distribution of public funding until late in the campaign or after election day can effectively undermine electoral campaign equality and works against less affluent political parties.

185. 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. Some have argued that legislation for public funding is generally most effective at achieving political pluralism and equal opportunity by providing a combination of both absolute and equitable equality. Where minimum thresholds of support are required for funding, it should be considered that an unreasonably high threshold may be detrimental to political pluralism and small political parties. Further, it is in the interest of political pluralism to have a lower threshold for public funding than the electoral threshold for the allocation of a mandate in parliament.

186. Legislation determining systems for allocation may also include a system of 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, such systems do require strong oversight to ensure reported donation amounts are not inflated and that all such private donations are made with due respect to the regulatory framework governing private donations.

187. Legislation should ensure that the formula for the allocation of funding does not provide a monopoly or disproportionate amount of funding to one political party. Nor should the formula for allocation of funding allow the two largest political parties to monopolize the receipt of public funding.

e) Requirements to Receive Public Funding

188. 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 ideally be extended beyond parties represented in parliament to all parties representative of a minimum level of the citizenry's support and presenting candidates in an election. This is particularly important in the case of new parties, which must be given a fair opportunity to compete with existing parties.

189. The level of available public funding should be clearly defined in the relevant statutes and regulations. The rights and duties of the body with legal authority to set and revise the maximum level of support should also be clearly defined in law. Public funding of political parties must be accompanied by supervision of the parties' accounts by specific public bodies.

190. Public funding, by providing increased resources to political parties, can increase political pluralism. As such, it is reasonable for legislation to require a party to be representative of a minimum level of the electorate prior to receipt of funding. However, as the denial of public funding can lead to a decrease in pluralism and political alternatives, it is an accepted good practice to enact clear guidelines for 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.

191. 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 CEDAW (Article 4). As articulated in the Council of Europe 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.⁶¹ While it is important to respect the free internal functioning of parties with regard to candidacy selection and platform choices, public funding may be reasonably restricted based on compliance with a set of basic obligations.

192. It is reasonable for states to legislate minimum requirements which must be satisfied for the provision of public funding. Such requirements may include:

- Registration as a political party
- Proof of a minimum level of support
- Gender balanced representation⁶²
- Proper completion of financial reports as required (including for the previous election)
- Compliance with relevant accounting and auditing standards.

4. REGULATION OF PARTY AND CAMPAIGN FINANCE

a) Spending Limits

193. The regulation of party and campaign finance is necessary to protect the democratic process, including spending limits where appropriate. As noted by the United Nations Human Rights Committee in General Comment No. 25, "Reasonable limitations on campaign expenditure may be justified where this is necessary to ensure that the free choice of voters is not undermined or the democratic process distorted by the disproportionate expenditure on behalf of any candidate or party. The results of genuine elections should be respected and implemented." 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 relevant Council of Europe recommendations.⁶³

194. Transparency in party and campaign finance, as noted above, is important to protect the rights of voters as well as prevent corruption. Transparency is also important because the public has the right to receive relevant information and to be informed. Voters must have relevant information as to the financial support given to political parties in order to hold parties accountable.

195. Reasonable limitations on campaign expenditures might 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 political party.

196. It is reasonable for a state to determine a maximum spending limit for parties in elections in order to achieve the legitimate aim of securing equality between candidates. However, the legitimate aim of such restrictions must be balanced with the equally legitimate need to protect other rights such as rights of free association and expression. This requires that spending limits to be carefully constructed so that they are not overly burdensome. The maximum spending limit usually consists of an absolute sum or a relative sum determined by factors such as the voting population in a particular constituency and the costs for campaign materials and services. Notably, the Council of Europe Committee of Ministers has supported the latter option, with maximum expenditure limits determined regardless of which system is adopted in relation to the voting population of the applicable electorate. Whichever system is adopted, such limits should be clearly defined in law.

197. In addition, the state body with power to develop and review 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 modern electoral campaigns. It is best that limits are designed against inflation. This requires that the legal rules for limits are based on a form of indexation rather than absolute amounts.

b) Campaign Finance Reporting Requirements

198. States should require political parties to keep records of all direct and in-kind contributions given to all political parties and candidates in the electoral period. Such records should be available for public review and must be in line with the pre-determined expenditure limit.

199. Parties 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 campaigning. Such information should include the party's bank account information and the personal information of those persons accountable for a party's finances.

