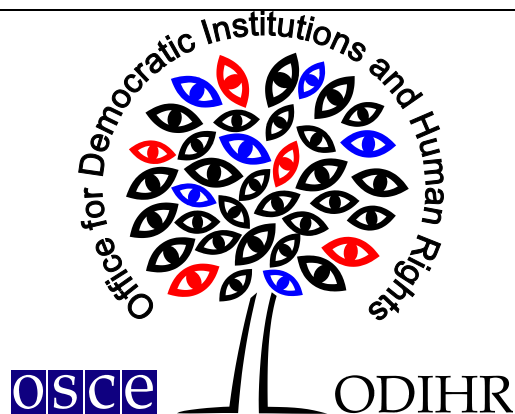


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OPINION ON THE CONSTITUTIONAL LAW OF THE REPUBLIC OF ARMENIA ON POLITICAL PARTIES

based on an unofficial English translation of the Law

*This Opinion has benefited from contributions made by
Fernando Casal Bértoa (OSCE/ODIHR Core Group of Experts on Political Parties),
Lolita Cigane (OSCE/ODIHR Core Group of Experts on Political Parties) and
Richard Katz (OSCE/ODIHR Core Group of Experts on Political Parties)*

OSCE Office for Democratic Institutions and Human Rights
Ulica Miodowa 10 PL-00-251 Warsaw ph. +48 22 520 06 00 fax. +48 22 520 0605

*This Opinion is also available in Armenian.
However, the English version remains the only official version of the document.*

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Annex: Constitutional Law of the Republic of Armenia on Political Parties

I. INTRODUCTION

1. *By letter of 12 September 2019, the Chair of the State and Legal Committee of the National Assembly of Armenia requested the OSCE Office for Democratic Institutions and Human Rights (hereinafter “OSCE/ODIHR”) to review the Constitutional Law of the Republic of Armenia on Political Parties (hereinafter “the Law”).*
2. *On 13 September 2019, the OSCE/ODIHR responded to this request, confirming the Office’s readiness to prepare a legal opinion on the compliance of the Law with OSCE commitments and international human rights standards.*
3. *In 2016, OSCE/ODIHR, together with the European Commission for Democracy through Law, had already reviewed an earlier draft of the Law and released a Joint Opinion on the Draft Constitutional Law on Political Parties of Armenia (hereinafter “2016 Joint Opinion”).¹*
4. *This Opinion was prepared in response to the above request. The OSCE/ODIHR conducted this assessment within its mandate.*

II. SCOPE OF REVIEW

5. The scope of this Opinion covers only the Law, submitted for review. Thus limited, the Opinion does not constitute a full and comprehensive review of the entire legal and institutional framework governing political party regulations in Armenia.
6. The Opinion raises key issues and provides indications of areas of concern. In the interest of conciseness, the Opinion focuses more on those provisions that require improvements rather than on the positive aspects of the Law. The Opinion will concentrate on issues which have been raised in the 2016 Joint Opinion and have not been addressed in the adopted legislation which was submitted for review. The ensuing recommendations are based on international standards and practices related to political party regulation. The Opinion will also seek to highlight, as appropriate, good practices from other OSCE participating States in this field.
7. Moreover, in accordance with the Convention on the Elimination of All Forms of Discrimination against Women² (hereinafter “CEDAW”) and the 2004 OSCE Action Plan for the Promotion of Gender Equality and commitments to mainstream a gender perspective into OSCE activities, the Opinion analyses the potentially different impact of the Law on women and men.³
8. This Opinion is based on an unofficial English translation of the Law which is attached to this document as an Annex. Errors from translation may result. This Opinion is also available in Armenian. However, the English version remains the only official version of the document.

¹ Joint Opinion on the Draft Constitutional Law on Political Parties of Armenia, 12 December 2016, available at <http://www.legislationline.org/documents/id/20087>.

² *UN Convention on the Elimination of All Forms of Discrimination against Women* (hereinafter “CEDAW”), adopted by General Assembly resolution 34/180 on 18 December 1979. The Republic of Armenia acceded to this Convention on 13 September 1993.

³ See par 32 of the OSCE Action Plan for the Promotion of Gender Equality adopted by Decision No. 14/04, MC.DEC/14/04 (2004), available at <http://www.osce.org/mc/23295?download=true>.

