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URGENT OPINION ON THE DRAFT LAW ON POLITICAL PARTIES

KYRGYZ REPUBLIC

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Based on an unofficial English translation of the Draft Law.



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This Opinion is also available in Russian.

However, the English version remains the only official version of the document.

EXECUTIVE SUMMARY AND KEY RECOMMENDATIONS

At the outset, the Draft Law is a considerable improvement of the legal framework regulating political parties in the Kyrgyz Republic. It implements many recommendations previously made by OSCE/ODIHR and other organizations and aims at creating a permissive and transparent environment for the establishment and operation of political parties. At the same time, the Draft Law, at times, overregulates internal party matters. The Draft Law could be further improved to close loopholes in funding of political parties, guarantee effective oversight and provide proportionate sanctions.

More specifically, and in addition to what was stated above, OSCE/ODIHR makes the following recommendations to further enhance the Draft Law:

- A.** In Article 4 par 4: to either specify the documents that are to be made publicly available or to delete this part of the article; [par 15]
- B.** In Article 1 par 1 and Article 7 par 1: to remove “citizenship” and “legal capacity” as a prerequisite for party membership so that there is no blanket exclusion that prevents non-citizens, stateless persons and persons with disabilities from participating in political life; [pars 16-18]
- C.** In Article 6 par 1: to reconsider minimum party membership number required for registration or alternatively to determine the minimum number of supporters required as a reasonable percentage of the total voting population, thereby avoiding the risk of fragmentation of the political landscape while also not putting a disproportionate burden on persons wanting to found a political party [pars 19-20];
- D.** In Articles 9-10: to revisit Articles 9 and 10 of the Draft Act to ensure that it does not overregulate internal processes, providing an opportunity for a party itself to define the process of decision-making,

including nomination of candidates, adopting a programme, establishing internal dispute resolution procedure, or other issues which should be left up to the internal leadership and membership of the political parties; [pars 23-30]

- E.** In Article 11 par 1 and Article 16: to replace “other activities that meet the goals and objectives of a political party as defined in its charter and agenda” and “other sources not prohibited by the legislation of the Kyrgyz Republic” with a list of clearly defined permitted commercial activity; to consider curbing commercial activities by political parties; and to restrict political parties from establishing and owning commercial media outlets while allowing non-commercial media outlets or printing houses necessary for publishing campaign , educational or information materials, etc.; [pars 31-34]
- F.** In Article 11 par 4: to explicitly define what constitutes in-kind donations and to specify under what circumstances volunteer work is to be counted as a donation; [par 42]
- G.** In Article 11 par 8: to state that the terms of loans need to include a clear timeframe, that loans with unusually favourable terms and loans that are forgiven should count as donations and that credits and debts are counted as donations and have to be disclosed and reported; [par 47]
- H.** In Articles 15 and 17: to consider simplifying the monitoring and oversight of political party activities preferably by establishing one regulatory body responsible for oversight with a robust mandate that includes investigative powers and the power to pursue violators; [par 52-54]
- I.** In Article 18: to ensure that a catalogue of dissuasive and effective sanctions is applicable, which are proportionate to violations of the Law, in particular, of misuse of public funds as well as reporting and

disclosure obligations; [par 55-56]

- J. In Article 5 par 5: to reconsider the paragraph in its entirety and to either revise it extensively and render it compliant with international standards, or to delete it so that there is no blanket ban on the formation of parties on the basis of religious or ethnic affiliation; [par 57]
- K. In Article 5 par 6: to delete “violation of state integrity” from the Draft Act or, at a minimum, to specify that it only covers integrity challenged by violent means and to clarify that dissolution is a measure of last resort in the gravest circumstances, which are to be set out by law in a clear and precise manner [pars 58-60].

As part of its mandate to assist OSCE participating States in implementing OSCE commitments, the OSCE/ODIHR reviews, upon request, draft and existing legislation to assess their compliance with international human rights standards and OSCE commitments and provides concrete recommendations for improvement.

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I. INTRODUCTION

1. On 20 May 2020, the Deputy Speaker of the *Jogorku Kenesh* (Parliament) of the Kyrgyz Republic sent to the OSCE Office for Democratic Institutions and Human Rights (hereinafter “OSCE/ODIHR”) a request for a legal review of the Draft Law on Political Parties of the Kyrgyz Republic (hereinafter “the Draft Law”).
2. In response, OSCE/ODIHR prepared this legal opinion on the compliance of the Draft Law with international human rights standards and OSCE human dimension commitments. Earlier in 2020, OSCE/ODIHR had assessed an earlier version of a draft law on political parties.¹
3. Given the short timeline to prepare this legal review, the OSCE/ODIHR decided to prepare an Urgent Opinion on the Draft Law concentrating on the main areas for concern left in the Draft Law.

II. SCOPE OF REVIEW

4. The scope of this Urgent Opinion covers only the Draft Act submitted for review. Thus limited, the Opinion does not constitute a full and comprehensive review of the entire legal and institutional framework regulating political party regulation in the Kyrgyz Republic.
5. The Urgent 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 standards, norms and practices as well as relevant OSCE human dimension commitments. The Opinion also highlights, as appropriate, good practices from other OSCE participating States in this field. When referring to national legislation, the OSCE/ODIHR does not advocate for any specific country model; it rather focuses on providing clear information about applicable international standards while illustrating how they are implemented in practice in certain national laws. Any country example should always be approached with caution since it cannot necessarily be replicated in another country and has always to be considered in light of the broader national institutional and legal framework, as well as country context and political culture.
6. Moreover, in accordance with the 2004 OSCE Action Plan for the Promotion of Gender Equality and commitments to mainstream a gender perspective into OSCE activities, programmes and projects, the Opinion’s analysis takes into account the potentially different impact of the Draft Act on women and men.²
7. This Opinion is based on an unofficial English translation of the Draft Law commissioned by the OSCE/ODIHR, which is attached to this document as an Annex.

¹ OSCE/ODIHR Opinion on the Draft Law on Political Parties of the Kyrgyz Republic (8 April 2020) available at https://www.legislationline.org/download/id/8649/file/367_POLIT_KGZ_8Apr2020_en.pdf (hereinafter “2020 I Opinion”).

² See par 32 of the OSCE Action Plan for the Promotion of Gender Equality adopted by Decision No. 14/04, MC.DEC/14/04 (2004), <<http://www.osce.org/mc/23295?download=true>>.

Errors from translation may result. This Urgent Opinion is also available in Russian. The English version shall prevail.

8. In view of the above, the OSCE/ODIHR would like to make mention that this Opinion does not prevent the OSCE/ODIHR from formulating additional written or oral recommendations or comments on respective legal acts or related legislation pertaining to the legal and institutional framework regulating political parties the Kyrgyz Republic in the future.

