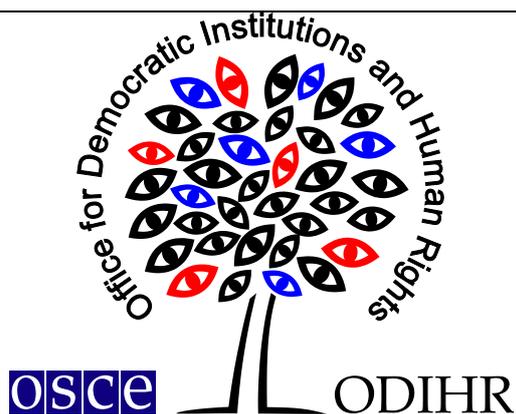


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# **OPINION ON THE ACT ON AMENDMENT OF THE ACT ON THE 2019 STATE BUDGET OF THE REPUBLIC OF BULGARIA**

**based on an unofficial English translation of the draft amendments**

*This Opinion has benefited from contributions made by*

*Fernando Casal Bértoa (OSCE/ODIHR Core Group of Experts on Political Parties)*

*Lolita Cigane (OSCE/ODIHR Core Group of Experts on Political Parties)*

*Ömer Faruk Gençkaya (OSCE/ODIHR Core Group of Experts on Political Parties)*

*Richard Katz (OSCE/ODIHR Core Group of Experts on Political Parties)*

OSCE Office for Democratic Institutions and Human Rights

Ulica Miodowa 10 PL-00-251 Warsaw ph. +48 22 520 06 00 fax. +48 22 520 0605

*This Opinion is also available in Bulgarian.*

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

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## **I. INTRODUCTION**

1. *On 31 July 2019, the Vice President of the National Assembly of the Republic of Bulgaria sent to the OSCE Office for Democratic Institutions and Human Rights (hereinafter “OSCE/ODIHR”) a request for a legal review of the Act on Amendment of the Act of the 2019 State Budget of the Republic of Bulgaria. (“Draft Amendments”).*
2. *On 2 August 2019, the OSCE/ODIHR responded to this request, confirming the Office’s readiness to prepare a legal opinion on the compliance of these draft amendments with OSCE commitments and international human rights standards.*
3. *This Opinion was prepared in response to the above request. The OSCE/ODIHR conducted this assessment within its mandate.*

## **II. SCOPE OF REVIEW**

4. The scope of this Opinion covers only the Draft Amendments, submitted for review. Thus limited, the Opinion does not constitute a full and comprehensive review of the entire legal and institutional framework governing political party regulation in Bulgaria.
5. The Opinion raises key issues and provides indications of areas of concern. In the interests of conciseness, the Opinion focuses more on those provisions that require improvements rather than on the positive aspects of the Draft Amendments. The ensuing recommendations are based on international standards and practices related to political party regulation and finance. The Opinion will also seek to highlight, as appropriate, good practices from other OSCE participating States in this field.
6. Moreover, in accordance with the Convention on the Elimination of All Forms of Discrimination against Women<sup>1</sup> (hereinafter “CEDAW”) and the 2004 OSCE Action Plan for the Promotion of Gender Equality and commitments to mainstream a gender perspective into OSCE activities, the Opinion analyses the potentially different impact of the Draft Amendments on women and men.<sup>2</sup>
7. This Opinion is based on an unofficial English translation of the Draft Amendments, which is attached to this document as an Annex. Errors from translation may result. This Opinion is also available in Bulgarian. However, the English version remains the only official version of the document.
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 the respective legal acts or related legislation of Bulgaria that the OSCE/ODIHR may wish to make in the future.

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<sup>1</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. Bulgaria ratified this Convention on February 1982.

<sup>2</sup> 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), available at <http://www.osce.org/mc/23295?download=true>.

### **III. EXECUTIVE SUMMARY**

9. The Amendments drastically cut public funding while, at the same time, reintroducing corporate donations and abolish the cap for private donations. While individual elements of the Amendments may be acceptable and do not directly contravene international standards, the legislative package in its entirety, together with the way and timing it was conceived and adopted, raise numerous concerns with regard to the principle of political pluralism.
10. In light of international standards and good practices, the OSCE/ODIHR recommends:
  - A. To repeal the Amendments in their entirety; [par 31]
  - B. To ensure that reform processes are transparent, inclusive, and involve effective consultations, with affected groups, relevant authorities, civil society organisations and involve a full impact assessment and dedicating adequate time for all stages of the ensuing law-making process; [pars 14-20]
  - C. To ensure that the system of political finance aims at safeguarding the principle of political pluralism, that any reform does not place specific players in an unfavourable position while others are privileged, and to provide for a plurality of funding sources for political parties; [pars 21-25]
  - D. To consider re-introducing contribution limits for private donations, which are common in most OSCE participating States, while carefully balancing between ensuring that there is no distortion in the political process in favour of wealthy interests and encouraging political participation, including by allowing individuals to contribute to the parties of their choice; [pars 26-27]
  - E. To consider the introduction of contribution limits for corporate donations; [par 28] and
  - F. To reconsider automatic dissolution of a political party for not participating in elections “during more than five years after the latest court registration thereof” [pars 29-30].