9. In view of the above, the OSCE/ODIHR would like to make mention that this Opinion does not prevent the OSCE/ODIHR from formulating additional written or oral recommendations or comments on the respective legal acts or related legislation of Armenia that the OSCE/ODIHR may wish to make in the future.

III. EXECUTIVE SUMMARY

10. At the outset, OSCE/ODIHR welcomes that the legal framework currently in place in Armenia implements several recommendations made in the 2016 Joint Opinion. If adequately implemented, many aspects of the Law can contribute to greater autonomy for political parties and to levelling the playing field among them. However, significant shortcomings are apparent, in particular, in the area of monitoring and oversight of political party finances, which is a vital part of any functioning legal framework in the area of political parties. Additionally, it should be ensured that a catalogue of proportionate sanctions is applicable in cases of violations of the Law.
11. More specifically, and in addition to what was stated above, OSCE/ODIHR makes the following recommendations to further enhance the Law:
 - A. To amend the Law to state that a majority or qualified majority of votes of the founders of a political party attending the founding congress is sufficient for the establishment of a political party and to remove other overly burdensome requirements for founding and registering a political party; [pars 18-20]
 - B. To remove overly detailed regulation of a political party's governing bodies and decision-making processes; [pars 21-22]
 - C. To introduce measures aimed at increasing the political participation of women, persons with disabilities and youth; [pars 28-29]
 - D. To considerably strengthen the system of financial oversight by vesting the oversight body with investigative powers which are clearly spelled out and by detailing the procedure for receiving and investigating complaints; [par 30-32]
 - E. To make the allocation of public funding conditional upon the adequate fulfillment of reporting requirements as well as compliance with relevant accounting and auditing prior to receiving public funds; [pars 33-34]
 - F. To state that, at a minimum, the OAS should have the power to initiate an audit if it receives credible information of falsified reports or other serious financial violations; [par 35]
 - G. To amend the Law so that the term "gross nature of the violation of the law" reflects the gravity of the violation; [par 38]
 - H. To ensure a catalogue of dissuasive and effective sanctions is applicable, which are proportionate to violations of the Law, in particular, of reporting and disclosure obligations; [par 39-42] and
 - I. To remove the requirement of "active legal capacity" as a prerequisite to being a member of a political party [par 43].

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

IV. ANALYSIS AND RECOMMENDATIONS

1. International Standards on Political Party Regulation

12. This Opinion analyses the Law on Political Parties with regard to its compatibility with international, in particular, Council of Europe, obligations and standards on the prevention of corruption in politics, political party and campaign financing, as well as with key OSCE commitments. In this regard, good practices from other OSCE participating States and Council of Europe member States are also taken into account.
13. Article 22 of the International Covenant on Civil and Political Rights⁴ and Article 11 of the European Convention on Human Rights (ECHR)⁵ set standards regarding the right to freedom of association, which protects the rights of political parties as special types of associations and their members. Pursuant to Article 7 par 3 of the United Nations (UN) Convention against Corruption⁶ “[e]ach State Party shall also consider taking appropriate legislative and administrative measures, consistent with the objectives of this Convention and in accordance with the fundamental principles of its domestic law, to enhance transparency in the funding of candidatures for elected public office and, where applicable, the funding of political parties”. The UN Convention on the Rights of Persons with Disabilities (CRPD) contains State obligations in the area of political participation of persons with disabilities.⁷ This Opinion further takes into consideration OSCE commitments, in particular, on the protection of the freedom of association (Copenhagen Document, par 9.3)⁸ Within the OSCE context, the Ministerial Council’s Decision 7/09 on women’s participation in political and public life is also of interest.⁹
14. In addition, soft-law standards in the area of political party regulation can be found in the recommendations of the UN, Council of Europe and OSCE bodies and institutions. At the UN level, these include General Comment No. 25 of the UN Human Rights Committee on the right to participate in public affairs, voting rights and the right of

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

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

⁶ UN Convention against Corruption, adopted on 31 October 2003, ratified by Armenia on 8 March 2007, available at:

http://www.unodc.org/documents/treaties/UNCAC/Publications/Convention/08-50026_E.pdf.

