

NOTE ON INTERNATIONAL AND REGIONAL STANDARDS APPLICABLE TO CERTAIN ISSUES RELATING TO POLITICAL PARTY REFORM IN UKRAINE

UKRAINE

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EXECUTIVE SUMMARY

Political parties are critical institutions, which are essential to the development and sustenance of any pluralistic representative democracy and the exercise of the citizen's right to participate in public life.

The international framework for protecting the rights of political parties and the right to establish and participate in and through political parties is based mainly on the rights to freedoms of association, expression, peaceful assembly and political participation, protected by the International Covenant on Civil and Political Rights (ICCPR), the European Convention for the Protection of Human Rights and Fundamental Freedoms (ECHR) and its Protocols, as well as OSCE human dimension commitments.

ODIHR welcomes the request for international expertise in relation to several questions, including the voluntary use of an e-government digital platform for joining a political party, the requirement for political parties to set up intra-party dispute resolution mechanisms, the grounds and procedures for suspending and prohibiting political parties, including during times of war, as well as some issues pertaining to political party financing.

The Note provides an overview of relevant international and regional standards, recommendations and OSCE commitments as well as some examples of good states practices with respect to the identified topics. It primarily aims at informing the legislative choices with a view of enhancing the overall effectiveness and integrity of the political party system in Ukraine but also to ensure pluralism of the political landscape and to inform the reform of political party legislation in a human-rights compliant manner. The Note should be read together with ODIHR and Venice Commission joint opinions related to the review of Ukrainian draft or existing legislation pertaining to political party regulation, as well as ODIHR election observation reports on Ukraine, which contain recommendation related to political party regulations, activities and financing.

Regarding the voluntary use of an e-government digital platform for joining a political party, given the sensitivity of the processing of personal data revealing the political opinions of individuals, the legislation should provide for a specific legal regime for the automatic processing of such data - with additional safeguards, while ensuring compliance with international personal data protections standards. Other more traditional modalities of joining a political party should also be available, in addition to the use of an online platform, to avoid the risk of digital or generational divide, while ensuring that the online platform is accessible to all.

While a legal requirement for political parties to have an internal dispute resolution mechanism could be included in legislation, the legal provisions should not interfere in the free functioning of political parties and their autonomy, and political parties should be free to decide the preferred modalities of resolving potential disputes, not necessarily through arbitration. Decisions of the internal dispute resolution mechanism concerning civil rights or obligations should be challengeable on substance and procedural grounds before a court or tribunal. Any form of violence against women shall be excluded from the scope of any *mandatory* internal dispute mechanism set up by a political party.

Linking party donations to yearly income may appear unnecessarily restrictive, potentially discriminatory and overall result in less inclusive political participation, while presenting challenges in terms of oversight and identification of violations.

When devising the grounds for prohibiting political parties, it is important to bear in mind underlying principles that prohibition is a measure of last resort that should only be applied on an exceptional basis and in extreme cases, and strictly comply with the requirements imposed under international human rights standards, i.e., to be prescribed by law – meaning that the law concerned must be precise, certain and foreseeable, pursue a legitimate aim as provided in international instruments, be necessary in a democratic society and non-discriminatory. A number of contemplated grounds mentioned in the request raises some concerns in this respect as further detailed in Section 4 of the Note.

Legislation aiming at regulating political parties in times of war should include a sunset clause meaning that all legal acts and measures taken during that period would cease to have effect at the end of that state of emergency or other similar regime. As a consequence, instead of prohibition, it is recommended to consider introducing in legislation the possibility to suspend political parties, which could be reversible at the end of the martial law. This is without prejudice to the possibility of banning a political party by applying general prohibition grounds of political party legislation, as a measure of last resort and if absolutely required by the exigencies of the situation.

More detailed and elaborated considerations and concrete recommendations that should be taken into account in relation to the proposals are highlighted in the text of the Note.

ODIHR notes positively that overall, some of the identified issues, if addressed adequately, should contribute to enhancing political party regulation and should therefore be encouraged in principle. However, legal regulation of political parties is a complex matter, requiring consideration of a wide range of issues, including the political system, context and culture. While the practices vary in OSCE participating States, political parties must be protected as an integral expression of the individuals' right to freely form associations insofar as is necessary to ensure effective, representative and fair democratic governance.

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

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I. INTRODUCTION

1. On 30 January 2023, the Parliamentary Working Group on Development of the Draft Law of Ukraine on Political Parties sent to the OSCE Office for Democratic Institutions and Human Rights (hereinafter “ODIHR”) a request to provide legal expertise in relation to some issues relating to the reform of political party legislation in Ukraine.
2. On 3 February 2023, ODIHR responded to this request, confirming the Office’s readiness to provide expert advice in the form of a Note outlining relevant applicable international and regional standards and recommendations and, if and as relevant, providing a comparative overview of selected examples from OSCE participating States, which have been acknowledged as constituting good practices by relevant international or regional bodies.
3. This Note also aims at informing the legislative choices at the Parliamentary Working Group’s disposal, with a view to enhance the overall effectiveness and integrity of the political party system in Ukraine but also to ensure pluralism of the political landscape and to inform the reform of political party legislation in a human-rights compliant manner.
4. This Note was prepared in response to the above request. ODIHR conducted this assessment within its general mandate to assist the OSCE participating States in the implementation of their OSCE human dimension commitments. ODIHR stands ready to review existing legislation and future draft law/amendments that will be developed in relation to political party regulation in the near future. Such a legal review would provide more detailed analysis of compliance with international human rights standards and OSCE commitments in relation to specific legislative choices and legal provisions.

II. SCOPE OF THE NOTE

5. The scope of this Note focuses on certain issues as requested by the Parliamentary Working Group, primarily on (i) electronic application for joining a party via an e-government digital platform and formation of an online register; (ii) regulation of internal dispute resolution mechanisms; (iii) issues related to political party financing and limits to donations; and (iv) grounds and procedures for suspending and prohibiting political parties, including during martial law. This Note aims at providing an overview of relevant international human rights standards and recommendations, OSCE commitments and good legislative practices from the OSCE Region pertaining to political party regulation in these areas. Thus limited, it does not constitute a review of the entire legal and institutional framework regulating political parties in Ukraine.
6. This Note seeks to provide general guiding principles and concrete examples to further pursue the contemplated reforms through the adoption of legislation if deemed necessary. When referring to good legislative practices, ODIHR does not advocate for any specific model. Also, any country example should be assessed with caution since it cannot necessarily be replicated in another country. Country examples should always be considered in light of the broader national institutional and legal framework, as well as country context and political culture.

7. In accordance with the Convention on the Elimination of All Forms of Discrimination against Women¹ (hereinafter “CEDAW”) and the 2004 OSCE Action Plan for the Promotion of Gender Equality² and commitments to mainstream gender into OSCE activities, programmes and projects, the Note integrates, as appropriate, a gender and diversity perspective.
8. The Note is translated into Ukrainian, but in case of discrepancies, the English version shall prevail.
9. In view of the above, this Note does not prevent ODIHR from formulating additional written or oral recommendations or comments on the issues addressed in the present Note or on relevant legal acts or related legislation pertaining to the legal and institutional framework regulating political parties and their financing in Ukraine in the future.

IV. RELEVANT INTERNATIONAL HUMAN RIGHTS STANDARDS AND OSCE HUMAN DIMENSION COMMITMENTS

10. 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.³ 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.
11. Fundamental rights afforded to political parties and their members are found principally in Articles 19 and 22 of the International Covenant on Civil and Political Rights (hereinafter “ICCPR”), which protect the rights to freedom of expression and opinion and the right to freedom of association respectively.⁴ Other provisions of the ICCPR that are also relevant to the present Note are Articles 25 (right to participate in public affairs), 20(2) (prohibition of advocacy of national, racial or religious hatred that constitutes incitement to discrimination, hostility or violence), 17 (right to privacy), Article 3 (right to equality between men and women), 27 (rights of ethnic, religious or linguistic minorities) and 26 (equality before the law). In the area of gender equality and diversity, the UN Convention on the Elimination of All Forms of Discrimination against Women⁵ (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.⁶ In the sphere of combatting corruption, Article 7(3) of the UN Convention against Corruption specifies that “[e]ach State Party shall also consider taking appropriate legislative and administrative measures, consistent with the objectives of this Convention and in accordance with the

¹ See [UN Convention on the Elimination of All Forms of Discrimination against Women](#) (hereinafter “CEDAW”), adopted by General Assembly resolution 34/180 on 18 December 1979. Ukraine acceded to this Convention on 2 December 2009.

² See [OSCE Action Plan for the Promotion of Gender Equality](#), adopted by Decision No. 14/04, MC.DEC/14/04 (2004), para. 32.

³ ODIHR-Venice Commission, [Joint Guidelines on Political Party Regulation](#) (2nd edition, 2020), CDL-AD(2020)032, para. 17.

⁴ See [International Covenant on Civil and Political Rights](#) adopted by the UN General Assembly by resolution 2200A (XXI) of 16 December 1966. Ukraine ratified the Covenant on 12 November 1973.

⁵ [UN Convention on the Elimination of All Forms of Discrimination against Women](#) (hereinafter “CEDAW”), adopted by General Assembly resolution 34/180 on 18 December 1979. Ukraine ratified the Convention on 12 March 1981.

⁶ [UN Convention on the Rights of Persons with Disabilities](#), adopted on 13 December 2006 during the sixty-first session of the General Assembly by resolution A/RES/61/106. Ukraine ratified the Convention on 4 February 2010.

*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”.*⁷

12. At the regional level, Article 11 of the European Convention on Human Rights (hereinafter “ECHR”) sets standards regarding the right to freedom of association, which protects the rights of political parties as special types of associations and their members.⁸ The case law of the European Court of Human Rights (hereinafter “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 of the ECHR. 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 issues relating to political parties are analyzed.
13. 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.*”⁹ The Copenhagen Document (1990) 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.¹⁰
14. These standards and commitments are supplemented by various guidance and recommendations of the UN, the Council of Europe and the OSCE. At the international level, these include General Comment No. 25 of the UN Human Rights Committee on the right to participate in public affairs, voting rights and the right of equal access to public service interpreting state obligations under Article 25 of the ICCPR,¹¹ and the CEDAW General Recommendation No. 23: Political and Public Life.¹² Other useful reference documents at the OSCE and Council of Europe levels include the Council of Europe Committee of Ministers’ Recommendation (2003)4 on Common Rules Against Corruption in the Funding of Political Parties and Electoral Campaigns.¹³ The ensuing recommendations will also make reference, as appropriate, to other documents of a non-binding nature, which provide further and more detailed guidance, including:
 - the ODIHR-Venice Commission Joint Guidelines on Political Party Regulation¹⁴ adopted in 2020 (hereinafter “2020 Joint Guidelines”);
 - the 2015 ODIHR-Venice Commission Joint Guidelines on Freedom of Association;¹⁵

⁷ [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 Ukraine ratified it on 2 December 2009.

⁸ See the [Council of Europe’s Convention for the Protection of Human Rights and Fundamental Freedoms](#) entered into force on 3 September 1953. Ukraine ratified the Convention on 11 September 1997.

⁹ See the [1990 OSCE Copenhagen Document](#) (29 June 1990) 29 ILM 1305.

¹⁰ See the [OSCE Ministerial Council Decision 7/09](#), 2 December 2009, Women’s participation in political and public life.

¹¹ See the [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.

¹² See [CEDAW Committee, General Recommendation No. 23](#): Political and public life (1997), A/52/38/Rev.1.

¹³ Council of Europe, Committee of Ministers’ [Recommendation \(2003\)4 on Common Rules Against Corruption in the Funding of Political Parties and Electoral Campaigns](#).

¹⁴ ODIHR and Venice Commission, [Guidelines on Political Party Regulation](#) (2nd edition, 2020), CDL-AD(2020)032 (hereinafter “2020 Joint Guidelines on Political Party Regulation”).

¹⁵ ODIHR and Venice Commission, [Guidelines on Freedom of Association](#) (2015), CDL-AD(2014)046 (hereinafter “2015 Joint Guidelines on Freedom of Association”).

- the 2019 ODIHR Guidelines on Promoting the Political Participation of Persons with Disabilities;¹⁶
- the ODIHR's publication "Gender Equality in Elected Office: A Six-Step Action Plan" (2011);¹⁷
- the OSCE High Commissioner on National Minorities (hereinafter "HCNM") Handbook on Observing and Promoting the Participation of National Minorities in Electoral Processes (2014)¹⁸ and HCNM Lund Recommendations on the Effective Participation of National Minorities in Public Life (1999);¹⁹
- various ODIHR and Venice Commission joint opinions,²⁰ especially those related to the review of Ukrainian draft or existing legislation pertaining to political party regulation, as well as ODIHR election observation reports on Ukraine, which contain recommendation related to political party regulations, activities and financing;²¹ and
- the Reports of the Council of Europe Group of States against Corruption (GRECO) relating to transparency of party funding in Ukraine.²²

V. APPLICATION OF STANDARDS AND GOOD PRACTICES

1. PARTY MEMBERSHIP THROUGH VOLUNTARY APPLICATION VIA AN E-GOVERNMENT DIGITAL PLATFORM

15. The request for the Note included a question about the establishment of a system of voluntary submission of applications for joining a political party, using the Digital Platform "Diia", the single State and public administration e-services portal with a view to simplifying the entry of new members into the party and the effective operation of mass parties. In practice, this would also lead to the formation of a register of party members by authorized persons through the online platform.
16. Generally, the use of online tools may contribute to facilitating the exercise of the right to freedom of association²³ and to enhancing the integrity of party membership procedures. However, **given the sensitivity of data revealing the political opinions of individuals,²⁴ any automatic processing of such data should be approached with**

¹⁶ ODIHR, [Guidelines on Promoting the Political Participation of Persons with Disabilities](#) (2019).