200. Reports on campaign financing should be turned into the proper authorities within a timely deadline of no more than 30 days after the elections. Such reports should be required not only for the party as a whole but for individual candidates and lists of candidates. The law should define the format of reports so that parties provide standard reports that disclose all categories of the required information and so that reports of parties can be compared. In an effort to support transparency, it is good practice that such financial reports are made timely and publicly available on the internet.

c) Political Finance Reporting Requirements

201. Article 7(3) of the United Nations Convention against Corruption (UNCAC) obligates signatory states to make good faith efforts to improve transparency in election candidate and political party financing. Political finance disclosure is the main policy instrument for achieving such transparency. While other forms of regulation are available for controlling 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 effectively.

202. Political parties should be required to submit disclosure reports to the appropriate regulatory authority at least on an annual basis even in the non-campaign period. These reports should require disclosure of incoming contributions and an explanation of all expenditures. While transparency may be increased by requirements to report the identity of donors, legislation should balance such a requirement with considerations of privacy and protection from intimidation. All disclosure reports should be on a consolidated basis that includes all levels of party activities.

203. Reports should clearly distinguish between income and expenditure. Further, reporting formats should include the itemization of donations into standardized categories as defined by relevant regulations. The nature and value of all donations received by a political party should be identified in financial reports.

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

205. A party might attempt to circumvent campaign finance requirements by conducting activities during a "pre-electoral" period or through use of others as conduits for funds or services. The use of others as conduits is known in some countries as the use of "third parties". To limit this abuse, strong systems of political party financial reporting outside of elections must be enacted. Legislation should provide clear guidelines regarding which activities are not allowable during the pre-election campaign, and income and expenditures used for such activities during this time should be subject to proper review and sanction. Legislation should clearly state to whom political party funds may be released in the pre-election period and the limitations upon their use by third parties not directly associated with the party.

206. Transparency in reporting, which is an accepted good practice, requires the timely publication of parties' financial reports. The fulfillment of this requirement necessitates that reports contain enough details in order to be useful and understandable for the general public. While 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 the privacy concerns of donors.

d) Abuse of State Resources

207. The abuse of state resources is universally condemned by international norms. While there is a natural and unavoidable incumbency advantage, legislation must be careful to not perpetuate or enhance such advantages. Incumbent candidates and parties must not use state funds or resources (i.e. materials, work contracts, transportation, employees) to their own advantage. Paragraph 5.4 of the OSCE Copenhagen Document provides, in this regard, that member states will maintain "a clear separation between the State and political parties; in particular, political parties will not be merged with the State".

208. To allow for the effective regulation of the use of state resources, legislation should clearly define what is considered abuse. For instance, while incumbents are often given free use of postal systems (seen as necessary to communicate their acts of governance with the public), mailings including party propaganda or candidate platforms are a misuse of this free resource. Legislation must address such abuses.

209. The abuse of state resources may include the manipulation or intimidation of public employees. It is not unheard of for a government to require its workers to attend a pro-government rally. Such practices should be expressly and universally banned by law.

210. Public employees (civil servants) should not be required by a political party to make payments to the party. This is a practice the law should prohibit as an abuse of state resources.

5. REGULATORY AUTHORITY

211. As stated by the Council of Europe Committee of Ministers in their 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.”

212. Monitoring can be undertaken by a variety of different bodies, including a competent supervisory body or state financial bodies. Whichever body is tasked to review the party's financial reports, effective measures should be taken in legislation and in state practice to ensure its independence from political pressure and commitment to impartiality. Such independence is fundamental to this body's proper functioning and should be strictly required by law. In particular, it is strongly recommended that appointment procedures be carefully drafted to avoid political influence over members.

213. Legislation should define the procedure for appointing members to the regulatory body, clearly delineate their powers and activities, specify the types and scope of violations requiring sanction, and provide clear guidance on the process for appeal against regulatory decisions.

214. The regulatory authority should be given the power to monitor accounts and conduct audits of financial reports submitted by parties and candidates. The process for conducting such audits should be stated in relevant legislation. Financial regulation is an area too often susceptible to discriminatory or biased treatment by regulatory bodies, which should be avoided. Therefore, legislation should specify the process and procedures determining how and which party reports are selected for auditing. In all cases it is necessary that audits be non-discriminatory and objective in their application.

a) Sanctions for Finance Violations

215. Irregularities in financial reporting, non-compliance with financial reporting regulations or 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 payment of administrative fines by the party. As noted by the Council of Europe's Committee of Ministers, political parties should be subject to 'effective, proportionate and dissuasive sanctions' for violation of political funding laws.⁶⁴ Sanctions for violations of law are more fully discussed below in paragraph 200.