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

<https://www.ohchr.org/EN/HRBodies/CRPD/Pages/ConventionRightsPersonsWithDisabilities.aspx#12>;

Armenia ratified the CRPD on 20 September 2010 (hereinafter “CRPD”).

⁸ 1990 OSCE Copenhagen Document (29 June 1990) 29 ILM 1305, available at <http://www.osce.org/odihr/elections/14304?download=true>.

⁹ OSCE Ministerial Council Decision 7/09, 2 December 2009, Women’s participation in political and public life, available at <https://www.osce.org/mc/40710?download=true> (hereinafter “MC Decision 7/09”).

equal access to public service.¹⁰ Within the Council of Europe and OSCE area, Council of Europe Committee of Ministers Recommendation 2003(4) on Common Rules against Corruption in the Funding of Political Parties and Electoral Campaigns,¹¹ Recommendation 2003(3) on balanced participation of women and men in political and public decision making,¹² as well as the Joint OSCE/ODIHR-Venice Commission Guidelines on Political Party Regulation are of relevance.¹³ Throughout the Opinion, reference will also be made to previous opinions issued by OSCE/ODIHR and the Venice Commission. Additionally, election reports from previous OSCE/ODIHR election observation missions in Armenia are also referenced.¹⁴

2. General Remarks

15. Article 2 of the Law refers to a political party as a union of citizens. As mentioned in the 2016 Joint Opinion¹⁵ **a general exclusion of foreign citizens and stateless persons from membership in political parties is not justified, as they should to some extent be permitted to participate in the political life of their country of residence, at least as far as they can participate in elections.**¹⁶ It is recommended to amend the Law accordingly.
16. Similarly, as stated in the 2016 Joint Opinion, **it is recommended to reintroduce the principle of freedom of political parties into Article 4 and to explicitly mention the promotion of gender equality and inclusiveness in the provision, which would also pertain to the political participation of persons with disabilities, youth and national minorities.**

3. Registration of Political Parties

17. Compared to previous legislation and the draft reviewed in 2016, the requirements for registration have been liberalized, for example reducing the number of initial members necessary from 1000 to 800 (Article 9 par 2 of the Law) and increasing the time period

¹⁰ UN Human Rights Committee General Comment 25, *The right to participate in public affairs, voting rights and the right of equal access to public service*, UN Doc. CCPR/C/21/Rev.1/Add.7, available at <http://www.refworld.org/docid/453883fc22.html>.

¹¹ Council of Europe Committee of Ministers Recommendation 2003(4) on *Common Rules against Corruption in the Funding of Political Parties and Electoral Campaigns*, available at [http://www.coe.int/t/dghl/cooperation/economiccrime/cybercrime/cy%20activity%20interface2006/rec%20003%20\(4\)%20pol%20parties%20EN.pdf](http://www.coe.int/t/dghl/cooperation/economiccrime/cybercrime/cy%20activity%20interface2006/rec%20003%20(4)%20pol%20parties%20EN.pdf) (hereinafter “Recommendation 2003(4)”).

¹² Council of Europe Committee of Ministers Recommendation 2003(3) on *balanced participation of women and men in political and public decision making*, available at https://search.coe.int/cm/Pages/result_details.aspx?ObjectID=09000016805e0848 (hereinafter “Recommendation 2003(4)”).

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

¹⁴ All OSCE/ODIHR election observation mission reports can be found at: <http://www.osce.org/odihr/elections/armenia>.

¹⁵ *Op. cit.* footnote 1 par 18 (2016 Joint Opinion).

¹⁶ See Venice Commission, *Guidelines and Explanatory Report on Legislation on political parties: Some Specific Issues* (015 April 2004) CDL-AD (2004)007rev, Guidelines on, item “H”.