¹⁷ ODIHR, [Gender Equality in Elected Office: A Six-Step Action Plan](#) | OSCE (2011).

¹⁸ OSCE High Commissioner on National Minorities (OSCE/HCNM), [Handbook on Observing and Promoting the Participation of National Minorities in Electoral Processes](#) (2014).

¹⁹ OSCE/HCNM, [Lund Recommendations on the Effective Participation of National Minorities in Public Life](#) (1999).

²⁰ Available at: <<https://www.legislationline.org/odihr-documents/page/legal-reviews/topic/16/Political%20Parties/show>>, especially ODIHR and the Venice Commission, [Joint Interim Opinion on the Law of Ukraine on the Condemnation of the Communist and National Socialist \(Nazi\) Regimes and Prohibition of Propaganda of their Symbols](#), CDL-AD(2015)041-e; [Joint Opinion on the Draft Amendments to Some Legislative Acts Concerning Prevention of and Fight against Political Corruption of Ukraine](#), CDL-AD(2015)025; [Joint Opinion on the Draft Law of Ukraine on Political Parties](#), CDL-AD(2021)003. See also Venice Commission, [Opinion on the Ukrainian Legislation on Political Parties](#), CDL-AD(2002)017.

²¹ See <[Elections in Ukraine](#) | OSCE>.

²² See GRECO, Third Evaluation Round, [Evaluation Report on Ukraine, Transparency of Party Funding](#) (Theme II), 2011 ([Greco Eval III Rep \(2011\) 1E](#)), Third Evaluation Round, [Compliance Report on Ukraine, Transparency of Party Funding](#), 2013 ([Greco RC-III \(2013\) 14](#)), Third Evaluation Round, [Second Compliance Report on Ukraine, Transparency of Party Funding](#), 2015 ([Greco RC-III \(2015\) 22](#)), and [Addendum to the Second Compliance Report on Ukraine](#), 2017 ([Greco RC3\(2017\)8](#)).

²³ See ODIHR and Venice Commission, [Joint Guidelines on Freedom of Association](#), CDL-AD(2014)046, paras. 260-262.

²⁴ See e.g., ODIHR and Venice Commission, [Joint Opinion on the Draft Law of Ukraine on Political Parties](#), CDL-AD(2021)003, para. 77, which states that "[i]nformation 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", and refers in this context to ECtHR, *Catt v. the United Kingdom*, no.

great caution. In particular, it must be emphasized that the right to privacy applies to an association, including a political party, and its members and the state should respect data protection principles and the right to associational privacy.²⁵ Hence, any such modality or system of voluntary online application for party membership will need to be assessed against compliance with human rights and fundamental freedoms, notably the rights to freedom of association, respect for private life and political participation as well as personal data protection standards and principle of non-discrimination. In addition, when considering the use of online tools, a number of considerations further underlined below need to be taken into account.

17. Practice varies greatly across OSCE participating States but any such example needs to be considered in light of the broader national political, institutional and legal framework, as well as country context and culture. Some countries do not require any register of party members,²⁶ while others provide for public access to list of party members²⁷ or require to regularly submit an updated list of members to public authorities but the list is not public or may be accessed but only upon request.²⁸ Of note, regarding the requirement for a party to provide the state with lists of its members, the Joint Guidelines underline that this requirement would appear to be an overly intrusive measure that is not compatible with the principles of necessity and proportionality.²⁹ As regards specifically the voluntary use of online platforms/tools for joining a political party, this is generally carried out through the political parties' own websites and the respective lists of party members are generally kept by the said political parties.³⁰ ODIHR is unaware of examples of use of state-managed e-government or online/electronic public services systems for the purpose of joining political parties.

1.1. Electronic Applications for Party Membership

18. An earlier proposed amendment to the Law on Political Parties in Ukraine was proposing to oblige political parties to enter information about their members into the Unified Register of Members of Political Parties, administered by the Ministry of Justice. ODIHR and the Venice Commission recommended reconsidering this provision. The 2021 Joint

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.

²⁵ *Ibid.* paras. 164 and 228 ([ODIHR and Venice Commission Joint Guidelines on Freedom of Association](#)).

²⁶ See e.g., in **The Netherlands**, where political parties receive extra subsidies from the state on the basis of the number of members; there is no general register and reported membership by parties is checked by independent accountants on the basis of the payment of membership dues.

²⁷ See e.g., **Estonia** (<https://ariregister.rik.ee/est/political_party>), where the information (on name, birth date and date the person became member of the party) is public with access to information about previous members of a party (i.e. people that left the party or died) also being possible with a request made to the Register. If a citizen leaves a party, then the said party has the obligation to report to the Register about it, so his/her name is struck from the Register.

²⁸ See e.g., in **Lithuania** parties are obliged to submit to the Minister of Justice (MoJ) an updated list of members every year (no later than 1st of March and 1st of October – Art. 9 of the Law on Political Parties), the list being non-public though any citizen may check through an information system whether s/he is a member of a political party, and may after informing the party, directly write to the MoJ to be deleted from the list of party members if s/he no longer wishes to be a member of the party. In **Latvia**, there is also an obligation of parties to yearly (March 1st) submit an up-to-date list of members to the Register but only information about the number of members per party can be found online: <<https://www.ur.gov.lv/lv/specializeta-informacija/informacija-par-politisko-partiju-biedru-skaitu/>> though the members' list (with just name and surname) is publicly accessible in the digital Register by looking in with the e-ID card or e-Bank if a fee (around €4 per party-year list) is paid. In **Romania**, political parties need to submit a list with the name and surname, date of birth, address, type of ID (series and number), personal numerical code and the signature, accompanied by an affidavit of the person who prepared the list, certifying the authenticity of the signatures, under a penalty provided in the Criminal Code (Art. 292); the list need to be updated each pre-electoral year (by 31st December of that year) but is not available online, but only the number of members as well as the names of the members that form part of directive organs in each of the party branches (see <<https://tribunalulbucuresti.ro/index.php/partide-si-aliant-politice/partide-politice>>). In **Moldova**, political parties are required to present a list of members (including name, gender, date of birth, address, ID series/number and signature for each member) at the moment of registration, but the list is not publicly available.

²⁹ ODIHR and Venice Commission, *Guidelines on Political Party Regulation* (2nd ed., 2020), para. 154.

³⁰ See e.g., in **Estonia** (<https://ariregister.rik.ee/est/political_party>) where the respective parties have their own modalities of joining, online or/and offline, and the lists of members are kept by the parties' boards even if available on the centralized database. See also e.g., International IDEA, *New Forms of Political Party Membership* (2020).

Opinion noted that “[e]ven if not all information on members (including their passport numbers and tax registration information) included in the register is available to the public, the existence of such a register, and particularly its openness to oversight bodies such as the Ministry of Justice, and to the public at large raises serious concerns with respect to the rights of political parties and their members to freedom of association and privacy.”³¹

19. It is understood that the option considered will consist of offering a possibility for political parties to use “Diia” for the purpose of having new members join their political parties and that online submissions for persons willing to join a political party will be voluntary. It is important indeed that **the use of “Diia” be optional for political parties to respect the principle of party autonomy and freedom to manage their own internal affairs.**³² Using online tools in addition to other more traditional modalities of joining a political party, reduces the risk of indirect discrimination against certain persons or groups who may have more limited access to the Internet or not having the knowhow for using such online tools (see also Sub-Section 1.5 below).
20. It is also welcome that the contemplated use of “Diia” is voluntary for individuals wishing to join a political party. Indeed, if it was compulsory, this could potentially have a chilling effect, by discouraging them from becoming members of political parties, particularly from the opposition for fear of misuse of the online tools, and more generally from participating in political life.³³ In practice, this also means that political parties should also offer alternative modalities for joining their political parties.

1.2. Automatic Processing of Personal Data Revealing Political Opinions

21. As stated in Article 6 of the Council of Europe Convention for the Protection of Individuals with regard to Automatic Processing of Personal Data (ETS No. 108), to which Ukraine is a State Party,³⁴ “[p]ersonal data revealing racial origin, political opinions or religious or other beliefs, as well as personal data concerning health or sexual life, may not be processed automatically unless domestic law provides appropriate safeguards”. Indeed, such data revealing political opinions of individuals are especially sensitive. The processing of personal data revealing political opinions entails severe risks of voter discrimination, potentially leading to voter suppression and intimidation, while the knowledge of who may have, and have not, supported a governing party could also affect the provision of government services.³⁵ Hence, **the processing of such special categories of personal data needs to be accompanied by safeguards appropriate to the risks at stake of voter discrimination and of the interests, rights and freedoms protected.**³⁶

³¹ See the ODIHR and Venice Commission, [Joint Opinion on the Draft Law of Ukraine on Political Parties](#), CDL-AD(2021)003, para. 76

³² Indeed, obliging political parties to use an online platform for the purpose of registering their members may interfere in the internal functions and processes of political parties of gathering/registering new members, which may not be congruent with the respect of the principle of party autonomy and right of parties as free associations to manage their own internal affairs; see ODIHR and Venice Commission, [Guidelines on Political Party Regulation](#) (2nd edition, 2020), CDL-AD(2020)032, para. 151, which states: “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”.

³³ Indeed, if the use of an online platform for joining a political party was compulsory and not voluntary, this could constitute a deterrent for individuals to become affiliated with opposition political parties as they may fear the consequences of their political support and/or be inhibited from adhering to a party.

³⁴ See Council of Europe, *Convention for the Protection of Individuals with regard to Automatic Processing of Personal Data* (CETS No. 108), 28 January 1981, which entered into force in Ukraine on 1 January 2011. Ukraine has not yet ratified [Protocol amending the Convention for the Protection of Individuals with regard to Automatic Processing of Personal Data](#) which aims at further enhancing personal data protection mechanisms.

³⁵ See e.g., Committee of the Convention for the protection of individuals with regard to the automatic processing of personal data (Convention 108), [Guidelines on the Protection of Individuals with regard to the Processing of Personal Data by and for Political Campaigns](#) (2021), para. 4.2.4.

³⁶ *Ibid.*

22. The Protocol (CETS: 223) amending the Convention, though not yet ratified by Ukraine, further specifies that the automatic processing of such sensitive data “*shall only be allowed where appropriate safeguards are enshrined in law, complementing those of [the] Convention*”, which shall “*guard against the risks that the processing of sensitive data may present for the interests, rights and fundamental freedoms of the data subject, notably a risk of discrimination*” (proposed new Article 6(1) and (2) of the Convention). The Explanatory Report to the Protocol further provides examples of the types of additional safeguards that could be considered alone or in combination regarding the handling of such sensitive data, including the data subject’s explicit consent, a law covering the intended purpose and means of the processing or indicating the exceptional cases where processing such data would be permitted, a professional secrecy obligation, measures following a risk analysis;³⁷ a particular and qualified organisational or technical security measure.³⁸
23. In light of the above, should the option be pursued of using the existing online platform “Diia” for the purpose of voluntary submission for membership in a political party, **a specific legal regime for the automatic processing of the data regarding membership in political parties - with additional safeguards - will need to be adopted, beyond the existing legal framework concerning personal data protection pertaining to “Diia” that itself should be compliant with international and regional personal data protection standards.**³⁹ The compliance of such existing framework with these standards goes beyond the scope of this Note.
24. In addition, ODIHR and the Venice Commission have on several occasions raised concerns when the authority handling the personal data related to political party registration or membership and/or exercising oversight over such data was not meeting requirements of independence and impartiality.⁴⁰ A lack of actual or perceived independence of the managing authority would undermine public trust in the intended function of such a system. It is thus generally recommended that **the managing authority and any data controller/authorized person presents sufficient guarantees of independence and impartiality, in addition to offering guarantees ensuring the confidentiality and security of the data it stores.**⁴¹ The legislation could also provide a requirement of certain level of security clearance that the data controller should have.

1.3. Publicity of Information and Access to the Data

25. It is unclear whether the data in “Diia” regarding political party membership will be accessible to the public or not. As underlined on several occasions by ODIHR and the Venice Commission, in principle, **the list of party members is an internal document of the party and is not to be made publicly available.**⁴² Even if submissions via “Diia” are voluntary, if information about political party affiliation submitted via “Diia” is to be

³⁷ Risk assessment prior to processing should assess whether data are protected against unauthorised access, modification and removal/ destruction and should seek to embed high standards of security throughout the processing; such an assessment should be informed by considerations of necessity and proportionality, and the fundamental data protection principles across the range of risks including physical accessibility, networked access to devices and data, and the backup and archiving of data; see Convention 108), [Guidelines on the Protection of Individuals with regard to the Processing of Personal Data by and for Political Campaigns](#) (2021), para. 4.3.5.

³⁸ See [Explanatory Report – CETS 223 – Automatic Processing of Personal Data \(Amending Protocol\)](#), 10 October 2018, para. 56.

³⁹ Especially the GDPR and Council of Europe, *Convention for the Protection of Individuals with regard to Automatic Processing of Personal Data* (CETS No. 108).

⁴⁰ See e.g., ODIHR and Venice Commission, [Guidelines on Political Party Regulation](#) (2nd ed., 2020), para 267, which states “*Whichever body is tasked with registration, it should be non-partisan in nature and meet requirements of independence and impartiality*”; and para. 270, which states “*In order to ensure transparency and to increase their independence, legislation shall specifically define how relevant state oversight bodies are appointed*”. See also e.g., ODIHR and Venice Commission, [Joint Opinion on the Law on Political Parties of Azerbaijan](#), CDL-AD(2023)007, para. 100.

⁴¹ *Ibid.* para. 100.

