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EUROPEAN COMMISSION FOR DEMOCRACY THROUGH LAW
(VENICE COMMISSION)

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

ARMENIA

**DRAFT JOINT OPINION
ON DRAFT AMENDMENTS TO THE LEGISLATION CONCERNING
POLITICAL PARTIES**

on the basis of comments by

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Draft - restricted

I. Introduction

1. On 18 February 2020, the President of the National Assembly of the Republic of Armenia requested the OSCE Office for Democratic Institutions and Human Rights (hereinafter “OSCE/ODIHR”) and the European Commission for Democracy through Law of the Council of Europe (hereinafter “Venice Commission”) to provide a legal opinion on the draft constitutional law on making amendments and supplements to the Law of the Republic of Armenia on Political Parties ([CDL-REF\(2020\)015](#), hereinafter “the Law”; the draft amendments can be found under [CDL-REF\(2020\)012](#)), the draft constitutional law on making amendments and supplements to the Code of the Republic of Armenia on Administrative Offences ([CDL-REF\(2020\)014](#)) as well as the draft law on making amendments and supplements to the Criminal Code of the Republic of Armenia ([CDL-REF\(2020\)013](#)) (hereinafter altogether “the draft amendments”) with respect to their compliance with international legal standards and OSCE commitments. The draft amendments derive from a consultative process carried out over the past months in Armenia.

2. Messrs Richard Barrett, Nicolae Eșanu and Pere Vilanova Trias were appointed as rapporteurs for the Venice Commission. Mr Fernando Casal Bértoa and Ms Lolita Cigane and were appointed as legal experts for OSCE/ODIHR.

3. A delegation of the Venice Commission and OSCE/ODIHR composed of Mr Eșanu, Mr Casal Bértoa, Ms Cigane, as well as Mr Pierre Garrone, Head of the Division of Elections and Political Parties at the secretariat of the Venice Commission and Mr Marcin Walecki, Head of the Democratization Department of OSCE/ODIHR, visited Yerevan, Armenia, on 2 March to meet with the Ministry of Justice, the Standing Committee on State and Legal Affairs, the parliamentary factions, non-parliamentary parties, the Commission for the Prevention of Corruption and NGOs. OSCE/ODIHR and the Venice Commission also received written submissions from parliamentary and non-parliamentary opposition parties. This joint opinion takes into account the information obtained during the above-mentioned visit.

4. In 2016, the OSCE/ODIHR and Venice Commission prepared an opinion on a previous draft version of the Constitutional Law on Political Parties (hereinafter “the 2016 Joint Opinion”).¹ Some points made in the 2016 Joint Opinion also touch upon issues regulated in the Electoral Code or the Law on the Commission on the Prevention of Corruption. Additionally, in 2019, OSCE/ODIHR prepared a legal opinion on the Constitutional Law on Political Parties in force in Armenia at the time (hereinafter “the 2019 OSCE/ODIHR Opinion”) and presented its recommendations during a public hearing in parliament in October 2019.²

5. *Following the cancellation of the 122th session of the Venice Commission due to the COVID-19 disease, the present Joint Opinion was adopted by the Venice Commission by a written procedure on ... March 2020 following consultation of the Council for Democratic Elections.*

¹ OSCE/ODIHR-Venice Commission Joint Opinion on the draft constitutional law on political parties of Armenia, 12 December 2016 ([CDL-AD\(2016\)038](#)), also available at <https://www.legislationline.org/documents/id/20087>.

² OSCE/ODIHR Opinion on the Constitutional Law of the Republic of Armenia on Political Parties, 11 October 2019, available at <https://www.legislationline.org/documents/id/22549>.

II. Background and Scope of the Joint Opinion

6. The scope of this Joint Opinion covers only the draft amendments, submitted for review, and the legislation that they are amending. Thus limited, the Joint Opinion does not constitute a full and comprehensive review of the entire legal and institutional framework governing political party regulation in Armenia.

7. The Joint Opinion raises key issues and provides indications of areas of concern. In the interest of conciseness, it focuses more on areas that require amendments or improvements than on the positive aspects of the draft amendments. The ensuing recommendations are based on relevant Council of Europe and other international legal standards and obligations, OSCE commitments, and good national practices, and on previous recommendations where relevant.

8. Moreover, in accordance with the commitments of the OSCE and the Council of Europe to mainstream a gender perspective into all policies, measures and activities,³ the Joint Opinion also took account of the potentially different impact of the draft amendments on women and men.

9. This Joint Opinion is based on an unofficial English translation of the draft amendments provided by the requester. Errors from translation may result.

10. In view of the above, OSCE/ODIHR and the Venice Commission would like to note that this Joint Opinion does not cover the entire legal and institutional framework, and that it does not prevent them from formulating additional written or oral recommendations or comments on the respective legal acts or related legislation in Armenia in the future.

III. International Standards relating to Political Party Regulation

11. Article 22 of the International Covenant on Civil and Political Rights⁴ and Article 11 of the European Convention on Human Rights (ECHR)⁵ set standards regarding the right to freedom of association, which protects the rights of political parties as special types of associations and their members. Pursuant to Article 7 para 3 of the United Nations (UN) Convention against Corruption⁶ “[e]ach 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”. Article 29 of the UN Convention on the Rights of Persons with Disabilities (CRPD) contains State obligations in the area of political participation of persons with disabilities.⁷ The UN Convention on the Elimination of All Forms of

³ See para 32 of the OSCE Action Plan for the Promotion of Gender Equality adopted by Decision No. 14/04, MC.DEC/14/04 (2004), available at <http://www.osce.org/mc/23295?download=true>, which refers to commitments to mainstream a gender perspective into OSCE activities; and the Council of Europe’s Gender Equality Strategy 2014-2017, available at <http://www.coe.int/en/web/genderequality/gender-equality-strategy>, which includes the realisation of gender mainstreaming in all policies and measures as one of five strategic objectives.

⁴ International Covenant on Civil and Political Rights adopted by the UN General Assembly by resolution 2200A (XXI) of 16 December 1966. Armenia acceded to the Convention on 23 June 1993.