III. ANALYSIS

1. International Standards and OSCE Commitments on Political Party Regulation

9. **Political parties, as collective instruments for political expression, must be able to fully enjoy the rights to freedom of expression and freedom of association. Fundamental rights afforded to political parties and their members are found principally in Article 22 of the International Covenant on Civil and Political Rights (ICCPR), which protects the right to freedom of association, and Article 19, which contains the right to freedom of expression and opinion.³ The United Nations (UN) Convention against Corruption requires, in Article 7.3, State Parties to enhance transparency with respect to the funding of candidatures for elected public office and, where applicable, the funding of political parties.⁴ The UN Convention on the Rights of Persons with Disabilities (CRPD) also contains specific State obligations in the area of political participation of persons with disabilities in Articles 29 and 12.⁵ Additionally the Convention on the Elimination of All Forms of Discrimination against Women obliges States Parties, in Article 7 to “take all appropriate measures to eliminate discrimination against women in the political and public life of the country”, including in the field of the right to vote, to hold public office and to participate in organisations and associations concerned with the political and public life in the country⁶**
10. **At the regional level, in paragraph 7.6 of the 1990 OSCE Copenhagen Document OSCE participating States commit themselves to “respect the right of individuals and groups to establish, in full freedom, their own political parties or other political organizations and provide such political parties and organizations with the necessary legal guarantees to enable them to compete with each other on a basis of equal treatment before the law and by the authorities.”⁷ The OSCE**

³ International Covenant on Civil and Political Rights adopted by the UN General Assembly by resolution 2200A (XXI) of 16 December 1966. The Kyrgyz Republic acceded to the Covenant on 7 October 1994.

⁴ UN Convention against Corruption, adopted on 31 October 2003, ratified by the Kyrgyz Republic on 16 September 2005, available at http://www.unodc.org/documents/treaties/UNCAC/Publications/Convention/08-50026_E.pdf.

⁵ Convention on the Rights of Persons with Disabilities, 13 December 2006, entered into force 3 May 2008, available at <https://www.ohchr.org/EN/HRBodies/CRPD/Pages/ConventionRightsPersonsWithDisabilities.aspx#12>; The Kyrgyz Republic ratified the CRPD on 16 May 2019.

⁶ UN Convention on the Elimination of All Forms of Discrimination against Women (hereinafter “CEDAW”), adopted by General Assembly resolution 34/180 on 18 December 1979. The Kyrgyz Republic acceded to the Convention on 10 February 1997.

⁷ 1990 OSCE Copenhagen Document (29 June 1990) 29 ILM 1305, available at <http://www.osce.org/odihr/elections/14304?download=true> (hereinafter “1990 Copenhagen Document”).

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) and obligations on the separation of the State and political parties (paragraph 5.4). Within the OSCE context, the Ministerial Council's Decision 7/09 on women's participation in political and public life is also of relevance.⁸

11. **In Europe, Article 11 of the European Convention on Human Rights (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.⁹ While the Kyrgyz Republic is not a member State of the Council of Europe, the obligations imposed by the European Convention on Human Rights, as well as jurisprudence of the European Court of Human Rights and other Council of Europe mechanisms and instruments can provide useful guidance beyond the Council of Europe's geographical scope of application.¹⁰**
12. **These obligations are supplemented by various UN recommendations, the most important of which are 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 service¹¹, CEDAW Committee General Recommendation No 23: Political and Public Life and CRPD Committee's 2014 General Comment No. 1 to Article 12 of the CRPD.¹² Similar types of recommendations can be found at the OSCE and the Council of Europe levels. These include Joint Guidelines issued by OSCE/ODIHR and the Council of Europe Commission for Democracy through Law (Venice Commission) on Political Party Regulation,¹³ the OSCE/ODIHR and Venice Commission Joint Guidelines on Freedom of Association,¹⁴ the Council of Europe Committee of Ministers' Recommendation (2003)4 on Common Rules Against Corruption in the Funding of Political Parties and Electoral Campaigns,¹⁵ as well as various OSCE/ODIHR and Venice Commission opinions on individual pieces of legislation and OSCE/ODIHR election observation reports.¹⁶**

⁸ 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>.

⁹ The Council of Europe's Convention for the Protection of Human Rights and Fundamental Freedoms entered into force on 3 September 1953.

¹⁰ **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; see also par 28 of the 1990 Copenhagen Document: The participating States recognize the important expertise of the Council of Europe in the field of human rights and fundamental freedoms and agree to consider further ways and means to enable the Council of Europe to make a contribution to the human dimension of the CSCE.**

¹¹ UN Human Rights Committee General Comment 25, The right to participate in public affairs, voting rights and the right of equal access to public service, UN Doc. CCPR/C/21/Rev.1/Add.7, available at <http://www.refworld.org/docid/453883fc22.html>; UN Committee on the Rights of Persons with Disabilities General Comment 1, Article 12: Equal Recognition before the Law, CRPD/C/GC/1, available at <https://www.ohchr.org/EN/HRBodies/CRPD/Pages/GC.aspx> (hereinafter CRPD Committee General Comment No. 1).

¹² UN Committee on the Elimination of discrimination against Women General Recommendation 23, Public and Private Life UN doc A/52/38, available at <https://www.ohchr.org/en/hrbodies/cedaw/pages/recommendations.aspx>.

¹³ OSCE/ODIHR-Venice Commission Guidelines on Political Party Regulation (2010), available at <http://www.osce.org/odihr/77812> (hereinafter "OSCE/ODIHR-Venice Commission Guidelines on Political Party Regulation").

¹⁴ OSCE/ODIHR-Venice Commission Guidelines on Freedom of Association (2015), available at <https://www.osce.org/odihr/132371>.

¹⁵ Council of Europe Committee of Ministers Recommendation 2003(4) on Common Rules against Corruption in the Funding of Political Parties and Electoral Campaigns, available at <https://rm.coe.int/16806cc1f1> (hereinafter CoE Recommendation 2003/4).

¹⁶ All relevant OSCE/ODIHR election observation reports on Kyrgyzstan can be found at: <http://www.osce.org/odihr/elections/kyrgyzstan>.

2. PRINCIPLES OF FUNCTIONING OF POLITICAL PARTIES

13. **Article 4 of the Draft Law sets forth the general principles of functioning of political parties by stressing principles of free and voluntary association, non-interference, non-discrimination, inclusiveness of underrepresented groups (women, youth, people with disabilities) and openness. The annotation to the Draft Law explains the goal of the law is “to create sustainable and able to compete political parties that would base their work in common ideology and not center around one political personality.”**
14. **Among the guiding principles – legality, voluntariness, transparency and others, it is unclear how the principle of “humanism” is defined in the context of a political party so the lawmakers could consider to delete the term.**
15. **Article 4 par 4 of the Draft Law commendably states the obligation of parties to operate openly, but it also enumerates documents and actions by political parties (for instance activities connected to elections) that “should be made publicly available”. Without more specifics on how, what and where has to be publicized or accessed, especially in addition to the reference “other information related to activities of the party”, this can lead to arbitrary treatment and potential harassment of political parties by institutions and competitors.**

RECOMMENDATION A.