⁴² See also ODIHR and Venice Commission, [Joint Opinion on the Law on Political Parties of Azerbaijan](#), CDL-AD(2023)007, para. 100. See also ODIHR and Venice Commission, [Joint Guidelines on Freedom of Association](#), para. 231.

made public or accessible to the public, **the individual must be clearly informed about it and thus have an opportunity to explicitly consent to the disclosure of such data, which could be easily withdrawn at any time.**⁴³

26. Another issue is to know how the online register of members will be used and to what extent it will be potentially accessible to other public authorities, beyond the data controller, which as underlined above, should be an independent body. It is worth recalling 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.⁴⁴ 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.⁴⁵ Hence, when considering the option to use “Diia”, it would be important to bear in mind that **the online register should not be accessible by the oversight body (or other public authorities) for the purpose of carrying out regular checks, except in the limited case of possible investigation when there is suspicion of a serious contravention of the legislation and such possibility should be duly provided by law.**⁴⁶

1.4. Withdrawal from Party Membership and Removal from the Digital Platform

27. Any individual whose data is processed in “Diia” digital platform should be guaranteed the right to obtain from the controller the erasure of such data and the controller shall have the obligation to erase personal data without undue delay,⁴⁷ which is considered to be about a month. S/he should be informed about such erasure. According to Article 20 of the UDHR, all individuals must be free to belong to *or abstain* from joining associations. Since party membership is an expression of an individual’s free choice, right to freedom of expression and political opinion, it is important that **individual party members’ right, at any time, to withdraw their membership and be removed from the membership list available in “Diia” is guaranteed, without undue delay.** This is in addition to **the right to request rectification if the data are inaccurate, obsolete or incomplete** also guaranteed by international personal data protection standards.
28. In this respect, there should be **clear and effective mechanisms in place, including judicial oversight and an effective legal redress in case an individual no longer wants to be included in the digital platform/register.** As provided by OSCE commitments and international obligations, procedural guarantees would be necessary to ensure everyone’s right to “*effective means of redress against administrative decisions so as to guarantee respect for fundamental rights and ensure legal integrity*”.⁴⁸ This commitment also grants an “*effective means of redress against administrative regulations for individuals affected thereby*” and by providing “the possibility for judicial review of such

⁴³ See e.g., [Regulation \(EU\) 2016/679 of the European Parliament and of the Council of 27 April 2016 on the protection of natural persons with regard to the processing of personal data and on the free movement of such data](#), and repealing Directive 95/46/EC (General Data Protection Regulation, “GDPR”), Article 7 and Recital 32.

⁴⁴ ODIHR and Venice Commission, [Guidelines on Political Party Regulation](#) (2nd ed., 2020), para 269.

⁴⁵ ECtHR, *Republican Party of Russia v. Russia*, [Republican Party of Russia v. Russia](#), no. 12976/07, 12 April 2011, para 115.

⁴⁶ See e.g., ODIHR and Venice Commission [Joint Opinion on the Law on Political Parties of Azerbaijan](#), CDL-AD(2023)007, para. 100. See also ODIHR and Venice Commission, [Joint Guidelines on Freedom of Association](#), CDL-AD(2014)046, para. 231; and [Guidelines on Political Party Regulation](#) (2nd ed., 2020), para. 268.

⁴⁷ See Article 17 of the GDPR and Article 8(c) of the CoE Convention 108.

⁴⁸ See para. 5.10 of the [1990 OSCE Copenhagen Document](#).

regulations and decisions”.⁴⁹ To ensure effective legal redress, **the rules regarding the use of the online register should foresee appeal venues.**⁵⁰

1.5. Other Key Human Rights Considerations

29. A number of considerations should be kept in mind when the use of new technologies is considered to facilitate the establishment of political parties and registration of members, including the following:
- the use of new technologies and online tools should not lead to involuntary exclusion due to unequal access to or knowledge of online tools and the Internet. States should address the needs and overcome specific challenges confronting minority, disadvantaged, or marginalized persons or groups wishing to participate in public life, meaning that **when the use of new technologies is considered, some alternative to online tools should also be offered, in order to reduce the risk of a digital and/or generational divide**, especially when seeing the statistics regarding the use of the Internet and state electronic services in Ukraine by certain categories of persons;⁵¹ States should also consider additional measures to raise awareness and enhance capacities of individuals about the use of such online tools, while ensuring or facilitating access to the Internet more generally;
 - the State should ensure that **the online platform is accessible to all, including persons with disabilities**, and hence comply with Web Content Accessibility Guidelines (WCAG) standards;⁵²
 - there should be **means of legal redress for any violation of the right to privacy of political party members**,⁵³ noting the States’ positive obligation to protect against interference by third parties;⁵⁴ while ensuring safeguards to prevent persons to become associated with or a member of a political party online without their express consent and not of their own volition;⁵⁵
 - States should be **equipped with the required infrastructure guaranteeing high standard of security of the database, while also ensuring compliance with international and regional personal data protection standards.**⁵⁶

⁴⁹ Under Article 2.3(a) of the [ICCPR](#), States obligated themselves “[t]o ensure that any person whose rights or freedoms as herein recognized are violated shall have an effective remedy, notwithstanding that the violation has been committed by persons acting in an official capacity.” See also UN Human Rights Committee, [General Comment No. 31 on the nature of the general legal obligation imposed on States Parties to the Covenant](#) (2004), para. 15. In addition, Article 13 of the [ECHR](#) guarantees an effective remedy before a national authority to everyone whose rights and freedoms are violated, notwithstanding that the violation has been committed by people acting in an official capacity.

⁵⁰ See [UNGA: Resolution 73/179 on the Right to Privacy in the Digital Age](#), para. 6, which “Calls upon all States (e) To provide individuals whose right to privacy has been violated by unlawful or arbitrary surveillance with access to an effective remedy, consistent with international human rights obligations; (f) To consider developing or maintaining and implementing adequate legislation, in consultation with all relevant stakeholders, including civil society, with effective sanctions and appropriate remedies, that protects individuals against violations and abuses of the right to privacy, namely through the unlawful and arbitrary collection, processing, retention or use of personal data by individuals, Governments, business enterprises and private organizations.”

⁵¹ See e.g., UNDP, [Analytical report on the “Opinions and views of the Ukrainian population regarding state electronic services”](#), 16 January 2023, p. 6, although showing an increase of the use of the Internet during the last year among “vulnerable” groups, indicating that 59% of persons beyond 70 years old do not use the Internet and that 31% of persons with disabilities do not use it at all.

⁵² [WCAG 2 Overview | Web Accessibility Initiative \(WAI\) | W3C](#) on web content accessibility for persons with disabilities.

⁵³ ODIHR and Venice Commission, [Joint Guidelines on Freedom of Association](#), CDL-AD(2014)046, para. 231.

⁵⁴ *Ibid.* para. 264 ([ODIHR and Venice Commission Joint Guidelines on Freedom of Association](#)).

⁵⁵ *Ibid.* para. 261 ([ODIHR and Venice Commission Joint Guidelines on Freedom of Association](#)).

⁵⁶ Including the Council of Europe, [Convention for the Protection of Individuals with regard to Automatic Processing of Personal Data](#) (CETS No. 108), 28 January 1981, which entered into force in Ukraine on 1 January 2011; and the EU [General Data Protection Regulation \(GDPR\) – Official Legal Text \(gdpr-info.eu\) as an EU candidate country](#).

IN RESPONSE TO THE QUESTION RELATING TO THE USE OF AN ONLINE PLATFORM FOR VOLUNTARY APPLICATIONS TO JOIN A POLITICAL PARTY

If the option to proceed with the use of “Diia” is pursued, on the assumption that this will be optional for political parties for the purpose of having their members joining the party, as well as voluntary for individuals wishing to join a political party meaning that alternative modalities for joining the political party should be also be available, the following considerations should be kept in mind:

- (i) given the sensitivity of the processing of personal data revealing the political opinions of individuals such as the data regarding membership in political parties, the legislation should provide for a specific legal regime for the automatic processing of such data - with additional safeguards going beyond those applicable to the processing of personal data in general;
- (ii) it is generally recommended that the managing authority and any data controller/authorized person presents sufficient guarantees of independence and impartiality, in addition to offering guarantees ensuring the confidentiality and security of the data it stores;
- (iii) if information about political party affiliation submitted via “Diia” is to be made public or accessible to the public, the individual member must be clearly informed about it and thus have an opportunity to explicitly consent to the public disclosure or accessibility of such data, while ensuring that such consent could be easily withdrawn at any time;
- (iv) other more traditional modalities of joining a political party should also be available, in addition to the use of an online platform, to avoid the risk of digital or generational divide, while ensuring that the online platform is accessible to all, including persons with disabilities;
- (v) should individual party members may wish to withdraw their party membership, they should have the right to be removed from the membership list available in “Diia”, without undue delay.

2. REQUIREMENT OF ALTERNATIVE DISPUTE RESOLUTION MECHANISMS FOR RESOLVING INTERNAL DISPUTES AND REGULATION ON INTERNAL PARTY STRUCTURES

30. The request for the Note included a question about the introduction in the legislation of a requirement for political parties to determine in their statutes the procedure for the formation, powers, procedure for holding meetings and decision-making by arbitration bodies of political parties, which will be in charge to consider applications and complaints of party members, and resolve other disputes.

2.1. Respect for Party Autonomy

31. International standards recognize the importance of internal democracy and transparency within political parties as a fundamental aspect of democratic governance. The ICCPR recognizes the right to freedom of association and requires that this right be exercised in a manner consistent with democratic principles: “*States should ensure that, in their*

internal management, political parties respect the applicable provisions of article 25 in order to enable citizens to exercise their rights thereunder.”⁵⁷

32. The ODIHR and Venice Commission Guidelines on Political Party Regulation provide that the internal functions and processes of political parties should generally be free from state interference.⁵⁸ Internal political party functions are best regulated through the party constitutions or voluntary codes of conduct elaborated and agreed on by the parties themselves. Regarding dispute-settlement mechanisms in particular, the ODIHR and Venice Commission Guidelines on Political Party Regulation underline that “*Party members should have recourse to civil courts against abuse of a party’s contractual obligations towards its members – if such exist – but only after exhausting internal dispute-resolution mechanisms, where such mechanisms exist. Such recourse may be in addition to the development of internal party structures for the adjudication of intra-party disputes.*”⁵⁹ At the same time, the Guidelines further state that “*the legal regulation of intra-party disputes must not infringe upon the free functioning of political parties with regard to their internal decision-making procedures or policies*”.⁶⁰
33. At the same time, the Guidelines also note that it is legitimate for states to introduce some legislative requirements for the internal organisation of political parties, in the interest of democratic governance and equal treatment or participation of minorities or disadvantaged groups, although without interfering too much with the internal matters of political parties. In such cases, “[l]egal 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”.⁶¹
34. In light of the foregoing, **the legal regulation of intra-party dispute mechanisms in legislation would be considered consistent with international standards as long as this regulation does not interfere in the free functioning of political parties and their autonomy.**⁶² Hence, the issue is whether obliging political parties to have such an internal dispute settlement mechanism (in the form of an arbitration body) would impinge upon the party autonomy and may be justified.
35. It should be noted that while obliging political parties to have an arbitration body, the intention of lawmakers would seem to allow political parties to determine the modalities of such internal dispute mechanism as they will be free to determine the procedure for the formation, powers, procedure for holding meetings and decision-making by arbitration bodies of political parties in their statutes. This would *prima facie* respect the principle of free functioning of political parties and give them the choice to determine their own arbitration mechanism and rules. At the same time, **imposing the modality of “arbitration”⁶³ whereas there are various other possible internal modalities of resolving potential disagreements, disputes, disciplinary matters or other issues would appear to unduly limit party autonomy in this respect.**
36. At the same time, political parties are vehicles for political expression that seek a role in public decision-making. As such, they require structure, order and internal regulations to ensure that they can perform this function professionally, effectively and ethically.

⁵⁷ See UN Human Rights Committee, *General Comment No. 25 on Article 25 of the ICCPR*, (1996), para. 26

⁵⁸ See ODIHR and Venice Commission, *Guidelines on Political Party Regulation* (2nd ed., 2020), para. 151.

⁵⁹ *Ibid.* para. 75 (*Guidelines on Political Party Regulation*).

⁶⁰ *Ibid.* para. 75 (*Guidelines on Political Party Regulation*).

⁶¹ *Ibid.* para. 151 (*Guidelines on Political Party Regulation*).

⁶² *Ibid.* para. 75 (*Guidelines on Political Party Regulation*).

⁶³ i.e., the submission of a dispute to the binding decision of one or more independent third persons other than a court.

37. In practice, a majority of political parties, but not all, would appear to have their own internal dispute resolution mechanisms, such as disciplinary committees or grievance procedures, to address internal disputes and disagreements.⁶⁴ In some instances, political parties also decide to outsource the resolution of disputes to arbitration or mediation bodies. In principle, the establishment of internal dispute resolution mechanisms are essential components of good governance and accountability.
38. The existence of intra-party alternative dispute resolution mechanisms, such as arbitration bodies, can be seen to promote internal democracy as well as transparency and accountability within political party structures. Rules for the internal settlement of disputes may prevent disagreements or conflicts from escalating as such mechanisms or bodies can review and settle disputes between the party establishment and individual members or between various party structures. Generally, political parties should be encouraged to set-up such internal dispute resolution mechanisms, though a number of considerations should be taken into account as underlined below, but it is questionable whether they should be required to do so by law, unless there exists a “pressing social need” and “relevant and sufficient” reasons.⁶⁵ For instance, if it is evidenced that many intra-party disputes end up being adjudicated before courts thereby creating a risk of court overload impacting the good administration of justice, there could be a reason for requiring having such mechanisms in place, providing also that this ensures an effective remedy for members.
39. As also noted in previous opinions, in order to respect party autonomy, the state should not overregulate matters that should in principle lie within the discretion of the political parties⁶⁶ as this may allow for greater State interference in the affairs of political parties.⁶⁷ In the 2021 ODIHR-Venice Commission Joint Opinion, ODIHR and the Venice Commission specifically emphasize that “*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’*”.⁶⁸ Further, the question that arises is the consequence in case of non-compliance with such a legal requirement and it should not be used to impose disproportionate sanctions upon political parties.