⁵ Council of Europe’s Convention for the Protection of Human Rights and Fundamental Freedoms, entered into force on 3 September 1953. The Convention was ratified by Armenia on 26 April 2004.

⁶ UN Convention against Corruption, adopted on 31 October 2003, ratified by Armenia on 8 March 2007, available at: http://www.unodc.org/documents/treaties/UNCAC/Publications/Convention/08-50026_E.pdf.

⁷ Convention on the Rights of Persons with Disabilities, 13 December 2006, entered into force 3 May 2008, available at

<https://www.ohchr.org/EN/HRBodies/CRPD/Pages/ConventionRightsPersonsWithDisabilities.aspx#12>; Armenia ratified the CRPD on 20 September 2010.

Discrimination against Women obliges States Parties to “take all appropriate measures to eliminate discrimination against women in the political and public life of the country”, including in the field of the right to vote, to hold public office and to participate in organizations and associations concerned with the political and public life in the country (Article 7).⁸ This Opinion further takes into consideration OSCE commitments, in particular, the Copenhagen Document, paras 5.4, 7.6 and 9.3).⁹ Within the OSCE context, the Ministerial Council’s Decision 7/09 on women’s participation in political and public life is also of interest.¹⁰

12. In addition, soft-law standards in the area of political party regulation can be found in the recommendations of the UN, Council of Europe and OSCE bodies and institutions. At the UN level, these include General Comment No. 25 of the UN Human Rights Committee on the right to participate in public affairs, voting rights and the right of equal access to public service,¹¹ and CEDAW General Recommendation No 23: Political and Public Life.¹² Within the Council of Europe and OSCE area, Council of Europe Committee of Ministers Recommendation 2003(4) on Common Rules against Corruption in the Funding of Political Parties and Electoral Campaigns,¹³ Recommendation 2003(3) on balanced participation of women and men in political and public decision making,¹⁴ as well as the Joint OSCE/ODIHR-Venice Commission Guidelines on Political Party Regulation (currently under revision) are of relevance.¹⁵ Throughout the Opinion, reference will also be made to previous opinions issued by OSCE/ODIHR and the Venice Commission. Additionally, election reports from previous OSCE/ODIHR and the Parliamentary Assembly of the Council of Europe (PACE) election observation activities in Armenia are also referenced.¹⁶

⁸ *UN Convention on the Elimination of All Forms of Discrimination against Women* (hereinafter “CEDAW”), adopted by General Assembly resolution 34/180 on 18 December 1979. The Republic of Armenia acceded to this Convention on 13 September 1993.

⁹ 1990 OSCE Copenhagen Document (29 June 1990) 29 ILM 1305, available at <http://www.osce.org/odihr/elections/14304?download=true>; 5.4 “a clear separation between the State and political parties; in particular, political parties will not be merged with the State”; 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;” 9.3 “the right of association will be guaranteed”.

¹⁰ OSCE Ministerial Council Decision 7/09, 2 December 2009, Women’s participation in political and public life, available at <https://www.osce.org/mc/40710?download=true> (hereinafter “MC Decision 7/09”).

¹¹ UN Human Rights Committee General Comment 25, *The right to participate in public affairs, voting rights and the right of equal access to public service*, UN Doc. CCPR/C/21/Rev.1/Add.7, available at <http://www.refworld.org/docid/453883fc22.html>.

¹² UN Committee on the Elimination of Discrimination against Women General Recommendation 23, Public and Private Life UN doc A/52/38

¹³ Council of Europe Committee of Ministers Recommendation 2003(4) on *Common Rules against Corruption in the Funding of Political Parties and Electoral Campaigns*, available at [http://www.coe.int/t/dghl/cooperation/economiccrime/cybercrime/cy%20activity%20interface2006/rec%202003%20\(4\)%20pol%20parties%20EN.pdf](http://www.coe.int/t/dghl/cooperation/economiccrime/cybercrime/cy%20activity%20interface2006/rec%202003%20(4)%20pol%20parties%20EN.pdf) (hereinafter “Recommendation 2003(4)”).

¹⁴ Council of Europe Committee of Ministers Recommendation 2003(3) on *balanced participation of women and men in political and public decision making*, available at https://search.coe.int/cm/Pages/result_details.aspx?ObjectID=09000016805e0848 (hereinafter “Recommendation 2003(4)”).

¹⁵ OSCE/ODIHR and Venice Commission *Guidelines on Political Party Regulation* (2010), available at <http://www.osce.org/odihr/77812>. (hereinafter “Guidelines on Political Party Regulation”)

¹⁶ All OSCE/ODIHR election observation activities reports can be found at: <http://www.osce.org/odihr/elections/armenia>. For the PACE reports, see <http://semantic-pace.net/default.aspx?search=dHlwZV9zdHJfZnJlIjhcHBvcnQgZOKAmW9ic2VydMFOaW9uIGTigJnDqWxIY3Rpb24i&lang=en>.

IV. Analysis

13. First, ODIHR and the Venice Commission welcome that public consultations have been carried out when preparing the draft amendments. When conducted in a meaningful way, public discussions and an open and inclusive debate increase all stakeholders' understanding of the various factors involved and enhance confidence and trust in the adopted legislation, and in the relevant state institutions in general. Particularly legislation that may have an impact on human rights and fundamental freedoms, as is the case here, **should undergo extensive consultation processes throughout the drafting and adoption process, to ensure that human rights organisations and the general public, including marginalised groups, are fully informed and able to submit their views prior to the adoption of the Amendments.** In this context, it is worth recalling that OSCE commitments require legislation to be adopted "as the result of an open process reflecting the will of the people, either directly or through their elected representatives" (Moscow Document of 1991, para 18.1). The legislator is encouraged to ensure that the draft amendments are consulted extensively up until their adoption.

A. Establishment and Registration of Political Parties

14. The draft amendments implement some of the recommendations previously made in the 2016 Joint Opinion and the 2019 ODIHR Opinion. Article 2 of the draft amendments abolishes the requirement of "unanimous" decision of at least 100 founders of a political party as a prerequisite of establishment of a party from article 8 para 2 of the Law. While the provision that the decision shall be adopted by 100 founders does significantly lower the burden for establishment of a political party and must be welcomed, it is not clear if a majority is required.¹⁷ Additionally, by the time of registration, political parties still have to have at least 800 members. However, it is unclear if and how the State would verify the required number of founders at the founding congress, which seems to be a mandatory requirement. In order to promote political participation and political pluralism, and avoid possible confusion, it is recommended to refrain from a two-step process for the registration of political parties.