*Additional Recommendations, highlighted in bold, are also included in the text of the opinion.*

### **IV. ANALYSIS AND RECOMMENDATIONS**

#### **1. International Standards on Political Party Regulation**

11. This Opinion analyses the Amendments with regard to their compatibility with international, in particular, Council of Europe, obligations and standards on the prevention of corruption in politics, political party and campaign financing, as well as with key OSCE commitments. In this regard, good practices from other OSCE participating States and Council of Europe member States are also taken into account.

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12. Article 22 of the International Covenant on Civil and Political Rights<sup>3</sup> and Article 11 of the European Convention on Human Rights (ECHR)<sup>4</sup> set standards regarding the right to freedom of association, which protects the rights of political parties as special types of associations and their members. Pursuant to Article 7 par 3 of the United Nations (UN) Convention against Corruption<sup>5</sup> “[e]ach State Party shall also consider taking appropriate legislative and administrative measures, consistent with the objectives of this Convention and in accordance with the fundamental principles of its domestic law, to enhance transparency in the funding of candidatures for elected public office and, where applicable, the funding of political parties”. The UN Convention on the Rights of Persons with Disabilities (CRPD) contains State obligations in the area of political participation of persons with disabilities.<sup>6</sup> This Opinion further takes into consideration OSCE commitments, in particular, on the protection of the freedom of association (Copenhagen Document, par 9.3)<sup>7</sup> Within the OSCE context, the Ministerial Council’s Decision 7/09 on women’s participation in political and public life is also of interest.<sup>8</sup>
13. In addition, soft-law standards in the area of political party regulation can be found in the recommendations of the UN, Council of Europe and OSCE bodies and institutions. At the UN level, these include General Comment No. 25 of the UN Human Rights Committee on the right to participate in public affairs, voting rights and the right of equal access to public service.<sup>9</sup> Within the Council of Europe and OSCE areas, 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> Recommendation 2003(3) on balanced participation of women and men in political and public decision making,<sup>11</sup> as well as the Joint OSCE/ODIHR-Venice Commission Guidelines on Political Party Regulation are of relevance.<sup>12</sup> Throughout the Opinion,

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<sup>3</sup> International Covenant on Civil and Political Rights adopted by the UN General Assembly by resolution 2200A (XXI) of 16 December 1966. Bulgaria ratified the Covenant on 21 September 1970.

<sup>4</sup> Council of Europe’s Convention for the Protection of Human Rights and Fundamental Freedoms, entered into force on 3 September 1953. The Convention was ratified by Bulgaria on 7 September 1992.

<sup>5</sup> UN Convention against Corruption, adopted on 31 October 2003, ratified by Bulgaria on 20 September 2006, available at [http://www.unodc.org/documents/treaties/UNCAC/Publications/Convention/08-50026\\_E.pdf](http://www.unodc.org/documents/treaties/UNCAC/Publications/Convention/08-50026_E.pdf).

<sup>6</sup> Convention on the Rights of Persons with Disabilities, adopted on 13 December 2006, entered into force on 3 May 2008, available at <https://www.ohchr.org/EN/HRBodies/CRPD/Pages/ConventionRightsPersonsWithDisabilities.aspx#12>; Bulgaria ratified the CRPD on 22 March 2012 (hereinafter “CRPD”).

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

<sup>8</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> (hereinafter “MC Decision 7/09”).

<sup>9</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>10</sup> Council of Europe Committee of Ministers Recommendation 2003(4) on *Common Rules against Corruption in the Funding of Political Parties and Electoral Campaigns*, available at [http://www.coe.int/t/dghl/cooperation/economiccrime/cybercrime/cy%20activity%20interface2006/rec%202003%20\(4\)%20pol%20parties%20EN.pdf](http://www.coe.int/t/dghl/cooperation/economiccrime/cybercrime/cy%20activity%20interface2006/rec%202003%20(4)%20pol%20parties%20EN.pdf) (hereinafter “Recommendation 2003(4)”).