2.2. Internal Dispute Resolution Mechanisms and Effective Legal Redress

40. Should the option of requiring the setting-up of an internal dispute resolution mechanism in political party legislation be pursued, with due respect to the principle of party autonomy and the caveats stated above, there are a number of procedural and substantive considerations that should kept in mind.
41. If the disputes involve a civil right or obligation, to ensure effective legal redress, the decision taken by the said mechanism should be subject to subsequent control by a judicial body having full jurisdiction.⁶⁹ In light of this, **the decisions of the internal dispute resolution mechanism should be challengeable on substance and procedural grounds before a court or tribunal** (which itself should present all the guarantees of

⁶⁴ See e.g., Scarrow, Susan; Webb, Paul D.; Poguntke, Thomas, 2022, “Political Party Database Round 2 v4 (first public version)”, <<https://doi.org/10.7910/DVN/0JVUM8>>, Harvard Dataverse, V1.

⁶⁵ See ODIHR and Venice Commission, *Guidelines on Political Party Regulation* (2nd ed., 2020), para. 51.

⁶⁶ See e.g., ODIHR and Venice Commission *Joint Opinion on the Draft Law on Political Parties in Mongolia*, CDL-AD(2022)013, para. 52; and ODIHR and Venice Commission *Joint Opinion on the Law on Political Parties of Azerbaijan*, CDL-AD(2023)007, para. 81; and *ODIHR and Venice Commission Joint Opinion on the Draft Law of Ukraine on Political Parties*, CDL-AD(2021)003, paras. 83-85.

⁶⁷ See ODIHR *Urgent Opinion on Draft Law on Political Parties in the Kyrgyz Republic*, para. 26.

⁶⁸ *ODIHR and Venice Commission Joint Opinion on the Draft Law of Ukraine on Political Parties*, CDL-AD(2021)003, para. 37.

⁶⁹ See e.g., ECtHR, *Albert and Le Compte v. Belgium*, Application no. 7299/75; 7496/76, 10 February 1983, para. 29.

independence and impartiality as required by Article 6(1) of the ECHR and Article 14(1) of the ICCPR). It is worth noting that certain categories of disputes may not be considered to constitute a “civil right”, such as cases regarding the exclusion from a political party which are considered to concern the political aspect of the freedom of association.⁷⁰

42. In addition, should **any dispute be linked to an alleged commission of a criminal offence, the case should be referred to the competent authorities for potential investigation and processing in accordance with relevant applicable criminal procedural rules and safeguards.**
43. A political party **may decide to have a mandatory or a voluntary internal dispute resolution mechanism.** Should a political party decide that it will be mandatory, there are some types of disputes for which one should not be required to first exhaust internal dispute resolution mechanisms before resorting to courts. Pursuant to Article 48 of the Council of Europe Convention on Preventing and Combating Violence against Women and Domestic Violence (Istanbul Convention),⁷¹ which entered into force in Ukraine on 1 November 2022, “[States] Parties shall take the necessary legislative or other measures to prohibit mandatory alternative dispute resolution processes, including mediation and conciliation, in relation to all forms of violence covered by the scope of this Convention”. This means that **any form of violence covered by the scope of the Istanbul Convention, including psychological violence, stalking, physical or sexual violence and sexual harassment,**⁷² **should be explicitly excluded from the scope of any mandatory internal dispute mechanism set up by a political party.**⁷³ **Consequently, any party member being subject to such types of behaviours shall access to adversarial court proceedings without having to exhaust internal dispute-resolution mechanisms. This should be made explicit in the underlying legislation, whether there is a requirement to have such a mechanism in place or not.**
44. Finally, seeing how violence against women in politics constitutes a barrier to women’s political participation, there is a need to respond to its manifestations in all areas of political life, including in political parties.⁷⁴ Hence, **whether required by law or not, political parties should be encouraged to provide for adequate rules, processes and structures to identify and respond to acts of violence against members of their party.**⁷⁵ In this respect, it is important that political parties have in place an effective and independent complaints-handling mechanism, that is confidential, responsive to the complainants, fair to all parties, based on a thorough, impartial and comprehensive investigation and timely.⁷⁶ In terms of composition, those carrying out the processes should be independent from any direct or indirect instructions from the party leadership or structures, while the gender balance of those engaged in investigation and hearings should be ensured.⁷⁷ **As emphasized above, this complaint mechanism should be in addition to any other avenue for redress before courts or tribunals.**

⁷⁰ See e.g., ECtHR, *Lovrić v. Croatia*, Application no. 38458/15, 4 April 2017, para. 55.

⁷¹ Council of Europe Convention on preventing and combating violence against women and domestic violence (CETS No. 210) (“Istanbul Convention”), was signed on 11 May 2011 and entered into force on 1 August 2014. Ukraine ratified the Istanbul Convention on 18 July 2022 and it entered into force in Ukraine on 1 November 2022.

⁷² See Articles 33 to 36 and 40 of the Istanbul Convention. Article 40 of the Istanbul Convention defines sexual harassment as “any form of unwanted verbal, non-verbal or physical conduct of a sexual nature with the purpose or effect of violating the dignity of a person, in particular when creating an intimidating, hostile, degrading, humiliating or offensive environment”.

⁷³ See ODIHR, *Addressing Violence against Women in Politics in the OSCE Region: ODIHR Toolkit* (2022), including specific [Tool 3](#) on political parties, p. 9.

⁷⁴ See ODIHR, *Addressing Violence against Women in Politics in the OSCE Region: ODIHR Toolkit* (2022), including specific [Tool 3](#) on political parties. See also IPU, “[Sexism, harassment and violence against women in parliaments in Europe](#)”, 2018.

⁷⁵ See ODIHR, *Addressing Violence against Women in Politics in the OSCE Region: ODIHR Toolkit* (2022), including specific [Tool 3](#) on political parties, p. 20.

⁷⁶ *Ibid.* pp. 9-12 ([ODIHR Tool 3](#)). See also, with respect to complaints-handling mechanisms addressing sexism, harassment and violence against women in parliament, 2019 [IPU Guidelines for the elimination of sexism, harassment and violence against women in parliament](#), pp. 42-43.

⁷⁷ *Ibid.* p. 9 ([ODIHR Tool 3](#)).

IN RESPONSE TO THE QUESTION RELATING TO THE REQUIREMENT FOR POLITICAL PARTIES TO SET UP AN INTERNAL DISPUTE RESOLUTION MECHANISM

If the option to introduce a legal requirement for political parties to have an internal dispute resolution mechanism is pursued, if considered justified by relevant and sufficient reasons, the following considerations should be kept in mind:

- (i) the legal provisions should not interfere in the free functioning of political parties and their autonomy, while ensuring access to an effective legal remedy;
- (ii) political parties should be free to decide the preferred modalities of resolving potential disputes, not necessarily through arbitration, given the variety of mechanisms that could be contemplated; they should also be free to determine the procedure for the formation, powers, procedure for holding meetings and decision-making by such internal dispute resolution mechanism;
- (iii) decisions of the internal dispute resolution mechanism concerning civil rights or obligations should be challengeable on substance and procedural grounds before a court or tribunal;
- (iv) in case a dispute is linked to an alleged commission of a criminal offence, the case should be referred to the competent authorities for potential investigation and processing in accordance with relevant applicable criminal procedural rules and safeguards;
- (v) any form of violence covered by the scope of the Istanbul Convention, including psychological violence, stalking, physical or sexual violence and sexual harassment, shall be excluded from the scope of any *mandatory* internal dispute mechanism set up by a political party, meaning that any individual being subject to such types of behaviours shall access to adversarial court proceedings without having to exhaust internal dispute-resolution mechanisms;
- (vi) political parties should be encouraged to provide for adequate rules, processes and structures to identify and respond to acts of violence against members of their party, including violence against women.

3. DETERMINATION OF LIMITS TO CONTRIBUTIONS IN SUPPORT OF POLITICAL PARTIES

45. The request for the Note referred to the option of linking the limits of contributions in support of a political party from a citizen of Ukraine, an individual entrepreneur or a legal entity to their total income for the last five calendar years, but not higher than a certain amount, to be indexed every year to inflation. At the same time, citizens of Ukraine would be allowed to provide contributions to political parties in the amount of up to one minimum wage without the obligation to confirm the existence of any income. One of the objectives pursued is to prevent the use of proxy donors.

46. As underlined in the ODIHR and Venice Commission Guidelines on Political Party Regulation, “[p]olitical parties need appropriate funding to fulfil their core functions, both during and between election periods. At the same time, the regulation of political party funding is essential to guarantee parties’ independence from undue influence of private donors, as well as state and public bodies, to ensure that parties have the opportunity to compete in accordance with the principle of equal opportunity, and to provide for transparency in political financing.”⁷⁸
47. Generally, the adoption of political party financing regulatory frameworks is intended to curb the negative influence that money in politics may have when political parties unduly rely on a few wealthy individuals or businesses for financing, thereby creating the risk that political parties’ agendas and platforms disproportionately favour the interests of such individuals or businesses. Such frameworks aim to contribute to a more level playing field for electoral contestants, providing for transparency in politics through the disclosure of financial information, and by holding all electoral and political actors accountable through effective oversight and sanctioning mechanisms.
48. Good practices envisage limitations on funding in an attempt to limit the ability of particular categories of persons or groups to gain undue political influence and potentially intervene in public decision-making processes through financial advantages.⁷⁹ Thus, limits of donations from businesses and private organizations, including state owned/controlled companies, and from anonymous donors, and limiting the amount of contributions from a single source, are considered positive to limit the influence of wealthy individuals and businesses.⁸⁰
49. Although international standards and recommendations call for regulating political financing (including in-kind donations) and for creating a balance between state funding and private funding of political parties, financing of political parties is a form of political participation, considered a fundamental right and is also protected by the right to freedom of association.⁸¹ Indeed, it allows individuals to freely express their support for a political party or a candidate of their choice through financial and in-kind contributions.
50. Legislation mandating donation limits should be carefully balanced between, on the one hand, ensuring that there is no distortion in the political process in favour of wealthy interests and, on the other hand, encouraging political participation, including by allowing individuals to contribute to the parties of their choice.⁸²
51. The possible sources of funding can generally be distinguished between public funding by the state and private funding by individuals or legal entities. Membership fees are also a legitimate source of political party funding, which are also qualified as donations. Systems of funding present striking differences across the OSCE region. The majority of countries use mixed systems, relying on private and public funding (for example, Armenia, Georgia, Greece, Estonia, Finland, Latvia, Lithuania, Poland, the Netherlands,

⁷⁸ ODIHR and Venice Commission, [Guidelines on Political Party Regulation](#) (2nd ed., 2020), para. 204.

⁷⁹ See ODIHR-Venice Commission, [Joint Guidelines on Political Party Regulation](#) (2nd ed., 2020), para. 211.

⁸⁰ See ODIHR-Venice Commission, [Joint Guidelines on Political Party Regulation](#) (2nd ed., 2020), paras. 211-213. See also, for example, ODIHR-Venice Commission, [Joint Opinion on the Draft Law of Ukraine on Political Parties](#), CDL-AD(2021)003, paras. 97-101; and [Joint Opinion on Draft amendments to Some Legislative Acts of Ukraine Concerning Prevention of and Fight against Political Corruption](#), para. 35. This is especially relevant in light of the finding and recommendations in ODIHR, [Ukraine - Early Parliamentary Elections, 21 July 2019 - ODIHR Election Observation Mission Final Report \(2019\)](#), p. 17, which notes: “the regulatory framework, as currently implemented, does not ensure the transparency of campaign finances, allows for the undue impact of big donors on politics, clientelism, patronage and excessive influence of campaign spending on the will of voters.”

⁸¹ See ODIHR-Venice Commission, [Joint Guidelines on Political Party Regulation](#) (2nd ed., 2020), para. 204, which provides that “[f]unding political parties through private contributions is also a form of political participation. Thus, legislation should attempt to achieve a balance between encouraging moderate contributions and limiting unduly large contributions.”

⁸² See ODIHR-Venice Commission, [Joint Guidelines on Political Party Regulation](#) (2nd ed., 2020), para. 213; and ODIHR-Venice Commission, [Joint Opinion on the Draft Law of Ukraine on Political Parties](#), CDL-AD(2021)003, para. 96.

etc.),⁸³ although some states opted to bar corporate donations (for example, Estonia, Latvia, Lithuania, Poland), while in others there is a predominance of private sources (the United States of America⁸⁴). Conversely, countries like Austria, Slovakia, Sweden, and Turkey rely predominantly on public funding while in others, public funding does not exist (such as Italy, Malta, Kyrgyz Republic).

