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**EUROPEAN COMMISSION FOR DEMOCRACY THROUGH LAW**  
**(VENICE COMMISSION)**

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

**AZERBAIJAN**

**JOINT OPINION**  
**ON THE LAW ON POLITICAL PARTIES**

**Approved by the Council for Democratic Elections**  
**at its 76<sup>th</sup> meeting (Venice, 9 March 2023)**  
**and adopted by the Venice Commission**  
**at its 134<sup>th</sup> Plenary Session (Venice, 10-11 March 2023)**

**on the basis of comments by**

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**Ms Renata DESKOSKA (Member, North Macedonia)**  
**Mr Jan VELAERS (Member, Belgium)**  
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## I. Introduction

1. By letter of 15 December 2022, Mr Piero Fassino, Chair of the Monitoring Committee of the Council of Europe's Parliamentary Assembly, requested an opinion of the Venice Commission on the Law on Political Parties of Azerbaijan, see CDL-REF(2023)012. Given its standard practice of collaborating with the OSCE Office for Democratic Institutions and Human Rights (hereinafter "ODIHR") when reviewing political party legislation, on 9 January 2023, the Venice Commission invited ODIHR to draft the Opinion jointly. On 12 January 2023, ODIHR agreed to prepare a Joint Opinion.

2. Ms Veronika Bílková, (Member, Czech Republic), Ms Renata Deskoska, (Member, North Macedonia) and Mr Jan Velaers (Member, Belgium) acted as rapporteurs for this opinion. Ms Lolita Čigāne and Mr Fernando Casal Bértoa from the ODIHR Core Group of Experts on Political Parties were appointed as experts for ODIHR.

3. The authorities of Azerbaijan informed the Secretariat that they did not consider a visit by the rapporteurs to Baku appropriate for the preparation of this opinion, as it has not been requested by Azerbaijan. Therefore, the rapporteurs and ODIHR experts, assisted by Mr Michael Janssen and Mr Pierre Garrone from the Secretariat of the Venice Commission and Ms Anne-Lise Chatelain from ODIHR, only held on-line meetings on 8 February 2023 with representatives of some political parties and some representatives of the civil society and of the international community. The meeting with a member of the ruling party was cancelled. The Commission and ODIHR regret that the rapporteurs and experts were not able to have an open dialogue with all the relevant authorities on key issues of concern and that the aims of certain provisions of the Law could not be fully clarified. The Venice Commission and ODIHR are grateful to the Council of Europe Office in Baku for the technical support it provided.

4. This opinion was drafted on the basis of comments by the rapporteurs and the results of the online meetings on 8 February 2023. It was approved by the Council for Democratic Elections at its 76<sup>th</sup> meeting (Venice, 9 March 2023) and adopted by the Venice Commission at its 134<sup>th</sup> Plenary Session (Venice, 10-11 March 2023).

## II. Background and scope of the joint opinion

5. On 9 September 2022, a new draft Law on Political Parties of Azerbaijan was submitted to the Parliament of Azerbaijan (*Milli Majlis*). Adopted in the first reading on 29 November 2022, the second reading on 6 December 2022 and the third and final reading on 16 December 2022, the law was signed into law (Law No. 693-VIQ) by the President of Azerbaijan on 11 January 2023.<sup>1</sup> On the same day, the President issued a decree on the implementation of the Law which further specifies certain provisions of the Law.<sup>2</sup>

6. The new law replaces the Law on Political Parties of Azerbaijan, adopted on 3 June 1992 and repeatedly amended since then. The original version of the 1992 law was assessed, at the request of the Azerbaijani authorities, by the Venice Commission, which concluded in its 2004 opinion that on the whole the law was a good one and was not over-prescriptive.<sup>3</sup> One set of (draft) amendments to this Law, prepared in 2011, was also assessed by the Venice Commission, again at the request of the Azerbaijani authorities.<sup>4</sup> While noting some improvements especially in the field of financing of political parties, the 2011 opinion concluded that the proposed amendments and the law raised multiple concerns. Most of these problematic aspects identified in both opinions have not been fixed yet and they also mark the new 2022 Law. This new Law should also be analysed within the broader context and the abundant case-law of the European Court of Human Rights regarding Azerbaijan and undue restrictions to the right to freedom of association, including of political parties.<sup>5</sup>

7. The current opinion assesses the new Law on Political Parties of Azerbaijan in its final, adopted version. Since the request does not contain any specifications or limitations as to the scope of the opinion, the opinion discusses the new law as a whole. At the same time, given that the scope of this opinion only covers the Law on Political Parties (hereinafter “the Law”), it does not constitute a full and comprehensive review of the entire legal and institutional framework regulating political parties in Azerbaijan.

8. Moreover, the Venice Commission and ODIHR will focus on what they consider to be key elements of the Law. The absence of comments on other provisions of the Law should not be seen as tacit approval of these provisions. The ensuing recommendations are based on international human rights standards and obligations, OSCE human dimension commitments, and good national practices. In accordance with the commitments of the OSCE and the Council of Europe to mainstream a gender perspective into all policies, measures and activities,<sup>6</sup> the Joint Opinion also takes account of the potentially different impact of the Law on women and men. ODIHR and the Venice Commission also consider obligations under the Convention on the

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<sup>1</sup> Azərbaycan Respublikasının Prezidenti İlham Əliyev, Siyasi partiyalar haqqında Azərbaycan Respublikasının Qanunu, 11 January 2023.

<sup>2</sup> Presidential Decree *On the implementation of the Law No. 693-VIQ of the Republic of Azerbaijan dated December 16, 2022 "On Political Parties" and on the implementation of the Law No. 346-IVQD of the Republic of Azerbaijan dated April 20, 2012 on making changes to the Law of the Republic of Azerbaijan "On Political Parties"*, Decree of the President of the Republic of Azerbaijan on amending the Decree of the President of the Republic of Azerbaijan No. 625 dated May 8, 2012, 11 January 2023.

<sup>3</sup> Venice Commission, Opinion on the Law on Political Parties of the Republic of Azerbaijan, [CDL-AD\(2004\)025, para 28](#).

<sup>4</sup> Venice Commission, Opinion on the draft law on amendments to the law on political parties of the Republic of Azerbaijan, [CDL-AD\(2011\)046](#).

<sup>5</sup> See e.g. ECtHR, *Jafarov and Others v. Azerbaijan*, no. 27309/14, 25 July 2019; ECtHR, *Tebieti Mühafizə Cəmiyyəti and İsrailov v. Azerbaijan*, no. 37083/03, 8 October 2009; ECtHR, *Ramazanova and Others v. Azerbaijan*, no. 44363/02, 1 February 2007.

<sup>6</sup> See [OSCE Action Plan for the Promotion of Gender Equality](#), adopted by Decision No. 14/04, MC.DEC/14/04 (2004), para. 32, which refers to commitments to mainstream a gender perspective into OSCE activities; and Council of Europe, [Gender Equality Strategy 2018-2023](#), which includes as its sixth strategic objective the achievement of gender mainstreaming in all policies and measures.

Rights of Persons with Disabilities.<sup>7</sup> This opinion was prepared in reliance on an unofficial English translation of the law. The translation may not accurately reflect the original version on all points and inaccuracies may occur in this opinion as a result of errors from translation.

9. The Venice Commission and ODIHR would like to note that this opinion does not prevent them from formulating additional written or oral recommendations or comments on the Law or related legislation in Azerbaijan in the future.

### **III. Analysis and recommendations**

#### **A. National and international legal framework**

10. The Constitution of Azerbaijan provides for the rights to freedom of association and freedom of expression. According to para II of Article 58, *“everyone has the right to establish any association, including political party, trade union and other public association or to join an already existing association. Freedom of activity of all associations is guaranteed”*. Article 47 declares that *“everyone has the right to freedom of thought and speech”* (para I), stressing however also that *“agitation and propaganda inciting racial, national, religious, social discord and animosity or relying on any other criteria is inadmissible”* (para III).

11. Azerbaijan is a state party to major international human rights instruments, including the European Convention for the Protection of Human Rights and Fundamental Freedoms (hereafter: ECHR)<sup>8</sup> and the International Covenant on Civil and Political Rights (hereafter: ICCPR).<sup>9</sup> The Constitution of Azerbaijan guarantees the supremacy of international law over national legislation in Article 151 of the Constitution.

12. This opinion assesses the Law in the light of the relevant international and regional instruments and standards. Political parties as private associations have been recognised as essential players in the democratic process and as foundational to a pluralist society and hence play a critical role in the public sphere.<sup>10</sup> The rights to free association and free expression are fundamental to the proper functioning of a democratic society. Political parties, as collective instruments for political expression, must be able to fully enjoy such rights. Fundamental rights afforded to political parties and their members are found principally in Articles 19 and 22 of the ICCPR, which protect the rights to freedom of expression and opinion and the right to freedom of association respectively. In the area of gender equality and diversity, the UN Convention on the Elimination of All Forms of Discrimination against Women<sup>11</sup> (hereinafter “CEDAW”) is relevant, in particular its Articles 4 (on temporary special measures to enhance gender equality) and Article 7 (on eliminating discrimination against women in political and public life), as is the UN Convention on the Rights of Persons with Disabilities (hereafter “CRPD”), primarily Article 29 on the participation of persons with disabilities in political and public life.<sup>12</sup> In the sphere of combatting corruption, Article 7 par 3 of the UN Convention against Corruption specifies that “[e]ach State Party shall also consider taking appropriate legislative and administrative measures, consistent

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<sup>7</sup> [UN Convention on the Rights of Persons with Disabilities](#), 13 December 2006, which entered into force on 3 May 2008. The Republic of Azerbaijan ratified the Convention on 28 January 2009.

<sup>8</sup> The [Council of Europe's Convention for the Protection of Human Rights and Fundamental Freedoms](#) entered into force on 3 September 1953. Azerbaijan ratified the Convention on 15 April 2002.

<sup>9</sup> [International Covenant on Civil and Political Rights](#), adopted by the UN General Assembly by resolution 2200A (XXI) of 16 December 1966. Azerbaijan acceded to the Covenant on 13 August 1992.

<sup>10</sup> Venice Commission and ODIHR, Joint Guidelines on Political Party Regulation (2<sup>nd</sup> edition, 2020), [CDL-AD\(2020\)032](#), para 17.

<sup>11</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. Azerbaijan acceded to the Convention on 10 July 1995.

<sup>12</sup> [UN Convention on the Rights of Persons with Disabilities](#), adopted on 13 December 2006 during the sixty-first session of the General Assembly by resolution A/RES/61/106. Azerbaijan ratified the Convention on 28 January 2009.

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”.<sup>13</sup>

13. At the Council of Europe level, Article 11 of the 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. The case law of the European Court of Human Rights (ECtHR) provides additional guidance for Council of Europe Member States on how to ensure that their laws and policies comply with key aspects of Article 11. Furthermore, the right to freedom of opinion and expression under Article 10 of the ECHR and the right to free elections guaranteed by Article 3 of the First Protocol to the ECHR are also of relevance when legislation on political parties is reviewed.

14. In the OSCE region, according to paragraph 7.6 of the 1990 OSCE Copenhagen Document, OSCE participating States committed to “respect the right of individuals and groups to establish, in full freedom, their own political parties or other political organisations and provide such political parties and organisations with the necessary legal guarantees to enable them to compete with each other on a basis of equal treatment before the law and by the authorities.”<sup>14</sup> The Copenhagen Document also includes the protection of the freedom of association (paragraph 9.3) and of the freedom of opinion and expression (paragraph 9.1), as well as obligations on the separation of the state and political parties (paragraph 5.4). Within the OSCE context, Ministerial Council Decision 7/09 on women’s participation in political and public life is also of interest.<sup>15</sup>

15. These obligations and commitments are supplemented by various UN recommendations, the most important of which is General Comment 25 of the UN Human Rights Committee on the right to participate in public affairs, voting rights and the right of equal access to public service, interpreting state obligations under Article 25 of the ICCPR.<sup>16</sup>

16. Similar recommendations can be found at the OSCE and Council of Europe levels. These include Council of Europe Committee of Ministers’ Recommendation (2003)4 on Common Rules Against Corruption in the Funding of Political Parties and Electoral Campaigns,<sup>17</sup> the Joint Guidelines issued by the Venice Commission and ODIHR on Political Party Regulation (hereinafter “the Joint Guidelines”),<sup>18</sup> the Venice Commission-ODIHR Joint Guidelines on Freedom of Association,<sup>19</sup> the Venice Commission’s Code of Good Practice in Electoral Matters,<sup>20</sup> the ODIHR Guidelines on Promoting the Political Participation of Persons with Disabilities,<sup>21</sup> as well as election observation reports of the Council of Europe’s Parliamentary

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<sup>13</sup> [UN Convention against Corruption](#), adopted by the General Assembly on 31 October 2003, by resolution 58/4. The Convention entered into effect on 14 December 2005, and Azerbaijan ratified it on 1 November 2005.

<sup>14</sup> 1990 [OSCE Copenhagen Document](#) (29 June 1990) 29 ILM 1305. For an overview of OSCE Human Dimension Commitments, see ODIHR, [Human Dimension Commitments \(Thematic Compilation\)](#) Human Dimension Commitments (Thematic Compilation), 3rd Edition, particularly Sub-Section 3.1.8.

<sup>15</sup> [OSCE Ministerial Council Decision 7/09](#), 2 December 2009, Women’s participation in political and public life.

<sup>16</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.

<sup>17</sup> Council of Europe Committee of Ministers, [Recommendation Rec\(2003\)4 to member states on common rules against corruption in the funding of political parties and electoral campaigns](#), adopted on 8 April 2003. See also Parliamentary Assembly of the Council of Europe, [Recommendation 1516\(2001\) on financing of political parties](#), adopted by the Standing Committee, acting on behalf of the Assembly, on 22 May 2001, par 3, which requires member states to adopt rules in order to maintain and increase the confidence of citizens in their political systems.

<sup>18</sup> Venice Commission and ODIHR, Joint Guidelines on Political Party Regulation, CDL-AD(2020)032.

<sup>19</sup> Venice Commission and ODIHR, Joint Guidelines on Freedom of Association (2015), [CDL-AD\(2014\)046](#).

