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**EUROPEAN COMMISSION FOR DEMOCRACY THROUGH LAW**

**(VENICE COMMISSION)**

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

**UKRAINE**

**JOINT OPINION**

**ON THE DRAFT LAW ON POLITICAL PARTIES**

**Approved by the Council of Democratic Elections  
at its 71<sup>th</sup> online meeting (18 March 2021)  
and adopted by the Venice Commission  
at its 126<sup>th</sup> Plenary Session  
(online, 19-20 March 2021)**

**on the basis of comments by**

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## I. Introduction

1. On 30 December 2020, the Chairperson of the Committee on Legal Policy of the *Verkhovna Rada* (Parliament) of Ukraine sent a request for an opinion on the draft Law of Ukraine on Political Parties ([CDL-REF\(2021\)005](#), hereinafter “the Draft Law”) to the OSCE Office for Democratic Institutions and Human Rights (hereinafter “OSCE/ODIHR”), to assess its compliance with international human rights standards and OSCE commitments. Given its practice of collaborating with the Venice Commission on similar matters, on 18 January 2021, OSCE/ODIHR invited the Venice Commission to prepare the Opinion jointly and confirmed to the Chairperson of the Committee its readiness to prepare the opinion in collaboration with the Venice Commission.
2. Mr Michael Frenco (Member, Malta), Mr Jan Velaers (Member, Belgium) and Mr Pere Vilanova Trías (Member, Andorra) were appointed as rapporteurs for the Venice Commission. Ms Ingrid van Biezen, Ms Alice Thomas and Mr Marcin Walecki were appointed as legal experts for the OSCE/ODIHR. The OSCE/ODIHR Core Group of Experts on Political Parties (more specifically, Mr Fernando Casal Bertoa, Ms Lolita Cigane, Mr Richard Katz and Mr Daniel Smilov) also contributed to this opinion.
3. On 16-17 February 2021, a joint delegation composed of Mr Frenco, Mr Velaers and Mr Vilanova Trías on behalf of the Venice Commission, and of Ms van Biezen, Ms Thomas and Mr Walecki on behalf of the OSCE/ODIHR, accompanied by Mr Michael Janssen and Mr Serguei Kouznetsov from the Secretariat of the Venice Commission and Mr Konstantine Vardzelashvili from the OSCE/ODIHR, participated in a series of videoconferences with the Chairperson of the Parliamentary Committee on Legal Policy and members of the Committee and MPs/members of the working group established within the Parliament to develop the Draft Law, representatives of Ukrainian political parties, the Deputy Minister of Justice, the Head and staff of the National Agency of Corruption Prevention, representatives of the Central Election Commission, as well as non-governmental organisations and the international community represented in Kiev. This Joint Opinion takes into account the information obtained during these meetings. The OSCE/ODIHR and the Venice Commission are grateful to the Council of Europe Office in Ukraine for the excellent organisation of the videoconferences.
4. This opinion was approved by the Council for Democratic Elections at its 71<sup>th</sup> meeting, held online on 18 March 2021, and adopted by the Venice Commission at its 126<sup>th</sup> Plenary Session, held online on 19 and 20 March 2021.

## 1. Scope of the Joint Opinion

5. The scope of this Joint Opinion covers only the Draft Law, submitted for review. Thus limited, the Joint Opinion does not constitute a full and comprehensive review of the entire legal and institutional framework regulating political parties in Ukraine.

6. 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 Law. The ensuing recommendations are based on international human rights standards and obligations, OSCE human dimension commitments, and good practices. Where appropriate, they also refer to the relevant recommendations made in previous legal opinions prepared by the OSCE/ODIHR and/or the Venice Commission.

7. 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,<sup>1</sup> the Joint Opinion also takes account of the potentially different impact of the Draft Law on women and men.

8. This Joint Opinion is based on an unofficial English translation of the Draft Law. Errors from translation may result.

9. In view of the above, the OSCE/ODIHR and the Venice Commission would like to note that this Joint Opinion may not cover all aspects of the Draft Law, and that the Joint Opinion thus does not prevent them from formulating additional written or oral recommendations or comments on the respective legal act or related legislation in Ukraine in the future.

## 2. Executive Summary

10. The current initiatives to amend the legislation on political parties of Ukraine are welcome in principle, and a number of aspects of the Draft Law are in line with previous OSCE/ODIHR and Venice Commission recommendations. In particular, the drafters' attempts to strengthen the transparency of key aspects related to the registration and functioning of political parties, to facilitate the process of registering political parties, to establish more effective funding and financial reporting requirements, to further delineate the powers of oversight bodies in terms of party finance monitoring and to ensure gender equality in the sphere of political parties, are acknowledged and go in the right direction. It is noteworthy that this initiative is aimed at enhancing the role, status and importance of political parties and at stimulating the development of democratic political parties as an important tool of democratic governance.

11. At the same time, the Draft Law, in seeking to resolve issues of the current Law, appears to have adopted a top-down approach in order to ensure bottom-up democracy within political parties. The Draft Law thereby overregulates matters that normally lie within the discretion of political parties themselves, which in turn raises concerns with regard to the internal autonomy of the parties, as protected by their freedom of association. This is compounded by a punitive approach to minor transgressions of political party funding regulations, some of which could better be addressed with enhanced communication and awareness-raising measures.

12. While some aspects of the procedure for registering parties have been improved, political parties are still required to ensure the formation and registration of regional

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<sup>1</sup> See [OSCE Action Plan for the Promotion of Gender Equality](#), adopted by Decision No. 14/04, MC.DEC/14/04 (2004), para. 32, which refers to commitments to mainstream a gender perspective into OSCE activities; and Council of Europe, [Gender Equality Strategy 2018-2023](#), which includes as its sixth strategic objective the achievement of gender mainstreaming in all policies and measures.

organisations in at least five electoral regions of Ukraine within six months of their state registration. Additionally, the Draft Law now introduces a process of confirming the registration of political parties within one year after their establishment, which is contingent on parties having at least 2000 members in at least five constituencies of Ukraine. This dual certification appears to be a potentially burdensome step, especially as newly established political parties may not take part in elections until they have been confirmed. The combination of such registration and restrictive membership requirements might pose unreasonable barriers to party registration and participation in elections – especially when it comes to smaller parties.

13. Moreover, the establishment of a Unified Register of Members of Political Parties disproportionately impinges on the rights to freedom of association of political parties and their members, and on the members' private lives, and should thus be reconsidered.

14. While a number of changes to permissible donations to parties are positive, the provisions regulating under which circumstances individuals may donate seem to be unnecessarily restrictive. At the same time, the overall ceilings for donating to parties remain quite high. Moreover, compliance of these new provisions with the Electoral Code needs to be ensured.

15. Finally, the provisions outlining the roles, mandates, status and limitations of oversight bodies remain quite vague and would benefit from greater detail. The legal basis for banning political parties also includes some quite general terminology. It is crucial to ensure that oversight and sanctioning powers are clear and that their limits are precisely defined. In this context, it would be advisable to introduce to the Draft Law a wider spectrum of sanctions, to ensure that sanctions are better adapted to the gravity of an offence.

16. In light of the above, OSCE/ODIHR and the Venice Commission make the following key recommendations for improvement of the Draft Law:

- A. to substantially revise or delete draft Article 10 par 3 requiring a party that wishes to be registered to form and register regional organisations in at least five electoral regions of Ukraine; [par 62]
- B. to remove the requirement of confirming registered parties within one year after their establishment under draft Article 16; [par 72]
- C. to remove draft Article 19 requiring political parties to register their members in a Unified Register of Members of Political Parties; [par 79]
- D. to substantially revise draft Section IV on Activities of Political Parties or to remove the provisions which impinge too far on the autonomy of political parties; [par 86]
- E. to amend draft Article 36 par 2 by revising disproportionate limitations on individuals' right to donate to political parties, and at the same time to lower the donation ceilings for individuals and for legal entities under draft Article 36 pars 2 and 3 respectively; [pars 98-101]
- F. to define the mandates and competences of the oversight bodies with more precision in draft Section VIII; [pars 128-137] and
- G. to introduce a wider spectrum of sanctions for different violations of the Draft Law to ensure that individual sanctions are proportionate to the established offences. [par 141]

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

### 3. Analysis and Recommendations

#### A. International Standards and OSCE Commitments relating to Political Parties

17. The rights to free association and free expression are fundamental to the proper functioning of a democratic society. Political parties, as collective instruments for political expression, must be able to fully enjoy such rights. Fundamental rights afforded to political parties and their members are found principally in Articles 19 and 22 of the International Covenant on Civil and Political Rights (hereinafter "ICCPR"), which protect the rights to freedom of expression and opinion and the right to freedom of association respectively.<sup>2</sup>

18. At the Council of Europe level, Article 11 of the European Convention on Human Rights (hereinafter "ECHR") sets standards regarding the right to freedom of association, which protects the rights of political parties as special types of associations and their members.<sup>3</sup> The case law of the European Court of Human Rights (ECtHR) provides additional guidance for Council of Europe Member States on how to ensure that their laws and policies comply with key aspects of Article 11. Furthermore, the right to freedom of opinion and expression under Article 10 of the ECHR and the right to free elections guaranteed by Article 3 of the First Protocol to the ECHR are also of relevance when legislation on political parties is reviewed.

19. In the OSCE region, paragraph 7.6 of the 1990 OSCE Copenhagen Document, commits OSCE participating States to "respect the right of individuals and groups to establish, in full freedom, their own political parties or other political organisations and provide such political parties and organisations with the necessary legal guarantees to enable them to compete with each other on a basis of equal treatment before the law and by the authorities."<sup>4</sup> The Copenhagen Document also includes the protection of the freedom of association (paragraph 9.3) and of the freedom of opinion and expression (paragraph 9.1), as well as obligations on the separation of the state and political parties (paragraph 5.4). Within the OSCE context, Ministerial Council Decision 7/09 on women's participation in political and public life is also of interest.<sup>5</sup>

20. These obligations and commitments are supplemented by various UN recommendations, the most important of which is General Comment 25 of the UN Human Rights Committee on the right to participate in public affairs, voting rights and the right of equal access to public service, interpreting state obligations under Article 25 of the ICCPR.<sup>6</sup> In the area of gender equality and diversity, the UN Convention on the Elimination of All Forms of Discrimination against Women<sup>7</sup> (hereinafter "CEDAW") is relevant (in particular its Articles 4 (on temporary special measures to enhance gender equality) and Article 7 (on eliminating discrimination against women in political and public life), as is the UN Convention on the Rights of Persons with Disabilities, primarily Article 29 on the participation of persons with disabilities in political and public life.<sup>8</sup> In the sphere of combatting corruption, Article 7 par 3 of the UN Convention against Corruption specifies that "[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

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<sup>2</sup> International Covenant on Civil and Political Rights adopted by the UN General Assembly by resolution 2200A (XXI) of 16 December 1966. Ukraine ratified the Covenant on 12 November 1973.

<sup>3</sup> The Council of Europe's Convention for the Protection of Human Rights and Fundamental Freedoms entered into force on 3 September 1953. Ukraine ratified the Convention on 11 September 1997.

<sup>4</sup>1990 OSCE Copenhagen Document (29 June 1990) 29 ILM 1305, available at <http://www.osce.org/odihr/elections/14304?download=true>

<sup>5</sup> 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>.

<sup>6</sup> 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>.

<sup>7</sup> 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. Ukraine ratified the Convention on 12 March 1981.

<sup>8</sup> UN Convention on the Rights of Persons with Disabilities, adopted on 13 December 2006 during the sixty-first session of the General Assembly by resolution A/RES/61/106. Ukraine ratified the Convention on 4 February 2010.

public office and, where applicable, the funding of political parties”.<sup>9</sup>

21. Similar recommendations can be found at the OSCE and Council of Europe levels. These include Council of Europe Committee of Ministers’ Recommendation (2003)4 on Common Rules Against Corruption in the Funding of Political Parties and Electoral Campaigns,<sup>10</sup> the Joint Guidelines issued by OSCE/ODIHR and the Venice Commission on Political Party Regulation (hereinafter “the OSCE/ODIHR-Venice Commission Guidelines on Political Party Regulation”),<sup>11</sup> the OSCE/ODIHR and Venice Commission Joint Guidelines on Freedom of Association,<sup>12</sup> the Venice Commission’s Code of Good Practice in Electoral Matters,<sup>13</sup> as well as various OSCE/ODIHR and Venice Commission opinions on individual pieces of legislation<sup>14</sup> and OSCE/ODIHR election observation reports.<sup>15</sup> In particular, the Venice Commission Opinion on the Ukrainian Legislation on Political Parties<sup>16</sup> and the OSCE/ODIHR-Venice Commission Joint Opinion on the draft amendments to some legislative acts concerning prevention and fight against political corruption of Ukraine<sup>17</sup> are directly relevant in this context. Moreover, reference is made to Reports of the Council of Europe Group of States against Corruption (GRECO) relating to transparency of party funding in Ukraine.<sup>18</sup>

## B. National Legal Framework

22. Article 15 of the Constitution of Ukraine guarantees “freedom of political activity not prohibited by the Constitution and the laws of Ukraine”. Articles 36 and 37 further establish the right of citizens of Ukraine “to freedom of association in political parties and public organisations”, and they include certain prohibitions for the activities of political parties. In line with Article 37 of the Ukrainian Constitution, Article 5 of the 2001 Law on Political Parties defines grounds for the prohibition of political parties.<sup>19</sup>

<sup>9</sup> UN Convention against Corruption, adopted by the General Assembly on 31 October 2003, by resolution 58/4. The Convention entered into effect on 14 December 2005, and the Republic of Ukraine ratified it on 2 December 2009.