52. At the same time, the OSCE participating States frequently provide certain limitations to the funding of political parties, such as bans or limits on donations from certain sources.⁸⁵ More specifically, donations to political parties from (certain) foreign sources are prohibited in most states, including Armenia, Croatia, Cyprus, Georgia, Greece, Estonia, Finland, France,⁸⁶ Latvia, Lithuania, Poland, the North Macedonia, Kazakhstan, and the United States of America.⁸⁷ Donations from anonymous sources are also not permitted in the majority of States,⁸⁸ including Greece, Hungary, Latvia, Lithuania, Luxembourg, Poland Portugal, Slovakia, Slovenia, Spain. In addition, donations from (certain) public sources are explicitly prohibited, such as in Cyprus (state institutions), Finland (corporations under governmental or municipal control, foundations governed by public law), North Macedonia (public sources) and Greece (state companies, government bodies, and public media).
53. The regulations also aim to provide for the effective enforcement of the rules and to sanction those who violate them. As such, the need for transparency in the political party financing has been recognised internationally. In this respect, the UNCAC requires States Parties to “*consider taking appropriate legislative and administrative measures... to enhance transparency in the funding of candidatures for elected public office and, where applicable, the funding of political parties*”.⁸⁹ OSCE commitments and international standards are minimal and general with regard to political party finance. Paragraphs 7.6 and 7.7 of the 1990 OSCE Copenhagen Document call for equal and fair treatment of candidates before the law. Paragraph 19 of the General Comment No. 25 of the UN Human Rights Committee (1996) provides guidance on campaign expenditure limits.⁹⁰

3.1. Modalities for Private Donations

54. As underlined in the Joint ODIHR/Venice Commission Guidelines on Political Party Regulation, “[w]ith the exception of sources of funding that are banned by relevant legislation, all individuals should have the right to freely express their support for a political party of their choice through financial and in-kind contributions” although “*reasonable limits on the total amount of contributions may be imposed and the receipt of donations should be transparent*”.⁹¹ The Guidelines further specify that in-kind-donations should be subject to the same restrictions as financial donations.

⁸³ For example, for an overview of the estimated share of public funding in total income of political parties in EU Members States, see European Parliament, [Study on Financing of political structures in EU Member States](#) (2021), pp. 15-16.

⁸⁴ In the USA, the public funding system of presidential elections is not used anymore, at least since 2012.

⁸⁵ For an overview of limits and prohibition on donations to political structures in the European Union, see European Parliament, [Study on Financing of political structures in EU Member States](#) (2021), pp. 17-18. See also IDEA Political Finance Database <<https://www.idea.int/data-tools/question-view/527>>.

⁸⁶ For instance, in France, foreign legal entities cannot donate to a political party or an election campaign, but foreign individuals can contribute to a political party or an election campaign if they reside in France.

⁸⁷ *Ibid.* pp. 17-18 (2021 European Parliament Study) and IDEA Political Finance Database <<https://www.idea.int/data-tools/question-view/527>>.

⁸⁸ *Ibid.* pp. 17-18 (2021 European Parliament Study) and IDEA Political Finance Database <<https://www.idea.int/data-tools/question-view/538>>.

⁸⁹ See [UNCAC](#), Article 7.

⁹⁰ As noted by the United Nations Human Rights Committee in [General Comment No. 25](#), para. 19, “*reasonable limitations on campaign expenditure may be justified where this is necessary to ensure that the free choice of voters is not undermined or the democratic process distorted by the disproportionate expenditure on behalf of any candidate or party. The results of genuine elections should be respected and implemented.*”

⁹¹ See ODIHR-Venice Commission, [Joint Guidelines on Political Party Regulation](#) (2nd ed., 2020), para. 209.

55. In this respect, good practice allows to cap the amount individuals and legal entities can contribute yearly to a political party or to an electoral campaign/candidate. At the same time, a balance needs to be struck between allowing individuals/entities to finance electoral and political activities, in line with international standards and good practice, and avoiding electoral/political actors' over-dependence on a small number of large donors, which is unhealthy for political parties and democracy. The practice varies greatly among OSCE participating States in this respect.⁹² The cap can be a set figure which may or may not differ between individuals, members and corporations⁹³ or determined by using an external measure, such as the average monthly salary⁹⁴ or by a variable measure, such as a percentage of the donor's income, which may also be combined with a cap.⁹⁵
56. The option considered by the Parliamentary Working Group would be to link the limit of contributions in support of a political party to the donor's total income for the last five calendar years, within an overall set limit indexed on inflation on a yearly basis. In general, it is a good practice **to adjust donation limits on a regular basis to take into account the cost of living**. In some countries, the primary legislation contains an automatic uplift provision to adjust the limits for inflation, which ensures that caps are set at the right levels without having to amend continuously the law.⁹⁶ Thus, allowing for an automatic adjustment of donation limits based on the inflation rate would follow this good practice.
57. Further, it is worth recalling that, as recommended in the *2021 Joint Opinion on the Draft Law of Ukraine on Political Parties*, the existing annual ceilings for private donations by a citizen of Ukraine or by a legal entity set out in Article 15 of the current Law on Political Parties,⁹⁷ are extremely high and should therefore be revised.⁹⁸ Hence, **it is important for the legislation to introduce appropriate yearly donation caps for individuals as well as corporations**.
58. Regarding the donation limits linked to the donor's income, ODIHR and the Venice Commission in their *2021 Joint Opinion* reviewed a proposed provision that was limiting the total sum of donations made in support of one political party from a citizen of Ukraine during a period of one calendar year to maximum 20 per cent of the donor's total income

⁹² See, for example, for an overview of limits on private donations in the European Union, European Parliament, *Study on Financing of political structures in EU Member States* (2021), p. 20, which notes that there is no limit at all on donations from a single source in eight Member States (**Bulgaria, Denmark, Estonia, Germany, Hungary, Luxembourg, the Netherlands, and Sweden**), while the average for the other 19 Member States is c. €53,000, but the limits in individual countries vary from €500 in **Belgium** to €300,000 in **Slovakia**. See also the IDEA Political Finance Database <<https://www.idea.int/data-tools/question-view/543>>.

⁹³ For example, in **Belgium**, donations from individuals and sponsorship by legal entities are limited to €500 per candidate or political party per year while a single donor can donate up to €2,000 in total per year to as many parties as s/he wants; in Bosnia and Herzegovina, the donation caps are KM 10,000 (approx. €5,100) (for individuals), KM 15,000 (approx. €7,700) for members and KM 50,000 (approx. €25,500) for corporations; in **Cyprus**, the donation cap of €50,000 is the same for individuals and corporations; **Georgia**, annual cap for donations (monetary and in kind) by individuals is set at GEL 60,000 (approx. €21,000) and for legal entities at GEL 120,000; in **France**, individuals can donate a total of €7,500 to political parties, per year and a total of €4,600 per election to one or more candidates; in **North Macedonia**, individuals and legal entities can donate up to €3,000 and €30,000, respectively to political parties and candidates; in **Slovakia**, both individuals and legal entities can donate up to €300,000 to political parties.

⁹⁴ For example, in **Armenia**, twelve average monthly salaries per citizen for all parties; in **Poland**, individuals can donate to an electoral committee or the party's electoral fund up to 15 times the minimum monthly salary and 25 times the minimum wage if there is more than one national election in a given calendar year; in **Romania**, parties may receive donations from individuals and legal entities up to an annual limit set at 200 and 500 minimum gross salaries respectively.

⁹⁵ In **Lithuania**, donations may not exceed 10 per cent of the donor's income during the previous year or 10 average monthly salaries. In **Latvia**, private contributions to political parties are restricted to a maximum of 30 per cent of an individual's annual income up to set permissible amounts per party, which were lowered in 2022; in 2022, permissible amounts of individual private donations (including membership fees) to a party were a maximum of €2,500 (5 minimum monthly salaries); to parliamentary parties receiving state funding, €6,000 (12 minimum monthly salaries); to parties not in parliament but qualifying for state funding having received between two and five per cent of votes in the parliamentary elections, and for parties not entitled to state funding: €10,000 (20 minimum monthly salaries) from non-party members and €25,000 (50 minimum monthly salaries) from party members.

⁹⁶ For instance, in Canada and in the United States of America.

⁹⁷ See Article 15 of the *Law of Ukraine on Political Parties*, referring to four hundred minimum monthly salaries per year for a Ukrainian citizen and eight hundred minimum monthly salaries per year for a legal entity.

⁹⁸ See ODIHR and Venice Commission, *Joint Opinion on the Draft Law of Ukraine on Political Parties*, CDL-AD(2021)003, para. 97.

for the last five years. In this respect, ODIHR and the Venice Commission have noted that these regulations appear to be restrictive, as they severely limit who may donate, and what percentage of their income they may donate.⁹⁹ In particular, the Joint Opinion noted that the proposed provision “prevents persons who have had an income only for the last two or three years, or who have accumulated savings or inherited funds over a longer period of time from making any donations and does not allow individuals the flexibility to decide to donate more than 20 per cent of their income to a political party in a particular year, if they so wish. This approach does not appear to encourage political participation, particularly of potential donors who are younger, and who may not have had previous income before they turned 18, nor does it allow all individuals to contribute to their parties of choice. While it is recognised that the drafters introduced this provision into the Draft Law to avoid situations of donating by proxy, the effects of this provision would nevertheless appear to be disproportionate to this aim”.¹⁰⁰

59. Compared to the scheme envisaged in 2021, the Parliamentary Working Group contemplates having an exception for citizens of Ukraine who would be allowed to provide contributions to parties in the amount of up to one minimum monthly salary without the obligation to confirm the existence of any income.
60. This proposal would address to some extent the concerns raised in the 2021 Joint Opinion as this would allow individuals to contribute irrespective of their income, though in a rather limited amount. However, this may still indirectly discriminate against different categories of individuals wishing to donate, for example, young people, who may not have earned income during the five previous years or persons whose unemployment rate is higher than the general population, such as persons with disabilities,¹⁰¹ or persons who have taken unpaid parental leaves, etc.
61. Also, linking the total amount of a contribution to a percentage of income also means that due consideration should be taken of potential important wage disparities between certain groups of persons based on their personal characteristics, for instance between women and men in light of the gender pay gap in Ukraine,¹⁰² but not only. As a consequence, this means that women would be able to contribute overall less to political party financing, which indirectly means less opportunities to contribute to political life. And more generally, a citizen with a higher income can contribute more than others who earn less, thereby also putting into question the principle of equality before the law.
62. In addition, the question is also whether such a scheme would also be workable in terms of oversight, identification of potential violations and imposition of sanctions. Indeed, it raises the question of how the recipient political party, or the political finance oversight body, would be able to verify the compliance with donation limits when the latter are calculated based on donors’ allowed percentage of their income (as it will vary from person to person) and for the donors to know the exact level of their “total income” for the last five years. Also, it is not clear whether “total income” refers to the donor’s gross income or net income. Comparative overview of states practices shows that this is not among the widespread models of funding. In Lithuania, where the total amount of donations by an individual is linked to a percentage of the donor’s previous annual income, in order to monitor and oversee donation limits, in order to donate over EUR 12, donors must submit income and property declarations and their names are published on the Central Election Commission’s website. In its Election Expert Team Report, ODIHR

⁹⁹ See ODIHR and Venice Commission, [Joint Opinion on the Draft Law of Ukraine on Political Parties](#), CDL-AD(2021)003, para. 98.

¹⁰⁰ See ODIHR and Venice Commission, [Joint Opinion on the Draft Law of Ukraine on Political Parties](#), CDL-AD(2021)003, para. 98.

¹⁰¹ See European Bank for Reconstruction and Development (BERD), [Profile on Economic Inclusion for People with Disabilities and Older Workers: Ukraine](#) (2020).

¹⁰² According to the UNDP Gender [Profile](#) of Ukraine, women earn on average 23% less than men (2019 data).

noted that some interlocutors “criticized the asset declaration prerequisite as burdensome and discriminatory and income declaration for small donations as discouraging grassroots funding and political participation” and recommended “raising the threshold of donations that trigger declaration of income by the donor and to reviewing the requirement for property declaration”.¹⁰³

63. In light of the foregoing, and previous ODIHR-Venice Commission Joint Opinion, **linking party donations to a yearly income would appear unnecessarily restrictive, potentially discriminatory and may lead to less inclusive participation, notwithstanding the challenges of overseeing and identifying violations. At the same time, appropriate donation caps (as also advised in the 2021 Joint Opinion), along with introducing effective mechanisms in order to prevent an individual to make multiple donations to the same party if they own multiple businesses or other legal entities, are important measures to safeguard a level playing field.** Establishing different limits on the basis of the kind of donor (e.g. members, candidates, individuals, third-parties – corporation owners, etc.), the type of donation (e.g. monetary, in-kind) and the moment it takes place (e.g., electoral campaign, non-election specific period) could be considered.

3.2. Safeguards to Reduce the Risk of the Use of Proxy Donors

64. It is also important to ensure that donation caps are not easily circumventable by adopting rules that guard against the use of proxy donors. In this respect, the existing Law on Political Parties already contains a number of provisions that should in principle help preventing circumvention of existing limits or bans on donations.¹⁰⁴ Generally, the most effective way to avoid the circumvention of limits on private donations through proxy donors is to enhance the transparency of party funding and credibility of financial reporting, including by requiring donations to go through the banking system, **having an effective and well-resourced (humanly and financially) oversight authority, increasing its coordination with other state authorities (e.g., tax office) and providing (and effectively imposing) clear and proportional sanctions in case of financial violations.** Findings and recommendations from the 2021 Joint Opinion in relation to private funding, including funding by third parties,¹⁰⁵ may provide further useful guidance.
65. Finally, it is important to underline that the political party financing regulatory framework cannot be analysed in isolation and that **it should be complemented by adequate levels of public funding to sustain the institutionalization of political parties,** ensuring that they benefit from necessary financial support to conduct their daily activities while reducing dependence on private funding.¹⁰⁶ Also, **to ensure their effectiveness, rules on political party and election campaign financing should be analysed as part of the broader integrity framework, also including regulation of conflict of interests and lobbying.**¹⁰⁷

¹⁰³ See ODIHR, [Republic of Lithuania - Parliamentary Elections, 11 and 25 October 2020 - ODIHR Election Expert Team Report](#) (February 2021), p. 14.

¹⁰⁴ For instance, Article 15(7) bans anonymous donations and those made under a pseudonym; Article 14 adopts a broad definition of what constitutes a donation/contribution, including membership fees and loans.