<sup>20</sup> Venice Commission, Code of Good Practice in Electoral Matters, [CDL-AD\(2002\)023rev2-cor](#). See, inter alia, section I.2.3 (“equality of opportunity”), I.2.4 (“equality and national minorities”) and I.2.5 (“equality and parity of the sexes”), as well as the corresponding sections of the Explanatory Report.

<sup>21</sup> ODIHR, [Guidelines on Promoting the Political Participation of Persons with Disabilities](#) (2019).

Assembly<sup>22</sup> and of ODIHR,<sup>23</sup> and finally various Venice Commission and ODIHR opinions on individual pieces of legislation. In particular, the Venice Commission Opinions on the Law on Political Parties of the Republic of Azerbaijan<sup>24</sup> and on the draft law on amendments to the law on political parties of the Republic of Azerbaijan<sup>25</sup> are directly relevant in this context.

## B. Legislative process

17. According to the Milli Majlis' website, on 26 July 2022, all state-registered parties were asked to submit their proposals to facilitate the process of drafting a new Law on Political Parties.<sup>26</sup> The Milli Majlis later reported that several parties submitted to Parliament their proposals in this respect. The draft text of the new law was submitted to Parliament on 7 September 2022.<sup>27</sup>

18. An amended version of the draft law was then made available on the website of the Parliament at the end of November 2022.<sup>28</sup> During the online meetings, the rapporteurs were informed that only one round table was held to discuss the draft with certain political parties, although several others had been announced. Another public hearing on the draft was held with representatives of certain non-governmental organisations (NGOs). The Milli Majlis reported that the comments made during the two events as well as those received from public statements or through social media were considered during the revision of the original draft which took place in late November 2022.<sup>29</sup> The revision allegedly entailed more than 60 changes in the text. However, the comments/contributions received are not publicly available and there is no clear indication to which extent such input received from certain political parties and during the above-mentioned events were taken into consideration and have been reflected in the revised draft. During the online meetings, representatives of the opposition and of certain NGOs informed that not all interested political parties or NGOs were consulted and that their critical comments were not adequately addressed. Subsequently, it took less than a month for the revised draft to pass through the three readings in the Parliament, with the law being adopted in third reading on 16 December 2022.

19. As underlined in the Venice Commission-ODIHR Joint Guidelines on Freedom of Association, legal provisions and legal acts concerning associations should be adopted through an open, transparent, broad, inclusive and participatory process, involving stakeholders representing a variety of different and opposing views, including those that are critical of the proposals made.<sup>30</sup> The public should have a meaningful opportunity to provide input.<sup>31</sup> Furthermore, the authorities responsible for organizing consultations should be required to respond to proposals made by stakeholders, in particular where the views of the latter are rejected.<sup>32</sup> In order to guarantee effective participation, consultation mechanisms should allow for input at an early stage and

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<sup>22</sup> See <http://semantic-pace.net/default.aspx?search=dHlwZV9zdHJfZnl6IjJhcHBvcnQgZOKAmW9ic2VydMFOaW9uIGTigJnDqWxIY3Rpb24i&lang=en>.

<sup>23</sup> See <https://www.osce.org/odihr/elections/azerbaijan>.

<sup>24</sup> Venice Commission, Opinion on the Law on Political Parties of the Republic of Azerbaijan, CDL-AD(2004)025.

<sup>25</sup> Venice Commission, Opinion on the draft law on amendments to the law on political parties of the Republic of Azerbaijan, CDL-AD(2011)046.

<sup>26</sup> See <https://www.meclis.gov.az/news.php?id=1032&lang=en>.

<sup>27</sup> See <https://meclis.gov.az/news.php?id=4254&lang=az> and <https://meclis.gov.az/news.php?id=4263&lang=az>.

<sup>28</sup> See <https://meclis.gov.az/news-layihe.php?id=1880&lang=az&par=0>.

<sup>29</sup> "Siyasi partiyalar haqqında" qanun layihəsinin yenilənmiş variantı Milli Məclisin internet səhifəsinə yerləşdirilib, 21 November 2022.

<sup>30</sup> Venice Commission and ODIHR, Joint Guidelines on Freedom of Association, CDL-AD(2014)046, paras 22 and 187. See also Venice Commission, Rule of Law Checklist, [CDL-AD\(2016\)007](#), section II.A.5, as well as paragraph 5.8 of the 1990 [OSCE Copenhagen Document](#) and para. 18.1 of the [1991 OSCE Moscow Document](#).

<sup>31</sup> Venice Commission, Parameters on the Relationship between the Parliamentary Majority and the Opposition in a Democracy: a checklist, [CDL-AD\(2019\)015](#), para 74.

<sup>32</sup> Venice Commission and ODIHR, Joint Guidelines on Freedom of Association, CDL-AD(2014)046, para 22. See also Venice Commission, Rule of Law Checklist, CDL-AD(2016)007, section II.A.5, as well as paragraph 5.8 of the 1990 [OSCE Copenhagen Document](#) and para. 18.1 of the 1991 OSCE Moscow Document.

throughout the process,<sup>33</sup> meaning not only when the draft is being prepared by the public authorities but also when it is discussed before Parliament.<sup>34</sup> Moreover, complex and controversial bills would normally require particularly long advance notice, and should be preceded by pre-drafts, on which some kind of (internet-)consultation takes place. In light of the above, and subject to further information, the law-making process leading to the adoption of the Law would not appear to fulfil such requirements. Venice Commission and ODIHR also take note of the speedy way in which the draft law was adopted by the Parliament without apparent reason justifying the need to resort to expedite procedures.

20. As an important element of good law-making, it would also be advisable to put in place a consistent monitoring and evaluation system of the implementation of the Law and its impact that would efficiently evaluate the operation and effectiveness of the Law.<sup>35</sup> Should on the basis of such evaluation, the Law be subject to future amendments, the public authorities are encouraged to ensure that inclusive, extensive and effective consultations, including with representatives of civil society and political parties, be organised. According to the principles stated above, such consultations should take place in a timely manner, at all stages of the law-making process.

### **C. Analysis of the Law on Political Parties of Azerbaijan**

21. The Law consists of six chapters and 30 provisions. The first chapter introduces basic concepts and general principles. The second chapter regulates the establishment of a political party, state registration, verification, suspension and restoration of the activity of a political party and its dissolution. The third chapter deals with the organisation of political party activities, the fourth with membership issues and the fifth with financial support of the activity of the political party. The sixth chapter contains final and temporary provisions.

22. When compared to the 1992 Law on Political Parties of Azerbaijan, the new law is, from the formal point of view, more detailed and has a more elaborate structure. From the substantive point of view, the main changes pertain to the conditions under which a political party may be established, the possibility for a political party to operate without a registration, the control over political parties exercised by state authorities, the rules on funding of political parties and the cases in which a political party may be dissolved. In most of these areas, the regulation has become much stricter.

#### **1. General Provisions**

23. The Law defines a political party as “*a non-commercial legal entity established by the citizens of the Republic of Azerbaijan in accordance with this Law in order to participate in the political life of the country and the expression of the political will of the citizens*” (Article 1.1.1). This definition is in line with the standard definition of a political party as “*a free association of individuals, one of the aims of which is to express the political will of the people, by seeking to participate in and influence the governing of a country, inter alia, through the presentation of candidates in elections*”.<sup>36</sup> The legal definition reflects that political parties are a special category of associations, as their purpose and function is to take part in elections and constitute the elected body of government of a country.<sup>37</sup> This inherently political role renders political parties crucial for any functioning democracy.

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<sup>33</sup> See, e.g., Section II, Sub-Section G on the Right to participate in public affairs of the 2014 ODIHR [Guidelines on the Protection of Human Rights Defenders](#).

<sup>34</sup> Venice Commission and ODIHR, Joint Opinion on the Draft Law on Political Parties of Mongolia, [CDL-AD\(2022\)013](#), para 113.

<sup>35</sup> See, e.g., OECD, [International Practices on Ex Post Evaluation](#) (2010). Venice Commission and ODIHR, Joint Opinion on the Draft Law on Political Parties of Mongolia, [CDL-AD\(2022\)013](#), para 117.

<sup>36</sup> Venice Commission and ODIHR, Joint Guidelines on Political Party Regulation, CDL-AD(2020)032, para 64.

<sup>37</sup> Venice Commission and ODIHR, Joint Guidelines on Political Party Regulation, CDL-AD(2020)032, para 66.



a. General Principles of the Legal Regulation

24. The Joint Guidelines identify 11 principles that apply independently of the prevalent model of democracy in a respective country and are intended to provide overall guidance with respect to the preparation, adoption and implementation of political party legislation.<sup>38</sup> These are freedom of association of political parties, including the presumption of lawfulness (principle 1), the duty to respect, protect and facilitate (principle 2), freedom of expression and opinion (principle 3), political pluralism (principle 4), legality and legitimacy of restrictions (principle 5), necessity and proportionality of restrictions (principle 6), effective remedy (principle 7), equal treatment of political parties (principle 8), equal treatment by and within political parties, special measures, internal democracy (principle 9), good administration (principle 10) and accountability (principle 11).

25. The general provisions of the Law on state guarantees of political party activity (Article 3) and on principles of establishment and operation of a political party (Article 4) declare adherence to most of the principles identified in the Joint Guidelines – while some of the specific provisions that follow do not properly implement those principles, see the comments in the following chapters of this opinion. The general provisions confirm that “*everyone has an equal right to form a political party or to join an existing political party*” (Article 3.1), “*the free activity of all political parties registered within the state is guaranteed*” (Article 3.3), political parties have equal rights (Articles 3.4 and 4.2) and the legal regulation should promote “*political pluralism*” (Article 3.5). They also stipulate that the right to form or join a political party may only be restricted if the restrictions are prescribed by law, pursue one of the aims specified in the Constitution or Constitutional Law “On the Regulation of the Implementation of Human Rights and Freedoms in the Republic of Azerbaijan”, are proportionate to this aim and do not affect the essence of the right (Article 3.2). If their rights or legal interests are violated, political parties may file an administrative or judicial complaint (Article 3.8). In their internal life, political parties should abide by the principles of voluntarism, equal rights of members, self-management, collegiality, the rule of law and transparency (Article 4.1), and the Law also refers to equal opportunities for women and men (Article 4.11).

26. In the view of the Venice Commission and ODIHR, in order to ensure that the general statements of intention translate into practice, some more detailed and concrete provisions should be included in the Law. As further detailed below, certain provisions of the Law also require revision to ensure respect for the above-mentioned principles.

27. Particularly, several provisions of the Law refer to equality in general terms.<sup>39</sup> While such provisions are welcome in principle, they are unlikely by themselves to lead to more gender balanced or diverse representation in political parties or in political life generally. The Law could be further elaborated regarding the balanced representation of women and men, and generally more diversity, in party structures and as candidates for public offices, as also recommended by ODIHR in its latest Parliamentary Election Observation Report.<sup>40</sup> In this context, attention is drawn to Article 7(c) of the CEDAW which prescribes that states shall take all appropriate measures to eliminate discrimination against women in the political and public life of the country and in particular ensure to women on equal terms with men the right “to participate in non-governmental organisations and associations concerned with the political life of the country.” Various OSCE and Council of Europe documents and recommendations have, over the last decade, called upon states to counteract the continued under-

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<sup>38</sup> Venice Commission and ODIHR, Joint Guidelines on Political Party Regulation, CDL-AD(2020)032, para 32.

<sup>39</sup> Including to the “equal right to form a political party or to join an existing one” (3.1), the “creation of equal legal conditions for the implementation of [political parties] activities” (3.4), “equal rights of members” (4.1), equality of political parties before the law (4.2), the creation of equal opportunities for women and men to become members of political parties (4.11).

<sup>40</sup> See ODIHR, [Republic of Azerbaijan - Early Parliamentary Elections, 9 February 2020 - Election Observation Mission Final Report](#), page 13.

representation of women in political life, including in political parties and in their decision-making structures, and proposed a number of possible ways to achieve this goal, including by addressing violence against women in politics.<sup>41</sup> To be effective, the legislation should state the legal consequences in case of non-compliance with the said requirements and include effective, proportionate and dissuasive measures with a real deterrent effect or financial incentives, for example in the form of public funding taking into account for instance the proposed candidates.<sup>42</sup> The Venice Commission and ODIHR recommend supplementing the Law in this respect, to ensure greater gender balance in political parties, especially in terms of the composition of their governing bodies and nominated candidates.

28. The Law specifies that a political party cannot pursue “*racial, religious, origin, gender, ethnic and other discrimination*” (Article 4.3.2). This provision should not be understood as preventing the establishment of political parties promoting the rights and political participation of national minorities, religious or belief communities or promoting related identity.<sup>43</sup> The Venice Commission and ODIHR recommend making this clear in the Law.

29. Article 4.9 of the Law appears to limit the right to freedom of expression of political parties by stating that “[a] *political party does not have the right to speak on behalf of the entire nation and appeal on behalf of the entire nation*”. It must be stressed that according to international standards political parties have the right to participate in political and public debate, regardless of whether the position taken by them is in line with government policy or advocates for legal or societal change or is unpopular or offensive to some groups.<sup>44</sup> Although it is legitimate to aim to delineate the distinction between political parties and state institutions, this provision should not be interpreted as limiting the right to freedom of expression of political parties and their members.

30. Article 4.10 stipulates that “*political parties should not abuse their rights*”. This provision is very vague and needs to be formulated in a more precise manner in order to adequately limit the discretion of oversight bodies and courts, or be completely deleted.

31. Article 4.12 states that “*the charter of a political party should not limit the participation of persons with disabilities*”. This provision is welcome in principle, but its wording should be reconsidered to provide for a more proactive approach in line with international standards. In particular, pursuant to Article 29(b)(i) of the CRPD, States Parties shall undertake to promote actively an environment in which persons with disabilities can participate in non-governmental organisations and associations concerned with the public and political life of the country, and in the activities and administration of political parties. Council of Europe Recommendation (2011)14 invites member states to enable persons with disabilities freely and without discrimination, particularly of a legal, environmental and/or financial nature to meet, join or found political parties.<sup>45</sup> The Venice Commission and ODIHR recommend emphasising in Article 4.12 – or in complementary regulations – the promotion of the participation of persons

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<sup>41</sup> Cf. Venice Commission and ODIHR, Joint Guidelines on Political Party Regulation, CDL-AD(2020)032, paras 167 et seq., which contain further references. See also ODIHR, [Handbook on Promoting Women’s Participation in Political Parties](#) (2014); and [Addressing Violence against Women in Politics in the OSCE Region: ODIHR Toolkit](#) (2022), including specific tool on political parties.