- for registration from 3 months to one year following the founding congress of the new party (Article 9 par 5 of the Law).
18. At the same time, the Law still contains several provisions which make establishment and registration overly burdensome for new political parties. For instance, the Law does still require the decisions on establishment, approval of the program and the statute as well as formation of governing and supervisory bodies to be adopted unanimously by the 100 founders attending the founding congress (Article 8 par 2 of the Law). **There is no reason to require unanimity of all the founders, which may be hard to achieve on all of these points. It is recommended, as stated in the 2016 Joint Opinion, to change the Law so that majority of votes of the founders is sufficient or to, at a minimum requiring a qualified majority of votes to be sufficient.**
 19. **Similarly, it is recommended to revisit the requirement of having 800 members at the time of registration of a political party. The temporal gap between founding a party with 100 founders but not being able to register it before it has 800 members with geographical representation might leave political parties in an unnecessary legal limbo.**
 20. Pursuant to Article 8 par 4 of the Law “[a]t least one month before the day of holding the founding congress, the organisers of the founding congress shall publish a notification about the time and venue of the founding congress of the political party, as well as the general provisions of the draft statute and draft programme of the political party on the official website for public notifications of the Republic of Armenia.” This provision seems to disproportionately interfere with the internal rules of political parties. **While transparency of the activities, processes and aims of political parties is important, the provision introduces a disproportionate limitation that can in fact hinder the prompt registration of a political party and should be removed. Furthermore the founding congress itself could be used to develop the programme and other party documents through participatory processes which might make the requirement of publishing these documents prior to the congress illogical in some cases. Lastly, requirements in Article 8 par 4 and Article 9 par 7 to publish party documents on a country’s official webpage for public notifications and the Ministry of Justice respectively are excessive and it should generally be sufficient to publish party documents on a party’s own website.**

4. Internal Party Democracy

21. While, due to the important role of political parties in a democracy, some regulation of parties’ internal functioning can be seen as necessary to guarantee proper functioning of political parties in a democratic society, “[s]ubstantive registration requirements and procedural steps for registration should be reasonable. Where such registration requirements exist, they should be carefully drafted to achieve legitimate aims necessary in a democratic society”¹⁷ and must not unduly interfere with the right of parties as free associations to manage their own internal affairs.¹⁸ Some OSCE participating States require publication of party constitutions or charters in order to ensure party members

¹⁷ *Op. cit.* footnote 13 par 66 (Guidelines on Political Party Regulation).

¹⁸ *Ibid* par 97.

are aware of their rights and responsibilities. However, the creation and processes of creating constitutions or charters should not be regulated in an overly prescriptive or detailed manner. Constitutions or charters should ideally provide members who believe that the party's constitution has been violated with internal avenues of redress. When the law allows access to civil courts, such access should only be provided following the exhaustion of internal avenues of redress¹⁹ and only in exceptional circumstances, such as, for instance, in cases of direct discrimination or violations of fundamental principles of rule of law, while at the same time providing effective protection for the fundamental rights to free association and expression²⁰

22. While it is noted positively that the drafters sought to somewhat ease the burden on political parties by, for example, changing the requirements of having party congresses every two years to every four years, or by deleting the requirement that the programme of a political party must set out how to fulfill the party's goals and objectives, **Articles 17 and 18 of the Law on governing bodies and on decision-making processes at the party congress remain too detailed and overregulate some internal processes which should be left up to the internal leadership and membership of the political parties.**²¹ There is no need to in detail regulate some of these processes by the State. In particular, the election of the head of the permanently functioning governing body (Article 17 par 3 (3) of the Law) could be done through a variety of ways (such as parliamentary caucus, members, mixed methods etc.) and should be left to a party to decide for itself.

5. Financing of Political Parties

23. The Law mitigates some of the shortcomings of the previous Draft Law by, for example, including loans, credits and debts as forms of donations under Article 24 par 1 of the Law or by introducing a cap for membership fees in order to not create loopholes through which donation limits can be circumvented in Article 23 par 3 of the Law.
24. According to Article 2 of the Council of Europe Recommendation Rec (2003)4, a donation to a political party is “any deliberate act to bestow advantage, economic or otherwise, on a political party” which includes in-kind donations, including in the form of real estate.²² Article 24 par 2 regulates the caps on monetary donations, whereas par 3 deals with property. Both articles contain caps on monetary and real estate donations which seem reasonable and are in line with international practice. **However, the Law lacks clarity on whether there is a minimum age for donors or whether minors are allowed to donate to political parties, which might create a loophole to circumvent limits on individual donations.**
25. The Law does not contain provisions aiming at increasing the political participation of women, persons with disabilities or youth.