<sup>11</sup> Council of Europe Committee of Ministers Recommendation 2003(3) on *balanced participation of women and men in political and public decision making*, available at [https://search.coe.int/cm/Pages/result\\_details.aspx?ObjectID=09000016805e0848](https://search.coe.int/cm/Pages/result_details.aspx?ObjectID=09000016805e0848) (hereinafter “Recommendation 2003(4)”).

<sup>12</sup> OSCE/ODIHR and Venice Commission *Guidelines on Political Party Regulation* (2010), available at <http://www.osce.org/odihr/77812>. (hereinafter “Guidelines on Political Party Regulation”)

reference will also be made to previous opinions issued by OSCE/ODIHR and the Venice Commission. Additionally, election reports from previous OSCE/ODIHR election observation missions in Bulgaria are also referenced.<sup>13</sup>

## **2. The Process of Preparing and Adopting the Amendments**

14. The amendments were introduced to parliament just before its summer recess in 2019 and were passed in a very fast procedure with minimal discussions either at the committee level or in the plenary. The timing and the speed of the reforms were not apparent or sufficiently clarified either to the public or to the political opposition.<sup>14</sup>
15. 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 Copenhagen Document, par 5.8).<sup>15</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>16</sup>
16. Consultations on draft legislation and policies, in order to be effective, need to be inclusive and to provide relevant stakeholders with sufficient time to prepare and submit recommendations on draft legislation. In particular, legislation pertaining to associations “should also be adopted through a broad, inclusive and participatory process, to ensure that all parties concerned are committed to their content”<sup>17</sup> and “associations should always be consulted about proposals to amend laws and other rules that concern their status, financing and operation.”<sup>18</sup> Political parties are private associations that enjoy a critical role as political actors in the public sphere and, as such, there is an obligation to consult them about any legislative project affecting them.<sup>19</sup>
17. The State should also provide for an adequate and timely feedback mechanism whereby public authorities should acknowledge and respond to contributions.<sup>20</sup> While periods for

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<sup>13</sup> All OSCE/ODIHR election observation mission reports can be found at: <http://www.osce.org/odihr/elections/bulgaria>.

<sup>14</sup> The lawmaking process and the timing as well as the amount of times legislation is amended have been criticized in the past by the Group of States against Corruption (GRECO) in the Third Evaluation Round see *Evaluation Report on Bulgaria Transparency of party funding (Theme II)* Greco Eval III Rep (2009) 7E (1 October 2010) par 125, available at <http://rm.coe.int/CoERMPublicCommonSearchServices/DisplayDCTMContent?documentId=09000016806c94ba> which states “Moreover, the way the relevant legislation is drafted and prepared, under the main responsibility of the political parties themselves, suggests that so far, this legislation has been politically instrumentalised. For instance, the Local Elections Act was amended 24 times since its adoption in 1995 – often too late for these amendments to become fully applicable to the upcoming elections and for reasons of the ruling parties' own interests, as pointed out during the on-site discussions.”

<sup>15</sup> *Op. cit.* footnote 7 (Copenhagen Document).

<sup>16</sup> Document of the Moscow Meeting of the Conference on the Human Dimension of the CSCE (1991), available at <<http://www.osce.org/fr/odihr/elections/14310>> (hereinafter “Moscow Document”).

<sup>17</sup> OSCE/ODIHR and Venice Commission Guidelines on Freedom of Association (2014), par 22, available at <https://www.osce.org/odihr/132371?download=true>.

<sup>18</sup> *Ibid* par 186.

<sup>19</sup> *Op. cit.* footnote 12 par 6 and pars 26-32 (Guidelines on Political Party Regulation).

<sup>20</sup> 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

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public consultations vary across the OSCE region, it is important that the overall timeframe takes into account, *inter alia*, the nature, complexity and size of the proposed draft act and supporting data/information. To guarantee effective participation, consultation mechanisms should allow for input at an early stage *and throughout the process*,<sup>21</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 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.<sup>22</sup> 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.

18. Given the short timeline for the adoption of the Amendments, it is unlikely that the sufficient time was allocated to review and evaluate the draft legislation, and to take professional account of the opinions of the relevant committee, or consider the views of civil society organizations and other experts. Hence, such an expedited process does not allow for transparent, inclusive and effective public consultations.
19. Additionally, while none of the aspects discussed in this Opinion concern changes in the Electoral Code, introducing changes to the financing of political parties just months prior to upcoming elections is not recommended as stability of laws connected to the electoral process is a crucial aspect contributing to the acceptance and credibility of elections and their results. The Venice Commission Code of Good Practice in Electoral Matters states that "Stability of the law is crucial to credibility of the electoral process, which is itself vital to consolidating democracy. Rules which change frequently – and especially rules which are complicated – may confuse voters. Above all, voters may conclude, rightly or