<sup>42</sup> Venice Commission and ODIHR, Joint Guidelines on Political Party Regulation, CDL-AD(2020)032, para 169. See also, e.g., [OSCE Gender Equality in Elected Office: A Six-Step Action Plan](#) (2011), pp. 33-34; Parliamentary Assembly of the Council of Europe, [Resolution 2111 \(2016\)](#), especially para 15.2.2. See also Venice Commission and ODIHR, Joint Opinion on the Draft Law on Political Parties of Mongolia, CDL-AD(2022)013, paras 28-29.

<sup>43</sup> Venice Commission and ODIHR, Joint Guidelines on Political Party Regulation, CDL-AD(2020)032, para 114. See also ECtHR, *United Communist Party of Turkey and Others v. Turkey* [GC], no. 19392/92, 30 January 1998, para 43.

<sup>44</sup> Venice Commission and ODIHR, Joint Guidelines on Political Party Regulation, CDL-AD(2020)032, para 43.

<sup>45</sup> [Recommendation CM/Rec\(2011\)14](#) of the Committee of Ministers to member states on the participation of persons with disabilities in political and public life, point 1. See also paragraph 7.6 of the OSCE Copenhagen Document; Venice Commission and ODIHR, Joint Guidelines on Political Party Regulation, CDL-AD(2020)032, para 54.

with disabilities in political and public life, and also enhancing other relevant provisions of the Law by specifically mentioning accommodative measures – such as programmes and communication in adjusted formats, easy-to-read language, physical access to events and venues, etc.<sup>46</sup>

b. Prohibition to Establish or Operate Certain Political Parties

32. By means of Article 4.3 it is not allowed to establish or operate parties for the following purposes: forcible change of the constitutional structure, fragmentation of territorial integrity, seizure or retention of power by force, open calls for mass riots, terrorism; promotion of terrorism, religious extremism, violence and cruelty, as well as racial, religious, origin, gender, ethnic and other discrimination, as well as actions contrary to the protection of health and the environment; and incitement of racial, religious or ethnic enmity.

33. In its opinions on the 1992 law, the Venice Commission recalled that the ECtHR “*has held that political parties are entitled to campaign in favour of a change in the legislation or in the legal or constitutional structures of the state subject to two conditions (1) that the methods employed for this purpose must in all respects be legal and democratic and (2) the change proposed must itself be compatible with fundamental democratic principles ... the Court held that the fact that a particular political proposal was incompatible with the existing principles and structures of the state did not mean it was contrary to democratic principles. It was of the essence of democracy to permit the advocacy and discussion of different political proposals, even those which would alter the existing structures of a state. (See Socialist Party of Turkey (STP) and Others v Turkey, No. 26482/95, 12 November 2003)*”.<sup>47</sup>

34. Some of the purposes indicated in Article 4.3 contain the element of violence in one form or another and, as such, the prohibition of parties pursuing such purposes is compatible with Article 11 of the ECHR and Article 22 of the ICCPR. Some other purposes, however, are drafted in a more cryptic manner and do not necessarily include elements incompatible with fundamental democratic principles. In any case, any ground for prohibition needs to be narrowly construed. This is so for “*fragmentation of territorial integrity*” (para 4.3.1) and “*actions contrary to the protection of health and the environment*” (Article 4.3.2). The broad reference to “*open calls for mass riots*”, might also be abused to unduly restrict the right to freedom of peaceful assembly – bearing in mind that the peaceful intentions of organisers and participants in an assembly are to be presumed, unless there is convincing evidence that they themselves intend to use or incite imminent violence.<sup>48</sup>

35. Furthermore, the reference in Article 4.3.2 to the “*promotion of terrorism*” is inherently vague<sup>49</sup> and would benefit from further clarification. Under international human rights law, such actions should only be prohibited if they: (a) expressly refer to the intent to communicate a message and intent that this message incite the commission of a terrorist act; and (b) are limited to the incitement to conduct that is truly terrorist in nature; and (c) include an actual (objective) risk that the act incited will be committed; and (d) preserve the application of legal defences or principles leading to the exclusion of criminal liability in certain cases.<sup>50</sup> The “*incitement of racial, religious or ethnic enmity*” (Article 4.3.3) should similarly be given a

<sup>46</sup> See ODIHR, [Guidelines on Promoting the Political Participation of Persons with Disabilities](#) (2019).

<sup>47</sup> Venice Commission, Opinion on the Law on Political Parties of the Republic of Azerbaijan, CDL-AD(2004)025, para 7; Venice Commission, Opinion on the draft law on amendments to the law on political parties of the Republic of Azerbaijan, CDL-AD(2011)046, para 27. See also ECtHR, *Linkov v. the Czech Republic*, no. 10504/03, 17 December 2006.

<sup>48</sup> Venice Commission and ODIHR, Joint Guidelines on freedom of peaceful assembly (3rd edition 2019), [CDL-AD\(2019\)017rev](#), para 46.

<sup>49</sup> See UN OHCHR, [Factsheet on Human Rights, Terrorism and Counter-Terrorism](#) (2008).

<sup>50</sup> A model offence of incitement to terrorism has been provided by the UN Special Rapporteur on the promotion and protection of human rights and fundamental freedoms while countering terrorism; cf. [2010 Report on “Ten areas of best practices in countering terrorism”](#), A/HRC/16/51, 22 December 2010, paras 29-32.

restrictive interpretation and only concern organisations that intent to incite imminent violence, if there is a likelihood of such violence and a direct and immediate connection to such violence.<sup>51</sup>

36. Finally, the reference to “*religious extremism*” as ground for refusing the establishment or for dissolving a political party also raises concerns. It is noted here that there is no consensus at the international level on a normative definition of “*extremism*”.<sup>52</sup> Several international bodies including the ODIHR and the Venice Commission have raised concerns pertaining to “*extremism*”/“*extremist*” as a legal concept, given the vague and imprecise nature of such a term, particularly in the context of criminal legislation.<sup>53</sup> In practice, the vagueness of this term may allow states to adopt highly intrusive, disproportionate and discriminatory measures, as demonstrated by the findings of international human rights monitoring mechanisms, which point to persistent problems, in particular, the abuse of measures to counter so-called “*extremism*” to restrict the legitimate exercise of the rights to freedom of religion or belief, expression, association, and peaceful assembly.<sup>54</sup> Several international bodies have recommended to refrain from enacting legal or other measures that are founded on or make reference to concepts such as “*extremism*” or “*religious extremism*”, given the vagueness of these terms and the potential for their misuse in excessively discretionary or discriminatory ways.<sup>55</sup>

## **2. Establishment of a Political Party, State Registration, Verification, Suspension and Restoration of the Activity, Dissolution**

37. Chapter 2 of the Law contains detailed provisions on the establishment of a political party, its state registration, verification, suspension and restoration of the activity of a political party and its dissolution (Articles 5-9).

### **a. Establishment of a Political Party**

38. Article 5 regulates the establishment of a political party. A party is founded by at least 50 Azerbaijani citizens (founders) who shall be “*fully functional*” (para I). While the 1992 law did not require any specific number of founders, the figure of 50 does not seem unreasonable or excessive, though it is understood from the information gathered during the online meetings that some founders may at times be prevented by the authorities from organizing such founding meetings. The requirement of full functionality is not completely clear, but it probably refers to full legal capacity (see Sub-Section 4(b) *infra* on legal capacity). A party is established during a

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<sup>51</sup> See International Mandate-holders on Freedom of Expression, [Joint Declaration on Freedom of Expression and Countering Violent Extremism](#), 3 May 2016, para 2 (d).

<sup>52</sup> See, e.g., UN Special Rapporteur on the promotion and protection of human rights and fundamental freedoms while countering terrorism (hereinafter “UN Special Rapporteur on Counter-terrorism and Human Rights”), [2015 Thematic Report](#), A/HRC/31/65, 22 February 2016, paras 11 and 21, noting that despite the numerous initiatives to prevent or counter violent extremism, there is no generally accepted definition of violent extremism, which remains an ‘elusive concept’.

<sup>53</sup> See, e.g., UN Special Rapporteur on Counter-Terrorism and Human Rights, [2020 Report on the human rights impact of policies and practices aimed at preventing and countering violent extremism](#), 21 February 2020, A/HRC/43/46, paras 12-14; UN Special Rapporteur in the field of cultural rights, [Report on the phenomena of fundamentalism and extremism](#), 16 January 2017, A/HRC/34/56, paras 10-11. See also Venice Commission and ODIHR, Joint opinion on the draft Law “On freedom of conscience and religious organisations” of Uzbekistan, [CDL-AD\(2020\)002](#), para 30; ODIHR, [Freedom of Religion or Belief and Security Policy Guidance](#) (2019), pages 31-32 and 35.

<sup>54</sup> See, e.g., UN General Assembly, [Report of the Working Group on the Universal Periodic Review Azerbaijan](#), A/HRC/39/14 (11 July 2018), 141.84.

<sup>55</sup> See e.g., ODIHR, [Freedom of Religion or Belief and Security Policy Guidance](#) (2019), pages 31-32 and 35; and UN Special Rapporteur on Counter-Terrorism and Human Rights, [2020 Report on the human rights impact of policies and practices aimed at preventing and countering violent extremism](#), 21 February 2020, A/HRC/43/46, para. 52 (b). See also UN Special Rapporteur on Counter-Terrorism and Human Rights, [2020 Report on the human rights impact of policies and practices aimed at preventing and countering violent extremism](#), 21 February 2020, A/HRC/43/46, para 52(b).

constituent meeting, where the charter and the programme of the political party are adopted, and an authorised person is selected from among the founders. The results of the meeting are formalised in a protocol and there should also be minutes – the difference between the protocol and the minutes, if there is any, should be specified.

39. Within 30 days from the date of the meeting, the charter, the programme and the protocol shall be submitted to the relevant executive body, which according to the Presidential Decree of 11 January 2023 is the Ministry of Justice. The Ministry has 30 days to verify the compliance of the documents with the requirements set in Articles 5.1-5.4 of the Law. If the Ministry of Justice finds deficiencies, it reports them to the authorised person of the party who has to take measures to eliminate them. The Ministry of Justice then again has 30 days to consider the documents and to inform the authorised person about the outcome of the verification. Once the authorised person is informed that there are no deficiencies, s/he has 180 days to take measures to ensure that the political party has a number of members foreseen in Article 6.1 and to compile the register of members foreseen in Article 20.10.

40. The requirement to adopt the party charter at the founding meeting is not inherently illegitimate, provided that it is not used to unfairly disadvantage or discriminate against any political party, especially those espousing unpopular ideas.<sup>56</sup> In contrast, the mandatory adoption of the party programme at this early stage appears rather burdensome. The Venice Commission and ODIHR have already stated that such a regulation requiring that the party's programme and ideology be finalised at the first founding meeting might be cumbersome, that there was no reason for the state to introduce such requirements at the time of applying for registration as a political party, and that this issue should be left to the political party to decide internally.<sup>57</sup> The Venice Commission and ODIHR therefore recommend removing the requirement to adopt the party programme at the founding meeting from Article 5.

41. The Venice Commission and ODIHR also recommend adequately extending the 30-day deadline for submitting the charter, the programme and the protocol to the Ministry of Justice. A restrictive timeline can have a negative effect on the establishment of a political party in which the members of the party are involved by participating in a democratically organised debate, which may take some time.

42. On the other hand, the term reserved for the verification of the documents – which only implies formal checking of the number of founders and the content of the minutes of the founding meeting – seems unreasonably long. The Joint Guidelines note that deadlines that are overly long constitute unreasonable barriers to party registration and participation,<sup>58</sup> and that the 30 days period appears to be a reasonable maximum deadline for decisions by state authorities on party establishment and registration.<sup>59</sup> The Law however reserves this period (of 30 days) for a preliminary verification which is only then followed by the registration procedure (with its own terms). This regulation risks turning the whole procedure into quite a lengthy one. The Venice Commission and ODIHR therefore recommend shortening the timeframe reserved for the formal verification by the Ministry of Justice under Article 5.

#### b. State Registration of a Political Party

43. Political parties may only operate if they get registered, see Article 4.7 of the Law. State registration is regulated by Article 6 of the Law, as well as by the Civil Code and the Law On State Registration and State Register of Legal Entities (Law No. 560-IIQ), adopted on 12 December

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<sup>56</sup> Cf. Venice Commission and ODIHR, Joint Guidelines on Political Party Regulation, CDL- AD(2020)032, para 90, with regard to party registration.

<sup>57</sup> Venice Commission and ODIHR, Joint Opinion on the Draft Law on Political Parties of Mongolia, CDL-AD(2022)013, para 45.

<sup>58</sup> Venice Commission and ODIHR, Joint Guidelines on Political Party Regulation, CDL- AD(2020)032, para 88.

<sup>59</sup> Venice Commission and ODIHR, Joint Guidelines on Political Party Regulation, CDL-AD(2020)032, para 271.

2003. The Venice Commission and ODIHR have not been asked to provide an assessment of the last two laws which are therefore not discussed in this opinion.

44. As underlined in the Joint Guidelines,<sup>60</sup> according to the case-law of the ECtHR requirements for registration do not, in themselves, represent a violation of the right to free association and it is reasonable to require the registration of political parties with a state authority for certain purposes, e.g., to acquire legal personality, to allow parties to participate in elections, and to receive certain forms of state funding. In such cases, substantive registration requirements and procedural steps for registration should be reasonable and be carefully drafted to achieve legitimate aims necessary in a democratic society. At the outset, the Venice Commission and ODIHR reiterate their position expressed in previous opinions that two-step processes for the establishment of political parties,<sup>61</sup> beyond increasing the complexity of the registration process, do not generally promote political participation and political pluralism. Such a lengthy and cumbersome process may also preclude some political parties from participating in elections, a concern further exacerbated by the requirement to re-register.

45. Under Article 6 of the Law, the application for registration is submitted to the determined body, which is again the Ministry of Justice, by the authorised person no later than 10 days after the expiration of the period of 180 days reserved for ensuring the adequate number of members and compiling the register of members. Failure to meet these deadlines or to submit the register *“causes the process of establishing of political party to be restarted”* (Article 6.3). This is a very strict rule; the Venice Commission and ODIHR recommend making it clear that this rule should only be applied in case of serious failure on the side of the political party, which should be specified in the law in order to avoid arbitrary application.