In Article 4 par 4: to either specify the documents that are to be made publicly available or to delete this part of the article.

3. MEMBERSHIP IN POLITICAL PARTIES

16. Article 1 par 1 of the Draft Act states “[c]itizens of the Kyrgyz Republic have a constitutional right to freedom of association in political parties, to associate freely, without interference of the state, and the right to participate in the activities of the political parties.” Article 7 par 1 of the Draft Act further elaborates that “Membership in political parties is open to citizens of the Kyrgyz Republic, who are of legal capacity to act, who have reached 18 years of age, who voluntarily joined the party on the basis of a written declaration, agree with its charter and second agenda.”
17. Two of these prerequisites for membership are problematic from the viewpoint of international law and good practices. First, a general exclusion of foreign citizens and stateless persons permanently residing in Kyrgyzstan from membership of political parties is not justified, as they should to some extent be permitted to participate in the political life of their country of residence, at least as far as they can participate in elections.¹⁷ General human rights protection, including the right to

¹⁷ See Article 16 ECHR and ECtHR *Perinçek v. Switzerland* [GC] (application no 27510/08), 15 October 2015, para 118ff; see further OSCE/ODIHR-Venice Commission Joint Opinion on Draft Amendments to the Legislation Concerning Political Parties of Armenia (20 March 2020) available at https://www.legislationline.org/download/id/8633/file/368_POLIT_ARM_20March2020_en.pdf, pars 20-21 (hereinafter “2020 Armenia Opinion”); OSCE/ODIHR Opinion on the Constitutional Law of the Republic of Armenia on Political Parties (11 October 2019) available at <https://www.legislationline.org/documents/id/225>, par 15.

freedom of association, is generally granted to all persons, regardless of whether they are citizens of a given country or not.¹⁸ Therefore, while recognizing the right of States to link certain modes of public office and political participation to a citizenship requirement, **it is recommended to amend the legal framework in order that parties are allowed to associate non-citizens in their activities.**

18. Additionally, it is important to ensure that the requirement of “legal capacity” does not exclude persons with disabilities from being members of a political party, as this would contravene the CRPD to which the Kyrgyz Republic is a State Party. According to Article 29 (b) (i) of the CRPD which states that State Parties shall undertake to actively promote an environment in which persons with disabilities can effectively and fully participate in public affairs, including by participation “in the activities and administration of political parties”. Additionally, States Parties to the CRPD recognise, pursuant to Article 12 of the CRPD, “that persons with disabilities enjoy legal capacity on an equal basis with others in all aspects of life”.¹⁹ **It is recommended to ensure that the Draft Law remains in line with the Kyrgyz Republic’s obligations under the CRPD and does not exclude persons with disabilities from party membership.**

RECOMMENDATION B.

In Article 1 par 1 and Article 7 par 1: to remove “citizenship” and “legal capacity” as a prerequisite for party membership so that there is no blanket exclusion that prevents non-citizens, stateless persons and persons with disabilities from participating in political life.

4. REGISTRATION OF POLITICAL PARTIES

19. **Pursuant to Article 6 par 1 of the Draft Law, a political party can be created upon the initiative of no less than ten Kyrgyz citizens who have a right to convene the founding constituent assembly with no other specific participation requirements. The rationale accompanying the Draft Law explains, after drawing comparison to facilitated registration of political parties in other countries, that “this number permits the citizens to implement their right to association freely and without restriction.” It is welcome that the number of minimum support is low in order to create a permissive environment for political participation. While careful consideration must be given to avoid provisions that might have a discriminatory effect on parties representing historically underrepresented groups such as national minorities, ten persons seems to be a low number and might risk increasing fragmentation of the political landscape. Additionally, it might create**

¹⁸ *Op. cit.* footnote 13 par 120 (OSCE/ODIHR-Venice Commission Guidelines on Political Party Regulation).

¹⁹ The CRPD Committee is very clear on this subject stating “To fully realize the equal recognition of legal capacity in all aspects of life, it is important to recognize the legal capacity of persons with disabilities in public and political life. This means that a person’s decision-making ability cannot be a justification for any exclusion of persons with disabilities from exercising their political rights, including the right to vote [and] the right to stand for election,” see *op. cit.* footnote 11 par 48(CRPD Committee General Comment No. 1) The Committee heard the case of *Bujdoso and five others v Hungary* in 2011 in which it concluded that the exclusion of the right to vote on the basis of a perceived, or actual psychosocial or intellectual disability, including a restriction pursuant to an individualized assessment, constitutes discrimination on the basis of disability,” available at <https://www.ohchr.org/EN/HRBodies/CRPD/Pages/Jurisprudence.aspx>, par 9.4.

the risk of establishing political parties around influential individuals rather than broader programmes and political offers.

20. **It is generally recommended that the minimum number to establish a political party be determined, at least at the local and regional level, not as an absolute number but, rather, as a reasonable percentage of the total voting population.²⁰ Minimum support for a party may be established either through active party membership or through an expression of support, such as the collection of signatures. Legislation should clearly state the means by which support must be evidenced.²¹**
21. **Article 6 par 4 to 6 of the Draft Act addresses registration of political parties referring to general procedure for registering legal entities and refers to the law governing administrative procedure for appeals in cases of rejection. Consideration could be given to a more detailed mentioning to the other legislation referenced in the paragraphs as this would increase the accessibility of the Draft Law.**
22. **Additionally, Article 5 par 7 of the Draft Law bans the creation and activity of political parties of other states in the territory of the Kyrgyz Republic. As mentioned previously, a State may legitimately ban foreign political parties from taking part in public debates or elections. However, this should not prevent cooperation between domestic and international political parties (and their members) for the purposes of training of activists, elaboration of programmes and platforms, seminars, conferences, and participation in regional programme within the territory of the Kyrgyz Republic.²² It is recommended to amend Article 5 par 7 of the Draft Law accordingly.**

RECOMMENDATION C.

In Article 6 par 1: to reconsider minimum party membership number required for registration or alternatively to determine the minimum number of supporters required as a reasonable percentage of the total voting population, avoiding the risk of fragmentation of the political landscape while also not putting a disproportionate burden on persons wanting to found a political party.

5. INTERNAL PARTY DEMOCRACY

23. **Article 7 par 4 of the Draft Law establishes the rights of citizens to withdraw his or her membership from a party at any time of one's own free will by written statement or "public announcement about his/her withdrawal from the party".**

²⁰ *Op. cit.* footnote 13 par 76 (OSCE/ODIHR-Venice Commission Guidelines on Political Party Regulation) the average in selected OSCE participating States is around 0.06 % percentage of the voting population (as in the last parliamentary elections), with North Macedonia and Lithuania as the closest countries to the average (see Fernando Casal Bértoa "Registration, Funding and Oversight: "Good Practices" in OSCE countries" – forthcoming).