15. Article 3 of the draft amendments also repeals the geographical restrictions at the moment of registration which are currently required pursuant to Article 9 para 2, Article 16 para 2 (6-7) and Article 19 para 1 of the Law. OSCE/ODIHR and the Venice Commission previously stated "[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"¹⁸ and repealing the provision would therefore be welcome.

16. The 2019 OSCE/ODIHR Opinion stated the requirement that documentation for establishing a political party was too detailed and burdensome.¹⁹ Article 8 para 4 which states "[a]t least one month before the day of holding the founding congress, the organisers of the founding congress shall publish a notification about the time and venue of the founding congress of the political party, as well as the general provisions of the draft statute and draft programme of the political party on the official website for public notifications of the Republic of Armenia" and which has been criticized as disproportionate in the 2019 Opinion has not been changed. Therefore, the recommendation is repeated. While transparency of the activities, processes and aims of political parties is important, the provision introduces a disproportionate

¹⁷ See also 2019 OSCE/ODIHR Opinion para 18.

¹⁸ [CDL-AD\(2010\)024](#), *Guidelines on Political Party Regulation* by the OSCE/ODIHR and the Venice Commission, adopted by the Venice Commission at its 84 Plenary session (October 2010), para. 81. See, in this context, the 2011 ECtHR Judgment in the case of the *Republican Party of Russia v. Russia* of 12 April 2011, no. 12976/07, paras 124- 131.

¹⁹ 2019 OSCE/ODIHR Opinion para 20.

requirement that can in fact hinder the prompt registration of a political party and should be removed.

17. Furthermore, the founding congress itself could be used to develop the programme and other party documents through participatory processes which might make the requirement of publishing these documents prior to the congress illogical in some cases. Establishment should not require too many details that a party may not be able to provide during the process of establishment. As an example, pursuant to Article 3 of the draft amendments, Article 9 now also requires parties to submit “approaches of the political party to the concept on the organisation of the public life” and “provisions regarding involvement of women, youth, representatives of national minorities and other under-represented groups in the activities of the political party”. While promoting diversity and furthering the political participation of different societal groups are crucial for pluralistic democracy, these regulations seem excessive to be placed on parties already at this early stage of their existence. Electoral legislation appears as more appropriate to ensure the effective representation of these groups in elected bodies and not including these provisions in the legislation on political parties looks appropriate. Lastly, requirements in Article 8 para 4 and Article 9 para 7 to publish party documents on the country’s official website for public notifications and the Ministry of Justice’s respectively are excessive. It should generally be sufficient to publish party documents on a party’s own website or the country’s official website for public notifications. The draft amendments now also include a variety of gender and diversity aspects as mandatory and ask for a level of detail which a political party might not be able or willing to provide in its process of establishment.

18. A positive development is the inclusion, in Article 11 of the Law (through Article 4 of the draft amendments) of a provision indicating that “[i]n case state registration of a political party is not rejected by the authorised state body within the time limit prescribed by this Law, the political party shall be deemed to be registered from the day following expiry of the time limit referred to in part 6 of Article 9 of this Law”. This is in line with the OSCE/ODIHR-Venice Commission Joint Guidelines on Political Party Regulation which state that deadlines for registration need to be reasonably short in order not to constitute unreasonable barriers to individuals’ right to freedom of association and political participation.²⁰ It is also noted positively that the draft amendments explicitly mention a political party’s right to appeal denial of registration, which should be ensured in due time in order to make the participation in elections possible.

B. Internal Democracy and Structure

19. Article 6 of the draft amendments changes Article 16 of the Law to lessen the level of detail required in a political party statute. This is a welcome amendment. However, while it is acceptable to take out of the Law Article 16 para 2 (10) which would require the statute of a political party to contain sources of acquisition of monetary funds and property, legislation should nevertheless ensure transparency of funding sources (see Sections D and E below),

20. Article 7 of the draft amendments amends Article 17 of the Law and sets out the governing bodies of a political party as the congress, the council and the permanently functioning governing body. The council is now imposed by law as a third compulsory body of the political party. The congress (meeting, conference, assembly) is the highest governing body of a political part and shall be convened at least every three years. The council of a political party (board, presidency etc.) is described as the “body determining the strategy for the current activities of the political party”. The draft law clearly delineates the responsibilities and mandates of the bodies. However, in accordance to what has been stated in the 2019 OSCE/ODIHR Opinion and the 2016 Joint Opinion, the Law, also with the new proposals put

²⁰ CDL-AD(2010)024, *Guidelines on Political Party Regulation* by the OSCE/ODIHR and the Venice Commission, adopted by the Venice Commission at its 84 Plenary session (October 2010), para. 69.

forward in the draft Amendments, regulates decisions that should be left to the party to decide internally in a too detailed manner.²¹ For instance, the new Article 17 paras 6 and 8 appears to be too rigid. According to Article 17 para 6 (1) the Council “shall determine the main direction for current activities.” Parties should be able to decide autonomously how to allocate functions.

21. Article 17 of the Law as a whole appears to excessively rule the internal structure of the political party, with three imposed bodies and a minimum number of members of the council (it could be simply provided that it should be a collegial and not a one-person body); it is not clear whether “board” or “presidency” is just another name which can be given to the council or a supplementary body which can be created; paras 6 and 8, as well as the requirement of a closed, secret ballot in para 10, also appear as over-prescriptive.

C. Membership in Political Parties

22. It is welcome that Article 5 of the draft amendments amends Article 12 paras 2 so that “active legal capacity” is not required in order to become a member of a political party. This is an important step to bring Armenian legislation in line with Article 29 (b) (i) of the CRPD which states that State Parties shall undertake to actively promote an environment in which persons with disabilities can effectively and fully participate in public affairs, including by participation “in the activities and administration of political parties”.²² Additionally, States Parties to the CRPD recognise, pursuant to Article 12 of the CRPD, “that persons with disabilities enjoy legal capacity on an equal basis with others in all aspects of life”.