46. Moreover, the obligation for a political party to publish and/or broadcast information about its registration within three days of registration (Article 6.5) also appears overly intrusive and the publication in the register should be enough to inform the public.

47. The number of members required for the state registration of a new political party is newly set up at 5,000. This is a sharp increase in comparison to the 1992 law which only required 1,000 members.<sup>62</sup> Such an increase was already contemplated in the past, when the amendments to the 1992 law were drafted in 2011. The Venice Commission then noted that *“the new threshold seems to be formidably high and put a burden on citizens trying to exercise their rights under Article 11 of the ECHR which is potentially restrictive and as such would be disproportionate and not necessary in a democratic society. It seems a large threshold particularly for a new party”*.<sup>63</sup> This conclusion applies to the new law as well. As the Joint Guidelines note, it is critical that the minimum number of members required to establish a party is reasonable and not overly burdensome.<sup>64</sup> While an increase in the number of members required for the state registration is, as such, not necessarily incompatible with international standards, the increase foreseen in the new law is quite dramatic (increase by 400%) and the motives for it have not been specified. The Venice Commission and ODIHR repeat the conclusion reached in the previous opinions that a figure of 1,000 in a country of a population of eight million is a reasonable number<sup>65</sup> but the figure of 5,000 is problematic.<sup>66</sup>

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<sup>60</sup> Venice Commission and ODIHR, Joint Guidelines on Political Party Regulation, CDL-AD(2020)032, para 85-86.

<sup>61</sup> See, e.g., Venice Commission and ODIHR, Joint opinion on draft amendments to the legislation concerning political parties of Armenia, [CDL-AD\(2020\)004](#), para 14.

<sup>62</sup> The Venice Commission and ODIHR note that the original text of the new law contained an even higher figure (10,000) and welcome that this figure has been decreased during the legislative process.

<sup>63</sup> Venice Commission, Opinion on the draft law on amendments to the law on political parties of the Republic of Azerbaijan, CDL-AD(2011)046, para 18.

<sup>64</sup> Venice Commission and ODIHR, Joint Guidelines on Political Party Regulation, CDL-AD(2020)032, para 97.

<sup>65</sup> Venice Commission, Opinion on the draft law on amendments to the law on political parties of the Republic of Azerbaijan, CDL-AD(2011)046, para 18. See also Venice Commission, Opinion on the Law on Political Parties of the Republic of Azerbaijan, CDL-AD(2004)025, para 8.

<sup>66</sup> A similar move in another country bound by the ECHR, Romania, where the number of members required for the registration of a political party was raised to 25,000, resulted in the relevant provision being declared unconstitutional

48. While Article 3.5 mentions the aim of promoting political pluralism, which is positive, the sharp increase in the number of members required for the registration of a new political party seems to go against this aim, and to limit rather than encourage political pluralism. It should be stressed in this context that the importance of a political party in terms of popular support cannot only be assessed on the basis of its membership, but also based on other criteria such as, e.g., the number of citizens having voted for the candidates of this party at the last elections.

49. Finally, there are no signs suggesting that the previously lower threshold has led to uncontrolled multiplication of political parties and an undesired fragmentation of the political scene that the new law would seek to forestall. In fact, with its current number of 62 political parties,<sup>67</sup> Azerbaijan has a much less diverse political scene than certain other European countries of a comparable size (Austria – over 1,000 parties, Bulgaria – 130 parties, Czech Republic – 220 parties, etc.).

50. The Venice Commission and ODIHR therefore recommend at the very minimum reverting to the original number of members required for the state registration of a political party that figured in the 1992 law (1,000 members) or replacing the membership requirement by other less stringent requirements for demonstrating minimum support as outlined in the Joint Guidelines.<sup>68</sup>

### c. Re-Registration of Political Parties

51. The Law does not only make it more difficult to establish new political parties, but it also effectively imposes on the already registered political parties the obligation to undergo the procedure of re-registration.

52. By virtue of Article 30.1 of the Law, all the registered political parties have 180 days from the date of the entry into force of the Law to fulfil the obligation foreseen in Article 6.1, i.e., to ensure the minimal number of members and to compile a register of members. The fulfilment is checked by the Ministry of Justice within 30 days from the submission of the register. If deficiencies are established, the party has 30 days to remove them and report back to the authorities. A new 30-day verification period starts then again. Once the Ministry of Justice established that there are no deficiencies, the party has 90 days to adopt or revise its main documents, the charter and the programme. The failure to fulfil all the requirements, to remove the deficiencies in the set deadline or to adopt or revise the main documents may result in the dissolution of the political party (under Articles 7.4 and 9.3.4 of the Law).

53. The Joint Guidelines stress that once party registration is approved, requirements for retaining it should be minimal. Loss of registration should be limited to cases of serious legal violations and carried out according to clearly defined procedures.<sup>69</sup> The Joint Guidelines on Freedom of Association also underline that re-registration should only be required in exceptional cases where significant and fundamental changes are to take effect and a sufficient transitional period should be provided to enable the associations to comply with the new requirements.<sup>70</sup>

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by the Constitutional Court of Romania on account of its incompatibility with the right to freedom of association, since the required number was found excessive and disproportionate: Constitutional Court of Romania, Decision No. 75 of 26 February 2015 (published in the Official Gazette of Romania, No. 265 of 21 April 2015). See also Dorneanu, Valer, Safta, Marieta, Constitutional Court of Romania: The Requirements for the Registration of a Political Party, *Vienna Journal on International Constitutional Law / ICL Journal*, Vol. 9, No. 4, 2015, pp. 612-620.

<sup>67</sup> The list is available here: <http://www.msk.gov.az/uploads/partiyalar/2020/UmumiMelumat.php>.

<sup>68</sup> See Venice Commission and ODIHR, Joint Guidelines on Political Party Regulation, CDL-AD(2020)032, paras 94-98.

<sup>69</sup> Venice Commission and ODIHR, Joint Guidelines on Political Party Regulation, CDL-AD(2020)032, para 99.

<sup>70</sup> Venice Commission and ODIHR, Joint Guidelines on Freedom of Association, CDL-AD(2014)046, para 165.

54. The Venice Commission and ODIHR note that the Law makes all registered political parties undergo re-registration based on the new requirements introduced in Articles 5 and 6. It will certainly be difficult for some parties to raise the number of members by several times within mere 180 days. The terms reserved for the verification by the Ministry of Justice are also again quite lengthy. All these factors place the registered political parties under strain and create the risks of negatively affecting political pluralism and even paralysing, at least temporarily, the political life in the country. The Venice Commission and ODIHR recommend reconsidering entirely the requirement to re-register. In any case, the length of the transitional period should be considerably increased and the loss of registration of already registered parties should be limited to cases of serious legal violations. As far as the role of the Ministry of Justice as regulatory authority is concerned, the Venice Commission and ODIHR refer to their comments in Sub-Section II.C.2.e below.

#### d. Prohibition of Non-Registered Political Parties

55. Article 4.7 of the Law expressly declares that *“it is not allowed to operate a political party without registration”*. The Venice Commission and ODIHR note that it is reasonable for the state to make the participation in elections or access to certain benefits, such as state funding, conditional on state registration. However, as they pointed out in the 2021 joint opinion on the draft law on political parties of Ukraine, it would not be proportionate to prohibit political parties without registration from conducting any kinds of political activities. In essence, such unregistered political parties would still be associations and should be able to conduct their activities in the same manner as other associations.<sup>71</sup> Political parties may be too small to be registered but that does not make their existence unlawful or prevent them from continuing to strive to organise and grow.<sup>72</sup> In Azerbaijan, the 1992 law did not contain a prohibition of non-registered parties and it is not clear why a provision in this direction has been introduced in the new Law. In its 2011 opinion on the political party legislation of Azerbaijan, the Venice Commission has already pointed out that non-registration as a political party can never be a basis to deprive anyone of the rights to freedom of speech, peaceful assembly or association.<sup>73</sup> The right to engage in political activities, on the basis of these freedoms, can in a free democratic society not be reserved for registered political parties.

56. The Venice Commission and ODIHR have been informed that at least one unregistered political party, the Democracy and Welfare Party (ADR), has already decided to dissolve itself due to the new prohibition contained in Article 4.7 of the Law.<sup>74</sup> The Venice Commission and ODIHR also note that this particular party, established on 17 October 2021, sought registration but was denied it by the Ministry of Justice four times in 2021-2022.<sup>75</sup> It appears that the grounds for the denial had mostly to do with minor formal deficiencies in the submitted documents, such as an (allegedly) missing signature by one person.<sup>76</sup> In light of this particular case, the new regulation gives rise to concerns. The combined effect of the lengthy procedure of registration, the denial of registration based on minor formal deficiencies, and the prohibition for unregistered parties to “operate” as such, without guaranteeing the right to participate in the political life of the country otherwise than through direct participation in the elections, might actually prevent certain political forces from being able to take part in the political life, thus again limiting political pluralism

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<sup>71</sup> Venice Commission and ODIHR, Joint Opinion on the draft law on political parties of Ukraine, [CDL-AD\(2021\)003](#), para 58.

<sup>72</sup> Venice Commission, Opinion on the Draft Law on Political Parties and Socio-Political Organisations of the Republic of the Republic of Moldova, [CDL-AD\(2002\)028](#), para 28.

<sup>73</sup> Venice Commission, Opinion on the draft law on amendments to the law on political parties of the Republic of Azerbaijan, CDL-AD(2011)046, para 35.

<sup>74</sup> Gubad Ibadoglu announced the dissolution of the Democracy and Welfare Party, *Turan*, 13 January 2023.

<sup>75</sup> Why do not they register the Azerbaijan Democracy and Welfare Party? Is it discrimination?, *Turan*, 26 August 2022.

<sup>76</sup> *Ibid.*



rather than strengthening it. Consequently, the Venice Commission and ODIHR recommend revising the strict prohibition in Article 4.7 of the Law.<sup>77</sup>

#### e. Verification of Political Party Activities

57. Article 7 of the Law deals with the control exercised over political parties by “*the body (institution) determined by the relevant executive authority*”, which is again the Ministry of Justice. The Ministry “*verifies the compliance of the activity of the political party with the requirements of normative legal acts and its charter*” (Article 7.1), “*studies the compliance of the political party with the normative legal acts and statutes of the Republic of Azerbaijan*” (Article 7.2) and “*investigates violations of the requirements of normative legal acts*” (Article 7.3). The concrete tasks include carrying out regular checks of the register of members of political parties, reviewing information published in the media, considering application concerning political parties, issuing written warnings in relevant cases (Articles 7.1.3, 7.3.3 and 7.4) and filing judicial application suggesting suspension or dissolution of political parties (Articles 7.1.4 and 7.3.2).

58. The Venice Commission and ODIHR note that states have the right to exercise oversight over political parties. They furthermore note that the law should enable oversight agencies to investigate and pursue potential violations.<sup>78</sup> At the same time, they also recall that the bodies charged with the supervision of political parties must refrain from exerting excessive control over party activities and limit their investigations to cases where there has been an indication of wrongdoing by an individual party.<sup>79</sup> The ECtHR raised particular concern about political parties being liable to inspections by the authorities under threat of dissolution. The Court stated in the *Republican Party* case that it could not discern any justification for such intrusive measures subjecting political parties to frequent and comprehensive checks and a constant threat of dissolution on formal grounds.<sup>80</sup> The far-reaching and intrusive verification mechanism under Article 7 of the Law is incompatible with the political freedom political parties have to enjoy in a democratic society. The Venice Commission and ODIHR recommend significantly reducing the control powers of the oversight body.

59. Notably, the verification mechanism extends to the oversight of compliance by a political party with its charter (Articles 7.1 and 7.4) and consideration of applications received from the members of the political party, state bodies, and local self-government, as well as review of the information published (broadcast) in the media (Article 7.2.1). Such wide oversight powers in these and other provisions are of particular concern, given that securing compliance with a political party’s goals, objectives and internal rules/procedures should be a matter for its founders and members and not for public bodies. There should be sufficient internal mechanisms that address the issues of unethical conduct, intra-party conflicts, etc. As stated in the Joint Guidelines on Freedom of Association, inspections conducted with the main purpose of verifying compliance with internal procedures of an association should not be permissible. Moreover, associations must not suffer sanctions on the sole ground that their activities breach their own internal regulations and procedures, as long as these activities are not otherwise unlawful.<sup>81</sup> Such an approach is guided by the general principles of self-

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<sup>77</sup> Of note, in principle, Article 15 of the Law on Non-Governmental Organisations allows for the establishment and existence of informal, unregistered associations, meaning that in practice, the de-registered political party should be able to continue operating as an unregistered association. However, given the new regulation in Article 4.7 of the Law the status of de-registered political parties needs to be clarified, to ensure that they are able to continue their activities as an unregistered association, without being considered illegal.

<sup>78</sup> Venice Commission and ODIHR, Joint Guidelines on Political Party Regulation, CDL-AD(2020)032, para 268.

<sup>79</sup> Venice Commission and ODIHR, Joint Guidelines on Political Party Regulation, CDL-AD(2020)032, para 269.

<sup>80</sup> ECtHR, *Republican Party of Russia v. Russia*, no. 12976/07, 12 April 2011, para 115.

<sup>81</sup> Venice Commission and ODIHR, Joint Guidelines on Freedom of Association, CDL-AD(2014)046, para 178. See also, e.g., Venice Commission, Opinion on the Law on non-governmental Organisations (Public Associations and Funds) as amended of the Republic of Azerbaijan, [CDL-AD\(2014\)043](#), para 77.

governance and independence of associations,<sup>82</sup> which is also applicable to political parties as a special category of associations. Further, in the absence of evidence to the contrary, the activities of political parties should be presumed to be lawful.<sup>83</sup> Therefore, the Venice Commission and ODIHR recommend removing the public authorities' control and sanctioning powers in relation to non-compliance by a political party with its charter, in Articles 7.1 and 7.4 and any other provisions of the Law.