¹⁰⁵ See ODIHR and Venice Commission, [Joint Opinion on the Draft Law of Ukraine on Political Parties](#), CDL-AD(2021)003, paras. 91-103.

¹⁰⁶ See e.g., OECD, [Funding of Political Parties and Election Campaigns and the Risk of Policy Capture](#) (2016), p. 38.

¹⁰⁷ See e.g., OECD, [Funding of Political Parties and Election Campaigns and the Risk of Policy Capture](#) (2016), p. 18.

IN RESPONSE TO THE QUESTION RELATING TO THE DETERMINATION OF LIMITS TO CONTRIBUTIONS IN SUPPORT OF POLITICAL PARTIES

- (i) linking party donations to yearly income may appear unnecessarily restrictive, potentially discriminatory and result in less inclusive political participation, while presenting challenges in terms of oversight and identification of violations;
- (ii) while provisions to adjust donation limits on a regular basis taking into account the cost of living or indexed on inflation would be in line with international standards and good practices, it is crucial to introduce effective safeguards against proxy or multiple donations, ensuring adequate levels of public funding and appropriate (lower than existing) caps for yearly donations;
- (iii) having an effective and well-resourced oversight authority equipped with adequate investigative and sanctioning powers, coupled with coordination with other state authorities (e.g., tax office) and clear and proportional sanctions in case of financial violations.

4. GROUNDS AND PROCEDURES FOR SUSPENDING AND PROHIBITING POLITICAL PARTIES

66. The request for the Note included a question about the compatibility of certain listed grounds for prohibition of political parties.¹⁰⁸ For the purpose of this Note, it is understood that the issue relates to the general topic of the ban of political parties and that the ban of illegal activities entails the ban of political parties carrying out such activities. The request further inquired whether providing in legislation the requirements and principles for prohibiting political parties in times of war, for reasons of collaboration of the said political parties, would be compliant with international standards.

4.1. Permissible Grounds for Banning a Political Party

67. Any restriction on the right to freedom of association must be in conformity with the specific permissible grounds of limitations set out in the relevant international obligations and standards. This means that it should be justified by reasons of national security or public safety, public order (or prevention of disorder or crime in Article 11(2) of the ECHR), and the protection of public health or morals or the protection of the rights and freedoms of others (Articles 22(2) of the ICCPR and 11(2) of the ECHR). As noted in paragraph 34 of the Joint ODIHR and Venice Commission Guidelines on Freedom of Association, “[t]he scope of these legitimate aims shall be narrowly interpreted.”¹⁰⁹ In

¹⁰⁸ These include when the activities of a political party are aimed at “eliminating the independence of Ukraine, changing the constitutional order by force, violating the sovereignty and territorial integrity of the state, undermining its security, illegal seizure of state power, propaganda of war, violence, incitement of interethnic, racial, religious hatred, encroachment on human rights and freedoms, public health; propaganda of communist and/or national socialist (Nazi) totalitarian regimes and their symbols; propaganda of the Russian Nazi totalitarian regime, armed aggression of the Russian Federation as a terrorist state against Ukraine, symbols of the military invasion of the Russian Nazi totalitarian regime in Ukraine, as well as financing of the activities of a political party by public organizations, political parties of the state, recognized in accordance with the law as an aggressor state, and included in the List of political parties and public organizations - non-residents of Ukraine that pose a threat the national security of Ukraine, whether a political party has paramilitary formations”.

¹⁰⁹ See also Principle 1 of the Joint ODIHR and Venice Commission [Guidelines on Freedom of Association](#) which includes the presumption in favour of the lawful formation, objectives and activities of associations and states that “[a]ny action against an association and/or its

addition, such limitations must be prescribed by law – meaning that the law concerned must be precise, certain and foreseeable, and must be formulated in terms that provide a reasonable indication as to how these provisions will be interpreted and applied.¹¹⁰ They must also be necessary in a democratic society and non-discriminatory.

68. In some landmark decisions, the ECtHR has expressly extended the right to free association to political parties, a form of association essential to the proper functioning of democracy, and emphasized the necessity of political pluralism in democratic societies.¹¹¹ The ECtHR also held that, “[i]n view of the role played by political parties, any measure taken against them affects both freedom of association and, consequently democracy in the State concerned”.¹¹² This has led the Court to conclude that, “the exceptions set out in Article 11 [of the ECHR] are, where political parties are concerned, to be construed strictly; only convincing and compelling reasons can justify restrictions on such parties’ freedom of association.”¹¹³
69. Dissolution as the most severe sanction should only be applied as a measure of last resort, be decided by a court and can only be justified in extreme circumstances.¹¹⁴ In paragraph 11 of Resolution 1308(2002), on “Restrictions on political parties in the Council of Europe’s member States”, the Parliamentary Assembly has stated that “restrictions on or dissolution of political parties should be regarded as exceptional measures to be applied in cases where the party concerned uses violence or threatens civil peace and the democratic constitutional order of the country” and that “as far as possible, less radical measures than dissolution should be used”.¹¹⁵ This reflects the European approach to the creation, existence and administration of political parties in that there is a consensus around the fact that political parties, using their freedom of expression, can advocate fundamental changes in the form of government and express political opinions that can be seen as controversial, unpopular or offensive, providing that it does not use or call for violence and does not threaten civil peace or fundamental democratic principles.¹¹⁶ As noted by ODIHR and the Venice Commission, dissolution “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. 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.”¹¹⁷ In order to comply with international standards, the legislation “should specify narrowly formulated criteria, describing the

members may only be taken where the articles of its founding instrument (including charters, statutes and by-laws) are unambiguously unlawful, or where specific illegal activities have been undertaken.” In addition, Principle 2 states that the State has the positive obligation to respect and facilitate the exercise of the freedom of association.

¹¹⁰ See ODIHR-Venice Commission, [Joint Guidelines on Political Party Regulation](#) (2nd ed., 2020), para. 48.

¹¹¹ See, for example, ECtHR, *United Communist Party of Turkey and Others v. Turkey*, no. [19392/92](#), 30 January 1998; *Socialist Party and Others v. Turkey*, no. [21237/93](#), 25 May 1998.

¹¹² See ECtHR, *Cumhuriyet Halk Partisi v. Turkey*, no. [19920/13](#), 26 April 2016, para. 64.

¹¹³ See ECtHR, *Socialist Party and Others v. Turkey*, no. [21237/93](#), 25 May 1998, para. 46.

¹¹⁴ See ODIHR and Venice Commission, [Guidelines on Political Party Regulation](#) (2nd ed., 2020), para 272, which stress that “the use of sanctions to hold political parties accountable for their actions should not be confused with prohibition and dissolution based on a party’s use of violence or threats to civil peace or fundamental democratic principles. The prohibition and dissolution of parties based on such extreme circumstances is the most severe form of accountability for legal violations and should only be applied as a measure of last resort where this is necessary in a democratic society. Where a party is a habitual offender with regard to legal provisions and makes no effort to correct its behaviour, the loss of registration status might be appropriate, depending on the rights and benefits attached to such status.” See also the ODIHR and Venice Commission, [Joint Opinion on the Draft Law of Ukraine on Political Parties](#), CDL-AD(2021)003, paras. 64-65.

¹¹⁵ See Parliamentary Assembly of the Council of Europe, [Resolution 1308 \(2002\)](#), 18 November 2002, para. 11. See also [Venice Commission Guidelines on prohibition and dissolution of political parties and analogous measures](#), CDL-INF(2000)001.

¹¹⁶ See ODIHR-Venice Commission, [Joint Guidelines on Political Party Regulation](#) (2nd ed., 2020), para. 114.

¹¹⁷ See ODIHR and Venice Commission [Joint Opinion on the Law on Political Parties of Azerbaijan](#), CDL-AD(2023)007, para. 70. See also [ODIHR and Venice Commission Joint Opinion on the draft act to regulate the formation, the inner structures, functioning of political parties and their participation in election of Malta](#), para. 17.

*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”.*¹¹⁸

70. As underlined in the Joint Guidelines on Political Party Regulation, the overall examination of whether prohibition or dissolution of a party is justified “*must concentrate on the following points: (i) whether there was plausible evidence that the risk to democracy, supposing it had been proved to exist, was sufficiently imminent; (ii) whether the act and speeches of the leaders and members of the political party concerned were imputable to the party as a whole; and (iii) whether the acts and speeches imputable to the political party formed a whole which gave a clear picture of a model of society conceived and advocated by the party which was incompatible with the concept of ‘a democratic society’.*”¹¹⁹
71. The ECtHR has also opined that “[p]luralism and democracy are based on a compromise that requires various concessions by individuals or groups of individuals, who must sometimes agree to limit some of the freedoms they enjoy in order to guarantee greater stability of the country as a whole.”¹²⁰ This high level of protection stems from the fundamental role played by political parties in the democratic processes.¹²¹
72. In general, criteria for the prohibition and dissolution of political parties vary greatly across OSCE participating States and often national criteria for prohibition or dissolution of political parties refer to illegal activities undertaken by political parties involving some form of violence or being fundamentally incompatible with democratic principles.¹²² It is worth emphasizing however that some states stop short of banning parties even where the parties’ statutes and programmatic activities have been found to violate fundamental democratic principles, if the influence wielded by such parties is marginal, and it is unlikely that they would win an election; they thus were not considered to constitute an imminent threat to democratic principles and values.¹²³
73. The activities mentioned in the request that are envisioned to be banned may be grouped into three categories: the actions carried out by political parties (means), the party’s ideology and political views (objectives) and financing of party activities (mostly from foreign sources). Several of the proposed grounds actually reflect the prohibited grounds listed in Article 37 of the Constitution of Ukraine.¹²⁴ Some of the proposed grounds have

¹¹⁸ Ibid. para. 71 (ODIHR and Venice Commission *Joint Opinion on the Law on Political Parties of Azerbaijan*, CDL-AD(2023)007).

¹¹⁹ See ODIHR and Venice Commission, *Guidelines on Political Party Regulation* (2nd ed., 2020), paras. 120 and 121.

¹²⁰ See ECtHR, *Petersen v. Germany*, no. 39793/98.

¹²¹ See ECtHR, *United Communist Party of Turkey and Others v. Turkey*, no. 19392/92, 30 January 1998.

¹²² For example, in **Spain**, the Supreme Court ruled on the ban of Basque political groups *Batasuna* and *Herri Batasuna* for their alleged ties to Basque separatist group ETA on the grounds that the political parties’ activity consisted of “*providing assistance and political support to the actions of terrorist organisations with the aim of overthrowing the constitutional order or seriously disturbing the public peace*”; the ECtHR upheld this ban on the grounds that the groups’ purposes were contrary to the overall goal of democracy and was justified in the interests of national security or public safety (see ECtHR, *Herri Batasuna and Batasuna v. Spain*, Applications nos. 25803/04 and 25817/04, 30 June 2009); in **Germany**, the Communist Party was banned in 1952 on the basis that the party’s revolutionary practice meant “*the impairment or the abolition of the fundamental liberal democratic order in the Federal Republic*”; the ECtHR upheld the ban on the basis that the party’s dictatorship of the proletariat doctrine was “*incompatible with the Convention, inasmuch as it includes the destruction of many of the rights or freedoms enshrined therein*” (see European Commission of Human Rights, *Decision 250/57*, 20 July 1957); in **Switzerland**, the Swiss Constitution provides for the prohibition of parties that are a danger to the state; it is generally agreed, however, that such extreme action should be taken only in times of war.

¹²³ See the judgment of the German Federal Constitutional Court of 17 January 2017 in the case concerning the banning of the National Democratic Party, where the Court confirmed the party’s unconstitutionality, but decided not to ban it because there were no indications that the party would succeed in its anti-constitutional aims (no specific and weighty indications that would at least make it appear possible that the party’s activities will be successful [potentiality]).

¹²⁴ Article 37 of the Constitution of Ukraine provides that: “*The establishment and activity of political parties and public associations are prohibited if their programme goals or actions are aimed at the liquidation of the independence of Ukraine, the change of the constitutional order by violent means, the violation of the sovereignty and territorial indivisibility of the State, the undermining of its security, the unlawful seizure of state power, the propaganda of war and of violence, the incitement of inter-ethnic, racial, or religious enmity, and the encroachments on human rights and freedoms and the health of the population.*”

also already been analysed in previous ODIHR and Venice Commission Joint Opinions¹²⁵ and the Note will make reference to these legal analyses as appropriate and relevant.

74. “Eliminating the independence of a state and changing the constitutional order by force” and “violating the sovereignty, security and territorial integrity of a state” – As mentioned above, international norms require that grounds for prohibition of political parties are precise and foreseeable, providing a reasonable indication as to how these provisions will be interpreted and applied. It is unclear in this respect what substantive difference there may be between “eliminating the independence of a state” and “violating sovereignty”. It is also important to clarify that the reference to forcible change is equally applicable to “eliminating the independence of a state”, “change of constitutional order” and violation of sovereignty/territorial integrity. As underlined above, **only a call or use of violence or threat to civil peace or fundamental democratic principles may justify a prohibition and dissolution of a political party**. The reference to “eliminating the independence of a state” without specific references to violence should not serve as a ground for prohibiting political parties that may defend the rights of national minorities, peacefully call for regional autonomy, or even for secession of part of the territory or advocating for a peaceful change of the Constitution, all of which should be protected by the rights to freedom of association and to freedom of expression.¹²⁶ Hence, the link between the “elimination of the independence of a state” and violence should be more explicit. The same could be said of the broad terminology “violating the sovereignty, security and territorial integrity of a state”.
75. “Propaganda of war and violence” and “inciting interethnic, racial, religious hatred” – The “propaganda of war” and the “advocacy of national, racial or religious hatred that constitutes incitement to discrimination, hostility or violence” shall be prohibited as per Article 20 (1) and (2) of the ICCPR. At the same time, the UN Human Rights Committee specified that the “advocacy of the sovereign right of self-defence or the right of peoples to self-determination and independence in accordance with the Charter of the United Nations” do not fall under the “propaganda for war”.¹²⁷ **To avoid overbroad interpretation, such exception could be considered in underlying legislation.** “All dissemination of ideas based on racial superiority or hatred, incitement to racial discrimination, as well as [...] incitement to [acts of violence] against any race or group of persons of another colour or ethnic origin” shall be an offence punishable by law according to Article 4 (a) of the ICERD. At the same time, such a wording to serve as a ground for prohibiting a political party **should be given a restrictive interpretation and only concern political parties that intent to incite imminent violence, if there is a likelihood of such violence and a direct and immediate connection to such violence**.¹²⁸ In this respect, it is worth reiterating the factors that the ECtHR consider when assessing whether a conviction for calls to violence constitutes an interference with a person’s exercise of the right to freedom of expression, which are also useful in the present context. These are: whether the statements were made against a tense political or social background; whether such statements, being fairly construed and seen in their

¹²⁵ See especially, ODIHR-Venice Commission, [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](#) (2015); and [Joint Opinion on the Draft Law of Ukraine on Political Parties](#), CDL-AD(2021)003.