<sup>10</sup> Council of Europe Committee of Ministers, Recommendation Rec(2003)4 to member states on common rules against corruption in the funding of political parties and electoral campaigns, adopted on 8 April 2003. See also Parliamentary Assembly of the Council of Europe, Recommendation 1516(2001) on financing of political parties, adopted by the Standing Committee, acting on behalf of the Assembly, on 22 May 2001, par 3, which requires member states to adopt rules “in order to maintain and increase the confidence of citizens in their political systems”.

<sup>11</sup> Joint Guidelines of the OSCE/ODIHR and the Venice Commission on Political Party Regulation (2<sup>nd</sup> edition, 2020), CDL-AD(2020)032, available at <https://www.legislationline.org/odihr-documents/page/guidelines> and [https://www.venice.coe.int/webforms/documents/default.aspx?pdffile=CDL-AD\(2020\)032-e](https://www.venice.coe.int/webforms/documents/default.aspx?pdffile=CDL-AD(2020)032-e).

<sup>12</sup> Joint Guidelines of the Venice Commission and OSCE/ODIHR on Freedom of Association (2015), CDL-AD(2014)046, available at <https://www.osce.org/odihr/132371> and [https://www.venice.coe.int/webforms/documents/?pdf=CDL-AD\(2014\)046-e](https://www.venice.coe.int/webforms/documents/?pdf=CDL-AD(2014)046-e).

<sup>13</sup> Venice Commission, Code of Good Practice in Electoral Matters, CDL-AD(2002)023rev2-cor, available at [https://www.venice.coe.int/webforms/documents/default.aspx?pdffile=CDL-AD\(2002\)023rev2-cor-e](https://www.venice.coe.int/webforms/documents/default.aspx?pdffile=CDL-AD(2002)023rev2-cor-e). See, inter alia, section I.2.3 (“equality of opportunity”), I.2.4 (“equality and national minorities”) and I.2.5 (“equality and parity of the sexes”), as well as the corresponding sections of the Explanatory Report.

<sup>14</sup> See, among others, -the Venice Commission and OSCE/ODIHR Joint Interim Opinion on the Law of Ukraine on the Condemnation of the Communist and National Socialist (Nazi) Regimes and Prohibition of Propaganda of their Symbols,

[CDL-AD\(2015\)041-e](https://www.venice.coe.int/webforms/documents/default.aspx?pdffile=CDL-AD(2015)041-e).

<sup>15</sup> All relevant OSCE/ODIHR election observation reports can be found at: <http://www.osce.org/odihr/elections/ukraine>.

<sup>16</sup> Venice Commission, Opinion on the Ukrainian Legislation on Political Parties, CDL-AD(2002)017.

<sup>17</sup> Venice Commission and OSCE/ODIHR Joint Opinion on the Draft Amendments to Some Legislative Acts Concerning Prevention of and Fight against Political Corruption of Ukraine, [CDL-AD\(2015\)025](https://www.venice.coe.int/webforms/documents/default.aspx?pdffile=CDL-AD(2015)025).

<sup>18</sup> See GRECO, Third Evaluation Round, Evaluation Report on Ukraine, Transparency of Party Funding (Theme II), 2011 ([Greco Eval III Rep \(2011\) 1E](https://www.greco-international.org/en/evaluation-reports/evaluation-report-on-ukraine-transparency-of-party-funding-theme-ii-2011)), Third Evaluation Round, Compliance Report on Ukraine, Transparency of Party Funding, 2013 ([Greco RC-III \(2013\) 14](https://www.greco-international.org/en/evaluation-reports/compliance-report-on-ukraine-transparency-of-party-funding-2013)), Third Evaluation Round, Second Compliance Report on Ukraine, Transparency of Party Funding, 2015 ([Greco RC-III \(2015\) 22](https://www.greco-international.org/en/evaluation-reports/second-compliance-report-on-ukraine-transparency-of-party-funding-2015)), and Addendum to the Second Compliance Report on Ukraine, 2017 ([GrecoRC3\(2017\)8](https://www.greco-international.org/en/evaluation-reports/addendum-to-the-second-compliance-report-on-ukraine-2017)).

<sup>19</sup> Political parties may be prohibited under Article 5 of the Law if they aim to retract the independence of Ukraine, change the constitutional order by forceful means, violate the sovereignty and territorial integrity of Ukraine, undermine national security, actively seize state power or incite war, violence, interethnic, racial or religious hatred,

23. The Law further regulates membership in political parties by limiting it to Ukrainian citizens with the right to vote, who may be a member of only one political party at a time (Article 6). Article 10 allows for the establishment of a party by 100 citizens of Ukraine supported by at least 10,000 signatures of citizens having the right to vote in elections collected in two-thirds of all rayons of at least two-thirds of all oblasts of Ukraine, the cities of Kyiv and Sebastopol, and no less than two-thirds of the rayons of the Autonomous Republic of Crimea.

24. Funds and property of political parties are set out in Chapter IV of the Law. Article 15 contains restrictions to private donations, including limitations on who may donate, and in which amount.<sup>20</sup> Article 17 regulates financial reporting and auditing of such reports and provides that political parties shall submit reports on property, income, expenses and financial obligations to the National Agency on the Prevention of Corruption (hereinafter “NACP”) on a quarterly basis.

25. A separate Chapter IV-1 regulates public funding of political parties.<sup>21</sup> Based on Article 17-3, a political party becomes eligible for such funding if in recent parliamentary elections its list of candidates in the nationwide multi-member constituency received at least 5% of the votes. The allocation of public funding includes extra 10% of funding divided among those parties that have ensured that one sex does not exceed two-thirds of the total number of Members of Parliament elected for that party. Parties may only use public funding for one calendar year.

26. In terms of oversight, Article 18 contains a list of bodies entitled to exercise public control of activities of political parties. This includes a central executive body in charge of implementing public policy related to the state registration of civic associations, which also supervises the compliance of political parties with the Constitution, the laws of Ukraine and the party’s statute, except for cases where such control is exercised by other bodies. The Central Election Commission and district and territorial election commissions oversee the compliance of political parties with procedures for participation in the electoral process and financial reporting concerning the receipt and use of election funds. The Accounting Chamber supervises the proper use of public funds allocated to political parties, while the NACP oversees the compliance of political parties with funding restrictions, including in the electoral sphere and as regards public funding, and financial reporting, in general and regarding the receipt and use of election funds.

27. Finally, Article 19 outlines sanctions that may be imposed on political parties for violations of the Constitution and of the Law on Political Parties and other laws of Ukraine. The list of sanctions includes warnings to prevent further illegal activities and the prohibition of political parties; Articles 20, 21 and 22 provide for the possibility of individual disciplinary, administrative, civil or criminal liability for offences relating to the founding, registration and running of political parties. The termination and de-registration of political parties (only by court decision) is regulated in Articles 23 and 24.

### **C. The Scope and Purpose of the Draft Law**

28. The Draft Law was prepared in May 2020 by a working group established by the Committee on Digital Transformation of the *Verkhovna Rada* in cooperation with the Committee on Legal Policy. The working group was composed of members of parliament, representatives of various

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encroach on human rights or freedoms or public health, or promote communist and/or national socialist (Nazi) totalitarian regimes and symbols.

<sup>20</sup> According to this provision, the overall amount of donations made in support of a political party by a Ukrainian citizen within one year shall not exceed 400 minimum monthly salaries, with the amount of the minimum monthly salary established as of 1<sup>st</sup> of January in the year when the donation was made. For legal entities, the annual limit lies at 800 minimum monthly salaries. The annual donation limit to political parties is thus currently UAH 2,000,000 (roughly EUR 60,000) for individuals. Legal entities may donate to political parties up to UAH 4,000,000 (roughly EUR 120,000).

<sup>21</sup> Such funding is allocated for statutory activities of political parties and shall be equal to 100th of the minimum monthly salary as established by 1st of January of the preceding year, multiplied by the number of voters who voted in the nationwide multi-member constituency in the most recent national elections (Article 17-2).

state bodies and institutions, as well as representatives of civil society and of international organisations, and independent experts.

29. According to the letter sent to OSCE/ODIHR on 30 December 2020, the Draft Law aims at improving the quality of the political process and public policy in general, and also seeks to enhance the level of political responsibility in society, among others by ensuring “the openness of politics and participation of citizens in it”. The Draft Law would replace the current Law on Political Parties of Ukraine of 2001, last amended in July 2020. In 2002, the Venice Commission had prepared an Opinion on the law and on draft amendments to it.<sup>22</sup> This Opinion contains several recommendations that are still relevant and are referred to in the present Joint Opinion.

#### **D. General Remarks**

30. It should be stated from the outset that the Draft Law represents a positive attempt to reform political party regulations in Ukraine and addresses many existing deficiencies identified by the OSCE/ODIHR, the Venice Commission, GRECO and other organisations. The Draft Law thus represents an important legislative initiative. A number of aspects of the Draft Law are in compliance with OSCE/ODIHR and Venice Commission recommendations made in the past.

31. The Draft Law contains a number of improvements over the existing Law on Political Parties. Notably, it seeks to strengthen the transparency of key aspects related to the registration and functioning of political parties, facilitates the process of registering political parties, establishes more effective funding and financial reporting requirements, including regulations related to third parties, better defines different types of donations, and further delineates the powers of oversight bodies in terms of party finance monitoring. The Draft Law further seeks to enhance women’s engagement in political party decision-making processes, which is a welcome step.

32. At the same time, the Draft Law regulates almost every aspect of political parties, often in a very detailed way, including their establishment and registration, their internal organisation and structure, the membership of political parties, their leadership, their charter and programme documents, their activities, both internal and international, their decision-making procedures, their public and private funding activities, the reporting obligations that rest on them, as well as the control that the state can exercise over them.

33. Political parties must be protected as an integral expression of the right of individuals and groups to freely form associations. But, given the unique and vital role of political parties in the 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.<sup>23</sup> As there is no single or universally accepted model for party regulations, states enjoy a degree of discretion in choosing the most appropriate and efficient model, while respecting norms of international law.

34. When preparing the Draft Law, the drafters have clearly opted for the so-called “egalitarian-democratic model” of state control and not for the so-called “liberal model”:<sup>24</sup> the former model, to a large extent, limits party autonomy in the interests of transparency, internal democracy, accountability and state control. Although both approaches can be justified, especially taking into account the historical and political context in which parties have to operate, it is important to stress that parties shall always operate on the basis of the freedom of association, the freedom of peaceful assembly and the freedom of expression. These rights are guaranteed both in the Ukrainian Constitution and in international and European human rights instruments. These

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<sup>22</sup> Venice Commission, Opinion on the Ukrainian Legislation on Political Parties, CDL-AD(2002)017.

<sup>23</sup> See Joint Guidelines of the Venice Commission and OSCE/ODIHR on Political Party Regulation, CDL-AD(2020)032, par 22.

<sup>24</sup> See Joint Guidelines of the Venice Commission and OSCE/ODIHR on Political Party Regulation, CDL-AD(2020)032, pars 23-28.

freedoms are not absolute. Limitations are possible on the condition that they are based on law, “necessary in a democratic society”, and in the interests of a legitimate aim.

35. The OSCE/ODIHR-Venice Commission Joint Guidelines on Political Party Regulation state in this context that the need for restrictions shall be carefully weighed, and that the chosen limitations need to be proportionate and the least intrusive means to achieve the respective objective. Indeed, “[p]articularly in the case of political parties, given their fundamental role in the democratic process, prohibitive measures shall be narrowly applied and shall never completely extinguish the right or encroach on its essence.”<sup>25</sup>

36. The requirement that actions taken to achieve a legitimate aim need to be necessary in a democratic society means that states need to prove the existence of a “pressing social need” and of “relevant and sufficient” reasons. Regulations of political parties should be introduced and implemented with restraint, acknowledging that permissible limitations to the right of free association for political parties have been narrowly interpreted by the ECtHR.<sup>26</sup>

37. With respect to the limitation of party autonomy in particular, the OSCE/ODIHR-Venice Commission Joint Guidelines on Political Party Regulation, with reference to ECtHR case law, have noted the competence of states to introduce some legislative requirements for the internal organisation and selection of candidates for elections, in the interest of democratic governance. At the same time, state authorities should not interfere with the internal matters of political parties unless necessary, as it is for the parties themselves to determine the manner in which their conferences and decision procedures shall be organised. Likewise, it should primarily be up to the political party and its members and not the public authorities to ensure that the relevant formalities are observed in the manner specified in its statutes. Thus, while some kind of state regulation or guiding principles for the inner functioning of political parties may be acceptable, it may suffice if such state interference would formulate some “requirements for parties to be transparent in their decision-making and to seek input from their membership when determining party constitutions and candidates”.<sup>27</sup>

## **E. Basic Principles in the Draft Law**

38. Section 1 of the Draft Law deals with general provisions of the Draft Law, which include, among others, definitions, legal foundations and principles, and rights and guarantees of political parties and of their activities.