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of the 2015 Supplementary Human Dimension Meeting on Freedoms of Peaceful Assembly and Association), Vienna 15-16 April 2015; see further, for example, OSCE/ODIHR Opinion on Draft Amendments relating to the Appointment of Supreme Court Judges of Georgia (17 April 2019), pars 91-98, available at [https://www.legislationline.org/download/id/8155/file/FINAL%20ODIHR%20Opinion\\_Georgia\\_Supreme%20Court%20Judges%20Appointment\\_17April2019\\_ENGLISH.pdf](https://www.legislationline.org/download/id/8155/file/FINAL%20ODIHR%20Opinion_Georgia_Supreme%20Court%20Judges%20Appointment_17April2019_ENGLISH.pdf); OSCE/ODIHR Opinion on Certain Provisions of the Draft Act on the Supreme Court of Poland (30 August 2017) pars 133-142 available at [https://www.legislationline.org/download/id/7393/file/313\\_JUD\\_POL\\_30Aug2017\\_en.pdf](https://www.legislationline.org/download/id/7393/file/313_JUD_POL_30Aug2017_en.pdf); OSCE/ODIHR Opinion on Certain Provisions of the Draft Act on the Supreme Court of Poland (as of 26 September 2017) (13 November 2017) pars 145-150, available at [https://www.legislationline.org/download/id/7483/file/FINAL%20ODIHR%20Opinion%20on%20the%20Draft%20Act%20on%20the%20Supreme%20Court%20of%20Poland\\_13Nov2017\\_ENGLISH.pdf](https://www.legislationline.org/download/id/7483/file/FINAL%20ODIHR%20Opinion%20on%20the%20Draft%20Act%20on%20the%20Supreme%20Court%20of%20Poland_13Nov2017_ENGLISH.pdf); Joint OSCE/ODIHR and Venice Commission Opinion on Two Draft Laws (no. 6674 and no. 6675) of Ukraine on Public Transparency of Information on Finance Activity of Public Associations and on the Use of International Technical Assistance (16 March 2018), Recommendation D and par 30, available at [https://www.legislationline.org/download/id/7841/file/321\\_NGO\\_UKR\\_16March2018\\_en.pdf](https://www.legislationline.org/download/id/7841/file/321_NGO_UKR_16March2018_en.pdf)

<sup>21</sup> See *OSCE/ODIHR Opinion on Draft Amendments Relating to the Appointment of Supreme Court Judges of Georgia* (17 April 2019) par 92, available at [https://www.legislationline.org/download/id/8155/file/FINAL%20ODIHR%20Opinion\\_Georgia\\_Supreme%20Court%20Judges%20Appointment\\_17April2019\\_ENGLISH.pdf](https://www.legislationline.org/download/id/8155/file/FINAL%20ODIHR%20Opinion_Georgia_Supreme%20Court%20Judges%20Appointment_17April2019_ENGLISH.pdf); *Assessment of the Legislative Process in Georgia* (30 January 2015), in [English](#) and in [Georgian](#), pars 33-34. See also 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.

<sup>22</sup> *Ibid.*

wrongly, that electoral law is simply a tool in the hands of the powerful, and that their own votes have little weight in deciding the results of elections.”<sup>23</sup>

20. In light of the above, the process by which the Amendments were developed and adopted does not seem to conform to the aforesaid principles of democratic law-making. Any legitimate reform process **should be transparent and inclusive. Such consultations should involve effective consultations, with affected groups, relevant authorities, civil society organisations and should involve a full impact assessment including of compatibility with relevant international standards, according to the principles stated above. Adequate time should also be allowed for all stages of the ensuing law-making process.** It would be advisable for relevant stakeholders to follow such processes in future legal reform efforts.

### **3. Public Funding**

21. The Amendments, adopted within months of upcoming local elections, reduced the annual amount of the state subsidy per valid vote received for from BGN 11 (approximately 5.5 EUR) to BGN 1 (approximately 0.50 EUR) pursuant to Article 1 of the Amendments amending Article 64 of the Act on 2019 State Budget of the Republic of Bulgaria.
22. The previous amount of State funding has been criticized as too high by some interlocutors of OSCE/ODIHR’s Limited Election Observation mission for the 2017 early parliamentary elections, and an adjustment of state subsidies was recommended as a possibility to provide a more level playing field during the election campaign.<sup>24</sup>
23. However, the Amendments deprived political parties of a further installment of a predictable amount of their annual subsidy for 2019 which they could have reasonably expected to be paid out in accordance with the Act of the 2019 State Budget. As such, while a reform of the process of public funding could potentially lead to a more level field, the Amendments, in fact, had the opposite effect, by disadvantaging parties without considerable savings, parties that had just undertaken considerable investments or smaller parties without access to significant private donations shortly before an electoral period. Such intervention by the State, employing an expedited process without undertaking meaningful public consultations of the law in its draft state, undermines the strategic and political planning of political parties which were unaware that these abrupt and major changes of the funding scheme were planned. As such, the amendments call into question the neutral attitude necessary to guarantee the principle of equality of opportunity. The Venice Commission Code of Good Practice in Electoral Matters clarifies the principle of

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<sup>23</sup> Venice Commission Code of Good Practice in Electoral Matters (Doc. CDL-AD(202)23, of 30 October 2002), par 63, 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) (hereinafter “Venice Commission Code of Good Practice in Electoral Matters”).