216. As noted below in paragraph 200, all sanctions must be proportionate in nature. In the area of finance violations, this should include consideration of the amount of money involved, whether there were attempts to hide the violation, and whether the violation is a reoccurring violation.

217. While criminal sanctions are reserved for serious violations that undermine public integrity, there should be a range of administrative sanctions available for the improper acquisition or use of funds by parties.

XIII. MONITORING OF POLITICAL PARTIES

1. ESTABLISHMENT OF REGULATORY BODIES

a) Impartiality and Neutrality in Regulation

218. Regulatory authorities must remain neutral and objective in dealing with the process of political party registration (where applicable), political party finance, and regulation of party activities. Regulations must always be applied in an objective and non-discriminatory manner. 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 Regulatory Bodies

219. There should be a clear delineation of which bodies are responsible for the regulation of political parties, as well as clear guidelines establishing their functions and the limits of their authority. Generally, registration is completed by a competent state ministry or a judicial body. Whichever body is tasked with regulation should be non-partisan in nature and uphold the requirements of independence and impartiality. Parties should have the right to appeal decisions by regulatory bodies to an appropriate tribunal,⁶⁵ and in all cases authorities should be held accountable for their decisions.

220. Legislation must include guidelines for how a legal violation may be brought to the attention of regulatory bodies, what powers of investigation are granted to such bodies, and the range of applicable sanctions. Generally, legislation should grant regulatory agencies the ability to investigate and pursue potential violations. Absent such investigative powers, agencies are unlikely to have the ability to effectively implement their mandate. Adequate financing to ensure the proper functioning and operation of the regulatory body are also necessary.

221. Legislation should clearly define the decision making process for regulatory bodies. Bodies charged with supervision of political parties should refrain from excessive control over party activities. The majority of these functions are internal party matters and should only come to the attention of state authorities in exceptional circumstances and then only to ensure compliance with the law.

222. In order to ensure transparency as well as increase regulatory independence, legislation should specifically define how regulatory bodies are appointed. Generally, such appointments best guarantee proper functioning if they are made on a staggered basis separate from the electoral cycle. In addition, it is generally good practice for regulatory officials to either have a lifetime appointment or be limited to a single term. This helps to ensure they can act free from political influence. In any case, it should be guaranteed that the body tasked with the appointment of regulatory officials may not dismiss them at will.

223. The timeline for decisions regarding regulation of political party activities or formation should be clearly stated in law. 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 time period for regulatory bodies to make a decision about party establishment and

registration. 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.

c) Sanctions Against Political Parties for Non-compliance with Law

224. Sanctions should be applied to political parties found in violation of relevant laws. Sanctions at all times must be objective, enforceable, effective and proportionate to their specific purpose. 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 threat to civil peace and the democratic constitutional order of the country. Prohibition and dissolution based on such extreme circumstances is not a matter of holding parties accountable for legal violations, but is in fact done because it is necessary in a democratic society. Where a party is a habitual offender of legal provisions and makes no effort to correct its behaviour, the loss of registration status might be appropriate. The loss of registration status may be significant where there is state financial support for parties.

225. There should be a variety of sanctions for non-compliance with laws. As noted above, sanctions must bear a relationship to the violation and respect the principle of proportionality. Such sanctions should include:

- Administrative fines, the amount of which should consider the nature of the violation, including whether the violation is a reoccurring violation
- Partial or total loss of public funding and other forms of public support, which could be imposed as a temporary measure for set period of time
- Ineligibility for future state support for a set period of time
- Partial or total loss of reimbursement for campaign expenses
- Forfeiture to the state treasury of financial support previously transferred to or accepted by a party
- Ineligibility for presenting candidates in elections for a set period of time
- Criminal sanctions in cases of significant violations, imposed against the party members who are responsible for the violation
- Annulment of a candidate's election to office, but only as determined by a court of law after compliance with applicable legal protections for due process of law and only if the legal violation likely impacted the electoral result
- Loss of registration status for the party.

226. 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.