39. Article 3 sets out principles relating to the establishment and activities of political parties, which includes “respect for the constitutional order and sovereignty of the state” (par 1), and the principles of non-discrimination, equality and internal democracy, representativeness and focus on party members, and transparency and openness, among others. The majority of these principles are defined in ensuing paragraphs of Article 3.

40. Thus, par 4 of this provision further defines the concept of “respect for the constitutional order and sovereignty of the state”, by stating that such respect includes the possibility of banning political parties if their goals and programmes fail to respect the constitutional order

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<sup>25</sup> Joint Guidelines of the Venice Commission and OSCE/ODIHR on Political Party Regulation, CDL-AD(2020)032, par 50.

<sup>26</sup> See ECtHR, *Gorzelik and Others v. Poland*, no. 44158/98, [GC] judgment of 17 February 2004, par 95, stating that “exceptions to the rule of freedom of association are to be construed strictly and only convincing and compelling reasons can justify restrictions on that freedom”. See also ECtHR, *Sidiropoulos and Others v. Greece*, no. 26695/95, 10 July 1998, par 40 and ECtHR, *Tebieti Mühaffize Cemiyetti and Israfilov v. Azerbaijan*, no. 37083/03, 8 October 2009, par 67. See also Joint Guidelines of the Venice Commission and OSCE/ODIHR on Political Party Regulation, CDL-AD(2020)032, par 51.

<sup>27</sup> See Joint Guidelines of the Venice Commission and OSCE/ODIHR on Political Party Regulation, CDL-AD(2020)032, par 28. See also ECtHR, *Yabloko Russian United Democratic Party and Others v. Russia*, no. 18860/07, 8 November 2016, par 79, and ECtHR, *Republican Party of Russia v. Russia*, no. 12976/07, 12 April 2011, par 88, both of which refer in turn to par 98 of the first edition of the Joint Guidelines of the Venice Commission and OSCE/ODIHR on Political Party Regulation, CDL-AD(2010)024 (2010).

and sovereignty of the state. In addition to references to the use of force to change the constitutional order, propaganda of war, and incitement to ethnic violence and the prohibition of racial and religious enmity, Article 3 par 4 also contains very general terminology, e.g. references to banning parties that “undermine [the] security [of the state]”, or that engage in “encroachment of human rights and freedoms” or “threat to public health”. These terms, while very similar to the contents of Article 5 of the current Law on Political Parties, are so general that it is impossible to know which kind of behaviour they would encompass. They thus do not seem to be in line with the principle of legality.

41. Moreover, as also stated in the OSCE/ODIHR-Venice Commission Joint Guidelines on Political Party Regulation, the state’s duty to protect the freedom of association of political parties also extends to cases where a party espouses ideas that do not enjoy the support of the majority of society, as long as the promotion of such ideas does not involve or advocate the use of violence or is not aimed at the destruction of democracy.<sup>28</sup>

42. Article 3 par 4 of the Draft Law considers banning parties “whose programme goals or actions are aimed at forcibly changing the constitutional order, violating the sovereignty and territorial integrity of the state, undermining its security.” A similar provision can be found in Article 37 of the Ukrainian Constitution and in Article 5 of the current Law on Political Parties.

43. It should be noted that from the wording of Article 3 par 4, it is not immediately clear whether the prohibition of political parties violating the sovereignty and territorial integrity of the state and undermining state security is linked to the use of or real threat of violence or whether such ban is of a general nature and also prohibits all forms of non-violent actions and expressions.

44. A party that promotes certain ideas on “sovereignty”, “integrity” or “security” of the country should be able to do so freely, as long as it does not advocate, incite to or threaten with violence (see also par 143 *infra*). Given the essential role played by political parties in the proper functioning of democracy, only convincing and compelling reasons can justify restrictions on such parties’ freedom of association.<sup>29</sup> The right of state authorities to ban political parties, in particular, should only be exercised in exceptional and extreme circumstances and must be narrowly tailored.

45. Similarly, Article 3 par 4 also bans political parties that are aimed at “promoting communist and/or National Socialist (Nazi) totalitarian regimes and symbols”. A similar provision also exists in Article 5 of the current Law on Political Parties. As far as the “promotion” of such regimes is concerned, it is reiterated that states are not prevented from banning the propaganda of certain ideologies, provided that they do not unnecessarily and disproportionately impinge on key human rights such as the right to freedom of association and the right to freedom of expression. As stressed by Resolution 1308 (2002) of the Council of Europe’s Parliamentary Assembly, democracies must strike a balance by assessing the level of threat to the democratic order in the country represented by such parties and by providing the appropriate safeguards.<sup>30</sup> Whether or not the promotion of such regimes constitutes a sufficient threat to the state to justify the dissolution of a party will need to be assessed in each individual case by the competent court.

46. As far as the promotion of the symbols of communist or Nazi regimes is concerned, it is important to recall that in 2015, the OSCE/ODIHR and the Venice Commission have already dealt with similar issues in their Joint Interim Opinion on the Law of Ukraine on the Condemnation of the Communist and National Socialist (Nazi) Regimes and Prohibition of

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<sup>28</sup> See Joint Guidelines of the Venice Commission and OSCE/ODIHR on Political Party Regulation, CDL-AD(2020)032, par 42.

<sup>29</sup> ECtHR, *Freedom and Democracy Party (ÖZDEP) v. Turkey*, no. 23885/94, 8 December 1999, par 44. See also ECtHR, *Socialist Party and Others v. Turkey*, no. 21237/93, 25 May 1998, par 50.

<sup>30</sup> Council of Europe Parliamentary Assembly, Resolution 1308 (2002) Restrictions on political parties in the Council of Europe member states, adopted on 18 November 2002, par 3.

Propaganda of their Symbols.<sup>31</sup> In this context, it should be noted that states are not prevented from banning, or even criminalising, the use of certain symbols and the propaganda of certain ideologies. Yet, such ban or criminalisation needs to comply with several requirements, in order to satisfy the European standards on the freedom of expression and the freedom of association, as developed in the case-law of the ECtHR<sup>32</sup> and in the documents of the Venice Commission and the OSCE/ODIHR.<sup>33</sup>

47. As stated in the 2015 Joint Opinion, the mere public use of a forbidden symbol, with no additional reference to illegal activity of a political party (within the context of international human rights law), should not in itself lead to the prohibition or dissolution of the party.<sup>34</sup> However, banning parties that use certain symbols or insignia intended to justify or propagate totalitarian oppression may be reasonable if the respective legal provisions are formulated with sufficient precision and clearly identify the prohibited symbols, names and terms.<sup>35</sup> Otherwise, the restriction would raise issues not only with respect to the party's freedom of association, but also as regards the freedom of expression enjoyed by the party and its members. **For the stated reasons, it is recommended to provide clear definitions of prohibited symbols which may create grounds for banning political parties in Article 3 par 4 of the Draft Law.**

48. Article 3 par 4 likewise bans political party structures in different public institutions, including educational ones. If this should also apply to higher education institutions, such as universities, then this would be an interference with the rights of young people to associate and engage in political activities while studying. **It is recommended to clarify this point.**

49. According to Article 3 par 5, the principle of preventing discrimination involves prohibiting political parties from introducing any privileges or restrictions for membership, being elected to constituent bodies of a political party, or participating in the management of political party on the basis of, among others, race, colour, ethnic and social origin, but also sex.

50. According to the OSCE/ODIHR-Venice Commission Joint Guidelines on Political Party Regulation, individuals and groups that seek to establish a political party must be able to do so on the basis of equal treatment before the law.

51. In this context, it is also important to recall that the right to freedom of association generally entitles those forming an association, including political parties, or belonging to one to choose

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<sup>31</sup> Venice Commission and OSCE/ODIHR Joint Interim Opinion on the Law of Ukraine on the Condemnation of the Communist and National Socialist (Nazi) Regimes and Prohibition of Propaganda of their Symbols, [CDL-AD\(2015\)041-e](#).

<sup>32</sup> See, e.g., ECtHR, *Vajnai v. Hungary*, no. 33629/06, 8 July 2008, pars 51-57. See also ECtHR, *Fratanolo v. Hungary*, no. 29459/10, 3 November 2011, and ECtHR, *Fáber v. Hungary*, no. 40721/08, 24 July 2012.

<sup>33</sup> See Venice Commission and OSCE/ODIHR, Joint Amicus Curiae Brief for the Constitutional Court of Moldova on the Compatibility With European Standards of Law No. 192 of 12 July 2012 on the prohibition of the use of symbols of the totalitarian communist regime and of the promotion of totalitarian ideologies of the Republic of Moldova, [CDL-AD\(2013\)004-e](#), par 124.

<sup>34</sup> Venice Commission and OSCE/ODIHR Joint Interim Opinion on the Law of Ukraine on the Condemnation of the Communist and National Socialist (Nazi) Regimes and Prohibition of Propaganda of their Symbols, [CDL-AD\(2015\)041-e](#), par 108.

<sup>35</sup> Joint Guidelines of the Venice Commission and OSCE/ODIHR on Political Party Regulation, CDL-AD(2020)032, par 89. In relation to totalitarianism per se, two resolutions of the Parliamentary Assembly of the Council of Europe deal with the condemnation of the totalitarian regimes: Resolution 1096 (1996) on Measures to dismantle the heritage of former communist totalitarian systems, adopted on 27 June 1996, and Resolution 1481 (2006) on the Need for international condemnation of crimes of totalitarian communist regimes, adopted on 25 January 2006. These resolutions do not deal with the use of communist symbols.

The OSCE Parliamentary Assembly adopted the Vilnius Declaration, which, in the Resolution on Divided Europe Reunited: Promoting Human Rights and Civil Liberties in the OSCE Region in the 21st Century, adopted at the Eighteenth Annual Session of the OSCE Parliamentary Assembly, 29 June to 3 July 2009, at pars 3, 11 and 17, stated, inter alia, that "in the twentieth century European countries experienced two major totalitarian regimes, Nazi and Stalinist, which brought about genocide, violations of human rights and freedoms, war crimes and crimes against humanity", urged all OSCE participating States to take a "united stand against all totalitarian rule from whatever ideological background" and expressed deep concern at "the glorification of the totalitarian regimes, including the holding of public demonstrations glorifying the Nazi or Stalinist past".

with whom they form an association or whom to admit as members. However, this freedom of choice is not unlimited, as this aspect of the right to association is also subject to the prohibition of discrimination, meaning that any differential treatment of persons with respect to the formation or membership of an association that is based on a personal characteristic or status must have a reasonable and objective justification. When the distinction in question operates on such grounds as colour or ethnic origin, or in the intimate sphere of an individual's private life – for example, where a difference of treatment is based on sex or sexual orientation – particularly “weighty reasons” need to be advanced to justify the measure.<sup>36</sup>

52. Article 3 par 7 states that the principle of representativeness and focus on party members shall consist of, among others, ensuring certain regional quotas of representation, holding extraordinary congresses, or ensuring the right of veto for party members on the decisions of the governing bodies. Furthermore, Article 3 par 8 requires the “existence of a political party body that interacts with society to promote the formation and expression of political will of citizens” and pars 9 and 10 of the same Article establish the legal requirement of regular reporting by a political party on its activities to voters, to ensure prompt, clear and transparent communication between its members, and establish the “inevitability of disciplinary action against any member of a political party” for a breach of its charter, programme or ethical code, etc.