23. However, Article 12 para 2 still requires members of political parties to be citizens of Armenia. Similarly, Article 2 of the Law refers to a political party as a union of citizens. As mentioned in the 2016 Joint Opinion²³ as well as the 2019 OSCE/ODIHR Opinion,²⁴ a general exclusion of foreign citizens and stateless persons from membership of political parties is not justified, as they should to some extent be permitted to participate in the political life of their country of residence, at least as far as they can participate in elections. It is recommended to amend the Law in order to make it clear that there is no such general exclusion.

D. Financing of Political Parties

Prohibition of specific donations, limits to donations

24. One of the major changes contained in the draft amendments (in Article 12 paras 1 and 3 (1) of the draft amendments) would prohibit any donation from legal persons. Bans on donations from companies to political parties and candidates are increasingly common and are not, as such, objectionable. If such prohibitions are to be effective, it should be ensured, however, that these types of bans also cover donations to legal structures connected to election campaigns and political parties. Additionally, banning any legal person from making donations makes it all the more important to draft legislation carefully to avoid loans, credits and debts to be used to circumvent these limits. It is positive that Article 24 of the Law already mentions these types of contributions but it may be advisable to include further provisions on the repayments or cancellation of loans (both from credit institutions and other legal entities such as corporations), credits or debts.²⁵

²¹ 2019 OSCE/ODIHR Opinion paras 21-22; 2016 Joint Opinion para 34.

²² See footnote 7 above (CRPD).

²³ 2016 Joint Opinion para 18.

²⁴ 2019 OSCE/ODIHR Opinion para 15.

²⁵ See also OSCE/ODIHR Opinion on Laws Regulating the Funding of Political Parties in Spain, 30 October 2017 <https://www.legislationline.org/documents/id/21441> paras 43-45.

25. Article 12 of the draft amendments changes Article 24 para 2 of the Law to significantly lower the amount a natural person can donate to a political party from 10,000-fold of the minimum salary prescribed by law to 250-fold of the minimum salary prescribed by law, whereas the minimum salary for the purposes of calculation is set at 1,000 Drams (equivalent to less than EUR 2). The draft law proposes a cap at 250-fold of the minimum salary prescribed by law (below EUR 500). Legislation setting reasonable limits to the amount a single individual can contribute to a political party has been shown to be an effective way to curb political corruption and prevent the dependency of a party on wealthy individuals.²⁶ As previously stated by OSCE/ODIHR and the Venice Commission “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 encouraging political participation, including by allowing individuals to contribute to the parties of their choice”.²⁷ The legislator is reminded, however, that political party regulation should allow for an adequate balance between public and private funding.²⁸ Legislation should ensure that new or small parties are able to receive some funding, private or public, that would allow them to effectively participate in the political process and make their ideas heard.

26. In addition, consideration should be given to tackling the issue of the so called intermediation in funding of political parties, i.e. a legal or physical person with an aim of keeping their identity secret, uses other person for transferring a donation to a political party, declaring it in the other person’s name.

27. Pursuant to Article 12 para 3 of the draft amendments, Article 24 of the Law would specify that donations obtained from a donor who was not permitted to donate to a political party shall be automatically transferred to the State Budget within two weeks whereas donations exceeding the permissible limit would first be attempted to return to the donor (either the exceeding amount or the contribution as a whole) and only be transferred to the State Budget if a return to the donor is not possible. A wrongful donation may not always be the result of a decision in bad faith. As private donations are a form of political participation, it might be advisable to try to return the donation to the donor in both cases before incorporating it in the State Budget save for circumstances in which donors have been proven to have intentionally tried to circumvent financial regulations for political parties.

28. Article 12 para 23 of the draft amendments also would introduce a provision into article 24 of the Law requiring donors to disclose their “name, surname, data in identification document and workplace.” Article 27 of the Law which specifies reporting, disclosure and publishing obligations of political parties, in paras 4 and 5 states that “[t]he statement of a political party during the reporting year must contain data on the sources and amount of funds deposited on the account of the political party, the spending of such funds, as well as the property in possession, with an indication of its value. The source of donations received by a political party shall, regardless of the value, be indicated in the statement of the political party.” While the frequency of preparing reports and the means of their publication is regulated in detail in Article 27, it is not clarified what data will be published pertaining to the individual donors.

29. Article 7 para 3 of the UN Convention against Corruption obliges States Parties consider “taking appropriate legislative and administrative measures (...), to enhance transparency in the funding of candidatures for elected public office and, where applicable, the funding of political parties.”²⁹ Recommendation 2003(4) to member states on common rules against corruption in the funding of political parties and electoral campaigns also urges States to

²⁶ Guidelines on Political Party Regulation para 175.

²⁷ Ibid.

²⁸ See also OSCE/ODIHR Opinion on Laws Regulating the Funding of Political Parties in Spain, 30 October 2017 <https://www.legislationline.org/documents/id/21441> para 21.

²⁹ See footnote 7 above (UN Convention against Corruption).

provide specific rules to “ensure transparency of donations and avoid secret donations.”³⁰ As stated in the Guidelines on Political Party Regulation “[t]ransparency in party and campaign finance, (...) is important to protect the rights of voters and to prevent corruption. Transparency is also important because the public has the right to be informed. Voters must have relevant information as to the financial support given to political parties in order to hold parties accountable.”³¹ However “[w]hile transparency may be increased by requirements to report the identities of donors, legislation should balance such a requirement with considerations of privacy and protection from intimidation”.³² Including the workplace of donors into reporting requirements, let alone making this information publicly accessible seems a disproportionate requirement which might deter individuals from donating to political parties and as such, may interfere with their right to privacy in an unjustified manner. It also does not seem necessary for the purposes of identification. Additionally, it should be clarified what “data in information document” entails and whether it refers to the number of the document only or more far reaching information, potentially including the address or place of residence of the donor which should not be made public. It is recommended for the Law to clearly state which information related to individual donors need to be published by a political party keeping in mind the balance between transparency and privacy concerns, to delete the requirement of submitting (and publishing) information of a donor’s work place and to clarify that the data required from the ID document refers to the number of the document only.