<sup>24</sup> See recommendation 25 of the OSCE/ODIHR Limited Election Observation Mission Final Report on 26 March 2017 Early Parliamentary Elections, available at <https://www.osce.org/odihr/elections/bulgaria/327171?download=true>, which reads “The adjustment of state subsidies could be considered to provide a more level playing field during the campaign. In addition, the funding for paid political advertising provided for non-parliamentary parties and independent candidates could be reviewed to ensure equality of opportunity.”

equality of opportunity implies “a neutral attitude by state authorities, in particular with regard to: (...) iii. public funding of parties and campaigns”.<sup>25</sup>

24. In addition, the allocation of public funding is seen in many States as a potential means for preventing corruption, supporting political parties in the important role they play, and removing undue reliance on private donors.<sup>26</sup> Such systems of funding are aimed at ensuring that all parties are able to compete in elections in accordance with the principle of equal opportunity, thus strengthening political pluralism and helping to ensure the proper functioning of democratic institutions.<sup>27</sup> If a country instead opts for a system of funding based mainly or solely on private donations, it should be ensured that the principle of political pluralism is not violated by placing specific players in an unfavourable position or by privileging others. Generally, legislation should ideally attempt to create and allow for funding from different sources and strike a balance between public and private contributions as sources of funding for political parties.<sup>28</sup> Giving political parties the possibility to obtain funds from different sources, public and private and to limit the amount of funds that can be contributed by a single donor decreases the dependence of political parties and their officials/candidates on some donors, be them individuals or organizations. This is recognized, for example, in Article 1 of Council of Europe Recommendation 2003(4) which states “States should ensure that any support from the state and/or citizens does not interfere with the independence of political parties.”<sup>29</sup>
25. The abrupt nature of these amendments could interfere with the principle of political pluralism and parties were not given sufficient time for adjustment. **For this reason, it is recommended to ensure that the system of political finance aims at safeguarding the principle of political pluralism and that any reform ensures that specific players are not placed in an unfavourable position while others are privileged. Ideally, legislation should attempt to provide for and allow funding from a plurality of funding sources for political parties.**

#### **4. Private Funding and its Limitations**

26. In order to compensate for the reduction of direct public financial support, the Amendments change Article 23 of the Act on Political Parties. By repealing Article 23 par 2 of the Act on Political Parties which, prior to the Amendments, stated “[t]he donation from any single natural person per one calendar year may not exceed BGN 10,000” they allow for unlimited donations from individuals. Pursuant to CoE Recommendation 2003(4), States should consider “the possibility of introducing rules limiting the value of donations to political parties”.<sup>30</sup> The Amendments also allow

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<sup>25</sup> *Op. cit.* footnote 23, p 7 (I.2.3 a ii) (Venice Commission Code of Good Practice in Electoral Matters).

<sup>26</sup> *Op. cit.* footnote 12, par 176 (Guidelines on Political Party Regulation).

<sup>27</sup> *Ibid.*

<sup>28</sup> *Ibid.*; see also 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](https://www.legislationline.org/download/action/download/id/7479/file/310_POLIT_ESP_30October2017_en.pdf).

<sup>29</sup> *Op. cit.* footnote 10 (Recommendation 2003(4)).

<sup>30</sup> *Ibid.* Article 3 b ii.

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donations “from legal entities and sole proprietors”, reintroducing corporate donations after they were banned in Bulgaria in 2009.<sup>31</sup>