53. While in general some kind of state regulation of the inner operation of political parties, fostering internal party democracy, may be acceptable (for instance in case of special temporary measures to promote the nomination of candidates from underrepresented groups<sup>37</sup>), the legal regulation of internal party functions must be narrowly construed so as to respect the principle of party autonomy and to not unduly interfere with the rights of parties as free associations to manage their own internal affairs.<sup>38</sup> With this in mind, it has to be noted that Article 3 paras 7-10 and the Draft Law in general seem to interfere with a party's autonomy and seek to regulate many parts of the internal operation of political parties. **It is recommended to scale back some aspects of this overly regulatory approach, to enhance the inner autonomy of political parties and allow them to determine their internal procedures, without too much state interference (see also pars 33-37 supra, as well as Section F on Establishment and Registration of Political Parties and Section H on Activities of Political Parties).**

54. Article 8 of the Draft Law regulates the international activities of political parties. The provision expressly states that political parties may maintain relations with political parties and public organisations of other states, as well as international and intergovernmental organisations. At the same time, par 3 prohibits political parties from supporting or “having any relations” with political parties or public organisations linked to a state recognised by the *Verkhovna Rada* as an “aggressor or occupant state”. While security considerations and threats must be taken seriously, it is essential that any law restricting the freedom of a political party to operate is defined in a narrow and precise manner and is necessary and proportionate. It is not apparent from the wording of the par 3 what would constitute prohibited conduct, in particular whether prohibition shall apply to any contacts (including conferences, academic and other public events) of Ukrainian political parties with democratic parties or associations linked to an “aggressor or occupant state”, even if such associations, for example, promote the peaceful resolution of the conflict. In discussions with representatives of the Ukrainian *Verkhovna Rada*, the latter agreed that Article 8 should perhaps be more narrowly defined. **Such an amendment is recommended, for the sake of legal certainty and clarity.**

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<sup>36</sup> See Joint Guidelines of the Venice Commission and OSCE/ODIHR on Political Party Regulation, CDL-AD(2020)032, par 59.

<sup>37</sup> See Joint Guidelines of the Venice Commission and OSCE/ODIHR on Political Party Regulation, CDL-AD(2020)032, pars 60 and 163.

<sup>38</sup> See Joint Guidelines of the Venice Commission and OSCE/ODIHR on Political Party Regulation, CDL-AD(2020)032, pars 151 and 155.

55. Generally, associations, including political parties, should be able to communicate freely and co-operate with similar associations at the international level.<sup>39</sup> As confirmed in the OSCE/ODIHR-Venice Commission Guidelines on Political Party Regulation, limitations on the interaction and functioning of political parties at an inter-state level are unjustifiable and contrary to good practice, and should be avoided in all relevant legislation.<sup>40</sup> At the same time, it is generally recognised that military conflicts are exceptional situations that may warrant certain limitations on such interactions. **In any event, it is recommended to avoid blanket prohibitions and to amend Article 8 par 3 accordingly.**

## **F. Establishment and Registration of Political Parties**

56. The establishment of political parties is set out in Article 9 of the Draft Law. According to par 1 of this provision, founders of political parties need to, among others, be citizens of Ukraine, and may not be members of already registered parties. The latter requirement is quite invasive; the question of whether party founders may also be members of other political parties should be left to the discretion of political parties themselves (see, in this context, pars 73-74 *infra*).

57. According to Article 11 par 1, political parties need to be registered; unregistered parties may not engage in any activities. Generally, it is reasonable to require political parties to register with a state authority for certain purposes, e.g., to acquire legal personality, to allow individuals, associated in political parties, to participate in elections, to receive state funding or other benefits. However, substantive registration requirements and procedural steps for registration should be reasonable and carefully drafted in order to achieve legitimate aims in line with the right to freedom of association under Article 11 par 2 of the ECHR and Article 22 par 2 of the ICCPR, read in the light of Article 3 of Protocol 1 to the ECHR on the right to free elections.<sup>41</sup>

58. Bearing this in mind, it would be disproportionate to prohibit political parties without registration from conducting any kinds of activities. In essence, such unregistered parties would still be associations and should be able to conduct their activities in the same manner as other associations in Ukraine. In this context, the Draft Law should also provide clear guidance as to whether and to what extent new requirements as developed by the Draft Law would impact already registered political parties. **It is recommended to revise Article 11 par 1 accordingly.**

59. Additionally, Article 11 pars 3 and 4 provide the possibility of registering “primary cells” of political parties without granting them legal entity status. **However, the exact meaning of the term “primary cell”, the reasons and conditions for registering them are not explained. This should be clarified in the Draft Law.**

60. Article 10 par 3 stipulates that political parties shall, within six months of their state registration, ensure the establishment and registration of their regional organisations in at least five electoral districts of Ukraine. This to some extent facilitates the process of registration compared to the current procedure set out in Article 10 par 1 of the current Law, which requires the signatures of least 10,000 Ukrainian citizens with voting rights at the moment when a political party is constituted, collected in two-thirds of all the rayons of at least two-thirds of all the oblasts of Ukraine, the cities of Kyiv and Sebastopol, and in no less than two-thirds of the rayons of the Autonomous Republic of Crimea.

61. Nevertheless, the approach taken by the Draft Law still seems to favour large political parties, and put at a disadvantage, or even eclipse smaller parties, as smaller parties may not

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<sup>39</sup> OSCE 1990 Copenhagen Document, par 10.4

<sup>40</sup> Joint Guidelines of the Venice Commission and OSCE/ODIHR on Political Party Regulation, CDL-AD(2020)032, par 104

<sup>41</sup> See Joint Guidelines of the Venice Commission and OSCE/ODIHR on Political Party Regulation, CDL-AD(2020)032, pars 85-86.

have sufficient capacities and necessary funding to establish regional organisations in numerous electoral districts simultaneously. The failure to do so would prevent them from completing the registration process and could hamper their further development. Moreover, it is difficult to see why political parties would need to be active nationwide. In this connection, it is recalled that the Venice Commission had already recommended in its 2002 Opinion that this requirement at least be loosened in the text of the law, as such a requirement “constitutes a legal impediment to forming parties which concentrate on matters concerning regional issues”.<sup>42</sup> The Commission also reminded Ukraine that European democracies “offer numerous examples of well-established political parties with an agenda focused on and with support concentrated to some part of the country only” and noted that “there are even more examples of political parties which are exclusively active on the local level”.<sup>43</sup> It is important that certain parties also address issues that are of a purely local or regional concern, and indeed, during the online meetings, interlocutors in Ukraine specified that such parties operate in Ukraine even today.

62. The OSCE/ODIHR-Venice Commission Guidelines on Political Party Regulation call upon states to remove provisions regarding the limitation of political parties purely on the grounds that they represent a limited geographic area from relevant legislation, stressing the discriminatory nature of such provisions. They furthermore note that such provisions may also have discriminatory effects against small parties and the ones representing national minorities.<sup>44</sup> The burdens of registration in multiple different geographic areas could have a serious negative effect on the political rights of certain minorities who are geographically concentrated in particular areas. Such small/regional parties might be the only option or mechanism of entry for minority groups and ethnic groups, and thus requiring registration in at least five electoral regions can prevent minority groups to register effectively. **For these reasons, Article 10 par 3 should be substantially revised or deleted, and all references to this Article in other parts of the Draft Law should be removed.**

63. **Article 12 contains a detailed list of mandatory requirements for political party charters, some of which should not necessarily be regulated by law and should instead be left to the discretion of the political party.** For example, according to the Draft Law, party charters must contain information about the control and audit bodies and procedure of their formation, or about the formation of a party's disciplinary bodies and disciplinary measures, among others. While it may be beneficial for charters to regulate such matters, the absence of such information should not become an obstacle for party registration. Furthermore, the list should not be deemed exhaustive. Parties should be allowed, if they wish, to also regulate other intra or inter-party relationships by their charters.

64. Apart from that, according to par 2 (8) of the same Article, the charter of a political party needs to contain information on the procedure whereby factions (groups) of elected bodies, Members of Parliament and deputies of local councils elected from party lists shall report to a political party. In this context, it should be recalled that any accountability of elected holders of public office to their political party is questionable at best, given that such persons receive their mandates by the voters, and not by their parties.<sup>45</sup> Although it may be permissible for political parties to advise or even require elected office holders to inform their parties about certain activities, while at the same time respecting the autonomy of the office holder, it is certainly problematic for the Draft Law to introduce such a mandatory requirement. **Most importantly, it is essential that Members of Parliament and deputies of local councils**

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<sup>42</sup> See Venice Commission, Opinion on the Ukrainian Legislation on Political Parties, CDL-AD(2002)017, par 37.

<sup>43</sup> Venice Commission, Opinion on the Ukrainian Legislation on Political Parties, CDL-AD(2002)017, par 10.

<sup>44</sup> Joint Guidelines of the Venice Commission and OSCE/ODIHR on Political Party Regulation, CDL-AD(2020)032, pars 102-103. See also a recent recommendation in OSCE/ODIHR's Final Report on the 2020 Local Elections in Ukraine of 25 October 2020 (p. 21): “To ensure access to the ballot, including the participation of national minorities at all levels of local elections, the law on political parties should be amended to allow the formation of regional political parties.”

<sup>45</sup> ECtHR, *Paunović and Milivojević v. Serbia*, no. 41683/06, 24 May 2016, par 63.

**are not under an “imperative mandate” to answer to and act according to the orders of their parties.<sup>46</sup> Article 12 par 2 (8) of the Draft Law should therefore be deleted.**

65. Article 12, par 2(13) states that quotas determining the level of representation of men and women should not be less than 30 percent of the total number of candidates on an electoral list. This provision should also address the position of women or men on such lists, to avoid a situation where all persons of one gender are found at the bottom of the list. Moreover, the provisions on party charters pertaining to women inclusion on the candidate lists/candidate nomination in multi-mandate constituencies must be fully harmonized with the respective provisions of the Electoral Code and should refer to the Code directly. Concerns about legal inconsistencies in this area had been voiced during the online meetings by numerous interlocutors from Ukraine.

66. Article 13 describes political party programmes and documents, including electoral programmes. This provision generally regulates the types of documents that a party shall generate in an unnecessarily detailed manner, which may constitute an unjustified interference with the internal autonomy of political parties. Moreover, this provision also states that the electoral programme of a political party may not contradict the party’s programme. This raises the question of who or which body shall determine whether such contradictions exist or not. If this would be determined by a state body, this would open the door for potentially excessive state interference into the inner functioning of political parties and the campaigns of electoral contestants.<sup>47</sup>

67. According to Article 15, it is prohibited for political parties to use certain names and symbols, including symbols of communist and National Socialist (Nazi) totalitarian regimes. As mentioned already, in this context, it may be difficult to know which symbols are forbidden and which are not. Such information could be set out in a relevant sub-legal norm (see, in this context, pars 46-48 supra).

68. Article 16 states that political parties shall, within one year of the date of their registration, confirm their activities by ensuring the involvement of at least 2000 citizens of Ukraine in at least five constituencies. Once the party has reached this number, the Ministry of Justice shall enter information on the confirmation into the relevant register (Article 16 par 2). A political party may not participate in elections if it has not confirmed its activities in this way, which would also, in the long run, prevent such political party from receiving state funding (as this is based on the number of votes that a political party received in a previous election). This renders it very difficult for newly created parties to participate in elections if they take place in the same year in which the parties were founded.

69. In this context, the OSCE/ODIHR-Venice Commission Guidelines on Political Party Regulation have stressed that where political parties need to register to take part in elections, substantive registration requirements and procedural steps for registration should be reasonable. Expedient decisions on registration applications are important, particularly in the case of parties seeking to present candidates in elections. Overall, the system for ballot access should not discriminate against new parties; on the contrary, there must be fair, clear and objective criteria for the inclusion of new parties.<sup>48</sup>

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<sup>46</sup> Joint Guidelines of the Venice Commission and OSCE/ODIHR on Political Party Regulation, CDL-AD(2020)032, par 131. See further OSCE/ODIHR Final Report of the Limited Election Observation Mission to the 25 October 2020 Local Elections in Ukraine, p. 10, which also recommended that Ukraine remove the imperative mandate mechanism, at [https://www.osce.org/files/f/documents/3/e/476974\\_0.pdf](https://www.osce.org/files/f/documents/3/e/476974_0.pdf), and Venice Commission, Report on the Imperative Mandate and Similar Practices, 16 June 2009.

<sup>47</sup> See also ECtHR, *Tebieti Mühafize Cemiyeti and Israfilov v Azerbaijan*, no. 37083/03, 8 October 2009, par 78, stating that while the State may introduce certain minimum requirements as to the role and structure of associations’ governing bodies [...], the authorities should not intervene in the internal organisational functioning of associations to such a far-reaching extent as to ensure observance by an association of every single formality provided by its own charter.

<sup>48</sup> See Joint Guidelines of the Venice Commission and OSCE/ODIHR on Political Party Regulation, CDL-AD(2020)032, pars 86, 88 and 197.

70. It is not clear from the wording of Article 16 what “involvement” means, and whether this means that the political party shall have 2000 members across five constituencies, or whether such involvement is simply an indication of support. Also, it is unclear why just 200 citizens are required to establish a party, but 2000 persons need to be involved for certification. In the meetings with Ukrainian counterparts, it was clarified that “involvement” in the above sense referred to membership, meaning that parties will need to be confirmed by 2000 members spread across five constituencies. At the same time, the Draft Law does not specify the consequences if a political party fails to complete the confirmation process, and whether it then still remains registered as a political party, or what happens if a political party is confirmed after the electoral process has begun.