¹²⁶ ODIHR and Venice Commission, [Guidelines on Freedom of Association](#) (2014), CDL-AD(2014)046, para. 182. See also, for example, European Court for Human Rights, *Socialist Party and Others v. Turkey*, 20/1997/804/1007, 25 May 1998, para. 47; *Manole and Others v. Moldova*, Application no. 13936/02, 17 September 2009, para. 95; *Stankov and the United Macedonian Organisation Ilinden v. Bulgaria* (2001), Application nos. 29221/95 and 29225/95, 2 October 2001, paras. 97-103.

¹²⁷ UN Human Rights Committee, [General comment No. 11 “Prohibition of propaganda for war and inciting national, racial or religious hatred”](#) (Article 20)” (29 July 1983), para. 2.

¹²⁸ See e.g., [ODIHR and Venice Commission Joint Opinion on the Law on Political Parties of Azerbaijan](#), CDL-AD(2023)007, para. 35. See also International Mandate-holders on Freedom of Expression, [Joint Declaration on Freedom of Expression and Countering Violent Extremism](#), 3 May 2016, para 2 (d).

immediate or wider context, could be seen as a direct or indirect call for violence or as a justification of violence, hatred or intolerance; the manner in which the statements were made; their capacity – direct or indirect – to lead to harmful consequences; and the proportionality of sanctions.¹²⁹

76. *“Violation of human rights and freedoms, public health”* – While falling under the permitted legitimate aims listed under international human rights standards to limit the right to freedom of association, such a wording does not necessarily imply some elements of violence or other elements incompatible with fundamental democratic principles.¹³⁰ It should still be proven by the state and the court that no less restrictive means than prohibition would suffice and such a sanction is proportionate to the legitimate aim pursued.
77. *“Propaganda of communist and/or national socialist (Nazi) totalitarian regimes and their symbols”* – ODIHR recalls its 2015 Joint Opinion, which recognized *“the right of Ukraine to ban or even criminalise the use of certain symbols of and propaganda for totalitarian regimes”*, further emphasizing that *“States are free to enact legislation that bans or even criminalises the use of symbols and propaganda of certain totalitarian regimes, such laws must comply with the requirements set by the ECHR and other regional or international human rights instruments, as well as with their national constitutions.”*¹³¹ As underlined in the 2021 Joint Opinion, which analysed provisions similar to the ones listed in the request: *“states are not prevented from banning the propaganda of certain ideologies, provided that they do not unnecessarily and disproportionately impinge on key human rights such as the right to freedom of association and the right to freedom of expression. As stressed by Resolution 1308 (2002) of the Council of Europe’s Parliamentary Assembly, democracies must strike a balance by assessing the level of threat to the democratic order in the country represented by such parties and by providing the appropriate safeguards.”*¹³² Whether or not the promotion of such regimes constitutes a sufficient threat to the state to justify the dissolution of a party will need to be assessed in each individual case by the competent court.”¹³³ ODIHR also refers back to the recommendations made in the ODIHR-Venice Commission [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](#), which noted **the inherent vagueness of the term “propaganda of communist and/or national socialist (Nazi) totalitarian regimes” and recommended to define it more clearly in order to distinguish it from other forms of expression guaranteed by Article 10 of the ECHR¹³⁴ and Article 19 of the ICCPR.**
78. When it comes to the prohibition of *“symbols of “communist and/or national socialist and totalitarian regimes”*, the 2021 Joint Opinion stated: *“the mere public use of a forbidden symbol, with no additional reference to illegal activity of a political party (within the context of international human rights law), should not in itself lead to the prohibition or dissolution of the party.”*¹³⁵ However, banning parties that use certain symbols or insignia intended to justify or propagate totalitarian oppression may be

¹²⁹ See, for example, ECtHR, *Perinçek v. Switzerland*, [no. 27510/08](#), Judgment of 15 October 2015, paras. 204-208 and 215.

¹³⁰ See also as a comparison the [ODIHR and Venice Commission Joint Opinion on the Law on Political Parties of Azerbaijan](#), CDL-AD(2023)007, para. 34.

¹³¹ See ODIHR and the Venice Commission, [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](#) (2015).

¹³² Parliamentary Assembly of the Council of Europe, [Resolution 1308 \(2002\) Restrictions on political parties in the Council of Europe member states](#), adopted on 18 November 2002, para. 3.

¹³³ See ODIHR and Venice Commission, [Joint Opinion on the Draft Law of Ukraine on Political Parties](#), CDL-AD(2021)003, para. 45.

¹³⁴ See ODIHR-Venice Commission, [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](#) (2015), paras. 83-85 and 119.

¹³⁵ ODIHR-Venice Commission, [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](#) (2015), para. 108.

reasonable if the respective legal provisions are formulated with sufficient precision and clearly identify the prohibited symbols, names and terms.¹³⁶ Otherwise, the restriction would raise issues not only with respect to the party's freedom of association, but also as regards the freedom of expression enjoyed by the party and its members. For the stated reasons, it is recommended to provide **clear definitions of prohibited symbols** which may create grounds for banning political parties in Article 3 par 4 of the Draft Law."¹³⁷ It is worth noting that a ban on the display of symbols varies in OSCE participating States.¹³⁸ The ECtHR noted that a blanket ban on such symbols may restrict their use in contexts in which no restriction would be justified.¹³⁹ ODIHR and the Venice Commission in their Joint *amicus curiae* brief for the Constitutional Court of Moldova on the prohibition of the use of symbols of the totalitarian communist regime and of the promotion of totalitarian ideologies in the Republic of Moldova, also emphasized the issue of the banned acts' specificity and the issue of necessity where the mere display of symbols resulted in criminal prosecution in the absence of an examination as to whether they represented dangerous propaganda.¹⁴⁰

79. Propaganda of the Russian Nazi totalitarian regime, armed aggression of the Russian Federation as a terrorist state against Ukraine, symbols of the military invasion of the Russian Nazi totalitarian regime in Ukraine – At the outset, ODIHR acknowledges the legitimate right of Ukraine to introduce effective measures to protect national security and sovereignty, safeguarding democracy and rights and liberties of others, especially in the context of war caused by the Russian Federation's invasion of Ukraine. Although the introduction of permanent changes to the legislation on political parties with new provisions that will remain in force even after the end of the emergency/martial state should be treated with extreme caution, certain restrictions with respect to usage of symbols associated with military invasion may be justified for a reasonable period of time. However, such provisions, if they are included in political party legislation should necessarily be analysed from the perspective of their longer term application in time of peace when the martial law and derogations to international human rights standards will no longer be applicable, and therefore should fully comply with international human rights standards (see also comments regarding the prohibition of political parties during times of war). Furthermore, as underlined above regarding other symbols, it is important to ensure certainty and foreseeability of restrictive grounds. The uncertainty with respect to the term "Russian Nazi totalitarian regime" may potentially lead to overbroad and potentially arbitrary interpretation and thus should be reconsidered. In addition, the same above concerns regarding the term "propaganda" as noted above are applicable in relation to this proposed ground. Furthermore, it is questionable whether such an additional

¹³⁶ See ODIHR-Venice Commission, *Joint Guidelines on Political Party Regulation* (2nd ed., 2020), para. 89. In relation to totalitarianism per se, two resolutions of the Parliamentary Assembly of the Council of Europe deal with the condemnation of the totalitarian regimes: *Resolution 1096 (1996) on Measures to dismantle the heritage of former communist totalitarian systems*, adopted on 27 June 1996, and *Resolution 1481 (2006) on the Need for international condemnation of crimes of totalitarian communist regimes*, adopted on 25 January 2006. These resolutions do not deal with the use of communist symbols. The OSCE Parliamentary Assembly adopted the *Vilnius Declaration*, which, in the *Resolution on Divided Europe Reunited: Promoting Human Rights and Civil Liberties in the OSCE Region in the 21st Century*, adopted at the Eighteenth Annual Session of the OSCE Parliamentary Assembly, 29 June to 3 July 2009, at paras 3, 11 and 17, stated, inter alia, that "in the twentieth century European countries experienced two major totalitarian regimes, Nazi and Stalinist, which brought about genocide, violations of human rights and freedoms, war crimes and crimes against humanity", urged all OSCE participating States to take a "united stand against all totalitarian rule from whatever ideological background" and expressed deep concern at "the glorification of the totalitarian regimes, including the holding of public demonstrations glorifying the Nazi or Stalinist past".

¹³⁷ See ODIHR and Venice Commission, *Joint Opinion on the Draft Law of Ukraine on Political Parties*, CDL-AD(2021)003, para. 47.

¹³⁸ For example, ban on the use of Nazi symbols and/or Nazi propaganda exists in Austria, Belarus, Brazil, France and the Russian Federation. Legislation banning the use of communist symbols or the propaganda of communism has been enacted in countries such as Hungary, Lithuania and Poland. Albania, the Czech Republic, Italy, Slovakia and Germany have banned the use of totalitarian or unconstitutional symbols or related propaganda without specifying whether or not the regulation extends to communist symbols and ideology.

¹³⁹ See ECtHR, *Vajnai v. Hungary*, no. 33629/06, 8 July 2008, para. 54.

¹⁴⁰ See ODIHR and Venice Commission, *Joint Amicus Curiae Brief* for the Constitutional Court of Moldova on the compatibility with European Standards of Law No. 192 of 12 July 2012 on the prohibition of the use of symbols of the totalitarian communist regime and of the promotion of totalitarian ideologies of the Republic of Moldova, CDL-AD(2013)004, para. 44; see also ECtHR, *Fratanolu v. Hungary*, no. 29459/10, judgment of 3 November 2011, para. 25.

ground would be required at all since the said prohibited activities could be covered by other above-mentioned listed grounds (as narrowly interpreted or more clearly defined and/or circumscribed), such as “propaganda of war”, calls for violence, etc. Moreover, this ground is undoubtedly linked to the war caused by the Russian Federation’s invasion of Ukraine. From a legalistic point of view, **it is questionable whether such circumstantial provisions should be introduced permanently in legislation of general application, all the more since they would somewhat duplicate the other above-mentioned grounds. This is without prejudice to the possibility of introducing more restrictive provisions during a time of war or other state of emergency, subject to strict conditions as further detailed below.**

80. *“Financing of the activities of a political party by public organizations, political parties of the state, recognized in accordance with the law as an aggressor state, and included in the ‘List of political parties and public organizations - non-residents of Ukraine that pose a threat the national security of Ukraine’”* – As far as the ban on financing from public organizations/political parties of an “aggressor state” that are included in a specific list is concerned, it has to be recalled that donations from foreign donors or legal entities are already prohibited in Ukraine. These bans constitute solid bases that should prevent the financing of political parties from foreign sources. As provided in the Joint Guidelines on Political Party Regulation, ban on donations from foreign sources is “consistent with Article 7 of Council of Europe Committee of Ministers Recommendation (2003)4, on common rules against corruption in the funding of political parties and electoral campaigns, which provides that, ‘States should specifically limit, prohibit or otherwise regulate donations from foreign donors’.”¹⁴¹ This restriction aims to avoid undue influence by foreign interests, including foreign governments, in domestic political affairs, and strengthens the independence of political parties.”¹⁴² However, each individual case has to be considered separately in the context of the general legislation on financing of political parties. The ECtHR stated in this connection “that this matter falls within the residual margin of appreciation afforded to the Contracting States, which remain free to determine which sources of foreign funding may be received by political parties”.¹⁴³ At the same time, a mere receipt of financial resources from prohibited sources, unless they constitute a criminal offence defined in accordance with international standards (e.g., financing of terrorism, money-laundering, corruption, etc.), should not automatically justify the prohibition of a political party, as the prohibition should be a measure of last resort (this is notwithstanding potential different rules/grounds that may be applicable during times of war or martial law, or restrictions with respect to funding received from a state carrying out a military aggression).
81. In light of the foregoing, while acknowledging the legitimate right of Ukraine to introduce effective measures to protect national security and sovereignty, safeguarding democracy and rights and liberties of others, especially in the context of war caused by the Russian Federation’s invasion of Ukraine, it is fundamental **to not seek to introduce circumstantial provisions in legislation of general application, that will remain applicable during time of peace. Such specific grounds should rather feature in separate legislation as temporary measures strictly limited to the duration of the martial law.**

¹⁴¹ See Article 7 of the Appendix to [Recommendation Rec\(2003\)4](#) of the Committee of Ministers to member states on common rules against corruption in the funding of political parties and electoral campaigns.