27. Limits have historically been placed on private donations in an attempt to limit the ability of particular groups to gain political influence through financial advantages.<sup>32</sup> Unlimited private donations increase the risk of complete dependency of political parties on a few wealthy individuals.<sup>33</sup> It is a central characteristic of systems of democratic governance that parties and candidates are accountable to the citizenry, not to wealthy special interest groups. As such, limiting the amount that an individual can contribute is an effective way to minimize the possibility of corruption or the purchasing of political influence.<sup>34</sup> **It is recommended for the legislator to consider re-introducing contribution limits for private donations, which are common in most OSCE participating States, while carefully balancing between ensuring that there is no distortion in the political process in favour of wealthy interest groups or particular individuals and encouraging broad political participation, including by allowing individuals to contribute to the parties of their choice.**<sup>35</sup>
28. There are no clear trends or standards on whether or not all corporate donations should be banned. While CoE Recommendation 2003(4) urges States to take measures to limit, prohibit or otherwise strictly regulate donations from legal entities which provide goods or services for any public administration (Article 5 b) and to prohibit donations from entities under the control of the State or any other public authority (Article 5 c), there are no such standards or recommendations banning corporate donations as a whole.<sup>36</sup> They are banned altogether in approximately 40% of all OSCE participating States but allowed in other countries. It is welcome that the Amendments ban donations from public corporations, as donations are prohibited from corporations “that have outstanding public liabilities and/or are registered in jurisdictions with preferential tax regime” pursuant to Article 2 par 3 (a) of the Amendments. However, allowing unlimited donations bears the risk, as outlined above, that political parties become completely dependent on wealthy legal or natural persons. **At a minimum, it is recommended to consider the introduction of contribution limits for corporate donations.**

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<sup>31</sup> In its Third Evaluation Round Compliance Report on Bulgaria of 2012, GRECO had concluded that its Recommendation v “regulate in a consistent and clear manner the prohibition of donations from legal persons in the context of party and election campaign financing, in line with the already introduced amendments to the Political Parties Act, the acts on election of national and European parliamentarians, and the new practice adopted in this regard by the National Audit Office” had been implemented satisfactorily; see GRECO Third Evaluation Round *Compliance Report on Bulgaria Theme II “Transparency of Party Funding”* Greco RC-III (2012) 14E (19 October 2012) pars 45-48, available at <https://rm.coe.int/16806c957e>.

<sup>32</sup> *Op. cit.* footnote 12, par 173 (Guidelines on Political Party Regulation).

<sup>33</sup> See e.g. OSCE/ODIHR Opinion on the Constitutional Law of the Republic of Armenia on Political Parties (11 October 2019), par 34, available at [https://www.legislationline.org/download/id/8413/file/356\\_POLIT\\_ARM\\_11October2019\\_en.pdf](https://www.legislationline.org/download/id/8413/file/356_POLIT_ARM_11October2019_en.pdf); ODIHR-Venice Commission Joint Opinion on the Draft Amendments to some Legislative Acts concerning Prevention of and Fight against Political Corruption in Ukraine (26 October 2015), pars 22, 35, available at <https://www.legislationline.org/download/id/6151/file/POLIT-UKR2742015.pdf>.

<sup>34</sup> *Op. cit.* footnote 12, par 175 (Guidelines on Political Party Regulation).

<sup>35</sup> *Ibid.*

<sup>36</sup> Donations from legal entities under the control of the State or from legal entities which provide goods or services for any public administration are also not in line with Copenhagen Document par 5.4 (*op. cit.* footnote 7) according to which OSCE participating States declare to uphold “a clear separation between the State and political parties; in particular, political parties will not be merged with the State”.

## 5. Dissolution of Political Parties

29. Article 40 of the Law on Political Parties concerns the dissolution of political parties. The Amendments amend Article 40 par 1 (3) of the Law on Political Parties to read: “The Sofia City Court shall decree dissolution of a political party solely in the cases where (...) (3). such party has not participated in elections of National Representatives, of President, Vice President, or *Members of the European Parliament from the Republic of Bulgaria* or of Municipal Councillors and Mayors, during more than five years after the latest court registration thereof;” (emphasis added).
30. There is a general presumption in favor of the formation, functioning and protection from dissolution of political parties.<sup>37</sup> Their formation and functioning should not be limited, nor their dissolution allowed, except in extreme cases as prescribed by law and considered necessary in a democratic society. 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.<sup>38</sup> In addition, the case law of the ECtHR provides that dissolution of a party should only be applied in the most serious cases, as a measure of last resort, if the requisite aim cannot be achieved by applying less invasive measures. In general, bearing in mind that the dissolution is one of the most restrictive measures, it is recommended to avoid its application when and if other measure can prove to be effective. Therefore, the automatic dissolution of a party for not participating in elections “during more than five years after the latest court registration thereof” appears excessive.