71. Moreover, the need for this two-step system requiring an additional confirmation of a party within a year of its founding and registration is not apparent. Requiring political parties to conduct this form of confirmation is highly burdensome for the political parties involved and essentially delays their participation in any scheduled or pre-term elections for up to one year, until the regional organisations are established, with the requisite number of members. The process of registering every single member in the online register and verifying the information in particular could take a substantial amount of time for a small party with no full-time staff. Moreover, the Ministry of Justice may not have the capacity to certify a large number of applications at the same time, particularly in pre-election periods.

72. Overall, it is doubtful whether this cumbersome process of confirming already registered parties is in line with key freedom of association guarantees of political parties, and the rights of political parties and their members to participate in elections. This additional confirmation step further tilts the political playing field towards larger political parties, to the detriment of smaller or regional parties, which will in such cases not be able to exist at all (see pars 61-62 supra). **It is recommended to remove this additional hurdle for political parties foreseen in Article 16 of the Draft Law, so that they may immediately start their activities, and nominate candidates for elections, upon being registered.**

## **G. Membership in Political Parties**

73. According to Article 18, only citizens of Ukraine may become members of political parties. While Article 16 of the ECHR allows states to restrict the political activities of non-citizens under, inter alia, Article 11, the ECtHR has clarified that this shall only apply to activities that directly affect the political process.<sup>49</sup> Thus, while the rights of non-citizens to establish political parties may be restricted, Article 16 should not be applied to restrict membership of non-citizens in political parties.<sup>50</sup> In this connection, attention is drawn to the recommendation issued by the Venice Commission in its 2002 Opinion, according to which “foreign citizens and stateless persons should be allowed to participate to some extent in the political life of their country of residence, at the very least by making possible their membership in political parties”.<sup>51</sup> **It is thus recommended to remove from Article 18 of the Draft Law the restriction of the right to become a member of political parties to citizens of Ukraine.**

74. Article 18 par 4 likewise prohibits citizens from acquiring the membership of more than one political party. Given the fundamental nature of the right to freedom of association, states should generally not limit this right by imposing legislative requirements obliging an individual to associate only with a single organisation. In cases where they do, states should show compelling reasons for doing so, and need to assess their legislation carefully, and only maintain it if it is compatible with the ECHR.<sup>52</sup> Individual political parties may require the termination of

<sup>49</sup> ECtHR, *Perinçek v. Switzerland* [GC], no. 27510/08, 15 October 2015, para. 122.

<sup>50</sup> Joint Guidelines of the Venice Commission and OSCE/ODIHR on Political Party Regulation, CDL-AD(2020)032, par 149.

<sup>51</sup> Venice Commission, Opinion on the Ukrainian Legislation on Political Parties, CDL-AD(2002)017, par 37.

<sup>52</sup> Joint Guidelines of the Venice Commission and OSCE/ODIHR on Political Party Regulation, CDL-AD(2020)032, par 150.

membership in other political parties for persons wishing to join their party but regulating such matters in state law cannot be deemed “necessary in a democratic society” in the sense of Article 11 par 2 of the ECHR. **For this reason, it is recommended to remove this requirement from Article 18.**

75. According to Article 19, political parties are obliged to enter information about their members into the Unified Register of Members of Political Parties, which is administered by the Ministry of Justice. The register is an open-access database, which allows the public to see only certain parts of the database, namely the names and patronyms of the members of political parties.

76. Even if not all information on members (including their passport numbers and tax registration information) included in the register is available to the public, the existence of such a register, and particularly its openness to oversight bodies such as the Ministry of Justice, and to the public at large raises serious concerns with respect to the rights of political parties and their members to freedom of association and privacy.

77. Notably, the obligation to inform public authorities and the wider public of the names of all members of the political parties is clearly a limitation of the freedom of association of these members individually and of the party collectively. Information on the membership of a political party is also protected by the right to privacy, as such information provides direct insights into the political opinions of individuals.<sup>53</sup>

78. During the online meetings with different Ukrainian stakeholders, the register was considered necessary by some to prevent situations where electoral candidates run for more than one political party, or where candidates run on behalf of political parties that they are not members of. It is highly doubtful that such a severe interference with the rights of political parties and their members is necessary and proportionate to achieve this aim, especially as the Electoral Code of Ukraine also limits the number of electoral contests that an individual may partake in and specifies that candidates shall be nominated by only one nominating authority.

79. Generally, the only party members that state authorities would need to know by name are the 200 founding members and those 2000 members required to confirm political party activity under Article 16 of the Draft Law (if this provision is retained), and party members running for public office. The OSCE/ODIHR-Venice Commission Guidelines on Political Party Regulation likewise note that extensive state monitoring or judicial review of the internal functioning of a political party, including the requirement for the party to provide the state with lists of its members, would appear to be an overly intrusive measure that is not compatible with the principles of necessity and proportionality.<sup>54</sup> **For the above reasons, it is recommended to reconsider the establishment of the Unified Register of Members of Political Parties in the Draft Law, and to remove Article 19 and related provisions.**

80. Article 21 outlines the grounds and procedure for the expulsion of members of political parties. It is doubtful whether it is truly necessary to enumerate the possible grounds for the termination of membership in a political party in the Draft Law. Such issues belong to a party's autonomy and need not to be regulated by law.

81. Article 22 concerns the disciplinary liability of party members, and also foresees the establishment of disciplinary bodies in its par 3. While it may be positive to create a special constituent body to consider complaints of members against disciplinary sanctions imposed by a particular body of the political party, such issues likewise belong to a party's internal autonomy and thus also do not need to be regulated by law.

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<sup>53</sup> See, in this context, ECtHR, *Catt v the United Kingdom*, no. 43514/15, 24 January 2019, par 112, stressing that personal data revealing political opinion falls among the special categories of sensitive data attracting a heightened level of protection.

<sup>54</sup> Joint Guidelines of the Venice Commission and OSCE/ODIHR on Political Party Regulation, CDL-AD(2020)032, par 154.

## H. Activities of Political Parties

82. Section IV outlines the activities of political parties and goes into broad detail with respect to the organisation, debate culture and decision-making bodies and process of political parties. The provisions in this section are much more detailed and specific than Articles 7 and 8 of the current Law, which merely state that political parties shall have programmes and statutes and outline the basic elements of such statutes.

83. Overall, and as stated earlier (see pars 33-37 and 53), the internal structures and operation of political parties should be left largely to the discretion of the political parties themselves, and state interference into such matters should be kept to a minimum. Thus, while the desire of the drafters to ensure internal party democracy is recognised, the legal regulation of internal party functions must be such as to respect the principle of party autonomy and should not unduly interfere with the rights of parties to manage their own internal affairs.<sup>55</sup>

84. In particular, the provisions in Section IV obliging parties to convene party congresses with a pre-determined frequency and to convene extraordinary congresses based on certain specified procedures (Article 23 par 1), the detailed competences of party congresses and party organisations (Article 24), and the specific procedures for forming political party governing bodies and their composition (Article 26) would appear to create an instructional blue-print for all political parties in Ukraine, leaving very little to the discretion and decision-making powers of the political parties themselves. Similar considerations apply with respect to Article 28 on nominating candidates (though, for instance, the state may introduce some temporary measures to promote the nomination of candidates from underrepresented groups) or cancelling the registration of candidates in elections.

85. Overall, it is recommended to review Section IV, and other provisions of the Draft Law that impinge too far on the autonomy of political parties, and to delete them. Only provisions that respond to a “pressing social need” can be deemed to be “necessary in a democratic society”. If states seek to regulate the internal functioning of political parties too closely, this could, depending on the extent of state interference, raise issues with respect to political parties’ right to freedom of association (see, in this context, pars 33-37 and 53 supra).

86. It is particularly noticeable that numerous provisions in Section IV contain obligations for parties to comply with them, e.g. Article 23 par 1 (1) requiring parties to convene party congresses at least once a year and extraordinary congresses, or Article 23 par 2 stipulating the obligation to convene regular meetings and conferences, as well as extraordinary meetings of party organisations. While it seems excessive to oblige political parties to conduct their internal affairs in this exact manner, this also raises the question of which body would supervise compliance with such provisions, and how. During the online meetings, representatives from the Ministry of Justice, but also other oversight bodies set out in the Draft Law, clarified that such extensive supervision would not fall under their competences. This lack of clarity of how the provisions would be enforced would not be in line with the principle of legality and foreseeability of legislation. Even if it would be clear which body was competent to oversee such compliance, this kind of oversight would be unduly invasive, and should thus not be pursued. **Therefore, it is recommended to substantially revise Section IV of the Draft Law or to remove the provisions which impinge too far on the autonomy of political parties.**

87. While generally, it is up to the parties themselves to determine the manner in which their conferences and decision procedures are organised,<sup>56</sup> the contents of some of the provisions under Section IV also pose certain stylistic and substantive problems. Thus, it is questionable whether Article 25 needs to repeat many of the provisions set out under Article 24 concerning

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<sup>55</sup> Joint Guidelines of the Venice Commission and OSCE/ODIHR on Political Party Regulation, CDL-AD(2020)032, par 155.

<sup>56</sup> Joint Guidelines of the Venice Commission and OSCE/ODIHR on Political Party Regulation, CDL-AD(2020)032, par 28.

the manner of voting or the decisions that lie within the exclusive competence of the meeting holders, and whether a reference to the other provision would not be sufficient. **As far as the election of the leadership of a political party (leader and governing bodies) is concerned, greater flexibility should be introduced into Article 26, as in a fast-changing political situation leadership changes might need to happen more frequently. Moreover, the principle of rotation of representatives of party representatives in the governing bodies of political parties is unclear and should be removed and left to the discretion of political parties.**

88. When looking at Article 28 par 6, it is noted that the list and order of candidates of political parties for elections may not be changed to clarify errors and inaccuracies once they have been submitted to the relevant election commission. In the opinion of OSCE/ODIHR and the Venice Commission, this is a disproportionately strict approach, as there seems to be no reason why a party should not be able to correct inadvertent errors or inaccuracies, or to update lists where a party member has fallen seriously ill or is deceased. The Draft Law could prevent abuse of such provisions by requiring proof of the internal decisions taken by the party decision-making bodies, to establish that the list and order do not comply with the wishes of the party, and of relevant medical certificates.

89. Moreover, Article 28 par 7 outlines the procedure for cancelling the registration of party candidates for state-wide and local elections, which involves calling a party congress for this purpose. If it should become necessary to cancel the registration of a candidate, calling a party congress to determine this might end up being an unnecessarily lengthy and cumbersome procedure; **it is recommended to rethink this approach, and to consider adopting a shorter and less complex procedure to ensure that cancellation may happen and that alternate candidates may be registered in time before elections, in coordination with the relevant provisions of the Electoral Code.**

## **I. Funding of Political Parties**

90. In terms of funding, the Draft Law foresees both private donations and public funding by the state. While private funding is described in Section V, public funding is outlined in Section VI.

### **1. Private Funding**

91. Private donations may be made in the form of monetary donations, property donations, donations in the form of works or services, in the form of intangible assets, in the form of similar preferences or privileges, or in the form of financing events or activities in favour of a political party (Article 29). It is noted that according to Article 30 par 1, monetary donations “to the bank account (including the account of the election fund) of a political party (party organisation)” may be made by private individuals, but also by legal entities. This may be at odds with Article 215 par 3 (3) of the Electoral Code, which does not permit legal entities to donate to the electoral fund of a political party. Moreover, the requirements for transferring donations by bank transaction set out in Article 30 par 1 are not entirely the same as those specified in Articles 8 par 1 and 215 par 4 of the Electoral Code. **It is recommended to review the Draft Law for its overall consistency with the Electoral Code, to avoid discrepancies and confusion, but also to ensure that provisions of the Draft Law cannot be used to circumvent funding restrictions imposed by the Electoral Code.**

92. Funds received as income from legal activities (Article 30 par 3 (8)) are among the kinds of funds under Article 30 par 3 that are exempted from the definition of monetary donations. This provision would benefit from more precision, to avoid situations where items are sold far above the market value. Moreover, here or elsewhere, the Draft Law should cover cases where parties make rental payments that are set at a level that is far below the market value; both situations would allow for hidden donations that should not be exempted from the donations limit set out in Article 36 par 2. **It is recommended to revisit this and the afore-mentioned provisions, to**

**ensure that they cannot be used to exempt donations cloaked as fund returns or income from the overall amount of permissible donations per year.**

93. It is further noted that Article 30 par 1 allows only “non-cash” monetary donations made through bank transfer. This is a welcome and necessary measure, which enables the tracing of donations and ensures effective monitoring for the sake of transparency and accountability. **However, for the sake of inclusiveness, legislators may consider establishing a low threshold for small cash donations, that fall below the declaration amount.**

94. Article 36 par 1 prohibits certain individuals or legal entities from making private donations at all, including those legal entities that have concluded an agreement on work, goods or services amounting to a total value of more than 100 subsistence minimums for able-bodied persons, during the term of the agreement and for the year after its termination (par 1 (10)). **It is welcome that the limits for such donations are now lower,<sup>57</sup> but it is nevertheless recommended to increase this period to enhance transparency.**

95. Paragraph 2 of Article 36 introduces limits to private donations from two different angles – on the one hand, it states that the total sum of donations made in support of one political party from a citizen of Ukraine for a period of one calendar year may not exceed 20% of the donor’s total income for the last five years. On the other hand, it stipulates that the total sum of donations from one citizen may not exceed 400 subsistence levels for able-bodied persons,<sup>58</sup> as established on the 1<sup>st</sup> of January of the year in which the donations were made. Similar considerations apply to legal entities, which may not donate more than 20 % of its income over the last calendar years and may not exceed 800 subsistence levels of able-bodied persons.<sup>59</sup>

96. In this context, it should be noted that, as also stressed in the OSCE/ODIHR-Venice Commission Guidelines on Political Party Regulation, funding of political parties is a form of political participation. It is appropriate for parties to seek private financial contributions, i.e. donations. 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.<sup>60</sup> Legislation mandating donation limits should be carefully balanced between, on the one hand, ensuring that there is no distortion in the political process in favour of wealthy interests and, on the other hand, encouraging political participation, including by allowing individuals to contribute to the parties of their choice.<sup>61</sup>

97. It is welcome that the drafters seek to amend the current system of donating to political parties, as the Law in place is in need of certain amendments, in particular as regards the annual ceilings for private donations set out in Article 15 of the current Law, which are extremely high.<sup>62</sup> At the same time, the contribution limits foreseen by the Draft Law are still not formulated in a

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<sup>57</sup> See a recommendation to that effect in the Venice Commission and OSCE/ODIHR Joint Opinion on the Draft Amendments to Some Legislative Acts Concerning Prevention of and Fight against Political Corruption of Ukraine, [CDL-AD\(2015\)025-e](#), par 32, referring to the prohibition of donations from companies benefiting from public contracts that account for over 20% of the company turnover.