²¹ *Op. cit.* footnote 13 par 76 (OSCE/ODIHR-Venice Commission Guidelines on Political Party Regulation).

²² OSCE/ODIHR – Venice Commission Joint Opinion on the Draft Law on Political Parties of the Kyrgyz Republic (23 October 2009) available at https://www.legislationline.org/download/id/2861/file/134_POLIT_KYR_%2025%20June%202009_en.pdf par 15 (hereinafter "2009 Opinion").

While withdrawal from political party should be fully voluntary and unimpeded, governing bodies of a political party should be duly informed about it in accordance with the procedures established by the party. In the situation of fragmented media and social media landscape it might be impossible to monitor all public announcements of all members and thus could cause confusion.

24. **Article 9 pars 1-7 of the Draft Law include detailed provisions on the political party charter and program that clearly lay out procedural requirements for political party work – the necessity for defined procedures for internal dispute resolution, exclusion of members, organizational structure, nomination of candidates. Similarly, legal provisions state the necessity of a political party to have a programme and publicize it.**
25. **Additionally, Article 10 outlines the political party bodies, in particular, the congress and its competences. Its main aim seems to be to make political parties internally democratic and accountable to a democratically elected body. It leaves to the party to establish who has the right to participate in the congress, and if the charter has no such provisions – then all members of the party have the right to participate. This may lead to a problem for bigger parties: if for some reason they fail to agree on a procedure, then the party governing body is turned into a party referendum by the law. In some circumstances, this could lead to chaos.** The nomination of candidates for elections is often a significant resource for securing party discipline and loyalty. Making it very difficult to change the nomination process may also put specific parties at a disadvantage. For instance, if there are snap elections for parliament, a party may be unable to go through its prescribed procedure for nomination or for a change in its charter as time may be an issue in some circumstances. The nomination procedure also seems to preclude nomination of candidates by the leader alone. This requirement does not seem to make much sense for small parties, which are at the start of their activities.
26. **Enumerating concrete procedures that should be adopted by political parties (but not their content) can strengthen political party internal accountability. However, care should be taken in making sure that the provisions are accessible and not repetitive or contradictory, not too detailed or too burdensome so they could potentially stifle and create barriers for the establishment and running of a political party, in particular, for new and/or smaller parties.**²³ Overregulation allows for greater State interference in the affairs of political parties. Also, it limits their capacity to take autonomous decisions and renders them inflexible in political competition. **In particular,** the requirements for adoption of a programme (agenda) of the party and a procedure for the nomination of candidates and elections as necessary requirements for the registration of a political party seem excessive. The requirements for the programme of the party to be adopted by the congress, as well as the nomination procedure for candidates, limit the possibility of the party leadership to manoeuvre in specific circumstances. If, for instance, a month before the election the leadership of the party finds out that specific elements of the party programme are not popular or are wrong-headed, it may be in no position to convene a congress on a short notice.

²³ See also OSCE/ODIHR Opinion on the Constitutional Law of the Republic of Armenia on Political Parties (11 October 2019) available at <https://www.legislationline.org/documents/id/225>, par 22; OSCE/ODIHR Opinion on the Draft Law on Political Parties of Mongolia (27 November 2019) available at https://www.legislationline.org/download/id/8494/file/359_POLIT_MNG_27Nov2019_en.pdf, pars 20-23.

27. **It might be preferable to provide an opportunity for the congress to be able to delegate some of its powers to the leader and the executive bodies of the party. Especially powers regarding to the elaboration of the programme and the nomination process. This would give some flexibility to the party which would not be forced to convene congresses for relatively minor or urgent revisions.**
28. **Article 10 includes a provision that a commission for internal dispute resolution should be created and contains detailed provisions of its work (e.g. invitation of external experts). Such regulation might be too prescriptive. It should be sufficient that Article 9 par 2 requires that procedure for internal dispute solution is created by the charter. The provision of Article 10 par 10 that there should be first internal and then external appeal mechanism (court) for internal disputes should be maintained.**
29. **Hence, it is recommended for the lawmaker to revisit Articles 9 and 10 of the Draft Act to ensure that it does not overregulate some internal processes which should be left up to the internal leadership and membership of the political parties, yet observe the spirit of internal party democracy.**
30. **Article 10 par 20 of the Draft Act states “The right to participate in the work of the congress and to vote on issues included in the agenda is reserved for delegates elected in the manner and terms established by the political party’s charter.” A reference to the necessity of candidate selection to be made being respectful of the principle of democracy could be considered.**

RECOMMENDATION D.

In Articles 9-10: to revisit Articles 9 and 10 of the Draft Act to ensure that it does not overregulate some internal processes, providing an opportunity for a party itself to define the process of decision-making, including nomination of candidates, adopting a programme, establishing internal dispute resolution procedure, or other issues which should be left up to the internal leadership and membership of the political parties, yet observe democratic principles.

6. Funding of Political Parties

6.1. Property of a Political Party

31. **According to Article 11 par 1 of the Draft Act, “[p]roperty of a political party comes from:**
 - entrance and membership fees, if their payment is provided for by the charter of the political party;**
 - voluntary donations;**
 - revenues from events held by a political party, revenues from publishing and other activities that meet the goals and objectives of a political party as defined in its charter and agenda;**

- money from the republican budget provided in compliance with the legislation of the Kyrgyz Republic;
- other sources not prohibited by the legislation of the Kyrgyz Republic”.

32. In particular, “other activities that meet the goals and objectives of a political party as defined in its charter and agenda” and “other sources not prohibited by the legislation of the Kyrgyz Republic” are too broad and vague to serve as appropriate guidelines for political parties who want to behave lawfully and create potential loopholes. It is recommended for these two possibilities to either be deleted from the Draft Law or further elaborated on. Additionally, it is suggested to clarify in the Draft Law if “revenues from events held by a political party” is meant to cover fundraising events.
33. Similarly, Article 13 par 1 of the Draft Act indicating that “Political parties may engage in economic activity, without distributing the profits received between party members, officials, employees and members of the party bodies and only for achieving the charter goals and fulfilling the charter objectives” is too ambiguous and can be misused, especially as the Draft Law does not oblige parties to prohibit commercial activities in their charters. Generally, it is preferable to curb commercial business activities of political parties or allow them only in well-defined, limited circumstances in a non-discriminatory manner.²⁴
34. It is recommended to further clarify that parties may acquire property from “[r]evenues from publishing and other activities that meet the goals and objectives of a political party as defined in its charter and agenda.” Article 16 also explicitly states that political parties have, inter alia, the right to establish mass media. Article 16 states “[f]or the implementation of the goals and objectives defined in the charter, the agenda and other documents of the party, in compliance with the legislation of the Kyrgyz Republic, a political party has the right to: (...) establish mass media (..).” As previously mentioned by OSCE/ODIHR, it is important ensure that political parties are not using funds to wield disproportionate media influence.²⁵ In order to contribute to a level playing field, especially before elections, political parties should not be permitted to own and establish their own commercial media outlets.²⁶ However, it also has to be ensured that political parties are still able to establish, own and run non-commercial media outlets and printing houses in order to publish campaign material or inform about the party’s statutory activities, goals and programmes.²⁷

RECOMMENDATION E.