227. Sanctions should always be compatible with the principle of proportionality. Prior to the enactment of any sanction, the regulatory authority should carefully consider the sanction's aim against a possible detrimental effect to political pluralism or the enjoyment of protected rights. When sanctions are imposed, the public should be informed of the facts giving rise to the legal violation and the particular sanction imposed on the political party.

228. Where sanctions are imposed, the party in question should have available recourse to a fair hearing by an impartial tribunal. While regulatory authorities can determine sanctions, there should be an opportunity for a party to request that the final decision regarding sanctions should be made by the appropriate judicial body in accordance with judicial principles.

2. RIGHTS TO AN EFFECTIVE REMEDY AND FAIR HEARING BY AN IMPARTIAL TRIBUNAL

a) Right to an Effective Remedy

229. Article 13 of the European Convention on Human Rights provides that “Everyone 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 ICERD. Thus, legislation should require that the state 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 granted by international and regional instruments. Remedies must be provided expeditiously in order to be effective. A remedy that is granted too late is of little remedial benefit. In order for a remedy to be effective, it is necessary that it be timely.

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

230. Article 6 of the European Convention on Human Rights provides that “In 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 rights to have one’s case heard publicly and expeditiously by an impartial tribunal, equal access to judicial proceedings, and equality of arms. The right to a fair and public hearing, coupled with the right to an effective remedy, ensures an adequate means of redress for the violation of fundamental rights. Thus, any interference by authorities in the activities of political parties should provide an opportunity for the party to challenge such decision or action in a court of law and to have the challenge adjudicated publicly by an impartial tribunal. This is particularly true in regard to the prohibition or dissolution of a political party, where a court should make the final decision on such a serious matter. A hearing before a competent judicial authority should be necessary in all cases of dissolution or prohibition.

231. There should be legal provisions to challenge any decision by regulatory authorities which negatively impact the free association of political parties or other protected rights (including a denial of registration or loss of party status based on electoral results). Generally, judicial procedures and remedies should be available for such disputes as they relate to fundamental rights.⁶⁶ Therefore, all parties should have the ability to seek appropriate recourse for decisions made by a regulatory body in a court of law. In such proceedings, parties (as a collective of individuals) must be ensured a fair and public hearing in the determination of their rights.

232. Expedited consideration is an important element to the fairness of a hearing. Proceedings cannot be delayed without risking usurpation of the right to a fair hearing.⁶⁷ Legislation should define reasonable deadlines by which applications should be filed and decision granted, with due respect to any special considerations arising from the substantive nature of the decision.

233. Legislation should specify the procedures for initiating judicial review (appeal) of a decision affecting the rights of a political party. Legislation should also extend the right of judicial review of such decisions to persons or other parties that are affected by the decision.

XIV. ANNEXES

ANNEX A – SELECTED INTERNATIONAL AND REGIONAL INSTRUMENTS

This section include a selection of text excerpted 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 International Covenant on Civil and Political Rights and the European Convention on Human rights 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 Rights⁶⁸

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.

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 Women⁶⁹

Article 3

States Parties shall take in all fields, in particular in the political, social, economic and cultural fields, all appropriate measures, including legislation, to ensure the full development and advancement of women, for the purpose of guaranteeing them the exercise and enjoyment of human rights and fundamental freedoms on a basis of equality with men.

Article 4

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

Article 7

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

(a) To vote in all elections and public referenda and to be eligible for election to all publicly elected bodies;

(b) To participate in the formulation of government policy and the implementation thereof and to hold public office and perform all public functions at all levels of government;

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

International Convention on the Elimination of Racial Discrimination⁷⁰

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

United Nations Convention Against Corruption⁷¹

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 Rights⁷²

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.

Beijing Declaration and Platform for Action⁷³

Article 13.

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

Article 24

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

Article 32

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

Platform for Action

Actions to be taken by Governments:

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

By political parties:

- (a) Consider examining party structures and procedures to remove all barriers that directly or indirectly discriminate against the participation of women;
- (b) Consider developing initiatives that allow women to participate fully in all internal policy-making structures and appointive and electoral nominating processes;
- (c) Consider incorporating gender issues in their political agenda taking measures to ensure that women can participate in the leadership of political parties on an equal basis with men.

By Governments, national bodies, the private sector, political parties, trade unions, employers' organizations, subregional and regional bodies, non-governmental and international 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.