<sup>58</sup> As of 1 January 2021, the subsistence level for able-bodied persons in Ukraine has been calculated to lie at 2,270 UAH (with slight raises starting from July and December), which is the equivalent of around 67 EUR. 400 subsistence levels would thus be the equivalent of almost 27,000 EUR.

<sup>59</sup> Based on the calculations made in the previous footnote, this would amount to nearly 54,000 EUR.

<sup>60</sup> Joint Guidelines of the Venice Commission and OSCE/ODIHR on Political Party Regulation, CDL-AD(2020)032, par 209.

<sup>61</sup> Joint Guidelines of the Venice Commission and OSCE/ODIHR on Political Party Regulation, CDL-AD(2020)032, par 213.

<sup>62</sup> Article 15 of the current Law states that the overall value (amount) of donation(s) made in support of political party by Ukrainian citizen over one year shall not exceed four hundred minimum monthly salaries, providing that the amount of the minimum monthly salary shall be established as of January 1 of the year when the donation was made.

The overall value of donation(s) made in support of political party by the legal entity over one year shall not exceed eight hundred minimum monthly salaries, providing that the amount of the minimum monthly salary shall be established as of January 1 of the year when donation was made.

The annual donation limit to political parties is thus UAH 2,000,000 (roughly EUR 60,000) for individuals. Legal entities may donate to political parties up to UAH 4,000,000 (roughly EUR 120,000).

way that would prevent wealthy individuals and businesses, or, for that matter, electoral candidates, from contributing large sums of money or similar non-monetary assets. Further, the Draft Law unduly limits the manner in which individuals may donate to political parties.

98. As far as the latter point is concerned, the regulations set out in Article 36 par 2 appear to be very restrictive, as they severely limit who may donate, and what percentage of their income they may donate. With respect to individuals, this disproportionately restricts their choices in relation to the political parties that they may wish to support. More specifically, this provision prevents persons who have had an income only for the last two or three years, or who have accumulated savings or inherited funds over a longer period of time from making any donations and does not allow individuals the flexibility to decide to donate more than 20% of their income to a political party in a particular year, if they so wish. This approach does not appear to encourage political participation, particularly of potential donors who are younger, and who may not have had previous income before they turned 18, nor does it allow all individuals to contribute to their parties of choice. While it is recognised that the drafters introduced this provision into the Draft Law to avoid situations of donating by proxy, the effects of this provision would nevertheless appear to be disproportionate to this aim.

99. Moreover, given that all types of donations, including the non-monetary donations described in Articles 31-35 would appear to fall under Article 36 par 2, this means that an individual cannot donate his/her work or services (below the threshold of Article 36 par 1 (10)) and a sum of money in the same year if the total sum is higher than 20% of his/her income. Similar considerations may apply accordingly to other such combined forms of donating, also by legal entities.

100. At the same time, the annual limits that Article 36 par 2 imposes on private donations by one person or one legal entity still appear to be very high, as they lie at the equivalent of 27,000 and 54,000 EUR. This is likely to favour wealthy interests or businesses, which, as opposed to public associations, charities or religious organisations, may donate funds to political parties. Article 36 par 2 would also allow an individual to make multiple donations to the same party, if he/she owns multiple businesses or other legal entities.

101. Overall, while the donation regulations imposed on individuals and legal entities are on the one hand overly restrictive, they are on the other hand extremely lenient in terms of donation limits. **It is therefore recommended to re-evaluate this part of the Draft Law and amend the relevant parts of Article 36 accordingly.**

102. It is welcome that based on Article 35 par 2, events or other actions organised and paid for by individuals and legal entities also fall under the donation ceilings set out in Article 36. Article 35 thereby differentiates between individuals and legal entities funding events that are implemented by a political party (par 1), and individuals and legal entities independently carrying out events for the benefit of a political party on their own initiative or behalf, and at their own expense. It is noted that Article 35 par 3 requires the respective individuals and legal entities to notify and inform political parties and the NACP about the details of events that they funded for the benefit of political parties. This raises the question of how the expenses of such events may be quantified and evaluated for the purposes of financial reporting. **It is recommended to clarify this point.** Furthermore, requiring individual donors to report on such events represents an excessive and unjustified burden. **It would be preferable for the respective political party to report on these kinds of third-party donations once they have received the necessary information from the organising individuals or legal entities, following clear and specific NACP guidance on such matters.**

103. The above-mentioned kinds of “third parties” are usually individuals and organisations not legally tied to, or acting in coordination with particular political parties, but still conducting activities with the aim of influencing the electoral result.<sup>63</sup> In order to avoid the creation of loopholes, through which unlimited funding may be channelled and financial transactions hidden, laws

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<sup>63</sup> Joint Guidelines of the Venice Commission and OSCE/ODIHR on Political Party Regulation, CDL-AD(2020)032, par 218.

should address third party contributions by imposing proportionate and reasonable limits on the amounts that third parties may spend on promoting political parties, including by applying ceilings for private donations to and spending limits made by third parties as well,<sup>64</sup> as well as maintaining adequate and effective reporting obligations.

## **2. Public Funding**

104. According to Article 38, political parties may receive state funding if in regular or pre-term parliamentary elections, their electoral lists in a national multi-member constituency received at least 2% of the total number of votes. The Draft Law thereby lowers the funding threshold, which under the current Law is defined at 5% of the total number of votes. This is welcome, as it allows parties that are not necessarily represented in the *Verkhovna Rada* to be eligible for state funding.

105. Overall, there is no universally prescribed system for determining the distribution of public funding and each legislator may choose to require minimum thresholds of support for political parties to qualify for public funding. The OSCE/ODHR and Venice Commission nevertheless stress that unreasonably high thresholds may be detrimental to political pluralism and the opportunities of small political parties. Rendering only post-election public funding to political parties that previously participated in the last national elections may not provide political parties with the minimum initial financial resources necessary to fund a political campaign. This approach will especially undermine newly founded political parties or parties that missed out on one election, as they would then not be eligible for state funding, even though they might be the ones who need it most. **It is therefore recommended to consider the establishment of a funding system that would allow funding allocations early enough in the electoral process, to ensure equal opportunities throughout the period of campaigning.**<sup>65</sup>

106. Political parties that are eligible must apply for state funds with the NACP by 10 January of the year following elections and need to provide proof of having opened a separate bank account for receiving and using state funds. The parties will then receive state funding from 1 January (of that same year) onwards.

107. If political parties fail to adhere to the above deadline, they will not receive their funding before 1 January of the following year. This appears to be too burdensome, as it would essentially oblige the political parties to wait an additional year for their funds to arrive, which could impact their ability to implement their activities (par 5). **It is recommended to adopt a more proportionate approach, which would foresee a certain delay in receiving funds that would not be as lengthy as proposed in Article 38 par 5.**

108. Moreover, if political parties may only apply for public funding in the January after elections, this could, depending on when the elections took place, mean that they will need to wait for their funds for a long time. If, e.g., snap or premature elections take place sometime in the first half of the year, this would essentially mean that a political party would need to wait for almost a year to receive public funding. For this reason, it may be preferable to provide political parties with such funds some number of weeks/months after the election, rather than in January.

109. Similarly, Article 38 par 6 states that political parties now need to submit an intention to receive state funding by 10 January in the year in which regular or “pre-term elections” are held. It is assumed that the term “pre-term elections” refers also to early or snap elections, In such cases, however, it will be impossible for parties to submit such intentions in advance, as they will not be aware of upcoming elections. Similarly, new political parties founded in the year of the elections will also not be able to meet the deadline set out in Article 38 par 6. **It is recommended**

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<sup>64</sup> Joint Guidelines of the Venice Commission and OSCE/ODIHR on Political Party Regulation, CDL-AD(2020)032, par 220.

<sup>65</sup> See in this context the Joint Guidelines of the Venice Commission and OSCE/ODIHR on Political Party Regulation, CDL-AD(2020)032, par 238, which encourage states to give careful consideration to pre-election funding systems, as opposed to post-election reimbursement, as the latter can perpetuate the inability of small, new or less wealthy parties to compete effectively.

**to take these situations into consideration and modify this provision accordingly. Alternatively, it may be easier to offer public funds to all political parties that are eligible after elections, except for those that turn such offer down.**

110. Article 41 describes the manner in which public funds shall be distributed among political parties. According to par 1(1) of this provision, 10 percent of the annual amount of state funding<sup>66</sup> shall be distributed equally among eligible political parties if, based on the results of the last parliamentary election, the number of representatives elected from one gender does not exceed two-thirds of the total number of members of parliament from that party. In order to determine this, the ratio of men and women at the opening of the first parliamentary session is considered. After that, however, it will not matter whether this ratio is maintained.

**111. In order to enhance gender parity in the *Verkhovna Rada*, it is recommended to increase the percentage of funds that a political party receives for these types of measures (including the measure to put the underrepresented gender on top of the list); this would pose a greater incentive for political parties to adhere to Article 41, as not doing so would involve a more significant loss of funds. Furthermore, it is recommended to delete the provision stating that the maintenance of the ratio of men and women will not lead to a violation of this Article, as this might encourage parties to shift positions around after having entered parliaments or force women representative to resign. Consideration may even be given to specifying in the Draft Law that the ratio should, as far as possible, be maintained, and that the additional funding provided for a political party's efforts to ensure gender equality among its Members of Parliament may be suspended if the ratio changes too much at a later stage.**

112. Based on Article 42, the NACP shall ensure the annual transfer allocated by the state budget in two half-year instalments, after verifying reports on property, incomes, expenditures, and financial liabilities submitted by political parties for the previous half-year. If the NACP is obliged to conduct such assessments for every political party that is eligible for public funding, then this exercise will no doubt take a very long time. Such delays in the receipt of funding may greatly impact the respective political parties and force them to limit their activities accordingly.

113. Thus, while the attempt at enhancing the transparency of distributing public funds is in principle positive, the manner in which public funds will be distributed is unnecessarily cumbersome for the NACP but also for the respective political parties. **It is therefore recommended to amend this process in the Draft Law. In particular, consideration may be given to clarifying in the above provisions that political parties may receive the respective instalment of funds, at least in part, at an earlier stage, while the NACP is conducting its assessment. In case the NACP finds irregularities, this could then, if needed, lead to a reduction of future funds.**

114. Moreover, the oversight body should be given more time to check the reports received from political parties. **While it is positive that, according to what was stated by Ukrainian interlocutors during the online meetings, the time needed to review the reports has been extended from 60 to 120 days, consideration could be given to, depending on the scope of the verification, allowing the oversight body more time, to review and verify the reports, clarify inconsistencies with the parties and then decide on the suspension of public funds if necessary.** At the same time, the oversight bodies should be able to react promptly when this is necessary.