In Article 11 par 1 and Article 16: to replace “other activities that meet the goals and objectives of a political party as defined in its charter and agenda” and “other sources not prohibited by the legislation of the Kyrgyz Republic” with a list of clearly defined permitted commercial activity; to consider curbing commercial activities by political parties;

²⁴ See also *op cit.* footnote 17 par 31 (2020 Armenia Opinion).

²⁵ See *op. cit* footnote 1 par 75 (2020 I Opinion).

²⁶ Ibid; see also *op cit.* footnote 17 par 33 (2020 Armenia Opinion)./

²⁷ *op. cit* footnote 1 par 75 (2020 I Opinion); *op cit.* footnote 17 par 33 (2020 Armenia Opinion)..

and to restrict political parties from establishing and owning commercial media outlets, while allowing non-commercial media outlets or printing houses necessary for publishing campaign , educational or information materials, etc.

6.2. Public Funding

35. **Article 14 of the Draft Law provides for public funding of political parties which received, “as a result of the recent elections of deputies to the Jogorku Kenesh of the Kyrgyz Republic, at least 2 per cent of the votes of voters who took part in the voting in the national electoral district” and which fulfill certain criteria in terms of representation of women, national minorities, young candidates and persons with disabilities as well as adhere to reporting requirements.**
36. **It is commendable that Kyrgyz legislation introduces a system of public funding of political parties and their activities. Public funding and its requisite regulations (including those related to spending limits, disclosure, and impartial enforcement) have been designed and adopted in many States as potential means for enhancing pluralism, preventing corruption, supporting political parties in the important role they play in democratic governance, and removing undue reliance on private donors. Such systems of funding are aimed at ensuring that all relevant parties are able to compete in elections in accordance with the principle of equal opportunity, thus strengthening political pluralism and helping to ensure proper functioning of democratic institutions. Generally, legislation should attempt to create a balance between public and private contributions as sources of funding political parties.²⁸ In no case should the allocation of public funding limit or interfere with a political party’s independence.²⁹ Commendably, Article 14 par 2 of the Draft Act includes clear criteria of how State budget allocation of public funding to political parties happens, indicating a figure of 0,01% of the annual budget. Such system enhances certainty and independence of political parties, as there is a prescribed, concrete funding available to them outside yearly budget bargaining processes and the figure automatically adjusts to actual circumstances. However, while Article 14 par 3 (1) of the Draft Law contains the qualifier that public funds will be distributed to “parties that meet the conditions” established by Article 14 par 1 of the Draft Law, this qualifier is missing in Article 14 par 3 (2) of the Draft Law. The provision could be clarified to ensure that political parties know if the same qualifier applies to Article 14 par 3 (2) of the Draft Law.**
37. **In general, it is regrettable that in accordance to provisions of Article 21 par 2 of the Draft Act public funding regulations will enter into force only on 1 January 2025. Introduction of public funding in a more expedient way should be considered.**
38. **Pursuant to Article 14 par 5 “[o]ne twelfth of the annual amount due to the political party as government funding shall be transferred to the party’s account**

²⁸ *Op. cit.* footnote 1 par 176(OSCE/ODIHR-Venice Commission Guidelines on Political Party Regulation); see also OSCE/ODIHR Opinion on the Act on Amendment of the Act on the 2019 State Budget of the Republic of Bulgaria (3 December 2019) available at https://www.legislationline.org/download/id/8492/file/351_POLIT_BGR_3Dec2019_en.pdf, par 24; OSCE/ODIHR Opinion on Laws Regulating the Funding of Political Parties in Spain (30 October 2017), available at https://www.legislationline.org/download/action/download/id/7479/file/310_POLIT_ESP_30October2017_en.pdf pars 18-21.

²⁹ *Op. cit.* footnote 1 par 176 (OSCE/ODIHR-Venice Commission Guidelines on Political Party Regulation).

on a monthly basis.” This arrangement might make it difficult for political parties to account for bigger expenses or plan their activities. It might be preferable to pay public funding as a lump sum to political parties annually or in bi-annual intervals or to give parties a choice to select monthly, bi-annual or annual allocation after fulfilment of their reporting obligations.

6.3. Private Funding

39. Limits have historically also been placed on private funding, in an attempt to limit the ability of particular groups to gain political influence through financial advantages. It is central characteristic of systems of democratic governance that parties and candidates are accountable to the citizenry, not to wealthy special interest groups. As such, a number of reasonable limitations on funding have been developed. These include limitations on contributions from state-owned/ controlled companies and anonymous donors.³⁰
40. Article 11 par 3 refers to limits on citizen and legal entity donations as calculated in “reference units”. The law does not explain the concept of “reference units”, but it is understood that one “reference unit” equals 100 Kyrgyz Som, setting the contribution limit for individuals currently to approximately EUR 600 and that for legal entities about EUR 1200.³¹ Although in such case it could have the useful property of being automatically adjustable to the existing economic situation, care should be taken so that not to overburden political parties with finding out each time what the respective “reference unit” is. **Some countries in such cases use, for instance, a fraction of total estimated country GDP, minimum salary or yearly budget.**
41. Article 11 par 2 of the Draft Act states that all donations to political parties have to be transferred in a cashless form. It is important to be able to trace donations for the sake of transparency and accountability and to avoid circumvention of limits or creation of loopholes. **However, a low threshold for very small cash donations, for the sake of inclusiveness, for example up to the amount indicated by Article 15 par 6 that fall below the declaration amount could be considered.**
42. **Additionally, it would be useful to have a clearer definition of “in-kind” donation as per Article 11 par 4 of the Draft Law, as such non-monetary donations can include a variety of notions, including voluntary work. In-kind donations may be defined as “all gifts, services, or property provided free of charge or accounted for at a price below market value”.³² With regard to voluntary work, services which are part of a volunteer’s regular line of business and for which he or she would normally be expected to be paid for had the service been provided to other clients should be counted as an in-kind donation, at least when provided regularly during working hours.³³ For transparency purposes, some countries refer to monetary or non-monetary benefits that are being transferred to**

³⁰ Ibid par 173.

³¹ See Resolution of the Jogorku Kenesh from 2006 года № 1115-III on “reference unit” <http://cbd.minjust.gov.kg/act/view/ru-ru/51948> adopted on the basis of the Law on the amount of referral units. <http://cbd.minjust.gov.kg/act/view/ru-ru/1801?cl=ru-ru>

³² OSCE/ODIHR Handbook for the Observation of Campaign Finance (2015), available at <https://www.osce.org/odihr/elections/135516> p 20.