In-kind contributions

30. The draft amendments clarify, in Article 12 para 5, that “work performed by volunteers, including through the use of personal property by them (except for transport means and immovable property), as well as the appropriate expenditures compensated to the political party and the members thereof for participation in training, re-training, conferences, seminars and other similar events shall not be deemed to be donations.” The clarification that financial support used for training and educational events is not to be considered a donation is welcome. However, the blanket exclusion of volunteer work from the definition of donation could create a loophole to circumvent donation limits and the prohibition of donations by legal persons. Services which are part of the volunteer’s regular line of business and for which he or she would normally be expected to be paid for had the service been provided to other clients should be counted as an in-kind donation. In-kind donations may be defined as “all gifts, services, or property provided free of charge or accounted for at a price below market value”.³³ In-kind donations should be subject to the same restrictions as financial donations.³⁴ For that purpose, the monetary value of in-kind donations should be determined based on market price and should be listed in funding reports. Only if the service provided is one for which a volunteer would not otherwise expect payment, had the service been provided to a client other than the political party in question should the service be counted as a volunteer work and not an in-kind donation. It is recommended for the law to be amended accordingly.

³⁰ Article 3 a Recommendation 2003(4).

³¹ Guidelines on Political Party Regulation para 194.

³² Ibid para 202.

³³ OSCE/ODIHR Handbook for the Observation of Campaign Finance (2015) p 20.

³⁴ The Guidelines on Political Party Regulation para 170 state “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 that are banned by relevant legislation, all individuals should have the right to freely express their support for a political party of their choice through financial and in-kind contributions. However, reasonable limits on the total amount of contributions may be imposed.”

Prohibition of commercial activity

31. Article 10 of the draft amendments amends Article 21 of the Law, so that political parties shall not have the right to be involved in entrepreneurial activity, give property belonging thereto by the right of ownership for lease, as well as be the founder or participator of a commercial legal person. Pursuant to Article 22 of the draft amendments, Article 10 enters into force later than the rest of the law on 1 December 2021. While it is possible and perhaps desirable to curb the commercial activities of political parties, such curbs have to be proportionate and equally applied to all. Instead of a blanket ban on property lease, bans of leasing property to public or semi-public entities³⁵ and provisions indicating that such lease cannot be significantly or disproportionately higher than the current market prices should be considered. In addition, to avoid that lease of property is used to circumvent restrictions of donations from legal entities, the Commission for Prevention of Corruption should have the right to review and question all the financial documentation, including the terms/value of contracts. Regulations of political finance should not be used as a way to indirectly deal with the improper conduct of privatisations, which should be addressed as such. The issue should be reassessed to ensure compliance with Article 1 of the First Additional Protocol to the European Convention on Human Rights: even if there is a legitimate aim, restrictions regarding property acquired prior to the entry into force of the law should respect the principle of proportionality and be non-discriminatory.

32. The principle of equality of opportunity could also justify that the amount of income political parties garner from lease could be factored in and affect the amount of public funding (see para 36ff below) political parties receive.³⁶ Political parties that have income from lease over a certain threshold could receive fewer or no public funding in order to further a level playing field.

33. The draft amendments' prohibition of entrepreneurial activity in Article 10 of the draft amendments also affects political parties' media activities. While the Law still allows political parties to "establish mass media and publishing houses" (Article 21 para 1 (3) of the Law), Article 10 of the draft amendments is likely to prohibit commercial media outlets to be owned or run by political parties. The 2018 ODIHR Election Observation Mission to Armenia was told by many interlocutors that many nationwide private outlets are strongly associated with political parties, including financially and ODIHR recommended measures to ensure full transparency of media ownership by requiring clear identification of the ultimate ownership.³⁷ It is crucial that political parties do not use funds to wield disproportionate media influence and such ban of commercial media ownership is acceptable.

34. However, it is equally important that political parties are able to freely chose whichever means and form of communication they deem most useful to communicate with their electorate, party members and the broader public. It therefore should be guaranteed that political parties are still able to establish, own and run non-commercial media outlets and printing houses in order to publish campaign material or inform about the party's statutory activities, goals and programmes. In order to contribute to a level playing field for all parties, the draft amendments should consider introducing a mandatory provision of reasonable free media time in private outlets during campaign periods. Similarly, and with the same purpose, the legislator could also include disclosure and reporting obligations for other types of indirect founding, like free/discounted office space or free/subsidised postage.

³⁵ See Copenhagen Document 5.4.

³⁶ See Guidelines paras 176, 177; see also OSCE/ODIHR Opinion on the Act on Amendment of the Act on the 2019 State Budget of the Republic of Bulgaria, 3 December 2019, par 24, available at <https://www.legislationline.org/documents/id/22613>.

³⁷ Republic of Armenia, Early Parliamentary Elections, 9 December 2018, OSCE/ODIHR Election Observation Mission Final Report p. 14 and Recommendation 15; see also Parliamentary Assembly of the Council of Europe, Doc. 14801, Observation of the early parliamentary elections in Armenia (9 December 2018), para 83.

Third-party involvement

35. The legislator could consider including third-party involvement in the ambit of the draft amendments. The term “third party” refers to both individuals and organisations – including political foundations - not legally tied to any candidate or political party, which, in the course of an election, campaign in support of or in opposition to a candidate or a political party. While third-party involvement in itself contributes to the expression of political pluralism and citizen involvement in political processes, it should be limited, in conformity with the principle of proportionality, to prevent the circumvention of the rules on financing and in particular the prohibition of financing by legal persons. This could be done by: setting limits on individual contributions; expanding Article 24 in order to also include third parties which act on behalf of persons prohibited from giving donations; prescribing comprehensive reporting requirements for third parties and in particular political foundations. **In order to promote transparency, legislation should oblige political parties to report on their expenditure. The legislator could envisage introducing similar reporting requirements for third parties not directly associated with political parties.**³⁸