¹⁹ Ibid par 112

²⁰ Ibid par 229.

²¹ *Op. cit.* footnote , 1 par 34 (2016 Joint Opinion).

²² *Op. cit.* footnote 11 (Recommendation 2003(4)).

26. **Allowing for the establishment of youth organizations within the party in line with international good practice; in this context, it is important to ensure that persons below the age of 18 can participate despite the legal age limit for party membership in Article 12 par 2 of the Law. Hence the legislator may consider mentioning youth organizations of political parties within the Law.**
27. Similarly, political finance for women remains one of the greatest barriers to women's entry into politics. For this reason, the legislator might consider mentioning specific women's sections within parties.²³ In addition, consideration could be given to establishing temporary special measures which link allocation of some public funding to representation of women.²⁴ Some public funding could also be ear-marked for gender equality initiatives, such as for example training of female politicians, programmes related to women's empowerment and funds to support the functioning of women's sections. These initiatives are in line with emerging practice and international standards such as CEDAW²⁵, the Beijing Declaration and Platform for Action²⁶, Council of Europe Recommendation Rec(2003)3²⁷, as well as the MC Decision 7/09.²⁸
28. In addition, in accordance with another emerging international trend, public funds can also be used to increase participation in political life of persons with disabilities to political life in line with the CRPD.²⁹ Pursuant to Article 29 of the Convention, States shall "[e]nsure that persons with disabilities can effectively and fully participate in political and public life on an equal basis with others, directly or through freely chosen representatives, including the right and opportunity for persons with disabilities to vote and be elected." Through various measures ensuring accessibility and representation, States shall furthermore promote the participation of persons with disabilities "in the activities and administration of political parties" (Article 29 (b) (i) of the CRPD. Accordingly, legislation should ensure that persons with disabilities can participate in political life, including through engagement in political parties. Some public funding could also be ear-marked for initiatives supporting participation of persons with disabilities in political life. This may include public subsidies for providing campaign material in accessible formats or funds providing financial assistance of candidates with disabilities³⁰.
29. It is welcomed that political parties have to publish the statements detailing funds and expenditure pursuant to Article 27 par 2 of the Law. However, it would be preferable to specify further where exactly to publish the statements, as the Law currently states that they have to be published in "mass media" (in addition to the requirement to "post it on the official web-site of public notifications of the Republic of Armenia, as prescribed"). In order to receive wide coverage and to provide certainty to political parties as to what the publication requirement entails, **it is recommended to supplement the law with details of the kind of media (online and offline) in which the reports should be published and to**

²³ *Op. cit.* footnote 1, par 37 (2016 Joint Opinion).

²⁴ *Ibid.*

²⁵ *Op. cit.* footnote 2 (CEDAW).

²⁶ Fourth World Conference on Women 'Beijing Declaration and Platform for Action' in 'Report' (17 October 1995) UN Doc A/CONF.177/20, 4.

²⁷ *Op. cit.* footnote 12 (Recommendation 2002(3).)

²⁸ *Op. cit.* footnote 9 (MC Decision 7/09).

²⁹ *Op. cit.* footnote 7 (CRPD).

³⁰ See further OSCE/ODIHR Guidelines on Promoting the Political Participation of Persons with Disabilities (15 March 2019) e.g. p 51-52, 79, 97, available at <https://www.osce.org/odihr/414344?download=true>.

clarify that the publication should be available over an extended period of time and its format should be easily searchable and accessible.³¹