³³ See also op. cit. footnote 17 par 30 (2020 Armenia Opinion).

a political party.³⁴ Viewing it in “benefit” categories might facilitate in calculating the value of the donation. The determination of the market value by Article 11 par 4 of the Draft Law of such donation should happen “in accordance with the procedure established by the legislation of the Kyrgyz Republic”. **A reference to the particular law or description of methodology would add clarity.**

RECOMMENDATION F.

In Article 11 par 4: to explicitly define what constitutes in-kind donations and to specify under what circumstances volunteer work is to be counted as a donation.

43. Article 11 par 7 of the Draft Law enumerates prohibited sources of political party funding, including “from international organizations and movements”. Although, it is proportional to prohibit direct funding to political parties by such organizations, consideration should be given to the fact that pursuant to membership and participation in international organizations, there might be an element of international cooperation that includes capacity-building measures such as democracy strengthening, assistance to drafting programmes and development of inclusiveness measures that would not entail direct funding to political parties but would provide benefits to political parties.³⁵ **While it is common for States to ban donations from abroad, it is equally common to introduce exceptions for monetary or in-kind donations from international organizations as long as these funds are not used for campaigning but solely provide resources for the purposes of democratic education or training.**³⁶
44. The sections of Article 11 par 7 of the Draft Law prohibiting donations from State and local authorities, institutions and enterprises would benefit from more clarity to explicitly prohibit the abuse of State resources.³⁷ **In particular, legal entities and individuals with public contracts should be banned from donating to political parties for the period of service indicated in the contract and a considerable cool-off period afterwards.** Similarly, it would be useful to add to the Draft Law a ban for donations from those legal entities that might be under consideration or have applied for receiving public contract. Additionally, Article 11 par 7 also does not allow individuals “who are in arrears to the state budget for taxes and insurance” to donate to political party. This seems to be an unreasonable and unjustified restriction of an individual’s freedom of political expression and participation, in particular, as the Draft Law does not define the scope of the arrear which would preclude a donation, thus

³⁴ This is the case, for example, in Canada, Latvia and the United Kingdom, see the UK Electoral Commission’s document for party treasurers *Managing donations to political parties*, available at https://www.electoralcommission.org.uk/sites/default/files/pdf_file/sp-manage-donations-rp.pdf, p 6.

³⁵ See also *op. cit.* footnote 1 par 93 (2020 I Opinion).

³⁶ *Op. cit.* footnote 7 par 26 (1990 Copenhagen Document) which states “The participating States (...) will therefore encourage, facilitate and, where appropriate, support practical co-operative endeavours and the sharing of information, ideas and expertise among themselves and by direct contacts and co-operation between individuals, groups and organizations in areas including the following: -developing political parties and their role in pluralistic societies;” see also Joint Opinion on the Draft Amendments to Some Legislative Acts concerning Prevention of and Fight Against Political Corruption of Ukraine (25 October 2015), available at <http://www.legislationline.org/documents/id/19868> par 33.

³⁷ See for further reference *Op. cit.* footnote 7 par 5.4 (1990 Copenhagen Document); ODIHR-Venice Commission Joint Guidelines for preventing and Responding to the Misuse of Administrative Resources during Election Campaigns (March 2016), available at <https://www.osce.org/odihr/elections/227506?download=true>; see also *op. cit.* footnote 13 pars 207-210 (OSCE/ODIHR-Venice Commission Guidelines on Political Party Regulation).

precluding individuals from donating even for minor non-payment. It is recommended to delete this prohibition.

45. Further, Article 11 par 9 of the Draft Law currently reads “[i]n the event funds are received to the political party's bank account from individuals and legal entities specified in clause 7, the political party shall be obliged to return the funds to the donors within five banking days from the moment the funds were transferred to the account. In case of non-return or inability to return the funds, the political party is obliged to transfer these funds to the state budget.” It is possible that political parties are not aware that a donor is prohibited from donating. The legislator could consider a caveat that deadline of five banking days starts once a political party is made aware or should be aware of available reliable information indicating that the donation came from a prohibited source.
46. Article 14 par 1 of the Draft Law establishes that public funding is disseminated to political parties that received at least 2 % of votes of voters who took part in the voting in the national electoral district in the recent elections of deputies to the Jogorku Kenesh of the Kyrgyz Republic, if certain quotas regarding the nomination of women, minorities, youth and persons with disabilities as candidates are fulfilled. These requirements are more ambitious than the quotas for candidates set under Article 60 par 3 of the Constitutional Law On Presidential and Jogorku Kenesh Elections in the Kyrgyz Republic. It is welcomed and in line with regional standards that the Draft Law proposes financial incentives to increase diversity in politics and to ensure that all parts of society are represented.³⁸
47. Political parties are allowed to take loans and credits by Article 11 par 8, the only limitation being that it has to be from the banks of Kyrgyz Republic. **The Draft Law should be clearer on the terms and timeframes of loans and state that beneficial loans with unusually favorable terms and loans that are forgiven should count as donations. Additionally, the Draft Law does not explicitly mention that preferential credits and write-off debts might be counted as donations and have to be disclosed and reported in order to avoid creating loopholes that a political party can use to circumvent regulatory restrictions.**

RECOMMENDATION G.

In Article 11 par 8: to state that the terms of loans need to include a clear timeframe, that loans with unusually favorable terms and loans that are forgiven should count as donations and that credits and debts are counted as donations and have to be disclosed and reported.

³⁸ See e.g. *op. cit.* footnote 8 (OSCE MC Decision 7/09) calling on the participating States to:

2. Consider possible legislative measures, which would facilitate a more balanced participation of women and men in political and public life and especially indecision-making;
3. Encourage all political actors to promote equal participation of women and men in political parties, with a view to achieving better gender-balanced representation in elected public offices at all levels of decision-making;