Public funding

36. Article 14 of the draft amendments amends Article 26 of the Law to repeal the public funding scheme currently in place in Armenia and replace it with a new system of distribution of public funds. Currently Article 26 paras 2 of the Law stipulates “[t]he total amount of funds provided for by the State Budget of the Republic of Armenia for funding of political parties may not be less than the product of 0,04-fold of the minimum salary prescribed by law and the total number of citizens included in the electoral lists during the latest elections to the National Assembly” .The new proposal establishes a two per cent threshold for political parties in parliamentary elections to receive public funding (as opposed to the current three per cent threshold in Article 26 para 3) and introduces a staggered mechanism of distribution of public funds starting with the amount of one minimum salary for each vote in case of receiving two to five per cent of the votes and decreasing the amount for each vote the more votes a political party receives.³⁹ It is welcome and in line with the Guidelines on Political Party Regulations that the minimum threshold for receiving public funding is lowered in the draft amendments and that the public funding allocation scheme proposed particularly supports smaller parties and, hence, promotes political pluralism.⁴⁰ Article 23, as stated in the explanatory note provided to the authorities, entitles all parties which took part in the last elections of the National Assembly to obtain state financing up to the next convocation of the National Assembly.

37. Article 14 para 4 of the draft amendments makes the allocation of public funds conditional to the preparation of the quarterly report of the previous quarter. This provision implements a key recommendation of the 2019 ODIHR Opinion which stated “[i]t is recommended to make the allocation of public funding conditional upon the adequate fulfilment of reporting requirements as well as compliance with relevant accounting and auditing prior to receiving public funding”.⁴¹ It is welcome that such a provision is introduced as making the allotment of public funding dependent on the adequate fulfilment of reporting obligations: this is crucial to safeguard the integrity of the system of political finance and to

³⁸ Guidelines para 205.

³⁹ Article 14 para 3 of the draft amendments.

⁴⁰ The Guidelines on Political Party Regulation state in para 187 “It is in the interest of political pluralism to condition the provision of public support on attaining a lower threshold than the electoral threshold for the allocation of a mandate in parliament.”

⁴¹ Key Recommendation E and para 34 2019 OSCE/ODIHR Opinion; See also para 192 of the Guidelines on Political Party Regulation.

enhance transparency and accountability.⁴² While requiring frequent and regular reporting is paramount to achieving these goals, in order to efficiently do so, adequate financial and human resources need to be provided to the regulatory oversight body to make it able to accomplish their respective tasks in a timely and accurate manner.⁴³

38. Article 14 para 6 of the draft amendments stipulates that political parties shall “gear at least 15 per cent of state funding towards the conduct, publication and dissemination of the studies of the political party on ideology, programme goals and public policy, as well as the actions that contribute to the involvement of women, national minorities and youth in the activities of the political party”. According to the draft amendments, the results of the studies conducted through state funds must be available for the public. It is laudable and in line with international good practice to reserve some part of state funding for initiatives advancing the political participation of women and other groups that have historically been marginalized in terms of political participation. These initiatives are in line, inter alia, with CEDAW,⁴⁴ Beijing Declaration and Platform for Action⁴⁵, Recommendation 2003(3),⁴⁶ MC Decision 7/09⁴⁷ as well as the Joint ODIHR-Venice Commission Guidelines on Political Party Regulation.⁴⁸ However, the provision remains vague and groups two issues (awareness raising on party ideology and goals as well as advancement of women, national minorities and youth) together in a way that, ultimately, does not safeguard that any will be spent on the latter. In line with Article 29 of the CRPD, Armenia is also obliged to create an environment in which persons with disabilities can realise their right to political participation. It is therefore recommended to separate awareness raising initiatives from initiatives to increase the political participation of women, national minorities, youth (and persons with disabilities) and to allot a percentage of public funding for both of these initiatives separately – or only to the initiatives aimed at increasing the political participation of specific groups. More generally, it could be difficult to assess whether activities are done in the interest of the party or in the interest of the respective groups. In addition, the Law should clearly state which body would verify if the requirements are fulfilled.

39. Article 7 of the draft amendments redrafts Article 17 of the Law. The new Article 17 para 5 stipulates that “The council (board, presidency, etc.) shall be the body determining the strategy for the current activities of the political party. Members of the council shall be elected by the congress as and for a term prescribed by the charter of the political party. The number of members of the council must not be less than five. The number of representatives of each gender in the composition of the council must not exceed 60 per cent”. In case of not meeting these quotas, public funding of the political party will be suspended pursuant to Article 14 para 6 of the draft amendments (new Article 26 para 8 of the Law). It is welcome to make public funding conditional on achieving a gender-balanced composition of the council as required by the draft amendments. However, as suspending public funding is quite a drastic measure and to close loopholes open to abuse, it is recommended for the draft law to include a provision that would trigger suspension only after a certain period of time (e.g. after four or six months) in order to give political parties the opportunity to rectify

⁴² See also Articles 11 and 13 Recommendation 2003(4).

⁴³ See also GRECO Compliance Report Armenia Fourth Evaluation Round, 8 December 2017, GrecoRC4(2017)15, <https://rm.coe.int/fourth-evaluation-round-corruption-prevention-in-respect-of-members-of/1680775f12> para 27 and GRECO Second Compliance Report Armenia Fourth Evaluation Round, 6 December 2019, GrecoRC4(2019)21, pars 25-31.

⁴⁴ See footnote 9 above (CEDAW).

⁴⁵ Fourth World Conference on Women ‘Beijing Declaration and Platform for Action’ in ‘Report’ (17 October 1995) UN Doc A/CONF.177/20, 4.

⁴⁶ Council of Europe Committee of Ministers Recommendation 2003(3) on *balanced participation of women and men in political and public decision making*, available at https://search.coe.int/cm/Pages/result_details.aspx?ObjectID=09000016805e0848.

⁴⁷ OSCE Ministerial Council Decision 7/09, 2 December 2009, Women’s participation in political and public life, available at <https://www.osce.org/mc/40710?download=true>.

⁴⁸ See para 61 of the Guidelines.

the situation and account for cases in which unforeseen circumstances (e.g. illness) force council members to quit their positions.