60. Moreover, it is crucial that the competent body exercise the oversight in an impartial manner and free from partisan influence and treats all political parties in the same way (in line with Article 4.2 of the Law). As the Venice Commission has highlighted in one of its previous opinions on political party legislation of Azerbaijan, regulatory authorities must remain neutral and objective in dealing with the process of political party registration, political party finance and regulation of party activities, and it is clear that it is difficult to meet these requirements if the monitoring body is an organ of the executive, linked by hierarchy to political actors, rather than an independent institution.<sup>84</sup> It is important that the monitoring body be impartial and for this reason independent of government or ministers who would have interest in defeating their political rivals.<sup>85</sup> The Venice Commission and ODIHR therefore recommend revising the oversight mechanism to ensure that control over political parties is exercised by an impartial and independent body. Moreover, the competent body should be determined by the Law itself and not by Presidential Decree, for the sake of legal certainty and stability.

61. Article 7.3.3 allows for a warning that is issued to a political party regarding possible breaches of "normative legal acts". However, the Law does not seem to offer a possibility for the political party in question to dispute the content of the warning, and Article 7.5 provides only for the requirement to eliminate "the violations" within 30 days. This legal gap needs to be filled.

#### f. Suspension and Restoration of the Activities of Political Parties

62. Article 8 regulates the suspension of the activities of a political party, which can take place either upon the decision of the congress of the political party or upon a court decision. In the two cases, suspension of the activities is, by its very nature, temporary and can result either in the restoration of the activities, or the (final) dissolution of the party. There is no specific time limit in case of voluntary suspension, the involuntary suspension may last for a period from two to six months. It would be useful to indicate some criteria determining the length of the suspension period in concrete cases.

63. Suspension upon a court decision takes place if the political party fails to report violations determined by the Ministry of Justice in a warning and to inform it within the period indicated in the warning (Article 8.3). During the suspension period, the party may not operate. Another 30-days term running from the end of the period of suspension is foreseen for redress by the party, followed by the usual 30 days reserved for the verification of the submission by the Ministry of Justice (Article 8.7). Only if such verification reveals no deficiencies, are the activities of the political party fully restored. If the party fails to redress the violation or to inform about the redress within the 30-day term, the Ministry of Justice shall file a claim for its dissolution (Article 8.9).

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<sup>82</sup> Venice Commission and ODIHR, Joint Interim Opinion on the Draft Law amending the Law on Non-commercial Organisations and other Legislative Acts of the Kyrgyz Republic, [CDL-AD\(2013\)030](#), para 73.

<sup>83</sup> Venice Commission and ODIHR, Joint Guidelines on Political Party Regulation, CDL-AD(2020)032, Principle 1/para 36.

<sup>84</sup> Venice Commission, Opinion on the draft law on amendments to the law on political parties of the Republic of Azerbaijan, CDL-AD(2011)046, para 38.

<sup>85</sup> Venice Commission, Opinion on the draft law on amendments to the law on political parties of the Republic of Azerbaijan, CDL-AD(2011)046, para 39.

64. The Venice Commission and ODIHR note that the status of the political party during the interim period – between the end of the period of suspension and the date of the restoration of the activities – gives rise to uncertainty, as the activities of the party in this period seem to be no longer suspended but not yet restored. The use of the term “report” in the formulation is also somewhat confusing and its meaning would warrant clarification.

65. Most importantly, however, the Venice Commission and ODIHR stress that, while it is undisputable that sanctions should be applied against political parties found in violation of relevant law and regulations, care must be taken that sanctions be objective and proportionate to the specific violation.<sup>86</sup> In order to respect the principle of proportionality, there should be a spectrum of sanctions available<sup>87</sup> in order to be able to adjust the level of punishment to the seriousness of the violation.<sup>88</sup> As the Law only provides for mere executive warnings and for the dissolution of the party – in the absence of redress following its suspension – as possible sanctions for non-compliance with state legislation,<sup>89</sup> it fails to guarantee the respect for the principle of proportionality, which is an essential of the requirement that every restriction of the freedom of association has to be “necessary in a democratic society”. The above-mentioned provisions of Article 7 seem to imply that any violation of a normative legal act may lead to the suspension of the political party by a court decision, followed by its dissolution in the absence of redress. The suspension of a political party is however a particularly invasive and exceptional measure and should only be imposed in the most serious cases involving particularly grave violations of the rules on donations or on reporting, if other less invasive measures have proven ineffective.<sup>90</sup> The Venice Commission and ODIHR recommend stating explicitly in the Law that suspension may only be resorted to in case of the most serious violations of normative legal acts which would lead to its dissolution in the absence of redress, and providing for a range of less severe sanctions applicable in case of less serious violations.

66. By means of Article 4.13, a political party whose activities have been suspended must refrain from any activities indicated in this provision. The party may still make certain payments (mandatory state payments, fines, payments under existing civil-legal and labour contracts, damages caused by the political party), publish information about the suspension or take some measures to redress deficiencies, though the uncertainty concerning the time frame for such a redress has already been noted (see the preceding paragraph). Moreover, this provision appears very strict and should be reconsidered; party bodies should at least be enabled to take measures aimed at terminating the suspension.

67. Article 8.10 stipulates that *“the activity of a political party that prevents the elimination of the circumstances that led to the declaration of a military or emergency state and the implementation of the specified measures may be suspended until the end of the period of the military or emergency state.”* The Venice Commission and ODIHR note that the right to freedom of association is a non-absolute right and, as such, it can be limited in emergency situations. It however also recalls that any restrictions imposed on the exercise of this right need to be prescribed by law, pursue a legitimate aim and be necessary in a democratic society. The wording “preventing the elimination of the circumstances that led to the declaration of a military or emergency state” also appears too broad and vague, and subject to arbitrary interpretation.

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<sup>86</sup> Venice Commission and ODIHR, Joint Guidelines on Political Party Regulation, CDL-AD(2020)032, para 272.

<sup>87</sup> Venice Commission and ODIHR, Joint Guidelines on Political Party Regulation, CDL-AD(2020)032, para 273.

<sup>88</sup> Venice Commission and ODIHR, Joint Opinion on the Draft Act to regulate the formation, the inner structures, functioning and financing of political parties and their participation in elections of Malta, [CDL-AD\(2014\)035](#), paras 44-45.

<sup>89</sup> Article 29 of the Law disposes: “Persons are responsible for violation of the requirements of this Law in the cases defined by the Civil Code of the Republic of Azerbaijan, the Code of Administrative Offenses and the Criminal Code.” While this seems to imply that warnings and dissolution are not the only available sanctions, the rapporteurs were told that the cases giving rise to other sanctions were not yet defined by those codes.

<sup>90</sup> Venice Commission and ODIHR, Joint Opinion on the Draft Constitutional Law on Political Parties of Armenia, [CDL-AD\(2016\)038](#), para 51.

Emergency measures moreover need to be applied in a non-discriminatory manner and must never be used for other purposes than countering the emergency situation.

68. In its 2020 Reflections on the Respect for Democracy, Human Rights and Rule of Law During States of Emergency, the Venice Commission recalled that certain groups of individuals – including members of opposition parties – might be particularly vulnerable to human rights abuses in times of emergency.<sup>91</sup> It also recalled that the opposition should play an important role in the political control of the state of emergency.<sup>92</sup> A suspension of the activities of a political party in times of emergency should therefore be a measure of last resort, applied only exceptionally and when no other, less radical measures are available; and such a measure should never lead to preventing political control being exercised over the state of emergency. This should be made clear in Article 8.10 of the Law.

#### g. Dissolution of a Political Party

69. The dissolution of a political party is regulated by Article 9 of the Law. It can again take place upon a decision of the congress of the political party or upon a decision by an appellate court. The application for dissolution shall be filed by the Ministry of Justice in cases where a political party pursues one of the prohibited purposes (Article 4.3), or fails to have at least 4,500 members at the time of registration (Article 7.3.2) or during its operation (Article 9.3.4), or where a political party whose activities have been suspended has not eliminated deficiencies or has not informed the Ministry of Justice (Article 8.9), or where, during the period of suspension, it continues to engage in one of the activities listed in the Law (Article 4.13).

70. The Venice Commission and ODIHR welcome that the law explicitly stipulates that “*dissolution of a political party /.../ is considered the last measure of necessity that can be applied against the political party*” (Article 9.4). Indeed, as stressed both in the case-law of the ECtHR and in the Joint Guidelines, dissolution of a political party is a drastic measure that can only be resorted to in the most extreme situations and must be the very last resort.<sup>93</sup> It can only be justified in the case of parties which advocate the use of violence or use violence as a political means to overthrow the democratic constitutional order, thereby abolishing the rights and freedoms guaranteed by the constitution.<sup>94</sup> It should be used with utmost restraint, when it is clear that the party really represents a danger to the free and democratic political order or to the rights of individuals and whether other, less radical measures could prevent the said danger.<sup>95</sup> As stated in the Joint Guidelines, political parties should never be dissolved for minor administrative or operational breaches, in the absence of other relevant and sufficient circumstances.<sup>96</sup>

71. The law should specify narrowly formulated criteria, describing the extreme cases in which prohibition and dissolution of political parties is allowed. Prohibition is only justified if it meets the strict standards for legality, subsidiarity and proportionality.<sup>97</sup> The Venice Commission provided a detailed overview of the legal standards applicable to the dissolution of political parties and the

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<sup>91</sup> Venice Commission, Respect for Democracy, Human Rights and Rule of Law during States of Emergency – Reflections, 2020, CDL-PI(2020)005rev, para 44.

<sup>92</sup> Venice Commission, Respect for Democracy, Human Rights and Rule of Law during States of Emergency – Reflections, 2020, CDL-PI(2020)005rev, para 84.

<sup>93</sup> See Venice Commission and ODIHR, Joint Guidelines on Political Party Regulation, CDL-AD(2020)032, paras 52 and 272; and ECtHR, *Socialist Party and others v. Turkey*, no. 21237/93, 25 May 1998, para 47.

<sup>94</sup> Venice Commission, Tunisia – Opinion on the draft institutional law on the organisation of political parties and their funding, [CDL-AD\(2018\)025](#), para 63; Venice Commission and ODIHR, Joint Opinion on the draft act to regulate the formation, the inner structures, functioning of political parties and their participation in election of Malta, CDL-AD(2014)035, para 17; Venice Commission, Guidelines on Legislation on Political Parties: some specific issues, [CDL-AD\(2004\)007rev](#), p. 3, B.

<sup>95</sup> Venice Commission, Guidelines on Prohibition and Dissolution of political parties and analogous measures, [CDL-INF\(99\)15](#), pp. 3-4; Venice Commission, Opinion on the proposed Amendment to the Law on Parties and other Socio-Political Organisations of the Republic of Moldova, [CDL-AD\(2003\)008](#), para 10.

<sup>96</sup> Venice Commission and ODIHR, Joint Guidelines on Political Party Regulation, CDL-AD(2020)032, para 113.

<sup>97</sup> Venice Commission and ODIHR, Joint Guidelines on Political Party Regulation, CDL-AD(2020)032, para 109.

actual practice in this area in its 2009 Opinion on the Constitutional and Legal Provisions relevant to the Prohibition of Political Parties in Turkey.<sup>98</sup> The opinion concluded that although there is a diversity of national regulations, dissolution must always be treated as an exceptional tool that is, moreover, virtually never resorted to in practice.

72. Subject to the caveats and strict conditions stated in the comments in section III.C.1.b above, the Venice Commission and ODIHR note that it may be lawful to dissolve a political party that pursues some of the prohibited purposes listed in Article 4.3 connected to violence. The dissolution based on the other grounds is more problematic and Article 9.4 would be of great importance here, as it should make courts refrain from using this tool in case of less serious breaches of the legal regulation or where other, less radical means of redress are available. That said, for the sake of legal certainty, the Venice Commission and ODIHR recommend excluding such other grounds (based on Articles 4.13, 7.3.2, 8.9, 9.3.4 in addition to those grounds from Article 4.3 not connected to violence) from the scope of Article 9 and to explicitly provide for less drastic sanctions.<sup>99</sup>

73. It would be contrary to the freedom of association to dissolve a party, for example, when its membership falls below a certain threshold. As emphasised in the Joint Guidelines, de-registration for lack of minimum support should not result in the dissolution of the party.<sup>100</sup> It can be envisaged to end the registration of such a party, but it should be provided with reasonable amount of time to address the issue and in any case, be able to continue its existence as a non-registered political party or association and strive to grow again.<sup>101</sup> The forced dissolution of a “long-established and law-abiding” party based on a formal ground, such as the failure to comply with minimum membership requirements, has been held to be a disproportionate measure by the ECtHR.<sup>102</sup>

### 3. Operation of a Political Party

74. Articles 10-19 regulate the operation of a political party.

75. Under Article 10, a political party must have a name encompassing the word party, which may be too prescriptive.<sup>103</sup> It can have an abbreviated name and certain symbols. The name, the abbreviated name and the symbols need to be different from those used by other parties. This regulation is in line with the Joint Guidelines which make it clear that “*the regulation of party names and symbols to avoid confusion, especially with other parties, is an important means to enable the state to ensure a duly informed electorate that is able to exercise a free and conscious choice.*”<sup>104</sup>

76. Article 10.3 prohibits the name, abbreviated name and symbols of a political party to refer to racial, religious, origin, gender, ethnic characteristics, as well as to use the names of natural persons. This regulation is somewhat unusual in the European context and seems to be, in reality, directed against the creation of political parties based on the enlisted characteristics. While there might be good reasons to prohibit the establishment of political parties based on

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<sup>98</sup> Venice Commission, Opinion on the Constitutional and Legal Provisions relevant to the Prohibition of Political Parties in Turkey, [CDL-AD\(2009\)006](#).

<sup>99</sup> The Joint Guidelines point to the difference between de-registration and dissolution: De-registration may legitimately result in the loss of official recognition and of some privileges such as state funding or privileged ballot access, but it should not result in the dissolution of the party. See Venice Commission and ODIHR, Joint Guidelines on Political Party Regulation, CDL-AD(2020)032, para 113.

<sup>100</sup> Venice Commission and ODIHR, Joint Guidelines on Political Party Regulation, CDL-AD(2020)032, para 98.

<sup>101</sup> Venice Commission, Opinion on the Draft Law on Political Parties and Socio-Political Organisations of the Republic of the Republic of Moldova, CDL-AD(2002)028, para 28.

<sup>102</sup> ECtHR, *Republican Party of Russia v. Russia*, no. 12976/07, 12 April 2011, para 131.