Charter of the Fundamental Rights of the European Union⁷⁴

Article 12

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

Article 21

1. Any discrimination based on any ground such as sex, race, colour, ethnic or social origin, genetic features, language, religion or belief, political or any other opinion, membership of a national minority, property, birth, disability, age or sexual orientation shall be prohibited.
2. Within the scope of application of the Treaty establishing the European Community and of the Treaty on European Union, and without prejudice to the special provisions of those Treaties, any discrimination on grounds of nationality shall be prohibited.

Article 23

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

European Convention for the Protection of Human Rights and Fundamental Freedoms
(European Convention on Human Rights)⁷⁵

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.

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 Minorities⁷⁶

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 Level⁷⁷

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.

Document of the Copenhagen Meeting of the Conference on the Human Dimension of the CSCE (Copenhagen Document)⁷⁸

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 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.

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

ANNEX B –SELECTED CASES

Below is a selection of European Court of Human Rights Cases 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)
- *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)
- *Güneri and others v. Turkey* (2005) (Application Nos. 42853/98, 43609/98 and 44291/98)
- *KPD v. FRG* (1957) (Application No.250/57)
- *Loizidou v. Turkey* (1995) (Application No. 15318/89)
- *Moscow Branch of the Salvation Army v. Russia* (2006) (Application No. 72881/01)
- *Ouranio Toxo and others v. Greece* (2005) (Application No. 74989/01)
- *Presidential Party of Mordovia v. Russia* (2004) (Application No. 65659/01)
- *Refah Partisi (The Welfare Party) and Others v. Turkey.* (2003) (Application Nos. 41340/98, 41342/98 and 41344/98)
- *Sidiropoulos and Others v. Greece.* (1998) (Application No. 26695/95)
- *Socialist Party and Others v. Turkey* (1998) (Application No. 26482/95)
- *STP [Socialist Party of Turkey] and others v. Turkey* (2003) (Application No. 26482/95)

- *United Communist Party of Turkey and Others v. Turkey*. (1998) (Application No. 19392/92)
- *Vogt v. Germany* (1995) (Application No. 17851/91)
- *Yazar, Karatas, Aksoy and the Peoples' Work Party [H.E.P.] v. Turkey* (2002) (Application Nos. 22723/93, 22724/93 and 22725/93)
- *Yumak and Sadak v. Turkey* (2008) (Application No. 10226/03)

ANNEX C – SELECTED REFERENCE DOCUMENTS

Parliamentary Assembly of the Council of Europe

- Resolution 1736 (2010) 21/05/2010, Code of good practice in the field of political parties
- Resolution 1601(2008) 23/01/2008, Procedural guidelines on the rights and responsibilities of the opposition in a democratic parliament
- Resolution 1546 (2007) 17/04/2007, The code of good practice for political parties
- Recommendation 1438 (2000) and Resolution 1344 (2003) on the threat posed to democracy by extremist parties and movements in Europe
- Resolution 1308 (2002) on restrictions on political parties in the Council of Europe member states
- Recommendation 1516 (2001) on the financing of political parties
- Resolution 1264 (2001), Resolution 1320 (2003) and Recommendation 1595 (2003) on a code of good practice in electoral matters
- Report on financing of political parties, Doc. 9077 (2001)
- Report on restrictions on political parties in the Council of Europe member states, Doc. 9526 (2002)
- Report on incompatibility of banning democratically elected political parties with Council of Europe standards, Doc. 8467 (1999)

European Commission for Democracy through Law (Venice Commission)

- CDL-AD(2009)002 Code of good practice in the field of Political Parties adopted by the Venice Commission at its 77th Plenary Session (Venice, 12-13 December 2008)
- CDL-INF(2000)001 Guidelines on prohibition and dissolution of political parties and analogous measures adopted by the Venice Commission at its 41st plenary session (Venice, 10 – 11 December, 1999) in English
- CDL-INF(2001)008 Guidelines and Report on the Financing of Political Parties adopted by the Venice Commission at its 46th Plenary Meeting (Venice, 9-10 March 2001)
- 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 (Venice, 17-18 March 2006)
- 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 (Venice, 12-13 March 2004)

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

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)

ANNEX D – MODEL CODES

Code of Conduct for Political Parties: Campaigning in Democratic Elections. 1999. Stockholm: International Institute for Democracy and Electoral Assistance.