40. The new Article 27 para 6(1) of the Law treats members of councils and governing bodies like civil servants for the purpose of declaring assets. While it is valid to expect such persons to make some declaration relevant to their role it must be consistent with political rights and the principle of proportionality should be applied. Moreover, the proposed text could blur the line between political parties and the public (state) service.

E. Oversight

41. The draft amendments establish that the Commission for the Prevention of Corruption will exercise supervision of the financial activities of political parties in line with new Article 30 para 1 (1) of the Law. This function is currently taken on by the Oversight and Audit Service of the Central Election Commission.⁴⁹ The Venice Commission and the OSCE/ODIHR have previously emphasised the advantage of independent institutional oversight over campaign financing and recommended to clarify in the Electoral Code the institutional status of the Oversight and Audit Service.⁵⁰ As stated above, it is paramount that the Commission for the Prevention of Corruption is vested with sufficient financial and qualified human resources to fulfil its mandate in an appropriate manner. The proposed amendments do not provide sufficient ground for this.

42. In addition, the mandate of political party finance control of the Commission for the Prevention of Corruption should be clearly defined in the relevant law governing its work which does not seem to be addressed in the Law on the Commission for the Prevention of Corruption. Moreover, the draft amendments are not sufficient for clear delineation of responsibilities between the newly created Commission for the Prevention of Corruption and the Oversight and Audit Service of the Central Election Commission. The latter, in accordance to the Electoral Code, will continue to be responsible for oversight of campaign finances. The Electoral Code grants the Oversight and Audit Service the right to request information from banks, political parties and other entities, receive, audit and publish campaign finance reports, as well as impose administrative sanctions. The legal framework, should the draft amendments be adopted, leaves finance oversight functions divided between two oversight bodies, the Commission for the Prevention of Corruption for statutory finance and the Oversight and Audit Service for campaign finance, which has a potential to create confusion and inconsistencies in application of the legal provisions.

43. The draft as it stands does not guarantee an effective mechanism for supervision of the financial activity of political parties. It should be developed in order to provide for clear mechanisms and a clear delineation of mandates of the Commission for the Prevention of Corruption. Sufficient staff and budget should be allocated to this Commission, and transitional provisions should address the transfer of files from the Oversight and Audit Service of the Central Election Commission to the Commission for the Prevention of Corruption.

44. Article 28 of the Law describes the prerequisites and procedure of audits of political parties' finances. According to Article 28 currently in force "Political parties possessing assets with the value exceeding 10,000-fold of the minimum salary prescribed by law shall be obliged to publish the statements only after undergoing audit and along with the audit

⁴⁹ See Council of Europe Evaluation Report on Armenia on Transparency of Party Funding (Theme II) Greco Eval III Rep (2010 4E) 3 December 2010, <https://rm.coe.int/CoERMPublicCommonSearchServices/DisplayDCTMContent?documentId=09000016806c2b33> pars 48-50, 70.

⁵⁰ First Joint Opinion on the Armenian draft electoral code (CDL-AD(2016)019), para. 77; Second Joint Opinion on the Electoral Code CDL-AD(2016)031), para. 56; see also para 46 of the 2016 Joint Opinion.

opinion". Pursuant to para 3 "Political parties having received funding from the State Budget as prescribed by this Law shall be obliged to publish the statements only after undergoing audit and along with the audit opinion, where the funding from the State Budget in the reporting year has exceeded 3,000-fold of the minimum salary.

45. The draft amendments would make the Commission for the Prevention of Corruption responsible for those audits and add a para 4 which stipulates "The audit provided for by part 3 of this Article shall be financed from funds of the State Budget and shall be carried out by an auditing organisation that meets the standards defined by an authorised state body, by randomly selecting an auditing organisation for each political party from among auditing organisations". This is in line with prior ODIHR recommendations that the costs of audits are covered from the State Budget.⁵¹ However, the means of randomly selecting an auditing organisation for each party should be clarified. Furthermore, the Law should stipulate the requirements auditing organisations must fulfil in order to be considered. In case only national auditing organisations are considered, it may be prudent to assess if there are a sufficient number of auditing organizations in Armenia which fulfil the required criteria and are licensed and qualified to carry out the above-mentioned audits. The law should be clearer about how auditing organizations will be selected: will the Commission for the Prevention of Corruption select an organisation for each party or will it establish a list of organizations the parties may contract with? In case no auditing organisation accepts such an assessment, it should be made mandatory.

F. Sanctions

1. Proportionality and Flexibility of Sanctions

46. Article 17 of the draft amendments, amending Article 30 of the Law, provides a list of gradually escalating sanctions including the possibility to rectify inaccuracies, a warning suspension of state support and a criminal liability. The proposed sanctions seem proportionate and dissuasive and have the potential to be effective in line with Recommendation 2003(4)⁵² and prior ODIHR Recommendations.⁵³

2. Administrative and Criminal Sanctions

47. The legislative package submitted for review also contains proposed amendments to both the Criminal Code and the Code on Administrative Offences. While criminal sanctions should be 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.⁵⁴ It is admissible for a State to establish criminal or administrative offences specifically related to violations of political party regulations. However, new criminal provisions should only be established following a thorough needs assessment to account for legal certainty. It is also remarked that financial/administrative sanctions are, in many cases, as effective as criminal sanctions. Regardless the type of sanction imposed on a political party, legislation should specify the procedures for appealing a decision affecting the rights of a political party.⁵⁵

48. Article 189.15 provides a sanction for "failure to make non-cash donations provided for by the law to the political party". As formulated, this provision does not make sense, but it

⁵¹ Republic of Armenia, Parliamentary Elections, 6 May 2012, OSCE/ODIHR Election Observation Mission Final Report, Recommendation 14, p. 26.

⁵² Article 16 (Recommendation 2003(4)).

⁵³ 2019 OSCE/ODIHR Opinion Key Recommendation H and paras 39-42; 2016 Joint Opinion Recommendation (c) ad para 52; see also Guidelines on Political Parties para 215.

⁵⁴ Guidelines on Political Party Regulation para 217.

⁵⁵ Guidelines on Political Party Regulation para 233.

may be a problem of translation: presumably the intention was to provide a sanction for persons which make non-cash donations in an amount higher than the admissible threshold.