6. Oversight

30. As stated in Article 14 a of Recommendation 2003(4): “States should provide for independent monitoring in respect of the funding of political parties and electoral campaigns. The independent monitoring should include supervision over the accounts of political parties and the expenses involved in election campaigns as well as their presentation and publication.”³²
31. Chapter 8 of the Law dealing with oversight of political parties only contains one article, namely Article 30, while the reporting obligations of political parties and particulars on the audits of these statements are detailed in Chapter 6, Articles 27-28 of the Law. While some details regarding the composition and the mandate of the Oversight and Audit Service (hereinafter “OAS”) are regulated in Article 29 of the Electoral Code and while the appeals process against decisions of the CEC is outlined in the Electoral Code, many details are lacking that should be regulated when it comes to the oversight of political parties’ activities. Legislation should define the procedure for appointing its members, clearly delineate their powers and activities as well as specify the types and scope of violations requiring sanction (see pars 37-42 *infra*).³³
32. Legislation must include guidelines on how a legal violation may be brought to the attention of oversight bodies, what powers of investigation are granted to such bodies, and the range of applicable sanctions. Generally, legislation should grant oversight agencies the ability to investigate and pursue potential violations. While Article 29 par 6 of the Electoral Code delineate the powers of the OAS and also state that the OAS has the power to “receive” statements from banks, political parties and entities providing goods, services or carrying out works statements necessary for their monitoring tasks, it is unclear how far the investigative powers of the OAS go. Without such investigative powers, agencies are unlikely to have the ability to effectively implement their mandate.³⁴ Additionally, Article 29 par 6 does not empower the OAS to receive information from other public entities and institutions that may have information relevant to the OAS audits. **These issues should rectified in the Law by clearly stating that the OAS has investigative powers and by outlining them clearly, including deadlines in accordance to which entities have to comply with OAS**

³¹ See also OSCE/ODIHR Opinion on Opinion on Laws Regulating the Funding of Political Parties in Spain (30 October 2017) par 55, available at https://www.legislationline.org/download/action/download/id/7479/file/310_POLIT_ESP_30October2017; OSCE/ODIHR Opinion on Draft Amendments to some Legislative Acts of Ukraine concerning Transparency of Financing of Political Parties and Election Campaigns (14 September 2014), available at https://www.legislationline.org/download/id/5600/file/258_POLIT_UKR_11Sep%202014_en.pdf par 25; OSCE/ODIHR-Venice Commission 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 (14 October 2014), available at <http://www.legislationline.org/documents/id/19359>, par 38; and OSCE/ODIHR-Venice Commission Joint Opinion on the Draft Amendments to some Legislative Acts Concerning Prevention of and Fight against Political Corruption of Ukraine (26 October 2015) par 60, available at <http://www.legislationline.org/documents/id/19868>.

³² *Op. cit.* footnote 11 (Recommendation 2003(4)).

³³ *Op. cit.* footnote 13, par 213 (Guidelines on Political Party Regulation).

³⁴ *Ibid* par 220.

requests. In addition, the procedure for receiving complaints and for the oversight body to investigate complaints should be spelled out in detail.

33. In general, the framework of public funding is not sufficiently linked to requirements of transparency and reporting, leading to a discrepancy between Chapter 5 on one hand and Chapters 6, 8 and 9 on the other. According to Article 27 of the Law, political parties have to publish annual reports on their income and expenditure and are required to inform the Central Electoral Commission of its publication. Additionally, political parties whose assets exceed ten thousand-fold of the minimum salary prescribed by law have to undergo an audit before publication of its statements pursuant to Article 28 and, according to Article 28 par 3, “Political parties having received funding from the State Budget as prescribed by this Law shall be obliged to publish the statements only after undergoing audit and along with the audit opinion, where the funding from the State Budget in the reporting year has exceeded three thousand-fold of the minimum salary”. However, these reporting obligations are not immediately linked with the allocation of public funding, subject to proper and timely fulfillment of a political party’s reporting obligation or the possibility to suspend public funding in cases of inaccurate or missing reports.
34. Funding of political parties, in particular public funding, must be accompanied by supervision of the parties’ accounts by specific public bodies and public funding can only be allocated once a party has fulfilled its reporting, disclose and audit obligations.³⁵ The monitoring of income and expenditure, including from private sources, is necessary to ensure integrity and independence of political parties from wealthy individuals and political corruption. Monitoring of political parties is also a crucial part of sanctioning violations of the laws and regulations that govern political parties in a way that is proportionate, dissuasive and effective.³⁶ **It is recommended to make the allocation of public funding conditional upon the adequate fulfillment of reporting requirements as well as compliance with relevant accounting and auditing prior to receiving public funding.³⁷ Additionally, the reporting obligation under Article 28 par 3 of the Law should be extended to all political parties receiving public funds.**
35. Further, while detailed, objective and non-discriminatory procedural standards specifying how and on what grounds parties are chosen for auditing are important, **the Law should also specify that, at a minimum, the OAS should have the power to initiate an audit if it receives credible information of falsified reports or other serious financial violations.**
36. **Furthermore, adequate financing to ensure the proper functioning and operation of the regulatory body are also necessary. As the 2018 ODIHR Election Observation Mission Final Report stated “[l]egislator and the CEC should clearly define the OAS mandate for financial control and provide it with necessary material and human resources in order to ensure that the OAS is fulfilling a meaningful oversight of campaign finance.”³⁸**

³⁵ Ibid par 189.