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

Minimum Standards for the Democratic Functioning of Political Parties. 2008. National Democratic Institute for International Affairs

XV. ENDNOTES

¹ 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), the Universal Declaration of Human Rights (adopted 10 December 1948 UNGA Res 217A (III)) (UDHR), 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), and the Copenhagen Document - Second Conference on the Human Dimension of the CSCE (Copenhagen, 5 June- 29 July 1990), Document of the Copenhagen Meeting of the Conference on the Human Dimension of the CSCE (Copenhagen Document).

² *Case of the Refah Partisi (The Welfare Party) and Others v. Turkey.* (40/1993/435/514) (European Court of Human Rights, February 13, 2003), paragraphs 87-89.

³ *Case of the Refah Partisi (The Welfare Party) and Others v. Turkey.* (40/1993/435/514) (European Court of Human Rights, February 13, 2003), paragraphs 87-89.

⁴ *Case of the Refah Partisi (The Welfare Party) and Others v. Turkey.* (40/1993/435/514) (European Court of Human Rights, February 13, 2003), paragraphs 87-89.

⁵ See the Universal Declaration of Human Rights, Article 20.

⁶ See the United Nations Human Right Committee, General Comment 31, para. 8; General Comment 28, para. 31.

⁷ United Nations Human Rights Committee, General Comment 31, paras. 15-16.

⁸ See the International Covenant on Civil and Political Rights, Article 22(2).

⁹ See, for example; International Covenant on Civil and Political Rights, Articles 2, 26; European Convention on Human Rights, Article 14 (understood in light of ECHR – Protocol 12).

¹⁰ The Copenhagen Document, paragraph 7.6 states; "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."

¹¹ Convention on the Elimination of all forms of Discrimination Against Women, Article 4(1); International Convention on the Elimination of Racial Discrimination, Article 2(2), and Council of Europe Framework Convention for the Protection of National Minorities, Article 4(2).

¹² See the Organization for Security and Cooperation in Europe, Document of the Moscow Meeting of the Conference on the Human Dimension of the CSCE (1991), para. 18 which states "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."

¹³ See the Convention on the Protection of Human Rights and Fundamental Freedoms (European Convention of Human Rights), Article 13, the International Covenant on Civil and Political Rights, Article 2(3), and the Universal Declaration of Human Rights, Article 8.

¹⁴ This definition applies to parties at the national, regional, and local level. Parties also exist at an intra-state level (for example European Union parties). However, as these guidelines are intended to inform national legislation such parties are not discussed at length here.

¹⁵ Prohibition of Political Parties and Analogous Measures – Report, Adopted by the Venice Commission at its 35th plenary meeting. (Venice, 12-13 June 1998) and 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. (Venice, 13-14th March 2009).

¹⁶ Both the International Covenant on Civil and Political Rights, Article 2(2) and the Copenhagen Document, para. 5.7 requiring states to undertake a process of domestication,

ensuring international human rights are reflected in domestic legislation. Paragraph 5.7 states that “Human rights and fundamental freedoms will be guaranteed by law and in accordance with their obligations under international law.”

¹⁷ Other human rights treaties and declarations are particularly relevant to regulation of political parties in terms of gender equality. See, for e.x. the Convention on the Elimination of All Forms of Discrimination Against Women (CEDAW), and the Beijing Declaration and Platform for Action.

¹⁸ *Case of the United Communist Party of Turkey and Others v. Turkey*. (133/1996/752/951).

¹⁹ *Case of the United Communist Party of Turkey and Others v. Turkey*. (133/1996/752/951.) (European Court of Human Rights, January 30, 1998).

²⁰ Resolution 1308 (2002), Parliamentary Assembly of the Council of Europe. "Restrictions on Political Parties in the Council of Europe Member States."

²¹ *Socialist Party and others against Turkey* (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 that or constitutional change, to the electorate.

²² All OSCE member states have committed themselves to the tenets of the Copenhagen Document and/or the European Convention on Human Rights, through a process of signature and ratification, as appropriate. Ratification of the European Convention on Human Rights creates a legal obligation upon a state to uphold the articles of this treaty, while the Copenhagen document serves as a political commitment persuasive upon signatory states.

²³ The Copenhagen Document, paragraph 7.6 states; “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.”

²⁴ See *Wilson & the National Union of Journalists and Others v. the United Kingdom*, nos. 30668/96, 30671/96 and 30678/96, § 41, ECHR 2002-V) and *Plattform “Ärzte für das Leben” v. Austria*, judgment of 21 June 1988, Series A no. 139, p. 12, § 32).