## 6. Concluding Comments

31. Generally, while individual elements of the Amendments may be acceptable and in line with international standards, the entire legislative package taken together raise concerns regarding its adherence to the principle of political pluralism.<sup>39</sup> The ODIHR-Venice Commission Guidelines on Political Party Regulation highlight political pluralism as a principle of political party regulation and emphasize “Legislation regarding political parties should aim to facilitate a pluralistic political environment. The ability of citizens to receive a variety of political viewpoints, such as through the expression of political party platforms, is commonly recognized as critical element of a robust democratic society. As evidenced by paragraph 3 of the Copenhagen Document and other OSCE commitments, pluralism is necessary to ensure individuals are offered a real choice in their political associations and voting choices. Regulations on the functions of political parties should be carefully considered to ensure they do not impinge upon the principle of political pluralism”.<sup>40</sup> **In light of this, it is recommended to repeal the Amendments.**

[END OF TEXT]

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<sup>37</sup> *Op. cit.* footnote 12, par 43 (Guidelines on Political Party Regulation).

<sup>38</sup> *Ibid.* par 90.

<sup>39</sup> *Op. cit.* footnote 12, Principle 7 (Guidelines on Political Party Regulation).

<sup>40</sup> See also *op. cit.* footnote 16, par 18 “The participating States again reaffirm that democracy is an inherent element in the rule of law and that pluralism is important in regard to political organizations.” (Moscow Document).

**ANNEX:**

**REPUBLIC OF BULGARIA  
FORTY-FOURTH NATIONAL ASSEMBLY  
ACT  
on Amendment**

**of the Act on 2019 State Budget of the Republic of Bulgaria**

(Promulgated, SG No. 103 of 2018; Decision No.3 of the Constitutional Court of 2019- SG No.23 of 2019)

**§ 1.** In art. 64 the number “11” shall be replaced by “1”.

**FINAL PROVISIONS**

**§2.** The following amendments and supplements shall be made to the Act on Political Parties

(Promulgated, SG No. 28 of 2005; amended, SG No.102 of 2005, SG No. 17 and 73 of 2006, SG No. 59 and 78 of 2007, SG No. 6 of 2009, SG No. 54 and 99 of 2010, SG No. 9 and 99 of 2011, SG No. 30, 68 and 71 of 2013, SG No. 19 of 2014, SG No. 32 and 95 of 2015, SG No. 39 and 98 of 2016, SG No. 86 of 2017 and SG No. 17 and 50 of 2019):

1. In art. 2 after the word “parties” “may be “shall be added.

2. In art. 23:

a) In para. 1 a new item 4 shall be added:

“4. donations from legal entities and sole proprietors:”

b) Paragraph 2 shall be repealed.

3. In art. 24:

a) In para. 1, item 2, at the end, the following text shall be added “that have outstanding public liabilities and/or are registered in jurisdictions with preferential tax regime”;

b) Paragraph 3 shall be repealed.

4. In art. 29:

a) In para. 2, items 1 and 2 after the words “item 3” “and item 4” shall be added;

b) Item 7 shall be repealed.

5. In art. 31:

a) In para. 1 the words “in consideration of a rental charge” shall be replaced by “free of charge”;

b) In para. 2 the words “which have received more than 1 per cent of the valid votes at the latest parliamentary elections” shall be replaced by “which, at the latest elections for Members of Parliament, have received no fewer than one per cent of the valid votes in the state and abroad, with the exception of the votes under art. 279, para.1, item 6 of the Electoral Code.”

6. Art. 32 shall be amended as follows:

“Art. 32. (1) Political parties which have been granted premises under art. 31 shall pay operating costs, should such have been incurred.

(2) The premises provided to political parties may not be sublet or given out for any other use. Any such premises may be used jointly under a contract with third parties solely for purposes directly related to the activities of the party. No business activities shall be carried out in these premises.

(3) Relations with political parties shall be terminated upon non-disbursement of operating costs for a period exceeding three months or upon violation of the ban under para. 2.” I

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7. In art. 34, para. 4, second sentence, after the word “persons” the words “legal entities and sole proprietors” shall be added.

8. In art. 40, para. 1, item 3 after the words “Vice President” the words “for Members of the European Parliament from the Republic of Bulgaria” shall be added.

9. In art. 43, para. 1 the words “art. 23, para.2” shall be deleted.

**§3.** The following amendments and supplements shall be made to the Electoral Code (Promulgated, SG No. 19 of 2014, amended SG No. 35, 53 and 98 of 2014, SG No. 79 of 2015, SG No. 39, 57, 85 and 97 of 2016, Decision No. 3 of the Constitutional Court of 2017- SG No. 20 of 2017; amended SG No 85 of 2017, SG No. 94 and 102 of 2018 and SG No.17, 21, 29 and 34 of 2019):

1. In art. 162 everywhere after the words “natural persons” the words “legal entities and sole proprietors” shall be added.

2. Art. 167 shall be repealed.

3. In art. 168, para. 1, item 2, at the end, the following shall be added: “that have outstanding public liabilities and/or are registered in jurisdictions with preferential tax regime.”