3. Suspension of Activities of a Political Party

49. Article 18 of the draft law proposes to amend Article 32 of the Law which regulates the suspension of a political party. It is welcomed that the draft amendments repeal Article 32 para 2 according to which a political party's activities were suspended, *inter alia*, in case of the party not participating in two consecutive elections. The draft amendments also attempt to provide more clarity and specificity to the term "gross violation of law" which leads to suspensions of political parties' activities. "Gross violation of law" is proposed to be defined as "violation, in bad faith, by a political party of the requirement or procedure prescribed by law for the restriction on entrepreneurial activities or receipt and disposal of donations or for publication of the annual statements of the political party or for provision of documents prescribed by law and failure to eliminate the violation within a 40-day period after being subjected to liability as provided for by the legislation of the Republic of Armenia and after submitting a written requirement for elimination of the violation by the Commission for the Prevention of Corruption".⁵⁶ It is welcome that the provision is made somewhat more concrete and a mental element is added by proscribing that the listed violation needs to have been committed in bad faith, extending the time period for rectifying the grounds leading to suspension under Article 32 and supplementing the provision with a requirement of submitting to the political party a written warning by the Commission for the Prevention of Corruption. Article 18 para 6 of the draft amendments would also introduce a new para 9 in Article 18 that clarifies what a political party may and may not do while its activities are suspended and state that a party's activities may not be suspended where a political party has submitted an application to participate in upcoming elections. These are important clarifications and safeguards that provide some additional clarity for political parties.

50. At the same time, some of the previously voiced criticism is not mitigated in the draft amendments.⁵⁷ As previously pointed out, the provision still does not differentiate between major violations and those which are relatively minor, even when committed in bad faith. OSCE/ODIHR and the Venice Commission have stated in the past that "[t]he suspension of a political party is a particularly invasive and exceptional measure, and should only be imposed in the most serious cases involving particularly grave violations of the rules on donations or on reporting, if other less invasive measures have proven ineffective".⁵⁸ In this context, it is also not clear how the newly introduced catalogue of sanctions in new Article 30 para 2 relates to the sanction of suspension pursuant to Article 32. Therefore, pursuant to the recommendation of the 2019 ODIHR Opinion and the 2016 Joint Opinion the term "gross nature of the violation of the law" in Article 32 should reflect the gravity of the violation, while paying due regard to the proportionality principle as outlined in the OSCE/ODIHR and Venice Commission Second Joint Opinion on the Electoral Code.⁵⁹ These recommendations are reiterated here: even if suspension is forbidden "during the elections", some of its negative consequences could be difficult to overcome.

⁵⁶ Currently, Article 32 para 2 of the Law states: "Within the meaning of part 1 of this Article, gross violation of law shall mean: (1) violation of the procedure prescribed by law for the disposal of donations or publication of the annual statements of the political party or provision of documents prescribed by law and failure to eliminate the violation within a thirty-day period after being subjected to liability as provided for by the Administrative Offences Code of the Republic of Armenia; or (2) commission of such a violation during the foundation or state registration of a political party, for which the political party would not be registered if it has been known at the moment of state registration."

⁵⁷ See 2019 OSCE/ODIHR Opinion para 38 and 2016 Joint Opinion para 51.

⁵⁸ See 2019 OSCE/ODIHR Opinion para 38 and 2016 Joint Opinion para 51.

⁵⁹ *Ibid.*

G. Other Remarks

51. Similarly, as stated both in the 2016 Joint Opinion and the 2019 ODIHR Opinion,⁶⁰ it is recommended to reintroduce the principle of freedom of political parties into Article 4 and to explicitly mention the promotion of gender equality and inclusiveness in the provision, which would also pertain to the political participation of persons with disabilities, youth and national minorities.

52. The new provision in Article 27 para 2 obliges political parties to disclose assistance received during international co-operation. A transitional provision would be useful.

53. The new provision in Article 13 of the draft amendments amends Article 25 of the Law whereby the State provides local offices where political parties can organise “visits of citizens to the political parties having factions in the National Assembly as prescribed by the Government of the Republic of Armenia in the National Assembly”. This provision carries the danger of leading to further identification of parties with State authority. It is notable that the offices are not provided for general party use but for one narrow purpose. Policing and monitoring this narrow purpose could become a form of State control. Financing of the rental of offices can be envisaged as an alternative.

V. Conclusion

54. In conclusion, OSCE/ODIHR and the Venice Commission welcome many of the proposals in the draft amendments which, if implemented adequately, can help to further political pluralism in line with international standards on political party regulation.

55. At the same time, the draft amendments would benefit from certain revisions and improvements to ensure political party registration is not too burdensome, internal party processes are not overregulated and loopholes in political party funding are closed.

56. In order to further improve the compliance of the draft amendments with international human rights standards and OSCE commitments, OSCE/ODIHR and Venice Commission make the following main recommendations:

- To remove other overly burdensome requirements for founding and registering a political party and refrain from too detailed regulation of a political party's governing bodies and decision-making processes [paras 14ff];
- To ensure that all in-kind donations, including volunteer work for services which normally carry a reasonable expectation of payment, are counted as donations; [para 30]
- To abolish the requirement of the workplace of a donor to be disclosed or published when making a donation [para 29];
- To separate promoting the political participation of certain groups from awareness raising about the goals and ideology of political parties [para 38];
- To develop a clear mechanism of oversight by the Commission for the Prevention of Corruption with a clear delineation of mandates and a detailed procedure and to ensure that sufficient staff and budget is allocated to the Commission for the Prevention of Corruption within its mandate of oversight of political party finance [paras 41ff];
- To amend the Law so that the term “gross nature of the violation of the law” reflects the gravity of the violation. [para 50].

⁶⁰ 2016 Joint Opinion para 18.

⁶⁰ 2019 OSCE/ODIHR Opinion para 16.

These and additional Recommendations, including those highlighted in bold, are included throughout the text of this Joint Opinion.

57. The Venice Commission and OSCE/ODIHR remain at the disposal of the Parliamentary Assembly and the authorities of Armenia for further assistance in this matter.

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