²⁵ Proportionality is discussed in the case of *Case Of Sürek V. Turkey* (No. 1) (Application no. 26682/95), where it states that, “In particular, it 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 *Case Of Refah Partisi (The Welfare Party) And Others V. Turkey* (Applications nos. 41340/98, 41342/98, 41343/98 and 41344/98) the Court states that “The Court considers in that connection that the nature and severity of the interference are also factors to be taken into account when assessing its proportionality”.

²⁶ See the International Convention on the Prevention of all forms of Racial Discrimination, Convention on the elimination of Discrimination against Women, Convention on the Rights of persons with Disabilities, as well as the Copenhagen Document.

²⁷ *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). §8.7.

²⁸ See paragraph 8 for examples of such treaties.

²⁹ 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). Article 11(2).

³⁰ Prohibition of Political Parties and Analogous Measures – Report, Adopted by the Venice Commission at its 35th Plenary Session. (Venice, 12-13 June 1998).

³¹ CDL-INF(2000)1 - Guidelines On Prohibition And Dissolution Of Political Parties And Analogous Measures.

³² 2008 figures accessed at from the World Bank – World Development Indicators placed the population of Moldova at 3,633,369 people, while Latvia had a population of 2,266,094.

³³ CDL-AD (2002) 23 rev – Code of Good Practice in Electoral Matters.

³⁴ Copenhagen Paragraph 10.4 states that 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.”

³⁵ CDL-AD(2009)021 - Code of Good Practice in the Field of Political Parties and Explanatory Report, adopted by the Venice Commission at its 77-78th Plenary Session. (Venice, 13-14 March 2009).

³⁶ Convention on the Elimination of All Forms of Discrimination against Women, Articles 3-4, Council of Europe Framework Convention on National Minorities, Article 4(2) (Nicholas Toonen v. Australia 2004).

³⁷ *Case of the United Communist Party of Turkey and Others v. Turkey*. (133/1996/752/951) (European Court of Human Rights, January 30, 1998).

³⁸ The concept of “morals” has the potential to be applied in an overly restrictive manner, particular with the regards to sexual orientation which was historically considered by some as immoral. However, distinctions made on the basis of sexual orientation are clearly discriminator (See the Charter on the Fundamental Rights of the European Union, and European Court of Human Rights cases including *Salgueiro da Silva Mouta v. Portugal*, and *Case of E.B vs. France*).

³⁹ 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). Article 11(2); International Convention on the Elimination of All Forms of Racial Discrimination (entered into force 4 January 1969). Article 22(2).

⁴⁰ Parliamentary Assembly of the Council of Europe (PACE) Resolution 1308(2002) on Restrictions on political parties in the Council of Europe’s member states, the PACE, paragraph 11.

⁴¹ 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 (Venice, 10 – 11 December, 1999), paragraph 51.

⁴² 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 (Venice, 10 – 11 December, 1999), paragraph 51.

⁴³ 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. (Venice, 13-14th March 2009).

⁴⁴ CDL-DEM(2003)002rev,3.5 - Cf. Replies to the Questionnaire on the Establishment, Organisation and Activities of Political Parties.

⁴⁵ See the Council of Europe publication *Parity Democracy – a far cry from reality* (CDEG (2009) 17 prov) for detailed statistics on gender representation for Council of Europe States.

⁴⁶ OSCE/ODIHR. “Handbook for Monitoring Women’s Participation in Elections.” Published by the OSCE Office for Democratic Institutions and Human Rights, Warsaw, Poland; 2004.

⁴⁷ Beijing Declaration and Platform for Action (adopted 15 September 1995, Fourth World Conference on Women).

⁴⁸ See, for example Council of Europe Committee of Ministers recommendation 2003/3 on balanced participation of women and men in political and public decision making adopted on 12 March 2003 and explanatory memorandum, principles A.8, B.20 and B.22.

⁴⁹ The Court has established the right of general associations to deny membership of persons who do not agree with the association's fundamental beliefs. See *Associated Society of Locomotive Engineers and Firemen v. the United Kingdom*. (European Court of Human Rights, 2007) (Application No. 11002/05).

⁵⁰ CDL-AD(2009)021 - Code of Good Practice in the Field of Political Parties and Explanatory Report, adopted by the Venice Commission at its 77-78th Plenary Session. (Venice, 13-14 March 2009). See for example party constitutions of the Austrian, Swedish and German Social Democratic Party, the Liberal Democrats in the United Kingdom, and the United Left Party in Spain.