4. In art. 169:

a) In para. 1 after the word “natural” the words “or legal” shall be added and after the word “person” the words “or sole proprietor” shall be added;

b) Paragraph 3 shall be repealed.

5. In art. 171, para. 2:

a) Item 7 shall be repealed;

b) In tem 8 the words “and the declaration by the natural persons on the ownership of the property provided for gratuitous use” shall be deleted.

6. Article 477 shall be repealed.

**§4.** The following amendments and supplements shall be made to the Act on State Property (Promulgated SG No. 44 of 1996, amended SG No. 104 of 1996, amended SG No. 55, 61 and 117 of 1997, SG No. 93 and 124 of 1998, SG No. 67 of 1999, SG No. 9, 12, 26 and 57 of 2000, SG No. 1 of 2001, Decision No. 7 of the Constitutional Court of 2001- SG No. 38 of 2001, SG No. 45 of 2002, SG No. 63 of 2003, SG No. 24 and 93 of 2004, SG No. 32 of 2005, SG No. 17, 30, 36, 64 and 105 of 2006, SG No. 41, 59, 92 and 113 of 2007, SG No. 52 and 54 of 2008, SG No. 10, 17, 19, 33 and 41 of 2009, SG No. 18 and 87 of 2010, SG No. 19 and 47 of 2011, SG No. 45, 82 and 99 /15 of 2012, SG No. 27 of 2013, Decision No. 6 of the Constitutional Court of 2013- SG No. 65 of 2013, SG No. 66 and 109 of 2013, SG No. 40, 98 and 105 of 2014, SG No. 52, 60 and 61 of 2015, SG No. 81 of 2016, SG No. 13, 58 and 96 of 2017, SG No.21, 64, 77 and 90 of 2018 and SG No.25 and 44 of 2019):

1. In art. 20, para.1 the words “conceding of properties” shall be replaced by “conceding of properties free of charge”.

2. Para. 2 of art. 24 shall be amended in the following way:

“(2) Contracts with political parties shall be terminated when the relevant party discontinues to meet the requirements for conceding a state property, determined by a separate act, as well as under the procedure of art. 32, para. 3 of the Act on Political Parties.”

**§5.** The following amendments and supplements shall be made to the Act on Municipal Property (Promulgated SG No. 44 of 1996, amended SG No. 104 of 1996, SG No. 55 of 1997, SG No. 22 and 93 of 1998, SG No. 23, 56, 64, 67 69 and 96 of 1999, SG No. 26 of 2000, SG No. 34 of 2001, SG No. 120 of 2002, SG No. 101 of 2004, SG No. 29, 30 and 36 of 2006, SG No. 59, 63 and 92 of

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2007, SG No. 54, 70 and 100 of 2008, SG No. 10, 17, 19 and 41 of 2009, SG No. 87 of 2010, SG No. 15 and 19 of 2011, SG No. 45 and 91 of 2012, SG No. 15 of 2013, Decision No. 6 of the Constitutional Court of 2013- SG No. 65 of 2013, amended SG No. 66 and 109 of 2013, SG No. 98 and 105 of 2014, SG No. 13 and 43 of 2016, SG No. 13 and 96 of 2017 and 77 of 2018):

1. In art. 14, para. 4, first sentence, the words “letting for rent” shall be replaced by “conceding free of charge” and the second sentence shall be deleted.

2. In art. 15, para. 1, item 5 and para. 4 the words “para.4, 5 and 6” shall be replaced by “para. 5 and 6”.

3. Art. 15a shall be developed:

“Art. 15a (1) Contracts with political parties shall be terminated when the party acquires ownership of premises of the same kind, suitable for permanent use, discontinues to meet the requirements for conceding a municipal property, determined by a separate act, as well as under the procedure of art. 32, para. 3 of the Act on Political Parties.

(2) Relations shall be terminated by force of an order issued by the respective mayor, which states the reasons for the termination of relations, evidence gathered and deadline for vacating, which shall not exceed one month. The order shall be subject to appeal under the procedure of art. 15, para. 5.”

4. In art. 18, para. 1 the words “para.4, 5 and 6” shall be replaced by “para. 5 and 6”.

**§6.** The Act shall enter into force as of the date of its promulgation in the State Gazette.

The Act was adopted by the Forty-Fourth National Assembly on 4 July 2019 and on 24 July 2019 it was stamped with the official seal of the National Assembly.

SPEAKER OF

THE National Assembly : Tsveta Karayancheva

Round seal: NATIONAL ASSEMBLY

REPUBLIC OF BULGARIA

Accurate,

HEAD OF ADMINISTRATIVE SERVICES Sgd ill.

DEPARTMENT (Irina Koleva)