115. Article 44 contains a list of priority areas for the use of state funding, which include capacity-building, enhancing communication and outreach, fostering women's interests, and the effective functioning of parliamentary factions. As this list is quite general and quite wide, it is not clear why there is a need for such prioritisation, as it will be difficult in practice to distinguish what will fall

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<sup>66</sup> According to Article 41 par 1, 20% of the annual amount of state funding shall be distributed equally among all eligible political parties, while 70% are distributed among eligible political parties in proportion to the number of valid votes cast for lists of candidates for MPs from these parties in the national multi-member constituency in parliamentary elections.

within such priority areas and what will not. Moreover, the incentive to prioritise certain areas is hampered by the fact that Article 44 par 4 only requires political parties to use 5% of their funding for these priority areas. **The legal drafters should re-evaluate this point and either remove the rules on priority areas from Article 44 of the Draft Law or define those areas more precisely. If priority areas are kept, consideration may be given to including further specific areas including e.g. the promotion of the political participation of youth, persons with disabilities and education/training.**

116. Under paragraph 3 of Article 44, political parties may not use state funds for certain acquisitions and activities, including for activities that are “not provided for or are explicitly prohibited by the charter of a political party”. This again raises the question of who or which body will determine whether certain activities are provided for or allowed in the charter or not; in case it is the executive that decides, then this would constitute an interference with the autonomy of political parties.<sup>67</sup>

117. Also, state funds may not be used for advertising services (Article 44 par 3). This may cause difficulties in practice, as it may not always be possible to distinguish between the “preparation, design, publication and dissemination of communication materials covering the current activities of the political party, plans for the future, etc.” encouraged in 44 par 2 (2) and advertising. Moreover, while laws may impose conditions on how political parties may spend public funds, it is not clear why advertising should be excluded from public funding, seeing as it is an integral part of the usual activities of political parties. Moreover, the use of public funds is generally important to maintain a level playing field and limit private interests. If the provision was introduced to ensure that political parties do not spend all of their funding on advertising, then it should be possible to limit funds for advertising to a certain percentage of the funding received, rather than prohibit it entirely.

118. Overall, par 3 of Article 44 provides the state with significant discretionary powers when deciding whether political parties have complied with its conditions on using public funds or not, based on unclear and vague criteria. **It is recommended to amend those provisions, to ensure that state funding is tied to clear and specific, but also limited criteria, so that parties will know what they may spend public funding on.**

119. Based on Article 45, political parties receive state funding for their activities in one calendar year, which echoes the contents of Article 17-6 of the current Law. Unused funds that exceed 10% of the total amount of state funding received shall be returned to the state budget within 10 days; the remaining 10% may be used. This is stricter than the current approach, which allows parties to use such funds in the following calendar year as well.

120. Overall, it appears to be too limiting to restrict the use of public funds to one calendar year, as parties may have more expenditures in election years, and less expenditures in others. Additionally, this kind of incentive to spend all funds by the end of the calendar year may lead to unnecessary expenditures of state funds. **It is recommended to amend this provision, to ensure that political parties may use state funding for the entire term of the legislature following elections.**

121. In certain circumstances, public funds may also be suspended (Article 46), for example if political parties submit reports on property, intangible assets, income, expenses and financial liabilities containing unreliable information, and where parties fail to conduct or report on independent audits of financial reporting. During the online meetings, the NACP noted that the manner of such suspension would need to be clarified, as according to Article 41, political parties receive state funding in advance. **Given the serious consequences of having one's funds**

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<sup>67</sup> See ECtHR, *Tebieti Mühafize Cemiyyeti and Israfilov v Azerbaijan*, no. 37083/03, judgment of 8 October 2009, par 78, stating that while the state may introduce certain minimum requirements as to the role and structure of associations' governing bodies [...], the authorities should not intervene in the internal organisational functioning of associations to such a far-reaching extent as to ensure observance by an association of every single formality provided by its own charter.

**suspended, it would also be good to clarify what exactly would be considered “unreliable” information, to enhance clarity and foreseeability of this part of the Draft Law. Moreover, to comply with the principle of proportionality, Article 46 should foresee not only the entire, but also the partial suspension of funds.**

122. Furthermore, the ability to conduct independent audits of financial report will often depend on the size and financial situation of a political party. **If smaller political parties are not able to conduct such audits for lack of funds, then depriving them of additional funding would appear to be quite harsh. This part of Article 46 should be re-considered.**

123. Article 47 par 10 requiring the loss of the right to receive state funding for political parties where such funding has been terminated needs to be clarified. On the one hand, this provision states that such parties shall lose the right permanently, on the other the ensuing sentence clarifies that such loss of the right to receive public funding shall only last as long as the next election.

### **3. Reporting Requirements**

124. Section VII outlines the reporting requirements of political parties, which include the already mentioned half-year reporting requirement for all property, incomes, expenditures, and financial liabilities received over six months. It is welcome that Article 49 outlines the necessary contents of the reports on property, income, expenses and financial liabilities in detail and provides further information that more clearly outlines the different steps of the online financial reporting system.

125. Article 50 states that political parties shall submit to the NACP a notice on the receipt of monetary donations to the current accounts of the political party by introducing such information into the Unified State Register of Political Parties Reporting on the Property, Income, Expenses and Financial Liabilities within fifteen calendar days. Such notification shall be verified by the NACP within 40 calendar days (Article 53). If political parties are obliged to do this every time that they receive monetary donations, then this could over time become quite burdensome. It is important that reporting obligations are proportional and do not place an undue burden on political parties.<sup>68</sup> Moreover, in the meetings with Ukrainian counterparts, it became clear that the need to verify such frequent notifications would also greatly increase the workload of the NACP, which would then need to invest in additional software and staff.

126. It is questionable whether such detailed and frequent reporting is truly necessary, given that monetary donations are covered in the other forms of reporting set out in Section VII. **It is recommended to rethink and ideally to delete this provision.**

## **J. Oversight Bodies**

127. According to Article 55, there are three bodies that exercise state control over the activities of political parties: the Ministry of Justice, the Central Election Commission and the NACP. While the Ministry of Justice exercises state control over the compliance of political parties with the Constitution and laws of Ukraine, as well as with their own charter, the Central Election Commission and other district and territorial election commissions are mandated to monitor whether political parties observe the relevant provisions relating to participation in the electoral process, and financial reporting in that context. Finally, the NACP oversees the funding of political parties, and their submission of financial reports in general.

128. The Draft Law assigns to the Ministry of Justice quite extensive powers in overseeing the establishment and activities of political parties, without properly defining these powers, or their

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<sup>68</sup> See the Venice Commission and OSCE/ODIHR Joint Opinion on the Draft Amendments to Some Legislative Acts Concerning Prevention of and Fight against Political Corruption of Ukraine, [CDL-AD\(2015\)025](#), par 58, which cites this principle in relation to financial reporting in the context of elections.

limitations.<sup>69</sup> In this, it does not differ much from the current Law on Political Parties, which, in its Article 18, contains a similarly general and brief description of the competent oversight bodies and their powers. In its 2002 Opinion, the Venice Commission had already noted that the powers of the Ministry of Justice were not clearly defined or delimited, and that this could pose a potential threat to the autonomy of parties.<sup>70</sup> **It therefore recommended that the Law should outline the powers of the Ministry of Justice, including the power to obtain documents and other information from parties, in a detailed and accurate manner that does not unduly impinge on parties' autonomy.**

129. Moreover, and as also stated above in par 37, the Venice Commission considered in particular that control over party statutes or charters should be exercised internally, by members of the party. External control might exist in the form of access to a court for party members considering that a decision of a party organ violated the statute. In general, however, judicial control over political parties should be preferred over executive control.

**130. Given the extent of the Ministry of Justice's control over activities of political parties, and recalling the previous recommendations of the Venice Commission, it is recommended to review this section, with a view to clarifying in greater detail the competences of the Ministry of Justice under the Draft Law, but also their limitations.** After all, as specified in the OSCE/ODIHR-Venice Commission Guidelines on Political Party Regulation, laws permitting limitations or oversight over political parties need to be precise, certain and foreseeable, in particular in the case of provisions that grant discretion to state authorities and must be formulated in terms that provide a reasonable indication as to how these provisions will be interpreted and applied.<sup>71</sup>

131. It is noticeable that the NACP has by far the most extensive workload, as it is required to oversee the half-year reporting of political parties (Article 49) and the reporting of monetary and other donations received by political parties in the Unified State Register of Political Parties Reporting on the Property, Income, Expenses and Financial Liabilities, which the NACP also manages (Article 34 par 2 and Article 35 par 3). The NACP also deals with requests of political parties to receive public funding (Article 38 par 4 and Article 39), decides on and transfers state funds (Articles 39 par 4, 41 and 42) and decides on the suspension of funding for political parties (Article 46), among others. Moreover, the NACP also has other tasks unrelated to political parties.

132. Such an important workload for one oversight body may incapacitate the body itself, if the additional tasks given to such body are not complemented with sufficient amounts of additional funding that would allow the NACP to select and hire sufficient additional high-quality staff to meet this vast array of competences. Moreover, the new provisions should not apply immediately, as the NACP may require time to hire and train staff, and to familiarize itself with its new tasks.

133. As regards oversight on the funding of political parties, international standards require that such oversight should be conducted by bodies that are sufficiently independent from state structures to conduct effective oversight.<sup>72</sup> As stated in Article 14 of the Council of Europe Committee of Ministers Recommendation 2003(4), “[s]tates should provide for independent monitoring in respect of the funding of political parties and electoral campaigns. The independent

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<sup>69</sup> Article 55 par 1 (1) provides that the Ministry of Justice and its territorial bodies shall exercise control over “compliance with the requirements of the Constitution and laws of Ukraine, as well as the charter of a political party, except when such control is assigned to the powers of other public authorities by law”.

<sup>70</sup> See Venice Commission, Opinion on the Ukrainian Legislation on Political Parties, CDL-AD(2002)017, par 23: “According to Article 18, Section 1 of the Law on Political Parties, the Ministry of Justice exercises control over the parties with regard to the observance of the Constitution and other laws, and also with regard to the party’s statute or charter. These powers of the Ministry of Justice are not clearly defined and delimited, which, in the Commission’s view, might constitute a potential threat to the autonomy of parties. Accordingly, it is advisable that the Ministry’s powers, including the power to obtain documents and other information from the parties, should be set out in a detailed and accurate manner.”

<sup>71</sup> Joint Guidelines of the Venice Commission and OSCE/ODIHR on Political Party Regulation, CDL-AD(2020)032, par 48.

<sup>72</sup> Venice Commission and OSCE/ODIHR Joint Opinion on the Draft Amendments to Some Legislative Acts Concerning Prevention of and Fight against Political Corruption of Ukraine, [CDL-AD\(2015\)025](#), par 36.

monitoring should include supervision over the accounts of political parties and the expenses involved in election campaigns as well as their presentation and publication”.<sup>73</sup> Regulatory bodies have to be independent, impartial and non-partisan in nature, which is why the establishment and appointment of representatives of these bodies should follow clearly established and carefully crafted procedure.<sup>74</sup>

134. Most importantly, whichever body is tasked to review the party’s financial reports, effective measures should be taken in legislation and in practice to ensure the respective body’s independence from political pressure and commitment to impartiality. Such independence and impartiality are fundamental to its proper functioning.<sup>75</sup>

135. The NACP was established by the 2014 Law on Prevention of Corruption. According to Article 4 of this Law, the NACP is “is under the control of and accountable to the Cabinet of Ministers of Ukraine”. The Head of the Agency is appointed by the Cabinet of Ministers following a competition, organised by the Competition Commission, which includes representatives of the government and members appointed by international partners of Ukraine. The mandate of the Chairperson may be terminated in the case of his/her “inefficiency” (Article 5 par 5 (9)) by a Commission on the independent assessment of effectiveness of the NACP, also established with the participation of international partners (Article 14 par 4). There have been recent positive attempts to strengthen the role of the NACP, including additional guarantees of independence in Article 9 of the Law on Prevention of Corruption. Nevertheless, and while acknowledging the credibility that the NACP enjoys at the moment and the effectiveness of its work, it is important that this oversight body receive guarantees of greater independence from other state structures in the long run, to strengthen its mandate further and ensure its future sustainability.

**136. As already stated in previous Venice Commission opinions and GRECO reports in relation to other oversight functions of the NACP, it is thus recommended to undertake appropriate measures, including of a regulatory nature, to enhance the independence and impartiality of the NACP’s decision-making structures, and to lay down detailed, clear and objective rules governing the NACP’s work to ensure full transparency and accountability.**<sup>76</sup>

**137. The Draft Law also does not clarify how the three main oversight bodies shall coordinate their efforts and cooperate. This would be particularly important in the case of the NACP and the Central Election Commission, which both conduct oversight in the area of elections and campaign financing. Overlapping and unclear mandates might create loopholes and could thus be detrimental to an effective oversight of political party finances. While it is welcome that meetings are ongoing between these two bodies to ensure coordination and reduce overlaps in their functions, it would be advisable to also clarify this in the Draft Law.**

138. According to the OSCE/ODIHR-Venice Commission Guidelines on Political Party Regulation, in cases where there are several monitoring bodies, the relevant legislation should

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<sup>73</sup> Council of Europe Committee of Ministers, Recommendation Rec(2003)4 to member states on common rules against corruption in the funding of political parties and electoral campaigns, adopted on 8 April 2003.