³⁶ *Op. cit.* footnote 11 appendix, Article 16 (Recommendation 2003(4)).

³⁷ *Op. cit.* footnote 13, par 192 (Guidelines on Political Party Regulation).

³⁸ ODIHR Election Observation Mission Final Report, Republic of Armenia Early Parliamentary Elections 9 December 2018 Recommendation 14, available at <https://www.osce.org/odihr/elections/armenia/413555?download=true>.

4. Sanctions

37. Chapter 9 deals with sanctions political parties face for “gross violations” of the Law (Article 32 par 1 (1) of the Law) or for not having participated in elections for two consecutive times (Article 32 par 1 (2) of the Law). However, the only sanctions explicitly detailed in the Law are suspension or prohibition of the party activities.

4.1. Gross Violation

38. The Law defines “gross violation” in Article 32 par 2 as “(1) violation of the procedure prescribed by law for the disposal of donations or publication of the annual statements of the political party or provision of documents prescribed by law and failure to eliminate the violation within a thirty-day period after being subjected to liability as provided for by the Administrative Offences Code of the Republic of Armenia; or commission of such a violation during the foundation or state registration of a political party, for which the political party would not be registered if it has been known at the moment of state registration.” As pointed out in the 2016 Joint Opinion, this definition is vague and refers to an array of actions, without differentiating between minor and more serious actions.³⁹ As previously mentioned “[t]he suspension of a political party is a particularly invasive and exceptional measure, and should only be imposed in the most serious cases involving particularly grave violations of the rules on donations or on reporting, if other less invasive measures have proven ineffective”.⁴⁰ Hence, OSCE/ODIHR recommends that **the term “gross nature of the violation of the law” in Article 32 should reflect the gravity of the violation, while paying due regard to the proportionality principle** as outlined in the OSCE/ODIHR and Venice Commission Second Joint Opinion on the Electoral Code.⁴¹”.

4.2. Proportionality of Sanctions

39. Requirements can only be effective if they are accompanied by effective sanctions in case the requirements are not met. Article 16 of Recommendation Rec (2003)4 emphasizes the need for ‘effective, proportionate and dissuasive sanctions’ for breaches of party and campaign finance rules. Sanctions should always be compatible with the principle of proportionality. Prior to the enactment of any sanction, the regulatory authority should carefully consider the sanction’s aim, balanced against the possible detrimental effect to political pluralism or the enjoyment of protected rights. When sanctions are imposed, the public should be informed of the facts giving rise to the legal violation and the particular sanction imposed on the political party.⁴²
40. In particular, when it comes to reporting requirements, the Law foresees no possibility of proportionate, gradually escalating sanctions, ranging from fines to suspending or withholding public funding for a set period of time to the possibility of criminal sanctions. While, in the Armenian context, sanctions might be detailed in other pieces of legislation and not necessarily mentioned in the Law, it be preferable if external legislation were cross-referenced in order to ensure that proportionate, effective and

³⁹ *Op. cit.* footnote 1, par 51 (2016 Joint Opinion).

⁴⁰ *Ibid.*

⁴¹ *Ibid.*; see also OSCE/ODIHR Second Joint Opinion on the Electoral Code (13 October 2016) pars 54-56, available at <http://www.osce.org/odihr/elections/armenia/275511?download=true>.

⁴² *Op. cit.* footnote 13, par 227 (Guidelines on Political Party Regulation).

dissuasive sanction are, in fact, available for all the violations listed in the Law. While stating this, it is important to keep in mind that, in general, administrative sanctions or fines, or other sanctions such as the temporary suspension of public funding or of other forms of public support are preferred responses to the improper acquisition or use of funds by parties. Criminal sanctions should only be imposed for serious violations of financial regulations, which undermine public integrity. Sanctions should be proportionate and allow for a certain level of flexibility based on the seriousness of the offence.