<sup>103</sup> Cf. Venice Commission and ODIHR, Joint Opinion on the Draft Law on Political Parties of Mongolia, CDL-AD(2022)013, para 40.

<sup>104</sup> Venice Commission and ODIHR, Joint Guidelines on Political Party Regulation, CDL-AD(2020)032, para 89.

certain problematic grounds (such as race or exclusive feature of ethnicity), it is less clear why it should not be possible to establish a political party based on some of the other grounds. Targeting more specifically a certain electorate does not necessarily mean promoting racial, religious, origin, gender, ethnic and other discrimination (Article 4.3.2), which is rightly prohibited. Furthermore, the Venice Commission and ODIHR stress that legislation restricting the use of certain names and symbols needs to be drafted with utmost care<sup>105</sup> and needs to be sufficiently clear and foreseeable in order to comply with the principle of legal certainty.<sup>106</sup> Having a blanket prohibition on the name of a party on an ethnic group, a religion or other component may indirectly discriminate certain religious, ethnic or other groups and would be contrary to the principles of freedom of association, freedom of expression and non-discrimination.<sup>107</sup> The Venice Commission and ODIHR recommend removing those blanket prohibitions from Article 10.3 of the Law and ensuring freedom of expression and participation of ethnic, religious and minority groups.

77. Article 11 contains a list of “activities of the political parties”. It is unclear whether the list refers to activities a political party has the right to develop or, on the contrary, to activities any political party has the obligation to fulfill. In the latter case, Article 11 would not be compliant with the freedom of association which implies that a political party undertakes the activities it freely chooses to develop. This is specifically relevant for the activity mentioned in Article 11.1.7, i.e., “participating in holding elections, as well as national voting (referendum)”. In a democratic society a political party must have the right to boycott elections,<sup>108</sup> e.g., as a protest against the deficient way the elections are organised. The Venice Commission and ODIHR therefore recommend making it clear in the Law that the activities listed in Article 11 are not obligatory for each political party. It should also be made clear that the list is not a closed one and that a political party may engage in any other activities not prohibited under the legal regulation. Moreover, it should be clarified that the promotion of “*national values and patriotism*” (Article 11.1.4) does not imply the obligation to adhere to any specific ideology or any fixed set of values.

78. Article 12 defines the rights and duties of political parties. Here, the open nature of the two lists is clearly indicated (Articles 12.1.18 and 12.3.8). The provision is rather detailed but most of the rights and duties included in it are standard ones. The conferral on political parties of the right to “*prepare and submit drafts of legal acts, as well as to participate in the preparation of drafts of legal acts*” (Article 12.1.10) was already welcomed as a positive development in the previous opinion but it was also noted that it remained to be seen how it was implemented in practice.<sup>109</sup> As mentioned in Section III.B, while a number of political parties were reported to have contributed to the preparation of the current law, the Venice Commission and ODIHR are not in a position to say whether such an involvement is standard practice. Political parties may not engage in entrepreneurial activities, which reflects their nature as non-commercial legal entities (Article 1.1.1). According to Article 12.3.6, political parties must not “*interfere in the activities of state bodies (institutions), local self-government bodies, officials, as well as in the entrepreneurial activities of other persons*”. It is not clear what is meant by “*interference*” in this context; this needs to be formulated more precisely in order to exclude legitimate activities of opposition parties challenging government policy and decisions. Article 12.4

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<sup>105</sup> Cf. ECtHR, *Vajnai v. Hungary*, no. 33629/06, 8 July 2008, paragraph 54 et seq; Venice Commission and ODIHR, Joint Interim Opinion on the Law of Ukraine on the condemnation of the communist and national socialist (Nazi) regimes and prohibition of propaganda of their symbols, [CDL-AD\(2015\)041](#), para 52.

<sup>106</sup> Venice Commission and ODIHR, Joint Interim Opinion on the Law of Ukraine on the condemnation of the communist and national socialist (Nazi) regimes and prohibition of propaganda of their symbols, [CDL-AD\(2015\)041](#), paras 77 et seq.

<sup>107</sup> ODIHR Opinion on the Draft Law on Political Parties of Mongolia, [Opinion-Nr. POLIT-MNG/359/2019](#), para 19.

<sup>108</sup> See e.g. the comments by the Venice Commission and ODIHR on sanctioning boycott (of Parliament, and financially) in their Joint Opinion on amendments to the Election Code, the Law on Political Associations of Citizens and the Rules of Procedure of the Parliament, [CDL-AD\(2021\)008](#), paras 10 et seq.

<sup>109</sup> Venice Commission, Opinion on the draft law on amendments to the law on political parties of the Republic of Azerbaijan, [CDL-AD\(2011\)046](#), para 31.

stipulates that the meetings of collegial management bodies of a political party are allowed to be held through the videoconference system in real time only in connection with the implementation of the anti-epidemic regime, sanitary-hygiene and quarantine regime. In the view of the Venice Commission and ODIHR, this requirement is unduly restrictive and is something that should be determined by political parties themselves.

79. Articles 13 recalls that a political party must have a charter and a programme that are publicly available. The provision also sets the minimal content of these two documents in an unnecessarily detailed manner which may constitute an unjustified interference with the internal autonomy of political parties.<sup>110</sup>

80. Articles 14-18 relate to the main bodies of a political party, i.e., the supreme governing body (Article 14), a collegial governing body (Article 15), chairperson (Article 16), a control body (Article 17) and structural institutions (Article 18). Some of these bodies must be established, other are optional. The provisions define the main competences of each of the bodies as well as the relationship among them. Article 19 deals with international relations of political parties. Parties are free to cooperate with political parties from other countries, sign agreements with them or become members of international alliances of political parties. The formal activities have to be reported to the Ministry of Justice within 30 days. The Venice Commission and ODIHR cannot see a justifiable reason for the state to obtain such information. The obligation of a political party to inform the state body on international cooperation carries the risk of excessive state control over the operation of the party and should be removed from the Law.

81. Overall, the Venice Commission and ODIHR are concerned about the above-mentioned detailed regulations on the internal organisation and decision-making processes of political parties. With all those provisions, the Law determines – with limited space for variations – almost the same structure for all political parties, the same competencies of the party bodies for all political parties, the same relations between all parties and their members. This approach unduly limits the autonomy of the party to decide on internal organisational matters.

82. According to the case-law of the ECtHR, states cannot be denied the competence to introduce some legislative requirements for the internal organisation and selection of candidates for elections, in the interest of democratic governance. At the same time, state authorities should not interfere with the internal matters of political parties unless absolutely necessary, as it is for the parties themselves to determine the manner in which their conferences and decision procedures shall be organised. Likewise, it should primarily be up to the political party and its members and not the public authorities to ensure that the relevant formalities are observed in the manner specified in its statutes.<sup>111</sup> Thus, while some kind of state regulation or guiding principles for the inner functioning of political parties may be acceptable, it may suffice if such state interference would formulate some requirements for parties to be transparent in their decision-making and to seek input from their membership when determining party constitutions and candidates.<sup>112</sup> This is notwithstanding the introduction of legislative measures to promote balanced representation of women and men, and generally more diversity, in party structures and governing bodies as well as candidates for public offices (see Section III.C.1.a).

83. The Joint Guidelines note in this respect that “*the internal functions and processes of political parties should generally be free from state interference. Internal political party*

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<sup>110</sup> Cf. Venice Commission and ODIHR, Joint Opinion on the draft law on political parties of Ukraine, CDL-AD(2021)003, para 66.

<sup>111</sup> ECtHR, *Republican Party of Russia v. Russia*, no. 12976/07, 12 April 2011, para. 88.

<sup>112</sup> ECtHR, *Yabloko Russian United Democratic Party and Others v. Russia*, no. 18860/07, 8 November 2016, para. 79. See also Venice Commission and ODIHR, Joint Guidelines on Political Party Regulation, CDL-AD(2020)032, para 28.

*functions are best regulated through the party constitutions or voluntary codes of conduct elaborated and agreed on by the parties themselves. Legal regulation of internal party functions, where applied, must be narrowly construed so as to respect the principle of party autonomy and not to unduly interfere with the right of parties as free associations to manage their own internal affairs.*<sup>113</sup> Furthermore, “*state control over political parties should remain at a minimum, and should be limited to what is necessary in a democratic society.*”<sup>114</sup> In principle, political parties should be free to establish their own organisation and the rules for selecting their party leaders and candidates, and it should also be up to the parties themselves to determine how their conferences and decision-making procedures are organised.<sup>115</sup>

84. When preparing the Law, the drafters have clearly opted for the so-called “egalitarian - democratic model” of state control and not for the so-called “liberal model”:<sup>116</sup> the former model, to a large extent, limits party autonomy in the interests of transparency, internal democracy, accountability and state control. Although both approaches can be justified, especially taking into account the historical and political context in which parties have to operate, it is important to stress that parties shall always operate on the basis of the freedom of association, the freedom of peaceful assembly and the freedom of expression.<sup>117</sup> Thus, while the desire of the drafters of the Law to ensure internal party democracy is recognised, the legal regulation of internal party functions must be such as to respect the principle of party autonomy and should not unduly interfere with the rights of parties to manage their own internal affairs.<sup>118</sup> With this in mind, it has to be noted that Articles 10-19 and the Law in general seem to interfere with a party’s autonomy and seek to regulate unnecessary parts of the internal operation of political parties. The Venice Commission and ODIHR recommend scaling back some aspects of this overly regulatory approach and keeping only those provisions which are clearly necessary to guarantee transparency and fair democratic governance, in order to enhance the inner autonomy of political parties and allow them to determine their internal operation and procedures, without too much state interference.

#### **4. Political Party Membership Issues**

85. Chapter 4 regulates political party membership issues. It sets the conditions under which an individual may become a member of a political party and when his or her membership is terminated (Article 20). It also defines rights and duties of members (Articles 21-22). The regulation is based on the principle that “*no one can be forced to join or remain a member of any political party*” (Article 20.2). Provided that Azerbaijan has gone in its history through periods, when a membership in a certain political party was *de facto* obligatory, it is important that this principle is confirmed expressly.

##### **a. Citizenship Requirement**

86. Membership in a political party is reserved to citizens of Azerbaijan. Article 20.4 makes it clear that “*foreigners and stateless persons cannot be members of a political party*”. This principle is also enshrined in other provisions of the Law, including Article 1.1.7 and Article

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<sup>113</sup> Venice Commission and ODIHR, Joint Guidelines on Political Party Regulation, CDL-AD(2020)032, para 151. See also Venice Commission and ODIHR, Joint Opinion on the draft law on political parties of Ukraine, CDL-AD(2021)003, para 83.

<sup>114</sup> Venice Commission and ODIHR, Joint Guidelines on Political Party Regulation, CDL-AD(2020)032, para 154. Venice Commission and ODIHR, Joint Opinion on the draft law on political parties of Ukraine, CDL-AD(2021)003, para 85.

<sup>115</sup> See Venice Commission and ODIHR, Joint Guidelines on Political Party Regulation, CDL-AD(2020)032, paras 20, 155, 176; Venice Commission and ODIHR, Joint Opinion on the Draft Law on Political Parties of Mongolia, CDL-AD(2022)013, para 52.

<sup>116</sup> Venice Commission and ODIHR, Joint Guidelines on Political Party Regulation, CDL-AD(2020)032, para 151.

<sup>117</sup> Cf. Venice Commission and ODIHR, Joint Opinion on the draft law on political parties of Ukraine, CDL-AD(2021)003, para 34.

<sup>118</sup> Venice Commission and ODIHR, Joint Guidelines on Political Party Regulation, CDL-AD(2020)032, para 155.



20.9.3 according to which loss of citizenship will result in termination of membership in a political party. Such a restriction already existed in the 1992 law and it was extensively, and critically, commented upon in the previous opinions.<sup>119</sup>

87. The Venice Commission and ODIHR acknowledge that the regulation in this area is not completely uniform across Europe and that Article 16 of the ECHR expressly recognises the right of states to impose restrictions on the political activity of aliens. Yet, the ECtHR has held that this provision should be construed as only allowing restrictions on “activities” that directly affect the political process.<sup>120</sup> Moreover, it is Recommendation 1500 (2001) on Participation of immigrants and foreign residents in political life in the Council of Europe member states, the Parliamentary Assembly has declared that democratic legitimacy required equal participation by all groups of society in the political process, and that the contribution of legally resident non-citizens to a country’s prosperity further justified their right to influence political decisions in the country concerned (para 4). In the Joint Guidelines the Venice Commission and ODIHR considered that only the possibility of aliens to establish political parties could be restricted under Article 16 of the ECHR, and this provision should not be applied in order to restrict the membership of aliens in political parties.<sup>121</sup>

88. It should be noted that in Azerbaijan, Article 58 of the Constitution guarantees the right the right of everyone, not only citizens, “to establish any association, including political party”. . In line with their previous recommendations,<sup>122</sup> the Venice Commission and ODIHR recommend extending the circle of individuals who may become members of political parties to foreigners and stateless persons. This is notwithstanding the possibility to introduce certain restrictions on aliens’ activities “that directly relate to the political process” within the meaning of Article 16 of the ECHR.<sup>123</sup>

#### b. Requirement of Legal Capacity

89. Article 20.9.4 stipulates that a person’s membership in a political party is terminated if s/he is deprived of legal capacity by court decision. This may cover circumstances where a person is deprived of legal capacity on the basis of intellectual or psychological disability. Article 29 of the CRPD requires states to guarantee to persons with disabilities political rights and the opportunity to enjoy them on an equal basis with others, and Article 12 of the CRPD requires that States Parties shall recognise that persons with disabilities enjoy legal capacity on an equal basis with others in all aspects of life. Additionally, and more specifically, Council of Europe Recommendation (2011)14 invites member states to enable persons with disabilities freely and without discrimination, particularly of a legal, environmental and/or financial nature to meet, join or found political parties.<sup>124</sup> Paragraph 24 of the 1990 OSCE Copenhagen Document provides that any restriction on rights and freedoms must, in a democratic society, relate to one of the objectives of the applicable law and be strictly proportionate to the aim of that law.

90. In this connection, the Venice Commission and ODIHR draw attention to previous opinions in which they supported removal of the requirement of “active legal capacity” to become a

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<sup>119</sup> Venice Commission, Opinion on the Law on Political Parties of the Republic of Azerbaijan, CDL-AD(2004)025, para 5; Venice Commission, Opinion on the draft law on amendments to the law on political parties of the Republic of Azerbaijan, CDL-AD(2011)046, para 12.