7. OVERSIGHT

48. The Draft Law gives the “authorized body responsible for the conduct of elections and organization of referenda” i.e. the Central Election Commission (hereinafter “CEC”), a comparatively broad mandate to control all political finances, including the right to request information from banks and other credit institutions about specific political party donors (both legal entities and citizens, Article 15 par 4).
49. Article 15 par 4 of the Draft Act enumerates obligations of “authorized body” in the realm of political party finance control. The CEC has the right “in cases of such need” demand financial information from political parties and financial institutions, receive information about finances of individuals and legal entities and refer to respective authorities and “in case of reasonable suspicions regarding illegal financial activities of a political party, [the CEC] has the right to notify authorized bodies”. **Since enforcement of legal provisions is the core element that makes finance provisions meaningful, consideration should be given to obliging the CEC to issue such notification rather than giving it the right to do so.**
50. Article 15 par 5 of the Draft Law provides for a possibility to create a specialized financial unit [in the CEC] for specifically political party finance control, indicating a possible delineation between the tasks of election administration and political finance oversight. Such units exist in many OSCE participating States.³⁹ **Consideration could be given to obliging the CEC instead of giving the right to create such unit. Also, more specifics about the composition of such unit (proportion of auditors, lawyers) could be considered, along with assurances that such unit would have sufficient financial resources and independence to conduct its work.**
51. Thus, Article 18 pars 1 to 2 of the Draft Law include general provisions that “in the event political party performs actions that do not comply with applicable law, the governing body of this party may be issued a written warning by “respective justice authority”. The Draft Law should clarify which institution exactly is meant by that, whether it is the Ministry of Justice or its territorial units. The Draft Law also states that failure to eliminate violation will result in liability in accordance with applicable law. **To avoid the risk of arbitrary application these provisions due to possible lack of clarity, this norm should be clarified.**
52. Article 15 of the Draft Law deals with the financial statements political parties have to submit about their statutory and campaign finance while Article 17 par 2 of the Draft Law outlines the system for monitoring of general activities of political parties by the “the authority responsible for registration of legal entities”. Article 17 par 3 states that oversight of political parties’ finances, “sources of income of a political party, the amount of funds they receive, their spending and the payment of taxes and social security contributions” is exercised by “authorized government bodies”. Additionally, pursuant to Article 17 par 4 the use of public funds is controlled by the Court of Auditors.
53. This means that several different bodies have oversight competencies in the field of political parties, their activities and their finances. **For proper functioning of the political party law, there has to be clear delineation of oversight authority over particular elements of political party activity. If no such clear dividing lines exist,**

³⁹ For example, in Armenia, Bosnia and Herzegovina, Lithuania, Poland, the United Kingdom amongst others.

overlapping and unclear mandates might be detrimental to an effective oversight of political party finances and might create loopholes, in particular, regarding oversight and disclosure of political finance.⁴⁰

54. **The legislator should therefore consider simplifying the monitoring and oversight of political party activities to ensure that fewer regulatory bodies with a robust mandate are responsible. While it is crucial, in cases where various bodies are involved in oversight, that all bodies coordinate their activities, inform each other and exchange information on their activities, their findings and concerns, yet one independent body should be mandated with leadership and overall responsibility (including obligations to report to parliament). This mandate needs to include board investigative powers and powers to pursue potential violators without which it will not be possible for the regulatory agency to effectively implement its mandate.⁴¹**

RECOMMENDATION H.

In Articles 15 and 17: to consider simplifying the monitoring and oversight of political party activities preferably by establishing regulatory body responsible for oversight with a robust mandate that includes investigative powers and the power to pursue violators.

8. SANCTIONS

55. It is welcomed that the Draft Law makes the dissemination of public funds subject to adherence to “timely provision of accurate and complete reporting” (Article 14). However, requirements can only be effective if they are accompanied by ‘effective, proportionate and dissuasive sanctions’ for breaches of party and campaign finance rules.⁴² Article 18 par 3 of the Draft Law contains several unclear provisions which could be misused against political parties and may be at odds with the principle of legal certainty. Its first sub-paragraph states “for late submission (...) of the annual financial (...) also for provision of incomplete and unreliable information – the funding from the national budget shall be suspended until the violations are eliminated.” It is not clear, especially in view of gradual monthly allocation of the funds as offered in the Art 14 par 5 of the Draft Law, whether the suspended financing will be restored completely after the violation is eliminated (including for those months when the funding was suspended), or the financing will be restored only starting from the date when the violation was eliminated. Article 18 par 3 of the Draft Law also states that “for inappropriate use of public funds – a full reimbursement to the national/or local budget of the entire amount transferred from the national/or local budget”. The term “full reimbursement” lacks clarity as it is unclear if it refers to reimbursement of those funds which were inappropriately used, the entire allocation of funds up to the month of violation, the entire amount of allocations for the whole year, including parts envisaged

⁴⁰ See e.g. OSCE/ODIHR-Venice Commission Joint Opinion on the Draft Amendments to Some Legislative Acts Concerning Prevention of and Fight against Political Corruption of Ukraine (26 October 2015) par 38.

⁴¹ Op. cit. footnote 13 par 220 (OSCE/ODIHR-Venice Commission Guidelines on Political Party Regulation).

⁴² Ibid pars 215, 225

by Art 14 par 3 (1) and (2) or all allocations for the 5-year parliamentary convocation. **The Draft Law should be amended to clarify these aspects. Additionally, the process for arriving to such reimbursement should be more detailed and include several steps of sanctions of increasing severity, as well as give possibility for appeals. Sanctions for other parties that do not receive public funding could also be made more specific instead of just referring to being “held responsible in accordance with the legislation of Kyrgyz Republic.”** Article 18 is prefaced by a general article on regulation of political parties by the State in Article 17 of the Draft Law. Taking both articles together, the possibilities for suspension of political parties are too broadly defined and permissive. As the text of the Draft Law stands, a party could be suspended for any violation of its charter or any normative act of the Kyrgyz Republic. Such language provides for the opportunity to suspend a party on the basis of trivial violations of the law or the charter. Suspension for violations of rules of internal procedures seem disproportionate.

56. It is important to keep in mind that, in general, administrative sanctions or fines, or other sanctions such as the temporary suspension of public funding or of other forms of public support are preferred responses to the improper acquisition or use of funds by parties. Criminal sanctions should only be imposed for serious violations of financial regulations, which undermine public integrity and democratic order. Sanctions should be proportionate and allow for a certain level of flexibility based on the seriousness of the offence. The imposition of both administrative and criminal sanctions for the same violation of legislation should also be avoided. **The legislator should ensure a catalogue of dissuasive and effective sanctions is applicable, which are proportionate to violations of the Law, in particular, of misuse of public funds as well as reporting and disclosure obligations.**

RECOMMENDATION I.

In Article 18: to ensure a catalogue of dissuasive and effective sanctions is applicable, which are proportionate to violations of the Law, in particular, of misuse of public funds as well as reporting and disclosure obligations.

9. PROHIBITION OR DISSOLUTION OF PARTIES

57. Pursuant to Article 5 par 5 “establishment of political parties on a religious or ethnic basis is prohibited.” While the Draft Law goes on to state “[a]t the same time, party members may not be subjected to discrimination and restrictions on the basis of religion or ethnicity”, OSCE/ODIHR reiterates what has been stated in the OSCE/ODIHR Opinion on the Draft Law on Political Parties of the Kyrgyz Republic of April 2020 and the OSCE/ODIHR and Venice Commission Joint Opinion on the Draft Law on Political Parties of the Kyrgyz Republic of 2009. A blanket ban of political parties established on religious or ethnic grounds is not compatible with the right to freedom of association.⁴³ Such a restriction would only be permissible if it were strictly necessary in a democratic society, which would require a party “whose militant

⁴³ *Op. cit.* footnote 1 par 13 (2020 I Opinion).

religious character poses a serious and immediate danger to the constitutional order”.⁴⁴ However, such political parties are already covered by the prohibition of Article 5 par 6 of the Draft Law. **Parties should not be prohibited simply because their members, sympathisers or leaders happen to be from a particular religious denomination, or because they include the name of a specific religion in their official name, as long as their objectives are democratic in character and are pursued by legal and democratic means.**⁴⁵ It is therefore recommended to revise Article 5 par 5 of the Draft Law extensively and render it compliant with international standards, or to delete it so that there is no blanket ban on the formation of parties on the basis of religious or ethnic affiliation.