<sup>74</sup> Venice Commission and OSCE/ODIHR Joint Opinion on the Draft Amendments to Some Legislative Acts Concerning Prevention of and Fight against Political Corruption of Ukraine, [CDL-AD\(2015\)025](#), par 36. See also GRECO Fifth Addendum to the Compliance Report on Ukraine (adopted 19 June 2015) available at [http://www.coe.int/t/dghl/monitoring/greco/evaluations/round2/GrecoRC1&2\(2009\)1\\_FifthAdd\\_Ukraine\\_EN.pdf](http://www.coe.int/t/dghl/monitoring/greco/evaluations/round2/GrecoRC1&2(2009)1_FifthAdd_Ukraine_EN.pdf) at pages 4-5.

<sup>75</sup> Joint Guidelines of the Venice Commission and OSCE/ODIHR on Political Party Regulation, CDL-AD(2020)032, par 278

<sup>76</sup> See the Urgent Joint Opinion of the Venice Commission and the Directorate-General of Human Rights and Rule of Law (DGI) of the Council of Europe on the Legislative Situation Regarding Anti-Corruption Mechanisms, Following Decision No. 13-R/2020 of the Constitutional Court of Ukraine, [CDL-AD\(2020\)038](#), par 57. See also GRECO, [Fourth Evaluation Round](#) (Corruption prevention in respect of members of parliament, judges and prosecutors, Evaluation Report Ukraine, 2017, par 31, and GRECO, Fourth Evaluation Round, Compliance Report on Ukraine – Corruption prevention in respect of members of parliament, judges and prosecutors, 6 December 2019, par 14.

clearly outline their various differing competences and mandates and ensure that they complement one another; the different mandates and competences need to be easily understandable to the parties, the wider society, as well as the respective bodies themselves. Additional provisions should ensure coordination and information-sharing between the different bodies, to avoid overlapping responsibilities.<sup>77</sup> **The delineation of powers between different authorities in legislation is also a key rule of law principle.<sup>78</sup> In this context, it is essential that the funding of campaign and party finances is overseen by the same body, to ensure consistency.**

139. Finally, once the Draft Law has been adopted, it may be helpful to have a transition period between adoption of the Draft Law and its entry into force, to allow parties to comply with all the financial requirements and have the NACP provide trainings, develop manuals and build its capacity, as well as to introduce relevant and necessary amendments to the Law on Prevention of Corruption.

## **K. Sanctions and Dissolution of Political Parties**

140. Article 57 specifies that political parties may suffer punitive measures if they violate the Constitution, this and other laws of Ukraine. These measures include warnings, but also suspension or termination of funding, the banning of a political party, and the cancellation of its registration. It is noted, however, that other than the suspension or termination of state funding, or the complete dissolution of the party, this provision does not contain any administrative and financial sanctions for different types of violations of the law.

141. In this connection, it is important to bear in mind the recommendation issued by the Venice Commission in its 2002 Opinion, according to which a distinction should be made between different degrees and contexts of transgressions and the degree of the sanctions incurred.<sup>79</sup> The OSCE/ODIHR-Venice Commission Guidelines on Political Party Regulation also stress that laws should contain a wide spectrum of sanctions for a variety of violations of law. Such sanctions must bear a relationship to the violation and respect the principle of proportionality and must also include minor sanctions for less serious infringements. **Next to administrative or financial sanctions, these could also involve, among others, the inability to present candidates for elections for a particular period, the rejection of electoral lists or candidates, or removal from the electoral ballot, criminal sanctions, or annulment of an election to office (but only if based on a court decision preceded by due process, and if the violation is likely to have impacted the election results).**<sup>80</sup> Moreover, in order to fully comply with the principle of proportionality, Article 57 should explicitly mention the possibility of not only an entire but also a partial suspension of funding.

142. The prohibition or banning of political party activity is set out in Article 62 and is decided by a court following a lawsuit initiated by the Ministry of Justice. One of the grounds for initiating such a procedure essentially reiterates the reasons for banning political parties set out in Article 3 par 4. As stated above, provisions describing actions leading to a possible ban of political parties need to be formulated with sufficient precision, so as to correspond with the principles of legality and proportionality (see pars 40-47 supra).

143. Generally, it is important to reiterate that the ban or dissolution of a political party should always be a measure of last resort and should be limited to cases where a party uses violence or threatens civil peace or the democratic order of the country. Thus, the opportunity for a state to dissolve a political party or prohibit one from being formed should be narrowly tailored and

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<sup>77</sup> See Venice Commission and OSCE/ODIHR Joint Opinion on the Draft Amendments to Some Legislative Acts Concerning Prevention of and Fight against Political Corruption of Ukraine, [CDL-AD\(2015\)025](#), paras. 38-39.

<sup>78</sup> See, in this context, the Venice Commission Rule of Law Checklist, CDL-AD(2016)007, Benchmark A.2.ii.

<sup>79</sup> See Venice Commission, Opinion on the Ukrainian Legislation on Political Parties, CDL-AD(2002)017, par 37.

<sup>80</sup> Joint Guidelines of the Venice Commission and OSCE/ODIHR on Political Party Regulation, CDL-AD(2020)032, pars 273 and 274.

applied only in exceptional and extreme cases. As the most severe of all available restrictions, the prohibition or dissolution of political parties may consequently only be undertaken when all less restrictive measures have been deemed inadequate. It is important to ensure that the mere fact that a party criticises government actions, advocates a peaceful change of the constitutional order, or promotes self-determination of a specific people is not sufficient *per se* to justify a party's prohibition or dissolution. Moreover, although according to Article 62 par 1 the decision to prohibit a political party is made by a court, the Draft Law does not provide for a right to appeal in such cases. **Unless the decision on prohibition is made by a Constitutional Court or Supreme Court, the right to speedy appeal has to be guaranteed.**

144. The OSCE/ODIHR and the Venice Commission are of the view that, given the importance of political parties as vital instruments of the freedom of association and their relevance for the democratic process, as well as the far-reaching consequences that the restrictions imposed on political parties may have, any restriction on political party freedoms must be capable of being submitted to review by an independent and impartial court. Moreover, the prohibition/dissolution of a political party must always be decided by an independent court,<sup>81</sup> as also set out in Article 4 par 4 of the Draft Law. To ensure an effective remedy, it is imperative for the procedure, before the tribunal, including appeal and review, to be in accordance with fair trial standards. The procedure shall be clear and affordable. Proper, timely and effective redress shall be available to parties if a violation is found to have occurred. The principle of effectiveness requires that some remedies be granted expeditiously. Remedies that are not provided in a timely fashion may not satisfy the requirement that a remedy be effective.<sup>82</sup>

145. According to Article 62 par 4, the prohibition of a political party shall entail the termination of the political party and its membership, as well as dissolution of its governing bodies and structural units, and decisions of the Ministry of Justice to terminate the party and its structural units. If the court decision on cancellation of registration of a political party does not appoint a commission for termination, Article 62 par 5 states that the Ministry of Justice shall appoint a governing body or person who may perform legal actions on behalf of the political party. **In the interest of neutrality, it is recommended that such decisions on interim governing bodies or persons be taken by the competent court.**

146. While the ban of a political party under Article 62 will also lead to the cancellation of this party's registration by court order, Article 63 deals with other instances where courts, at the request of the Ministry of Justice, may decide to cancel political party registration. One such example is the failure of a political party to submit a report on property, income, expenses and financial liabilities to the NACP either three times in a row, or three times within the last three years. **Given that deregistration is one of the harshest sanctions that can be imposed on political parties (especially as under the current Draft Law, unregistered parties may not engage in any activities), it is recommended to rethink this approach, and to address such issues with a less serious sanction (e.g. fines or the suspension of certain rights, see par 141 supra). De-registration should only be possible after numerous other sanctions have failed to remedy the situation. At the same time, given that the NACP evaluates and considers such reports, the Draft Law should either provide a procedure whereby the NACP may refer such cases to the Ministry of Justice for further action or should allow the NACP to act itself. Furthermore, the Draft Law should guarantee the right to speedy appeal, unless the decision on cancellation of this party's registration is made by a Supreme Court.**

147. Article 63 also foresees the failure of a political party to nominate candidates for national elections for a period of ten years. This seems to be problematic as some parties may be active and successful in local elections. It is thus doubtful whether this is a legitimate reason for cancelling a party's registration. Apart from that, it is not clear how parties may reapply for

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<sup>81</sup> See OSCE/ODIHR-Venice Commission Joint Guidelines on Freedom of Association, par 256.

<sup>82</sup> Joint Guidelines of the Venice Commission and OSCE/ODIHR on Political Party Regulation, CDL-AD(2020)032, par 53

registration once their registration has been cancelled.

148. **At the same time and particularly if a party's registration is cancelled on account of not presenting candidates, rather than being (voluntarily) dissolved, it should have the option of converting into an association that still may participate in the political life of the country. Similarly, in the event of self-dissolution (Article 59), there should be a possibility to convert into an association while retaining the assets of the old party (except, perhaps, for the state subsidy that goes to parties in particular).** A party is, after all, a subset of the general class of associations.

#### **L. Recommendations Related to the Process of Preparing and Adopting the Draft Law**

149. OSCE participating States have committed to ensure that legislation will be “adopted at the end of a public procedure, and [that] regulations will be published, that being the condition for their applicability” (1990 OSCE Copenhagen Document, par 5.8).<sup>83</sup> Moreover, key commitments specify that “[l]egislation will be formulated and adopted as the result of an open process reflecting the will of the people, either directly or through their elected representatives” (1991 Moscow Document, par 18.1).<sup>84</sup> The Venice Commission's Rule of Law Checklist also emphasizes that the public should have a meaningful opportunity to provide input.<sup>85</sup> The 2015 Joint Guidelines on Freedom of Association further specifically recommend that associations always be consulted about proposals to amend laws and other rules that concern their status, financing and operation.<sup>86</sup>

150. For consultations on draft legislation to be effective, they need to be inclusive and involve consultations and comments by the public, and relevant stakeholders. They should also provide sufficient time to stakeholders to prepare and submit recommendations on draft legislation, while the State should set up an adequate and timely feedback mechanism whereby public authorities should acknowledge and respond to contributions, providing for clear justifications for including or not including certain comments/proposals.<sup>87</sup> To guarantee effective participation, consultation mechanisms must allow for input at an early stage *and throughout the process*,<sup>88</sup> meaning not only when the draft is being prepared by relevant ministries but also when it is discussed before Parliament (e.g., through the organisation of public hearings).

151. Given the potential impact of the Draft Law on the rights and freedoms of political parties and their members, it is essential that the development of legislation in this field be preceded by an in-depth regulatory impact assessment, including on human rights compliance, completed with a proper problem analysis using evidence-based techniques to identify the most efficient and effective regulatory option.<sup>89</sup>

152. In light of the above, it is welcome that Draft Law has been the subject of extensive consultations with a wide array of stakeholders, with numerous proposals for amendment taken up along the way. **It is recommended that the public authorities continue such inclusive, extensive and effective consultations, including with a wide range of political parties, while also offering equal opportunities for women and men to participate.** According to the

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<sup>83</sup> Document of the Copenhagen Meeting of the Conference on the Human Dimension of the CSCE, 29 June 1990.

<sup>84</sup> Document of the Moscow Meeting of the Conference on the Human Dimension of the CSCE, 4 October 1991.

<sup>85</sup> See Venice Commission, [Rule of Law Checklist](#), CDL-AD(2016)007, Benchmark II.A.5.

<sup>86</sup> See Joint Guidelines of the Venice Commission and OSCE/ODIHR on Freedom of Association, CDL-AD(2014)046, par 186.

<sup>87</sup> See e.g., [Recommendations on Enhancing the Participation of Associations in Public Decision-Making Processes](#) (from the participants to the Civil Society Forum organised by the OSCE/ODIHR on the margins of the 2015 Supplementary Human Dimension Meeting on Freedoms of Peaceful Assembly and Association), Vienna 15-16 April 2015.

<sup>88</sup> See OSCE/ODIHR Guidelines on the Protection of Human Rights Defenders, Section II, Sub-Section G on the Right to participate in public affairs.

<sup>89</sup> See OSCE/ODIHR, [Preliminary Assessment of the Legislative Process in the Republic of Uzbekistan](#) (11 December 2019), Recommendations L and M; and Venice Commission, [Rule of Law Checklist](#), CDL-AD(2016)007, Benchmark II.A.5.

principles stated above, such consultations should take place at different stages of the law-making process, including before parliament, and in particular following significant changes to certain parts of the Draft Law. As an important element of good law-making, a consistent monitoring and evaluation system of the implementation of the Law and its impact should also be put in place that would efficiently evaluate the operation and effectiveness of the Draft Law, once adopted.<sup>90</sup>

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<sup>90</sup> See e.g., OECD, [International Practices on Ex Post Evaluation](#) (2010).