<sup>120</sup> ECtHR, *Perinçek v. Switzerland* [GC], no. 27510/08, 15 October 2015, para 121.

<sup>121</sup> Venice Commission and ODIHR, Joint Guidelines on Political Party Regulation, CDL-AD(2020)032, para 149.

<sup>122</sup> See also, most recently, Venice Commission and ODIHR, Joint Opinion on the Draft Law on Political Parties of Mongolia, CDL-AD(2022)013, para 48; Venice Commission and ODIHR, Joint opinion on draft amendments to the legislation concerning political parties of Armenia, CDL-AD(2020)004, para 23.

<sup>123</sup> ECtHR, *Perinçek v. Switzerland* [GC], no. 27510/08, 15 October 2015, para 122.

<sup>124</sup> Council of Europe, [Recommendation CM/Rec\(2011\)14 of the Committee of Ministers to member states on the participation of persons with disabilities in political and public life](#), point 1.

member of a political party.<sup>125</sup> Freedom of association, including in the formation of and support to political parties, is essential to ensuring the full enjoyment and protection of the rights to freedom of expression and political participation, and it must be respected without discrimination. Furthermore, as emphasised in the Joint Guidelines, all individuals and groups that seek to establish or join a political party must be able to do so on the basis of equal treatment before the law. State regulations on political parties may not discriminate against individuals or groups on any ground such as sex, race, colour, language, religion, political or other opinion, national or social origin, association with a national minority, property, birth or other status.<sup>126</sup> Therefore, the Venice Commission and ODIHR recommend revising Article 20.9.4 of the Law to ensure that deprivation of legal capacity on the grounds of disabilities does not lead automatically to termination of membership in a political party.

### c. Restrictions on Certain Categories of Persons

91. In its previous opinions on the legislation on political parties of Azerbaijan, the Venice Commission also commented upon the restrictions imposed on certain professions. It noted that any rule of this type necessarily trenching on the rights of the person affected to take part in political life and that, hence, there was a scope for argument about the precise content of such a list /a list of professions on which restrictions are imposed.<sup>127</sup> It also noted that there were offices where the necessity for impartiality was such that they could not properly be filled by persons who at the same time played an active part in politics,<sup>128</sup> such as the judiciary, the ombudsperson and, arguably, senior prosecutors, but that the situation was more problematic with regard to some of the other professions.

92. The ICCPR explicitly foresees the possibility of imposing lawful restrictions of the right to freedom of association, including the right to join political parties, on members of the armed forces and of the police (Article 22(2)). The ECHR further adds the administration of the State (Article 11(2)). In the case of *Rekvenyi v. Hungary*, the ECtHR found lawful the obligation to refrain from political activities imposed on certain categories of public officials, including police officers, noting that such obligation was “intended to depoliticise the services concerned and thereby to contribute to the consolidation and maintenance of pluralistic democracy in the country”.<sup>129</sup> It also confirmed that “the desire to ensure that the crucial role of the police in society is not compromised through the corrosion of the political neutrality of its officers is one that is compatible with democratic principles”.<sup>130</sup> In the case of *Ahmed and Other v. the United Kingdom*, the ECtHR reached a similar conclusion with respect to certain categories of local government officials.<sup>131</sup>

93. The Law introduces a double-track regulation in this area. First, certain professions – judges, the Human Rights Commissioner, military personnel, special-ranking employees of the prosecutor's office, justice, internal affairs, customs, emergency situations, migration, foreign affairs, tax authorities, the Broadcasting Council of the Public Television and Radio Broadcasting Company, members, general director and his/her deputies, members of the Board of Directors and the Accounting Chamber of the Central Bank, religious figures and notaries – cannot be

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<sup>125</sup> Venice Commission and ODIHR, Joint opinion on draft amendments to the legislation of Armenia concerning political parties, [CDL-AD\(2020\)004](#), para 22; Venice Commission and ODIHR, Joint Opinion on the Draft Law on Political Parties of Mongolia, CDL-AD(2022)013, paras 34-39.

<sup>126</sup> Venice Commission and ODIHR, Joint Guidelines on Political Party Regulation, CDL-AD(2020)032, para 54.

<sup>127</sup> Venice Commission, Opinion on the Law on Political Parties of the Republic of Azerbaijan, CDL-AD(2004)025, para 15; Venice Commission, Opinion on the draft law on amendments to the law on political parties of the Republic of Azerbaijan, CDL-AD(2011)046, para 27.

<sup>128</sup> Venice Commission, Opinion on the Law on Political Parties of the Republic of Azerbaijan, CDL-AD(2004)025, para 15; Venice Commission, Opinion on the draft law on amendments to the law on political parties of the Republic of Azerbaijan, CDL-AD(2011)046, para 27.

<sup>129</sup> ECtHR, *Rekvenyi v. Hungary* [GC], no. 25390/94, 20 May 1999, para 41.

<sup>130</sup> ECtHR, *Rekvenyi v. Hungary* [GC], no. 25390/94, 20 May 1999, para 41.

<sup>131</sup> ECtHR, *Ahmed and Others v. the United Kingdom*, no. 22954/93, 2 September 1998, para 53.

members of political parties and cannot participate in the activities of political parties (Article 20.5). Second, *“other public servants, /.../, as well as those who are created on behalf of the state and carry out public policy in the relevant field and have the power of authority /.../, employees holding administrative positions in public legal entities may be members of a political party but may not participate in the activities of a political party while performing their duties”* (Article 20.6).

94. The Venice Commission and ODIHR note that some of the terms used in these provisions, e.g., public servants created on behalf of the state, special-ranking officials, are not fully clear, though this may be due to translation. It also notes that it would be useful to clarify whether the prohibition to participate in the activities of a political party refers only to the exercise of the right enshrined in Article 21.2.1 (i.e., to participate in the organisation of party bodies and be elected to them) or also to the other rights stipulated in Articles 21.2.2-21.2.6.

95. The distinction between the two categories of professions is not in itself problematic. The list under Article 20.5 seems to be a rather limited one, though the inclusion of notaries is somewhat unusual. In most European countries, notaries are free to become members of political parties, though sometimes they may be prohibited from becoming members of governing bodies of such parties or from being politically active.<sup>132</sup> Furthermore, the reference to *“religious figures”* gives rise to concerns; this is a vague concept that needs to be clarified. The list under Article 20.6 seems to be conversely rather broad, encompassing all public servants as well as persons in the authoritative or, even, administrative positions in various public entities. Read together with the increase of the required minimum number of members, such incompatibilities may render even more difficult for the parties to fulfil the criteria for registration of the party. The Venice Commission and ODIHR note that prohibiting such a large number of persons from engaging in political activities, especially if the prohibition would cover all the activities listed in Article 21.2, could be found a disproportionate and excessive interference with the right to freedom of association. They recommend reconsidering this provision to ensure that restrictions only apply to a limited range of persons for which such restrictions are necessary to guarantee their impartiality and the proper functioning of their non-partisan public offices.

#### d. Prohibition of multiple membership

96. Simultaneous membership in several political parties is also prohibited under the Law (Article 20.1). The Venice Commission and ODIHR have stated in several opinions that the question of whether party founders may also be members of other political parties should be left to the discretion of political parties themselves.<sup>133</sup> They recall that *free* association is a fundamental individual right that should not generally be limited by legislative requirements obliging an individual to only associate with a single organisation. Therefore, laws that limit party membership to only one political party must show compelling reasons for doing so.<sup>134</sup> Individual political parties may require the termination of membership in other political parties for persons wishing to join their party, but regulating such matters in state law cannot be deemed “necessary in a democratic society” in the sense of Article 11, para 2 of the ECHR. For this reason, the Venice Commission and ODIHR recommend removing from the Law the prohibition of multiple membership in political parties.

#### e. Register of Political Party Members

97. Pursuant to Articles 12.3.2 and 20.10, each political party shall set up, maintain and regularly update a register of its members, indicating the personal data (first name, surname, patronymic, date of birth, registered address, local organisation of the registered party (if any) and contact

<sup>132</sup> See e.g. Montenegro, *Code of Notary Ethics*, 2021, Article 11.

<sup>133</sup> Venice Commission and ODIHR, Joint Opinion on the draft law on political parties of Ukraine, CDL-AD(2021)003, para 57; Venice Commission and ODIHR, Armenia - Joint Opinion on the Draft Constitutional Law on Political Parties, CDL-AD(2016)038, para 21.

<sup>134</sup> Venice Commission and ODIHR, Joint Guidelines on Political Party Regulation, CDL-AD(2020)032, para 150.

phone number) of these members. Having such a register is one of the conditions for the state registration of a political party (Articles 5.9 and 30.1). The information in the register is regularly, at least twice a year, verified by the Ministry of Justice (Article 7.2.2). Members have an obligation to inform their party about any changes in their personal information contained in the register (Article 22.2.7). It is not fully clear whether the register would get public.

98. The requirement for political parties to set up, maintain and update a register of members is not in itself necessarily unlawful and illegitimate. The requirement of making such a list available to the Ministry of Justice and, even more, to the general public could however be so, especially if all the personal data indicated in Article 20.10 would need to be made accessible. As the Venice Commission and ODIHR recalled in one of their previous joint opinions, *“the obligation to inform public authorities and the wider public of the names of all members of the political parties is clearly a limitation of the freedom of association of these members individually and of the party collectively. Information on the membership of a political party is also protected by the right to privacy, as such information provides direct insights into the political opinions of individuals”*.<sup>135</sup> The Joint Guidelines further underline that the requirement for the party to provide the state with lists of its members would appear to be an overly intrusive measure that is not compatible with the principles of necessity and proportionality.<sup>136</sup>

99. It is not certain which purpose such a requirement would serve. Since the main goal of having a register seems to be to make it possible for the Ministry of Justice to verify whether the party has the required number of members, providing a full list of members to the authorities, let alone making such a list public, seems unnecessary. The regular, at least twice-a-year verification of the information contained in the register by the Ministry of Justice (when the information is moreover updated once a year, by 15 January) appears to be excessive and hardly compatible with the presumption of lawfulness of activities of political parties, on which any legal regulation in this area should rely.<sup>137</sup> Such frequent checks may in fact have a chilling effect on individuals and might discourage them from becoming members of political parties. During the online meetings, the rapporteurs were concerned to hear from representatives of opposition parties that they were reluctant to register their party as this would oblige them to disclose the identity of their members to the authorities and expose them to potential pressure.

100. The Venice Commission and ODIHR therefore recommend, at the very least, removing the obligation on political parties to provide access to state authorities to an updated register of their members for verification. If this obligation is maintained, an independent agency and not the Ministry of Justice, should be assigned all the functions the Law now attributes to the Ministry of Justice and clear guarantees should be offered for the independence of this agency (independence from government or ministers, no hierarchical links to other authorities, etc.) and for the confidentiality of the data it receives. In such case, political parties should not be required to submit the entire membership registry but only a list of members proving compliance with the minimum number of members required for registration purpose (see also recommendation B with regard to minimum membership). It would also need to be made clear in the Law that the list of members is an internal document of the party and is not to be made publicly available. In any case, verifications or checks should be made less frequent and should not take place unless there is suspicion of a serious contravention of the legislation, and should only serve the purpose of confirming or discarding the suspicion.<sup>138</sup>

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<sup>135</sup> Venice Commission and ODIHR, Joint Opinion on the draft law on political parties of Ukraine, CDL-AD(2021)003, para 77, which refers in this context to ECtHR, *Catt v. the United Kingdom*, no. 43514/15, 24 January 2019, para 112, stressing that personal data revealing political opinion falls among the special categories of sensitive data attracting a heightened level of protection.

<sup>136</sup> Venice Commission and ODIHR, Joint Guidelines on Political Party Regulation, CDL-AD(2020)032, para 154.

<sup>137</sup> Venice Commission and ODIHR, Joint Guidelines on Political Party Regulation, CDL-AD(2020)032, para 37.

<sup>138</sup> See Venice Commission and ODIHR, Joint Guidelines on Freedom of Association, CDL-AD(2014)046, para 231.

## 5. Financing of Political Parties

101. Chapter 5 of the Law is devoted to the financing of political parties. Various sources of such financing are foreseen in Article 23.1, encompassing membership fees, donations, state financial assistance, the income obtained from publications, funding from civil law contracts (including the funds obtained from the use and sale of property), property acquired through legal succession and inheritance and other income not prohibited by law. At the same time, political parties are prohibited from being financed, including through donations, by state bodies, local self-government bodies, other legal entities (public associations, religious institutions), international organisations, foreign states and foreign legal entities, foreigners and stateless persons, minors and persons with legally limited capacity and unspecified natural persons (Article 23.2). It seems that trade unions are no longer included in the list of prohibited donors, which is to be welcomed, as it also corresponds to the recommendation contained in the previous opinions.<sup>139</sup> Political parties may not open an account outside the country (Article 23.6) and they can only accept funding in national currency and transfer it into a bank account without cash (Article 23.7).

102. Many of the above-mentioned limitations on funding are reasonable and common, such as limitations on donations from businesses and private organisations, and the prohibition of donations from legal entities under the control of the state or of other public authorities.<sup>140</sup> However, the strict prohibitions regarding funding from abroad are problematic. As noted in previous opinions, international obligations tend to be restrictive when it comes to foreign funding of political parties and this requires a careful and nuanced approach to foreign funding which weighs the protection of national interests against the rights of individuals, groups and associations to co-operate and share information.<sup>141</sup> The Venice Commission and ODIHR have stressed on several occasions that there should be exceptions to an outright prohibition for contributions from international organisations or even by other states when based on international agreements, which might provide resources for purposes of party-building or education and for resources provided by international and European party groups.<sup>142</sup> Similarly, the Joint Guidelines underline that an exception “can be made for donations from international organisations for the purposes of party-building and education, as long as it is ensured that these contributions are not used to fund electoral campaigns or to advantage some parties at the expense of others”.<sup>143</sup> The Venice Commission and ODIHR recommend considering such exceptions to the prohibition of funding from abroad.