RECOMMENDATION J.

In Article 5 par 5: to reconsider the paragraph in its entirety and to either revise it extensively and render it compliant with international standards, or to delete it so that there is no blanket ban on the formation of parties on the basis of religious or ethnic affiliation.

58. Article 5 par 6 of the Draft Act states “it shall be prohibited to create and operate political parties that promote national, ethnic, racial, religious, inter-regional hatred, gender or any other superiority, calling for discrimination, hatred, seizure of power, violent changing of the constitutional system and violation of the state integrity”. In particular, the alternative of “violation of state integrity” is too vague and subject to interpretation and abuse. It could, for example, be used against a party which advocated for regional independence or autonomy. **It is recommended to delete “violation of state integrity” from the Draft Law or, at a minimum, to specify that it only covers integrity challenged by violent means.**
59. Dissolution of a political party should be a measure of last resort in cases a party uses violence or threatens civil peace or the democratic order of the country.⁴⁶ Thus, the opportunity for a state to dissolve a political party or prohibit one from being formed should be exceptionally narrowly tailored and applied only in extreme cases. Such a high level of protection has been deemed appropriate by the European Court of Human Rights, given political parties’ fundamental roles in the democratic process.⁴⁷ As the most severe of available restrictions, the prohibition or dissolution of political parties is only applicable when all less restrictive measures have been deemed inadequate. A political party should not be prohibited or dissolved because it is a regional, religious or minority party, or promotes a related identity,⁴⁸ nor because its ideas are seen as unfavorable or offensive.⁴⁹ The mere fact that a party criticises government actions,⁵⁰ advocates a peaceful change of the constitutional order,⁵¹ or promotes self-

⁴⁴ Ibid pars 25-29; *op. cit.* footnote 22 par 14 (2009 Opinion)

⁴⁵ *Op. cit.* footnote 1 par 28 (2020 I Opinion) ;*op. cit.* footnote 22 par 14 (2009 Opinion).

⁴⁶ *Op. cit.* footnote 13 par 92 (OSCE/ODIHR-Venice Commission Guidelines on Political Party Regulations); see also par 11 CoE Resolution 1308(2002), on “Restrictions on political parties in the Council of Europe’s member states.

⁴⁷ ECtHR *United Communist Party of Turkey and Others v. Turkey*.

⁴⁸ ECtHR, *Stankov and the United Macedonian Organization Ilinden v. Bulgaria*, par 89.

⁴⁹ ECtHR, *United Communist Party of Turkey and Others v. Turkey*, para. 43.

⁵⁰ ECtHR *Yazar and others v Turkey*, par 59; see also ECtHR, *HADEP and Demir v Turkey*, par 70.

⁵¹ ECtHR, *Partidul Comunistilor (Nepeceristi) and Ungureanu v Romania*, par 52.

determination of a specific people⁵² is not sufficient per se to justify a party's prohibition or dissolution.

60. **It is recommended to amend Article 5 par 6 of the Draft Law and to clarify that dissolution is a measure of last resort in the gravest circumstances, which are to be set out by law in a clear and precise manner. Equally, Article 8 par 5 of the Draft Law which prohibits political parties from using symbols which promote the actions specified in Article 5 par 6 should be revised. For the sake of clarity and in order not to disproportionately restrict freedom of association and freedom of expression, an exhaustive list of symbols which are not allowed to be used by a political party should be provided either in the Draft Law itself or in associated laws or by-laws.**⁵³

RECOMMENDATION K

In Article 5 par 6: to delete “violation of state integrity” from the Draft Act or, at a minimum, to specify that it only covers integrity challenged by violent means and to clarify that dissolution is a measure of last resort in the gravest circumstances, which are to be set out by law in a clear and precise manner.

10. FINAL COMMENTS

61. It is unclear why political parties, under Article 16 par 3 of the Draft Law, need to “submit information on the number of registered candidates for deputies nominated by the party, for other elected positions in the national and local governmental bodies” a verified copies of the relevant protocol. The rationale for such collection of data is unclear and it would be quite burdensome for parties to collect such data.⁵⁴ **Therefore it is recommended to delete Article 16 par 3 of the Draft Law.**
62. OSCE commitments require legislation to be adopted “as the result of an open process reflecting the will of the people, either directly or through their elected representatives” (Moscow Document of 1991, par 18.1). Consultations on draft legislation and policies, in order to be effective, need to be inclusive and to provide sufficient time to prepare and submit recommendations on draft legislation; the State should also provide for an adequate and timely feedback mechanism whereby public authorities should acknowledge and respond to contributions.⁵⁵ To guarantee effective participation, consultation mechanisms must allow for input at an early stage and throughout the

⁵² ECtHR, *HADEP and Demir v Turkey* (Application no. 28003/03) (ECtHR, December 14, 2010).

⁵³ See also, albeit in a different context, Joint Interim Opinion on the Law of Ukraine on the Condemnation of the Communist and National Socialist (Nazi) Regimes and Prohibition of Propaganda of Their Symbols (21 December 2015) available at <http://www.legislationline.org/documents/id/20100>

⁵⁴ See also *op. cit.* footnote 1 par 81 (2020 I Opinion).

⁵⁵ See e.g., Recommendations on Enhancing the Participation of Associations in Public Decision-Making Processes (from the participants to the Civil Society Forum organized 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, <<http://www.osce.org/odihr/183991>>.

process,⁵⁶ meaning not only when the draft is being prepared by relevant ministries but also when it is discussed before Parliament (e.g., through the organization of public hearings). Public consultations constitute a means of open and democratic governance; they lead to higher transparency and accountability of public institutions, and help ensure that potential controversies are identified before a law is adopted.⁵⁷ Discussions held in this manner that allow for an open and inclusive debate will increase all stakeholders' understanding of the various factors involved and enhance confidence in the adopted legislation. Ultimately, this also tends to improve the implementation of laws once adopted.

63. In light of the above, the Kyrgyz legislator is therefore encouraged to ensure that the Draft Act is subject to further inclusive, extensive and effective consultations, according to the principles stated above, at all stages of the law-making process.

[END OF TEXT]

⁵⁶ See e.g., OSCE/ODIHR, Guidelines on the Protection of Human Rights Defenders (2014), Section II, Sub-Section G on the Right to participate in public affairs, <<http://www.osce.org/odihr/119633>>.

⁵⁷ *ibid.*