¹⁴² See ODIHR-Venice Commission, [Joint Guidelines on Political Party Regulation](#) (2nd ed., 2020), para. 229. See Article 7 of the Appendix to [Recommendation Rec\(2003\)4](#) of the Committee of Ministers to member states on common rules against corruption in the funding of political parties and electoral campaigns. See also [Venice Commission Report on Funding of Associations](#) (2009), para. 77.

¹⁴³ See ECtHR, *Parti Nationaliste Basque – Organisation Régionale d’Iparralde v. France*, [no. 71251/01](#), 7 June 2007. See also [Venice Commission Code of Good Practice in the field of Political Parties](#), para. 160. See also Venice Commission, [Opinion on the Prohibition of Financial Contributions to Political Parties from Foreign Sources](#) (2006), para. 34.

82. Additionally, it is noted that the ground of “collaboration of individual parties” would also *a priori* fall under the above-mentioned grounds for prohibition and it is questionable whether a separate ground should be introduced during martial law.
83. Finally, ODIHR would also like to recall the recent recommendation in the 2021 Joint Opinion providing that “*the Draft Law does not provide for a right to appeal in such cases. Unless the decision on prohibition is made by a Constitutional Court or Supreme Court, the right to speedy appeal has to be guaranteed.*”¹⁴⁴ Indeed, remedies that are not provided in a timely fashion may not satisfy the requirement that a remedy be effective.¹⁴⁵ These considerations should be kept in mind to ensure access to effective remedies.

IN RESPONSE TO THE QUESTION ABOUT THE HUMAN RIGHTS COMPLIANCE OF CERTAIN GROUNDS FOR PROHIBITING POLITICAL PARTIES

When devising the grounds for prohibiting political parties, it is important to bear in mind underlying principles that prohibition is a measure of last resort that should only be applied on an exceptional basis and in extreme cases, and strictly comply with the requirements imposed under international human rights standards, i.e., to be prescribed by law – meaning that the law concerned must be precise, certain and foreseeable, pursue a legitimate aim as provided in international instruments, be necessary in a democratic society and non-discriminatory.

In relation to the contemplated proposed grounds, the following considerations should be kept in mind:

- (i) only a call or use of violence or threat to civil peace or fundamental democratic principles may justify a prohibition and dissolution of a political party and the link between the “elimination of the independence of a state”/“violating the sovereignty, security and territorial integrity of a state” and violence should be more explicit;
- (ii) given the vagueness of the term “propaganda”, especially in relation to the “communist and/or national socialist (Nazi) totalitarian regimes” and “Russian Nazi totalitarian regime” and their symbols, it should be defined clearly in order to distinguish it from other forms of expression guaranteed by Article 10 of the ECHR and Article 19 of the ICCPR;
- (iii) regarding the prohibition of use of symbols, the respective legal provisions should be formulated with sufficient precision and clearly identify the prohibited symbols, names and terms; and
- (iv) to reconsider introducing separate grounds or circumstantial provisions for prohibition of political parties if they would duplicate the other grounds of prohibition existing in legislation, without prejudice to the possibility of introducing more restrictive provisions during a time of war or other state of emergency, subject to strict conditions.

¹⁴⁴ See ODIHR and Venice Commission, [Joint Opinion on the Draft Law of Ukraine on Political Parties](#), CDL-AD(2021)003, para. 143.

¹⁴⁵ See ODIHR and Venice Commission, [Guidelines on Political Party Regulation \(2nd ed., 2020\)](#), para. 53.

4.2. Prohibition of Political Parties in Times of War

84. Wartime conditions put pressure on democratic rights as they entail the restriction of certain activities in the interest of maintaining order and security while the demands of national security rise. It is noted that while the Joint Guidelines on Political Party Regulation do not deal with the situation of a state of emergency,¹⁴⁶ certain fundamental principles listed therein are applicable at all times, especially the right to an effective remedy (see below).
85. Under the current legal framework, the Constitution of Ukraine allows for restriction of certain political rights, including activities of the parties under martial law (Articles 64, 36 and 37). The Decree of the President of Ukraine “On the Introduction of Martial Law in Ukraine” No. 64/2022 of 24 February 2022 refers to Article 8 of the Law of Ukraine on the Legal Regime of Martial Law, which itself provides for the possibility of “*banning the activities of political parties, public associations, if it is aimed at eliminating Ukraine's independence, forcibly changing the constitutional order, violating the sovereignty and territorial integrity of the state, undermining its security, illegal seizure power, propaganda of war, violence, incitement of interethnic, racial, religious hatred, encroachment on human rights and freedoms, public health*” (paragraph 1(9)).¹⁴⁷
86. In addition, in accordance with Article 15 of the ECHR and Article 4 of the ICCPR,¹⁴⁸ Ukraine has also formally notified the [Council of Europe](#) and the [UN Secretary General](#) about temporary derogations from several provisions of the ECHR and of the ICCPR during the Martial Law, which have been regularly extended since March 2022 (most recently in February 2023, for 90 more days).¹⁴⁹ The said notifications refer among others to derogations from Article 10 and 11 of the ECHR and 19 and 22 of the ICCPR.
87. Accordingly, during the martial law and in line with international obligations, certain restrictions may justifiably be imposed in a manner and for the time that is strictly required by the exigencies, *going beyond the limitations that may be imposed in peace time*. At the same time, **derogating measures should still fulfil the strict necessity and proportionality test in terms of their temporal, geographical and material scope, to deal with the exigencies of the situation**. In this respect, **it is generally good practice to include a sunset clause in legislation that aims to introduce derogating measures** i.e., that all legal acts and measures taken during that period would cease to have effect at the end of that state of emergency or other similar regime.¹⁵⁰ Hence, **rather than providing for prohibition/dissolution of political parties, in order for the measures to be reversible when the state of emergency or martial law ends, it could be more appropriate to consider introducing legal provisions in legislation providing for temporal restrictions, including if necessary a possibility to suspend activities of political parties, although sometimes in practice suspension may have effects somewhat similar to dissolution. This is without prejudice to the possibility of banning a political party by applying general prohibition grounds of political party**

¹⁴⁶ See ODIHR-Venice Commission, [Joint Guidelines on Political Party Regulation](#) (2nd ed., 2020), para. 82.

¹⁴⁷ See the text of the [Decree](#) of the President of Ukraine and of the [Law](#) of Ukraine on the Legal Regime of Martial Law.

¹⁴⁸ The ICCPR allows the Party States to “take measures derogating from their obligations under the present Covenant to the extent strictly required by the exigencies of the situation, provided that such measures are not inconsistent with their other obligations under international law and do not involve discrimination solely on the ground of race, colour, sex, language, religion or social origin.” (Article 4). Article 15(1) of the ECHR provides: “In time of war or other public emergency threatening the life of the nation any High Contracting Party may take measures derogating from its obligations under [the] Convention to the extent strictly required by the exigencies of the situation, provided that such measures are not inconsistent with its other obligations under international law.”

¹⁴⁹ See [Full list - Treaty Office \(coe.int\)](#); and [CN.47.2023-Eng.pdf \(un.org\)](#).

¹⁵⁰ See e.g., though in relation to health emergency measures, ODIHR, [OSCE Human Dimension Commitments and State Responses to the COVID-19 Pandemic](#), 17 July 2020, pp. 36 and 50.

legislation, as a measure of last resort and if absolutely required by the exigencies of the situation.

88. Irrespective of the legal basis, it is also important that emergency measures should not confer unfettered discretion on the executive authorities and should lay down explicit conditions and limitations and should never provide an open-ended delegation of powers.¹⁵¹
89. Finally, even in times of emergency, overall respect for rule of law principles should be ensured,¹⁵² including principle of legality, effective, independent judicial control and effective domestic remedies.¹⁵³ Hence, **even during such times, suspension or dissolution of a political party should always be based on a court order. While the martial law regime may potentially justify restricting activities of a political party through speedier judicial procedures, when this is strictly necessary by the exigency of the situation, any such procedures should still comply with the fundamental principles of a fair trial, which are non-derogable under any circumstances.**¹⁵⁴ Hence, the modalities of the said judicial procedure should be such as to allow the political party to defend itself in compliance with the principle of equality of arms.

IN RESPONSE TO THE QUESTION REGARDING THE PROHIBITION OF POLITICAL PARTIES IN TIMES OF WAR

The following should be considered when regulating political party activities in times of war:

- (i) To ensure that derogating measures pertaining to the regulation of political parties during martial law fulfil the strict necessity and proportionality test in terms of their temporal, geographical and material scope, to deal with the exigencies of the situation;
- (ii) To include a sunset clause in legislation that aims to introduce derogating measures in relation to political parties meaning that all legal acts and measures taken during that period would cease to have effect at the end of that state of emergency or other similar regime; as a consequence, instead of prohibition, it is recommended to consider introducing in legislation the possibility to suspend political parties, which could be revoked at the end of the martial law, without prejudice to the possibility of dissolving the said political parties under the general provisions, and subject to safeguards ensuring access to effective remedies by the political party;
- (iii) To ensure that even during martial law, suspension or dissolution should always be based on a court order, potentially through speedier judicial procedures, when this is strictly necessary by the exigency of the situation, but ensuring that such procedures comply with the

¹⁵¹ *Ibid.* p. 50 (2020 ODIHR Report).

¹⁵² See UN Human Rights Committee, [General Comment no. 29 on Article 4 of the ICCPR](#), para. 2.

¹⁵³ See PACE, [Resolution 2209 \(2018\) State of emergency: proportionality issues concerning derogations under Art. 15 of the European Convention on Human Rights](#), para. 3. See also UN Human Rights Committee, [General Comment no. 29 on Article 4 of the ICCPR](#), paras. 14-15.

¹⁵⁴ See UN Human Rights Committee, [General Comment no. 29 on Article 4 of the ICCPR](#), para. 16; and General Comment no. 32 (2007), para. 6. These would include the right to be tried by an independent and impartial tribunal (CCPR General Comment no. 32 (2007), para. 19); the presumption of innocence (CCPR General Comment no. 32 (2007), para. 6); the right to access to a lawyer; and the right of arrested or detained persons to be brought promptly before an (independent and impartial) judicial authority to decide without delay on the lawfulness of detention and order release if unlawful/right to habeas corpus (CCPR, General Comment no. 29, para. 16; and General Comment no. 35, Art. 9 (Liberty and security of person), para. 67).

fundamental principles of a fair trial, which are non-derogable under any circumstances.

5. MASS PARTY MEMBERSHIP AND THE ROLE OF RANK-AND-FILE PARTY MEMBERS

90. The request for the Note inquires whether mass party membership and the role of rank-and-file party members play a prominent role as the basis for the resilience of political parties and democracy.
91. As stated in Article 20 of the UDHR, all individuals must be free to belong to or abstain from joining associations since party membership is an expression of an individual's free choice and right to freedom of expression and political opinion. There is no universally accepted model of party organization, however, generally, the more members a party has, the more it is considered to be stable and institutionalized. Party institutionalization has not only been considered as one of the main determinants of party system stability but also as an essential condition for the consolidation of democracy.
92. There are many ways to enhance resilience of political parties, including increasing intra-party democracy. Intra-party democracy, itself can be manifested in internal party procedures that enhance inclusion of party members in deliberation and decision-making processes, extending the involvement of the party rank-and-file in certain key tasks of party governance, like the selection of party leaders and electoral candidates through open, regular, competitive transparent elections within the party, as well as the definition of the party's policy positions. Adopting a strategy for rank-and-file participation may help to engage party members in the party activities, and ultimately enhance the internal party democracy, and as a consequence political party resilience. As it is maintained by the Venice Commission *"[i]nternal party democracy fulfils the citizens' legitimate expectation that parties, which receive public funding and effectively determine who will be elected to public office, 'practice what they preach', conforming to democratic principles within their own organisations. Therefore, good practices in the area of democratic functioning within political parties, in parallel to the legislation on the subject where it has been enacted and on their own initiative where it has not been developed, is essential to enhance the credibility of the entire democratic system and generally strengthen democratic culture."*¹⁵⁵
93. For example, in the United Kingdom, the Labour Party and the Liberal Democrats members of the relevant electoral constituency are invited to participate in the process of short-listing and final selection of candidates through direct ballot. The Social Democratic Party in Sweden admits proposals of candidates by any individual member and other party constituencies though final selection corresponds to an assembly of delegates (election conference) unless one third of the present delegates call for a general vote among members, who will then be able to draw up the ballot paper by ranking candidates according to their preferences.¹⁵⁶
94. From this perspective, it is important to assess the intra-party democracy, to which extent a party can allow direct integration of members into intra-party governance (selecting the party leader or candidates, approving coalition agreements, or deciding party policy, as well as deciding requirements for membership (for example, dues and procedures for application). During the last decades, many countries have evolved from a liberal model

¹⁵⁵ See the [Venice Commission Code of Good Practice in the Field of Political Parties](#), CDL-AD(2009)021.

¹⁵⁶ See also the statutes of the Spanish Socialist Workers' Party, those of the People's Party and of the United Left.

towards increased regulation of political parties, introducing requirements as to internal democracy and equality, external accountability and (more) respect for the basic elements of constitutional order.¹⁵⁷ If this is the choice being pursued, this should be clearly regulated so that rules relating to transparency, equality and integrity are not circumvented at the intra-party level. As provided by the ODIHR and Venice Commission Guidelines on Political Party Regulation, “*recognising that candidate selection and the determination of ranking on electoral lists is often dominated by closed entities and networks of established politicians, parties that aspire to internal party democracy should adopt clear and transparent criteria that are accessible to all members for candidate selection.*”¹⁵⁸

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¹⁵⁷ See ODIHR and Venice Commission, [Guidelines on Political Party Regulation](#) (2nd ed., 2020), para. 30.

¹⁵⁸ See ODIHR and Venice Commission, [Guidelines on Political Party Regulation](#) (2nd ed., 2020), para. 162.