⁵¹ *Ahmed and Others v. The United Kingdom* (1998) (65/1997/849/1056).

⁵² See, for example the case of *Vogt vs. Germany* (application No. 17851/91) in which the court found that the dismissal of a public teacher on the basis of her membership in a political party was an infringement on Articles 10 and 11 of the ECHR.

⁵³ 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.

⁵⁴ Copenhagen Document - Second Conference on the Human Dimension of the CSCE (Copenhagen, 5 June- 29 July 1990), Document of the Copenhagen Meeting of the Conference on the Human Dimension of the CSCE (Copenhagen Document). Paragraph 7.5.

⁵⁵ Council of Europe Convention on the Protection of National Minorities, Article 4(2), International Convention on the Elimination of Racial Discrimination, Article 2(2).

⁵⁶ See Opinion 423/2007, CDL-AD(2007)018, paragraph six.

⁵⁷ OSCE/ODIHR Guidelines on Freedom of Peaceful Assembly (Strasbourg, 4 June 2008 CDL(2008)062), as revised in 2010.

⁵⁸ OSCE/ODIHR Guidelines on Freedom of Peaceful Assembly (Strasbourg, 4 June 2008 CDL(2008)062), as revised in 2010.

ⁱ See Code of Good Practice in Electoral Matters CDL-AD(2002)023rev.

⁶⁰ See, for e.g. ICERD, CEDAW.

ⁱⁱ See Code of Good Practice in Electoral Matters CDL-AD(2002)023rev, p.2.2.5.

⁶¹ Examples of such a requirement are found in the legislation of Croatia and Slovenia.

⁶² 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 offered to them. The Council of Europe Committee of Ministers Recommendation 2003/3 states that: "Member states should consider adopting legislative reforms to introduce parity thresholds for candidates in elections at local, regional, national and supra-national levels. Where proportional lists exist, consider the introduction of zipper systems; consider action through the public funding of political parties in order to encourage them to promote gender equality"

⁶³ See the United Nations Convention Against Corruption, Article 7(3). See also, the Council of Europe, Committee of Ministers. Recommendation Rec(2003)4 of the Committee of Ministers to member states on common rules against corruption in the funding of political parties and electoral campaigns, Article 3.

⁶⁴ Council of Europe, Committee of Ministers. Recommendation Rec(2003)4 of the Committee of Ministers to member states on common rules against corruption in the funding of political parties and electoral campaigns, Article 16.

⁶⁵ United Nations Human Rights Committee General Comment 32, UN Doc. CCPR/C/GC/3; § 18-19. See also, the Council of Europe, Committee of Ministers. Recommendation Rec(2003)4 of the Committee of Ministers to member states on common rules against corruption in the funding of political parties and electoral campaigns, Article 3.

⁶⁶ 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. (Venice, 12-13 March 2004).

⁶⁷ United Nations Human Rights Committee, General Comment 32, para. 27.

⁶⁸ International Covenant on Civil and Political Rights (adopted 16 December 1966, entered into force 23 March 1976) 999 UNTS 171 (ICCPR).

⁶⁹ 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).

⁷⁰ International Convention on the Elimination of Racial Discrimination (signed 21 December 1965, entered into force 4 January 1969) 1249 UNTS 13 (CEDAW).

⁷¹ United Nations Convention Against Corruption (signed 9 December 2003, entered into force 14 December 2005) 1249 UNTS 13 (CEDAW).

⁷² Universal Declaration of Human Rights (adopted 10 December 1948 UNGA Res 217A (III)) (UDHR).

⁷³ Beijing Declaration and Platform for Action (adopted 15 September 1995, Fourth World Conference on Women).

⁷⁴ Charter on Fundamental Rights of the European Union (2000/C 364/01) (entered into force 1 December 2009).

⁷⁵ 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).

⁷⁶ Convention Framework Convention for the Protection of National Minorities. Council of Europe, European Treaty Series – 157. Strasbourg 1.II.1995.

⁷⁷ Convention on the Participation of Foreigners in Public Life at the Local Level. Council of Europe, European Treaty Series – 144. Strasbourg 5.II.1992.

⁷⁸ Copenhagen Document - Second Conference on the Human Dimension of the CSCE (Copenhagen, 5 June- 29 July 1990), Document of the Copenhagen Meeting of the Conference on the Human Dimension of the CSCE (Copenhagen Document).