103. Article 23.2.7 provides that a political party is prohibited from being financed by natural persons who do not indicate their name, surname, patronymic, date of birth, registered address and contact telephone number. This is partly in line with the Council of Europe Committee of Ministers’ Recommendation (2003)4 which requires that in case of donations over a certain value, donors should be identified in the records. It is not clear to what extent this information on the identity of the donator is made public for the sake of transparency of party financing. If this is the case, it is important to recall that transparency or reporting requirements must strike a fair balance between necessary disclosure and the required privacy and data protection safeguards of individual donors.<sup>144</sup> The Venice Commission and ODIHR recommend providing that only names

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<sup>139</sup> Venice Commission, Opinion on the Law on Political Parties of the Republic of Azerbaijan, CDL-AD(2004)025, para 23-27; Venice Commission, Opinion on the draft law on amendments to the law on political parties of the Republic of Azerbaijan, CDL-AD(2011)046, para 50.

<sup>140</sup> Venice Commission and ODIHR, Joint Guidelines on Political Party Regulation, CDL-AD(2020)032, paras 211-212 and 214.

<sup>141</sup> See, e.g., Venice Commission and ODIHR, Joint Opinion on the draft act to regulate the formation, the inner structures, functioning of political parties and their participation in election of Malta, CDL-AD(2014)035, para 24.

<sup>142</sup> Venice Commission and ODIHR, Joint Opinion on the draft amendments to some legislative acts concerning prevention and fight against political corruption of Ukraine, [CDL-AD\(2015\)025](#), para 33; Venice Commission, Opinion on the Law on the Financing of Political Parties of Bosnia and Herzegovina, [CDL-AD\(2008\)002](#), para 15.

<sup>143</sup> Venice Commission and ODIHR, Joint Guidelines on Political Party Regulation, CDL-AD(2020)032, para 231.

<sup>144</sup> See, e.g., Venice Commission and ODIHR, Joint Opinion on the Draft Law on Political Parties of Mongolia, CDL-AD(2022)013, para 102.

of donors and amounts above a certain level be made public<sup>145</sup> and that the private addresses and contact details of donors shall not be made public.<sup>146</sup>

104. Political parties may receive donations, but only from citizens of Azerbaijan (Article 24.1). Donations may not be linked to or conditioned on any specific services or favours (Articles 24.2-3) and they can be in the form of cash, property or services (Article 24.4). The upper limit of a person's donation to one or more parties during one year may not exceed 35 times the minimum wage (Article 24.5). While introducing an annual limit on donations might be legitimate, it is not clear why the figure of 35 minimum wages has been opted for. This same amount is set for the maximal annual membership fee (Article 23.3). It might however be expected that annual membership fees would be lower than donations. The Joint Guidelines stress that membership fees should not be so high as to unduly restrict membership and they should be of reasonable amount.<sup>147</sup> In the view of the Venice Commission and ODIHR, 35 minimum wages would appear as a rather high annual membership fee. While parties are free of course to opt for lower fees, it is recommended to set a lower maximum amount in the Law. This would also prevent the risk of misusing membership fees as "hidden donations" and avoiding transparency of party finances, bearing in mind that only donations are to be reported in detail to the Central Election Commission (Article 24.6). In turn, the maximum amount for donations could be adequately increased.

105. Political parties also obtain financial assistance from the state. The rules for the allocation of such assistance are set out in Article 25 of the Law. Provision of state financing is important for the ability of political parties to free themselves from influences of narrow, affluent interests. Currently the total sum appears to be determined and allocated on yearly bases as a line in the state budget, thus detracting from legal certainty. As underlined in the Joint Guidelines, the level of available public funding should be clearly defined in the relevant legislation and the rights and duties of the body with legal authority to set and revise the maximum level of financial support should also be clearly set out.<sup>148</sup> The Venice Commission and ODIHR recommend supplementing the provision on annual public financing allocation (Article 25.1) accordingly.

106. Under Article 25, 40% of the funds are divided equally among all parties represented in the Parliament. 50% are divided among such parties in accordance with the number of their members in the Parliament. 5% are reserved for parties gaining seats in the Parliament in repeated or additional elections or due to the changes of party affiliations. The remaining 5% are allocated to parties which got votes in the elections but did not get to the Parliament (2.5% is distributed equally, 2.5% proportionally according to the results in the elections).

107. As the Venice Commission and ODIHR have stated on previous occasions, there is no universally prescribed system for determining the distribution of public funding and each legislator may choose to require minimum thresholds of support for political parties to qualify for public funding. That said, unreasonably high thresholds may be detrimental to political pluralism and the opportunities of small political parties.<sup>149</sup> The current financing system in Azerbaijan does not exclude that many parties which obtained a relatively high amount of votes without reaching the threshold will only obtain a very small financial support. In this connection, it should be noted that 19 out of 55 registered political parties participated in the 2020 parliamentary elections. Based on the majoritarian electoral system applicable for the distribution of the seats, eight of those

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<sup>145</sup> Venice Commission, Opinion on the Law on Political Parties of the Republic of Azerbaijan, CDL-AD(2004)025, para 22.

<sup>146</sup> Venice Commission and ODIHR, Joint Opinion on the Draft Law on Political Parties of Mongolia, CDL-AD(2022)013, para 102.

<sup>147</sup> Venice Commission and ODIHR, Joint Guidelines on Political Party Regulation, CDL-AD(2020)032, paras 207-208.

<sup>148</sup> Venice Commission and ODIHR, Joint Guidelines on Political Party Regulation, CDL-AD(2020)032, para 243.

<sup>149</sup> Venice Commission and ODIHR, Joint Opinion on the draft law on political parties of Ukraine, CDL-AD(2021)003, para 105. See also Venice Commission and ODIHR, Joint Guidelines on Political Party Regulation, CDL-AD(2020)032, para 239.

parties obtained a seat in Parliament: the majority party obtained 70 mandates, and the other seven parties altogether nine mandates; further 41 mandates were obtained by individual candidates. Under such circumstances, the system of distribution of state funding can hardly be considered as fair. In the specific context of Azerbaijan, and given the application of the majoritarian system, the Venice Commission and ODIHR recommend revising the formula for distribution of state funding, for example by giving more weight to the number of votes received by a political party, instead of the seats obtained in Parliament. Other considerations could be taken into account for the allocation of public funding such as diverse and gender-balanced representation, as an incentive, in light of the under-representation of women in political life (see Section III.C.1.a).

108. The distribution formula should also be designed in such a way that it ensures adequate funding of newly formed political parties. The current Law does not address the concerns raised in this respect in the 2011 opinion.<sup>150</sup> The fact that the Law only provides for post-election public funding to parties that participated in the last national elections gives rise to concern. This approach will especially undermine newly founded political parties or parties that missed out on one election, as they would then not be eligible for state funding, even though they might be the ones who need it most. It is therefore recommended to consider the establishment of a funding system that would allow funding allocations early enough in the electoral process, to ensure equal opportunities throughout the period of campaigning.<sup>151</sup>

109. Political parties may own property and may use it (only) for the achievement of goals and objectives arising from their charter and programme and the implementation of tasks. They are not allowed to own industrial enterprises, cooperatives or production enterprises (Articles 26.1-3). This regulation is not problematic. Somewhat unusually, a state body, the Ministry of Economic Affairs of Azerbaijan, is expected to provide political parties with headquarters (Article 26.5). The provision of headquarters, if retained, should comply with the principle of equality of treatment of political parties and transparency.

110. Political parties have to submit a financial report, together with an audit report, once a year (Article 27.1). The form, content and submission procedure are to be determined by the Cabinet of Ministers (Article 27.4). It would be preferable to have those specified directly in the Law. The annual report and the audit report are to be made public (Article 27.6). Although an important transparency provision, this norm could be made more explicit by including such important information as uniform reporting forms that political parties use, specification in which media the reports are published, and specification on the timelines – by what date such report should be published.

111. The failure by a political party to submit the report “*in an appropriate manner*” is sanctioned by the suspension of the state financial aid (Article 27.7). If this violation is repeated in the next year, the political party will not be paid state financial aid for the remaining quarters of that year, as well as for the next year. These sanctions are quite harsh and, thus, the conditions for their application should be stated in much clearer terms to minimise the risk of their abuse and ensure proportionality of the sanction. The Venice Commission and ODIHR recommend amending Article 27 accordingly and, in addition, providing explicitly for legal remedies in cases where state funding is not paid.

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<sup>150</sup> See Venice Commission, Opinion on the draft law on amendments to the law on political parties of the Republic of Azerbaijan, CDL-AD(2011)046, para 43.

<sup>151</sup> See in this context Venice Commission and ODIHR, Joint Guidelines on Political Party Regulation, CDL-AD(2020)032, para 238, which encourage states to give careful consideration to pre-election funding systems, as opposed to post-election reimbursement, as the latter can perpetuate the inability of small, new or less wealthy parties to compete effectively. See also Venice Commission and ODIHR, Joint Opinion on the draft law on political parties of Ukraine, CDL-AD(2021)003, para 105.

#### IV. Conclusion

112. The Venice Commission has been asked by the Chair of the Monitoring Committee of the Council of Europe's Parliamentary Assembly to prepare an opinion on the Law on Political Parties of Azerbaijan. As this opinion relates to the field of elections and political parties, it has been prepared jointly by the OSCE Office for Democratic Institutions and Human Rights (ODIHR) and the Venice Commission.

113. The Law on Political Parties was adopted by Parliament on 16 December 2022 and signed into law by the President of Azerbaijan on 11 January 2023. It replaces the Law on Political Parties of 3 June 1992 which had been assessed by the Venice Commission at the request of the Azerbaijani authorities. Regrettably, the Venice Commission and ODIHR have not been given the opportunity to discuss the new law with the authorities of Azerbaijan.

114. When compared to the 1992 Law on Political Parties of Azerbaijan, the new law is, from the formal point of view, more detailed and has a more elaborate structure. From the substantive point of view, the main changes pertain to the conditions under which a political party may be established, the possibility for a political party to operate without a registration, the control over political parties exercised by state authorities, the rules on funding of political parties and the cases in which a political party may be dissolved. In most of these areas, the regulation has become much stricter.

115. The new law partly addresses some previous recommendations of the Venice Commission, for example in the area of party financing and its control. However, several other previous comments and recommendations have not been taken into account, for example with respect to foreigners and stateless persons, who are not allowed to become members of political parties, even if they permanently reside on the territory of Azerbaijan.

116. Moreover, and most importantly, the new law has introduced a number of new highly problematic provisions which risk having further chilling effects on pluralism in the country. The most serious among them are the following ones:

- the increase of the minimum number of members of the party from 1,000 to 5,000;
- the need for the already registered political parties to undergo a re-registration;
- the lengthy terms and cumbersome procedure foreseen for the establishment and registration of political parties;
- the prohibition to operate a political party without state registration;
- the overregulation of internal party structures and operations;
- the excessive control exercised by the Ministry of Justice over party activities and over the registers of members of political parties;
- the possibility to suspend the activities of a political party or even dissolve a party in cases not involving serious violations of the legal acts by such a party.

117. The aforementioned new regulations give rise to serious concerns with respect to the right to freedom of association which is guaranteed both in international human rights instruments and the national Constitution. The Venice Commission and ODIHR recall that the rights to free association and free expression are fundamental to the proper functioning of a democratic society. Political parties, as collective instruments for political expression, must be able to fully enjoy such rights. This implies, *inter alia*, that substantive registration requirements and procedural steps for registration should be reasonable and be carefully drafted to achieve legitimate aims necessary in a democratic society; state control over political parties should be limited to what is necessary in a democratic society; in particular, political parties should control their own internal procedures; extensive state monitoring of the internal functioning of a political party, including the requirement for the party to provide the state with lists of its members, would



appear to be an overly intrusive measure that is not compatible with the principles of necessity and proportionality; suspension and dissolution of political parties may only be applied in case of the most serious violations of normative legal acts and in last resort.

118. In light of the above, the Venice Commission and ODIHR make the following key recommendations:

- A. Defining more precisely in Article 4.3 the purposes for which it is not allowed to establish and operate political parties, while removing unclear or vague terminology; [paragraphs 34-36]
- B. Facilitating the establishment and registration of political parties, *inter alia* by – at the very minimum – reverting to the original number of members required for the state registration of a political party that figured in the 1992 law (1,000 members), or replacing the membership requirement by other less stringent requirements for demonstrating minimum support; [paragraph 50]
- C. Extending the circle of individuals who may become members of political parties to foreigners and stateless persons, notwithstanding the possibility to introduce certain restrictions on aliens' activities "that directly relate to the political process" within the meaning of Article 16 of the ECHR; [paragraph 88]
- D. Removing the obligation on political parties to provide access to state authorities to an updated register of their members for verification. If this obligation is maintained, an independent agency and not the Ministry of Justice should be assigned all the functions the Law now attributes to the Ministry of Justice and clear guarantees should be offered for the independence of this agency and for the confidentiality of the data it receives. In such case, political parties should not be required to submit the entire membership registry but only a list of members proving compliance with the minimum number of members required for registration purpose (see also recommendation B with regard to minimum membership). It would also need to be made clear in the Law that the list of members is an internal document of the party and is not to be made publicly available. In any case, verifications or checks should be made less frequent and should not take place unless there is suspicion of a serious contravention of the legislation, and should only serve the purpose of confirming or discarding the suspicion; [paragraph 100]
- E. Scaling back the overly regulatory approach concerning internal party structures and operations and keeping only those provisions which are clearly necessary to guarantee transparency and fair democratic governance, in order to enhance the inner autonomy of political parties and to allow them to determine their internal operation and procedures, without too much state interference; [paragraph 84]
- F. Revising the formula for distribution of state funding, for example by giving more weight to the number of votes received by a political party, instead of the seats obtained in Parliament; [paragraph 107]
- G. Providing that only names of donors and amounts above a certain level be made public and that the private addresses and contact details of donors shall not be made public; [paragraph 103]
- H. Revising the oversight mechanism to ensure that control over political parties is exercised by an impartial and independent body, and significantly reducing the scope of control (*inter alia*, excluding the party charter from that scope); [paragraphs 58-60]
- I. Limiting the cases in which a political party may be suspended or, in the absence of redress, be dissolved or lose its registration, to the situations involving most serious violations of legal rules by the relevant political party, and providing for a range of less severe sanctions applicable in case of less serious violations. [paragraphs 65 and 72]

119. These and a number of additional recommendations are included throughout the text of this Joint Opinion.

120. The Venice Commission and ODIHR remain at the disposal of the Azerbaijani authorities and of the Parliamentary Assembly for further assistance in this matter.