41. Sanctions should be specifically tailored to the type of violation and the law should be particularly clear about what type of sanctions a violation of financial provisions on reporting and disclosure obligations entail. In accordance with the ODIHR-Venice Commission Guidelines on Political Parties, an escalating catalogue of available sanctions should include, as applicable in the national context:
- Administrative fines, the amount of which should be determined according to the nature of the violation – including whether the violation is recurring;
 - Partial or total loss of public funding and other forms of public support for a set period of time;
 - Ineligibility for state support for a set period of time;
 - Partial or total loss of reimbursement for campaign expenses;
 - Forfeiture to the state treasury of financial support previously transferred to or accepted by a party;
 - Ineligibility to run candidates in elections for a set period of time
 - In the cases involving significant violations, criminal sanctions against the party members responsible for the violation(s);
 - Annulment of a candidate’s election to office, but only as determined by a court of law, in compliance with due process of law and only if the legal violation is likely to have impacted the electoral result; and
 - Loss of registration status for the party. partial or total loss of public funding and other forms of public support for a set period of time.⁴³
42. **The legislator should ensure a catalogue of dissuasive and effective sanctions is applicable, which are proportionate to violations of the Law, in particular, of reporting and disclosure obligations. If sanctions for the violations of the Law are detailed in other pieces of legislation, it would be preferable for the Law to cross-reference these.**

5. Final Comments

43. Article 12 par 2 of the Law is not in line with the 2006 Convention on the Rights of Persons with Disabilities (CRPD). Article 12 par 2 of the CRPD states that “States Parties shall recognize that persons with disabilities enjoy legal capacity on an equal basis with others in all aspects of life” whereas pursuant to Article 29 (b) (i) States Parties shall undertake to promote actively an environment in which persons with disabilities can participate in “non-governmental organizations and associations concerned with the public and political life of the country, and in the activities and

⁴³ Ibid par 225.

administration of political parties”.⁴⁴ **As a State Party to the CRPD, the drafters should remove the requirement of “active legal capacity” as a prerequisite to be a member of a political party.**

44. Pursuant to Article 5 par 3 of the Law, “[e]stablishment or activities of foreign political parties or subdivisions and institutions thereof” on the territory of Armenia shall be prohibited. It is recommended to clarify that this does not restrict the open communication and cooperation on an inter-state level, for example, through assistance from foreign sister parties. The OSCE Copenhagen Document clearly states that all associations, including political parties, have the right to communicate freely and cooperate with similar associations at the international level.⁴⁵ The Venice Commission Code of Good Practice in the Field of Political Parties also states that international cooperation between parties should, as a principle, be welcomed.⁴⁶

[END OF TEXT]

⁴⁴ *Op. cit.* footnote 7 (CRPD); see further ODIHR Election Observation Mission Final Report, Republic of Armenia Early Parliamentary Elections 9 December 2018 Recommendation 9, available at <https://www.osce.org/odihr/elections/armenia/413555?download=true>

⁴⁵ Para. 10.4 of the Copenhagen Document, *op. cit.*, footnote 8, states that participating States should commit to “allow members of such groups and organizations to have unhindered access to and communication with similar bodies within and outside their countries and with international organizations, to engage in exchanges, contacts and co-operation with such groups and organizations and to solicit, receive and utilize for the purpose of promoting and protecting human rights and fundamental freedoms voluntary financial contributions from national and international sources as provided for by law”.

⁴⁶ Venice Commission Code of Good Practice in the Field of Political Parties adopted by the Venice Commission at its 77th and 78th Plenary Sessions (12–13 December 2008 and 13–14 March 2009) CDL-AD(2009)02; “The practice of international co-operation among parties sharing the same ideology is a widespread one. Some parties have projected further their international dimension by assisting sister parties in third countries. In the past, these practices assisted, for instance, the democratic consolidation in a number of European countries. Whenever this assistance is compatible with national legislation and in line with ECHR principles and European standards, it must be welcomed as a good practice, since it contributes to creating solid democratic party systems.”